

Climate Finance

*A project of the Institute for International Law and Justice (IILJ)
at New York University School of Law*

Climate Finance

Regulatory and Funding Strategies for Climate Change and Global Development

EDITED BY

*Richard B. Stewart, Benedict Kingsbury,
and Bryce Rudyk*

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We are grateful to all authors and conference participants, to NYU Abu Dhabi for their support and for funding much of the work needed to produce this book, to the Emirates Center for Strategic Studies and Research for the kind hospitality in hosting the conference, and to NYU Law School, Dean Richard Revesz, and the Hauser Global Law School Program. Our faculty colleagues Kevin Davis (Director of the closely linked Financing Development Project), Robert Howse (on trade and investment issues), and Lily Batchelder and Mitchell Kane (on tax issues) contributed much to the planning of this project, as well as their own essays. We acknowledge with thanks the support for faculty research provided by the D'Agostino and Greenberg Fund and a grant to the IILJ from Carnegie Corporation of New York for work on global administrative law and specific issues

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This is an unusual volume in condensing into thirty-six short and trenchant policy essays considerable thought, analysis, and research. Steve Maikowski, the director of NYU Press, has provided exceptional leadership and guidance in taking on this project and enabling us to produce and distribute this book in very timely fashion. We also thank the other staff at the Press. At NYU Law School, James Chapman, John Wunderlin, and Rachel Jones did sterling work in editing, checking, polishing, and proofreading the essays under considerable time pressure.

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Richard Stewart, Benedict Kingsbury, Bryce Rudyk
New York City, September 2009

Foreword

NYU Abu Dhabi and the Sustainable Environment

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This book is the first volume of policy papers issuing from the NYU Abu Dhabi Institute. It demonstrates NYU Abu Dhabi's commitment to scholarship on matters that have critical significance in the world today. And we consider it fitting, with the selection of Abu Dhabi as home for the International Renewable Energy Agency and the ground-breaking work of Masdar, that this volume tackles one of the most pressing global issues: climate change.

Climate change mitigation and adaptation requires complex thinking across a wide range of fields: science, economics, finance, public policy, and law. Effective action demands the collaboration of institutions on all continents. Resulting from a conference on novel mechanisms and frameworks for financing climate change abatement—organized jointly by NYU's School of Law and the NYU Abu Dhabi Institute—the papers in this book exemplify this cross-disciplinary and inter-continental approach. Abu Dhabi is an apt location for such a meeting of minds and call to action. As a flat, low-lying, desert country with an extensive Gulf coastline, at a latitude of 24° N, Abu Dhabi has a particularly direct understanding of the risks attached to even a small rise in global temperatures and sea levels. The Emirate's long-term strategy to diversify its economy beyond hydrocarbon resources includes a major commitment to

renewable energy research and the policy work required to translate such new knowledge into economically viable applications.

Just as Abu Dhabi is taking a leadership role in fostering research and meaningful dialogue toward a sustainable environment, NYU Abu Dhabi is developing its new campus on Saadiyat, a natural island of great beauty, in a manner that will minimize its environmental impact. In the same spirit, NYU Abu Dhabi's undergraduate curriculum offers a multidisciplinary concentration on the environment. Students will study and research environmental science to understand the scientific foundations of climate change, responsible use of natural resources, and sustainable development. They will learn about a wide range of strategies that can inhibit damaging and irreversible environmental change, while making connections between abstract scientific concepts, the physical world around us, and local and global policy.

As a full partnership between Abu Dhabi and NYU's global community of scholars and students, NYU Abu Dhabi fosters the development of well-founded and practical solutions to the most challenging problems of our century. We hope that this book is but a first step.

Abu Dhabi, September 2009

Summary of Key Findings and Recommendations

Meeting the imperative of achieving major reduction in greenhouse gas emissions in developing as well as developed countries, without sacrificing urgently needed development, requires far greater attention to the emerging subject of climate finance than it has yet received. To achieve the necessary mitigation of climate change in developing countries, *additional* investments of €55–80 billion each year during the period 2010–2020 may be required, rising to USD 92–96 billion per year by 2030. Carbon markets are part, but only part, of the solution. Innovative financing, regulation, and governance are essential. The following strategies are proposed:

- A variety of new arrangements to generate public and private climate finance and engage developing countries in mitigation are needed; a single uniform design is neither feasible nor desirable. Ideally, they should be designed to support and not retard the future adoption by major developing countries of emissions caps.
- A suite of revised or new market-based mechanisms must be developed to mobilize very large increases in private investment in developing country mitigation. These include a reformed Clean Development Mechanism (CDM) and credit offset trading systems established pursuant to domestic cap-and-trade climate regulation by developed countries.
- These mechanisms must leverage private investment in order to achieve net climate benefits and secure long-term low carbon development.
- Carbon markets cannot be autonomous; they must be structured, regulated with developing as well as developed country involvement in their design and governance. Governance arrangements should be transparent and provide for appropriate mechanisms for account-

ability to non-state actors, including investors and non-governmental organizations.

- Linkages among national and regional regulatory/trading systems through allowance trading and transfers of offset credits will play a key role; achieving them will require coordination among governments.
- Governance arrangements and the determination of conditions on official development assistance (ODA) must be changed significantly to enhance developing countries' roles, build trust, and assure climate-sustainable development. Greater integration or coordination of international ODA mechanisms is also needed.
- The new arrangements for both private investment and ODA must be structured to match with the different types and costs of mitigation opportunities available in developing countries.
- New institutional arrangements are needed to recognize, facilitate, and coordinate the diversity of decentralized climate initiatives among both developing and developed countries.
- World Trade Organization (WTO) trade rules need to be interpreted and applied to accommodate domestic climate-related regulatory measures, including border carbon adjustments to deal with competitiveness and leakage issues and mitigation technology subsidies, so long as they are non-discriminatory and not protectionist.
- The WTO and developing countries need to develop additional capacities to monitor and respond to adoption of climate-related domestic measures that impact trade in potentially distortionary or protectionist ways.
- Changes in tax laws, including a degree of harmonization among national tax systems, are needed in order to avoid creating market distortions and regulatory inefficiencies in trading-based climate regulatory systems.

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