

Evolution Of Climate Change Legislation

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Introduction

- Climate change is arguably the most significant current global environmental challenge
- Global debates begun in the 1950 into the 70's and 80's
- There was increasing evidence from scientists that GHG concentration was increasing thus causing rise in global temp and changes to the climate
- October 1985 the Vienna Convention for the Protection of the Ozone Layer was signed
- 1986- The International Conference on the Assessment of the Role of CO₂ and Other GHGs in Climate Variations and Associated Impacts in Villach, Austria under UNEP, the World Meteorological Organization (WMO) and the International Council of Scientific Unions (ICSU).
- The conference generated an influential scientific consensus on the greenhouse gas problem.

Introduction

- The conference suggested that policy makers needed to address climate change
- It proposed that development of a framework convention ought to be considered
- 1987, World Commission on Env't and Development published “our common future”
- Climate change from CO₂ emission was among the 4 environmental risks stated in the report
- The report recommended for international agreements to reduce GHG's
- 1988, UNEP and World Meteorological Organization formed IPCC to provide objective and scientific analysis on climate change
- 1992, UNFCCC was adopted at the Earth Summit in Rio de Janeiro
- It provides the institutional framework for international climate policy

UNFCCC

The aim of the convention is to prevent “dangerous” human interference with the climate system (Article 2)

Key outcomes of UNFCCC

- The Convention set an ultimate objective of “stabilization of GHGs concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”
- It urges governments to reduce the sources of GHGs in order to reduce global warming
- Industrialized countries are expected to take the heaviest burden for mitigating climate change

N.B “Dangerous”- is still fuzzy but globally informed by ecological and social impacts of temperature rise due to GHGs

UNFCCC

- Industrialized nations agree to support climate-change activities in developing countries by providing financial support above and beyond any financial assistance they already provide to these countries
- Industrialized countries have to report regularly on their climate change policies and measures
- Industrialized countries must submit an annual inventory of their greenhouse gas emissions
- Developing countries report in more general terms on their actions both to address climate change and to adapt to its impacts

N.B The weakness with this convention is that it is not specific as far as emission reduction targets are concerned for industrialized countries.

- Parties agreed to adopt the Kyoto protocol to address it (COP3)

The Kyoto Protocol to the UNFCCC

- 1997, The Protocol established emissions targets for each of the participating developed countries relative to their 1990 emissions levels
- Committed to reduce their over all GHG emissions by at least an average of 5.2 % below aggregate 1990 emission levels (Annex B has the target for each) during the commitment period 2008-2012
- It was the first international agreement with mandatory limits on GHG emission
- It was the first legally binding international agreement on climate protection
- The protocol emphasized mostly reduction of CO₂ from fossil-fuel combustion by Annex B countries.

The Kyoto Protocol to the UNFCCC

Strategies for Industrialised countries to attain their emission targets

- Afforestation and reforestation
- Emission trading among developed countries
- Enhance emissions-absorbing sinks, such as forests in other developed countries
- Clean Development mechanism
- Countries can agree to meet their total commitment jointly by allocating a share to each member (bubble)
- The total reduction of all member nations can be met collectively through the trading of emissions rights (umbrella)

The Key Architectural Elements of the Kyoto Protocol

- Ambitious, short-term emission reduction targets,
- Full responsibility (targets) only for industrialized countries;
- Flexibility provided through market-based mechanisms, such as tradeable permit systems;

Weaknesses in the Protocol and how they are addressed

- Non-ratifying countries are not punished
- Absence of effective instruments for promoting compliance and participation

To address the limitations, protocol incorporated the following:

- Emission-reduction targets that are modest in the short-term, but increase in stringency over time
- Mechanisms such as growth targets intended to increase developing country participation over time
- Market-based instruments

UNFCCC COPs and Paris Agreement

- 1997 -onwards several COPs of UNFCCC held in an attempt to agree on additional limits on emission and to extend the reduction requirements beyond 2012
- In 2009, The Copenhagen Accord (COP 15) was adopted- the goal was limiting warming to below 2°C, with a review by 2015 in relation to a lower warming limit of below 1.5°C increase above pre-industrial levels
- The other COPs led to the signing of the Paris Agreement of the UNFCCC in 2015
- It is the 1st global accord on climate change that contains policy obligations for all countries
- The overarching climate goal of the Paris Agreement is to hold “the increase in the global average temperature to well below 2 °C(**RED LINE**) above preindustrial levels and to pursue efforts to limit the temperature increase to 1.5 °C (**DESIRABLE**) above pre-industrial levels” (Article 2)

UNFCCC COPs

- Pre-industrial period is a time when fossil-fuel burning had yet to change the climate
- This IPCC uses the reference period 1850–1900 to represent pre-industrial temperature.
- This is the earliest period with near-global observations and is the reference period used as an approximation of preindustrial temperatures

Paris Agreement

- Each party is supposed to prepare, communicate and maintain **successive** NDC's every 5 years with text that guarantees progression over time
- Developed country parties shall provide financial resources to assist developing countries
- It leaves domestic policy to governments
- Provides for national policies to be subjected to international transparency system and global review
- Governments are expected to ensure successive policy plans (NDC's) are progressively stronger

Key strengths of the Paris agreement

- Principled obligation to act (legally binding provisions)
- Regularity and progression of National policy development
- International transparency and accountability
- Created political parity between adaptation and mitigation
- Contains legal provisions on mitigation, adaptation policies, international climate finance, and cooperative mechanisms such as technology transfer
- Encourages private sector to invest in low carbon investment

National Climate Legislation

- The, UNFCCC, Kyoto protocol and Paris agreement strengthened response to climate change
- They led to a strong movement for national climate legislation to enable implementation of international commitments
- Climate legislation is informed and justified by notions of environmental ethics, human rights and inter-intra generational equity
- **Environmental ethics notion-** based on the understanding that human beings have personal moral obligation to reduce GHG emissions because personal reductions can make a contribution, if there is an obligation to ameliorate climate change

National Climate Legislation

- **Human rights notion-** based on the understanding the threat posed by climate change to “old rights” such as rights to life, health and subsistence.
- Others invoke the right to “adequate environment”
- **Inter-intra generational equity notion-** based on understanding of the need for “distributional justice”(climate is finite resource)
- This is because climate change can result into unjust distribution of harm it will cause
- Climate justice considerations have had influence on the content of international climate law and thus indirectly influencing domestic legislation

Aspects of CC legislation

- Institutional arrangements
- Energy (Supply and Demand)
- Adaptation (climate risk assessment)
- Climate risk
- Trade in carbon
- Landuse
- Research and Development

Aspects of CC legislation

- Reducing greenhouse gas emissions
- Maintenance of carbon sinks
- Green growth
- Climate resilience (focus of most developing countries)
- Mitigation and adaptation
- Transportation

Forms of CC legislation

- Acts of parliament
- Executive orders
- Decrees
- Strategies
- Development plans

NB. The National context and aspirations determine the form of legislation

Rationale for CC legislation

- Improves accountability of actions in relation to climate change
- Builds momentum for international commitments on climate change
- To enable implementation of international commitments such as the Paris Agreement
- Develop institutional infrastructure relevant for climate action

Significance of National CC legislation

- Legislation offers a means to adapt law deliberately to changing circumstances and for negotiating the range of issues and disagreement inherent in climate change
- Establishes authoritative and visible state sponsored commitments
- Provides enforcement and compliance mechanisms
- Provides predictable regulatory environment on climate change related matters
- Closes the gap between policy ambition and policy delivery

What constitutes a good CC law?

- It should provide for ensuring that the country has adequate information on emissions from all sectors and climate risk to inform adaptation
- It should provide targets on either mitigation or adaptation or both
- Coordination mechanisms across different levels of governance should be defined
- Roles of non-state actors should be defined
- Should provide for soft and hard instruments to facilitate compliance
- Enable climate justice (polluter pays, distributional equity, access to basic needs under CC)

Further reading

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