Interview with David Freestone¹

1. *You have been on the Editorial Board of the Carbon & Climate Law Review since its launch. At the time, you worked in a very senior position at the World Bank, and had overseen some of the earliest initiatives in carbon finance and mitigation projects. Looking back, do you feel that these efforts bore the envisioned fruit? What do you see as the legacy of your work in those early days?*

I am very pleased to have been involved with the Carbon & Climate Law Review (CCLR) since its inception. It has established itself well as the market leader – so considerable congratulations to the editors. In those early days the World Bank was trying to ‘lead from behind’ in carbon finance, to help ease the path for the private sector. The use of the market mechanisms envisaged by the Kyoto Protocol was a radical innovation in international environmental law, but the early uncertainties surrounding the modalities of the trading regime were substantial – certainly up to the Marrakech Accords in 2001, but even after that as well. The Prototype Carbon Fund was deliberately seeking to use risk capital from the public sector and other early movers to address the most difficult early challenges. With a lot of consultation and help from others in the field, my team pioneered the first Emission Reduction Purchase Agreement, which was a standard for some years. Indeed some of the models we developed then are still basically robust, even though expectations have changed.

2. *You co-edited two volumes on carbon trading that became bestsellers in the field, *Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work* (Oxford University Press 2005) and *Legal Aspects of Carbon Trading: Kyoto, Copenhagen and Beyond* (Oxford University Press 2009). Much has happened in the carbon market since their publication, including success stories and disappointments. On what issues have these volumes proven prescient after all these years, and where do you feel that actual policy and market developments developed in an entirely unpredicted (and unpredictable) direction? Are there lessons to be learned for current authors writing on these topics?*

The major disappointment was of course the collapse of the carbon price with the 2008 recession. That really inhibited the level of private as well as public investments in the Clean Development Mechanism, which could otherwise have done so much more for the transfer of low carbon and carbon free technology to the developing world. Another has been the length of time it has taken to develop a truly global agreement. The Paris Agreement is a very welcome breakthrough, but we are still waiting for the detailed implementation guidance, and when it comes – like the Marrakech Accords - I am sure it will provide a lot of fodder for analysts and writers. Interestingly, although the terminology has changed from carbon finance to climate finance, and the Paris Agreement has Nationally Determined Contributions rather than top down Quantified Emission Limitation and Reduction Objectives (QELROs), many of the basic issues we addressed in those early volumes, such as ownership, transfer, certification, double counting etc – are very similar. It also seems clear that the role of the sub-national and voluntary sector is likely to be much more significant than in the past.

3. *Aside from your prolific career at the World Bank, you have been a leading scholar in international environmental law: you started out in academia in the United Kingdom, and returned to university life following your retirement from the World Bank. As a scholar, what themes do you see emerging in the area of international law and climate change? Are some topics underserved, and how do you think CCLR can help raise their profile?*

There will be plenty to write about as the climate finance regime of the Paris Agreement begins to be developed, but a lot of other important climate change issues are not even addressed by the UNFCCC regime. The understandable preoccupation of the UNFCCC Parties with achieving the mitigation stretch target

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of keeping climate change within a 1.5-2° C window has largely precluded detailed consideration of much else. Adaptation is now firmly back on the agenda, but issues such as geo-engineering, the impacts on the ocean, particularly acidification (a direct result of

anthropogenic CO₂ emissions), or the political implications of sea-level rise have been left to other bodies to address. I hope CCLR will be able to continue to give these issues the serious attention they deserve and require.