DEVELOPMENTS IN CLIMATE CHANGE LAW

Environmental Adjudication for the Green Bench Judges of Bhutan
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We are the first generation to feel the effect of climate change and the last generation who can do something about it.

Barack Obama, Former President of the United State of America
Overview

• International Climate Change Core Instruments

• What needs to happen so that the Paris Agreement can take flight?

• Climate change litigation
### UNFCCC, 1992

<table>
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<th><strong>Overarching Goal</strong></th>
<th>Stabilize GHG concentrations “at a level that would prevent dangerous anthropogenic interference with the climate system”: art. 2</th>
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<td><strong>Key Principle</strong></td>
<td>Common but differentiated responsibilities and respective capabilities (CBDR-RC): art. 3.1. Developed countries therefore take the lead on combating climate change</td>
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| **197 Parties**      | Annex I (OECD members + EIT) – limit GHG emissions + protect GHG sinks  
|                      | Annex II (OECD members) – financial support for non-Annex I Parties  
|                      | Non-Annex I Parties – including Bhutan |
Kyoto Protocol, 1997 (effective 2005)

- Operationalized UNFCCC
- Set binding GHG emission reductions for UNFCCC Annex I parties over 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
Paris Agreement, 2015

Commencement

- Took force on 4 November 2016
- Bhutan ratified on 19 September 2017
- Agreement commenced in Bhutan on 19 October 2017

Parties

- 195 signatories 178 parties ➔ universal acceptance
- Bound for 3 years, until 4 November 2019

Focus

- Post-2020 action
- Does not prescribe targets
Agreement Purpose

Temperature
1.5C – 2C
• Hold the increase in the global average temperature to “well below 2°C” above pre-industrial levels and “pursue efforts to limit the temperature increase to 1.5°C…”: art. 2.1(a)

Adaptation
• Increase the ability to adapt to climate change and foster climate resilience: art. 2(1)(b)

Finance
• Finance must support low GHG emissions and climate resilient development: art. 2(1)(c). Developed countries to provide $1 billion from 2020 as a floor to help developing countries. Other countries may provide support voluntarily.
Source: Carbon Brief
NDCs and Timeline

• Nationally Determined Contributions (NDCs) must be:

  ✓ Ambitious and aim to achieve Agreement’s purpose: art. 3
  ✓ Revised every 5 years: art. 4(9)
  ✓ Progressively more ambitious: arts. 3 and 9(3)
  ✓ Registered and recorded by UNFCCC Secretariat: art. 4(12)

• NDC targets are not binding BUT measurement, reporting and verification are legally binding

• Bhutan’s INDC: 30 September 2015 – most ambitious pledge
  ➔ stay carbon negative

2018 ➔ Talanoa Dialogue (Facilitative Dialogue)
2020 ➔ First Nationally Determined Contributions
2023 ➔ First Global Stocktake
Timeline: How countries plan to raise the ambition of their climate pledges

The Paris 'ratchet mechanism' is designed to steadily increase ambition over time, ensuring that the world reaches net zero emissions in the second half of the century and keeps temperature rise 'well below 2°C'.

1. **Climate plans submitted**
   - Countries submit their first round of climate pledges (NDCs). Some cover the period up to 2025, some up to 2030.

2. **Facilitative dialogue / Talanoa dialogue**
   - To take stock of collective efforts of countries in relation to the long-term goal of the agreement and to inform the preparation of the next round of pledges.

3. **By 2020**
   - Countries with 2025 targets communicate their second round of climate pledges, while countries with 2030 targets communicate or update their pledge.
   - New climate pledges will then be submitted every 5 years.

4. **Global stocktake**
   - On mitigation, adaptation and finance.

5. **By 2025**
   - Countries submit their third round of climate pledges.

6. **Second stocktake**
   - ...
2030 EMISSIONS GAPS
CAT 2017 projections and resulting emissions gaps in meeting the Paris Agreement's temperature goals

The “gap” range results only from uncertainties in the pledge projections. Gaps are calculated against the mean of the benchmark emissions for 1.5°C and 2°C.
The Road to Katowice (COP24)

- Pre-2020 Action
- Talanoa Dialogue
- Paris Rulebook
- Climate Finance
- Loss and Damage
- Carbon Markets
Climate Change Litigation

**Government**
- Mitigation and adaptation
- Public trust
- EIAs or other permits
- Climate refugees

**Private Parties**
- Torts
- Failure to adapt
- Misleading and deceptive conduct
- Transboundary suits
- Human rights
The diplomats have done their job: the Paris Agreement points the world in the right direction, and with sophistication and clarity. It does not, however, ensure implementation, which necessarily remains the domain of politicians, businessmen, scientists, engineers, and civil society.

Jeffrey Sachs, Director of the Earth Institute, Columbia University