

Xiaoyi Jiang

Legal Issues for Implementing the Clean Development Mechanism in China

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the Clean Development
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 Springer

Xiaoyi Jiang
China Institute of Boundary
and Ocean Studies
Wuhan University
Wuhan Hubei
People's Republic of China

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Preface

The idea of undertaking a research project on the topic of a Kyoto Protocol mechanism in China came into my mind when I was pursuing my Master's degree in Environmental Law in 2006. After several years' studies on international and national environmental law and policy, I realized the seriousness of the phenomena of climate change and the indispensability of China's role in international climate change legal regime. The international community had been working together to combat climate change issues through the 1992 United Nations Framework Convention on Climate Change and its innovative 1997 Kyoto Protocol. The Clean Development Mechanism (CDM), one of the three financial mechanisms under the Kyoto Protocol open to developing and developed countries, was devised to assist in mitigation of global warming.

As a non-Annex I Party of the Kyoto Protocol, China is eligible to participate in CDM projects. However, for the reason that the CDM is an emerging market-based mechanism, its implementation involves many disputable legal issues. Although China has no limits on its carbon emissions during the first Kyoto period 2008–2012, its carbon emissions would soon emerge as one of the most urgent problems. Against this background, the CDM could bring a brand new development opportunity for China in that China was regarded as the largest potential market for CDM in the world. However, to develop this potential market into a real market, a lot of work needed to be done in the area, the most important work of which was to understand how to implement the CDM project under the international legal framework and domestic laws that the development of CDM projects would involve. Meanwhile, as the legal requirements of the CDM are extremely complex, technical and detailed, a large number of problems of implementing the CDM projects have been identified, and awaits solutions.

In addition, although an extensive literature has developed covering studies on economic, political, methodological, sustainable development and legal aspects of how the CDM has been implemented since 1997, there is a dearth of literature that seriously or thoroughly explores the legal issues surrounding the CDM in China in a systematic and comprehensive way.

Considering the efficiency of the financial tools and the growing importance of China's role in addressing climate change and the benefits the CDM could bring to China, it is of great significance to learn China's experience and lessons in developing CDM projects as well as addressing climate change issues through viable environmental laws and policies. Therefore, it makes practical and theoretical sense to conduct urgent research on the legal issues of the CDM and its implementation in China. For these reasons, I decided to conduct my Ph.D. studies on the topic of legal issues for implementing the CDM in China and spent over 3 years on completing the research in Australia. This book is an outcome of my Ph.D. research.

Since it was initiated, thousands of CDM projects have been in place worldwide for several years. Already today, China with its large carbon emissions potential and favourable investment environment has dominated the global carbon market through participating in CDM projects and has become the largest beneficiary. However, despite the significant benefits the CDM has brought to China, many barriers and problems are still encountered in the practical implementation of CDM projects. Moreover, as the first Kyoto period is set to expire in 2012, the climate legal regime and the CDM are likely to be changed. China, as a major emitter and developing country, will play a crucial role in combating global warming in the post-2012 period. Therefore, it will be under considerable pressure to reduce carbon emissions without undermining its economic development.

The central aim of this book is to discuss what China should do to make full use of the CDM to promote sustainable development and meet the challenge of climate change from a legal perspective. First, how the CDM contributes to sustainable development in China is explored on the basis of the current situation of CDM projects. Following this, the existing barriers and problems encountered in the practical implementation of CDM projects are identified, based on a field work study. Finally, how the CDM would contribute to assisting China in dealing with climate change beyond 2012 is analysed.

Based on this analysis, the thesis comes to a conclusion that the CDM has limitations in promoting sustainable development in China and thus should be regarded only as a complementary instrument in combating climate change. Legal strategies for improving the implementation of CDM projects under the legal framework in China are thus put forward and some proposals for China to meet the challenge of climate change in the post-2012 era are made.

In addition, I would like to thank the MOE (Ministry of Education in China) for supporting my research work. This book is the outcome of the MOE Project of Humanities and Social Sciences (Project No.11YJC820045).

It will afford me very great satisfaction if the publication of this book enables readers to appreciate fully the legal issues for implementing the Clean Development Mechanism in China.

Xiaoyi Jiang
September 2011

Wuhan, People's Republic of China

About the Author

Xiaoyi Jiang is currently a Lecturer in Environmental Law at the Wuhan University China Institute of Boundary and Ocean Studies, People's Republic of China. She holds a Master's degree in Environmental Law from Wuhan University, People's Republic of China and a Ph.D. in Environmental Law from the University of Western Sydney, Australia. She has teaching and research interests in International and Comparative Environmental Law, Climate Change, Chinese Environmental Law and Trade and Environment Law.

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I would also like to thank those people who assisted me in conducting fieldwork in China. I thank them for helping me organize the fieldwork and taking time to participate in interviews and written surveys. For confidentiality reasons, I am unable to list their names here, but their cooperation and help are acknowledged.

This work is the result of lasting commitment, continuous encouragement and patience of my family and the unconditional dedication of my parents. It was only through their understanding and sacrifice that I have been able to complete this challenging project. They are the most important people in my life. This work is dedicated to them.

Finally, special mention and appreciation goes to those who came into my life during my study in Australia. I am deeply appreciative of them for enriching my life and dispelling my fears and loneliness for being abroad alone. With their company, I can have courage to face the difficulties and challenges in my research and life. Just because of them, doing a Ph.D. in Australia has become an experience that can never be forgotten. They are irreplaceable.

Abbreviations

AAU	Assigned Amounts Unit
APEC	Asia-Pacific Economic Cooperation
APP	Asia-Pacific Partnership on Clean Development and Climate
AR4	IPCC Fourth Assessment Report
CDM	Clean Development Mechanism
CDM EB	CDM Executive Board
CER	Certified Emission Reduction
CFCs	Chlorofluorocarbons
CO ₂	Carbon Dioxide
COP/MOP	Conference/Meeting of Parties
DNA	Designated National Authority
DOE	Designated Operational Entity
ERPA	Emission Reduction Purchase Agreement
ERU	Emission Reduction Unit
EU	European Union
FDI	Foreign Direct Investment
G77	Group of 77
GDP	Gross Domestic Product
GHG	Greenhouse Gas
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
MEP	Ministry of Environmental Protection (China)
MoEF	Ministry of Environment and Forests (India)
NCB	National CDM Board (China)
NCCCC	National Climate Change Coordinate Committee (China)
NCDMA	National Development and Reform Commission (China)
NDRC	National Development and Reform Commission (China)
NGO	Non-Government Organization
NPC	National People's Congress (China)
ODA	Official Development Assistance

PDD	Project Design Document
RMU	Removal Unit
SEPA	State Environmental Protection Administration (China)
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	UN General Assembly
US	The United States of America
VER	Voluntary Emission Credits/Verified Emission Reduction
WHO	World Health Organization
WMO	World Meteorological Organization

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Chapter 1

Introduction

1.1 Problem Statement

The Clean Development Mechanism (CDM) is a ‘market-based’ mechanism defined in the Kyoto Protocol¹ to the United Nations Framework Convention on Climate Change (UNFCCC)² as part of the Kyoto response towards mitigation of global warming. Global warming has been described as one of the greatest challenges for the twenty-first century.³ For decades scientists have understood the processes by which emissions of carbon dioxide (CO₂) and other gases might warm the planet through the so-called ‘greenhouse effect’, nevertheless it was not until the 1980s that international concern about anthropogenic impacts on the atmosphere through such emissions came to a head, and it was only in the last two decades of the twentieth century that the UN took the first steps towards recognizing and addressing the issue.⁴ These first steps led to the conclusion of the 1992 UNFCCC, followed by its innovative 1997 Kyoto Protocol that refines and quantifies the rights and obligations regarding greenhouse gas (GHG) emissions reductions under the UNFCCC. According to the Kyoto Protocol, industrialized countries (Annex I Parties) are assigned legal binding reduction targets for GHG emissions by an average of 5.2% during the first commitment period 2008–2012 below 1990 levels whilst developing countries (non-Annex I Parties) whose paramount task at present stage is the economic development and to get rid of poverty are free of emission obligations during this period.

In order to assist with the massive reductions of GHG emissions necessary to arrest the processes of climate change, three ‘financial mechanisms’—Joint

¹ Kyoto Protocol (1997).

² United Nations Framework Convention on Climate Change (1992).

³ A consensus has been reached from a scientific, political, economic or legal perspective. See, e.g., Watkins et al. (2007) and Fry (2008).

⁴ See Freestone (2005), p. 3.