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978-0-521-19948-3 - Promoting Compliance in an Evolving Climate Regime

Edited by Jutta Brunnée Meinhard Doelle and Lavanya Rajamani

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PROMOTING COMPLIANCE IN AN EVOLVING CLIMATE REGIME

As the contours of a post-2012 climate regime begin to emerge, compliance issues will require increasing attention. This volume considers the questions that the trends in the climate negotiations raise for the regime's compliance system. It reviews the main features of the UN Framework Convention on Climate Change and its Kyoto Protocol, canvasses the literature on compliance theory, and examines the broader experience with compliance mechanisms in other international environmental regimes. Against this backdrop, contributors examine the central elements of the existing compliance system, the practice of the Kyoto compliance procedure to date, and the main compliance challenges encountered by key groups of states such as OECD countries, economies in transition, and developing countries. These assessments anchor examinations of the strengths and weaknesses of the existing compliance tools and of the emerging, decentralized, 'bottom-up' approach introduced by the 2009 Copenhagen Accord and pursued by the 2010 Cancun Agreements.

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P R E F A C E

Our work on this volume began in 2008. At the time, like many other observers of the UN climate change regime, we were optimistic that the 2009 Copenhagen meetings would produce at least the basic framework of a post-2012 regime. We embarked on a book project that was intended to provide a comprehensive assessment of the climate regime's existing compliance system, and an authoritative guide to the new elements of the system, which we were hoping would emerge from the Copenhagen meetings. We were not alone in our optimism about the future trajectory of the climate regime. In a remarkably short time we were able to assemble a first-rate group of authors, comprising leading scholars and practitioners with close knowledge of the climate regime. Our authors enthusiastically committed to a tight writing schedule, designed to produce a complete book manuscript within a few weeks of the Copenhagen meetings.

The rest is history, as the saying goes. It became clear in the summer and autumn of 2009 that Copenhagen was unlikely to produce the much anticipated breakthrough. Indeed, 'Copenhagen' has since come to be associated with fundamental shifts in the structure and approach of the global climate regime. The Copenhagen Accord, a non-binding policy instrument cobbled together in the dying hours of the meetings, signalled a departure from the prescriptive, internationally negotiated commitments and oversight mechanisms that had characterized the UN Framework Convention on Climate Change and its Kyoto Protocol and, indeed, the majority of multilateral environmental agreements. Instead of this centralized approach, the Copenhagen Accord heralded decentralization – a shift toward non-binding, self-selected, and nationally or regionally supervised commitments.

Given these developments, which have since been confirmed by the outcomes of the 2010 Cancun meetings of the parties to the convention and protocol, we reoriented the approach of this volume. We asked our authors to consider the experience with the climate regime to date, as well as the implications of its new directions for efforts to promote compliance

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with climate commitments. We are extremely grateful to our authors for their good humour, their flexibility, and, above all, their insight into the evolving climate regime and its compliance elements. From an international law perspective, the shifts in the climate regime may well have led us to produce a more interesting volume. Not only are our authors taking stock of the strengths and weaknesses in the design and practice of the climate regime's existing compliance system, they also put their fingers on the pulse of international environmental law, tracking the latest developments and analysing their broader ramifications for the structure and process of international climate law and, perhaps, beyond.

Of course, every book is the result of the hard work of individuals other than those whose names appear in the table of contents. This one is no exception. We have benefited immeasurably from the editorial support provided to us by two young lawyers. Christie Kneteman, a Student-at-Law at Torys LLP, as well as a veteran of the Copenhagen and Cancun climate meetings, has been instrumental in bringing our book manuscript together. She has been an outstanding editor and a calm guardian of consistency and 'the most recent version'. We are grateful to Christie for her assistance and to Torys LLP for enabling her to work with us on a *pro-bono* basis. We also thank Don McCrimmon, an SJD candidate at the Schulich School of Law, Dalhousie University, for all of his equally careful editorial work on the chapters that make up this volume. We are also grateful to Shibani Ghosh, a Research Associate at the Centre for Policy Research in Delhi, for her marvellous editing in the final stages of readying the manuscript for submission. This volume has benefited tremendously from her remarkable eye for detail and demanding standards for precision and accuracy. Finally, our thanks go to Finola O'Sullivan at Cambridge University Press, for her support, encouragement, and flexibility throughout our work on this volume, and to Richard Woodham, also at Cambridge University Press, for his advice and assistance in the finalization of the book.

Jutta Brunnée, Meinhard Doelle, and Lavanya Rajamani
April 2011

ABBREVIATIONS

AAU	assigned amount unit
ACESA	American Clean Energy and Security Act
AfDB	African Development Bank
AGF	Advisory Group on Climate Change Financing
AIEs	Accredited Independent Entities
AIJ	Activities Implemented Jointly
AOSIS	Association of Small Island States
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action under the Framework Convention on Climate Change
BAP	Bali Action Plan
BASIC	Brazil, South Africa, China, and India
BCAs	border carbon adjustments
CBD	Convention on Biological Diversity
CBDR	common but differentiated responsibilities
CBDRRC	common but differentiated responsibilities and respective capabilities
CC	Compliance Committee
CCS	carbon capture and storage/sequestration
CDM	Clean Development Mechanism
CERs	certified emissions reductions
CITES	Convention on International Trade in Endangered Species
CITL	Community Independent Transaction Log
CMP	Conference of the Parties serving as the meeting of the parties to the Kyoto Protocol
COP	Conference of the Parties
CPM	compliance procedures and mechanisms
CTCN	Climate Technology Centre and Network
EB	enforcement branch
EBRD	European Bank for Reconstruction and Development
ECJ	European Court of Justice
EITs	economies in transition
ERT	expert review team

ERUs	emission reduction units
ETS	emissions trading system
EU	European Union
EU ETS	European Union Emissions Trading Scheme
EUAs	European Union Allowances
EUTL	European Union Transaction Log
FB	facilitative branch
FCCC	United Nations Framework Convention on Climate Change
GEF	Global Environmental Facility
GHG	greenhouse gas
GIS	Green Investment Schemes
GWP	global warming potential
IACHR	Inter-American Commission on Human Rights
IADB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development
ICA	international consultation and analysis
ICC	Inuit Circumpolar Council
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IEA	International Energy Agency
IGO	intergovernmental organization
IPCC	Intergovernmental Panel on Climate Change
IR	international relations
ITL	International Transaction Log
ITPGR	International Treaty on Plant Genetic Resources
JI	Joint Implementation
JISC	Joint Implementation Supervisory Committee
JPAC	Joint Public Advisory Committee
LDCs	least developed countries
LOSC	United Nations Convention on the Law of the Sea
LRTAP	Convention on Long Range Transboundary Air Pollution
LULUCF	land use, land-use change and forestry
MCCF	Multilateral Carbon Credit Fund
MEAs	multilateral environmental agreements
MRV	measurement, reporting and verification
NAFTA	North American Free Trade Agreement
NAMAs	Nationally Appropriate Mitigation Actions
NCPs	non-compliance procedures
NEPA	US National Environmental Policy Act
NGOs	non-governmental organizations
NIR	national inventory report

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NOA	National Observatory of Athens
NTUA	National Technical University of Athens
ODA	official development assistance
OECD	Organization for Economic Cooperation and Development
OPIC	US Overseas Private Investment Corporation
PDDs	project development documents
QA/QC	quality assurance/quality control
QELROs	quantified emissions limitation and reduction obligations
REDD	Reducing Emissions from Deforestation and Degradation
REDD+	Reducing Emissions from Deforestation and Degradation and supporting forest conservation, sustainable management of forests and enhancement of forest carbon stocks
REIO	Regional Economic Integration Organization
RMUs	removal units
SB	subsidiary body
SBI	Subsidiary Body for Implementation
SCCF	Special Climate Change Fund
SCM	World Trade Organization Agreement on Subsidies and Countervailing Measures
SIARs	Standard Independent Assessment Reports
SIDS	Small Island Developing States
tCO ₂ e	tonnes of carbon dioxide equivalent
TEC	Technology Executive Committee
UNCED	United Nations Conference on Environment and Development 1992
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization
WB	World Bank
WHC	United Nations Educational, Scientific and Cultural Organization's World Heritage Committee
WTO	World Trade Organization