

# 2007 CONTENT

## NEWSLETTER

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visions of the Convention and decisions adopted by the CoP. They also encouraged Parties with stricter domestic measures or reservations, authorized under Articles XIV and XXIII, to review the effectiveness of those measures in achieving the objectives of the Convention.

### **Trend 3 – More balance**

The new Strategic Vision seeks to balance biodiversity conservation and its sustainable use. Parties are also working to bring more balance to the attention given to other aspects of the Convention, such as: science and policy; obligations of exporting and importing countries; legal and illegal trade; and regulatory and non-regulatory instruments. Recent CoP14 decisions ensure there is balance among the measures used to promote, facilitate and achieve compliance with the Convention and among different special interest groups that participate in the Convention (e.g. private sector bodies, local communities, indigenous groups and academia as well as conservation and animal welfare NGOs).

### **Trend 4 – More rationality**

CITES Parties have increasingly tried to ensure that decisions under the Convention are taken on the basis of the best available scientific information and reflect the differing conservation needs of species. They have recognized the importance of having expert, authoritative and impartial data. Such data enable them to take better-informed decisions and to better assess additional information that might be provided by non-professionals and those with certain personal or financial interests.

One of the longstanding strengths of CITES is its ability to evolve to meet changing circumstances and to solve specific problems. The recent trends described above show that the Convention, adopted in 1973, is becoming more and more relevant to global developments with age.

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## The International Climate Change Regime: At a Crossroads Yet Again

### **State of the International Regime**

The UN Framework Convention on Climate Change (UNFCCC)<sup>29</sup> has its roots in UNCED in Rio de Janeiro<sup>30</sup> and has operated in coordination with the Intergovernmental Panel on Climate Change (IPCC).<sup>31</sup> The IPCC provides the scientific basis for international negotiations, with major reports issued to inform each of the major steps in the development of the international regime. The UNFCCC provides the context for more substantive negotiations on how to mitigate the effects of human induced climate change and how to adapt to the impacts that cannot be mitigated.<sup>32</sup>

The Kyoto Protocol was negotiated in 1997 and came into force in 2005. It requires developed states to reduce their emission for the commitment period from 2008-2012. Emission reduction targets were negotiated on a state by state basis, and range from 8% below to 11% above 1990 levels of emissions. The targets in the Kyoto Protocol can be met through a combination of domestic action and reliance on a number of mechanisms. These mechanisms are available to developed nations to supplement domestic action with reductions achieved outside their own jurisdictions: the Clean Development Mechanism (CDM), Joint Implementation, and Emissions Trading.<sup>33</sup>

### **1<sup>st</sup> Commitment Period Obligations**

In the first period, the former member states of the Soviet Union are likely to meet their target of returning to 1990 levels of emissions, mainly as a result of the collapse of their economies after the dissolution of the Soviet Union. Members of the European Union (EU) are generally on target to meet the goal of reducing emissions to 8% below 1990 levels, along with other European States.<sup>34</sup>

Four developed states are struggling to meet the emission reduction targets they accepted in Kyoto (Australia, the United States (US), Japan and Canada).<sup>35</sup> For Canada and Japan, some reliance on Kyoto Mechanisms will be necessary to achieve compliance. Other nations

<sup>29</sup> United Nations Framework Convention on Climate Change, Intergovernmental Negotiating Committee for a Framework Convention on Climate Change OR, 5th Sess., Annex. UN Doc. A/AC.237/18 (PartII)/Add.1 (1992), 31 I.L.M. 849, online: UNFCCC <<http://unfccc.int/resource/docs/a/18p2a01.pdf>> [UNFCCC or The Framework Convention]

<sup>30</sup> See *Report of the United Nations Conference on Environment and Development*, (Rio de Janeiro, 3-14 June 1992) ACONF 151/26 vol. 1 <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>31</sup> For information about the IPCC <http://www.ipcc.ch>

<sup>32</sup> The UNFCCC has been ratified by almost all UN member states. See online: UNFCCC <http://unfccc.int>

<sup>33</sup> See Kyoto Protocol, Articles 6, 12 and 17. Parties can also offset emissions through the use of sinks, to take greenhouse gases back out of the atmosphere.

<sup>34</sup> See <http://unfccc.int> for progress reports and annual emissions reports filed by Kyoto Protocol parties.

<sup>35</sup> Australia and the US are not parties to the Protocol, whereas Japan and Canada are.

are also relying to some extent on the mechanisms for compliance (eg EU Member States).

Experience with the CDM has been mixed. The volume of CDM credits has exceeded all expectations,<sup>36</sup> but there are concerns about the quality of CDM credits generated, such as HFC destruction projects in China, where CDM credits generated would provide an incentive to increase the production of ozone depleting substances.<sup>37</sup> Regional distribution is also a concern, with significant CDM credits generated in major developing states in Asia, but very little CDM activity in Africa, a region that would particularly benefit from CDM project investment consistent with sustainable development objectives.<sup>38</sup>

Work of the compliance committee has focussed on the facilitative branch. A number of concerns have been brought to the attention of the facilitative branch, including those about efforts by some Annex I parties to meet their emission reduction obligations. The facilitative branch appears reluctant to become actively involved in assessing whether a party is on target to meeting its obligations, to identify steps to meet the obligation and to motivate states to take their obligations seriously. This may be a result of a sense that the parties in question know what needs to be done and have the capacity to act, but have not shown the will to do so, making facilitation difficult. Whatever the reason, inaction from the facilitative branch will likely create serious challenges for the enforcement branch, the compliance committee and the Conference of the Parties (CoP), if parties are unwilling to purchase the credits necessary to come into compliance.<sup>40</sup>

### Towards a 2<sup>nd</sup> Commitment Period

The climate change regime faces a number of key challenges. The 4<sup>th</sup> IPCC assessment report highlights that targets negotiated for the first commitment period are inadequate.<sup>41</sup> Some developed states, including a number of EU states, are demonstrating that emission reductions are possible without compromising quality of life.

However, the three developed states with the highest per capita emissions are either not parties to the Kyoto Protocol or appear to have abandoned any serious efforts to meet their targets. Issues of responsibility and liability for impacts and adaptation remain unresolved. Discussions on how to engage major developing states, such as China, India, Brazil, South Africa, South Korea and Mexico in emission reduction efforts have been slow.

At CoP11 in Montreal, Parties agreed to initiate the process of negotiating future commitment period targets for developed states through the establishment of an Ad-hoc Working Group (AWG). This process is to be completed in time to avoid a gap between the 1st and 2nd commitment period, suggesting a 2009 agreement deadline.<sup>42</sup> Russia proposed allowing developing states to take on voluntary targets. A group of developing countries led by Papua New Guinea and Costa Rica submitted a proposal to consider avoided deforestation in future commitment periods. The role of a requirement under Article 9 of the Kyoto Protocol to periodically review its effectiveness was also considered.<sup>43</sup>

At CoP12 in Nairobi, December 2006, the work of the AWG on new targets was discussed.<sup>44</sup> Parties made limited progress but agreed on a workplan.<sup>45</sup>

The world community appears split on whether the basic structure of Kyoto is sound. The EU and developing nations are pushing for continuation under Kyoto with minor adjustments, while some non-European developed nations question the Kyoto structure. A key issue in this debate is whether the US will re-engage without fundamental changes to the Kyoto structure.<sup>46</sup>

CoP12 also dealt with the Russian proposal on voluntary targets resulting in a compromise agreement to hold a workshop in 2007 to explore opportunities for developing nations to take on voluntary targets.<sup>47</sup> Periodic review of the Kyoto Protocol under Article 9 was also discussed.<sup>48</sup>

<sup>36</sup> See M. Doelle, "From Kyoto To Marrakech; A Long Walk Through The Desert: Mirage Or Oasis?" (2002) 25 Dalhousie Law Journal 113.

<sup>37</sup> See B. Wittneben *et al.*, *In From the Cold: The Climate Conference in Montreal Breathes New Life into the Kyoto Protocol* (Wuppertal: Wuppertal Institute for Climate, Environment and Energy, 2006), and M. Doelle, "The Cat Came Back, or the Nine Lives of the Kyoto Protocol" (2006) 16 J. Env. L. & Prac. 261

<sup>38</sup> See <http://unfccc.int> for a current world map of CDM projects. See also D. V. Wright, *The Clean Development Mechanism: Climate Change Equity and the South-North Divide* (Berlin: VCM Verlag Dr. Muller, 2007)

<sup>39</sup> For a list of submissions to the facilitative branch [http://unfccc.int/kyoto\\_protocol/compliance/facilitative\\_branch/items/3786.php](http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php)

<sup>40</sup> For a detailed review of the compliance process under the Kyoto Protocol, see M. Doelle, *From Hot Air to Action? Climate Change, Compliance and the Future of International Environmental Law* (Toronto: Carswell, 2005) at 109 - 145

<sup>41</sup> Emission reductions in the range of 80% for developed states and 50% globally by 2050 relative to 1990 levels are needed to avoid the most serious consequences of climate change. For summaries and pre-publication versions of the IPCC's 4th Assessment Reports, see <http://www.ipcc.ch> For the state of negotiations within the Ad-hoc Working Group under the Kyoto Protocol on future targets for developed nations, <http://unfccc.int/resource/docs/2007/awg3/eng/02.pdf>

<sup>42</sup> The process is under the Kyoto Protocol and therefore does not include the US and Australia, although the focus of the negotiations in many ways is to find a way to bring them back under the Protocol. The US presidential election in 2008 is one of the reasons a final agreement on future targets is considered unlikely until CoP 15 in 2009.

<sup>43</sup> See B. Müller, "Montreal 2005, What Happened, and What it Means" Oxford Institute for Energy Studies, (February, 2006) at 7 <http://www.oxfordenergy.org/pdfs/EV35.pdf>, and Doelle (2006) see note 9.

<sup>44</sup> For a good overview of the Nairobi negotiations, see W. Sterk, *et al.*, "The Nairobi Climate Change Summit (CoP 12-MOP 2: Taking a Deep Breath Before Negotiating Post-2012 Targets?)" (2007) 2 Journal for European Environmental & Planning Law 139

<sup>45</sup> A promising result of the most recent meeting of the AWG in Austria in August was a general agreement that the scale of mitigation effort needed from developed nations is in the range of 25-40% below 1990 levels by 2020.

<sup>46</sup> The outcome of the 2008 election will be an important factor. It is important to note that US administration in 1997 was largely responsible for the current Kyoto structure and that support for cap and trade has grown significantly in the US.

<sup>47</sup> The proposal was controversial as it was seen by developing nations as an attempt to initiate negotiations on developing nation mitigation targets, opposed by a number of developing nations, most notably India.

<sup>48</sup> It was hoped that the first review would be comprehensive and proceed in parallel to the AWG to provide an avenue for negotiating developing country commitments on mitigation, and on a range of other critical issues. The initial review was concluded in Nairobi more or less as a formality.