

Exam - International Climate Change and Energy Law (JUS5911)

Spring 2012

Please answer three (3) of the four (4) sets of questions below

1. Which principles inform the UN climate treaties? How is in particular the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDRRC) reflected in the architecture of these treaties and which challenges does it pose to the current climate negotiations?
2. Which competences does the Compliance Committee under the Kyoto Protocol have for dealing with an Annex I member state's non-compliance with its obligations under the Protocol?
3. The market for biofuels is exploding, and sub-Saharan African countries are interested in becoming biofuel and carbon credit suppliers to world markets. In 2009, the Africa Journal stated that "private and public sector institutions [...] are currently working to streamline the CDM biofuel approval process, which will enable industrialized countries to facilitate biofuel projects in Africa for their benefit." Increasingly, "Africa will be a frontier for developed nations to diversify their energy supplies and attain carbon 'neutrality.'" The CDM Executive Board has since approved methodologies for biofuel projects. At present, only roughly 2% of all CDM projects (85 projects) are based in Africa according to UNFCCC statistics (13 April 2012).
Please discuss critically the CDM, its role in Africa and the approval of biofuel projects under the CDM. Which legal challenges could arise with regard to biofuel projects in the CDM?
4. The Lamedives are a state comprising of 1200 islands in the South-Indian Ocean. On average, the islands are lying about 1.3 m above sea level. In the last five years, rising sea levels and increasing sea surface temperatures are having an impact on the islands and their surrounding marine ecosystem. Erosion is a big problem on many of the islands and most of their coral reefs are badly bleached. Some islands have become inhabitable causing whole communities to resettle to other islands. The Lamedives rank number 181 on the list of 190 countries' Gross Domestic Product - GDP (nr. 1 having the highest GDP). The Government of the Lamedives is contemplating a claim to seek compensation for the occurred damages to its territory.
 - As a first step, compensation shall be claimed from Dancana. Dancana is an industrialized state and one of the highest emitters of greenhouse gases (GHG), responsible for about 10% of global annual emissions. Dancana has a thriving oil and gas sector. In the recent years, Dancana has developed its large tar sand reservoirs for oil production, causing its GHG emissions to increase by 30% since 1990.
 - Both, the Lamedives and Dancana are Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. Dancana is an Annex I Party with an emission limitation and reduction commitment of 6 % (base year 1990). The Lamedives are not listed in Annex I or II of the UNFCCC.

You are a legal advisor to the Government of the Lamedives and are asked to assess the feasibility of such claim. Please analyze the requirements for this claim and provide arguments for and against the success of

a compensation claim. (For the purpose of this case, we assume that there is an international court with the jurisdiction to hear this case.)