

Implications of Global Financial Crisis for International Negotiations on Climate

Change: Challenges and Responses

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1. Introduction

The two crises of our times – economic recession and climate change - pose a grave challenge to current world community as they threaten to inflict untold damage on human lives. The convergence of these two interrelated and mutually exacerbating crises threaten to undermine the development gains so far achieved in the developing and Least Developed Countries (LDC) and negatively affect their future prospects as well. Many assume that the ongoing recession will reduce the ambition of EU and other countries to press ahead with climate change policies. Their concern is not just that the trillions devoted to rescuing the global financial system mean fewer expense for the climate-change agenda. They are worried a prolonged recession will deflect consumers from green habits and drain corporate and government coffers of funding for research and development into green technology.¹ Moreover, the financial crisis is likely to distract the attention of world leaders and media to other things (financial matters) apart from climate change issues. Many analysts, opinion formers and leaders argue that the global financial crisis and economic downturn mean that we should delay our efforts to tackle climate change. But delaying action on climate change would facilitate dangerous growth in the stock of greenhouse gases in the atmosphere, making the task of dealing with the problem much more costly and difficult in the future.

¹ Mark Rice-Oxley, Financial Crisis Threatens Climate-Change Momentum, The Christian Science Monitor (Environment), November 13, 2008, available at <http://features.csmonitor.com/environment/2008/11/13/financial-crisis-threatens-climate-change-momentum/> accessed on 03 November 2009.

A broad scientific consensus exists that climate change is real and the amount and rate have accelerated in recent years. According to the Intergovernmental Panel on Climate Change (IPCC), human-induced climate change will transform the ecological balance of our planet and lead to dramatic societal problems.² It has found that to stave off the worst effects of climate change, industrialised countries must cut emissions by 25 to 40 per cent of 1990 levels by 2020 and global emissions must be halved by 2050. To achieve these targets the international community must employ all possible efforts to combat climate change. Unfortunately, this is not the case.³ There remains uncertainty about the political will of the international community to take effective measures to combat it.⁴ One of the main reasons is that the global economy is still relies heavily on the burning of fossil fuels, the primary cause of climate change.⁵ So, forming effective mechanisms to control and mitigate climate change is not easy.

Yet optimists maintain that the economic recession presents an opportunity, arguing that if the world can take rapid, expensive action to save its banks, it can do the same to save its climate.⁶ Though it involves massive amount of money, the recent experience of financial crisis indicates that it is possible to mobilise lots of money as soon as governments and heads of state take things seriously.⁷ Some politicians and industrialists might try to holdup the process by depicting climate mitigation as an unaffordable luxury in a period of recession. But the economic slowdown should not be an excuse to postpone the much-needed transition towards a low-carbon economy. Indeed, climate change demands that world leaders to make

² See, Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, (2007) 12, available at <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>.

³ Timo Koivurova, 'International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects' (2007) 22 *Journal of Environmental Law and Litigation*, 267.

⁴ Ved P. Nanda, *Climate Change, Developing Countries, and Human Rights: An International Law Perspective*, (2008) Conference Proceedings of Indian Society of International Law, 251.

⁵ See, IPCC, above n 2, 12.

⁶ Oxley, above n 1, 2.

⁷ *Ibid*

an unprecedented effort to agree on regulatory frameworks and targets to reduce greenhouse gases emissions.

2. Objective of study

In this context, the purpose of this paper is to provide an overview of implications of current global financial crisis in international climate change negotiations. For this, firstly, it discusses the principles and rules already developed under the international climate change regime. Then it highlights the opportunities and responses that should be on the agenda in future climate change negotiations. Finally, it proposes for integration of human values in international climate regime keeping away solely economic costs and benefits.

3. International Climate Regime

The international climate regime consists of both the United Nations Framework Conventions on Climate Change (UNFCCC)⁸ and the Kyoto Protocol.⁹ This existing treaty framework with 194 state parties¹⁰ has a broad mandate for tackling issues related to climate change.¹¹ The UNFCCC is an agreement between states to ‘anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.’¹² It plays an important role as a framework for international actions, political decisions, diplomatic negotiations, and coordinated

⁸ United Nations Framework Convention on Climate Change (UNFCCC), Status of Ratification, http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php (last accessed on November 05, 2009).

⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/7/Add.1, 3, Dec. 11, 1997, 37 I.L.M. 22 (1998), available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf> [hereinafter Kyoto Protocol].

¹⁰ UNFCCC, above n 8.

¹¹ Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33 *Harvard Environmental Law Review*, 349-403, 394.

¹² UNFCCC, above n 8, art. 3(3).

scientific research.¹³ It includes general rules that require virtually all states in the world to begin to slow down climate change and adapt to its effects.¹⁴ It also provides technological and financial assistance for mitigation, adaptation, information exchange, and capacity building.¹⁵ Negotiated within the framework of the Convention, the Kyoto Protocol commits industrial countries to specific, definite emissions reductions.¹⁶ Furthermore, the climate regime creates bodies that monitor implementation of the Convention.¹⁷ The Compliance Committee of the Protocol has the authority to determine different forms of sanctions if a state fails to comply with its obligations.¹⁸

3.1. United Nations Framework Conventions on Climate Change (UNFCC)

3.1.1. Objectives of UNFCC

Article 2 of the UNFCC Convention constitutes the object and purpose of the Convention. According to it, the ultimate objective of this Convention is to achieve, in accordance with the relevant provisions of the Convention, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.¹⁹

¹³ U.N. Framework Convention on Climate Change, Essential Background, http://unfccc.int/essential_background/items/2877.php (last visited Apr. 20, 2008).

¹⁴ *See*, UNFCC, above n 8.

¹⁵ *Ibid.*

¹⁶ Kyoto Protocol, above n 9, art. 3.

¹⁷ UNFCC, above n 8.

¹⁸ UNFCC, above n 8.

¹⁹ UNFCCC, above n 8, art. 2.

3.1.2. Principles and Rules of UNFCCC

The principles are laid out explicitly in the Preamble, art 2 and art 3 of the UNFCCC. To reiterate, UNFCCC Article 3 (Principles) sets out five principles:

- Common but differentiated responsibilities
- Protection of the Vulnerable
- Protection of the Right to Development
- The Precautionary Principle
- Promotion of an open economic system to support sustainable development.

The UNFCCC introduces the notion of common but differentiated responsibilities, urging industrialised nations responsible for most carbon wastes stored in the atmosphere to take the lead in cutting emissions, with developing countries to contribute according to their capacity to do so.²⁰ Secondly, the precautionary approach is to structure the response, so that scientific uncertainty should not justify inaction.

As a framework convention, the UNFCCC does not contain concrete obligations. Article 4, paragraph 2 of the Climate Convention requires industrialised countries to commit to lowering their greenhouse gas emissions by the year 2000 to the level they emitted in 1990—an objective they have failed to meet.²¹ Articles 4, 5, 6, and 9 of the UNFCCC lay out preventive initiatives, such as the transfer of technologies to prevent emissions,²² plans to mitigate climate

²⁰ Tim Stephens, 'Kyoto is Dead, Long Live Kyoto! A New Era for International Climate Change Law' (Paper presented at the Australian and New Zealand Society of International Law Fifteenth Annual Conference, Canberra, 28-30 June 2007), 4. available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1121605 (accessed on 04 September, 2009.)

²¹ UNFCCC, above n 8, art 4.

²² UNFCCC, above n 8, arts. 4(1)(c), 5.

change by addressing emissions,²³ research and scientific studies,²⁴ and education, training, and awareness programs.²⁵ Article 13 of the Climate Convention requires the Conference of the Parties to consider the establishment of a multilateral consultative process during its first session.²⁶ This process would be available to parties upon request for the resolution of questions regarding the implementation of the Convention.²⁷ While this multilateral consultative process was indeed developed by the Conference of the Parties, its development ceased after acceptance of the Kyoto Protocol and its Compliance Committee. Article 14 of the Climate Convention offers the parties various opportunities to settle their disputes.²⁸ If parties wish to submit their problem to legal dispute settlement, they may declare so in a written instrument.²⁹ However, only one such declaration has been made to date.³⁰ Article 14, paragraph 5 includes rules for a conciliation procedure.³¹ This conciliation procedure may not yet be available because the Conference of the Parties has not satisfied the precondition of approving rules for its application.³²

3.2. Kyoto Protocol

When the UNFCCC entered into force, negotiations began immediately on an implementing agreement that would give concrete effect to the broad objectives of the UNFCC by setting quantified and binding emission reduction targets and the modalities for achieving them. The result was the Kyoto Protocol.³³ The Kyoto Protocol had been drawn up in 1997 to define policy obligations for climate protection. After protracted international convulsions, the treaty

²³ UNFCCC, above n 8, art. 4(1)(b).

²⁴ *See*, UNFCC, above n 8, arts. 5, 9.

²⁵ *See, Ibid*, arts. 6.

²⁶ UNFCCC, above n 8, art. 13.

²⁷ *Ibid*.

²⁸ UNFCCC, above n 8, art. 14.

²⁹ *Ibid*. art. 14(2).

³⁰ UNFCC, above n 8.

³¹ UNFCCC, above n 8, art. 14(5).

³² UNFCCC, above n 8, art. 14(6)-(7). (“Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.”).

³³ Stephens, above n 20, 4.

acquired legal validity on February 16, 2005 - a long drawn-out process of consensus and institution building reached a temporary conclusion. The development of the Kyoto Protocol demonstrates the difficulty of organizing an effective international response to climate change. As Clive Hamilton has noted, Kyoto represents ‘the most complex and ambitious international treaty process ever attempted.’³⁴ Kyoto has enjoyed widespread support in the international community, now with 190 ratifications,³⁵ and its mechanisms have been supported in practice. For the first time, despite setbacks along the way, under this Protocol industrial countries have a legal commitment to reduce greenhouse gas emissions. The Protocol imposed concrete obligations on states to reduce their greenhouse gas emissions during the first commitment period, 2008-2012.³⁶

3.2.1. Kyoto Rules and Principles

The Kyoto Protocol shares objectives with the UNFCCC. The Protocol includes detailed emissions-reduction obligations for industrial countries.³⁷ However, in comparison with the Convention, which encourages Parties to stabilize greenhouse gas (GHG) emissions and does not have mandatory obligations, the Protocol has legally binding obligations for developed countries to reduce GHG emissions below a level specified for each of them in Annex B to the Protocol.³⁸ In deference to considerations of intra-generational equity, through the notion of ‘common but differentiated’ responsibilities, only industrialised countries are committed to individually specified and legally binding emissions reduction or limitation targets.³⁹ These Annex I parties agreed to reduce their overall emissions of six greenhouse gases by an

³⁴ Clive Hamilton, ‘Building on Kyoto’ (2007) 45 *New Left Review* 91, 96.

³⁵ UNFCCC, above n 8.

³⁶ Kyoto Protocol, above n 9.

³⁷ Kyoto Protocol, above n 9, art. 3.

³⁸ Kyoto Protocol, above n 9, Annex B.

³⁹ Stephens, above n 20, 4.

average of 5.2 per cent below 1990 levels by the first commitment period.⁴⁰ These reductions would achieve an overall reduction of 5% below the baseline level of 1990 by the year 2012.⁴¹

To achieve its objectives Kyoto establishes three so-called ‘flexible mechanisms’, which have a definite market focus.⁴² These are joint implementation of emissions reduction projects by two or more industrialized parties; the clean development mechanism (the CDM) under which such projects can be implemented in developing state parties, and emissions trading.⁴³ Guidelines for these mechanisms were fleshed out in the Marrakesh Accords agreed at COP 7 in 2001, and formally adopted at MOP 1 in Montreal in 2005.⁴⁴

3.3. Bali Action Plan

The Conference of the Parties to the U.N. Framework Convention on Climate Change (UNFCCC) met in Bali, Indonesia, in December 2007 to launch comprehensive and inclusive negotiations for a new multilateral framework.⁴⁵ It was intended to create commitments beyond the year 2012, the end of the first commitment period under the Kyoto Protocol.⁴⁶ The Bali Action Plan was agreed to, and consensus was achieved, only on the last day of negotiations. Under pressure from the United States, the Plan set no worldwide goals. The targets sought by some such as the European Union were omitted and a footnote in the preamble merely drew attention to the IPCC Fourth Assessment Report. These omissions

⁴⁰ *Ibid.*

⁴¹ Kyoto Protocol, above n 9.

⁴² Stephens, above n 20, 5.

⁴³ Stephens, above n 20, 4.

⁴⁴ Stephens, above n, 5.

⁴⁵ Svitlana Kravchenko, ‘Right to Carbon or Right to Life: Human Rights Approaches to Climate Change’, (2008) 9 *Vermont Journal of Environmental Law*, 513-547, 515.

⁴⁶ Kyoto Protocol, above n 9.

kept the United States at the negotiating table, but at a meeting in Hawaii in January 2008, the United States again refused to agree to any particular targets.⁴⁷ A new treaty - the Copenhagen Protocol - is supposed to be negotiated now, to be completed at the next meeting of the Conference of the Parties in December 2009 in Copenhagen, Denmark.⁴⁸

3.4. Critics to International Climate Regime

The greatest problem with the climate regime is that so far, commitments to emissions reductions have been relatively mild in comparison with those demanded by the scientific community.⁴⁹ This problem is exacerbated because the worst polluters have not committed themselves to the Protocol and because developing nations have no binding obligations to reduce emissions.⁵⁰ For instance, China and India are among the worst emitters of greenhouse gases but have no reduction commitments.⁵¹ Even if the United States decides to ratify the Protocol, its reduction standards are clearly inadequate.⁵² The worst emitters of greenhouse gases are, thus, either outside the Protocol altogether or have no binding reduction obligation.⁵³ This is alarming news for those states and people who will suffer the most severe consequences of climate change.⁵⁴ Furthermore, no long-term international climate policy⁵⁵ can be established, for the climate regime requires all states to consent to

⁴⁷ Europeans Test US Commitment to Climate Change, SPIEGEL, Jan. 30, 2008, <http://www.spiegel.de/international/world/0,1518,532077,00.html>.

⁴⁸ Kravchenko, above n 45, 516.

⁴⁹ Sarah A. Peay, 'Joining the Asia-Pacific Partnership: The Environmentally Sound Decision?', (2007) 18 *Colorado Journal of International Environmental Law and Policy*, 477, 481.

⁵⁰ See UNFCCC, above n 8, art. 4(2).

⁵¹ BBC NEWS, *Climate Change: The Big Emitters*, July 4, 2005, <http://news.bbc.co.uk/1/hi/sci/tech/3143798.stm>.

⁵² Koivurova, above n 3, 269.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ See, Kyoto Protocol, above n 9, art. 4(9), art. 21(7).

their reduction obligations every five years.⁵⁶ Negotiations began in 2005 for reducing emissions during the second commitment period, 2012-2016.⁵⁷

3.5. Future Climate Regime

The first commitment period, under which industrialised states (Annex I nations⁵⁸) agreed to reduce emissions, ends in 2012. Rolling Kyoto into second commitment period for 2012-2016 will require agreement by a supermajority (75 per cent⁵⁹) of parties.⁶⁰ Both more likely and more desirable is for Kyoto to be adapted and built upon, with renewed and updated targets and timetables. But on this the clock is ticking if a lawless interregnum between commitment periods is to be avoided.⁶¹

At the most fundamental level the choice for the international community is between two opposing visions. The first is the top down and comprehensive architecture supplied by the UNFCCC and the Kyoto Protocol that sets a quantified goal for reducing emissions. The second is a bottom-up or decentralised approach whereby governments agree to an overall goal, but are free to set their own national targets according to their national circumstances.

⁵⁶ Koivurova, above n 3, 274.

⁵⁷ Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol, Montreal, Can., Nov. 28 - Dec. 10, 2005, *Report of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol* 3, U.N. Doc. FCCC/KP/CMP/2005/8/Add.1 (Mar. 30, 2006), available at <http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf>. A 2005 conference in Montreal for the parties to the Climate Convention simultaneously served as a meeting for the parties to the Kyoto Protocol and established the negotiation process to determine the mitigation commitments that would follow the first commitment period. *Id.*; see also Ad Hoc Working Group on Further Commitments for Annex I Parties Under the Kyoto Protocol, Bonn, F.R.G., May 17-25, 2006, *Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties Under the Kyoto Protocol*, U.N. Doc. FCCC/KP/AWG/2006/2 (July 18, 2006), available at <http://unfccc.int/resource/docs/2006/awg1/eng/02.pdf>.

⁵⁸ Those states listed in Annex I of the United Nations Framework Convention on Climate Change, opened for signature 9 May 1992, 1771 UNTS 165 (entered into force 21 March 1994).

⁵⁹ Kyoto Protocol, above n 9, arts 20 and 21.

⁶⁰ Wolfgang Sterk *et al.*, 'The Nairobi Climate Change Summit (COP 12 – MOP 2): Taking a Deep Breath before Negotiating Post-2012 Targets?' (2007) 2 *Journal for European Environmental and Planning Law* 139, 140.

⁶¹ Stephens, above n 20, 2.

In essence, therefore, discussions about the future of climate change policy are centred on whether it can or should be subject to the international rule of law.⁶²

4. Challenges to International Climate Change Negotiations

Climate change is not entirely an environment policy issue, but it is an economic issue as well. Implementation of principles and rules of the climate change Convention (UNFCCC) and Kyoto Protocol involve financial outlays. Until the recent financial meltdown, this money was expected to come from private investors and carbon markets such as the EU Emissions Trading Scheme (ETS). The private sector investments, which are most affected by the crisis, comprise 86% of investment and financial flows for climate change.⁶³ So, the world leaders very rapidly started to discover that the global financial crisis can impact resources available for climate change solutions. It will affect, in the short term, because of funding gaps and falling carbon credit prices, and in the long term because of reduced expenditure in critical areas such as research and development in clean energy technologies.⁶⁴

It is true that the crisis helps curb greenhouse gas emissions. The slowdown of economic and industrial activities reduces global energy demand and automatically cuts some energy-related carbon dioxide emissions. It gives some relief in the fight against climate change and makes it easier for developed countries to achieve their Kyoto targets. But this 'positive' impact is only temporary. Soon the U.S., Chinese and Indian economies will recover and energy demand will rebound. But energy and climate fundamentals will not change. As

⁶² *Ibid.*

⁶³ Investment and Financial Flows Relevant to the Development of an Effective and Appropriate International Response to Climate Change, available at [//www.unfccc.int/cooperation_and_support/financial_mechanism/items/4053.php](http://www.unfccc.int/cooperation_and_support/financial_mechanism/items/4053.php)

⁶⁴ Namrata Kala, The Financial Crisis and Climate Change – Greening the Economic Stimulus, available at <http://www.ewi.info/financial-crisis-and-climate-change-%E2%80%93-greening-economic-stimulus-0> at 03 November, 2009.

opposed to the financial crisis, they will impact humanity for decades. The economic recovery will have to cope with the same constraints as before: the ongoing process of human-induced climate change, scarcity of energy resources and, sooner or later, a new surge in energy prices when the economy recovers.

5. Opportunities and Responses

The financial and economic crises have had huge negative consequences around the globe. But for the fight against climate change, there is a silver lining too.⁶⁵ There is substantial economic potential for the mitigation of global GHG emissions over the coming decades that could offset the projected growth of global emissions or reduce emissions below current levels.⁶⁶ The recent financial crisis presents the best opportunity in over a century to simultaneously reform money systems and create additional mediums of exchange and financing mechanisms to accelerate the shift from the fossil-fuel/nuclear-industrial era to the greener information rich solar age.

According to latest data released by the International Energy Agency, the economic crisis has created a unique window of opportunity to shift the world energy sector onto a 450 ppm CO₂ equivalent scenario, which offers a 50% chance of keeping the global temperature rise below 2 degrees Celsius. There are mainly two impacts:

1. Many investments in the energy sector have been postponed as a result of the economic crisis. This has also hit investments in renewable energies, but to a larger extent, it has affected investments into unsustainable technologies, which would have locked emission-

⁶⁵ Yvo de Boer, 'Implementing Copenhagen: business and regional government in a new low carbon world', Speech delivered at the 'The Climate Group' Barcelona, 4 November 2009.

⁶⁶ Kravchenko, above n 45, 515.

intensive technologies into energy sectors for the next 20 or 30 years to come. As economic growth picks up again, it is critical to direct new investments into low-emissions infrastructure.⁶⁷

2. And the economic crisis has impacted emission trends to 2020. This year is projected to show a decline in emissions of 3%. As a result, emissions are projected to be 5% lower in 2020 than estimated one year ago. Consequently, there is an opportunity to be more ambitious in adopting emission reduction targets at relatively low cost.⁶⁸

Climate change may also become a primary source of revenue to solve the EU's and other governments' fiscal problems. By instituting GHG emissions rights, the EU ETS and similar schemes elsewhere, governments have created significant value. If emissions rights are auctioned – as is foreseen under the EU ETS – governments will be able to collect at least €30 billion annually from 2012 onwards.⁶⁹ This figure is likely to rise each year until 2020 and could reach up to €90 billion annually, by which time it is expected that all major OECD countries will be operating such schemes. Moreover, a growing number of individual states in the United States are going down this route. Studies estimate that the auctioning revenues from cap-and-trade bills currently under discussion within the US Congress amount to between 7 and 15% of total US states' budgets. Thus, even if they may be for the wrong reasons, such calculations in themselves may be an important incentive for pressing on with climate change.

⁶⁷ Boer, above n 65, 2.

⁶⁸ *Ibid.*

⁶⁹ See, Financial Impacts of Climate Change: Implications for the EU Budget, Arno Behrens, Jorge Núñez Ferrer and Christian Egenhofer, CEPS Working Document No. 300, August 2008.

The German government wants to offer tax incentives to encourage consumption, such as the purchase of new, cleaner cars or the installation of energy-efficient heating systems for homes to support domestic consumption. Other governments have similar ideas. The list of new spending areas is long: green cars, green appliances, better insulation, more efficient lighting equipment, better public transport and so-called ‘clean energy’, including biofuels, renewables and nuclear. Hand-outs to consumers are also a move to make the highly unpopular rescue package for the banks more palatable to voters. And what is more, hand-outs will also make climate change policy acceptable.

There is also vast potential to integrate adaptation and mitigation measures in economic activities to minimize the ‘extra’ cost of the climate change financing.⁷⁰ These strategies include:

Integrating climate change into business cycles: In developed economies, while the opportunities for new infrastructure may be relatively limited, those for the renewal of existing infrastructure may be higher.⁷¹ For example, investments in energy infrastructure, expected to total over \$20 trillion between now and 2030, will have significant long-term impacts on greenhouse gas emissions because of the longevity of energy infrastructure.⁷²

Integrating climate change into development: Adaptation and mitigation initiatives can be integrated into economic and social development policies with multiple benefits.⁷³ Under South Korea’s Green Growth Plan, for instance, the government will invest about \$2.7 billion in the next five years to develop the green energy sector.⁷⁴ The Asia-Pacific region alone is

⁷⁰ Kala, above n 64, 2.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

estimated to need as much as \$6.4 trillion in new energy infrastructure by 2030, which provides enormous potential for mainstreaming climate change into development policy.⁷⁵

6. Conclusion: Integrating Human Values in Climate Change Negotiations

The global economic downturn indicates the inevitable adverse consequences of unsustainability and the lack of appropriate policies in a particular dimension of economic activity. It is vital to ensure that unsustainable economic policies are modified to take into account broad-based and climate-friendly development by synergising public and private sector initiatives and by establishing policies and targeted regulations to facilitate financial flows where they would be most effective.

In the meantime, short-term economic stimulus plans should pave a new path for low-carbon, resource-efficient development. Energy efficiency measures for buildings and vehicles will have the greatest payback since they reduce costs, create jobs and enable to buy time to develop innovative technologies. Financing research and development and electricity grids for the delivery of power from renewable will also prepare the ground for a clean-energy economy.

The most promising success is that the US. President Obama has already connected the financial crisis and climate change, and is promising a catalyst investment fund to build a clean energy future. He has asked Members of Congress to feedback to him from Poznan.

However, economics – which influences many current climate-policy debates – approaches

⁷⁵ *Ibid.*

decision-making by weighing up competing costs and benefits. But in a global context, the financial costs of cutting emissions in the richest countries cannot be compared with the human costs of climate change for the world's poorest people. The implications of such a trade-off are appalling.⁷⁶ Human-rights principles provide an alternative to the assumption that everything – from carbon to malnutrition – can be priced, compared, and traded. Human rights are a fundamental moral claim each person has to life's essentials – such as food, water, shelter, and security – no matter how much or how little money or power they have.⁷⁷

The Universal Declaration of Human Rights states that, 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.'⁷⁸ Yet, as the world's scientists have made clear, rich countries' failure to act with urgency in tackling climate change is leading towards social and international disorder.⁷⁹ It is proposed here that the climate regime itself should be changed to accommodate the human considerations that arise within it.⁸⁰ In this way, the climate regime would become more reflexive,⁸¹ and the infrastructure and capacity to realise ambitious aims would be strengthened.⁸² Human rights help to anchor international policy making in the most widely shared set of international norms, and provide clear principles against which to assess current policy proposals.⁸³

The ongoing climate negotiations – from Bali in 2007 to Copenhagen at the end of 2009 – are

⁷⁶ Kate Raworth, 'Climate Wrongs and Human Rights- Putting People at the Heart of Climate-Change Policy' (Oxfam Briefing Paper No 117, Oxfam International, 2008) 2.

⁷⁷ *Ibid.*

⁷⁸ Universal Declaration of Human Rights, Article 28.

⁷⁹ Raworth, above n 76, 5.

⁸⁰ Rosalind Cook and Eljalil Tauschinsky, 'Accommodating Human Values in the Climate Regime' (2008) 4(3) *Utrecht Law Review*, 18, 19.

⁸¹ In the sense of 'reflexive law', see G. Teubner, 'Substantive and Reflexive Elements in Modern Law', (1983) 2 *Law & Society Review*, 239-285.

⁸² Cook and Tauschinsky, above n 80, 18, 19.

⁸³ Raworth, above n 76, 8.

the best available chance for achieving the international cooperation needed to prevent dangerous climate change and to enable communities to adapt.⁸⁴ That is why human rights must be placed at the heart of their deliberations. Indeed the impacts of climate change on the rights of the world's most vulnerable people will be the critical test of whether these negotiations succeed.⁸⁵

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⁸⁴ Raworth, above n 76, 4.

⁸⁵ *Ibid.*