



Climate change and the role of global administrative law: An overview

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Abstract

Globalization has transformed the world into a global village. At the same time, it has been largely instrumental in integrating the whole world into a unit by a vast range of regulatory regime that has led to the emergence of a global state, through international institutions. This concept of global governance has paved the way for the development of global administrative law.

Climate change is the most persistent and perplexing phenomenon of our times. Its culmination on the form of Global warming is wreaking havoc on the normal life of the people the world over. With a view to put a check on this constantly rising of temperature, a UN Framework Convention on Climate Change was convened in 2015 which is well known as Paris Agreement.

Recently, the 24th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP24) took place at Katowice, Poland. It evolved and adopted a set of guidelines -the Paris Rulebook -for implementing the 2015 Paris Agreement to strengthen the global response to climate change.

Though these rules have provided a stepping stone to all countries of the world for removing the administrative glitches in implementing the Paris Agreement. But it seems there are some left over areas which need more brainstorming. This paper deals with the various aspects of the Paris Rulebook in the backdrop of the global administrative law.

Keywords: climate change, Paris agreement, Katowice conference, rule book, global administrative law

Introduction

The present era can rightly be described as an "Era of Globalization". Consequently, the whole world has converged into a unit by a vast range of regulatory regime. This has culminated into a global state through international institutions and the concept of Global Governance has emerged fast^[1]. "Global institutions are about twenty years old, but they have developed rapidly. Indeed, globalization enhances the role of law and of legal systems, because globalization is achieved mainly through legalization^[2]. Thus, the present focus of the global administrative law is the emergence and the potential further development of administrative law mechanisms to promote greater accountability in decision-making in the rapidly proliferating variety of global regulatory mechanisms^[3]. "These include formal treaty-based international organization (such as the WTO, the Security Council, the World Bank, the Climate Change regime, etc.), informal intergovernmental networks of domestic regulatory officials (such as the Basel Committee of national bank regulators), domestic authorities implementing global regulatory law, and hybrid public-private and purely private transnational regulatory regimes. The subjects of such global regulatory

systems include individuals, firms and other economic actors, states, and occasionally NGOs. These systems and subjects, we argue, are part of a single, if multifaceted global administrative space distinct from the domains of international law and domestic administrative law^[4].

The definition of global administrative law is yet to evolve achieving consensus. It is still very much contested. The relations of the global administrative law with international law and constitutional law are not finally settled. "We define global administrative law as consisting of the principles, procedures, and review mechanisms that are emerging to govern decision-making and regulatory rule-making by these bodies. We identify a number of structural mechanisms that have arisen to develop and apply global administrative law. They include, at the domestic level, courts and legislatures reviewing domestic implementation of global standards and national officials' participation in global administrative decisions. They also include mechanisms developed at the global level for governance of international transnational regulatory bodies as well as states' implementation of global law"^[5].

Global regulatory mechanisms is inclusive of Climate Change regime also. During the past two decades in particular, the phenomenon of climate change has drawn attention of the entire world. The respective governments and the people alike are apprehensive of its widely destructive impact. Simply put, mostly because of human actions, the concentration of gases like carbon dioxide, Methane etc. has increased the earth's temperature which has resulted in the phenomenon called Green House Effect.

¹ Rajeshwar Tripathi, Concept of Global Administrative Law: An overview, available at <https://journals.sagepub.com/doi/10.1177/097492841106700405>, accessed on 30.03.2019.

² Sabino Cassese, Global administrative Law: The State of the art, available at <https://academic.oup.com/icon/article/13/2/465/735692>, accessed on 30.3.2019.

³ Benedict Kingsbury, Nico Krisch & Richard B. Stewart, The Emergence of Global Administrative Law, available at <https://www.ijl.org/publications/the-emergence-of-global-administrative-law-2/>, accessed on 30.3.2019.

⁴ Ibid.

⁵ Ibid

This has resulted in steady increase in the average global temperature, which is termed as Global Warming. It is estimated that the difference between today's temperature and the last ice age is about 5°C. Global Warming is very much detrimental to the all kinds of life on earth and the only way to deal with it is to reduce the emission of Green House Gases (GHC) like carbon dioxide, Methane etc. In order to combat this deadly menace of climate change, the United Nations has come up with an international environmental treaty, known as United Nations Framework Convention on Climate Change (UNFCCC). This treaty was adopted on 9 May, 1992 and came into force on 1st March 1994. The objective of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Currently, there are 197 parties (196 States and European Union) to the United Nations Framework convention on Climate Change.

The Parties to UNFCCC aligned themselves in Paris in 2015 and came out with a package of strategies to combat with the climate change phenomena under Paris Agreement. This Agreement replaced earlier Kyoto Protocol to deal with climate change. One of the most significant outcome of Paris Agreement was to make an endeavour towards finalizing a Rule book in order to facilitate the implementation of decisions taken under the Paris Agreement. This Rulebook is primarily aimed at administrative and financial measures and is helpful in bringing uniformity in the administrative practices adopted by the nations for the mitigation of climate change scourge. The present paper focuses on the various aspects of the Rule Book and its scope towards the value addition of the global administrative law.

Paris Agreement was preceded by the Kyoto Protocol as a measure to combat the ill-effects of climate change. It is imperative here to further discuss the significant aspects of this Protocol as such:

Kyoto Protocol

Kyoto Protocol is a step ahead towards setting internationally binding emission reduction targets under the aegis of the United Nations Framework Convention on Climate Change (1992). This international agreement that commits state parties to reduce greenhouse gas emissions based on scientific consensus which encompasses two suppositions, viz., 1 global warming is occurring and 2. in all likelihood the human-made CO-emission have predominantly caused it. The Kyoto Protocol applies to the six greenhouse gases listed in Annex A: carbon dioxide (CO₂), Methane (CH₄), Nitrous oxide (N₂O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), and Sulphur hexafluoride (SF₆).

The Kyoto Protocol was adopted in Kyoto, Japan on 11 December 1997 and entered into force on 16 February 2005. The detailed rules for implementation of the Protocol were adopted at COP7 in Marrakesh, Morocco, in 2001, and are referred to as the "Marrakesh Accords." Its first commitment period started in 2008 and ended in 2012. The Protocol is based on the principle of common but differentiated responsibilities. Since the individual countries have different capabilities in combating climate change depending upon their economic development, it puts the obligation to reduce current emissions on developing countries on the basis that they are historically responsible

for the current levels of greenhouse gases in the atmosphere. In Doha, Qatar, the "Doha Amendment to the Kyoto Protocol" was adopted on 8 December 2012.

The Kyoto mechanism

The Kyoto Protocol envisages that countries must meet their targets primarily through national measures. Notwithstanding, this fact, Protocol also offers them an additional means to meet their targets by way of three market based mechanisms which are as under:

- International Emissions Trading.
- Clean Development Mechanism (CDM)
- Joint implementation (JI).

These mechanism help to augment green investment and also help parties to meet their emission targets in a cost-effective way.

Besides, the following mechanisms are specifically significant with regard to administrative angle:

Monitoring emission targets

Under the Protocol, countries' actual emissions have to be monitored and precise records have to be kept of the trades carried out.

Registry systems

Such systems track and record transactions by parties under the mechanisms. The U.N. Climate Change Secretariat, based in Bonn, Germany keeps an international transaction log to verify that transactions are consistent with the rules of the Protocol.

Reporting

Reporting is done by Parties by submitting annual emission inventories and national reports under the Protocol at regular intervals.

Compliance system

A compliance system ensures that parties are meeting their commitments and helps them to meet their commitments if they have problems doing so.

The Kyoto Protocol is seen as an important first step towards a truly global emission regime in the direction of stabilizing Greenhouse Gases emissions. It was also supposed to provide the architecture for the future international agreements on climate change.

The Marrakesh Accords

The important decisions under the Marrakesh Accords are given below ^[6].

▪ Capacity-building in developing countries

This agreement establishes a framework for capacity building, for implementation of the FCCC, and to stimulate effective participation in the Kyoto Protocol. The framework must reflect the host countries' national sustainable development strategies, and special needs of the least developed countries (LDCs). Developing countries have the responsibility to identify their specific needs and to co-operate with other developing countries (South-South

⁶ Christiaan Vrolijk, The Marrakesh Accords, A brief point-by-point description and comments, available at Marrakesh_accords.pdf., accessed on 31.3.2019.

Co-operation).

- **Capacity-building in countries with economies in transition**

This agreement establishes a framework for capacity building, for implementation of the FCCC, and to stimulate effective participation in the Kyoto Protocol, similar to the framework in developing countries.

- **Development and transfer of technologies**

COP-7 decided to adopt a meaningful and effective framework for technology transfer, including the expert group who will meet twice yearly and make recommendations. The decision requests all parties to create an enabling environment by removal of barriers, environmental regulation, protecting intellectual property rights, promote technology transfer through export credit agencies or tax credits/ preferences. the mechanisms for technology transfer should facilitate the support of financial, institutional and methodological activities, and facilitate implementation projects.

- **Activities implemented jointly under the pilot phase**

The COP has decided to continue the pilot phase and learning by doing for this purpose the secretariat shall write the sixth annual synthesis report. Before SB-16 (Summer 2002), a workshop on experience with the uniform reporting format should be held.

- **Minimize the adverse effects of implementation of the Kyoto Commitments**

COP-7 agreed to establish a process to analyze adverse effects and their minimization, including funding, insurance and technology transfer. While developing countries should provide information on their needs, a workshop should be organized in order to develop guidelines by COP/ MOP-2 (earliest: end 2004).

- **Funding under the Kyoto Protocol**

The Bonn Agreement II established the adaptation fund for concrete adaptation projects and programmes. The fund will be funded from the share of proceeds of the CDM at 2%

- **Work Programme on Mechanisms**

COP-7 specified that the Protocol and the Kyoto mechanisms do not give property rights. Domestic measures shall be implemented aiming towards the objective of the Convention, and narrowing the per capita emissions. The use of mechanisms shall be supplemental to domestic action, and parties should report on this. Parties agreed that there should be a strong compliance regime, but it is the prerogative of the COP/ MOP to decide on the legal nature of the compliance regime.

- **Guidelines for the implementation of Article 6 of the Kyoto Protocol**

In Bonn, Parties agreed that Article 6 projects, should assist in achieving sustainable development, that Annex I Parties shall refrain from using nuclear, and that COP/MOP-I shall establish the Article 6 supervisory committee (A6SC).

- **Procedures and mechanisms relating to compliance under the Kyoto Protocol**

In the Bonn Agreement V Parties agreed to establish a

Compliance Committee consisting of two branches. The facilitative branch would promote compliance and provide early warning of potential non-compliance. The enforcement branch would determine compliance with the target, reporting requirements, it would also apply the consequences for non-compliance. A legal instrument on compliance would be adopted as an integral part of the Protocol.

- **Good practice guidance under article 5 and "good practices" in policies in annex i to the convention.**

Parties shall use the "IPCC good practice guide." The COP also decided to continue information exchange between Parties in the run up to COP/ MOP-1. The measures should improve the transparency and effectiveness of the policies.

Paris agreement

Paris Agreement is an international agreement to combat climate change. From 30 November to 11 December 2015, the governments of 195 nations gathered in Paris, France and discussed on possible new global agreement on climate change, aimed at reducing global greenhouse gas emissions and thus reduce the threat of dangerous climate change. The 32-page Paris agreement with 29 articles is widely recognized as a historic deal to stop global warming. In the Kyoto Protocol, both the developed and developing countries were parties but the developing countries were not mandated to reduce their emissions. Thus, while Paris Agreement is legally binding to all parties, Kyoto Protocol was not. Paris Agreement was reached on the twenty-first session of the Conference of the Parties (COP).

"The soul of the Paris Agreement is in six of its 27 Articles. These are: "market mechanism" (A.6), which allows a country to fund green projects in another country and buy credits; 'Finance', (A-9); 'technology development and transfer' (A.10); 'Capacity building' (A.11); 'transparency framework' (A.13); which deals with reporting of each country's actions; and 'global stock-take' (A.14), which calls for periodic review and improvement of each country's commitment and action for fighting climate change."^[7]

The most important achievement of the Paris Agreement was that the Parties to UNFCCC agreed to strive to limit the rise in global warming to well under 2 degrees Celsius, over pre- industrial levels by 2100. At Paris, Nationally determined contributions (NDCs) were also conceived which require each Party to prepare, communicate and maintain successive nationally determined contribution (NDCs) that it intends to achieve. It was also agreed upon that the Parties shall pursue domestic mitigation measures, with the aim of achieving the objection of such contribution. Paris Agreement replaced earlier agreement to deal with climate change, Kyoto Protocol. The Paris Agreement has a bottom up structure in contrast to most international environmental law treaties which are top down.

24th Conference of the Parties to the UN framework convention on climate change (cop24)

In December 2018, the two-week year-end annual meeting, called as COP 24, was held in Katowice, Poland. The main agenda in this meeting was to finalize the "rulebook" for the

⁷ M. Ramesh, COP 24 talks end with rulebook on Paris Agreement, available at <https://www.thehindubusinessline.com/news/cop-24-talks-end-with-rulebook-on-paris-agreement/article25758107.ece>, accessed on 31.3.2019.

implementation of the Paris Agreement. For the last two years, the negotiations were on to work at formulation of rules, procedures, guidelines, and institutional mechanisms through which the provision of the Paris Agreement would be implemented. These include such things as agreeing on accounting standards to measure emissions, processes for monitoring, reporting and verification (commonly referred to as MRV in climate negotiation circles) of actions being taken by individual countries, mechanisms to raise financial resources and ensure the flow of funds for climate projects, and institutions to facilitate the diffusion of appropriate technologies to countries and regions that need them. Two years ago, at the COP22 meeting in Marrakesh, 2018 deadline was set by the countries to finalize the "rulebook".

Important Outcome of Summit (COP 24)

• Paris Rulebook

The COP-24 finalized a rulebook to operationalize 2015 Paris Agreement. The evolution of rulebook is an extremely important step in operationalizing the Paris Agreement, especially in the light of a recent report of the Inter-Governmental Panel on Climate Change, the UN's scientific body for climate change- which stressed on the need and feasibility to limit global warming to not more than 1.5 degrees Celsius over pre- industrial levels^[8].

- The rulebook set out how countries will provide information about their Nationally Determined Contribution (NDC) describing their domestic climate actions, mitigation, and adaptation measures^[9].
- The rulebook covers areas such as how countries should report their greenhouse gas emissions, contributions to climate finance, what rules should apply to voluntary market mechanisms, such as carbon trading etc^[10].
- The rulebook has addressed some concerns about the opaqueness of climate financing, such as, developed nations will have to provide hard data on the sources of future financial flows^[11].
 - a. Climate finance refers to local, national or transnational financing- drawn from public, private and alternative sources of financing.
 - b. It seems to support mitigation and adaptation actions that will address climate change.
 - c. The UNFCCC, the Kyoto Protocol and the Paris Agreement call for financial assistance from developed countries to developing and less developed countries in accordance with the principle of "common but differentiated responsibility and respective capabilities."
 - d. Under Paris Agreement, developed countries have committed to provide \$ 100 billion annually from

2020 for dealing with climate change.

- e. The rulebook describes which loans, concessions and grants can be classified as climate finance, how they should be accounted for, and the kind of information about them needed to be submitted^[12].
- f. The modalities and procedures for Monitoring and Progress Report System proposal (MPR) to (INDC) were also discussed^[13].

Climate expert Alden Meyer, Director of Strategy and Policy at the Union of Concerned Scientists, noted that while "some elements of the rulebook still need to be fleshed out, the agreement lays a solid foundation for implementation and strengthening of the historic Paris accord"^[14].

India's Stand on Rulebook

India is satisfied with what the notebook says on the most critical issue 'finance'. There are two broad aspects to this. One, where under Article 9.5, the developed countries shall provide visibility on the quantum of funds that would be made available to developing countries' efforts for fighting climate change. India has expressed satisfaction with the level of detailing in such reporting^[15]. The second aspect is when developed countries are to state, under Article 9.7, how much funding they have provided. Here, too, India seems satisfied^[16]. India is also satisfied with the flexibility developing countries could be allowed in the stringency of reporting its climate actions, even though India has the capability to report pretty granular details^[17]. India has been in favour of a robust transparency regime, and the finalized Enhanced Transparency Framework builds upon the existing guidelines while providing flexibilities for developing countries^[18]. The overarching framework for technology recognizes the need for enhanced support towards operationalization of the framework and comprehensively covers all stages of technology development and transfer^[19]. The modalities for Global Stocktake take into consideration the core principles of equity and includes assessment of collective progress on all pillars of climate action^[20]. On the whole India is fine with the rulebook.

Conclusion

The definition of global administrative law is still very much contested and its relations with international law and constitutional law are not yet settled. While it is seen as the "exercise of international public authority" on the one hand, some scholars, find it more appropriate to speak of the "law

⁸ M. Ramesh, COP 24 talks end with rulebook on Paris Agreement, available at <https://www.thehindubusinessline.com/news/cop24-talks-end-with-rulebook-on-paris-agreement/article25758107.ece>, accessed on 31.3.2019.

⁹ COP 24, Biodiversity & Environment, available at <https://www.drishtiias.com/to-the-points/paper3/cop24>, accessed on 31.3.2019

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ M Ramesh, COP 24 talks end with rulebook on Paris Agreement, available at <https://www.thehindubusinessline.com/news/cop24-talks-end-with-rulebook-on-paris-agreement/article25758107.ece>, accessed on 31.03.2019.

¹⁵ Ibid.

¹⁶ Ibid

¹⁷ Ibid.

¹⁸ Outcome of 24th Session of Conference of Parties (COP) positive : India, Press Information Bureau, Govt. of India, 16 December, 2018, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=186446>, accessed on 31..3.2019.

¹⁹ Ibid.

²⁰ Ibid.

of global governance" on the other hand. Notwithstanding the fact, global administrative law is undergoing constant development, change, and improvement. The main reason being global problems require global institutions. Such global regulatory regimes, according to Sabino Cassese, feature legislation (treaties, rules, policies, standards, soft law) without legislatures; dispute settlement functions with only a limited number of courts (but a great number of quasi-judicial reviewing bodies); implementation without an executive branch (through indirect rule, and by monitoring and controlling implementation and enforcement through national bodies ^[21]). In this perspective, to reduce global warming or to combat climate change, one must go global. This can't be tackled at national level only. United Nations Framework Convention on Climate Change (UNFCCC) is endeavouring in that direction. Under this framework, Conferences of Parties take place from time to time. Paris Agreement is the outcome of such endeavours in which definite policy goals were determined and accepted by all the participatories aiming at reducing the temperature of the earth to control global warming. But the unique feature of this 2015 Agreement was to go forward and formulate a Rule Book for the guidance of all the parties to the Paris Agreement. Two years later, under the umbrella of 24th Conference of Parties (COP24) at Katowice, Poland, for the first time a Rulebook was prepared with a consensus among the parties. This rulebook is a manual of procedures for the implementation of the goals set by the Paris Agreement. This rulebook covers all aspects ranging from administrative to financial and other miscellaneous matters related to implementation stage. With this, every Party to the agreement is equipped with the know-how about how to proceed in the desired direction to achieve climate change objectives. This rulebook gives option to the parties to tackle issues at the national level which can be resolved only at the national level. For the first time, arguably, such clear-cut rules for implementation of a treaty / agreement have been framed with the help of combined wisdom of parties so that all possible confusion of any kind is thereby removed. Moreover, the principles of good governance, like transparency, accountability etc. have also been adhered to in these rules. Previously, such efforts were made at Kyoto and Marrakesh, but they were not conclusive. Therefore, it can be safely concerned that this Rulebook is a landmark step forward in the advancement of global administrative law. Since there is no global government and no such laws to regulate the procedures, the emergence of this rulebook will certainly go a long way in resolving global problems by consensus having a common vision document. We don't need global government; we need only global administrative laws to tackle menacing global problems adversely affecting the very existence of mankind. And the Rulebook is a step in right direction.

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²¹ Sabino Cassese, Global Administrative Law: The State of the art, available at <https://academic.oup.com/icon/article/13/2/465/735692>, accessed on 30.3.2019.