COP-10: Green Gimmicks, Lawsuits, and "Climate Witnesses"

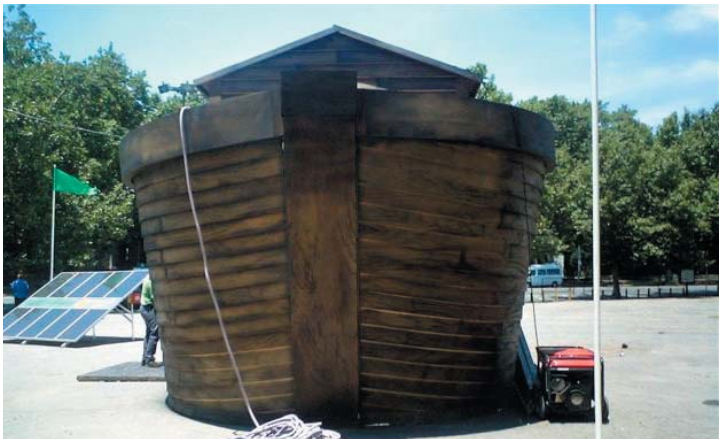
by Ivan G. Osorio

The 10th Conference of the Parties (COP-10) to the United Nations Framework Convention on Climate Change met in Buenos Aires, Argentina in December, with what would seem to be reason to celebrate. The Kyoto Protocol was finally going to go into force on February 16. But the mood among the thousands of environmental NGO participants was neither happy nor hopeful.

Ironically, the COP-10 meeting was held at the Argentine Rural Society (La Rural, for short), an agricultural promotion body. Next to the convention hall is an amphitheater for equestrian and cattle shows.

As always, the major environmental pressure groups made their presence felt. Indeed, the first thing visible upon arrival at the convention center was a large ark placed in front of the entrance by Greenpeace. Allegedly powered by solar panels, the inside of the ark seemed to house Greenpeace office facilities—but early in the conference, it had a line leading into it from a gasoline generator, which was later removed.

The Greenpeace ark, with solar panels...



...and with gasoline generator (photo courtesy of Bureaucrash)

Inside the conference, some delegates sported nametag neckbands that read "No to Bush, Yes to Kyoto," courtesy of Greenpeace. The National Environmental Trust gave out plastic buttons featuring different high-ranking U.S. officials—including President Bush, Vice President Cheney, and Undersecretary of State for Global Affairs Paula Dobriansky—with the caption, "Sorry, everybody! Good luck dealing with global warming without us," and plastic hula dancer figurines with the inscription "Visit the Arctic in 2050! Global Warming Tours, Inc." But Greenpeace and other green activist groups did more at COP-10 than engage in the publicity stunts for which they've become famous.

Friends of the Earth International (FoE) pushed bans on genetically modified trees, promotion of hydroelectric projects by international bodies like the U.N., and—especially significant for the United States—climate change litigation against businesses and governments. The premise: American industries, by contributing to global warming, are destroying native peoples' traditional livelihoods, and should therefore pay.

FoE has teamed up with fellow environmentalist giants Worldwide Fund for Nature (WWF) and Greenpeace to promote climate change litigation. The three groups sponsored an event, featuring Ken Alex from the California State Attorney General's office, to "explain the recent legal actions around the world against governments and companies, highlighting their scientific backing, and warning that there will be more to come unless deep cuts are made in emissions and victims are compensated."

A possible preview of courtroom strategy could be a December 16 event co-hosted by WWF, "Bringing Climate Change Home—How People Witness Climate Change." At the event, WWF thanked "climate Witnesses from Nepal, India, Fiji, and Argentina for their willingness to come to COP-10 and for their hard work in testifying about the impacts of climate change on their communities." Never mind the possibility of individuals being able to actually witness climate change—rather than mere weather. Such emotional appeals are often good at swaying juries.

This all obscures the fact that for many native peoples, traditional livelihoods, which often means subsistence, are not something to preserve but overcome. Thankfully, outside the climate-alarmism-as-an-article-of-faith unreality prevalent at the COP, people were more receptive to this basic commonsensical notion.

At two events sponsored by the Argentine free-market institute, Fundación Atlas, CEI Director of Global Warming Policy Myron Ebell laid out the scientific case against Kyoto. The historical evidence from the 20th century suggests that the rate of global warming will be modest. Computer models that predict more rapid warming in the future get their

Continued on page 9

in-state alcoholic beverage industries' economic interests, then it will likely strike them down. Judging by the oral arguments, the latter argument seems to have won the day.

Justice Antonin Scalia expressed doubt that requiring "an in-state office somehow prevents wineries from shipping to minors or prevents them from evading taxes," and added that the experience from the 26 states that allow direct shipping from other states "suggest it's not a problem." Justice Ruth Bader Ginsburg noted that the purpose of the 21st Amendment "was not to empower states to favor local liquor industries by erecting barriers to competition."

Although the 21st Amendment applies solely to alcoholic beverages, a Supreme Court ruling in favor of protecting interstate direct wine sales under the commerce clause could clear away other potential barriers. Beyond wine, middlemen for a wide variety of goods and services—including motor vehicles, real estate and mortgages, contact lenses, medical supplies, and pharmaceuticals—are also exerting in-state political clout to restrict Internet competition. Federal Trade Commission (FTC) Chairman Timothy Muris, commenting on a FTC report advocating an end to state restrictions on wine e-commerce, noted that, "our findings in the wine industry suggest that anti-competitive state regulations may significantly harm consumers in many of these industries." This being the first such case to reach the Supreme Court, a decision allowing direct Internet wine sales will set a powerful precedent, and could go a long way in shaping the future of Internet commerce.

Ben Lieberman (blieberman@cei.org) is a Senior Policy Analyst at CEI.

COP-10: Green Gimmicks

Continued from page 4

results by using implausible scientific and economic assumptions. And even if global warming occurs as predicted, the alleged adverse impacts have been exaggerated or simply made up.

At the same events and in an appearance on Argentine television, I discussed the costs that the Kyoto Protocol would impose on developing countries like Argentina. Although developing nations don't have to make cuts in Kyoto's first round, they would have to be included in further rounds if global emissions are going to be slowed significantly. But, unlike western Europe and Japan, countries like India, China, and Brazil are still increasing in population. Greater population means greater energy demand. Thus, Kyoto, by leading to energy rationing, would be a disaster

for the developing world.

Fortunately, many major developing country leaders seem to understand this. China, whose rapid economic growth has made it the world's second largest producer of greenhouse gases, stated emphatically in Buenos Aires that as a developing nation it will not accept any curbs on emissions now or for at least 50 years. The resistance of major developing countries to sign on to energy rationing, plus the fact that the European Union, Japan, and Canada probably won't meet their initial targets means that Kyoto has probably reached a dead end. But that won't keep its supporters from trying to resurrect it. They'll be coming soon to a courtroom near you.

Ivan Osorio (iosorio@cei.org) is Editorial Director at CEI.

COP-10: Green Litigation Tango

Continued from page 5

violated.

Potential plaintiffs are placing great value in a ruling—even one by the IACH—that anthropogenic climate change violates human rights. Such a determination could qualify plaintiffs to sue for money—and thus possibly a non-subsistence lifestyle—under the 1789 Alien Tort Claims Act. That Act gives any foreigner with a tort claim access to the U.S. federal courts, so long as they allege violation of a treaty or "the law of nations."

Therefore, whatever its weaknesses, this approach should be taken seriously. Substantively, of course, many other difficulties impede an effort to assign responsibility for some portion of climate change—particularly since earlier climate changes have occurred naturally, without calamity (or lawsuits), and which even many alarmists admit cannot be distinguished from alleged man-made climate changes.

Assisting such plaintiffs, however, is the Bush Administration's biggest environmental policy blunder: the Climate Action Report 2002. The report—submitted to the United Nations as America's official "policy and position" on climate change—"admits" U.S. complicity in climate change, albeit with some watery qualifications. Presumably, its authors assumed that this, like so much else in the diplomatic arena, is a consequence-free feel-good project. Jurists increasingly disagree.

All of this begs for the opportunity to put climate alarmism on trial. To date, grandstanding lawsuits, like that of New York Attorney General Eliot Spitzer, et al. against select utilities, are not likely to yield substantive debate but only settlements for windmill quotas. Depending on how the Inuits proceed, they might surprise the world through altering their ages-old culture—by adopting litigiousness.

Christopher C. Horner (chorner@cei.org) is a Senior Fellow at CEI. A version of this article appeared in Tech Central Station.