

# INTERNATIONAL LEGAL REGULATION OF GREENHOUSE GAS EMISSIONS AND UKRAINIAN POLICY ON IMPLEMENTATION OF THE KYOTO PROTOCOL

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## Abstract

The aim of the report is provide comprehensive analysis of international legal regulation of greenhouse gas emissions limitation and Ukrainian experience in this area. There is a common concern that global warming only makes our world warmer. But it tends to cause substantial climate changes resulting in extreme natural events like droughts, flooding of the coastal territories, powerful hurricanes and abnormal temperatures. By the end of 21st century these changes are expected to put millions of lives in danger. This negative tendency is currently observed in many countries including Ukraine. The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change, which commits its Parties by setting internationally binding emission reduction targets. It is the first agreement between nations to develop global solutions for economic and environmental problems in the 21st century. Analysis of the regulatory instruments regarding global climate change shows that Ukraine still hasn't adopted the strategic approaches to legislative regulation of greenhouse gas emission. There is no clear policy in the tax assessment, application of excise taxes, environmental taxes, consumer/manufacturer taxes, rate differentiation and other ways of promoting energy efficiency and energy overuse remedies. But the mechanisms of legislative implementation of legal regulation are being designed at this stage.

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**Keywords:** Kyoto Protocol, United Nations Framework Convention on Climate Change, implementation, global warming, state regulation

## Introduction

There is a common concern that global warming only makes our world warmer. But it tends to cause substantial climate changes resulting in extreme natural events like droughts, flooding of the coastal territories,

powerful hurricanes and abnormal temperatures. By the end of 21st century these changes are expected to put millions of lives in danger.

Scientific research proves the increase of different extreme natural phenomena in caused by global climate change in the world. For example, number of hurricanes (Categories Four and Five) has increased up to 1970 for approximately 75%. The highest indicators were recorded in northern and south-western parts of the Pacific and Indian Ocean. It should be pointed out that the number of hurricanes in North Atlantic region has exceeded the limit during the last decade.

The number of drought-stricken regions has also grown – it was mainly caused by the disbalance between unessential decrease of terrestrial weather elements and enhanced evaporation due to warming processes. The same negative tendency is currently observed in Ukraine – number of dangerous natural phenomena is increasing year by year.

Today many scientists consider the unprecedented rapid climate changes to be the result of anthropogenic influence (first of all we talk about fossil fuel burning). Many countries, especially the least developed ones, suffer the most from these changes. Specialists claim that huge resources are required for the regulation and stabilization of the climate and limitation of greenhouse gases emission.

## I.

The Kyoto Protocol is a legally binding agreement under which industrialized countries take measures for climate change prevention. Many specialists are involved in cost estimate procedures concerning reduction of greenhouse gas emission, development of environmentally-friendly economic programs and mechanisms of the Protocol implementation (e.g. mechanisms of transferring the carbon credits and taxes). All countries must focus on limitation of the greenhouse gas emission to prevent the global warming. The Kyoto Protocol which extends the 1992 United Nations Framework Convention on Climate Change (UNFCCC) has become a final result of international efforts aimed to search the globalized solutions of economic and ecological issues. It defines the key structural elements of the foundation of anti-climate change global campaign in the 21st century. It must be mentioned that the majority of world's population neither heard of the abovementioned agreements nor got its point. Meanwhile the climate change issues directly affect our lives and the solution is of common concern. The aim of this report is to provide the comprehensive analysis of the Kyoto Protocol and its influence on the legal regulation in Ukraine and at international scale.

In 1970 UN Secretary-General mentioned “natural disasters caused by warming” in his Ecological Report. In 1972 the first UN Conference on

the Human Environment was held in Stockholm where the UN Environment Programme (UNEP) was adopted. It presented the solutions for the so called "first generation" environmental problems like water and air pollution, soil impoverishment etc. Since then the UN Environment Programme has become the most extensive and influential form of international cooperation within the scope of environmental protection. In 1983 the World Commission on Environment and Development was created for the UNEP purposes to be accomplished. In 1987 the Commission prepared the "Long-Term Development Programme" published later under the title "Our Common Future". This programme contained recommendations concerning development and improvement of national legislation on environmental protection. In 1980s within the context of the UN Environment Programme and in association with the World Meteorological Organization (WMO) many scientific seminars were convened where specialists came to a consensus on the abovementioned issues.

The majority of countries are capable of significant emission cut without additional expenses taking "painless" measures. These measures include easing of market limitations and economic disproportions (e.g. through changes in legal regulation and reduction of subsidies for fossil fuel extraction), prevention of carbon dioxide emissions from further increase (including other harmful substances of non-industrial origin) by, for example, "clearing" of car exhaust fumes.

In this aspect the 'fair play' principle in the climate change control is important as inherent value and tool effective implementation of international agreements.

In June 1992 the United Nations Framework Convention on Climate Change was adopted during the Earth Summit - United Nations Conference on Environment and Development (UNCED) – in Rio de Janeiro. This document contained recommendations concerning steps aimed at regulation of the abovementioned issue (came into effect on March 21, 1994). The history of Kyoto Protocol creation must be analyzed in a single package with this document. Recommendations deal with control of atmosphere changing and its stabilization on the safe level: "The main aim of the Convention is to promote measures for fixed retention of greenhouse gas emissions on the level of guaranteed anthropogenic threat exclusion concerning the balance of the planet's climate system".

The adoption of the Convention resulted in creation of specific area in the scope of international law and established the principles approved by its signatories.

USA was one of the first countries to ratify the Convention later followed by others. By December 1990 the United Nations Framework Convention on Climate Change had been adopted by 50 countries –

sufficient for the document to come in effect in three months according to law. The term is considered to be relatively short for this type of international treaty. Up to the Kyoto meeting the number of signatories increased to 167 (without EU).

The next step to be taken was the convocation of the first Annual Conference of the Convention Parties – this event was aimed to assess the steps taken after the Earth Summit and identify the key perspectives of further development. The decision was made to hold the Conference in Berlin in 1995. During the first session the members adopted the “Berlin Mandate” (1/CP1) which initiated the international negotiation process on development of new legally binding document to accompany the Convention in terms of specific commitments of the Parties concerning reduction or limitation of emissions. Discussion of organizational matters in Berlin was generally impassive without taking into account the failure of attempts to approve the formal procedural norms (this situation repeated in Kyoto). Emission trading was the most debatable issue but the compromise was eventually achieved – a set of specific steps was forwarded without clearly formulated commitments on emission limit for contributing countries. It resulted in new stage of intensive negotiation finished in Kyoto.

Conference in Kyoto has become one of the most important global events in the scope of international protection of environment. Representatives of different countries were to take clearly defined and legally unbeatable commitments admitting the previous agreements with their declarations and consensus to fail. “This agreement got a widespread approbation and was stated to become an important step in facing the challenges caused by the global climate change”. Still many contradictions can be traced in it causing the negotiation complexity: it was necessary to formulate the commitments more clearly, provide appropriate quantitative formula, dispense them between the participants and create a mechanism for execution control. The negotiation was concentrated on the emission reduction commitments taken by the countries according to the main provisions of the Berlin Mandate. The discussions concerned three main aspects: extent of commitments (period of fulfillment with consideration of emission sources and effects); level of commitments to be taken (including differentiation between parties); international mechanisms ensuring extra flexibility for the parties’ commitments to be fulfilled.

What conclusions can be made after analyzing the negotiation process on Kyoto Protocol? First of all, it must be noted that despite the common belief that in the age of economic globalization national state declines in importance the Kyoto Protocol is an agreement between national states. The environmental protection organizations declined almost all the mechanisms of credit transfer and demanded to toughen the commitments.

But governmental authorities were determined to achieve the consent and took all possible measures to protect the planet's atmosphere as well as their own interests.

The USA managed to keep the leading position during the negotiation process. American policy was aimed to achieve the highest possible flexibility in all aspects of climate change prevention where the political and economic interests of the state came to the fore. The negotiation process in Kyoto was also marked by internal conflicts of the developing countries which had difficulties in formulation of positive ideas and achievement of consent. Countries with transition economy were more successful in protection of their interests tackling it to EU and American interests in credit trading. Developing countries presenting 70% of the conference participants and 75% of world's population proposed a set of commitment initiatives through AOSIS – Alliance of Small Island States and issues concerning potential negative consequences (AOSIS made offers on climate change influence and OPEC (Organization of Petroleum-Exporting Countries) provided information on the effects of the measures taken). Many OPEC members admitted failure of attempts to limit the emissions in the developing countries to be the main flaw in the negotiation process due to the fact that they were mostly presented by the states with powerful industrial sector and leading world polluters (e.g. China and India). At the same time these states are not bound by any commitment according to the Kyoto Protocol despite the fact that extent of emissions produced by Indian and Chinese industry goes far beyond the estimated limits – specialists claim China to become the leading world polluter by 2030.

Commitments under Kyoto Protocol consider emissions of six greenhouse gases from defined sources; in general it means overall anthropogenic pollution in form of greenhouse gas emission in countries with developed industry.

Political struggle around the Kyoto Protocol caused the excessive flexibility in the commitment fulfillment. This struggle continues in scope of fulfillment of the commitments and usually traced in discussions on wash-off accounting regulations, credit trading and CDM (Clean Development Mechanisms).

States' attitude to the Protocol itself is different. EU member states tried to raise the bar up to 15% on emission reduction. Russia stood for establishment of differentiated emission reduction system to reach the overall level of 3%. Japan insisted on 5% reduction – this indicator was defined in the document for the majority of states. The USA insisted on inclusion of the commitments for developing countries into the text of the document. This requirement has substantial background – some of developing countries are massive industrial polluters (e.g. China and India).

These states use technologies of the developed countries in order to produce less carbon dioxide. The defined commitments stimulate Western Europe and Japan to develop more effective technologies and at the same time improve the ecological situation in developing countries.

Immediately after the final document was signed the USA representatives started to deliver the thoughts that ratification of the Kyoto Protocol is not of economic benefit. It was based mostly on the claims that its provisions contradict the Byrd-Hagel Resolution adopted by the US Senate in 1977 (before the USA joined the Kyoto Protocol).

According to the Resolution, the USA must not participate in international treaties which do not include obligatory target parameters and terms concerning not only industrially developed states but also developing countries if these treaties may “cause serious damage to the US economy”.

On May 31st, 2002 EU officially informed the UN about ratification of the Kyoto Protocol. It was an important step on the way to practical implementation of this document.

18th Conference of the Framework Convention Parties and 8th Meeting of the Kyoto Protocol Parties were held in Doha (Qatar) on November 26th – December 7th 2012. The negotiation resulted in adoption of the decision package called Doha Climate Gateway. Resulting from activities of the Special Work Group on Kyoto Protocol an amendment was issued. Second commitment period of the Kyoto Protocol started on January 1st 2013 and will finish on December 31st 2020 – industrially developed countries (37 in total) will continue to reduce the greenhouse gas. New Zealand, Russia and Japan refused to make commitments on emission reduction, Canada withdrew from the Kyoto Protocol. Total commitments presented by states on emission reduction during the second period comprise only 18% of the total emission level (1990) or 3% of the global emissions reduced. According to the last report of International scientific group on climate change the abovementioned commitments aren't capable of holding the global warming under 2°C. If this temperature is exceeded, it may cause irreversible natural effects. Researchers from Potsdam Institute of for Climate Impact prove that current global temperature is coming to 4°C. That is why countries must reconsider their commitments for the second Kyoto period. They will save their right for greenhouse gas emission credit trading of the first or second commitment period, but Amendment to the Kyoto Protocol provides limitations for the purchasing countries. If necessary, countries have right to buy not more than 2% of the established Assigned Amount Units (AAU) of the first period. Through transactions credits will be transferred from the excess reserves of the previous period of the selling country to the reserve of the purchasing country. In case if Ukraine exceeds the average emission level of 2008-2010 by 2020, the country will have right

to compensate the difference from the extra credit reserve of the first period. It is stated in the subsection 25 of the Amendment to the Kyoto Protocol.

The Doha Climate Gateway decisions didn't cover the issues on extra admissions for greenhouse gas emission in Kyoto Protocol after 2020. That is why during the process of new "post-Kyoto" agreement arrangement the issue on transfer and use of the Assigned Amount Units will arise. Currently full participation in the second commitment period requires countries to calculate new amount units, assess the potential effects of the Amendments and correct the commitments on emission reduction by 2020.

Working group on long-term cooperation encouraged industrially developed countries to raise quantitative commitments on greenhouse gas emission reduction according to conclusions made by International Group of Experts on Climate Change and actualize the low-carbon economic development. The decisions made will be used as base for formulation and implementation of the new mechanisms of the greenhouse gas reduction in parallel with the current flexible mechanisms of the Kyoto Protocol. Ways of providing financial support for adaptation to the climate change for developing countries weren't clearly defined though the necessity of financial support was outlined.

The following issue will concern the implementation of Kyoto Protocol to the UN Framework Convention on Climate Change and national legal regulations of greenhouse gas emissions in Ukraine.

Analysis of the regulatory instruments regarding global climate change shows that Ukraine still hasn't adopted the strategic approaches to legislative regulation of greenhouse gas emission. There is no clear policy in the tax assessment, application of excise taxes, environmental taxes, consumer/manufacturer taxes, rate differentiation and other ways of promoting energy efficiency and energy overuse remedies. But the mechanisms of legislative implementation of legal regulation are being designed at this stage.

The main reason for legal framework of the state regulation of greenhouse gas emission to be incomplete is that Ukraine has no convincing threat for the commitment infraction regardless of the period comparing to industrially developed countries.

## **Conclusion**

For industrially developed countries state regulation of industrial greenhouse gas emissions is an obligatory condition for the national aim to be achieved. For example, EU members were obliged to cut the overall emissions by 8% - this task will not be fulfilled if the appropriate measures aimed at industrial emission reduction are not taken.

The majority of estimations covering greenhouse gas emissions clearly show that national emission level will be 30-40% lower of the average level in 1990. Up to now Ukraine had no necessity for any additional state regulations on greenhouse gas emission limitation and reduction on industrial (sector/enterprise) level. But these steps are essential – firstly, Ukraine must prepare to the next commitment period beforehand. Secondly, promotion of industrial emissions reduction will provide an opportunity to settle the issues on additional reduction to be sold on international AAU market. Finally, cautious and gradual implementation of state measures for greenhouse gas emission regulation will promote the “environmental” refocusing of economy with energy-saving technologies – it will be cost-efficient for the country and increase the GDP.

The second reason is absence of national strategies on industrial emissions reduction – attention was mostly paid to provision of reports concerning state regional and sector programmes.

No special taxes for greenhouse gas emissions were introduced in Ukraine – initial discussions in the scope of the Protocol ratification concerned only development of the State Concept on Legislative Regulation of the Greenhouse Gas Emissions. There is a clear contradiction between the experts’ recommendations of the state tax pressure to be decreased for the development of small and medium-sized business and positive experience of European countries where the additional “carbon” taxes were imposed on big enterprises.

Two main concepts are currently being implemented in Ukrainian legislation:

1. Planning of annual average emission amount;
2. Liberal mechanism for the emission level to be achieved and guaranteed according to the international commitments.

Legislative regulation of the greenhouse gas emissions must be gradually improved with attention to every detail in order to achieve maximum economic and environmental effect.

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