

Climate change: an important foreign policy issue

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It does not often happen that the Deputy Prime Minister of the UK storms out of a conference room with a face like thunder, exclaiming 'I'm gutted!' to the expectant throng of journalists. It did happen, however, last November in The Hague, after the breakdown of negotiations at the Sixth Conference of the Parties (COP-6) to the UN Framework Convention on Climate Change (FCCC).¹ The failure of this conference revealed, among other things, some strong underlying tensions in the transatlantic relationship, with the chief US negotiator accusing 'green fundamentalists' in the European delegation of having obstructed a deal. Raw nerves were exposed inside the EU as well: the British head of delegation accused the French negotiator of having been unable to follow the negotiations properly during the final night, to which the French minister replied by calling him 'macho'—and other European colleagues came to her rescue. Unusually, all these rather undiplomatic exchanges were made publicly, via the press.

In view of this tumult, it is perhaps not surprising that climate change can be expected to remain a highly fascinating policy area. However, it is the sheer scale of the implications of the problem, not its entertainment value, that will ensure its continued presence high on the political agenda in the new century. The leading scientific body on this issue, the Intergovernmental Panel on Climate Change (IPCC),² has recently concluded that the potential impact of unrestricted 'global warming' might be worse than it judged in its last assessment of 1995. According to the scenarios of the Third Assessment Report,

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¹ For documents and other material on that conference, see the website of the Secretariat at <<http://www.unfccc.de>>. The Conference of the Parties constitutes the highest decision-making body under the FCCC and meets once a year; the first meeting took place in 1995 in Berlin.

² The IPCC is jointly organized by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP). On its history and operation see John Lanchbery and David Victor, 'The role of science in the global climate negotiations', in Helge Ole Bergesen and Georg Parman, eds, *Green globe yearbook of international cooperation on environment and development* (Oxford: Oxford University Press, 1995), pp. 29–39.

released early in 2001, climate change will lead to a temperature increase of between 1.5 and 6° Celsius between now and 2100.³ At its greatest extent, this would not only be a bigger change than the difference between now and the last ice age, it would also come at a speed much faster than anything experienced by humankind in the last 10,000 years—a period which, maybe not incidentally, covers the time-span that saw the evolution of culture and civilization. Much of that, and many lives, will be at stake once the earth turns into an unfriendly place for humans.

And yet the fascination with this issue has deeper roots than just the scale of the potential threat. Climate change is, above all, a unique challenge to humanity. It is a challenge to humans' technological and social ingenuity, our ability to adapt to changing conditions and, most importantly, our ethical capability to act today in response to a threat that will not seriously affect ourselves, but will have grave impacts on the lives of our children and grandchildren. The challenges posed, and the responses called for, have been described elsewhere in length and do not need to be repeated here.⁴ Suffice it to say that the issue involves nothing less than a technological and social revolution within the next 100 years—the conscious development of a global society that has outgrown its fossil-fuel resource base. It hardly needs to be said that complex questions of international and intergenerational equity loom large behind almost every aspect of the problem. It is no coincidence that many of the arguments familiar from the debate on a 'new international economic order' in the 1970s have been resuscitated in recent years.

It comes as no surprise, therefore, that the path of international climate diplomacy has always been a rocky one. This is especially true since the adoption of the Kyoto Protocol in December 1997 as a complementary treaty to the climate convention. This landmark protocol subjected the industrialized countries, for the first time in history, to (initially rather modest) cuts in their emissions of greenhouse gases (GHGs).⁵ It now appears that even this modest step represented too bold an approach for many countries. That should not, of course, prevent others from going it alone, though under the widely held assumption that the unilateral implementation of climate policies negatively affects the competitiveness of national economies, most states are aiming for 'universal participation' in the regime, which includes at least the industrialized North in the beginning and the biggest developing countries later.⁶ Nevertheless, the Nordic countries and—the first large industrialized country to do

³ The Policy Makers Summary is available on the website of the IPCC: <<http://www.ipcc.ch>>.

⁴ See in general S. Oberthuer and H. E. Ott, *The Kyoto Protocol: international climate policy for the 21st century* (Berlin: Springer, 1999); Michael Grubb, Christian Vrolijk and Duncan Brack, *The Kyoto Protocol: a guide and assessment* (London: Earthscan/RIIA, 1999); John T. Houghton, *Global warming: the complete briefing*, 2nd edn (Cambridge: Cambridge University Press, 1997); see also the reports of the IPCC at <<http://www.ipcc.ch>>.

⁵ See also H. E. Ott, 'The Kyoto Protocol—unfinished business', *Environment* 40: 6, July/Aug. 1998, pp. 16–20, 41–5.

⁶ Other reasons include the need to avoid free riding and leakage of GHG intensive industry into third countries.

so—Germany have already taken far-reaching steps towards a stringent climate policy without compromising their competitiveness on global markets.⁷

The failure of the Hague meeting must be seen in this context; it is much too early to declare the sudden death either of the Kyoto Protocol or of the entire international process on climate change. Indeed, on the contrary many environmentalists applauded the European Union for its resolute stance that ultimately led to the breakdown, on the grounds that any deal reached at that point might have compromised the environmental integrity of the protocol.⁸ This article will attempt to shed some light on the reasons why no deal was concluded in The Hague and to offer some reflections on how the success of international climate policy in the short and medium term may be ensured. It will become apparent during the course of the discussion that climate change has become a ‘serious’ policy issue that cannot be ignored by the foreign policy community; and, further, that the international climate negotiations are in need of the expertise of experts in international relations.

The next section will briefly describe the events in The Hague and the more technical questions that were left unresolved. In the following section, some of the underlying difficulties facing the negotiations are analysed. The final section explores some short- and long-term design issues that are vital to the success of international climate policy after the breakdown of negotiations in The Hague.

The deal that almost was: negotiations in The Hague

‘Every disappointment can be a blessing in disguise’—these were the words used by Sani Daura, Nigeria’s minister for the environment, to comment on the failure of COP-6. After a long last night in The Hague, the president of the conference, Jan Pronk of the Netherlands, conceded that the ministers had not been able to agree on the decisions required. Faced with the prospect of an inconclusive result, the parties decided not to close the conference but to suspend the meeting with the aim of resuming in May or June 2001, to coincide with the scheduled meetings of the subsidiary bodies of the FCCC. A further delay was, however, prompted by the new US administration, which successfully demanded a postponement of negotiations until June or July 2001 on the grounds that it needed more time to prepare. The resumed COP-6 will take place from 16–27 July in Bonn.

Approaching The Hague

The negotiation process since the adoption of the Kyoto Protocol by COP-3 in December 1997 had seen plenty of ups and downs. The year 1998 was marked

⁷ See Germany’s National Climate Protection Programme, 18 Oct. 2000, available at <<http://www.bmu.de/english/download/climate/files/climateprotection.pdf>>.

⁸ See Bill Hare, Remi Parmentier and Michel Raquet of Greenpeace International, *Deadlock at The Hague: a salutary crisis?*, 30 Nov. 2000, internal paper, Greenpeace International.

by a rather low spirit, despite the adoption by COP-4 of the 'Buenos Aires Plan of Action', a comprehensive package of work designed to fill in the gaps left by negotiators in Kyoto.⁹ COP-5 in late 1999 injected a new sense of vision and hope into the process. Not only Germany under Chancellor Schröder, but also the other 14 EU countries, as well as Japan and central and eastern Europe, announced they would work for an early entry into force of the Protocol by 2002. There was, furthermore, some indication that the EU would be willing to move ahead and ratify even if the United States and some of its allies would not. In Kyoto, Japan, the United States, Canada, Australia and New Zealand had formed an alliance with Russia, Ukraine, Khazakstan, Norway and Iceland, coming to be known as the 'Umbrella Group', originally founded on the possibility of 'jointly fulfilling' the commitments of the Kyoto Protocol under Article 4 in a so-called 'bubble'.¹⁰ Though the Umbrella Group has not yet formally established such a bubble, the group nevertheless serves as a useful platform in the negotiations for these otherwise diverse countries. The advantages of such platforms have been realized by other countries as well, and the climate regime recently saw the formation of two other groups: the 'CG 11' group of eleven central and east European countries, and the 'Environmental Integrity Group' comprising Switzerland, South Korea and Mexico.

During 2000, two meetings of the subsidiary bodies took place in order to prepare COP-6. Both meetings were unspectacular, producing neither great advances nor great failures. Considerable progress was made on the more technical issues, whereas progress on the political issues was painfully slow. Nothing, however, foreshadowed the impending failure of the talks in The Hague—except for a distinct lack of urgency, noticeable not only in the conference halls themselves, but also in the upper echelons of politics. For example, whereas climate change should have been one of the major topics of the UN Millennium Summit of World Leaders in New York, it was instead relegated to a few speeches and footnotes. Compared with the almost frenzied activity before COP-3, where every month saw a major international gathering dealing with climate change,¹¹ this was a clear sign that the issue had fallen off the agenda of some of the top politicians across the world.

The Pronk paper

The negotiation process during 2000 took its character to a large extent from the activities and style of Jan Pronk, the Dutch environment minister and president-designate of COP-6. He spent much of that year travelling the

⁹ See Hermann E. Ott, 'Report on developments in international climate policy and law' in *Yearbook of International Environmental Law* 9 (Oxford: Oxford University Press, 1998), pp. 183–9.

¹⁰ For an explanation of this concept see Oberthuer and Ott, *The Kyoto Protocol*, pp. 141ff; also Eric Haites, '“Bubbling” and the Kyoto mechanisms', *Climate Policy* 1, 2001, pp. 109–16; Axel Michaelowa and Regina Betz, 'Implication of EU enlargement on the EU greenhouse gas “bubble” and internal burden sharing', in *International Environmental Agreements: Politics, Law and Economics* 1, 2001, pp. 267–79.

¹¹ See Oberthuer and Ott, *The Kyoto Protocol*, pp. 59ff.

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capitals of the world in order to collect views and positions. He also announced quite early that, should the negotiations lead to a dead end, he would submit a compromise paper. Very soon after the opening of COP-6 it became apparent that there was indeed a need for such a paper. The first week of the conference yielded little progress, except on technical issues like GHG inventories, monitoring and reporting. When the ministers arrived in the second week, therefore, there was nothing for them to decide upon—because there was still too much to decide. On most issues the texts were still far too voluminous, amounting to several hundred pages in all. For the first few days the ministers were kept busy in various break out-groups. The chairs of these groups reported that progress was being made, but not much was achieved to justify the expenditure of two days of precious negotiating time.

If the president's paper had been submitted at the beginning of the second week, with the ministers newly arrived at The Hague, time might have permitted at least the conclusion of political deals. However, it was submitted only on the afternoon of Thursday 23 November, at which point there remained officially just one more day of the conference. To make things worse, the paper contained material on thirty-nine so-called 'crunch issues' that had been identified by earlier informal meetings; and even these were not all the outstanding issues, but only those that required political decisions at the highest level. Finally, the text was not written in legal language, but contained political positions. Even if ministers at the conference had been able to agree on those positions, another meeting would have been necessary in order to translate these positions into treaty language. Thus COP-6 was not really in a position to conclude the negotiations on the issues left over from Kyoto.

The issues of contention

The 'Note by the President of COP-6', as the Pronk paper was officially named, divided the 'crunch issues' into four boxes.¹² These were developing country issues ('capacity building, technology transfer, implementation of Articles 4.8/4.9 and 3.14, finance'); the Kyoto mechanisms (emissions trading, joint implementation and the Clean Development Mechanism); land-use, land-use change and forestry (LULUCF); and compliance issues (policies and measures, compliance, accounting, reporting and review).

Of those boxes only the fourth, on compliance issues, represented a real compromise that provided a good starting point for further negotiations. In contrast, box one, on developing country issues—and especially financing—was very much oriented towards the demands of the recipient countries, while the language in the boxes on the mechanisms and LULUCF showed a clear leaning towards the positions of the Umbrella Group. Indeed, despite Dutch membership of the European Union, most of the demands of the Umbrella Group had been met.

¹² The paper has been annexed to Decision 1/CP.6; see <<http://www.unfccc.de>>.

The most contentious issue in The Hague—and the one that finally caused the breakdown of the conference—concerned the absorption of greenhouse gases by sinks and reservoirs, covered by the rubric ‘land use, land use change and forestry’ (LULUCF).¹³ The Kyoto Protocol specified three activities that influence the assigned amount of greenhouse gases for any country: afforestation, reforestation and deforestation (Article 3.3). With regard to these activities, the parties still have to define the terms—as yet, not even the term ‘forest’ is clearly defined under the regime. The use of definitions is crucial, as they determine how much of a country’s reduction or limitation commitment can be met through land-use change and forestry activities. The more sink activities are allowed (for example, by using broad definitions for land-use change activities that include business-as-usual practices), the easier it will be for parties to achieve their reduction goals.¹⁴

The president’s text contained some formulations on additional sink activities which are not defined in the Kyoto Protocol but could be added under Article 3.4. These included grazing land management, cropland management, forest management (broadly defined) and revegetation (narrowly defined). In acknowledgement of the inherent uncertainties surrounding the effect of these activities, the proposal contained a ‘cap’, a numerical limit on the quantities of greenhouse gases that could be accounted for in this way in determining a party’s assigned amount of emissions. The proposed inclusion of these measures ran counter to the position of the EU as well as most of the G-77, and would have been mainly to the benefit of three countries: the United States, Canada and Japan. The first two in particular could have counted ordinary business-as-usual activities in the agricultural sector as climate protection measures. This ultimately led to the failure of COP-6.

Moreover, the Pronk paper, which allowed for the carrying out of sink activities under the Clean Development Mechanism (CDM), against the clearly stated positions of the EU, the CG-11 and most of the G-77, did not contain any safeguards for forestry activities, for example the protection of old-growth forests, principles of sustainable forestry or the protection of biodiversity. The lack of such safeguards could have severe effects, especially in developing countries; indeed, the inclusion of sink activities is highly controversial, because it may provide an incentive to gain ‘emissions credits’ through investments in forestry activities in developing countries without taking into account the prior destruction of old-growth forests and their replacement by plantations.¹⁵

¹³ See the Special Report of the IPCC: Robert T. Watson, Ian R. Noble, Bert Bollin, N. H. Ravindranath, David J. Verardo and David J. Dokken, eds, *Land use, land-use change, and forestry* (Cambridge: Cambridge University Press, 2000); see also Ian Noble and R. J. Scholes, ‘Sinks and the Kyoto Protocol’, *Climate Policy* 1, 2001, pp. 5–25; and, for the politics, Oberthuer and Ott, *The Kyoto Protocol*, pp. 130ff.

¹⁴ The Pronk paper used the definition of the Food and Agricultural Organization (FAO) for the term ‘forest’ (with ‘a certain flexibility’), whereas it relied on IPCC definitions for the three activities mentioned above.

¹⁵ For a discussion of some of the difficulties see Kenneth Richards and Krister Andersson, ‘The leaky sink: persistent obstacles to a forest carbon sequestration program based on individual projects’, *Climate Policy* 1, 2001, pp. 41–54.

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To meet some of the demands of the EU and most developing countries, nuclear energy was to be banned from the CDM by a unilateral ‘declaration’ on the part of industrialized countries. Renewable energies and projects to enhance energy efficiency, on the other hand, received a certain priority treatment mainly through expedited consideration of applications. However, the paper did not address the inclusion or exclusion of large hydro and coal power stations, as demanded by the EU and most environmental NGOs.

Finally, again contrary to the demands of the EU, which had placed great stress on this point after Kyoto, the paper failed to place any quantitative restrictions on the use of the Kyoto mechanisms that would be necessary to ensure that parties had to fulfil the majority of their obligations domestically.¹⁶ Contrary to conventional economic wisdom, it does matter where emissions are being reduced; only the industrialized countries have the potential to come up with the required technological (and cultural) revolution to sketch the path towards a fossil-free economy. Buying emission certificates abroad rather than cutting emissions at home could thus hold back climate-induced technological innovation. Instead of setting a numerical cap on the use of these mechanisms, the paper submitted by Mr Pronk simply used the term ‘primarily’ for measures to be carried out domestically. This might seem to be equivalent to the ‘more than 50 per cent’ demanded by the EU, but leaves much room for prolonged debate and would not have provided clarity. However, the US rejected even this formulation.

Showdown and aftermath

There are as many versions of history with regard to the ultimate collapse of the conference as there were participants in this final hour—probably more. The breakdown came about after a long night from Friday to Saturday, by which time the conference had already been officially closed for one day. This last act was an exclusive matter between the United States and Europe; developing countries and eastern European countries alike were—as usual—only bystanders, and could only express their regret afterwards.

The United States clearly moved some way towards meeting the demands of the EU, but not far enough, persevering in their insistence on the inclusion of additional sink activities under Article 3.4 in the first commitment period and also on unlimited trading. According to the last compromise paper, which seems to have been prepared in a long telephone call between the British Prime Minister Tony Blair and US President Clinton, the United States, Canada and Japan would have been allowed to count a certain amount of emissions absorbed by sinks towards their obligations. Not only did this paper not provide for a quantitative cap on the use of the mechanisms, the term ‘primarily’ used in the Pronk paper to refer to domestic measures was replaced by the much weaker

¹⁶ For a discussion of this issue see Grubb et al., *The Kyoto Protocol*, pp. 213ff; Oberthuer and Ott, *The Kyoto Protocol*, pp. 197ff.

'significant'. Finally, the compromise postponed the decision demanded by the EU on the eligibility of sink activities in the CDM.

Perhaps it would only have taken a couple more hours to conclude 'the final deal'—some European ministers had already left in the wee hours of Saturday morning. Others suggest, however, that no final deal was ever in sight. In the event, the Conference of the Parties adopted just one decision (Decision 1/CP.6) in the afternoon of Saturday 25 November that suspended the sixth session. This decision requested the president to 'seek advice on the desirability of resuming that session in May/June 2001 in order to complete work'. The decision took note of the Pronk paper as an element of 'political guidance' and requested the president of the COP to make proposals for the further development 'in a transparent manner'.

The first weeks after COP-6 were marked by hectic diplomatic activity. President Clinton himself issued an invitation to the EU to return to the negotiating table in order to reach a basic understanding before handing over power to the incoming US President, now known to be George W. Bush. Heads of delegations of major OECD countries met on 6–7 December in Ottawa with the aim of preparing an informal ministerial meeting to be held later in Oslo. However, the representatives of the EU (the Commission, Austria, Belgium, Germany, France, the Netherlands and the UK) and those of the Umbrella Group (Australia, Canada, Iceland, Japan, Norway, the United States) were not able to reach agreement. Both groups afterwards complained that the other side had re-opened previously agreed text on the supplementarity of the mechanisms and on additional activities under Article 3.4. This indicates that the elusive 'deal' of The Hague might not have been as close as some have maintained. In any event, the meeting in Oslo at ministerial level was cancelled after the United States declined to attend.

Climate policy at The Hague: a question of leadership

These events left most of the world puzzled. It was not at all clear, first, why the conference had failed, and second, whether that was good or bad. As for the first question, some possible explanations have already been indicated. As noted above, there was a conspicuous lack of urgency in the months before COP-6. The delegations for the most part behaved as if there were plenty of time to address the issues, when in fact time was already extremely short. The thirty-nine 'crunch issues' identified by Mr Pronk in the second week of the conference had already been identified in earlier informal meetings, and the enormity of the task should have been apparent to anyone closely involved. This absence of urgency might have been due to the fact that after the breathtaking Kyoto conference many countries—despite the rhetoric so widely used—adopted a policy of 'wait and see'.¹⁷ This in turn may have contributed

¹⁷ According to the US Department of Energy, energy information agency emissions in the United States increased 12%, in Canada 18% and in Japan 14% from 1990 to 1998; see <<http://www.eia.doe.gov/emeu/iea/tableh1.html>>.

to the absence of pressure from the upper echelons of politics: the Kyoto Protocol would not have been adopted without the involvement of heads of state, heads of government and foreign ministers.

There were many reasons why the negotiations did not produce any real advances beyond technical issues. However, it is quite probable that the expectation of a 'brilliant' compromise paper by Jan Pronk did not exactly encourage the parties to make compromises themselves or to get fully involved in the inevitable *mêlée* of the final negotiations. The submission of compromise papers had also been the style of the chairman of the group that negotiated the Kyoto Protocol, Ambassador Estrada,¹⁸ and this had proved to be quite successful. However, Estrada did so on the request of the parties; moreover, he had presided over the negotiations on the Kyoto Protocol for several years, whereas the Dutch minister was a newcomer. Furthermore, unlike Estrada, Pronk did not make extensive use of the resources provided by the FCCC Secretariat or the advice provided by the Bureau of the Conference; nor did he keep in close contact with NGOs before and at the conference. Instead, Pronk tended to rely on his own group of young social scientists and the assistance of computer models.

Another reason for the failure of the COP-6 negotiations may have been the rather weak performance of the European Union. Observers of most international negotiations are by now familiar with the uncoordinated, reactive and fragmented style of European diplomacy.¹⁹ The negotiations leading up to and at The Hague were characterized by the fact that the EU was not in a position to counter the various proposals of the United States and the Umbrella Group—in large part because the coordination of 16 dissonant voices (15 member states plus the Commission) into a harmonious chorus is a Herculean task. As a further complication, in the climate talks the Union is represented not by the Commission but by the EU presidency, which rotates every six months and thus does not present a stable arrangement for negotiating partners. Nor does this arrangement allow for the development of a coherent medium- or long-term negotiating strategy, since every presidency has its own ambitions and priorities. If agreement is to be reached on the details of the Kyoto Protocol at the resumed COP-6 in summer 2001, the EU will need to undertake not only much better short-term preparation but also—as is clear from the structural problems outlined above—a thorough analysis and improvement of its negotiating power on a strategic as well as a tactical level.

On the positive side, the EU did withstand the pressure of the Umbrella Group in The Hague. The failure of COP-6 thus gave a clear signal that the Union has changed. Until recently, the United States and its allies in the Umbrella Group could assume that, in the end, Europe would give way and

¹⁸ See 'The Estrada factor', in Oberthuer and Ott, *The Kyoto Protocol*, pp. 84ff; on the chairman's role, see also Grubb et al., *The Kyoto Protocol*.

¹⁹ At least on those issues involving so-called 'mixed competences' between the Community and its member states.

consent to an agreement that amounted to an abdication of its positions. This assumption came a cropper in The Hague. In this sense, the failure of COP-6 was also the result of a miscalculation by the US delegation, whose offers of compromise came too late. This may to some extent explain the rather undiplomatic allegations afterwards that the deal was obstructed by 'green fundamentalists', as the ministers for the environment from Germany and France happened to be members of green parties.

Let us now turn to the second question: how to assess the breakdown of the negotiations. In the immediate aftermath of The Hague, the fossil fuel industry made an attempt to portray the Kyoto process as dead, but the follow-up has quickly reasserted the viability of the regime. One of the unknown variables before the resumed COP-6 remains the positioning of the new Bush administration in the United States. At the time of writing, appointments to some key positions have not been made. Many observers feel that it will be much more difficult to come to an agreement with the new administration than with its predecessor; but this need not necessarily be the case. One of the problems associated with the Clinton administration was the fact that it could not 'deliver' in the US Senate, the constitutional body that ratifies international treaties and thus renders them binding for the United States. In any case, the rest of the world knows much better now what to expect from the United States and has the opportunity to fine-tune its strategy accordingly. In the end, Bush may surprise everyone by taking a constructive attitude towards the Kyoto Protocol—somewhat as President Nixon did when he took a surprising stance on a strategic issue by visiting Communist China.²⁰ However, a letter dated 13 March 2001 from President Bush to Senator Hagel and others destroyed much wishful thinking. The President not only reneged on his campaign pledge to regulate carbon emissions but furthermore openly admitted that he 'opposed the Kyoto Protocol' because it would exempt developing countries from emission cuts and was detrimental to the US economy.

Contrary to some rather pessimistic assessments of the outcome at The Hague, other commentators were more inclined to agree with the comment of the Nigerian environment minister Sani Daura, quoted above, that the failure of the conference might, in retrospect, appear as a 'blessing in disguise'. The judgement of Greenpeace that 'no deal is better than a bad deal' was also shared by other environmental organizations.²¹ Of course, this judgement is dependent on the assessment of 'good' and 'bad', in other words, of the potential environmental impact of the rules that would have been agreed to in The Hague. Ultimately, the threat to the 'environmental integrity' of the Kyoto Protocol resides not so much in a short-term failure to reduce greenhouse gas emissions to the extent required by scientific understanding as in the challenge to the regime set up to achieve medium- and long-term reductions that will induce

²⁰ See Andrew C. Revkin, 'Bush team under attack on emissions talks', *New York Times*, 16 Feb. 2001.

²¹ See e.g. Karl-Ludwig Schibel, member of the Board of Directors of the Climate Alliance in Germany, in *Climail. Klima-Bündnis Europa*, D 2001/1, pp. 1–4.

structural change in the economies of the industrialized West. The integrity of the Kyoto Protocol would be in severe jeopardy if the foundations of the regime were shaken—as would be the case, for example, if the binding nature of the commitments were abandoned or if the regime were to lose its very foundation, namely the reliability of inventories and data.

Thus even a small loophole would be unacceptable if it carried the danger of breaking a dam. This might have been the case with the proposed deal in The Hague, under which the EU would have given up its demand for a limit on the use of the flexible mechanisms, at the same time consenting to the use of additional sink and reservoir activities under Article 3.4 of the Kyoto Protocol which would have weakened the already rather modest reduction obligations of many industrialized countries. Furthermore, a key principle was at stake: allowing these activities would introduce further uncertainties into the regime and would make it considerably more complex than it is already. Such a deal would also threaten the integrity of the data to an unacceptable degree.²² Putting a tight cap on the use of sinks would reduce the damage, but would amount to the disguised renegotiation of the quantitative targets. It would, furthermore, compromise the legally binding nature of these targets, since the assessment of compliance would be extremely difficult and even more contentious than under the present rules. In short, if the United States was looking for a compromise, it could not expect to be granted *both* unlimited use of the mechanisms, especially emissions trading, *and* the inclusion of additional sink activities.

Viewed from this perspective, the failure of The Hague might actually have created a chance to come to an environmentally effective agreement at the resumed COP-6 in summer 2001. The comments of representatives on the last day in The Hague were promising and indicated a great willingness on all sides to work for a successful conclusion. There should be no further delay, however, because the ratification process takes time, and the entry into force of the Kyoto Protocol in 2002 or 2003 at the latest is vital. In some member states of the EU, ratification procedures have been initiated already.

The road ahead: which path to take?

The climate change regime is without doubt at a crossroads. The parties to the Framework Convention must decide whether to strengthen the Kyoto Protocol or abandon it. By ‘abandoning’ it, I mean not only taking a conscious decision to give up on efforts to put the Protocol into effect, but elaborating the rules in such a way as to preclude its proper functioning. It appears that everyone involved in the regime is aware of the consequences of abandoning the Kyoto Protocol. It would, above all, imply the setback of efforts to protect the global climate by five to ten years. A decision consciously to abandon the Protocol therefore must wait for the results of the resumed COP-6.

²² There is a huge uncertainty range; see e.g. Watson et al., eds, *Land use, land-use change, and forestry*, (e.g. table 2 of the executive summary).

Any discussion of the future of the regime must address short-term as well as long-term design issues.²³ One of the problems with this distinction obviously lies in the fact that the necessities of short-term decision-making tend to frustrate all efforts to develop the regime according to long-term analyses. The package deal in Kyoto, for example, introduced a wealth of new problems, not the least being the provision referred to above to allow for additional sink activities under Article 3.4. Nevertheless, I will make a cautious attempt to tackle the problems on both levels.

Short-term issues: ensuring ratification of the Kyoto Protocol

The immediate short-term task within the climate regime necessarily revolves around the resumption of COP-6 in July 2001 and the ratification process afterwards. Much will depend on the positioning of the new Bush administration towards climate change and the Kyoto Protocol. The postponement of negotiations from May to July has already demonstrated the weight of the United States on this issue—felt equally by the administration, as evidenced by its request, and by the rest of the world, in granting it.²⁴ Nevertheless, there are some benefits associated with this delay: in particular, the G-8 summit in July, exactly during the first week of the resumed COP-6, will provide a valuable opportunity for European and Japanese heads of government to raise the issue with the United States and to underline the urgency of the matter. As noted above, the failure of the Hague conference can be attributed in part to the lack of pressure from the higher echelons of politics. The final decision on the outcome of COP-6, at least concerning the US–EU standoff, might thus be taken not in Bonn but in Genoa at the summit.

Reducing complexity The post-Kyoto process has suffered from a hugely burdensome workload. The regime has become immensely complex, almost impossible for any individual to grasp. Only the heads of the larger delegations and some bigger NGOs have the required multiple information channels to keep track of the process. The chief US negotiator in Kyoto, Stuart Eizenstat, called the negotiations the most complex apart from those on disarmament. This problem has been exacerbated with the introduction of sink activities into the process. The thirty-nine ‘crunch issues’ identified by Jan Pronk, multiplied by approximately 15 major players in the negotiations, makes for a very dense web of cross-cutting interests and possible compromises. President Pronk in The Hague did not possess a sword sharp enough to cut through this web, and it is doubtful whether a weapon up to the task will be unearthed before the resumed conference.

²³ See also the approach under the IHDP project Institutional Dimensions of Global Environmental Change at <<http://www.dartmouth.edu/~idgce>>.

²⁴ It may be remembered that the German environment minister Jürgen Trittin went to COP-4 in Buenos Aires (November 1998) just a couple of days after he was sworn in.

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One way to alleviate the burden on negotiators would be to reduce the number of issues, so that only those problems that definitely require solution prior to ratification would be tackled at the resumed COP-6. Some of these are easy to identify. The parties must first of all agree on the rules for accounting, monitoring and verification, and they must agree on procedures for cases of non-compliance. Negotiations on these matters have made considerable headway, and outstanding compromises should be easy to achieve. Furthermore, agreement must be sought on the definition of sink activities under Article 3.3 (deforestation, afforestation and reforestation); this discussion is also at a very advanced stage. Another very important issue concerns the establishment of new and additional resources for developing countries. Here the Pronk paper and subsequent negotiations have already produced advanced understanding, so that while agreement will require some intensive negotiations it should not be too difficult to reach.

It is more difficult to determine whether to include decisions on the Kyoto mechanisms (emissions trading, joint implementation and the CDM). This is a complex matter, but it is also very important because it determines the degree of effort that is required domestically by the parties. Not only Japan but also most European countries probably would not ratify the Kyoto Protocol without agreement on at least emissions trading. There are some concerns regarding the availability of very cheap emission certificates from Russia should the United States not ratify,²⁵ but this will ultimately be of secondary importance. Emissions trading will allow any country to meet its target, should all efforts fail domestically. Furthermore, the existence of a trading regime will attract American business and thus increase the pressure on the administration and the US Senate to ratify the Protocol and participate at least in the second and further commitment periods after 2012. Decisions on the three mechanisms should, however, be restricted to the bare minimum necessary in order to make the system work. Details can be resolved later.

Finally, there seems to be one issue that should *not* be on the agenda: namely, the 'additional sink activities' under Article 3.4. There is no legal requirement to make an early decision on these, since the article calls not on the Parties to the Convention, but to the (not yet established) Conference of the Parties to the Kyoto Protocol to take decisions on the inclusion of further sink categories.²⁶ The political pressure on this issue comes from three countries only: the United States, Japan and Canada. Japan appears to be the most ardent supporter and was ultimately responsible for the problems that have arisen by its insistence on the insertion into the article of a last sentence that allows for the application of a decision on additional activities in the first commitment period, 2008–12. Political intelligence and much tactical skill will be required to convince Japan of

²⁵ See M. Grubb, 'Hold tight at The Hague', *Climate Policy* 1, 2001, pp. 3–4.

²⁶ According to Article 13.6 of the Kyoto Protocol, the first session of the 'Conference of the Parties serving as the meeting of the Parties to this Protocol' shall be convened in conjunction with the first session of the COP to the FCCC that is scheduled after the entry into force of the protocol.

the detrimental effect of insisting on Article 3.4 now. Nevertheless, the issue should be removed from the agenda of the resumed COP-6 and left for later meetings to decide. This would eliminate the largest of the stumbling blocks that ultimately brought down the conference in The Hague.

EU leadership for ratification Successful negotiations need skilled and determined leadership by a country or group of countries. Several possible scenarios can be sketched regarding the future US position—

- the US might decide to oppose the process openly, as indicated in President Bush's letter to Senator Hagel and others on 13 March 2001;
- the new administration might decide to 'play the game' in order to keep up a progressive image;
- the new Bush team might decide to influence the process as much as possible and to abstain from voting against the adoption of decisions, thereby letting the rest of the world go ahead;
- President Bush might decide to play the game cautiously but seriously because of the potential environmental threats, as evidenced by the recent IPCC reports and the pressure of his friends in Europe and the South

—but none of them would put the United States into a position to exert leadership. The Bush letter does not leave much room for manoeuvre, but there is still a possibility that the pressure from both within the US and from colleagues in Europe and Japan might induce the US to choose option three. Whatever the ultimate outcome of policy formulation in the United States, there is no doubt that the most important player in the climate negotiations during the years to come will be the European Union. The Union has always played a progressive role in this field, despite the setbacks in developing its own internal strategy.²⁷ The EU, furthermore, uniquely possesses crucial qualifying features for a leadership role, because of its economic and political weight, because of its diplomatic experience in cooperation and coalition-building, and because of its internal problem-solving capacities.²⁸ It is therefore high time the EU agreed on a realistic strategy for the international climate negotiations. Taking the considerations above into account, and in view of the fact that the US Senate as presently constituted is highly unlikely to ratify the Kyoto Protocol, the EU must face up to the prospect of non-participation by the United States and some of its allies.²⁹

A realistic and pragmatic strategy on the part of the Union must therefore include the possibility of bringing the Protocol in force independently of the United States. Given current emission trends, especially in the United States,

²⁷ See D. Phylipsen, K. Blok and C. Hendriks, *A review of the stage of implementation of European Union policies and measures for CO₂ emission reduction* (Utrecht: WWF, 1998).

²⁸ See Michael Grubb and Joyeeta Gupta, 'Leadership: theory and methodology', in *Climate change and European leadership: a sustainable role for Europe?* (Dordrecht: Kluwer, 1999) pp. 15–24.

²⁹ On the prospects for climate policy in the United States see P. G. Harris, ed., *Climate change and American foreign policy* (New York: St Martin's, 2000).

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this would furthermore imply non-participation by the United States in the first commitment period (2008–12).³⁰ The EU must therefore seek allies among the central and eastern European countries with economies in transition, developing countries and even the Umbrella Group. This ‘Leadership Initiative’ of the European Union is described elsewhere and need not be repeated in detail here.³¹ However, it should be noted that the participation of two countries is in effect indispensable at least for the entry into force of the Kyoto Protocol: Russia and Japan. This is because Article 25 of the Kyoto Protocol establishes a high threshold for entry into force: not only must 55 parties to the FCCC ratify, but the ratifying industrialized countries must represent at least 55 per cent of the total CO₂ emissions in 1990 by the industrialized countries. The United States emitted 36.1 per cent of those emissions in 1990, the EU 24.2 per cent, Russia 17.4 per cent and Japan 8.5 per cent. Should the US not ratify, as can be expected, the European Union would additionally need Russia, Japan and the economies in transition.

Both Japan and Russia have some interest in the success of the negotiations. Japan, as the host of COP-3, has a strong desire to see the Kyoto Protocol in force, because it represents one of its greatest diplomatic achievements and bears the name of its old imperial city. This will provide enough motivation to overcome resistance within the cabinet from the Ministry for International Trade and Industry (MITI). Russia’s overriding interest, on the other hand, consists in the ability to sell its surplus emissions capacity resulting from the economic breakdown, the so-called ‘hot air’ that accounts for about 30 per cent of its 1990 emissions.³² Russia might have aligned itself with the United States because it feared European attempts to limit the use of hot air; however, while it would certainly like to have the United States on board as a potential buyer, aligning itself with the EU would ensure that it could sell at least part of its hot air, whereas staying with the United States might entail the risk of not being able to sell anything. In light of the recent positioning of President Bush, this option is clearly on the table.

This diplomatic strategy will not be easy to implement. However, a concerted effort by the EU to establish and strengthen diplomatic ties with these countries at the highest levels might lead to unexpected results. Before the start of the resumed negotiations, the Union should know the terms of a possible deal with these countries and with its allies in the developing world. This will be difficult, because it implies a much more outward-going attitude instead of the almost incestuous occupation with internal communication and decision-making. Nevertheless, it has been done under certain circumstances and can be done again.

³⁰ According to the US Department of Energy, CO₂ emissions in the US went up 12% from 1990 to 1999: see <<http://www.eia.doe.gov/emeu/iea/table1.html>>.

³¹ See Oberthuer and Ott, *The Kyoto Protocol*, pp. 301ff; H. E. Ott and S. Oberthuer, *Breaking the impasse: forging an EU leadership initiative on climate change*, policy paper no. 2 (Berlin, Heinrich Böll Foundation [Documentations, Papers and Reports], 1999); also available at <<http://www.wupperinst.org>>.

³² See the In-depth Review performed under the FCCC with Russian cooperation, FCCC/IDR.1/RUS, 21 Feb. 1997, available on the website of the FCCC Secretariat at <<http://www.unfccc.de>>.

Long-term design issues: getting climate policy out of the deadlock

The failure of COP-6 has led to considerable unrest among diplomats and scientists as to the best way of moving forward internationally in protecting the climate. Some calls for different approaches voiced soon after Kyoto have certainly assumed greater plausibility after The Hague.³³ The discussion of 'alternative scenarios' should not be a taboo and might be employed to elaborate the structure and design of the regime.³⁴ Should the resumed COP-6 in summer 2001 fail, however, some intensified thinking about the future of international cooperation on climate change is indispensable. The following paragraphs outline some possible avenues for international action that fit well into the present institutional framework and may also be useful in its further development.

- On the question of structure, the parties to the FCCC might want to explore possibilities for further strengthening the institutional and financial base of the climate regime. It appears that the present structure is not adequate for dealing with the complexity of this process. Meetings of the Conference of the Parties as the highest decision-making body, and of the subsidiary bodies provide at most a period of four weeks each year for communication and negotiation. This is not much for a process that involves 180 countries as well as a variety of vested interests and ultimately aims at a fundamental restructuring of the way all of us produce and consume. Improvement might require the establishment of an institutional structure that allows for a much stronger and more continuous process of communication and opinion-forming. Institution-building is not the ultimate answer to problems, but in many cases an effective regime is indispensable for their solution.³⁵
- Whatever international framework for climate policy is ultimately agreed upon, there is an urgent need for domestic action. Greenhouse gas emissions in almost all OECD countries, with the exception of Germany, the UK and Luxembourg, are still increasing.³⁶ There is no reason why this should not change. Some of Germany's emission reductions in the past were due to economic decline in the former East Germany, but a large part of the reductions in the range of 15 per cent have been achieved by a major overhaul of East German infrastructure.³⁷ Additionally, Germany has embarked upon a comparably ambitious climate protection strategy that

³³ See R. E. Benedict, 'Auf dem falschen Weg zum Klimaschutz?', *Universitas*, Nov. 1998, pp. 1017–31 and recently in the *Frankfurter Rundschau*, 12 Dec. 2000; R. N. Cooper, 'Toward a real global warming treaty', *Foreign Affairs* 77: 2, 1998, pp. 66–79; also M. Massarat in *Der Spiegel*, 47, 2000.

³⁴ See the controversial paper by James E. Hansen et al., 'Global warming in the twenty-first century: an alternative scenario', in *Proceedings of the National Academy of Science* 97, 29 Aug. 2000, pp. 9875–80; also at <http://www/giss.nasa.gov/gpol/abstracts/2000.HansenSatoR.html>.

³⁵ See H. E. Ott, *Umweltregime im Völkerrecht* (Baden-Baden: Nomos, 1998).

³⁶ See the table provided by the US Department of Energy at <<http://www.eia.doe.gov/emeu/iea/table1.html>>.

³⁷ See German Federal Environment Ministry, ed., *Causes of the trend in CO₂ emissions in Germany between 1990 and 1995* (Berlin/Karlsruhe, Nov. 1997).

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involves the introduction of progressive energy taxes in consecutive steps each year, the support for cogeneration of power and heat, an extensive programme for the introduction of renewable energies and other measures.³⁸ This programme by one of the biggest industrial powers with a high dependency on exports should provide some evidence that economic progress and climate protection are not mutually exclusive. Indeed, most of the EU's member states have in recent years adopted climate protection programmes with more or less far-reaching policies.

- There is a need for greater cooperation on domestic measures. Progress on so-called 'policies and measures' within the climate regime is slow. Emphasis should be placed not on binding common measures, but on a transparent process of coordination and mutual learning subject to a high degree of public scrutiny.³⁹ This process should concentrate at first on a limited number of measures upon which agreement can be achieved most easily. A leadership group of countries might thus emerge and demonstrate that ecological modernization and an efficient economy are not only compatible, but also mutually reinforcing targets. This process might be mirrored by or might involve a process for industry.⁴⁰
- The involvement of developing countries in a climate protection strategy will be decisive for the long-term success of the regime.⁴¹ This does not mean the ill-advised demand for 'meaningful participation' by developing countries called for by the US Senate, that has caused much frustration and anger in Third World countries. This call denies the historical responsibility of industrialized countries and is even misleading because it wrongly implies that industrialized countries are moving ahead when in fact the record of many developing countries looks much better than those of the Northern countries.⁴² Developing countries need, first of all, a convincing strategy to combat the impacts of climate change (adaptation); and, second, they have the right to an open and transparent dialogue on the fair and equitable allocation of emission rights.⁴³ This is an extremely sensitive issue. Emphasis should be placed on confidence building through a discussion process separate from the negotiations.

³⁸ See Germany's National Climate Protection Programme, 18 Oct. 2000, available at <<http://www.bmu.de/english/download/climate/files/climateprotection.pdf>>.

³⁹ For a more detailed account see Oberthuer and Ott, *The Kyoto Protocol*, pp. 305ff.

⁴⁰ For a private initiative to coordinate Japanese and European industry efforts on climate change see H. E. Ott and T. Takeuchi, *Japan and Germany: towards co-ordinated climate protection strategies*, Wuppertal special paper no. 15 (Wuppertal Institute for Climate, Environment and Energy, 2000).

⁴¹ For a more detailed account see Oberthuer and Ott, *The Kyoto Protocol*, pp. 308ff.

⁴² China, for example, has reduced its CO₂ emissions by 17% since 1997 and is back on 1992 levels; see the table provided by the US Department of Energy at <<http://www.eia.doe.gov/emeu/iea/tableh1.html>>. See also W. V. Reid and J. Goldemberg, 'Developing countries are combating climate change', *Energy Policy* 26: 3, 1998, pp. 233-7.

⁴³ See A. Meyer, *Contraction and convergence: the global solution to climate change*, Schumacher briefings no. 5 (Dartington, Devon: Green Books, 2000). See also H. E. Ott and W. Sachs, 'Ethical aspects of emissions trading', contribution to the World Council of Churches Consultation on *Equity and emission trading—ethical and theological dimensions*, Wuppertal papers no. 110 (Sept. 2000), available at <<http://www.wupperinst.org>>.

- Reduction of complexity can be achieved by reducing not only the number of issues, but also the number of participants. If the regime does not want to follow the ‘slowest boat’ rule, it must allow for differing speeds by different groups of parties. To be sure, there are different speeds within the regime already—most importantly, between industrialized and developing countries as regards commitments. Nevertheless, the slowest boat rule reigns in the FCCC, since any group of countries that would like to go faster needs the approval of each and every other party. The reason for this lies in the opposition by OPEC countries to the adoption of rules of procedure for majority voting which, by default, leads to the requirement to adopt decisions by consensus. Therefore the progressive parties in the regime should explore possibilities of concluding agreements among themselves within the regime, or of modifying existing treaties like the Kyoto Protocol. Customary international law and the 1969 Convention on the Law of Treaties both provide the legal instruments for this strategy. The EU has some experience with such approaches, most notably through the concept of ‘flexibility’ introduced by the Treaty of Amsterdam (Treaty on European Union, Articles 43 and 44). According to these provisions, a majority of member states may under certain limited circumstances move faster in ‘closer cooperation’.⁴⁴ A limited number of participants might thus agree on emission reductions and establish a regime of emissions trading among themselves which other countries might join later.
- The urgency of the matter and the potential destruction brought about by unmitigated climate change calls for the adoption of a worldwide R&D effort comparable to the programme that enabled the landing on the moon in the 1960s.⁴⁵ This ‘mission’ would need large financial and human resources. Some of those might be generated through a levy on transactions under the emissions trading system, others through a redirection of the enormous subsidies currently given to fossil fuels.⁴⁶ Research and the dissemination of technologies should concentrate on fossil-free technology and an efficiency revolution of at least a factor of four.⁴⁷
- The oil price rise in the second half of 2000 demonstrated the vulnerability of exporters and consumers of oil and gas to price fluctuations. Prices for crude oil ‘zigzagging’ between below US\$20 and almost US\$40 inflict

⁴⁴ See S. Bär et al., ‘Closer cooperation: a new instrument for European environmental policy’, European integration online papers (EIoP) vol. 7, 2000. These provisions have been modified by Articles 27 (a)–(e) of the Treaty of Nice, signed 26 Feb. 2001. According to the new rules, which are not yet in force, no member state may veto such closer cooperation except on military and defence matters.

⁴⁵ This idea was voiced recently by Richard Benedick in the *Frankfurter Rundschau*, 12 Dec. 2000; see also Oberthuer and Ott, *The Kyoto Protocol*, p. 307.

⁴⁶ See OECD, *Subsidies and the environment: exploring the linkages* (Paris: OECD, 1995); A. de Moor and P. Calami, *Subsidizing unsustainable development: undermining the earth with public funds* (commissioned by the Earth Council) 1997; and, specifically on climate and energy, D. Koplów and A. Martin, *Fueling global warming: federal subsidies to oil in the United States*, report for Greenpeace, 1998.

⁴⁷ See e.g. E. U. von Weizsäcker, A. B. Lovins and L. Hunter Lovins, *Factor four: doubling wealth—halving resource use* (London: Earthscan, 1997).

damage upon everybody in the system. For the producers, prices below US\$20 lead to severe difficulties for many smaller oil countries, and even the biggest, like Saudi Arabia, have problems meeting their foreign debts; high prices, on the other hand, raise fears that industrialized countries will start looking for substitutes.⁴⁸ For the consuming countries, huge price fluctuations thwart all efforts towards implementing a rational climate policy: low prices not only offer wrong incentives to consumers and technology developers, they also offset any impact of market instruments like taxes. High prices, on the other hand, directed the anger of many protesting farmers and drivers against these largely innocent taxes.⁴⁹ The French Prime Minister Lionel Jospin, in his statement to a climate meeting in Lyon in September 2000, therefore called for 'greater cooperation' between oil producers and importers. German economics minister Werner Müller supported a stabilization of oil prices somewhere between US\$22 and US\$28.⁵⁰ Cooperation between oil producers and consumers could take many forms, and it would be worth analysing the potential gains and pitfalls.

Conclusion

It is too early to declare the sudden death of the Kyoto Protocol. The failure to adopt the necessary decisions in The Hague was certainly a blow to the process—but it can easily be turned into a beneficial 'wake-up call' (as suggested by the Executive Director of UNEP, Klaus Töpfer). This, however, will require a concerted foreign policy effort by all those interested in progress, in particular the European Union. This will stretch the Union's abilities to its limits, but it may also lead to reinvigorated confidence. Leadership in international affairs is difficult to achieve and maintain, as demonstrated by the failure of Europe to respond to the crisis in former Yugoslavia. The United States perceives itself as the natural leader in world affairs, but is severely handicapped by a constitutional structure and lifestyle preferences that make leadership on this issue very unlikely for many years to come.

Europe thus has the chance to demonstrate that it has matured from the object of globalization to a driver of policies that ensure the decent survival of humanity in the centuries to come. Climate policy, in short, equals security and peace politics. Water and food shortages, rising sea levels and generally changing patterns of precipitation will lead to mass migration and a considerable increase in low- and high-intensity warfare in many parts of the Southern world.⁵¹ The

⁴⁸ 'Yamani says OPEC accelerating end of the oil era', Reuters News Service, 5 Sept. 2000 (Richard Mably). Sheikh Ahmed Zaki Yamani, a former Saudi oil minister, was instrumental in establishing the OPEC oil cartel in the 1970s.

⁴⁹ See e.g. 'Amid protests, Europe's leaders resist oil-tax cut', *International Herald Tribune*, 12 Sept. 2000, p. 1.

⁵⁰ *Süddeutsche Zeitung*, 4 Oct. 2000, p. 25.

⁵¹ See the recent report by the UK Ministry of Defence, 'The future strategic context for defence', available at ><http://www.mod.gov.uk><.

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increasing dependency on oil renders severe shortages in the supply of affordable resources likely from 2030 onwards, leading to renewed struggles over resources and, once again, disadvantages for the developing nations. Climate policy thus equals foreign policy. It is for the European Union to decide whether to take up that challenge. It is for the US President to demonstrate statesmanship by not interfering with this vital policy area and by letting the world go ahead with international cooperation. The world needs US leadership; but sometimes the leader has to step back in order to pass on the baton to a fresh runner.