

ACTIVITIES

I. ACTIVITIES OF THE INTERNATIONAL LAW ASSOCIATION OF JAPAN

THE FOURTEENTH ACADEMIC CONFERENCE (2006)

Date: April 15, 2006

Place: Sanjo Kaikan

The Common Theme: Compliance with International Environmental Law with
Special Reference to Climate Change

Morning Session:

Chair: Professor Yuji Iwasawa, University of Tokyo

Speaker: Professor Shinya Murase, Sophia University

Afternoon Session:

Chair: Professor Norio Tanaka, Ryukoku University

Speaker: Ambassador Mutsuyoshi Nishimura, Ambassador for the Global
Environment

Speaker: Professor Yukari Takamura, Ryukoku University

Speaker: Professor Minoru Ota, Keio University

Speaker: Professor Akihiro Sawa, University of Tokyo

Implementation of International Environmental Law with
Particular Reference to Climate Change Issues

Shinya Murase, Sophia University

The Kyoto Protocol requires industrialized parties to limit and reduce GHG emissions by quantified amounts and within a specific timeframe as set out in Annex B. Most of the industrialized country parties appear to be facing difficulty in meeting the assigned numerical targets. It should be noted that, with the departure of the United States from the Protocol, and with the large developing country emitters such as China and India having no obligation, the Protocol actually covers only one third of the total GHG emissions of the world.

There have been two schools of thoughts about the responses to non-compliance that are contemplated under Article 18 of the Protocol. One view advocates “soft” compliance-management, which favours primarily facilitative and promotional approaches by rendering assistance to non-compliant States, modelled after the Montreal Protocol’s non-compliance procedure. The other view takes a “hard” enforcement approach in order to coerce compliance by imposing penalties or sanctions on non-complying parties. The COP-7 at Marrakesh in November 2001 adopted an

enforcement approach which was in turn endorsed by the COP/MOP-1 at Montreal in December 2005. It was submitted that this was highly inappropriate not only from the policy perspective but also quite problematical from the legal point of view.

With regard to the future framework after 2013, it was suggested that the Kyoto Protocol would not work, and that a more flexible mechanism modeled after WTO/GATT should be considered (see, S. Murase, "Trade and the Environment with Particular Reference to Climate Change Issues", *Manchester Journal of International Economic Law*, Vol. 2. No. 2, 2005, pp. 18-38).

The Current Situation and the Problems of the Kyoto Protocol

Mutsuyoshi Nishimura, Ministry of Foreign Affairs of Japan

The recent decision in Montreal at COP11 to launch a new dialogue on the post-Kyoto long-term climate cooperation is important, because it involves all major emitters including the US, China and India. Japan worked hard to achieve this because it believes that any new post-Kyoto structure must engage those countries.

In that two-year-long dialogue which is due to start May 2006, Japan will continue playing a key role to help create a new comprehensive climate regime which is fair and equitable, capable of effectively combating advancing climate change on a long-term basis.

Japan's top-rated energy efficiency and technology fortify our country's leadership role during that process. Yet that is not enough. Japan has to establish a long-term reduction plan of its own GHG emissions. After Kyoto, which is a plan of action for only five years, the world is most likely to debate a long-term action plan. Japan is not prepared for it without such a long-term reduction plan. And besides, if Japan is really a part of the global solidarity concerned with climate change, it must show the world how it intends to reduce its emissions.

Compliance Procedure under the Kyoto Protocol:

Its Universality and Innovativeness

Yukari Takamura, Ryukoku University

Compliance procedures under multilateral environmental agreements (MEAs) have been proliferating. International law on state responsibility, although having served to some extent as a mechanism ensuring compliance with international obligations, does not sufficiently work with MEAs. First, law on state responsibility can intervene only after violation of international obligations, while MEAs need proactive intervention before violation occurs. Second, in case of non-compliance due to lack of capacity, sanctions are not effective in ensuring compliance. In light of such limits, compliance procedures under MEAs are in all respects and inventively

structured to ensure compliance, based on a “managerial model” instead of the traditional “enforcement model.”

The managerial model is applauded for pointing out these problems with the traditional enforcement model. On the other hand, criticism of the managerial model argues that some enforcement is needed for deliberate non-compliance, or international rules could never be enforced, and that would in turn impair their stability and effectiveness. In practice, compliance procedures under MEAs adopt a mixed (hybrid) approach: depending mainly on the managerial model, they provide for some enforcement against deliberate non-compliance. A Compliance procedure under the Kyoto Protocol shares the above characteristics and has two specificities. First, it institutionalizes and quasi-jurisdictionalizes the process that identifies the cause of non-compliance and decides how to respond, thus reducing the discretion of compliance committee and improving predictability and legal stability. Second, it is oriented towards a stronger response to non-compliance in order to deter countries from freeriding and to keep the market mechanism operating soundly. Consequences of non-compliance under the procedure, even though non-binding, would be implemented in most cases. If not, non-compliant parties and their authorized entities would lose their eligibility for the Kyoto Mechanisms, leading to great economic losses. Expanding carbon markets considerably heightens the incentive to comply, and that has become a driving force for compliance.

Practices in Emissions Trading

Minoru Ota, Keio University

Credits in the form of certified emission reductions (CERs) under the Kyoto Protocol are generated in countries implementing Clean Development Mechanism (CDM) projects by private participants. CERs issued following each project's validation and verification are first registered in the CDM registry and then distributed by the project's participants to overseas parties pursuant to project design documents. Financial institutions provide financial arrangements for implementation of the CDM projects, and trading companies, carbon funds and manufacturers appear to be purchasing the CERs from the participants.

The government recently adopted a registry system for credits allotted under the Kyoto Protocol to recognize their acquisition and transfer. However, while the transferability of credits in international and domestic markets must be assured, in Japan where no cap and trade system has been adopted, it has become difficult to define the legal nature of credits in terms of traditional property concepts. This may call into question the marketability of credits which was discussed at the conference as illustrated in a certain cross-border project financing which may be conducted in a developing country.

Political Problem about Implementing Kyoto Protocol in Japan

Akihiro Sawa, University of Tokyo

Japan ratified the Kyoto Protocol in June 2002. At that time there was a fierce policy conflict in the government on how strict the domestic policies and measures should be in order to comply with the GHG reduction target of the Protocol. Especially the Ministry of Environment(MOE) and the Ministry of Economy, Trade, and Industry(METI) are respectively the leaders of the two kinds of interested parties.

The position of environment-oriented groups led by MOE, was as follows: Kyoto Protocol is a "bible" to internationally tackle the global warming, and it is essential to maintain the framework. Therefore, Japan, having ratified the Protocol, has to take all necessary measures to fulfill its commitment regardless of how much cost will be incurred. In addition, it is the industry sector that should make the hardest effort to achieve the target because it is the most responsible for GHG emissions in Japan.

On the other hand, the position of economy-oriented groups led by METI, was as follows: the framework of the Kyoto Protocol has structural defects to be corrected in the next round of the multilateral negotiation. Taking the enormous difficulty for Japan to achieve the target into account, the ratification was a serious diplomatic mistake. In order to meet the Kyoto target, it is on a change of the Japanese people's energy-consuming life-style that should be put the highest priority because households and transportation sectors had been showing a rapid increase in GHG emission.

However, the political climate is changing gradually. Recently, environment-oriented groups have recognized the importance of the cost-effectiveness and a need for actions in the households sector, and on the other hand, economy-oriented groups have understood the necessity of meeting the reduction target set by the Kyoto Protocol. There is seen a gradual cooperation among the ministries and interested groups in the field of energy conservation and development of alternative energy.

ACTIVITIES OF THE OFFICE IN 2006

1. The General Meeting of the Japan Branch was held on April 15, 2006 at Sanjo Kaikan, Tokyo.

a. Election of Council Members and Auditors

Twenty-nine Council members and two Auditors, who were to serve from October 23, 2006 through October 22, 2009, were elected as follows :

Council Members

- Jun'ichi Akiba, Professor Emeritus, Hitotsubashi University

- Nisuke Ando, Professor Emeritus, Kyoto University
- Masato Dogauchi, Professor, Waseda University
- Hisakazu Fujita, Professor, Kansai University
- Ribot Hatano, Professor Emeritus, Gakushuin University (declined to serve)
- Kazuya Hirobe, Professor, Seikei University
- Yuji Iwasawa, Professor, University of Tokyo
- Naoya Kasai-Okuwaki, Professor, University of Tokyo
- Yoshiya Kawamata, Professor Emeritus, Kyoto University
- Ichiro Komatsu, Director-General of International Legal Affairs Bureau, Ministry of Foreign Affairs
- Akira Kotera, Professor, University of Tokyo
- Shigeru Kozai, Professor Emeritus, Kyoto University
- Yoshio Kumakura, Attorney-at-Law, Nakamura & Partners Patent & Law Office
- Yoshiro Matsui, Professor, Ritsumeikan University
- Hiroshi Matsuoka, President, Tezukayama University
- Shigeki Miyazaki, Professor Emeritus, Meiji University
- Shinya Murase, Professor, Sophia University
- Toshihiro Nakajima, Legal Advisor, Asahi Koma Law Office
- Ko Nakamura, Professor Emeritus, Keio University
- Kazuhiro Nakatani, Professor, University of Tokyo
- Seiichi Ochiai, Professor, University of Tokyo
- Shigeru Oda, Professor Emeritus, Tohoku University
- Tsuneo Ohtori, Professor Emeritus, University of Tokyo
- Hisashi Owada, Judge, International Court of Justice
- Yoshiaki Sakurada, Professor, Kyoto University
- Hisashi Uchida, Former Professor, University of Tokyo
- Chusei Yamada, Member, International Law Commission
- Soji Yamamoto, Professor Emeritus, Tohoku University
- Syunji Yanai, Judge, International Tribunal for the Law of the Sea

Auditors

- Masaki Orita, Former Ambassador to the United Kingdom
- Akira Kawamura, Attorney-at-Law, Anderson Mori & Tomotsune Law Office

b. With regard to the fiscal year 2005:

- (i) The financial account of the Japan Branch for fiscal year 2005, audited by Mr. Shunji Yanai, Auditor, as prepared by Mr. Yoshio Kumakura, Treasurer, were submitted and approved by the Meeting.
- (ii) The general affairs of the Branch during this term were reported by Professor Shinya Murase, Secretary-General.

- (iii) The academic activities of the Branch during this term were reported by Professor Naoya Okuwaki, former Director of Planning.
 - (iv) The publication of Number 48 of *The Japanese Annual of International Law* was reported by Professor Akira Kotera, Editor-in-Chief.
- c. With regard to the fiscal year 2006
- (1) The budget for fiscal year 2006, as prepared by Mr. Yoshio Kumakura, Treasurer, was submitted and approved by the meeting.
 - (ii) The general affairs scheduled for this term were presented by Professor Shinya Murase, Secretary-General.
 - (iii) The academic activities of the Branch scheduled for this term were presented by Professor Yuji Iwasawa, Director of Planning.
 - (iv) The progress of the editorial work for Numbers 49 and 50 of *The Japanese Annual of International Law* was reported by Professor Akira Kotera, Editor-in-Chief.
2. Council Meetings were held twice for fiscal year 2006 and dealt with the following matters.
- a. At the first Regular Council Meeting of 2006 held on April 15, 2006 at Sanjo Kaikan, Tokyo:
- (i) The financial account of the Branch for fiscal year 2005 and its budget for fiscal year 2006 were approved.
 - (ii) The general affairs of the Branch during fiscal year 2005 and the program for fiscal year 2006 were approved.
 - (iii) The academic activities of the Branch during fiscal year 2005 and the program for fiscal year 2006 were approved.
 - (iv) The publication of Number 48 of *The Japanese Annual of International Law* and the progress of the editorial work for Numbers 49 and 50 were reported on.
 - (v) The following persons were admitted as new members of the Branch.
 - Motoo Noguchi, Senior Attorney, Ministry of Foreign Affairs
 - Tadashi Mori, Associate Professor, Tokyo Metropolitan University
 - Shuhei Mizuta, Lecturer, Meiji University
 - Mariko Shoji, Professor, Keiai University
 - Yoshiyuki Kohari, Professor, Hiroshima University
 - Takeo Horiguchi, Associate Professor, Hokkaido University
 - Shotaro Hamamoto, Professor, Kobe University
- b. At the second Regular Council Meeting of 2006 was held on November 1, 2006 at Gakushi Kaikan, Tokyo:
- (i) Professor Shigeru Oda was elected as the President.
 - (ii) Mr. Toshihiro Nakajima was elected as the Vice-President.

- (iii) Professor Soji Yamamoto and Mr. Yoshio Kumakura were elected as the Standing Councillors.
- (iv) The financial condition of the Branch was reported on.
- (v) The general affairs of the Branch was reported on.
- (vi) The academic activities of the Branch were reported on.
- (vii) The progress of the editorial work for Numbers 49 and 50 were reported on.
- (viii) The following persons were admitted as new members of the Branch.
 - Akihiro Sawa, Professor, University of Tokyo
 - Katsuhiko Shoji, Professor, Keio University
 - Masahisa Deguchi, Professor, Ritsumeikan University
 - Akiko Okamoto, Lecturer, Shobi University
 - Yasushi Nakanishi, Professor, Kyoto University
 - Koji Takahashi, Associate Professor, Doshisha University

(Kazuhiro Nakatani)
