

Tracking Down the Future Climate Regime – An Assessment of Current Negotiations under the U.N.

Camilla Bausch and Michael Mehling*

Heads of State of eight major industrialised nations recently affirmed that the United Nations will remain “the appropriate forum for negotiating future global action on climate change.” Within the U.N., however, a number of concurrent “tracks” have emerged for negotiations and discussions, accompanied by a certain degree of overlap and giving rise to questions on the mandate, scope, and limitations of each track as a pathway to a future climate regime. Options for global climate governance beyond 2012 have been addressed in formal negotiations based on Article 3 (9) and 9 of the Kyoto Protocol, while parties to the UNFCCC have initiated an open and non-binding dialogue on future cooperative action under the Convention. Meanwhile, a proposal submitted by the Russian Federation has also become relevant by addressing certain aspects of a future climate regime. Each of these fora has specific characteristics regarding the range of admissible negotiators or discussants, issue areas, and objectives, determining how it can influence and contribute to the shape of a future climate policy architecture. Describing the evolution of the different fora, the following article draws on official documents and statements to, first, outline the central features and respective differences of each negotiation track, including the legal boundaries, and second, to assess options for the application of issues discussed within each forum towards a coherent climate regime.

I. Introduction

Over the past year, climate policy has arguably emerged as the single most dynamic subject matter in a growing array of societal responses to environmental degradation. During this process, it has been literally promoted to a symbolic status, reflecting the many challenges humanity will face in reconciling continued development with the need to distribute environmental and economic burdens equitably across regions as well as generations. Environmental issues have rarely attracted as much attention as climate change does nowadays, with a series of influential documentaries¹, reports² and public events³ projecting the severe consequences of anthropogenic global warming into the headlines of international media and, as a result, into the consciousness and conscience of a globalised society. Climate change has, indeed, become part and parcel of daily international discourse.

The Intergovernmental Panel on Climate Change (IPCC) recently released its fourth Assessment Report, confirming increases in global average air

* Dr. Camilla Bausch is a Senior Fellow at Ecologic – Institute for International and European Environmental Policy, Berlin and Brussels; Michael Mehling, LL.M., is a Research Fellow at the University of Greifswald and an Associate with Ecologic. Both have attended the U.N. climate negotiations and served in a variety of advisory capacities. The views expressed in this article are nonetheless entirely their own. This paper was written with support of the German Ministry of Education and Research under the “Social Ecological Research” Framework Programme.

1 See, for instance, *An Inconvenient Truth*, U.S.A. 2006, a documentary directed by Davis Guggenheim and presented by the former Vice President of the United States, Albert Gore.

2 See, for instance, Stern, *The Economics of Climate Change: The Stern Review*, Cambridge 2006.

3 See, for instance, *Live Earth*, a series of worldwide concerts primarily organised by Kevin Wall and held on 7 July 2007. It involved more than 150 musical acts in eleven locations, and was broadcast to a global audience through radio, television, and the Internet. *Live Earth* also initiated a campaign to combat climate change and advocate environmentally-sustainable living over the next three years.

and ocean temperatures, widespread melting of snow and ice, and rising global average sea levels.⁴ According to the first Working Group of the IPCC, unhindered continuation of present trends will cause global average temperatures to rise by a further 1.8-4.0° Celsius during this century.⁵ Socially and environmentally, the impacts of such a temperature rise are likely to be unprecedented, affecting the lifestyles of communities across the globe, and seriously compromising the livelihoods of millions in vulnerable areas. In point of fact, the consequences are considered grave enough for climate change to be increasingly viewed as a security

issue, even resulting in its discussion before the Security Council of the United Nations.⁶

Although the perceived urgency of climate change is not yet matched by the ambition of international measures adopted for its mitigation, climate change is increasingly capturing the attention of many policy makers. Like few other environmental challenges, it has found entrance into the agendas of a wide range of different institutions and fora, generating a wealth of declarations and pledges of varying legal provenance.⁷ A prominent example is the recent and controversial discussion of climate change during the annual summit of the Group of Eight leading industrialised nations (G8) in Heiligendamm, Germany.⁸ Still, even some of the more reserved participants in such processes have acknowledged that the oldest and most universal setting of negotiations, that convening under the auspices of the United Nations, “is the appropriate forum for negotiating future global action on climate change”⁹, elevating the Framework Convention on Climate Change (UNFCCC)¹⁰ and its subsequent Kyoto Protocol¹¹ to central landmarks of any future climate protection regime.

It should not surprise, then, that the world is anxiously observing the negotiations under the United Nations and gearing its attention towards the next Conference of the Parties (COP) to the UNFCCC and the Meeting of the Parties to the Kyoto Protocol (COP/MOP)¹² in Bali, Indonesia, in December 2007. As with any issue carrying great political and economic weight as well as lofty expectations, however, the scope and precise mandate of these meetings are often misinterpreted. One common source of confusion is the idea that the Kyoto Protocol will expire at the end of 2012. As a matter of law, the Kyoto Protocol does not, however, contain any provisions on its expiration, despite the frequent reference to “post-Kyoto” options in both the media and political debates. Only one element of the Protocol, the quantified emission limitation and reduction objectives set out for certain parties in Article 3 and Annex B, is limited in application to a “first commitment period” between 2008 and 2012. Given the absence of binding targets for the period after 2012, there is indeed an urgent need for prompt and focused negotiations for the time thereafter: binding limitation and reduction commitments are critical to internalise the social and environmental cost of global warming and define a price for carbon.¹³ In-

4 IPCC, Fourth Assessment Report – Climate Change 2007, forthcoming. While the final versions are still pending publication, several parts have already been released and made available on the Internet at <http://www.ipcc.ch>. The Fourth Assessment Report (AR4) will be released in four sections: Working Group I Report (WGI): Climate Change 2007 – The Physical Science Basis, Working Group II Report (WGII): Climate Change 2007 – Impacts, Adaptation and Vulnerability, Working Group III Report (WGIII): Climate Change 2007 – Mitigation of Climate Change, and a Synthesis Report (SYR).

5 IPCC, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change – Summary for Policy Makers, <http://www.ipcc.ch/SPM2feb07.pdf>.

6 For further details, see Sindico, “Climate Change: A Security (Council) Issue?”, in this issue.

7 For a discussion of this trend, see van Asselt, “From UNity to Diversity: The UNFCCC, the Asia-Pacific Partnership, and the Future of International Law on Climate Change”, in this issue.

8 For further information, see the summit website at <http://www.g-8.de>.

9 See para. 52 of the Summit Declaration of 7 June 2007, titled “Growth and Responsibility in the World Economy”, published on the Internet at http://www.g-8.de/nn_220074/Content/EN/Artikel/_g8-summit/anlagen/2007-06-07-gipfeldokument-wirtschaft-eng.html: “We acknowledge that the UN climate process is the appropriate forum for negotiating future global action on climate change. We are committed to moving forward in that forum and call on all parties to actively and constructively participate in the UN Climate Change Conference in Indonesia in December 2007 with a view to achieving a comprehensive post 2012-agreement (post Kyoto-agreement) that should include all major emitters.”

10 United Nations Framework Convention on Climate Change (UNFCCC), New York, 9 May 1992, in force 21 March 1994, International Legal Materials 1992, p. 849 ff.

11 Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol), Kyoto, 10 December 1997, in force 16 February 2005, International Legal Materials 1998, p. 22 ff.

12 Actually, the “Conference of the Parties to the United Nations Framework Convention of Climate Change serving as the Meeting of the Parties to the Kyoto Protocol”; for the sake of brevity, it will be referred to here as “Meeting of the Parties”.

13 On this issue, see Pearce, “The Social Cost of Carbon”, in Helm (ed.), *Climate-change Policy*, Oxford 2005, p. 99 ff.; Mendelsohn, “The Social Cost of Greenhouse Gases: Their Values and Policy Implications”, in Helm (ed.), *Climate-change Policy*, Oxford 2005, p. 134 ff.

vestment decisions and carbon markets rely on the price signals flowing from clear and long-term reduction targets,¹⁴ prompting even sectors of the economy affected by reduction policies to favour the transparency of binding targets over regulatory uncertainty.¹⁵ Negotiations in this context also provide an opportunity to review the international climate regime and its ability to address global warming, as well as the need for improvement and reform.

Still, consensual decision making and universal participation make it a cumbersome process, and negotiations on the future architecture of the climate regime will require time.¹⁶ Contrary to occasional belief, the climate conference in Bali will not be able to conclude these negotiations. Discussions are still at an early stage, rendering a political breakthrough highly unlikely. Instead, a successful outcome will merely establish the parameters of negotiations in the following conferences, rather than culminate in the adoption of a substantive policy arrangement. And while time is of the essence, Bali can only be the first of a series of steps towards a future regime. Overall, thus, one can sum up the foregoing section as an affirmation that:

- binding greenhouse gas emission limitation and reduction commitments are not only necessary for successful climate protection, but also for functioning carbon markets and favourable investment conditions;
- following recent declarations by relevant heads of state, a policy framework based on mandatory limitation and reduction commitments is most likely to evolve within the process created under the United Nations;
- and negotiations resulting in such a framework can be expected to evolve only in the medium-term, rolling over into the conferences following that scheduled in Bali, Indonesia.

Adding the fact that many aspects of the formal negotiation process have given rise to mispercep-

tions and unrealistic expectations, there is an apparent demand for clarification of the legal and institutional boundaries of these negotiations. Responding hereto, the remainder of this article seeks to outline the main tracks of international negotiations under the UNFCCC and the Kyoto Protocol, hoping to shed some light into many darker corners of the complex debate.

II. Moving Beyond 2012: A Highway with Several Lanes?

Different approaches have been suggested to face the challenge of climate change, but all share a core set of objectives: to limit greenhouse gas levels in the atmosphere while fostering adaptation to the impacts of global warming. Accordingly, any future climate regime will have to define answers to the following general questions:¹⁷

- Who will participate?
- What kind of targets can developed countries agree upon?
- What kind of commitments are developing countries willing to take on?
- What kind of country groups can and should be established, especially: should there be new forms of differentiation within the group of developing countries?
- How should questions relating to adaptation needs and technology be answered?
- What types of incentive schemes and sanctions can and should be institutionalised?

While addressing these questions, the principles and definitions of the UNFCCC will almost certainly provide a framework of orientation. With its nearly universal participation, it currently represents binding international law for 191 states, including all major emitters of greenhouse gases;¹⁸ and although any new agreement between parties could substitute the earlier framework,¹⁹ its core

14 For the European carbon market, see, for instance, Christiansen et al., "Price Determinants in the EU Emissions Trading Scheme", *Climate Policy* 2005, p. 20 f.

15 See, inter alia, the demands for mandatory emission limits voiced by major American companies in the U.S. Climate Action Partnership (USCAP), described in greater detail by Danish, "Current Developments: North America", in this issue.

16 As Niklas Höhne, commentator on the debate about future climate commitments, aptly concludes: "The current system under the UNFCCC and the Kyoto Protocol ... is possibly more compli-

cated than necessary, but this arises from the way decisions are made – by consensus of 189 countries", see Höhne, *What is Next after the Kyoto Protocol? Assessment of Options for International Climate Policy Post-2012*, 2nd ed., Amsterdam 2006, p. 37.

17 For a more detailed overview of the substantive issues to be addressed by a climate regime beyond 2012, see Höhne, *ibid.* p. 38 ff.

18 As of 11 April 2007, 191 countries had ratified the UNFCCC, see http://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php.

ideas have become so deeply established that any major revision is unlikely. Accordingly, the answers to the preceding questions are likely to be guided by the principle of common but differentiated responsibilities and capabilities set out in Article 3 (1) UNFCCC²⁰ as well as the ultimate objective set out in Article 2 UNFCCC, which calls for stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Still, while there is likely a consensus to retain such broad, underlying principles, their application and interpretation may prove to be controversial, and discussions on actual commitments and other detailed aspects of the future climate regime are still at an early stage. A number of different conceptual options have entered the current discussions, and it is unclear which strategy will find the greatest support in substantive negotiations. Accordingly, this article will not seek to answer the material questions outlined above, but instead traces the mandates and institutional pathways along which states will convene to formulate such answers.

During the negotiations for the Kyoto Protocol prior to the 3rd Conference of the Parties to the UNFCCC in 1997, the international community was

clearly aware that this agreement could only constitute a first step in the elaboration of an effective climate change regime.²¹ As a result, two provisions were included in the Protocol with a view to its further elaboration: Article 3 (9) of the Protocol, which calls for consideration of commitments for industrialised countries for the period after 2012, and Article 9 of the Protocol, which mandates a periodical review of the Protocol and its operation. Currently, these two provisions form the mandate for negotiations on a future regime based on the Kyoto Protocol. As is widely known, however, several important emitters, including the United States, have failed to ratify the Kyoto Protocol and indicated their unwillingness to ever do so.²² Given the many emotional and political connotations acquired by the Protocol over the past decade, some observers have recommended that it be altogether abandoned in both name and concept.²³

As a result, the international community has witnessed a rise of parallel negotiations and arrangements involving different groups of actors with often divergent interests. As mentioned above, the United States – along with nearly every other nation on the planet – are a party to the UNFCCC. And while the Kyoto Protocol adopted under its auspices has remained the only international policy architecture with binding emission limitation and reduction commitments, it does not preclude the adoption of a successor treaty based on a different model or treaty. Against that backdrop, the UNFCCC has acquired renewed weight as a possible forum for further negotiations, despite the fact that no formal negotiations on a future regime have yet been launched under the Convention. Nevertheless, parties decided in 2005 to engage in a “Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention”.

Finally, a fourth forum for discussions on future policy options was launched by the Russian Federation with the so-called “Russian Proposal.” It addresses, *inter alia*, the possibility to enter into “voluntary commitments”. Uncertainties remain as to how this discussion will evolve and whether it will become part of one or more of the foregoing “tracks”. So far, it has remained a “stand-alone-discussion”, and is therefore discussed separately below.

The following sections will outline each of the preceding fora, elaborating on their main traits and respective differences, and also addressing options

19 See Article 39 of the Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, International Legal Materials 1969, p. 679 ff.: “A treaty may be amended by agreement between the parties.”

20 This principle acknowledges the different contribution of industrialised and developing countries to global warming, see generally Rajamani, “The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime”, *Review of European Community and International Environmental Law* 2000, p. 121 ff.; Halvorsen, “Common, but Differentiated Commitments in the Future Climate Change Regime – Amending the Kyoto Protocol to Include Annex C and the Annex C Mitigation Fund”, *Colorado Journal of International Environmental Law and Policy* 2007, p. 247 ff.; discussing it as an emerging principle of general international law, Stone, “Common but Differentiated Responsibilities in International Law”, *American Journal of International Law* 2004, p. 276 ff.

21 See Depledge, *Tracing the Origins of the Kyoto Protocol: An Article-by-Article Textual History*, U.N. Doc. FCCC/TP/2000/2, 25 November 2000, p. 52 f.; Oberthür/Ott, *Das Kyoto-Protokoll*, Opladen 2000, p. 170 ff., especially 189.

22 Describing the Kyoto Protocol as “fatally flawed”, George W. Bush decided against U.S. ratification in early 2001, see Lisowski, “Playing the Two-Level Game: US President Bush's Decision to Repudiate the Kyoto Protocol”, *Environmental Politics* 2002, p. 101 ff.

23 See, for instance, Murkowski, “The Kyoto Protocol is not the Answer to Climate Change”, *Harvard Journal on Legislation* 2000, p. 345 ff.; Victor, *The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming*, Princeton, N.J., 2001.

to bring issues discussed within each forum together for a coherent future climate regime. Developments can unfold swiftly in this fast-paced field, and it merits noting that this article reflects developments up until June 2007, including the outcome of the negotiations in Bonn in May 2007. The intersessional discussions and negotiations scheduled for the end of August 2007 in Vienna are not covered.

1. Article 3 (9) of the Kyoto Protocol: Commitments for Annex I Parties

As mentioned earlier, Article 3 of Kyoto Protocol, read in conjunction with Annex B of the Protocol, lays out binding emission limitation and reduction commitments for parties listed in Annex I of the UNFCCC, which, generally speaking, comprises industrialised nations.²⁴ With its current wording, the Protocol merely defines these commitments for the period between 2008 and 2012. In view of that, Article 3 (9) of the Protocol mandates that “[c]ommitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol”, and provides that the Meeting of the Parties “initiate the consideration of such commitments at least seven years before the end of the first commitment period”.

With the first commitment period ending in 2012, this process was due to begin in 2005, coinci-

dentally the year in which the Protocol finally entered into force²⁵ and its first Meeting of the Parties convened in Montreal, Canada.²⁶ Following tense negotiations, parties were able to adopt a decision on the “consideration of commitments for subsequent periods for Parties included in Annex I”²⁷. This decision established an open-ended Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG),²⁸ which was mandated with reporting to each COP/MOP on the status of its work. Because Article 21 (4) of the Kyoto Protocol requires that amendments of an Annex be adopted through consensus or, “as a last resort...by a three-fourths majority vote of the Parties present and voting”, the elaboration of commitments within this process will certainly prove cumbersome and time-consuming.²⁹ With a view to the threat of significant delays, the AWG was mandated with completing its work and having its results adopted by the COP/MOP “as early as possible”³⁰. Arguably, this wording reflects a political compromise and avoids a stricter timeline or explicit reference to a certain date, for instance 2009, that would afford parties the time needed to ratify and implement a future regime at the national level. Still, the wording of the decision also reflects a clear desire to achieve a seamless transition between commitment periods in recognition of the need to avoid a “gap”. Avoiding such a gap is crucial not only for political and envi-

24 The countries listed in Annex I of the UNFCCC include the 24 original OECD members, the European Union, and 14 countries with economies in transition. Croatia, Liechtenstein, Monaco and Slovenia joined Annex I at COP-3. Furthermore, the Czech Republic and Slovakia replaced Czechoslovakia. According to the definition in Article 1(7) of the Kyoto Protocol, in the context of the Protocol, Annex I Parties are understood as all Parties included in Annex I to the UNFCCC, as well as all Parties which have made a notification under Article 4(2)(g) of the Convention.

25 Article 25 (1) of the Kyoto Protocol stipulates its entry into force after 55 States have “deposited their instruments of ratification, acceptance, approval or accession”, on the condition that those states account for at least 55% of the 1990 CO₂ emissions by developed states; given the withdrawal of the United States, this threshold was only met with the ratification by the Russian Federation in late 2004, allowing an entry into force of the Protocol on 16 February 2005.

26 On the outcomes of this first meeting, see also: Bausch/Mehling, “‘Alive and Kicking’: The First Meeting of the Parties to the Kyoto Protocol”, *Review of European Community & International Environmental Law* (2006), p. 193 ff.

27 Decision 1/CMP.1, Consideration of commitments for subsequent periods for Parties included in Annex I to the Convention under Article 3, paragraph 9, of the Kyoto Protocol, contained in U.N. Doc. FCCC/KP/CMP/2005/8/Add. 1.

28 Examples for other important Ad Hoc Working Groups in climate negotiations have been the Ad hoc Group on Article 13 (AG13), which was a subsidiary body (committee) created by COP-1 to explore how to help governments overcome difficulties experienced in meeting their commitments under the Climate Change Convention (1995-1998); and the Ad hoc Group on the Berlin Mandate (AGBM), which was a subsidiary body created by COP-1 to conduct the talks that led to the adoption of the Kyoto Protocol in 1997; for an overview of the different formal and informal bodies involved in negotiations, see Yamin/Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*, Cambridge 2004, p. 449 ff.

29 Pursuant to Article 21(2) and (3) of the Kyoto Protocol, any Party may propose an amendment, and the secretariat must communicate the text of the proposed amendment to all parties at least six months before the meeting where the amendment is proposed for adoption. An additional stipulation applies to amendments of Annex B, which, under Article 21(7), require the written consent of the parties concerned. If adopted, amendment will enter into force for those parties having ratified it on the ninetieth day after it has been ratified by at least three-fourths of the Parties to the Protocol, see Article 21 (7) in conjunction with Article 20 (4) and (5)

30 Decision 1/CMP.1, *supra* note 28, para 3.

ronmental reasons, but also because carbon markets and the private sector rely on relevant, stable and – above all – continuous reduction commitments.

At its first session, held in Bonn in May 2006 with the 24th Sessions of the Subsidiary Bodies to the UNFCCC (SB24), the AWG affirmed its commitment to expeditious progress and avoidance of a gap between commitment periods, although some contention arose over the question of available and necessary information. Developed countries expressed the desire to obtain information from the IPCC and the International Energy Agency (IEA), whereas the AWG, following the view held by most developing countries, “considered that the principal sources of inputs to the group’s work would be the Parties themselves”³¹. While this averted a source of delay and thus opened the door for further negotiations, parties forewent substantive discussions in Bonn. Convening for its second session during the second Meeting of the Parties in Nairobi in November 2006, the AWG overcame initial dissent between developing and industrialised countries to adopt a “work programme”.³² This work programme included the following aspects:

- analysis of mitigation potentials and ranges of emission reduction objectives of Annex I parties;
- analysis of possible means to achieve mitigation objectives;
- consideration of further commitments by Annex I parties.³³

Although the AWG failed to agree on a detailed timeline, it decided to focus on the first task in 2007. At its third session in Bonn May 2007, the AWG reaffirmed its will to stick to the foregoing work programme and noted that, with the information at its disposal, it had a “solid foundation...to proceed” with this programme. Furthermore, the AWG agreed “to consider, at its resumed fourth session, this work programme and to develop a timetable to guide the completion of its work in order to avoid a gap between the first and second commitment period”³⁴. Developing a timetable could prove crucial to build up the pressure needed for a timely conclusion of the AWG work agenda.

With a view to the substantive questions, the AWG acknowledged the most recent statement by the IPCC that global greenhouse gas emissions need to be reduced “well below half of levels in 2000 by the middle of the twenty-first century, in order to stabilize their concentrations in the atmosphere at the lowest levels assessed by the IPCC to date in its scenarios”³⁵. Moreover, the conclusions refer to “inputs made by some Parties, presenters and observers” stating that greenhouse gas emissions need to peak in the next 10 to 15 years, and that this calls for emission reduction commitments by Annex I Parties of between 25% and 40% below 1990 levels for the period beyond 2012.³⁶ Admittedly, although quantified reduction commitments are mentioned, the context is altogether vague. First, the AWG merely refers to “inputs made” without identifying it as a consensus of the group, and second, it has geared this passage towards a general period “beyond 2012” without mentioning precise dates. And yet, given the considerable differences of opinion among parties, the insertion of quantified reduction objectives, timelines, and peaks in a conclusion of the AWG can already be considered a success.

While negotiations on the allocation of reduction burdens have commonly resulted in dissension, the opportunities offered by many mitigation strategies are generally more amenable to swift agreement. Calling attention to the benefits of policy efforts, the AWG noted that “inputs made by some Parties, presenters and observers” affirm negative costs, co-benefits which may offset a substantial part of mitigation costs, and the fact that “accelerated deployment of low-carbon technologies yields economic benefits in terms of new investment and through the creation of new and sustainable employment”. In this

31 Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its first session, held at Bonn from 17 to 25 May 2006, U.N. Doc. FCCC/KP/AWG/2006/2, para 21.

32 For a more detailed description of the negotiations, see Sterk et al., “The Nairobi Climate Change Summit (COP 12/MOP 2): Taking a Deep Breath before Negotiating Post-2012 Targets?”, *Journal for European Environmental and Planning Law* 2007, p. 140 f.; Carter et al., “Summary of the Twelfth Conference of the Parties to the UN Framework Convention on Climate Change and Second Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol: 6-17 November 2006”, *Earth Negotiations Bulletin* 2006, p. 10 f., available at <http://www.iisd.ca/climate/cop12>.

33 Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its second session, Nairobi, 6 to 14 November 2006, U.N. Doc. FCCC/KP/AWG/2006/4, para. 17.

34 Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on its third session, held at Bonn from 14 to 18 May 2007, U.N. Doc. FCCC/KP/AWG/2007/L.2, para. 6, 10.

35 U.N. Doc. FCCC/KP/AWG/2007/L.2, supra note 35, para. 4.

36 U.N. Doc. FCCC/KP/AWG/2007/L.2, supra note 35, para. 6 (a).

context, the findings of the 3rd Working Group of the IPCC might have been influential. According to their Summary for Policy Makers, current scientific studies suggest that mitigation opportunities with net negative costs have the potential to reduce emissions by around 6 gigatonnes of CO₂eq per year by 2030 if implementation barriers are successfully eliminated.³⁷ Again, however, the AWG opted for an indirect reference by way of “inputs made by some Parties, presenters and observers”, and also cited such inputs as evidence for possible mitigation constraints due to social, economic, political, technical and other barriers, which was clearly geared towards the special circumstances of the Economies in Transition (EIT).³⁸

Overall, the third session of the AWG served to set the stage for the 4th session scheduled for August 2007 in Vienna, Austria.³⁹ It will see the continued analysis of mitigation potentials and further efforts to identify possible ranges of emission reductions, as well as an analysis of their contribution to the ultimate objective of the Convention.⁴⁰ A discussion of possible collective ranges would amount to progress in the work programme from the analysis of mitigation potentials – the first point of the work programme – to the identification of possible ranges of emission reductions by Annex I Parties, which falls under the second point of the work programme. The fourth session will be a crucial indicator for the negotiations in Bali, where the AWG has already decided to proceed to an analysis of possible means for the achievement of mitigation objectives. Given the current circumstances, however, it will prove a difficult political challenge to trigger an agreement on ranges.

2. Article 9 of the Kyoto Protocol: Review of the Protocol

Article 9 of the Kyoto Protocol provides that the Meeting of the Parties “shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information”, and goes on to state that the “first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner”. A first question

posed by parties in this process was the definition of “review”. With varying objectives in mind, the approaches of parties differed greatly as to the need for a discussion of substantive issues in a review and its design. Against that backdrop, negotiations at the second COP/MOP in Nairobi in 2006 turned out to be quite controversial. Developing countries voiced suspicion that a full review of the Kyoto Protocol could lead to new commitments for them, whereas the European Union argued in favour of a “thorough, comprehensive and well prepared review of the Kyoto Protocol”⁴¹.

In the end, parties adopted decision 7/CMP.2.⁴² Without actually defining the features of a review, it declared the first review “to be completed... at its second session”, notwithstanding the fact that no substantive discussions had taken place. A number of parties would have preferred to discuss in greater depth before concluding the first review, and therefore proposed to establish the review as an ongoing process with COP/MOP-2 as its starting point.⁴³ Most developing countries, however, drew on the wording of the Protocol to call for completion of the review at COP/MOP-2.⁴⁴ Some of these countries even welcomed the limited scope of the first review, referring to important new sources of information scheduled for after the conference (“including the IPCC AR4”)⁴⁵

37 IPCC, Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change – Summary for Policy Makers, <http://www.ipcc.ch/SPM040507.pdf>, p. 12. Moreover, the macro-economic cost of greenhouse gas stabilisation at even the most ambitious stabilisation level under study was estimated to be equivalent to a reduction of the average annual GDP growth rate of less than 0.12%, *ibid.*, p. 27.

38 U.N. Doc FCCC/KP/AWG/2007/L.2, *supra* note 35, para 6 (d).

39 This was also the view held by many parties to the negotiations, see Appleton et al., “Twenty-Sixth Sessions of the Subsidiary Bodies of the UNFCCC and Associated Meetings: 7-18 May 2007”, *Earth Negotiations Bulletin 2007*, p. 15, available at <http://www.iisd.ca/climate/sb26>.

40 See the Provisional Agenda and Annotations, U.N. Doc. FCCC/KP/AWG/2007/3, para. 11.

41 See Finnish Ministry of the Environment, “EU Presidency Perspective to Nairobi Climate Change Conference”, *Points 2006*, at <http://www.environment.fi/download.asp?contentid=60494&lan=fi>.

42 Decision 7/CMP.2, Review of the Kyoto Protocol pursuant to its Article 9, contained in U.N. Doc. FCCC/KP/CMP/2005/8/Add.1.

43 See, for instance, the submission by Canada, U.N. Doc. FCCC/KP/CMP/2006/MISC.3/Add.1.

44 See, for instance, the submission by Brazil, U.N. Doc. FCCC/KP/CMP/2006/MISC.3.

45 See, for instance, the submission by South Africa, U.N. Doc. FCCC/KP/CMP/2006/MISC.3/Add.1.

and – in doing so – reserved some leeway for a deeper substantive analysis in the second review.

Parties agreed to schedule this second review for COP/MOP-4 in 2008, setting the scope and content at the 3rd session in Bali. Moreover, parties decided that the second review “shall be based on the best scientific information and assessment, including the Fourth Assessment Report” of the IPCC. Again, this highlights the relevance of scientific input and, in particular, the results of the work by the IPCC for the international climate negotiations. With the first slender review in mind, the scope and content of the second review will send an important signal on how to interpret the concept of “review” under the Protocol on future occasions.

Despite the fact that both the scope and content of the second review have yet to be discussed, the COP/MOP already decided that it “shall not pre-judge action that may be decided upon” by the COP/MOP and “that it shall not lead to new commitments for any Party”. As evidenced by the submissions of Algeria and China prior to COP/MOP-2,⁴⁶ this reflects a concern and resistance of developing countries, in particular, against being drawn into new substantive commitments. Still, the second review can provide an opportunity to discuss central issues for a policy framework beyond 2012. Decision 7/CMP2 explicitly mentions the implementation of the Kyoto Protocol and adaptation as topics to further elaborate upon. Moreover, some of the issues parties may wish to discuss have already been enumerated in various submissions to COP/MOP-2.⁴⁷ Accordingly, issues for discussion could include, for instance, the adequacy of the

Kyoto Protocol as a means to achieve the ultimate objective described in Article 2 of the Convention, the further development and possible extension of global carbon markets, and further aspects such as the development, deployment and transfer of climate friendly technology, issues relating to land use, land-use change and forestry (LULUCF), action on bunker fuels, adaptation and assistance measures, procedures to join Annex B, amendments to Annex A, as well as matters relating to education and public awareness. Greater clarity on the review scope might already evolve in late summer, as parties are invited to submit their views hereupon by mid-August.

Ultimately, in the pursuit of the ultimate objective of the Convention, the review can and should provide a basis for the COP/MOP to decide on “appropriate actions” for the further enhancement of the Protocol and its environmental effectiveness. What constitutes “appropriate actions” is not clearly defined, and could also entail amendments to the Protocol. Appropriate enhancement will only be possible if both the Kyoto Protocol and subsequent COP/MOP decisions are taken into account. Whether the review process will prove successful, however, largely depends on the scope of issues the parties are willing to define and discuss.

3. The Convention Dialogue

The “ultimate objective” of the Convention, and that of “any related legal instruments”, including the Kyoto Protocol, is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”⁴⁸. Achievement of this objective will clearly require a concerted effort by the international community, including those countries which abstained from ratifying the Kyoto Protocol, such as the United States and Australia. Despite its general and elusive language, therefore, the Convention and its further development acquire a distinct importance with regard to the involvement of these countries into discussions and possibly even negotiations on a future international climate regime under the Convention.

Overcoming initial resistance, notably by the United States, delegates at COP-1 agreed on an international “Dialogue on long-term cooperative action to address climate change”⁴⁹. While the deci-

46 U.N. Doc. FCCC/KP/CMP/2006/MISC.3 with Add.2.

47 U.N. Doc. FCCC/KP/CMP/2006/MISC.3 with Add.1 and Add.2.

48 Article 2 of the UNFCCC; this provision goes on to state, that “[s]uch a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.” Scientific uncertainty and political dissension have, to date, stood in the path of international consensus on a threshold for “dangerous anthropogenic interference”, although average global warming by more than 2° Celsius is frequently cited as a critical benchmark by the European Union. See also Ott et al., Reasoning Goals of Climate Protection: Specification of Article 2 UNFCCC, Berlin 2004.

49 Decision 1/CP.11, Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention, U.N. Doc FCCC/CP/2005/5/Add.1; comprehensive information on the dialogue and the presentations given in this context can be found at: <http://unfccc.int/meetings/dialogue/items/3668.php>.

sion adopted to this end acknowledges that “the global nature of climate change calls for the widest possible cooperation and participation in an effective and appropriate international response”, it goes on to state that “the dialogue will take the form of an open and non-binding exchange of views, information and ideas in support of enhanced implementation of the Convention, and will not open any negotiations leading to new commitments”⁵⁰. Accordingly, the Dialogue is framed as a forum to discuss and not to negotiate. Formally, the Dialogue is set out as a series of four workshops, the last one of which is scheduled to be held in Vienna at the end of August 2007, in conjunction with the fourth session of the AWG.

An important feature of the Dialogue is not only the inclusion of big emitters, such as the United States, but also of developing countries and emerging economies. Under the Kyoto Protocol, the latter were exempted from concrete emission reduction and limitation commitments in accordance with the principle of “common, but differentiated responsibilities”. Nevertheless, changing consumption patterns in certain developing countries and emerging economies will render their participation in active greenhouse gas mitigation policies inevitable in the mid- to long-term to reach the ultimate objective of the Convention. Many countries, such as China, have already launched significant domestic efforts in this regard, although they have consistently emphasised that these efforts are purely national responses and not to be understood as commitments in the international context.

The Dialogue could serve as the starting point for discussions on a stronger involvement of developing countries, relevant incentive schemes, and a general review of the Convention. On this issue, Decision 1/CP.11 states “that the dialogue should identify approaches which would support, and provide the enabling conditions for, actions put forward voluntarily by developing countries that promote local sustainable development and mitigate climate change in a manner appropriate to national circumstances, including concrete actions to enable countries, in particular developing countries, to manage and adapt to climate change”⁵¹.

By being conceptually open, the Dialogue has the advantage of allowing for the introduction and discussion of new ideas, some of which are listed below. Substantively, it focuses on the following issues:

- advancing development goals in a sustainable way;
- addressing action on adaptation;
- realizing the full potential of technology; and
- realizing the full potential of market-based opportunities.

Decision 1/CP.11 explicitly states that the Dialogue “will be informed by the best available scientific information and assessment on climate change and its impacts from the Intergovernmental Panel on Climate Change, as well as other relevant scientific, technical, social and economic information”⁵². Again, thus, it underlines the importance of the IPCC and its findings for the exchange of views. Unsurprisingly, the results of the Fourth Assessment Report were only discussed at the most recent workshop.

A broad range of issues has been raised by different countries during the workshops, ranging from sectoral options for the CDM (India), sustainable development policies and measures (SD PAMs, South Africa), to incentives to reduce emissions from deforestation by developing countries (Brazil). The third workshop once again highlighted the importance of adaptation for Non-Annex I countries, in particular for the least developed countries (LDCs) and small island developing states (SIDS). Another issue attracting much attention is the cross-cutting topic of investments. Based on a request by parties, the secretariat has initiated a study on investment flows and finance schemes relevant to the development of an effective and appropriate international response to climate change, with a particular reference to the needs of developing countries. This study could provide valuable input for any follow-up process to the Dialogue.

Overall, the Dialogue has sought to follow the request of several parties and increasingly allowed for a more concrete discussion and exchange of views. With the last of the four workshops approaching, options for a follow-up process can be expected to move towards the centre of attention, and the final meeting may give rise to important discussions in this regard. Conceivable pathways

50 Ibid., Recital 7 and para. 2.

51 Decision 1/CP.11, *supra* note 50, para 5.

52 Decision 1/CP.11, *supra* note 50, para 3.

towards such a process have already been set out by the interventions from Brazil and South Africa at the third workshop. Close to the end of that meeting, Brazil underlined that the time for discussions had ended and negotiations were required to further the concrete implementation and set positive incentives for mitigation in developing countries. In support of this approach, South Africa outlined different options for a follow-up to the Dialogue:

- prolonging the Dialogue in its current format and generating additional new ideas;
- a new agenda item under the COP on long-term cooperative action;
- a platform under Article 4 (1) of the UNFCCC; and/or
- integrating the following relevant aspects into existing agenda items: adaptation, voluntary mitigation by developing countries, unintended consequences of mitigation and adaptation, and economic diversification, technological research, development, deployment and diffusion, and means of implementation such as finance and capacity building.⁵³

Although these suggestions have set the stage for future discussions and likely belong to the most “noteworthy outcomes” from the meetings in Bonn,⁵⁴ alternative ideas may still be brought forward. At any rate, however, a controversial debate can be expected. When raising the foregoing issues, South Africa and Brazil were not talking on behalf of the G77 and China. It would be very surprising if all developing countries could agree so soon on a launch of formal negotiations. Also, an early intervention by the United States at the third workshop clarified that it considers the dialogue to be “just beginning”, rendering it unlikely that the U.S. would be ready for formal negotiations. In addition, the intervention by South Africa and Brazil focused on Non-Annex I parties only. This leaves open

the question of what that may mean for Annex I Parties – especially those which have not ratified the Kyoto Protocol.

Both opportunities and pitfalls raised by each of the foregoing options, as well as possible alternatives, will likely be discussed at the fourth workshop of the Dialogue in Vienna, and maybe also at COP-13 in Bali, where the two co-facilitators of the Dialogue will report “on the dialogue and the information and diversity of views presented by the Parties”⁵⁵.

4. The “Russian Proposal”

The Russian Proposal is not an “official” negotiation track and emerged as a discussion *sui generis* from controversy on whether and how “voluntary commitments” should be discussed. During the discussions on Article 3 (9) of the Kyoto Protocol at COP/MOP-1 in Montreal, the Russian Federation proposed that the AWG be mandated with developing appropriate procedures on the approval of voluntary commitments. As parties were unable to arrive at an agreement on this issue, the COP/MOP finally requested the President to hold consultations on how this issue should be addressed, and to report back to the Meeting of the Parties at COP/MOP-2.

At COP/MOP-2, the Russian Federation requested official discussions on this topic. A heated agenda dispute emerged over this issue, reflecting concerns held by the G77 and China about being drawn into new commitments. Finally, the Meeting of the Parties asked its President to convene a workshop in May 2007 to “clarify and explore the scope and implications of the proposal by the Russian Federation”, and to report back on the proceedings as well as on central issues raised at said workshop.⁵⁶ It also decided to consider the report of the President at its third session in Bali. The workshop was then held in Bonn 2007 to explore the meaning of the Russian Proposal and also enable an open discussion. It was introduced by a Russian presentation elaborating the proposal and clarifying many questions that had previously been raised.⁵⁷ On this occasion, it then became evident that the proposal actually consists of two separate elements.

The first element asks for simplified procedures to join Annex B of the Protocol. Under Articles 20 and 21 of the Kyoto Protocol, an alteration of An-

53 See also Appleton et al., “SB 26 Highlights: 17 May 2007”, *Earth Negotiations Bulletin* 2007, p. 1, available at <http://www.iisd.ca/climate/sb26>.

54 See Appleton et al., *supra* note 40, p. 17.

55 Decision 1/CP.11, *supra* note 50, para 7 (c).

56 Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its second session, held at Nairobi from 6 to 17 November 2006, U.N. Doc. FCCC/KP/CMP/2006/10, paras. 135 f.

57 The presentation can be downloaded under the following link: http://unfccc.int/files/meetings/workshops/other_meetings/application/pdf/russian_presentation.pdf.

nex B currently requires a proposal from any party, as well as a decision by the Meeting of the Parties to amend Annex B. The decision can be adopted either by consensus or, as a last resort, by a three-fourths majority of the parties present and voting. In addition, the written consent of the Annex B party affected by the amendment is needed.

If adopted, the amendment enters into force for those parties having ratified it on the ninetieth day after it has been ratified by at least three-fourths of the parties to the Protocol.

This last requirement, in particular, renders changes to Annex B cumbersome, given that ratification by three-fourths of all parties is a challenging and lengthy process. Unsurprisingly, these requirements have been subject to criticism. At the same time, concerns have been voiced about the possibility of an amendment entering into force for some parties only, resulting in a fragmentation of commitments between states which have acceded to the Protocol. Such a “rift” could prove critical, since Annex B is the foundation of the carbon market and the latter will be affected by any change. Future discussions on amendment procedures to join Annex B will have to embrace complex issues such as the environmental integrity of the Kyoto Protocol, as well as potential impacts on the carbon market and on relevant interests of other parties already listed in the Annex.

The second element of the Russian Proposal deals with options to recognise contributions towards achievement of the ultimate objective of the Convention by way of voluntary commitments. Russia has provided examples of such commitments by mentioning absolute as well as relative emission reduction targets, and commitments based on the implementation of national policies and measures. More specifically, the proposal is aimed at voluntary commitments with “no regret emission reduction measures”, implying that a party would be rewarded if its voluntary commitments are met, but not punished if it fails to do so. As “possible types of benefits”, Russia has enumerated the following options in its presentation:

- emissions trading;
- technology transfer options;
- finance mechanisms (such as insurances); and
- other types.⁵⁸

Procedurally, the two elements of the Russian Proposal might have to be treated on different tracks – unless the proposal becomes its own independent

track, something that appears unlikely at this point. For the discussion of amendments to Annex B, Russia has itself suggested the review of the Kyoto Protocol under Article 9, or a separate process under the Subsidiary Body for Implementation (SBI), as the adequate fora. Voluntary commitments, on the other hand, could be dealt with in the Dialogue according to Russia, and maybe be made an integral part of a post-2012 package. Still, Russia seems to be flexible and open to suggestions on the most suitable arena for discussions.

The workshop was well attended, and a lively discussion followed the presentation by the Russian Federation.⁵⁹ While some critical statements were voiced, for instance by Saudi Arabia, there also seemed to be considerable interest in the Russian proposal, particularly in its first element. As for the issue of voluntary commitments, developing countries raised their concern that this might culminate in a situation where such countries might possibly lose their entitlement to current and promised support by Annex I Parties if they decide against entering voluntarily commitments. Clarifying the extent to which the incentives provided for voluntary commitments will be additional to existing and already promised support for developing countries could thus prove crucial for further work on this aspect. Overall, it will be interesting to see if and how parties in Bali – after having received the report from the President – will agree to further pursue this topic, or if the strong resistance witnessed from developing countries will continue even after the clarifications offered during the workshop.

III. Conclusion: Finding a Path into the Future

For the conclusion, it merits revisiting the main pathways of negotiations and discussions one final time: – negotiations under Article 3 (9) of the Kyoto Protocol are focused on new commitments for Annex I Parties who have ratified the Protocol;

⁵⁸ Presentation of the Russian Federation at the Workshop on the Russian Proposal, 11 May 2007, Slide 10, available at http://unfccc.int/files/meetings/workshops/other_meetings/application/pdf/russian_presentation.pdf.

⁵⁹ For an overview of the reactions from participants, see Appleton et al., “SB 26 Highlights: 11 May 2007”, Earth Negotiations Bulletin 2007, p. 1, available at <http://www.iisd.ca/climate/sb26>.

- the review pursuant to Article 9 of the Kyoto Protocol involves an evaluation of the Protocol and – probably – of decisions adopted by the Meeting of the Parties, providing the latter with a basis for its decision on “appropriate action”;
- the workshops under the Convention Dialogue are a forum to discuss ideas under the roof of the Convention;
- and the Russian Proposal – which still lacks formal institutionalisation – has a very concise focus on only two topics and can develop into a source of input for existing streams of discussions and negotiations or – less likely – into a separate track.

Accordingly, every track outlined in this article has its distinct features and character. Differences can be both procedural and substantive in nature: formal negotiations on the one hand, informal workshops on the other; focused negotiations on the Kyoto Protocol as opposed to open discussions between parties to the Convention; new commitments of industrialised nations on the one hand, voluntary commitments of developing countries on the other. But upon closer scrutiny, it becomes apparent that each forum deals with a variety of connected or even identical themes. At any rate, they often draw on the same sources of information – such as the reports of the IPCC – and share the overall aim of achieving the ultimate objective of the Convention as laid out in Article 2 UNFCCC.

Submissions by both Annex I and Non-Annex I countries clearly establish that parties are very aware of these connections and overlaps, and also that they recognise the possibility of one track influencing the outcome of another.⁶⁰ Unsurprisingly, there has been some deliberation on how to channel the work carried out in one forum for arguments on proceedings in other fora. Merging different tracks has also been contemplated as an idea in the past, and will probably be considered again in the future. But neither the integration of different fora, nor their explicit separation by attributing

specific issue to one track only, has found common support. For 2007, at least, this situation is unlikely to change, and it seems altogether difficult to imagine that discussions under the Convention can be merged with negotiations under the Kyoto Protocol, if for no other reason that they involve different parties. But even a merger of different fora under the Kyoto Protocol will prove difficult to accomplish and would possibly result in lengthy discussions on the process, thereby squandering valuable time needed for negotiations on substantive issues. Accordingly, while the fragmented consultation tracks will undoubtedly render it more difficult to elaborate a conclusive future climate regime, any attempt to merge separate fora has to face the danger of delaying substantive negotiations.

A multiplicity of fora is likely to persist, even if common coordinates evolve or an overarching “umbrella” is institutionalised at some point. With that in mind, it is important to ensure that the results of these different streams remain coherent or at least do not interfere with each other; adopting “negotiation packages” with ingredients from different fora will pose a particular challenge. And yet, it can be hardly stated with certainty at this point how the different tracks will evolve, what their exact scope will be, and whether their respective progress will correspond to the work completed in other fora, also regarding its timeline. In other words, it is too early to ascertain the best approach for a coherent climate regime, and discussions on this aspect will have to unfold over the medium term. Overall, however, it will be crucial for all participants in one track to pay close attention to the developments in all other tracks. Smaller delegations, in particular, will face challenges as a result, but so will other parties due to the complexity of the issues involved.⁶¹

If a comprehensive regime is to be adopted in time, the international community will have to move in one direction despite the differences in culture, economic situation, and vulnerability to climate change, overcoming the current distrust between certain countries and regions, as tackling the complexity of the matter and the limited – albeit rapidly growing – knowledge on many aspects of the problem. What is most likely needed to overcome current obstacles and stimulate further consultations is not only a clear timeline, but also, most importantly, a shared vision – particularly with a view to the precise meaning of the ultimate objec-

60 See as examples the submission by the Republic of Korea, U.N. Doc. FCCC/KP/CMP/2006/MISC.3/Add.2, the submission by Canada, U.N. Doc. FCCC/KP/CMP/2006/MISC.3/Add.1, and the submission by Brazil, U.N. Doc. FCCC/KP/CMP/2006/MISC.3.

61 See, for instance, Okereke et al., *Assessment of Key Negotiating Issues at Nairobi Climate COP/MOP and what it means for the Future of the Climate Regime*, Oxford 2007, p. 13: “The complex linkages between [the] four tracks added to the confusion among parties and hampered the outcomes of negotiations.”

tive of the UNFCCC to prevent “dangerous anthropogenic interference with the climate system”⁶². Starting from there, visions have to be established on politically and economically feasible pathways. Consensus on principles and objectives should help frame the substantive negotiations. And yet, the recent rise in public concern for the causes and effects of climate change, coupled with a reasoned appeal for more stringent action in a variety of reports and studies, may prove the most decisive driver, instilling decision makers at the highest level with a sense of urgency and fostering the will to act collectively.⁶³ Finally, the many processes unfolding outside the formal boundaries of the Convention and the Kyoto Protocol, including the processes set in motion by the Secretary-General of the United Nations, the G8, the World Bank, different regional initiatives, and informal ministerial dialogues, could become crucial venues for consensus-building and thus merit further investigation, particularly as regards their potential contribution to the foregoing tracks under the U.N.⁶⁴ For while the latter has been

recognised as “the appropriate forum for negotiating future global action on climate change”, other processes might add valuable dimensions and open new opportunities to drive the process and achieve the momentum needed to tackle the challenges ahead.

62 The importance of a “shared vision” was also emphasised by several participants in the official negotiations, see the statement of the European Union, Norway and Iceland in the AWG process, see Appleton et al., “SB 26 Highlights: 16 May 2007”, *Earth Negotiations Bulletin* 2007, p. 2, available at <http://www.iisd.ca/climate/sb26>.

63 As a recent report illustrates, “only a global approach to address climate change with all major countries being involved will achieve substantial long-term greenhouse gas emissions reductions that offer a good chance of achieving the EU 2°C climate target. . . . A global approach would mean that the USA, as well as fast-growing, large developing countries such as China, India and Brazil, would be actively reducing their greenhouse gas emissions before the year 2020.” See Boeters et al., *Post-2012 Climate Policy Scenarios*, Bilthoven 2007, p. 25.

64 On the potential – and also risks – of parallel discussion fora outside of the United Nations, see van Asselt, “From UNity to Diversity: The UNFCCC, the Asia-Pacific Partnership, and the Future of International Law on Climate Change”, in this issue.