Dispute settlement and compliance under the UNFCCC regime

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1. Dispute settlement according to international law

• Duty to settle dispute peacefully.

• Distinction between diplomatic and judicial means.

• Political and legal disputes.

• Dispute diagnosis
Article 2 of the UN Charter

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. ...

2. ..

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

....
Diplomatic means of settlement

• Negotiation
  – direct between parties

• Good offices
  – third party brings parties to dispute together

• Mediation
  – third party takes part in negotiations

• Inquiry
  – impartial body seeks to resolve a disputed issue of fact

• Conciliation
  – dispute is referred to third party
  – usually non-binding report with recommendations
Judicial means of dispute settlement

• Arbitration

• International Court of Justice

• Special courts
Arbitration (history)

• Early cases, e.g. Alabama arbitration (United States v. Great Britain) 1872

• Hague Conventions of 1899 and 1907

• Permanent Court of Arbitration
International Court of Justice

• Contentious cases

• Advisory cases
Special courts and tribunals

- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda
- International Criminal Court
- International Tribunal for the Law of the Sea
- Dispute settlement system of the World Trade Organization
- Regional courts, e.g., European Court of Justice, European Court of Human Rights
Main characteristics of dispute settlement

• Jurisdiction
• Admissibility
• Intervention
• Preliminary objection
• Counterclaim
• Provisional measures
• Merits
• Judgements
Jurisdiction (Contentious cases)

- Requires consent
- Consent can be given:
  - by a special agreement (compromis)
  - by treaties and conventions in advance
  - by declaration (optional clause)
Advisory Jurisdiction

• Advisory opinion on any legal question
• The request can be made by
  – UN General Assembly
  – UN Security Council
  – Other organs the UN and specialized agencies agencies
2. Example

*The Trail Smelter Case:*

- United States v. Canada
- Decision by the Arbitration Tribunal (1938 and 1941)
"under the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."
3. Development of International Environmental Treaty Regimes

- Insufficiency of the traditional dispute settlement
- Development of international regulations
- Establishment of international institutions
- Shift to a management approach
- Evolution of international environmental treaty regimes
Convention on Long-range Transboundary Air Pollution (1979)

- 1984 EMEP
- 1985 Sulphur
- 1987 Nitrogen
- 1991 VOC
- 1994 Sulphur
- 1998 Heavy metals
- 1998 POPs
- 1999 Multipollutants
Ozone regime

• 1985 Vienna Convention
• 1987 Montreal Protocol
4. Climate Change Regime

• 1992 United Nations Framework Convention on Climate Change
• 1997 Kyoto Protocol
  – 2012 Doha Amendment
• 2015 Paris Agreement
5. Development of Compliance Regimes

• Background

• Compliance theory

• Purpose of compliance regimes

• Evolution of the compliance regimes under the multilateral environmental agreements
Main Characteristics of Compliance Regimes

• Purpose
• Nature
• Institution
• Triggering of the process
• Procedure
• Consequences
6. Dispute Settlement under the UNFCCC

• Article 14 of the Framework Convention
• Article 19 of the Kyoto Protocol
• Article 24 of the Paris Agreement
7. Compliance under the UNFCCC regime

• Article 13 of the Framework Convention
• Article 18 of the Kyoto Protocol
• Article 15 of the Paris Agreement
8. Example: the Compliance Regime under the Kyoto Protocol

• Main elements of the Kyoto Protocol

• Function of the compliance system
Greenhouse gases

- Carbon dioxide (CO$_2$)
- Methane (CH$_4$)
- Nitrous oxide (N$_2$O)
- Hydrofluorocarbons (HFCs)
- Perfluorcarbons (PFCs)
- Sulphur hexafluoride (SF$_6$)
Annex B to the Kyoto Protocol

- EU-15, Bulgaria, Czeck Republic, Estonia, Latvia, Liechenstein, Lithuania, Monaca, Romania, Slovakia, Slovenia, Switzerland: -8%
- United States: -7%
- Canada, Hungary, Japan, Poland: -6%
- Croatia: -5%
- New Zealand, Russian Federation, Ukraine: 0
- Norway: +1%
- Australia: +8%
- Iceland: +10%
Policies and measures

• Energy efficiency
• Sinks
• Sustainable agriculture
• Renewable energy
• Removing market imperfections for environmentally damaging activities
• Reforms in relevant sectors
• Transport sector
• Waste management
Kyoto Mechanisms

- Joint Implementation (article 6), emission reduction units (ERUs)
- Clean Development Mechanism (article 12), certified emission reductions (CERs)
- Emissions Trading (article 17), assigned amount units (AAUs)
Actual emissions < or = Assigned amount +/- Sinks +/- ERUs +/- CERs +/- AAUs +/- banking (5 times the % in Annex B baseline emissions)
EU Burden Sharing

- Portugal + 27%
- Greece + 25%
- Spain + 15%
- Ireland + 13%
- Sweden + 4%
- France 0%
- Finland 0%
- Netherlands - 6%
- Italy -6.5%
- Belgium -7.5%
- United Kingdom -12.5%
- Austria - 13%
- Germany - 21%
- Denmark - 21%
- Luxemburg - 28%
Article 18 of the Kyoto Protocol

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.
Information on compliance under the Kyoto Protocol

http://unfccc.int/kyoto_protocol/compliance/items/2875.php