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When compliance with United Nations policy raises ethical questions: Examples from the Kyoto Protocol

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INTRODUCTION

"Relations with United Nations : Covalence Criteria 41. Relations with United Nations describes how a company discusses and collaborates with programmes or agencies of the United Nations, such as the Global Compact, UNEP, UNDP, etc."

In Covalence's Ethical quote database, documents linked to this criterion 41 are considered positive if a company complies with a United Nations (UN) policy. For example, a Clean Development Mechanism project is linked to the Kyoto Protocol, which is part of United Nation's Framework Convention on Climate Change (UNFCCC) an official UN framework guided by a UN program the United Nations Environmental Programme (UNEP). Participation is almost by definition positive and as a result classified as such in Covalence's database. Covalence's Criteria Manual for interns, whose jobs are to analyse and classify the information, which will later be used in the reports and rankings, suggests this classification. For example the manual specifies that such issues: "- tends to be positive, such as UN partnerships (e.g. Novartis with WHO, L'Oréal with UNESCO)" , furthermore a negative classification is described as a non-compliance with a UN code "Can also be used to code negative information (demand): for example if a company violates a UN Code of Conduct" .

This is perfectly normal as the Covalence's 45 criteria are mostly based on UN declarations (Universal Declaration of Human Rights 1948, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 1977, RIO Declaration on Environment and Development 1992, Copenhagen Agreements on Social Development 1995, United Nations Global Compact 2000, UN Millennium Declaration + Millennium Goals), the goals and ideals of the UN are at the very heart of what Covalence considers Ethical. Ethics is a very subjective topic dependent on history, culture, religious beliefs, etc., consequently one has to choose a tangible bases for defining what is or is not ethical. For example, the fist ethical funds were created by religious communities in the United States. The basic idea was not to invest in companies involved in activities or products considered immoral or sinful (alcohol, pornography, gambling, etc.). In this case the source used for defining ethical criteria was the bible and protestant

tradition, this enabled the whole community to rally around a defined set of criteria. Covalence must in the same way find a source to construct and justify it's criteria. The major difference is that Covalence's criteria aim to be global, not just linked to a particular community. The source must therefore be as global as possible, the UN which in it's founding charter's preamble affirms: "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," has this global aim. Compliance with UN declarations, frameworks or programs is therefore generally considered ethical behaviour since it follows the guidelines of Covalence's ethical source. However, participation in UN programs or guidelines can sometimes lead to demands in other criteria. The aim of this paper is not to question the use of UN declarations as a source or to invalidate criteria 41, it is plainly to show examples of how companies can simultaneously collaborate with the UN while creating demands on other criteria. The mechanisms created by the Kyoto Protocol offer an excellent example of ethical problems within a UN framework.

THE KYOTO PROTOCOL AND IT'S FLEXIBILITY MECHANISMS

The United Nations officially started to take environmental problems into account in 1972 with the first Earth Summit (Stockholm). The goal of this summit was to define the main environmental problems, which needed to be dealt with on the international level. Some concepts, which are today totally integrated in international environmental negotiations and in the media, were officially recognized in Stockholm. For example, the common but differentiated responsibility between developed and developing countries, the right to development and the right of the future generations, which will pave the way to the concept of sustainable development. However, global warming officially became a recognized problem on which the UN takes action at the second Earth Summit of Rio in 1992. This summit addresses specific problems such as deforestation, biodiversity and global climate change. Four important texts emerge from Rio: the Rio Declaration on Development and the Forest Principles, the Agenda 21, the Convention on Biological Diversity and the Convention on Climate Change. It is this last text which will be of importance to us, we will therefore not address the other conventions and declarations.

The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol

The UNFCCC came into effect in March 1994, it's goal is to stabilize the level of green house gas (GHG) emissions to a level which prevents all human induced climate change. The countries which ratify this convention pledge to take action, but no form of punishment is planned for those who don't and there is no precise definition of what "taking action" means. The UNFCCC is therefore more remarkable by the institutional structure, which it provides, than by it's direct impact on emission reductions. This structure (conference of parties, administration, subsidiary bodies) will be the framework harbouring all important

international climate change negotiations to come. The Conference of Parties (COP), which meets every year is the main decision maker and can for example adopt protocols to the convention, which address specific topics or specify binding engagements for the ones who ratify them. This is exactly what happened at the third COP in Kyoto in 1997, a protocol (which will become known as the Kyoto Protocol) specifying specific reduction goals (each county must lower it's emissions by 5% during the period of 2008 to 2012, the reference used is the country's emissions in 1990) and outlining the mechanisms by which the countries may attain theses goals, was opened to ratification. All countries, which ratified the Protocol, must therefore present inventories of their GHG emissions and report their progress. Where the UNFCCC says : "All counties which have ratified this convention should do something about climate change", the Kyoto Protocol's message is : "All countries which have ratified this protocol must reduce this much GHG emissions, in this timeframe, with these mechanisms and report it to the COP". The Kyoto Protocol is therefore much more binding. However, it must be understood that not all countries which have ratified the UNFCCC have the obligation to ratify it's protocol. For instance, the United States have ratified the UNFCCC, but only signed the Protocol (not ratified), therefore they have no obligation to reduce their GHG emissions. For those, which have ratified the Protocol and have reduction goals (basically developing countries have no specified emission reduction goals even if they have ratified the Protocol) the Protocol proposes three mechanisms by which this might be done: The emissions permit market, Joint Implementation and the Clean Development Mechanisms. The Clean Development Mechanism (CDM) is the most controversial; it is also the one most susceptible to be classified as a Covalence criteria 41 issue. But before we describe this mechanism and explain how it can raise ethical questions, we must go through the emissions permit market and the Joint Implementation, for the three mechanisms are interrelated.

The flexibility mechanisms of the Kyoto Protocol

The emissions permit market

The emissions permit market is a way to give a price to GHG pollution. Basically, the idea is to create permits, which allow industries to emit a certain amount of GHG. At a fixed date every year each actor of the market must present an amount of permits equal to the amount of GHG that it has emitted, if it doesn't it is fined. However, if an actor doesn't have enough permits it can buy some from an other which has emitted less GHG and which therefore has excess permits. If few actors have reduced their GHG emissions there will be a strong demand for a limited amount of permits, the price of permits will rise which will persuade actors to reduce GHG emissions and sell excess permits instead of buying them. By the law of offer and demand, equilibrium will be reached giving a price for the emission of a fixed quantity of CO2. Of course, only a limited number of permits will be issued each year, equivalent to the quantity of CO2 emitted on a business as usual bases minus the desired reduction. For example if a county usually emits 1000 tons of GHG per year, it will receive 950 permits to release 1 ton, which is the equivalent of a 5% reduction. This market concerns all Annex B countries to the Kyoto Protocol. Therefore a French chemical company not able or willing to reduce it's emissions can buy permits from an Italian electricity

provider, given that it is willing to sell. The mechanisms by which the permits are distributed and how emissions are calculated are quite complex and are of no particular interest in this paper and for that reason will not be discussed. The European Union has created it's own internal emissions permit market in 2005 in order to have practical experience when the market created by the Kyoto Protocol opens in 2008.

Joint Implementation

Joint Implementation (JI) is a mechanism closely linked to the emissions permit market (EPM). JI is the act of outsourcing GHG reductions in another Annex B country, which has ratified the Protocol. The idea is that reducing 1 ton of GHG in Romania may be cheaper than reducing it in Switzerland. Factories are less efficient in so called "counties in transition" than in rich western European countries and consequently offer more reduction possibilities. JI allows reducing GHG emission at the cheapest possible cost. This is possible because of the date set as reference by the Kyoto Protocol, 1990. Many eastern European countries saw their heavy industrial production fall after the Soviet Union collapsed, so they produce less GHG today then they did in 1990. Therefore some of these countries can actually increase their GHG emissions while still respecting the Koto Protocol. Thus, if a Swiss company modernises a factory in Romania it will take the cheap permits which will be used in Switzerland, but that won't be a big loss for Romania, which doesn't need to do many reductions anyway. Furthermore, if these countries want they can sell their extra permits to other counties who need them. This system gives de facto a gift to these countries, which is why they accepted to ratify the Protocol. They will have to commit to reductions in the future, but for now Kyoto is a net income of technology or money.

Clean Development Mechanisms

The Clean Development Mechanism (CDM) is very similar to the JI. It is also a way for Annex B countries to reduce emissions in locations were the cost is minimal. The main difference is that the reduction projects are done by an Annex B county in a non-Annex B country (JI is done between Annex B countries). Instead of going to Romania to build a cleaner factory a Swiss company (or the Swiss Confederation) can create a project in Ghana a non-Annex B county. Through the CDM Switzerland will get it's cheap reductions (at least cheaper than if they were made in Switzerland) and Ghana, which has no present reduction goals benefits from a technology transfer with a less polluting and more efficient factory. Thus the CDM, in theory (if not always in practice as we will see), is a win-win-win situation. The Annex B countries can reduce their emissions in cheaper ways, the environment benefits from an emission reduction (global warming being global it doesn't really matter where the reductions take place) and developing counties benefit from the technology transfer, which is a contribution to their development. There is another difference with the JI: whereas in JI the investor country and the recipient swap their emissions permits, the CDM creates new permits (called certificates). Non-Annex B countries do not participate in the emissions market and therefore do not have permits to swap. The effect is that CDM augments the number of permits, which in consequence lowers their price (offer and demand), which lowers the

incentive to reduce emissions. New emissions brought into the market are balanced by a lack of reductions in Annex B countries, CDMs do not create more reductions than those already set by the Protocol.

MALFUNCTIONS OF THE FLEXIBILITY MECHANISMS WHICH CAN LEAD TO ETHICAL PROBLEMS

Non-Additionality

Non-Additionality is a problem linked to the very nature of CDM and JI: both are project-based mechanisms. A project by definition involves a projection into the future and therefore uncertainty. To better understand why this is a problem let us see how a reduction project becomes a CDM (or a JI) and not just a random investment. The promoters must begin by describing the project in an official Project Design Document. This document must contain a description of the project, the certified approbation of the host country and the methodology used to calculate the baseline. The defining of the baseline is where the biggest problems reside. A baseline is the quantity of emissions that are emitted in a business as usual scenario, in other words it is an estimate of the future emissions if no CDM project was created. Certificates are given for the difference between the baseline (business as usual) and actual emissions of the project. Let us see this in a very basic example: if a factory in a isolated area has been emitting 1 ton of GHG every year and it has an estimated lifespan of 10 more years, chances are that in the next ten years this factory will have emitted 10 tons of GHG. If the CDM project transforms this factory making it emit only ½ tons of GHG a year it will reduce GHG emissions by 5 tons over a ten year period. Every year the investor will receive certificates for ½ tons, which he can sell or use. Unfortunately, most baselines are not so easy to predict. What will be the impact of the future price of fuel or the economic development of the region, the availability of new technology, political instability, etc. The truth is that it is impossible to be sure of what would have happened if the project hadn't existed. This means emission certificates of CDM aren't proven reductions but just estimations. This is a problem for as we saw above; CDM certificates enter the emissions market and lower the price of the permits, which diminishes the incentive to reduce. An emission certificate that doesn't represent a real reduction will prevent reductions from being made elsewhere, which damages the environment. One might say that estimations can go both ways, certificates representing an overestimation of reductions are compensated by certificates representing an underestimation, the global count being therefore correct. The problem is that investors have an obvious interest in having the highest possible baseline in order to gather more emission certificates as for the host countries, they have an interest in attracting these investments to benefit from the technology transfer. Baselines are consequently likely to be over-estimated.

Official Development Aid

One concern of the UNFCCC, in accordance with the common but differentiated responsibility principal, is to bring new funds ton solve the climate change problem, not divert existing funds from their original use. However, there seems to be a danger that some countries use funds normally designated to official development aide to sponsor CDM projects. They claim such investments reach goals of development and environment at the same time and therefore should be counted twice, once in the global tally of the country's foreign aide and once to meet the terms of the Kyoto Protocol. Japan announced it would use this strategy . The European union accepts it under particular circumstances: "official development finance and GEF should only be supplementary to private funding (…) ODA within the framework of CDM (…) would have to be targeted to areas where the public sector has a comparative advantage over private investment and where additional social benefits are to be expected." There is therefore a risk of CDM projects depriving populations in need of official development aid.

CO2 Sinks

CO2 sinks are a way to reduce CO2 in the atmosphere (CO2 being the most important GHG), but instead of not producing CO2, sinks propose to capture it. Capturing CO2 is a natural process that nature does every day with plants. A tree basically captures CO2 and releases O2 by Photosynthesis (OK, things are a little more complicated, a simplified equation would be: 6 CO2 + 12 H2O + photons → C6H12O6 + 6 O2 + 6 H2O or in other words: carbon dioxide + water + light energy → glucose + oxygen + water), as a result if we plant a lot of trees or even if we protect a forest which was going to be destroyed (for example burned to create more farmland) we reduce emissions. This sounds like a good solution: plant trees to reduce global warming, how green can you get? In most cases it is an interesting solution, but it can also cause problems. One of them is that it is not a very secure long-term solution, forests can burn, governments can change their minds about protection. Sinks don't stock CO2 ad eternam. For example over 50% of the wood produced in Indonesia, Brazil and Cameroon is cut illegally, if a forest is protected by a CDM project who can really be sure it is not being illegally cut down. In cases like these over-estimated certificates may be issued. Other problems can occur with sinks. If an investor decides to plant trees in a CDM project instead of protecting an endangered forest, environmental or social problems may occur. First of all these projects are planed on a very long time frame, this means that local populations will not be able to do what they want with their land for very long periods. This could become a burden for the future development of the area. Sinks also need to be economically efficient by rapidly capturing a maximum of CO2 in order to attract investors. To achieve this, fast growing plants such as eucalyptus are used, but these plants are huge water consumers, which can put strain on water supplies and thus affect local communities and the environment. Generally speaking, creating artificial forests can rarely be done without creating a strain on the environment, nature doesn't have time to adapt, species are favoured over others, resources are redistributed. This will almost always have an impact on local populations.

Leeks

Leeks are problems closely linked to non-additionality, in fact the idea is the same except that leeks are negative consequences only remotely related to the project and therefore not mentioned in the official Project Design Document. For example, if a specific portion of rainforest is protected, trees in that place will not be cut down (admitting of course this protection is effective), however the global demand for wood will not decrease. If the demand stays the same while the offer decreases, prices will go up. Ultimately, these high prices may push investors to cut down another forest (maybe located thousands of miles away) to meet demand. A leek is when emissions are locally reduced, but compensated somewhere else. Globally the project has no effect and like for non-additionality over estimated certificates may be issued.

IMPACT OF THESE MALFUNCTIONS ON COVALENCE'S 45 CRITERIA

As we have seen flexibility mechanisms proposed by the Kyoto Protocol can cause harm and therefore be in some cases unethical. Therefore, they could be classified as ethical demands in relation to some of the 45 criteria of Covalence, let us see which ones.

The first problem we have seen above is non-additionality. We have seen that CDM as well as JI are project-based mechanisms and that they have a tendency to over estimate GHG reductions. This overestimation leads in fine to fewer reductions or in other words to an emission increase. This could be classified as a demand on criteria 26: Environmental Impact of Production, which is used to "…categorize information that relates to how a company's production activities are impacting the environment." Leeks, which are of similar nature, lead to the same demand on criteria 26.

Our second problem was with Official Development Aide. We explained that some countries have the intention to divert their ODA to CDM projects. This could deprive communities of aide because they don't offer GHG reduction opportunities. This could qualify as a demand for criteria 8: Official Development Assistance, since the company is withholding this assistance.

Sinks are related to two types of problems. First of all protecting an existing forest is relatively unstable, carbon trapped in trees is far from being as well contained as it is in underground wells. This leads to the same risk of overestimated credits and therefore a demand on criteria 26. The second danger is that by changing the environment too rapidly the ecosystem as well as local populations will suffer. This brings once again demands on criteria 26 but also criteria 43: Social Stability which is when "…a company helps or fails to help, promote local social stability in a community where it is active." The land is also reserved for a very long period of time, which could be an obstacle to the area's development: a demand on Economic Impact, criteria 12.

With these few examples we can see that an offer on criteria 41 can lead to demands on criteria 26 Environmental Impact of Production, 8 Official Development Assistance, 43 Social Stability and 12 Economic Impact. Participation in a United Nations policy is not always a guarantee of ethical behaviour.

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