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**COP 17 | DAY 11**

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## **Durban: A very personal Plea**

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In January 1898, Émile Zola famously published an open letter to the President of the French Republic entitled “J’Accuse!” This piece is emphatically NOT in this mind set! It is not meant to point the finger of blame; if anything the analogous heading would be “Je Supplie!” It is a humble personal plea to one of the most important and influential Parties in the UN climate change negotiations not to inadvertently cause the baby to be thrown out with the bathwater at the Durban Climate Change Conference.

### ***America’s Kyoto Trauma and Pershing’s Lesson***

In April 1995 the first Conference of Parties (COP) of the UNFCCC agreed in the Berlin Mandate to begin a process of strengthening developed country Party (Annex I) commitments *through the adoption of a protocol or another legal instrument*. Significantly, this Mandate stipulated that this process *will not introduce any new commitments for non-Annex I Parties*. The subsequent negotiations culminated two years later in Kyoto in the adoption of the Kyoto Protocol.

All this happened during President Clinton’s second term in office. The problem for the Clinton Administration with this process became manifest on 25 July 1997 when the US Senate passed the bi-partisan ‘Byrd-Hagel’ Resolution 95 to 0 expressing the sense of the Senate that the US should not sign a Protocol to the UNFCCC which would *mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless it also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period*.

On 12 November 1998, the Clinton Administration signed the Kyoto Protocol, even though they were keenly aware that it did not meet the sense of the Senate as expressed in the Byrd-Hagel Resolution. Vice-President Al Gore announced that *signing the Protocol, while an important step forward, imposes no obligations on the United States. The Protocol becomes binding only with the advice and consent of the U.S. Senate. As we have said before, we will not submit the Protocol for ratification without the meaningful participation of key developing countries in efforts to address climate change*.

‘Meaningful participation’ – trying to somehow change the status quo so as to enable Senate ratification ? became the Holy Grail for the Administration, but it was never quite clear how this should happen. The ‘meaningfulness’ in which developing countries were meant to participate was defined in the Protocol and not open for re-negotiation; and with a Senate minority of 45 seats, it was difficult to see how in the absence of a revision of the Protocol that would have contravened the Berlin Mandate it would have been possible to command the 67 votes required for ratification.

As it happens, the preconditions under which the Clinton Administration would have been willing to submit the Protocol for consent to the Senate were never met, and in 2001, President Bush formally repudiated it – which some commentators cite as the catalyst for the

rest of the world to go ahead with it. Be that as it may, the fact is that the whole experience was traumatic for the Clinton Administration team who were genuinely eager for the US to become a Kyoto Protocol Party.

Indeed, Jonathan Pershing ? who took part in the negotiations of the Kyoto Protocol as State Department Science Officer and is currently US Deputy Special Envoy for Climate Change – said as much in a lecture at the Washington-based Centre for Strategic and International Studies, (13 January 2010) on his outlook after Copenhagen and on lessons learned from the past:

*What are we supposed to do? We are supposed to enshrine and inscribe a target for greenhouse gas emissions. What do we intend to do? The President has been quite clear about that: we intend to follow Congress. And this I think is again a departure from where we had been in the process leading up to and following Kyoto, where the administration went out with a statement of what we thought we could do, brought it home, and it was not acceptable. We did not have the work, the background, the leg-work, to bring home an agreement that would be accepted by Congress.*

### **What if?**

Hypothetical histories are notoriously fought with the dangers and should generally be avoided. Yet in some cases, the situation seems to be so clear cut that they can be useful, which is why I propose to ask ourselves what would have happened if the US delegation in Kyoto had acted in accordance with Pershing lessons. As it was absolutely clear that the Protocol text as submitted for adoption in Kyoto was not acceptable to the Senate, the only option open to Stuart Eizenstat, the US lead negotiator in Kyoto, would have been to block consensus, and to have the negotiations under the Berlin Mandate continue at COP 2 in Buenos Aires (1998). But would it have been possible to secure ‘meaningful participation’ there, or would it have been necessary to carry on in Bonn (COP 5, 1999), or even The Hague (COP 6, 2000)? The answer is, I believe, quite straight forward: it would not have happened, for the simple reason that the Berlin Mandate would not have allowed the sort of ‘meaningful participation’ that would have been required for a successful submission to the Senate.

In short, had the US delegation under the Clinton Administration followed Pershing’s lesson, then we would not have a Kyoto Protocol, for the Berlin Mandate negotiations would never have had an agreed outcome, but would have simply fizzled out. Now, while it is true that when Pershing drew his lesson, the chances of persuading the Senate to ratify something new were, with 57 Democratic Senators, considerably better than in the final Clinton years. But unfortunately, they have again deteriorated, both in number and in the chance to convince Republicans to make up the numbers to the required 67 votes. And I fear that Pershing’s lesson applied as intended to the current negotiations will ultimately lead precisely to the same result that it would have done fourteen years ago: no legally binding outcome.

It is for this reason that I would like to make this very personal plea to the US delegation for returning to the Kyoto spirit and not block consensus if they find that everybody else is willing to agree. The risk is, of course, that they might not be able to come on board for some time, but does it really make sense to sink the ship in order to avoid that risk?