

Climate Change Law and Transnational Corporations

Authors : Manuel Jose Oyson

Abstract : The Intergovernmental Panel on Climate Change (IPCC) warned in its most recent report for the entire world “to both mitigate and adapt to climate change if it is to effectively avoid harmful climate impacts.” The IPCC observed “with high confidence” a more rapid rise in total anthropogenic greenhouse gas emissions (GHG) emissions from 2000 to 2010 than in the past three decades that “were the highest in human history”, which if left unchecked will entail a continuing process of global warming and can alter the climate system. Current efforts, however, to respond to the threat of global warming, such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol, have focused on states, and fail to involve Transnational Corporations (TNCs) which are responsible for a vast amount of GHG emissions. Involving TNCs in the search for solutions to climate change is consistent with an acknowledgment by contemporary international law that there is an international role for other international persons, including TNCs, and departs from the traditional “state-centric” response to climate change. Putting the focus of GHG emissions away from states recognises that the activities of TNCs “are not bound by national borders” and that the international movement of goods meets the needs of consumers worldwide. Although there is no legally-binding instrument that covers TNC activities or legal responsibilities generally, TNCs have increasingly been made legally responsible under international law for violations of human rights, exploitation of workers and environmental damage, but not for climate change damage. Imposing on TNCs a legally-binding obligation to reduce their GHG emissions or a legal liability for climate change damage is arguably formidable and unlikely in the absence a recognisable source of obligation in international law or municipal law. Instead a recourse to “soft law” and non-legally binding instruments may be a way forward for TNCs to reduce their GHG emissions and help in addressing climate change. Positive effects have been noted by various studies to voluntary approaches. TNCs have also in recent decades voluntarily committed to “soft law” international agreements. This development reflects a growing recognition among corporations in general and TNCs in particular of their corporate social responsibility (CSR). While CSR used to be the domain of “small, offbeat companies”, it has now become part of mainstream organization. The paper argues that TNCs must voluntarily commit to reducing their GHG emissions and helping address climate change as part of their CSR. One, as a serious “global commons problem”, climate change requires international cooperation from multiple actors, including TNCs. Two, TNCs are not innocent bystanders but are responsible for a large part of GHG emissions across their vast global operations. Three, TNCs have the capability to help solve the problem of climate change. Assuming *arguendo* that TNCs did not strongly contribute to the problem of climate change, society would have valid expectations for them to use their capabilities, knowledge-base and advanced technologies to help address the problem. It would seem unthinkable for TNCs to do nothing while the global environment fractures.

Keywords : climate change law, corporate social responsibility, greenhouse gas emissions, transnational corporations

Conference Title : ICCCGW 2015 : International Conference on Climate Change and Global Warming

Conference Location : Stockholm, Sweden

Conference Dates : July 13-14, 2015