

Climate Change After Marrakesh: Should Environmentalists Still Support the Kyoto Protocol?

By Paul Baer and Tom Athanasiou

(FPIF offers this analysis of the Kyoto Protocol as part of its series of discussion papers addressing contentious issues in global affairs. We welcome your comments, which should be sent to tom@irc-online.org.)

In a previous article for FPIF, written after COP6bis in Bonn, (see Tom Athanasiou and Paul Baer, Bonn and Genoa: A Tale of Two Cities and Two Movements (August 2001) online at <http://www.fpif.org/papers/kyoto.html>) we argued that despite all the weakening that the Kyoto Protocol had suffered, the Bonn Compromise had made it ratifiable, and had to be counted as a major victory. We argued that with Kyoto's ratification, carbon would actually be priced, that new principles for the protection of the global commons would be established, and that the structures necessary to eventually strengthen the climate regime would be put into place. And we added a few elements of hope: that as the reality of climate change becomes more sensible and the climate protection coalition stronger, it would become possible to step past Kyoto to the global, equity-based treaty that might actually work.

At COP7 in Marrakesh, the Kyoto Protocol was weakened even further—it is, now, the Marrakesh Dilution of the Bonn Compromise to the Kyoto Protocol. Nevertheless, and despite the often-dispiriting nature of Kyoto's loopholes, we believe that the essential situation remains unchanged. Particularly in today's grim international context, the ratification of even this weakened first-generation climate treaty must be counted as a major victory for democratic, multilateral environmental governance. And this remains true despite 9-11, despite the arrival of the U.S.-led "anti-terror coalition," and despite the newly uncertain fate of the Bonn coalition.

The "Gang of Four"

The politics at Marrakesh were not complicated. As a result of the Bush administration's withdrawal from the negotiations, Japan, Canada, Australia, and Russia—the rump of the Umbrella Group and the so-called "Gang of Four"—held veto power over ratification, a fact of which they were well aware. They accordingly used Marrakesh to extract a new round of concessions and to further weaken the Kyoto Protocol. Particularly in the areas of sinks and the rules for access to the flexibility mechanisms, they did all they could to *reduce their actual domestic emission reduction requirements to a bare minimum*, and to protect themselves from the enforcement actions that would follow

should they fail to live up to even their residual obligations.

These four countries were the dominant actors in Marrakesh, so our analysis will start with them. Note, however, that they did not act as a unified bloc. Russia, in particular, had entirely different motivations from Japan, Australia, and Canada. Russia has an enormous surplus of emissions rights (the infamous "hot air") and is primarily concerned with maximizing its income from selling it, while at the same time minimizing its chances of being prevented from selling hot air due to a future failure to comply with treaty requirements. Further, Russia remains a relatively politically unstable country, and evidence suggests that its participation in the climate negotiations is somewhat opportunistic and haphazard, with different members of its delegation making contradictory statements and demands.

The actions of Japan, Canada, and Australia, in contrast, seem relatively strategic in a broader political sense. Understanding their positions, however, requires considering the role of their semi-silent partner, the United States. Leaving aside Japan, for the moment, Canada, Australia, and the U.S.—three dominant members of the "Umbrella Group"—have in common two things: very high per capita emissions, and right-wing governments. Notwithstanding the Clinton administration's half-hearted efforts to move the Kyoto process forward, these countries have consistently taken negotiating positions reflecting a fundamental unwillingness to submit their domestic energy economies to international regulation.

Fortunately, the rules of the Kyoto Protocol require only that countries representing a 55% majority of 1990 Annex 1 emissions ratify for the treaty to enter into force, and this means that Canada and Australia do not hold decisive positions as long as Japan ratifies. In spite of this, the EU/G77 coalition has sought to entice all three to ratify by making concessions to them all, a process that has been painful to behold. Indeed, even after Australia's govern-

Tom Athanasiou and Paul Baer are the cofounders of EcoEquity, which advocates a phased transition to a second-generation climate treaty based on per-capita carbon emission rights. For more information on how to subscribe to EcoEquity's Climate Equity Observer, visit www.ecoequity.org, or write to ceo@ecoequity.org.

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Essay Editor

John Gershman (IRC)

Project Directors

Tom Barry (IRC)
Martha Honey (IPS)

Communications & Outreach

Kathy Spillman (IPS)
kathy@ips-dc.org
Erik Leaver (IPS)
erik@fpif.org
Siri Khalsa (IRC)
communications@irc-online.org

Project Administrative Assistant

Nancy Stockdale (IRC)

Design/Production Manager

Tonya Cannariato (IRC)

Editorial inquiries and information:

IRC Editor

Voice: (505) 388-0208

Fax: (505) 388-0619

Email: tom@irc-online.org

IPS Editor

Voice: (202) 234-9382/3 ext. 232

Fax: (202) 387-7915

Email: ipsps@igc.apc.org

Orders and subscription information:

Mail: PO Box 4506

Albuquerque, NM 87196-4506

Voice: (505) 842-8288

Fax: (505) 246-1601

Email: infocus@irc-online.org

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ment announced (during COP 7) that it would not in fact ratify the protocol, it continued to hack away at the treaty. The U.S. team looked good in comparison.

Japan's negotiating position is more complex and more difficult to understand. Neither its current government nor its business class is especially right wing, at least not in the simple ideological terms of modern neoliberalism. Furthermore, when compared to other industrialized nations, Japan's per-capita domestic emissions are relatively low, as is its carbon intensity level (emissions per unit of GDP). Why, then, did Japan fight so hard, even to the point of endangering the Protocol? Clearly, internal bureaucratic resistance played a part, as did the dismal state of the Japanese economy and Japan's traditional subservience to the United States. But it should be said that the structure of the Kyoto Protocol itself must also have played a part. Since Kyoto's reduction targets are based on proportional reductions from 1990 baselines, Japan's relatively more-efficient economy makes its reduction target somewhat tougher to achieve, since there are presumably fewer "low-hanging fruit" than in less efficient economies like the U.S., Canada, and Australia.

Japanese politicians have made a fair number of public statements about the importance of the Kyoto protocol, but they also played a negative role at COP6bis and COP 7, and did a great deal to weaken the final treaty rules. Clearly, there are strong forces in Japan that want to make it relatively easy for the U.S. to rejoin, as well as to reduce Japan's own targets, and these forces have probably had a great deal to do with Japan's advocacy of minimal restrictions on sink activities. However, there's probably more to it than this. Japan has consistently tried to weaken the compliance mechanisms, and this, notably, is contrary to the position that the U.S. took under the Clinton administration. Indeed, Japanese insistence on deferring a decision on legally binding enforcement was one of the sticking points in reaching the Bonn compromise. It's possible that back-channel communications with the Bush people have deepened Japanese intransigence on compliance, but it seems likely that domestic Japanese politics (driven by the economic crisis) are the core drivers here.

The Issues

As we suggested at the beginning, the Marrakesh controversies were all variations on a theme: making it as easy as possible for countries to meet their targets without actually reducing their domestic emissions. And, particularly after Bonn, when looking at the *additional* concessions that were made in Marrakesh to ensure ratification of the Protocol, it's hard not to ask the radical's question: is this treaty now worse than nothing, providing the illusion of action where there is none? We'll try to answer this question below, when we look at some of the details, but here's the headline: *this is not a good deal, but there's no reason to believe that a better one was possible in the past, or will be possible in the future if this one is derailed.*

The details of the negotiations are a swamp, and we're not going to try to address all of the issues that were on the Marrakesh agenda. Key controversies, however, involved compliance, sinks, and the banking of credits. In most cases, it's necessary to know a little bit about the Bonn Compromise (on the fpif.org website) in addition to the basics of the Kyoto Protocol, with which we will assume the reader is familiar.

Linking use of the mechanisms to compliance—sort of...

One of the most contentious and confusing issues debated in Bonn and Marrakesh has been whether the compliance regime will be "legally binding," a term whose meaning in international law is quite ambiguous. The Bonn compromise deferred a decision on a binding compliance regime to the first Meeting of the Parties—that is, to the first convention after the Kyoto Protocol's ratification. Critical rules regarding compliance will thus come by way of a future amendment to the Protocol. Marrakesh saw extended controversy on whether countries would have to ratify this future compliance amendment before they would be allowed to participate in the Kyoto flexibility mechanisms: trading "assigned amounts" or doing Joint Implementations and Clean Development Mechanism deals. Unfortunately, the Gang of Four (with U.S. assistance) succeeded in preventing any clear linkage from being made. Specific rules were written into the mechanisms

texts that make compliance with the requirements for reporting and the implementation of national registries prerequisites for eligibility for trading. But it's (legally) possible for countries to be out of compliance with their actual reduction targets, and yet continue to use the flexibility mechanisms. This represents a serious potential for the abuse of the mechanisms and is one of several important ways in which the Marrakesh Dilution significantly endangers the environmental integrity of the Protocol.

More free tons for Russia for domestic forest sinks

Another concession made to the Umbrella Group (including the "absent" U.S.) in Bonn was a formula by which domestic forestry could be counted as a carbon sink, and thus be used to reduce a country's emission reduction target. Because temperate forests are currently sequestering carbon (usually due to a combination of regrowth after previous deforestation, CO₂ fertilization, and nitrogen deposition), this rule, in effect, awards "free tons" for business-as-usual forestry activities. In fact, the U.S. came to The Hague claiming that its forestry activities (*none* of which were actually implemented for the purpose of sequestering carbon) represent a sink of approximately 300 megatons of carbon annually, or about a sixth of its current fossil fuel emissions! The Bonn Compromise established a formula by which national forestry data (as reported to the FAO) was the basis of a cap on these Article 3.4 tons. This was the basis of Bonn's "Annex Z," in which—surprise!—Japan, Canada, Australia, and Russia received by far the largest caps.

It was, evidently, not enough. Despite its existing huge surplus of "hot air," Russia came to Marrakesh demanded a near doubling of its Annex Z cap. Rumors during the conference even had it that Russia's demand was based on a misapplication of the approved formula to what they claimed was the correct data, and that even their (dubious) numbers would only justify a smaller increase (from 17 megatons of carbon per year to approximately 25, instead of the 33 they were arguing for). In the end they were given the 33 megatons they demanded. For a country that stands to make a huge amount from the sales of per-

mits under Article 17 trading of assigned amounts, this was an act of remarkable cynicism.

Sinks credits can't be banked—until you convert them...

Next up on the Marrakesh loophole work plan was "banking." The issue here was whether, after being given both huge quantities of domestic sinks and the ability to use sinks in the CDM, the Umbrella Group countries would be allowed to bank its resulting sinks credits for use in the second commitment period. For obvious reasons, the greater the emphasis on sinks, the less motivation to pursue technologies that will actually reduce energy emissions in the long run. Thus preventing the banking of sinks credits was one of the ways in which the environmental integrity of the Protocol might have been strengthened. However, the Umbrella Group again prevailed; even though a new non-bankable "Removal Unit" (RMU) was created, no rules were created to prevent RMUs from being converted into other bankable credits, rendering the distinction essentially meaningless.

This is a big one, for it not only opens a new loophole, it extends that loophole into the second commitment period, when the climate regime has to go global and, presumably, become more serious. But now that both domestic BAU sinks and sinks in the CDM are allowed, and the resulting sink credits are fungible with each other, and can be banked to boot, *Annex I countries may, in effect, be allowed to accumulate large quantities of inexpensive credits based on dubious science.* Developing countries, in contrast, can neither claim credit for domestic BAU sinks or bank sinks credits, which puts them in a disadvantageous position in the second commitment period. The full implications of this problem won't become clear for some time, but it's a matter of great concern to developing countries, and to those in the North concerned with an equitable follow-up agreement to Kyoto.

Odds and ends

There's more, of course. Another aspect of the Marrakesh Dilution is that sinks reporting is not required before a country can use the mechanisms. A compromise was reached on reporting, in which sinks

would in fact have to be reported each year (Russia in particular had objected to this proposal), but the quality of the reporting would not be subject to penalizable evaluation. This in effect guts the annual reporting requirement as far as sinks go, in spite of the argument (dubious, but often repeated by Russia and others) that sinks *could* in fact be reliably measured.

Negotiators in Marrakesh also had to resolve controversy over public participation in the Clean Development Mechanism. Although the NGOs had made this an important lobbying point, there were no strong advocates for participation in the negotiations (ironically, the U.S. had been one of the stronger advocates in earlier negotiations), and the *public participation rules that were finally adopted are even weaker than those governing World Bank projects.* It's not a good sign, and something to keep in mind the next time you hear that the Kyoto Protocol is the strongest existing environmental treaty.

A final issue that arose in Marrakesh concerned the eligibility of CDM sinks projects for the so-called "prompt start." This is an area where the details really are mind-boggling. One set of decisions stated that sinks projects could not be credited until further rules are proposed by the UNFCCC's Subsidiary Body for Scientific and Technological Advice (SBSTA), no earlier than next year. However, another decision said that CDM sinks projects *would* be eligible for the prompt start, even though the rules won't have been approved! This raised concerns among many environmental NGOs that the rules would be weakened to ensure that projects that had already begun would in fact be eligible. Preventing this from happening will be a major focus for the NGOs in the coming period.

NGOs are gearing up to monitor sinks projects and CDM projects more generally. Two groups, coined "Sinks Watch" and "CDM Watch" were formed in Marrakesh to coordinate work that will bird-dog the process, publicize the types of projects that are being proposed and implemented, and, one hopes, prevent the most egregious abuses from taking place. These activities will also generate information relevant to the second commitment period negotiations, particularly since the inclusion of

sinks in the CDM was explicitly limited to the first commitment period.

Choking It Down

So here we are again: if the deal is so bad, why do we support it? And it is bad, there's no doubt about this. Not only is the now almost final Kyoto Protocol weak (a matter that can always be explained away by arguing that it's a first step), but it establishes precedents (banking of credits, credits for BAU forestry) that bode ill for future negotiations, particularly as they create loopholes that bias, and even corrupt, the all-important second commitment period negotiations. Further, the process has clearly established some general precedents—that the field belongs to the strong, and that countries can always weaken the treaty further by threatening to walk—which suggest that even in the second period we may not move substantially closer to an adequate climate regime.

Still, there's a bright side, and it may be a decisive one. First, a crucial battle has been won, if only by not being lost. Climate change has been deemed a serious problem, demanding coordinated international action. Only in the U.S. (and among Europe's Bjorn Lomborg's fans) is it possible to argue that the Kyoto Protocol is unnecessary; even the Bush administration now admits that the problem is serious and that something needs to be done. Furthermore, the principle of historical responsibility has been established, at least outside the U.S. and Australia. The North caused the climate problem, and the North must seriously address it before the developing world is obligated to come along; this is a settled matter.

Second, carbon will soon have a price. Clearly, the high-emitting countries have

expended huge efforts to ensure that the price remains low, at least in the coming period, but, still, they're swimming against the tide. And the fact that carbon will have a price will mark a major change in the way we think about energy production and consumption, and make a real impact on how consumers, corporations, governments, and multilateral institutions address energy services. To be sure, this is only the beginning of the main act. The speed with which the world transitions to low- and zero-carbon energy systems will depend on epochal battles yet to be fought, both within countries and on the (roiling) international stage. But at least these battles are now on the agenda. Kyoto's ratification will represent some very large, bold handwriting on the wall.

Third, the EU/G77 climate protection coalition, together with the environmental NGOs, has begun to take the center stage in global environmental negotiations. It's clearly still a weak coalition, as was proven by its inability to prevent the further weakening of the climate treaty in Marrakesh, but it was nevertheless strong enough to prevent the U.S.'s rejection from completely torpedoing the negotiations. This pro-environment, sustainable development coalition stands in uneasy tension with coalitions operating in other spheres of international politics; but this, too, is a sign of change. The environment will remain an issue of increasing global salience even when the current war has faded from view, and the climate talks will probably remain the dominant venue for concretely addressing sustainable development.

This last point is critical, for in the next round of talks—addressing the second commitment period—the issue of North/South equity will be moving rapidly to the center of the debate. Battle lines are

already being drawn. The U.S. is clearly maneuvering to make the acceptance of emissions restrictions by large developing countries a condition of its own participation, and the environmental NGOs, the South, and the Europeans are all, each in their own way, preparing stands. Questions abound. Will the Southern elites allow themselves to be bought off with “development” as usual? Will Europe really stand with the South in rejecting the continued appropriation of the global commons by the North? Will the larger “equity agenda” ever make it into the mainstream?

No one believes that emissions growth in the South can remain unrestricted indefinitely. But does a person born in the South have the same right to the atmosphere as a person born in the North? If the answer is yes, as we believe it must be, the North has a real obligation to help finance true “clean development” in the south—not in the token fashion of the CDM, but on the scale of the tens of billions of dollars annually that would ultimately be associated with tradable permits allocated on a per capita basis.

This is the challenge facing the climate protection coalition—Europe, the developing countries, and the NGOs—in the coming years. Sure, sinks must be watched, and all the myriads of rules and mechanisms, but we cannot allow ourselves to bog down in the details of implementing Kyoto. We have to build the understanding at all levels—among the public as well as the policy elites—that (as we've been saying all along) Kyoto is just a first step, and that the climate talks are of necessity a forum for fundamentally addressing the North/South divide. If we cannot reach solidarity when the global climate is at stake, what hope can we have for the future?

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