International Law and Climate Intervention

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Climate Intervention Law
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UN Framework Convention on Climate Change (UNFCCC)

- Intergovernmental Panel on Climate Change (IPCC)
- First Assessment Report – 1990
- Framework Convention opened for signature – 1992
- Entered into force – 1994 (189 parties)
Key Aspects of UNFCCC

• In force with virtually universal participation (including U.S.)

• Structure and objectives (Article 3)
  – Common but Differentiated Responsibility
  – Precautionary Principle

• Organizational Principles
  – Annex I nations
  – Conference of Parties (COPs)
  – Subsidiary organizations
So Why Seek Another Agreement?

• Why isn’t the UNFCCC enough? Remember that:

  – UNFCCC established general goals, including a reduction of current greenhouse gas emissions to 1990 levels to help reduce the risk of disruptive climate change.

  – Its tools: common but differentiated responsibilities, precautionary principle.
UNFCCC’s Shortfalls

• Tiers of Commitments:
  – All parties:
    • provide emission inventories (including sinks),
    • implement national plans to mitigate climate change, and
    • assist in transfer of technologies
  – Annex I parties:
    • adopt national policies to mitigate climate change “with the aim of” returning to 1990 emission levels;
    • additional funds to developing countries

• “Soft” commitments:
  – No enforcement
  – 1990 levels not low enough by scientific consensus
Next major milestone: The Kyoto Protocol

KYOTO PROTOCOL

The Climate Reporter
The first culmination – The Kyoto Protocol

- So what was the Kyoto Protocol?
  - Technically, the Kyoto Protocol was a supplemental agreement within the U.N. Framework Convention on Climate Change
  - Was the most significant international climate change convention that imposed binding emission limits on the nations who ratified it
  - The Kyoto Protocol established important legal mechanisms to help reduce emissions over time
Outcome in Kyoto

• Agreement adopted, after much drama and brinksmanship, on Dec. 11, 1997. Ratified in February 2005 after the Marrakesh Accords and Russian approval (Article 25)

• Core concepts:
  – Targets and timetables for binding emission reduction commitments

  • Quantified emissions limitation and reduction objectives (QLROs) for Annex I parties (Annex B to Kyoto)

  – Flexibility mechanisms: joint implementation, emissions trading, Clean Development Mechanism
Kyoto – Emission Limits

- Binding emission limits for developed parties for period 2008-2012
  - Established in Article 3, and described in Annex B
  - Each Party has full discretion on national strategy to reach goal
  - Commitments vary for each party
    - Europe – 8 percent reductions below 1990 levels
    - U.S. – 7 percent
  - Must meet commitment on annual average during commitment period
Kyoto – Emissions Limits (cont’d)

• The European Union Bubble
  – Article 4 – Annex I parties can fulfill commitments jointly
  – EU members agreed to collectively meet obligation
  – Burden sharing agreement among themselves

• Land Use and Forestry
  – Controversial – hard to quantify, not permanent, discourage clean energy investment
  – Kyoto (and Marrakesh) limited use: limited to afforestation, reforestation and deforestation since 1990
  – Expanded to agricultural practices in COP-6 (Bonn), but capped by complex formula
  – Parties can add Removal Units (RMUs) to their Allocated Amount or bank them.
The Kyoto Protocol provides three flexible mechanisms that Annex I parties can use to meet their emission reduction obligations:

- International Emissions Trading
- Joint Implementation
- Clean Development Mechanism

Fundamental question – auction vs. grandfathering?
Kyoto – International Emissions Trading

- Each Party receives an “Assigned Amount,” which can be divided into an “Assigned Amount Unit” (AAU)
  - i.e., right to emit one ton of GHG (CO2e)

- Under Article 17, the Parties can trade AAUs with each other
  - Similar to Acid Rain Trading Program in U.S.

- Pitfalls
  - Must be “supplemental to domestic actions”
  - Risk of overselling (bad faith rent seeking)
Kyoto – Joint Implementation

- Joint implementation also focuses on emissions trading, but from projects

- Straightforward –
  - A sponsor Party enters into transaction with a host Party to undertake project in the host Party’s country, and
  - the sponsor party then transfers a portion of its Assigned Amount to the host Party as Emission Reduction Units
  - the host Party then simply adds the ERUs to its Assigned Amount
Kyoto – Joint Implementation

- Limits on Joint Implementation
  - Only among Annex I parties (although “legal entities” can be authorized by Parties to participate)
  - “Additionality”
    - Built-in incentive – why would host Party hurt itself with ineffective project?
    - Parties must meet basic Article 5 and 7 requirements – national registry for credits, submit annual emissions inventory, national system to calculate emissions
  - Two-track system: Track 1 with no external review, or Track 2 with approval from Joint Implementation Supervisory Committee
Kyoto – Clean Development Mechanism

- Clean Development Mechanism (CDM) – allows Annex I Parties to benefit from emission reductions projects in non-Annex I countries
  - CDM has become the primary mechanism to involve developing countries
  - Allow participation by private parties
  - Significant concern – incentives for non-Annex I countries?
Kyoto – CDM Basic Requirements

• Under Article 12, a CDM project must be:
  – “additional”
  – voluntary
  – Approved by each Kyoto Party involved

• More generally, CDM projects should help non-Annex I parties to “achieve sustainable development”

• A share of proceeds must go to CDM for expenses and to provide financial assistance for “particularly vulnerable” developing country parties
Kyoto – CDM Project Cycle

• Heart of CDM: the project approval cycle

• *All* CDM projects must receive third-party verification
  
  – “Designated Operational Entities” – can be private company
  
  – Can use standardized emission baseline inventories

• Project Design Document -- approved by DOE, then by CDM Executive Board

• Then must monitor and retain second (different) DOE to verify reductions. *All Certified Emission Reductions (CERs) awarded on post-hoc basis.*
Kyoto – CDM for Non-Standard Projects

- Small-scale projects
  - E.g., renewable energy projects
  - Streamlined approval process

- Land use and forestry
  - Only for afforestation and reforestation
  - Time limits – 30 years (or 20-year credits up to 60 years)
  - tCERs (expire at end of commitment period) or ICERs (do not expire, but must replace them if loss occurs)
Kyoto and Climate Intervention

- Large scale carbon dioxide removal projects – attainment of Party emission targets?

- Solar radiation management proposals - to generate tradeable credits? Joint Implementation or CDM projects?

- Marine cloud brightening to offset global surface mean temperature increases?

- Methane capture columns? Basket of GHGs approach.
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