

## International Climate Policy at the Crossroads: Towards Success or Failure at the forthcoming 6<sup>th</sup> UNFCCC Conference of Parties in The Hague?

An analysis of current climate negotiations and the prospects for COP-6 by Hauke von Seht and Gerhard Sardemann, ITAS

### 1 Introduction

At the beginning of the new millennium climate change is at the centre of the international environmental debate. The warmest years in the past few centuries have all been in the 1990s and there is an increasing frequency and severity of natural disasters. Although there is no absolute certainty, these developments are increasingly seen as first signs that human induced climate change already takes place and that there is a need to act urgently in order to avoid the worst impacts.

Diplomacy has begun to respond to the challenge. At least since 1992, climate change is on the "high priority" list of international negotiations. That year the United Nations Framework Convention on Climate Change (UNFCCC) was signed at the United Nations Conference on Environment and Development. Five years after, the Kyoto Protocol (KP) to the UNFCCC was adopted by delegates from 160 nations at the third Conference of the Parties (COP-3). For the first time in history, it established legally binding reduction targets for all major greenhouse gases (GHGs). While individual country commitments vary, on average industrialised countries in Annex I to the UNFCCC agreed to reduce their emissions by 5.2 % for the commitment period 2008-2012.

However, as will be highlighted subsequently, there are many open questions which endanger the success of the Kyoto Protocol. Most problems are due to be solved at COP-6 in The Hague, 13 - 24 November 2000. This meeting is supposed to be the endpoint of the process of implementing the Buenos Aires Plan of Action (BAPA). The BAPA was adopted at COP-4 in Argentina, November 1998, and sketches out the stages for strengthening

UNFCCC implementation and for specifying the Kyoto Protocol.

This article provides a critical introduction to international climate policy and an analysis of recent developments, especially the last major meeting in Lyon in September 2000. Furthermore, the prospects for success of the forthcoming climate conference in The Hague are assessed.

### 2 Main issues at stake and recent developments

One of the most important problems in international climate diplomacy is the fact that the Protocol has not yet entered into force. A "double-trigger" requires not only *ratification* of 55 countries; ratifying industrialised countries also have to account for at least 55 % of the total Annex I carbon dioxide (CO<sub>2</sub>) emissions in 1990. Thus, action of a small number of industrialised parties is vital for entry into force (United States: 36.1 % of Annex 1 CO<sub>2</sub> emissions in 1990, European Union: 24.2 %, Russia: 17.4 %, Japan: 8.5 %). Up to now, no major industrialised country has ratified, though some countries announced to do so in the near future.

In his opening speech of COP-5, held in Bonn from 31 May - 11 June 1999, German Chancellor Gerhard Schröder called for entry into force of the Protocol in time for Rio+10 in 2002. Subsequently, this call was not only supported by UNFCCC Executive Secretary Michael Zammit Cutajar, but also repeated by representatives of numerous other parties, e.g. Japan, the EU and EU Member States (Seht 2000). Thus, early ratification of some key players has become much more likely. It might be that sufficient parties for entry into force ratify irrespective of US action.

In order to enhance the willingness to ratify it has to be clarified in The Hague what the implications would be. This requires especially to resolve questions regarding the details of novel "*Kyoto mechanisms*": *Emissions Trading* (ET) among industrialised countries listed in Protocol Annex B, *Joint Implementation* (JI) of projects by industrialised countries listed in Annex I of the Convention and the *Clean Development Mechanism* (CDM) for project-based co-operation with developing countries.

These mechanisms were included in the Protocol to give countries more flexibility in reaching their commitments, but they also have the potential to weaken the Kyoto targets.

One of the questions at stake is what kind of projects will be allowed under JI or the CDM. Currently discussed are so called positive lists of possible projects, but parties are divided on them and their contents.

A particularly controversial issue is nuclear power. At the high-level segment of COP-5 many parties already called for the exclusion of nuclear power projects in the CDM and some also opposed inclusion in JI (Seht 2000). However, up to now no agreement could be reached on that matter. Still up for decision also is whether or not large hydroelectric power plants will be eligible under the project based mechanisms despite social problems (forced migration) and negative impacts on the local environments. Additional controversy surrounds the option of sink projects (see below). Clarifications on eligibility might also help with regard to the current pilot phase on *activities implemented jointly* (AIJ). Still missing is a final decision on the eligibility of AIJ projects under the corresponding mechanisms CDM and JI.

Another question that still has to be answered is to what extent parties can make use of the mechanisms as a substitute for domestic action. This was also discussed at the last major meeting in international climate diplomacy, the first part of the 13<sup>th</sup> sessions (SB-13) of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI), held together in Lyon, September 2000. The EU, the developing countries group G-77/China and Hungary reiterated that domestic action shall be the primary means to fulfil commitments. This refers to a clause in the Kyoto Protocol which demands trading to be supplemental to action at home. However, the Protocol does not give figures on *supplementarity* and the United States and Canada are opposed to the related idea of quantitative *caps* on the use of mechanisms.

Additional decisions have to be made on *monitoring* and *verification* provisions and especially on the *liability* for incorrect use of ET. Regarding the latter, Australia, Canada,

New Zealand and the US spoke out for issuer liability in Lyon, but this poses the risk of overselling. More credible appears to be a proposal by the EU which represents a mix of shared and acquiring party liability. Linked to this problem is the unresolved question of who shall be allowed to enter the trading regime. Some parties, most notably the EU, favour strict criteria governing parties eligibility to trade.

Furthermore, agreement has to be reached on how the *baselines* under the CDM are to be defined: Industrialised countries that finance climate protection projects in developing countries can receive credits for resulting emission reductions. The latter have to be measured with the help of a reference development, the so-called baseline, in order to ensure environmental additionality. Soft baselines and a substantial number of projects in developing countries (that did not take on binding commitments) have the potential to considerably weaken the Kyoto target of a 5.2 % emission reduction for industrialised countries. Baselines are also required for JI, but because the reductions are traded among industrialised countries, they do not have the same kind of potential to affect the Kyoto target.

A particularly crucial area of controversy are *sinks*, in the Kyoto Protocol connected to land-use, land-use change and forestry (LULUCF). Sink projects make use of the fact that forest, soils and other natural elements can extract and store CO<sub>2</sub> from the atmosphere, but there is no final agreement yet as to when and to what extent sinks can be used to fulfil emission reduction commitments. Among others, this is due to substantial scientific uncertainty regarding sinks.

An ambitious work-plan relating to LULUCF was adopted at COP-5, while major decisions were postponed until the presentation of a special report of the Intergovernmental Panel on Climate Change (IPCC) on LULUCF. This presentation took place at the 12<sup>th</sup> SBSTA session in June 2000 and was followed by a corresponding UNFCCC workshop in July, but much scientific uncertainty remained. Nevertheless, parties (most notably American countries) interested in using sinks to achieve commitments under the Protocol, mounted further pressure to speed up negotiations.

At the first part of SB-13 in Lyon, sinks were at the centre of many debates, but the developed draft texts contain numerous brackets, indicating disputes. Key discussion points were the separation of human induced and natural effects, the possible inclusion of sinks in the CDM and the question of whether additional human induced activities relating to changes in emissions removals (Article 3.4 KP) should be accounted for in the first commitment period 2008-2012. It was noted that under a full carbon accounting approach, not separating human induced and natural effects, Annex I countries would be allowed to emit more than under a business-as-usual scenario. Thus, sinks could become a major "loophole" to the Protocol and endanger its environmental integrity. A sensible solution might be to postpone inclusion of most sink activities to the second budget period when science can be expected to have made considerable progress and new reduction targets will apply.

Another issue is *compliance* with commitments under the Protocol. It has to be decided *inter alia* when and what kinds of penalties are required in cases of non-compliance, who can officially raise concerns about compliance of a certain party and whether the compliance system will only apply to commitments under the Protocol or also to commitments referred to in the Protocol (namely commitments under the UNFCCC). Many parties agree that a strong compliance mechanism is needed, while provisions should not only allow for enforcement, but also provide help and assistance. Lyon saw some progress on procedural issues, but Australia and the Russian Federation argued against binding consequences for non-compliance, an idea that can be perceived as an invitation to non-compliance. Related to the issue of compliance are *national communications*. Credible data in these documents and clear guidelines on data collection and presentation are vital, because national communications form the basis for reviewing achievements with respect to the implementation of commitments. Recent submissions show increases in the emissions of many countries, most prominently the US.

Furthermore, the emissions from *international air and marine traffic* still have to be allocated. Given especially the rapid growth of

air traffic and its highly damaging effect on the atmosphere, this "loophole" could seriously undermine the effectiveness of the global climate regime. Due mainly to pressure from Saudi-Arabia, speaking on behalf of G77/China, not much progress was achieved at COP-5 with regard to this issue. Similarly disappointing were the results of Lyon.

Some parties, most notably the EU, also press for enhanced efforts to co-ordinate *policies and measures* (P&Ms) for combating climate change. One advantage would be that internationally co-ordinated P&Ms do not affect competitive economic positions of countries. Furthermore, if implemented soon, they might have an impact way before the commitment period of 2008-2012. In Lyon the EU urged for a "consultative process" aimed at promoting information exchange, gaining experience, facilitating co-operation between parties and contributing to the assessment of demonstrable progress. However, EU negotiators were – again – not able to strongly defend their position on these matters against the US and other parties which prefer independence regarding the choice of measures. Generally speaking, the prospects for substantial progress on P&Ms appear to be very limited.

*Developing country commitments* are currently restricted to some general commitments under Article 10 Kyoto Protocol and voluntary participation in the CDM. Given that the emissions of the developing world are expected to rise substantially, they will have to be more fully included in the climate regime. How and when this will take place has yet to be decided. American negotiators attempt to make "global participation" already a precondition for US ratification, but major developing countries strongly oppose such moves, fearing restrictions with regard to their economic development potential.

There was some movement on that matter at COP-5. Kazakhstan stated its intent to join UNFCCC Annex I and Argentine announced a voluntary GHG reduction target. This has to be noted with caution. If additional countries could participate in future ET on the basis of weak (voluntary) targets, this could prove to be a major "loophole" to the Protocol. The proposals of Argentine and Kazakhstan – as well

as potential similar initiatives of other countries – will have to be handled with care at COP-6.

The issue could be dealt with in the process of *reviewing the adequacy of commitments* of Annex I parties. However, though such regular reviews are requested under Article 4.2 a) and b) UNFCCC, they did not take place after Kyoto. This ongoing shortcoming threatens to delink politics from science.

Given the indications that climate change already takes place and that it affects in particular the less developed world, there is an urgent need to address the needs and concerns of developing and least developed countries arising from climate change. The corresponding headlines are *adaptation* measures and minimisation of *adverse effects*. Obligations for action exist under the UNFCCC and Article 3.14 Kyoto Protocol. However, after the meeting in Lyon the whole negotiating text on adverse effects remains bracketed, due to substantial disputes. One of the underlying questions is if not only the adverse effects of climate change, but also those of response measures shall be addressed. The latter is pressed for by some oil exporting countries, but opposed by most Annex I parties.

Finally, the details of the *transfer of climate friendly technology* from industrialised to developing regions and of *capacity building* in non-Annex I countries have to be agreed upon. Capacity building shall help developing countries to fulfil their – limited – obligations under the UNFCCC while technology transfer shall contribute to limiting the expected rise in emissions of these countries. A core demand of developing countries is that technology transfer help under the Protocol be additional to official development aid. In Lyon, movement on transfer of technology as well as capacity building was minimal, despite that fact that G-77/China strongly called for fast progress. The texts produced contained numerous brackets (i.e. conflicts are unresolved).

### 3 Success in The Hague?

What are the general prospects for the forthcoming climate negotiations? The part of the question most easy to answer is what issues will be on the agenda: Apart from work on the topics of the various workshops, the forthcom-

ing IPCC special report on sinks and the IPCC third assessment report will be hotly discussed. At COP-6 the discussions will center around the unresolved questions outlined: e.g. how the mechanisms will work and whether there will be a cap on their use; if, in what way, and when developing countries shall take on commitments; to what extent and when sinks will be eligible under the Protocol, or what kind of projects will be allowed under JI and the CDM. Major questions beyond COP-6 will be whether sufficient parties ratify for entry into force of the Protocol by Rio +10 and if tougher targets for the second budget period can be agreed upon.

More interesting – and difficult – to answer is how the chances for success are. It requires taking a look at the basic conditions: On the negative side, one has to note that most industrialised countries have not adopted the measures necessary to be on track for fulfilling their commitments under the Protocol. CO<sub>2</sub> emissions of major countries, such as the US, Japan and Canada, are even considerably higher than baseline 1990 levels. This failure makes willingness for tough action and new commitments less likely.

Furthermore, media attention for the climate negotiations is currently low as compared to previous sessions and in the face of rather technical discussions environmental non-governmental organisations (E-NGOs) have problems in getting their demands across. To the contrary, recent calls for cutting down on the prices of petrol were soon taken up by the media as well as being supported by large parts of the public, pointing to unwillingness to reduce the consumption of fossil fuels.

This certainly was recognised by leading politicians as well and might have contributed to the fact that many observers did not perceive a broad willingness for fast progress at the meeting of the subsidiary bodies in Lyon. While at COP-5 even critical observers acknowledged the business-like atmosphere and the new sense of urgency (Seht 2000; Anonymous 1999a), such comments were rarely heard with regard to the first part of SB-13. Even EU officials openly showed some disappointment and indirectly blamed the US and other industrialised countries for failures

(<http://europa.eu.int/comm/environment/press/bio00172.htm>; Anonymous 2000).

A technical problem is the very limited time left to resolve extremely complex and disputed issues. For example, delegates left Lyon with a text on mechanisms that had been extended to cumbersome 200 pages and further submissions and related disputes can be expected. Many still hope that the most controversial issues will be solved at the last night in The Hague, pointing to the fact that the logic of negotiations requires to keep as much negotiation "capital" till the final talks. However, the volume of open question means that even if this were to be achieved, there is the danger of fundamental flaws. A help could be to reduce as many questions as possible beforehand to a very small number of clearly defined (compromise) options.

On the – in a way – positive side, the number of studies, which indicate that climate change will and is already happening increases rapidly. As bad as the results are for the global environment, these studies enhance the chance for success of calls for early action.

Furthermore, other new research underpins the thesis that substantial GHG-reductions can be achieved at low or negative costs and that additional benefits such as higher levels of employment and improved local air quality can result (Bernow et al. 1999; European Commission 1999; Krause et al. 1999). If such findings make their way to the conference halls, this can also contribute to new momentum in the negotiations. At COP-5 German Chancellor Schröder already emphasised in his opening speech that those who do not make progress on climate protection will loose contact to the markets of the future.

Related to this line of argument is another recent development that might help to achieve progress on climate protection. Irrespective of calls for cheap petrol, the rise in fuel prices might have made less environmentally orientated parties aware that apart from climate change, there are also other reasons to reduce dependence on fossil fuels, thus increasing their willingness to compromise in climate negotiations.

A special case is the US, probably the most important player in the negotiations. Positively, many US companies have left the

Climate Change Coalition, a group that lobbies heavily against serious climate protection measures, and numerous company representatives acknowledge the business chances of climate protection. Furthermore, as the global E-NGOs were enthusiastically welcomed at COP-5 (Anonymous 1999b), there are polls indicating that the vast majority of US citizens is in favour of US action on global warming. This might allow US politicians to agree to meaningful arrangements.

However, a victory of Republican candidate Bush in the presidential election could mean the US being even less progressive than in previous negotiations. As a response the EU, Japan, Russia and Eastern European countries with economies in transition – which together account for more than the required 55% of 1990 Annex I CO<sub>2</sub> emissions – could set the Protocol in force irrespective of US ratification. This idea, sketched out by Oberthür and Ott (1999, S. 303-305), was already hotly discussed at COP-5 and there are signs that support is growing.

Difficult to assess is what the implications of new coalitions in climate talks will be. At the first part of SB-13 in Lyon a group of least developing countries (LDC Group) was established as well as a so called Environmental Integrity Group (Mexico, Republic of Korea, Switzerland). The LDC Group might enhance the chances of progress on developing countries' demands while the Integrity Group could help to achieve compromises on conflicts between developing and industrialised countries. However, it could also be that the formation of these new players make negotiations even more complicated, thus limiting the chances for success.

In sum, there are a number of positive developments, but also many issues that cast doubts over the prospects of future climate negotiations and the important COP-6. Even if agreement can be achieved, one still has to look carefully at the details of decisions before making judgements on the environmental credibility of results.

Further information on international climate diplomacy and the road to COP-6 can be found at:

<http://www.itas.fzk.de/eng/InfUm/Infume.htm>.

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**ANKÜNDIGUNGEN****Konferenzen/Workshops/Seminare**

Vorlesungsreihe

**Nachhaltigkeit – Facetten einer regulativen Idee**

**Universität Greifswald, 18. Oktober - 20. Dezember 2000**

Über die genaue Bedeutung und die nähere Konzeptionalisierung der letztlich ethischen Idee einer ökologisch nachhaltigen Entwicklung wurde in den vergangenen Jahren in wissenschaftlichen und politischen Kontexten eine lebhaft Diskussions geführt. Nach wie vor in Fragen stehen sowohl die theoretische Leistungsfähigkeit als auch die politisch-praktische Umsetzung dieser Idee. In dieser Diskussion haben sich eine Reihe von Problemen herausgeschält, die einer genauen Analyse bedürfen, wenn „Nachhaltigkeit“ nicht zu einer allseits beliebten, aber inhaltlosen und daher unverbindlichen „façon de parler“ werden soll.

Die Heinrich Böll Stiftung Mecklenburg-Vorpommern und die von der Michael-Otto-Stiftung für Umweltschutz an der Ernst-Moritz-Arndt Universität Greifswald eingerichtete Professur für Umweltethik veranstalten daher diese Vorlesungsreihe mit dem Ziel, in der Auseinandersetzung mit wesentlichen Sachfragen zu einem vertieften Verständnis der Nachhaltigkeitsidee und ihrer Konzeptionalisierung zu gelangen.

Die Vorlesungsreihe wendet sich an all diejenigen, die in Wissenschaft, Politik, Medien, staatlicher Administration, sozialen Bewegungen und lokalen Initiativen mit dem Thema „Nachhaltigkeit“ und „nachhaltige Entwicklung“ befasst sind.

Die Vorlesungsreihe an der Universität Greifswald beginnt im Wintersemester am 18. Oktober 2000. Die Vorträge finden jeweils am Mittwoch um 19.00 Uhr in der Universität Greifswald, Hörsaalgebäude Rubenowstraße, Hörsaal 7 statt.