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WHAT HAPPENED, AND WHAT IT MEANS

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EXECUTIVE SUMMARY

In December 2005, the Canadian city of Montreal hosted an important session of the annual United Nations climate change conference, with a record attendance of almost 10,000 participants. This was the first session of the governing body of the Kyoto Protocol – known as 'COP/MOP[1]' – signalling the full legal implementation of the Protocol. By coincidence, it was also the year agreed to in the Kyoto Protocol to launch negotiations on industrialised country commitments post-2012, when its current commitments expire.

The present account of what happened at Montreal and what it means is divided into two substantive 'tracks': one concerning emissions mitigation, and the other focusing on other issues, primarily adaptation to climate change impacts.

I. The Mitigation Track

At the suggestion of the Canadian Environment Minister, Stéphane Dion, the conference agenda was based on 'three-*is*': '*i*mplementation', '*i*mprovement', and '*i*magination'.

1.1 *'Implementation': The Marrakech Accords and the Kyoto Compliance Regime*

Although not completely unexpected, the adoption of the forty-odd decisions of the 'Marrakech Accords', the Kyoto Protocol rulebook, without dissent at the beginning of the Montreal meeting was seen as a good omen. The early resolution of another issue was less expected, namely whether the consequences of non-compliance with the Kyoto Protocol targets should be legally binding penalties, or some form of 'rehabilitation' measures. In practical terms, the argument boiled down to the manner in which the draft compliance instrument would be adopted. For binding penalties, it had to be adopted as an amendment to the Protocol, whereas for non-binding consequences an adoption by decision of the COP/MOP would be sufficient.

Saudi Arabia had tabled a controversial proposal ahead of the meeting that adoption of the compliance instrument should be by way of an amendment to the Protocol alone and not through a COP decision. This was more than just a legalistic point because an amendment would require separate ratification by the Parties to the Protocol, a process which could take years. Without its adoption, the Protocol and its carbon trading instruments could not actually be implemented. In effect, the Saudi proposal could have easily led to a last minute derailment of the whole Kyoto process. The conference made a classic compromise to avoid this: the compliance instrument was adopted by decision for the time being, while at the same time discussions were scheduled on its adoption as an amendment, to be concluded at COP/MOP3 in 2007.

1.2 *'Improvements': The Clean Development Mechanism*

With the adoption of the Marrakech Accords and the compliance regime, the Kyoto Protocol became fully operational. The conference went a step further by adopting improvements of some of its elements, in particular the Clean Development Mechanism (CDM), an emission trading mechanism under which developing countries can attract much needed investment in clean development projects from (industrialised) Kyoto Parties in return for emission credits generated by the projects. The CDM in its initial form had proven to have some bottlenecks which were unlikely to let it develop its full potential, and were largely resolved in Montreal.

1.3 *Imagination': What happened on 'Post-2012' and 'Future Action'*

These achievements would have been sufficient for the first COP/MOP to be deemed a success. However, there was more at stake: the conference was also meant to initiate negotiations on the future

[1] Conference of the Parties serving as Meeting of the Parties to the Kyoto Protocol.

of the Kyoto Protocol beyond its first commitment period. What made the Montreal conference a historic meeting was a decision by the Kyoto Parties to initiate formal negotiations on industrialised country targets for a period after 2012.

This decision was historic because it finally gives the business sector, particularly in the industrialised world, the regulatory certainty indispensable for the investment decisions required to solve the climate change problem. Energy infrastructure investments, in particular, are medium to long-term and thus much more in need of regulatory certainty than other types of investments.

1.4 *'Imagination': 'Post-2012' and the issue of competitiveness*

Concerning the substance of these post-2012 Kyoto negotiations, the greatest challenge to imagination will be to convince the Parties involved that further-reaching emission cuts will not impose unfair burdens. This will mean, in particular, addressing the competitiveness concerns of producers in Annex B countries *vis à vis* their competitors from countries without emission restrictions. The important point in this context is to keep in mind that there are ways – even tried and tested ones (for example, export duties, as recently discussed by Müller and Sharma[2]) – to address such worries without having to resort to country emission reduction commitments.

1.5 *The Montreal Mitigation Message*

With respect to greenhouse gas emissions, the main 'message from Montreal,' has to be that the Kyoto Protocol – with its emission caps and trading mechanisms – is not only fully operational, but has moved on from being potentially merely a 'one-period wonder' to the only viable existing multilateral effort to combat greenhouse gas emissions, which is here to stay!

1.6 *The Role of the United States*

'Finally,' conference president Dion reminded the delegates in his closing statement, 'we have achieved what many claimed was unattainable, a decision launching a dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention.'

This was felt to be unattainable because, as a Convention dialogue, it had to include the United States. Until the very last moment, the USA categorically refused to enter into any discussions on future action under the aegis of the United Nations, and at one point actually walked out of the negotiations to demonstrate their conviction on the matter.

There is no doubt that getting the USA finally to agree to some dialogue – if only a 'non-binding' one that explicitly rules out negotiations of new commitments – is a tremendous personal success for Monsieur Dion.

However, one should not get too carried away about the Bush administration having 'blinked', as one observer put it, or having second thoughts on either the Kyoto Protocol, or the usefulness of the UN process as a whole. At present, the only way for the international community to engage with the USA in a meaningful manner on climate change in general – and to address US emissions, in particular – is to bypass the White House, and deal directly with the many sub-national entities – be they cities, states, and even groups of like-minded states – who are willing to take on serious mitigation obligations, such as the group of north-eastern states that have introduced a carbon cap and trade system for their utilities.

Given that the emergence of such regional trading systems is likely to lead to a US-wide system – due to pressures from the involved sectors regarding interstate competitiveness and regulatory streamlining – the most important step forward for the Kyoto Parties with regard to engaging the

[2] Benito Müller and Anju Sharma, 'Trade tactic could unlock climate negotiations,' *SciDev.Net*, 17 June 2005, http://www.scidev.net/Opinions/index.cfm?fuseaction=readOpinions&itemid=399&language=1

USA is to integrate these regional US schemes with their own schemes. This will ensure that an international component and Kyoto compatibility is built into these prototypes from the outset.[3]

II. The Adaptation Track

While the focus of the debate in Montreal was mainly on mitigation issues, a considerable amount of time was nonetheless devoted to issues related to adverse impacts of climate change, mostly concerning how to reduce them through adaptation. And while the 'mitigation track' produced more concrete successes with regard to the first two of Dion's 'three-*i*s', the debate on adaptation, particularly adaptation financing, is no doubt a top candidate for being most in need of the 'third-*i*' – *i*magination

2.1 *The Issue*

Even though the relevant negotiations were firmly focused on issues related to reducing *potential* adverse climate change impacts through adaptive measures, the theme of *present-day*, *unavoided* impacts was given unexpected prominence, both inside the Conference hall, where the Canadian Prime Minster Paul Martin reminded the high-level audience that we no longer need to imagine climate change effects, 'for now we can see them', and outside, where former US President Bill Clinton began his much publicised address to a parallel event organised by the host city by stating that 'climate change is real, accelerating and caused by human activities.'

The fact that impacts 'here and now' were acknowledged in this manner was widely reported. What was less publicised – although equally noteworthy, if not unexpected – was that during the high-level statements, the Group of Least Developed Countries (LDCs), which comprises many of the world's most vulnerable countries, openly raised the issue of 'compensation for damages due to unavoidable adverse impacts of climate change', as well as suggesting that 'if voluntary contributions are not working then binding commitments may need to be considered to secure adequate funds.'

The call for damage compensation may be somewhat premature, but there can be little doubt that the issue of securing adequate funding for adaptation and other impact management activities – which was one of the focal points of the Montreal adaptation debate – is not only here to stay, but will become more and more important in 'future action' discussions.

2.2. *What Happened at Montreal?*

2.2.1−2 While the adoption of a Five-year Work Programme on Adaptation was hailed as the major adaptation outcome of the Montreal meeting, the most important negotiations on adaptation were about financial matters, namely the role of the Global Environmental Facility (GEF) as an operating entity of the financial mechanism of the United Nations Framework Convention on Climate Change (UNFCCC), on the one hand, and the operation of the Adaptation Fund, on the other.

The choice of the GEF as an operating entity of the financial mechanism,[4] and as the operator of the two Convention Funds, has been controversial from the outset, particularly among developing countries. However, what gave the discussions about the role of the GEF – in particular concerning its suitability as operator of the Kyoto Protocol Adaptation Fund – added strength of feeling was the GEF's recently adopted Resource Allocation Framework (RAF).

Even though the RAF allocation formulae officially apply only to disbursements from the GEF Trust Fund – which is quite distinct from the UNFCCC funds – many developing countries clearly fear from experience concerning such issues as 'incremental funding' and 'global environmental benefits'

[3] Indeed, the 'Regional Greenhouse Gas Initiative' by the said north-eastern states already envisages the option of using 'offsets' from the EU Emission Trading Scheme and the CDM (see Section 1.4)
[4] Note '*an*' and not '*the*' operating entity (see, for example, COP Decision 3/CP.4)!

that the GEF's internal rules will ultimately be paramount in all of its activities. The fact that the RAF climate change funding formula essentially rewards large and fast growing emitters[5] – thus breaching the first Convention principle concerning common but differentiated responsibilities and respective capabilities (Art.3.1 UNFCCC) – clearly added to the concerns of many of the potential recipients of Convention funding and, more to the point, of Adaptation Fund disbursements under the Kyoto Protocol.

Moreover, unlike the two Convention Funds – which are replenished purely by bilateral funding, generally through donor agencies – the Adaptation Fund is to be (primarily) filled through private sector contributions, raised in developing countries in the form of a 2 percent levy on CDM projects. In other words, unlike the two Convention funds, the Adaptation Fund is *not* a multi-donor fund. Given this, and the deeply entrenched suspicions about donor-country dominance in GEF/World Bank decision making, it is not surprising that during the conference, the G77 and China expressed collective concerns about the GEF RAF as well as reservations about the appropriateness of the GEF as operator for this fund.

2.2.3 The concerns over adequacy of funding, expressed by Bangladesh on behalf of the LDCs during the high-level opening session, also received considerable attention during the adaptation negotiations. Possibly due to the realisation that bilateral funding – even if guaranteed by some form of legal commitment as suggested by Bangladesh – is unlikely to raise the sums of money required to deal adequately with adaptation (let alone impacts), the debate focused on the adequacy of the private sector money to be raised for adaptation through the proposed levy on the CDM.

The fact that the CDM should be singled out in this way as the only one of the three Kyoto Protocol flexible mechanisms to be burdened by an additional levy – particularly given its already disproportionately high transaction costs – has long been a bone of contention among developing countries. Brazil's proposal to extend the levy to the other two mechanisms was hence not only to increase the funding base of the Adaptation Fund, but also to restore equity between the Kyoto mechanisms by levelling the playing field (although Russia, the potential prime beneficiary from the other two mechanism, did not quite see it like that).

However, the key question in this context is not really *which* of the Kyoto mechanisms should have an adaptation levy, but why *any*? Why should activities which are involved in *reducing* emissions be burdened with a levy that will inevitably create disincentives to carry out these activities? Would it not be more reasonable, or even more rational, to put such a levy on the polluting activities themselves if only to synchronise the funding raised with the funding needed?[6] In short, instead of arguing which of the Kyoto mechanisms should be covered by an adaptation levy, it might be more appropriate to look at the question how private sector emissions could be used in raising the required adaptation funding (say as a levy on permits issued to emitters as part of a cap and trade regime).

[5] A brief analysis of the adopted RAF Climate Change Benefit Index – one of the key determinants of how much GEF money countries receive for climate change projects – and of its compatibility with the principles of the Framework Convention can be found in section 3.2.2.

[6] The levy on mitigation activities such as the CDM, by contrast, is clearly counter-cyclical: the less mitigated, the more the need for adaptation, but the less the revenue for it.

III. The Dion Dialogue

Although some observers had reservations about the usefulness of the dialogue on future action under the UNFCCC initiated by the conference president Stéphane Dion,[7] it may well prove to be a very useful instrument, particularly for developing countries, to raise issues and ideas that have thus far failed to enter the UN climate change negotiation agenda. The fate of the issue of emissions from deforestation may be a case in point. It was raised in May 2005 during a presentation by Papua New Guinea at the Bonn 'Seminar of Government Experts,' which itself clearly had the hallmarks of the dialogue envisaged by Dion. Consequently it managed to attract sufficient support to be included in the COP11 agenda, leading to the decision to hold an official workshop on the issue before November 2006.

3.1 *The Adaptation Strand*

With respect to adaptation, the Dion Dialogue is meant to be about strategic approaches to long-term cooperative action on adaptation under the Convention. There is clearly a need for such strategic approaches – possibly even in the guise of a legal instrument on adaptation[8] – and while the variety of options for such approaches may well be rather large and heterogeneous, all of them without exception will require adequate funding. In short, whatever else, a key component of the Dialogue with respect to adaptation must be an imaginative discussion of issues such as the ones mentioned concerning the adequacy of funding and of the GEF.

3.2 *The Mitigation Strand*

As concerns mitigation, the key challenge for the Dialogue has to be how to address the emissions of the environmentally relevant large emitters who are not bound by Kyoto targets, without imposing unfair burdens. As mentioned earlier, it is unlikely that the US government would be willing to engage in the UN process in this manner, which is why the Dialogue should not waste precious time but focus instead on how one might be able to address the emissions of the large *developing* country emitters, without imposing unfair burdens.

One way to proceed might be to take up the long-established idea of 'luxury emissions,' but in its individual sense, i.e. referring to emissions from 'luxury' activities regardless of whether they are carried out in a developed or a developing country. Although it might be difficult to come to a consensus of what sort of activities should be covered by this term, it is clear that the consumption of luxuries is not exclusive to any one group of countries. A possible candidate that springs to mind is travel by air, particularly international air travel, not least because it has become increasingly clear that emissions from air transport – currently excluded from the UN regime – are becoming a serious problem in their own right. Indeed, in a final leap of Dion's third-*i*, the size of the (international) air transport sector, when levied, might just suffice to provide the sort of funding required for the expected adaptation needs.

Such an adaptation levy on international air transport emissions would not only simultaneously address two of the major mitigation and adaptation problems – the growing emissions of the sector, and the present inadequacy of adaptation funding – it would also constitute the first truly global effort by the more affluent people, wherever they may live, to help their most vulnerable fellow humans to cope with climate change impacts.

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[7] See, for example, Bettina Wittenleben *et al.,* 'In from the Cold: The Climate Conference in Montreal Breathes New Life into the Kyoto Protocol', Wuppertal Institute for Climate, Environment and Energy, http://www.wupperinst.org/download/COP11MOP1-report.pdf

[8] Note that even though the dialogue is not meant to 'open any negotiations leading to new commitments,' this does not mean that it cannot raise issues such as the usefulness (or not) of such a legal instrument on the adaptation part of its mandated 'open and non-binding exchange of views, information and ideas in support of enhanced implementation of the Convention'.

I. THE MITIGATION TRACK

On 28 November 2005, an important session of the annual United Nations climate change conference opened in Montreal, Canada. Canadian Environment Minister, Stéphane Dion, President of the conference presented his personal agenda, characterised by what became known as 'the three-*i*s': the need for *i*mplementation, *i*mprovement, and *i*magination.

The following analysis follows this classification, beginning, in this Part, with issues concerning the mitigation of greenhouse gas emissions, turning to other climate change issues – in particular those related to adaptation – in Part II, and concluding in a discussion of next steps – with a particular emphasis on the proposed 'Dion Dialogue' – in Part III.

1.1 '*Implementation*': *The Marrakech Accords and the Kyoto Compliance Regime*

When introducing his first '*i*', Monsieur Dion had in mind primarily the implementation of the Kyoto Protocol, which is by and large an emission mitigation instrument (although it contains some provisions concerning adaptation, particularly an Adaptation Fund). Dion's aim concerning 'implementation' was the legal adoption of the Marrakech Accords ('the Kyoto rule-book'), and the Protocol's compliance regime.

The Marrakech Accords were adopted by COP/MOP, the governing body of the Kyoto Protocol, the following Wednesday. While not unexpected, the fact that this historic adoption of the Kyoto rule-book happened without any objections at the outset of the Conference was generally regarded as a very positive signal for the success of Dion's triple-*i* agenda.

More surprising, and possibly even more encouraging, was that the 'compliance saga', which had been going on for a number of years, was not only resolved, but resolved before the final marathon of the High-level segment, which is where controversial issues usually end up. The nature of the Kyoto Protocol compliance mechanism had been controversial from the outset, and the one key question that remained open even after the architecture of the mechanism was adopted at Marrakech was whether or not compliance measures should be legally binding.[9]

Discussions ultimately focused on the legal form of adopting the compliance mechanism, since – according to Article 18 of the Kyoto Protocol – it could only have legally binding consequences if it is adopted as an amendment to the Protocol, while adoption as a COP/MOP decision would be sufficient to make the Protocol fully operational.

From the outset Japan opposed a legally binding compliance regime and expressed with New Zealand a preference for only a COP/MOP decision. Saudi Arabia put forward the proposal of adoption by amendment alone. While this may seem like legalistic hair-splitting, the issue was of considerable importance, since adoption as an amendment requires ratification by the Parties of the Protocol. This, as the Protocol itself has shown, could take a considerable amount of time. Following the Saudi proposal would hence inevitably have left the Kyoto Protocol in operational limbo for years to come, and may even have scuppered it in the end.

[9] For a detailed account of the Marrakech chapter of the compliance saga see ENB Vol. 12 No. 189 Monday, 12 November 2001 [http://www.iisd.ca/climate/cop7/]

The issue was finally resolved through the able co-chairing of two countries at opposite ends of the global development scale – Norway and Burkina Faso, 1st and 175th respectively in the UNDP development ranking. The compromise achieved agreed to adoption as a COP/MOP1 decision for the time being, and initiating a two-year process to consider an amendment.

The adoption of the Marrakech Accords and the Kyoto compliance regime itself was generally lauded as an historic step, rendering the Kyoto Protocol and its flexibility mechanisms – International Emissions Trading, Joint Implementation (JI), and the Clean Development Mechanism (CDM) – fully operational, and thus creating carbon emission reductions as a truly global commodity. This is arguably the most important step in the global fight against climate change to date.

1.2 '*Improvement*': *The Clean Development Mechanism*

With regard to mitigation, Dion's second '*i*' – for '*i*mprovement' – was focused on the Clean Development Mechanism (CDM). Months before the Montreal meeting, considerable concern was voiced by business and host countries alike about the CDM, in general, being too complex and cumbersome, and the CDM Board, in particular, being unable to cope in a timely manner with the expected stream of projects.

Thus it did not come as a surprise that the COP/MOP approved measures to clarify the procedural rules, strengthen the governance, speed up the development of methodologies and overcome the bottleneck in project processing by providing more funding for the professional functioning of the CDM Executive Board, be it through bilaterally pledged donations (currently about US$8 million), or through a levy on CDM credits.

Interestingly, 'the COP/MOP also opened the door for a broader range of potential CDM activities beyond those that are strictly project-based. While specifying that local or national policies or standards do not qualify as CDM projects, the decision allows projects which are part of a "program of activities" to be registered as a single CDM project, provided there are appropriate baseline and monitoring methodologies. This could allow for a so-called programmatic approach, crediting a range of activities such as energy efficiency improvements across a series of entities or an entire sector.'[10]

The uneven regional distribution of CDM projects, raised a number of times by African and least developed Parties, unfortunately remained without an answer. The COP/MOP decided to invite Party submissions on 'systemic or systematic' barriers to equitable distribution of CDM projects, but it is difficult to see how this problem could be resolved, given the market-based distribution of CDM projects, even with a large dose of Dion's third '*i*' (*i*magination).

1.3 '*Imagination*': *What happened on 'Post-2012' and 'Future Action'*

The fact that COP/MOP1 happened to fall in the year when, according to the Protocol, negotiations regarding future ('post-2012') quantified emission limitation and reduction commitments were meant to be initiated was quite coincidental, determined by the whim of

[10] http://www.pewclimate.org/what_s_being_done/in_the_world/cop11/index.cfm

the Russian government whose lengthy ratification saga had postponed entry-into-force to earlier this year.

It did, however, give the Montreal meeting particular importance long before it actually started, a fact reflected in the record participation of almost 10,000 participants. While the adoption of the Marrakech Accords and the compliance regime would, under ordinary circumstances, already have sufficed for the conference to be judged a success, the judgment about Montreal depended crucially on the success of the negotiation concerning Dion's 'third *i*' – the imagination required to agree on a future path, beyond what had already been agreed in the existing Kyoto Protocol.

Prime Minister Paul Martin opened the crucial High-level segment of the Conference with a speech that was without doubt one of the highlights of the Conference. He not only reminded delegates that climate change has ceased to be a hypothetical matter, that it is a matter of here and now but also gave an extraordinarily candid assessment of the moral and ethical implications of the fact that these damages are man-made (see Part II of this paper). At a press conference, Martin famously restated these conclusions even more forcefully as his 'Message to the Conference':

> 'To the reticent nations, including the United States, I say this: there is such a thing as a global conscience, and now is the time to listen to it. Now is the time to join with others in the global community, now is the time for resolve, for commitment, and for leadership. And above all now is the time for action, because only by coming together can we make real and lasting progress.'
>
> And, with a thinly veiled reference to the USA and Australia, he later re-iterated the point: 'Yet there are nations that resist. Voices that attempt to diminish the urgency, or dismiss the science, or declare either in word or in indifference that this is not our problem to solve. Well let me tell you, it is our problem to solve and we are in this together.' [11]

Mr Martin's 'shockingly undiplomatic language'[12] may, as some reporter at a later press conference claimed, have earned the Canadian Ambassador in Washington an official rebuke, and it may have contributed to the fact that some time later, 'America's chief negotiator stormed off in a huff.'[13] What is clear is that it did not go unnoticed in Washington, where Adam Ereli, State Department spokesman pointed out that 'if you want to talk about global consciousness, I'd say there's one country that is focused on action... dialogue... co-operation and... helping the developing world, and that's the United States.'[14]

After this rather dramatic launch, the three-day high-level negotiations on the future of the multilateral climate change regime proceeded almost non-stop with their own fair share of excitement and drama. The negotiations were carried out in three groups, one deliberating the issue of post-2012 commitments under the Kyoto Protocol (KP Article 3.9), another concerning an overall review of the Protocol (KP Article 9), and finally one concerning a proposal of Monsieur Dion to engage in a dialogue under the Convention for long-term cooperative action to address climate change. As is not uncommon in such negotiation

[11] Author's transcript.
[12] 'Pricking the global conscience', *The Economist*, 14 December 2005.
[13] *Ibid.*
[14] 'Last-minute climate deals reached' BBC NEWS, 10 December 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/sci/tech/4515898.stm

'end-games,' progress in each of the groups was intimately linked, and it soon became clear that an outcome could only be achieved as a 'package deal'.

On the second night of the high-level segment, the contact group on post-2012 commitments under the Kyoto Protocol (Art. 3.9) reached an agreement, conditional on progress in the deliberations on the review of the Kyoto Protocol (Art.9), and on future action under the Framework Convention. Towards midnight, the COP president convened a high-level informal group to discuss the three issues as a package, even though the US negotiator had walked out of the negotiations earlier that night (see Section 1.6). In the early hours of the morning, in the absence of the USA, the group agreed to a draft decision on a dialogue on future action under the Convention.

The USA returned to the negotiations the following morning with a counter proposal, and after another marathon negotiation session, final draft decisions on both 'post-2012' and 'future UNFCCC action' were circulated in the early hours of the next morning. Following a classic case of last-minute (3 a.m.) brinkmanship with the Russian Federation, demanding that the deliberation on Art. 3.9 (legally binding targets for industrialised countries) should include a discussion on voluntary developing country targets, the conference reached a package deal on all three of the agenda items in question and the conference was gaveled to a close just before 7 a.m. on Saturday 10 December.

1.4 '*Imagination*': '*Post-2012' and the issue of competitiveness.*

The fact that developing countries, particularly China and India, are exempt from taking on emission targets under the Kyoto Protocol has been one of the key reasons put forward by industrialised country opponents of the Protocol, particularly the United States, against taking on targets themselves. The arguments used were primarily based on the view that differentiated early action – that is, taking on targets without simultaneous 'meaningful participation' by these large developing countries – would give them an unfair competitive advantage. Christian Azar, for example, sees one of the key obstacles to achieving agreements with internationally differentiated climate policy ambitions as the perception that 'climate policies would then, it is often argued, lead to relocation of production which could be costly in terms of premature closure of industrial facilities and losses of jobs, and lead to increases in carbon emissions in other countries (sometimes referred to as "carbon leakage"). […] Thus, it is worthwhile to better understand the concerns about competitiveness and what governments may possibly do about it.' [15]

There have already been a number of concrete economic studies on this issue, particularly in the context of the EU Emission Trading Scheme – not least a recent report by the UK Carbon Trust, which concludes that none of the energy intensive sectors in question[16] has any change

[15] Christian Azar (2005), 'Post-Kyoto Climate Policy Targets: Costs and Competitiveness Implications', *Climate Policy* (Special Issue on post-2012 Policy), forthcoming.

[16] '***Electricity***, representing a large proportion of EU emissions and widely considered to be the key sector with unique characteristics, generally not exposed to international competition and seen by many as a possible winner from the EU ETS; ***Cement manufacture***, a highly energy intensive sector with some degree of international/country-to-country competition; ***Paper*** (newsprint) – part of the pulp and paper industry, a highly international subsector with material energy costs; ***Steel manufacture***, a highly energy-intensive sector with strong but differentiated international competition; ***Aluminium*** (smelting) – a sector not part of the EU ETS but unusually dependent upon electricity, and a fully global commodity market.'[Carbon Trust (2005):p.7]

in the number of firms operating, and that they all, apart from aluminium smelting, are likely to make windfall carbon profits, some of them, particularly cement and steel, significant (steel +17 percent, cement +25 percent). In short, the first step in dealing with the fear of 'carbon leakage' has to be to ascertain in depth for each sector which feels threatened whether the fear is justified. And, if it turns out that it is, then it will be useful to remember – given the political realities about extending Kyoto-style targets to large developing country emitters, or even to the USA – that there are other ways to address the competitiveness issues than having these countries take on emission targets.[17] One option recently advocated was based on an example from the world trade in textiles, with its recent abolition of import quotas.[18] The challenge to the imagination will be to integrate these ways into the post-2012 debate to overcome those competitiveness concerns that turn out to be justified.

1.5 The Montreal Mitigation Message

In his closing remarks, Conference President Dion gave the following assessment of the achievements of the preceding two weeks:

> Now that we adopted the Marrakech Accords, including the compliance regime, ladies and gentlemen, *Kyoto is fully implemented, it is up and running*! Now that the Clean Development Mechanism has been strengthened, streamlined, and better funded, we will be able to handle the increasing demand for project approvals. Thanks to our work these last two weeks, the CDM will become one of the best instruments for North-South solidarity and for our joint fight to protect the climate and promote sustainable development everywhere on this planet. In addition, the launch of the Joint Implementation supervisory committee and its operations opens new business opportunities and brings new players to the emerging carbon market.
>
> We approved a programme of work on adaptation, responding to the urgent need to better address the impacts of climate change. Now we will implement this programme of work for adaptation and improve knowledge and information exchange on this critical issue. We have also agreed on a way forward on the Adaptation Fund which is critical for helping to meet adaptation needs in developing countries.
>
> This Conference has recognised the fundamental role of technology, both for mitigation and adaptation to climate change. We have begun consideration of promising new technologies, such as carbon capture and storage.
>
> We have successfully initiated discussions on commitments of industrialised countries in the period beyond 2012. This sends a strong signal to the carbon market and creates incentives for long-term investments in innovative climate-friendly technologies. Under Article 3.9 of the Kyoto Protocol, we will be meeting in May of 2006 to advance the discussion by Parties on Annex I commitments post 2012. Finally, we have achieved what many claimed was unattainable, a decision launching a dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention.
>
> This represents a major victory for the global community, now national governments will have the forum to exchange experiences and analyse strategic approaches and to free our imaginations to find further innovative solutions that I know we are capable of.

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[17] Indeed, the only emission targets that might be acceptable to China and India, namely those based on equal per capita allocations, would give these countries a significant amount of surplus permits, which, depending on how they were allocated domestically, might even aggravate the competitiveness issue.

[18] Benito Müller and Anju Sharma, 'Trade tactic could unlock climate negotiations,' *SciDev.Net*, 17 June 2005, http://www.scidev.net/Opinions/index.cfm?fuseaction=readOpinions&itemid=399&language=1

Undoubtedly, it was the agreement on how to continue the global effort to combat climate change under the multilateral aegis of the United Nations that lifted the Montreal meeting over and above being 'merely' successful and made it an historic event. This success was in no small part due to the indefatigable efforts before and during the meeting of the conference president, Stéphane Dion. And, at a press conference immediately after the closing of the conference, Dion also formulated arguably the key message from Montreal, in answer to a question as to why a second phase of Kyoto should be seen as essential:

> It is essential because if you are an investor you will not invest in a system that risks disappearing in 2012. This is why they had to be given a message in Montreal. And I am very happy that we have given them the right message [namely:] The carbon market is here to stay![19]

Indeed, it does not matter too much at this stage what the post-2012 commitments for Kyoto Parties will exactly turn out to be, whether they will conform to the 15 to 30 percent (of 1990 levels) 2020 reduction aim of the EU.[20] What does matter is that those countries that have embraced the mandatory cap-and-trade regime of the Kyoto Protocol have decided to send the message to their economies that mandatory, tightening caps on carbon are here to remain.

This matters because of the role of these countries in the global economy: being industrialised countries, they are part of the global economic motor, which not only consumes the majority of resources and emits the majority of emissions, but also carries out most of the world's (technological) research and development, essential in any effort to combat global climate change. Being responsible for the majority of emissions, industrialised countries clearly are a relevant part of the problem, carrying out the majority of global research and development, they are also a key component of the solution, particularly to the global mitigation problem: the technologies developed and adopted in industrialised countries will have a crucial impact on emissions all over the world ('technology spill-over').

Given the failure of voluntary approaches – such as the one attempted originally under the Framework Convention ('return to 1990 levels by 2000') – it thus stands to reason that the only way in which the global economic engine of the industrialised world can be overhauled is through a mandatory regime, such as the one prescribed by the Kyoto Protocol.

The problem is, of course, that one key component of this global economic engine, the United States of America – having repudiated the Kyoto Protocol, and rejected all mandatory (multilateral) approaches as a matter of principle – completely disagrees with this reasoning. As this does have the potential to seriously undermine the efforts of the Kyoto parties – not least due to competitiveness concerns – it is important to look in somewhat more detail at the role of the USA in order to judge the outcomes of the Montreal meeting.

[19] Translated from the original French by the author.
[20] EU High-level statement, 7 December 2005

1.6 *The Role of the United States*

At Montreal, the United States delegation found itself pushed centre stage, and it is important to understand the US position and its role in the negotiation in order to give a correct assessment of the Conference outcome.

Even before the three key negotiating issues – post-2012 Kyoto commitments, Kyoto revision, and future action under the Convention – were taken up as a 'package' in a high-level informal group, the US delegation took the rather dramatic decision to walk out of the discussions, 'expressing concerns about the nature and direction of the process'.[21] According to Charles Clover, Environment Editor of the London-based *Telegraph*,

> The sticking point for Mr Watson [the US lead negotiator] was the word 'dialogue' used in the Canadian chairman's text. He said this amounted to the opening of negotiations on a new treaty, which America had said it would not accept. He is reported to have said: 'If it walks like a duck, quacks like a duck, then it is a duck,' before stalking out.[22]

However, the informal group continued into the early hours of the morning of 9 December, and agreed, in the absence of the US delegation, to a draft decision on a dialogue on long-term action under the Convention (see Section 1.3). Later that morning, the delegation returned to the informal group discussions with a counter proposal, 'presented as a "take it or leave it" offer, based on Dion's text, which strengthened references to technology and stated that the process should be "non-binding" and "not open any negotiations leading to new commitments."'[23,24,25]

While the dramatic walk-out staged by the US delegation may have taken some delegates by surprise, its position was hardly surprising. It has been the formal position of the US government that they would not review their climate change policy before 2012 ever since they adopted their own alternative to the Kyoto Process in 2001. It was also clear at least since the Ottawa Ministerial in October 2005 that the USA would not be participating in any UN dialogue on climate change, and was willing, as Harlan Watson allegedly put it on that occasion, 'to take the heat'.

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[21] ENB Summary

[22] 'US out in the cold at world climate talks', Charles Clover, Environment Editor in Montreal, *The Telegraph*,10 December 2005, www.telegraph.co.uk

[23] ENB Summary

[24] 'US delegates had walked out of the UN climate change conference in Montreal. But they later returned and agreed to sign up to non-binding talks on long-term measures to tackle global warming. It appears the move came after the British Government made a call to the White House. Environment Secretary Margaret Beckett said there were "conversations to and fro between London and Washington … Once they saw what had been agreed overnight they realised that actually what we had all been telling them right the way through, which is that there was a goodwill on the part of the negotiators of the world to re-engage the United States constructively, they looked at the text, they saw that was true." They then suggested some other minor amendments that would make it more comfortable for them and that is why, in the end, we got agreement."'[Call 'saved climate change deal' © Copyright Press Association Ltd 2005, http://news.scotsman.com/latest.cfm?id=2386052005]

[25] 'The United States did not engage on the text until the final day, then agreed with only minor revisions, such as substituting "market-based opportunities" for "market-based mechanisms" and noting in the preamble that "there is a diversity of approaches to address climate change".'
[http://www.pewclimate.org/what_s_being_done/in_the_world/cop11/index.cfm]

The position of the current White House on climate change in general, and on the relevant United Nations efforts, in particular, has indeed been remarkably unchanging over the years. For one, it has been characterised by a scepticism about the science of climate change, or at least about the connection between man-made climate change and climate related adverse impacts: Harlan Watson reportedly told the Associated Press in an interview that the Bush administration does not blame global warming or climate change for extreme weather – including the hurricanes that ravaged the Gulf Coast states and much of the Caribbean and Yucatan Peninsula.[26]

On the policy side, the Bush administration's approach to international collaboration on climate change is based on two corner stones: *technology*, and *voluntary international partnerships*. The US delegation went to great lengths in stressing this, and indeed the difference of their approach. In her high-level opening statement in Montreal, Paula Dobriansky (US Under-Secretary of State for Democracy and Global Affairs, and Head of US Delegation to COP 11) thus asserted that 'technology is the common currency. And partnerships focusing on diversified approaches are the best way forward.' Later she reiterated to a press conference that 'the best way forward is through different and diversified approaches.'

Yet caution is advised to interpret this as the White House's espousal of Chairman Mao's famous dictate to 'let a thousand flowers bloom, a hundred schools of thought contend.' There is at least some evidence that the approach is meant to be in competition with the UN-led effort that culminated in the Kyoto Protocol. Thus, according to an Associated Press article, White House spokeswoman Dana Perino contended 'if you only focus on debates about binding emissions caps, more specifically the Kyoto Protocol, then yes, we have a different view than the participants that have signed onto Kyoto. However, when you consider the real actions that will be needed to address the issue, there is no doubt that we are leading the world in a global and long-term effort.' She pointed out that 'the White House has reached voluntary, market-related climate agreements with nations that represent 80 percent of global greenhouse gas emissions.'[27] Paula Dobriansky, welcoming the (postponed) January launch of the US-led Asia-Pacific partnership, also stressed that it 'represents nearly half of the world's economy and population'.[28]

The aversion of the current US administration to the Kyoto Protocol is well known although it did reveal itself in some curious manifestations, such as an apparent attempt to restrict attendance of the Kyoto-track negotiations by members of the US Congressional delegation.[29] Arguably, however, this aversion is symptomatic of an issue that goes deeper –

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[26] 'Climate conferees hash out plans', 30 November 2005, CNN, © Associated Press, http://edition.cnn.com/2005/TECH/science/11/30/canada.climate.change.ap/index.html

[27] Associated Press, U.S. Isolated by Stance on Global Warming, 12.11.2005, 05:15 PM, http://www.forbes.com/home/feeds/ap/2005/12/11/ap2383657.html

[28] US High-level opening statement.

[29] 'The Kyoto protocol was never submitted to the Senate for ratification, and therefore the agreement does not bind the United States. Without being a party to the treaty, the US could not participate directly in this set of negotiations, but we could attend as observers. There were a few early disagreements in which the U.S. State Department sought to limit the ability of the U.S. Congressional Delegation to observe the negotiating sessions. Fortunately, this issue was resolved in favor of the Congressional Delegation, and I found these sessions to be among the most informative discussions of the entire session.'['From The Montreal Climate Change Negotiations', By Senator Susan M. Collins, Magic City Morning Star, 16 December 2005]

which is the role of the UN itself, in the eyes of the Bush administration. In its fifty-some years of existence, the UN has frequently been labelled as a 'talking shop'. Generally, this was meant as a criticism. But not so in the eyes of the present US administration, which would very much like the role of the UN to be restricted to being no more than a talking shop. Thus, the US administration is of the opinion that the role of the UN in the climate change context, if any, should *at most* be to provide 'a forum for the very active exchange of what countries are doing to address climate change, in the near term in the medium term and in the long term' but not for negotiations, which the Bush administration 'believe firmly … will not reap progress'.[30]

However, as is now widely acknowledged, US climate change efforts are no longer synonymous with the White House policy on climate change. There were a large number of US protagonists in Montreal who did not concur with the White House approach − most prominently, former US President Bill Clinton.

At an event outside of the Conference organised by the City of Montreal and the Sierra Club, Mr Clinton stated unequivocally that 'there is no longer any real doubt that climate change is real, accelerating and caused by human activities'.[31] As his main point, he stated that the view that the Kyoto Protocol would harm the US economy 'was just flat wrong, it was factually wrong, and we know from every passing year we get more and more objective data that if we had a serious disciplined effort to apply on a large scale existing clean energy and energy conservation technologies we could meet and surpass the Kyoto targets easily in a way that would strengthen not weaken our economy.'[32]

The key to meeting the climate change challenge, said Clinton, is 'by a serious commitment to a clean energy future. … We can create jobs out of wind energy, out of solar energy, out of bio fuels, out of hybrid engines… In America there is no telling how many jobs we could create if we just made a decision that in the rebuilding of New Orleans it would become America's first green city!'

Later, at a press conference with Canadian Prime Minister Paul Martin, Clinton put forward his view of how to deal with a USA that continues to reject national emission caps. He proposed engaging with sub-national actors on terms that focus on economic benefits – such as job creation – and that would achieve substantive emission reductions without being necessarily anathema to those who reject the target and timetable approach.

While it is unlikely, if only for chronological reasons, that Mr Clinton's remarks caused the US delegation to return to the Dion Dialogue negotiations as claimed in some news report,[33] it is true that the speech was warmly received, and widely reported in the USA. It is also true that there is a lot happening at the sub-national level which does not conform to the attitudes of the White House. Briefing to journalists in Washington on environmental trends for 2006,

[30] Dobriansky, press conference, 7 December 2005.
[31] All quotations from the Clinton address are transcribed by the author.
[32] On a somewhat more controversial note, Clinton also claimed that the other criticism of the Kyoto Protocol, namely that it did not include the major developing countries, was a fair criticism.
[33] 'After Mr Clinton's remarks − which were warmly received − the official US team appeared to shift its position. The US delegation appears to have been stung by negative coverage in the US media after it walked out in protest at Canadian attempts to get it to accept mandatory targets, as well as by Mr Clinton's strong comments, our correspondent says.'['Last-minute climate deals reached' BBC NEWS, 10 December 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/sci/tech/4515898.stm]

Jonathan Lash, president of the World Resources Institute predicted that the isolation of the US delegation at Montreal could well foreshadow a policy evolution in the USA, and that its position will change before the end of the first Kyoto commitment period in 2012.

His reasoning was based in part on a swing in public opinion as well as the increasing state-level activities. Almost four-fifths of Americans now believe that global warming is already happening and a majority believes that it is a major problem[34, 35]) and more than half (28) of the American states have climate action plans in place (see Figure 1). Shortly after the Montreal meeting, the Governors of seven north-eastern states announced their agreement on a 'Regional Greenhouse Gas Initiative' (RGGI), the first mandatory cap-and-trade regime in the USA.[36]

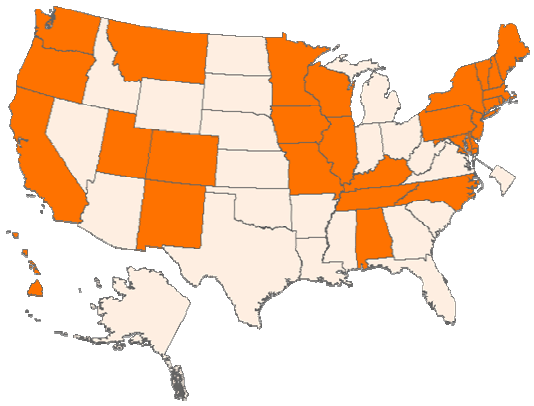

Figure 1: US States with climate action plans
(in orange, map source: WRI CAIT-US)

The most interesting aspect of the RGGI in the context of engaging the USA in the UN climate change efforts is that it allows a (limited) application of flexibilities other than emissions trading. In particular, it envisages 'emission offsets,' i.e. project-based emission reductions outside the sectors covered by the RGGI trading scheme.[37] These offsets are of particular interest due to the provision that, should the price of emissions surpass US$10/ton, project offsets will be allowed from 'outside the U.S. as well as allowances from the EU Emissions Trading Scheme and the Kyoto Protocol's Clean Development Mechanism'.[38]

Given that any prospective national cap-and-trade regime is likely to evolve from such regional prototypes, such an integration of the prototypes with the international efforts is crucial in the endeavour to eventually re-engage the USA meaningfully in the UN-led international climate change regime. It is therefore crucial that these integration opportunities be reciprocated by the potential international partners, such as the EU ETS and the CDM that they themselves should, as far as possible, recognise reductions carried out under US prototype schemes such as this Regional Greenhouse Gas Initiative.

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[34] FOX News Poll: Global Warming, 10 November 2005.

[35] For a detailed analysis of US opinion polls on climate change up to 2005 see Thomas L. Brewer, 'U.S. Public Opinion on Climate Change Issues: Implications for Consensus-Building and Policymaking,' which appeared in the refereed journal *Climate Policy*, 4 (2005):359−76, and, in particular 'U.S. Public Opinion on Climate Change Issues: Update for 2005', available at http://faculty.msb.edu/brewert/documents/USPublicOpinionupdatefor2005.doc

[36] For more information on the RGGI, visit: www.rggi.org/index.htm

[37] 'Approved offset projects will initially include the capture of landfill methane from farming operations or from leaking natural gas infrastructure, the implementation of end-use natural gas or heating oil energy efficiency, afforestation, and the capture of sulfur hexafluoride (SF6) emissions from electricity transmission and distribution equipment. Other eligible offset types may be added in the future.' [http://www.pewclimate.org/]

[38] 'Q & A: Regional Greenhouse Gas Initiative' www.pewclimate.org/what_s_being_done/in_the_states/rggi/rggi.cfm

II. THE ADAPTATION TRACK

2.1 *The Issue*

On the second Monday of the Conference, just before the Ministers started to arrive for the High-level segment, Alister Doyle, Reuters' Environment Correspondent, published an article from Montreal suggesting that the world may have just witnessed the first displacement of people due to climate change:

> Rising seas have forced 100 people on a Pacific island to move to higher ground in what may be the first example of a village formally displaced because of modern global warming, a U.N. report said on Monday. In the Arctic, indigenous peoples in Shishmaref in Alaska and in Tuktoyaktuk in Canada were considering moving because of climate change, U.N. officials said.[39]

The theme of unavoided climate change impacts 'here and now' was also taken up by Paul Martin, the Canadian Prime Minister, in his opening address to the High-level segment of the Conference (7−9 December), which, for his forcefulness and frankness, was without doubt one of the highlights of the whole Conference.

> We no longer need to ask people to imagine its [climate change] effects, for now we can see them. You may, and I'm sure each of you has examples from your own part of the world. … Weather events are intensifying. Storms, forest fires and infestation are already testing our capacity to respond and to recover. As time goes on, these events will worsen. There will be an economic toll; there will be a human toll. …
>
> We cannot separate the collective from the sovereign interest. We need to accept that with our behaviour, with our actions, we affect one another in the planet we share. We are in this together. … The developed world cannot walk away from its responsibilities; it is as clear and simple as that. [40]

Many of the subsequent high-level statements, including that of Jamaica on behalf of G77 + China, also 'noted the high toll from recent extreme weather events'.[41] Not surprisingly, these statements came predominantly from developing countries, in particular from small island states, but not exclusively so: both 'Romania and Switzerland reported on the impact of extensive flooding in 2005.'[42] Other related issues underscored were the increasing frequency and intensity of climatic impacts, particularly in agriculture, food security and achieving sustainable development (Malawi and Lesotho), and the connection between increased sea surface temperature and hurricane intensity (Mauritius, on behalf of AOSIS, the Alliance of Small Island States).

Former US President Clinton again began his lunch-time address on the final day of the Conference by highlighting the clear and present danger of climate impacts. But while putting forward the intriguing idea of rebuilding New Orleans as America's first green city emphasising its job-creating potential, he failed to mention not only the toll which the disaster had placed on the inhabitants of the city – be it in human or financial terms (loss of

[39] 'Pacific islanders move to escape global warming' Alister Doyle, Environment Correspondent, Reuters, Monday 5 December 2005.
[40] Author's transcript.
[41] ENB, 8 December 2005.
[42] ENB 9 December 2005.

life, displacement, property loss) – but also the burden which such a rebuilding would impose in terms of adaptation measures alone.

Indeed, judging from a number of recent articles in the American press, the debate about the costs of adapting the city in its present location has clearly begun. As reported in a *Los Angeles Times* Editorial of 19 December:

> Donald Powell, President Bush's point man on Gulf Coast recovery, said the administration wanted an additional $1.5 billion to make the levee system 'better and stronger than it ever has been in the history of New Orleans'. That's on top of the $1.6 billion the administration had previously requested to restore the system essentially to its pre-Hurricane Katrina status. [However] the consensus among experts in the Gulf is that levees and other man-made barriers have dangerously undermined the coast's natural defences against hurricanes, such as its wetlands and barrier islands. Rebuilding those protections and restoring the mechanisms that used to replenish them is an enormous job, with cost estimates running from $14 billion to $32 billion.'[43]

John Schwarz of the *New York Times*, in turn, puts these figures into perspective: 'more than the $21 billion spent on New York City after 9/11, but less than the $57 billion to be spent on highway construction and maintenance in the recent federal transportation bill. […]. Given a large federal deficit and other demands for money, however, there is still no indication that Washington will pay the $32 billion or more for full protection.'[44]

But Schwarz concludes on a note of optimism by quoting Scott Angelle, Secretary of the Department of Natural Resources for Louisiana: The work ahead, Agnelle said, is daunting but certainly possible. 'We can fix anything that we focus on,' he said. 'we, as a people, and we, as Americans.'[45]

The problem is, of course, that not all countries have the option to allow themselves the luxury of such 'can-do' optimism. While it is notoriously difficult to transfer cost figures across the North-South divide – even if they pertain to adaptation costs and not to damages – one only needs to keep in mind that the 'full protection' figure for New Orleans amounts to 0.3 percent of the annual (2003) American GDP, while estimates for, say, protecting Tanzania's populated coast lines,[46] are almost 50 percent more than its total annual national income,[47] to see the problem in its enormity, if one chooses to look, that is!

It is therefore not surprising that the adequacy of adaptation funding and the way it is administered (by the 'financial mechanism') were at the heart of the negotiations both under the Convention and the Kyoto Protocol. What was rather more surprising was that during the opening of the High-level segment of the Conference

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[43] 'Protecting New Orleans', Editorial, *Los Angeles Times*, 19 December 2005.

[44] 'The huge expense of a safer New Orleans', John Schwartz, *International Herald Tribune*, 30 November 2005.

[45] 'The huge expense of a safer New Orleans', John Schwartz, International Herald Tribune, 30 November 2005.

[46] 'There was supposed to be $400m made available annually from all rich countries, starting in 2005, to cover all poor countries' costs of adaptation. Unfortunately it will cost more than 36 times that amount to protect just the populated coastline of Tanzania against sea-level rise.'['Our best is not enough: The pace of climate change talks is glacially slow. It's time for a global reality check', Andrew Simms, *The Guardian*, London, Tuesday 13 December 2005]

[47] US 2003 GDP: $10,882bn, Tanzania 2003 GDP: $10bn (Source: The World Bank. 2004. *World Development Indicators 2004*)

> Rafiq Ahmed Khan from Bangladesh, speaking on behalf of the least developed countries, called for 'immediate and adequate resources for adaptation', and broke new ground. Suggesting a shift from the politics of aid to one of obligation, or legal rights, he called for 'compensation for damages due to unavoidable adverse impacts of climate change', and said 'binding commitments', rather than voluntary contributions, would be needed to secure adequate funds.[48]

While not widely reported, it stands to reason that with the predicted increase of unavoided climate change impacts and damages, these calls are unlikely to fade away, and that it would ultimately be better for the international community to face them head-on, than to remain in a state of denial.

2.2 *What happened at Montreal?*

Most of the key negotiations concerning adaptation at the Montreal meeting were carried out by the COP under the agenda item on review of implementation of commitments and other provisions of the Convention. They involved consideration of several sub-items dealing with the financial mechanism, national communications, the development and transfer of technologies, capacity building, and implementation of Articles 4.8 and 4.9 on adverse effects, which included consideration of the five-year programme of work on adaptation and matters relating to least developed countries (LDCs). The key adaptation item discussed under the Kyoto negotiations (COP/MOP1) was the implementation of the Protocol's Adaptation Fund.

2.2.1 *Five-year Work Programme on Adaptation*

Negotiations on the implementation of the 'Buenos Aires Programme of Work on Adaptation and Response Measures' under Articles 4.8 and 4.9 of the Convention proceeded, as expected, along traditional lines. Those most vulnerable to adverse climate impacts, such as Tuvalu and the Cook Islands, pleaded for an action-oriented programme of work and for a 'learning-by-doing' approach, while the USA emphasised stocktaking, assessments, and the sharing of experiences. Saudi Arabia attempted to widen the meaning of 'adaptation' – a term traditionally used in the context of climate change impacts – to cover also impacts of 'response measures', i.e. potential revenue losses from fossil fuel, in particular in oil-exporting countries due to emission reduction measures in industrialised countries.

In the relevant decision,[49] taken on 9 December, the COP notes that 'adaptation to climate change and its adverse effects is of high priority for all countries and that developing countries, especially the least developed countries and small island developing States, are particularly vulnerable,' and adopts a five-year programme of work on impacts, vulnerability and adaptation to climate change.

As always, the decision was based on a compromise between the relevant positions and it is difficult to judge who managed to be more persuasive. Yet if one looks at the actions listed in the Scope of Work of the adopted programme,[50] one may be forgiven for thinking that the

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[48] 'Our best is not enough: The pace of climate change talks is glacially slow. It's time for a global reality check', Andrew Simms, *The Guardian*, 13 December 2005,

[49] FCCC/CP/2005/L.3

[50] **(a) Impacts and vulnerability:** (i) Promoting methodologies and tools for … assessments, …; (ii) Improving … access to and use of observational data …; (iii) Promoting the development of, access to, and use of information …; (iv) Promoting understanding of …; (v) Promoting the availability of information … and improving the integration of … information …;

focus of the programme is rather more on 'stocktaking, assessments, and the sharing of experiences' than on the concrete action that Kenya stressed in her opening address to the COP/MOP.

While this was hailed as a major achievement, the most important negotiations on adaptation-related issues both under the COP and the COP/MOP, had to do with funding − the guidance by the COP to the GEF as operating entity of its financial mechanism and operator of the Convention funds, and the implementation of the Kyoto Protocol Adaptation Fund.

2.2.2 *Financial Mechanism*: *The Role of the GEF* [51]

The Global Environmental Facility (GEF) serves as an operating entity of the financial mechanism of the UN Framework Convention on Climate Change (UNFCCC). As such, it 'provides new and additional grant and concessional funding' from the GEF Trust Fund. In addition, the GEF operates the Special Climate Change Fund and Least Developed Countries Fund of the UNFCCC and, in future, probably also the Adaptation Fund of the Kyoto Protocol.

As operating entity of its financial mechanism, the GEF 'climate change objectives are based on the guidance of the UNFCCC'. More precisely Article 11 of the Convention which defines the financial mechanism requires that the mechanism is to function under the guidance of and be accountable to the COP, which shall decide on its policies, programme priorities and eligibility criteria relating to the Convention. To be noted in this context is that according to the COP the GEF is '*an* entity entrusted with the operation of the financial mechanism'[52], and not '*the*' operational entity, as it is sometimes misleadingly referred to.

In accordance with the overall GEF mandate 'to provide incremental cost financing to generate global environmental benefits,' the relevant funding from the GEF Trust Fund is meant 'to achieve global environmental benefits in climate change. … The guidance to the GEF on adaptation calls for [the support of] adaptation activities in the context of national communications. More recently, the [GEF] Council has responded to guidance from COP7 and COP10 by approving resources for a Strategic Pilot on Adaptation (SPA), intended to provide support for adaptation activities in the various focal areas in which GEF works.'

The GEF Resource Allocation Framework RAF. The policy recommendations of the third replenishment of the GEF Trust Fund requested 'the GEF Secretariat to work with the Council to establish a system for allocating scarce GEF resources within and among focal areas with a view towards

- maximizing the impact of these resources on global environmental improvements and
- promoting sound environmental policies and practices worldwide.'[53]

(**b) Adaptation planning, measures and actions:** (i) Promoting the development and dissemination of methods and tools …; (ii) Collecting, analysing and disseminating information …; (iii) Promoting research …; (iv) Facilitating communication and cooperation …; (v) Promoting understanding and the development and dissemination of measures, methodologies and tools …;

[51] Unless otherwise indicated, quotations in this section are from 'The GEF Resource Allocation Framework', GEF/C.27/Inf.8/Rev.1, GEF Council November 8-10 2005.

[52] Decision 3/CP.4 (1998), emphasis added.

[53] GEF/C.20/4, Summary of Negotiations on the Third Replenishment of the GEF Trust Fund, Annex C, para. 16.

The GEF Council's endorsement of these recommendations in October 2002 led to the creation of a new Resource Allocation Framework (RAF) for the GEF Trust Fund, which was adopted at a special Council meeting in August 2005.

The GEF RAF involves two indices, aimed at 'measuring' countries' performance with respect to the two key targets, namely:

- a 'GEF Benefits Index (GBI): a measure of the potential of each country to generate global environmental benefits in a particular focal area; and [a]
- GEF Performance Index (GPI): a measure of each country's capacity, policies and practices relevant to a successful implementation of GEF programs and projects.'

A weighted product of these key indicators ($GBI^{0.8} \times GPI$) produces 'country scores' and the country allocation of funding under the RAF is essentially – i.e. up to certain final adjustments – proportional to these country scores. Unfortunately, there are a number of problems with the way in which these key indicators are constructed which make their envisaged application in the context of climate change funding highly questionable.

Problems with the key indices. Even if one accepts that the potential for successful implementation of GEF projects should be reflected in the amount that a country receives from the GEF Trust Fund – a premise by no means universally accepted! – it is rather curious that the index which is supposed to 'measure' this potential for *climate change projects* is largely (70%) based on the World Bank CPIA[54] 'evaluations of (i) the existence of supportive policies; and (ii) the capacity to implement and enforce policies' in areas that are *at best tangential to the climate change problem*.[55]

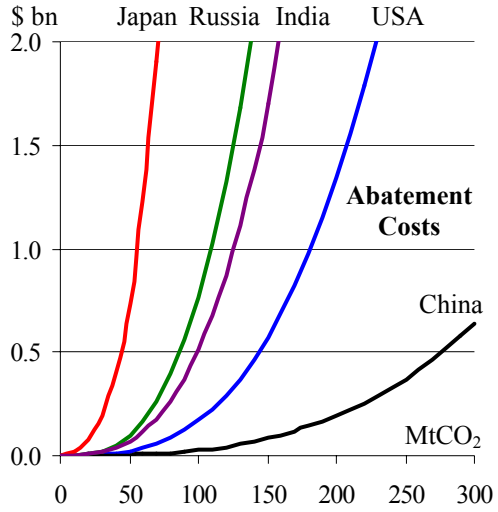
The GEF Climate Change Benefit Index (GBI_{CC}), in turn, is defined as the product of a country's carbon dioxide emissions in 2000,[56] and a 'Carbon Intensity Adjustment Factor' (CIAF) computed as the ratio of the carbon intensity in 1990 to the carbon intensity in 2000, i.e: $GBI_{CC} = CO2(2000) \times CIAF$, with $CIAF = \frac{CO2(1990)}{GDP(1990)} : \frac{CO2(2000)}{GDP(2000)}$.

The GEF RAF information paper gives the following reasons for adopting such an index:

> Baseline GHG emission levels provide a broad measure of the scale of the mitigation potential of a country, while avoiding perverse incentives that result from using current level emissions. …. Including baseline GHG emission levels in the GBI results in a larger GEF Benefit Index for larger emitters. There are two reasons for using GHG emission levels. First, in general, countries with larger emissions have lower abatement costs, which increase less rapidly with abatement than those in countries with smaller emissions. Second, projects are likely to have greater demonstration and learning effects in high emitting countries than in countries with smaller levels of emissions. … There are two reasons for using change in carbon intensity. First, reducing emissions will be less costly in countries that have already demonstrated willingness and/or ability to reduce carbon intensity. Second, it rewards countries that have reduced their carbon intensity levels.

[54] Country Policy Institution Assessment Indicator.
[55] Air pollution, water pollution, solid and hazardous waste, ecosystem conservation and biodiversity protection, marine and coastal resources, freshwater resources and commercial natural resources.
[56] 'In keeping with the current programs and strategies of the GEF, only carbon emissions from fossil fuel combustion and cement and the emission of other GHG gases are included in the baseline GHG emissions.'

The claim that country-wide emission levels provide 'a broad measure of the scale of the mitigation potential of a country' could be interpreted as stating no more than the obvious: the more there is, the more there is to reduce. Yet, this clearly is not the intended reading. The claim, in light of the reasoning put forward, is rather meant to be about the cost-effectiveness of abatements: the larger the emissions of a country, the more emissions can be abated *for the same amount of money*. The problem is that this reading is by no means as self-evident as the first one: after all, it would be surprising if factors such as the structure of the economy and the level of development did not have an influence on the abatement potential in this second sense.



As a matter of fact, the claim that 'in general, countries with larger emissions have lower abatement costs, which increase less rapidly with abatement than those in countries with smaller emissions' *is simply not true*, at least if one takes into account the cost estimates by the Massachusetts Institute of Technology[57] MIT (see Figure 2). Consider the case of the USA (with 5.7GtCO_2 in 2000[58]), China (3.2Gt), Russia (1.5Gt), Japan (1.2Gt) and India (1.0Gt). Even though the USA has the largest emissions, it clearly does not have the cheapest abatement costs in the group. And even if one were to focus only on the GEF eligible countries by removing the USA and Japan, the situation persists: abatement in Russia is more expensive than in India, even though it emits one and a half times as much.

The inclusion of carbon intensity growth figures in the allocation formula turns out to be equally problematic, if not more so. For one, it has been pointed out that they are liable to vary in magnitude purely because of accountancy choices, such as the choice of base year.[59] Second, the MIT cost estimates also show that reducing emissions is actually not always less costly in countries that have managed to decrease their emission intensity:

Japan, which managed to reduce its carbon intensity by 2 per cent over the 1990s, is nonetheless much more expensive to abate than India, which kept its intensity level, or Russia, which *increased* it by 8 percent.

To conclude, the reasons put forward by the GEF for 'grandfathering' its funds to large and fast growing emitters – in the sense that the more one emits and the faster one grows, the more funding one gets:

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[57] A. Denny Ellerman and Annelene Decaux , 'Analysis of Post-Kyoto CO2 Emissions Trading Using Marginal Abatement Curves,' Massachusetts Institute of Technology, Joint Program on the Science and Policy of Global Change, Report #40, October 1998.

[58] International Energy Agency (IEA), 2004. *CO2 Emissions from Fossil Fuel Combustion* (2003 Edition). Electronic database available online at: http://data.iea.org/ieastore/default.asp. Paris: Organization for Economic Cooperation and Development (OECD).

[59] Benito Müller, Georg Müller-Fürstenberger, 'Price-related sensitivities of greenhouse gas intensity targets', *Climate Policy*, 3S2 (2003):59−74

$$GBI_{CC} = CO2(2000) \times \left(\frac{CO2(1990)}{GDP(1990)} : \frac{CO2(2000)}{GDP(2000)} \right) = CO2(1990) \times \frac{GDP(2000)}{GDP(1990)}$$

– are not valid (given the MIT cost-estimates), and hence are unlikely to lead to the most cost effective use of GEF funds. In other words, it is unlikely that the new GEF allocation formula for the climate change focal area will actually produce the maximum global environmental impact as demanded in the policy recommendations of the third replenishment of the GEF Trust Fund.

However, the issue in the present context is not so much whether the RAF will be able to deliver on the GEF's own goals with regards to the use of the Trust Fund, but rather whether the RAF would be a suitable mechanism to disburse UNFCCC moneys.

The GEF and UNFCCC funding. When it comes to UNFCCC funding and to operating its funds – 'the Special Climate Change Fund (SCCF) and the Least Developed Countries Fund (LDCF), which support projects designed to meet countries adaptation needs' – the Convention and its principles must clearly take precedence over GEF mandate and criteria. The key principle, in this context, is listed in Article 3.1 of the Convention:

> The Parties should protect the climate system for the benefit of present and future generations of humankind, ***on the basis of equity*** and ***in accordance with their common but differentiated responsibilities*** and ***respective capabilities***. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

The point to keep in mind in this context is not just that, even if the figures used in constructing the GBI for climate change were suitable measures for the 'responsibility' and 'capability' referred to in Article 3.1 – and there are reasons to believe they are not[60] – the RAF would reward in exact opposition to what one would expect under a scheme following this Convention principle: while under the Convention one would expect greater emissions and thus greater responsibility leading to less funding, the GEF RAF would give more. And the same for capabilities, where – in contrast to the RAF allocation – one would expect less funding for increased capability (wealth) under Article 3.1. In other words, the resource allocation formula devised for GEF climate change funding under the new GEF Resource Allocation Framework is *not* consistent with the overarching guiding principle of the Convention, and thus *cannot be admissible as a mechanism for distributing either Convention or Kyoto Protocol funding*.

Additional Guidance to the GEF as Operating Entity of the Financial Mechanism. Given these problems, the COP decided[61] to request 'the GEF to include in its report to the COP information on the initial application of the RAF to resources allocated in the fourth replenishment and how the RAF is likely to affect funding available to developing countries for the implementation of their commitments under the Convention.'[62] Given the importance of funding matters, in general, and of this discrepancy, in particular, it was not surprising that

[60] It stands to reason, that (moral) responsibility cannot adequately be captured without relativising the measures in question to per capita terms. In other words, large country-wide emissions are not necessarily synonymous with large (moral/legal) responsibility, which has to be measured in per capita terms.
[61] FCCC/SBI/2005/L.29.
[62] ENB Summary.

the matter also led to a debate in the COP/MOP negotiations concerning the Adaptation Fund.

2.2.3 *Adaptation Fund: Involving the Private Sector in Adaptation Funding*

Who should operate the fund? The negotiations on implementing the Kyoto Protocol Adaptation Fund essentially focused on two questions: the issue of (co-) financing and the issue of who is to operate the Fund on behalf of the COP/MOP. Given the problems with the GEF's Resource Allocation Framework highlighted above, it will not be surprising that there was no consensus on the suitability of the GEF as Fund operator. While 'Japan stressed that the GEF should be the operating entity for the Adaptation Fund'[63] the 'G-77/CHINA emphasized that for developing countries, having the GEF and World Bank acting as trustee would not be the best option for managing the Fund'[64] and 'noted the need for an MOU between the COP-MOP and the operating entity of the financial mechanism of the Convention and the need to avoid the 'onerous operational policies on eligibility criteria,' including 'incremental costs',[65] while Tuvalu and Bangladesh stressed that 'COP/MOP should exercise its authority in administrating the Fund'.[66]

Moreover, during the opening presentations to the high-level statement, 'Jamaica, on behalf of the G-77/China, expressed concern at the GEF Resource Allocation Framework,'[67] and 'Namibia noted the cumbersome role of the GEF and called for an innovative approach to manage the Adaptation Fund.'[68]

In the course of the negotiations, the EU suggested the use of a sliding scale to measure additional costs, but since there was clearly no consensus on this issue either, the COP/MOP finally decided to postpone a decision on these issues to its next session in November 2006, and requested, at the same time, 'the submission of views on policies, programme priorities and eligibility criteria for consideration at SBI 24, and guidance on a workshop on further guidance for operation of the Fund before SBI 24.[15−26 May 2006]'[69]

To understand the strength of feeling involved on the part of many of the developing country Parties, particularly with respect to their doubts about the GEF and its Resource Allocation Framework, one needs to keep in mind a fundamental difference in the way climate change funding has been regarded across the North/South divide. Traditionally, climate change funding under the UN regime has been bi-lateral, through donor agencies which were often seen as treating the disbursement of these moneys as akin to their 'core business,' namely disbursing Official Development Assistance (ODA).

Whether accurate or not, this perception, by itself, did create resentment among some recipient countries, who felt that according to the principle of common but differentiated responsibilities, the disbursement of funds under the Convention should be a matter of right and not of charity, and that – unlike in the case of ODA, or the GEF Trust Fund money – they should have equal say in determining the disbursement rules for these funds.

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[63] ENB Summary.
[64] ENB 30 November 2005.
[65] ENB 3 December 2005.
[66] ENB 30 November 2005.
[67] ENB Summary.
[68] ENB 8 December 2005.
[69] ENB Summary.

Having largely resigned themselves to the political realities of bilateral funding,[70] the long-standing reservations of many developing countries concerning the GEF as operator of the UN climate change funds was rekindled by the prospect that the same perceived procedural inequities would be adopted for the Adaptation Fund, even though that fund was to be replenished mainly through market contributions and not bilateral donations, and what is more, through a 2 percent levy on the assets – the Certified Emission Reductions (CERs) – generated in developing countries by the Clean Development Mechanism (CDM).

The prospect that the disbursement of contributions generated in their own territories – i.e. the revenue from the levy on CERs used to replenish the Adaptation Fund – should be governed by institutions and decision-making processes from which they feel largely excluded, appeared to be a step too far for many of the developing country protagonists involved in the negotiations. And it is doubtful that progress in implementing this Fund can be made without taking these reservations fully into account.

Who should pay? As mentioned, the key difference between the Kyoto Protocol Adaptation Fund and the Convention Fund is that the Adaptation Fund is principally replenished through a levy on certain private sector transactions. This is of considerable importance, as it has become more and more clear that public funding – whether for the two Convention funds or even ODA – will not be able to provide the sort of money needed to carry out the required adaptation measures, let alone to deal with the consequences of unavoided impacts.

The only way in which sufficient funding might be raised for these purposes is by involving the private sector. And while there may be a number of ways of doing so, given that most of the activities to be funded have the nature of public goods, the most tried and tested way is some form of taxation, duty, and levy. The key question therefore is: what exactly should be taxed?

The fact that the levy used to replenish the Adaptation Fund is applied only to CDM transactions proved to be controversial for a number of reasons. For one, it means that the Fund is to be essentially replenished by developing country contributions, at least in the sense that the contributions are based on assets generated in developing countries. It also means that the CDM – already disadvantaged due to higher transaction costs than the other Kyoto mechanisms – is made even less attractive due to the asymmetric application of this adaptation levy.

This, naturally, has not gone unnoticed. Indeed, at Montreal, developing countries, led by Brazil, suggested the levy be extended to cover the other two Kyoto mechanisms – Joint Implementation and international emissions trading – both dealing with transactions between industrialised countries. 'The proposal prompted what one participant called "a tit-for-tat response" from the Russian Federation aimed at increasing the levy on CDM. … "It's like a competition between JI and CDM, with each side trying to make their mechanism more attractive to investors," alleged one expert.'[71]

Russia's position was, of course, not surprising, as they clearly saw the Adaptation Fund CDM levy for what it entails: a competitive advantage for Joint Implementation, particularly

[70] 'From total rejection, developing countries have moved to a slow acceptance of GEF, faced with he realisation that it is the only form of environmental funding available'[Agarwal *et al.* (1999):314].
[71] ENB 6 December 2005.

in Russia, one of the countries with the largest JI potential. And yet, given the sums of money probably needed to deal with the adaptation needs – if only of the poorest and most vulnerable countries – it seems unlikely that the proposed levy on the CDM alone will be able to raise the required sums. Something else will have to be taxed, but what, if not the other Kyoto mechanism?

However, the question really has to be why there should be a levy, and thus a financial disincentive, on any mitigation activity at all? Would it not seem more rational to put such a levy on emitting greenhouse gases rather than on activities to reduce them? One way of doing so could be to put an adaptation levy on permits either grandfathered or auctioned in emission cap-and-trade regimes. Unlike levies on mitigation activities, this would give an additional incentive to reduce emissions, as well as correctly correlate adaptation funding with emissions: the more emissions, the more available funding for adaptation.

Having said this, one must also keep in mind that such levies on permits allocated to domestic sources are likely to be interpreted as belonging to the permit issuing country, as part of its taxation system, and as such it might again be politically difficult – as in the case of ODA – to justify significant transfers abroad.[72] Fortunately, there are other types of emissions which cannot be as readily claimed by countries and which have precisely for this reason remained outside the UN mitigation regime, namely the emissions from the so-called 'bunker fuels', in particular, emissions from (international) air transport. The potential for adaptation funding by way of levying these emissions should – it is argued below (Section 3.2.3) – be a key theme of the Dion Dialogue.

[72] The author would like to thank Liza Leclerc for this point.

III. THE DION DIALOGUE

As mentioned earlier,[73] Stéphane Dion managed to initiate a dialogue on future action under the Framework Convention that includes the United States, who had entered the negotiations categorically refusing any talk of future multilateral action. While the dialogue is restricted to being 'an open and non-binding exchange of views, information and ideas in support of enhanced implementation of the Convention, [that] will not open any negotiations leading to new commitments,'[74] the fact that there is going to be any discussion of future action over and above the mandated post-2012 Kyoto negotiations must be judged a very positive development. The purpose of the dialogue is to analyse strategic approaches for long-term cooperative action in a number of areas, including sustainable advancement of development goals, action on adaptation, and realising the potential of technology and of market-based opportunities.

Although 'adaptation' appears as just one of the items in the list of potential dialogue areas, it would help, particularly in reaching out to developing countries, if the dialogue were divided into an adaptation strand and a mitigation strand, both given equal importance and prominence.

3.1 *The Adaptation Strand*: *Ensuring adequate funds through private sector involvement*

Apart from the general constraints about supporting the 'enhanced implementation of the Convention,' and not opening negotiations 'leading to new commitments,' the remit of the Dion dialogue on adaptation is wide open. It is meant to be about *strategic approaches for long-term cooperative action on adaptation*.

Given the somewhat piece-meal approach to adaptation – exemplified not least by *the ad hoc* funding for adaptation activities through three different funds – that has thus far prevailed in the UN climate change regime, there can be little doubt that some discussion on a more strategic approach, particularly to adaptation funding, is highly desirable. The question is what sort of cooperative action one would sensibly wish to address in such a dialogue, and what type of approaches would be 'strategic' in this context.

Unfortunately, this cannot be the place to delve into these questions beyond some generalities, such as the fact that it would probably not be useful to discuss activities that can be carried out perfectly well on a purely bilateral basis. Or, for that matter, that some properly conceived Legal Instrument for Adaptation would be one way of achieving such a strategic approach.

One thing that can reasonably be assumed is that any strategic approach will have to address the issue of how to fund the envisaged cooperative actions on adaptation. It thus stands to reason that the adaptation funding modalities mentioned in Section 2.2 will have to be at the centre of any such strategic approach. In other words, if there is any adaptation topic that should be discussed in the dialogue, it would have to be how to transform the current funding of adaptation activities to be adequate for the projected demands, specifically as mentioned earlier by harnessing private sector money.

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[73] Section 1.3.

[74] 'Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention' -/CP.11.

3.2 *The Mitigation Strand*: *The need to engage large non-Annex B emitters*

Australian Environment Minister Ian Campbell 'reinforced that Australia wanted to see developing countries, such as India and China, included in emission-reduction initiatives. "Twenty-five countries account for approximately 80 per cent of global greenhouse gas emissions. The reality is that we can only make meaningful global greenhouse gas reductions if effective action is taken by all of the major emitting countries."'[75]

There is a need to engage with the large emitters who are not bound by Kyoto targets in order to find ways to address their emissions, but it is unlikely that this could be achieved in the way recently envisaged by UK Prime Minister Tony Blair, who predicted that the post-2012 Kyoto track negotiations would lead to binding commitments by all major economies.[76] For one, the top 25 large emitters not bound by Kyoto targets – *pace* Mr Campbell – are not just to be found among developing countries. They include Australia and, obviously, the largest emitter of them all, the USA, who are highly unlikely to embrace binding international targets.

3.2.1 ***Engaging the USA.*** The Bush administration's attitude to the UN binding target approach was succinctly summarised by Harlan Watson, lead US negotiator, in reply to the question in a BBC interview at the conclusion of the Conference whether the participation of the USA in the UNFCCC dialogue would mean that the USA would eventually be part of an international treaty with mandatory targets: 'No, no, no, no, not that! You know our position very well on that!'

Having been asked at his final press conference what the USA is really agreeing to with their agreement to participate in the dialogue, conference president Dion answered that 'discussions may lead to ideas that *will be negotiated in other forums than this one*. That is the way in which it will work. It may convince Canada, the United States and other countries to start a new initiative that we would not have had otherwise. … the way we are working now, before this conference at least, was certainly not enough, … we need to not miss an opportunity to work together, and to stop the blame game.'[77]

Given that the overall aim of the Dialogue was meant to be to 'address climate change by enhancing implementation of the Convention',[78] it may seem curious that the president of the COP considers its purpose to be to furnish ideas for negotiations outside the UNFCCC. But as concerns the engagement of the present US administration, this is clearly realistic, for it would seem to be the best that could be achieved.

However, given the above-mentioned overall aim of the Dialogue, one might well ask oneself whether this sort of brainstorming for the benefit of 'other forums' would indeed be a legitimate use of the time allocated for the Dialogue. Would it not be more appropriate, to leave the issue of 'US engagement' to the debate of how to integrate sub-national entities

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[75] 'Canada appeals to US, Australia on Kyoto', *The Age*, December 9, 2005, http://www.theage.com.au

[76] 'British Prime Minister Tony Blair, meanwhile, said Tuesday he believed the United States would eventually come on board with mandatory emissions caps. "I believe there will be a binding international agreement to succeed Kyoto when the Protocol expires in 2012 that will include all major economies," Blair said in a review of British energy policy.' ['Climate conferees hash out plans' CNN (© Associated Press) http://edition.cnn.com/2005/TECH/science/11/30/ canada.climate.change.ap/index.html]

[77] Press Conference, Saturday 10 December 06:45h, author's transcription and emphasis.

[78] Title of the COP11 Decision on the Dialogue.

into the post-2012 Kyoto regime, and to use the limited time of the Dialogue more fruitfully to discuss how one could *equitably* address the emissions of large developing country emitters?

3.2.2 *Engaging Large Developing Country Emitters*

In the course of the opening high-level statements, Tanzania and Namibia somewhat surprisingly 'suggested engaging developing countries on a voluntary basis, combined with enforceable commitments by others'.[79]

One of the reasons for this may well have been a general frustration on the part of these countries that developing country achievements will continue to go largely unnoticed unless they are tied to some sort of target figure. Indeed – contrary to how they have at times been portrayed[80] – the reason why developing countries have hitherto refused to adopt legally binding emission reduction targets is not simply their being unreformed polluters, delighting in emitting to their heart's content.

The fact is that many developing countries – such as Brazil, which has avoided 0.6GtCO_2 and in the process saved over $100m with an aggressive sugar cane biofuel programme[81] – have made considerable progress in addressing their greenhouse gas emissions. And many use technologies that are at least as clean as the ones employed by their main industrialised competitors: average fuel economy of the Chinese transport sector (measured in miles per gallon), for example, has improved by almost 20 percent over the last three years and is at present 40 percent better than the average fuel economy of American vehicles, which remained essentially unchanged over the same period.[82] Moreover, Brazilian cement production has been as 'clean' as cement produced in Germany, Japan, or the USA, namely 0.5tCO_2/t cement, and only marginally cleaner than Indian (0.51tCO_2) or Chinese (0.53tCO_2) production.[83]

The prime reason why most developing countries have hitherto forcefully rejected the idea of taking on emission reduction targets – as witnessed again in the statement by the Indian Environment Minister that 'calls for developing countries to take up greenhouse abatement commitments in some guise or other are misplaced'[84] – is equity, or rather inequity, for

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[79] ENB, 8 Dec. 2005.

[80] 'The Treaty [Kyoto Protocol] is also patently unfair because it exempts 77 percent of all countries from any obligations. China, India, Mexico, and Brazil, just to name a few, are completely unfettered by the Treaty – these countries already have the competitive advantages of cheap labor, lower production costs, and lower environmental, health, and safety standards. If President Clinton has his way, now these countries will be free to develop and pollute all they want, while the U.S. economy goes into a deep freeze.'[David M. McIntosh, Chairman of the US House of Representatives Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, in his opening statement to the Subcommittee on 20 May 1998]

[81] WRI News Release, Washington, DC, December 14, 2005 − Jonathan Lash, President of the World Resources Institute, briefed journalists on environmental trends for 2006
http://climate.wri.org/newsrelease_text.cfm?NewsReleaseID=354

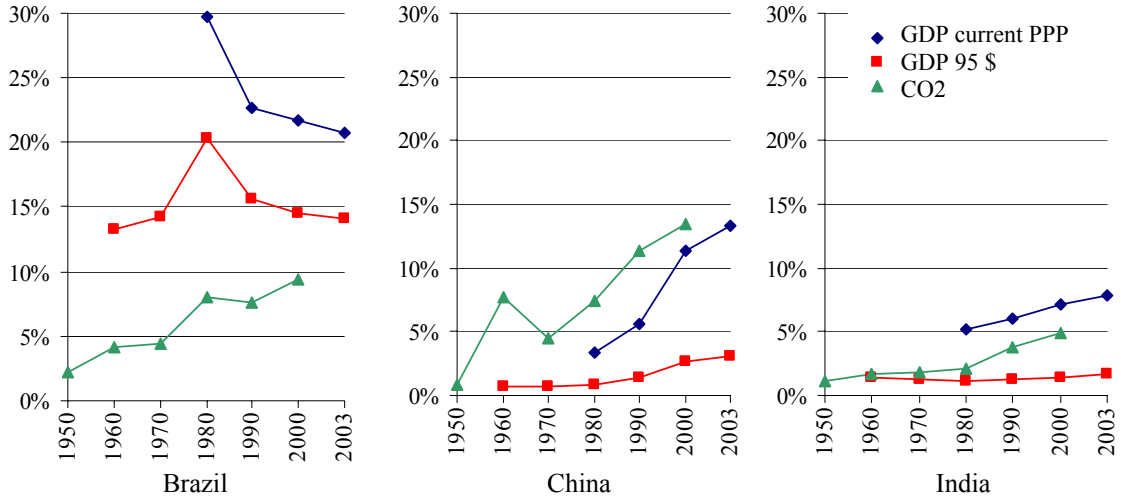
[82] Powerpoint presentation by Jonathan Lash, ibid.: 2005 (2002) fuel economy comparison: China 34 MPG (29 MPG), USA 24 MPG (24 MPG). MPG converted to CAFÉ Test cycle.

[83] 5-year (1986−90) average CO_2 intensity of cement production. Sources:
Cement production: http://unstats.un.org/unsd/cdbdemo/cdb_series_xrxx.asp?series_code=18060
CO2 emissions : http://cdiac.esd.ornl.gov/trends/emis/em_cont.htm

[84] 'Developing nations lined up to say rich countries could not expect the poor to give up burning coal, oil and gas − all exploited with no limits by rich nations as the locomotives of economic growth since the Industrial

most developing countries are keenly aware of the fact that in terms of moral responsibility for the problem, to be measured in per capita figures, many if not most of the industrialised countries, in particular the Kyoto-sceptics, are still far more responsible and indeed economically 'capable' than they themselves. As illustrated in Fig. 3, according to these per capita indicators, the USA, for example, is by and large over seven times more responsible and capable than even the 'large' developing country emitters Brazil, China, and India.

Fig. 3: Per Capita Indices, US = 100%



However, some of the conclusions drawn from these perfectly valid country comparisons have themselves drawn some criticism concerning their 'domestic consistency' as it were. For example, in the immediate wake of the Montreal meeting, Praful Bidwai – a well-known Indian journalist and commentator – attacked his government's refusal to adopt any emission reduction targets on the grounds of having low per capita emissions and a large number of people living in poverty.

> These arguments are utterly hypocritical. The low averages hide yawning gaps in consumption (and hence contributions to emissions) between the rich and the poor. The vast majority of Indians consume very little energy. However, India's burgeoning middle classes, comprising some 80 million people, have increasingly adopted Northern lifestyles. They buy a million cars a year, as well as six million two-wheelers, and even more air conditioners and refrigerators – numbers which are three to five times higher than five or seven years ago. The Indian government resists emission cuts primarily to protect the interests of this consumerist elite, but cites the poverty of the mass of its population as its excuse.[85]

This is by no means the first time this type of criticism has been raised, although it has usually been done by Northern commentators. And the reply from developing country protagonists has usually been that these criticisms concern matters of national sovereignty and are therefore not up for debate, particularly in international negotiations.

Revolution. "Calls for developing countries to take up greenhouse abatement commitments in some guise or other are misplaced," Indian Environment Minister Thiru Raja said, saying any brakes on emissions would jeopardize a fight against poverty.'['UN climate talks speed Third World investments' By Alister Doyle and Mary Milliken, Reuters, 8 December 2005]

[85] Praful Bidwai, 'ENVIRONMENT-INDIA: Changing Mind on Climate Change', Inter Press Service News Agency Saturday, 17 December 2005.

The point is that all these positions are at least partly justifiable. The fact that India, to keep with the example at hand, has indeed very low per capita emissions compared with any of the industrialised countries can indeed be used to justify that it should not be expected to take on an overall emission reduction target. Indeed, if one were to apply the one global allocation of emission permits that India has indicated it would accept as fair, namely the allocation in proportion to population size – on the grounds that every human being has an equal right to these permits – then it is most likely (depending on the overall size of the global cap) that India would not only not have to reduce emissions, but that it would be surplus allocation permits, due to the extremely low emissions of the vast majority of its inhabitants. Moreover, it stands to reason that from a purely legalistic point of view, the way in which these permits would be allocated domestically would indeed be a matter of national sovereignty, and thus not subject to legitimate outside expectations.

However, it is questionable whether certain types of domestic allocations would be acceptable from an equity point of view. The fact is that as the said 'per capita' allocation of national assigned amounts would have been argued for on egalitarian grounds – every person has equal rights – it would, indeed, be quite hypocritical – to follow Bidwai's criticism – if the Indian government failed make those of its subjects with emissions higher than the global allocation per person either reduce their emissions or buy permits to cover the excess amounts, by failing to introduce any domestic emission regime.

In short, while the legitimate absence of a country-wide emission reduction target may justify domestic inaction on legal grounds, it does not mean that there could not be certain domestic mitigation efforts for which there is a moral obligation, even in the absence of a country-wide target. What might legitimately follow from the absence of such a country-wide target is that such mitigation efforts should not put a financial burden on the country as a whole.

3.2.3 *Addressing 'Personal Luxury Emissions'*

Anil Agarwal famously introduced the distinction between 'luxury' and 'survival' emissions, and while, at the time, the distinction was mainly used to differentiate at the country level – with reference to per capita emission figures – he will have been aware of the fact that analogous arguments could be made concerning the situation within countries.[86] In the present context, it may be useful to 'personalise' or, if we wish, 'de-nationalise' these concepts altogether, i.e. to tie them exclusively to certain types of activities associated with emissions, regardless of on whose sovereign territory they occur. That is to say, it might be useful to redefine 'luxury emissions' not as emissions coming from a (certain kind of) country, but from a certain type of activity. Clearly, there are types of (consumption) activities which are luxuries, regardless of where they happen. Enjoying an aromatherapy massage in an air-conditioned five-star luxury spa is a luxury regardless of whether the spa is in Davos or Zanzibar, particularly if one is as costly as the other.

[86] Although, the way in which he sometimes presented the distinction, did give the impression that luxury emissions do only occur in richer countries: 'Many of the uses of energy in the richer countries are for purposes of luxury, and the emissions caused from such uses may be termed **luxury emissions**. … But the lower per capita emissions of developing countries are because a large number of poor people do not even have access to basic amenities such as electricity. They will need their share of ecological space to increase what could be termed **survival emissions**.'[Anil Agarwal, 'Climate Change: A Challenge To India's Economy', Centre for Science and Environment, Briefing Paper for Members of Parliament, 2000, http://www.cseindia.org/programme/geg/pdf/cse_briefing.pdf]

The idea of putting some sort of levy on 'luxury' activities for the global good is by no means new. In 1987, the World Commission on Environment and Development (WCED) – also known as the Brundtland Commission after its chair, the former Norwegian Prime Minister Gro Harlem Brundtland – proposed a special fund for the environment and 'called on international institutions to go beyond their traditional sources, and explore new sources for this fund. As voluntary contributions had proved to be unpredictable and short-term, WCED recommended 'automatic' sources, such as … revenue from international commons (charges on ocean fishing, sea-bed mining, parking charges of geostationary communications satellites); taxes on international trade (consumption taxes on luxury goods, taxes on specific traded commodities)".[87]

Not everybody will agree about what constitutes a 'luxury', and not all such luxuries are equally relevant to the problem of climate change. However, there is at least one type of activity, namely (international) air travel, which (i) is clearly relevant to the problem, (ii) is currently not covered by the international climate change regime, and (iii) does seem, on balance, to be closer to 'luxury' than to 'survival'.

Environmental Relevance. According to the IPCC's Special Report on *Aviation and the Global Atmosphere*,[88] aircraft in 1992 were responsible for about 2 percent of total anthropogenic carbon dioxide emissions or 13 percent of carbon dioxide emissions from all transportation sources. For the scenarios considered by the IPCC, the range of increase in carbon dioxide emissions to 2050 varies between 1.6 to 10 times this value. This means that the sector, if it were a country, would currently (2002) be number 9 in the ranking of the world's largest emitters, just after Canada and before Korea.[89] Given the recent fashion of identifying environmental relevance with being among the top 25 emitters, aviation emissions are hence undoubtedly relevant.

Financial Adequacy. Every percentage point levied on the carbon value of these emissions[90] would, at €20/tCO_2, generate €10.3bn,[91] amounting – according to IATA figures[92] – to €6.43 per passenger carried annually. In the absence of some technical analysis, it is not possible to estimate what percentage would be needed to have an effect on aircraft emissions, but it clearly would have to be at least in the tens of Euros on average per passenger, thus

[87] Anil Agarwal, Sunita Narain, and Anju Sharma, *Global Environmental Negotiations 1: Green Politics*, New Delhi: Centre for Science and Environment, 1999:315.

[88] 'Emissions of carbon dioxide by aircraft were 0.14 Gt C/year in 1992. This is about 2% of total anthropogenic carbon dioxide emissions in 1992 or about 13% of carbon dioxide emissions from all transportation sources. The range of scenarios considered here projects that aircraft emissions of carbon dioxide will continue to grow and by 2050 will be 0.23 to 1.45 Gt C/year. For the reference scenario (Fa1) this emission increases 3-fold by 2050 to 0.40 Gt C/year, or 3% of the projected total anthropogenic carbon dioxide emissions relative to the mid-range IPCC emission scenario (IS92a). For the range of scenarios, the range of increase in carbon dioxide emissions to 2050 would be 1.6 to 10 times the value in 1992.'[IPCC, *Aviation And The Global Atmosphere: Summary for Policymakers*, IPCC Special Report, 1999 (http://www.ipcc.ch/pub/av(E).pdf) :p.6.]

[89] This ranking is based on the conservative assumption that the global share of aviation emissions is still 2 percent. Global CO_2 emissions 2002: 6975MtC, 2% thereof = 140MtC (514MtCO_2), Source: (CDIAC), http://cdiac.esd.ornl.gov/ftp/ndp030/global.1751_2002.ems. 2002 Canada: 141MtC, South Korea 136MtC (Source WRI: CAIT).

[90] Again based on the assumption of a 2 percent share in global emissions.

[91] 514MtCO2 x €20 = €10.3bn.

[92] According to IATA (International Air Transport Association), the industry annually carries worldwide about 1.6bn passengers. See http://www.iata.org/pressroom/industry_facts/stats/2003-04-10-01.htm)

generating tens of billions of Euros, which does seem to be at least in the 'ball park' of what will be required in adaptation funding.

Political Relevance. The issue of aviation emissions – or more precisely, emissions from international air transport associated with so-called 'bunker fuels' – has proven to be politically too difficult to address. This is why they have been excluded from the range of emissions covered by the Kyoto protocol. However, the situation does seem to have changed with regard to the Kyoto post-2012 negotiations, where the EU, the key player, has officially put the 'inclusion of more sectors, notably aviation'[93] in its negotiation strategy.

One of the key reasons why it was impossible to integrate these emissions into the Kyoto framework was that it dealt only with national emissions, i.e. emissions which could be associated with (originating in) a sovereign state. For obvious reasons, this proved to be rather tricky for emissions from international air travel. However – as mentioned earlier (Section 2.2.3) – this very fact may prove to be the main factor in determining the political acceptability of the proposed levy: given that the emissions are 'international,' so is their carbon value, and consequently any percentage of it. In particular, the use of the funds thus generated will not be a transfer, let alone donation, from one country to another, which would generally be the biggest stumbling block to political acceptability in the donor country in question. It is a transfer from the 'global community' of international air passengers to the communities most vulnerable to climate change, and as such it is genuinely additional and complementary to any national taxation system.

[93] EU, 'Winning the Battle Against Global Climate Change' Commission Staff Working Paper, http://www.europa.eu.int/comm/environment/climat/future_action.htm