The International Climate Change Regime: UNFCCC

International Climate Change and Energy Law
Spring semester 2015
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Questions

1. Is climate change an «environmental» issue?
2. What needs to be done?
3. Who should take action?
The next three lectures:

1. The Legal Status of the Atmosphere
2. 1992 UNFCCC and its 1997 Kyoto Protocol
3. Global Carbon Market
The Atmosphere

- Troposphere: 0 - 11 km
- Stratosphere: 11 - 50 km
- Mesosphere: 50 - 87 km
- Thermosphere: 87 km - 300 km
- Exosphere: Above 300 km
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,…”
How to make international climate law?
How to make international climate law?
The Making of International Climate Law?

• Where?:
  – By States
  – By the Conference of the Parties (COP) (Art. 7.2 UNFCCC)
  – Are COP-decisions law?
The Making of International Climate Law?

• How?
  – Adopting legally binding instruments (amendments, protocol or amendments to protocols)
  – Rules of Procedure – not formally adopted
  – …but applied by every COP since 1995
  – …except for rule 42 on voting
  – «Each Party shall have one vote» (Art. 18)
  – Consensus
The Making of International Climate Law?

• What is Consensus?
  - Precise content and scope unclear
  - Consensus does not equal unanimity
  - UN Office of Legal Affairs: “a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on record”.
The Making of International Climate Law?

• Consensus in international climate negotiations?

• … in COP 16- Cancun
The Making of International Climate Law?

- Consensus in international climate negotiations?
- …and COP 18- Doha
Legally binding international climate agreements

- UNFCCC 1992/1994
- Kyoto Protocol 1997/2005
- Amendment to the Kyoto Protocol 2012/?
- …«Paris Protocol» 2015/2020?
UNFCCC

- Adopted in 1992 in NY
- In force since 21 March 1994
- Almost universal participation:
  - 195 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
Organisational Structure

Groups:
EU
Umbrella: USA, CAN, NO, AUS, NZ, RF, UK
G77 and China (subgroups: AG, AOSIS and LDC)
EIG: Sveits, MX, South Korea
OPEC
BASIC: Brazil, India, China, South Africa
LMDC: Bolivia, China, Cuba, Dominica, Ecuador, Egypt, El Salvador, India, Iran, Iraq, Malaysia, Mali, Nicaragua, Philippines, Saudi Arabia, Sri Lanka, Sudan, Venezuela
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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, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased.

Each of the last three decades has been successively warmer at the Earth’s surface than any preceding decade since 1850 (see Figure SPM.1). It is virtually certain that globally the troposphere has warmed since the mid-20th century.

Human influence on the climate system is clear. This is evident from the increasing greenhouse gas concentrations in the atmosphere, positive radiative forcing, observed warming, and understanding of the climate system. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century.

Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system. Limiting climate change will require substantial and sustained reductions of greenhouse gas emissions.

Global surface temperature change for the end of the 21st century is likely to exceed 1.5°C relative to 1850 to 1900 for all RCP scenarios except RCP2.6. It is likely to exceed 2°C for RCP6.0 and RCP8.5, and more likely than not to exceed 2°C for RCP4.5.
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Projected impact of climate change

Global temperature change (relative to pre-industrial)

0°C 1°C 2°C 3°C 4°C 5°C 6°C

Food
- Falling crop yields in many areas, particularly developing regions
- Possible rising yields in some high latitude regions
- Falling yields in many developed 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
Cancun Agreements

4. Further recognizes that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2 °C above preindustrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity;
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Climate Change: Defining Options

**Climate Change**

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

- Adaptation
  - 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.)
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Commitments:

• *All parties: Art 4.1.:
  • National inventories
  • National and regional programmes to mitigate cc
  • Promote Sustainable Development
  • Promote conservation of sinks, adaptation, education etc.
UNFCCC

Commitments:

• **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))
UNFCCC

Annex-II Parties: (OECD countries /30=18% of world population)

• 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)
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Commitments:

• Non-Annex countries (developing countries, Group 77 and China – now 131 countries – 80% of world population and more than 50% of current GHG emissions)
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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)
Figure 3: Total Greenhouse Gas Emissions by Region

Developed Countries

Developing Countries

Emissions (Gt CO₂ equivalent)


1 Gt = 10^9 metric tons = 1 billion metric tons = 1 petagram (Pg)
Top Fossil Fuel Emitters (Absolute)

Top four emitters in 2011 covered 62% of global emissions
China (28%), United States (16%), EU27 (11%), India (7%)

The growing gap between EU27 and USA is due to emission decreases in Germany (45% of the 1990-2011 cumulative difference), UK (19%), Romania (13%), Czech Republic (8%), and Poland (5%)

Source: CDIAC Data; Le Quéré et al. 2012; Global Carbon Project 2012