INTERNATIONAL CLIMATE CHANGE LAW

Implications for South Asia

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South Asia Judicial Conference on Environment and Climate Change

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Outline

• International Climate Change Core Texts
  - UNFCCC 1992
  - Kyoto Protocol 1997
  - Paris Agreement 2015

• COP 22 in Marrakech
• Implications for South Asia
CLIMATE CHANGE
CORE TEXTS
UN Framework Convention on Climate Change, 1992

- Overarching Goal
  - Stabilize greenhouse gas (GHG) concentrations “at a level that would prevent dangerous anthropogenic interference with the climate system”: art. 2

- Key Principle
  - Common but differentiated responsibilities and respective capabilities (CBDR-RC): art. 3.1. Developed countries therefore take the lead on combating climate change

- 197 Parties
  - Annex I (OECD + EIT) – limit GHG emissions + protect GHG sinks
  - Annex II (OECD) – financial support for developing country parties (non-Annex I Parties)
Kyoto Protocol, 1997 (commenced 2005)

- Operationalized UNFCCC
- Binding GHG emission reductions for UNFCCC Annex I parties for 2 commitment periods

**Commitment Period 1**
- 2008-2012: 5% below 1990 levels + individual targets listed in Annex B

**Commitment Period 2**
- 2013-2020: 18% below 1990 levels
Kyoto Protocol, 1997 (commenced 2005)

- Other Key Components

Flexible market-based mechanisms with governance procedures

Allows trade of emissions to boost green investment in developing countries

Compliance mechanism

Facilitates and enforces compliance with the commitments
Paris Agreement, 2015

Nations Unies
Conférence sur les Changements Climatiques 2015

COP21/CMP11

Paris, France

#ParisAgreement

## Agreement Aims

- Strengthen the global response to climate change with

<table>
<thead>
<tr>
<th>Temperature</th>
<th>Hold the increase in the global average temperature to “well below 2°C” above pre-industrial levels and “to pursue efforts to limit the temperature increase to 1.5°C...”: art. 2.1(a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>GHG Peaking</td>
<td>Aim to reach global peaking of GHG emissions as soon as possible: art. 4(1)</td>
</tr>
<tr>
<td>Adaptation</td>
<td>Increase the ability to adapt to climate change and foster climate resilience and low GHG emissions: art. 2(1)(b)</td>
</tr>
<tr>
<td>Finance</td>
<td>Make finance flows consistent with a pathway towards low GHG emissions and climate resilient development: art. 2(1)(c)</td>
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Key Principles

“Sustainable development and efforts to eradicate poverty”: arts. 2(1) and 4(1)

“Equity and common but differentiated responsibilities and respective capabilities in the light of different national circumstances”: art. 2(2)
Agreement Essential Elements

• Long-term temperature goal: art. 2
• Global emissions peak and nationally determined contributions (NDCs): art. 4
• Sinks and reservoirs: art. 5
• Mitigation – international transfer of mitigation outcomes and sustainable development mechanism: art. 6
• Adaptation goals: art. 7
• Loss and damage: art. 8
• Support – financial (art. 9), technology development and transfer (art. 10), and capacity building (art. 11)
• Transparency: art. 13
• Global stocktake: art. 14
Nationally Determined Contributions

• Outlines of the actions (domestic mitigation measures) that parties intend to achieve to address climate change
• Must
  ✓ Be ambitious and set with a view to achieving the purpose of the Agreement: art. 3
  ✓ Be registered by the UNFCCC Secretariat
  ✓ Be reported every 5 years: art. 4(9)
  ✓ Represent a progression over time – meaning each successive NDC should be more ambitious than the last: arts. 3 and 9(3)
• First submission in 2020
• Not binding
Financial Support

- Developed countries to provide US $100 billion annually by 2020 to developing countries for climate change mitigation and adaptation
  - Not formally part of the Paris Agreement – agreed in Copenhagen in 2009 and is in continuation of UNFCCC obligations
  - Now considered inadequate and to be scaled up post 2020

- Financing for adaptation has historically received less support – agreement calls for a balance of climate finance between adaptation and mitigation: art. 9(4)

- Parties to strengthen institutional arrangements for support on adaptation
### Adaptation: Financial Support – Developed Country Commitments

<table>
<thead>
<tr>
<th><strong>Hard Commitments</strong> (Shall)</th>
<th><strong>Soft Commitments</strong> (Should)</th>
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<tr>
<td>• Provide financial resources – in line with existing obligations under UNCFCCC</td>
<td>• Take the lead in mobilizing finance, set at USD 100 billion until 2020, with a new funding amount to be set post 2020</td>
</tr>
<tr>
<td>• Communicate projected financial resources to be provided</td>
<td>• Strongly urged to scale up funding</td>
</tr>
<tr>
<td>• Provide information on finance provided</td>
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</tbody>
</table>

- (Shall) indicates mandatory actions.
- (Should) indicates recommended or suggested actions.

**Adaptation:**
- **Financial Support –**
- **Developed Country Commitments**
Loss and Damage

- **Global goal** – enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change: art. 7
- **Funding and support** – avert, minimize, and address loss and damage for those climate change impacts that cannot be adapted to – they are too severe or come too quickly
- **Warsaw International Mechanism for Loss and Damage** – agreement uses this mechanism but parties need clarity on how to classify, address, and share responsibility for loss and damage: art. 8
- **Task force** – established to address human displacement associated with climate change: accompanying COP decision
- **No compensation** – no legal recourse for countries suffering loss and damage due to climate change: accompanying COP decision
Global Stocktake

- Review of collective progress towards agreement objectives: art. 14

- **Timeline**
  - ✔ 2018 – facilitative dialogue
  - ✔ 2020 – first NDCs filed
  - ✔ 2023 – first global stocktake, with subsequent stocktakes every 5 years: art. 14

- **Features and purpose**
  - Inform and enhance subsequent NDCs
  - Informed by transparency framework
  - Comprehensive – assesses mitigation, adaptation, and support efforts
  - Takes into account equity and science
Transparency

Reporting Requirements

• Parties must communicate + report every 2 years
  • Information on their national GHG inventory: art. 13(7)(a)
  • Information necessary to track progress made in implementing and achieving the NDCs: art. 13(7)(b)
  • Climate change impacts and adaptation: art. 13(8)

System Checks

• Reporting is subject to technical and peer review: art.13(4)
• Reporting system takes into account each country’s ability to report – peer reviewer must consider a country’s reporting capacity
Compliance

• No agreement reached on compliance – details to be discussed at COP 22
• Binding obligations of conduct could be subject to compliance system
Agreement Structure

- Bottom up – no standards and targets set for state implementation
- Aspirational – seeks voluntary commitments and outcomes are politically encouraged
- Measurement, reporting, and verification of efforts are legally binding
- Focuses on laying out a context for implementation
- Acknowledges that different nations have different capacities and duties relating to climate action but does not provide a specific division between developed and developing nations
Agreement Status

- Ratified by 113 of the 197 parties to the Agreement
- Entered into force on 4 November 2016 after EU ratification
- First session of COP serving as the Meeting of the Parties to the Paris Agreement in Marrakech from 7-18 November
- Parties bound for 3 years
Paris Agreement Parties and Signatories

- Yellow = party
- Green = signatory

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Paris Agreement Assessment

- More ambitious than expected
- Change in approach from the UNFCCC and Kyoto Protocol
  - Non-prescriptive architecture
  - No annex-based differentiation
  - No legally binding obligations of result
- Agreement expectations
  - Progressive NDCs, funding, and assistance should reflect the highest possible ambition: art 4.3
  - Leadership expected from developed countries: art 4.4
- It’s still not enough – but it’s a start…
COP 22: 17-18 November 2016

WE WILL MOVE AHEAD!
Marrakech “Implementation” COP

• First meeting – governing body of the Paris Agreement

Key Focuses

• Define the issues
• Outline what documents and workshops are needed to define the issues by the 2018 deadline

What Influenced COP 22?

• US elections
• Paris Agreement came into force earlier than expected, meaning parties were not ready to negotiate
Marrakech Outcomes

- **Commitments** – developed countries did not increase their ambitions for emissions reductions or financial contributions for the pre-2020 period.

- **Proclamation** – High-level Marrakech Action Proclamation.

- **Finance** – financial obligations not settled. Countries were urged to continue scaling up their financial contributions towards the pre-agreed “$100bn a year by 2020” goal.

- **Adaptation Fund** – parties may submit their position regarding governance and institutional arrangements for the Adaptation Fund by 31 March 2017.
Marrakech Outcomes

- **Facilitative Dialogue** – presidents of COP 22 and COP 23 to consult with parties on the organization of the facilitative dialogue in 2018 and report at COP 23

- **Loss and Damage** – indicative framework for a 5-year rolling work plan on “loss and damage” approved, to commence in 2017

- **Global Stocktake** – discussion on the structure for the stocktake commenced – covered format, inputs, timeline, duration, and output

- **Orphan Issues** – no resolution on who will take responsibility for the “orphan issues”
Major Emissions Commitments

• Bangladesh, Ethiopia, and the Philippines were among 48 countries that committed to filing plans for becoming zero-carbon societies by 2050, in line with the Paris deal’s aspiration of limiting global warming to 1.5°C
Next Steps

• Fiji will host COP 23 (6-17 November 2017 in Bonn) and will assume the COP presidency
• Poland will host COP 24 (5-16 November 2018)
• But..
  • Trump – climate change is a “hoax”
    • But, when questioned over the link between human activity and global warming 2 days ago, Trump also said: “I think there is some connectivity. Some, something. It depends on how much” and he is considering “how much it will cost our companies.”
• Implications of Brexit – UK ratified on 18 November 2016
• Rejection by some – Philippines? President Duterte will reportedly sign the agreement and the Philippines has committed to carbon neutrality
• Trump also galvanized the international community
Implications for South Asia

What Now?

NDCs

SAARC Role?

Climate Finance

Legal Challenges
Final Thought

“We have got to change the tone of this conversation. Because there is no way you can deliver victory without optimism … courage, hope, trust, solidarity, the fundamental belief that we humans can come together and can help each other to better the fate of mankind.”

Christiana Figueres, Former Executive Secretary of the UN Framework Convention on Climate Change