The Framework Convention on Climate Change and the Kyoto Protocol

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I. Introduction

The Framework Convention on Climate Change (FCCC) and the Kyoto Protocol are particularly prominent examples of multilateral attempts to address an environmental problem of global significance. This is partly due to the scope of the threat of climate change which will affect not only islands and coastal areas that will suffer from a rising sea level but potentially all global regions due to inter alia strange weather phenomena, a change in local and regional rain patterns and the amount of precipitation as well as irreversible changes in ecosystems. Another reason for the attention on this regime are the innovative legal instruments, in particular those of the Kyoto Protocol, to respond to the threat and promote compliance with its obligations.

Effectively addressing this global threat demands emission reductions far beyond the requirements of FCCC and even of the Kyoto Protocol, which envisages reducing the global output of greenhouse-gases by 5 % below the level of 1990 by 2012. However, even this first step puts the industrialised states before unprecedented challenges, because it can only be achieved through extraordinary changes in the production and consumption of energy, thus affecting virtually all areas of economic activity, be it enterprises or private households.

The complexity and magnitude of this task indicate the necessity for robust and innovative mechanisms with a view to promoting and controlling compliance as well as effectively addressing non-compliant behaviour by State Parties. The FCCC and the Kyoto Protocol make use of several mechanisms to address this need, thereby creating one of the most sophisticated and innovative compliance mechanisms existing in international environmental law.

A report on the practice of compliance control with both the Convention on Climate Change and the Kyoto Protocol has to take into consideration

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that the Kyoto Protocol has not yet entered into force and, consequently, does not yet establish obligations that need to be complied with. However, since the Kyoto Protocol with its flexible mechanisms has for a long time been discussed as an example for modern compliance mechanisms, the following paragraphs shall outline the legal instruments for compliance control in the climate change regime including the Kyoto Protocol (II). While doing so, it is appropriate to distinguish between non-confrontational and confrontational means of compliance control and enforcement.1 Having discussed the legal framework for compliance, I will then attempt to enrich the discussion with some first experiences and examples from the implementation of the FCCC and the preparations for the entering into force of the Kyoto Protocol (III). A short summary will close this paper.

II. Legal Framework of the Climate Change Regime for Promoting and Enforcing Compliance

1. Non-confrontational Means to Ensure and Enforce Compliance

a) Enhancing Compliance and Implementation through Cooperation

The objective of the climate change regime, i.e. to stabilise greenhouse gas concentrations at a sustainable level world-wide2, renders the exact place where emission reductions occur irrelevant. It is thus sensible with respect to efficiency to put into place mechanisms of cooperation and joint implementation which allow for the greatest emission reductions for the lowest abatement costs. Consequently, the FCCC foresees joint implementation as a possibility for developed countries to meet their obligations.3 Under the ongoing pilot phase of “Activities Implemented Jointly” (AIJ) established by COP 1, Annex I States Parties are permitted to invest in emission reduction projects in other countries, including Non-Annex I States Parties.

The Kyoto Protocol makes further use of this overall approach by introducing four so-called “flexible mechanisms”. One of them is the possibility

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2 Art. 2 FCCC.
3 Art. 4 para. 2 (a) and (b) FCCC.