The Montreal Climate Summit: Starting the Kyoto Business and Preparing for post-2012
The Kyoto Protocol’s First Meeting of the Parties (MOP 1) and COP 11 of the UNFCCC

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I. Introduction

The first Meeting of the Parties to the Kyoto Protocol (MOP 1)1 took place from 28 November to 10 December 2005 in Montreal, in conjunction with the eleventh meeting of the Conference of the Parties to the Framework Convention on Climate Change (COP 11). This meeting signifies a successful start into a new era of international climate policy: The Kyoto Protocol, which in the past had been sometimes declared as being dead,2 has become operational, including its flexible mechanisms and its non-compliance procedure. Negotiations have started to move forward towards 'Kyoto 2', an agreement for the time after 2012 when the Protocol’s first commitment period expires.

More than 10,000 participants made this the largest climate change conference ever, exceeding even the previous record set by COP 3, which had seen the adoption of the Kyoto Protocol in 1997. The Canadian Environment Minister Stéphane Dion, serving as President to the summit, termed the challenges of the meeting the ‘Three Is’, drawing on an idea by former Executive Secretary Michael Zammit Cutajar: Implementation, Improvement and Innovation. The first challenge (Implementation) entailed in particular the adoption of the Marrakesh Accords, the agreements reached at COP 7 in Marrakesh that set out the detailed rules for making the Kyoto Protocol operational. The second challenge (Improvement) referred to improving the work of the Framework Convention and the Kyoto Protocol in the near future. The third and most important challenge (Innovation) referred to the further evolution of the regime.

This paper will provide an account of the main developments in Montreal along the lines of the ‘Three Is’. However, due to the importance of the issue and the supposed interest of the reader, the politically most noted developments regarding the post 2012 process (Innovation) are described at the beginning of this report. It is followed by the developments regarding Implementation and Improvement. The paper concludes with an assessment and outlook on international climate policy.

II. Innovation – paving the way for post-2012 negotiations

The reduction obligations contained in the Protocol expire in 2012 and are rather moderate compared to the efforts needed to prevent ‘dangerous’ climate change, the Framework Convention’s ultimate objective. The recent years have therefore seen intensive debates on the development of mitigation commitments beyond the Protocol’s first commitment period in the research community and in civil society, but also increasingly among decision-makers.3 However, before the Montreal conference these post-2012 discussions had not been part of the formal negotiations. An early attempt by the EU to transfer this issue onto the agenda of negotiations failed at COP 8 in New Delhi (2002) and caused serious disturbances in the relationship between the EU and the developing countries, organised in the Group of 77 (G-77) & China.4 Last year at COP 10 in Buenos Aires, long-lasting, high-level negotiations

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1 For the sake of brevity and to minimize complexity the abbreviation MOP is used instead of COP/MOP for ‘the Conference of the Parties to the Convention’ serving as the meeting of the Parties to the Protocol.
2 See Meinhard Doelle: The Cat Came Back, or the Nine Lives of the Kyoto Protocol (unpublished manuscript; http://law.dal.ca/files/the_cat_came_back_or_the_nine_lives_of_the_kyoto_protocol.pdf.
only resulted in an informal 'Seminar of Governmental experts' that was not formally linked to the negotiation process.\(^5\)

The conditions in Montreal, however, were far more promising for getting 'innovation' processes within the climate regime started. This was, first, due to a legal provision contained in the Protocol: Article 3.9 requests the MOP to initiate considerations on post-2012 commitments for Annex I Parties\(^6\) at least seven years before the end of the first commitment period, i.e. in 2008. Second, negotiations under the MOP only involve the 'like-minded' group of Parties to the Kyoto Protocol, thus excluding the US delegation that has been a stumbling block in past negotiations. Thirdly, more than ever before, private sector actors involved in the evolving carbon markets put pressure on the Kyoto Parties to send a clear signal on mid- and long-term perspectives at MOP 1. Last but not least, recent results of climate models combined with emissions trends and projections in recent years have rendered it more obvious that mitigation activities have to be strengthened far beyond the Kyoto obligations.\(^7\) The Canadian Presidency attempted to pursue these tasks with a 'dual track' approach: Apart from initiating a negotiation process under Article 3.9 KP, President Dion also pushed for a decision under the Climate Convention to kick-start a process with broader participation beyond the 'Kyoto Ratifiers'.

1. The Kyoto track

There were mainly two points of contention during the negotiations pursuant to Article 3.9. The first was of a more procedural nature, involving questions of the institutional setting and the timeline for negotiations. From the outset of the negotiations, the G-77 & China, were quite clear on their position to establish an open-ended ad hoc working group of Kyoto Parties that should complete its work with a view to adopt decisions on future commitments at MOP 4 in 2008.\(^8\) Such an ad hoc working group has the benefit that it can meet more often than the MOP as well as have chair and its own agenda. This enables the group to focus solely on the issue addressed in its mandate and to formulate draft decisions for the MOP. The G-77 & China emphasised that progress under Article 3.9 KP was seen as a crucial test of the industrialised countries' willingness to take the lead and of their faith in the Protocol. The proposals put forward by the EU and Japan in the first week were much weaker on the procedural aspects and did not mention any timeline or negotiation body.\(^9\) However, these first proposals were partly strategic positions to have a bargaining chip on the second point of contention: Which countries should take on commitments?

Although Article 3.9 KP only addresses future commitments of Annex I Parties, most industrialised countries aimed at broadening the process to other Parties. They proposed to include a reference in the mandate to Article 9 KP. This article prescribes a general review of the adequacy of the Protocol at regular intervals, with the first review starting at MOP 2. This review might be used to also consider future actions by developing countries. The G-77 & China, however, clearly stated in their proposal that 'no new commitment shall be introduced under the Protocol for Parties not included in Annex I' and therefore refused to include...