

Lex Terra

News Updates on Environmental Law

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“What's the use of a fine house if you haven't got a tolerable planet to put it on?”

— Henry David Thoreau

The rate at which we are exploiting the Earth at present is at its highest. A bit of awareness can help change this. *Lex Terra* is a mode of creating awareness. An effort made by the Seventh Semester Environmental Law Specialisation Students of B.A.,LL.B, it is an extension of a classroom exercise which the students under Asstt. Prof. Chiradeep Basak intend to put forward to the entire family of NLU-A. A bit of contribution here and a bit of contribution there from each one of us is what the Earth desperately needs at this point of time. Through *Lex Terra*, the students intend to highlight important happenings in the field of Environment which we all must be aware of.

Every issue of *Lex Terra* would be a collection of various Environment specific news items which will be touching various facets of environmental law as well. Law is the best instrument to usher in any kind of change and change in our approach towards our interaction with the environment is a necessity right now.

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Photo courtesy: Google

About CELAR

The primary mission of Centre for Environmental Law, Advocacy and Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish

periodically, newsletters and journals.

The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi-disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through

scientifically sound legislative proposals.

- Organise training programmes for strengthening the legal capacity building on environmental laws and civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

— Professor (Dr.) Yugal Kishore,
Centre Head, CELAR

Message from Team *Lex Terra*

Dear Readers,

Lex Terra is back with its eighth issue for all the would be legal eagles and scholars of NLU, Assam. With your continuous support, she will maintain her tempo and share all relevant news vis-a-vis environment, through this virtual interface.

The 8th issue is a special edition which focuses on the **UN Conference on Climate Change** held in Paris from 30th November 2015 to 11th December 2015. This issue includes policy brief and articles on various facets of the climate change negotiations. We hope that this issue will provide the readers a general insight on the topic of climate change.

We congratulate the *Lex Terra* team for its praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express our gratitude to our respected Vice-Chancellor, Prof. (Dr.) Vijender Kumar for his continuous support and timely inputs. We would like to thank Prof. (Dr.) Yugal Kishore, the Centre Head of CELAR for his help and

encouragement. We would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the job, from planning, to setting clear goals and appraising the outcome. Lastly, we would also like to extend our gratitude to our faculty advisors, Ms. Shannu Narayan and Mr. Nayan Jyoti Pathak for their ideas and relentless support.

Our issues go online every 1st and 16th of each month. Contributions for the next issues are invited. The same will be reviewed and then published online. Maximum of 10 write ups will be part of this segment.

Please keep pouring down your support and concern for mother nature.

Thank you
Happy Reading!

THE SALIENT FEATURES OF PARIS DOCUMENT: WITH RESPECT TO ADOPTION, INDCs AND DECISIONS TO GIVE EFFECT TO THE AGREEMENT

*Chiradeep Basak,
Assistant Professor of Law &
Knowledge Enthusiast*

POLICY/LEGISLATIVE BRIEF- PART- I

(This brief is first segment of five, which will be published in *Lex Terra*- Issue 9 and thereafter)

The planet earth, its beauty, its capacity, its richness: we are well aware of that but are we aware of its vulnerability in real sense? If we are, then yes! We have a future, if not then we might end up with another futile effort

FCCC/CD/2015/L.9/Rev.1 a.k.a decision 1/CP.17 - The Paris Agreement has been adopted on 12th December, 2015. This policy/legislative brief highlights the salient features of the Draft decision:

The new agreement is based on the following pre-existing principles:

Principle of Sustainable Development with an objective of “Transforming our World: The 2030 Agenda for Sustainable Development”;

International Cooperation- by “recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and this requires the widest possible cooperation by all countries”;

Principle of Common Concern of Humankind- The agreement

acknowledge that “climate change is a common concern and parties should respect, promote and consider their respective obligations on human rights, right to health and the right of indigenous peoples, local communities, children migrant and persons with disabilities and the once in vulnerable situation”;

The text also recognizes the **right to development** as well as **women empowerment** with the aspect of **intergenerational equity**;

Last but not the least, the **principle of common but differentiated responsibilities** is the core feature of Paris document.

The signature ceremony has been slated to commence from 22nd April, 2016- 21st April, 2017 in New York, United States of America. However, the parties to the convention can provisionally apply the provisions of this document. An ADWG-Paris has been established in the line of ADWG-Durban. This ad hoc working group shall prepare for the entry into force of the agreement and for the convening of the first session of the COP serving as the meeting of the

Parties to the Paris Agreement (Article I, cl. 8). The working work has been bestowed other pivotal responsibilities, viz:

- To oversee the implementation of the work programme resulting from the relevant request contained in this decision (Art. I, cl. 9);
- To report regularly to the COP on the progress of its work and complete the same within given timeframe (Art. I, cl. 10);
- To hold sessions starting in 2016 in conjunction with the sessions of the convention subsidiary bodies and shall prepare draft decisions to be recommended through COP to the CMP-Paris for consideration and adoption at its first session. (Art. I, cl. 11).

The next feature of this document is on INDCs- Intended Nationally Determined Contributions:-

The Paris Document, once again welcomes the INDCs from parties to the Convention (UNFCCC). The document reiterates its invitation to all parties that have not yet communicated to the secretariat their INDCs towards achieving the objective of the convention as set out in Art 2 (of UNFCCC);

The document expresses concern over estimated GHGs emission levels in 2025& 2030 resulting from the INDCs. The same do not fall within least cost two degree Celsius scenarios, instead lead to a projected level of 55 Giga-tons in 2030 (Art II., cl. 17);

However, in a way this agreement passed the litmus test because nations signed with the goal of keeping planet's global temperature below 2 degree Celsius, while pursuing actions to stay under 1.5 degree Celsius i.e. reaching net zero GHG emissions in the second half of the century.

The document enunciates certain responsibilities upon the states (both- who submitted INDCs and the one yet to) under the head, decision to give effect to the agreement. The AD-WG Paris has been asked to further guide the state parties as regards INDCs for consideration and adoption by the CMP-Paris.

In the next segment, we will delve into the other salient features of Paris Document with further details but we should accept that this document is one of the most ambitious target ever formalized by UN framework.

Source:

See <https://www.climaterealityproject.org/blog/cop21-paris-agreement> , last accessed on December 14th, 2015.

Oirfanhasieb

FINANCIAL FLOWS FOR TACKLING CLIMATE CHANGE

*Sucheta Ray,
Student*

With the conclusion of the Paris conference on Climate change (COP21), one of the main issues which came to the forefront was the funding for combating climate change. Article 2 of the Paris Agreement on Climate Change states that, making financial flows consistent with a “pathway towards low greenhouse gas emissions and climate-resilient development” is one of its objectives. Climate funding is very important. It acts as a connecting factor and is of equal importance for developing countries and developed countries alike. Thus, there is a need that both the groups come to an agreement regarding the adaptation of climate finance.

According to the United Nations Framework Convention on Climate Change (UNFCCC), *“Climate finance refers to local, national or transnational financing, which may be drawn from public, private and alternative sources of financing.”*

It is crucial while discussing climate change as humongous amount of investments are required to significantly reduce the impact of the changes. Upholding the principle of Common But Differentiated Responsibility enshrined in the Rio Convention, 1992 as well as in the UNFCCC, the developed countries of the world are responsible for providing financial assistance to the developing countries for achieving the goals set out to reduce the situation of climate change.

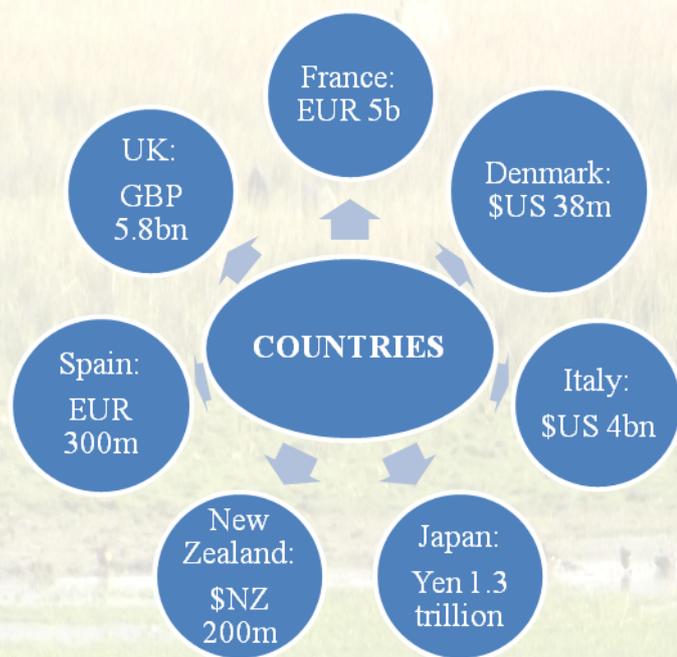
One of the mechanisms established in COPI6 was the Green Climate Fund (GCF) as per Article 11 of the Convention which aimed to support projects, programmes, policies and other activities undertaken by the developing countries. While the importance of the GCF is

understood, it has not found a significant place in the recent legally binding document released during the COP 21. The document lacks the clarity as to the role of the GCF for providing the financial support post 2020, when the Paris Agreement would take effect. Also, there is no express mention of the role of the GCF is delivering more than \$100 billion annually for climate aid which is a key factor of the new global deal. However, the agreement renews the commitment by the developed countries to send \$100 billion a year to the developing countries from 2020 to aid their battle against climate change. While the GCF is an important piece of Climate finance, nevertheless, there are also several other mechanisms through which finance can be obtained.

The Adaptation fund is another such mechanism which is important for climate finance. Established in 2001, it was established to finance the concrete adaption projects taken up by the developing countries which are parties to the Kyoto Protocol that particularly affect by the adverse impact of climate change. The Fund has received new undertakings for 2015 from various European countries like Germany, Italy and Sweden among various others.

In the week’s discourse in the COP21 several countries, multilateral investment banks and funds have explicitly pledged to provide climate funding. European countries like Germany, Spain, Italy and France have announced to increase their public and private climate finance. Canada’s new Prime Minister, Justin Trudeau has stated that the country will provide CAD\$ 2.65 billion over the next five years in international climate finance.

The table shows some of the funding announcements by various countries:



Besides the funds by the countries, several multilateral development banks have also announced climate finance during the Paris conference. The World Bank Group, for instance, has pledged a one-third increase in climate financing by 2020. At the outset it means reaching the value of \$US16 billion a year in public finance. It also intends to continue its co-financing of climate related projects which, in financial aspect, means an additional \$US13 bn/year in 2020. The other announcements made by the development banks are:

- African Development Bank- \$US 5bn annually by 2020 (approx.)
- Asian Development Bank- \$US 6bn by 2020; \$US 4bn for mitigation and 2bn for adaptation
- European Bank for Reconstruction and Development- \$US 20bn over the next 5 years.
- European Investment Bank- \$US 100bn till 2020, that is 20bn per year

Besides these, several other climate funding has been pledged by developed countries for the Green

Climate Fund and the Adaptation Fund. Around \$US 10.1billion and \$US 75million respectively have been pledged by developed countries like Germany, Sweden, Italy and others. Also, a group of 11 countries have announced contributions to the Global Environment facility which sums up to \$US 248 million for the Least Developed Countries.

Therefore, it is seen that while climate finance from various resources are available, the distribution of the same stands unclear. The Paris Agreement is unclear regarding how these available funds are going to be used by the countries. Thus, there is a need for proper methodologies and analysis to ensure that the funds are constructively used by the countries in order to reduce the irrevocable affects of climate change.

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LIMA—PARIS ACTION AGENDA

*Sweden Doley,
Student*

The Lima-Paris Action Agenda (LPAA) was launched on December, 2014 at the Lima Climate Conference in Lima with the main aim of accelerating the growing engagement of all members of the society and to build a concrete, ambitious and lasting cooperative initiative ahead of the recently concluded Paris Conference.

The LPAA, during the Conference of Parties 21 (COP21), demonstrated the massive and rising response of cities, regions, business and civil society to take ambitious climate action and frequently cooperate with national governments with the main objectives of reducing greenhouse gas emissions and lowering the cost of low-carbon technologies.

The initiatives of the LPAA are also structured and to be implemented in such a manner that, it can provide a significant support to the countries while implementing their own national climate action plans.

The initiatives contain concrete climate solutions based on technological, political and financial innovation. The initiatives of the LPAA, which is to come into effect in the year 2020, has already shown remarkable progress in some areas –

Remarkable commitment by cities and communities. Over 7,000 communities have made ambitious, operational commitments to reduce their greenhouse gas emissions.

Numerous initiatives set energy efficiency as the main source of emission reductions, including electrical appliances, urban districts, industrial, transports and fuel facilities.

Private finance has announced unprecedented shifts of capital in the transition to a low-carbon, resilient future in three main areas: measuring the carbon footprint of portfolios; investment in climate focused projects and an orderly divestment from fossil fuels.

Stakeholders in water resources have launched concerted management initiatives involving hundreds of public and private stakeholders under the

Paris Pact on Water and Climate Change Adaptation.

Apart from these, the LPAA has witnessed some major announcements by numerous countries and other private parties for improving transport facilities and efficiencies, private finance for improving carbon emissions, reduction in deforestation and sustainability, improve food security and sustainable agriculture, and for development of the energy sector through promoting the usage of renewable energy and developing technologies.

Source:

- Available at: Lima to Paris Action Agenda: Driving Climate Action Forward – UN and Climate Change.

SUBSIDIARY BODY FOR IMPLEMENTATION

*Irfan Hasieb,
Student*

The Subsidiary Body for Implementation (SBI) is one of the permanent bodies to the convention established by the Conference of Parties (COP) and Parties to the Kyoto Protocol (CMP). The work of the SBI is to look after the implementation and assess the work of the COP and CMP with regards to the implementation of the Convention and the Kyoto Protocol and provide advice in budgetary and administrative matters to the COP. The SBI's focus is shifting towards Monitoring, Reviewing and Verifying (MRV) functions and demonstrating progress in implementation of the Bali Action Plan.

In 2013, the SBI had to face the challenge to manage the shift in focus towards the MRV issues after the International Assessment and Review (IAR) was launched. Further in 2014, the SBI had to further deal with the challenge put forward by the launch of the International Consultations and Analysis (ICA) and the work on the Nationally Appropriate Mitigation Actions (NAMAs). The SBI also made progress in the same period by reaching an agreement on a loss and damage mechanism and pledging funds in the range of US\$ 100 million to the adaptation fund. The 43rd Session of SBI, also

known as SBI 43 was held from the 30 November, 2015 to 11 December, 2015 in Paris, France. The work of the parties listed in Annex I to the convention was reviewed as part of SBI 43. SBI 43 also dealt with the review of the modalities and procedures for Clean Development Mechanism (CDM) and the implementation of guidelines under the Kyoto Protocol. Special emphasis was also laid on the matters related to the least developed countries and the national adaptation plans of the respective countries.

The report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts was also discussed. In respect of development and transfer of technology and implementation of technology mechanism the Annual Report of the Technology Executive Committee and the Climate Technology Centre Network was reviewed. Capacity building under the Convention was also discussed in detail. Further another important discussion that took part was with regards to Gender and Climate Change. Further Audit Report and Financial Statements for 2014 were also a part of discussions of SBI 43.

The United Nations Framework Convention on Climate Change (UNFCCC) is yet to publish the

detailed report regarding SBI 43. But the Paris agreement has already been criticised by many as they feel it falls very short on forming adequate plans to make the goals listed under the agreement a reality. The areas in which the deal has come up with targets include temperature targets, emission reductions, future ambition, loss and damage and finance. The SBI 43 has reviewed in a detailed manner the work that has been done the world over on the above mentioned areas and most importantly how it has been implemented and what has been actually achieved. Hence, analysing the detailed SBI 43 report would be of great use to actually predict if we can achieve the goals mentioned under the Paris deal or whether the critics are actually right.

INDIA & COP 21: EXPECTATIONS AND OUTCOMES

- Rashmi Patowary,
Student

“(A total of) 1,600 points of dissent reduced to 0 in 10 days.”

— Piyush Goyal (Union Minister for Power)

After two weeks of intense debate in the year’s biggest international jamboree, the Paris Agreement has been finally adopted to everyone’s applause. Stated as ‘ambitious’ and ‘historic’ by the US President Barack Obama, the agreement contains the following key measures –

Firstly, to keep the rise in global temperature below 2 degree Celsius.

Secondly, to pursue efforts to limit the rise in global temperature to 1.5 degree Celsius.

Thirdly, to review progress once in every five years.

Fourthly, to achieve a balance between the sources and sinks of greenhouse gases in the second half of the century.

Fifthly, to finance the developing countries 100 billion\$ every year by 2020.

However, the other side of the picture reflects serious concerns. James Hansen (Former NASA Scientist and an Adjunct Professor at the Columbia University) who is considered as the father of global awareness of climate change regards the Paris

Talks as a hoax. He claims the outcomes to be worthless words. He said that greenhouse gas emissions will be reduced quickly only when they are taxed, for as long as fossil fuels continue to be the cheapest fuels available, they will be used.

In the midst of the conundrum, India has been regarded to play a key role in the Paris Talks. Prior to the Paris Discussion, India’s move was keenly studied across the globe. Given India’s position as the world’s third largest consumer of coal, its pledge to escalate its renewable energy target from 20,000 MW to 100,000MW by 2022 drew considerable attention (as reports stated that on achieving the aforesaid target, India will become one of the largest green energy producers in the world.). This was in contrast to the firm take of India’s not reducing its domestic coal consumption. This stand of India was supported by the 2014 reports which suggested that, carbon emission in India were 1.7 metric tonnes in 2010 and remained below the global average of about 5 metric tonnes (furthermore as per

World Resources Institute i.e. WRI, India was at the bottom for per capita emissions among the top ten emitters, with United States 19.6 tonnes, Russia 15.3 tonnes and China 7.69 tonnes in 2011). India’s Intended Nationally Determined Contribution (INDC) which is 33-35 percent by 2030 from the 2005 level was reported to be much above United States also drew attention and strengthened the key role that India was expected to play in Paris.

With the closing of the deal and adoption of the Paris Agreement on 13 December 2015, India has not been a disappointment to the expectations that the world posed on its shoulders. Its constant stress on “Common but Differentiated Responsibility” owing to the historic differentiation between developed and developing countries found its due place at the discussion table.

It received a clear mention “across all the pillars of action including mitigation, adaptation, finance and access to technology”. (Contd in Page 10)

Environment Minister Prakash Javadekar said that the draft text was "balanced" and was a way forward for the world. He termed it as an "important achievement" for India. He also mentioned that, "sustainable lifestyles and climate justice" which have been espoused by India got a mention in the final 31-page draft.

Minister for Power, Piyush Goyal said that India had lived up to the expectations at COP 21 at Paris in protecting the interests of developing and less developed countries. He reflected that, India has duly provided "leadership not only to protect the interests of the developing countries and less developed countries, but also to balance the deep concerns of the future generations with climate justice, equity and fairness for all".

However, all said and done, the

true success of the Paris Agreement and that of India's Role in COP 21 will be tested in the near future, as countries across the globe will be tested to the zenith in meeting their respective commitments and cooperating with one another to keep the rise in global temperature below 2 degree Celsius.

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