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Environmental crime

Sally Ramage

Environmental crime covers those activities which are against the law and which are detrimental to our environment and our quality of life such as litter, dog fouling, flytipping and graffiti. Leaving litter in a public place is an offence with a maximum penalty of £2500. The Council provides litter bins for you to put litter in, but even if they're full you have no excuse for not taking your litter home and disposing of it properly. This is especially the case with drivers who need to be taught that the road is not their ashtray or litterbin. UK local authorities on average spend £6.8 million of citizens' Council Tax revenue every year on street cleaning to clear up after a minority of people who have no respect for our environment.

Dog Fouling in the UK

It is a criminal offence in the UK to allow one's dog to foul in a public place and fail to clean up after it. Leaving dog mess in a public place not only makes the place its left untidy, but it can be trodden on and carried into someone's home. Dog mess can cause blindness if in contact with the eyes. The problem is easily avoided. By dog owners carrying plastic bags with them and clear up after their pet foul outdoors. If there are no designated poop bins nearby the dog owner may double bag the dog's mess and safely dispose of it in any litterbin, or take it home and put it in their own bin. Dog Fouling is an offence under the Dogs (Fouling of Land) Act 1996 section 3, and carries a maximum penalty of £1000.

Flytipping in the UK

Flytipping is the illegal depositing of waste onto land. Whether it's an old sofa or mattress, or drums of chemicals that are dumped, a serious criminal offence is committed. Dumping hazardous materials causes a danger to other people and can cause long-term damage to land and watercourses. Some UK local authorities provide a free collection service for large items. To dispose of commercial waste a UK citizen must have a contract with a registered waste carrier. Disposal of business waste can only be done at a licensed tip and a fee is payable.

Dumping commercial or household rubbish on a nature reserve is a criminal offence. Environmental crime officers say the problem is very prevalent during traditional New Year clear-outs and they are urging residents to dispose of their waste responsibly and legally, or face a fine.

Warnings

Environmental crime officers do warn residents to be aware of rogue door-to-door traders who may offer to dispose of their unwanted household items cheaply. Residents could face a fine if they do not dispose of waste legally and responsibly and using door-to-door traders could make offenders out of householders unless they verify that these traders are licensed waste carriers. Local authority officials have power to enter homes to search and seize if they suspect an environmental crime. They constantly warn householders that failure to ensure their waste materials are properly disposed of can result in heavy fines if they dump rubbish in the countryside.

Use of third parties to commit flytipping

In December 2009, a man was found guilty of hiring someone to dump rubbish for him in Beechdale Lane, Stone. The man whom he hired failed to dispose the rubbish and just dumped carpet, tiles, a kitchen basin and bathroom fittings. The first of such court trials in the UK took place in December 2008 at Stafford Crown Court when a man was found guilty of an environmental protection crime after he dumped rubbish in a country lane in the village of Tittensor, Stone, Staffordshire. The UK government takes environmental crime very seriously and anyone caught fly tipping will be prosecuted under the Environmental Protection Act 1990 section 33, the maximum penalty two years imprisonment and/or an unlimited fine on conviction.

Flyposting and grafitti in the UK

It is an offence under the Criminal Damage Act 1971, to flypost or to create graffiti. It costs UK local authorities many thousands of pounds for the removal of flyposting. However, by arranging planning permissions for businesses and creating large frames on walls, flyposters are allowed to undertake their work but need to agree between themselves, the policing,

removal and timescales for flyposting. Agreed sites and regular meetings between promoters and flyposters, results in a more controlled system of operating. Flyposting is a criminal offence under the Environmental Protection Act 1990 section 87, and carries a maximum penalty £2500 fine.

Fish poaching from protected reserves

Fish poaching occurred at Cranbrook and District Angling Club when the Park Farm lake used by the angling club was dragged with a net on Saturday, November 15, 2009, late at night and thieves, using a net, stole all the fish in the lake, including 32 carp, about 100 tench, thousands of small rudd and some pike, fish which anglers of the club fish but throw back into the lake.

Conclusion

The commitment of environmental crimes is a topic of criminal law that deserves much more attention.

'White collar crime' and the global financial crisis; how long will we have to wait for the 'day of reckoning'?

Dr. Nicholas Ryder[1]

During the height of the Global Financial Crisis, and whilst leader of the Conservative party, David Cameron boldly proclaimed that the City of London faced a 'Day of Reckoning' and that severe penalties would be imposed for those bankers whose reckless activities caused the Global Financial Crisis. During his 'Day of Reckoning' speech David Cameron strongly emphasised the importance of punishment and deterrence:

> *'[T]he most important step we must take in enforcing responsibility in the City is to make sure that when rules are broken, and culprits are found, they are properly punished. That's only fair - because those responsible must be held to account … around the world, bankers sat up and took notice not when global finance ministers issued some new communiqué on unauthorized speculative trading - it was when Nick Leeson was caught and put behind bars. And corporate America really understood the consequences of dodgy accounting not just when Enron collapsed but when Jeffrey Skilling was given a twenty-four year jail sentence. The problem in Britain … is that there just doesn't seem to be the will to see appropriate justice done at the highest level. Not from the Government. And not much will is evident in the FSA either'*[1]

The speech by David Cameron poses a set of interesting questions and a number of useful points can be raised, especially from this section of the speech. For example, David Cameron stated that when '*rules are broken, and culprits are found, they are properly punished'*. This raises a very important question: how many of those corporations or individuals who are responsible for the 'Global Financial Crisis' or contributed towards it have been held

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accountable since the Coalition government came into office in 2010? The answer at the time of writing this article is: a mere handful.

FSA banned Peter Cummings

An illustration of Financial Services Authority ('FSA') taking action against those if feels contributed towards the Global Financial Crisis was their action against Peter Cummins, the former Chief Executive Officer ('CEO') of HBOS.[2] In addition to being banned by the FSA, he was also fined £500,000 for his 'breaching Statement of Principle 6 of the FSA's Code of Practice for Approved Persons, by failing to exercise due skill, care and diligence in managing HBOS's Corporate Division'.[3] The FSA stated that:

> *'Despite being aware of the weaknesses in his division and growing problems in the economy, Cummings presided over a culture of aggressive growth without the controls in place to manage the risks associated with that strategy. Instead of reacting to the worsening environment, he raised his targets as other banks pulled out of the same markets. It is essential that senior executives understand that incentivising revenue over risk is a dangerous folly. Growth is a sound ambition for any business but risk must be properly managed and robust controls are imperative to ensure growth is achieved in a way that is both stable and sustainable'*.[4]

Willmot and James (2012) took the view that:

> *'This is the first case that the FSA has pursued in which disciplinary action is taken in relation to the core business risks taken by the firm – in this case, the bank's decision as to whether or not to lend its own money to customers. It is not based on risks to customers, but solely on risks to the institution itself from the prospect of customers not repaying amounts lent. This is unprecedented in the 11 years of the FSA's existence and marks a very important shift in the FSA's own view of its regulatory remit'*.[5]

[2] Financial Services Authority 'FSA issues ban and fine of £500,000 against former HBOS executive, Peter Cummings', September 12 2012, available from http://www.fsa.gov.uk/library/communication/pr/2012/087.shtml, accessed June 30 2013.
[3] *Ibid*.
[4] Financial Services Authority.
[5] Willmot, N. and James, P. 'Reading between the lines: understanding the FSA's unwritten expectations of significant influence function holders on appointment and beyond' (2012) Compliance Officer Bulletin, 101(Nov), 1-28, at 13.

FSA banned David Jones

The FSA had utilised prohibition orders in July 2010, when it banned and fined the former finance director of Northern Rock, David Jones, for misrepresenting mortgage arrears figures.56The FSA also fined and banned the former deputy chief executive and credit director of Northern Rock for also misreporting mortgage arrears figures.67

No ban for James Cameron

However, the implementation of these prohibition orders can be contrasted with the lack of enforcement action against banker James Cameron. Unlike Peter Cummins, the FSA reached a settlement with Johnny Cameron, who agreed that he would no longer 'perform any significant influential function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm or undertake any further full time employment in the financial services industry.8 It is important to stress that that James Cameron made no admission of guilt and in response to the decision by the FSA James Cameron stated:

> *'Given the losses sustained by RBS in 2008, as a director of the Royal Bank of Scotland Group, I recognise that it is appropriate that I take my share of responsibility, and I will not be seeking another managerial role in the financial services industry'*.[9]

No ban for Fred Goodwin

The highest profile former banker against whom the FSA decided not to take action is Fred Goodwin, who was the CEO of Royal Bank of Scotland ('RBS') between 2001 and 2009. [7] During his tenure as CEO, Fred Goodwin oversaw what can be classified as a boom time for RBS. [8] By 2008, the bank had demonstrated rapid growth and its assets totalled £1.9 trillion and it was the fifth largest bank on the stock exchange. Fred Goodwin was 'deemed by the banking world and by the government to have a Midas touch. He advised the government on banking matters and was knighted for his services. He could do no wrong'. [10] However, Goodwin's persona changed after RSB's ill-advised purchase in 2007 of ABN Amro for £48bn, [10] which was unsurprising given his eagerness to expand the size of RBS via acquiring other banks.[11]This approach was flawed and extremely risky because Fred Goodwin was 'known for the way in which he aggressively cut costs within the bank'. This created the perfect set of circumstances that ultimately contributed to RBS suffering the largest annual corporate loss in United Kingdom's banking history. The FSA decided against pursuing Fred

[6] Financial Services Authority 'FSA bans and fines former Northern Rock finance director £320,000 for misreporting mortgage arrears figures', July 27 2010, available from http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/126.shtml, accessed July 1 2013.
[7] Financial Services Authority 'FSA fines and bans former Northern Rock deputy chief executive and credit director for misreporting mortgage arrears figures', April 13 2010, available from http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/066.shtml, accessed July 1 2013.
[8] Financial Services Authority 'FSA statement on Johnny Cameron', May 18 2010, available from http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/081.shtml, accessed July 1 2013.
[9] Anon. 'Former RBS investment bank chief Johnny Cameron banned from City', May 18 2010, available from http://www.telegraph.co.uk/finance/financialcrisis/7736540/Former-RBS-investment-bank-chief-Johnny-Cameron-banned-from-City.html, accessed July 7 2013.
[10] Kirk, D. 'Criminalising bad bankers' (2012) *Journal of Criminal Law*, 76(6), 439-441, at 440.

Goodwin, who has offered a 'profound and unqualified apology for all of the distress that has been caused'.

No director's disqualification for bank directors

Additionally, not one director of a bank has been disqualified by the UK's Department of Business Innovation and Skills ('DBIS') under the Company Director Disqualification Act 1986 ('CDDA'). However, the DBIS had stated in June 2012 that there is 'prosecutable evidence' to pursue disqualification proceedings under the CDDA 1986 against Fred Goodwin. In May 2013, the Telegraph reported that the DBIS had asked Lord Wallace, the Government's principal legal adviser in Scotland, 'demanding to know when a decision will be made on whether to ban the former bankers from sitting on company boards'.[11]

Discrepancy between sentiment and action

A month after his 'Day of Reckoning Speech' David Cameron said:

> *'I think that we need to look at the behaviour of banks and bankers and, where people have behaved inappropriately, that needs to be identified and if anyone has behaved criminally. In my view, there is a role for the criminal law and I don't understand why in this country the regulatory authorities seem to be doing so little to investigate it, whereas in America they're doing quite a lot'.*[12]

This part of the UK Prime Minister's speech must be questioned as despite the efforts of the United States ('US') Securities and Exchange Commission ('SEC') and the Federal Bureau of Investigation ('FBI') there has been no high- profile prosecutions in the UK (thus no convictions) of those UK top- bankers who participated in the Global Financial Crisis.

The United States of America prosecuted Kareem Serageldin in 2013

According to the Economist, US prosecutors secured their first Global Financial Crisis conviction when Kareem Serageldin was convicted of mismarking mortgage-backed securities in April 2013.[13] Law enforcement and financial regulatory in the United States of

[11] Hurley, J. 'Speed up action against Fred Goodwin, Vince Cable tells Scottish prosecutors', May 1 2013, available from http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10029013/Speed-up-action-against-Fred-Goodwin-Vince-Cable-tells-Scottish-prosecutors.html, accessed July 2 2013.

[12] Porter, A. 'David Cameron calls for criminal actions against bankers', January 27 2009, available from http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/4348801/David-Cameron-calls-for-criminal-actions-against-bankers.html, accessed May 7 2013.

[13] Anon. 'Blind justice', May 4 2013, available from http://www.economist.com/news/finance-and-economics/21577064-why-have-so-few-bankers-gone-jail-their-part-crisis-blind-justice, accessed June 30 2013. Also see Cahalan, P. 'Trader, Kareem Serageldin, pleads guilty to role in banking crash', April 14 2013, available from http://www.independent.co.uk/news/uk/crime/trader-kareem-serageldin-pleads-guilty-to-role-in-banking-crash-8572216.html, accessed June 30 2013 and Federal Bureau of Investigation 'Former Credit Suisse Managing Director Pleads Guilty in Connection with Scheme to Hide Losses in Mortgage-Backed Securities Trading Book', April 12 2013, available from http://www.fbi.gov/newyork/press-releases/2013/former-credit-suisse-managing-director-pleads-guilty-in-connection-with-scheme-to-hide-losses-in-mortgage-backed-securities-trading-book, accessed June 30 2013.

America (US) have concentrated on imposing what were perceived as 'impressive' or 'media friendly' financial penalties on the alleged culprits.

FSA now has plethora of investigative and enforcement powers

Sadly, authorities in the United Kingdom (UK) have adopted a similar approach. In order for the FSA to achieve its statutory objective of reducing financial crime, it was been given a plethora of investigative and enforcement powers which should have insured that it was well placed to tackle white-collar crime associated with the Global Financial Crisis. For example, the FSA is a prosecuting authority for both money laundering and a limited number of fraud related offences. [15] It also has the power to impose financial penalties where it establishes that there has been a contravention by an authorised person of any requirement. [16] Furthermore, FSA had the power to ban authorized persons and firms from undertaking any regulated activity. [17]

FSA continues with its tepid approach

What has transpired since 2007 can be described as a tepid approach towards enforcing the white-collar crime provisions of Financial Services and Markets Act 2000 and its handbook. The FSA has favoured imposing financial penalties on those firms and individuals as opposed to instigating criminal proceedings, as part of its 'credible deterrence' policy. 1814 This point is clearly illustrated by the significant increase in the use of financial penalties since the start of the Global Financial Crisis. In 2007, the FSA imposed a total of £5.3m financial penalties.1915 A year later, the FSA reported that the figure had increased to £22.7m.[16] In 2009 the total financial amount of fines imposed increased to £35m. 2217 The figures for 2010 and 2011 illustrated an increase to £89.1m and a decrease to £66.1m.18However, in 2012 the FSA imposed fines of £311.5m. 2319 As of July 2013, the FSA has imposed fines totalling £143.1m. 2420 It is very important to note here that the FSA was self-financing,

[14] Financial Services Authority 'Delivering credible deterrence', speech by Margaret Cole, Director of Enforcement, FSA, Annual Financial Crime Conference, 27 April 2009, available from http://www.fsa.gov.uk/library/communication/speeches/2009/0427_mc.shtml, accessed 8 March 2013.
[15] Financial Services Authority 'FSA Fines Table 2007', n/d, available from http://www.fsa.gov.uk/about/press/facts/fines/2007, accessed 8 March 2013.
[16] Financial Services Authority 'FSA Fines Table 2008', n/d, available from http://www.fsa.gov.uk/about/press/facts/fines/2008, accessed 8 March 2013.
[17] Financial Services Authority 'FSA Fines Table 2009', n/d, available from http://www.fsa.gov.uk/about/press/facts/fines/2009, accessed 8 March 2013.
[18] Financial Services Authority 'FSA Fines Table 2011', n/d, available from http://www.fsa.gov.uk/about/press/facts/fines/2011, accessed 8 March 2013.
[19] Financial Services Authority 'FSA Fines Table 2012', n/d, available from http://www.fsa.gov.uk/about/press/facts/fines/2012, accessed 8 March 2013.
[20] Financial Conduct Authority 'Fines table - 2013', n/d, available from http://www.fca.org.uk/firms/being-regulated/enforcement/fines, accessed July 2 2013.

which means that that the amount of fines it imposed was qualified and linked to its sustainability. Therefore, it is possible to argue that there is an obvious conflict of interest here.

The Serious Fraud Office

A section of David Cameron's 'Day of Reckoning' was also targeted at the Serious Fraud Office (SFO). He stated that:

> '*[T] he Serious Fraud Office has an important part to play too. But its effectiveness was called into question earlier this year in a review conducted by American prosecutor Jessica de Grazia. This has to change. The FSA and the SFO should be following up every lead investigating every suspect transaction. And the government should be urging them on, because we need to make it one hundred percent clear: those who break the law should face prosecution'*.[21]

In order for the SFO to 'follow up' every lead it is essential that it is granted the appropriate levels of funding by the Coalition government. However, since the 2010 general election, the SFO, like many other government departments and agencies, has had its budget cut as part of a glut of extensive austerity measures.[22] For example, the annual budget of the SFO in was £43.3m, in 2008/2009 it was £53.2m, in 2009/2010 the figure reduced to £40.1m, in 2010/2011 it was £35.5m, in 2011/2012 the annual budget of the SFO was £31.5m and this will reduce to £34.8m in 2012/2013, £32.1m in 2013/2014 and £30.8m in 2014/2015.[23] The decision to reduce the budget of the SFO, at a time where white-collar crime has increased and the duties of the SFO have been expanded to incorporate the enforcement of the Bribery Act 2010,[24] must be questioned and criticised.[25] However, it is important to note that fraud is an extremely difficult criminal offence to detect, prosecute and expensive to enforce.[26] The imposition of budget cuts on the SFO since 2010 initially limited its investigation into the

[21] See Conservatives above, note 2.
[22] For the most recent government funding cutbacks in the United Kingdom see HM Treasury *Spending Review* (HM Treasury: London, 2013), HM Treasury *Spending Round 2013: distributional analysis* (HM Treasury: London, 2013, HM Treasury *Spending Round 2013: policy costings* (HM Treasury: London, 2013) and HM Treasury 'Spending Round 2013: speech', June 26 2013, available from https://www.gov.uk/government/speeches/spending-round-2013-speech, accessed June 30 2013.
[23] Serious Fraud Office *Serious Fraud Office Annual Report and Accounts 2011-2012* (Serious Fraud Office: London, 2012) at 7. Also see for example Purkiss, A. 'U.K. Fraud Office Hit by Budget Cuts, Staff Losses', March 28 2011, available from http://www.bloomberg.com/news/2011-03-28/u-k-fraud-office-hit-by-budget-cuts-staff-losses-ft-reports.html, accessed June 30 2013.
[24] For a more detailed discussion of the role of the Serious Fraud Office and the enforcement of the Bribery Act 2010 see Wells, C. 'Who's afraid of the Bribery Act 2010?' (2012) Journal of Business Law, 5, 420-431, Parlour, R. 'Bribery and corruption – an international update' (2013) Company Lawyer 34(7), 218-221 and Yeoh, P. 'The UK Bribery Act 2010: contents and implications (Legislative Comment)' (2012) Journal of Financial Crime, 19(1), 37-53.
[25] See for example Masters, B. 'Fraud watchdog weakened by budget cuts', March 27 2011, available from http://www.ft.com/cms/s/0/8221aba2-58b5-11e0-9b8a-00144feab49a.html#axzz2XgX4w3hV, accessed June 30 2013, Russel, J. 'The case to answer for the Serious Fraud Office', May 26 2012, available from http://www.telegraph.co.uk/finance/financial-crime/9292046/The-case-to-answer-for-the-Serious-Fraud-Office.html, accessed June 30 2013, Armitage, J. 'Cuts hamper fight against crime, warns SFO director', April 5 2012, available from http://www.independent.co.uk/news/business/news/cuts-hamper-fight-against-crime-warns-sfo-director-7619339.html, accessed June 30 2013.
[26] For an excellent discussion of the practical difficulties in prosecuting fraud cases see Lloyd-Bostock, S. 'The Jubilee Line Jurors: does their experience strengthen the argument for judge-only trial in long and complex fraud cases?' (2007) Criminal Law Review, April, 255-273, Julian, R. 'Judicial perspectives in serious fraud cases - the present status of and problems posed by case management practices, jury selection rules, juror expertise, plea bargaining and choice of mode of trial', (2008) Criminal Law Review, 10, 764-783 Julian, R. 'Judicial perspectives on the conduct of serious fraud trials', (2007) Criminal Law Review, October, 751-768.

alleged manipulation of LIBOR.[27] The Wall Street Journal reported that the SFO were unable to accept the offer to investigate LIBOR in 2011, due to significant budget cuts.[28] The Coalition government responded by increasing the SFO budget into the investigation of LIBOR.[29] Indeed, the Financial Times reported that the SFO had been given £10.5m to fund its investigation into LIBOR.[30] In March 2013, the Director of the SFO, Sir David Green QC, announced that:

> 'We have an agreement with HM Treasury that where any case costs over a certain percentage of our budget in any one year, we can have access to the reserve for a sum covering that cost, ring fenced for that case. Libor is the first example'.[31]

In June 2013, the SFO announced that it had charged a former trader with UBS and Citigroup, Tom Hayes, with the offences of conspiracy to defraud in relation to the alleged manipulation of LIBOR.[32] However, it is important to note that the amount of funding provided to support the SFO and to combat fraud is likely to be limited by proposed cuts in the legal aid budget.[33] Michael Turner QC, the chairman of the Criminal Bar Association, advised the Justice Select Committee that one way to reduce the amount of taxpayers' money committed to fraud prosecutions was to introduce an insurance system that would involve banks contributing towards the cost of such prosecutions.[34] He stated that:

> *'At present, when a bank loses any money, the only person who suffers is the taxpayer. The bank is allowed to write the money off against tax; the taxpayer pays for the investigation; the taxpayer pays for the prosecution. If the*

[27] See for example Brady, B. and Owen, J. 'Budget cuts killed of LIBOR inquiry', 1 July 2012, available from http://www.independent.co.uk/news/uk/politics/budget-cuts-killed-off-libor-inquiry-7901940.html, accessed 18 March 2013, Russell, J. 'SFO given just £2m to enforce Bribery Act', 30 January 2011, available from http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/8290808/SFO-given-just-2m-to-enforce-Bribery-Act.html, accessed 18 March 2013, Reyes, E. 'News focus: who will bring a Libor claim?', July 5 2012, available from http://www.lawgazette.co.uk/news/news-focus-who-will-bring-a-libor-claim, accessed June 30 2013.

[28] Colchester, M. 'U.K. Fraud Office Opens Libor Investigation', July 6 2012, available from http://online.wsj.com/article/SB10001424052702303962304577510534226515306.html, accessed June 30 2013.

[29] See for example Anon. 'SFO to launch criminal investigation into Libor scandal', July 6 2012, available from http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9381683/SFO-to-launch-criminal-investigation-into-Libor-scandal.html, accessed June 30 2013 and Binham, C. and Parker, G. 'SFO secures cash for Libor investigation', July 6 2012, available from http://www.ft.com/cms/s/0/3b590260-c6cd-11e1-943a-00144feabdc0.html#axzz2XgX4w3hV, accessed June 30 2013.

[30] Shoffman, M. 'SFO given £10.5m for Libor probe', February 20 2013, available from http://www.ftadviser.com/2013/02/20/regulation/regulators/sfo-given-m-for-libor-probe-uza6iEIER2ai2LZejszgLJ/article.html, accessed June 30 2013.

[31] Serious Fraud Office 'Inaugural fraud lawyers association, Inner Temple, speech by David Green CB QC Director, Serious Fraud Office', March 26 2013, available from http://www.sfo.gov.uk/about-us/our-views/director's-speeches/speeches-2012/inaugural-fraud-lawyers'-association.aspx, accessed June 30 2013.

[32] Serious Fraud Office 'Trader charged in LIBOR investigation', June 18 2013, available from http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/trader-charged-in-libor-investigation.aspx, accessed July 11 2013.

[33] Judd, T. 'Hundreds of millions from legal aid budget helps banks defend fraud cases ', June 11 2013, available from http://www.independent.co.uk/news/uk/home-news/hundreds-of-millions-from-legal-aid-budget-helps-banks-defend-fraud-cases-8654539.html, accessed June 30 2013.

[34] House of Commons 'Oral evidence by Michael Turner QC, taken before the Judicial Committee Price Competitive Tendering Proposals in the Government's Transforming Legal Aid Consultation', June 11 2013, available from http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/uc91-i/uc9101.htm, accessed June 30 2013.

prosecution is successful, lo and behold, the bank is delivered free of charge all it needs to get its civil recovery'.[35]

Conclusion

There is evidence to suggest that law enforcement agencies have been very proactive since the start of the Global Financial Crisis. For example, President Barak Obama granted the Department of Justice and FBI additional funding in to tackle the threat posed by mortgage during. The stance adopted in the UK towards targeting those allegedly involved in the Global Financial Crisis and white-collar crime has been to impose financial penalties and to seek prohibition orders. It is the author's opinion that this stance is fundamentally flawed, and that this has been largely influenced by a lack of funding from the Coalition government. We are still waiting for the 'Day of reckoning' as promised by David Cameron, and it is likely that we are going to be in for a very long wait.

The carbon credit markets

Sally Ramage

Introduction

The twenty-six elements of the United Nations environmental programme were established in 1972 at the Stockholm environmental matters Conference on Human Environment, to promote international co-operation and to recommend policies to co-ordinate environmental programmes alongside other UN Agencies such as the International Marine Organisation, International Labour Organisation, International Oceanographic Commission, International atomic Energy Agency and the International Monetary Fund.

The main effect of the environmental programme is to prevent, reduce and control environmental harm through monitoring of countries' activities so that there is sovereignty

[35] Ibid.

over natural resources and non-pollution and protection from hazardous waste of international water courses as this affects air pollution, vegetation and habitation.

The European Union

The EU with its twenty five member states has ratified environmental treaties and because it can issue regulations to its member states has passed the 1986 Unified European Act and the 1992 European Union Convention to ensure that its member states have defined environmental objectives to preserve, protect and improve the quality of its environment in the form of tax and development measures.

In 1993 the EU passed the Regulation EEC/93/1836, which was an environmental management and auditing scheme for European industry, compelling member states to use the best technology available in order to cut pollution. The Council Directive 75/436 Euratom , imposed on the steel industry the international system of "polluter pays" and a regulator of the environmental finances called Financial Instrument for Environment, LIFE, which was formed by EEC/92/1973 to control pollution from motor vehicles, lead, industrial plants, waste incinerators, and air quality assessment and management. There are to date over 1000 pieces of environment-related legislation globally. They all indicate that climate change is the motivation to enforce environmental laws internationally and domestically.

The Kyoto Protocol to the Climate Convention was adopted in 1997 and made binding obligations to reduce emissions of greenhouse gases. Under this Protocol, developed countries agreed to reduce emissions to 5.2% below the 1990 levels in the period from 2008 to 2012. United States of America has refused to agree to the ratification of the Kyoto Protocol and denies the problem with the ozone layer.

Directive 2000/25/EC in 2000 was to prohibit gas and pollution emissions by motor engines, reporting on sulphur content by 2003. But the 2003 reports were not sent in by France, Belgium, Austria, Italy in 2003 and the European Commission issued them a written warning. In 2004, Directive 2004/35/EC laid down environmental liabilities for any pollution caused.

Other countries and CO2 emissions

In the United States, more than half the power companies are expecting penalties for mandatory limits on CO2 emissions whilst Canada admits to an increasing proportion of pollution by over 2 percent per year and the Swiss have proposed a tax on CO2 emissions in their country.

Of the ten new EU member states, Slovenia does not have government issued policies on the environment; neither does Romania, Latvia, Estonia, Bulgaria, Cyprus, Poland and Malta, there being very little regulatory infrastructure in these poorer member states despite lavish EU aid of billions of Euros to bring them to an acceptable level in readiness to join the EU.

The proposed Emissions Trading Plan

In 2000 the United Kingdom issued a consultation paper to the European Commission proposing a swap market for divesting a country of its over-pollution as per its permitted quota by paying an under-developed poor country which does not use much of its own pollution quota to put on its records the over-polluting country's excess pollution. So this market will allow emitters to trade carbon allowances on the open market, like a commodity. It is calculated that emission trading will add flexibility in terms of when and where emission reductions are to take place. So emitters face large abatement costs and some countries may prefer to buy additional allowances from the market if prices are lower than the costs of implementing in-house measures. At the same time, countries with industrial plants, which have low abatement costs, can try to beat their own emission targets and sell off their surplus allowances at a profit. So polluting the under-developed countries will continue by the industrialised countries who buy their additional allowances by securitization. 36 The polluter continues to pollute and harm the polluted by a legal financial device because the atmosphere is not a distinct category.

Since some European countries including the UK have started to implement emission trading programs to be ahead of other countries37, it is imperative that all countries are helped to bring them up to readiness so that when trading begins the poor countries with strong trading power in carbon credits have the financial infrastructure to get their true worth to those polluting industrialised countries who need to trade. There are issues with carbon trading that are unresolved. The proponents of carbon trading say that such markets will help to monitor emissions and cost the reduction of emissions, whilst opponents say that rich countries that have polluted the planet are purchasing the right to pollute by buying emission allowances.38 Even the Eastern European countries that have joined the EU in May 2004, refurbishing their steel plants with £millions PHARE [39] aid, have the same emission limits set in 1990 by the

[36] In a typical securitisation transaction, the company originating or sponsoring the transaction sells rights to payment from income -producing financial assets, such as pollution credits as in this case, to a special purpose entity which in turn transfers such rights to a second such entity which issues securities to capital market investors (organised markets and exchanges) and uses those proceeds to pay the originator. The investors in the securities are repaid from collections of the financial assets. They therefore buy the securities based on their assessments of the values of the financial assets. Some people (see Janger. E. J. (2002),'Muddy rules for securitization', Journal of Corporate and Financial Law, 301-306.) regard securitization as reflecting the uncompensated risks onto third parties, taking advantage of these third parties.

[37] This can be viewed as a regional reaction to this environmental threat. Agreement that the global community is gradually recognising the essential threats to planet Earth, posed by increasing destruction of the environment , global warming, water pollution, and groundwater pollution, is undisputed. But the promulgation by the west that there is a relationship with under-development and global destruction is fiercely disputed. The writer disagrees with the perceptions put forward in the article *Delbruck. J, (1993), 'Globalisation of law, politics and markets - implications for domestic law: A European Perspective', Indiana Journal of Global Legal Studies, Volume 1, Issue 1, Fall, 1993.*

[38] *Equity Watch, '(2001), 'Carbon on sale', Centre for Science and Environment.*

[39] In readiness to join the EU in May 2004, the PHARE programme provided funds to build institutions and gave Romania 140 Million Euros a year from 1990 to 2000. The ISPA aid programme provided investment of 270 Million Euros to Romania alone for environmental and transport infrastructure for the 10 joining member states., to be spent between the years 2000 to 2006. Romania receives 153 Million Euros per year for development, a total of 257 Million Euros of aid until the year 2006.

Kyoto agreements. Their new steel plants will emit less CO2 and so they will be able to trade their surplus. It has been argued that such countries will be the cause of even greater CO2 emissions as they offer their excess allowances for sale to such large consumers as the USA.40

So what are the unresolved issues with regard to these carbon-trading markets? They are -

Limits have not been agreed to.

The sources of emissions traded have not been agreed - eg. should emissions from nuclear energy , hydropower, steel plants, be allowed to be traded?

How will the emissions stated by polluting countries be verified? What standardised model of measurement will be used?

Will there be taxation on each transaction? Will there be a limit to the size of each transaction?

Who will book-keep the levels of carbon traded to the carbon-credit countries? Who will certify these amounts?

Statistics reveal that even in 1850, 80% of CO2 emissions resulted from the North. Why is this continued overuse of the planet being allowed? Why is this inequity been consolidated into legislation? Why has the Western world agreed to continue the industrialisation of their countries at the expense of the undeveloped countries, which will be forced to remain undeveloped?

What aspects of this carbon trading are being addressed by companies Corporate Governance Rules? Corporate responsibility in such carbon trading companies must demonstrate how they are managing risks and maintaining control. One of the most critical areas in these businesses is that of Information Technology and the measurement and control of IT processes and procedures., presenting timely and accurate reports to supervisory bodies A most necessary corporate governance tool in such companies would be a corporate governance stock index which can aid global confidence ; such an index would help investors

[40] *Retallack. S, (2001), 'The Kyoto Loopholes', Third world Network, March 2001*.; See also The Centre for Science and Environment's criticisms; see also the criticisms of The Corporate Europe Observatory, their statement on the issue being.."Many corporate ventures that might become eligible for emission credits - nuclear power plants, so-called 'clean coal' plants as well as industril agriculture and large-scale tree plantations (including genetically engineered varieties) - have extremely serious negative social and environmental impacts. Investments in 'carbon sinks' (such as large-scale tree plantations) in the South would result in land being used at the expense of local people, accelerate deforestation, deplete water resources and increase poverty. Entitling the North to buy cheap emission credits from the South, through projects of an often exploitative nature, constitutes 'carbon colonialism'. Industrialised countries and their corporations will harvest the 'low-hanging fruit' (the cheapest credits), saddling Southern countries with only expensive options for any future reduction commitments they might be required to make".

by simply indicating how good the corporate governance of the company is as a score. The UK, for instance, initiated Greenhouse Gas Emissions Trading Scheme (ETS) in 2000, which allows UK companies that exceed their targets for energy reduction to 'bank' credits for the reduction in carbon dioxide emissions that result, these credits having a monetary value BASED ON DEMAND 41and which traded can be profited from. There have been no Corporate Governance Rules agreed for energy trading UK companies, nor is there an open register of such companies. There is no agreed fines and other penalty system42 in place for such companies. There is no environmental certified audit of such companies. There is no UK legislation relating either to excessive emissions or to limits on trading or to pricing brackets to avoid unfair competition and exploitation. The UK has not produced a Model for measuring emissions nor an audit system for certifying emission trade transactions, not any Accounting Standards to reveal these transactions. There have been no regulatory systems set up to monitor uniformly the state of the technology used to process controls, no government incentive by way of extra tax allowances for capital spending .on computer control systems for metal production processes. The Kyoto Protocol, ratified by the majority of countries except the biggest polluter United States of America, lists six greenhouse gases, being carbon dioxide, methane, nitrous oxide, perflourocarbons, halocarbons and sulphur hexaflouride, which all have a CO2-e value as follows:

No table of figures entries found. Greenhouse Gases	CO2 - e value (in tonnes)
Carbon Dioxide	1
Methane	21
Perfluorocarbons	6590-9200 (varies by 39%)
Halocarbons	140-11700 (varies by 8200%)
Sulphur Hexafluoride	23900

Source: Rio de Janeiro earth summit Report (1992).

[41] This method can be seen to be high-handed since it stresses the superiority of the free market economy and particularly the Anglo-Saxon model over any other economic or societal model. It represents the stateless society administered by laws of the market as per Milton Friedman's 'Capitalism and Freedom' (1962) when clearly this is of global concern and should be decided among nations including those not enamoured of liberalism.

[42] For instance, in the case of marine pollution, US statute prescribes criminal penalties and fines of up to $25,000 a day for each day of violation, with half the fine given as a reward to the whistle-blower if violation reported by a whistle-blower. This is the discretion about fines to be imposed by domestic enforcement by the United Nations MARPOL Convention. Yet the US, Norway, Bahamas and Panama have been found to be the worst offenders of applicable environmental marine laws. (see *Dehner. J. S.,(1995), 'Vessel-source pollution and public vessels: sovereign immunity v compliance. Implications for International Environmental Law', Environmental Law Journal, Fall 1995.*

It is obvious that the varying value of perfloucarbons by 39% and of Halocarbons by 82 time the amount that could be stated, calls for an audit of these values and certification every time these values are recorded, if the figures and carbon credits traded are not to be deemed a nonsense. There is no such provision, nor is these any acknowledgement of the apparent problem this can cause. Other calculating issues are, for example, in respect of aluminium production, when two units of aluminia plus three units of carbon produce four units of aluminium plus three units of CO2 emissions. Aluminium, used in car production, has a long life in which the reprocessing produces less carbon dioxide and companies that recycle aluminium must calculate the CO2 emissions differently.[43]

The trade of greenhouse emissions in exchange for money has already begun44 and not only does it trade in power stations emissions, factory emissions, steel manufacturing, aluminium manufacturing, it also deals with aviation emissions.[45]

These are just some of the issues that have not even been acknowledged and that remain un-addressed by the UK Initiative on carbon trade markets, begun in the year 2000.[46]

The global atmosphere

The atmosphere consists of fluctuating air-mass and it cannot be equated with airspace which, above land, is simply a spatial dimension subject to the sovereignty of the adjacent country. The overlap with territorial sovereignty means that the atmosphere cannot be treated as an area with common property. It is beyond the jurisdiction of any state. It cannot be compared with the high seas. It is a shared resource. Its control and regulation was stated in the

[43] Report on Greenhouse emission challenges, New Zealand Aluminium Smelters Ltd., April 2004.

[44] It is booming business as 2,100,000 tons of carbon dioxide were sold in October 2004 at a price of between E 8.65 to E 8.75 per ton of carbon dioxide., a total sale of E11.31 Million euros or about £7.92 MILLION . The commission on £7, 920,000. must be high and there must be commission to be made on every transaction, a lucrative market indeed. We do not what percentage of the E 8.7 per ton of carbon dioxide the developing countries are paid, but like the charity trade in which the world -wide charity Oxfam deals and declares that 85 pence in every sterling pound currency donated is spent in administration, it would not be surprising if the developing countries are getting the equivalent, ie £1.2 million going to the developing countries and £6,720,000 to the carbon traders.

[45] Carbon Finance, (2004), Newsletter , Issue 11, October 2004.; the International Civil Aviation Organisation produces guidelines for the sale of aviation emissions - this sale will start from the year 2008.

[46] The UK carbon markets initiative which began in 2000 has not been thorough in its inception. It has failed to address the primary issue of which type of process a country would choose to use, whether it would continue with old , polluting equipment in metal production or whether it would calculate a cost/benefit analysis of paying for new clean equipment and save on emissions or pay to trade its emissions in the carbon markets planned. For itself, it is obvious that the UK has not addressed this problem. The UK has a disjointed set of planned programmes to install a mixture of more nuclear power stations, wind farms, and contracted-in coal and raw materials for its metal production, rather than use its planned carbon market as per its own initiative. See articles by Jameson. A, (2004), 'Clean-coal technology could cut CO2 bill by £3 Billion.', *The Times Newspapers*, p36, 22 November 2004. UK's ageing power stations can be replaced with new clean coal-technology power stations that will cut greenhouse emissions.

Geneva Convention on Long-Range Transboundary Air Pollution of 1979. It is not clear how exactly the audit of CO2 emissions will take place and there is bound to be litigation about it. In case of fraud by way of false statements as to carbon credits or carbon emissions, the dispute would be a criminal matter. Would proceedings be granted in the place where the fraud was discovered [47]or the country that is alleged to have committed fraud? Could such decisions be made beforehand by agreement; could it be settled by arbitration, even though it is criminal because it would also constitute breach of contract? What would be the penalties? Will penalties, if monetary, be passed back to consumers in increased prices? Would there be an emergency action if a country had grossly exaggerated false statements, to the extent of putting the world at risk? What would be the penalty? What of the human rights of that country's citizens?

Case law on atmospheric pollution

The only case about atmospheric pollution is the 1939 Trial Smelter arbitration case48 in which a Canadian smelter[49] caused damage as far away as seven miles into Washington, United States. The Trial Smelter case is the precedent that states can litigate against each other to prevent damage and environmental injury for which they are responsible. After the Trial Smelter case, there was more diligent regulation of smelters in Canada, ordered by the

[47] As in the case of *Molins plc v GD S p A*, [2000] All ER (D) 107, reversed, .in which there was a written agreement to be construed and interpreted under English law, yet GD issued proceedings in Italy about the payment of royalties . Since the Italian court was 'first seized' of the action, under article 21 of the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1968, (The Brussels Convention), the English court was obliged to stay the proceedings, had the plaintiff been properly served with notice, but since notice was served by fax which was not acceptable, the English court was allowed to proceed.

[48] *Trail Smelter Arbitration, 33 Ajil,* [1939], 182.
The Consolidated Mining and Smelting Company Limited of Canada operated a zinc and lead smelter along the Colombia River at Trail, British Columbia, about 10 miles north of Washington's border. Between 1925 and 1935 the US Federal government complained about its sulphur dioxide emission, failed to agree at two arbitration hearings and finally the US sued Canada for damage to land and failure of crops. The US was awarded $428,179.51 in damages and costs and a mandate to the Canadian company to maintain equipment to measure wind velocity, direction, turbulence, atmospheric pressure, barometric pressure and sulphur dioxide concentrations at Trail, which the court ordered to be no more than a certain level. This case was the catalyst for the US/Canadian air pollution treaties.
Since then, there have been 3 similar cases , one in Arizona (see article *Audubon, 'Smoking smelter shuts in Arizona', p 147, March 1987*) , one in Washington(see article in International Wildlife Journal,(1984), 'Anti-pollution costs cited in closing of Tacoma smelter', September/October 1984.) and one in Mexico(see article *Business Week, 'A Mexican smelter has the Southwest all fired up', 22 July 1985.*).

[49] Smelters of the old-fashioned kind are still producing today, especially in the Eastern European countries. For example, in Slovakia, smelters, which produced smoke and dust and grit, have only recently been replaced with gas boilers due to the PHARE aid programme to bring the new EU member states up to EU environmental standards.

court and compensation paid also. The burden of unavoidable harm will still lie with the suffering party. At present Germany has such an excess of pollution in carbons that to get rid of the excess pollution it has, it would need to sell its greenhouse pollution at a cost to Germany of $1.22 Billion United States dollars, working back to approximately 1,220,000,000 tons of excess carbon dioxide pollution to be gotten rid of before the end of this year, according to the carbon trading rules. Germany does not have 1.62 Billion Euros spare cash to sell off its present excess pollution, even if there were enough countries willing to buy it; therefore Germany has been trying to persuade on a change of rules in order to carry forward its excess pollution for the year, much like a book-keeping account does.. Similarly France has excess carbon pollution, Carbon Trading on the Chicago Stock exchange this year shod a sale price of a ton of carbon dioxide pollution to be Euro 0.94 per ton of pollution to the present Euro 8.7 per ton of pollution , a price increase of 925 percent in ten months. America treats its excess carbon pollution, ranging into trillion tons of carbon dioxide pollution, as nonsense and has tried to have the case against it dismissed in court. Australia's carbon dioxide excess emissions today are valued at US dollars 1.15 Billion and Australia will have to borrow $US 1.15 Billion to pay to get rid of its excess carbon pollution by December, it plans to borrow the money and pay it back over the next 20 years. This is the present seriousness of the financial and pollution precariousness in the western world.

Terrorism by sabotage and no global jurisdiction

With respect to crime, be it financial fraud relating to the planned carbon pollution trading or acts of terrorism[50], there are no international conventions on jurisdiction. There is however, a regional treaty between some Latin American countries, the Bustament Code, attached to the Havana Convention on Private International Law in force since 1935 between Brazil, Bolivia, Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela. The EU has the 1968 Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters but no convention on criminal matters, although there is legal assistance in criminal matters. As far as the United Kingdom

[50] Terrorism is a real threat to global security and environmental safety, more so now than ever. With the suicide bombing of the World Trade Centre with a live projectile by way of a full aeroplane aimed at a building, it is not inconceivable that terrorists, devastated and frustrated might try to annihilate the whole world by disrupting the electronics of a nuclear power station or several large metal producing smelters, causing a sudden increase in pollution as never experienced before. The International Law Commission has defined terrorism to include:
'(1) Any act causing death or grievous bodily harm or loss of liberty to a Head of State, persons exercising the prerogatives of the Head of State, the spouse of such persons or persons charged with holding public office;
(ii) Acts calculated to destroy or damage public property or property devoted to a public purpose;

is concerned all crime is local as per the common law rule and any extraterritorial crime will rely on extradition laws, UK prosecutors retaining absolute discretion[51] whether to prosecute or not. A Commonwealth Scheme for Mutual Assistance in Criminal Matters exists and was ratified in 1986 by 29 Commonwealth countries. However the Commonwealth Scheme has no guaranteed reciprocity.[52]

Then there is corruption[53], lack of professionalism and conflict of interest; but the most daunting task is the matter of regulating[54] and auditing the pollution levels of every country to ensure uniformity and equality. For financial investigations, a Memorandum of Authority is often used, these having set principles that state that the country will give the requesting country assistance even if the MOU violates the requested country's laws; in strictest confidentiality; agreeing between the countries how they would gather the information requested; with the right to refuse to assist a country in the public interest of the requested country; and able to punish persons in their country who refuse to comply with the request.

This is the knob of the problem. Will all countries be treated equal? Will a poor country with high carbon credit[55] be given a fair value for that carbon credit or will that credit be discounted because that country is undeveloped? The legislation on carbon credits must be applied equally Dworkin argues that the measure of equality is the treatment of all people as free and equal human beings. A further condition of Dworkin 's equality would be that attitudes towards risk-taking and preferences for material resources be evenly distributed throughout the world's population. For it is wrong that an unclothed and hungry uneducated person should die so that a fat, healthy, educated, materially wealthy person should live, and

(iii) Any act likely to imperil lives through the creation of a public danger;
(iv)The manufacture, obtaining of arms, explosives or harmful substances with a view to committing a terrorist act'. The UK Terrorism Act 2000 provides its own definition of 'terrorism' and terms 'country' and 'government' as any country or any government, taking on the mantle of responsibility for the world.

[51] The vesting of broad discretionary powers in all public officials leads to the possibility of dictatorship. Vague statutes lead to immoral behaviour where people will pick and choose the laws they want to enforce and the people against whom they wish to enforce them.

[52] See *Robinson .P .L. (1984), 'The commonwealth scheme relating to the rendition of fugitive offenders: a critical appraisal of some essential elements', International Comparative Law Quarterly Journal, Volume 33, pages 617-624.*

[53] The Gini and Power Distance Index for Countries by level of corruption state the ten most corrupt countries as Columbia, Pakistan, Mexico, India, Venezuela, Philippines, Thailand, Turkey, Argentina and Brazil, whilst they state that the ten least corrupt countries are Denmark , Finland, Sweden, New Zealand, Canada, Netherlands, Norway, Australia, Singapore and Switzerland in that order.
Karstedt. S, (1997), 'Inequality, power and morality', Australian Institute of Criminology Paper.

[54] This specialised field mainly has a Memorandum of Understanding ('MOU') to rely on. The Memorandum of Understanding to Establish Mutually Accepted Means for Improving International Law Enforcement Co-operation, 1983, can consist of just diplomatic notes on related matters. The UK's Financial Services Authority has a wide range of MOU's with authorities in many countries. Since 1991 countries that agree to use MOU's have adopted a set of Principles of MOU's.

[55] That there is much global poverty today is beyond dispute. The World Bank's Report on poverty states that there are 1.1 Billion persons living on less than $1 a day and with reduced life expectancy of 46 years , when western industrialised countries have populations with life expectancy increasing to over 70 years. Poor people are those in East Asia and Pacific China, Latin America and Caribbean, South Asia, Sub-Saharan Africa.

if one must die so that the other may live, then it is the one with the abundance of experiences, fulfilment and usage of the planet's resources who should expire to allow the other some of what was always his due but denied him until now.

The American Declaration of the Rights and Duties of Man, states, at Article 28, that '*the rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'.* Theoretically, there is no derogation, restriction or limitation available from this article and a person has the inherent right to enjoy and utilise fully and freely their national wealth and resources. If we consider that health is the factor that is to be protected with the ozone layer, then all people are important and equal and their carbon credits must be equally valuable. The trading of carbon credits in markets at the price according to demand is the using of wealth maximisation as a normative ideal in the insurance of a social good, the ozone layer.

As far as human rights to the environment goes, there have been cases in 1994[56] and 1998[57] that make it quite clear that Article 8 provides a solid basis for claiming adequate environmental protection. The human rights by way of political rights can be affected. The Rio de Janeiro Declaration on Environment and Development includes principle 10. This states *'environmental issues are best handled with the participation of all concerned citizens, at the relevant level.'* Therefore the right to private life, right to property and right to political participation into areas that affect environmental protection can all be protected under the right to a fair trial.

Conclusion

There is much controversy on greenhouse emissions and the strategy planned to reduce these as outlines above. The market size needs to be determined and the market power also. Governments must be proactive and monitor any mergers in this market of carbon trading. There must be limits put on consolidation in this market to avoid monopoly and anti-

[56] *Lopez-Ostra v Spain, (1995) 20 EHRR 277-300* was a case in which the ECtHR declared that Spain had violated the right to environmental protection when it failed to prevent environmental damage caused by a waste-treatment plant built near the applicant's home. The government failed to implement regulations and procedures. Awarding her damages and mandating the scale-down of the plant, the court said that "*severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously damaging their health*".

[57] In the case *Guerra v Italy, (116/1996/735/932), 19 February 1998*, the court held that the toxic emissions of a chemical factory in an Italian town was a violation of Article 8 on respect for private and family life which a public authority is obliged to observe. Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, the court said.

competitive activity. This very important market must start on a level playing field and consideration must be put on aiding poor countries to set up the required regulatory financial systems to facilitate carbon trading; international accounting standards are needed to treat such transactions uniformly in company reports and accounts, corporate governance rules on ethical transactions need to be formulated, capital requirements in place if securitization is to be used in this market, and a global reaching supervisory body set up with monitoring and enforcement personnel , independent from each country's financial supervisory agency, separate to the World Trade Organisation and its non-compulsory and retaliatory sanctions. All this would require enormous resources, which could be met by the polluting countries urgently needing such a market.

Suggested further reading

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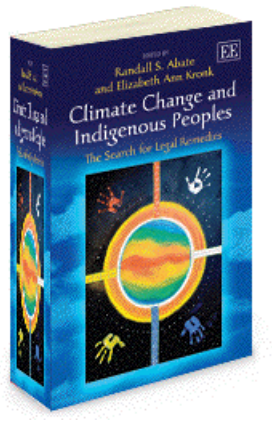
Randall S. Abate and Elizabeth Ann Kronk, (2013) *Climate change and indigenous peoples: the search for legal remedies,* Cheltenham: UK: Edward Elgar Publishing Limited

Book review by Sally Ramage

This new book published by Edward Elgar Publishing Limited is 'right on the button' and the subject matter was in dire need of being brought up-to-date, notwithstanding the swathe of ill-informed dramatised newspaper and other publications on the subject of climate change.



For when it comes to climate change issues, the whole planet, rich and poor countries, are all affected and effective, the principal factor being economics.

The developing countries, most affected by climate pollution effects, and trying to drag their economies into the running, are in the same boat as the rich countries, whose sophisticated farming processes and urban areas have havoc wreaked on them, which no amount of financial reparation and speedy resettlement could assuage the fear and stress they suffer at the hands of the elements.

However, let us take a look at the possible legal remedies as discussed by the distinguished legal scholars who kindly contributed to this comprehensive book, divided into two parts- Part One containing 6 chapters dealing with context and principles, and Part Two, in 18 chapters, which discusses the global perspective, divided into chapters on South America; United States of America; Arctic; Pacific Islands; Asia; Australia and New Zealand; and Africa.

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Indigenous peoples

As reflected in the title, this book on climate change concentrates on its effect on the world's indigenous peoples and hence their communities. The causes of climate change on these vulnerable peoples are outside of their control, occurring as they do as a result of developed countries afar and such indigenous peoples are located in vulnerable locations throughout the world (Parker et al, 2006). Indigenous peoples suffer changes to their biodiversity, causing them to no longer rely on their customary foodstuff such as decreased fish population due to, for example, bleaching of the coral reefs. When the mitigation of climate change began and forest conservation initiatives were put in place by the world's governments, it displaces many indigenous peoples and restricted their long established and rights to their use of land and to natural resources, forcing them to leave their homes, thereby displacing them.

UN Declaration on the Rights of Indigenous Peoples (2007)

Indeed, the 2007 United Nations Declaration on the Rights of Indigenous Peoples, Articles 1-34, state:

'Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights4 and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples

concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their

communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own

procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realisation of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other

resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.'

Even before the 2007 Declaration above, there was much legislation to protect the world against adverse climate change. However, indigenous peoples need special treatment as they are on the frontline of climate change—they are the first to feel its effects, with subsistence economies and cultures that are the most vulnerable to climate catastrophes. The United States passed the law of Tribal Water Rights in 1952, codified and thus restrictive as to measure of quantification, as discussed in chapter 11. And even before this, there had been important litigation (see *United States v Pelican*[58] and *Oklahoma Tax Commission v Sac & Fox Nation*[59.] Federal reserved rights continued to be an issue, as in *United States v District Court*[60;] *Colorado River Conservation District v United States*[61;] *Colville Confederated Tribes v Walton*[62]; and *United States v Adair*[63,] for example.

[58] 232 U.S. 442, 449 (1914).
[59] 508 U.S. 114, 125 (1993).
[60] 401 U.S.520 (1971).
[61] 424 U.S. 800 (1976).
[62] 647 F.2d 42, 48 (9th Cir. 1981).
[63] 723 F.2d 1410 (9th Circuit 1983).

In Australia, more recent litigation concerned the indigenous peoples in Australia. There is a noted lack of litigation concerning indigenous people from less developed areas of the world with less sophisticated legal systems.

Guyana in South America has allowed logging by Chinese company

More recently, it has been alleged that Guyana in South America had allowed a certain Chinese company to cut a large amount of logs, exceeding the amount agreed. During 2012, a roundwood equivalent volume of approximately 120,000 cubic metres of timber was exported from Guyana. China and India each account for about one quarter of the total, almost entirely as logs. A further 3% was destined for the EU, predominantly as 'undressed' sawn wood having an export value of little more than US$ two million. This accounts for a large majority of the roundwood equivalent volume, which is exported from Guyana. China imports most of the coal which the United States exports. United States' export of coal is mainly to China. China's annual coal consumption is almost a total of half of this planet's coal consumption today.

Allegedly, a Chinese enterprise has negotiated rights to log 300,000 cubic metres of forest- twice as much as this - in order to supply a proposed saw mill. This allegation has created doubt about sincerity of Guyana's Low Carbon Development Strategy. Under the United States Lacey Act and also the EC Regulation 995/2010 (which prohibit the placement, on the USA or EU market respectively of non-negligible amounts of wood-based products, supplied directly or indirectly) one would query whether a sum of $2 million dollars of logs can compare to the billions of dollars of coal sold by the United States to China.

Global warming

Let us take a moment to examine global warming as it is at present. The fact is that global warming has been increasing more slowly than in previous decades.64

Such excitable news released to the public via Guyana's local newspapers has apparently caused other countries to stop the carbon credit rebate due to Guyana. One cannot help wonder whether some of these machinations are not contrived to keep this poor country down since Guyana is one of the richest countries in the whole world as regards cleaning up carbon.

[64] See the United Kingdom's BBC television programme on the Global Warming debate on 17 May 2013.

Guyana has a wealth of forestry, yet this country is extremely poor and still reeling from the massive loans of cash it borrowed from the United States decades ago in order to build roads – roads which crumbled nearly as soon as they were laid by road engineers who obviously did not know the nature of the land in this country, partly causing Guyana to become a bankrupt country, from which bankruptcy it has now emerged.

Understanding climate change: heat v temperature

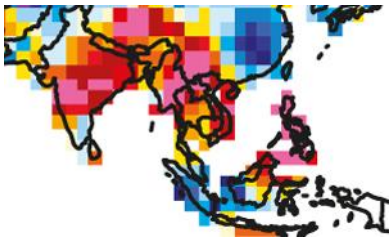
There is a difference between 'heat' and 'temperature'. For example, a spark contains a small amount of intense heat but a heated swimming pool or an ocean contains more heat energy than a spark and comparisons should be with like volumes to make any sense.

Oscillation in the rate of global warming

Thus a small oscillation in the rate of global warming. A study, based on sediment in a Siberian lake, reveals or concludes that 3 million years ago, carbon dioxide levels were are high as in present years. This means that the average temperatures in Siberia 3 million years ago were 8 degrees centigrade higher than the temperatures today.

The difference between then and now is the rate of speed at which the planet is heating up today, which is faster than then. In the medium term, climate is affected by atmospheric carbon dioxide levels.

The El Nino Southern Oscillation



The 'El Niño/Southern Oscillation' exhibits natural variability on interdecadal to centennial timescales that obscures the effects of climate change.65 A reconstruction shows anomalously high activity in the late twentieth century, relative to the past seven centuries.

[65] *Nature Climate Change*, ISSN 1758-678X.

This suggests a response to global warming, and could be used to improve climate models and projections. If carbon emission on this planet were cut by 80% by the year 205066, in 37 years' time, this would limit the average world atmospheric temperature rise to 2% by the year 2110 (in 97 years' time). The rate of rise of emission currently is 2.6% a year. If emissions were cut by 80% in 37 years time, it would stem the flow of heat waves, floods, crop failures, etc by 20-65%.

The developed countries continue to increase carbon emission

Evidence of this abounds. In the Athabasca tar sands, oil production is planned to triple by the year 2020. The United States plans a Keystone XL pipeline from the Athabasca tar sands to oil refineries in the state of Texas. Such pipelines are already in place to refineries in the states of Illinois and Oklahoma.

The planet's oceans

Today's speed of the heating of the planet Earth would have been even higher were it not for the seas today. It is clear that in the medium term, climate is affected by the Pacific Decadel Oscillation and the Atlantic Multidecadel Oscillation, which oscillations affect the amount of heat absorbed by the planet and also affects the amount of heat radiated out into space. This factor is affected by atmospheric carbon dioxide levels. People fail to realize that there are major environmental issues faced on earth: the rate of increase of carbon dioxide in the atmosphere; the rise of sea levels as the oceans heat up; and extreme weather conditions – based on long-term

Atmospheric warming trends

Some experts believe that when these oscillations in the rate of global warming enter another phase, warming could accelerate even further when oceans release, to the atmosphere, the heat accumulated in the current phase.

Conclusion

[66] See European Commission's 'road map'.

This book on climate change is very necessary reading for lawyers keen to grasp this important area of law. It was written by scholars at the coalface, so to speak. These writings assist the reader to realize the many factors, legal, financial, political and social, which are interlinked and impact on climate change.

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