

6. Institutional Framework of the UNFCCC and Kyoto Protocol Regime

This section summarizes the development and framework of the UNFCCC and the Kyoto Protocol, which will provide the basis for the creation of a climate regime beyond 2012.

It is important and practical to build the future regime to address climate change upon the foundation of international agreement that has been achieved thus far. In this respect, the framework of the UNFCCC and the Kyoto Protocol offer a solid foundation for the next regime.

<The UNFCCC and Kyoto Protocol: The Outcome of Extensive Negotiations>

- Climate change was first addressed as a major international political issue at the G8 Summit in Toronto in 1988. The Second World Climate Conference in Geneva in 1990 recommended the start of negotiations on a treaty on climate change, and then, the negotiations for the United Nations Framework Convention on Climate Change began in 1991. Over the 15 years from that time until the present day, international negotiations on climate change have continued without pause, on a United Nations platform. Reviewing the past international negotiations, it is important and practical to build the future regime to address climate change upon the foundation of international agreement that has been achieved thus far. In this respect, it is important to analyze and understand the framework of the UNFCCC and the Kyoto Protocol as the solid foundation of a next regime.

<Structure of the UNFCCC>

- The UNFCCC was adopted in May 1992 and entered into force in March 1994. Japan ratified the Convention in May 1993. Almost all of the countries are the parties to this Convention (190 countries and regions had ratified the Convention as of November 2002), which makes it the most comprehensive and fundamental framework to promote international responses to climate change.
- The Convention sets important foundations of international efforts on tackling global climate change. For example, it states that its ultimate objective is “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic

interference with the climate system,” and it is based on the principles that “Parties should protect the climate system ... in accordance with their common but differentiated responsibilities and respective capabilities,” “developed country Parties should take the lead in combating climate change and the adverse effects thereof,” “where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing [precautionary] measures,” and all should be “taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”.

United Nations Framework Convention on Climate Change

Article 3 Principles

In their actions to achieve the objective of the Convention and implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.
5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Background

The obligations of Parties to the UNFCCC include the following:

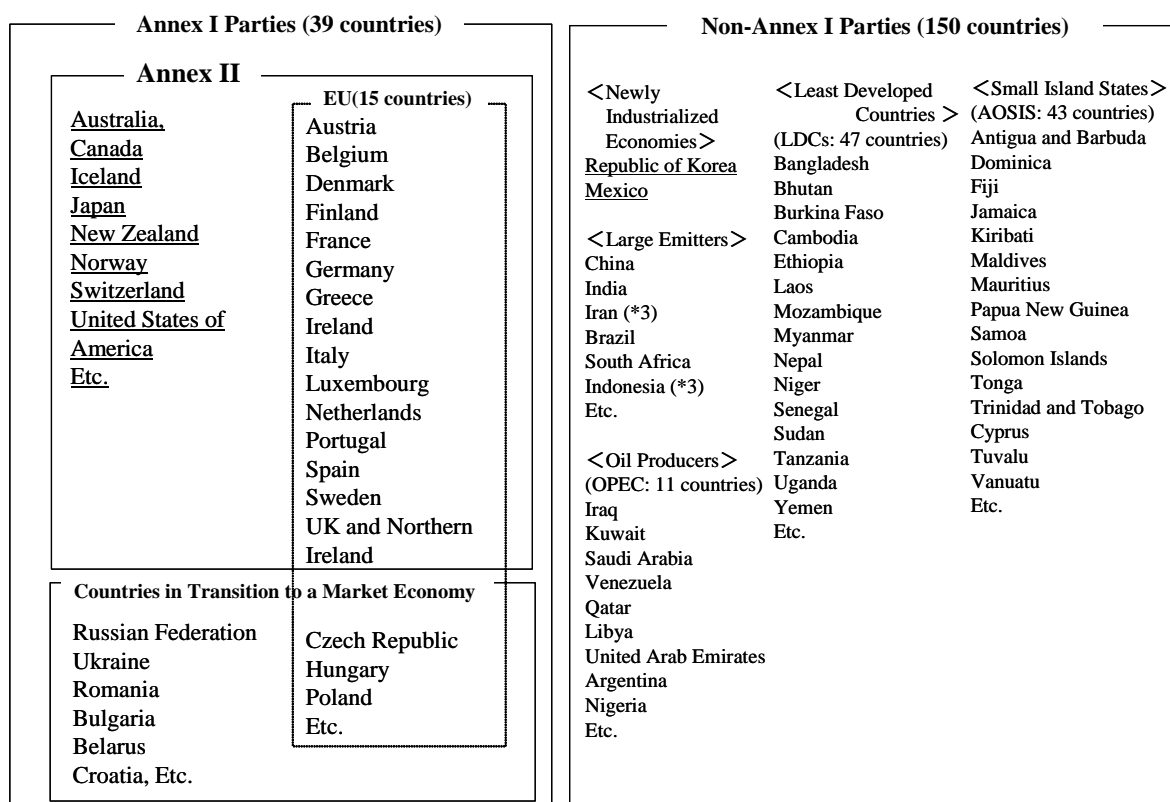
1. Obligations of all Parties
 - (1) Prepare, report, and update inventories of emissions and sinks.
 - (2) Formulate, implement and publish programmes, including mitigation and adaptation measures.

2. Obligations of Annex I countries, i.e., developed countries (including economies in transition):
 - (1) Prepare policies to modify long-term trends in anthropogenic GHG emissions, and develop response measures.
 - (2) Periodically communicate information relating to the above to the Conference of the Parties (with the aim of returning the GHG emissions to 1990 levels by 2000).

3. Obligations of Annex II countries, i.e., developed countries excluding economies in transition:

Provide funding and technology transfers to developing countries.

Figure 6.1 Annex I and Non-Annex I Countries in the UNFCCC



※1 This figure shows selected Parties only, not all Annex I and non-Annex I Parties.

※2 Underlined Parties belong to the OECD.

※3 Both Iran and Indonesia were classified here as large emitters, although they are also members of OPEC.

- Provisions in the Convention cover the review of obligations of the Parties and of the institutional framework, and based on these provisions, the Berlin Mandate was adopted in 1995 at the first session of the Conference of the Parties to the UNFCCC (COP 1).
- The Berlin Mandate recognized that the commitment of developed countries under the UNFCCC to return GHG emissions to 1990 levels by 2000 was not sufficient. It was based on recognition that the provisions of the Convention for stabilization of GHG emissions at 1990 levels were merely non-binding targets and that it would probably not be possible for many countries to achieve them, and that the Convention contained no provisions for concrete actions after 2000.
- Based on this awareness, agreement was reached in the Berlin Mandate to aim for adoption of a protocol or some other legal instrument at COP 3 in 1997, and to begin discussions for that purpose. At the same time, it was recognized that under the new framework no new obligations would be introduced for developing countries. The negotiations based on the Berlin Mandate led to adoption of the Kyoto Protocol at COP 3.

<Structure of the Kyoto Protocol>

- The Kyoto Protocol was adopted at COP 3, which was held in Kyoto, Japan in December 1997. As of November 2004, 127 countries and the European Union had concluded the Protocol. Japan ratified the Protocol in June 2002. On 18 November 2004, Russia deposited an instrument of ratification, with the result that all conditions for the Protocol's entry into force were met, meaning that the Protocol would enter into force ninety days later, on 16 February 2005.

- The negotiations that created the Kyoto Protocol were replete with difficulties until the last day of the COP 3 meeting. A major reason for these problems was that countries were strongly advocating different frameworks based on their differing political, economic, social and natural circumstances.

 - Even at the final stage of the negotiations, some parties did not yield on their positions. Japan argued for the introduction of different numerical targets for each country in order to reflect past efforts to promote energy conservation; the European Union stressed that it should be treated as a single group, and aimed to introduce a system that would admit the collective achievements of the emissions targets only for its members; meanwhile, the United States, in order to make it possible to achieve numerical targets in the most cost-effective manner, called for the expansion of the number of the target gases, the introduction of flexible mechanisms, such as emissions trading, and concrete efforts of developing countries (especially countries with high levels of GHG emissions) for mitigation and emissions limitation.
 - The United States made strong demands for the *meaningful* participation of developing countries although this point was supposed to have already been settled under the Berlin Mandate. Developing countries, meanwhile, demanded adequate emissions reductions by developed countries, and strongly demanded a reconfirmation of the decision of the Berlin Mandate which stated there would be no new obligations for developing countries.
 - Moreover, there was a large gap between countries such as the United States, Australia and New Zealand, which claimed that it was necessary to incorporate some way to deal with sinks, and parties such as Japan, EU, AOSIS, and Brazil who were quite opposed to this proposal due to the uncertainties involved.
 - At the final stage, the arguments of all countries were considered, and in return, each country was asked to make compromises. The result was the Kyoto Protocol that included not only the numerical targets for developed countries, but also a variety of other elements that arose in the course of negotiations, and then, the Protocol was adopted as a package.

- The Kyoto Protocol was a landmark achievement in establishing the obligations on the developed countries to limit or reduce their GHG emissions, and the important first step to achieve the ultimate objective of the UNFCCC. The main pillar of the Kyoto Protocol is that it gives Parties the responsibility to achieve their commitments for short-term reductions at the country level. At the same time, several important elements were adopted:
 - To allow adequate flexibility in the system, the selection of the policies and measures to achieve the targets is left to each country;
 - Emissions targets are differentiated for each country;
 - CO₂ absorption by forests and other sinks are counted as a part of the commitments; and
 - The Kyoto Mechanisms (joint implementation, the Clean Development Mechanism, and emissions trading) were introduced as the methods to achieve targets in the most cost-effective manner through international collaboration.

- As a result of incorporating the various demands of countries, the Kyoto Protocol is structured with much diversity in its provisions. When designing a climate regime beyond 2012, it will be important to give adequate consideration to these provisions and the circumstances and backgrounds that created them.

Table 6.1 Outline of the Kyoto Protocol

Target gases	Carbon dioxide, methane, nitrous oxide, and 3 CFC alternatives (HFC, PFC, SF ₆), for a total of 6 gases
Sinks	Carbon sequestration by forests and other sinks are counted.
Base year	1990 (For HFC, PFC and SF ₆ 1995 may also be used)
Commitment period	Five years (2008 - 2012)
Numerical targets	Reductions: Japan ▲6%, United States ▲7%, EU ▲8%. Developed countries will achieve a 5% reduction as a whole.
Features	Introduction of the methods to achieve targets cost-effectively through international collaboration (the Kyoto Mechanisms)

Table 6.2 Obligations under the Kyoto Protocol

	Obligations of all Parties	Obligations of Annex I Countries
Overarching	• In accordance with UNFCCC	• In accordance with UNFCCC
Mitigation measures	• In accordance with UNFCCC	<ul style="list-style-type: none"> • 5% reduction in overall GHG emissions during the period from 2008 to 2012 (each country has its own target) • Make demonstrable progress in achieving commitments by 2005 • Implement policies and measures in order to promote sustainable development in achieving national commitments • Establish a national system to estimate emissions removals by sinks by 2007
Adaptation measures	• In accordance with UNFCCC	• Voluntary contributions to adaptation fund (a decision on COP 7)

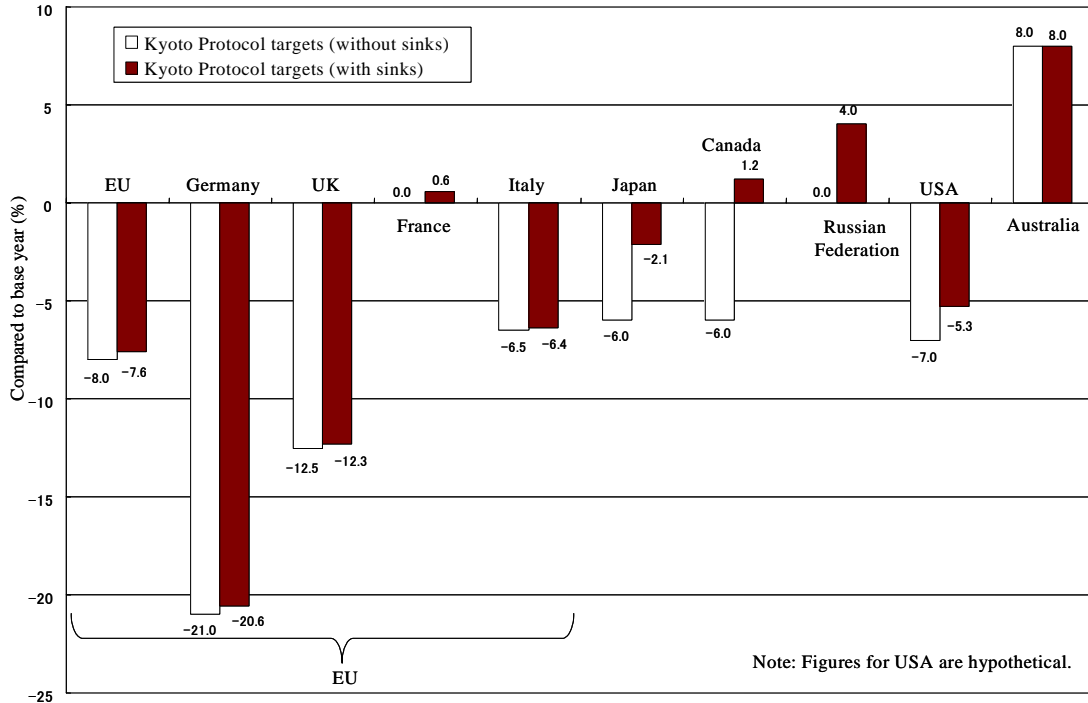
<Implementation Rules of the Kyoto Protocol: The Marrakech Accords>

- Negotiations have continued even after the adoption of the Kyoto Protocol in order to establish operational rules and solid international framework. As a result, the operational rules for the Kyoto Protocol were adopted as a legal framework at COP 7 in the form of the Marrakech Accords, which included the agreements that a fund to assist developing countries would be established, that utilization of the Kyoto Mechanisms would not imply acceptance of a legally binding compliance system, that there would be upper limits for each country’s use of sinks from forest management, and that measures could be taken in the event of non-compliance. With these Accords, the preparations for the ratification of the Kyoto Protocol were completed.

Table 6.3 Outline of Marrakech Accords

Developing country issues	<ul style="list-style-type: none"> ● Established a fund to assist capacity building, technology transfers, and enhancement of measures, etc., in developing countries (voluntary contributions by developed countries)
Kyoto Mechanisms	<ul style="list-style-type: none"> ● Use of the Kyoto Mechanisms will not be conditional on acceptance of a legally binding compliance system. ● Emissions credits obtained through the CDM, joint implementation (JI), etc., can be traded with no conditions. ● The use of Mechanisms are supplemental to domestic action (quantitative limits will not be applied, however). ● Parties using JI and CDM are to refrain from using emission reductions generated from nuclear facilities to meet their commitments ● To prevent overselling in emissions trading, countries are required to maintain a commitment period reserve of 90% of the Party's assigned amount or five times Party's most recent emissions, whichever is lowest.
Sinks	<ul style="list-style-type: none"> ● Set an upper limit for each country on removals by sinks from forest management (Japan secured 3.9% of base year emissions; Russia secured 33 million tons as requested; EU 0.45%) ● Afforestation and reforestation are recognized as sink activities under the CDM.
Compliance	<ul style="list-style-type: none"> ● In the event of failure to achieve a commitment, 1.3 times the amount of excess emissions is deducted from the Party's assigned amount for the second commitment period. ● Procedures and mechanisms relating to compliance is to be decided at the first Meeting of the Parties to the Protocol (MOP 1) after it enters into force.

Figure 6.2 Numerical Targets After Counting Sinks



< Issues for the Post-Kyoto Era >

- International agreements has been established over the years in order to support actions based on the regime of the Kyoto Protocol, which is finally about to enter into force.

Some argue that a shortcoming of the Kyoto Protocol is the fact that developing countries such as China face no obligation to reduce emissions under the Protocol. However, it was built upon the principles clearly stated in the UNFCCC (that actions should be “in accordance with common but differentiated responsibilities and respective capabilities,” and “developed country Parties should take the lead in combating climate change”), and in this sense, it is the appropriate first step to achieve the ultimate objective of the UNFCCC (Article 2).

Some also argues that, from the Japanese perspectives, the UNFCCC is an extremely unfair agreement for Japan, considering the fact that it has already achieved a high level of energy efficiency. This is why, while the European Union, the United States and others were calling for common targets at the COP 3 in Kyoto, the Japanese government was calling for differentiated reduction targets, and even when they were set, respecting the Japanese appeals, at ▲6%, ▲7% and ▲8% respectively for Japan, the United States, and the European Union, Japan still called

for 3.7% for sinks and flexibility through the introduction of the Kyoto Mechanisms. With regard to sinks, under the Marrakech Accords, the amounts for Japan and the European Union were set respectively at 3.9% and 0.45%, implying that further differentiation had been achieved at a net 2.1% reduction in the GHG reduction targets for Japan and 7.6% for the European Union.

- As a next step, it is important for developed countries to fulfill their commitments under the Kyoto Protocol. But meanwhile, it has become clear that fulfillment of the Kyoto commitments by the participating developed countries alone is not enough to achieve the ultimate objective of the UNFCCC. It will be necessary to overcome some key issues, such that the United States—the world’s largest emitter of GHG—has not altered its policy of not participating in the Protocol, and that the Protocol applies no concrete obligations to developing countries over and above what is stated in the UNFCCC although countries like China and India are indeed emitting more than many developed countries and their emissions are expected to grow rapidly in future.
- In the establishment of next climate regime, how to develop and improve the existing international agreements must become the key agenda from the perspective of the need for further enhancing and strengthening global actions to address climate change.

Figure 6.2 History of International Negotiations from COP 1 through Entry into Force of the Kyoto Protocol

