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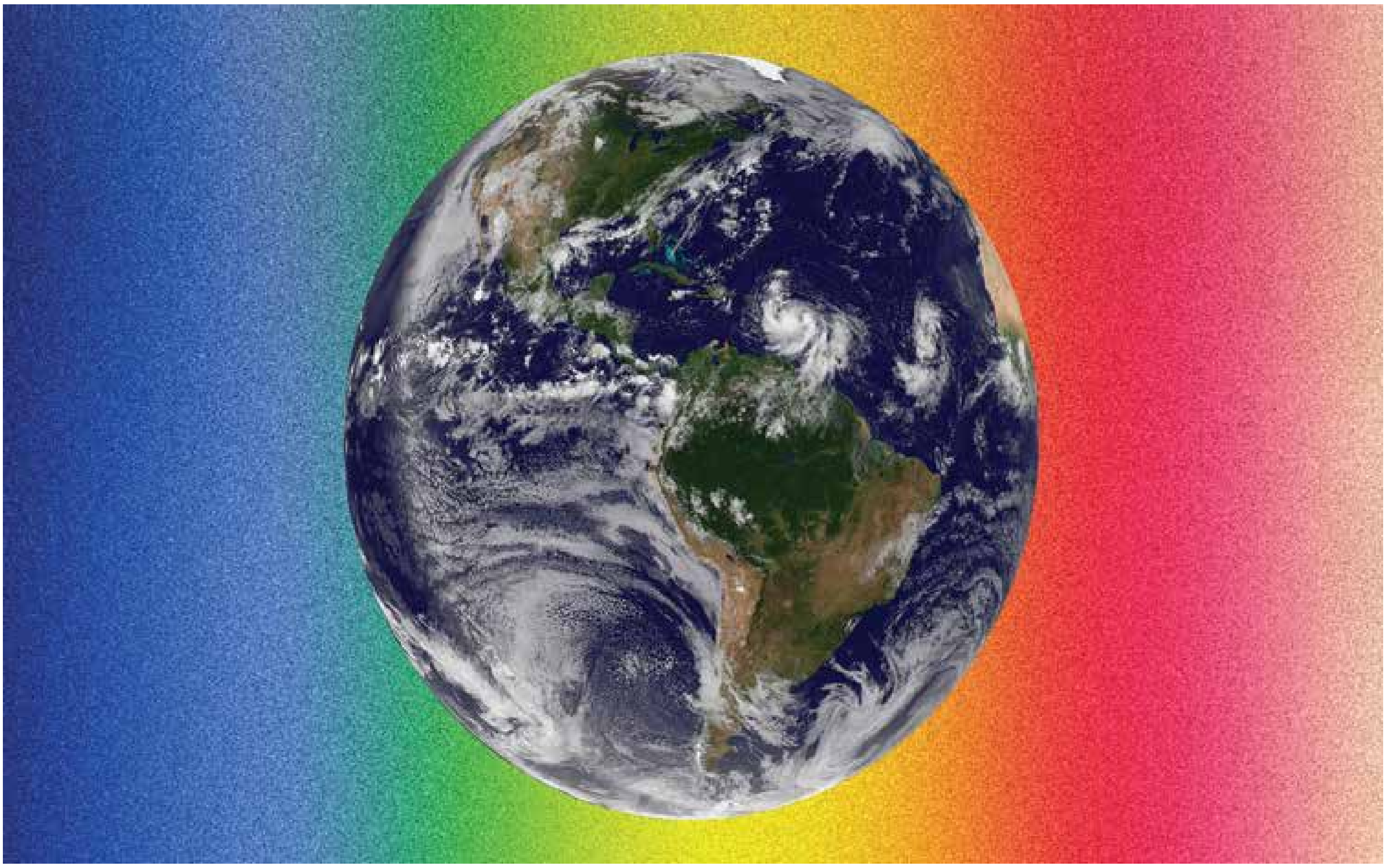
From Kyoto to the Paris Climate Agreement
The evolving global climate change discourse



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1 Introduction

Though derided as toothless by some for lacking binding commitments on greenhouse gas emissions reduction, it is likely that the negotiations which led to the adoption of the United Nations Framework Convention on Climate Change ("UNFCCC") in 1992 at the Rio Earth Summit in Brazil would have aborted if from very outset parties had to oblige to specific targets, they in the first-place thought could interfere with their economic ambitions. To date, climate change conversations remain complex with competing priorities of economic development, energy security and environmental protection despite the amplified net zero aspirations.

It is the reason the UNFCCC originally took the framework format facilitating initially international cooperation to work together, rather than prescribing specific emission reduction targets that were unlikely to be acceptable to all the countries in the negotiations. The UNFCCC was fully alive to the fact that dealing with climate change would not only be protracted but required a long-term approach. Cognisant of the fact that the climate change narrative would advance progressively with emerging scientific evidence and changing social and political views, the UNFCCC left open the possibility of adoption of subordinate Protocols to supplement its principal objective of stabilising greenhouse gas concentrations in the atmosphere.

In this article, we thus discuss the influence of the Kyoto Protocol and the Paris Climate Agreement adopted in 1997 and 2015 respectively on the evolving global climate change discourse.

2 The Kyoto Protocol

The Kyoto Protocol underlined bolder ambitions to deal with the scale of global warming. Adopted at the 3rd Conference of Parties (COP) meeting to the UNFCCC hosted in Kyoto and coming into force in 2005, the Kyoto Protocol set binding targets for the 41 industrialised countries and economies in transition ("Annex Countries") to reduce their greenhouse gas emissions to 5.2% below the 1990 levels during the first commitment period between 2008 and 2012.

The 1st COP to the UNFCCC held in Germany in 1995 approved the "Berlin Mandate" which established a framework for negotiating the Kyoto Protocol by calling for industrialised nations to take the lead in reducing greenhouse gas emissions. Anchored on the principle of common but differentiated responsibility and respective capabilities ("CBDR"), the Kyoto Protocol placed a heavier burden of climate change mitigation on the industrialised countries that are largely responsible for the greenhouse gas emissions.

During the second commitment period running from 2013 to 2020, the Annex Countries committed further to reduce their greenhouse gas emissions by at least 18% below the 1990 emission levels.

a) Emissions covered

The greenhouse gas emissions covered under the Kyoto Protocol included carbon dioxide produced largely from burning fossil fuels, methane from livestock and agriculture waste as well as nitrous oxide. The other gas emissions under the scope of this Protocol were hydrofluorocarbons and perfluorocarbons used for cooling in refrigeration equipment and in a range of industrial processes respectively and sulphur hexafluorides applied in the electrical industry.

b) Market mechanisms

The Kyoto Protocol established 3 flexible mechanisms of generating carbon credits that could count towards the greenhouse gas emissions reduction target.

The first market-based mechanism is the emissions trading also known as "cap and trade". Though under the auspices of government regulation, emissions trading typically involves companies buying and selling emissions allowances to meet their emission reduction targets. It starts off with companies within specific sectors being given emission allowances. Those that emit less than allocated can sell their spare allowances to companies that emit more for their allocation thereby creating a financial incentive for companies to reduce their emissions and invest in clean technologies.

The second mechanism is the Clean Development Mechanism ("CDM") which allows developed countries to invest in emissions reduction projects in developing countries and earn Certified Emissions Reductions (CERs), which can be used to meet their emissions reduction targets.

The third mechanism is the Joint Implementation ("JI") under which developed countries invest in emissions reduction projects in other developed earning Emissions Reduction Units (ERUs), which can be applied towards their emissions reduction count.

c) Technology transfer and financing

Technology development, transfer and financing is at the heart of climate change mitigation and adaption. In this regard, the Kyoto Protocol established a technology centre and network to provide information and support on the development and deployment of climate-friendly technologies in developing countries.

The Protocol also established the Global Environment Facility ("GEF") providing financing for a variety of activities including those undertaken by the private sector aimed at promoting technology transfer, as well as research and development and capacity building.

d) Criticism of the Protocol

Though the CBDR principle justly recognises the unequal responsibilities of developed and developing countries in addressing climate change, the exclusive placement of binding emissions reduction commitments on the developed countries was a major source of contention.

Developed countries like the United States of America, Canada and Russia that eventually pulled out of the Protocol argued that it was unfair for only the industrialized countries to bear the brunt of the emissions reductions while rapidly industrializing countries like China and India were not obliged to take any action. This was the main reason for the shift from the Kyoto Protocol to the Paris Climate Agreement.

3 The Paris Climate Agreement

Adopted in 2015 superseding the Kyoto Protocol, the Paris Climate Agreement represents a more comprehensive and inclusive approach to addressing global climate change. Also referred to as the Paris Accords, this agreement that set a global goal of limiting global warming to well below 2 degrees celsius above pre-industrial levels, and pursuing efforts to limit it to 1.5 degrees celsius was responding to the limitations of the Kyoto Protocol for the lack of emissions reduction targets on developing countries and major emitters like the USA and China.

a) Nationally Determined Contributions

The Paris Accords includes Nationally Determined Contributions ("NDCs") that represent greenhouse gas emissions reduction commitments by countries but also their enhanced efforts to combat climate change. These actions can include the deployment of renewable energy sources, the adoption of energy-efficient technologies, and the protection of natural carbon sinks, such as forests. NDCs are not legally binding, but countries are encouraged to progressively revise their emissions to reflect their highest possible ambition. They are submitted to the UNFCCC Secretariat and are reviewed and updated periodically, usually every five years.

b) Technology transfer and financing

The Paris Climate Agreement also emphasises the importance of technology development, transfer and financing in climate change mitigation and adaption. The Paris Agreement established mechanisms and platforms through which information and experiences are shared with regard to the development and deployment of clean and low carbon technologies.

The Paris Accords also established the Adaptation (AF) and Green Climate Fund ("GCF"). The AF supports developing countries in their efforts to adapt to the impacts of climate change and to implement their adaptation plans while the GCF provides financial resources to developing countries to support a range of activities, including technology transfer, capacity building, and the deployment of clean and low-carbon technologies.

c) Market mechanisms

The Paris Climate Agreement builds on the market mechanisms under the Kyoto Protocol and retains the CDM and Joint Implementation and Emission Trading mechanisms. The Paris Agreement however has in place enhanced rules and regulations that augment the transparency, integrity and effectiveness of these market mechanisms.

d) Loss and damage

The Paris Accords builds on the Warsaw International Mechanism for Loss and Damage ("WIM') to deal with loss and damage due to climate change that cannot be

avoided through mitigation and adaptation.
Established at the COP19 meeting of the UNFCCC in 2013, the WIM aims to enhance knowledge, action and support on issues related to loss and damage and to facilitate the integration of loss and damage into national and international efforts to address the impacts of climate change.

At the recent COP 27 in Egypt, a historic agreement setting up and operationalizing the loss and damage fund for climate crisis vulnerable nations was reached addressing the criticism against the WIM for concentrating on supposedly inconsequential activities like knowledge gathering and coordination of bodies that did not consider funding mechanisms to address climate justice or provide compensation to countries already facing losses and damages.

e) Criticism of the Paris Accords

Despite the active participation of countries in the implementation of the Paris Climate Agreement, it is however noted that the current NDCs are not sufficient to limit the global temperature increase to well below 2 degrees celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees celsius.

4 Conclusion

Addressing climate change requires a long-term approach based on sustained collective actions from individuals, businesses and governments. To move forward together, there is always a moderation of the competing priorities of economic development, energy security and environmental protection complicating the climate change discourse. The UNFCCC did not only set the scene for international collaboration but also remained flexible to integrate emerging climate change perspectives as seen in the adoption of the Kyoto Protocol and subsequently the Paris Climate Agreement.

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Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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