6. The International Climate Change Regime: UNFCCC

International Environmental Law

Dr. Christina Voigt
Biodiv Quiz

• What are the three objectives of the CBD?
• Which protocols exist to the CBD?
• Is it useful to have a global agreement on biological diversity?
• What are its strengths?/Weaknesses?
1. The Legal Status of the Atmosphere

2. 1992 UNFCCC

3. 1997 Kyoto Protocol

4. Global Carbon Market

5. The way ahead
   2. Cancun Agreements (2010)
   3. Durban platform and way forward (2011)
The Atmosphere
Legal status:

- Common resource
- Shared resource
- Common heritage of mankind
- Common concern of humankind (Preamble UNFCCC)
Preamble UNFCCC, para 1:
…”change in the Earth’s climate and its adverse effects are a common concern of humankind,…”
International Climate Agreements

- UNFCCC 1992/1994
- Berlin Mandat 1995
- **Kyoto Protocol 1997/2005**
- Marrakech Accords 2001
- Bali Action Plan 2007
- Copenhagen Accord 2009
- Cancun Agreements 2010
- Durban Platform for Enhanced Action (ADP) 2011
How to make international climate law?
Or this way?
UNFCCC

- Adopted in 1992 in NY
- In force since 21 March 1994
- Almost universal participation:
  - 194 States and the EU
- Framework Convention
- Legally binding international agreement
  - Ultimate objective, art. 2
  - Principles. Art. 3
  - Groups of States, art. 4 and Annexes I and II
  - Institutional Framework and Reporting
Institutional Structure

**Groups:**
- EU
- Umbrella: USA, CAN, NO, AUS, NZ, RF, UK
- G77 and China (subgroups: AOSIS and LDC, African Group)
- EIG: Sveits, MX, South Korea
- OPEC
- BASIC: Brazil, India, China, South Africa
UNFCCC

Ultimate Objective, Art. 2:

"stabilizing of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system."

• BUT:

"such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner."
“Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperature, widespread melting of snow and ice, and rising global mean sea levels.”

“Most of the observed increase in globally average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations.”

Discernible human influences now extend to other aspects of climate, including ocean warming, continental-average temperatures, temperature extremes and wind patterns.”
UNFCCC

• Ultimate Objective, Art. 2:
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Potential climate changes impact

Temperature

Sea level rise

Precipitation

Impacts on...

Health
- Weather-related mortality
- Infectious diseases
- Air-quality respiratory illnesses

Agriculture
- Crop yields
- Irrigation demands

Forest
- Forest composition
  - Geographic range of forest
  - Forest health and productivity

Water resources
- Water supply
- Water quality
- Competition for water

Coastal areas
- Erosion of beaches
- Inundation of coastal lands
- Additional costs to protect coastal communities

Species and natural areas
- Loss of habitat and species
- Cryosphere: diminishing glaciers

Source: United States environmental protection agency (EPA).
Projected impact of climate change

Global temperature change (relative to pre-industrial)

<table>
<thead>
<tr>
<th>0°C</th>
<th>1°C</th>
<th>2°C</th>
<th>3°C</th>
<th>4°C</th>
<th>5°C</th>
<th>6°C</th>
</tr>
</thead>
</table>
| Food
| Possible rising yields in some high latitude regions | | | Falling crop yields in many areas, particularly developing regions | | | |
| Water
| Small mountain glaciers disappear – water supplies threatened in several areas | | Significant decreases in water availability in many areas, including Mediterranean and Southern Africa | | Sea level rise threatens major cities |
| Ecosystems
| Extensive damage to coral reefs | | | | Rising number of species face extinction |
| Extreme weather events
| | | | Rising intensity of storms, forest fires, droughts, flooding and heat waves |
| Risk of abrupt and major irreversible changes
| | | | Increasing risk of dangerous feedbacks and abrupt, large-scale shifts in the climate system |

SOURCE: Stern Review
Equilibrium global mean temperature increase above preindustrial
Multi-model Averages and Assessed Ranges for Surface Warming
UNFCCC

• Ultimate Objective, Art. 2:
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Climate Change: Defining Options

- Reducing Emissions
- Expanding and Protecting Forests
- Life Style Changes

- Building Dams
- Flood Protection
- Erosion Protection
- Irrigation Systems
UNFCCC

Principles:

• Precautionary Principle (3.3.)
• Sustainable Development (3.4.)
• Cost-Effectiveness (3.1 and 3.2)
• Inter-generational Equity (3.1.)
• Common but Different Responsibilities (3.1.)
UNFCCC

Commitments:

- Participants: all Parties, Annex I, Annex II, non-Annex Parties
- **All parties:** Art 4.1.:  
  - national inventories  
  - national and regional programmes to mitigate cc  
  - promote Sustainable Development  
  - promote conservation of sinks, adaptation, education etc.
- **Annex I Parties:** Art. 4.2.(a)  
  - develop **national policies and measures** on the mitigation of cc  
  - **Taking the lead!**  
  - reporting requirements (Art. 4.2.(b))
- **Annex II Parties:**  
  - provide financial resources to developing countries (Art.4.3)  
  - assist developing countries in meeting adaptation costs (Art. 4.4)  
  - technology transfer (Art. 4.5)  
  - allow degree of flexibility (Art 4.6)
UNFCCC

BUT: stronger commitments needed!

Art. 4.7: ”The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.”

.... Art. 17: Protocol necessary (more specific obligations)
7. The International Climate Change Regime: The Kyoto Protocol

International Environmental Law

2012

Dr. Christina Voigt
Quiz

1. Which legally binding international agreements exists in the field of climate change?
2. Where do we find the ultimate objective of the UNFCCC?
3. What are ”Annex-I countries”?
4. What are ”non-Annex countries”?
5. What is the COP?
Kyoto Protocol

• Entered into force 16.02.2005, Members: 192 States and the EU

• Sets quantified emissions limitation and reduction obligations (QELRO) for Annex-I Parties (37 States)

• Art. 3.1 KP: overall emissions from Annex I Parties shall be reduced to at least 5% below 1990 levels within 2008-2012 (First Commitment Period)

• Assigned Amounts (Annex B)

• Art. 3.1 KP: Annex I Parties shall not exceed their Assigned Amounts)
## Kyoto Protocol

Countries included in Annex B to the Kyoto Protocol and their emissions targets

<table>
<thead>
<tr>
<th>Country</th>
<th>Target (1990-2008/2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-15, Bulgaria, Czech Republic, Estonia, Latvia, Liechtenstein,</td>
<td>-8%</td>
</tr>
<tr>
<td>Lithuania, Monaco, Romania, Slovakia, Slovenia, Switzerland</td>
<td></td>
</tr>
<tr>
<td>US</td>
<td>-7%</td>
</tr>
<tr>
<td>Canada, Hungary, Japan, Poland</td>
<td>-6%</td>
</tr>
<tr>
<td>Croatia</td>
<td>-5%</td>
</tr>
<tr>
<td>New Zealand, Russian Federation, Ukraine</td>
<td>0</td>
</tr>
<tr>
<td>Norway</td>
<td>+1%</td>
</tr>
<tr>
<td>Australia</td>
<td>+8%</td>
</tr>
<tr>
<td>Iceland</td>
<td>+10%</td>
</tr>
</tbody>
</table>
Kyoto Protocol

• Rules focus on:
  • **Commitments:** legally binding individual emissions targets and general commitments
  • **Implementation:** domestic measures and three novel implementing mechanisms (flexibility mechanisms)
  • **Minimizing impacts** on developing countries
  • **Accounting, Reporting and Review**
  • **Compliance:** Compliance Committee to assess and deal with problems of non-compliance
Flexibility Mechanisms

• Geographic location of abatement measures is climatically irrelevant

• Aim: global cost-effectiveness and reduction of compliance costs

• Assigned amounts (AU) can be divided up into *units* (Assigned Amount Units – AAUs) allowing Annex I Parties (37 + EU) to participate in the flexibility mechanisms

• Units create a tradable currency (1 unit = 1 t CO2 eqv.)
Flexibility Mechanisms

4 Types of Mechanisms:

- **Clean Development Mechanism (CDM)** Art. 12
  - Resulting in Certified Emissions Reductions – CERs
  - Non-Annex I/ Annex I Projects

- **Joint Implementation** (Art. 6)
  - Resulting in Emission Reduction Units – ERUs
  - Annex I /Annex I Projects

- **International Emissions Trading**, Art. 17 (allows for trade with AAUs, ERUs, CERs)

- **Joint Fulfillment of Commitment** (Art. 4)
Kyoto Protocol: Flexibility Mechanisms

Eligibility Requirements:

• Annex I Party
• Ratification of KP
• Compliance
• Methodological and reporting infrastructure in place
• Establishment of designated national entities and registries
• Inventories for accounting the tradable units
Supplementarity

• Art. 17, Art. 12.3(b), Art. 6.1 (d) Kyoto Protocol
• Marrakesh Accords: (Decision 15/CP.7)

“The Conference of the Parties: ...

Affirming that the use of the mechanisms shall be supplemental to domestic action and that domestic action shall thus constitute a significant element of the effort made by each Party included in Annex I to meet its quantified emission limitation and reduction commitments under Article 3, paragraph 1.”

(15/CP.7, preamble)
The Global Carbon Market

- **IET**
  - €10 NOK 100
- **EU ETS** (2005)
- **NZ ETS** 2008/2009
- **USA:** Federal? WCI RGGI (2012)
- **Others? Japan South Korea China**

### International Emissions Trading
- **Art. 17, 3.10, 3.11 KP**

### Clean Development Mechanism
- **Art. 12 KP**

### Joint Implementation
- **Art. 6 KP**

- **China**
  - Non-Annex I
  - **CERs** €4-5 NOK 40-50
  - **ERUs** €8 NOK 80

- **L** (Lithuania)
  - Annex I
  - **ERUs** 1.6 Mrd NOK
  - **CERs** 0.8-1 Mrd NOK
  - **20 mil credits = 2 Mrd NOK**

- **USA:**?
  - Federal? WCI RGGI

- **AUS ETS** (1.1.2012)

- **Others? Japan South Korea China**
Flexibility Mechanisms

Catching the Sun, CDM PROJECT: 0079 Kuyasa low-cost urban housing energy upgrade, Khayelitsha (Cape Town; South Africa)
Why do the climate negotiations continue?

- KP: first commitment period expires 2012 (not the Protocol!)
- Developing countries demand developed countries to continue with the KP (But: USA?)
- BUT: (some) Developing countries are becoming major emitters
- (Most) Developed countries insist on a "comprehensive" agreement, including all major emitters
Copenhagen Accord (2009)

“...one of the most successful failures in the history of multilateral diplomacy”
Copenhagen Accord
Copenhagen Accord

- 2 degree celsius target
- Deadline for submitting reduction targets and actions for all countries! (31.1.2010) ("bottom-up": pledge and review)
- Monitoring, Reporting and Verification (MRV)
- Finance (fast-start and long-term)
- Copenhagen Green Climate Fund
- Technology mechanism
- Redd+ mechanism
- Adaptation
- Carbon marked

But: CA was not adopted as a COP decision
Cancun COP 16/CMP6

...and the redefinition of "consensus"
Cancun Agreements

• Shared Vision: 2 degrees centigrade (review in 2013)

• Pledge and review: tables with targets (developed countries) and actions (developing countries)

• MRV: developed countries (international incl MRV of finance) for developing countries (national MRV, except for supported NAMAs – international MRV)

• REDD+ mechanism

• Establishment of Green Climate Fund Creation of new Climate Adaptation Framework and an Adaptation Committee

• Technology mechanism (consist of Technology Executive Commitee and the Climate Technology Center and Network (CTCN)

• Legal form? "legal options with the aim to complete the agreed outcome" (legally binding agreement to complement the KP, inclusive legally binding agreement for all countries, or cooperation through COP decisions rather than a new treaty or…?)
Durban (COP17/CMP7)

• Kyoto Protocol:
  – Parties formally recognized the second commitment period but delayed the decision on its length (5 or 8 years) to CMP8 in Qatar in 2012
  – decision on the new greenhouse gas emission reduction targets delayed to CMP8
  – Parties were invited to submit information on their quantified emission reduction and limitation objectives (QELROs) for the second commitment period under the Kyoto Protocol by 1 May 2012.
Durban (COP17/CMP7)

- In detail, the Durban package included, amongst others:
  - Establishment of a new body to negotiate a global agreement (Ad Hoc Working Group on the Durban Platform for Enhanced Action) by 2015 to come into effect and be implemented from 2020;
  - Extension of the work of the AWG-LCA for one year;
  - Launch of a workplan on enhancing mitigation ambition with a view to ensuring the highest possible mitigation efforts by all parties (workshop to be held at the first negotiating session in 2012);
  - Identification of a new market-based mechanism to be defined under the Convention;
  - Launch of the Green Climate Fund;
  - Agreement on the second commitment period of the Kyoto Protocol;
  - Agreement on the LULUCF rules and on the changes to the existing flexible mechanisms.
Durban Platform

• The form of a new agreement was not decided

• Parties opted for three options - ‘protocol, legal instrument or agreed outcome with legal force’
Legal Form

- What is a ”Protocol, another legal instrument or an agreed outcome with legal force under the Convention”?
- ”Deal” between the EU (legally binding agreement/commitment) and India (legally binding outcome)
- ”outcome with legal force”: not a legal instrument under the UNFCCC: amendment, annex, protocol
- Legal force = legally binding or something different? outcome that is not legally binding? COP decision?
The United Nations Climate Change Conference, Durban 2011, delivered a breakthrough on the international community's response to climate change. In the second largest meeting of its kind, the negotiations advanced, in a balanced fashion, the implementation of the Convention and the Kyoto Protocol, the Bali Action Plan, and the Cancun Agreements. The outcomes included a decision by Parties to adopt a universal legal agreement on climate change as soon as possible, and no later than 2015. The President of COP17/CMP7 Maite Nkoana-Mashabane said: "What we have achieved in Durban will play a central role in saving tomorrow, today."