

10th Colloquium of the IUCN Academy of Environmental Law

Prof. Lorenzo Schiano di Pepe, LL.M., D.R.

EU Climate Law & Practice at the End of the Kyoto Era

Unilateralism, Extraterritoriality
and the Future of Climate Change Governance

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Climate Change Governance and the EU

- Traditionally → the EU and its legal system have been at the forefront of the fight against anthropogenic climate change
- Today → the above is even more true, even if the international community is facing one of the most difficult passages of all times in agreeing on binding commitments to be enforced once the first reference period established by the KP will elapse at the end of this year

From Multilateralism to Unilateralism?

- Such a stalemate may cause individual States to resort to **unilateralism** → a move that would represent a regression from the UNFCCC - KP regime, whose main merit had been the creation of a **common** (although **differentiated**) legal framework consisting inter alia of a series of provisions requiring contracting parties to **limit their emissions of certain greenhouse gases** from a defined range of human activities over a given period of time
- Unilateralism as an option for UNFCCC - KP contracting parties?

The “European Way” to Unilateralism

- By way of the “effort sharing” decision (406/2009/EC of April 23th 2009):
 - ➔ the EU has increased the emission reduction objectives imposed on its Member States;
 - ➔ the scope of application of such objectives has been widened and now includes more climate-adverse substances and a higher number of economic activities, including for the first time a series of “small” emitters

Extraterritorial Application of the Kyoto Regime through EU Law: Recent Developments

- By way of directive 2008/101/EC, amending directive 2003/87/EC (so-called “emission trading”), European legislators added “aviation” to the activities covered by the European emission trading scheme ...
- ... making clear that flights arriving in or departing from the territory of the EU would be covered, including (respectively) those from or to aerodromes situated outside the territory of the EU
- In addition, the calculation of the relevant emissions was to be based on the actual fuel consumption of such flights

Extraterritorial Application of the Kyoto Regime through EU Law: Recent Developments (cont'd)

- With its “clean skies” judgment of December 21st 2011 (case C-366/10, *Air Transport Association of America*) the European Court of Justice confirmed the applicability of the European emission trading scheme to the operation of North American air carriers when they use European airports as arrival or departure points for their flights
- The Court expressly excludes the extraterritorial nature of its ruling (§ 125), but ...

Unilateralism, Extraterritoriality and beyond

- A unilateral and extraterritorial approach will never be sufficient to ensure a proper climate governance
- The EU, as an important political and economic international player, faced with the difficulty in agreeing international binding commitments, tries to extend its own standards to business actors that enter in contact with the European market
- Such measures may, in turn, play an important role with a view to bringing climate change negotiations back on track

Thank you for your attention!

Lorenzo Schiano di Pepe

Professor of International Law at the University of Genova (Italy)

lorenzo.schianodipepe@unige.it