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Climate Change and Pre-Paris Agreement International Legal Regime

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ABSTRACT

Climate change is an ongoing issue, people have been working and researching towards this, but still, we haven't stabilised the emission levels. Every year, scientists report increasing water levels and melting of glaciers. Humans have been causing a warming trend over the years, happening at a very fast rate. Among other things, this phenomenon has caused our atmosphere to warm up and land and ocean temperatures. Earth-orbiting satellites have enabled scientists to take notice of these changes, which signal an impending change in the climate.

Humans are responsible for global warming because there would be no such thing without human activity from 1950 onward - or so it seems when looking back on history with comprehensive data collected by satellites and cameras alike! This paper answers questions of relations of UN to the other climate change, the funds provided to achieve the goal, how are developing countries and developed countries helping each other out, what are the different laws and rules which oversee the working of the nations. It also traces the timeline of the Protocols, amendments and targets set by the UNFCCC.

Keywords: UNFCCC, Climate Change, Emissions, Kyoto Protocol, COP, Carbon Sink.

I. INTRODUCTION

This convention allows forming a multilateral consultative process for parties for any kind of dispute. This lets parties resolve the questions in case of implementation of commitments or another, as mentioned in Article 13 of the convention (*Transparency of Support Under the Paris Agreement*, n.d.). Apart from this, the Kyoto Protocol in 1997 developed a conforming regime regarding resolving disputes. In article 14 of the convention, international dispute

settlement provisions are similar to the 1985 Vienna Convention and the 1987 Montreal Protocol. When there are two or more parties, the UNFCCC gives the option to seek the settlement through negotiation or another peaceful manner. One other way to deal is to recourse it can be viable in the scenarios of arbitration or ICJ also, article 14 of the convention applies to the Kyoto Protocol.

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II. NEGOTIATIONS AND MECHANISMS OF THE KYOTO PROTOCOL

In 1995, the UN held COP 1 in Berlin, and the parties of the 1992 UNFCCC observed that the commitments in the convention were not adequate to achieve the set goals. The COP came off as a potent political mandate for “strengthening the commitments of developed country Parties included in Annex” without introducing “any new commitments for non-Annex 1 Parties.” In 1997, the UN held COP 3 in Kyoto, a sequel to the Berlin COP in December. During this COP meeting, the parties adopted Kyoto Protocol to the United Nations Framework Convention on Climate Change.

In 1998, the UN held COP 4 in Buenos Aires; during this session, the unresolved questions and issues were left during the Kyoto Protocol discussion. COP discussed technical and political topics like the operational rules, emission trading, and the concept of ‘sinks.’ A group of countries were not ready to ratify the Kyoto Protocol before all the issues weren't resolved. Until further changes and modifications, the Buenos Aires Plan of Action came into power until further changes and modifications. And after this, the 1997 Kyoto Protocol was scheduled to be finalised in 2000. Later, when the Russian Federation ratified the Protocol on 18th November 2004, which set off the adoption of the 1997 Kyoto Protocol, it was adopted on 16th February 2005.

The Berlin Mandate calculated that the 1997 Kyoto Protocol had to cover the period beyond 2000 years, and hence it required strong but

flexible commitments from the Annex 1 parties. And following this, Annex A included six greenhouse gases, namely Sulphur hexafluoride, Perfluorocarbons, Nitrous Oxide, hydrofluorocarbons, Methane, and Carbon Dioxide. While in Annex B, parties were given the targets for reducing the emissions to at least 5% below 1990 levels between 2008 - 2012. But scientists speculated that the emission level is so high that there's little to no chance that the reduction will stabilise global warming due to human activity. The parties that were part of Annex B's list were assigned different targets, which were decided based on their circumstances and economic power. The limits on the emission were based on the data of emissions in 1990. As for the EU, the range of reduction was 8%, while for Iceland, it was a 10% increase. Convention asked the Annex B (*UNITED NATIONS Subject to Technical Revision, 1997*) parties to reduce the emissions by 2005 considerably. Also, in the 1997 Kyoto Protocol, there weren't any specifications given away. There were five general, indicative measures - promoting energy efficiency, promoting renewable energy, phasing out subsidies that contradict the convention's objectives, protecting and enhancing sinks, and promoting sustainable forms of agriculture. However, any two member countries could complete the required commitment together.

Article 6 of the Protocol (*6 - Kyoto Protocol, 1997*) confirms that the parties in Annex 1 can receive credits whenever they help any such appropriate project that helps reduce the emissions. And this credit is further added in the calculation of the reduction of emissions by that

country. Next, the Clean Development Mechanism (CDM: *About CDM*, n.d.) is a part of the Protocol designed to encourage and spread awareness about the projects related to emission reduction. It was introduced to develop countries using this mechanism, and developed nations could contribute and support the developing nations. As mentioned in Article 12 of the Protocol, we can say that CDM is the only flexible way to make the developing countries participate in the campaign. Till 2014 a total of 7445 CDM projects were registered on the UNFCCC website. Whereas in Article 17, the Protocol allows Annex B parties to get indulged in emissions trading for the sake of completion of the commitments. In this case, each party involved has to keep a reserve that a party can't trade, and it shouldn't drop beyond 90% of the assigned amount.

III. THE SINK

In 1997 during the Kyoto Protocol, the concept of carbon sinks was introduced, and it turned out to be a very controversial topic. A sink is a carbon pool that stores the carbon in the atmosphere like forests or soil. Article 3 of the Protocol mentions that the parties must count both the storage and the emissions of the greenhouse gases from the eligible land-use change and the forestry activities in measuring the performance.

The rules of the 'carbon sink' (Dale, 2020) method were COP-7 in Marrakesh. A new trading unit was introduced during the COP-7 (COP 7, 2001) meeting named Removal Unit (RMU). This unit was created specifically for the measurement of the sink credits. First, the

assessment of LULUCF (*Land Use, Land-Use Change and Forestry (LULUCF)*, n.d.) activities should be based on sound science. Second, consistent methodologies are used to estimate and report these activities. Third, the mere presence of carbon stocks is to be excluded from accounting, as are increased removals due to faster growth caused by increasing concentrations of atmospheric CO₂. Fourth, Any reversals of LULUCF removals are to be accounted for at the appropriate time, and the activities must contribute to biodiversity conservation and the sustainable use of natural resources.

IV. REPORTING AND COMPLIANCE

The 1997 Kyoto Protocol includes the rules for reporting, and it was designed to facilitate transparency, comparability, completeness, and accuracy of the data collected. The rule abides the parties to submit periodic national communications containing information on national circumstances, vulnerability assessment, financial resources, and transfer of technology and education, training, and public awareness (*Reporting Requirements*, n.d.). Also, the Annex 1 parties have to mention their annual emission inventories and removal of the greenhouse gases to demonstrate compliance with the Protocol's commitments. In contrast, the least developed countries submit their National Adaption Programs of action, which address their adaption priorities.

The 2006 amendment of Annex B was to include Belarus in Annex B to assume QELRC (Quantified emission reduction commitment), and still, it's not in force yet. Article 20 and 21 of

the Kyoto Protocols state that the parties should deposit at least three-fourths of the deposit instruments of acceptance with the Depository for an amendment to enter into force. By 2019, only 30 parties had accepted the amendment (*UNITED NATIONS Proposal From Belarus to Amend Annex B to the Kyoto Protocol*, 2006). The 2012 Doha amendment also complies with articles 20 and 21, and it says that the parties have to deposit instruments of acceptance with the depositary. This amendment will come into force after 144 countries have deposited their instrument of acceptance and 124 countries have deposited to date. The CMP, who oversees the Kyoto Protocol, has recognised that the parties can provisionally apply, marking its entry pending for the Doha Amendment (*Doha Amendment to Enter Into Force | News | SDG Knowledge Hub | IISD*, 2020).

Compliance is another controversial concept that parties discussed during the COP-7 Marrakesh. This meeting led to the formation of the Compliance Committee, which is in charge of promoting compliance, advising and assisting the parties, and determining the cases of non-compliance. It has two branches: the facilitative branch and the enforcement branch. The facilitative branch advises and assists the parties following the Kyoto Protocol. It warns the parties who are in danger of falling out of the commitments under the Protocol and recommends the parties the financial and technical resources required to reach the goal.

In contrast, the enforcement branch determines whether Annex 1 party members have fulfilled their commitments or not. Under article 8 of the

Protocol (8 - *Kyoto Protocol*, n.d.), the expert review team triggers the compliance procedure, but a party can initiate this with respect to another party. The Bureau of Compliance Committee (*Compliance Committee Bodies Page*, n.d.) allocates the question of implication to the appropriate branch. The Enforcement Branch is responsible for deciding by double voting so that the majority of the parties from Annex 1 and Non-Annex 1 can approve it. In this case, even public participation is allowed. And in case the party has doubts during the enforcement proceeding, they can appeal to CMP.

In case of Non-Compliance with the commitments, the party must submit an action plan to the Enforcement Branch (*The Implementation and Compliance Regimes Under the Climate Change Convention and Its Kyoto Protocol*, n.d.). The action plan includes an analysis of the causes of non-compliance, undertaking corrective measures to remedy the non-compliance, and setting a timetable for the implementation. Suppose any Annex 1 party member fails to complete the commitments, then that party is banned from participating in any mechanism till the party has not achieved the decided compliance. That party member won't use the international emission trading benefits either.

V. CONCLUSION

We must strengthen the resilience and adaptive capacities to climate-related hazards and natural disasters in all countries. We will integrate climate change measures into national policies, strategies, and planning. We need to focus on improving education and spreading awareness of

human capacity on mitigation, adaptation, and reduction. Also, help the developed nations implement the commitment to mobilise jointly \$100 billion annually from all sources for developing countries in the context of meaningful mitigation actions with complete transparency on implementation (*Climate Change - United Nations Sustainable Development*, n.d.).

Other than that promotion of mechanisms for raising capacity for effective action against natural disasters among least developed countries (LDCs) or Small Island Developing States (SIDS). We have to focus on women's empowerment and youth participation, especially locally, since those regions are more prone to damage due to landslides or hurricanes. Even though there are several programs to curtail emissions and slow down climate change, the conclusion is that natural systems worldwide are being affected by regional climate changes, particularly temperature increases. These temperature increases are very likely due to anthropogenic emissions of greenhouse gases.

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