The Oslo Principles and Australia: A Brief
Examination of Climate Obligations in Relation to Small Island States

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I. Introduction

Climate change is a major issue confronting the World today – it stands to impact on every aspect of everyday life. Warming air and sea surface temperatures, ocean acidification, and sea level rise will impact low lying Pacific and Indian Ocean Island States disproportionately compared with rich non-island States. As a major economic force within the southern hemisphere, Australia is interconnected with many of the island states within the region. Australia’s current outlook for climate change mitigation has been criticised by some within these island nations, who think Australia needs to do more, especially since it is one of the highest per capita emitters within the OECD.\(^1\) Australia also would be a likely destination for some of the displaced population of these nations, as they lose their land area.

For the small island states (‘SIS’) of the Pacific Ocean, climate change is an important issue. Loss of land, impacts on fresh water availability and food production will all affect life on the SIS, especially those that are composed mostly of atolls.\(^2\) With all of these impending problems, many SIS heads-of-state have been vocal in the lead up to the Paris climate talks, and are demanding that the global community act on climate change.\(^3\) At the Paris negotiations, this bloc of nations maintained their assertion that the developed world needs to do more regarding mitigation.\(^4\) As a major economic force in the southern hemisphere, many SIS are looking to Australia to take on its fair share of responsibility regarding climate change.


\(^2\) Eric L Kwa, ‘Climate Change and Indigenous People in the South Pacific’ (Paper presented at the IUCN Academy of Environmental Law Conference on Climate Law in Developing Countries Post 2012: North and South Perspectives, 26-28 September 2008) 7.


mitigation. More than a moral imperative, Australia has a legal responsibility to the SIS in the Pacific to act on climate change as outlined in the Oslo Principles. The Oslo Principles examine the legal obligations required of nations to mitigate climate change, and is based on treaty and customary international law. The climate mitigation requirements contained within the Oslo Principles has implications for Australia, and other developed nations around the world.

II. The Oslo Principles

In March of 2015, legal experts from around the World gathered to discuss the legal obligations of nations regarding climate change – resulting in the Oslo Principles. In its preambular statement, the Oslo Principles: identify the need for action on climate change, state that the two degree rise in average temperature should not be exceeded according to the prevailing scientific evidence, and seek to clarify ambiguities regarding State obligations concerning climate change. It is the view of this panel of experts that nations are ‘legally obliged to reduce GHG emissions, even if they do not conclude (further) international agreements or conventions.’


6 Antonio Benjamin, Michael Gerrard, Toon Huydecoper, Michael Kirby, M C Mehta, Thomas Pogge, Qin Tianbao, Dinah Shelton, James Silk, Jessica Simor, Jaap Spier, Elisabeth Steiner, and Philip Sutherland, Oslo Principles on Global Climate Change Obligations (2015) (‘Oslo Principles’) <http://vkplusmobilebackend.persgroep.net/rest/content/assets/9a632464-ff2b-4ebe-bc99-1420e055283b>.

7 Oslo Principles 1.

8 Oslo Principles preamble.

Principle 1

Outlines the precautionary principle, which underlies most of the subsequent articles.10 The Oslo Commentary states this principle is well established in law, and for example is found within the United Nations Framework Convention on Climate Change, and attempts to be fair regarding uncertainty and the acceptance of risk among conflicting interests.11 Further, the authors argue that following this principle requires reduction of GHGs to prevent the hazards of climate change that may still be circumvented. The reductions needed should be based on the ‘worst-case scenario’ acknowledged by the majority of scientists.12

Principle 6

Requires nations to reduce their GHG emissions to a level that will help the World halt warming to 2º.13 Within the Oslo Commentary the authors identify that this concept is rooted in the idea that those countries that are producing per capita emissions above their accepted target, must reduce them. The panel continues by stating this legal obligation is supported by human rights and international law.14

Principle 7

Declares nations should institute Principle 6 actions that impose no additional costs.


12 Oslo Principles pr 1.

13 Ibid pr 6.

14 Oslo Commentary, above n 9, 64.
Principle 7 also identifies the need to utilise carbon-based energy sources efficiently, and not wastefully.\textsuperscript{15}

**Principle 8**

Principle 8 of the *Oslo Principles* argues that nations must not initiate new activities that would result in ‘excessive’ emissions. The example given is the building of new or enlarging of existing coal-fired power plants, unless they can be shown to be ‘indispensable’ (primarily for developing nations) and have appropriate measures in place to counter the increase in emissions.\textsuperscript{16} By extension it would seem that principle 8 would also encompass the building of new mines and expansion of coal exports to other countries.\textsuperscript{17}

Related to this is the idea that nations must not subsidise, or make guarantees that would be for the provision of new or the further development of extant facilities that would produce increased emissions (**Principle 21**).\textsuperscript{18} The panel expressed that this provision is based on a similar provision within the *Montréal Protocol*, and on the established concept that ‘climate change is a human rights issue.’\textsuperscript{19} The International Bar Association (‘*IBA*’) suggests that countries may want to increase subsidies to renewable energy production methods, or alternatively, decrease those subsidies to the fossil fuel industry should international consensus be reached.\textsuperscript{20}

The Oslo panel elucidates that nations must commit to emissions reduction measures even if there is a cost, particularly if the cost will be recouped through ‘future savings or financial

\textsuperscript{15} *Oslo Principles* pr 7; Oslo Commentary, above n 9, 65.

\textsuperscript{16} *Oslo Principles* pr 8; Oslo Commentary, above n 9, 66-7.

\textsuperscript{17} *Oslo Commentary*, above n 9, 66-7.

\textsuperscript{18} *Oslo Principles* pr 21.

\textsuperscript{19} *Oslo Commentary*, above n 9, 80-1.

\textsuperscript{20} *IBA Report*, above n 11, 70.
gains." According to the commentary this could mean that a nation might need to finance these measures through a loan, which the panel contends is justified due to savings made through reduced energy payments. Principle 13 requires those countries that are above their prescribed emissions levels must take action to reduce those emissions within the shortest time frame possible. This consideration of time frame is to allow for installation of alternative technologies to contend with the necessary energy requirements – since it will not happen overnight. However, according to Principle 19, nations who are above permissible emissions must make additional reductions if necessary to keep the global average temperature below the 2° rise over pre-industrial levels. If that is still not enough to maintain the temperature below the 2° rise, then countries that are below their emissions levels should enact further emissions reductions. This 2° limit has been incorporated into the Paris Agreement.

To maintain climate warming below the 2° maximum agreed to in the Paris Agreement and to deliver upon the construction of ‘finance flows’ that will enable a reduction in carbon emissions, Australia must divest from fossil fuel subsidies. This, however, seems to be contrary to the Australian Federal Government’s actual direction with a continued push to approve the Adani, Carmichael coal mine and to expand ports within the Great Barrier Reef.

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21 Oslo Principles pr 9.
22 Oslo Commentary, above n 9, 67-8.
23 Oslo Principles pr 13.
24 Oslo Commentary, above n 9, 72-3.
25 Oslo Principles pr 19; Oslo Commentary, above n 9, 78-9.
26 Paris Agreement art 2.
III. Conclusion

Australia and other developed nations have a responsibility to the SIS, and to the least developed countries (‘LDCs’), however, the responsibilities are not necessarily well defined. While the instrument discussed above is ‘soft’ law, and academic in nature, it points to Australia, and other developed nations, having obligations to developing nations, in particular LDCs and SIS – the special needs of these countries were reaffirmed in the Paris agreement.29 It is known that soft law and declarations are important as they indicate the evolution of the law.30 Some of the principles discussed above such as the precautionary, prevention, no harm, and intergenerational equity do oblige nations to act on climate change, which could be through mitigation measures, reduction of subsidies for carbon intensive industries, and aiding SIS as their nations submerge. With the success of Urgenda v the Netherlands there is evidence that suggests courts will require countries to reduce their GHG emissions,31 which could indirectly work in favour of the SIS, however, the more poignant question may be will it be done in time to save some of these island nations.


29 Paris Agreement arts 4(6), 9(4), (9), 11(1), 13(3).
