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General

- International treaty building on Copenhagen Accord
- Formally binding procedural commitments
- Focuses on mitigation and also addresses other areas
- COP decision language with some uncertainties
- Framework/skeleton agreement – ad-hoc Working Group on Paris Agreement – methodologies, rules, recommendations etc.
- Role of the US
Climate Justice

• Substantive component: no disproportionate exposure to climate change impacts and hazards (distributive justice) and rectifying injustice (corrective justice)
• Procedural elements: access to information, participation in decision making, and access to justice in climate change related-related matters
Climate justice & the Agreement

• Preamble: human rights, “climate justice”, public participation, public access to information, engagement of all levels of government and various actors

• Non-market approaches shall aim to enhance public and private participation in the implementation of NDCs (Art.6.8)

• Adaptation action should follow participatory approach, taking into consideration vulnerable groups, communities (Art.7.5)

• Public awareness (Art.12), transparency (Art.13),

• Dispute settlement (Art.24), compulsory jurisdiction, consultative process not mentioned, Bolivia’s climate justice tribunal
Climate justice & the Agreement

• CBDRRC in the light of different national circumstances > historic responsibilities (carbon budget, atmospheric space)
• Finance (Art.9, decision para.53)
• Art.17 para.2 Convention: text of proposed protocol circulated to parties 6 months before session
• NDC implementation => domestic legislation
• Loss and damage (Art.8)
Loss & damage (Art.8)

- Warsaw International Mechanism on loss and damage
- Disaster response, risk assessment and management, insurance
- Outside support, transparency, stocktake, review and compliance
- Continuation after review (decision, para.47)
- Task force on displacement related to the adverse impacts of climate change (para.49)
- “Agrees that Article 8 does not involve or provide a basis for any liability or compensation” (para.51)
Exclusion of compensation & liability?

• COP decision does not exclude application of general rules of public international law

• UNFCCC and PA = lex specialis? International Law Commission’s (ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentary, Art.55

• Future work of WIM und PA?

• Rules of transboundary pollution (principle of prevention) apply to climate change (ILA draft principles related to climate change)

• Limited effect on liability under domestic or private international law (disputes between persons of nations – e.g. Hague conference)
State accountability

• Legal advisory opinion by the International Court of Justice (ICJ) - Palau Initiative; contentious interstate cases – compulsory jurisdiction

• World Heritage Convention, Law of the Sea Convention (International Tribunal for the Law of the Sea)

• Transboundary impact assessments (Micronesia – Czech Republic)

• European Court of Justice (human rights); Interamerican Commission on Human Rights (v. US), Aarhus Compliance Committee, etc.

• Massachusetts v. Environmental Protection Agency, (US federal agency to regulate carbon dioxide and other greenhouse gases); Urgenda case (Dutch State to take additional measures against climate change)

• Atmospheric trust doctrine and action on behalf of future generations
“Polluter pays”

• Fraud investigation in the US to understand what Exxon knew about climate change in the 1970s

• Peruvian farmer requests German utility company RWE to pay for protective measures (Germany)

• Philippines Human Rights Commission (CHR) asked to investigate and acknowledge the complicity of 50 fossil fuel companies in causing extreme weather events

• Kivalina v. Exxon (US)

• http://www.climatelaw.org/
Other climate justice approaches

• Export credit agencies
• Pension and investment funds, fiduciary duties, sustainability reporting
• Legislation to allow for climate damage lawsuits (Climate Compensation Act, “Taking Climate Justice into our own Hands”)
• Fossil fuel extraction and other carbon taxes
• Climate Justice Fund, Climate justice movement...