

## The Resurrection of a Protocol

### *The Bonn Agreement and its impact on the 'Climate Catch 22'*

Benito Müller\*

Sunday, 22 July: **'Kyoto Protocol's Last Gasp.'**  
Monday: **'Nations Wrangle in an All-Night Marathon on Climate Treaty.'**  
Tuesday: **'178 Nations Reach A Climate Accord; U.S. Only Looks On.'**

Reading these *New York Times* headlines about the events at the ministerial segment of the recent UN climate change conference in Bonn (COP6), no one could be blamed for being puzzled about this re-birth of a protocol which had been officially declared dead by the US administration some months earlier. But was it the re-birth of a phoenix rising from its ashes or a lame duck doomed to extinction?

### The Agreement

The Bonn Agreement –adopted after two days of continuous negotiations at ministerial level on Monday 23 July– is a political agreement on the core elements of the 1998 'Buenos Aires Plan of Action' designed to finalise the text of the Kyoto Protocol and to strengthen the implementation of the UN Framework Convention on Climate Change (FCCC). In the negotiations, these core elements were grouped into four themes: Financial Issues, Mechanisms (emissions trading and other market-based instruments), 'Carbon Sinks,' and Compliance.<sup>1</sup>

*Financial Issues.* Overall, the negotiations on these issues proved to be the most successful ones in that all draft decisions had been approved by the end of the conference. Key amongst them are the creation of a special climate change fund and a least developed country fund for adaptation under the FCCC and a Kyoto Protocol adaptation fund which will be funded by a 2 per cent levy on Clean Development Mechanism (CDM) activities. The negotiations –skilfully facilitated by Swiss Secretary of State Roch– also led to an important political declaration in which the EU, Canada, Iceland, Norway, New Zealand and Switzerland undertook to provide an annual contribution of €450m/\$410 to these and related funds.

*Mechanisms.* Key points include the 2 per cent levy on Clean Development Mechanism (CDM) activities, and simplified modalities for small CDM projects. It was decided that Annex I countries are to 'refrain from using' credits generated by nuclear projects, and that only a limited use of sink projects under the CDM for the Kyoto commitment period (afforestation and reforestation, capped at 1 per cent of the countries base year emissions) be allowed. Arguably the most controversial decision – at least within environmental groupings – was the decision *not* to include any limits on the use of these mechanisms by Annex I parties over and above the rather weak requirement that domestic action shall constitute 'a significant element' in their effort to reach their targets. The insistence by some parties on stronger language had been a significant obstacle at the failed first part of COP6 in The Hague.

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<sup>1</sup> For a more detailed description see, for example, the 'Summary of the Climate Change Agreement in Bonn' issued by the Pew Centre on Global Climate Change ([www.pewclimate.org](http://www.pewclimate.org)), or the 'COP6.bis Final' Issue of the *Earth Negotiations Bulletin* ([www.iisd.ca/climate/cop6bis](http://www.iisd.ca/climate/cop6bis))

*Carbon Sinks.* The one issue which was largely blamed for the break-down at The Hague was: how much agricultural and forestry practices leading to absorption of atmospheric CO<sub>2</sub> should be allowed to count towards a country's emission target. It was thus surprising to find that the negotiations in Bonn 'proved to be comparatively straightforward, [arguably because] negotiators came to Bonn conscious of the fact that sinks were fatal to The Hague deal, and, with greater pressure to conclude a package, they had an increased willingness to compromise.'<sup>2</sup>

*Compliance.* Following good progress on this issue in The Hague, many expected that in Bonn these negotiations would be relatively straightforward. However, this failed to be the case. The previous US administration had consistently sided with the EU, Canada and G77+China in demanding legally binding compliance measures, as opposed to a 'politically binding' compliance regime ('naming and shaming'). But the Bush administration clearly did not feel that a politically binding regime would be contrary to US interest. Accordingly it did not intervene when Australia, Japan and Russia –with their bargaining power strengthened by the US withdrawal– de facto reopened the negotiations on this issue. In the end, this decision was deferred until after entry-into-force of the Protocol. However, other important decisions were taken, concerning for example the nature of the 'penalties' (restoration of shortfalls plus 30 per cent and suspension of eligibility to sell credits in the subsequent commitment period, establishing a Compliance Action Plan).

### **Initial Evaluation**

Environmental pressure groups have attacked the Bonn agreement reached this week for being a watered down, barely effective version of the 1997 Kyoto Protocol. Greenpeace dubbed it "Kyoto-Lite".(*Reuters*, 25 July)

Japan, Canada and others won substantial concessions in the form of offsetting pollution-reduction "credits" for forests and agricultural regions that absorb carbon dioxide from the atmosphere. ... "I think that we would have liked it much better if we would have had a more ambitious protocol, but these compromises were necessary to get the support of Russia, Japan, Australia and Canada," said Karsten Sach, a high-ranking German environmental official who took part in the two weeks of talks. "It's a first step to get the process moving," Sach said of the deal. "And we hope the U.S. will join in later."(*Washington Post*, 29 July)

As indicated by Karsten Sach, the success of the resurrected Protocol –the 'phoenix condition', as it were – is whether this first step taken in Bonn will ultimately lead to an effective and equitable regime covering all the key emitters of the South *and* the North. This remains a tall order. But one thing can be said with certainty: a failure of the resurrected Protocol to enter into force in the near future will definitely turn it a doomed duck. Entry into force, of course, presupposes a sufficiently clarified text so as to be ratifiable. While there are a number of issues which had to be deferred to COP7 (Marrakech) this autumn, this should not detract from Bonn's main achievement, namely the consensus – expressed by COP6 president Jan Pronk at the closing plenary – that with the Bonn Agreement, the Kyoto Protocol has indeed become a ratifiable treaty. Whether or not this will in actual fact lead to early entry-into-force, however, still depends on what is going to happen on the road to Marrakech.

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<sup>2</sup> 'COP6.bis Final' Issue of the *Earth Negotiations Bulletin* ([www.iisd.ca/climate/cop6bis](http://www.iisd.ca/climate/cop6bis)):p.13.

## US Gateway to Marrakech: Elba or St Helena?

White House officials didn't change their arguments after the Bonn agreement. Asked whether the United States finds itself on its own Elba after the nations agreed to pursue the Kyoto accord, [US National Security Advisor] Rice said yesterday: "We do continue to believe that any solution to the global climate change problem will have to be a truly global solution, and that developing countries will have to be a part of that solution." (*Washington Post*, 24 July)

What will happen in the few months leading up to COP7? The key issue is no doubt concealed in the very astute question to Ms Rice referring to the Italian island of Elba, an allusion to the 'voluntary' exile of Napoleon Bonaparte after his first abdication in 1814. What happened in the course of the following year –in particular, the rude awakening of the European allies prematurely celebrating Napoleon's defeat at the 1815 Vienna Congress– is well known: the exile's return in force to Paris on 20 March 1815, beginning his famous 'Hundred Days.'<sup>3</sup> In other words, the key question on the road to Marrakech is whether the Bush administration will be able and willing to table a multilateral alternative to the Kyoto Protocol before Marrakech – returning from Elba, as it were – or whether it finds itself on its own St Helena in this matter?

A brief look at the chronology of recent statements by US administration officials – Secretary of State Colin Powell, National Security Advisor Condoleezza Rice, EPA Administrator Christine Todd Whitman, and White House Press Secretary Ari Fleischer– shows that this is by no means a trivial question:

*19 July (Beginning of COP6 High Level Segment).* **Powell** – during the Rome G8 foreign ministers meeting: "we are looking toward [COP7] for the tabling of specific proposals that could be seen as an alternative [to the Kyoto Protocol]." (*Washington Post*, 27 July) 'Powell assured foreign nations that the United States would have a plan developed in time for [COP7]' (*LA Times*, 30 July)

*22 July.* G8 heads of government meeting in Genoa: **Fleischer**: "The cabinet-level working group is still in the midst of its review of alternatives to the Kyoto protocol. ... there is no indication about whether or not they will have their work complete before then [COP7]" (*Reuters*, 24 July)

*23 July (End of COP6 High Level Segment).* 'Bush officials dismissed claims ... that Bush had pledged to devise a global-warming proposal in time for [COP7], suggesting such claims, also made by Canadian Prime Minister Jean Chretien and French President Jacques Chirac, came out of "thin air." ... **Rice** said Bush told his counterparts that he hopes "to have some ideas as soon as possible," but "I don't think he said a proposal." She said Bush's remarks were "not a view toward trying to get something on the table at any specific time.'" (*Washington Post*, 24 July)

*24 July.* **Powell** – talking in Tokyo with the Japanese Prime Minister: "... the Kyoto Protocol – even what came out at Bonn – still is not acceptable to the United States ... We have our cabinet members deeply involved in this and hopefully we'll have new ideas that can be presented at COP7 or at other future meetings." (*Reuters* 25 July)

*26 July.* **Whitman** said that 'the Bush administration has little interest in attempting to reopen international global warming talks any time soon and instead will focus on hemispheric and domestic measures to curb greenhouse gas emissions. .... Whitman said President Bush is unlikely to offer a substantive alternative when negotiators meet again late this year in Morocco.' (*Washington Post*, 27 July)

*29 July.* **Rice** on CNN's *Late Edition*: "I don't think we want to set a deadline [on completing the US policy for combating global warming] of a specific meeting." (*LA Times*, 30 July)

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<sup>3</sup> Having been forced to abdicate, the allies granted Napoleon the island of Elba as a sovereign principality with an annual income of 2,000,000 francs. He arrived at Elba on 4 May 1814, but was back in Paris in force to begin the 'Hundred Days' which led him –via Waterloo– into permanent exile and death on the remote Atlantic island of St Helena.

In a recent appearance at the Nixon Center (Washington D.C.), Richard Haass, – director of policy planning for the State Department – explained that formulating a policy has been difficult because “differences have been so pronounced” within the administration. (*LA Times*, 30 July). These differences may also lie at the heart of the somewhat contradictory signals from administration officials about the tabling of a multilateral alternative to the Protocol by Marrakech or soon thereafter. And yet, in trying to form an informed judgment about whether the US administration will choose Elba or St Helena as gateway to Marrakech, one would do well to consider the broader political scene in Washington, in particular Capitol Hill.

The Bonn Agreement has turned out to be a catalyst for Congressional climate change activities (see below). Of particular importance for the issue under consideration here has been the unanimous passing by the Senate Foreign Relations Committee on 1 August of an amendment sponsored by Senator John Kerry setting forth principles to guide the administration in the multilateral negotiations. Senator Kerry summarises his amendment as follows: <sup>4</sup>

- It calls on the Administration to craft an agreement that is consistent with the environmental objectives of the Framework Convention on Climate Change, that protects the economic interests of the United States, and recognizes the shared international responsibility for addressing climate change, including developing country participation.
- It calls on the Administration to participate in the international negotiations with the goal of crafting a revised Kyoto Protocol or other future binding climate change agreements. ... The Bush Administration has refused to recognize the need for binding agreements, instead endorsing only voluntary approaches.
- It calls on the Administration to participate in international negotiations, including putting forth a proposal at the next meeting of the Conference of the Parties. The Bush Administration has stated it may not do so.

In short, the ‘Kerry Amendment’ is a reaffirmation of the 1998 Byrd-Hagel resolution, combined with a rebuke for the administration’s preference of voluntary measures and a call for a US alternative by COP7. This is significant, for if the Bush administration fails to submit such an alternative on time, it would find itself in the same sort of defiance of Congress which dogged the Clinton administration after having signed the Kyoto Protocol in defiance of the Byrd-Hagel resolution.

### **Resolving the Climate Catch 22**

*Plus ça change...* As concerns a US ratification of multi-lateral climate change treaties, the ‘Climate Catch 22’ is thus as alive as ever: One the one hand, there remains the Senate’s insistence that it will only ratify a treaty with legally binding developing country emission limitations. On the other, it is still highly unlikely that the developing world will even contemplate such limitations without the industrialised countries demonstrating themselves to be serious about tackling a problem they are largely responsible for. As the latter hinges on whether the industrialised world manages to bring into force a treaty binding them to quantitative emission reduction targets, the situation retains all the hallmarks of a classical Catch 22.<sup>5</sup>

Yet there may be a way to resolve this apparent paradox: The fact is, negotiations on a treaty for the time after the commitment period (2008-12) established in the Kyoto Protocol are scheduled to start in 2005. If the Protocol were to enter into force before

<sup>4</sup> <http://kerry.senate.gov/~kerry/releases/01/08/2001801B55.html>

<sup>5</sup> The Senate has thus been quite even handed across administrations in its declarations of refusing to ratify.

that date, then it might, on the one hand, just be possible to convince developing countries to take on certain commitments in this successor treaty which, in turn, would overcome one of the main obstacles to US ratification. By the beginning of the first commitment period, it will on the other hand be obvious how far the US has diverged from its Kyoto target, and it should be possible to reassess its target in concrete terms – and possibly arrive at a mutually acceptable ‘special accession’ agreement in return for US ratification.

This scenario of how the US might be brought back into the Kyoto regime obviously depends on at least two questions:

- Would the developing world be satisfied that industrialised countries are demonstrating the demanded leadership if Kyoto (‘lite’) were to come into force by 2002 *without* the US?
- Will the US be able to reduce its emissions sufficiently by 2008 so as to make a special accession under a ‘Kyoto-lite’ target politically feasible?

As it happens, the Bonn Agreement seems to have increased the chances for such a scenario on both accounts.

*Annex I Leadership.* On 2 August Ambassador Asadi (Iran) held at the Press Conference at the New York UN Headquarters at which he gave an assessment of the Bonn Agreement in his capacity as Chairman of the Group of 77 which gives some positive indication concerning the ‘leadership question’:

The very essence of the Bonn achievement is a political one. That is, the entire international community resolved to save a decade-old hard-won multilateral process despite the withdrawal of the United States. ... the Bonn outcome is indeed a very welcome development, with important and far-reaching implications for other multilateral processes. The very visible, expressed satisfaction across the world with this political agreement on the fate of the embattled Protocol clearly indicates that the international community, both governmental and non-governmental, appreciates the inherent meaning of the development in Bonn. ... The agreement in the Bonn Conference, which I characterized as an "honourable deal" in my remarks at the meeting soon after the gavel came down, managed to bring all relevant parties and partners - both developed and developing, of course, with the exception of one - to the table and let them leave generally satisfied.

*Prospects for Reducing US Emissions.* As mentioned earlier, the Bonn Agreement has catalysed climate change actions on Capitol Hill:

Congressional efforts to combat global warming received an unexpected boost from a decision this week by more than 180 countries to deal with the problem without the United States, outside experts and key lawmakers said Tuesday. ... They added that prospects now appear good that Congress will pass one or more measures designed to reduce emissions of carbon dioxide, ... “The odds are improving that this Congress will deal with the issue before the [2002] election,” said Rep. Sherwood L. Boehlert (R-N.Y.), a leading environmentalist in his party. Several House and Senate members said they were caught off guard when the other countries adopted rules Monday in Bonn to implement the Kyoto Protocol without U.S. participation. (*Los Angeles Times*, 25 July)

In the same excellent article by Elizabeth Shogren, Senator Joseph I. Lieberman – former vice-presidential running mate of Al Gore – gave his personal opinion of the events in Bonn: ‘Bonn surprised people. ... The feeling was that, if the United States took its football and left the field, the game couldn’t go forward. But the rest of the nations of the world found their own football, and they completed the game. They left the United States on the sidelines. ... The events in Bonn will accelerate movements that have begun here over the last several months toward doing something to curb American greenhouse gas emissions. There has been a growing bipartisan movement to take action even while the Bush administration has been pulling away from the international process. It really has been fascinating.’

Senator Lieberman – who, together with Senator John McCain, recently announced their intention to introduce legislation for a legally binding domestic cap-and-trade system which ‘will much better enable us to negotiate an acceptable international agreement with the Kyoto participants when the U.S. does come back to the table’<sup>6</sup> – also chairs the Senate Governmental Affairs Committee which on 1 August ‘approved landmark legislation that would create a new White House office on climate change responsible for developing, coordinating, and implementing a national strategy to address the problem of global climate change and bring the United States into compliance with the Senate-ratified 1992 Rio Treaty.’<sup>7</sup>

But the impact potential of the Agreement goes beyond the narrow confines of Washington D.C. The municipality of Seattle, for example, has recently committed itself to the Kyoto target.<sup>8</sup> Of equal, if not greater importance, may be certain recent developments in the private, particularly the energy sector:

The administration, meanwhile, is coming under pressure to shift its opposition to regulating carbon dioxide emissions from another, unlikely source: several of the nation's largest utilities. ... Executives of those firms, including American Electric Power Co., the Cinergy Corp. of Ohio and the Wisconsin Electric Power Co., argue that regulation of carbon dioxide is inevitable and that they want some certainty in the coming decade as they invest billions of dollars in plant expansion. ... “Our CEO believes carbon dioxide regulation at some point is a given,” said Steve Brash, a spokesman for Cinergy. “You don't want to spend a billion dollars on building additional coal capacity and then five years later find out it will cost you \$5 million more to comply with CO<sub>2</sub>.” (*Washington Post*, 2 Aug.)

While the administration’s presently proposed domestic climate change policy is unlikely to have much of an impact on US emission levels by 2008, these legislative and private-sector initiatives may well have a significant domestic mitigation effect, in particular if they lead to a binding domestic cap-and-trade regime. As such they will need support, and –judging from the reception of the Bonn Agreement– the best international support would be the planned entry into force of the Kyoto Protocol by the time of the Johannesburg Earth Summit in 2002, the year of the next Congressional elections. In short, there is a good chance that the Kyoto Protocol resurrected at Bonn will prove to be a phoenix after all, paving the road towards equitable and comprehensive successor agreements for the rest of the century.

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<sup>6</sup> <http://www.senate.gov/~lieberman/press/01/08/2001803930.html>

<sup>7</sup> [http://www.senate.gov/~gov\\_affairs/080101\\_press.htm](http://www.senate.gov/~gov_affairs/080101_press.htm),

<sup>8</sup> Seattle pledged to beat the Kyoto goal to cut carbon dioxide emissions by 7 percent from 1990 levels and try to cut three times that much. ... The mitigation would cost city-owned utility Seattle City Light about \$3 million a year, a tiny fraction of the half billion-dollar annual budget, officials said, rejecting Bush's assertion that the Kyoto treaty would wreck local economies. (*Reuters*, 24 July)