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## Between a Rock and a Hard Place: Transatlantic Efforts at a Supranational Climate Policy

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## 8

# BETWEEN A ROCK AND A HARD PLACE: TRANSATLANTIC EFFORTS AT SUPRANATIONAL CLIMATE POLICY

**Brianna Hand**

Global warming is becoming a serious concern for the world. With scientific studies linking GHG emissions to human-induced climate change, and events such as Hurricane Katrina, heat waves, the melting of glacier caps adding credibility to the increasingly persuasive scientific arguments, there has been a progressively globalized movement towards supranational legislation to curb GHG emissions, most notably the Kyoto Protocol. Yet the world's leading "developed country" polluters, the United States and the European Union, have taken dramatically varying stances regarding the Kyoto Protocol. In this research paper, I seek to explore, (a) the problem of climate change, (b) attempts at solving the problem, namely the Kyoto Protocol and (c) the effectiveness of the Kyoto Protocol, the first attempt at supranational legislation, and (d) the actions taken by the United States and the European Union in conjunction to curb GHG emissions. Through the exploration of these four key elements, I ultimately seek to discover what solutions or programs may replace the Kyoto Protocol and allow for transatlantic cooperation in supranational climate change policy after the Kyoto Protocol expires in 2012. I strive to prove that before any effective supranational climate legislation and collectivized action against global warming can be put into place, before anything similar to the Kyoto Protocol can be ratified in the post-2012 period, there needs to be a joint transatlantic effort between the world hegemon in both pollution and power, the United States, and the leader in climate policy legislation, the EU, towards a solution in global warming, a solution that contains a hybrid Kyoto Protocol with a renovated Emissions Trade System as part of the answer.

The problem of global warming is an extremely complex one that breeds disunity in both the political and scientific arena. Global warming includes not only a rising average temperature of the Earth's near surface air, but also a rising sea level. Other effects of global warming may include changes in agricultural yields, glacier retreats, species extinctions, more extreme weather patterns, etc. While there is consensus that global warming is a certifiable phenomenon, a division occurs among scientific experts as to whether humans and their GHG emissions are the ones to blame for negative climate change. The Intergovernmental Panel on Climate Change (IPCC), established in 1988 by the World  
Transatlantic Efforts at a Supranational Climate Policy

Meteorological Organization and the United Nations Environment Program, serves “to assess . . . the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation.”<sup>1</sup> Their role, in a nutshell, is to reexamine scientific evidence on climate change in the most neutral, fair, and objective manner possible, compile scientific findings from the world’s leading experts in climate change, synthesize a report, and present it to the world’s political leaders. For their most recent report, the Fourth Assessment Report published in 2007, the IPCC compiled scientific evidence from over 600 of the world’s leading climate experts, synthesized a report, and submitted it to two extensive reviews by over 2,500 experts before publishing it.<sup>2</sup> The Working Group I Summary for Policymakers, as part of the Fourth Assessment Report of the IPCC 2007, comes to the conclusion that “warming of the climate system is unequivocal . . . [and] most of the observed increase in globally averaged temperatures since the mid-20th century is *very likely* due to the observed increase in anthropogenic (human) greenhouse gas concentrations.”<sup>3</sup> The term “very likely” signifies at least a 90% likelihood that GHG emissions are responsible for climate change, raised from the previous assessment report of 2001 that placed GHG emissions responsible for climate change at “likely” or at least a 66% likelihood. The Fourth Assessment Report, even more strongly than its predecessors, links climate change to human activity and provides the scientific basis necessary to justify and drive collectivized political action in the post-Kyoto Protocol years ahead.

The most visible and well-known supranational legislative effort at curbing GHG emissions and effecting positive climate change in recent years has been the Kyoto Protocol. Arguably both a success and a failure, it has played a pivotal role in laying the architecture for future supranational climate change policy. The Kyoto Protocol is an amendment to the United Nations Framework Convention on Climate Change (UNFCCC), an international environmental treaty with the stated objective “to achieve stabilization of greenhouse gas concentrations in the atmosphere at a low enough level to prevent dangerous anthropogenic interference with the climate system.”<sup>4</sup> The major difference between the Kyoto Protocol and the UNFCCC is that the Kyoto Protocol serves as a binding international agreement with minimum requirements on GHG emissions and penalties for noncompliance, while the UNFCCC simply encourages countries to consider stabilization in GHG emissions. Adopted in Kyoto, Japan in 1997 after two and a half years of negotiation and put into effect in 2005 after it was ratified by the obligatory number of 55 countries, the Kyoto Protocol commits developed countries to the stabilization of GHG emissions with specific emissions reductions targets to be met during the budget period of 2008 – 2012. The protocol includes a series of flexibility mechanisms that allow developed countries to meet their target emissions levels including national and regional emissions trading schemes such as European Union Emission Trading Scheme, or the Clean Development Mechanism.

As of November 2007, 174 countries have signed and ratified the Kyoto Protocol, with 36 developed countries committed to reducing GHG emissions below a certain amount as previously agreed upon within the treaty.<sup>5</sup> These 36 developed countries include major international actors and GHG emitters such as the EU, Russia, Norway, and Japan. Yet, the world’s leading GHG emitter is missing from the Protocol: the United States.

Why has the US, the number one GHG emitter in the world with 25 percent of the world’s carbon emissions and only 5 percent of its population, failed to ratify the treaty? For the US, the Kyoto Protocol poses a problem for three main reasons: (1) concern over U.S.

sovereignty, (2) the lack of developing country participation, (3) the assumed threat to the health of the US economy. In terms of sovereignty, the US takes a very strong stance against the Kyoto Protocol, the Senate failing to ratify the treaty (in fact, the Protocol was never even submitted for ratification) because it does not want a binding international treaty with minimum requirements and penalties for noncompliance dictating its own foreign and domestic policy. In terms of developing country participation, there is none under the Kyoto Protocol. Only developed countries, the major GHG emitters by 20th century industrialization standards, are held accountable for meeting GHG emissions targets. The Senate's unanimous 95–0 vote against U.S. participation in the Kyoto Protocol, or any form of supranational climate policy for that matter, hinges upon the idea that there must be a sharing of the global warming burden, where “specific scheduled commitments to limit or reduce greenhouse gas emissions for the developing country parties [are met] within the same compliance period” as those faced by developed countries.<sup>6</sup> Developing countries such as China and India are considered free riders that negate any positive action taken by developed countries towards climate change. Therefore, any effort made by the US as a “developed nation” to curb GHG emissions is deemed pointless and futile with “developing countries” allowed to continue growth without any reductions targets on their GHG emissions.

In fact, during a hearing before the committee on international relations in front of the house of representatives in May 1998, Chairman Benjamin A. Gilman points out that, considering that China is currently the world's second largest GHG emitter and soon to overtake the United States in GHG emissions and has been exempted from the Kyoto Protocol, “we must ask whether the Administration accomplished anything meaningful at Kyoto.”<sup>7,8</sup> Some experts argue that, in fact, the Kyoto Protocol in itself is completely useless because it has failed to gain the backing of the United States, the closest thing the world has to a “world police” that would actually enforce the rules and hold countries to their word.

Beyond the issues of free-riding developing countries and the threat to sovereignty, the final significant reason that the US, and specifically the Bush Administration, has chosen to refrain from the Kyoto Protocol is the perceived economic threat to the US economy. The Bush Administration believes that reducing CO<sub>2</sub> emissions in an attempt to meet target reduction levels would be detrimental to industry and would subsequently prove disastrous to the health of the economy.

Despite the United States' failure to ratify the treaty and secure climate policy at the federal level, there have been concerted efforts at the state and local levels. California has taken tremendous steps towards reducing GHG emissions, Governor Arnold Schwarzenegger signing Bill AB-32, the Global Warming Solutions Act of 2006 that sets up the first enforceable state-wide act to place caps on GHG emissions and penalties for non-compliance on major industries, and places California on par with the Kyoto Protocol in terms of reductions targets within a certain time frame. As well, California's motor vehicle plan sets to reduce car emissions by 30 percent by 2016.<sup>9</sup> Beyond California, other efforts have been made at the state level to reduce GHG emissions. The U.S. Mayors Climate Protection Agreement seeks to advance the goals of the Kyoto Protocol by securing the signatures and promises of mayors from cities across the entire United States to establish or beat Kyoto Protocol targets in their own communities.<sup>10</sup> Thus far, over 435 U.S. mayors have signed the agreement, actions ranging from anti-sprawl land use policies to public information campaigns to building incentives for creating more environmentally friendly



buildings.

And with the 2008 elections coming closer every day, climate policy and global warming are some of the forefront campaign issues in the U.S. presidential race and bring hope to possible near-future federal level and (potential) transatlantic climate change legislation. Presidential hopeful Hillary Clinton proposes to reduce GHG emissions to 80 percent below 1990 levels by 2050 as well as create a \$50 billion dollar Strategic Energy Fund to fund investments in alternative energy, reduce U.S. oil dependence, and reduce CO<sub>2</sub> emissions. Barack Obama wants to also reduce GHG emissions to 80 percent below 1990 levels by 2050, and invest billions of dollars in alternative energy technology as well as create a Global Energy Forum to focus on environmental and climate issues with other G8 members. Even John McCain has taken a stance on GHG emissions, proposing a cap-and-trade system for CO<sub>2</sub> emissions within the U.S. These local and state levels efforts are small, but necessary steps made by a country that is essentially "lacing up its running shoes and preparing to join the race" and getting ready to bridge over and join the leader in climate policy, the European Union, in creating effective supranational climate legislation in a post-Kyoto Protocol world.<sup>11</sup>

The European Union is the world leader in climate policy, the original architect and proselytizer of the Kyoto Protocol and the standard by which both developing, and developed countries should emulate in forming their own responses to climate change. At the federal level, dramatic political strategy and negotiation have resulted in tangible results, the most recent effort at curbing carbon emissions, the new Energy Policy for Europe (EPE), giving sense to the awareness and concern that European policymakers exhibit towards climate change. In addition to the Kyoto Protocol, which already sets the overall goal of a 8 percent reduction in emissions by 2012, the EPE commits the EU to "independently reducing its greenhouse gas emissions by 20 percent by 2020 (compared to 1990), with a pledge for a 30 percent reduction should other developed countries follow suit."<sup>12</sup> As well, the EPE calls for the EU to triple its use of renewable energy sources by 2020 (to about 20 percent of its total consumption), and creates new regulatory measures that will improve energy efficiency.

Nation-state members of the EU such as Germany are important national leaders in the fight against human-induced climate change. With 27 underlying countries that compose the EU, each with its own unique industrial base and energy demands, Germany has taken a tremendous burden upon itself as Europe's largest economy to reduce GHG emissions. Germany plans to reduce its GHG emissions by 21 percent by 2012 under the Kyoto Protocol, which accounts for close to three-quarters of the overall 8 percent EU reduction target (as part of the original agreement between the 15 EU countries in 1997).<sup>13</sup> Beyond its localized efforts at GHG reductions through energy efficiency programs, changes in technology, and the utilization of renewable resources to meet the Kyoto Protocol target, Germany has been very vocal and active in garnering international support for climate change initiatives. Chancellor Angela Merkel used the G-8 summit in Heiligendamm, Germany in 2007 as a platform to push climate change issues and global warming policy, trying to draw China, India, and the United States into climate forums for future discussion.

Although exceptional in their federal and national level legislative efforts at curbing GHG emissions and effectively impacting positive climate change, the EU has faced a series of hurdles in making the Kyoto Protocol truly work. For example, countries such as France, Sweden, and the UK are not going to meet their Kyoto Protocol targets, and others like

Spain, Portugal and Ireland are not even close.<sup>14</sup> The European Union's flexible mechanisms such as the Clean Development Mechanism, or the selling and trading of carbon credits through the Emission Trading Scheme are fantastic ideas with thus far limited results. With the first phase of ETS, from 2005 to 2007, we witnessed the symbolic importance of carbon emissions credits, but the fallacy in liberal credit distribution. With emissions trading, a cap is set by a central authority on the amount of GHG emissions to be emitted. Carbon credits can be traded or purchased (through the Clean Development Mechanism from countries outside of the EU such as China or India) to meet the target emissions requirement. The central theory behind ETS is that the purchaser of carbon credits is paying for the cost of pollution, while the seller is being rewarded for reducing emissions. Although fantastic in theory, it had kinks to work out in practice during the first budget period. Many high emitting countries received too many carbon credits for the EU's collective good and were subsequently not required to reduce emissions or purchase carbon credits because they already had an existing surplus. As well, this market for trading and selling carbon credits has proved contradictory to the core values of the Kyoto Protocol and climate change policy in that it acts "as a disincentive to many companies to change their polluting ways and move away from fossil fuels toward renewable energy sources and new technologies."<sup>15</sup>

Both the United States and the EU have taken very different approaches concerning reductions in GHG emissions and fighting global warming, but neither has yet reached agreement with one another to form a unified front on supranational climate policy. The EU wants the US to agree to a legally binding international climate treaty. The US famously avoids anything binding that might compromise its sovereignty and debase its economic and political might. It seems that transatlantic efforts towards collectivized action against human-induced climate change have come to a relative standstill, and supranational climate policy now rests between a rock and a hard place. The EU can't pick up the slack for the rest of the world; despite its best efforts it is having a hard time meeting its own reduction targets. And even in doing so, any positive efforts made by the EU or active members of the Kyoto Protocol are being derided by pollution from the United States, India, China, Brazil, etc.

But with the Kyoto Protocol set to expire in 2012, an increasingly globalized effort by citizens, non-profits, and corporations towards going "green," ever more scientifically grounded evidence linking climate change to human-induced GHG emissions, state and regional legislative efforts at curbing GHG emissions, and a presidential election for the United States occurring in 2008, there is real possibility for positive change and transatlantic harmony in approaching climate change policy. The EU top-down approach to climate change, and the US down-up approach might finally meet a middle ground. Supranational climate policy and transatlantic cooperation can become a reality if both US and EU policymakers can form some type of mutual agreement on climate policy drawn from the foundations of the Kyoto Protocol that is (a) non-binding, or (b) binding (but matches the domestic climate policy legislation already put in place by the United States).

Some critics of ETS and the Kyoto Protocol suggest a complete rebirth of supranational climate legislation. Many experts are placing their collective weight behind the idea of replacing the carbon emissions credits cap-and-trade scheme (and for that matter, the Kyoto Protocol) with a carbon emissions tax, whereby a tax is placed on pollution, or the use of fossil fuels and other non-renewable resources (i.e. Gasoline, coal, and oil). The money generated from the tax would then be earmarked towards environmental projects and research towards cleaner technologies, the relaying of forests and other green sinks. The

major problem, in light of the United States and their current position on the environment and the economy, is that such a tax would invariably be passed onto the consumer, a cost that neither the consumer nor industry can afford with the falling value of the greenback and the increasing instability of the economy with the credit crisis and the bursting of the housing bubble. Such a carbon tax would never pass congress in the United States because it would impact the health of an already ailing economy.

There is no need to fully re-actualize climate change policy when we already have a system in place that we can work off of and improve upon. With the Kyoto Protocol having taken almost a decade for countries to discuss, negotiate, and finally agree upon and put into action, to relay the foundations of climate policy yet again would take years we do not have. Therefore, it is in our interest to take the Kyoto Protocol, to learn from both its successes and failures, and to build upon it. We can draw from experience and create something inordinately better in the post-2012 years that can have a greater impact on positive climate change.

The Emissions Trade Scheme formed under the first budget period of the Kyoto Protocol can not only be improved upon, with a more conservative approach to credit distribution for European countries, but also extended to individual US states to further encourage a type of bottom-up revolution in climate and energy policy for the US. Further improvements to ETS extend to the auctioning of credits, as opposed to the giving away of credits, in order to garner funds to be earmarked towards research on renewable and cleaner technologies.

Both the US and EU have incentive to join together, combine political forces and create a hybrid Kyoto Protocol that better deals with upcoming developing countries such as China and India. China is soon to surpass the US as leading world emitter of GHG emissions and India is on its way. By revamping the current framework of the Kyoto Protocol to hold both developed and developing nations responsible for emissions reduction targets, there is greater possibility for a supranational solution to climate change. As an incentive to developing nations who may view their participation as a financial disadvantage due to a different industrial base and the use of more primitive technologies and energy sources, financial incentives and superior forms of technologies could be required to be given by developed countries to developing countries as part of new supranational climate/energy legislation.

In conclusion, supranational climate change legislation is an extremely complex problem with a complex solution. The Kyoto Protocol has been absolutely fundamentally in establishing a framework and forum for future climate change legislation. But it is not enough. With the United States and EU moving closer and closer everyday towards respectively similar domestic level climate policies, and an informed public and savvy media constantly upping the anti and demanding more from their local policymakers, there is great potential for future climate legislation. It is critical that the world political, economic and military power, the United States, join a united front with the world leader in climate policy, the EU, so that together they can create an enforceable standard by which both developed and developing nations must stand by. In the meantime, we need to make changes in our lifestyles and consumption behavior and help make the individual effort to curb GHG emissions.

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