

CLIMATE CHANGE AND THE LAW

General Reporter | **Erkki Hollo***

National Reporters | **Marcelo López Alfonsín**
Alberto Spota

General Remarks

The questionnaire has four main parts. The first of them covers main ideology and international sources of climate law, adapted to the national legal system in question. The second part addresses issues concerning national energy and CO2 policies in terms of the use of renewable sources, recycling of relevant waste, forest management and other. The third part deals with questions related to the set of legal, economic and political instruments practiced in the legal context, describing also there supranational contexts. The fourth part focuses on adaptation issues, especially the policies taken to combat effects caused by global warming.

* Helsinki, Address: Faculty Law, University of Helsinki, POB 4, FI-00014 Helsinki University, erkki.hollo@helsinki.fi

Instructions

The national reporter should avoid answering just “yes” or “no” to direct questions. Instead, there should be at least a short explanation for the reasons that there is no substantial answer to the question. Is it due to lack of legal institutions when a State for instance promotes voluntary or market measures or is there a political opposition to implement political goals or to integrate climate instruments in commercial and other policies?

It would be to recommend what the origin of adopted rulings and policies are: was it a national initiative for advanced steps or an eventually reluctant position to transpose what was internationally coerced. In addition, if possible, a documentation of primary legal and political material for actions should be indicated.

There is also a wish to give a brief chronological list of main legal sources through which exist to enact or transpose the central parts of climate law.

Technically, the report should be delivered in the Word or RTF format. Reports may be accompanied if relevant by legal sources in the original language.

While answering please use the (running numbering in brackets)

Questionnaire

SECTION A (Prevention and Management)

Part I: Introduction

I 1. Describe briefly (including main political or legal decisions)

(1) *1a) the international position of your country to EC Community Law, other Community or Regional Law*

Argentina, as a State Party to the MERCOSUR (Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay) actively participates in the development of that Law and adopts it according to effective procedures in force.

(2) *1b) the position of your country to the UN Climate Change Framework Convention 1992 and the Kyoto protocol and*

Ratification status

Climate Change Convention		Kyoto Protocol	
Date of signature:	12 June 1992	Date of signature:	16 March 1998
Date of ratification:	11 March 1994	Date of ratification:	28 September 2001
Date of entry into force:	09 June 1994	Date of entry into force:	16 February 2005

Argentina has actively participated in the negotiations that led to the establishment of the UNFCCC, and of the Kyoto Protocol. In the last case, an Argentine negotiator exercised the presidency of the ad-hoc group on the Berlin Mandate that facilitated the negotiation. Argentina has promoted in the UNFCCC, the Buenos Aires Work Program on Adaptation and Response Measures. Argentina has hosted two conferences of the Parties (COP) of the UNFCCC and consequently its ministers have exercised the presidency of the COP and of the Bureau of the COP in two opportunities. Its diplomats, officials and experts have had and have important responsibilities in several of the UNFCCC organs.

Argentine experts participate in the work of the IPCC. An Argentine expert has been cochair of Working Group Two during the Third and Fourth Assessment Reports of the IPCC and various more have been acting as lead and contributing authors, or reviewers of the Third and Fourth Assessment Reports.

As part of the obligations assumed under the United Nations Framework Convention on the Climatic Change (UNFCCC), the Argentine Government submitted its First National Communication in July of 1997, and a Revision of that communication in October of 1999.

The contents and the format the Second National Communication (2007), comply with the guidelines recommended by decision 17/COP 8 of the UNFCCC.

- (3) *1c) reasons for full or partial reluctance to participate in either the UNFCCC or the Kyoto and follow ups of protocols or COPs.*

As said in 2.1.b, Argentina actively participated and

participates in the UNFCCC and in the follow ups of protocols and in COPs.

I 2. Present and evaluate

- (4) *2a) reasons for eventually having adopted a national regime for mitigating climate change and related effects;*

Five studies on the mitigation of GHG emissions have been carried out in the framework of the SCN enabling activities. They cover different components of the main emission sectors. These studies have identified feasible mitigation measures and policies that in a time horizon of 15 to 20 years would imply a net reduction of emissions of more than 60 million tons of CO₂ eq. per year. These options of mitigation do not include the large hydropower and nuclear facilities that are projected, neither other options of mitigation that were not analyzed in these five studies.

A common element of most of these mitigation options is that their implementation needs additional capital investments in their initiation phase, well above of what is required in a scenario without those options.

- (5) *2b) do you feel the national choice is compatible with or more efficient than the global programmes adopted so far?*

Compatible with.

I 3. Short evaluation (empirical part) of

(6) 3a) the impact of the industrial and other activities of your country on the global load of GHGs

Annual greenhouse gas (GHG) emissions for Argentina, in Gg CO2 equivalent

Query results for Party: Argentina - Years: All years -

Category: Totals - Gas: Aggregate GHGs

Category	Base Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Last Inventory Year(2000)
Total GHG emissions excluding LULUCF/LUCF	n.a.	231,057.28	---	---	---	257,522.43	---	---	270,910.29	---	---	282,000.76
Total GHG emissions including LULUCF/LUCF	n.a.	216,291.39	---	---	---	223,335.53	---	---	241,956.19	---	---	238,702.90

Note 1: The reporting and review requirements for GHG inventories are different for Annex I and non-Annex I Parties.

The definition format of data for emissions/removals from the forestry sector is different for Annex I and non-Annex I Parties (see details).

Note 2: Base year data in the data interface relate to the base year under the Climate Change Convention (UNFCCC).

The base year under the Convention is defined slightly different than the base year under the Kyoto Protocol.

Note 3: --- means "No data available"; * means "Emissions were reported with notation keys"; n.a. means "not applicable".

(7) *3b) main sources or percentage of different sources in terms of GHGs*

Second National Communication-2007:

From the point of view of the sector emissions, Energy contributes to 46.8%, Agriculture and livestock 44.3%, waste management 5.0% and the remainder 3.9% corresponds to Industrial Processes. This high proportion of the farming-livestock sector in the total of the GHG emissions reflects the productive profile of the country.

The GHG emissions corresponding to year 2000 including the sector LUCF are 238,703 Gg of CO₂ eq., slightly lower than those of 1997. However, if the LUCF (Sector Sector Land Use Change and Forestry) is excluded, the emissions of the year 2000 increased 4.1% above those of the year 1997. This difference is explained by the increase of the net sequestration of the LUCF sector between those years.

When the emissions, expressed in tons of CO₂ eq., are disaggregated by gases (without considering the LUCF sector), the 45.5% of the total is CO₂, 30.1% CH₄, 23.9% N₂O and 0.5% the remainder of the GHGs.

(8) *3c) specific reasons for eventually high load of GHGs (energy, geography, agriculture, traffic)*

Does not apply

(9) *3d) official State policy in terms of action (compulsory measures, financial aid, taxation)*

The Unit of Climate Change (UCC) has implemented two programs of education and diffusion: the National Program for the Civic Participation in the Agenda of the Climate

Change and the National Program of Environmental Education and Training on Climate Change. In addition, the UCC facilitated the diffusion of the issue through the publication of books and brochures.

A group of measures and programs that lead to the mitigation of GHG emissions have been carried out or are being developed. Some of them have been implemented for coping with this main objective while others, primarily for economic or social development goals, also contribute to the GHG mitigation process.

The Argentine Office of the Clean Development Mechanism evaluates and authorizes the projects to be presented to the CDM. To facilitate the mitigation project generation in a context of financial restrictions, the Government established the Argentine Carbon Fund (ACF) by the decree 1070/05 in September 2005. The ACF objective is to facilitate and encourage the development of projects under the CDM from its initial phase. By the end of 2006, the Argentine projects registered with the CDM were six representing avoided emissions of 27 million tons of CO₂ equivalent. There were other five projects in the validation phase and a briefcase of more than 180 projects in the consultation phase for its development by the AFC.

The SAyDS, in agreement with the provinces and with the funding of the World Bank, has developed since the year 2005 an Urban Solid Wastes National Strategy. Given that around 60% of the disposal of urban solid wastes is still in open air dumps, the central objective of this strategy is the protection of the health of the population by the replacement of these dumps with controlled landfills. Likewise, the subsequent capture and elimination of the methane is also contemplated in this strategy.

The Secretary of Energy (SE) has established a Program of Rational Use of Energy in the year 2004 to encourage electric power savings. Besides, the SE is currently developing the Project of Energy Efficiency with the funding support of the GEF and the participation of the power distributing companies. It is estimated that toward the year 2015, the Project would permit the reduction of 2,400 MW in the electricity demand and a savings of 1,700,000 Toe per year. The accumulated reduction of CO₂ emissions in the 10 years period (2006-2015) is estimated in 28,000,000 ton.

The SE has a national plan for wind power linked with the development of the national wind energy industry: it plans the installation of 300 MW of power in a first phase in various wind farms with an investment of the order of US\$ 300 million.

The law 26093/06 regulates and promotes the production and use of biofuels. From the year 2010 on, it will be obligatory to add biofuels to all the liquid fuels used in transportation.

Argentina has a fiscal policy of subsidies and tax benefits for planted forests, which in addition to the promotion of the industry, contributes to its development in an environmentally sustainable way. This policy has led during the last years to the increment of the carbon stored in the commercial plantations.

The network of national parks and other protected areas in the wooded regions totals 2,260,000 hectares, and there is wide number of proposals of conservation programs that would considerably expand that surface. This network, and their eventual enlargement, will contribute to limit deforestation and eventually to generate net flows of carbon removal.

Today, the national projects registered with the CDM are 16 representing avoided emissions of nearly 41 million tons of CO2 equivalent

(10) 3e) the position of the social society; is there a concern, attitude or information system

In Argentina, the nongovernmental organizations (NGOs) contribute to the development of knowledge and the dissemination of the issues related to Climate Change. Their activities and ways of action are diverse, according to their specific interests and characteristics. The ONGs with academic objectives have contributed significantly to the development of knowledge and they have been substantially involved in the enabling of activities of the First and the Second National Communications.

Part II: Essence of Climate Law

II 1. What is climate law?

(11) 1a) to what extent does it represent environmental principles and economic reasoning

Copenhagen discussions reflect the existing difficulties to represent some environmental principles within the international law framework, for example: the one related to common but differentiated responsibilities

(12) 1b) are there environmental conditions in rules concerning the application of e.g. the Kyoto mechanisms and other, nationally adopted voluntary measures

Yes there are, but mainly guided by economic reasoning

II 2. Political play of enterprises

(13) 2a) how do you feel about having regionally different mechanisms for the mitigation of climate change

In my opinion, change in the Earth's climate and its adverse effects are a common concern of humankind and must be globally addressed.

Having different regional mechanisms may be inappropriate and of unwarranted economic and social cost to other regions.

(14) 2b) how does this difference influence movement of companies from one region to another?

Companies will move to those regions where they find the most favourable conditions

(15) 2c) are there any scientific studies or approaches on the "economic climate migration"

I don't know about the existence of any national study or approach on "economic climate migration"

(16) 2d) is your country suffering or profiting from such a development?

Does not apply

Part III: International (and EC Community) Law

III 1. Transposition of supranational obligations in the national regime

In the beginning, describe briefly if there are supranational or

inter-state commitments that are decisive for the national legal and political structure (list main sources).

(17) 1a) analytical and systematic presentation of the legal structure of what you understand to be essential for "climate law"

Argentina has in its public administration the organization and institutions for the management of Climate Change policy.

Presidential Decree 2213 of year 2002 appointed the Secretary of Environment and Sustainable Development (SAyDS) as the authority for the enforcement of the law 24295 by which the Republic of Argentina has ratified the UNFCCC.

Subsequently, the Unit of Climate Change (UCC) was created in the SAyDS to implement the climate change related activities of this secretary.

Other governmental areas have responsibilities on Climate Change issues according to their own incumbencies and functions.

(18) 1b) what would these elements be in your legal order (statutes, programmes)

Explained in 17.1.a.

(19) 1c) administration: competence, duties – is there a juridical control of legal obligations

Yes

(20) 1d) the role of the public in adopting programmes for climate law or the application of climate law

There's no broad public participation.

III 2. State structure(if relevant)

(21) 2a) *In a federal state – what is the division of competences between central and regional authorities?*

Argentina is a federal, representative, and republican state, with a decentralized political organization, consisting of 23 provinces and the Autonomous City of Buenos Aires.

The Republic of Argentina, conscious of the importance of the Environment, explicitly includes its care in its national constitution. According to the basic principles of this constitution, each province holds the original dominium of its natural resources. However, the Nation has the right to dictate the norms with minimum requirements for the protection of the environment.

(22) 2b) *Do states or regions have the power to adopt energy or climate strategies of their own?*

Yes

(23) 2c) *If so, are regions or states participation in the international process (UNFCCC, Kyoto) or enacting directly commitments adopted there (e.g. California v. USA)*

No

Part IV: Structure and Instruments of Energy and Climate Policies

IV 1. National climate policies and choice of energies (energy mix)

(24) 1a) Content and goal of national energy policies – is there a climate or environmental approach

The Secretary of Energy (SE) has established a Program of Rational Use of Energy in the year 2004 to encourage electric power savings. Besides, the SE developed the Project of Energy Efficiency with the funding support of the GEF and the participation of the power distributing companies. It is estimated that toward the year 2015, the Project would permit the reduction of 2,400 MW in the electricity demand and a savings of 1,700,000 Toe per year. The accumulated reduction of CO₂ emissions in the 10 years period (2006-2015) is estimated in 28,000,000 ton,

(25) 1b) Use of Renewable energy sources

The SE has a national plan for wind power linked with the development of the national wind energy industry: it plans the installation of 300 MW of power in a first phase in various wind farms with an investment of the order of U\$S 300 million.

(26) 1c) Is there a national legal basis for introducing or favouring the use of renewable resources

The law 26093/06 regulates and promotes the production and use of biofuels. From the year 2010 on, it will be obligatory to add biofuels to all the liquid fuels used in transportation.

(27) 1d) *What would the incentives be?*

(28) 1e) *Is the income of energy taxes and other fees earmarked for climate measures, directly or indirectly?*

IV 2. Focussed Instruments of mitigating CO2 emissions

(29) 2a) *Is your state party to the UNFCCC and/or Kyoto*
Yes, to both

(30) 2b) *Is your state member of the EU or other regional economic organisations (Mercosur e.a.)*
MERCOSUR

(31) 2c) *Are you member of a community emission trading scheme? – which one?*

(32) 2d) *Is your state bound by an emission quota on GHGs – are harsh measures require to reach the goal or is your country more or less apt to reach the goal in due time?*
No – Argentina is a non-Annex I Party

(33) 2e) *Is there a trend to apply emission quota to other sources than those covered by Kyoto? – What would be the reason (e.g. EC, national ambition?)*
No

(34) 2f) *In the quota system, are you profiting from sinks and, in relation to this, is there a sink policy?*

Argentina has a fiscal policy of subsidies and tax benefits for planted forests, which in addition to the promotion of the industry, contributes to its development in an environmentally sustainable way. This policy has led during the last years to the increment of the carbon stored in the commercial plantations.

The network of national parks and other protected areas in the wooded regions totals 2,260,000 hectares, and there is wide number of proposals of conservation programs that would considerably expand that surface. This network, and their eventual enlargement, will contribute to limit deforestation and eventually to generate net flows of carbon removal.

(35) 2g) *Present policies and national measures on the use of climate mechanisms (mandatory and voluntary), in general and specifically in relation to Kyoto mechanisms*

IV 3. Emission trading scheme (where applicable)

(36) 3a) *Do you have a national emission trading law?*

(37) 3b) *Who are the actors in the trading system and which are their functions (State, authorities, companies, stock companies, individuals*

- (38) 3c) *Is there a public law system for obtaining allowances*
- (39) 3d) *How are these allowances distributed in the quota system*
- (40) 3e) *Is there an allowance market and how does it function?*
- (41) 3f) *Are foreign companies entitled to apply for allowances or to buy them on the stock market?*
- (42) 3g) *External connections of the emission-trading scheme (you may modulate freely)*
- (43) 3h) *What is the link to national energy policy?*
- (44) 3i) *How are allowances treated in property and tax law – how are, if this is the case, allowances embedded in national political regimes and market structures*
- (45) 3k) *Relation to environmental permit and environmental impact systems*

SECTION B (Adaptation and Preservation)

Part V: Adaptation Strategies to Global Warming

V 1. General issues

(46) 1a) Political position and awareness

(47) 1b) Participation in supranational and regional strategies and programmes

(48) 1c) Position of land use regimes and other planning instruments to adapt to climate-related changes

Argentina is potentially vulnerable to Climatic Change, as a high percentage of its exports are agricultural commodities and manufactures of agricultural origin. In addition, the country relies on hydro-power for an important share of its electricity generation. Accordingly, various studies were carried out to characterize the impacts of current climate variability and of the climate changes that may take place in a time horizon of 10 to 40 years.

In most of the Argentine territory and in regions of neighbouring countries there were remarkable climatic trends during the last 3 or 4 decades, very likely related to the global warming trend. These climate changes have produced important impacts that required adaptation responses, which in some cases were already taken, but in others are still pending.

Over almost all the Argentine territory there was a positive trend in the annual average precipitation that was greater in the northeast and the central regions. This change makes possible the expansion of crop cultivation into the western border of the traditionally humid region, but on the other

hand, increases the permanent or transitory flooding of agricultural fields.

Consistent with these trends, there was an important increase in the river stream-flows, except in those rivers that originate in the Andes Mountains. This trend allowed an important rise in hydropower generation in the Del Plata basin, but it was also associated with an increasing frequency of huge floods that caused considerable socioeconomic losses in the large rivers' valleys of the east of the country. Likewise, in the east and center of the country there was a considerable augment in the frequency of extreme precipitations with the consequent boost of damages by floods, destructive winds and hail associated to these events.

The temperature of the Andean zone of Patagonia had an increase in more than one degree, with the consequent receding of almost all the Andean glaciers. There was a centennial downward trend in the streamflows of the rivers that originate in the Andes Mountains in the provinces of San Juan, Mendoza, Río Negro and Neuquén, which was likely caused by a reduction of winter snowfall over that mountain range. In the case of the two last provinces, where an important part of the country's hydropower is generated, this trend has already caused generation losses of up to 40%.

The projected changes for the period 2020/2040 were analyzed utilizing results from numerical experiments carried out at the Center for Ocean Atmospheric Research (CIMA) with a high resolution climatic model and from various GCM outputs. According to the climate scenarios projected by these models, global warming would create new vulnerabilities and enhance most current ones.

A general reduction of the streamflows of the rivers of the Del Plata basin is expected, not because there would be significant changes in the precipitation over the basin, but

because of a considerable warming and therefore an increase in evaporation and a reduction of runoff. This would bring losses in the regional hydropower generation, increased concentration of contaminants in the rivers and difficulties in navigation. Similarly, an increase in water stress is expected in most of the north and part of the west of the country. This would affect agriculture and, in some zones, might compromise the supply of drinking water.

The downward trend of snowfall in the Andes Mountains is projected to persist. Thus, the hydropower generation in the provinces of Mendoza, Río Negro and Neuquén is expected to continue being negatively affected; in addition and more critical, the present productive model of Mendoza and San Juan, based on the irrigation in the oasis of the Andean rivers, would be severely conditioned.

It is estimated that the high frequency of intense precipitation and floods in the zones currently affected will continue along with the consequent negative impacts. In Patagonia and Comahue glaciers will continue receding and in some locations of the maritime seaboard and of the coast of the Plata River, storm tides will affect with recurrent flooding larger areas due to the sea level rise.

Each of the changes and impacts described in the preceding section will require adaptation measurements that according to some pilot studies would need important funds.

However, it cannot be overlooked here the circumstance, until now quite special of Argentina, that due to the significant climate changes already occurring, an important autonomous adaptation has been developed, especially in the farm sector. Though, this adaptation was in general successful from the short-time economic point of view, it is however causing environmental damages that according to climate projections would become devastating during the

next decades. This adaptation consists of the expansion of the agriculture boundary toward the west and north of the traditional agricultural zone. It was motivated by both commercial and technological changes, but was enabled by the positive precipitation trends that occurred in those zones. This autonomous adaptation already requires public attention to minimize its negative impacts.

V 2. Cost issues

(49) 2a) Examples for covering adaptation costs (fees, insurance)

(50) 2b) Role of specified policies

(51) 2c) Policies on water management, agriculture and traffic

(52) 2d) Use of nature conservation measures to update effects of global warming

(53) 2e) Threat of loss of biodiversity (GMO cultivation etc.)

Part VI: Targetted Measures of Adaptation

(54) a) Flood control (legal sources, action programmes)

- financing system
- property restrictions
- insurance
- more

(55) b) Resettlement programmes

- threatened settlement and cultivated areas

- basis of legal competence
- constitutional rights
- financial responsibility

(56) c) Adaptation of agriculture and forestry to climate change

- rural policies as instruments
- existing or planned legal tools
- role of the EU, WTO, FAO etc.

Part VII: Preservation of Threatened Natural and Cultural Habitats

This part is open for free thoughts

(57) a) Could present international conventions (UNESCO, Biodiversity Convention and others) offer required tools for understanding the needs of global warming (Arctic, Antarctic, - species and habitats, ice bear and wetlands – and Venice, “Atlantis”?)

(58) b) Is there a national or scientific approach to your knowledge with legal relevance?

Varia

If you want to add further relevant information or put remarks on the questionnaire you can do so here.