

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

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The Human Impact on Climate Change

Global warming, which is the increase in global average temperature in the course of the twentieth century, is mostly due to the increase of atmospheric greenhouse gas (GHG) concentrations caused by human activity; these anthropogenic emissions have increased by 70 per cent between 1970 and 2004 (Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report). The greenhouse gas effect in the atmosphere regulates overall temperature on the Earth's surface. It is, in principle, a naturally occurring phenomenon by which certain gases present in the atmosphere (e.g., carbon dioxide, water vapour, methane, nitrous oxide, and chlorofluorocarbons) re-radiate heat back to the Earth's surface; without it our planet would be considerably colder and most likely uninhabitable.

By the mid-1980s, scientists warned that global warming beyond natural variability was occurring and that this was in large part due to human activity and the increase of anthropogenic emissions of greenhouse gases (GHGs). Advancements in computing technology had permitted the development of complex and more realistic models on cause-and-effect relationships and on the risks of climate change to humans and the ecosystem. In a 1985 conference, the International Conference on Assessment of the Role of Carbon Dioxide and of Other Greenhouse Gases in Climate Variations and Associated Impacts, held in Villach, Austria, scientists called on politicians to collaborate in the exploration of policies to mitigate human-induced climate change. The discovery of the ozone hole and a heat wave in 1988 created an additional sense of increased urgency for action.

Negotiating a Universal Legal Framework

International consensus soon developed that States should also consider the elaboration of a legally-binding convention on climate change, which would address emissions of greenhouse gases not covered under the Ozone Layer protection regime, i.e., the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. A first step was the establishment of the IPCC by the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP) in 1988 as a scientific intergovernmental body to provide decision makers with an assessment of the latest scientific research and its policy implications for mitigation and adaptation. In 1990, at the Second World Climate Conference in Geneva, it became clear that there was a "North-South" divide on how developed and developing countries viewed climate change. While for the former it was, at that time, primarily a scientific and environmental issue, the latter emphasized the implications for poverty and development of any future regime. These seemingly joint positions of the "North" and "South" were based on different and often diverging underlying interests with respect to obligations. In the first group, the majority of

Organisation for Economic Cooperation and Development countries favoured the adoption of an agreement that would reduce global GHG emissions, though there was no agreement by how much these should be reduced. In contrast, the United States, agreeing in principle to the need for an environmental agreement, did not want to be subject to any obligation to reduce emissions. The second group was united in the argument that the new legal instrument must not obstruct their economic development. Apart from this position, interests were divided: while the oil exporting countries feared for their revenue streams under a new instrument that might restrict the use of fossil fuels, and charcoal consuming countries were concerned about the future use of their primary source of energy, the Small Island States and States with low-lying coastal areas created an alliance to protect themselves from the threat of rising oceans.

Developing countries felt that their concerns were not properly addressed by the scientifically focused IPCC process and rejected the proposal of a negotiating committee that would work under the auspices of WMO and UNEP. Thus, an International Negotiating Committee for a Framework Convention on Climate Change (INC) was established under the auspices of the United Nations General Assembly (resolution 45/212 of 21 December 1990). The INC was open to all Member States of the United Nations and its specialized agencies. Its mandate was “to negotiate a framework convention, containing appropriate commitments, and any related legal instruments as might be agreed upon” in time to be opened for signature at the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro.

In an enormous negotiation effort which involved more than 140 States and took less than seventeen months, the Committee fulfilled its mandate and the United Nations Framework Convention on Climate Change was open for signature at UNCED from 4 to 14 June 1992, and thereafter at United Nations Headquarters in New York until 19 June 1993. By that date, the Convention had 165 signatories. It entered into force on 21 March 1994. With 192 instruments of ratification deposited, the United Nations Framework Convention on Climate Change has near universal membership (status as of 26 August 2008).

The United Nations Framework Convention and its Objectives

The long-term objective of the Convention and its related legal instruments is “to achieve [...] the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (article 2). Climate change is defined by the Convention as “change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods” (article 1 (2)).

Noting that the largest share of emissions has originated in the developed world and taking into account the developing countries’ concern for development, the Convention espouses the principles of equity and sustainable development and calls on States to cooperate as widely as possible in accordance with the principle of common but differentiated responsibilities and in accordance with their respective capabilities. In the implementation of commitments, parties to the Convention shall consider the specific needs and concerns of particularly affected country groups, such as low-lying coastal, transit and landlocked countries, Small Island States, fossil fuel dependent countries and

countries with semi-arid areas, areas liable to drought and desertification, forested areas, areas prone to natural disaster, areas of high urban atmospheric pollution and areas with fragile ecosystems, as well as least developed countries and countries that may be economically harmed by climate change response measures (article 4 (8) to (10)).

The Convention outlines a set of general commitments applicable to all parties, while specific commitments apply only to developed countries listed in annexes I and II. The Convention recognizes the existence of other international agreements regulating GHG emissions; in particular, it provides that commitments under the Convention do not apply to GHGs already controlled by the Montreal Protocol. The principle of common but differentiated responsibilities is also the governing principle for the implementation of general commitments listed in article 4, paragraph 1. The preparation and regular update of national inventories of GHGs emissions provides a scientific basis for future planning and achievement of the long-term objective of the Convention. Further general commitments include long-term national planning, the diffusion of technologies and processes to control emissions, the conservation of sinks, cooperative adaptation planning, and adjustment of environmental policies, systematic observation and development of data archives, exchange of information, as well as promotion of education, training and public awareness. Developed countries listed in annex I commit themselves to the objective to limit anthropogenic emissions of GHGs with the aim of returning individually or jointly to their 1990 levels of emissions. They are subjected to more stringent reporting requirements than developing countries and must coordinate relevant economic and administrative instruments that contribute to increased GHG emissions (for example, subsidies and energy pricing) as well as review their policies regularly (article 4 (2)). Annex II countries, which represent a smaller set of annex I countries, are under the obligation to provide new and additional financial resources to developing countries for their compliance with national reporting requirements specified under article 12, paragraph 1. They further provide resources to cover full incremental costs of implementation of general commitments by developing countries and assist the particularly vulnerable States in meeting costs of adaptation (article 4 (3) and (4)). Annex II countries are also responsible to promote the transfer of and access to environmentally sound technologies to other parties, in particular to developing countries, and support capacity enhancement of the latter (article 4 (5)).

Institutional and Financial Mechanisms

The Conference of Parties (COP) is the supreme body of the Convention. The COP takes decisions to promote the implementation and reviews the effectiveness of the Convention regularly. To this end, it is authorized to examine national reports, parties' obligations and institutional arrangements under the Convention, review the adequacy of the commitments in article 4, paragraph 2, facilitate, upon request, the coordination of national measures, and make recommendations on any matters necessary to realize the goals of the Convention. Observers are admitted to the annual meetings of the Conference (article 7).

Further to the COP, the Convention established four additional bodies; a Secretariat (article 8), which is now permanently located in Bonn, Germany; two subsidiary bodies, one for scientific and technological advice (article 9) and the other for implementation (article 10); and a financial mechanism (article 11). The subsidiary bodies are both open to all parties in their membership and are composed of Government representatives with the

relevant expertise. They assess the state of scientific knowledge and the aggregate progress and effect of measures taken by the parties to implement the Convention. They report only to the COP, which is authorized to establish further subsidiary bodies as needed.

A financial mechanism is established to provide financial resources on grant or concessional basis, including for the transfer of technology. It functions under the guidance of the COP and one or more existing international entities may be entrusted with its operation. The Convention provides that the financial mechanism shall have an equitable and balanced representation of all parties with a transparent system of governance (article 11 (2)). The Global Environmental Facility, which was initially entrusted with an interim mandate (article 12 (3)), was restructured accordingly and by Decision 3/CP.4 (1998) recognized as the financial mechanism of the Convention.

Compliance Mechanism and Dispute Settlement

Two complementary mechanisms are established for the resolution of questions regarding implementation of the Convention and dispute settlement (articles 13 and 14). A multilateral consultative process is envisaged to help parties overcome difficulties encountered in implementation and aims at promoting the understanding of the Convention as well as at preventing disputes from arising. The decisions on the functioning of the process and the establishment of a standing Multilateral Consultative Committee are left to the COP. The Ad Hoc Group on Article 13 completed its work in 1998, without being able to agree on the number of members of the Consultative Committee, the length of their term or their geographical distribution. The report of the Ad Hoc Group, which was adopted at the fourth COP meeting in 1998, outlines the procedures for the consultative process. It is guided by the premise to be facilitative, cooperative, and non-adversarial as well as non-judicial. Parties have the possibility to address concerns about their own implementation difficulties, as well as about those of other parties to the Committee. In case a dispute cannot be avoided by the consultative process, article 14 envisages possibilities for its resolution by the more traditional bilateral dispute settlement procedures of negotiation, the establishment of a conciliation commission upon request, or, if accepted by the States concerned, submission to the jurisdiction of the International Court of Justice or international arbitration.

Towards Tighter Commitments

Already in the establishment of the INC, the General Assembly called on the Committee to take into account the scientific contributions of the IPCC. Cooperation with the IPCC continues under the Convention, notably through the COP and the Subsidiary Body on Scientific and Technological Advice. If the first assessment report on global climate change of the IPCC contributed a lot to the successful negotiation of the Convention, a similar conclusion can be drawn with respect to the second assessment report of 1995 and its contribution to the Kyoto Protocol. When the Governments adopted the Convention, they already knew that its general and special commitments would not suffice to seriously tackle climate change. Accordingly, the COP, already at its first meeting, adopted a decision to launch a new round of talks in order to strengthen the special commitments of annex I countries, under article 4, paragraph 2 (a) and (b), by the adoption of a protocol or another legal instrument. Negotiations resulted in the adoption of the Kyoto Protocol at the third meeting of the COP in 1997, and its implementation

procedures in the 2001 Marrakesh Accords (composed of thirty-nine COP decisions). The Kyoto Protocol entered into force on 16 February 2005.

Subsequent IPCC assessment reports and scientific evidence from other resources confirmed that commitments established under the Convention and its Protocol are likely not to be sufficient to effectively mitigate anthropogenic impact on climate change. In December 2005, a dialogue on long-term cooperative action to address climate change by enhancing the implementation for the Convention was launched, and a new round of negotiations to step up international efforts to combat climate change was launched by the Bali Action Plan adopted by the COP at its thirteenth meeting in December 2007. An Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) was established to negotiate a long-term climate change pact addressing adaptation, mitigation, technology development and transfer, finances and a shared vision for long-term cooperative action. The result of the Working Group's negotiations will be presented at the fifteenth meeting of the COP scheduled to be held in Copenhagen from 30 November to 11 December 2009.

Related Materials

A. Legal Instruments

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Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, United Nations, *Treaty Series*, vol. 1522, p. 3.

Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 11 December 1997, United Nations, *Treaty Series*, vol. 2303, p. 162.

B. Documents

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Report of the Ad Hoc Group on Article 13 on its sixth session, held at Bonn, from 5 to 11 June 1998 (FCCC/AG13/1998/2).

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<http://www.ipcc.ch/pdf/climate-changes-1995/ipcc-2nd-assessment/2nd-assessment-en.pdf>

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