

# The Road to Doha through Seoul: The Diplomatic and Legal Implications of the Pre-COP 18 Ministerial Meeting

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## Abstract

*International climate change negotiations reached a critical crossroads in 2012. Facing the conclusion of the Kyoto Protocol and with no successor regime yet negotiated, nations have been compelled to re-engage in substantive and far-ranging discussions. The nation of Korea has distinguished itself in this process, in particular by hosting the final ministerial meeting prior to this year's Conference of the Parties in Doha, Qatar. The Korean government's willingness to lead has also been evidenced by Korea's founding of the Global Green Growth Institute, a leading international organization in the area of environmentally responsible economic development, and its successful bid to host the Green Climate Fund secretariat. Korean diplomacy has aided in the consensus to extend the Kyoto Protocol and to continue efforts to implement a new climate change architecture by 2020.*

*The importance of Korea's facilitative role is enhanced because it has already undertaken significant domestic and cross-border efforts to mitigate greenhouse gas emissions. Korean green growth policy has raised accountability for emissions, stimulated 'green investment', and resulted in a domestic emissions trading system to be launched in 2015. In addition, Korea exerts particular credibility on the international stage. As a nation transitioning from developing to developed status, it can liaise between both sides of the 'north-south' economic divide. Korea's role in future COP meetings and other international forums should increase in future years, as nations work urgently to overcome the political barriers to a compromise that can meaningfully mitigate the impacts of climate change.*

KEY WORDS: Climate change, Kyoto Protocol, Post-Kyoto, negotiation, COP 18, Durban Platform, green growth, low carbon development strategy, mitigation

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## I. Introduction and Background

The populations of nations around the globe are feeling the effects of climate change. Altered weather patterns, more frequent and severe natural disasters, changes to ecosystems, and shifts in agricultural productivity are just a few salient examples. An international consensus has emerged that cooperative efforts are needed to successfully mitigate greenhouse gas emissions and avoid the most harmful consequences of climate change. However, a gap persists between scientific evidence and diplomatic acknowledgement of climate change, on the one hand, and political and economic efforts to mitigate and adapt, on the other hand. Individual nations have innovated important and insightful policies to promote sustainable development and to harmonize economic productivity and environmentally responsible reduction of greenhouse gas emissions. However, the global nature of atmospheric greenhouse gas accumulation presents a need for collective action. To avert the diverse causes of the climate change collective action problem, international leadership is required. As we explain, the Republic of Korea (“Korea”) has played an increasingly important leadership role on the public stage of climate change negotiations. As critical discussions continue about the future legal and political governance of greenhouse gas emissions, Korea must serve as a bridge nation. Korea’s economic and social development provides the basis for the Korean government to identify common ground amongst nations for future compromise and consensus.

The United Nations Framework Convention on Climate Change (the “UNFCCC” or the “Convention”)<sup>1)</sup> and the Kyoto Protocol,<sup>2)</sup> which was agreed upon at the third Conference of Parties (“COP 3”), are the most important international treaties to address the shared challenges of climate

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1) The United Nations Framework Convention on Climate Change, March. 21, 1994, 1771 U.N.T.S. 107.

2) Kyoto Protocol to the United Nations Framework Convention on Climate Change, U. N. Doc. FCCC/CP/1997/7/Add.1, Dec. 10, 1997, 37 I.L.M. 22 (1998), entered into force Feb. 16, 2005.

change.<sup>3)</sup> The UNFCCC, adopted in 1992 and ratified in 1994, was a great and early achievement in international environmental diplomacy. The UNFCCC represented a global commitment to address climate change. The annual negotiation process, initiated by the UNFCCC and continued at the COP held each year, has been the driving force that spawned a variety of national actions. The existence of this process, and the continuing importance it plays as a forum for negotiation over nearly two decades, are strong demonstrations to international society that climate change is indeed one of the most important issues of our time. The UNFCCC emphasized the inter-related challenges of economic development, environmental integrity, and social justice. Pursuing a balanced and sustainable vision for equitable global prosperity remains a cornerstone challenge for the international community.<sup>4)</sup>

COP meetings have provided an annual forum for continuing climate change negotiations since 1994. While there have been many important COP meetings, COP 18, which will be held from November 26, 2012 to December 7, 2012 in Doha, Qatar, comes at a particularly significant time. The Kyoto Protocol's first national commitment period concludes at the end of 2012. Consensus to ensure a seamless continuation of the Protocol as of January 1, 2013, and thus the maintenance of an international instrument for climate change governance, is essential. Without action on the Kyoto Protocol, the nations of the world will collectively lapse into a "legal gap", with no source of law in force.<sup>5)</sup>

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3) For a brief history of the UNFCCC and the Kyoto Protocol, see IISD, *Summary of the Bangkok Climate Talks: 30 August - 5 September 2012*, 12 n.555 Earth Negotiation Bulletin 1-2, (2012).

See also UNFCCC, *Background on the UNFCCC: The International Response to Climate Change*, available at [http://unfccc.int/essential\\_background/items/6031.php](http://unfccc.int/essential_background/items/6031.php) (Accessed Nov. 14, 2012).

4) UNFCCC. Ad hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), FCCC/AWGLCA/2012/INF.3/Rev.1, *Report on the workshop on equitable access to sustainable development* (Aug. 15, 2012); CAN, *Fair Effort Sharing Discussion Paper* (Jul. 12, 2011); CAN, *CAN Fair Effort Sharing Principles Position Paper* (Sept. 22, 2011).

5) Daniel Bodansky, *W[h]ither the Kyoto Protocol? Durban and Beyond*, Harvard Project on Climate Agreement 3-11, (Aug. 2011); Jacob Werksman, *Law and Disorder: Will the issue of Legal Character Make or Break a Global Deal on Climate?*, German Marshall Fund of the United States Policy Brief 3 (Jul. 2010)

In addition, a transition to a future climate change regime requires decisive action in 2012. The work on negotiating a new, universal, and legally binding climate agreement by 2015, which is to enter into force from 2020 and aspirationally will be applicable to all nations (encompassing both developed countries and developing countries), started in 2012. At prior ministerial meetings, national representatives have confirmed their understanding that interim measures to mitigate climate change harms must be put into place as soon as possible. The timeline for negotiating the legal instrument to govern the post-2020 period must be accelerated and urgent, as delays may compromise the ability to put such an instrument in place in the years remaining before 2020.

At previous COPs, it was possible for the nations of the world to delay agreement on a concrete system for climate change governance moving forward, because the Kyoto Protocol provided a backstop. Now, COP 18 must result in a specific resolution on the climate change law to apply starting in 2013. It is neither hyperbole nor unsupported contention to state what national delegates have explicitly and implicitly agreed upon in prior ministerial meetings: we have run out of time for postponing difficult but necessary international decisions.

Korea hosted the 2012 Pre-COP Ministerial Meeting on Climate Change ("Pre-COP 18") from October 21-23 in Seoul, under the banner "Meet the Challenge, Make the Change-Moving Forward with a Balanced Perspective."<sup>6</sup> This Pre-COP marked a critical moment for the future of international climate change law and policy. It was a result of a compromise at COP 17 in Durban, at which time Qatar and Korea were both candidates to host COP 18. It was agreed that Qatar would host the COP, whereas Korea would host a key transitional meeting to help ministers prepare for the COP. Under this spirit of cooperation, the upcoming COP 18 President served as co-chair with the Korean Minister of Environment at Pre-COP 18.

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6) Hwangyeongbu[Ministry of Environment of the Republic of Korea], *Seoul Gihubyeonhwajanggwanseupoeui, Dohaui Seonggonggeul Ryeyakhada[Pre-COP Ministerial Meeting on Climate Change in Seoul promised 2012 Doha's Success]* (in Korean) (Oct. 23, 2012), available at [http://www.me.go.kr/web/286/me/common/board/detail.do?boardId=notice\\_02&decorator=me&idx=183099](http://www.me.go.kr/web/286/me/common/board/detail.do?boardId=notice_02&decorator=me&idx=183099) (Accessed Nov. 14, 2012).

As the last Ministerial Meeting before COP 18, Pre-COP 18 provided a conducive forum for positive and constructive discussions. Forty-seven Ministers from all regions engaged candidly with each other on the political obstacles to agreement and other issues. Their objective was to advance a productive discussion on a new climate regime, in order to ensure that the parties in Doha can reach consensus on a plan that will be as concrete and specific as possible. Although not a formal negotiation session, the Seoul Pre-COP was expected to deliver a meaningful outcome.

The two co-chairs called on all Ministers to provide leadership and political will to move the negotiations in a direction that would enable COP 18 to reach important decisions to help define the path forward. As a result, a set of key Doha deliverables was identified: (i) the adoption of the Amendments to the Kyoto Protocol on the second commitment period, with an understanding that a second commitment period would apply immediately to a range of countries in order to avoid a legal gap; (ii) conclusion of the work under the AWG-LCA (Ad Hoc Working Group on Long-term Cooperative Action under the Convention); and (iii) political momentum to the ADP to continue its work, with the assurance that it would meet its 2015 deadline.<sup>7)</sup>

Korea has been increasingly vocal and visible in recent environmental negotiations. At the inter-sessional meetings to prepare for the United Nations Conference on Sustainable Development (the “Rio+20 Summit”), Korea served as a co-chair nation and was charged with the task of building compromise among negotiating parties. At the Rio+20 Summit, the Korea-initiated Global Green Growth Institute (“GGGI”) was successfully transformed to an international organization through the participation of several countries.<sup>8)</sup> From the Korean government’s point of view, hosting the Pre-COP was a test case in asserting the nation’s emerging role as a crucial player to bridge gaps between developing and developed countries

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7) Co-Chairs’ Reflections, 2012 Pre-COP Ministerial Meeting on Climate Change, Seoul (Oct. 22-23, 2012), at 5, available at [http://www.me.go.kr/web/286/me/common/board/detail.do?boardId=notice\\_02&decorator=me&idx=183099](http://www.me.go.kr/web/286/me/common/board/detail.do?boardId=notice_02&decorator=me&idx=183099) (Accessed Nov. 14, 2012).

8) Global Green Growth Institute, *GGGI Holds Signing Ceremony to Convert into International Organization at Rio+20* (Jun. 20, 2012), available at <http://www.gggi.org/news/release/2011/00/00/gggi-holds-signing-ceremony-convert-international-organization-rio20-0>.

in the context of climate change negotiations.

Unsurprisingly, it proved very difficult to bring about any specific breakthroughs in the Pre-COP 18 climate change negotiations. First, as an informal ministerial meeting, it was not intended to be a forum for formal negotiations, so any progress made is inherently informal and difficult to measure. Further, this meeting was held only one and a half months after the conclusion of a negotiation session in Bangkok,<sup>9)</sup> so participants were not in a position to move dramatically from their recently established positions. Lastly, the duration of the meeting was too short for ministers to lay out new perspectives in sufficient detail to reveal previously unidentified opportunities for consensus.

In light of all these considerations, several important implications can be drawn, particularly for Korea. First and foremost, by collaborating with Qatar to achieve continuity between Pre-COP 18 and COP 18, Korea has demonstrated that it is functioning in a facilitative role in international climate change negotiations. As we will describe later, Korea has made several significant achievements in environmental diplomacy, and the successful conclusion of the Pre-COP was a culmination of those achievements. Korean diplomatic efforts have constructed an infrastructure to publicize green growth policy (or in climate change terms, Low Emission Development Strategies or “LEDS”). Green growth is an action-oriented paradigm which promotes a mutually supportive relationship between growth and the environment by holistically embracing the framework of sustainable growth.<sup>10)</sup> The green growth policy scheme needs to be re-examined and refined in order to provide a governing “software”. However, green growth continues to hold the promise of producing reliable, objective guiding principles for international policy.<sup>11)</sup> As the nations of the world embark upon climate change negotiations with increasing urgency, Korea can and should advance the concrete premises and tangible outcomes of green growth as source material for public

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9) For summary report of the Bangkok climate talks, see Earth Negotiation Bulletin (Sept. 8, 2012), available at <http://www.iisd.ca/vol12/enb12555e.html>.

10) Jisoon Lee, *Green Growth: Korean Initiatives for Green Civilization*, Green Growth (2010).

11) See World Bank, *Inclusive Green Growth: The Pathway to Sustainable Development* (2012); OECD, *Fostering Innovation for Green Growth* (2011).

international law.

## II. Challenges Faced at the Pre-COP

### 1. Bridging the gap between developed countries and developing countries

One of the most significant obstacles to the implementation of internationally agreed upon climate change mitigation measures is the difference of positions between developed and developing nations.<sup>12)</sup> Divergent economic interests, historically rooted disagreements on cultural and social issues, and conflicting visions for the future of diplomatic relations all contribute to this positional gap. The international community must address the lack of trust in negotiations and the need for balance in designing a durable compromise. Appropriate balances need to be struck between the efforts of developed countries and developing countries for moving climate action forward. To do so, it is clear that greater trust, and thereby greater capacity for collective action, must be built between developed countries and developing countries.<sup>13)</sup>

On the issue of mitigation actions, developing countries claim that developed countries need to reduce their emissions much more quickly and substantially, due to their historic responsibility for emissions and their greater capacity to undertake mitigation while maintaining a high quality of life for their citizens. Developing nations further argue that developed nations should provide financial and resource support to the developing world to facilitate mitigation and adaptation actions.<sup>14)</sup> Developed countries

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12) Michael W. Howard, *Sharing the Burdens of Climate Change: Environmental Justice and Qualified Cosmopolitanism*, in Paul G. Harris (ed.), *Ethics and Global Environmental Policy* 110-20 (2011); Aaditya Mattoo & Arvind Subramanian, *Equity in Climate Change*, 5383 World Bank Policy Research Working Paper 1-2; Janathan Pickering, Steve Vanderheiden & Seumas Miller, *Ethical Issues in the United Nations Climate Negotiations: A Preliminary Analysis of Parties' Positions*, available at <http://www.cappe.edu.au> (Accessed Nov. 14, 2012).

13) Bradley C. Parks & J. Timmons Roberts, *Inequality and the Global Climate Regime*, in Paul G. Harris(ed.), *The Politics of Climate Change: Environmental Dynamics in International Affairs* 184-87 (2009)

14) UNFCCC, Art. 4(7), ("The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective

insist that developing countries must demonstrate that they are sincere about their participation. According to this view, developing nations must make emissions mitigation pledges of their own, register their mitigation actions, and document the support they require in order to accomplish the collective action necessary to limit the probable increase in global temperature (relative to pre-industrial levels) to below 2°C.<sup>15)</sup> In Durban, the result of this debate was that governments implicitly rejected the pre-existing firewall between Annex I and non-Annex I nations.<sup>16)</sup> The principle of near-universal inclusion of nations in a collective climate change scheme has gained support, but many variables remain regarding the form and amount of support to developing countries, the nature and enforcement of commitments, and the inter-dependent relationship between developed and developing nations going forward.

On the issue of finance and the termination of work under the AWG-LCA, developing countries maintain that the finance discussion should continue under the AWG-LCA, referring to decisions from Bali,<sup>17)</sup> Copenhagen<sup>18)</sup> and Cancun.<sup>19)</sup> Developed countries maintain that the AWG-LCA has already achieved significant results and other subsidiary bodies such as the SBSTA (Subsidiary Body for Scientific and Technological

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implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology ..."); Kyoto Protocol, Art. 11.

15) UNFCCC/CP/2010/7/Add.1 para 4, Mar. 15, 2011

16) UNFCCC, *Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action* (2011), available at [unfccc.int/bodies/body/6645.php](http://unfccc.int/bodies/body/6645.php); Lavanya Rajamani, *The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law*, 8 n.3 *International Affairs* 616-18 (2012); Wolfgang Sterk, Christof Arens, Florian Mersmann, Hanna Wang-Helmreich & Timon Wehnert, *On the Road Again: Progressive Countries Score a Realpolitik Victory in Durban While the Real Climate Continues to Heat Up*, Wuppertal Institute for Climate, Environment and Energy 33 (2011)

17) Bali Action Plan, Decision 1/CP.13, paras. 1(b)(ii), 1(e), available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf>.

18) Copenhagen Accord, paras. 5, 8., available at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>.

19) Cancun Agreement, Decision 1/CP.16, §III(B) ("Recognizing that developing country Parties are already contributing and will continue to contribute to a global mitigation effort in accordance with the principles and provisions of the Convention, and could enhance their mitigation actions, depending on the provision of finance, technology and capacity-building support provided by developed county Parties."), available at <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2>.



Advice) and the SBI (Subsidiary Body for Implementation) can provide the most productive forums in which to continue the finance discussion.<sup>20)</sup>

How can we ensure that governments undertake environmentally efficient and credible commitments when there is prevalent mistrust between developed and developing countries? Increasing ambition has many dimensions. Nations must demonstrate the ambition not only to deepen pledges but also to employ diverse instruments to catalyze the fulfillment of those pledges, and to engage various public and private actors in the process. In other words, clarifying the means of implementation will be a critical building block for the system of enhanced action under the Convention.

## *2. Proposing a viable development strategy to enhance mitigation action*

Climate change implicates virtually every area of domestic policy. As a result, the climate change regime raises much greater domestic sensitivities than other international regimes. On the other hand, given the international approach of setting caps and allowing nations flexibility in achieving their designated target levels, individual governments can rationally adopt policies to respond to unique problems they are facing and to emphasize domestic priorities in domestic mitigation actions. In order to establish trust building in the system, the system must incentivize what governments can do best, instead of focusing entirely on areas or mechanisms where they are unlikely to commit.<sup>21)</sup> The system must be flexible enough to accommodate many different national approaches.

As nations seek to address the challenge of acting individually and collectively to formulate responsible climate change policies while promoting sustainable economic development, it is critical for all the participants in climate change negotiations to promote innovative national policies; these policies are commonly referred to as Low Emission Development Strategies (“LEDS”) or Low Carbon Development Strategies (“LCDS”). Such strategies reflect national circumstances and specific

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20) IISD, *supra* note 3, at 10.

21) *See generally* David G. Victor, GLOBAL WARMING GRIDLOCK: CREATING MORE EFFECTIVE STRATEGIES FOR PROTECTING THE PLANET (2011).

challenges, while harnessing public and private opportunities for seeking compatibility and efficiency in economic, social, and environmental policies.

While international negotiation on the future regime is underway, equally important will be the process to actually implement the international commitments that result from this negotiation. Once the parties reach agreements on structure and governance, proactive actions must be taken to expeditiously realize the vision of sustainable development and green economy. These efforts should operate on multiple levels and engage multiple stakeholders. LCDS will significantly complement international efforts to address climate change.

LEDS and LCDS were prominently featured in the text of the 2009 Copenhagen Accord,<sup>22)</sup> the 2010 Cancun Agreement<sup>23)</sup> and the 2011 Durban Platform.<sup>24)</sup> LCDS can play a pivotal role as a strategy and means of policy coordination; LCDS can be a pathway to effective climate change responses, including mitigation and adaptation. Moreover, LCDS should enable nations to articulate Nationally Appropriate Mitigation Actions (“NAMAs”), meaningful steps that can be recognized by the UNFCCC.<sup>25)</sup> Enabled through appropriate financial and technical support from developed countries, developing countries can implement long-term LCDS as part of their overall development planning. These strategies should be determined through a bottom-up country-driven process. As part of this process, developing countries should identify NAMAs they would

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22) Decision 2/CP.15, FCCC/CP/2009/11/Add.1, para.2.

23) Decision 1/CP.16, FCCC/CP/2010/7/Add.1, at 14 & paras. 6, 45, 65.

24) Decision 2/CP.17, FCCC/CP/2011/9/Add.1, at 9, 27 & paras. 11, 28, 135, 168; Decision 3/CP.17, FCCC/CP/2011/9/Add.1, paras. 2, 36 & 40.

25) See World Resources Institute, *The International Partnership on Mitigation and Measurement Reporting and Verification: Lessons and Next Steps* (Nov. 2011). The parties at COP 17 decided to design the Registry, which will include information on NAMAs (those seeking international support as well as other individual NAMAs). Draft decision [-/CP.17], Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, paras. 45-55 (Advanced unedited version). Implementing COP decisions of COP 16 in Cancun, the Subsidiary Body for Scientific and Technological Advice (SBSTA) was requested in Durban to develop general guidelines for domestic measuring, reporting and verification (MRV) of unilateral NAMAs. *Ibid.*, paras. 34 & 37.

undertake unilaterally.<sup>26)</sup>

Indeed, the Durban Platform aims at developing “a protocol, another legal instrument or agreed outcome with legal force”<sup>27)</sup> for the post-2020 period, and the question has been raised about the legal nature of the outcome. Could the requirement of “legal force” be satisfied by commitments that are legally binding under a country’s domestic law, rather than under international law? Would this be consistent with the language in the preamble of the Durban Platform about the need to strengthen “the multilateral, rules-based regime under the Convention”? If domestic policy coordination is one way forward, this policy coordination may not be “legally binding under the international law,” but this can nevertheless be “domestically binding” or carry some “legal force.”<sup>28)</sup> The Durban agreement stipulates negotiation of a new legally binding agreement but nowhere states that this agreement is to include legally binding emission reduction commitments, so this question is still completely open. This ambiguity provides flexibility for individual Parties, which means that developing countries would submit LCDS plans and NAMAs.

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26) The COP 17 decision reaffirmed “that social and economic development and poverty eradication are first and overriding priorities of developing country Parties, and that a low-emission development strategy is central to sustainable development, and that the share of global emissions originating in developing countries will grow to meet their social and development needs” and that developed countries “shall provide enhanced financial, technology and capacity-building support for the preparation and implementation of NAMAs of developing country Parties.” *Ibid.*, at 6.

27) Decision 1/CP.17, FCCC/CP/2011/9/Add.1, para.2.

28) Raj Bavishi, *Unwrapping the Durban Package* (March 2012), pp.7-11, available at [http://www.legalresponseinitiative.org/download/BP40E%20-%20Briefing%20Paper%20-%20Unwrapping%20the%20Durban%20Package%20\(12%20March%202012\).pdf](http://www.legalresponseinitiative.org/download/BP40E%20-%20Briefing%20Paper%20-%20Unwrapping%20the%20Durban%20Package%20(12%20March%202012).pdf) (Accessed Nov. 14, 2012); Jacob Werksman, *Q & A: The Legal Aspects of the Durban Platform Text* (Dec. 2011), available at <http://insights.wri.org/news/2011/12/qa-legal-aspects-durban-platform-text> (Accessed Nov. 14, 2012); Lavany Rajamani, *Decoding the Durban Platform* (Dec. 14, 2011), available at <http://www.ejiltalk.org/decoding-the-durban-platform/> (Accessed Nov. 14, 2012).

### III. Korea's Challenges and Opportunities at COP 18

Based on the political guidance resulting from Pre-COP 18, the parties at COP 18 are intended to adopt the workplans necessary to negotiate a global climate change agreement to be adopted by 2015 and to take effect from 2020; at COP 18, the parties should proceed to outline the main principles for this new universal agreement.<sup>29)</sup> We will outline and analyze Korea's challenges and opportunities in future negotiations.

#### 1. *Construing the specific index of national circumstances for Korea*

During the 18 years of COP conferences, it has been difficult to classify Korea as simply "developing" or "developed". Korea was not categorized as an Annex I nation under the Kyoto Protocol in 1998, as were traditionally wealthy countries. Excluded from this category, Korea was not under an obligation to reduce its carbon emissions. Since COP 3, the Korean economy has continued to grow<sup>30)</sup> and has strengthened relative to many other nations, and Korea now has a higher per capita GDP than approximately half of the Annex I nations.<sup>31)</sup> Furthermore, recent negotiations reflect a stakeholder approach to emissions mitigation that would entail much broader, even universal participation and commitments, consistent with the principle of "common but differentiated responsibilities". Given these considerations, Korea will most likely be

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29) CAN, *Doha Milestones and Action* 7-10 (Aug. 2012); CAN, *Increasing Mitigation Ambition in Doha* 3-4 (Aug. 2012)

30) As of 2010, Korea is the seventh-7<sup>th</sup> largest carbon emitting country, according to an estimate by the U.S. Energy Information Administration, available at <http://www.guardian.co.uk/environment/datablog/2012/jun/21/world-carbon-emissions-league-table-country>. For a comparison of per capita emission levels, see Sweden and France have lower per capita emissions than Korea. Jyoti Parikh & Iitil Baruah, *A New Framework for the UNFCCC*, XLVII, no. 45 *Economic & Political Weekly* 67 (Nov. 10, 2012)

31) Korea's per capita GDP is approximately, \$31,200, according to a recent estimate provided by the United States Central Intelligence Agency; this is higher than twenty Annex I nations, including New Zealand, Spain, Italy, Poland, Portugal and Turkey, to name a few. CIA World Factbook, ISSN 1553-8133, available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>.

regarded as a developed country for the purposes of a future legal regime,<sup>32)</sup> and will certainly be expected to assume binding commitments that incrementally contribute to the global effort to mitigate carbon emissions.

Korea's domestic policies and intensifying participation in international negotiations indicate that it is emerging as a leader in this area. Recently developed and increasingly prosperous nations like Korea should not assume a passive position of favoring the status quo and assuming obligations only to the minimum extent necessary for the formation of a global climate change system. In order for negotiations to succeed in the first place, nations at differing stages of economic development must actively lead. Significant net global emissions reductions are necessary for societies to avert the worst consequences of climate change.

We expect that Korea will build upon its own willingness to make commitments and undertake international obligations of the magnitude necessary to proportionally contribute to an effective global mitigation strategy, because it has already demonstrated the seriousness of the nation's resolve. Korea has made voluntary emission reduction pledges as a non-Annex I country.<sup>33)</sup> In fact, Korea's pledge to cut emissions is the largest among non-Annex I countries.<sup>34)</sup> Korea is also committed to the sustained use of incentives-based regulatory instruments as an integrated dimension of domestic policy to harmonize carbon emissions-reduction and

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32) Only 15 countries are responsible for more than 80 per cent of global emissions, and Korea is one of them. Jasmin Hundorf, *Institutionalizing and Agreement among Main Emitters under the Umbrella of the UNFCCC*, presented at Annual Conference of the Euro-Latin Study Network on Integration and Trade 42 & 56. It is said that the urgency of acting to mitigate climate change suggests that agreement among a small group of 15 largest emitters to reduce their GHG emission is a crucial immediate step. *Ibid.*, 37-43; David Victor, *Global Warming Gridlock: Creating More Effective Strategies for Protecting the Planet* 250 (2011); Arunabha Ghosh & Ngair Woods, *Governing Climate Change: Lessons from other Governance Regimes*, in Dieter Heml & Cameron Hepburn (eds.), *The Economics and Politics of Climate Change* 477 (2009)

33) Korea has made a voluntary commitment to reduce its nationwide carbon emission by 30% below business-as-usual levels by 2020. Shinhye Kang, *South Korea to Cut Greenhouse Emission 30% by 2020* (Nov. 17, 2009), available at <http://www.bloomberg.com/apps/news?id=newsarchive&sid=aTCT6NfyRFD0>.

34) Korea's goal is set at the highest level recommended for emerging economies by the IPCC.

sustainable development.<sup>35)</sup> Korea's recently legislated cap-and-trade system is a prominent example of the progress already made to implement incentive instruments.<sup>36)</sup> Korea's pledge is credible because the statement of political will was quickly followed by legal action.

The launching of the Durban Platform will not necessarily result in an agreement under which all countries will have legally binding commitments.<sup>37)</sup> However, it is very likely that Korea will be amongst the increasing number of countries to undertake binding emission reduction commitments in the post-2020 climate change regime. COP 18 discussions will include preliminary talks on how to address differing national circumstances in shaping the agreement; this, in turn, will have a significant impact on Korea's carbon-intensive industry sectors. While Korea's ability to assume emissions reductions may not be as great as the wealthiest nations, Korea can model for emerging economies the capacity to undertake meaningful and credible commitments, and to harmonize those commitments with a robust and efficiently regulated economic growth trajectory. In this context, an index of the national circumstances for Korea and other nations must be developed, taking into account industrial structure and capacity for further mitigation actions.<sup>38)</sup> These indexes can be defined as country-specific circumstances resulting in variances of sector emissions among countries that are virtually impossible to influence by the governments concerned, at least in the short and medium run. Hence, under certain conditions, such indexes may provide grounds for justification and agreement at the international negotiation table to concede certain additional allowances to the national emission mitigation targets of countries that are faced with less favorable country-specific circumstances.

From the perspective of Korea, key variables for these indexes include

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35) Prominent among these legislations is the Low Carbon Green Growth Framework Act. See generally John M. Leitner, *The Expansive Canopy of Korean Green Growth: Key Aspects for Forest Conservation Projects in Southeast Asia*, 10 J. KOR. L. 171 (2011).

36) For Emission Trading System in Korea, see Hongsik Cho, *Legal Issues Regarding the Legislation for an emission Trading System in Korea*, 9 J. KOR. L. 161 (2009).

37) Wolfgang Sterk et al., *supra* note 16 .at 32.

38) In Bangkok, Korea supported incentives for developing country participation that take into account national circumstances, such as population growth rate and density, energy mix, renewable energy endowment, and the extent of coastline. IISD, *supra* note 3, at 4.

the contribution of energy-intensive industry to GDP and the level of energy efficiency. Korea is facing specific problematic circumstances because its economy is in a state of transition from a rapidly developing, industrializing state to a more developed and moderately growing services economy. These circumstances may justify temporary, additional quantities of permitted emissions during the transition period.

In addition, given a certain economic structure, the level of energy efficiency determines the energy savings potential and the emissions reduction potential. Considerable differences exist in the energy efficiency of countries, varying by sector. As a result, the potential for reducing CO<sub>2</sub> emissions by improving energy efficiency will differ from country to country.<sup>39)</sup> Applying equal emissions limitations to all countries would disadvantage countries that have already invested great effort and resources into achieving energy efficiency.<sup>40)</sup> Competitiveness considerations and the related fear of foreign relocation of carbon-intensive industries have led to advocating the use of energy efficiency improvement potentials as a basis for setting mitigation targets.<sup>41)</sup>

## *2. Balancing the principle of efficiency and the principle of equity when designing the structure of financial, technology and capacity-building support*

The need for financial, technology and capacity-building support in developing countries is broadly acknowledged as a key issue to address

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39) See Australia's Department of Climate Change, *Australia's Fifth National Communication on Climate Change: A Report under the United Nations Framework Convention on Climate Change* (2010); Danish Ministry of Environment, *Denmark's Fourth National Communication on Climate Change: Under the United Nations Framework Convention on Climate Change* (2005); Singapore's National Climate Change Secretariat, *Climate Change & Singapore: Challenges, Opportunities, Partnerships* (2012); United States Department of State, *US Climate Action Report 2010*, Washington: Global Publishing Services (June 2010).

40) See Finnish' Ministry of Environment, *Finland's National Report under the United Nations Framework Convention on Climate Change* (1995); Italian Ministry of Environment, *First Italian National Communication to the Framework Convention on Climate Change* (1995).

41) , The Third Session of the Ad Hoc Group on the Berlin Mandate, Geneva, Mar. 5-8, 1996, *Report of the Ad Hoc Group on the Berlin Mandate on the Work of its 3rd Session, Held at Geneva from 5 to 8 March 1996* ., U.N. Doc. FCCC/AGBM/1996/5(Apr. 23, 1996).

climate change. Debates about climate finance are based on the seemingly conflicting principles of efficiency and equity. For example, international discussions frequently take under consideration the scale of funding needed and alternative ways of generating these sums. Familiar divergence between the principle of efficiency and the principle of equity is evident on this question. The former principle tends to emphasize the use of market mechanisms to stimulate investments in cleaner technologies that can reduce GHG emissions or more efficient ways of sequestering the gases generated in various sectors of the economy. The latter tends to focus on securing legal commitments under the UNFCCC, requiring that much of the climate change funding come through a predictable transfer of resources from rich to poor countries via public financing channels. The challenge is not necessarily to choose one or the other source, but rather to determine how funds raised through multiple sources can contribute to the international regime. Thus, the issue faced by Korea is on the one hand, how to leverage public funds to support viable conduits for greater sums of private investment and, on the other hand, how to give voice to developing countries in allocating funds and monitoring fund flows.

The principle of equity is a cornerstone principle of the Convention and the Protocol. It must remain a central focus for our continuing efforts. Equity must be agreed upon and ensured through all the facets of international climate change discussions, including national commitments and mitigation, finance, and knowledge sharing and transfer, to name a few areas. The central importance of the principle of equity reflects both the ideal of a socially just climate change system and the reality that, where global action is needed, any successful system must be sustainable through time. Developing nations, including some of the largest individual contributors to current greenhouse gas emissions, must engage with the international system and must credibly comply with emissions targets through time. Only a system understood to be fair and in the common interest of all (or nearly all) nations can command respect and adherence as political and social forces shift in various nations.

For instance, as Korea prepares for a presidential election at the end of 2012, the continued vitality of Korean green growth and the many laws and regulations promulgated thereunder depends upon the social perception of green growth as well-conceived and responsibly administrated. To long



endure, green growth must occupy the robust position of a fundamental pillar of Korean law. Such a fundamental area of law will certainly be subject to evolving interpretation and application as political elections ensue, technology advances, and social conditions change. However, just as a respected domestic legal system co-evolves with the society, so too must a socially equitable climate change system maintain its force and authority through time and amongst nations. It should be noted that specific projects undertaken in Korea as part of the green growth policy have been subject to criticism. One of the most ambitious and expensive public investments, the “Four Rivers Restoration Project”,<sup>42)</sup> met considerable resistance in Korean society.<sup>43)</sup> Opponents in many cases argued that the project was not in fact compatible with the environmental and energy-efficiency values of green growth.<sup>44)</sup> As Korea continues to aggressively pursue green growth policies, and to take a leadership position in the world community, it is essential that the Korean government be receptive to internal and external criticisms. By promoting government transparency and encouraging robust debate about policies, green growth becomes more likely to achieve environmental and economic benefits, and more fully embodies the social and political legitimacy needed for the policy to adapt and endure.

One reason why Korea can be expected to continue to exert an important influence in international negotiations is that the nation has a comprehensive and broadly supported domestic strategy for pursuing the parallel objectives of climate change mitigation and adaptation. Korea’s situation exemplifies the potential for enactment of major domestic

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42) The stated purpose of the Four Rivers Restoration Project is to restore the Han, Nakdong, Geum and Yeongsan Rivers and to provide water security, flood control and ecosystem vitality; however, many environmental groups criticized this massive civil engineering scheme for pursuing environmentally suspect economic objectives under the guise of green development. Dennis Normille, *Restoration or Devastation?*, 327 SCIENCE 1568, 1568-70 (2010).

43) Sun-Jin Yun and Dong-Ha Lee, *Agenda Setting and Frame of TV News about 4 Rivers Project in Korea (in Korean)*, 14 ECO 7 (2010).

44) *Id.* See also *South Korea’s Four Rivers project: The dredgery must go on*, THE ECONOMIST, Aug. 9, 2010, available at [http://www.economist.com/blogs/banyan/2010/08/south\\_koreas\\_four\\_rivers\\_project](http://www.economist.com/blogs/banyan/2010/08/south_koreas_four_rivers_project); *Catholic Bishops’ Conference of Korea announces opposition to Four Rivers project*, THE HANKYOREH, Mar. 13, 2010, available at [http://www.hani.co.kr/arti/english\\_edition/e\\_national/409868.html](http://www.hani.co.kr/arti/english_edition/e_national/409868.html).

legislation and the implementation of robust executive enforcement of climate change regulations. This stability in domestic law and policy has enabled the Korean government to more aggressively engage with diverse dimensions of global climate change negotiations, and now has engaged on a foundational level with the finance, strategy, and technology aspects of international discussions. Concurrently with Pre-COP 18, Korea hosted the Secretariat of the Green Climate Fund (“GCF”).<sup>45)</sup> The GGGI has, as of October 18, 2012, been converted into an international organization. GGGI’s fieldwork in various nations has thrust it into the forefront of transnational efforts to implement impactful and balanced climate change policies. Accomplishing international synergies needed to expediently mitigate carbon emissions, especially in a manner compatible with continued economic growth, requires significant sharing and continual improvement of technology. To this end, Korea has instituted the Green Technology Center-Korea to promote the innovation of technology related to energy and environment and to facilitate transfer of essential knowledge to developing states.

The “green triangle” of finance, strategy, and technology captures the essential aspects of an effective and pragmatic international approach to climate change.<sup>46)</sup> These areas dovetail with the priorities of the UNFCCC system, and exemplify the important role Korea must play in the global transition from aspirations to effectuated policies. It is likely that Korea will be able to contribute to finding consensus on the framework of financial, technology and capacity building support at the upcoming COP 18 in Doha

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45) In retrospect, Korea would likely not host the GCF Secretariat if it had hosted the COP 18 in Seoul. In the context of international environmental diplomacy, an application by the current COP host country to also host the GCF Secretariat may have been considered inappropriate, and almost surely would not have succeeded.

46) Gihoekjaejeongbu[Ministry of Strategy and Finance of the Republic of Korea], *Noksaekgihugigeum Isahoe, Hangugeul Yuchigugeu-ro Seonjeong*[Briefing & Press Release: South Korea Selected to host Green Climate Fund] (in Korean) (Oct. 20, 2012), available at [http://www.mosf.go.kr/policy/policy01\\_total.jsp?boardType=general&hdnBulletRunno=&cvbnPath=&sub\\_category=&hdnFlag=&cat=&hdnDiv=&hdnSubject=%EB%85%B9%EC%83%89%EA%B8%B0%ED%9B%84%EA%B8%B0%EA%B8%88&&actionType=view&runno=4015330&hdnTopicDate=2012-10-22&hdnPage=1&key=policy](http://www.mosf.go.kr/policy/policy01_total.jsp?boardType=general&hdnBulletRunno=&cvbnPath=&sub_category=&hdnFlag=&cat=&hdnDiv=&hdnSubject=%EB%85%B9%EC%83%89%EA%B8%B0%ED%9B%84%EA%B8%B0%EA%B8%88&&actionType=view&runno=4015330&hdnTopicDate=2012-10-22&hdnPage=1&key=policy) (accessed Nov. 14, 2012); Sarah B. Pralle, “Agenda-setting and climate change”, in *Climate Change and Political Strategy* 123 (Hugh Compston ed., 2010)

at the end of the year, considering that Korea has been strongly committed to green growth leadership in general, and to tangible progress in these areas in particular.

To help developing nations reach their 2020 targets, and to ensure they can participate in more aggressive and ambitious carbon mitigations from 2020-2050, further and significant pledges to the GCF must be obtained. To secure funding, nations may make pledges simultaneously to each other, to share the costs of the fund, as part of the outcomes of an international convention, such as the Doha COP. Korea has already taken a leading role in raising funds, and its continued efforts in this area are essential to bridging the gap between developed and developing nations, and embodying the principle of equity in the climate change system. For this reason, Korea is expected to play a crucial role at Doha, in order to finalize the detailed roadmap for the funding of the GCF.<sup>47)</sup>

### 3. Korea as bridge nation

As a Pre-COP host, Korea drew upon its transborder and regional experience. Korea has provided leadership amongst Asian nations in promoting enhanced legal regimes, capacity-building, and cross-border investment in carbon-mitigating projects.<sup>48)</sup> International cooperation helps demonstrate the great potential for collective action to achieve climate goals.

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47) While long deliberations took place on the need to ramp up commitments in the period between 2013 and 2020, the final decision did not include heightened commitments on climate finance. See Conference of the Parties Seventeenth Session, Durban, Nov. 28- Dec. 9, 2011, *Green Climate Fund – Report of the Transitional Committee*, U.N. Doc. UNFCCC/CP/2011/L.9 (Dec.10, 2011), para. 16., available at <http://unfccc.int/resource/docs/2011/cop17/eng/190.pdf> (Accessed Nov. 14, 2012); Transitional Committee, Report of the Transitional Committee for the Design of the Green Climate Fund to the seventeenth session of the Conference of the Parties, TC-4/3, available at [http://unfccc.int/files/cancun\\_agreements/green\\_climate\\_fund/application/pdf/tc4-3.pdf](http://unfccc.int/files/cancun_agreements/green_climate_fund/application/pdf/tc4-3.pdf) (Accessed Nov. 14, 2012); UNDP, *Taking Stock of Durban: Review of Key Outcomes and the Road Ahead* (Apr. 2012), 30-31.

48) World Bank, *State and Trends of the Carbon Market 2012* (2012), 90-91. Korea is one of the top four host countries generating more than nine-tenths of all credits. Certified Emissions Reductions issued by host countries, 1097m: China (60.45%); India (14.15%); Korea (9.12%); Brazil (6.90%)". See UNFCCC, "CERs issued by host party", available at <http://cdm.unfccc.int/Statistics/Issuance/CERsIssuedByHostPartyPieChart.html> (Accessed Dec. 1, 2012)

Korea can draw upon its experience as a recently developed (and still developing) nation. In the last 50 years, Korea has gone from a least-developed nation to a rapidly developing nation. In terms of the financial assistance, Korea has transitioned from a recipient of overseas development assistance to a contributor within a relatively short period of time. Korea understands the developmental needs and equity concerns of less developed nations. Korea also understands the importance that developed nations place on broad participation and shared but differentiated commitments by nations at all phases of economic development.

In the context of climate change negotiations, Korea finds itself situated between the developed and developing countries. Although Korea belongs to the OECD, it is a non-Annex I country for the purpose of mitigation commitments. It shares values, interests, and norms with other developing countries. At the same time, Korea contributes to the climate change negotiation in a progressive manner as a founding member of the Environmental Integrity Group (EIG), which also includes Switzerland and Mexico. Unsurprisingly, in many climate change negotiation simulation studies, Korea was frequently mentioned as a “threshold country,” which can make itself a good candidate for conducting “shuttle diplomacy” between multiple coalitions.<sup>49)</sup> Indeed, Korea has pronounced its strong will and commitment to play a role as a “bridge country” in various international environmental forums.<sup>50)</sup>

As the host of the second GCF Board Meeting as well as the Pre-COP 18 Ministerial Meeting, Korea demonstrated its capacity to carry out facilitative roles in climate change negotiations. So far, the Germany-led Petersberg Climate Dialogue has been instrumental in promoting cooperation and setting the political direction for negotiations by providing an informal setting for ministers in different countries to exchange frank views and perspectives on key issues.<sup>51)</sup> Building upon the experience of

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49) Ariel Macaspac Penetrante, *Simulating Climate Change Negotiations: Lessons from Modeled Experience*, Negotiation J. 279, 309 (2012).

50) See for instance, Proposal of the Republic of Korea on the Rio+20 Outcome Document, at 15, available at <http://www.unccd2012.org/content/documents/643ROK.pdf>.

51) BMU (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety), “Petersberg Climate Dialogue III”; “Press release as of 19.07.2012: Environment Minister Altmair: Advancing global climate protection”; “Press release as of 19.07.2012: Informal meeting of

hosting the Pre-COP, Korea may wish to continue its leadership role by establishing a similar forum. A forum like this can be materialized through global participation; or a small group of countries can come together to act on climate change, complementing other existing initiatives. There are indeed multiple dialog forums and implementation groups that are actively in operation parallel to the UNFCCC process,<sup>52)</sup> and Korea's further engagement in this avenue could inspire greater engagement by other nations as well.

#### 4. *Developing the concept of Korea's Green Growth*

At the Pre-COP, Ministers shared the view that "green economy" is one of the central tools to achieve sustainable development. 'Green Economy' first appeared in the document of the Rio+20 Conference.<sup>53)</sup> Along with LEEDS, Green Economy valuably contributes to international negotiations, because it provides a framework for integrating environmental and climate change goals with economic development in a manner that developing nations can support. A persistent challenge for each of these policy initiatives, however, remains the difficulty of moving from principles to the laws, regulations, and economic and social practices that fulfill the ephemeral promise of environmentally sound prosperity.

As the international community grapples with the extension of existing instruments and the challenge of designing a successful regime, one general lesson is that nations can and should seek to incorporate sustainable development into domestic law. An early and foundational legal commitment to a policy framework for emissions mitigation and

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*environment ministers seeks to promote new alliance in international climate protection", available at BMU site (Accessed Dec. 1 2012).*

52) Jeniffer Morgan and Lutz Weischer, *Two Degrees Clubs: How Small Groups of Countries Can Make a Big Difference on Climate Change*, Oct. 29 2012, available at <http://insights.wri.org/news/2012/10/two-degrees-clubs-how-small-groups-countries-can-make-big-difference-climate-change>.

53) IISD, "Summary of the United Nations Conference on Sustainable Development: 13-22 June 2012", 27 *Earth Negotiations Bulletin*, 2, 8 & 21; Jane A. Leggett & Nicole T. Carter, "Rio+20: The United Nations Conference on Sustainable Development, June 2012", CRS Report for Congress, 5.

contemporaneous economic development is vitally important. The Korean experience demonstrates that a central and consolidated legal and societal forum for deciding how to harmonize environment, economy, and social equity stimulates heightened public awareness and activism. Such domestic legal steps can also provide a structure for systematically pursuing carbon targets and complying with international commitments. Another important benefit, from the standpoint of reinforcing the effectiveness of the international governance regime, is that structured domestic legal enactments and enforcement facilitate collection and sharing of information with other governments and with international institutions. In order to enhance mitigation ambition and to achieve the broader goal of limiting the total increase in average global temperature, Ministers at the ministerial meetings and at Pre-COP 18 encouraged the parties to share their experiences on the formulation of low emission development strategies. The path forward must reflect a balanced consideration for developmental needs and the urgent imperative to mitigate environmental harms. Our collaborative efforts must serve to close the gap between mitigation ambition and implementation of the measures necessary to fulfill that ambition. LCDS, if well designed and coordinated, will significantly contribute to these objectives.

Indeed, Korea has engaged in meaningful steps to realize LCDS. Korea has voluntarily committed to reductions in the rate of carbon emissions. Through its green growth policies, Korea has fostered investment in sustainable sectors of the economy. It has acted aggressively to promote energy efficiency, most recently and dramatically with its domestic “cap-and-trade” legislation.<sup>54)</sup> At Pre-COP 18, the Korean Government suggested that, in the discussion of viable economic strategies to enhance mitigation action in the reflection paper, ‘green growth’ be discussed. Ultimately, ‘green economy’ and ‘LEDS’ were presented in the text of the co-chairs’ reflections. Although the language of the green growth paradigm is not currently being used in the work product of international negotiations, there is substantial overlap and interaction between Korean green growth and the ‘green economy’ and ‘LEDS’ concepts. Korea remains a leading

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54) Noh, Hee-Jin, *The Importance of Passing Korea’s Carbon Trading Bill and ETS Development*, KCMI Capital Market Opinion, May 30, 2012.

example of a nation that has legislated a cornerstone approach under the UNFCCC process into its domestic law, and has built upon that initial step with a wide variety of legislative and executive initiatives to fulfill the promise of green growth in law and economy.

Domestic experiences like Korean green growth demonstrate the value of establishing a knowledge-sharing platform or platforms where domestic climate actions can be communicated and where states, IGOs, and NGOs can consult and collaborate with each other.<sup>55)</sup> Pre-COP 18 discussions emphasized that nations can strengthen international communication and collaboration on ambitious national actions, thus harmonizing and potentially linking policies. Knowledge-sharing platforms will be vital to ensure the adequate inclusion of technology, education, facilities, and other resources into the set of tools that nations, especially developing nations, will depend upon to successfully participate in a global climate change mitigation regime.

Korea continues to propose 'green growth' as a critical international asset. While disagreement remains over preferences between principles for future policy, such as 'green growth', 'green economy', and 'LCDS', we should focus less on nomenclature than on the substantive elements that advocates of each approach propose. In the case of green growth, Korea strongly supports the creation of regional and global knowledge-sharing platforms for communicating domestic and trans-border climate policies and actions.<sup>56)</sup> These platforms can also function as forums for consulting amongst nations and between governments, inter-governmental organizations, and non-governmental organizations, with the objective of promoting transparency and collaboration. This idea is not just compatible with the policy prescriptions of other approaches, but must be an essential element of the future regime, no matter what labels are applied to the

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55) This issue was emphasized in the Pre-COP 18 Keynote Speech of Korean Prime Minister Hwang-sik Kim (22 October 2012). As the Prime Minister described, a central function of GGGI is to enable information-sharing. Regional and global capacity-building for mitigation and adaptation depends upon the exchange of knowledge and the transfer of technologies, making platforms for sharing and dissemination a central focus of GGGI and Pre-COP 18 discussions.

56) Proposal of the Republic of Korea on the Rio+20 Outcome Document, at 11-12, available at <http://www.uncsd2012.org/content/documents/643ROK.pdf>.

underlying philosophy.

Korean green growth has catalyzed several additional paths for promoting UNFCCC goals. Fueled by incentives-based instruments, Korean public and private parties have forged innovative partnerships with other nations, such as China and Brazil, and continue to collaborate closely with many regional neighbors, including Indonesia and Cambodia.<sup>57)</sup> These developments are being made outside of the UNFCCC process through bilateral or multilateral means.<sup>58)</sup> However, they embody the UNFCCC objectives and values of seeking efficient and mutually beneficial partnerships that produce net reductions in emissions while supporting economic development and strong diplomatic ties. Consistent with these transnational efforts and experiences, the Korean government is of the view that various resources and benefits are available to incentivize developing countries to establish domestic LCDS or green growth systems, and to participate in domestic and transnational projects. No single or limited set of paths or options can or should be designated at this time. Flexible and continuous collaboration between nations and the public and private sectors is a characteristic of Korean green growth that will remain essential not just to Korea's national approach, but to any enduring and global regime.

#### 4. Conclusion

Pre-COP 18 and the contemporaneous activities in Seoul provided a forum for Korea to assume a more visible leadership position. Korea's role has assumed a dual character of presenting a vision and specific initiatives for legal reform, while also conciliating and seeking compromise amongst nations, as a bridge between the developing nations that Korea has been associated with throughout its modern history, and the developed nations that it has recently joined as the Korean economy continues to emerge.

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57) Global Green Growth Institute, *Green Growth Planning for Developing and Emerging Countries*, available at <http://www.gggi.org/project/main>.

58) Remi Moncel, Paul Joffe, Kevin McCall & Kelly Levin, *Building the Climate Change Regime* (2011), 4-5.



Korea's balanced approach to the strategic, financial, and technological needs of the future climate change system provides an important insight for negotiations at COP 18 and beyond: nations must follow political ambition with effective and concrete action. To that end, Korean green growth serves as one model for domestic implementation of climate change-responsive policies. Korea's experience with green growth and the desire of Korean institutions to promote related but customized approaches to green growth for other nations can increase transnational capacity for meaningful and lasting mitigation of carbon emissions.

- Korea's position is that green growth, in a form related to but potentially different from the meaning of the concept in Korean law,<sup>59)</sup> holds great promise for domestic legal reforms, such as: (i) establishment of legal frameworks to guide executive action and administrative discretion; (ii) sectoral reforms, such as water, waste, energy production and use, and agriculture; and (iii) the role of the judiciary in interpreting legal duties and rights pertaining to the environment. In the international context, green growth can help form a basis for consensus and agreement upon more tangible and results-oriented language in negotiated international instruments. The critical question for Korea, and for other nations taking a growing interest in the Korean approach, is the extent to which the Korean experience can be understood to have yielded successful outcomes so far, and the shared circumstances and values that would enable other countries, and ultimately the world community, to benefit from the adoption of some version of green growth.

- In this paper, we have proposed a number of criteria that can be applied to understand the potential of green growth on the international stage, and the related question of Korea's dynamic and emerging role in international climate change negotiations. Korea's success as a leader in climate change negotiations depends upon its ability to help identify an

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59) Adapting green growth or a similar concept for a new nation is not necessarily simply or straightforward. The Korean manifestation of green growth policy reflects structural aspects of Korean law and government (such as the centralized government institutions and the considerable authority of the executive) and practice (for instance, the customs of the judiciary in interpreting the constitution or statutory language). Different instruments may be needed to reach the same underlying goals, depending upon the legal, political, economic and social conditions of a particular country.

elaborated and broadly supported system that reflects the principle of equity. Korea's burgeoning experiences in the tripartite realms of strategy, finance, and technology should enable it to provide vital leadership. To achieve sustainable progress in climate change mitigation, equity considerations must be harmonized with efficiency. To this end, Korea's green growth policy must be both the evidence of the nation's progress up to now, and source material for a vigorous and structured international discussion about vision and implementation as the process moves forward.

## 5. COP 18: Results and Implications

On Saturday, December 8, nearly 24 hours after the scheduled end of COP 18, the parties approved final decision texts for the COP. At Pre-COP 18 and other ministerial meetings, many nations emphasized the need to ensure that a legally binding instrument remained in force after the expiration of the Kyoto Protocol commitment period at the end of 2012. By these terms, COP 18 succeeded in this main objective by completing a second commitment period for the Kyoto Protocol through 2020.<sup>60)</sup> Ten nations assumed carbon emissions caps for the period, notably the EU and Australia.<sup>61)</sup> Amongst the participant nations in the first commitment period, Japan, Russia, Canada and New Zealand all declined to take on new commitments.<sup>62)</sup>

The Kyoto Protocol's amendments include the introduction of an enhanced ambition mechanism, whereby nations with binding commitments are encouraged to submit amendments at future COPs increasing the amount of their pledged reductions. However, it is doubtful that these nations can go much further in committing to reductions when most of the world's largest emitters, including the U.S., the BRICs (Brazil, Russia, India and China) and Korea, have no mitigation obligations. With

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60) Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, FCCC/KP/CMP/2012/L.9, available at [http://unfccc.int/documentation/documents/advanced\\_search/items/6911.php?preref=600007290](http://unfccc.int/documentation/documents/advanced_search/items/6911.php?preref=600007290).

61) *Id.* at 6-7.

62) *Id.*

the Kyoto Protocol providing for only limited emissions reductions, upcoming negotiations will assume a heightened importance. Korea engaged with the international process in a proactive manner throughout 2012, and visible leadership will be needed to reach a more comprehensive agreement in the coming years.

In addition to extending the term of application of the Kyoto Protocol, COP 18, as expected, concluded the work of the AWG-LCA.<sup>63)</sup> These negotiations, ranging from specific policies to the basic question of whether the negotiation track should continue, exposed the persistent divisions of opinion and trust between developed and developing nations. The events of COP 18 confirm that this “north-south” tension remains a profound problem for achieving an inclusive and meaningful compromise. Korea’s bridge nation role will assume critical importance if these differences are to be reconciled. Korea did not clearly concur with the polarized views of either developed or developing nations in the AWG-LCA. As Korea seeks a stronger leadership role, one major challenge will be for Korea to advocate for concrete positions without alienating any bloc of countries in particular.

Negotiations on a future agreement through the ADP negotiation track will continue to seek an agreement, consistent with the Durban Platform, that balances mitigation and adaptation strategies for responding to climate change.<sup>64)</sup> As an interim measure, developed countries will likely begin to finance the GCF,<sup>65)</sup> but the encouragement of Korea and other nations will remain critical to keep the GCF as a priority item, especially in facilitating projects that can have an immediate impact. As work under the ADP continues, any comprehensive agreement will surely need to contain significant emissions reduction pledges from (nearly) all the major emitter nations. Such an agreement, to be viable, must also leverage dramatically scaled-up funding to support climate change-related investment in

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63) See Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, FCCC/CP/2012/L.14/Rev.1, available at <http://unfccc.int/resource/docs/2012/cop18/eng/l14r01.pdf>.

64) See Advancing the Durban Platform, FCC/CP/2012/L.13, available at <http://unfccc.int/resource/docs/2012/cop18/eng/l13.pdf>.

65) The GCF Board and the Standing Committee will continue work on arrangements for the operationalization and funding of the GCF. See Arrangements between the Conference of the Parties and the Green Climate Fund, available at <http://unfccc.int/2860.php#decisions>.

developing countries. Just as climate change is one of the great challenges of our present moment, so to will be finding common ground and achieving sincere commitment from nations of the world with vastly different circumstances, but one common and menacing problem.