

Warning Signs from Delhi.

Troubled Waters Ahead for Global Climate Policy

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This text will also be published under the title “Global Climate” in:
Yearbook of International Environmental Law
Vol.13 (2002), Oxford University Press 2003

1 Introduction

Although the year 2002 saw the ratification of the Kyoto-Protocol by the European Union, by most other industrialized countries and all in all by more than 100 countries, global climate policy this year was more characterised by two negative trends that each have the capacity to considerably weaken and endanger progress. The first development concerns the United States, which changed its strategy from its rather benevolent laissez-faire negotiating approach in 2001 to outright opposition and an attempt to prevent the Kyoto Protocol from entering into force. The second development was a worsening of the relationship between industrialized and developing countries, where temperatures reached an all time low at the Eighth Conference of the Parties (COP 8) to the United Nations Framework Convention on Climate Change (UNFCCC) in New Delhi.

Global mean temperatures, on the other hand, reached a record high and 2002 was – as 2001 before – the second warmest year ever, only surpassed by 1998. In many areas of the world, extreme weather events pointed to the vulnerability of all societies to climate change, regardless of whether they possessed an agrarian or an industrial economic basis (see www.cidi.org/disaster/02b and www.risingtide.org.uk/pages/freak_weather2002.htm for some accounts). The year saw e.g. record flooding in Germany and parts of Central Europe causing damage of Euro 9.2 Billion in Germany alone. Both developed and developing countries were facing severe droughts. India experienced rainfall deficiency of up to 80 percent and a loss of the majority of crop yield. Many people in southern Africa were confronting food shortages and malnutrition due to persistent drought that devastated the economy. Australia was ravaged by extreme fires due to a prolonged draught in 2002 and early 2003 that wiped out some neighbourhoods in its capital Canberra.

However, Australia has still not ratified the Kyoto Protocol, although it promised to fulfil its obligations under the treaty voluntarily, which is a commitment to keep emissions below an eight percent increase compared to its 1990 levels. This task should not be underestimated taking into account the 18%-increase of Australian greenhouse gas emissions during the 1990`s. By contrast, and boosted considerably by the World Summit on Sustainable Development in Johannesburg, most industrialized countries have become a Party to the Protocol, not only the 15 countries of the EU (plus the EC Commission), but also Japan, Canada, Poland and New Zealand. Industrialized country ratifications by the end of 2002 accounted for 43.7% of 1990 emissions of carbon dioxide. Since the Kyoto Protocol requires a threshold of 55% of industrialized country CO₂-emissions in 1990 to enter into force and the US has declared not to ratify, Russia's 17.4% are essential (see the last chapter). Most activities in the global policy arena during 2003, therefore, will concentrate on Russian ratification.

This article will, first, examine the main event of the year, the Eighth Session of the Conference of Parties (COP 8) in New Delhi and analyse its results. It will, second, provide an outlook on the chances and challenges ahead.

2 Outcomes of COP 8

The Eighth Session of the Conference of Parties (COP 8) to the United Nations Framework Convention on Climate Change took place in New Delhi (India) from 23 October to 1 November 2002 in conjunction with the 17th Sessions of the Subsidiary Body on Scientific and Technological Advice (SBSTA) and the Subsidiary Body on Implementation (SBI). The conference was characterized by rather low expectations as a “working conference” since it had to deal mainly with leftovers from COP 7 in Marrakesh, where the Parties had adopted the so-called “Marrakesh Accords”. This strong document of more than 200 pages provides detailed rules filling out the blanks of the Kyoto Protocol, especially as regards the Kyoto Mechanisms (Emissions Trading, Joint Implementation and the CDM) and the compliance mechanism (see YbIEL of last year for a detailed treatment).

Despite – or because of – this generally low profile of COP 8, the Indian hosts had more far-reaching ambitions. According to the intentions of the Indian Minister for the Environment, T. R. Baalu, this conference was supposed to marry climate policy and sustainable development und thus bring the climate issue closer to the (perceived) agenda of developing countries. This change in direction met with resistance by the European Union who insisted, first, on climate change and its mitigation being the focus of the regime and, second, attempted to initiate a dialogue on the further development of the Kyoto Protocol after the end of the first commitment period in 2012. This, however, sparked a furious reaction from

developing countries, which perceived this attitude as deflecting from the “real issues” – implementation of the Kyoto obligations by industrialized countries.

In the end, the conference was marked by deep divisions and trenches within the former “Green Group” (EU plus developing countries) that had co-operated since drafting the Berlin Mandate at COP 1 and successfully completed the post-Kyoto process 2001 in Bonn and Marrakesh (see the last chapter). These difficulties were observed with satisfaction by the USA and supported by a position change, thus underlining its new role as an opponent of the Protocol: whereas before the US was adamant to demand more substantial participation by developing countries and, in particular, quantitative commitments, in New Delhi it sided with these countries in fending off “unreasonable” demands by the European Union that would lead to an economic slow down. Internal rifts within the South were widened by oil producing countries that were able to influence G-77 positions to a surprising degree.

Nevertheless the conference managed to adopt a so-called “Delhi Declaration” and a number of decisions on issues important for the implementation of the Kyoto Protocol.

2.1 The Delhi Declaration

The first draft of the Delhi Declaration that the Indian President of the COP, T. R. Baalu, presented to the conference did not meet with great enthusiasm by the EU and the environmental community. It neither mentioned the Kyoto Protocol nor the results of the Third Assessment Report of the IPCC (<http://www.ipcc.ch/activity/tar.htm>). Furthermore, it did not contain any proposal as to the further evolution of the regime. Instead, the draft declaration focused on poverty and sustainable development, on adaptation to climate change and on the implementation of commitments by industrialized countries. Even the amended draft presented by the Presidency some days later did contain language on climate policy that was weaker than some of the wording in Johannesburg at the World Summit on Sustainable Development.

The final result, the “Delhi Ministerial Declaration on Climate Change and Sustainable Development” (<http://www.unfccc.int/cop8/index.html>), neatly represents the rift between the EU and the G-77. It does call for ratification of the Kyoto Protocol, but only by those countries that had already ratified. The declaration does recognize the findings of the IPCC report and the need for significant cuts in global emissions, but also reaffirms that “economic and social development and poverty eradication are the first and overriding priorities” of developing countries. It does emphasize that actions are required, with a sense of urgency, to substantially increase the global share of renewable energy sources,

but is also stresses that urgent action is needed to enable especially least developed countries to adapt to the impacts of climate change.

The Delhi Declaration thus reflects the compromises required to arrive at an agreement and to prevent the meeting from complete failure. It will not go down in history as a major achievement, and immense pressure by the EU (especially Germany and France) was necessary to reach even this weak agreement. In the end, as in Johannesburg, those countries seeking progress had to be satisfied with preventing a major backlash. The declaration lacks, however, any hint at the further development of the climate regime, a fact that was deplored by speakers of the European Union, Japan and Canada afterwards. It may well be, however, that the timing of the Union's attempt to accelerate the pace of the regime was just not right (more in the last chapter).

2.2 Implementing Decisions by COP 8

Almost unnoticed behind the smoke of the battles between the EU and G-77, the meeting did arrive at some agreements on a number of issues like the Executive Board of the CDM and funding for Least Developed Countries. However, many issues were rendered very difficult by repeated demands of OPEC countries to address the socio-economic effects of measures. This was especially true for Policies and Measures (PAMs) to mitigate climate change, where Saudi Arabia insisted that assessments should focus on adverse effects of mitigation measures on developing countries and SBSTA was thus not able to arrive at conclusions in this vital policy area.

2.2.1 The Clean Development Mechanism

Maybe the most important set of decisions concerns the further elaboration of the Clean Development Mechanism (CDM). Most importantly, the meeting arrived at a consensus regarding the rules of procedure for the Executive Board overseeing the CDM and agreed on simplified modalities and procedures for small scale projects. The Seventh Conference of the Parties in Marrakesh had established an interim board that met several times and submitted a report with recommendations to COP 8. The conference adopted the rules with some amendments and submitted them to the first Conference of the Parties serving as the meeting of the Parties (COP/MOP). This latter body will, as a rule prescribed by international law on all issues, formally adopt these decisions after entry into force of the Kyoto Protocol.

Much of the discussion revolved around a new item called "effective participation" that was pushed hard by the US. Because to its future status as an

“observer” in the Protocol proceedings, the US was eager to liberalize the rules of attendance and argued for adequate notification of sessions of the Protocol’s bodies and workshops. The NGOs present in New Delhi suddenly found themselves massively supported by the US delegation – which was noticed with amusement, but also with some irritation. Whereas in all meetings so far observers have been forced to follow the proceedings on video, the US evidently would prefer to be allowed into the meeting room. No decision has been taken but the interim board will, as part of its reporting to the COP, address the issue.

The Parties also considered the treatment of sinks under the CDM, as requested by COP 7 in Marrakesh. Since COP 9 in December 2003 must decide on this issue, COP 8 was not supposed to arrive at final conclusions. The Marrakesh Accords determine eligible activities under the CDM as “reforestation” and “afforestation” projects. However, concrete definitions are still lacking, especially as regards the non-permanence of forests, additionality, leakage and the socio-economic and environmental impacts. Basically two options were considered in New Delhi to deal with the “non-permanence” of forests, i.e. the fact that all forests at some point will release the stored carbon into the atmosphere. This can happen either intentionally by way of logging or accidentally through fires or natural disasters. The first option, insurance against destruction or degradation of forest sinks, was proposed by Canada and would assign liability to project developers. The EU, on the other hand and following a proposal by Colombia, proposed a new, temporary type of emission certificate (T-CER) that would expire at the end of each commitment period.

2.2.2 Decisions Relating to Developing Countries

The Parties in New Delhi furthermore adopted some decisions of particular concern for developing countries. First, the conference issued initial guidelines for the Special Climate Fund and further guidance for the Least Developed Country Fund, two of the three funds established in Marrakesh. Under the LDC Fund, the Global Environment Facility (GEF) as the entity entrusted with the operation of the Financial Mechanism of the FCCC is requested to disburse funds for the preparation of national adaptation programmes of action (NAPAs) and to finance four regional workshops in developing countries on this issue.

The GEF has also been entrusted with the operation of the Special Climate Change Fund, whose funds should be additional to GEF resources and finance adaptation, technology transfer and mitigation measures. This decision also refers to the announcement by the European Community and its Member States, Canada, Iceland, New Zealand, Norway and Switzerland at COP 7 to contribute Euro 450 million to this fund and others (see FCCC/CP/2001/MISC.4). However, no further commitments were announced and the status of this pledge is unclear.

The Parties requested the Secretariat of the UNFCCC and the GEF to undertake an assessment of the funds and submit a report to the 20th meeting of the Subsidiary Bodies in summer 2004.

As regards national communications by developing countries (Non-Annex I communications), COP 8 adopted guidelines for the second and subsequent reports, without, however, arriving at an agreement on the frequency of the reports, which will be reconsidered by COP 9. The rift between the EU and G-77 was again noticeable on this subject, with developing countries complaining about constraints in funding and the EU being rather sceptical as regards the necessity of certain demands for funding like travelling. The consultative Group of Experts on non-Annex I communications was asked to identify and assess technical problems and constraints in the preparation of the first reports and the Secretariat was requested to prepare a report on the steps that have been taken by developing countries to implement the FCCC.

2.2.3 Other Decisions

The Parties at COP 8 took further decisions on matters of implementation, e.g. as regards reporting by industrialized countries (Annex I national communications) and guidelines for the technical review of these reports, on the development and transfer of technologies and on the technical standards for data exchange between registry systems.

The Parties furthermore adopted a five-year work programme on Article 6 of the Convention on education, training, public awareness, public access to information and international co-operation. Countries are requested to incorporate Article 6 activities in their national implementation programmes in order to increase awareness of the public and professionals for climate change.

Regarding a possible phase-out of certain inert gases that are part of the basket of greenhouse gases regulated in Annex I of the Kyoto Protocol (HFCs and PFCs), the conference invited the IPCC and the appropriate body of the Montreal Protocol on Substances that Deplete the Ozone Layer to prepare a report.

Finally, the meeting noted with appreciation the offer by Italy to host the Ninth Conference of the Parties (COP 9) in late 2003. It also considered arrangements for a possible entry into force of the Kyoto Protocol and the need to convene a Conference of the Parties serving as the meeting of the Parties to this treaty (COP/MOP 1). According to Article 13 para.6 of the Kyoto Protocol, the first meeting of the COP/MOP shall be convened by the Secretariat “in conjunction” with the first session of the COP scheduled after entry into force of the Protocol. This wording does allow for different interpretations: the meetings might either be

held back-to-back or concurrently. The Secretariat, supported by the EU and Japan, was clearly in favour of concurrent meetings, where items would be marked as “convention”, “protocol” or “common” issues. Colours of the badges for delegates could indicate whether the country was a Party to the Protocol or only to the Convention. The US objected to this arrangement, however, mainly on the grounds that it would be more difficult to separate between financial expenses of the different bodies. The SBI referred the issue to its next session in June 2003.

3 Conclusions and Outlook for International Climate Policy

The look back at climate policy in 2002 thus presents a rather mixed picture. On a positive note, ratification of the Kyoto Protocol by more than 100 countries within one year clearly demonstrates the rather universal acceptance of this treaty by the world community. Should Russia ratify, the Protocol will soon have as many Parties as the Convention and the US will be in danger of being the “odd one out”.

Maybe even more important than this development, however, concrete and far reaching policies to mitigate climate change have been taken at the national and regional level. This is especially true for the European Union that went from rhetoric to action in 2002. After a short and bitter battle in the various legislative bodies, the European Council on 9 December 2002 adopted a Directive on an internal emissions trading scheme for companies (<http://www.climnet.org/informal/etcouncil/htm>). Starting with a pilot phase in 2005 and becoming a fully-fledged regime in 2008, the carbon dioxide emissions of some 3.500 enterprises in the Union will be capped and surpluses may be traded. After it had not been possible for more than 10 years to agree on an Energy/CO₂-tax, the adoption of this directive as the cornerstone of European climate policy is a remarkable success.

This development may in the end be much more decisive than the events in New Delhi and the negative trends hinted at in the first chapter. Nevertheless, there are some reasons for concern. There is, first, the change in attitude of the United States. Whereas President Bush in summer 2001 had agreed not to obstruct the Kyoto Protocol negotiations (see the report in last year’s YbIEL), he obviously did not feel bound by this promise in 2002 anymore. At COP 8 the US acted with remarkably effective diplomatic skills to obstruct the negotiations. In close collaboration with Saudi Arabia and other OPEC countries it managed to bring deliberations on several issues to a complete standstill or to ban any substance from the decisions.

This behaviour must be seen against the background of a general scepticism in the US administration towards environmental protection and other civil society issues,

as had become abundantly clear at the World Summit on Sustainable Development, held in Johannesburg (South Africa) from 26 August to 4 September 2002. This change in attitude is furthermore explained by some theories describing the US as a “benign” hegemon that has switched into a somewhat less benevolent mode of behaviour. Another frequently cited example in this context is the obstructive position towards the International Criminal Court and the attempts by the US to undermine its effectiveness by concluding bilateral agreements with as many countries as possible in order to prevent extradition of US citizens. Not surprisingly, the US administration employs this instrument in the climate policy arena as well and at COP 8 the effect of the bilateral agreement with India, e.g., appeared to be visible already. This emphasis on unilateral strategies and the general disregard for civil society issues may not be completely new, but the consequences have not yet been spelled out yet with desirable depth and clarity.

The second possibly dangerous development is the widening of the gap between the EU and G-77 countries. There have always more or less difficult times for this fragile alliance, but the present atmospheric turbulences seem to indicate a new quality of alienation. In New Delhi, this process was fuelled by strategies on both sides that were rational *per se* but evolved into a lethal logic of two colliding trains. India and the G-77 were trying to put developing country issues to the fore, after the Kyoto process and the subsequent Marrakesh negotiations were primarily concerned with quantitative commitments for industrialized countries. There is a legitimate concern that preparations for adaptation to the impacts of climate change are inadequate, not only in developing countries, but especially in these poorly equipped societies. Therefore research on these impacts as well as capacity building and the provision of adequate financial resources are urgently needed. There are furthermore good reasons to insist on action by industrialised countries before taking on substantial obligations.

However, some of the language used before and at the conference could give the impression that the emphasis of the G-77 on developing country priorities might be used as an early, preemptive defence against demands for substantial commitments. This in turn triggered an alarmed reaction by the European Union, whose Member States sought to preserve what they perceived as the fundamental basis of the climate regime – the focus on mitigating climate change. Furthermore, the Union demanded the initiation of steps for the further evolution of the regime out of fear that precious momentum might get lost while waiting for the Russian ratification. This is a legitimate concern as well, although the timing appears to have been problematic. Instead of an instinctive counter-reaction, the EU might have been better advised to remain calm and to allow COP 8 being turned into a forum for developing country concerns without, however, compromising on the substance of the issues.

The logic of these two colliding trains was fuelled by activities of supporters on both sides. The EU was not alone in its demand to embark on a process to discuss post-2012 perspectives. This call was echoed and strengthened by the environmental community, for similar and well-intentioned reasons. The rather uncompromising attitude of the G-77, on the other hand, was in part due to the fact that it gave in to many demands of OPEC countries and to a large extent disregarded the concerns of small island states (AOSIS). The US meanwhile played the devil's advocate, supported the G-77 refusal to start thinking about the post-2012 evolution of the regime and provided Saudi Arabia and other OPEC-countries with language and arguments. In the end, crucial momentum for climate policy was lost and the frustration on both sides in New Delhi high.

It is difficult to ascertain the importance of these developments. Whereas experience suggests that major events like COP 7 in Marrakesh (as previously COP 1 in Berlin and COP 3 in Kyoto) are usually followed by some kind of sobering phase with little or no progress, the rift between the countries of the former Green Group seems to be of a more serious nature. It may thus point to the fundamental problems inherent in the next phase of global climate diplomacy. In fact, negotiations on the second and subsequent commitment periods have already started informally in New Delhi. This early start was not dictated by law, since Article 3.9 of the Kyoto Protocol requires the Parties to initiate a process for the "consideration" of commitments after 2012 "at least" seven years before the end of the first period, which is in 2005. However, with so much at stake it was foreseeable that positioning of the actors would commence much earlier.

There is thus good reason for concern and the difficulties in communication between the European Union and developing countries should serve as a warning. Evidence is growing that the intricate questions of "equity in climate policy" can no longer be ignored. There is also good reason to believe that the issues of mitigation, adequacy of commitments and climate justice will be inextricably linked in future negotiations. In other words: further advances in the protection of the global climate system demand decisions on the worldwide allocation of emission rights. A number of scientific research projects have already been devoted to this issue, but concrete attempts to reconcile the conflicting views in science as well as on the political level have been missing so far. This should be initiated now in order to foster mutual understanding between South and North and to arrive at a common basis for negotiations. Moreover, it should not be overlooked that there are great differences between the countries of the South and that a solution of "one size fits all" will not work.

In 2003, all diplomatic efforts will be devoted towards Russia – the country whose ratification is required to bring the Kyoto Protocol into force. President Vladimir Putin has repeatedly stated that he will work towards ratification by Russia and Prime Minister Mikhail Kasyanov confirmed this political goal at the World

Summit in Johannesburg. However, the news from Moscow are incoherent and do not yet suggest a concerted effort by the government to set the legislative process in motion. In the end, economic incentives, for example through the flexible mechanisms of the Kyoto Protocol, will play a decisive role as well as diplomatic and political considerations.

The Russian President and Japan's Prime Minister Junichiro Koizumi in January 2003 signed an Action Plan and the two countries will conclude agreements for large-scale Joint Implementation projects, in particular regarding conversion from coal to gas. Members of the Russian parliament also confirmed the fundamental interest of Russia in the trading of emission rights when they visited Germany in late January 2003. The deputy head of the Ecological Committee of the Duma did, however, go a step further and linked ratification with Russian foreign debt. Finally, as was stressed by most Russian speakers on this occasion, the "World Climate Change Conference" hosted by the Russian government in late September / early October 2003 might provide the final argument internally in favour of ratification.

COP 8 in New Delhi might thus be seen as a warning shot that should lead to some renewed thinking in the European capitals. A large amount of creativity, tolerance and discipline by all Parties will be necessary in order to successfully embark upon the next steps. In addition, new forms of meetings and governance may be required to reach this goal. In the end, the most significant result of COP 8 may have been an act of institution building far away from the intergovernmental negotiations: the Climate Action Network (CAN) – an international alliance of environmental NGOs dealing with climate change – adopted a Charter that transforms the assembly of regional networks into a truly global network. This act of "political globalisation", involving very diverse organisations from the Southern, Western, Eastern and Northern corners of this planet may thus provide a glimpse of a possible future - the co-operative, multilateral way forward.

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