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# Exceptionalism as Foreign Policy: The Norm of Compliance and U.S. Climate Change Policy

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*Sic utere tuo ut alienum non laedas*: the duty to exercise one's rights in ways that do not harm the interests of other subjects of law

"The legislature's job is to write law. It's the executive branch's job to interpret law."  
- George W. Bush, Austin, TX, 11/22/00

## Introduction

Climate change is not only an environmental problem but a foreign policy problem, for the United States and indeed any country. Our best scientific knowledge about the effects of global warming predicts negative changes, from precipitation to agriculture to disease vectors. As such, it is axiomatic that nations would want to mitigate this phenomenon as early as possible. However, our current system of international law places no involuntary obligations, such as compliance with a climate mitigation treaty, on any state. In the past, if a state refused to become party to a treaty, this refusal was assumed to be without prejudice. Not anymore. Because the effects of greenhouse gases (GHGs) emitted anywhere are felt everywhere, efforts to mitigate climate change must be coordinated across all nations, lest any one nation have the incentive to free ride on the efforts of others. Unfortunately, that is exactly what the United States has done over the past decade with its repudiation of the Kyoto Protocol.

A new norm of compliance with agreements is becoming customary with regard to the global environmental commons, particularly in the case of climate change, and this norm is being driven by improving climate science. This chapter will examine the development of this norm of compliance, why the United States has failed to comply with it, and what are the consequences and implications of this norm for both international law and American foreign policy. However, two key assumptions must be stated at the outset. First, the intellectual concepts behind the creation of customary norms of international law are valid regardless of the application of those norms. In other words, states are expected to comply with existing laws and norms, even if there is currently no real-world forum for their adjudication. Second, for the practical purpose of this discussion, there is little if any operational difference between a nation that is not a party to a global environmental treaty and a party that is out of compliance with that same treaty.<sup>1</sup> In both cases, the desired end-state is that all nations are parties and that they comply with the treaty's terms.

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<sup>1</sup> Legally, there is a world of difference between the two. A nation out of compliance with a treaty to which it is a party is in breach, whereas a nation that has accepted no legal constraint in this matter can be said to be doing nothing wrong. However, scientifically, an out-of-compliance party and a non-party nation are equally responsible for furthering global warming by failing to reduce their GHG emissions. Hence, they are equally culpable for creating the international situation that gives rise to the emerging norm, and thus are equally problematic from the scientist's point of view.

## **I. Emergence of the Norm of Compliance**

Customary international law is perhaps the most vague of legal doctrines. A norm, custom or general principle that appears germane to the fundamental interests of the international community can be thorny or tenuous when implemented. With the international community itself not always able to agree upon or even identify its fundamental interests, these norms can seem like figures in the fog, indistinct and always moving. It is especially difficult to determine when a new norm has emerged from this fog. While the United States' repudiation of its signature on the Kyoto Protocol in 2001 was legal under the practice of traditional international law, this same practice is no longer sufficient in scope or in time to keep pace with the rapid advances in our scientific understanding of global environmental processes. Because every member of the international community can suffer significant harm from climate change, the presumption of compliance with restrictions on greenhouse gases (GHGs) is emerging as a customary norm of international law.

### A. Multilateral Environmental Agreements

The United States, in its attempts to bring global environmental problems into its foreign policy orbit, has relied in the past on the negotiation and ratification of multilateral environmental agreements (MEAs). These MEAs are designed to address transnational environmental problems such as long-range pollution, depletion of fisheries, and stratospheric ozone depletion. (For further information on specific environmental issues and relevant treaties, see [www.ecolex.org](http://www.ecolex.org).) In 1992, the United States ratified the UN Framework Convention on Climate Change (UNFCCC), which promoted "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Five years later, the United States negotiated specific mandatory reductions in GHG emissions in the first Protocol to the UNFCCC, called Kyoto after the city in which it was signed. Carrying further the idea of "common but differentiated responsibilities," the developed countries listed in Annex I of the UNFCCC (the "Annex I countries") were assigned targets based on the assumption that since the developed countries contributed the most to the climate problem with their historically high emissions levels, they would be the first ones to undertake emissions reductions. The developing countries, in light of their economic conditions and priorities, were not assigned specific targets and timetables in this Protocol. The United States signed Kyoto in 1997, but then-President Bill Clinton did not submit it to the Senate for ratification. In 2001, President George W. Bush repudiated the agreement, saying that Kyoto was "dead" and that the U.S. now had no intention of attempting to meet its assigned targets.

### B. Formation of custom

Customary international law is in operation when states both observe or practice a particular norm of behavior and subjectively believe that they have a legal obligation to do so. Custom is important in the evolution of international law because while treaties bind only the signatory states, customary norms bind all states (Charney 1993, 531). Although there is no precise definition of what constitutes state practice, the International Court of Justice has held that such a practice must be widespread and virtually uniform. It is not required that the practice be either traditional or completely consistent, but it is required that states who fail to practice the custom be regarded as guilty of violating a legal obligation of some sort (Hunter et al 2002, 311). What constitutes a legal obligation is a trickier matter to identify because it is extremely subjective: a state knows that the international community expects this behavior and the state itself recognizes

that this is something it ought to do; maybe it does not always comply, but it knows it should. A legal obligation can be identified by a wide range of evidence, including diplomatic correspondence, official policy statements, judicial decisions, UN resolutions and declarations, and so forth (*ibid*, 312). Such soft law can serve a number of useful purposes. It can change the political thinking on an issue, it can expand the circumstances in which an issue is considered, and it can cause public opinion to coalesce (Palmer 1992, 269). Palmer goes further to assign soft law and norm creation to the intersection of international law and international politics; in the climate change regime, this means the intersection of the Kyoto Protocol and anti-regime politicking by the United States.

Most custom is created over time, but as global climate change progresses, we may not have decades or centuries to wait for a new custom of environmental compliance to emerge. Fortunately, a long wait is not legally required. As precedent, the North Sea Continental Shelf case states that, “the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law” (North Sea Continental Shelf Case, at §74). This has been referred to as “instant custom,” a phenomenon which legal scholar Prosper Weil argues is not just acceleration of the custom-formation process, but is a revolution in the theory of custom because rules that have been accepted by a very large number of states are now instantly extended to all states, whether or not they agree (Weil 1983). Geoffrey Palmer, however, argues that this is exactly the evolution in the formation of custom that the international environmental arena needs (Palmer 1992, 277-278). The 1989 Hague Declaration on the Environment, promotes “the principle of developing ... new institutional authority ... which, in the context of the preservation of the earth’s atmosphere, shall be responsible for combating any further global warming ... and shall involve such decision-making procedures as may be effective even if, on occasion, unanimous agreement has not been achieved.” The import of this declaration is that decisions made by some states could now instantly be binding on all states. While this development may alarm traditional practitioners of international law, this is exactly where environmental law based upon ecological science takes us. Rules governing the global environmental commons, if rooted in rational science, become binding on all states because all states are *de facto* parties to the environment, whether or not they are *de jure* parties to a particular agreement.

Furthermore, our scientific knowledge about climate change and its causes and effects has increased considerably over a relatively short period of time. Before the Intergovernmental Panel on Climate Change (IPCC), most scientific pronouncements on climate had come from the Advisory Group on Greenhouse Gases, a small scientific body founded in 1985 under the auspices of WHO and UNEP. The larger IPCC was created in 1988 and the U.S. Global Change Research Program in 1990, and these international collaborations of scientists have made huge scientific strides in our ability to understand the causes and effects of climate change. Only four years elapsed between the formation of the IPCC and the signing of the Framework Convention, and only another five until binding emissions reductions were negotiated. As environmental science moves quickly, environmental law, especially soft law in the form of custom, must keep up or be rendered irrelevant.

If a new norm of expected compliance with climate treaties is forming, what specific points of evidence argue for it? First, the importance of the existing MEAs addressing compliance with global environmental problems cannot be overstated. Both the UNFCCC and the Kyoto Protocol deal directly with the expected reduction of GHGs, and the Stockholm Declaration, the Montreal Protocol (along with its framework convention), the Rio Declaration, the Law of the Sea, and

other MEAs deal with the expectation of environmental protection as a duty of states. Second, pressure from allies and public opinion bear on the formation of custom. The United States has faced pressure from close and longtime allies such as Canada and the United Kingdom as well as developing nations to either ratify Kyoto or take some other meaningful actions to reduce GHG emissions. The American delegate at the 2007 Bali Convention was actually booed by other delegates when the United States refused to provide clean development assistance to developing nations (Eilperin 2007). Third, sub-national actors recognize the necessity to control GHGs and have taken actions themselves, as discussed below. Fourth, the best climate science we have argues for the need to reduce GHG emissions so as to avert possibly significant damage to the global environmental commons. Taken alone, each of these points may not be dispositive, but taken together they argue persuasively for the recognition of a customary norm, with which the United States is out of compliance (Weil 1983, 422; see also Brownlie 1973, 183).

### C. Actions by local/regional actors within the United States

If climate change is a foreign policy issue by nature, is it the sole preserve of the federal government? Interestingly, rather than waiting for the federal government to act, state governments, local governments, private companies, and universities have all taken steps to curb GHG emissions to the best of their ability. In 2002, California passed a first-in-the-nation law requiring strict emission controls on every car sold in the state, starting in model year 2009. Environmental groups hope and automakers fear that, due to the size of the car market in California, this law could force changes in vehicles sold nationwide. (Blocked by the U.S. Environmental Protection Agency, the issue is currently under litigation). California governor Arnold Schwarzenegger has since pledged to reduce the state's GHG emissions to 1990 levels by 2020. In 2007, ten northeastern and mid-Atlantic states have joined a landmark pact called the Regional Greenhouse Gas Initiative to reduce GHG emissions from their power plants (for more information on RGGI, see <http://www.rggi.org>). The mayors of Seattle, New York, Chicago, and over 750 other cities have signed onto the Climate Protection Agreement, pledging to reduce their cities' GHG emissions, to 7% below 1990 levels by 2012, exactly the target the United States was to have achieved under Kyoto (for more information on the U.S. Conference of Mayors Climate Protection Agreement, see <http://www.usmayors.org/climateprotection/agreement.htm>). These actions help to bolster the acceptance of the norm at the sub-national level – the more entities (sub-national, national and supra-national) that accept this norm, the more it emerges from the fog of nascent custom and begins to impact the behavior of states. That these sub-national actors feel they have a responsibility to adhere to the norm of compliance with international environmental agreements indicates how widespread and powerful it is, and just how exceptional the U.S. position is.<sup>2</sup>

## **II. How U.S. Foreign Policy has Failed to Adhere to the Norm of Compliance**

There are three distinct types of American legal exceptionalism: exemptionalism, wherein the United States supports multilateral treaties and regimes but only if they contain exemptions for U.S. practices or citizens; double standards, wherein the United States criticizes other nations but ignores any criticism it receives; and legal isolationism, wherein the United States ignores the

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<sup>2</sup> For an examination of the benefits to the climate regime of sub-national actions and why it does not have to be economically irrational as “tragedy of the commons” theory suggests it would be, see Kirsten H. Engel and Scott R. Saleska. *Subglobal Regulation of the Global Commons: The Case of Climate Change* 32 *ECOLOGY L. Q.* 183 (2005).

findings of other legal jurisdictions (Ignatieff 2005). While all three types of exceptionalism carry significant consequences in the realm of international environmental law, American exemptionalism is what weighs most heavily on the climate change regime, particularly with regard to U.S. behavior toward the Kyoto Protocol. Legal scholars have postulated that there are three reasons why states do not comply with treaty requirements: 1) ambiguity of the treaty language, 2) limitations on the capacity of the party to comply, and 3) temporal dimension of the social, economic, and political changes the treaty would require (Chayes and Chayes 1993). Customary norms of international law govern international behavior in the same fashion that treaties do by regulating the conduct of states towards each other, and in fact govern a greater percentage of international decisions because they operate when there is no specific treaty to regulate that conduct. Consequently, the reasons that a nation might be reluctant to participate in a treaty stem from the same concerns that would prevent them from acknowledging a norm – that their obligations are unclear or too onerous, or somehow they are being treated unfairly.

Why has the United States decided to be exceptional in the international climate regime, especially in the face of demonstrable environmental and legal harm? All states benefit from the international law system because it imparts a degree of predictability and order to international relations. The rules of the system allow members to avoid conflict and promote peaceful cooperative relations. Fear of sanctions, the desire to be viewed as reliable and law-abiding, and general respect for the rule of law further impel states to obey customary international law. Yet these rules are undermined by free-riders, states that reap the benefits of the system without paying the costs. In the case of global climate change, the United States, wary of carrying free riders like India and China, has decided to become a free rider itself. Its example may encourage other nations not to follow customary international law, thereby derailing the entire regime (Charney 1993, 530-533).

#### A. “Developing countries are not participants”

The Bush Administration has argued that the United States will not participate in the Kyoto Protocol or any international climate agreement that does not include developing nations such as India and China (White House Analysis 2001, 1). These nations, while historical under-emitters, are developing rapidly and are relying heavily on fossil fuels. China alone is looking to build 562 new coal-fired power plants in the next eight years (Clayton 2004), and the country’s overall CO<sub>2</sub> emissions are expected to surpass those from the United States as early as 2009 (IEA 2006); findings from one agency say that China has already overtaken the United States in total emissions, producing an estimated 6.2 billion metric tons CO<sub>2</sub> to the United States’ 5.8 billion tons CO<sub>2</sub> (Netherlands Environmental Assessment Agency 2006). Compliance with the Protocol would place the United States at a relative disadvantage economically, both vis-à-vis the EU, which has a denser population and different transportation patterns and can economically absorb emissions cuts more easily, and the developing countries, which could undercut U.S. goods on the world market since they would not be forced to spend money on climate control measures (Cooney 1997).

Critics of Kyoto have based this objection on the traditional American idea of fairness: if the United States is required to cut back on its use of fossil fuels and suffer the attendant economic dislocation, then other countries that also rely on fossil fuels should share the pain, regardless of their Annex I status. However, the legal concept of “common but differentiated responsibilities” answers the purported fairness issue. Both the UNFCCC and the Rio Declaration, as well as the Protocol itself, refer to the responsibility of developed nations to take the lead in combating

climate change not merely because they are the wealthiest countries and have the economic means to do so, but because the development process that generated their wealth also generated the GHG buildup that the entire world is now having to combat. Though both India and China have implemented various domestic GHG emission limitation strategies, they have stated that they will not accept binding emissions limits or timetables until the developing nations do (Walker 2007).

#### B. “Economic harm”

The Administration has argued secondly that the United States will not participate in Kyoto because to do so would cause significant harm to the American economy (White House Analysis 2001, 2). Estimates of the cost of implementing the Kyoto Protocol range from as low as one-tenth of one percent to as high as three percent of GDP, depending on differences in the methodology used (EIA 2002). However, the cost of implementing the Protocol does not have any bearing on the legality of the norm. Indeed, when compared to countries who violate clear international legal norms against genocide and torture for political, ideological or theological reasons, cost seems almost a mundane reason to violate a norm, especially when coming from the wealthiest country on earth. Rather, the “economic harm” argument, unlike the “developing countries do not participate” argument, has less to do with actual economic harm and more to do with the political harm the Republican Party may face if the United States either ratifies Kyoto or implements any sort of compulsory GHG emission reduction measures. Environmental issues in general have acquired a liberal Democratic cast in the United States, and are unlikely to garner support from a Republican Administration. Furthermore, some political conservatives see compliance with any sort of global norm or treaty as a violation of American sovereignty (Schlafly 2000).

#### C. “Uncertain science”

The Administration has argued thirdly that the science that underlies the reductions contained in the Protocol, and indeed the whole climate change mitigation regime, is speculative and arbitrary (White House Analysis 2001, 1). Of all the arguments leveled against the Protocol, however, this is the only one that direct scientific evidence can overcome. The IPCC was formed in 1988 by the WHO and UNEP,

to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy, although they may need to deal objectively with scientific, technical and socio-economic factors relevant to the application of particular policies. . . .

Review is an essential part of the IPCC process. Since the IPCC is an intergovernmental body, review of IPCC documents should involve both peer review by experts and review by governments. (IPCC 1998)

The IPCC is made up of thousands of scientists from around the world and is broken out into three working groups dealing with physical science, impacts, and mitigation and adaptation. Its job is to synthesize the best scientific, technical, and socio-economic information on the causes and effects of climate change. These scientists rotate in and out of chair and lead author positions, and all of the organization’s review procedures and finances are open for public scrutiny. The IPCC represents the best international scientific accord on the problem of global

climate change, and its latest assessment report states clearly that, “[T]he understanding of anthropogenic warming and cooling influences on climate has improved since the Third Assessment Report (TAR), leaving to *very high confidence* that the globally averaged net effect of human activities since 1750 has been one of warming.”(IPCC 2007a, 5, emphasis in original)

Science is a new factor in the creation of customary norms of international law, though there is no better field in which to give scientific findings significant norm-creating weight than environmental law. Science, too, can help set the bar to treaty exceptionalism much higher. For example, if the United States could sequester its carbon with any measure of reliable success, it might have an argument for why it could be exceptional with regard to the Kyoto Protocol, because it would not be causing the same level of atmospheric harm per molecule of CO<sub>2</sub> produced as other nations who do not sequester their CO<sub>2</sub>. However, since it cannot sequester CO<sub>2</sub> economically, or at least no better than any other CO<sub>2</sub>-producing nation, it has no grounds for exceptionalism. This moves environmental law away from the traditional practice that a state can be exceptional just because it desires to be. In the case of the global environmental commons, and facing an emerging norm of expected compliance with global environmental treaties, mere desire to be exceptional for whatever policy reason is not enough in the face of the ecological damage that could be done by an “exceptional” nation.

### **III. Implications of Norm Development**

#### **A. Increased application of science to international law and policy**

Arguments to persuade the United States to comply with the norm are overwhelmingly scientific. Allied governments and domestic environmental groups cite the increasing GHG emissions and IPCC predictions of their effects, and exhort the United States to either ratify Kyoto or take some other significant steps to control emissions.

The scientific component drives the qualitative argument that the global environmental regime is different from trade or human rights because the behavior of one nation can affect the viability of the entire regime for every other participant. In the area of international trade law, non-parties or parties out of compliance with a particular treaty may face economic deprivation or, at worst, sanctions. In areas of human rights law, non-parties or parties out of compliance may face sanctions, diffuse reciprocity (shunning or shaming, for example), and bad publicity. However, the area of global environmental law is critically different from trade and human rights law, because the regime attempts to address behavior not between human beings themselves, but between human beings and the natural world. This relationship is one that we do not fully understand and certainly cannot control, though we can affect it. Our assessment of what this regime should look like and what sorts of behavior it should include are governed by the best scientific judgment we can apply at the time, so the very purpose of the regime itself can change over time as our scientific knowledge advances. Ian Brownlie argues that while existing customary law for the environment tolerates a certain level of “ordinary use” pollution, the relevant standards may be changed by new expertise, by particular complaints of states and competent international organizations, and *by standards set in multilateral conventions* (Brownlie 1973). Extending this logic, the standards set in the Kyoto Protocol can be seen to capture the emerging norm until such time as they are superseded by better information about the effects of GHGs on the climate.

A nation’s non-compliance or non-party status is much more significant in this area than in other areas of international law because the level of harm resulting from non-compliance or non-participation has the potential to be much greater. Specifically, large polluters can negatively



affect the viability of the treaty regime, even if they are not parties, by the sheer magnitude of their contamination. In 2005, the United States emitted approximately 21% of global CO<sub>2</sub> emissions and was the largest emitter on a per-capita basis (IEA 2007). Even if every other nation on earth were a compliant party to a climate regime, global warming would still proceed because of the non-compliance of the “indispensable party.” This means that one non-party nation can render the entire regime ineffective and useless because the regime would not, and could not, achieve its goal of stabilization of atmospheric GHG levels. In other words, non-compliance by the United States can nullify compliance by other Annex I nations. Consequently, the traditional formation of customary norms has proven inadequate to deal with global environmental problems. Indeed, international law as a whole has never been confronted with a set of problems of the nature and quality of global environmental change (Palmer 1992, 282).

#### B. Increased observance of customary international law

Could protection of the global environment and expected compliance with international environmental treaties even be lifted from customary norm to *jus cogens*? (1969 Vienna Convention on the Law of Treaties, at §64) There are some legal scholars that point out the negative and confusing effects of breaking the normative regime into *jus cogens* norms on one hand and “ordinary” norms on the other (Weil 1983, 423). However, the development of *jus cogens* norms seems to be a positive one, since only the most heinous crimes of slavery, torture, and genocide are currently contained in this category,<sup>3</sup> crimes which the international community seems uniformly prepared to banish in theory if not always in practice. Furthermore, the identification of a *jus cogens* norm, even if unenforceable, carries its own prohibitive weight. For example, a state may still choose to engage in genocide, but if it does so, it knows it is doing something illegal and reprehensible, even if it may never come to trial. Slavery, torture, and genocide are prohibitive norms; states are forbidden from carrying them out. Compliance with agreements and treaties which apply to the global environmental commons, however, would be the first prescriptive norm to be elevated to the level of *jus cogens*. This means that states would be required to carry them out, and the United States would not have grounds to be exceptional.

*Jus cogens* norms would operate upon the whole international community, but Weil points out “a tendency to vague personification of the international community” (Weil 1983, 426), something which he finds unsettling. Which nations are part of this international community and who can speak for it? It must be a number less than the whole, or any nation would have what Weil calls “an inconceivable veto” over the development of any norm, *jus cogens* or otherwise. Yet it falls within the legal rights of a nation to opt in or out of this community with regard to certain regimes of international law. Nations who choose not to have capitalist economies can opt out of the WTO or any other body of trade law. Nations who define their social structures in certain ways can opt out of human rights law; while the moral value of this is questionable, the legal value is not. Yet no nation on earth can opt out of the international environment. No nation can pronounce, “We choose not to be affected by climate” or “We choose not to need fresh water, so these rules don’t apply to us.” This is where science, particularly global

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<sup>3</sup> Some scholars have argued that rape and the juvenile death penalty ought to be *jus cogens* norms as well, which means the category is open for expansion beyond its current limits. See Dean Adams, *The Prohibition of Widespread Rape as a Jus Cogens*, 6 SAN DIEGO INT’L L.J. 357 (2004); and Rachel J. Avery, *Killing Kids Who Kill: An International Perspective on the Juvenile Death Penalty in the United States* 7 UCLA J. INT’L L. & FOREIGN AFF. 303 (2002).

environmental science, can play its part in both delineating the international community and identifying norms that are in its fundamental interests and, by extension, norms that each state must abide by without abrogation. In the case of the global environment, the international community includes every nation on earth and abrogation of any state's fundamental responsibilities negatively affects each member.

### **Conclusion: Where Should the United States Go From Here?**

It is possible that nations who do not comply with a regime or customary norm will face diffuse reciprocity from their allies and other parties. This can take the form of obstructionism in other legal areas, such as imposition of tariffs or travel restrictions, disagreement or non-enforcement of legal judgments, or bad publicity (Dowd 2005). However, only Germany seems to have attempted to link trade sanctions with U.S. obstruction of climate agreements and the norm underlying it (Dempsey 2007). In order for diffuse reciprocity to be effective, the "reciprocity" part must be made clear: in this case, the United States must know that it is not receiving the full international cooperation it desires in a non-environmental area due to its non-compliance in the environmental area, specifically that it has not and apparently will not ratify Kyoto. In other words, the link must be explicit, or the non-compliant party will not understand how it needs to change its behavior to avoid further reciprocity. Reciprocity also has the most value when the parties are more equal in size and power (Keohane 1986). Thus, there is a limited amount of reciprocity that other parties can apply to the United States, since it is a critical player in world trade, finance, media, and many other global regimes.

At this time, the substance and conduct of U.S. foreign policy is at this time very administration-dependent, especially in the climate arena. The Bush Administration currently clings to an unpopular position on climate change, yet in the United States, the president conducts foreign policy. None of the players in the international climate regime, nation or NGO, anticipates a change in the substance of U.S. policy until a new president is elected in 2009. However, all of the Democratic candidates for president and about half of the Republican candidates have stated that the United States should undertake mandatory GHG reductions, either through a cap-and-trade system, a carbon tax, or an international agreement.

Certainly, the United States is already feeling the pressure. Earlier in 2007, Australia elected a new prime minister, Kevin Rudd, whose first act as PM was to ratify the Kyoto Protocol. This left the United States as the only remaining Annex I nation that has not done so. The 2007 Bali Conference of the Parties was the latest chance for the nations around the world to make their displeasure with the American position on climate change clear. Even China, India, Brazil, and other large, rapidly developing nations which are not required to cut GHG emissions under Kyoto have now begun to take the norm of compliance into account, and have agreed to take specific steps to do so. After much negotiation, some of it acrimonious, the consensus document was finally approved, which committed the United States and other developed nations to "measurable, reportable, and verifiable" assistance to developing nations (Bali Action Plan 2007, 1), though any mention of quantifiable emissions targets is still off the table until Copenhagen in 2009.

As climate and environmental science gets better, we are learning more and more about how the actions of every nation affect the global commons. This in turn gives more weight to the norm of compliance with climate regimes, because while such compliance might be economically costly in the short term, international regimes such as the UNFCCC and Kyoto are currently the only weapon we have to forestall catastrophic climate alterations.

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