The UNFCCC — history and evolution of the climate change negotiations

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Abstract
The United Nations Framework Convention on Climate Change (UNFCCC), adopted at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, has a rich, almost unique history, and a powerful and persuasive structure. In the years since the Convention was adopted, Parties have seen progress in the implementation of many of its provisions. Enough confidence was engendered among the more than 175 Parties that ratified the Convention to begin a new process of adopting a legally binding instrument for greenhouse gas emissions limitations from industrialized countries. The result of this process was the Kyoto Protocol, which was adopted in December 1997. This paper critically reviews the history of the evolving climate regime and assesses the UNFCCC and the Kyoto Protocol as the Parties prepare for the Sixth Conference of Parties in November 2000. How one might judge this regime, what “yardsticks” of success one might employ, and what the future may hold both for its successful implementation and the lessons that it might advance when humanity is confronted with another global environmental issue—these and other issues are addressed in this paper.

Introduction
The science of climate change is characterized both by profound uncertainties and by rapid advances resulting from ongoing research. It follows that any governance system in this area must seek not only to stimulate the growth of knowledge but also to provide mechanisms for integrating new insights into the system without triggering a time-consuming legislative process. In the case of climate change, to do this requires recognition of the challenge and a determination to deal with it. Such a dynamic is likely to involve the articulation of a new worldview that redefines human aspirations and gives rise to a restructured ethical system to guide human/environment relations. Almost certainly, this worldview will take as its point of departure the perspective of ecology, which stresses linkages among the elements of complex systems, in contrast to the perspective of technology, which emphasizes the separation of complex systems into discrete parts that can be dealt with as self-contained entities. Success in the development of an effective gover-
nance system for the Earth’s climate will require a concerted effort to nurture these
ew new intellectual underpinnings as well as an effort to design the specific elements
of the climate regime being established.

There was a time when the need for a formal instrument such as the Convention
was challenged. According to this view, letting the regime evolve more informally
through the development of what is commonly referred to as “soft law” was
a better option. Proponents of formalization stress the role that treaties and con-
ventions can play in establishing legal obligations and in minimizing opportuni-
ties for members to ignore the dictates of regimes with impunity. “Soft law” advo-
cates, by contrast, emphasize the virtues of more informal arrangements: avoiding
the complications of the ratification process and allowing regimes to adapt to
changing circumstances in a flexible manner. The general conclusion was that
there is no need to think of these alternatives as mutually exclusive.

Accordingly, it was agreed that to be effective the climate regime would require
the loyalty of both public and private actors throughout the world. Partly, this was
a matter of providing opportunities for all members of the international commu-
nity to participate in a meaningful way in formulating provisions to be imple-
mented through the framework of an international agreement to protect the
Earth’s atmosphere. More profoundly, however, there was critical need for the
evolving governance system to have the support of both the international state
system and non-state participants. In addition, meaningful deliberation requires
the empowerment of those who are directly affected by an issue through some rec-
ognized method for bringing their voice into the process.

The climate regime cannot succeed in the absence of a concerted effort to
address the priority concerns of the world’s developing countries. While the afflu-
ent residents of the industrialized countries are increasingly attentive to matters
of environmental quality, many developing country leaders are understandably
concerned that a focus on environmental issues will deflect worldwide attention
from their economic problems, or even lead to the promulgation of restrictive
rules that hinder their efforts to achieve sustained economic growth and a rea-
sonable standard of living for their citizens. Given the fact that the increases of
greenhouse gases (GHGs) now resident in the Earth’s atmosphere are attributable
in large measure to the industrialization of ‘First World’ countries, and that no cli-
mate regime can be effective in the absence of acceptance and active participation
on the part of the principal countries of the developing world, there is no avoid-
ing the need to accommodate the development concerns of developing countries
as part of a planetary bargain relating to climate change.

While it is certainly attractive to focus attention on one round after another of
negotiations, much of the work of bringing the terms of the resultant regime to
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ments of specific countries to alter current patterns of behavior. In part, it is also
a matter of facilitating the efforts of pairs or small groups of states to transcend rigid insistence on simplistic principles, such as the doctrine of polluter pays, and to enter into mutually beneficial agreements leading to net reductions in greenhouse gas emissions. Underlying all of these approaches is the need to set aside any expectation that the provisions of the climate regime will be adhered to in practice just because they are enshrined in a convention, and to begin thinking about the development of an array of implementation and strengthening techniques.

It is futile to ask governments of member states to take actions that are not feasible in economic, technical, or administrative terms. While it is frequently assumed that governments desiring to achieve well-defined goals have the capacity to alter the behavior of their citizens in the proscribed manner, this is often not the reality. This is particularly true of many developing countries and former socialist countries whose governments may be sharply limited in their ability to deliver on commitments made in good faith in connection with the creation of international regimes. It follows that an effective governance system for climate change mitigation must provide substantial assistance to governments that are prepared to make a concerted effort to implement the rules of the regime within their own jurisdictions. The appropriate tools for such an effort include technology transfers, training facilities, and additional development assistance earmarked for those endeavoring to implement the terms of the climate change regime.

History of the climate change negotiations

While the science and politics of climate change are more than 100 years old, the best place to begin to document the history is the Toronto Conference on “The Changing Atmosphere: Implications for Global Security” held in June 1988. The fast pace of developments from this time on has a history that is quite unique to the development of the climate regime. To wit — when the suggestion for adopting an international convention on climate change by 1992 was made at this Conference, many states, including the United States (which has had a remarkable influence, albeit mixed, in the development of the climate regime), believed it to be an extremely early and, therefore, implausible target. The United States held the first negotiating session on the subject in February 1991, in Washington, D.C. The United States was also one of the first major countries to ratify the Convention.

One of the principal reasons for this rapid change is the institutional innovation that took place during this time. Deserving special mention in this regard is the Inter-governmental Panel on Climate Change (IPCC). The IPCC was established by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) in November 1988. The secretary-general of WMO, speaking at the opening session, emphasized the scientific nature of WMO’s work in assisting 160 member countries in measuring, standardizing, collecting, and disseminating atmospheric data. Despite this scientific emphasis, and given that the predicted global warming as one of the most important long-term challenges facing humanity, the secretary-general said that WMO could not stand by while the consequences of the scientific studies were considered. The Executive Director of UNEP...
concorded with this assessment and hailed the formation and the launching of the
IPCC as a milestone in global cooperation to address the challenge of climate change.

Prior to the adoption of the First Assessment Report by IPCC, resolutions had
been passed by WMO and UNEP to convene the first open-ended negotiating ses-
sion for a framework convention on climate change. The first set of these meetings
took place in Geneva in September 1990 and was attended by over 70 countries. At
this meeting, the UNEP Executive Director emphasized that both he and the Sec-
retary General of the WMO had been asked by their governing bodies “to prepare
for negotiations now.” The UNEP/WMO notice set out a number of points to be
taken into consideration during the negotiation process, including:

- gases that ought to be included in atmospheric concentrations;
- stabilization and emission reductions targets; and
- proposed dates, base years, and the criteria for calculating emission levels (per
capita per unit of GNP or GDP, according to the area of the country, its climatic
conditions, the size of its natural carbon sinks, energy consumption per pro-
duction unit—or a mixture of criteria).

Apart from the detail on what the Convention should accomplish, there was
agreement to a large measure that “a meaningful legal act for adoption in 1992
should be a target.” The question, however, was whether this should be accom-
plished at the expense of agreeing to an instrument of a purely declaratory nature.

As this debate within UNEP/WMO continued, the United Nations General
Assembly established a single Intergovernmental Negotiating Committee (INC)
under its auspices for the preparation of an effective framework convention on cli-
mate change. It authorized the Secretary General of the United Nations, with the
assistance of the Executive Director of UNEP, and the Secretary General of WMO,
to convene the first negotiating session in February 1991 in Washington, D.C. Work
on the Framework Convention, according to the General Assembly, was to be

The First Session of the INC convened in February 1991, and in May 1992 the
Fifth Session concluded the negotiations. Thus, barely fifteen months after the
INC began its work, it completed negotiations on a framework convention. This
Convention, signed at the United Nations Conference on Environment and Devel-
opment in June 1992 (Rio Summit), received the required number of ratifi-

completed prior to the United Nations Conference on Environment and Devel-
opment in June 1992 and opened for signature during the Conference that month.
Thus, the United Nations General Assembly, where the developing countries have
an overwhelming majority, challenged its members to develop and conclude an
international agreement of enormous consequence in a fairly limited time.

Contrary to the history of typical developing country engagement in interna-
tional environmental affairs, their participation in climate negotiations was quite
spirited and constructive. The Special Committee of the IPCC on Developing
Countries attempted to channel this interest in ways that would be conducive to
long-term active involvement of developing countries. The task was, and still
remains, to translate what has now been accepted as concern on critical issues into
specific policy measures. As Mostafa Tolba, then Executive Director of UNEP, cor-
rectly pointed out, the three issues that would dwarf the entire negotiating process are financial requirements, technology transfer, and economic reforms.

The climate negotiations have been both complex and extremely significant for the future of international relations. In his statement at the first session of the INC, the UN Secretary General characterized the significance of the climate negotiations by saying that a parallel exists between the San Francisco Conference that created the United Nations and the process being set in motion at the INC meeting. Similarly, in terms of complexity of subject matter, many have drawn a parallel between the climate negotiations and the United Nations Conference on Law of the Sea (UNCLOS), which took nine years to negotiate and adopt the Law of the Sea Convention. Some have even gone so far as to say that the climate change regime is more complex than UNCLOS. Even a casual observer of the negotiations would attest to both the significance and inherent complexity of the task at hand for the INC — first for the drafting of the Convention, and now its implementation.

On the substantive side, progress at the first session was less than satisfactory, particularly on the organization of the work. Many countries stressed the importance of addressing the issue of global climate change in an integrated and comprehensive manner and taking full account of the special circumstances and needs of developing countries. Yet, there was significant opposition to considering emissions reductions, preservation and expansion of sinks, and financial and technical assistance in separate working groups. In particular, developing countries feared that if these topics were addressed by separate groups, less attention would be given to emission reductions and financial and technical assistance. Another concern was that forests in developing countries would be targeted as a panacea for the global warming problem since they are a sink for carbon dioxide, a principal greenhouse gas. It was clear, however, that all of these topics could not be addressed in the plenary. After intensive discussions, agreement was reached on the establishment of two working groups: one to deal with commitments and the other with mechanisms. The progress made by the working groups was integrated by the plenary, and the final text treated as one package.

This brief review of the process of building a climate regime indicates that the approach that the international community adopted in addressing global warming was different from any previous attempts. The First Session of the INC convened in February 1991, and in May 1992 the Fifth Session concluded the negotiations. Thus, barely fifteen months after the INC began its work, it completed negotiations on a framework convention. This Convention, signed at the United Nations Conference on Environment and Development in June 1992 (Rio Summit), received the required number of ratifications by December 22, 1993, and entered into force on March 21, 1994. At the time of this writing, the total number of ratifications stands at 176.

**The unique nature of the United Nations Framework Convention on Climate Change**

The key provision of the United Nations Framework Convention on Climate Change (UNFCCC) is its objective, which is outlined in Article 2:

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
In other words, the objective calls for a fine balance, which achieves stabilization of greenhouse gas concentrations in the atmosphere within a time frame sufficient to:

- allow ecosystems to adapt naturally to climate change;
- ensure that food production is not threatened; and
- enable economic development to proceed in a sustainable manner.

The other key element, one that took all of the combined energy of the industrialized countries, and nearly derailed the very possibility of adopting FCCC at the Rio Summit, dealt with the kinds of commitments that industrialized countries ought to make to reduce greenhouse gas emissions. Of particular note in this regard are Article 4.2(a) and Article 4.2(b). Article 4.2(a) and (b) read as follows:

The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

a. Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties’ starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

b. In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7.

One truly unique feature of UNFCCC, which has been emulated in other forums since then, is in the “prompt start” that the Parties agreed to, enabling the immediate continuation of preparation for the First Conference of the Parties (COP-1). Because of the prompt start, the INC remained in session and met for six more
times before COP-1. During these meetings the industrialized countries, led by the United States, began voicing the view that FCCC was seriously flawed. Specifically, despite the clause that had been adopted in 1992 for “equal but differentiated responsibilities” between developing and developed countries, the United States maintained that it was vital that the developing countries join in the next phase of commitments.

The Convention entered into force in 1994. The first Meeting of the Conference of the Parties (COP-1) was held in Berlin, Germany in March and April of 1995. Because of “prompt start,” this meeting turned out to be the most substantive of any first COP meeting of any international environmental agreements. The highlights include:

• Parties agreeing to Bonn, Germany as the home of the FCCC Secretariat;
• Parties agreeing to the “Berlin Mandate;”
• Parties agreeing to a “pilot phase” for Activities Implemented Jointly (A11); and
• The establishment of the Ad Hoc Group on the Berlin Mandate (AGBM).

The Berlin Mandate

Among these results, the adoption of the Berlin Mandate was the subject of some very intense debate. The developing countries succeeded in ensuring that the result adequately reflected their concerns. The Mandate called on Parties to:

Aim, as the priority in the process of strengthening the commitments in Article 4.2(a) and (b) of the Convention, for developed country/other Parties included in Annex I, both

• to elaborate policies and measures; as well as
• to set quantified limitation and reduction objectives within specified time-frames, such as 2005, 2010, and 2020, for their anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, taking into account the differences in starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort, and also the process of analysis and assessment referred to in section III, paragraph 4, below; Not introduce any new commitments for Parties not included in Annex I, but reaffirm existing commitments in Article 4.1 and continue to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4.3, 4.5 and 4.7.

While the debate between the industrialized and developing countries on the timing of commitments by all was underway, several leading private sector actors formed the Global Climate Coalition and began advancing the view that the uncertainties in the science of global climate change meant that any action by any group of countries, developed or developing, was unwarranted. As a result, the Parties felt it important at their Second Meeting of the Conference of the Parties (COP-2), held in Geneva, Switzerland in July 1996, to adopt a Ministerial Declaration firmly stating that the science of climate change is compelling, and that legally binding commitments are warranted. It made particular note of the Second Assessment Report (SAR) of the IPCC. The Declaration further recognized and endorsed “the SAR of the IPCC as currently the most comprehensive and author-
ative assessment of the science of climate change, its impacts and response options now available.” Thus, following COP-2, it was clear that all of the preparation for the next COP would focus on the endorsement of legally binding commitments. This led to a flurry of activities around the world. Examples from the United States alone include:

- The Economists’ Statement on Climate Change in January 1997;
- The Ecologists’ Statement on Consequences of Rapid Climatic Change in May 1997; and
- The Scientists’ Statement on Global Climatic Disruption in June 1997.

A Special Session of the United Nations General Assembly, which was held in 1997 in New York from June 23-27 to review progress since the Rio Summit, provided further evidence of the global community’s desire to make climate change the defining issue in terms of its ability to cope with global environmental challenge. At this Session, virtually all of the world leaders emphasized the need to have a meaningful Protocol adopted in Kyoto at COP-3. Further, the speech by President Bill Clinton at this Special Session was entirely devoted to climate change. The U.S. President subsequently launched the White House Initiative on Global Climate Change that same year. The U.S. Senate, on the other hand, had serious reservations about the activities of the White House. This concern was reflected in the Byrd-Hagel Resolution, a non-binding resolution that severely restricted the U.S. negotiating position, which was adopted by the U.S. Senate while Parties were preparing for COP-3 to adopt the Kyoto Protocol. The Senate resolved that:

1. The United States should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would:

   A. mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period; or

   B. result in serious harm to the economy of the United States; and

   C. any such protocol or other agreement which would require the advice and consent of the Senate to ratification should be accompanied by a detailed explanation of any legislation or regulatory actions that may be required to implement the protocol or other agreement and should also be accompanied by an analysis of the detailed financial costs and other impacts on the economy of the United States which would be incurred by the implementation of the protocol or other agreement.

Throughout these developments the AGM held eight sessions in preparation for COP-3 in Kyoto. It even held a day-long “resumed” eighth session in Kyoto on November 30, 1997. Prospects for agreement appeared very slim at the end of this session.

**Highlights of the Kyoto Protocol**

The Kyoto Protocol was adopted on December 11, 1997 after eleven days of intensive negotiations that, in addition to the Conference delegates, engaged Ministers of Environment, Foreign Affairs, Finance, and Treasury, and in some cases even
Heads of State and Government. The delegates worked late into the night for three nights in a row, and the last article was adopted on December 11th, after an all-night session that took place after the time allotted for the Conference was over.

The resulting Protocol contains 28 articles and 2 annexes. Decisions 1, 2, and 3, also adopted at COP-3, directly pertain to the Kyoto Protocol.

- Decision 1: Provides for work on implementation.
- Decision 2: Provides for the determination of methodological issues.
- Decision 3: Provides for the implementation of FCCC Article 4.8, which addresses the needs of developing countries, specifically those at risk from the impacts of climate change, and Article 4.9, which discusses funding for technology transfer to developing countries.

The Protocol, for the first time in the evolving climate change regime, requires legally binding emission commitments from Annex I Parties. It covers the six main GHGs as listed in Annex A to the Protocol:

- carbon dioxide;
- methane;
- nitrous oxide;
- hydrofluorocarbons;
- perfluorocarbons; and
- sulfur hexafluoride.

The target for each Annex I Party is listed in Annex B. The targets range from a reduction of 8% to an increase of 10%, calculated as an average over the commitment period 2008-2012. If all Parties meet their targets, the overall reduction in emissions from 1990 levels for that group will be around 5.2%.

The Buenos Aires and Bonn sessions: The road to The Hague

Since the adoption of the Kyoto Protocol a great deal has happened—particularly during the Fourth and the Fifth Meeting of the Conference of the Parties in Buenos Aires, Argentina and in Bonn, Germany respectively. At the Buenos Aires meeting the Parties adopted a plan called the Buenos Aires Plan of Action (BAPA). The primary content of the BAPA was a long list of topics that need to be addressed by the Parties as they prepare for the Sixth Session of the Conference of the Parties scheduled to take place in The Hague, the Netherlands in November 2000. In other words, the BAPA did not prioritize the issues in any meaningful manner. However, the meetings of the Parties leading up to and following the adoption of the BAPA did succeed in narrowing the scope without sacrificing any of the issues of significance to meeting the objective of the Convention. As Parties prepare for the Sixth Session the following topics and questions have gained significance for resolution.

In preparation for COP-6, a few important points should be kept in mind. Clearly most of the attention will focus on the details necessary to operationalize the provisions of the Kyoto Protocol. But it is wise not to lose sight of the work that still needs to be done to implement many of the provisions of the FCCC, which has already been ratified by more than 175 countries and is in force.

What are the “commitments” contained in the FCCC?

Annex I countries agreed to adopt national policies and take corresponding measures to mitigate climate change by limiting their anthropogenic emissions of
greenhouse gases and protecting and exchanging their greenhouse gas sinks and reservoirs. Further, Annex I countries agreed to take the lead in modifying longer-term emissions consistent with the objectives of the Convention, recognizing that the return to earlier levels of anthropogenic emissions of greenhouse gases (not controlled by the Montreal Protocol) by the end of the decade would contribute to such modifications.

The developed countries (not including countries undergoing the process of transition to market economies) agreed to provide new and additional financial resources to meet full agreed costs incurred by developing country Parties in complying with their obligations concerning communications and information. The developed country Parties also promised to provide resources needed by the developing country Parties, including funds for technology transfer, in order to meet the agreed upon incremental costs of implementing their commitments.

It is generally agreed that the extent to which developing country Parties will effectively be able to implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments. This is especially the case with regard to financial resources and the willingness of countries to transfer technology, while simultaneously taking fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties. Thus, the question remains how to achieve these ends.

Prior to COP-4, a workshop involving several participants in the climate negotiations identified the following measures for the purposes of enhancing success of the Kyoto Protocol:

- encouraging signature and ratification of the Kyoto Protocol
- encouraging implementation of the protocol pending its entry into force
- encouraging more direct and formal private sector participation
- building confidence and increasing co-operation
- expanding participation by non-Annex I parties
- formulating a Buenos Aires action plan

As we prepare for COP-6, it is instructive to note that outside of formulating a Buenos Aires Plan of Action, which focuses heavily on the flexibility of mechanisms, virtually everything else remains central to the development of the elementary climate change regime. Before going into the details of what or how these might be addressed, it may be useful to look at the specific issues identified at COP-4 in the BAPA.

The Buenos Aires Plan of Action

The BAPA contains a list of 140 items to be addressed over the two years following COP-4. In addition to the so-called “flexibility mechanisms,” there are a number of issues that were touched on in the BAPA. In a manner that all concerned agree is fair and equitable, the BAPA talks at some length about designing the mechanisms to support long-term climate protection. However, there are other issues to be considered. These include land use change and forestry and technology transfer issues, all of which are being dealt with in IPCC special reports. Further issues include the role of developing countries in the emerging climate regime, creating an effective compliance system, including linkages, and interdependence.
What can be done as we wait to develop the details outlined above?

It is important to encourage every possible effort to reduce greenhouse gas emissions. Whether or not Annex B countries accept their quantitative obligations in the near term, it is crucial that they begin reducing their domestic greenhouse gas emissions as soon as possible if there is to be any hope of meeting the greenhouse gas reduction goals set for the 2008-2012 commitment period. In some instances, reductions have been or may be achieved for unrelated reasons, or as a result of other policies. Whatever the reasons, these results are still important in moving toward the Protocol’s goals.

There are at least three ways an Annex B country can benefit from reducing greenhouse gas emissions domestically while conducting the formal processes of Protocol ratification and awaiting its entry into force. First, by documenting and publicizing its reduction efforts, a nation will enhance its international reputation. Second, if it helps other countries to learn from its efforts, it will make reductions by other countries more likely. For example, a country may be encouraged to reduce its own emissions when it learns just how substantial the economic benefits of fuel-switching have been for its neighbor. Third, if it can show low or negative economic costs and significant environmental benefits from its actions, a nation will build domestic political support for reducing greenhouse gas emissions.

It now appears that the availability of flexibility mechanisms, once their operations are clarified, can play a large part in encouraging voluntary action while the ratification process proceeds. By offering incentives to industry, they, in turn, will be eager to encourage governments to act if there are corresponding and sufficient financial rewards. Thus, the further development and implementation of the flexibility mechanisms discussed in Kyoto are important for encouraging voluntary action.

It is time to encourage the private sector to become more formally involved in implementing the goals of the Climate Change Convention, particularly the design of the flexibility mechanisms contained in the Kyoto Protocol. Not only is its involvement likely to be critical to the success of the new flexibility mechanisms, but the private sector is in a position to bring significant inducement to countries that have not yet signed, or may be hesitant to ratify, the Kyoto Protocol.

Why might corporations become more active supporters of the FCCC process?

In various parts of the world, much to the surprise of national governments, corporations are now asking for clarification of the “rules” governing emissions trading and domestic efforts to reduce greenhouse gas emissions. The high degree of uncertainty, both globally and domestically, as to which actions for reducing greenhouse gas emissions will receive credit, is making it difficult for corporations to plan their business efforts, and is discouraging them from taking early action. Moreover, a number of companies have realized that there are substantial economic gains to be had by corporations ready to make the global treaty system work for them. If given a choice, some corporations might have preferred that the Climate Change Convention had never been signed. Nevertheless, recognizing that more than 175 countries have already ratified the Framework Convention on Climate Change, many of the world’s leading corporations are now focused on the opportunities this might create.

It is important that all parties have confidence that each is doing its share to implement the Framework Convention on Climate Change. Non-Annex I countries are unaware of the efforts that Annex I countries are making to fulfil the man-
date of the Climate Change Convention. With a number of Annex I Parties calling for the expanded participation of non-Annex I Parties in the ongoing effort to implement the FCCC, it is critical that these non-Annex I countries have confidence in the fact that Annex I Parties are taking their commitments seriously, as signified by their domestic actions.

There are several ways in which confidence building and increased cooperation of non-Annex I Parties might be linked. The first is the implementation of the Clean Development Mechanism (CDM), which was created at the Kyoto Conference. CDM is going to be important to the efforts that certain non-Annex I countries make in reducing the growth of emissions over the next few years. Thus, it is important to design this tool with an eye toward the kinds of incentives that would be most effective and most responsive to the interests of developing countries. In addition, a commitment on the part of Annex I countries to help launch the CDM will underscore their stated desire to support the voluntary involvement of non-Annex I countries in the implementation of the Convention.

The developing countries are quite concerned about the design of the CDM governance system. If its creation is going to be seen as a confidence building measure that will lead to increased cooperation and participation of non-Annex I Parties, its structure needs to be responsive to their concerns. That is why they are currently putting so much emphasis on the design of the institutional arrangements that will be installed to oversee the allocation of CDM resources.

Another strategy for building confidence and expanding the participation of non-Annex I countries might be a process of voluntary independent review (VIR) of what is already happening in developing countries. Such a review would open up ongoing efforts to outside experts. It might also help to broaden international understanding, in an independently documented fashion, of the substantial efforts already underway. This would respond, at least in part, to the concerns expressed by the U.S. Senate that the developing world is not acting on its commitments to reduce emissions.

The VIR reporting process might make greater use of independent experts than the country reports required under the FCCC. On the other hand, it would likely be less comprehensive and/or less demanding than the national, sectoral and project review process that is mandated for funding requests by some multilateral and bilateral institutions. VIR would focus exclusively on activities directly related to the objectives of the Convention and the Protocol. The goals of VIR would be:

- to ensure that non-Annex I countries can learn from each other;
- to guarantee that consistent information on efforts to reduce greenhouse gas emissions in non-Annex I countries is provided to the full range of multilateral institutions seeking such documentation; and
- to provide skeptical policy-makers in Annex I countries with credible documentation of the substantial efforts already underway in non-Annex I countries to meet the original objectives of the FCCC.

**How are the FCCC and the Protocol being assessed?**

International agreements generally, and international environmental agreements in particular, are subject to criticism. Unfortunately, and to some extent unfairly, the FCCC and the Kyoto Protocol have not escaped this sort of fault-finding. Compromises that resulted from late-night negotiating sessions and the simple inability to “tie up all of the loose ends” make these instruments easy targets. However,
these critiques hardly serve any useful purpose, given that these instruments should be considered “works in progress.”

That said, it is still important to answer the criticism that Kyoto was not even a modest accomplishment. There have been suggestions that: (a) the Annex I countries will not follow through on their obligations; and (b) even if they did, there would be no beneficial impact. The implication of this is that Kyoto will make no difference—it will not even help put us on the path to reducing greenhouse emissions in Annex I countries. That even if all Annex I countries were to live up to the commitments they made at Kyoto the total emissions from these countries in 2010 would, in fact, be nearly the same as they are today.

The other fault that critics point out is the Parties’ insistence on using on 1990 as the base year. The suggestion is that there is a fundamental flaw in the whole approach, and having 1990 as the base year is a fatal error. Most Annex I countries would agree with this assertion, but for wholly different and often contradictory reasons. The Non-governmental Organization (NGO) community examined this issue carefully, and came to the conclusion that while having 1990 as the base year is not ideal, any attempt to change it would cause more openings for further subversion of the objective of the Convention.

One example in this context will suffice: An FCCC study looked at “business as usual” projections for 2010 from 1990 levels and concluded that there would be an emissions increase of between 19% and 33%. The mid-range was an increase of 24% from 1990 levels. When one takes the overall reductions agreed to in Kyoto and adds that to the mid-range of the projected increase, the reductions in 2010 would be approximately 29%. By staying with the 1990 baseline, the Parties could go back to their respective legislatures and point out that they have agreed only to modest commitments—between an 8% decrease and an increase limited to 10%. In the United States, even these so-called modest reductions were received with howls of protest.

In one sense, having 1990 as the base year was a victory for the environmental community. However, the presence of potential loopholes in the Protocol was critical for obtaining the acceptance of industrialized countries and the private sector, as well as wider political acceptability in general. Kyoto provided a delicate balance. It may now be very easily tilted one way or another, unfortunately, in a manner that will go against meeting even the modest targets contained in the Protocol. The way to address this is not by identifying what is wrong with the Protocol, but by determining the best means of ensuring that the flexibility mechanisms are used to accomplish net reductions for Annex I countries.

These things notwithstanding, the Protocol adopted in Kyoto is perhaps one of the most significant international environmental agreements ever crafted. Next to the Earth Summit, there probably has not been another conclave of governments that has attracted as many people or produced so significant a document as Kyoto. Noticeably absent from the Protocol are any commitments from developing countries. The Protocol contains new obligations only for industrialized countries, but its impact will be felt the world over in every walk of human life. On the same token, if some of the details of the Protocol are not worked out with great care, it is quite likely that the Kyoto Protocol could also mean nothing. How could any agreement contain the possibilities for such extremes?

It is beyond dispute that the Earth Summit of 1992 was a historic event and a prominent milestone in global environmental governance. Though a number of legal instruments were adopted at that Summit, the most active and prominent
amongst them was the adoption of the FCCC. The success or failure of the Earth Summit has come to be judged by the success or failure of the FCCC.

All of the countries at the Rio Earth Summit agreed that climate change is one of the most serious environmental and economic problems confronting humanity. They agreed to cooperate with each other and they agreed on “common but differentiated responsibilities.” In this case, this was expressed by the industrialized countries accepting voluntary commitments to bring their year 2000 emissions to 1990 levels, while developing countries joined in some general commitments of international cooperation.

At the First Meeting of the Parties in Berlin, it became clear that the industrialized countries would not be able to meet their voluntary commitments by 2000. It was also clear that Parties to the Convention needed to prepare for reduction commitments for the period beyond 2000. The shared understanding at Berlin was twofold: First, voluntary commitments will not work, legally binding commitments would be needed. Second, it would not be enough for those commitments to include only the industrialized countries. It is apparent that developing country emissions will equal or exceed those of the industrialized countries by 2030 or thereabouts. That notwithstanding, in the name of “common but differentiated responsibilities,” countries agreed in Berlin that the first round of legally binding commitments would include only the industrialized countries.

This decision supplied ammunition to those who were opposed to any sort of domestic U.S. action to reduce carbon dioxide emissions. It also sparked a predictable reaction from U.S. industry as well as a cross section of the political elite. Going into the Kyoto Meeting, the big issue was how to ensure that the outcome in Kyoto was “fair.” The United States considered anything that did not include developing countries “not fair.” The widespread influence of the actors who were opposed to U.S. undertakings was signified by the facility with which the Byrd-Hagel resolution was passed.

At the same time, the developing countries did their very best to ensure that they did not take on any binding legal commitments in Kyoto. In the end, they succeeded, although the coalition within which they worked, the g-77, came close to falling apart on a couple of occasions. The tensions within the developing world over the topic were obvious. On the one hand, there were the oil producing countries, concerned about the impact of actions to limit carbon dioxide on their economies; and on the other were the island nations, vulnerable to sea level rise and storm surges. The sub-Saharan African countries saw their interests as tied closely with the island nations because they, too, are vulnerable to damaging impacts of global warming. The large developing countries such as China, India, and Brazil felt that it would be unfair to expect them to take on any legally binding commitments to limit their GHG emissions unless the industrialized countries, led by the United States, took the initiative. There are yet other countries, including several in Latin America, with aspirations to join either the expanded North American Free Trade Agreement (NAFTA) and/or the Organisation for Economic Co-operation and Development (OECD). For these countries, following the lead of industrialized countries with regards to emissions limitations might be an acceptable option.

The message from Kyoto is clear. All countries eventually have to accept legally binding commitments to ensure that the concentration of GHGs in the atmosphere stays at an acceptable level. But the questions of fairness, and how they are
addressed within the framework of the evolving climate change regime, will deter-
mine the stage at which developing countries will join the industrialized coun-
tries. Any doubts about the unique role that the United States plays in interna-
tional affairs were set aside at Kyoto. The agreement came into existence because
the United States was willing to agree to reductions. While pressures from the
European Union and the NGO community played a big part, ultimate credit for
reaching the agreement is largely due to the role that the United States was able to
play.

Conclusions

After all was said and done, and the Kyoto Protocol was adopted, the perspectives
from industrialized and developing countries were quite different in terms of what
was achieved. The following table identifies what the “take home” messages were
in terms of key priorities for the different groups of countries. These impressions
are bound to have an influence on how the next steps in the evolution of climate
regime will be undertaken. Even the fact that the Clean Development Mechanism
appears in both lists does not mean that both groups agree on the real meaning of
the concept and its operational implications.

The task ahead is to see how to make the most of the Protocol: to accomplish
real emission reductions from the industrialized countries; to make it possible for
the developing countries to join in this exercise; and as a collective, to reach the
objective of the Convention..

The success of the Kyoto Protocol will therefore hinge very much upon what
the industrialized countries will be able to do in the next months and years.

• First, they need to demonstrate to their legislatures and the private sector that
implementing the Kyoto Protocol will not damage their economies.
• Second, they should be able to work with developing countries in a construc-
tive way both to expand and deepen their constructive engagement.

The speed with which the developing countries are able to take on such bind-
ing commitments is, of course, dependent on industrialized countries. Industrial-
ized countries should show their good faith by ensuring that the Kyoto Protocol
enters into force soon. They should meet their commitments by reducing their
GHG emissions as agreed in the Protocol. In addition, they should implement
other provisions, which are contained both in the FCCC and the Kyoto Protocol,
that deal with their commitments to developing countries by providing financial
and technical assistance. In the first phase, this means identifying those initiatives
currently underway that meet developing country socioeconomic objectives for
sustainable development, while simultaneously releasing fewer GHGs into the

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atmosphere. Once identified, assistance should be provided to ensure that feasible projects are replicated on a broader scale, and to introduce newer, faster, and more efficient technologies. Developing countries will be comfortable with the idea of working to reduce GHG emissions only when it has been demonstrated that emissions reductions do not necessitate foregoing their goal of sustainable development. Only when this comfort level is reached will they be open to the suggestion of binding legal commitments.

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