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**SHRI DHARMASTHALA MANJUNATHESHWARA  
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# Legal Opus

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# LEGAL OPUS

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# INTERNATIONAL REGIME RELEVANT TO CLIMATE CHANGE AND RENEWABLE ENERGY

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## Abstract

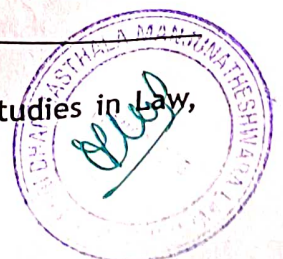
*Climate change affects not only individuals but all living organisms on earth, while energy is an essential commodity indispensable to life and industrial activities. Improving energy security and reducing climate change issues are the two greatest challenges faced by nations across the globe. Unfortunately, the supply and use of energy is the greatest contributor to global warming. A massive transformation of the world's energy system is the need of the day. The problems of energy security, climate change, and other environmental concerns have grabbed the attention of international agencies towards renewable energy development. The UNO and other agencies have adopted several initiatives to reduce the emission of greenhouse gases. However, the success of this initiative depends upon international cooperation and coordination as not much attention has been directed towards these so-called 'Soft Laws' by member countries. This paper highlights the role of international organisations in setting the agenda and serving as catalysts for the development of renewable energy.*

## Introduction

The development of a nation is dependent on adequate and continuous supply of energy sources. Energy is very important for every human being and it is the lifeline of economic development. The demand for energy is increasing and the supply of clean energy is lagging behind. Most of the countries in the world face the same problem due to onerous environmental regulations and the lack of technologies in renewable energy sector. Supply of clean and renewable energy is very essential for the development of a nation since every developing country is in need of continuous supply of energy for its industry and transport sector. Thus, India has its own obligation to protect the environment. So shifting towards renewable energy is inevitable.

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### Energy Security v/s Climate Change

Climate change affects not only individuals but all living organisms on earth, while energy is an essential commodity indispensable to life and industrial activities. Improving energy security and reducing climate change issues are the two greatest challenges faced by nations worldwide. Climate change will become a grave risk to the whole of humanity if not tackled since it is not the problem of one or two nations. Unfortunately, the supply and use of energy is the greatest contributor to global warming and climate change. A massive transformation of the world's energy system is the need of the day. The demand for fossil fuels is high and nations are struggling to meet the energy requirements of its citizens. There is no doubt that the supply of clean energy like wind and solar power is growing, but it is not sufficient to replace the fossil fuels.

The word energy security is based on three pillars, that is, availability, continuity, and affordability. It means that a consumer must have access to uninterrupted supply of energy for a reasonable price. Countries with limited energy resources have deployed different strategies to reduce their energy scarcity. The promotion of producing of renewable or sustainable energy is one of such strategy.

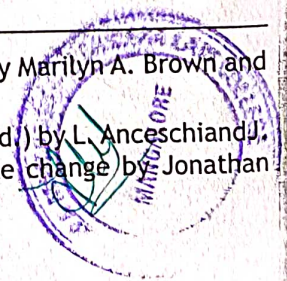
The destabilisation of the world's climate, driven by continuous emission of greenhouse gases (GHG), has the potential to exacerbate food and water shortages, advance the spread of infectious diseases, induce mass migration, damage trillions of dollars of property, and precipitate extreme weather event, which could lead to increased conflict worldwide.<sup>3</sup>

The energy security challenges and climate change have global dimensions, and the global institutions regulating and governing energy are relatively underdeveloped. It is viewed that energy security policies are national policies to safeguard national economic development. However, during the 20<sup>th</sup> and 21<sup>st</sup> century, the threat posed by global warming and climate change has alarmed the nations to take initiatives to transform the world's energy system. Since the energy sector is responsible for approximately 57% of the global GHG emissions, and estimates indicate that if warming in excess of 2°C is to be avoided, global emissions need to be reduced by 60-80% before 2050 and the linkage between these two issue areas are tight.<sup>4</sup>

The problem of energy security, climate change, and other environmental concerns has grabbed the attention of international agencies towards renewable energy development. Renewable energy is the potential solution towards climate change and energy security mitigation.

<sup>3</sup> Climate change and global energy security- Technology and policy options by Marilyn A. Brown and Benjamin K. Sovacool (the MIT Press, Cambridge, London, 2011), p.8.

<sup>4</sup> Energy security in the era of climate change: The Asia specific experience (Ed.) by L. Anceschi and J. Symons (Introduction- Challenges to energy security in the era of climate change by Jonathan Symons) (Springer publication).





## International Regimes Relevant to Climate Change

### History of Earth Summit

The UNO showed its concern towards environment protection during the 1970s and there were many regional environmental agreements in 1972. The first UN conference on human environment was organised at Stockholm in Sweden, which was attended by 113 delegates (including two heads of states). In this conference, the member countries secured a permanent place for the environment on the world's agenda and established a United Nations Environment Programme (UNEP).<sup>5</sup>

In 1983, UN General Assembly appointed a World Commission on Environment and Development known as the Brundtland Commission. This commission presented its report called the "Our Common Future" wherein the term 'sustainable development' was used to ensure that any economic development should not endanger the ability of future generations to enjoy the fruits of the earth.<sup>6</sup>

On the 20<sup>th</sup> anniversary of the Stockholm Conference on human environment, representatives from 178 nations, NGOs, and other interested parties met in Rio de Janeiro to discuss global environmental issues. It was named as the UN Conference on Environment and Development (UNCED) and in short is known as the 'Earth Summit'. The member countries agreed to reconcile their economic activities with the protection of the planet or earth for future generation. Although nonbinding, the principles of the Rio Conference, that is, the principle of "common but differentiated responsibilities" and common "Heritage of mankind" were formulated in strong legal terms.<sup>7</sup> The principle recognised historical differences in the contribution of developed and developing states to global environmental problems, and differences in their respective economic and technical capacity to tackle these problems. Despite their common responsibilities, important differences existed between the stated responsibilities of developed and developing countries.<sup>8</sup> The Rio Declaration stated, "In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command".<sup>9</sup> A similar provision was adopted in the Framework Convention on Climate Change, which stated that "parties should act to protect the climate system on the basis of equality and in

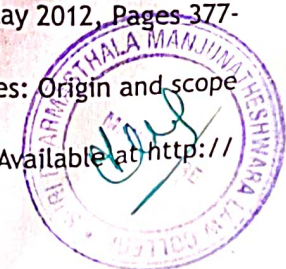
<sup>5</sup> It is a global environment authority with headquarters in Nairobi, Kenya.

<sup>6</sup> "The Rio Earth Summit"-Summary of UN Conference on Environment and Development by Stephanie Meakin available at [www.publications.gc.ca](http://www.publications.gc.ca)

<sup>7</sup> Sustainable Development in International Law : Nature and Operation of an Elaborative legal norms by VirginiesBarrlis (European Journal of International Law, Vol.23, Issue2, 1 May 2012, Pages 377-400' available at <https://doi.org/10.1093/ejil/chs016>

<sup>8</sup> A CISDL Legal Brief- The Principle of common but differentiated responsibilities: Origin and scope available at [http://cisdl.org/public/docs/news/brief\\_common.pdf](http://cisdl.org/public/docs/news/brief_common.pdf)

<sup>9</sup> Principle 7 of The Rio-Declaration on Environment and Development (1992). Available at [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF)





accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof".<sup>10</sup>

In 1997, the UN General Assembly affirmed that environmental protection, economic development, and social development were three interdependent dimensions of sustainable development.<sup>11</sup>

### United Nations Framework on Climate Change

It was an integrated treaty signed during the Rio Earth Summit (i.e., UN Conference on Environment and Development) and came in to force from 1994 onwards. The main objective of this conference was to agree for stricter actions for reducing greenhouse gas emissions. In support of this, a protocol named the Kyoto Protocol was adopted unanimously in 1997. Its main feature was that it set mandatory targets on greenhouse gas emissions for the world's heading economics, and which were accepted.<sup>12</sup>

There was, however, no explicit role assigned to renewable energy in the UNFCCC text for lacking climate change; rather, renewable was referred to only in the development policy context of the agreement.<sup>13</sup> The ultimate objective of the UNFCCC was to reduce climate change and support sustainable development. The state parties were required to take necessary measures to transfer to environmentally sound technology. In this process, promoting renewable energy sources was inevitable to achieve sustainable economic development.

### Kyoto Protocol and Energy Laws

The Kyoto Protocol recognised the evil effect of greenhouse gases, and committed to reduce GHG emissions through commitment periods of which the first committed year was from 2008 to 2017. In 2012, the "Doha Amendments" to the Kyoto Protocol was adopted with minor changes and the second commitment period from 2013 to 2020 was adopted. In the first commitment period, 37 industrialised countries and the EU community committed to reduce GHG emissions to encourage of 5% against 1990 levels.<sup>14</sup>

During the second period, the parties agreed to reduce GHG emission by at least 18% of the 1990 level, even though the Kyoto Protocol required the parties to do strict monitoring. It offered flexibility muting their targets. To help in achieving these targets, there were three flexible mechanisms recognised by the Kyoto Protocol International Emission Trading (IET), joint implementation (JI) the Clean

<sup>10</sup> Article 3(1) of UNFCCC available at [http://unfccc.int/files/essential\\_background/convention/background](http://unfccc.int/files/essential_background/convention/background)

<sup>11</sup> *ibid*

<sup>12</sup> Available at [www.unfccc.int/kyoto\\_protocol/background](http://www.unfccc.int/kyoto_protocol/background)

<sup>13</sup> Renewable Energy in East Asia: Towards a new Developmentalism by Christopher M. Dent, Routledge Publication, 2014.

<sup>14</sup> Available [www.unfccc.int/kyoto\\_protocol/items/2830.php](http://www.unfccc.int/kyoto_protocol/items/2830.php)





Development Mechanism (CDM). According to Article 12, the CDM was introduced to meet two objectives:

- ❖ To assist parties, who had not adopted any commitment achieve sustainable development, and
- ❖ To assist the parties adopt commitment to achieve their targets.<sup>15</sup>

A broad range of projects were eligible for CDM accreditation varying from hydropower and wind energy projects to fuel switching and industrial efficiency improvement. The CDM method, i.e., energy efficiency and use of renewable energy became a more successful, flexible mechanism of the Kyoto Protocol. Critics consider the Kyoto Protocol as a big hypocrisy, because no country that ratified it would be able to meet its target levels of emission-reduction during the first commitment period. However, the protocol did lay the base for a future strategy by increasing global awareness of the issue, stimulating research into the area of global warming, and providing incentive for the development of science and technology to help curb emissions.<sup>16</sup>

### International Regime Relevant to Renewable Energy

The promotion of renewable energy is very important to reduce GHG, and thereby meet the Kyoto Protocol goals to reduce climate change and to build a strong sustainable energy system at the global level. It was also a solution for the global energy crisis.

To achieve the UN goals to reduce carbon emissions and to promote the use of renewable energy sources, international legal rules and standards must be in place.<sup>17</sup> To these ends, governments, intra-governments, and non-governmental organisations play a very significant role in the formulation and implementation of international regulations that ultimately lead to sustainable production and consumption of energy.<sup>18</sup> But there is lack of definite and binding obligations on the part of member countries. The treaties are adopted as 'soft law' principles and it led into the adoption of international customary rule like principles of Permanent Sovereignty over Natural Resources<sup>19</sup>. The sovereignty over natural resources must be exercised in the interest of each countries natural development and wellbeing of the entire environment.

Today, all over the world many people lack access to energy and many depend upon non-renewable energy. In some industrial countries, there is no shortage of energy. However, inefficient and careless production and use of energy has led to the depletion of the environment and climate change problem, which will worsen the condition of

<sup>15</sup> Article 12 of Kyoto Protocol. Available at [www.unfccc.int/kyoto](http://www.unfccc.int/kyoto)  
<sup>16</sup> <https://www.mtholyoke.edu/~danov20d/site/challenges.htm>  
<sup>17</sup> Renewable energy: A common Concern of the International Community by MehrdadMohamade available at <http://nexgenenvironmentallaw.wordpress.com>  
<sup>18</sup> Ibid.  
<sup>19</sup> General Assembly Resolution 1803(XVII) adopted on 14 Dec 1962 at New York by 87 votes in favour and 2 against and 12 abstention. Available at [www.legal.un.org/avl/ha/ga\\_1803.html](http://www.legal.un.org/avl/ha/ga_1803.html)





poor people. The solution for this challenge is the promotion of sustainable energy at the global level. The United Nations Organisation has adopted several developmental programmes, and sustainable energy for all is one such attempt.

The Sustainable Energy for All initiative is a multi-stakeholder partnership between governments, the private sector, and the civil society.<sup>20</sup>

It has three interlinked objectives to be achieved by 2030:

1. Ensure universal access to modern energy services;
2. Double the global rate of improvement in energy efficiency; and
3. Double the share of renewable energy in the global energy mix.

These objectives are complementary. Progress in achieving one can help with progress toward the others. The Sustainable Energy for All initiative also acts in support of the 2014-2024 Decade of Sustainable Energy for All as declared by the UN General Assembly.<sup>21</sup> The success of this initiative depends upon international cooperation and coordination. But, unfortunately, there is not much attention towards these so-called 'Soft Laws' by the member countries. Since the promotion of renewable energy is costlier and the technology relating to renewable energy is in the developmental stage, member countries, especially developing countries, are facing difficulties in adopting renewable energy.

The International Renewable Energy Agency (IRENA)<sup>22</sup> is an intergovernmental organisation that supports countries in their transition to a sustainable energy future, and serves as the principal platform for international cooperation, a centre of excellence, and a repository of policy, technology, resource and financial knowledge on renewable energy.<sup>23</sup> IRENA promotes the widespread adoption and sustainable use of all forms of renewable energy, including bio-energy, geothermal, hydropower, ocean, and solar and wind energy in the pursuit of sustainable development, energy access, energy security and low-carbon economic growth, and prosperity.<sup>24</sup>

There are several organisations or initiatives that share IRENA's aim to promote the use of renewable energy<sup>25</sup> such as the International Energy Agency (IEA),<sup>26</sup> the United Nations Environment Programme (UNEP),<sup>27</sup> the United Nations Development Programme (UNDP),<sup>28</sup> the United Nations Industrial Development Organisation (UNIDO), etc.

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<sup>20</sup> Launched by the UN Secretary-General in 2011  
<sup>21</sup> <http://www.un.org/millenniumgoals/pdf/SEFA.pdf>  
<sup>22</sup> It was founded in 2009 and its statute entered into force on 8 July 2010. The agency is headquartered in Abu Dhabi  
<sup>23</sup> <http://www.irena.org/aboutirena>  
<sup>24</sup> Ibid.  
<sup>25</sup> <http://webcache.googleusercontent.com/search?q=cache:http://www.astridonline.it/static/upload/protected>  
<sup>26</sup> autonomous intergovernmental organization established in 1974  
<sup>27</sup> Supra  
<sup>28</sup> The United Nations Development Programme (UNDP) is the United Nations global development network formed in 1965.





**International Energy Agency** is a Paris-based autonomous intergovernmental organisation established in the framework of the Organisation for Economic Co-operation and Development (OECD) in 1974, in the wake of the 1973 oil crisis. The IEA provides authoritative, unbiased research, and analysis which focuses on:<sup>29</sup>

**Energy security:** Promoting diversity, efficiency, and flexibility within all energy sectors and ensuring the stable supply of energy to IEA member countries;

**Economic development:** Promoting free markets and energy sector investment to foster economic growth and eliminate energy poverty; and

**Environmental awareness:** Enhancing international knowledge of options for tackling climate change.

**United Nations Development Programme**-Within its work on renewable energy, the UNDP supports the development of on- and off-grid renewable energy technologies and delivery services. In doing so, it supports governments to transform their renewable energy markets and identify and implement policies that catalyse investment in renewable energy technologies. All renewable energy solutions, supported by UNDP, focus on integrated approach that benefits climate change and development. The UNDP's integrated approach and focus on zero-carbon, risk-informed, and sustainable development means that renewable energy is the core element in other development areas, including achieving climate targets, reducing disaster risks (associated with rising temperatures), and building back better following a disaster event.<sup>30</sup>

**Challenges for International Energy Law**

An effective enforcement mechanism is very important to achieve the goals of reducing climate change mitigation and global warming. If there were no threat of sanctions for non-compliance then it would only be in very rare instances that countries actually fulfilled their obligations under any regime.<sup>31</sup>

The views of developed countries and developing countries are not the same, and in terms of economic development, the developing countries are not ready to accept new challenges. Some developing countries that are forced to limit their fossil fuels are not ready to use other clean energies that are readily accessible in developed countries and this creates a significant financial and economic pressure on the developing countries and their competition in free international market will be destroyed.<sup>32</sup>

The sovereignty over natural resources is recognised by customary international law with the obligation of not harming other nations. But whether the consequences of

<sup>29</sup> <https://www.jodidata.org/about-jodi/partners/iea.aspx>  
<sup>30</sup> <http://www.undp.org/content/undp/en/home/climate-and-disaster-resilience/sustainable-energy/renewable-energy.html>  
<sup>31</sup> A Successor For The Kyoto Protocol - Challenges and Options, by Nikhil R. Ullal available at <http://mccawlewis.co.nz/assets/PDF/Kyoto-Protocol-Dissertation.pdf>  
<sup>32</sup> The Kyoto Protocol and the Barriers towards its Proper Implementation by Hamed Hashemi <http://newjurist.com/the-kyoto-protocol-and-the-barriers-towards-its-properimplementation.htm>





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fossil fuel energy generation activities and high levels of GHG emissions and depletion of finite natural resources fall within the scope of environmental harm sufficient to trigger international responsibility remains an open question.<sup>33</sup> Is it possible to generate fossil fuel energy without harming the environment? Whether the sovereignty over fossil fuel concentrate is superior or obligation to protect the environment or reduce global warming is a debatable question.

Permanent sovereignty over natural resources originated in 1950s as a result of the insistence from newly independent developing countries, who had a concern that foreign corporations were the main beneficiaries of their natural resources. Thus, most of the countries do not allow an international organisation to make law on their sovereign resources.

The subsidies provided for fossil fuel is comparatively high to renewable energy sources. In recent years, fossil-fuel consumption subsidies have been reduced, but it remains much higher than the estimated government support to renewable energy in the form of subsidies for renewable in power generation sector.<sup>34</sup>

### Conclusion

Global warming and climate change are not only a matter of concern of one or two nations, but of the entire international community. From 1970s onwards, several international instruments have been incorporated in this regard. The current international conventions for multilateral action against climate change are the United Nations Framework Convention on Climate Change (UNFCCC) and its associated Kyoto Protocol. It includes firm commitments to curb emissions from developed countries, but does not include the United States, and has no meaningful consequences for noncompliance.<sup>35</sup> Thus, the international environmental laws should be interpreted in such a way that they should not work as a tool in favour of any nation, but should bring all countries together to incur responsibility towards environmental protection.<sup>36</sup>

The major contributor for climate change is the negligent use of non-renewable energies. So, increasing energy efficiency and the use of renewable energy is the best solution for these problems. Unfortunately, there is no international instrument, which exclusively deals with the promotion of the use of renewable energies. International

<sup>33</sup> International Law And Renewable Energy: Facilitating Sustainable Energy For All. International Law And Renewable Energy by Stuart Bruce [http://law.unimelb.edu.au/data/assets/pdf\\_file/0011/1687439/02Bruce1.pdf](http://law.unimelb.edu.au/data/assets/pdf_file/0011/1687439/02Bruce1.pdf)

<sup>34</sup> Commentary: Fossil-fuel consumption subsidies are down, but not out. Available at <https://www.iea.org/newsroom/news/2017/december/commentary-fossil-fuel-consumption-subsidies-are-down-but-not-out.html>

<sup>35</sup> The Global Climate Change Regime- Report By International Institutions and Global Governance Program available at <https://www.cfr.org/report/global-climate-change-regime>

<sup>36</sup> All Answers Ltd., 'The Mechanisms For Preventing Climate Change International Law: Essay' (Lawteacher.net, June 2018) <https://www.lawteacher.net/free-law-essays/international-law/the-mechanisms-for-preventing-climate-change-international-law-essay.php?vref=1> accessed 24 June 2018



organisations can play an important role in reducing global warming and promoting the use of renewable energy sources. However, the existing international laws and treaties do not address the promotion of renewable energy. Cooperation and coordination between nations are important to achieve these goals.

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