

Climate Change post-2012: Transatlantic Consensus and Disagreements.

by Benito Müller¹

As many an editor can testify, it is not always easy to keep authors in check to create a coherent collection of articles. Shuzo Nishioka thus deserves special praise for putting together an excellent special volume (vol.5, no.1, 2004) of the *International Review for Environmental Strategies* on 'The Kyoto Protocol: Its Development, Implication, and the Future'. The volume is of particular use for collecting country perspectives from leading experts on a number of recurring issues. And it is especially enlightening in the transatlantic context, as represented by three lead experts, namely Ian Purvis (from The Brookings Institution, Washington, DC), on the American side, and Michael Grubb (Imperial College London and UK Carbon Trust) and Michael Zammit Cutajar (Maltese Ambassador and former Executive Secretary, UNFCCC), on the European one.²

To start, it is interesting that both of the Europeans independently describe the current situation regarding the United States and the Kyoto Protocol as 'paradoxical'. Zammit Cutajar believes that 'the essence of the Kyoto Protocol – its genius – is that it encourages recourse to the market to achieve environmental objectives at the least economic cost. The paradox of the protocol is that the main source of this genius – the United States – is also the source of the political veto that has prevented it from entering into force.' Grubb thinks 'the first paradox is that the United States was, in effect, rejecting its own treaty.' And he concludes that 'at present, one question dominates the future of climate negotiations, namely, that of US engagement. It is hard to imagine the rest of the industrialised world proceeding to negotiate a new round of commitments without the United States, and it is even less believable that developing countries will talk about any enhanced actions whilst the world's biggest and richest emitter remains outside.' Accordingly, let us begin by considering how the authors assess the situation in the USA.

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² Michael Grubb, 'Kyoto and the Future of International Climate Change Responses: From Here to Where?' (pp.15–38). Michael Zammit Cutajar, 'Reflections on the Kyoto Protocol – Looking Back to See Ahead' (pp.61–70). Nigel Purvis, 'The Perspective of the United States on Climate Change and the Kyoto Protocol' (pp.169–78).

The Situation in the United States

UN Scepticism. All three authors agree that one of the key issues in the US debate on climate change is the role, if any, of the United Nations. 'Sections of American society' Grubb says 'are fundamentally opposed to multilateral negotiations under the one-country, one-vote basis of the United Nations', while Purvis expresses his sense that 'perhaps the United Nations is not the ideal forum for the United States. Unfortunately, the US Congress tends to be very skeptical about actions taken in the UN as they relate to the environment.'

Indeed, according to Zammit Cutajar, this scepticism is by no means restricted to environmental matters. According to him, 'the reluctance of the United States to be bound by multilateral disciplines, by laws other than its own, is a deep-rooted trait of national character, pre-dating its great power status. The current multilateral landscape is dotted with examples of treaties that the US either opposes, or accepts with reservations protecting its sovereignty, or supports without being formally bound.' And, citing the fate of the international trade regime,³ he concludes that this is by no means a recent phenomenon.

However, Grubb also rightly cautions against over-simplification by citing a book recently published by the conservative American Enterprise Institute (styling itself as a right-wing counter-weight to the 'liberal' Brookings Institution⁴) advocating a longer-term multilateral approach under which 'the US should engage China (and other major developing countries) in a parallel regime and then jointly seek to enter a suitably modified version of the Kyoto Protocol.'⁵ While Grubb is right in pointing out that there is scant evidence 'that China and other major developing countries will be willing to work with the United States to form an alternate regime', it is obvious that the book's insistence on a 'joint accession by the United States and major developing country emitters' directly reflects the core demand of the US Senate's 1997 'Byrd-Hagel resolution' ('S. Res. 98'), namely that:

... the United States should not be a signatory to any protocol ...[which mandates] commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol ... also

³ 'In the 1940s, the United States had taken the lead in negotiating the establishment of an international trade organization, which Senate opposition obliged the then US administration to abandon, still-born. It took nearly 50 years of an interim regime – the General Agreement on Tariffs and Trade (GATT) – before the US accepted to work within the multilateral rules of the World Trade Organization (WTO).'

⁴ See Sam Hussein, 'Brookings: The Establishment's Think Tank,' *Extra!* November/December 1998, published by *Fairness & Accuracy In Reporting* (FAIR) <http://www.fair.org>

⁵ Richard Steward and Jonathan Wiener, *Restructuring Climate Policy – Beyond Kyoto*, Washington DC: American Enterprise Institute, 2003:p.6.

mandates new specific scheduled commitments ... for Developing Country Parties within the same compliance period ...⁶

Competitiveness and Cost Concerns. 'The unanimous Byrd-Hagel resolution that was adopted during the negotiations on the [Kyoto] protocol', Zammit Cutajar explains, 'was a clear signal of legislative opposition. The grounds for that opposition – economic cost and competitive disadvantage – were echoed by President Bush in rejecting the protocol' on 13 March 2001:

As you know, I oppose the Kyoto Protocol because it exempts 80 percent of the world, including major population centers such as China and India, from compliance, and would cause serious harm to the U.S. economy. The Senate's vote, 95-0 [on S. Res. 98], shows that there is a clear consensus that the Kyoto Protocol is an unfair and ineffective means of addressing global climate change concerns.⁷

Yet, as Senator Robert Byrd of West Virginia – one of the co-sponsors of S. Res. 98 – forcefully pointed out only recently⁸: contrary to President Bush's interpretation, it was never the intention of the Resolution that the US should withdraw from the multilateral process. As a matter of fact, it was – according to Byrd – 'an effort to strengthen the hand of the administration as it undertook international negotiations. It enabled our negotiators to walk into talks and point to the ever-present Congress, looking over their shoulders, to ensure that the interests of the U.S. would be protected in any agreement that eventually came to fruition.'⁹

In short, it is important not to confuse the economic competitiveness and cost considerations underlying the Byrd-Hagel resolution with the initially mentioned reservations to multilateral approaches, in general, and to the UN system, in particular. Indeed, the latter can and has in the past provided solutions to the former. For example, having claimed that 'US practice is generally to act first at home and then to build on that approach at the international level' Purvis explains by way of the case of the Montreal Protocol that 'because US industry was already subject to national regulation, it did not view the international treaty [the Montreal

⁶ S. RES. 98 Byrd-Hagel Resolution (approved by the US Senate with 95 to 0 votes on 25 July 1997)

⁷ <http://www.whitehouse.gov/news/releases/2001/03/20010314.html>

⁸ 30 October 2003, during a Senate hearing on the *Climate Stewardship Act of 2003*.

⁹ Congressional Record 2003 — Senate; S13585. However, it should also be mentioned that since the demand for simultaneous developing country commitments was actually contradictory to the mandate of the negotiations (as agreed in the 'Berlin Mandate'), Byrd's view of what the Resolution could achieve was rather optimistic.'

Protocol] as a threat. In fact, it saw it as the way to create a level playing field for foreign competitors'. However, as concerns climate change, significant domestic action in the face of perceived serious and unfair harm to US international competitiveness has so-far not materialised, although there are signs of increased activity, at least on the sub-national level.

'Kyoto-plus' or 'non-Kyoto'?

US domestic efforts. Concerning the prospects of the global effort to combat climate change, there is one point in which all three authors agree: the fact that, as Purvis puts it, 'the United States needs to start at home. On this there is great agreement from conservatives and liberals alike.' He also argues that 'mandatory domestic action must precede any new international treaty that involves the United States. This is important for a number of reasons, not the least of which is that the United States will not be credible as an international partner if it returns to the negotiating table without having established its own domestic policies. If we are going to ask more of other countries, including developing countries, we need to show that we have in fact taken important steps ourselves.' His last point is indeed echoed by Zammit Cutajar, when he suggests that 'the emerging new actors of the global economy – with China and India looming large – will not move to limit their greenhouse gas emissions until they are convinced that the United States is committed to doing so and has shown evidence of its commitment.' But beyond this consensus on the need for serious US domestic action, the views on the way forward differ dramatically across the Atlantic.

Non-Kyoto – indeed 'non-UN and non-treaty-based' Approaches. Nigel Purvis, for one, takes a distinctly 'UN sceptic' view. Under *Lessons learned from the Kyoto process*, he concludes that there is 'a sense that perhaps the United Nations (UN) is not the ideal forum for the United States.' He suggests that 'the United States would probably be more inclined to explore with its partners, such as Japan and Europe, non-UN fora where the United States might have a better chance of securing a favorable outcome that would be supported by the Congress.' Purvis also draws attention to the fact that 'treaties themselves, regardless of whether they're negotiated in the UN or not, are also difficult for the United States. The United States tends to be fairly slow in approving treaties, regardless of where they're negotiated.' This leads him to conclude that 'a non-UN and non-treaty-based approach, or at least a non-

environmental-treaty-based approach,^[10] may be more promising for engaging the United States.'

Apart from this non-multilateral approach, the other tactic in Purvis' strategy to engaging the USA is strong action by the rest of the world ('The United States, while often resistant to international pressure is not oblivious to the perceptions of other nations, and America sees itself as a leader in the world. Stronger international action will influence the United States.')

Multilateral 'Kyoto-plus' Approaches. While the rest of the world is generally aware of American UN-scepticism, it is not clear to what extent the US protagonists in the climate change debate are fully aware of the fact that the EU and most developing countries are staunchly opposed to re-locating the international climate regime outside the UN framework, a sentiment revealed in Grubb's conclusion that: 'In short, proposals to discard the basic Kyoto structure as the foundation for future action are equivalent to discarding the United Nations as the appropriate forum. [...] And for all the problems of the UN, abandoning it is a bridge too far.'

Indeed, both European authors are in general agreement on what the future post-2012 roughly ought to look like. Both envisage a broad continuation of the Kyoto cap and trade regime for industrialised countries, possibly with permit price caps as a cost 'safety valve.' And they seem to agree on a need for, as Grubb puts it, 'new terms of engagement with the United States, driven first and foremost by the growing domestic forces there, rather than by tinkering with international design.'

He¹¹ argues with others that, to maximise the USA's ability to participate meaningfully, any continuation of the Kyoto regime might have to admit willing non-Parties or even willing sub-national actors ('*as if Parties*'¹²) of non-Parties to participate in its flexibility mechanisms. Indeed, the first step towards an admission of the former – countries which are *de facto* Parties, i.e. willing to participate meaningfully but (as

¹⁰ What he seems to have in mind here are technology development initiatives such as the US Carbon Sequestration Leadership Forum (<http://www.cslforum.org/>)

¹¹ '[A]nother option, still more radical, could be to explore ways for the major US states to engage directly with the international process. They cannot sign treaties, but they can engage in other forms of international agreements, including contracts on emissions trading, for example. Arguably, this could be a logical extension of observations in the social sciences about the growing international importance of sub-national actors.'

¹² See, Benito Müller, 'Quo Vadis, Kyoto? Pitfalls and Opportunities', March 2005, www.OxfordClimatePolicy.org.

yet) unable to ratify – has already been made in the EC *Linking Directive* for the EU Emission Trading Scheme.¹³

The Role Envisaged for Large Developing Country Emitters

Given the global nature of climate change and today's globalised economies, it is not surprising to find each of the three authors devoting some space to discussing their view of the role of, in particular, large developing country emitters in future efforts to combat climate change.

There appears to be consensus 'across the Atlantic' that developing country emissions are relevant to the problem, and that, to put it with Purvis, 'developing countries are unwilling to make substantive climate commitments even though they are the most vulnerable to global change.' Purvis' reaction to this seems to be simply puzzlement, and accordingly he merely concludes that the USA 'should soften its demands on developing nations.' Grubb, however, calls for 'a major re-orientation in developing country attitudes', because, as he puts it, 'the climate problem cannot be solved without action in and by the major developing countries, and they know it.' Accordingly he advocates 'commitments embracing at least one tier of developing countries, but possibly with several tiers of differentiation, or graduation mechanisms, regarding the nature as well as the degree of their commitments.' The problem with Grubb's vision of the role for major developing countries – namely to require action 'in and by' them – is that it clashes with a widely held conviction by protagonists from these countries about the proper way forward concerning the international mitigation regime.

Take Jyoti Parikh and Kirit Parikh who, in the same collection,¹⁴ state that '[i]n the end, developing countries have only one path to get a fair deal: Be economically strong, unite among themselves, and negotiate from strength. Only then, is the simplest solution of equitable allocation of global environmental space likely to be accepted by the world community. [...] A global system of fair allocation of tradable emission quotas for all is required. The only fair allocation of the global environmental space is on a per capita basis.' In light of the fact that such a 'per capita allocation' would lead to substantial surplus emission permits ('Assigned Amount Units') in many of the larger developing

¹³ '(18) Following entry into force of the Kyoto Protocol, the Commission should examine whether it could be possible to conclude agreements with countries listed in Annex B to the Kyoto Protocol which have yet to ratify the Protocol, to provide for the recognition of allowances between the Community scheme and mandatory greenhouse gas emissions trading schemes capping absolute emissions established within those countries.' [Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004]

¹⁴ Jyoti Parikh and Kirit Parikh, 'The Kyoto Protocol: An Indian Perspective' (pp.127-44).

country emitters, such an allocation seems to be irreconcilable with Grubb's vision of the large developing countries' role in a future regime.

However, this is not necessarily the case. By distinguishing between actions '*in*' and actions '*by*' these countries, Grubb himself provides the key to resolving this apparent paradox.

While it is by definition true that the climate change problem cannot be resolved without action *in* the large developing country emitters – i.e. *large* developing country emitters are by definition environmentally relevant – it may, at least in principle, be possible to deal with the problem without actions *by* these countries (at least if by this we mean actions incurring burdens on them). In other words, the question of whose emissions *ought to be addressed* is one of environmental relevance. The one of who *ought to carry the burden* of taking the relevant actions is one of equity. And the answers are not necessarily the same. Fortunately, as discussed in Baumert *et al.* 2004,¹⁵ there are ways in which a (developing) country's emissions can be addressed without having to impose additional burdens on it.

In short, it may in principle be possible to obtain environmental integrity without having to try to impose emission reduction targets on the large developing country emitters – and thus avoid almost certain rejection by them on grounds of incompatibility with the equity principle of 'common but differentiated responsibilities' enshrined in the UNFCCC.

Yet there remains a key problem in achieving what Zammit Cutajar refers to as the 'common aim', namely 'the construction of a global climate regime incorporating the United States, as well as the industrializing countries, in a deal that will be considered equitable by all parties.' While there are ways of addressing the emissions of developing countries without imposing additional burdens on them, they do not necessarily address the second concern arising from (developing country) 'non-participation': international competitiveness, or to be more precise: unfair competitive (dis-) advantages.

Imposed Unfair Competitive (Dis-) Advantages

Like the concerns about excessive mitigation costs, competitiveness, as indicated earlier, has from the outset been a major bone of contention in the climate change debate. And like the cost concerns, it has the potential to seriously undermine the environmental effectiveness of a

¹⁵ Kevin Baumert, Chandrashekhar Dasgupta and Benito Müller (2004) 'How Can the Transatlantic Partners Help in Addressing Developing Country Emissions?', in A. Ochs and A. Venturelli (eds) *Towards a transatlantic consensus on climate change: Proceedings of the High-Level Transatlantic Dialogue on Climate Change: Comunicazioni Villa Vigoni VII, Lovenno di Menaggio (Como), Italy: 2 May 2004.*

mitigation regime for fear of 'carbon leakage,' that is the 'migration' of production and, in particular, of jobs to developing countries due to their not being subject to simultaneous mitigation commitments. Purvis' (second) conclusion for the USA from the rejection of large developing countries to take on such commitments, namely that the USA 'should also ensure that its domestic programs are sufficiently modest so as not to harm the competitiveness of US firms', clearly illustrates the point.

Mitigation Commitments. While there are good reasons to doubt whether there actually is, or will be, significant amounts of such 'carbon leakage',¹⁶ the important fact is that it is widely portrayed to be a threat, which is why the issue is and will remain to be of importance and in need to be addressed. The panacea most commonly cited is, of course, that of the Byrd-Hagel resolution: the imposition of mitigation commitments on the otherwise 'unfairly advantaged' developing countries in question. And yet, it is in fact far from clear whether such impositions would generally work in redressing such imposed changes in competitiveness.

Indeed, it is obvious that the variant which countries like India might actually accept – a *per capita* allocation resulting in significant surplus permits for the most populous developing countries – would definitely *not* do the job, since, by definition, surplus permits do not impose a mitigation cost. On the contrary, under a regime with trading, they can be sold at a profit.

Moreover, if by 'imposing a competitive disadvantage' we mean imposing a constraint leading to a negative change in market shares or profitability of the producer in question, it is equally clear that there are situations where the environmental aim simply cannot be achieved without imposing such changes. Take the case of two aluminium producers, both with their own electricity generation: one high-emission (say, coal-based), the other zero-emission (hydro). Any emission reduction requirement that incurs a cost for the former will alter its profitability. And no emission reduction commitment on the latter could possibly remedy this change in relative competitiveness.

This is not to say that the competitiveness issue could never be addressed by way of imposing (differentiated) emission commitments, but merely that this is by no means as certain to work as the general debate seems to assume. Given this potential fallibility, and the reluctance of the large developing country emitters even to talk about taking on such

¹⁶ See, for example, Lynn Price, Ernst Worrell, and Dian Phylipsen, 'Energy Use and Carbon Dioxide Emissions in Energy-Intensive Industries in Key Developing Countries', LBNL-45292, Ernest Orlando Lawrence Berkeley National Laboratories, Environmental Energy Technologies Division: September 1999.

commitments, it may therefore be advisable to consider whether there might not be alternative remedies for this competitiveness problem.

Alternative Remedies? As it happens, there is a simple and fail-safe way of overcoming such negative competitiveness changes, namely: to avoid them by reimbursing, in our aluminium example, the coal-based producer for the incurred mitigation costs. This is by no means the only alternative that uses direct economic instruments (as opposed to resorting to the 'indirect route' via mitigation commitments).

But, by its very simplicity, the direct reimbursement option reveals nicely a set of questions which are at the heart of the whole competitiveness debate. For one, it stands to reason that, in a domestic context, the general tax payer, or the aluminium consumer, might well query the suggestion that they should carry the burden for keeping the playing-field between the two producers at its original inclination. Indeed, in the case in question, it could be argued that the change in the competitiveness of the coal-based producer is actually not unfair, and that the mitigation costs should rightly be borne by the producer itself.

Even in those cases where there is reason to think that a change would be unfair – say low-emission producers being asked to reduce emissions but not their high-emission competitors – it is not self-evident who should in fairness be asked to carry the cost to remedy the situation, in particular if there are good reasons why the high-emission producers were exempt from the regime in the first place.

This cannot be the place to enter into an analysis of these difficult and intricate issues. Suffice to say that it should be possible to alleviate the competitiveness worries arising, particularly, from the absence of developing country emission targets, be it by rigorous analyses of the facts of the matter (is there really anything to be worried about?), and/or by using appropriate direct economic instruments (such as export duties, as recently used by China for the same reasons in the context of the abolition of the Multi Fibre Agreement¹⁷

Conclusions

Three general international issues are likely to dominate the (transatlantic) debate on climate change post-2012: the role of the UN, environmental integrity, and competitiveness – all three sharing an overarching theme: equity, or rather (perceived) inequity. The institutional locus of the international debate is for many, particularly small, countries a matter of crucial procedural justice. Environmental integrity

¹⁷ See Benito Müller, 'Overcoming the "Meaningful Participation" Impasse: Emission Reduction Obligations, Unfair Competitive (Dis-) Advantages, Carbon Leakage, and Trade Measures' *forthcoming*.

and competitiveness, in turn, are intimately linked to the question of who should, in fairness, be asked to carry the burden of reducing global emissions to the required level. It is these links with inequity that are at the heart of perniciousness of the issues. But there may be ways to overcome what at first sight has all the hallmarks of an intractable stalemate.

The UN-question – i.e. whether the international effort should be carried out under the auspices of the UN or not – can, at least in the short to medium term be if not resolved, then at least shelved, provided those who choose the UN way heed Purvis' advice not to try to force the Kyoto Protocol onto the USA, but instead push for binding and significant US domestic targets, and the UN sceptics refrain from trying to undermine the UN/Kyoto regime.

With the USA agreeing to significant (domestic) action and most of the other industrialised countries following a Kyoto-plus route, the *environmental integrity* of a post-2012 regime will depend on the evolution of large developing country emissions. Given the (equity-based) refusal to adopt emission mitigation commitments – unlikely to change in the near future – the only way forward is by addressing their emissions without imposing additional burdens on them (through preferential technology agreements, export credit facilities, the clean development mechanism and so on).

This leaves the trickiest of the three issues: competitiveness, or, to be more precise the perceived threat of exposure to (unfair) competitive disadvantages with respect to (developing) countries who are not required to adopt emission reduction measures. It is tricky, because it is unlikely that the USA would actually take on significant domestic reduction commitments in the absence of some measures to address this issue. Fortunately, the measure traditionally cited in this context – i.e. the introduction of mitigation commitments for these countries – is by no means the only way to deal with the issue. Apart from a thorough analysis of the actual severity of the problem, there are a number of pure economic instruments (side-payments, import/export duties and so on) which could be used to alleviate the 'carbon leakage' fears in a manner much more acceptable to all involved Parties than the imposition of emission reduction targets.