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INTERNATIONAL REGIME ON CLIMATE CHANGE

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While the world's climate has always varied naturally, the vast majority of scientists now believe that rising concentrations of "greenhouse gases" in the earth's atmosphere, resulting from economic and demographic growth over the last two centuries since the industrial revolution, are overriding this natural variability and leading to potentially irreversible climate change. Greenhouse gases – especially carbon dioxide, the most abundant from human sources – act like a blanket over the Earth's surface, keeping it warmer than it would otherwise be..

Increasing scientific evidence of human interference with the climate system, coupled with growing public concern over global environmental issues, began to push climate change onto the political agenda in the mid-1980s. Recognizing the needs of policymakers for authoritative and up-to-date scientific information, the World Meteorological organization (WMo) and the UN Environment Programme (UNEP) established the Intergovernmental Panel on Climate Change in 1988.[1] That same year, following a proposal by the Government of Malta, the United Nations General Assembly took up the issue of climate change for the first time and adopted resolution 43/53 on the "Protection of global climate for present and future generations of mankind". In 1990, the IPCC issued its First Assessment Report, confirming that climate change was indeed a threat and calling for a global treaty to address the problem. This call was echoed by the Ministerial Declaration of the Second World Climate Conference, held in Geneva in october/November of that year. The UN General Assembly responded to these calls in December of 1990, formally launching negotiations on a framework convention on climate change by its resolution 45/212. These negotiations were conducted by an Intergovernmental Negotiating Committee (INC), chaired by Jean Ripert (France).[2]

[1] Bell Stuart & Gillivery Donald Mc, *Environmental Law*, 520 (2008)
[2] http://unfccc.int/resource/process/guideprocess-p.pdf, visited on February 19, 2016.

The INC met for the first time in February 1991 and, after just 15 months of negotiations, governments adopted the United Nations Framework Convention on Climate Change at the INC's resumed fifth session on 9 May 1992.The Convention was opened for signature on 4 June 1992 at the UN Conference on Environment and Development (UNCED), the so-called "Earth Summit", in Rio de Janeiro, Brazil, and came into force on 21 March 1994. [3]

The complexity of the negotiations, however, meant that considerable "unfinished business" remained even after the Kyoto Protocol itself was adopted. The Protocol sketched out the basic features of its "mechanisms" and compliance system, for example, but did not flesh out the all-important rules of how they would operate. Although 84 countries signed the Protocol indicating that they intended to ratify, Preliminary version many were reluctant to actually do so and bring the Protocol into force before having a clearer picture of the treaty's rulebook. A new round of negotiations was therefore launched at CoP 4 (Buenos Aires,November 1998) to draft the Kyoto Protocol's rulebook. This round, based on an ambitious work programme known as the Buenos Aires Plan of Action, linked together negotiations on the Protocol's rulebook with talks on implementation issues under the Convention (such as finance and technology transfer). The deadline for negotiations under the Buenos Aires Plan of Action was set as CoP 6 (The Hague,November 2000). However, the volume of work facing that session, and the difficult political issues at stake, led to a breakdown in negotiations.[4]

United Nation Framework Convention on Climate Change ,1992

The Convention sets the overall framework for intergovernmental efforts to adder ss climate change. It establishes an objective and principles, commitments for different groups of countries, and a set of institutions to enable governments to monitor the Convention's implementation and continue their talks on how best to tackle the problem.

Objective

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally

[3] *Supra note* 96
[4] *Supra note* 99

to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.[5]

The Convention does not define what levels might be "dangerous", although it does state that ecosystems should be allowed to adapt naturally, food supply should not be threatened, and economic development should be able to proceed in a sustainable manner. Defining what we mean by "dangerous" is a tough political question, involving social and economic considerations as well as scientific judgment. Addressing climate change is clearly not an easy task, raising difficult dilemmas such as how to distribute the burden of reducing emissions among different countries and dealing with scientific uncertainty. [6]

Principles

The Convention's principles embody the common understanding of governments on how to deal with these dilemmas. The principles of "equity" and "common but differentiated responsibilities" respond to the fact that, although climate change is a global issue and must be tackled as such, the industrialized countries have historically contributed the most to the problem and have more resources to address it. The developing countries, for their part, are more vulnerable to its adverse effects and their technological, economic and institutional capacity to respond is generally lower. The Convention thus defines a global framework for addressing climate change, but requires industrialized countries to take the lead by modifying their long-term emission trends. It also calls on the richest among them to provide financial and technological resources to help developing countries tackle the problem and adapt to its adverse effects.[7]

The so-called "precautionary principle", in turn, responds to the dilemma that, although many uncertainties still surround climate change, waiting for full scientific certainty before taking action will almost certainly be too late to avert its worst impacts. The Convention, following many environmental treaties before it, thus calls for "precautionary measures" to combat climate change, stating that, "where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures".[8]

[5] Article 2 of the United Nations Framework Convention on Climate Change, 1992
[6] *Supra note* 99
[7] *Supra note* 96

[8] *Supra note* 96

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Another important dimension to climate change is its linkage with development – indeed, many see climate change as fundamentally a development problem, rather than an environmental one. Patterns of energy consumption, land use and demographic growth are all key drivers of both development and climate change. Tackling climate change must be compatible with advancing the aspirations of the Preliminary version world's poor, as part of their efforts to achieve sustainable development. At the same time, industrialized countries in particular are concerned that the economic costs of mitigating climate change should be minimized. The Convention recognizes these concerns in a number of ways. It acknowledges, for example, that the first and overriding priorities of developing countries are development and poverty alleviation. It also emphasizes the importance of promoting sustainable development, noting that sustainable economic growth and development will enable countries to better address climate change. In addition, the Convention calls for policies and measures to deal with climate change to be cost-effective, so as to ensure global benefits at the lowest possible cost.[9]

Groups of countries and their differentiated commitments

The Convention divides countries into three groups: Annex I countries which includes, relatively wealthy industrialized countries that were members of the organization for Economic Co-operation and Development (oECD) in 1992, plus countries with economies in transition (the EITs), including the Russian Federation, the Baltic States, and several Central and Eastern European States). Annex II countries which includes only oECD members of Annex I and non-Annex I countries, these are the countries which are not listed in the convention's Annexes.

All Parties to the Convention – those countries that have ratified, accepted, approved, or acceded to, the treaty – are subject to an important set of general commitments Preliminary version which place a fundamental obligation on both industrialized and developing countries to respond to climate change. Under these commitments, all Parties must prepare and regularly update national climate change mitigation and adaptation programmes, including measures to address sources of greenhouse gas emissions and to protect and enhance so-called carbon "sinks" and "reservoirs" (forests and other natural systems that remove carbon from the atmosphere). They must also take climate change considerations into account in their other relevant social, economic and environmental policies, and use such methods as impact assessments to minimize any adverse economic, health or environmental consequences of climate change measures.

[9] *Supra note* 99

As part of these general commitments, all Parties must also promote the development, application and transfer of climate-friendly technologies and practices, as well as the sustainable management of carbon sinks. [10]

The Convention recognizes the particular vulnerability of certain groups of developing countries. This vulnerability has two dimensions. Some groups, such as countries with low-lying coastal areas and those prone to drought and desertification, face particularly high risks from the adverse impacts of climate change. others, such as countries that are highly dependent on income generated from fossil fuel production, processing or export, feel more vulnerable to the potential economic impact of climate change response measures. The Convention calls for full consideration to be given to possible funding, insurance and technology transfer that could help meet the specific needs and concerns of these vulnerable countries. The countries that are classified as least developed countries (LDCs) by the UN are given special consideration under the Convention, on account of their particularly low capacity to respond to climate change and adapt to its adverse effects. Parties are urged to take full account of the special situation of LDCs with regard to funding and technology transfer.[11]

Development and Technology Transfer

Promoting the effective development and transfer of environmentally-friendly technologies is critical to enabling developing countries to pursue their sustainable development objectives, while avoiding the climate-destructive development path of the industrialized world. The secretariat has carried out a number of activities in support of Parties' efforts to promote technology development and transfer. At the request of the CoP and the SBSTA, these activities have focussed on the synthesis and dissemination of

information, such as assessing the technology needs of developing countries and compiling information on the existing technology transfer activities of both Annex II Parties and relevant intergovernmental organizations. As Parties often had different understandings of the concept of technology transfer, making it difficult to make progress on the issue. The consultative process, which included several regional workshops, culminated in agreement, as part of the Marrakesh Accords, on a "framework for meaningful and effective actions" to improve the implementation of the Convention's technology commitments.

[10] *Supra note* 99
[11] *Supra note* 99

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The framework covers five key themes, including the assessment of technology needs, the establishment of an efficient technology information system, the promotion of enabling environments to facilitate and remove barriers to technology transfer, and capacity building. Funding to implement the framework is to be provided through the GEF climate change focal area and the special climate change fund. A new expert group on technology transfer was established to oversee the implementation of the framework and to identify ways of advancing technology transfer activities. Composed of 20 members, the expert group meets twice a year and reports to the SBSTA. [12]

Least developed countries

The Marrakesh Accords also established a separate work programme for LDCs. This work programme is centred on the preparation of national adaptation programmes of action (NAPAs), which open up a simplified channel for LDCs to inform donors of their vulnerability to climate change and their urgent adaptation needs. This responds to the fact that many LDCs already need support to help them adapt to climate change, but lack the capacity to prepare full national communications detailing those needs in the near future. The preparation of NAPAs will be funded by the least developed countries fund. In order to support LDCs in their preparation and implementation of NAPAs, the Marrakesh Accords launched a least developed country expert group with a mandate to provide technical guidance and advice to LDCs and to facilitate information exchange with other multilateral environmental treaties. [13]

Research and public outreach

Two important commitments that apply to all Parties under the Convention concern cooperation in research and systematic observation of the climate system[14], and promotion of

[12] *Supra note* 96
[13] *Ibid*
[14] Article 5 of the United Nations Framework Convention on Climate Change, 1992 in this direction provides: In carrying out their commitments the Parties shall:

(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

education, training and public awareness on climate change.[15] The Convention's work on research and systematic observation is carried out in collaboration with the Global Climate observing System (GCoS) of the World Meteorological organization (WMo), along with other agencies participating in WMo's Climate Agenda. Key concerns surrounding this topic include addressing the deterioration of climate observing systems in many regions, and increasing the participation of developing countries in climate observation. GCoS has a number of activities underway to advance these aims (such as regional workshops), and reports regularly to the SBSTA on its work. An important step forwards was taken at CoP 5, when Parties adopted guidelines for reporting on their global climate observation activities as part of their national communications.

Activities Implemented Jointly (AIJ)

The Convention allows Annex I Parties to implement policies and measures jointly with other Parties to help them return their emissions to 1990 levels. This clause underpinned the decision, at CoP 1, to launch a pilot phase of so-called "activities implemented jointly" (AIJ). Under AIJ, an Annex I Party may implement a project that reduces emissions (e.g. energy conservation) or increases the removal of greenhouse gases by carbon sinks (e.g. reforestation) in the territory of another Party, including a developing country, but without gaining credit for the resulting emission reductions or removals. The pilot phase is intended to build experience through learning by doing, for example in establishing baselines and calculating the environmental benefits of projects. Although the pilot phase was due to conclude by 2000, CoP 5 decided to prolong it beyond that date to continue the learning process. This was especially important for some developing country regions, notably Africa, whose experience with AIJ had so far been limited.[16]

The secretariat compiles an annual synthesis report on the AIJ projects reported to it, which must have been endorsed by both host and investing countries. In reporting on their AIJ projects, Parties are expected to use a Uniform Reporting Format (URF), in order to maximize the comparability of information. The CoP reviews the progress of the pilot phase every year, based on this synthesis report. By June 2001, more than 150 AIJ projects had been communicated to the secretariat, engaging around one quarter of Parties to the

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

[15] Article 6 of the United Nations Framework Convention on Climate Change, 1992
[16] *Supra note* 99

Convention, either as investors or as hosts. Interest in the AIJ pilot phase has steadily grown, especially since the adoption of the Kyoto Protocol, with an almost 50% increase in the number of projects since 1997. While 70% of host Parties are non-Annex I Parties, EITs still host the majority of AIJ projects, although the balance is gradually shifting towards the developing countries. Most projects are in the renewable energy and energy efficiency sectors, although the largest projects involve forest preservation, reforestation or restoration.[17]

Linkages with other international organizations

The issue of climate change is so wide-ranging that the work of the Convention is interlinked with that of many other international organizations that share the common objective of sustainable development. An effective response to climate change, and progress towards sustainable development, thus requires that areas of possible conflict or overlap be properly managed, and that opportunities for synergies be exploited. The Convention recognizes this, authorizing the CoP to work with other international organizations, and calling on the secretariat to ensure the necessary coordination. A joint liaison group (JLG) was established in 2001 between the secretariats of the UNFCCC, the Convention on Biological Diversity (CBD) and the UN Convention to Combat Desertification (UNCCD), in order to enhance cooperation between these so called "Rio Conventions" (the origins of all three Conventions are associated with the 1992 Rio de Janeiro "Earth Summit"). Through the JLG, the three secretariats share information on the work of their conventions, and identify possible joint activities and any potential conflicts. [18]

The SBSTA regularly hears reports from international organizations whose work is linked to climate change, such as the World Health organization (WHo) and the Ramsar Convention. The secretariat in turn attends, and makes statements at, related international meetings. Input from other organizations is also sought on specific issues, such as collaboration with GCoS on research and systematic observation and UNEP on education, training and public awareness. In addition, the SBSTA has worked with the bodies of the Montreal Protocol on Substances That Deplete the ozone Layer on linkages between efforts to combat climate change and ozone depletion; this is an issue that involves synergies as well as potential conflicts, given that both ozone-depleting substances and some of their replacements are also greenhouse gases.[19]

[17] *Supra note* 99
[18] *Supra note* 96
[19] *Ibid*

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The Kyoto Protocol: The Framework for Action

The third session of the Conference of the Parties to the Framework Convention on Climate Change was held in Kyoto, Japan, from 1–11 December 1997. The Conference adopted the Kyoto Protocol to the Framework Convention.[20]The Kyoto Protocol is based on the general framework established by the Convention, sharing its ultimate objective and principles, as well as its grouping of countries into Annex I, Annex II (the oECD members of Annex I), and non-Annex I Parties. The Kyoto Protocol will share the Convention's institutions, including its two subsidiary bodies and secretariat, while the Convention's Conference of the Parties will serve as the "meeting of the Parties" to the Protocol, forming a body known as the CoP/MoP.

The GEF, operating as the Convention's financial mechanism, will also channel funding to developing countries under the Kyoto Protocol, while the IPCC is expected to play a similarly important role in support of the Protocol as it does for the Convention through its continued scientific, technical and methodological work. The Kyoto Protocol and its rulebook set out in the Marrakesh Accords consist of following five main elements namely Commitments, Implementation, Minimizing impacts on developing countries, Accounting, reporting and review and compliance.

Policies and measures

To achieve the Protocol's targets, Annex I Parties will need to implement climate change policies and measures at home. The Protocol does not oblige governments to implement any particular policy, but rather gives an indicative list of policies and measures that might help mitigate climate change and promote sustainable development. This list includes:

1. Enhancing energy efficiency;
2. Protecting and enhancing greenhouse gas sinks;
3. Promoting sustainable agriculture;
4. Promoting renewable energy, carbon sequestration and other environmentally friendly technologies
5. Removing subsidies and other market imperfections for environmentally damaging activities;
6. Encouraging reforms in relevant sectors to promote emission reductions;

[20] http://www.aph.gov.au/house/committee/environ/greenhse/gasrpt/appc.pdf,visited on March 7,2010

7. Tackling transport sector emissions; and
8. Controlling methane emissions through recovery and use in waste management.

Implementation

Three innovative mechanisms of the Kyoto Protocol are:

1. Joint implementation;
2. Clean development mechanism (CDM) and
3. Emissions trading.

The three mechanisms operate on the basis of accounting units, which are tracked and recorded through national registries to be established and maintained by Annex I Parties. Joint implementation projects result in emission reduction units (ERUs), CDM projects generate certified emission reductions (CERs) and, under emissions trading, Annex I Parties may exchange assigned amount units (AAUs), that is, some of the emissions included in their assigned amounts. They may also exchange CERs and ERUs, as well as RMUs generated through sink activities in the LULUCF sector. These units are all equal to one metric tonne of carbon dioxide equivalent (calculated using GWPs), and will all have their own unique serial number.

Health in International Climate Change Conventions

The UNFCC has been hailed as one international legal instrument with potential to protect human health. The Convention does not make extensive provisions on health but does contain some provisions. First, the Convention defines adverse effects of climate change as the physical environment or biota resulting from climate change having deleterious effects on inter alia human health[21]. Hence, health protection is part of the corpus of the global climate change legal regime.

Second, the Convention requires its Parties to take climate change considerations in their domestic environmental and social policies and to minimize impact on public health of actions to mitigate and adapt to climate change[22].

[21]Article 1 of the United Nations Framework Convention on Climate Change1992
[22] Article 4(1)(f) of the United Nations Framework Convention on Climate Change1992

Third, the obligation on Parties to promote and cooper-ate in scientific, technological, technical, and socio-economic research on climate change implicates the role of the health sector in providing evidence based public health interventions to tackle climate change and its impacts.[23] Finally, the UNFCC's Conference of Parties (CoP) has included health as eligible for funding under climate change funding mechanisms[24].

Kyoto protocol has given teeth to the UNFCC and latest development in this direction is the Copenhagen accord. So we have covered a long distance to tackle climate change through international conventions. The need of the hour is compliance of commitments by the parties and if it is done in that case we will be able to pass on this planet earth with healthy environment to the next generation, which is our duty also.

[23]Article 4(1)(g) of the United Nations Framework Convention on Climate Change1992
[24] Decision 5/CP.7 of the Conference of Parties to the United Nations Framework Convention on Climate Change, 2001 at http://unfccc.int/files/cooperation_and_support/ldc/application-/pdf/13a01p32.pdf, visited on March 13, 2017.