Sustainable Development Law & Policy

Volume 9
Issue 2 *Winter 2009: Climate Law Reporter 2009*

Article 3

An Overview of This Issue: Climate Change in 2009

Perry Wallace

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*by Professor Perry Wallace**

"Climate change has long since ceased to be a scientific curiosity," observes the recent United Nations Environment Programme's *World Year Book* 2009.[1] Indeed, climate change is "the major, overriding environmental issue of our time, and the single greatest challenge facing decisionmakers at many levels."[2] So powerful and overarching is this global phenomenon that its destructive potential comprises economic, health and safety, food production, security, and other dimensions. This includes such problems as: shifting weather patterns threatening food production; ice loss and thermal expansion creating rising sea levels that contaminate freshwater reserves and threaten catastrophic flooding; and warming atmospheres spreading pests to new terrain.

Moreover, successive assessments indicate that global warming, with its associated effects on climate, is a greater threat than predicted in earlier evaluations. Particularly disturbing are recent predictions that climate change will not evolve in a slow, linear pattern. In fact, we may have already reached certain important "tipping points," which portend irreversible changes in major Earth systems and ecosystems. In response to these developments, governmental and private actors around the world have begun the monumental work of creating mitigative and adaptive mechanisms for this equally monumental problem.

Emerging at a pace that has accelerated with the similarly growing certainty about the reality and the effects of climate change, a comprehensive network of regulatory regimes is finally beginning to occur. At the international level, negotiations for a post-Kyoto Protocol climate treaty have already begun.[3] Further, this activity reflects ongoing commitments of nations around the world to address climate change.

In the United States, in addition to earlier action by private actors and state and local governments, all branches of the federal government have now addressed climate change in some important way. The United States Supreme Court, in *Massachusetts v. Environmental Protection Agency*, held that greenhouse gases ("GHGs") fit well within the Clean Air Act's definition of "air pollutant" and that the federal Environmental Protection Agency possesses authority to regulate GHGs.[5] Additionally, the U.S. Congress is also considering legislative proposals to address the subject. Finally, the turnaround by the American Executive Branch, from doubt and resistance toward acknowledgement and determination to address the problem, is perhaps the most significant development. President Obama's vow to address climate change as a serious and urgent matter is widely seen as a key element in the quest for global consensus and action.

Nevertheless, these important developments portending positive action on climate change must be viewed against a background of both structural and current realities of a geopolitical and economic nature. Thus, while developed countries of the North, the historic GHG emitters, are generally favorable toward taking assertive, binding action, developing countries of the South have raised concerns about many of the proposed models. One major concern of these latter countries holds that while they were not the culprits, they are the most adversely affected by climate change. Further, they possess insufficient economic and technological resources for taking action. Another concern, they argue, is that implementing such measures could stifle their continuing development. China and India, with the most prodigiously emerging economies today, are major actors in this debate.

Another major dynamic that will affect progress in addressing climate change is the state of the global economy. A seriously recessionary global economy only makes for scarce governmental and corporate resources, and this in turn places limits on the abilities of those key actors to embark upon the massive project of creating a new, carbon-constrained world. Further, significantly decreased energy demand has reduced the prices of oil and other traditional sources of energy, thus taking away a previous source of pressure (high energy prices) to explore alternative energy sources. Decreased production during this period has also had unfortunately negative effects on a burgeoning emissions trading market. Thus, lower production has led to decreased GHG emissions and thereby lowered demand for emissions credits. Emissions credit prices have dropped precipitously, and, as with other market drops in an ailing economy, confidence in the larger system has suffered.

Nevertheless, these challenges will at best only slow down or complicate the evolution of the global movement to control and manage climate change. The urgency of the threat is well-documented at this point in history, and public and private actors around the world have resolved to travel the path towards a carbon-constrained planet. The articles in this edition of SDLP well reflect that resolve. These articles report on particular developments in as diverse set of governments as Mongolia, Australia, the European Union, and the small island states. They also encompass a range of crucial aspects relative to building regulatory effectiveness and institutional capacity, such as strategy, policy, technology, legal tools, and financial mechanisms. Together, they present an impressive treatment of the current state of affairs in developments relative to climate change.

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[1] *UNEP Year Book 2009*, at 21, *available at* http://www.unep.org/publications/UNEP-eBooks/UNEP_YearBook2009_ebook.pdf.

[2] *Id.*

[3] *See generally*, United Nations Framework Convention on Climate Change website, *available at* http://unfccc.int/2860.php.

[4] Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).