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## Notes & Comments

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# Impressions from Durban: COP-17 and Current Climate Change Policies

Jason Obold, Matthew Burns, and Caroline  
Baker

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## I. A CRITIQUE OF THE DURBAN PLATFORM

One adjective best describes the United Nations Climate Change Secretariat's press release that followed the conclusion of the Seventeenth Conference of the Parties ("COP-17") to the United Nations Framework Convention on Climate Change ("UNFCCC") in Durban, South Africa: gilded.<sup>1</sup> "Countries meeting in Durban, South Africa, have delivered a breakthrough on the future of the international community's response to climate change."<sup>2</sup> Ms. Maite Nkoana-Mashabane, President of COP-17, stated that the agreement signed in Durban ("Durban Platform") took "crucial steps forward" in the fight to stave off climate change and complimented the Parties for sacrificing some personal policy prerogatives in the interest of "a long-term solution to climate change."<sup>3</sup> She then stated that the Parties "have all laid aside some cherished objectives of their own to meet a common purpose."<sup>4</sup> The UNFCCC Executive Secretary added that, "Durban has lit up a broader highway to a low-emission, climate resilient future" leading into the next major UNFCCC Conference in Qatar in late 2012.<sup>5</sup>

Whether or not these comments hailing the Durban Platform as a "breakthrough" were accurate can only be judged by the test of time. But what can be said today is that the prospect of the Durban Platform as a "crucial step" is off to a very uncertain beginning. The Durban Platform states that the Conference of the Parties in Durban decided to create a new working group, which will produce a document "as early as possible but no later than 2015 in order to adopt this protocol, legal instrument or agreed outcome with legal force at the twenty-first session of the Conference of the Parties."<sup>6</sup> The product of the working group will

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1. "Since the UNFCCC entered into force in 1995, the Conference of the Parties (COP) to the UNFCCC have been meeting annually to assess progress in dealing with climate change." *See generally*, U.N. Climate Change Conf. 2011, Durban, S. Afr., COP17/CMP7, What is COP17/CMP7?, <http://www.cop17-cmp7durban.com/en/about-cop17-cmp7/what-is-cop17-cmp7.html> (last visited Apr. 5, 2012).

2. Press Release, U.N. Climate Change Secretariat, Durban Conference Delivers Breakthrough in International Community's Response to Climate Change (Dec. 11, 2011), *available at* [http://unfccc.int/files/press/press\\_releases\\_advisories/application/pdf/pr20111112cop17final.pdf](http://unfccc.int/files/press/press_releases_advisories/application/pdf/pr20111112cop17final.pdf).

3. *Id.*

4. *Id.*

5. *Id.*

6. Conf. of the Parties Dec. 1/CP.17 ¶ 4, Rep. of the Conf. of the Parties, 17th Sess., Nov. 28–Dec. 11 2011, Part Two, at 2, U.N. Doc. FCCC/CP/2011/9/Add.1 (March 15, 2012), *available at* <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=2>.

“come into effect and be implemented from 2020.”<sup>7</sup> While this agreement sounds promising on its face, it is a paper tiger without any guarantee that a productive solution will be adopted or that the solution will be legally binding. The giant linguistic loophole in the promise to develop “a protocol, another legal instrument or an agreed outcome with legal force” allows the adoption of a non-binding instrument that may be ignored by any signatory nation that deems the instrument against its cherished objectives.<sup>8</sup> Further, the Durban Platform’s goal of implementation by 2020 is past the date by which the International Energy Agency has determined that global emissions need to peak in order to keep global warming below the 2°C target outlined by the UNFCCC.<sup>9</sup> For another year, the Conference of the Parties (“COP”) managed to produce little more than an agreement to continue talking and delay action, this time for the better part of a decade.

Comparing statements by the Parties made before the start of COP-17 with the Durban Platform leaves one wondering which, if any, “cherished objectives” the President of COP-17 feels were sacrificed to support a comprehensive solution to climate change. Many nations walked away with much less than they had hoped for going into Durban. After a devastating year of record temperatures, drought, bush fires, floods, and hurricanes,<sup>10</sup> Australia, a country known for its climate change skepticism,<sup>11</sup> entered COP-17 touting a new domestic emissions trading scheme. The Australian statement showed the country’s willingness to cut domestic emissions. But the statement also revealed a lack of willingness to recommit to the Kyoto Protocol to the UNFCCC

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7. *Id.*

8. See Louise Gray, *Durban Climate Change: The Agreement Explained*, TELEGRAPH, Dec. 11, 2011, available at <http://www.telegraph.co.uk/earth/environment/climatechange/8949099/Durban-climate-change-the-agreement-explained.html>.

9. Brad Plumer, *Why Small Delays on Climate Change Can be Costly*, EZRA KLEIN’S WONKBLOG, WASH. POST (Dec. 14, 2011, 10:23 AM), [http://www.washingtonpost.com/blogs/ezra-klein/post/why-does-it-matter-when-we-cut-co2-emissions/2011/12/14/gIQaumxwtO\\_blog.html](http://www.washingtonpost.com/blogs/ezra-klein/post/why-does-it-matter-when-we-cut-co2-emissions/2011/12/14/gIQaumxwtO_blog.html).

10. See Jeff Goodell, *Climate Change and the End of Australia*, Rolling Stone, Oct. 13, 2011, at 54, available at <http://www.rollingstone.com/politics/news/climate-change-and-the-end-of-australia-20111003>.

11. See Stuart Rintoul, *Town of Beaufort Changed Tony Abbott’s View on Climate Change*, AUSTRALIAN, Dec. 12, 2009, available at <http://www.theaustralian.com.au/politics/the-town-that-turned-up-the-temperature/story-e6frgczf-1225809567009> (Tony Abbott, leader of the Opposition in the Australian House of Representatives, “dismissed the science underpinning climate change as ‘crap.’ ”); see also Rodney Tiffen, *Australia in Denial over Greenhouse*, SYDNEY MORNING HERALD, July 12, 2010, available at <http://www.smh.com.au/opinion/society-and-culture/australia-in-denial-over-greenhouse-20100711-105ha.html>.

(“Kyoto Protocol”) unless the major emitting countries were included in the next round of emissions targets. “Australia’s position remains unchanged—we will be part of a second commitment period only if it is a part of a wider agreement covering all major emitters.”<sup>12</sup>

Canada went a step further by declining to continue to be a part of the Kyoto Protocol. “Kyoto . . . is an agreement that covers fewer than [thirty] percent of global emissions. . . . By (sic) some estimates down to [fifteen percent].”<sup>13</sup> Russia declined to commit to a second period of Kyoto obligations for similar reasons. “[D]ata from the International Energy Agency suggests that [forty-one percent] of global emissions in 2009 originated from two countries, who are not bound by the Kyoto Protocol.”<sup>14</sup> Australia, Canada, and Russia all expressed a willingness to continue reducing their emissions and working toward a solution to global climate change. However, these countries also made clear that they will not be a part of any solution that does not include participation by the largest emitters. Because COP-17 ended without commitments from the largest emitters, Australia, Canada, and Russia declined to take part in a second round of Kyoto reduction commitments and, in signing the paper tiger Durban produced, gave up their pursuit of accountability from the world’s largest emitters.<sup>15</sup>

Statements made by the Micronesian delegation represent another group of nations that sacrificed objectives at the conference—the small island nations that contribute little to the problem of climate change but are experiencing its wrath exponentially. Andrew Yatilman, head of the Delegation for Micronesia, gave this warning to the parties:

We are approaching twenty years since the UNFCCC was established. Yet emissions are still increasing. 2010 saw not only the highest emissions ever, but also the largest growth in carbon dioxide emissions on a year-to-year basis. Meanwhile, we are continuing to

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12. Australia, Statement at COP-17: High Level Session (Dec. 7, 2011), [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111207\\_cop17\\_hls\\_australia.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111207_cop17_hls_australia.pdf).

13. Canada, Statement at COP-17/CMP 7: High Level Segment (Dec. 7, 2011), [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111207\\_cop17\\_hls\\_canada.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111207_cop17_hls_canada.pdf).

14. Alexander Bedritskiy, Special Representative of the President of the Russian Fed’n on Climate Change, Statement to COP-17/CMP 7 (Dec. 8, 2011), [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111208\\_cop17\\_hls\\_russia.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111208_cop17_hls_russia.pdf).

15. See Julian Drape, *Australia Defends Canada’s Kyoto Exit*, SYDNEY MORNING HERALD, Dec. 13, 2011, available at <http://news.smh.com.au/breaking-news-national/australia-defends-canadas-kyoto-exit-20111213-1osyd.html>.

witness increasingly damaging impacts from climate change, including the loss of land, homes and lives.<sup>16</sup>

For island nations to survive, “we will not only need to bring emissions to zero, but will actually have to achieve net negative emissions on an annual basis in the second half of this century and cannot wait until 2020 for action.”<sup>17</sup> With 2020 as the Durban Platform implementation year, the lack of any substantial, concrete action for another eight years is eroding the hope that many island nations had of saving their land from disappearing beneath the encroaching waves.

Although these statements did not provide specific names, their targets were clear and the tension was as palpable as the humidity that hung over the conference. The bulk of the Parties were singling out China, India, and the United States for their lack of participation in Kyoto and perceived lack of interest in being part of a global solution to climate change going forward from Durban.<sup>18</sup> The recalcitrant nations offered strong statements in support of a new climate change regime, but were reserved about committing to participating in any binding instrument. China urged the participants at COP-17 to work toward a “comprehensive, fair and balanced outcome” with practical objectives, but stressed the principle of common but differentiated responsibilities. Further, China called upon developed nations to take the lead in “drastic emission reduction” without agreeing to bind itself to Kyoto or any future plan.<sup>19</sup> Stressing the principle of common but differentiated responsibilities highlights a problem with the UNFCCC that has plagued the discussions since the beginning. China is the world’s largest emitter of carbon dioxide, releasing just under 7 billion tons of carbon in 2009, an increase of 206 percent since 1990.<sup>20</sup> However, China is considered a developing country and not bound to any emissions reductions under

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16. Andrew R. Yatilman, Head of Delegation for Micr. (Federated States of), Statement at the Seventeenth Conference of the Parties to the UNFCCC/Seventh Meeting of the Parties to the Kyoto Protocol: High Level Segment (Dec. 8, 2011), [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111208\\_cop17\\_hls\\_micronesia.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111208_cop17_hls_micronesia.pdf).

17. *Id.*

18. See *O Canada*, *ECONOMIST*, Dec. 15, 2011, available at <http://www.economist.com/blogs/graphicdetail/2011/12/daily-chart-6>; see also A Look to the East at the Durban Talks, *WASH. POST*, Dec. 11, 2011, available at [http://www.washingtonpost.com/national/health-science/a-look-to-the-east-at-the-durban-talks/2011/12/11/gIQAIerBoO\\_graphic.html](http://www.washingtonpost.com/national/health-science/a-look-to-the-east-at-the-durban-talks/2011/12/11/gIQAIerBoO_graphic.html).

19. Xie Zhenhua, Minister of China, Statement Made in Connection with COP-17/ CMP 7, available at [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111207\\_cop17\\_hls\\_china.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111207_cop17_hls_china.pdf).

20. *O Canada*, *supra* note 18.

Kyoto; nor does it want to be bound under any future scheme.<sup>21</sup> After two weeks and thirty-six additional hours, COP-17 ended with no concrete agreement to any reductions now or in the future, which is exactly what the Chinese were hoping for going into COP-17.<sup>22</sup>

India also preached common but differentiated responsibilities in its approach to a long-term agreement. India noted that while it is a large country, its per capita emissions are only 1.7 tons per person per year.<sup>23</sup> Like China, India noted its progress toward reducing its national emissions.<sup>24</sup> India called for a second round of Kyoto commitments, but did not commit itself to any Kyoto goals, stating that developing nations “cannot be expected to be legally bound to reduce their emissions when they have practically no emissions.”<sup>25</sup> In the end, India received exactly what it had been proposing from day one. The Durban Platform provides no requirement for a legally binding document, and India did not make any Kyoto commitments. Delaying action until 2020 was exactly what India wanted, and it is exactly what India received.<sup>26</sup>

President Obama’s special envoy for climate change and chief American negotiator at COP-17, Todd Stern, promised that the United States was not actively blocking pre-2020 action on climate change, while at the same time he stated his support for a “road map” proposed by the European Union (“EU”) that included a formal treaty by 2015 to take effect in 2020.<sup>27</sup> While supporting the EU roadmap, Mr. Stern refused to agree to any solution that did not include the world’s largest emitters, including China and India.<sup>28</sup> Mr. Stern stated his support for a document that delayed action until 2020 immediately after denying that

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21. See *A Deal in Durban*, ECONOMIST, Dec. 17, 2011, available at <http://www.economist.com/node/21541806>.

22. See John Broder, *Signs of New Life as U.N. Searches for a Climate Accord*, N.Y. TIMES, Jan. 24, 2012, available at <http://www.nytimes.com/2012/01/25/business/global/signs-of-new-life-as-un-searches-for-a-climate-accord.html?scp=6&sq=durban%20climate%20change&st=cse>.

23. Jayanthi Natarajan, Minister of Environment & Forests Government of India, Statement at COP-17/CMP 7: High Level Segment (Dec. 7, 2011), [http://unfccc.int/files/meetings/durban\\_nov\\_2011/statements/application/pdf/111207\\_cop17\\_hls\\_china.pdf](http://unfccc.int/files/meetings/durban_nov_2011/statements/application/pdf/111207_cop17_hls_china.pdf).

24. *Id.*

25. *Id.*

26. Nitin Sethi, *Durban Climate Talks End, New Global Climate Change Regime From 2020*, TIMES OF INDIA, Dec. 11, 2011, available at [http://articles.timesofindia.indiatimes.com/2011-12-11/developmental-issues/30504463\\_1\\_eu-roadmap-climate-talks-climate-change](http://articles.timesofindia.indiatimes.com/2011-12-11/developmental-issues/30504463_1_eu-roadmap-climate-talks-climate-change).

27. Editorial, *Climate Talks Keep Issue in Focus*, WASH. POST, Dec. 14, 2011, available at [http://www.washingtonpost.com/opinions/climate-talks-keep-issue-in-focus/2011/12/13/gIQAPtkluO\\_story.html](http://www.washingtonpost.com/opinions/climate-talks-keep-issue-in-focus/2011/12/13/gIQAPtkluO_story.html).

28. *Id.*

the United States proposed to delay action until 2020. In the realm of international posturing, it seems that supporting, while having the same practical effect as proposing, is less politically risky. Less than ninety-six hours after Mr. Stern's statements, COP-17 resulted in a delay of implementation until 2020, a plan Mr. Stern vehemently denied the United States was proposing.<sup>29</sup> From Mr. Stern's statements, it is unclear what "cherished objectives" the United States set aside in agreeing to a delay in action until 2020. It could be argued that the United States set aside its desire to have China and India included in an emissions reduction regime. But, similar to China and India, the United States left Durban without any firm commitment to emissions reductions now or in the future.

There are perilous times ahead for anyone who hopes for an effective, long-term solution to anthropogenic climate change, but agreeing to continue discussing the matter is certainly better than walking away from the table altogether. Perhaps the cautious optimism of the UNFCCC Secretariat and the COP-17 President is the only way to assess the future of a global climate change regime, especially given the disparate national perspectives and prerogatives that were represented at COP-17. The international community will never come to an agreement unless it continues to talk out the very complex problems that plague efforts to confront climate change. Ultimately, all that seems likely to be accomplished is talk. Yet talk is important. There can be no international agreement by unilateral action. However, no one should be surprised if talking produces no substantive agreements or, more importantly, no actual reductions in greenhouse gas emissions. This is the diagnosis of a realist given the factors at play and the history of the discussions.

## II. A REASON FOR HOPE? BUSINESS DRIVING CLEAN DEVELOPMENT

Climate change is an issue broader in both impact and cause than any environmental issue we have faced in the past. Previous environmental issues requiring significant changes on an international scale, such as the threat to the ozone layer addressed in the Montreal Protocol, have been more limited in scope.<sup>30</sup> The sources of global

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29. *See id.*

30. The Montreal Protocol on Substances that Deplete the Ozone Layer targets a very specific set of substances that are not, unlike some of the greenhouse gases addressed in the Kyoto Protocol, significant by-products of widespread human (and even natural) activity. *See* Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16 1987; *see also* Kyoto Protocol to the United Nations Framework Convention on

climate change implicate so many sectors, from heavy industry to agriculture, transportation, and deforestation, that the causes of the problem cannot be neatly selected and forced (or paid) to change. A significant part of the shift towards more climate friendly human behavior will have to be driven by finding ways to make “being green” refer to not just the color associated with things that are environmentally friendly, but also the color associated with money and profit. To achieve de-carbonization of the global economy, change has to be driven from within the particular markets themselves. In that spirit, I went to Durban looking for industry groups, trade associations, and development organizations that were stepping up with ideas on how they can be part of the solution.

I will focus on a few particular organizations: the United Nations Industrial Development Organization (“UNIDO”), the International Chamber of Commerce (“ICC”), and the World Business Council for Sustainable Development (“WBCSD”). Other similar organizations were present at COP-17, including the European Investment Bank, the International Civil Aviation Organization, and a group representing several significant Japanese industries.<sup>31</sup>

UNIDO is focused on developing countries and economies in transition.<sup>32</sup> It is estimated that developing countries will surpass the developed countries in greenhouse gas emissions in 2015.<sup>33</sup> Access to energy is important to both industrial and social development, and to best serve this need, UNIDO has developed an “Energy Programme.”<sup>34</sup> The Energy Programme aims to serve developing countries and countries with economies in transition by helping them “reduc[e] industrial energy intensity,” “promot[e] renewable energy technologies for industrial applications,” and “[i]ncrease the viability of their enterprises. . . by increasing the availability of modern energy. . . .”<sup>35</sup> UNIDO has recognized the threat to the climate posed by the rise of the developing world and has chosen to address this threat in a mutually beneficial

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Climate Change, Dec. 10, 1997, 37 I.L.M. 32.

31. COP-17 consisted of two major parts: the negotiations and the side events. The side events are an opportunity for various groups to make presentations and set up booths to disseminate their messages. A full side event schedule is available here: [http://regserver.unfccc.int/seors/reports/archive.html?session\\_id=COP17/CMP7](http://regserver.unfccc.int/seors/reports/archive.html?session_id=COP17/CMP7).

32. U.N. INDUSTRIAL DEV. ORG., ENERGY AND CLIMATE CHANGE: GREENING THE INDUSTRIAL AGENDA 1 (2011) [hereinafter ENERGY AND CLIMATE CHANGE].

33. U.S. Envtl. Prot. Agency, *Global Greenhouse Gas Data*, <http://www.epa.gov/climatechange/emissions/globalghg.html> (last updated Apr. 15, 2011).

34. ENERGY AND CLIMATE CHANGE, *supra* note 32, at 1–3.

35. *Id.* at 3.



way—by assisting developing countries with energy development in a manner that encourages such development to occur with minimal carbon intensity.<sup>36</sup> UNIDO is focused not only on making developing industries more efficient, but doing so “without compromising economic growth.”<sup>37</sup>

UNIDO has developed a two-pronged approach to achieving its goal of encouraging low-carbon development: improving energy efficiency and promoting renewable energy. In addition to being “one of the most cost-effective measures to loosen the link between economic growth and environmental degradation,” the benefit of low-carbon development is magnified in developing countries that experience energy supply constraints.<sup>38</sup> Where a nation is developing both its industries and its power grid, helping to build more efficient industries promotes cost saving in industry and infrastructure by reducing the total energy capacity that must be developed.

The second prong of UNIDO’s approach is promoting renewable energy production, both on and off the grid.<sup>39</sup> The on-grid renewable energy push has a goal similar to that of renewable energy expansion in developed countries: diversify energy sources and minimize impacts on the environment.<sup>40</sup> The decentralized nature of renewable energy is a benefit to developing countries in particular because renewable energy technologies can be deployed on a micro-scale, providing access to electricity in rural areas without the cost of expanding the main electricity grid.<sup>41</sup> UNIDO’s projects include wind, small hydropower, biofuels, and solar projects,<sup>42</sup> all of which can be deployed in small scales in rural areas with the aim of creating positive impacts in rural communities in a clean and sustainable manner.<sup>43</sup> UNIDO works to achieve these goals by using a project based approach,<sup>44</sup> as well as by establishing and collaborating with a number of energy technology centers aimed not only at transferring technology and educating potential users, but also at understanding local needs so proper technologies are employed.<sup>45</sup>

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36. *Id.* at 3.

37. U.N. INDUSTRIAL DEV. ORG., UNIDO AND ENERGY EFFICIENCY: A LOW-CARBON PATH TO ENHANCED INDUSTRIAL COMPETITIVENESS 4 (2011).

38. ENERGY AND CLIMATE CHANGE, *supra* note 32, at 4.

39. U.N. INDUSTRIAL DEV. ORG., UNIDO AND RENEWABLE ENERGY: GREENING THE INDUSTRIAL AGENDA 6 (2011).

40. *See id.*

41. *Id.* at 3.

42. *Id.* at 10.

43. *See id.* at 19.

44. For examples, *see id.* at 11–19.

45. *Id.* at 23.

UNIDO is really a first step away from the model of altruistic donors and helpless recipients in that it is aimed at creating environmentally friendly economic prosperity that will one day become self-sustaining.

A second group, the ICC, approaches the issue from the standpoint of existing businesses and advocating ways that business can be "Part of the Solution."<sup>46</sup> The ICC argues that business is the main driver of change, and government's role in the process is to provide the legal and policy infrastructures that allow business to progress towards a green economy.<sup>47</sup>

The ICC takes the approach that any movement must balance environmental responsibility and social development with commercial viability.<sup>48</sup> To achieve this goal, the ICC promotes two policies aimed at spreading environmentally friendly technologies: reducing or eliminating trade barriers, specifically for environmentally friendly goods and services, and "ensur[ing] strong protection of intellectual property rights."<sup>49</sup> The ICC recognizes that one significant mechanism of creating a broad adoption of environmentally friendly products is through commerce. Such commerce, the ICC argues, requires policies that reduce or eliminate trade barriers. Even without trade barriers, companies that develop environmentally friendly technologies and products are more likely to export them to countries where the intellectual property ("IP") embodied in those products is protected.

The ICC recognizes that government, academic, and nonprofit research organizations contribute to clean technology, but also argues that "[b]usiness is the primary source of innovation and a critical actor in the development, demonstration, commercialization and dissemination of technology."<sup>50</sup> The ICC advocates policies that provide business with the fuel to drive the engine of innovation, specifically policies that facilitate the transfer of technologies developed through public and academic research to the private sector where it can be commercialized, and policies aimed at creating strong IP rights in countries where products

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46. INT'L CHAMBER OF COMMERCE COMM'N ON ENV'T AND ENERGY, TRADE AND CLIMATE CHANGE (2011) [hereinafter ICC TRADE AND CLIMATE CHANGE].

47. INT'L CHAMBER OF COMMERCE COMM'N ON ENV'T AND ENERGY, THE ICC TASK FORCE ON GREEN ECONOMY, *available at* <http://www.iccwbo.org/uploadedFiles/ICC-Green%20Economy-task-force-factsheet-july2011.pdf>.

48. *Id.*

49. ICC TRADE AND CLIMATE CHANGE, *supra* note 46.

50. INT'L CHAMBER OF COMMERCE COMM'N ON ENV'T AND ENERGY, TECHNOLOGY DEVELOPMENT AND DEPLOYMENT TO ADDRESS CLIMATE CHANGE, *available at* [http://www.iccwbo.org/uploadedFiles/ICC/policy/environment/COP15/Technology\\_development.pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/environment/COP15/Technology_development.pdf).

and technologies will be disseminated.<sup>51</sup> The ICC believes that strong IP protection encourages investment in innovation and the dissemination of clean technologies that otherwise would not be developed or would be developed but not spread to countries with weak IP protection.<sup>52</sup> Other organizations are also advocating for policies that will encourage more environmentally friendly practices. One such organization is the WBCSD, an organization whose membership consists of approximately 200 businesses around the world, including BMW Group, Deutsche Bank, Siemens, Tokyo Electric Power Company, Honda Motor Company, Toyota Motor Corp., 3M, Accenture, Alcoa, Duke Energy, IBM, Caterpillar, PepsiCo, the Coca-Cola Company, and the New York Times.<sup>53</sup> The WBCSD argues for market mechanisms to change the way companies do business.<sup>54</sup> The WBCSD advocates for increased energy and resource use efficiency,<sup>55</sup> with the primary policy driver being the internalization of externalities.<sup>56</sup> By putting a price tag on environmental externalities, such as carbon emissions, the WBCSD believes there will be a consumer driven push towards more sustainable products and services.<sup>57</sup> The WBCSD supports a carbon tax,<sup>58</sup> but the mechanisms that the WBCSD proposes are not particularly critical here. What is noteworthy is that an organization with the WBCSD's membership profile is proposing, rather than fighting, a plan that would likely increase the cost of doing business in many industries.

The reason I sought out organizations like the WBCSD was because I felt that their presence at a conference like COP-17 would be a bellwether for a shift in the approach of the business world toward climate change policy. The rhetoric has often been that environmental

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51. *Id.*

52. INT'L CHAMBER OF COMMERCE COMM'N ON ENV'T AND ENERGY, INTELLECTUAL PROPERTY AND CLIMATE CHANGE, *available at* [http://www.iccwbo.org/uploadedFiles/ICC/policy/environment/COP15/IP\\_and\\_climate\\_change.pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/environment/COP15/IP_and_climate_change.pdf).

53. World Bus. Council on Sustainable Dev., *Membership*, <http://www.wbcSD.org/about/members.aspx> (last visited Apr. 5, 2012).

54. WORLD BUS. COUNCIL ON SUSTAINABLE DEV., CARBON PRICING: THE ROLE OF A CARBON PRICE AS A CLIMATE CHANGE POLICY INSTRUMENT (2011) [hereinafter CARBON PRICING].

55. *See* WORLD BUS. COUNCIL ON SUSTAINABLE DEV., INTEGRATING ENERGY EFFICIENCY ACROSS THE POWER SECTOR VALUE CHAIN (2011); *see also* WORLD BUS. COUNCIL ON SUSTAINABLE DEV., THE SUSTAINABLE FOREST PRODUCTS INDUSTRY, CARBON AND CLIMATE CHANGE, (3d ed. 2011).

56. *See* CARBON PRICING, *supra* note 54, at 1.

57. *Id.*

58. *Id.*

policies are anti-business,<sup>59</sup> and as a result of this rhetoric, some businesses have fought against environmental policies.<sup>60</sup> The shift in thinking by the business community, or at least some important players in it, from fighting environmentally friendly policies to helping to shape them is an important and positive sign.

Why are all of these companies and organizations doing this? The reality is that while there are people in the world motivated by good intentions and altruism, the significant changes in the world have often been driven by business interests. The organizations that stay ahead of the curve by setting the curve are the ones that will be successful in the future. Some organizations may believe that it is more effective to obstruct change from the inside rather than fight from the outside. Others may get involved just to stay informed. Still others may believe that a green revolution is coming and that they are more likely to survive the revolution if they are leading it. Cynical and self-serving or not, the participation of for-profit enterprises and the organizations that represent and lobby for them is necessary to achieve the lofty ideals set out by academics and altruists.

### III. AN ON-THE-GROUND VIEW: CARBON OFFSETS AND WOMEN IN REDD

The Seventeenth Conference of the Parties to the United Nations Framework Convention on Climate Change was intended to provide an opportunity for the Parties to come together and map out a future for global carbon reduction efforts post-Kyoto Protocol. COP-17 also presented an occasion for experts in various fields related to climate change reduction efforts to discuss what progress had been made and what issues still need to be—or ought to be—addressed. One issue that took a prominent place in the discussions was the role of women, and the promotion of women's rights, in the development of Reduced Emissions from Avoided Deforestation and Forest Degradation ("REDD") projects.

The idea behind the inclusion of women in REDD projects is to

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59. This has become a popular refrain in the current race for the 2012 Republican presidential nomination in the United States. See John M. Broder & Kate Galbraith, *E.P.A. is Longtime Favorite Target for Perry*, N.Y. TIMES, Sept. 29, 2011, available at <http://www.nytimes.com/2011/09/30/us/politics/epa-is-perrys-favorite-target.html>.

60. For one example, see the American Petroleum Institute's response to proposed environmental regulation: Suzanne Goldenberg, *Oil Lobby to Fund Campaign Against Obama's Climate Change Strategy*, THE GUARDIAN, Aug. 14, 2009, <http://www.guardian.co.uk/environment/2009/aug/14/us-lobbying> (last visited Apr. 5, 2012).

further the dual goals of reducing global carbon emissions and promoting gender equality through a single incentivizing scheme, namely the financing and development of local REDD projects. However, aligning theory with reality has proved challenging, and the myriad of issues involved in achieving these two goals may be beyond the scope of REDD as it currently exists.

REDD projects are appealing because they place a value on standing forests, thereby incentivizing their protection and sustainable management. Currently about eighteen percent of the world's anthropogenic carbon emissions are caused by deforestation and forest degradation.<sup>61</sup> This accounts for more carbon emissions than the entire global transportation sector, and is second only to those emitted by the global energy sector.<sup>62</sup> Thus, changing the perception of the value of standing forests is crucial to the effort to curtail the impacts of global climate change.<sup>63</sup> By placing a monetary value on the carbon stored in trees, and thereby providing a financial incentive for the protection of the forests, developing nations are encouraged to pursue "low-carbon paths" toward sustainable development.<sup>64</sup>

These projects, however, face challenges.<sup>65</sup> Concerns related to the implementation of these projects range from fear of government land grabs to the disenfranchisement of indigenous and marginalized groups.<sup>66</sup> The worry is that by placing a monetary value on trees, governments will displace these populations from their homes in order to protect the trees.<sup>67</sup> Furthermore, in countries where the decentralization of land ownership has only recently begun to be achieved, there are concerns that the government will attempt to re-centralize land ownership by sharply restricting property rights and land usage.<sup>68</sup>

There has also been debate over how best to measure and monitor forest carbon in order to accurately assess the reductions achieved

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61. VIVIENNE HOLLOWAY & ESTEBAN GIANDOMENICO, CARBON PLANET, THE HISTORY OF REDD POLICY 3 (2009), available at [http://unfccc.int/files/methods\\_science/redd/application/pdf/the\\_history\\_of\\_redd\\_carbon\\_planet.pdf](http://unfccc.int/files/methods_science/redd/application/pdf/the_history_of_redd_carbon_planet.pdf).

62. U.N. Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries ("UN-REDD Programme"), *About REDD+*, <http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx> (last visited Apr. 21, 2012).

63. *Id.*

64. *Id.*

65. See U. N. Univ. Inst. of Advanced Studies, *REDD Bulletin*, [http://www.unutki.org/default.php?doc\\_id=163](http://www.unutki.org/default.php?doc_id=163) (last visited Apr. 5, 2012).

66. *Id.*

67. *Id.*

68. *Id.*

through these projects.<sup>69</sup> The question of whether the reductions ought to be measured on a national or sub-national level has been subject to debate, leaving the issues of accounting and monitoring unresolved.<sup>70</sup> Further concerns relate to the possible infringement on national sovereignty by nongovernmental entities working at a sub-national level to develop REDD projects in local communities.<sup>71</sup> Other areas of concern include certain governments' lack of sovereign control over the forests within their borders.<sup>72</sup> This phenomena poses problems for the adoption and inclusion of REDD in a global climate change agreement.<sup>73</sup>

Women's rights come into play in the REDD discussions with the proposition that safeguards ought to be created to ensure that women are included in all levels of the REDD decision-making and implementation process.<sup>74</sup> Women account for about seventy percent of the world's population living in poverty and provide close to ninety percent of the food supply within forest dependent communities.<sup>75</sup> These women depend on the forests for fuel, food, and medicines, and in many communities, they are the ones in possession of the traditional knowledge related to the forest resources. Despite this, many of these women do not possess any ownership rights over the land they use.<sup>76</sup> Rather, the men in these communities are the landowners; women only have the right to access and utilize the land for food, fuel, and other forest resources.<sup>77</sup> Thus, women are generally excluded from the decision-making processes related to forest management and dispensation, even though women rely heavily on, and more frequently

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69. Arild Angelsen, et al., *What is the right scale for REDD? The Implications of National, Subnational, and Nested Approaches*, CIFOR INFOBRIEFS, Nov. 2008, available at [http://unfccc.int/files/methods\\_science/redd/application/pdf/what\\_is\\_the\\_right\\_scale\\_for\\_redd.pdf](http://unfccc.int/files/methods_science/redd/application/pdf/what_is_the_right_scale_for_redd.pdf).

70. *Id.*

71. Luca Tacconi, et. al., *Anti-Corruption Policies in the Forest Sector and REDD+*, in REALISING REDD+, NATIONAL STRATEGY AND POLICY OPTIONS 163, 166, available at [http://www.cifor.org/publications/pdf\\_files/Books/BAngelsen0902.pdf](http://www.cifor.org/publications/pdf_files/Books/BAngelsen0902.pdf).

72. CRYSTAL DAVIS, WORLD RES. INST., GOVERNANCE IN REDD+: TAKING STOCK OF GOVERNANCE ISSUES RAISED IN READINESS PROPOSALS SUBMITTED TO THE FCPF AND THE UN-REDD PROGRAMME 5 (2010), available at <http://www.fao.org/climatechange/21145-091981d43d2eb7409b8a710e700c6571.pdf>.

73. *Id.*

74. Int'l Union for Conservation of Nature, Statement: Women in REDD Critical for Climate Action (Dec. 2, 2010), <http://www.iucn.org/?6573/Women-in-REDD-critical-for-climate-action>.

75. *Id.*

76. *Id.*

77. *Id.*

use, the forest's resources.<sup>78</sup>

By involving women in the decision-making process, and by vesting women with control over parts of the forests involved, the role of women in rural communities could be changed and improved.<sup>79</sup> By granting some form of property rights over the forests to the women who rely upon the forest resources, the dual goals of the sustainable management of the forests and the enfranchising of women would likely be more feasible.<sup>80</sup> Taking a page from the success of micro-finance schemes, where women were given access to farm animals, capital, and/or land—and were able to utilize those materials to turn a profit and provide for their families—those promoting the inclusion of women in REDD projects hope to see a similar positive and productive result from the inclusion of women in the forestry sector.<sup>81</sup>

In order to further this goal of involving more women, forestry courses have been established in countries such as Nepal and Indonesia, which are intended to educate women about sustainable forest management practices.<sup>82</sup> These women, in turn, are able to return to their communities and share what they have learned in order to further promote sustainable agricultural and forestry practices.<sup>83</sup> This knowledge will hopefully empower these women within their communities and improve gender equality.<sup>84</sup>

The inclusion of women in REDD is most certainly an admirable goal, and it would serve to make a large difference socially as well as environmentally. However, the challenges facing this inclusion remain significant. One area where issues arise is in oversight: how can measures providing for the inclusion of women in REDD projects be enforced in a meaningful way? As of now, there is no overarching international legal framework dictating how REDD projects ought to be implemented or providing guidelines for the inclusion of marginalized groups.<sup>85</sup> Nor is there an overarching international oversight system in place to ensure that any safeguards that might be built into a specific

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78. *Id.*

79. See Kathleen Rutherford, *The Business Case for Mainstreaming Gender in REDD+*, UN-REDD PROGRAMME (Dec. 2011), available at [http://www.un-redd.org/Newsletter25/Mainstreaming\\_Gender\\_in\\_REDD/tabid/78573/Default.aspx](http://www.un-redd.org/Newsletter25/Mainstreaming_Gender_in_REDD/tabid/78573/Default.aspx).

80. *Id.* at 27–28.

81. See *id.* at 29.

82. *Gender and REDD+*, REDD-NET BULLETIN ASIA-PACIFIC 6 (May 2011), available at [http://www.recoftc.org/site/uploads/content/pdf/REDDNet04\\_141.pdf](http://www.recoftc.org/site/uploads/content/pdf/REDDNet04_141.pdf).

83. *Id.*

84. *Id.*

85. See UN-REDD PROGRAMME, BACKGROUND ANALYSIS OF REDD REGULATORY FRAMEWORKS, 1.

REDD project would be enforced.<sup>86</sup> For example, one project might require that a specific number of women be present at all decision-making meetings, but without some sort of effective oversight system, it would be impossible to ensure that those women actually played an active role in the process and were not simply present for the purposes of meeting that specific requirement. Moreover, the nature of REDD projects, controlling large tracts of forests, makes the inclusion of women more challenging than in the micro-finance scenario. The transfer of property ownership to women would require a major shift in perspective and tradition for many of these rural communities, a shift that some might oppose.

The potential that REDD projects provide for changing the relationship between forest dependent communities and their natural resources, is heartening. By incentivizing the conservation of standing forests, carbon emissions from deforestation and forest degradation could be drastically cut, and the process of desertification and land degradation could be slowed, or even halted.<sup>87</sup> REDD projects are not without their flaws, however, and the resolution of concerns relating to the effective implementation of REDD projects will be vital to their inclusion in a comprehensive international agreement. Moreover, the opportunity to utilize REDD projects in order to further improve gender equality in developing nations is great, but determining how to do so effectively will be crucial to the success of REDD on both an environmental and social level.

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86. *See id.*

87. *See About REDD+, supra* note 62.