



# Sovereignty, International Environmental Law, and Global Climate Change

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# UN Framework Convention on Climate Change (1992)

- Established basic goals and principles
- Obligations for research and data collection; mechanisms for scientific assessment
- Institutional structure

# [ Kyoto Protocol (1997) -- 1 ]

- Commitment to reduction in GHG emissions by industrialized nations during Kyoto commitment period (2008-2012)
- Mechanism: binding quotas limiting national GHG emissions

# [ Kyoto Protocol -- 2 ]

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- Flexibility mechanisms
  - Joint implementation
  - Clean development mechanism
  - Emissions trading

## UN Framework Convention on Climate Change:

*“Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions in developing countries will grow to meet their social and development needs, . . .”*

Developed countries should take the lead in addressing GHG emissions.

## Byrd/Hagel Resolution:

Whereas greenhouse gas emissions of Developing Country Parties are rapidly increasing and are expected to surpass emissions of the United States and other OECD countries as early as 2015; . . .

Whereas the exemption for Developing Country Parties [in Kyoto] is inconsistent with the need for global action on climate change and is environmentally flawed;

Whereas the Senate strongly believes that the proposals under negotiation, because of the disparity of treatment between Annex I Parties and Developing Countries and the level of required emission reductions, could result in serious harm to the United States economy, including significant job loss, trade disadvantages, increased energy and consumer costs, or any combination thereof . . .

Byrd/Hagel (continued):

(1) the United States should not be a signatory to any protocol . . . which would--

(A) mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period, or

(B) would result in serious harm to the economy of the United States; . . .

“A further complication [of efforts to address global warming through international cooperation] is that the wealthy countries of the northern hemisphere are the principal emitters of greenhouse gases but the poor countries of the equatorial belt are the principal prospective victims of global warming, and they cannot afford to compensate the wealthy countries for incurring the costs involved in substantially curtailing those countries’ emissions. This is one reason the United States has refused to ratify the Kyoto Protocol . . . . The United States would have borne almost two-thirds of the estimated \$800 billion cost of compliance with the protocol yet because of our temperate climate would have derived little benefit from it, unless of course compliance would stave off global catastrophe.”

Judge Richard Posner, Catastrophe: Risk and Response (2004).

# Sovereignty, nationalism, and the Kyoto model

- Kyoto model – negotiation of stringent national limits – may be fatally unattractive to major GHG emitters
  - Russia
  - China
  - India
  - EU
- How to persuade countries with high costs of compliance to follow model where benefits occur mostly elsewhere?

# [ Persuading reluctant emitters ]

- Convince them of moral imperative
- Convince them that cost will be lower or benefits higher than expected
  - Technology breakthroughs
  - Averting catastrophic losses

# More even-handed regulatory strategies

- International carbon/GHG tax
- Harmonized carbon/GHG taxes
- International technology standards controlling allowable emissions from automobiles, power stations, etc
- Removal of subsidies that encourage GHG emissions

# [ Deeper problems ]

- Profound American ambivalence toward international law
  - From the right and the left
  - Losing freedom to a federal world?
- American mistrust of regulatory solutions

# [ The future? ]

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- Can we reconcile
  - The need for close international cooperation on environmental problems, and
  - An unbending commitment to national sovereignty?
- Dare we accept ever closer moves toward a federalist world?