
Procedural Aspects of the International Legal Regime for Climate Change: Early Operation of the Kyoto Protocol's Compliance System

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This paper examines the early operation of the Kyoto Protocol's non-compliance procedure since 2006. Several important non-compliance cases recently or currently before the Kyoto Compliance Committee of the procedures and mechanisms deserve to be analysed and discussed. As we may see, the enforcement branch of the Compliance Committee has dealt with some important cases of non-compliance; Among them, from the viewpoint of interpretation or application of international environmental treaties, the question of compliance by Croatia would be particularly interesting. What must be noticed is that the Kyoto Protocol's NCP has prepared a multilateral forum which enables both the parties and the enforcement branch to base their arguments on international legal perspectives. This examination will also contribute to contested theories of compliance with international legal rules.

Keywords

Kyoto Protocol, Non-compliance Procedures, Compliance Mechanisms, Global Climate Change

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I. Introduction

One of the conspicuous characteristics of international environmental law is the development of so-called 'non-compliance procedures' ("NCPs"). It is contained in the procedural aspect of many recent 'sectoral' environmental regimes.¹ In this respect, noticeable at the outset is the adoption of the non-compliance procedure in 1990 under the Montreal Protocol on the Substances that Deplete the Ozone Layer of 1987.² Non-compliance with or non-performance of the ozone treaty obligations affects the international community as a whole rather than being geographically limited to particular sovereign states or even individuals under states' jurisdiction. Thus, 'ozone disputes' are totally different from environmental disputes concerning transboundary air pollution or the conservation of living or non-living natural resources. It can easily be assumed that traditional methods of procedures for dispute settlement, such as those envisaged in Article 33 of the United Nations Charter would not necessarily be preferred approaches in this context.³ As Günther Handl notes, what is required here is "regime-specific legal compliance mechanisms" of a more innovative nature.⁴

The Montreal-type NCP may be triggered by one party against another, a party itself which is in non-compliance, and the Ozone Secretariat of the United Nations Environment Programme ("UNEP"). The newly established Implementation Committee as the "legitimate first stop"⁵ in any formal discussion has examined and decided most non-compliance issues. Yet, the role and capability of the Committee is

¹ See generally PATRICIA BIRNIE, ALAN BOYLE & CATHERINE REDGWELL, *INTERNATIONAL LAW AND THE ENVIRONMENT* 245-50 (3d ed. 2009); PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 205-10 (2d ed. 2003); Gerhard Loibl, *International Environmental Agreements - "Compliance Mechanisms and Procedures at the Crossroads?"*, in *THE LAW OF INTERNATIONAL RELATIONS: LIBER AMICORUM HANSPETER NEUHOLD* 191 (August Reinisch & Ursula Kriebaum eds., 2007); M. A. Fitzmaurice & C. Redgwell, *Environmental Non-Compliance Procedures and International Law*, 31 NETH. Y.B. INT'L L. 35 (2000); Jan Klabbers, *Compliance Procedures*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 995 (Daniel Bodansky et al. eds., 2007); Malgosia Fitzmaurice, *Environmental Compliance Control*, in *ENCYCLOPEDIA OF PUB. INT'L L.* (Rüdiger Wolfrum ed., 2010), available at <http://www.mpepil.com> (last visited on Mar. 4, 2011).

² On the NCP of the Montreal Protocol, see generally Osamu Yoshida, *Soft Enforcement of Treaties: The Montreal Protocol's Noncompliance Procedure and the Functions of Internal International Institutions*, 10 COLO. J. INT'L ENVTL. L. & POL'Y 95 (1999); GILBERT M. BANKOBEZA, *OZONE PROTECTION: THE INTERNATIONAL REGIME* ch. V (2005). The text of the Protocol is reprinted in 26 I.L.M. 1550 (1987).

³ OSAMU YOSHIDA, *THE INTERNATIONAL LEGAL RÉGIME FOR THE PROTECTION OF THE STRATOSPHERIC OZONE LAYER: INTERNATIONAL LAW, INTERNATIONAL RÉGIMES AND SUSTAINABLE DEVELOPMENT* 173-6 (2001).

⁴ Günther Handl, *Controlling Implementation of and Compliance with International Environmental Commitments*, 5 COLO. J. INT'L ENVTL. L. & POL'Y 305, 327 (1999).

⁵ DAVID G. VICTOR, *THE EARLY OPERATION AND EFFECTIVENESS OF THE MONTREAL PROTOCOL'S NON-COMPLIANCE PROCEDURE* 36 (1996).