



Climate Change and Law

Law for a burning planet

International Environmental Law

- Transboundary, global environmental problems that require international regulation and solutions
- International agreements /treaties /conventions to establish standards
- International law not directly enforceable in the national legal system in the United Kingdom
- Treaties need to be ratified and given effect by Parliament

International Environmental Law

- Hard Law:
 - Treaties – bind states in relations with other states
 - Customary International Law
- Soft Law:
 - Declarations -
 - Consolidate
 - Move principles towards customary status
 - Reflect agreed international political aspirations
 - Principles
 - Recommendations
 - Standards

International Environmental Law

- 1987 World Commission on Environment and Development *Our Common Future* - Brundtland Report
 - Sustainable Development
- 1992 UN Conference on Environment and Development (Earth Summit) – 176 States attended
 - Rio Declaration
 - Convention on Biological Diversity
 - Framework Convention on Climate Change
 - Agenda 21
- Rio+20 2012 (Green economy)

Possibilities and Limits of Law

- Nightwatchman state v interventionist state
- Command and control v market forces
- Regulation v deregulation

International Climate Agreements

- UNFCCC Earth Summit 1992
- Kyoto Protocol 1997 (COPs)
- Bali Action Plan 2007
- Copenhagen Accord 2009
- Cancun Agreements 2010
- Durban Platform for Enhanced Action (ADP) 2011
- Doha Climate Gateway/KP II (2012)
- Rio+20 2012 (Green Economy)

Environment/Earth

- Common resource?
- Shared resource?
- Common heritage of mankind?
- Common concern of humankind? - *“change in the Earth’s climate and its adverse effects are a common concern of humankind...”* (Preamble to UNFCCC)



UNFCCC



- Negotiated at the United Nations Conference on Environment and Development (UNCED) – Earth Summit in Rio in June 1992
- Objective: “stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”
- No binding GHG emissions limits and no enforcement mechanisms – it is not legally binding!
- Provides a framework for negotiating specific international treaties (called protocols) that may set binding GHG limits
- Entered into force on 21 March 1994; 194 parties + EU

UNFCCC



Equity and Equality (Art. 3)

- Equality of sovereign states is a fundamental principle of international law
- Sovereign jurisdiction is based on territory ...
... climate change is a transnational problem – GHGs don't respect boundaries
 - Formal equality
 - Non-interference in internal affairs
 - Permanent sovereignty over natural resources vs common heritage/concern of mankind

UNFCCC Article 2



The ultimate objective of this Convention ... is to achieve ... *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 to climate change, *to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner*

UNFCCC

Article 3, s. 3



Precautionary Principle

The Parties should take *precautionary measures* to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects

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, taking into account that policies and measures to deal with climate change *should be cost-effective so as to ensure global benefits at the lowest possible cost...*

Precautionary Principle

The precautionary principle or precautionary approach states that if an action or policy has a suspected risk of causing harm to the public or the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is **not** harmful falls on those taking an action

It is a statutory requirement in some areas of EU law

UNFCCC

Article 3, s. 4



Sustainable Development

The Parties have a right to, and should, promote *sustainable development*

Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be *integrated* with national development programmes, taking into account that *economic development is essential* for adopting measures to address climate change

UNFCCC

Article 4, s. 1



Common but Differentiated Responsibility

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with *their common but differentiated responsibilities and respective capabilities*

Accordingly, the developed country Parties should *take the lead* in combating climate change and [it's] adverse effects

UNFCCC Article 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*

Kyoto Protocol

- Entered into force 16 February 2005
- Members: 192 States and the EU
- Sets quantified emissions limitation and reduction obligations for Annex-I Parties (37 States)
- Art. 3.1: overall emissions from Annex I Parties shall be reduced to at least 5% below 1990 levels within 2008-2012 (First Commitment Period)

Kyoto Protocol

- **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 (MRV)**
- **Compliance:** Compliance Committee to assess and address non-compliance

State Commitments

All parties: Art 4.1.:

- national inventories
- national and regional mitigation programmes
- promote sustainable development
- promote conservation of sinks, adaptation, education etc.

Annex I parties: Art. 4.2.(a) (all developed countries) shall in addition:

- develop national policies and measures on the mitigation of climate change
- reporting requirements (Art. 4.2.(b))

State Commitments

Annex I Parties (OECD countries):

- 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)

Kyoto Protocol Flexibility Mechanisms

Joint Fulfillment Commitment (art. 4)

Emissions trading (art. 17)

Joint implementation (art. 6)

Clean Development mechanism (art. 12)

“Copenhagen Accord/Discord”

- Recognises scientific target of 2 degrees Celsius
- Deadline for submitting (voluntary) reduction targets (developed countries) and actions (developing countries)
- Short term funding: 30 billion USD to 2012
- Aim to raise \$100 billion per year by 2020?
- Redd+ mechanism

Copenhagen Accord was not adopted as a COP decision.

Annex 1 Countries Emission Pledges

By 2020 compared to 1990:

- EU : 20% - 30%
- Japan: 25%
- Russia: 15% - 25%

Compared to 2000:

- Australia: 5% - 25%

Compared to 2005:

- Canada: 17%
- US: 17%

Developing Countries Emission Pledges

Compared to business as usual:

- Brazil: 36.1% - 38.9%
- Indonesia: 26%
- Mexico: 30%
- South Africa: 34%
- South Korea: 30%

Carbon intensity compared to 2005:

- China: 40% - 45% + increased share of non-fossil fuel to 15 % and increased forest coverage by 40 million hectares
- India: 20% - 25%

“Copenhagen Accord/Discord”

“One of the most successful failures in the history of multilateral diplomacy” – Nature magazine, January 2012



**MY PRIME MINISTER
GAVE THE PLANET
THE FINGER IN
COPENHAGEN!**

UK Climate Change Programme 2000

Climate Change Act 2008

Renewables Obligation

Low Carbon Transition
Plan 2009



Climate Change Act 2008

Framework to achieve a mandatory 80% cut in the UK's emissions by 2050 (compared to 1990 levels)

Intermediate target of 34% by 2020 which would have risen if a deal had been reached in Copenhagen



Climate Change Act 2008

Carbon Budgets: Government must set legally binding caps on GHG emissions over a five-year period. First four carbon budgets have been put into legislation and run up to 2027

Committee on Climate Change: to advise the Government on emissions targets and report to Parliament on progress in reducing GHG emissions

National Adaptation Plan: requires Government to assess the UK's risks from climate change & prepare a strategy to address them



EU Climate Change Legislation

Three 2020 targets:

- To reduce emissions by 20% from 1990 levels
- To provide 20% of its total energy from renewables
- To increase energy efficiency by 20% from 2007 levels

EU leaders have endorsed a target of 80-95% reduction in emissions by 2050



EU Climate Change Legislation

- EU Emissions Trading System (EU ETS)
- Renewable Energy Directive
- Energy Efficiency Directive (2012)
- New car and van CO₂ targets
- Carbon Capture and Storage (CCS)
- 2030 Climate Framework



Big 6 Energy Companies

- Ed Milliband: cap on energy prices (command and control)
- David (hug a husky) Cameron: change your supplier; competition inquiry

‘Greenest government ever’



Market Failure



- Stern Review (2006): “Climate change is the greatest and widest-ranging market failure ever seen”
- Regulation v deregulation: Lehman Brothers 2008

Market Failure: EU TS

- EU Trading Scheme: designed to fail?
- Launched in 2005. Now covers more than 11,000 factories, power stations, and other installations with a net heat excess of 20 MW in 31 countries — 28 EU members plus Iceland, Norway and Liechtenstein.
- This is half of EU's CO₂ emissions and 40% of its GHGs



Market Failure: EU TS

- **Problems:**
 - Over-allocation
 - Price volatility – not stimulating move to renewables
 - Grandfathering – historical data on emissions v auctioning
 - Free permits
 - Failure to meet its goals – reducing GHGs
- Failure of law, politics, economics or all three?

Climate Justice

- Who should do what
- and why?
 - Historical responsibility
 - Benefit from fossil fuelled industrialisation
 - Ability to pay
- Funding for adaptation and mitigation
- Technology transfer
- Binding commitments for all? (CBDR)



Where to Now – CPII?

- Doha Amendment: pursuant to Art. 3.9 KP, adopted in Doha, December 2013
- First commitment period expired on 31.12. 2012 (not the Protocol)
- Second commitment period (2013-2020) for KP Annex-countries, minus CA, RUS, NZL, J, US
- Paris 2015
- Developing countries demanded developed countries to continue with the KP

Objective of reducing GHG emissions by at least 18% below 1990 (voluntary pledges but no strengthening of commitments)

Where to Now?

- ***Emission Gap*** (UNEP Report):
 - Implement pledges: 1 Gt
 - Business as usual: 10 Gt
- ***Legal Gap***:
 - When will KP CPII come into force?
 - Will it be legally binding?
- ***Equity Gap***:
 - Funding
 - Technology

Where to Now – CPII?

- An global agreement is essential to address a global problem and provide a framework for regional, national and local action
- But the prognosis is not good –
Warsaw 2013

Where to Now – CPII?

- Human right to a clean and healthy environment?
- Pachamama – Rights of Mother Earth
- Climate refugee convention?

Is law an essential ingredient in the solution or a large part of the problem?

2013 7th Warmest on Record

World Meteorological Organisation (13 November 2013):

Provisional overview - ,the first nine months of the year tied with the same period of 2003 as seventh warmest, with average global land and ocean surface temperatures 0.48C above the 1961-1990 average



Where to Now?

Too
stupid to
survive?

