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International Community and Indonesia's Policy Towards Climate Change Post-2012

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Abstract: Throughout the international climate change regime's development up until 2012, the emergence of new and helpful mechanisms and negotiation processes were often accompanied by setbacks such as withdrawals and unmet State obligation. The object of this study focused on international community and Indonesia's policy towards climate change. The Method of this study is normative legal research. The result of this thesis is to situate the internal/domestic climate of several States (the U.S., Canada, Brazil, Norway, and Indonesia) and one regional organization (the EU); and connect it to the outward international policies each have chosen to put forward on the negotiation table and/or submit themselves to. Given the global nature of and concern about climate change, it feels as if there is no shortage of lessons to pick – from outright refusal to be legally bound to the regime at all (the U.S.), an unprecedented and recent move of formal and official withdrawal from the regime's key instrument (Canada), the struggles with implementation that a regional organization might face (the European Union), to the recent moves and measures in environmental protection pioneered and led by States characterized by their increasingly strong economies (Brazil, Norway, and Indonesia)

Keywords: International Law; Climate Change; International Politics; Post-Kyoto; Indonesia Policy.

INTRODUCTION

International law's very nature depends on States – namely, their ability to voluntarily submit themselves to rules that bind them. The practices

that States, represented by their leaders and officials, go through (and reflect this nature) have been studied extensively for as long as human civilization, with opinions ranging

from Machiavellian and *realpolitik* to hopeful and idealistic. International environmental law in particular is interesting because, unlike other international legal regimes such as terrorism or money-laundering, there seems to be a general consensus that it is an issue – and an issue that needs to be tackled as a global community. Except that may not be true for the climate change regime. Though it is often touted as boasting, “near-universal membership,” it would be hard-pressed to equate that fact alone to compliance.

The main inquiry of this article is to examine the extent political change (and in some cases, instability) can influence state compliance to an international legal regime. More specifically, it can be argued that the main factor influencing compliance of this regime was the extent to which the State governments respected the established principles and provisions of the international climate change regime, and relevant general international law norms. This attribute followed from the general expectation that in order to be deemed compliant, a State ought to be supportive of, and

adhere to, international law. It was also suggested by the context, namely, the involvement in negotiations under the international climate change regime, in which relatively clear ethical expectations were established for Parties by the 1992 United Nations Framework Convention on Climate Change (UNFCCC),¹ the 1997 Kyoto Protocol,² as well as subsequent decisions of the treaty Parties.³

This article also argues that, while the regime is in the form of framework compare to a legally binding covenant in relation to the negotiation of a post-2012 agreement, the agreement does provide a clear set of legal goals, which can be seen from the 2015 Paris

¹ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).

² *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005).

³ Includes, but is not limited to: UNFCCC, *Report of the Conference of the Parties on its Thirteenth Session: Addendum (Part 2)*, UN Doc FCCC/CP/2007/6/Add.1 (14 March 2008), decision 1/CP.13; and UNFCCC, *Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its Resumed Fourth Session*, UN Doc FCCC/KP/AWG/2007/5 (5 February 2008) annex I.

Agreement,⁴ and the subsequent negotiations in Morocco the following year.⁵ States try to achieve some crucial expectations that Parties would act consistently with the ultimate objective of the Convention; would act on the basis of equity and common but differentiated responsibilities; and that developed countries would adopt mitigation targets that reflected a comparative level of effort.

This thesis lists five States and one regional organization to examine. The United States and their refusal to commit to any binding international measures will open the discussion and provide insight into the “soft” nature of international law and international climate change law’s particular regime. Canada will follow and illustrate the same; their withdrawal from one of the regime’s distinguished instrument both a reflection of how State (government) party lines influences policy, as well as

the revocable nature of State consent. The European Union (EU) provides lessons in regional organizations attempting to situate themselves in the regime. Brazil and Norway – or rather, their diplomats and representatives – are both admirable in the international negotiations arena, with domestic implementation struggles arising at least partially from political and economic crises. Lastly, this thesis will close with Indonesia’s experience, where a determined (and often dubbed aggressive) foreign policy and domestic instruments reflect its own unique selection of pressing environmental issues.

METHOD

The method used in this study is a type of normative legal research that examines the application of the principles of international law in relation to the life of a state. As a type of normative legal research, it is prioritized to review the legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials.

ANALYSIS AND DISCUSSION

⁴ UNFCCC, *Paris Agreement*. Text of the agreement available at http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf/

⁵ UNFCCC, Marrakech Action Proclamation for Our Climate and Sustainable Development. Text available at: http://unfccc.int/files/meetings/marrakech_nov_2016/application/pdf/marrakech_action_proclamation.pdf/

Illustrative States Responses To The Climate Change Regime

The climate change regime enjoys one of the highest levels of participation in the international environmental arena among both States and stakeholder organizations, including non-governmental organizations (NGOs), intergovernmental organizations (IGOs), and UN bodies and specialized agencies. This thesis provides an overview of the climate change regime's diverse participants and how they have organized their responses, focusing on those most notable in either their advancement/support of the regime, or their supposed nonconformity and withdrawal.

The UNFCCC enjoys one of the highest rates of membership among international legal regimes, with its 197 Parties including 196 States plus the European Union, which participates as a regional economic integration organization.⁶ The Holy See, with its' observer status, yet to ratify the Convention; though it announced it

was considering the possibility of ratifying in December 2015.⁷ At the time of writing, the Kyoto Protocol to the Convention had been ratified by nearly two-thirds of Parties to the Convention, representing nearly three-quarters of the world's population.⁸

The Secretariat asks each Party to the Convention to designate a "national focal point," who then serves as the main point of contact for that party concerning activities in the climate change regime on a day-to-day basis.⁹ The great majority of Parties to the Convention regularly attend sessions of the regime bodies, with over 90 per cent typically represented at COP sessions and over 80 per cent at subsidiary body sessions.¹⁰ The size of

⁶ DiMento, Joseph F. C., and Doughman, Pamela, eds. 2014. *Climate Change: What It Means for Us, Our Children, and Our Grandchildren*. Cambridge, MA: MIT Press.

⁷ "Pope's Encyclical on Climate Change Reflects Urgency of the Challenge: US." *RTNNews*, June 19th 2015. <http://search.proquest.com/docview/168982424?accountid=17242>; and "Vatican intent on signing Paris climate agreement." <http://newsinfo.inquirer.net/745964/vatican-intent-on-signing-paris-climate-agreement> *Philippine Daily Inquirer*, December 9th 2015.

⁸ For up-to-date figures on Parties to the Convention and Kyoto Protocol, see <http://www.unfccc.int>.

⁹ See UNFCCC, UN Doc FCCC/CP/1996/6/Add.2, section B. The list of national focal points is available at <http://unfccc.int/resource/nfp.html>.

¹⁰ Yamin, Farhana, and Joanna Depledge. *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*.

delegation, however, varies significantly. Predictably, the smallest delegations are typically those from poorer developing countries, and the larger ones from the wealthy, industrialized nations. Some developing countries with a considerable interest in the climate change issue, however, do also field large delegations. Brazil, China, and Indonesia for example, all sent delegations of over twenty persons to COP-21.¹¹ However, the number of individual delegates who have attended high-profile COPs, compared to subsidiary body sessions, and the statistical trends would have to be a study of its own.

The Parties to the climate change regime are organized into a number of different groups and coalitions, some of which stem from official UN listings, while others consist of more ad hoc political alliances. Such listings are arguably quite directly related to the commitment of the Parties. Recognition that meaningful actions to protect our climate are possible has

come in different forms across the globe, and across negotiating platforms and groupings.

The States chosen in this section were meant to be representative. Given the global nature of and concern about climate change, it feels as if there is no shortage of lessons to pick – from outright refusal to be legally bound to the regime at all (United States), an unprecedented and recent move of formal and official withdrawal from the regime’s key instrument (Canada), the struggles with implementation that a regional organization might face (the European Union), to the recent moves and measures in environmental protection pioneered and led by States characterized by their increasingly strong economies (Brazil, Norway, and Indonesia) – all hopefully serve to shed light on some of the rhyme and reason behind international climate change law. All of them are illustrative of the characteristics of the regime’s nature in some way – and indeed, the nature of international law in general.

United States

If one had to find one redeeming characteristic about the position of the

Cambridge, UK: Cambridge University Press, 2004. p. 30.

¹¹ See UNFCCC, *List of Participants at COP-21*, UN Doc FCCC/CP/2015/INF.3/

United States on the international climate change regime, it would not even be consistency in obstinacy. Contested multiple times over, The United States had over 36 per cent of the 1990 emissions in the industrialized countries, which are listed in Annex I of the UNFCCC.¹² As of not long ago surpassed by China, the United States was the biggest single supporter of an Earth-wide temperature boost, representing just about one-fourth of worldwide ozone depleting substance emanations. The size of the US commitment reflects the size of its economy as well according to capita outflows that were second most astounding (after Australia) among industrialized.¹³ In any case, while plainly a huge piece of the issue, United States has not been a piece of the arrangement. With Australia's ratification in 2007, the United States was isolated as the only advanced

industrialized country to decline to ratify. At the domestic level, the US federal government has adopted relatively weak climate policies, relying on voluntary programs and modest government expenditures on research. Not surprisingly, in response US emissions have continued to increase, if at a rate lower than its population and economic growth.

The reality of the matter is that the United States approved the UNFCCC in October 1992, yet Senate discussion on confirmation concentrated on financial costs, consequences for aggressiveness, and the inability to request that creating nations lessen discharges. The Senate's recommendation and agreement to approval happened, to some degree, since objectives for decrease of discharges were willful. Ratification of the Convention moved U.S. climate change policy from "study only" to "study and action," though U.S. action was noted – both nationally and internationally – to be, “cautious and limited.”¹⁴

¹² US Energy Information Administration, *Emission of Greenhouse Gases in the United States*. 2011. Available at: [http://www.eia.gov/environment/emissions/ghg_report/pdf/0573\(2009\).pdf](http://www.eia.gov/environment/emissions/ghg_report/pdf/0573(2009).pdf)

¹³ Kahn, Greg. “The Fate of the Kyoto Protocol under the Bush Administration.” *Berkeley Journal of International Law* 21 no. 3 (2003) Available at: <http://scholarship.law.berkeley.edu/bjil/vol21/iss3/5>.

¹⁴ Yacobucci, Brent D. 2010. *Climate Change: Federal Laws and Policies Related to Greenhouse Gas Reductions*. Bibliogov, 2013. See also Carlarne, Cinnamon Piñon. *Climate Change Law and Policy: EU and US Approaches*. Oxford: Oxford University Press..

The Kyoto Protocol was adopted in 1997 and in force from February 16, 2005. It has been established that it set legally binding standards for reduction of GHG emissions, where industrial (i.e. Annex 1) countries, must reduce aggregate emissions of six GHGs to 5% below 1990 levels between 2008 and 2012.¹⁵

Though willing to make a voluntary commitment under the Convention, the United States was not politically motivated to ratify the Kyoto Protocol. In July 1997, even before adoption of the Protocol, the Senate resolved to reject new commitments for GHG reduction unless developing countries had obligations. Noting that emissions from developing countries were expected to surpass those of developed countries by 2015, the Senate stated, "the exemption for Developing Country Parties is inconsistent with the need for global action on climate change and is environmentally flawed."¹⁶ The Senate

feared "serious harm" to the U.S. economy from "significant job loss, trade disadvantages, [and] increased energy and consumer costs."¹⁷ Hence, however the United States signed the Kyoto Protocol, it was never sent to the Senate for counsel and assent.¹⁸ In 2001, President George W. Bush dismissed the Protocol, calling it "fatally flawed in fundamental ways" and "unrealistic" and citing issues of cost, competitiveness, and exemptions for developing countries.¹⁹

In 2009, President Obama promised to work with the UN to develop a new international treaty on climate change to replace the Kyoto Protocol for when would expire in 2012.²⁰ The U.S. proposal for the treaty indicated that the United States was "committed to reaching a strong international agreement in Copenhagen based on both the robust targets and ambitious actions that will be

¹⁵ UNFCCC, *Kyoto Protocol*, *op. cit.* http://unfccc.int/kyoto_protocol/items/2830.php

¹⁶ Grossman, Margaret Rosso. "Climate Change and the Law." *The American Journal of Comparative Law* 58. American Society of Comparative Law (2010): p. 229.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Pershing, Jonathan; Deputy Special Envoy for Climate Change, Remarks During Press Conference Call with Senior U.S. Climate Change Officials (May 29, 2009). <http://www.state.gov/e/oes/rls/remarks/2009/124210.htm/>

embodied in U.S. domestic law [...]"²¹ This implies under its terms, the United States would confront a bigger number of emissions lessening than most nations and would give monetary and innovative help to developing nations.

President Obama renewed his promise in September 2009 speech to the UN Climate Change Summit, assuring that the United States would battle climate change by "investing in renewable energy and promoting greater efficiency and slashing our emissions to reach the targets we set for 2020 and our long-term goals for 2050."²² In January 2010, in association with the Copenhagen Accord reached at the Summit, the United States committed to a reduction of GHG emissions; and in the following years, the President strengthened its status as a federal

priority by Executive Order, and affirmed the state's continued commitment through State of the Union address.²³

Domestically speaking, a good number of governmental institutions formulated agendas in order to comply with the Executive Order.²⁴ However, in terms of legal battles – of which the U.S. has plenty – one may cite The US Supreme Court's decision in *Massachusetts v. EPA*, which compelled the EPA to act according to section 202(a) Clean Air Act. The Act, which was federal in nature, requires the EPA to set standards for "any air pollutant." At the point when the EPA agreed, and the findings affirmed that GHGs represent a threat to human wellbeing and welfare and ought to be regulated. Therefore, President Obama guided the EPA to react to the solicitations of the condition of the state of California and thirteen other states for waivers, precluding states from directing auto emissions.

²¹ U.S. Department of State, U.S. Submission on Copenhagen Agreed Outcome, Introductory Comments (May 29, 2009) <http://unfccc.int/resource/docs/2009/cop15/eng/07.pdf/>

²² White House, Remarks by the President at United Nations Secretary General Ban Ki-Moon's Climate Change Summit (Sept. 22, 2009) (noting also that the United States "has done more to promote clean energy and reduce carbon pollution in the last eight months than at any other time in our history") <https://www.whitehouse.gov/the-press-office/remarks-president-un-secretary-general-ban-ki-moons-climate-change-summit/>

²³ Grossman, Margaret Rosso, *op. cit.* p. 231.

²⁴ *Climate Change – Government Institutions | U.S. Department of Interior.* <https://www.doi.gov/oia/climate-change/governmental-institutions/>

One case out of many, this illustrates the shaky steps and practices that the United States have tried taking within their own domestic sphere to regulate climate change, albeit based primarily through litigation. Though admirable, this quite obviously does not equate to compliance to international commitments. In the wake of the 2015 Paris Agreement,²⁵ and coinciding with the Presidential Election of 2016, candidates expressed views on the issue – and the given international agreement – that seemed typically along characteristic party lines.²⁶

As of this thesis' writing, there is worry rippling throughout the international community about the United States' role in mitigating and adapting the climate change after the nation has voted for President-Elect Trump. States party to the international climate regime are very visibly cautious, and this is seen best in COP-22, the Marrakech Climate Change

Conference.²⁷ As a candidate with a platform – and constituents – largely disbelieving of environmental problems, especially climate change, the fact that he had gained enormous traction is troubling to say the least. This overwhelming concern is explainable given the financial and technological advances as well as the influence it holds as a State. The United States is projected to backtrack from the global commitment established by the previous administration. Key among these issues is funding – compensation given by developed countries for the global warming caused since the days of the Industrial Revolution – to developing countries making an effort to reduce GHG emissions by preserving the environment and natural resources.

Suffice to say, despite the best efforts of the left-leaning political parties/inclinations as well as international political gestures, the United States as a country has yet to enact a comprehensive climate law that reflects its ostensible position in the

²⁵ *Ahead of Paris Conference, Udall Calls for Global Collaboration, US Leadership to Address Climate Change*. 2015. Lanham: Federal Information & News Dispatch, Inc.

²⁶ Rakisits, Claude. 2016. "The Climate Change Agreement and the Mixed US Reaction." *Defence Journal* 19 no. 6. pp. 56-57.

²⁷ Susanto, Ichwan. "Merebut Masa Depan Bumi Pada Pertemuan Maroko." *Kompas* (Jakarta), November 13, 2016; IPTEK - Lingkungan dan Kesehatan sec.

international arena. Indeed, until recently, the federal government's attitude toward climate change ranged from "simple inaction to outright obstructionism," with little meaningful federal regulation, and documented efforts to play down the extent and serious effects of climate change. It is not a stretch of the imagination that this sort of stance, taken by a State of such influence, would undoubtedly be problematic and harmful to international discourse – and the debate surrounding the efficacy of the international legal regime on climate change – as a whole.²⁸

Canada

One of the most significant actions taken by a State in recent years with regard to the international climate change regime is the withdrawal of Canada from the Kyoto Protocol in 2011.²⁹ Canada had been active in the

negotiations that led to the Protocol's birth in 1997 and in ratifying the Kyoto Protocol in December 2002, it acknowledged maybe the most aggressive duty among all parties to the treaty.³⁰ In spite of the fact that Canada's formal target was to decrease its emissions to 6 percent under 1990 levels by 2008 to 2012, Canadian policymakers realized that with a specific end goal to go along they would need to convey a 30 percent lessening below anticipated emissions by 2010.³¹ The effect of such profound diminishment on monetary aggressiveness lingered particularly extensive after the withdrawal from the Kyoto Protocol of Canada's biggest trading country, the United States, in 2001. Thus, its' withdrawal – which was submitted to the Secretary General of the UN on December 2011 and came into effect a year later – was unprecedented: cited as a hallmark of

²⁸ Tollefson, Jeff. "US Supreme Court Puts Obama Climate Regulations on Hold." *Nature*, 2016. <http://www.nature.com/news/global-warming-hiatus-debate-flares-up-again-1.19414>.

²⁹ Kneteman, Christie. "Canada." *Yearbook of International Environmental Law* 23 no. 1 (2012): pp. 355-358. See also Borick, Christopher P., Erick Lachapelle, and Barry Rabe. *Climate compared: Public opinion on climate change in the United States and Canada* (2011) Brookings Institute.

<http://www.brookings.edu/research/papers/2011/04/climate-change-opinion>.

³⁰ Harrison, Kathryn. 2010. "The Struggle of Ideas and Self-Interest in Canadian Climate Policy," in *American and Comparative Environmental Policy: Global Commons, Domestic Decision: The Comparative Politics of Climate Change*. Cambridge, US: The MIT Press.

³¹ Government of Canada. 2002. *Climate Change Plan for Canada*. Ottawa: Government of Canada.

climate change's politicized nature at best, and the international climate change regime's paper-tiger status at worst.³²

Admittedly, Canadian climate policy is characterized by a series of ambitious but unfulfilled commitments.³³ Canada's failure even to contain emissions growth, and each successive government's promise of deep cuts – albeit with ever-receding dates for compliance – makes the State's eventual withdrawal less of a surprise though no less influential.

On May 28th 2011, the federal government released a statement regarding certain considerations underlying its decision to withdraw from the Protocol, including that:

To fulfill its obligations under the Protocol, Canada would have to purchase a significant and costly amount of international credits using funds that could be invested here, in Canada, on domestic priorities, including the environment [...]. Importantly for Canada, the United

States, which is Canada's biggest economic trading partner and is responsible for nearly 20 [per cent] of global emissions, is not covered by the Kyoto Protocol.³⁴

Canada also confirmed at the 2011 UN climate talks in Bonn, Germany, that it would not support an extended Kyoto Protocol after 2012. It joined Japan and Russia in rejecting a new round of Kyoto, which at the time made European nations suggest that they would not sign on to the Protocol unless emerging economies take strong targets under a new deal.³⁵ This resulted in plenty of criticism that claimed this particular move of Canada put the future of the Kyoto Protocol in

³² Gnas, Herbert. "The Kyoto Protocol and the JUSCANNZ/Umbrella Group Countries - Party and Political System-Conditioned Determinants." *Annales Universitatis Mariae Curie-Sklodowska* 21 no.1 (2014): p. 23-40.

³³ Harrison, Kathryn. *Loc. cit.*

³⁴ Kneteman, Christie, *op. cit.* For a discussion on the significance of US-Canada relations with regard to such a politicized issue as climate change, see also Kirton, John. "Consequences of the 2008 US Elections for America's Climate Change Policy, Canada, and the World." *International Journal* 64 no. 1 (2008). [Sage Publications, Ltd., Canadian International Council]: pp. 153–62.

³⁵ International Institute for Sustainable Development (IISD) "Summary of the Durban Climate Change Conference." *Earth Negotiations Bulletin (ENB)* vol 12 (534) (13 December 2011) <http://www.iisd.ca/vol12/enb12534e.html/>. See also "Canada Rejects Kyoto Protocol Extension," *The Huffington Post* (8 August 2011) http://www.huffingtonpost.com/2011/06/08/canada-kyoto-protocol-2011-extension_n_873461.html/

jeopardy.³⁶ While we now know that the Protocol continues to exist, some suggest that there was real risk that the instrument “may become an empty shell with no targets, thereby creating a regulatory gap post-2012.”³⁷

With an increasing rift between developing countries (which have no obligations under the Kyoto Protocol and which want the commitments binding current Kyoto Protocol nations to be extended for a second period with deeper targets) and wealthy countries (which want large emerging economies including India and China to accept parallel legal obligations or at least to lower their emissions growth), it seemed unlikely to Canada that any solutions to curb rising global greenhouse gas ("GHG") emissions will result from the UNFCCC process.

Even so, from a domestic lens, while the federal government was slow to build up an observing and tenable reduction administration, a number of provincial governments have built up significant projects to lessen emissions on their individual territories. English Columbia, Manitoba, Ontario and

Quebec have joined the Western Climate Initiative, a meeting of 7 states of the Western United States whose point is to build up a typical structure to set up a carbon credit market. These regions have likewise made commitments with respect to the reduction and reported solid steps to decrease greenhouse gas emissions.

Alberta has a built up "Environmental Change Action Plan", which was announced in 2008. The Specified Gas Emitters Regulation in Alberta made it the first jurisdiction in North America to have a price on carbon. Reduction programs in different regions are significantly less developed. Canada's two biggest regions, Ontario and Quebec, are careful about government approaches moving the weight of greenhouse reductions on them with a specific end goal to give Alberta and Saskatchewan more space to additionally build up their tar sands reserves, in this way chilling relations between the 13 regions and domains.

On an international level, it must be said that despite its withdrawal from the Kyoto Protocol, Canada remained officially supportive of the Copenhagen

³⁶ *Ibid.*

³⁷ *Ibid.*

Accord, the Cancun Agreements, and the Durban Platform.³⁸ With the election of a new Liberal administration under Prime Minister Justin Trudeau – who assumed office in November 2014 – Canada seems keen to continue having this position in the wake the 2015 Paris Agreement.³⁹

European Union

Many reviews boldly express that the European Union has situated itself as the universal plan setter for climate change mitigation. At a few basic points, the EU and its individuals have received approaches and projects that have put it at the bleeding edge of universal endeavors to address environmental change.⁴⁰ In the early 1990s, a few European nations led the pack in building up willful domestic emission reduction targets. In October 1990, responding to these national

improvements, the European ministers of energy and the environment declared that the European Community (EC) all in all would try to settle its joint carbon dioxide emissions at 1990 levels by the turn of the century, an objective that the EU could accomplish. In 1997, in the months paving the way to the Kyoto Protocol transactions, the EU set the tone for the universal arrangements with its suggestion that industrialized states focus on decreasing their greenhouse gas emissions by 15 percent of 1990 levels by 2010. While at last the EU focused on a significantly more humble 8 percent decrease of 1990 greenhouse gas emissions by 2008–2012, the EU put other nations on edge, pushing them to go more remote than they had said they were eager or ready to go.⁴¹

Another significant instance of EU leadership was its decision to move forward with ratification of the Kyoto Protocol after President Bush made clear on 2001 that the United States

³⁸ *Ibid.*

³⁹ *Statement by the Prime Minister of Canada on Successful Conclusion of Paris Climate Conference.* <http://pm.gc.ca/eng/news/2015/12/12/statement-prime-minister-canada-successful-conclusion-paris-climate-conference>. See also IISD, “Paris Highlights,” *Earth Negotiations Bulletin (ENB)* vol 12 (653) (1 December 2015) <http://www.iisd.ca/vol12/enb12653e.html/>

⁴⁰ Harris, Paul G. *Europe and Global Climate Change: Politics, Foreign Policy and Regional Cooperation*. Cheltenham, UK: Edward Elgar, 2007.

⁴¹ The shift in the target was in part an accession on the part of the EU to the demand of the US that a larger basket of greenhouse gas emissions be included. The EU’s 15 percent target was in relation to three greenhouse gases, while the 8 percent target covered six greenhouse gases.

intended to withdraw from the agreement.⁴² The US pullout left Europe in a problem. The United States represented 36.1 percent of the 1990 CO₂ discharges of industrialized nations. The EU all in all was in charge of a to some degree smaller 24.2 percent. In the event that the Protocol was to survive, the EU would need to persuade states representing to another 30.8 percent of 1990 industrialized nation CO₂ emissions to go along with it in confirming the understanding so as to meet the Kyoto Protocol's to some degree self-assertive necessity that 55 percent of industrialized states' 1990 CO₂ emissions be represented by ratifying states all together for the consent to become effective.

In a 2003 survey conducted by the EC, 88 per cent of European voters supported taking immediate actions to address climate change.⁴³ By signing the Kyoto Protocol in 2002, countries in the EU agreed to reduce their greenhouse-gas emissions by 8 per cent

of 1990 levels by 2008 to 2012, although targets for individual EU countries vary.

On a more practical level, in effort to find cost-effective ways to reduce emissions and despite initial strong resistance from key member states (most noteworthy in this regard Germany), the EU implemented the world's first international CO₂ emissions trading scheme (ETS), modeled on the successful US sulfur dioxide emissions trading system established by the US Clean Air Act Amendments of 1990.⁴⁴ Thus, the EU Parliament has made the goal established by the international regime, by all means and purposes, legally binding, and a number of regional and national policies — including the aforementioned creation of a trading system for CO₂ emissions — aimed to reach this target.

The design of this market has been controversial. In Germany, for example, environmentalists supported an EU-wide market with mandatory compliance by individual companies,

⁴² Kahn, Greg. *Loc. cit.*

⁴³ DiMento, Joseph F.C., *op. cit.* See also Fischer, Thomas B., and Olivier Sykes. "The Territorial Agenda of the European Union: Progress for Climate Change Mitigation and Adaptation?" *The Town Planning Review* 80 no.1. (2009) Liverpool University Press: pp. 57–82.

⁴⁴ Peeters, Marjan and Kurt Deketelaere (eds.). 2006. *EU Climate Change Policy: The Challenge of New Regulatory Initiatives*. Cheltenham, UK: Edward Elgar.

while industry groups supported voluntary participation in a market designed to help each country in the EU attain its greenhouse-gas reduction targets.⁴⁵ Other members have revoked or objected to new tax instruments: Finland repealed its carbon tax,⁴⁶ Sweden weakened its tax,⁴⁷ and France and England have strongly resisted EU-wide carbon taxes.⁴⁸ In addition to emissions trading, the European Commission has strengthened energy-efficiency requirements for both residential and nonresidential buildings. In Europe, where buildings consume 40 per cent of energy (more than any other part of the economy), energy-efficiency advocates argue that the European Union could exceed its Kyoto Protocol targets through improved insulation, heating, cooling, and lighting technology and like actions.

⁴⁵ Ibid, p. 112.

⁴⁶ Herber, Bernard P., and Jose T. Raga. 1995. "An International Carbon Tax to Combat Global Warming: An Economic and Political Analysis of the European Union Proposal." *The American Journal of Economics and Sociology* 54 no. 3. pp. 257–67.

⁴⁷ DiMento, Joseph F.C., *op. cit.* See also Nolin, Jan. 1999. "Global Policy and National Research: The International Shaping of Climate Research in Four European Union Countries" *Minerva* 37 no. 2. Springer: pp. 125–40.

⁴⁸ Ibid.

Brazil

The most extraordinary deforestation has occurred in Brazil.⁴⁹ Since 1988, Brazilians have cleared more than 153,000 square miles of Amazonian rain timberland,⁵⁰ a zone bigger than Germany. With the resulting increase in arable land, Brazil has helped feed the growing global demand for commodities. With the subsequent growth in arable land, Brazil has sustained the developing worldwide interest for products,⁵¹ for example, soybeans⁵² and beef – yet the natural cost has been steep. Notwithstanding giving living spaces to untold quantities of plant and creature species and releasing around 20 for

⁴⁹ Fearnside, Philip M. 2005. "Deforestation in Brazilian Amazonia: History, Rates, and Consequences." *Conservation Biology* 19 no. 3. [Wiley, Society for Conservation Biology]: pp. 680–88

⁵⁰ Ibid.

⁵¹ Wiebelt, Manfred. 1999. "Stopping Deforestation in the Amazon: Trade-off between Ecological and Economic Targets?" *Weltwirtschaftliches Archiv* 131 no. 3. Springer: pp. 542–68.

⁵² For a more thorough research on the correlation(s) between climate change, deforestation, and Brazil's agricultural/food policy, See Macedo, Marcia N., Ruth S. DeFries, Douglas C. Morton, Claudia M. Stickler, Gillian L. Galford, and Yoshio E. Shimabukuro. "Decoupling of Deforestation and Soy Production in the Southern Amazon during the Late 2000s" *Proceedings of the National Academy of Sciences of the United States of America* 109 no. 4 (2012).

every penny of the world's fresh water, the Amazon basin assumes a vital part in controlling the world's atmosphere, putting away immense amounts of carbon dioxide that would some way or another add to a global warming.⁵³ Slashing and burning the Amazon rain woods discharges the carbon secured up plants and soils; from an atmosphere point of view, clearing the rain timberland is the same as copying petroleum products, for example, oil and gas. Late gauges propose that deforestation and related exercises represent 10-15 for each penny of worldwide carbon dioxide discharges.⁵⁴

But in recent years, good news has emerged from the Amazon. Due to the major importance of its forests for Brazil, as well as a new global emphasis on sustainable development, the Clean Development Mechanism (CDM) was recognized under the Kyoto Protocol. It was touted as the achievement of policy goals regarding sustainable development, where special emphasis was placed on the geographical distribution of projects and Brazil's hefty contribution to the

initiative. It became the policymaking goals of the CDM's Brazilian architects. The CDM arose from the Brazilian Proposal's Clean Development Fund, and was negotiated between Brazil and the United States.

The climate bill signed by Brazilian President Luiz Inácio Lula da Silva in 2009 has pulled in the consideration of the press and Brazil's environmental community. This is not surprising, given that the law recommends the mentality of Brazil with respect to climate change has essentially changed. It gives a lawful premise to the National Policy on Climate Change (Política Nacional sobre Mudança do Clima, or PNMC) and Brazil's universal sense of duty regarding reduce greenhouse gas emissions. The latter was publicized half a month preceding the Fifteenth Conference of the Parties (COP-15) of the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen, and has been expressed in Brazil's formal

⁵³ Fearnside, *op. cit.*

⁵⁴ *Ibid.*

submission of January 2010 under the terms of the Copenhagen Accord.⁵⁵

Previously, Brazil, along with other emerging economies, had insisted that developing countries must receive financial assistance to implement mitigation actions. In doing so, Brazil cited the principle of common but differentiated responsibilities (CBDR) contained in the UNFCCC text as well as the historic responsibility of industrialized countries for current concentrations of GHG in the atmosphere. However, during COP-15, President Lula emphasized Brazil's domestic commitment to reducing GHG emissions and, even more surprisingly, declared that Brazil would financially support developing countries if necessary. Brazil further demonstrated the need for compromise by playing a leadership role during the final day of COP-15, culminating in the Copenhagen Accord, earning substantial praise. It is clear, however, that Brazil will not entirely discard the principle of common but differentiated responsibilities. Brazil's Copenhagen

Accord submission⁵⁶ incorporates a reference to CBDR and states the voluntary nature of the proposed actions.

In 28 September 2015, Brazil presented its Intended Nationally Determined Contribution (INDC), with an objective to reduce net greenhouse gas emissions, including land use, land use change and forestry (LULUCF), by 37% below 2005 levels by 2025. Moreover, it said a "characteristic commitment" to reduce emissions by 43% below 2005 levels (incl. LULUCF) by 2030, with studies finding that Brazil is near meeting its INDC focuses under current strategies.⁵⁷

Perhaps most noticeable is the fact that Brazil became a test case for a controversial international climate-change prevention strategy known as REDD+, short for "reducing emissions from deforestation and forest

⁵⁵ Decision 2/CP.15, Copenhagen Accord, UN Doc. FCCC/CP/2009/11/Add.1, 18 to 19 December 2009.

⁵⁶ See Brazil's submission N° 5, Communications received from Parties in relation to the listing in the chapeau of the Copenhagen Accord, available at: https://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/brazilcphaccord_app2.pdf/.

⁵⁷ Climate Action Tracker, *Countries: Brazil*. 2015. Available at <http://climateactiontracker.org/countries/brazil.html>

degradation,” which places a monetary value on the carbon stored in forests;⁵⁸ as well as “conservation, sustainable management of forests, and enhancement of carbon stocks.”⁵⁹ Under such a framework, developed nations could pay developing nations to ensure their own particular timberlands, in this manner hypothetically balancing the built up nations' emissions at home.⁶⁰ Brazil's involvement with REDD recommends that, in addition to offering different advantages to forests occupants (human and something else), the model can be cheap and quick: Brazil has accomplished more to lessen outflows than some other nation on the planet as of late, without using up every last cent.

The REDD+ model remains a work in development. In Brazil and different spots where components of REDD have been connected, the financing still cannot seem to achieve

large portions of its expected recipients, and institutional changes have been slow to develop. This has added to a rustic reaction against the new implementation measures in the Brazilian Amazon – a backfire that the legislature is as yet attempting to contain. In any case, if Brazil can unite its initial increases, fabricate accord around a more extensive vision for improvement, and finish a program to redesign the economies of its rainforest areas, it could make ready for another period of ecological administration over the tropics. Surprisingly, maybe, it is conceivable to think about a conclusion to the time of huge scale human deforestation.

Norway

Norway is interesting in that its leadership ambitions in international climate politics are well documented;⁶¹ all while simultaneously being a country whose major export is petroleum.⁶² Norway has become

⁵⁸ UN-REDD Programme, *About REDD+*. <http://www.unredd.net/about/what-is-redd-plus.html/>.

⁵⁹ *Ibid.*

⁶⁰ Laurance, William F. 2008. “Better REDD Than Dead (response from Laurance)”. *Bioscience* 58 no. 8. [American Institute of Biological Sciences, Oxford University Press]: 677–77.

⁶¹ Sæverud, Ingvild Andreassen, and Jørgen Wettstad. 2006. “Norway and emissions trading: From global front-runner to EU follower.” *International Environmental Agreements: Politics, Law and Economics* 6 no.1. pp. 91-108.

⁶² Havro, Gø and Javier Santiso. 2008. *To Benefit from Plenty: Lessons from Chile and*

internationally known as a high-profile environmental negotiator, with a self-declared goal to act as a driving force in international climate talks.

In terms of national policy-making, it was the first to adopt a national emission target – in 1989 – and was also a forerunner in levying a carbon tax – in 1991. After it proved more difficult to cut domestic emissions than anticipated, Norway became an early proponent of flexibility mechanisms, including emissions trading together with the US – at a time when the EU remained highly critical of such mechanisms.⁶³

It must be noted that Norway is the single largest REDD+ donor, and has entered bilateral agreements with four countries: Tanzania, Brazil, Guyana, and Indonesia.⁶⁴ In 2010 the

governments of Norway and Indonesia signed a REDD+ agreement, known as the Climate Change Partnership, under which Norway provided Indonesia with US\$1 billion to assist that country with the detailed and phased implementation of REDD+.⁶⁵ This Partnership is demonstrated the influences that bilateral REDD+ agreements can have on individual tropical rainforest developing country jurisdictions. It is clear that a key component of the Partnership is supposed to be the full and effective participation of all relevant stakeholders, including indigenous peoples, local communities and civil society, at all stages of implementation, although the many note that there could be improvements in this regard.⁶⁶ Financing by Norway depends on “contributions-for-delivery” whereby payments will be made to Indonesia based on a progressive implementation of REDD+.

Norway. Paris: Organisation for Economic Cooperation and Development (OECD).

⁶³ *Ibid.* It is interesting to note, however, that from the late 1990s, however, an interesting reversal took place. The EU became a frontrunner in the trading system, while non-EU member Norway’s emission trading policies increasingly resembled EU policy.

⁶⁴ Sulistiawati, Linda Yanti. 2013. "REDD+ Issues Influence in Indonesia's Regulatory Process Case Studies: UNREDD Indonesia, REDD Plus Project Indonesia-Norway." Order No. 3588863, University of Washington. <http://search.proquest.com/docview/1428746725?accountid=17242>

⁶⁵ To read the Letter of Intent, see www.unorcid.org/upload/doc_lib/Norway-Indonesia-LoI.pdf

⁶⁶ Butt, Simon et. al. 2015. *Climate Change and Forest Governance – Lessons from Indonesia*, Routledge Research in International Environmental Law.

More recently, there were new moves and agreements made alongside Indonesia's change of administration. In the area of forestry and sustainable development, November 2015 saw the government of Norway and the Global Green Growth Institute (GGGI) pledge to support Indonesia's program of green economic development through inclusive development program, where it aims to be both sustainable and environmentally-friendly. Norway has pledged to contribute in the form of a grant of US\$ 19 million through the program, which has been carried out by GGGI and the National Development Planning Board (*Badan Perencanaan dan Pembangunan Nasional*, or Bappenas) since 2013.⁶⁷ The signing of the agreement meant the continuation of support for the green economic development after reported success in the first phase of the program.⁶⁸ Under the agreement support would be

continued in financing projects in the second phase including investment in the sectors of renewable energy, special economic zone, forestry and utilization of other lands – purportedly motivated by the leadership shown by the government by choosing development of green economy to reach economic growth and to answer environmental and climate challenges faced by the Indonesian people.⁶⁹

Aside from forestry, another area deeply affected by climate change is fishery. Progressively, the potential monetary, social, and political impacts of climate change are under dialog, including for living marine assets; with various worldwide establishments identified with fisheries as of now voicing their worry.⁷⁰ As Norway's oceans range from the North Sea to the Central Arctic Ocean, covering an area

⁶⁷ "Indonesia: Norway Pledges Support for Indonesia's Green Economic Development Program." 2015. *Asia News Monitor*, Dec 02. <http://search.proquest.com/docview/1738011943?accountid=17242>

⁶⁸ UNIDO and GGGI. 2015. *Global Green Growth: Clean Industry Investments and Expanding Opportunities*. Volume II: Experiences of Brazil, Germany, Indonesia, the Republic of Korea and South Africa. Vienna and Seoul.

⁶⁹ *Ibid.*

⁷⁰ Some of these institutions include the FAO Committee of Fisheries (COFI), and even the UN General Assembly in 2007. For the latter, see *Resolution adopted by the General Assembly: Sustainable fisheries*, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments. A/RES/62/177. <https://daccess-ods.un.org/TMP/3389933.7053299.html/>.

of more than 2 million km² – thus, the basis for globally important fisheries of a number of fish and crustacean species, as well of marine mammals⁷¹ – it is no surprise that the State has implemented very particular domestic and international regimes in the interest of protecting this resource against the worst effects of climate change. A vital element of this regime is that the administration elements of science, directions, and implementation are disseminated at different levels of administration. Expanding on the worldwide structure given by the 1982 Law of the Sea Convention (UNCLOS) and the 1995 UN Fish Stocks Agreement, the administration highlights broad collaboration with Russia in the North in the administration of shared fish stocks, and in addition participation in a few local game plans on the administration of straddling fish stocks. It in this manner involves significant universal participation and also organizations and

measures at the domestic level of administration.

Indonesia

Indonesia has completed the process of ratifying the Paris Agreement, and that process is an attempt to formulate the international instrument so it becomes a part of the national legal system. Although quite a few countries have started their own ratification processes much earlier – a smart move when it comes to all the hubbub of legislating – policy-wise, Indonesia's (belated) commitment will still generate considerable impact, be it national or international in nature.

The position occupied by Indonesia in international climate negotiations remains a hefty one. As one of the top emitters of greenhouse gas, behind China (the largest emitter in the world), the United States, the European Union, India, and Russia; Indonesia is influential in deciding the direction of climate policies.⁷² Though mathematically, Indonesia's emission

⁷¹ Harsem, Øistein and Alf Håkon Hoel. 2013. "Climate Change and Adaptive Capacity in Fisheries Management: The Case of Norway." *International Environmental Agreements: Politics, Law and Economics* 13 no. 1. pp. 49-63.

⁷² World Resources Institute. *Indonesian Climate Policy and Data in CAIT Indonesia Climate Data Explorer (PINDAI)*. <http://www.wri.org/publication/indonesian-climate-policy-and-data-cait-indonesia-climate-data-explorer-pindai/>. (accessed October 19th 2016).

is about one-tenth of China's – excluding land use change and activities in forestry – the fact remains that the amount still looms over any other developing country.

Land use change and activities in forestry (*kegiatan alih guna lahan dan kehutanan*) is considered the largest contribution of emission in Indonesia, amounting to more than twice the amount emissions compared to any other activity outside of that sector. This thesis suggests that this is caused by high rates of deforestation, forest degradation, encroachment, and land clearing, but perhaps most importantly, the continued pervasiveness of forest fires – which in turn, results in transboundary haze, and whose own impacts is most felt by the regional and international community.

Aside from forestry, the energy and transportation sector contributes significantly towards Indonesia's total greenhouse gas emission. Data from Bappenas (*Badan Perencanaan Pembangunan Nasional*, National Development Planning Agency) shows that until 2030, the energy sector by far outweighs land use change in emission. The amount of land that will be used

for the needs of other sectors grows more and more limited with time, while the need for energy will continue to increase in direct proportion to population growth and economic activities. There is some truth in this claim, as generally, a State's total emission of greenhouse gases correlates with its' population, gross domestic product (GDP), and the increasing energy needs of industries and transportation, along with the *sort* of energy being used (i.e. renewable, or non-renewable energy).

By 2030, the Indonesian government has targeted to reduce emission by:

1. 29 per cent, if done purely through domestic state budgeting;
2. 41 per cent, if done with international aid.

What remains critical, however, is the probable dissonance between reference points if no efforts are done (business as usual) and the targeted reduction; because should there be any miscalculation, obviously targets, no matter how ambitious or sensible, would not be met. Thus, credible systems of measurement, reporting, and verification (MRV) as established by

international legal instruments like the Kyoto Protocol all remain key in national emission reduction policies.

The current administration has been working hard to meet these reduction targets on multiple levels. It has been two years since the Ministry of Environment and Forestry established a subdivision focusing on issues of climate change (*Direktorat Jenderal Pengendalian Perubahan Iklim*), tasked to coordinate mitigation/adaptation actions, develop a monitoring and evaluation system, figure out the requisite funding mechanisms, and curtail forest fires. Additionally, recent developments include the establishment of *Badan Restorasi Gambut*,⁷³ whose prime directive is to restore the multitude of damaged peatlands (which may result in fires) as well as mitigate the severe impact of haze. We must look upon

these developments with a wary yet optimistic eye.

CONCLUSION

Law is never made in a vacuum. Factors such as political instability and administration changes affect State compliance in ways that can – and have been – well documented. Throughout the international climate change regime’s development up until 2012, the emergence of new and helpful mechanisms and negotiation processes were often accompanied by setbacks such as withdrawals and unmet State obligations; almost in the same breath. It needs to be seen if such a pattern re-establishes itself in the post-2012 regime, and if so, what that might mean.

The United States exemplifies non-commitment in climate change. Administration(s) in office during the first commitment period of the Kyoto Protocol paid little to no attention to the regime’s tone of urgency. Obama’s administration seemed more outwardly environmentally conscious compared to his predecessors, though this can partially be contributed to general political party lines. As Kyoto’s first

⁷³ A non-structural body (*lembaga nonstruktural*) established via Peraturan Presiden No. 1/2016 tentang Badan Restorasi Gambut. See Wikipedia. *Badan Restorasi Gambut*. https://id.wikipedia.org/wiki/Badan_Restorasi_Gambut/ (accessed October 19th 2016); as well as the direct link to the regulation, <http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Presiden/peraturan-presiden-republik-indonesia-nomor-1-tahun-2016-61704/>

commitment period ended and the second one took place, some domestic agendas were put into place to accommodate this increasing awareness, and new ideas formed on how to combat/obtain protection from climate change's deleterious impacts (i.e. climate litigation). However, all these steps are at risk of stumbling back, or demolished entirely, given the results of the most current U.S. Presidential Elections of 2016.

Canada's withdrawal from the Kyoto Protocol in December 2011 illustrates the soft nature of international law, where State consent is an absolute requirement and can be revoked any time the State wishes. Even the widely-acknowledged/ratified climate change regime is not exempt from this principle; and this move from Canada calls the effectiveness of the Kyoto Protocol in particular into question.

The European Union (EU) is the only regional organization to date that is Party to the Kyoto Protocol. The second commitment period required the EU to submit to binding targets, and it did so, though past resistance to environmentally friendly policies such

as carbon taxes lead to skeptics remaining unconvinced. Whether or not the relative success in dropping emissions can be contributed to regional synchronization or the individual performance of said States require further study.

Brazil played a big part in establishing and providing the idea for REDD+, a mechanism under UNFCCC. It stemmed in part from Kyoto Protocol negotiations and the Clean Development Mechanism (CDM) in particular. The REDD+ mechanism was continually refined, culminating in the Warsaw Framework, though there were no new developments by the time of COP-20 in December 2014. Due to the major focus on (tropical) forestry, Brazil emissions in the Amazonian forests has reduced and may be valuable guidance for other large, tropical nations looking to do the same. However, more recent political instability may prove a threat to

Norway is an odd amalgamation in the realm of climate change, as it is a country dubbed an "oil nation," but at the same time most concerned about how rising temperatures can affect its'

oceans. Most of what Norway has done in this regard has been in the area of fishery. Notably for the purposes of this thesis, however, is the fact that Norway has explicitly partnered up with Indonesia by way of the aforementioned REDD+ mechanism.

There are at least three indicators espoused in this thesis meant to

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