

THE FUTURE OF CLIMATE CHANGE

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This is part of a series of articles dealing with legal issues associated with climate change and the international legal regime founded on the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

The next few months are critical for concerted international action on climate change. A series of imminent meetings, under the UN aegis, will culminate in the Thirteenth Conference of the Parties (COP-13) to the UN Framework Convention on Climate Change (UNFCCC) and the third Meeting of Parties to the Kyoto Protocol (MOP-3) in Bali, Indonesia, scheduled for 3 to 14 December 2007.

The meeting-series was kicked-off by the "Fourth Sessions of the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol and Convention Dialogue", held between 27 and 31 August in Vienna, Austria. The context for the Working Group's activities is the need to define the approach of country-parties to the Kyoto Protocol to tackling climate change in the period after 2012. As matters currently stand, developed country-parties' commitments to reduce their greenhouse gas emissions apply only to the period 2008 to 2012. Agreement is urgently needed on the political and legal landscape for action to combat climate change, post-2012. In preparation for the series of meetings the UN General Assembly held an informal thematic debate on the subject of "Climate change as a global challenge" from 31 July to 2 August. The debate focused on both the adaptation and mitigation aspects of climate change and on the post-2012 question. Against the background of the pressing, international, urgency of global climate change, it is worth noting that both Australia and the United States are parties to the UNFCCC but not the Kyoto Protocol. Binding commitments to reduce greenhouse gas emissions flow from the Protocol and not the Convention.

There is currently no clear indication of the outcome of the Bali negotiations. Yvo De Boer, UNFCCC Executive Secretary, is quoted as having said "the treaty that replaces the Kyoto Protocol on climate change could be a potpourri of legal obligations, nonbinding commitments and aid arrangements for the developing world. The process we launch in Bali might lead to three, four or five different approaches that accommodate different countries, different capabilities to act on climate change. It doesn't need to be one size fits all".

The list of issues likely to be discussed in Bali includes:

- Establishing a “global target” to cut emission by 2050 and determining emissions reduction targets for all Convention parties.
- Steeper emissions reduction targets for developed country parties to the Kyoto Protocol and potential, future obligations for developing country parties. The group of developing countries includes some of the world’s largest emitters of greenhouse gas - South African, China, India and Brazil among them. In the past there has been fierce opposition from these countries to their shouldering emissions reductions targets. This position is based on the argument that development of their economies will be curtailed if they were to assume such targets. For this, and other, reasons the obligations that developing countries are likely to agree to assuming, include a range of options, e.g., the implementation of policies and measures to promote sustainable development, rather than, simply, undertaking to reduce greenhouse gas emissions.
- The development of criteria to determine countries should have binding obligation to cut emissions after 2012
- The future and potential re-structuring of the Clean Development Mechanism (CDM).
- The future and development of the carbon market, including the establishment of a global market.
- Funding for adaptation.
- How to reduce greenhouse gas emissions caused by deforestation in developing countries.

A Discussion Paper on the post-2012 framework (“CDM and the post 2012 Framework, Discussion Paper”, Vienna, August 2007) circulated at the meeting of the *Ad Hoc* Working Group on Further Commitments by the group Environmental Defense, argues that there is growing awareness that the post-2012 framework must not only require deeper reductions from industrialized countries, but also seek to reform the CDM. The Discussion Paper proposes three specific components for inclusion in the post-2012 legal framework, namely:

- The establishment of “Premium Emissions Budgets” for those developing country parties to the Kyoto Protocol that wish to engage, fully, in international emissions trading, rather than simply acting as hosts for CDM projects.
- The implementation of “value-added” requirements for carbon credits, e.g., Certified Emissions Reductions generated by CDM project, issued to developing economies.
- A phase-out of the CDM in major developing countries.

Growing international sensitivity to climate change and the expectations of the global population will be strong motivators for the negotiators in Bali. It is to be hoped that the outcome of the meeting reflects the growing realisation that, without common goals and concerted, co-operative effort, actions to reduce combat climate change are unlikely to succeed. Given the range of issues up for discussion in Bali, and the potential ramifications for national economies of the agreement reached, it will be crucial for South Africa to participate, actively, in the negotiations. The trick will be to achieve an agreement that can be implemented without jeopardizing economic growth and sustainable development in the country.

Upcoming UN climate change meetings

- From 27-31 August 2007, the fourth session of the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG 4) and the fourth workshop under the Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention (the Convention Dialogue), Vienna, Austria.
- A high-level event, called by the UN Secretary-General, will be held on 24 September 2007 for the purposes of providing political momentum towards agreement at the Bali conference, on a "roadmap" for completing negotiations on the post-2012 regime by 2009.
- The Intergovernmental Panel on Climate Change will hold its twenty-seventh session From 12-17 November 2007, in Valencia, Spain.
- Thirteenth Conference of the Parties (COP-13) to the UN Framework Convention on Climate Change (UNFCCC) and the third Meeting of Parties to the Kyoto Protocol (MOP-3) in Bali, Indonesia, from 3-14 December 2007.

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This article should not be regarded a comprehensive discussion of the topics addressed, and should not be taken as legal advice or relied upon. Those seeking to participate in climate change-related activities are advised to seek specific legal advice.