amsterdam law forum

CLIMATE POLICY: QUO VADIS?

Hans Labohm*

Introduction

Climate change has become a major issue of our time. While Earth history clearly demonstrates that there has always been climate change, the Intergovernmental Panel on Climate Change (IPCC) keeps reminding us that the current climate change, i.e. the measured recent warming of the Earth, is something exceptional and alarming and is mainly caused by mankind. Jumping on IPCC's bandwagon, politics, media and climate gurus such as Al Gore, George Montbiot and David Suzuki, reinforce and grossly exaggerate IPCC's message with their warnings of an imminent climate disaster, which can only be prevented if we fundamentally alter our societal order and lifestyles. Even from within the climate science community, voices can now be heard that consider IPCC warnings too modest. Such is the position of Stefan Rahmstorf and Hans Joachim Schellnhuber of the *Institut für Klimafolgenforschung*' in Potsdam, Germany.

The IPCC is generally believed to be the single most authoritative body in the field of climate science; and its reports serve as scientific basis for climate policies of governments, which have profound implications for society. As such, the panel occupies a quasi-monopoly position. However, as its genealogy shows, it has been preconditioned by its mandate, in which 'climate change' equals man-made global warming (often referred to as Anthropogenic Global Warming or AGW) and is assumed to be dangerous. That feature has constituted a straight-jacket, which made it prone to biased research, tunnel vision, cognitive dissonance and the exclusion of any alternative to the AGW hypothesis – right from the beginning.

Opinions which deviate from those of the IPCC are more often than not ignored by politics, even if they come from prominent scientists, attached to the most prestigious universities and scientific institutions in the world. Apparently, politics assumes that it can do without a second opinion. That is most unfortunate, because is has become abundantly clear by now that IPCC's *modus operandi* has been characterised by cherry-picking, spindoctoring and scaremongering, and that its reports lack scientific rigour.¹

* Drs. Hans H.J. Labohm is an independent economist and author specialised in climate issues. He is expert reviewer of the IPCC, former dpt. Foreign Policy Planning Advisor at the Netherlands Ministry of Foreign Affairs, former dpt. Permanent Representative of the Netherlands to the OECD, former Senior Visiting Fellow and Advisor to the Board of the Netherlands Institute of International Relations (Clingendael). He is lead author of: 'Man-Made Global Warming: Unravelling a Dogma', MultiScience Publishing Company, 2004.

¹ Hans Labohm, What Is Wrong with the IPCC?,

http://scienceandpublicpolicy.org/images/stories/papers/other/Labohm-What_is_wrong_with_the_IPCC.pdf (last accessed on 18 February 2010)

2010

Since its inception, the IPCC has been heavily criticised by the so-called climate sceptics. According to Al Gore and other AGW proponents, the dissident numbers have been dwindling over time. One AGW adherent has even said: "You could have a convention of all the scientists who dispute climate change in a relatively small phone booth". Yet the climate conference organised by the Heartland Institute in New York on March 2-4, 2008, which aimed at challenging the AGW hypothesis, was attended by some 400 scientists, whereas the so-called 'Petition Project' has listed the support of over 31,000 scientists, all distancing themselves from the man-made global warming hypothesis.² This is probably unprecedented in the history of science; although only few people might be aware of it, as it received little media attention.

Today, climate scepticism is extensively documented in thousands of peerreviewed articles, which have been published in many renowned journals in a variety of scientific disciplines – far too many for one single person to digest. However, two relatively brief reports have appeared which present an overview of salient points of the critique of the AGW hypothesis. They offer the additional advantage of being fairly accessible to non-expert readers.

- Ross McKitrick et al, The Independent Summary for Policymakers, IPCC Fourth Assessment Report, Fraser Institute, London, February 2007;³
- Fred Singer *et al*, *Nature, Not Human Activity, Rules the Climate*, Report by the Non-Governmental International Panel on Climate Change (NIPCC), Heartland Institute, March 2008.⁴

The latter report, in particular, shows that the AGW hypothesis is contradicted by observations. In doing so, it offers a convincing falsification of the AGW hypothesis. If that hypothesis continues to be used in computer models to produce future projections of climate, one surely enters the field of pseudo-science, no matter how sophisticated the models might be.

I Mother Nature Refuses to Comply

Mother Nature refuses to comply with the projection of the climate models. Despite the continued rise of CO_2 concentration in the atmosphere, there has not been any global warming over the last ten years – as a matter of fact, there has been a slight cooling. This suggests that the imminent climate catastrophe exists only in virtual reality – it is a product of computer modelling. Those who are old enough to remember the apocalyptic

² <u>http://www.oism.org/pproject/</u>

http://www.fraserinstitute.org/Commerce.web/product_files/Independent%20Summary5 .pdf

⁴ <u>http://www.sepp.org/publications/NIPCC-Feb%2020.pdf</u> (last accessed on 18 February 2010)

predictions of the Club of Rome at the beginning of the 1970s, will undoubtedly be struck by the similarities.

How can we rescue the AGW hypothesis from oblivion, in the light of these anomalies? Various options are available. One is to rewrite history by retrofitting past temperature data sets so that they better match the AGW hypothesis. This may be perfectly legitimate in the light of new scientific insights. However, it might also lead to some suspicion of data–fixing, especially when revisions of temperature figures which do not fit the AGW hypothesis are performed in silence and those which do match the hypothesis are widely publicised. One example of the former category was the discovery that 1934, not 1998, was the hottest year in the continental U.S. since 1880. In contrast to the stealth revision of this figure, there was another correction, which did match the AGW hypothesis. It was an upward revision of the relatively low temperatures of the 1940s, because of a change in measuring techniques for sea-surface temperature (the thermometer record of water at inlets for cooling ship's engines, instead of buckets thrown over the side, hauled up, and measured). This revision was widely publicised.

Another option for saving the AGW hypothesis is to rewrite the future by retrofitting the models to 'explain away' Mother Nature's anomalous behaviour, e.g. by revealing a hitherto unnoticed climate forcing, such as the impact of ocean currents on worldwide temperatures. This has been done by a German group of scientists (N.S. Keenlyside *et al*, 2008). Its research suggests that global surface temperature may not increase over the next decade because natural climate variations in the North Atlantic and tropical Pacific temporarily offset the (projected) anthropogenic warming.⁵

Of course, science progresses and all these adjustments may be perfectly legitimate. However, this new research also offers a hedge against an early demise of the AGW hypothesis, given the possibility of continued cooling.

Whatever the case may be, the cooling over the past ten years plus the forecasted cooling over the next ten years is anything but an imminent climate catastrophe. Climate scaremongering is unwarranted and as such it could deal a severe blow to the climate industry. Why is this so stubbornly ignored?

II. Ignored Societal Implications of Climate Policy

Global warming was generally believed to be such an overwhelming threat that critics have been actively dissuaded from questioning the possible

⁵ N. S. Keenlyside, M. Latif, J. Jungclaus, L. Kornblueh & E. Roeckner, Advancing decadalscale climate prediction in the North Atlantic sector, *Nature* (453) 2008, 84-88. <u>http://www.nature.com/nature/journal/v453/n7191/abs/nature06921.html</u> (last accessed on 18 February 2010)

adverse implications of climate policy – including Kyoto – for our economies, and, hence societies. It is not surprising, therefore, that these implications have so far received scant attention.

It is true that the statistician, Bjørn Lomborg, and economists, such as William Nordhaus and Richard Toll, have proved that Kyoto-like measures to curb the emission of man-made greenhouse gasses are not defensible from a cost-benefit point of view. Yet they have taken the AGW hypothesis as a given by scientific authority – which has deflected the discussion from the really important question: is global warming man-made, and if so to what extent? Obviously, only the man-made portion of any change can be ameliorated or 'mitigated' by policy.

The dire consequences of current climate policies for our societies in their various dimensions – social, political and economic –, have hardly, if at all, been addressed. It has often been argued that CO_2 emissions trading, which is a major element of Kyoto, is in conformity with market principles – the political implication being that it could enlist the support of the Right which staunchly defends the free market economy. But a closer look reveals major official interventionism. Emission trading requires a prior act of creating and distributing (property) rights (to emit), where no rights existed before. Only governments can do so. It may also create major source of income to governments, thus act as a new form of taxation.

In Europe, national emission ceilings are the outcome of negotiations between the EU member governments, and others which may join the scheme. Subsequently, individual governments are free to distribute the emission rights nationally according to schemes to their liking.

Among the developed countries, the US and Australia had long refused to join, although Australia is in the process of changing its mind under the new government. China, India and other G-77 countries have made it quite clear that they will not accept any commitment to reduce emissions as from 2012, when Kyoto Mark I expires. However, they are happy to sell emissions to 'buyers' from abroad. As a result, the Clean Development Mechanism (CDM), which allows a country with an emission-reduction or emissionlimitation commitment under the Kyoto Protocol to implement an emissionreduction project in developing countries, is now called the Chinese Development Mechanism.

The proponents of Kyoto argue that Kyoto I (to 2012) is only a small first step to achieve a substantial reduction of man-made greenhouse gas emissions, though an agreement on a globally binding target has not been reached. Estimates range from ten to thirty additional 'Kyotos' in order to realise more substantial reductions. Against this background, two brief and sketchy scenarios illustrate what the future might hold for us:

- Europe's 'Alleingang' (solo effort) on Kyoto
- Worldwide Kyoto participation

III. Europe's 'Alleingang'

Europe will continue on its own with its midget 'Son of Kyoto'. The costs will be staggering, and serious loss of competitiveness is likely. Europe will labour under enhanced 'Eurosclerosis' because of additional burdens on the economy, in terms of extra taxes and extra regulation. It will imply a de facto farewell to Lisbon strategy, which was adopted in March 2001 and aimed at making Europe the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion in 2010. (By the way, nobody is talking about this grandiose strategy any more.) A European mini-Kyoto would jeopardize the EU's worldwide competitiveness. Maybe this would lead to trade tensions or even trade wars. New 'green' tariffs and other trade barriers are likely, and already advocated, e.g. by France. And all this is for an undetectable net cooling of worldwide temperatures. Although AGW adherents and climate sceptics may have different views about many things, they do agree that a solo effort of Europe will not have any detectable impact on worldwide temperatures. In essence - all pain and no gain!

IV World-Wide Kyoto Participation

This scenario assumes that all countries will join Kyoto II and subsequent negotiation rounds. In the beginning costs will be relatively low, because it concerns the collection of low-hanging fruit. But the screws will have to be tightened in every successive round, and the costs will rise exponentially. Ultimately all 193 countries in the world have to join. It should be borne in mind that their allocations will have to be accommodated within a shrinking total of available emission allowances. Worldwide distribution of CO₂ emission rights should take place on the basis of equal rights per capita, since such an allocation would be in conformity with UN egalitarian philosophy.

Such a scheme would clearly require a degree of central control at the global level – unprecedented in the history of mankind. Is it likely that 193 countries will be able to reach agreement on the worldwide distribution of emission rights during some ten to thirty consecutive negotiation rounds over the next few decades?

If countries are not willing to voluntarily cooperate in order to reach a compromise on an overall accord for the worldwide distribution of emission rights, the only conceivable alternative solution is that it will be imposed on them. The implication is that national parliaments will have to be excluded from the decision-making process, because one cannot run the risk that these will obstruct the outcome of the 'negotiations' by their veto. Even national

governments should not be allowed to frustrate the successful outcome of 'negotiations'. Consequently, either some directorate of leading nations, or some semi-autonomous body should be put in charge to prepare proposals. For practical reasons, these proposals can only be marginally adjusted during the 'negotiations', because otherwise the whole package would fall apart. Subsequently, these proposals are expected to be officially rubber-stamped by all countries. Kyoto II therefore serves further centralisation, and political integration of the EU – no wonder critical science is ignored by the proponents.

All this would spell the end of both national sovereignty and democracy in such a crucial field as is the use of energy.

Compliance requires close monitoring by an army of inspectors and monitors, which will have to operate worldwide, and should be backed up by sanctions in case of non-compliance. In regards to sanctions, a parallel can be drawn with the EU Stability Pact which stipulates that budget deficits of member countries should remain below 3% of GDP. But, as we know now, in this case sanctions are very weak and ineffective. Kyoto is a different ball game. It is aimed at nothing less than 'saving Planet Earth', implying that we should not shy away from radical measures to enforce global compliance.

However, such an approach is rejected by an overwhelming majority of countries in the world. China, India and Russia harbour the suspicion that Europe wants to block the economic catching-up race of the poor(er) countries by means of environmental protection conditions. In addition, developing countries don't want their energy policies controlled by rich countries whose citizens emit five times as much as they do. China considers itself to be a developing nation. It believes that it is up to rich nations to shoulder the cuts. According to China: "There are three sorts of emissions: luxury emissions, normal emissions and survival emissions. Ours are necessary for our survival.' Also India rejects proposals to limit greenhouse gas emissions because stricter limits would slow its booming economy.

Russia's position is more ambivalent. It may well benefit from income transfers by selling emission rights. But within a few years it might have to buy emission rights. On a climate conference, end May 2007, Federation Council Speaker Sergei Mironov said: 'In reality, the scientific basis for the [Kyoto] protocol is fairly weak. In the opinion of many experts, the emission of carbon dioxide into the atmosphere does not have any effect on the climate.' If Russia adopts this view as its official position, it will drop out of Kyoto in 2012.

In the mean time, people in countries with ambitious goals in the field of climate policy, such as the UK and Germany, are beginning to feel the pinch. There is a difference between having some sympathy for the 'fight against global warming' and having to pay for the concrete measures which it entails - such as compulsory use of much more expensive renewable sources of energy, or even lifestyle changes. Popular protests in various European countries against high energy prices remind politicians of the risk that ignoring the wishes of the electorate might lead to a reshuffling of the political landscape, or to put it more bluntly, will force them out of office.

V Will There Be a 'Son of Kyoto'?

At the EU Summit of 15 – 16 October 2008, Italy and seven Central and East European countries threatened to veto the new package of climate policy proposals by the European Commission as a follow-up to Kyoto I. In the light of the current economic turbulence and rising unemployment, they fear that they will have to suffer unbearable costs as a result of an additional reduction of CO₂ emissions by 20% from 1990 levels. Besides worries about the adverse consequences of the credit crisis, they are also concerned about overdependence on Russian oil and gas supplies. A cap on CO2 emissions and auction of CO₂ emission rights would inevitably lead to the closure of a number of coal-fired power plants in various Central and East European countries. This is an unappealing option in the light of recent interruptions of gas supplies by Gazprom. The Italian objections were of a more general and fundamental nature. Prime Minister Silvio Berlusconi explained: We do not think that now is the time to be playing the role of Don Quixote, when the big producers of CO₂, such as the United States or China, are totally against adherence to our targets.'

Against this background, any reference to binding implementation of emission targets has been deleted. Instead, a new precondition had been introduced, namely that the new climate policy should be cost-effective for all sectors of the European economy and all countries, taking into account their specific situation. This means that new proposals will have to wait until a broad analysis of their cost-effectiveness has been completed.

The notion of cost-effectiveness looks innocent. It is like apple pie and motherhood – nobody is against it. That is, until one realises that costly measures to curb CO_2 emissions will have no detectable impact on worldwide temperatures. Consequently, they will never be cost-effective. If the EU countries opposing a 'Son of Kyoto' follow this line of argument, there will be no new deal.

Non-European countries are even less enthusiastic about a follow-up of Kyoto. There are no indications that countries such China and India, as well as other developing countries, will join the scheme. American participation is equally doubtful, even now that the Democrats have taken office, because they have to address more urgent problems than putative man-made global warming. The likelihood that Russia will drop out has already been mentioned.

All in all, it is highly unlikely that there will be a worldwide successor to Kyoto I. It is even highly doubtful whether Europe's mini Kyoto will have offspring. The most likely scenario is that – like the old soldiers – Kyoto will just fade away. The credit crisis, subsequent global economic melt-down, and their impact on the real world will act as welcome alibis to elegantly dump Kyoto, without too much loss of political face.

Conclusion

Kyoto's scientific base is fatally flawed. Moreover, it has become likely that there will never be a worldwide 'Son of Kyoto'. Its political, economic and social implications have not been sufficiently thought through. They are based on wishful thinking rather than a sober and realistic assessment, which is the hallmark of rational policy-making. Against this background Europe should reconsider its position. It is in grave danger of isolating itself from the rest of the world by its climate policy.

⁻ The Amsterdam Law Forum is an open access initiative supported by the VU University Library -