

# OIES Monthly Comment

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### **The Kyoto Protocol: Does US Ratification Really Matter?** by Benito Müller

A growing number of mainly US analysts and academics have voiced their opinion that the UN Protocol concerning the reduction of greenhouse gas emissions adopted in Kyoto on 11 December 1997 is doomed to failure because of US Congress hostility. Indeed, it does not seem very likely that Congress will ratify the Kyoto Protocol at all, let alone that it will opt for 'early ratification' as desired by the EU and Japan. But does this really imply 'the failure' of the Protocol?

Of course, to those of the rather ethno-myopic view that non-acceptance by, or in, the USA is in itself tantamount to a failure, the answer must logically be affirmative. Anyone else, however, will only be able to provide an answer after a somewhat more critical analysis of aims and purposes. After all, 'failure' here can only mean the failure to achieve a purpose. And it does not take a great deal of reflection to realise that the performance of the Kyoto Protocol can be judged relative to a variety of such aims and purposes

For one, there is if we wish the 'legal' (or 'procedural') aim of coming into force. Like any other international treaty, the Kyoto Protocol contains specifications concerning the conditions for becoming legally binding under international law. Article 25 of the Protocol specifies, in particular, that it 'shall enter into force on the ninetieth day after the date on which not less than 55 Parties ..., incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.' Although the USA - with around 35 per cent of 1990 Annex I emissions - does command considerable leverage in this context, it is not in a position to block a coming into force outright.

As far as substance is concerned, the Kyoto Protocol can be judged by reference to its overall environmental aim, namely to reduce average yearly Annex I emissions between 2008 and 2012 to around 5 per cent below their 1990 levels. Would US non-ratification inevitably lead to a failure in achieving this aim? Strictly speaking, the answer again has to be negative, for the crucial parameter in this case is not ratification but implementation. The question thus has to be: would US non-ratification mean that the Protocol would not be implemented in the USA? The fact is that there are quite a few international treaties which are signed by the USA and which they keep without ratifying them. However, given the strictures put into law by the Congress against any US attempts to implement the Protocol before it is ratified, it would seem unlikely that the Kyoto Protocol could become one of them. In other words, even though not inevitable, it is most likely that a non-ratification of the Protocol by the USA would imply no significant US mitigation measures, and this would wreck the Protocol's overall environmental aim.

There is, however, another substantive aim of the Protocol which should not be overlooked, namely to provide the means for industrialised countries to demonstrate their 'leadership' required to convince the developing world to join in abatement efforts. This 'political' aim differs from the ones discussed so-far in that the conditions under which it would be achieved cannot easily be quantified, as they are largely a matter of (political) perception. While it seems plausible to say that a failure of the Protocol to come into force would be sufficient to wreck this political aim, and a failure to ratify by Liechtenstein alone would not, it is not at all clear what effect a failure to ratify by the USA (perceived by many developing countries as the main 'culprit') would have. However, if the USA were the only (major) Annex I country not to ratify the Protocol, then the developing world just might decide that they would join a successor agreement (if only to brand the USA as the 'environmental pariah').

In other words, the answer to our question about the power of the US Congress to wreck the Kyoto Protocol is 'yes and no': By not ratifying, Congress practically ensures that the environmental aim of the Protocol is not achieved. However, provided that rest of Annex I does ratify, Congress' refusal will not be able to wreck the procedural aim of the Protocol, and chances are that the same is true of its political aim.

In light of this, should Annex I countries strive to ratify even if US ratification is not forthcoming? It might be argued that since the Kyoto Protocol is an environmental treaty, its environmental aim must have precedence, and since this aim will not be achievable without the USA, the whole affair should not be pursued. Yet such an argument rests on a profound misunderstanding of the nature of this Protocol. The Protocol must be understood as a first step in achieving the environmental aim of its 'parent agreement', the UN Framework Convention on Climate Change (which, incidentally, is in force). In light of this aim, namely to stabilise atmospheric greenhouse gas concentrations at an acceptable level, the Kyoto target is mainly symbolic. The main aim of the Kyoto Protocol is therefore not its environmental target but its political purpose, which, as I argued, just could be achieved, provided the Protocol comes into force. In short, Annex I policy makers should not get mesmerised by Congress' misconception of being able to bring the Kyoto Protocol to its knees. If they wish the Protocol to succeed in its main aim, they should quietly go ahead with ratification and ignore Congressional posturing.

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