

# International Environmental Law

## *Bering Sea Arbitration (1893)*

### U.S. claim

The United States, possessing, as they alone possess, the power of preserving and cherishing this valuable interest, are in a most just sense the **trustee thereof for the benefit of mankind** and should be permitted to discharge their trust without hindrance....

The coffee of Central America and Arabia is not the exclusive property of those two nations; the tea of China, the rubber of South America, are not the exclusive property of those nations where it is grown; they are, so far as not needed by the nations which enjoy the possession, the **common property of mankind**; and if nations which have custody of them withdraw them, they are failing in their trust, and other nations have a right to interfere and secure their share.

### The Court

The United States has **not any right of protection or property** in the fur-seals frequenting the islands of the United States in Behring Sea, when such seals are found **outside the ordinary three-mile limit**.

*Trail Smelter* case (Permanent Court of Arbitration, 1941)

Under the principles of international law, as well as the law of the United States, **no state has the right to use or permit the use of its territory** in such a manner as to **cause injury** by fumes in or to the territory of another or the properties or persons therein, when the case is of **serious consequence** and the injury is established by **clear and convincing evidence**.

## ***No Harm Principle***

Stockholm Declaration (1972)

### Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the **sovereign right to exploit their own resources** pursuant to their own environmental policies, and the **responsibility** to ensure that activities within their jurisdiction or control **do not cause damage to the environment** of other States or of areas beyond the limits of national jurisdiction.

## ***Due Diligence Principle***

*Pulp Mills* case (ICJ 2010)

The Court points out that the principle of prevention, as a customary rule, has its origins in the **due diligence** that is required of a State in its territory.... A State is thus **obliged to use all the means at its disposal** in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation “is **now part of the corpus of international law relating to the environment.**”

It may now be considered a **requirement under general international law to undertake an environmental impact assessment** where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource. Moreover, **due diligence... would not be considered to have been exercised**, if a party planning works liable to affect the régime of the river or the quality of its waters **did not undertake an environmental impact assessment** on the potential effects of such works.

## ***Precautionary Principle***

Rio Declaration (1992)

### Principle 15

In order to protect the environment, the **precautionary approach** shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, **lack of full scientific certainty shall not be used as a reason** for postponing cost-effective measures to prevent environmental degradation.

*Responsibilities and Obligations of States* advisory opinion (ITLOS 2011)

The **precautionary approach** is also an integral part of the general obligation of **due diligence** of sponsoring States.... The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations **where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient** but where there are plausible indications of potential risks.

## *UN Framework Convention on Climate Change (1992)*

### Article 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.

## *Kyoto Protocol (1997)*

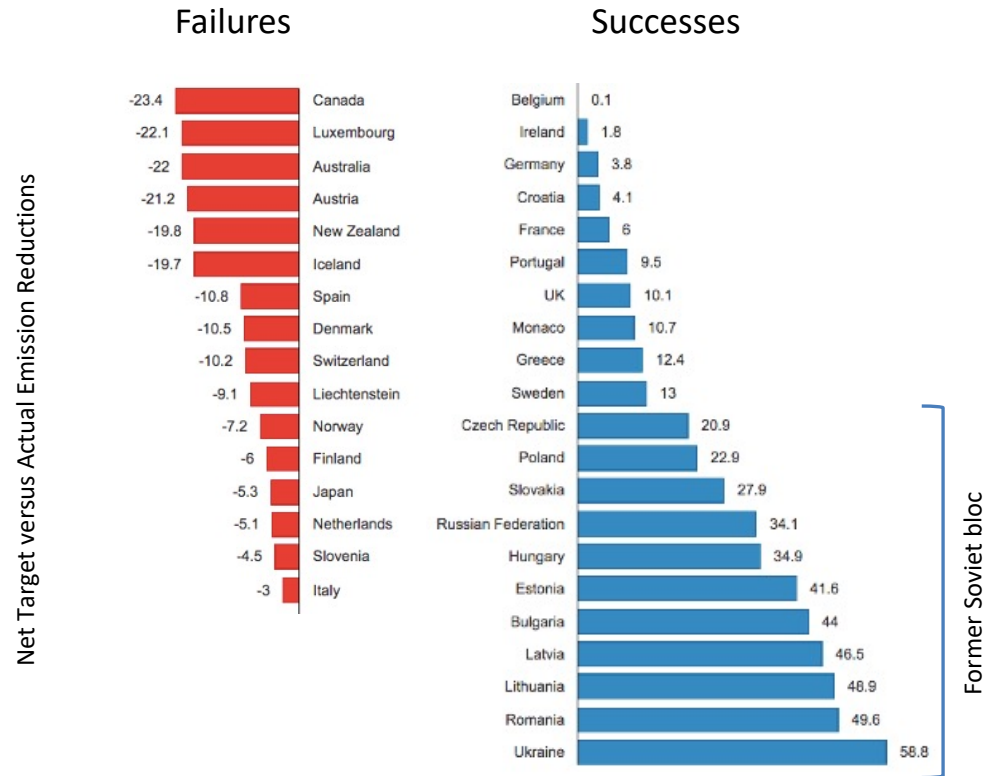
### Article 3

The Parties included in [Annex I](#) shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent [emissions of the greenhouse gases... do not exceed their assigned amounts](#),... with a view to [reducing their overall emissions](#) of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

### Article 6

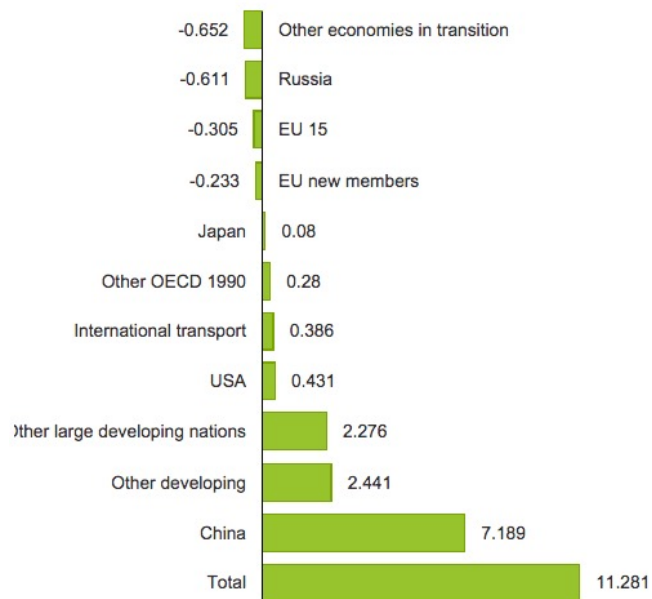
For the purpose of meeting its commitments under Article 3, any Party included in Annex I [may transfer to, or acquire from, any other such Party emission reduction units](#) resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy....

# Kyoto Protocol Compliance, 2008-2011

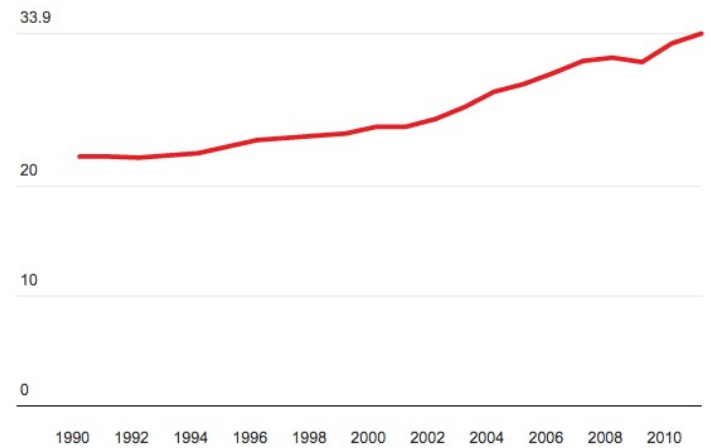


# CO<sub>2</sub> Emissions, 1990-2011

## Change in CO<sub>2</sub> emissions (GT), 1990 to 2011



## Global CO<sub>2</sub> emissions



## *Paris Agreement (2015)*

### Article 4

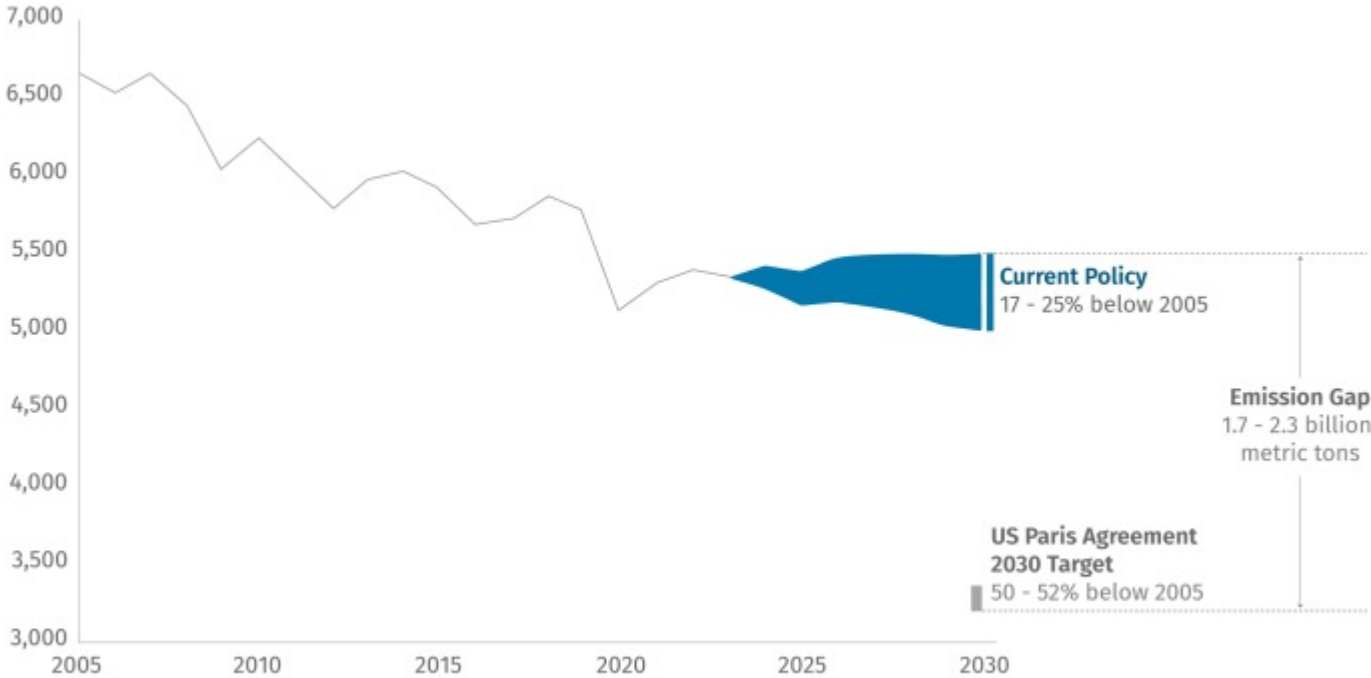
Each Party shall prepare, communicate and maintain **successive nationally determined contributions** that it intends to achieve. **Parties shall pursue domestic mitigation measures**, with the aim of achieving the objectives of such contributions.

Each Party's successive nationally determined contribution will represent a **progression beyond the Party's then current nationally determined contribution** and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

# Intended Nationally Determined Contributions (INDCs)

## The US emissions gap, 2005-2030

Million metric tons of CO<sub>2</sub>e



Source: Rhodium Group

## *Nuclear Tests* case (ICJ 1974)

The unilateral statements of the French authorities were made outside the Court, publicly and *erga omnes*.... In announcing that the 1974 series of atmospheric tests would be the last, the **French Government conveyed to the world at large, including the Applicant, its intention** effectively to terminate these tests.... The objects of these statements are clear and they were addressed to the international community as a whole, and the Court holds that they constitute **an undertaking possessing legal effect**.... It is true that the French Government has consistently maintained... that it "has the conviction that its nuclear experiments have not violated any rule of international law," nor did France recognize that it was bound by any rule of international law to terminate its tests, but this does not affect the legal consequences of the statements examined above.

*International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969)*

Parties to the present Convention may take such **measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger** to their coastline or related interests from pollution or threat of pollution of the sea by oil, **following upon a maritime casualty** or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

## ***Polluter Pays Principle***

International Convention on Civil Liability for Oil Pollution Damage (1969)

The **owner of a ship** at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence, **shall be liable for any pollution damage caused by oil** which has escaped or been discharged from the ship as a result of the incident....

"Pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the **escape or discharge of oil from the ship**, wherever such escape or discharge may occur, and includes the costs of preventive measures and further **loss or damage caused by preventive measures**.