Europe, the United States and the Global Climate Regime: All Together Now?

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Version Publisher's version


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I. INTRODUCTION

The European Union (EU) and the United States have many things in common. These include that both are leading actors in the "Western world," steeped in democratic traditions and committed to the rule of law. Both are also leading industrialized regions in the global economy. And yet, in recent years and on a range of issues, the EU and the United States could not have been further apart. One of them is what some would consider the single most important public policy challenge of our time: global climate...
Climate change not only poses complex environmental and economic challenges, it is also the quintessential collective action problem. Albeit to different degrees, all states contribute to climate change and all are affected by it. And unless states cooperate, a solution cannot be found. But bringing 191 states—and, in particular, the major greenhouse gas emitters—into a meaningful, long-term climate regime has proven to be the political and legal equivalent of squaring the proverbial circle.

It is all the more remarkable, then, that the 1992 United Nations Framework Convention on Climate Change (UNFCCC) boasts 192 parties, including the EU and the United States. The ultimate objective of the UNFCCC is to achieve a “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.” The convention provides that, initially, actions to that end be taken only by the developed countries and countries with economies in transition that are listed in Annex I to the Convention. The Kyoto Protocol, in turn, established an initial five-year commitment period (2008-2012) during which Annex I countries would have to achieve specific emission reduction targets. The Protocol's first round of commitments, even if fully implemented, will fall far short of achieving the Convention's objective, something that parties were aware of when the Protocol was negotiated. In the Protocol, therefore, they also agreed to begin consideration of new commitments well before expiry of the first commitment period.

Discussions about such additional commitments have been underway for some time now, but have been sluggish and contentious, to say the least. Quite apart from agreeing upon how much greenhouse gas emissions should be reduced and in what timeframe, the biggest challenge has been to engage the key states in

1. See David A. King, Climate Change Science: Adapt, Mitigate, or Ignore?, SCIENCE, Jan. 2004, at 176 (describing climate change as "the most severe problem that we are facing today").
4. UNFCCC, supra note 3, at art. 2.
5. Id. at arts. 3.1, 4.2(a)-(b).
7. See id. at art. 3.9.
the efforts to further develop the global regime. The European Union and its member states have been advocating demanding new commitments. However, some of the largest emitters of greenhouse gases do not have reduction obligations under the Kyoto Protocol. Until recently, these states—including, notably, the United States and large developing countries like China and India—have resisted even talking about future binding commitments.

The release of the Intergovernmental Panel on Climate Change’s (IPCC) Fourth Assessment Report in 2007 injected a new sense of urgency into the discussions. The IPCC concluded that “[w]arming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.” It also found that the unprecedented increases of greenhouse gas concentrations in the atmosphere during the industrial era are the result of human activities. Further, the IPCC concluded that to have a reasonable chance of guarding against dangerous warming, global greenhouse gas emissions would have to peak in the next ten to fifteen years and, by 2050, would have to be reduced to less than half of 2000 emissions.

These findings helped to prompt some shifts in previously entrenched positions. The “Bali Roadmap,” which was adopted at the December 2007 meetings of the parties to the UNFCCC and the Kyoto Protocol, speaks to the growing acceptance of a need for long-term action on climate change. Eventually, the United

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9. See Richard B. Alley et al., supra note 8, at 2-3. Working Group I considers it to be “very likely” (more than ninety percent certain) that human impact accounts for these increases. See id. at 2-3, 3 n.6.


States and the major developing country emitters joined the consensus. Still, climate diplomacy between the EU and the United States remains polarized, as it has been since the decision of the Bush Administration in 2001 to abandon the Kyoto Protocol. Indeed, according to many observers, the United States not only refused to take on the binding emission reduction commitments set out in the Kyoto Protocol, but also tried to undercut the U.N. climate regime by promoting alternative, non-binding initiatives.13

Either way, the United States has played far less of a leadership role in climate change talks than in other environmental negotiations.14 Indeed, other states have openly expressed their resentment of the U.S. stance, as did Papua New Guinea’s ambassador for climate change who made the following statements at the Bali negotiations: “[I]f for some reason you’re not willing to lead, leave it to the rest of us. Please get out of the way.”15 If the loss of respect so powerfully captured in this rebuke were not enough, the United States may also have lost political influence at a critical juncture in global climate politics. Meanwhile, the EU has stepped into the leadership role, working hard to sustain the regime and to promote and shape its further evolution.16

Global climate governance is now at a critical juncture due to at least three circumstances: the need to set the tracks for a post-Kyoto regime, the overwhelming new evidence of the urgency of this task, and the opening created by the Bali Roadmap. What, then, are the prospects for global action and, more specifically, for the regime established by the UNFCCC and its Kyoto Protocol? Its future and effectiveness will depend on many factors, including whether key developing countries, such as China and India,17 can be persuaded to join the effort. In turn, such developing country buy-in is arguably contingent on the actions of the main

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16. See Jutta Brunnée & Kelly Levin, Climate Policy Beyond Kyoto: The Perspective of the European Union, in A GLOBALLY INTEGRATED CLIMATE POLICY FOR CANADA 57, 59 (Steven Bernstein, Jutta Brunnée, David G. Duff & Andrew J. Green eds., 2008).

17. Together, China and India account for a fifth of global greenhouse gas emissions. See Lavanya Rajamani, China and India on Climate Change and Development: A Stance That Is Legitimate but Not Sagacious?, in A GLOBALLY INTEGRATED CLIMATE POLICY FOR CANADA 104, 104-05 (Steven Bernstein, Jutta Brunnée, David G. Duff & Andrew J. Green eds., 2008).
industrialized negotiating powers—the EU and the United States. In determining the prospects for the global climate regime, therefore, it is important to inquire into the potential for leadership by the EU or the United States or, ideally, by both. What are the factors that account for the European and American approaches to international climate law and policy, respectively? Why has the EU been so committed to the global regime when the United States has not?

At first glance, the explanations would appear to lie in the respective interests and power of the EU and the United States. Undoubtedly, actors' interests influence their policies, and their relative power affects their ability to pursue these interests. And yet, as plausible as these explanations may seem, they are also too crude. They obscure important aspects of the processes through which policy choices come to be made. This Article explores the normative dimensions to these policy processes. Drawing on a constructivist understanding of international affairs, the hypothesis is that international law, including the norms enshrined in the UNFCCC and the Kyoto Protocol, can come to shape policy processes, the interests that actors aim to pursue, and their power to do so. As will become apparent, international legal norms, for a range of reasons, have played a stronger role in shaping European, rather than American, climate policy. Interestingly, this fact seems to have strengthened the European approach to global regime building and catalyzed European interests. It appears to have made European policy positions and leadership more influential than the American efforts to weaken the U.N. regime.

The Article begins with a brief sketch of the climate regime as it has evolved under the UNFCCC and its Kyoto Protocol. It then highlights the main features of current approaches taken by the United States and the EU toward climate policy and to the global climate regime. Next, it explores some of the factors that might account for European and American policy trajectories. This discussion turns from the internal politics of the EU and the United States, to their respective identities as international actors and leaders, to European and American attitudes towards international law, and finally to the salience of international environmental norms for EU and U.S. policies. The Article concludes with an evaluation of the likely implications of these factors for the future of the U.N. climate regime and for the respective leadership roles of the EU and the United States within the regime.

18. See id. at 105-08 (commenting on the Chinese and Indian negotiating positions).
19. See infra notes 136-40 and accompanying text.
II. THE EVOLUTION OF THE GLOBAL CLIMATE REGIME

The UNFCCC, adopted at the Rio Earth Summit in 1992, contains principles and objectives to guide global climate policy and establishes institutions and processes for further treaty development. As already noted, its overarching objective is to avert "dangerous anthropocentric interference with the climate system." Among the Convention's foundational principles is the notion that parties should take "precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects." Climate change is described as a "common concern of humankind," and parties are called upon to protect the climate system "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities." The convention also stipulates that "developed country Parties should take the lead in combating climate change."

The Kyoto Protocol was adopted in 1997 to build on the general commitments set out in the Convention. It has been ratified by 181 states and the EU. It imposes binding greenhouse gas (GHG) emission reduction commitments on parties listed in Annex I to the UNFCCC, but not on developing countries. Although this feature of the protocol has become increasingly controversial, it actually respects the abovementioned principles of the Convention.

The Protocol requires Annex I parties to achieve, during a 2008-2012 "commitment period," specified reductions in comparison to their 1990 emission levels. Compliance with these targets is assessed at the end of that period. Parties' individual commitments vary. For example, while the United States, had it ratified the protocol, would have had to reduce its emissions by 7% below 1990 levels, the European Community (the legal entity that is party to the protocol) committed itself to an 8% cut. In addition to

20. UNFCCC, supra note 3, at art. 2.
21. Id. at art. 3.3.
22. Id. at pmbl.
23. Id. at art. 3.1.
24. Id.
26. See Rajamani, supra note 17, at 110-12.
27. The EU, which currently has twenty-five member states, was established through the 1992 Treaty on European Union. See Ludwig Krämer, Regional Economic Integration Organizations: The European Union as an Example, in OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 853, 854 (Daniel Bodansky, Jutta Brunnée & Ellen Hey eds., 2007) (describing the salient distinctions). The EU and the European Community (EC) are legally distinct but have the same member states and largely the same institutions. Id. at 554-55. The EC rather than the EU is legally competent to enter into international agreements. Id. at 855.
the Community, its member states have their own commitments. However, so long as the Community’s collective obligation is met, member states will not be assessed for compliance with their individual targets. This arrangement has come to be referred to as the “EU bubble.” To give all parties greater flexibility in meeting their emission reduction commitments, the Kyoto Protocol establishes trading mechanisms through which they (or legal entities under their jurisdictions) can exchange emission rights or emission reduction credits. Another distinctive feature of the Protocol is a compliance procedure that is considerably more ambitious than the facilitative approaches that multilateral environmental agreements (MEAs) typically employ. It encompasses an enforcement branch, which is meant to ensure compliance with the emission targets and the related inventory and reporting commitments.

Although the Protocol’s commitment period has only just begun, its expiry in 2012 makes settling whether there will be subsequent commitments—and, if so, what kind of commitments and to whom they will apply—an increasingly urgent task. Failure to agree upon a Kyoto successor will have a number of ripple effects on global climate governance. The absence of clear signals regarding subsequent commitments will undermine the existing regime, in part because, legally speaking, Kyoto parties’ emissions would be permitted to increase again after the expiry of the commitment period. More and more parties will then be tempted to abandon efforts to meet their existing Kyoto commitments, and industry would lose key incentives to step up climate action. Indeed, some Kyoto parties, such as Canada, have already begun to advocate emission baselines and targets that deviate from the cornerstones established in the UNFCCC and the Kyoto Protocol.

28. See Kyoto Protocol, supra note 6, at art. 3.1, Annex B.
29. See id.
30. See id. at art. 4.1.
32. See Kyoto Protocol, supra note 6, at arts. 6, 12, 17.
35. The Canadian government has pegged its policy goals to a 2006 baseline, rather than 1990, and is advocating GHG intensity targets rather than absolute, Kyoto-style, tar-
Multiple tracks for considering further actions under the UNFCCC umbrella were established at the eleventh meeting of the Conference of the Parties to the Convention and the parallel first Meeting of the Parties to the Kyoto Protocol in Montreal in 2005.\textsuperscript{36} An Ad-hoc Working Group was tasked, under article 3.9 of the Kyoto Protocol, with considering new commitments for Annex I parties. Given the Protocol's Annex I commitment focus, this track precludes consideration of developing country commitments. Article 9 of the protocol would allow for a broader review of the adequacy of the Protocol and its approach, but the G7 and China resisted the discussion of emissions-related commitments by developing countries. Given this resistance, industrialized states were unwilling to discuss a concrete negotiating mandate under article 3.9. However, an open-ended "dialogue" on "long-term cooperative action" was launched under the auspices of the Convention.\textsuperscript{37} It is intended in part to keep the United States and Australia, the two industrialized countries that had refused to join the Kyoto Protocol, engaged in global deliberations, but it also provides a forum for engagement with developing countries.

As noted earlier, the 2007 IPCC findings helped inject new momentum into the discussions on future commitments. In particular, the IPCC drove home the point that global greenhouse gas emissions would have to peak around 2020 and would have to be dramatically reduced by 2050 if there was to be a reasonable chance of averting dangerous warming.\textsuperscript{38} This message appears to have finally gotten through. The G8 leaders agreed at their June 2007 summit to aim for global emission reductions of at least 50% by 2050 and to work within a U.N. process.\textsuperscript{39} And, at their December 2007 meeting in Bali after much wrangling, the parties to the UNFCCC adopted a decision on "long-term cooperative action" on climate change.\textsuperscript{40} In the decision, dubbed the "Bali Action Plan,"

\textsuperscript{36} See Ott, supra note 34, at 17.
\textsuperscript{38} See Barker et al., supra note 10, at 38-40, and accompanying text.
the parties launched a process aimed at arriving at an “agreed outcome” by 2009—a “shared vision” for global climate action “including a long-term global goal for emission reductions.” Part of the significance of the Plan lies in the fact that it envisages climate action by all convention parties, rather than only those states currently committed under the Kyoto Protocol. Indeed, the language of the Action Plan moved away from the “Annex I” and “non-Annex I” party dichotomy that has constrained the current convention-protocol regime and refers to future actions by “developed” and “developing” countries. To keep these accomplishments in perspective, while the compromise struck in the Action Plan does not preclude future binding targets, it does not entail a commitment to them either. Similarly, the plan is silent on interim targets for 2020. Instead, the Bali Compromise recognizes that “deep cuts in global emissions will be required” and emphasizes the “urgency” of climate action. The Ad-Hoc Working Group, established to consider future Kyoto commitments, went somewhat further and recognized that the IPCC’s findings “would require Annex I Parties as a group to reduce emissions in a range of 25% to 40% below 1990 levels by 2020.” The group adopted a work program, pursuant to which the group is to report back to the Protocol parties by 2009.

III. AMERICAN AND EUROPEAN CLIMATE POLICY TODAY

A. The United States

While the United States has had long-standing concerns about internationally mandated climate action, the administration of George H.W. Bush eventually bowed to international pressure and supported the negotiation of the UNFCCC. The United States

42. See id. at 3; see also Spence et al., supra note 40, at 150 (explaining the elimination of Annex I and non-Annex I terminology).
43. The Action Plan contemplates “[m]easurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives . . . .” COP Thirteenth Session, supra note 41, at 3.
44. Id. at pmbl. The Action Plan also refers to the IPCC findings in a footnote. Id. at 3 n.1.
46. Id. ¶ 22(c).
47. See LOREN R. CASS, THE FAILURES OF AMERICAN AND EUROPEAN CLIMATE POLICY: INTERNATIONAL NORMS, DOMESTIC POLITICS AND UNACHIEVABLE COMMITMENTS 33-40, 78-
ratified the Convention shortly after its adoption at the 1992 Rio Earth Summit.\(^\text{48}\) However, the ensuing international push for binding emission reduction commitments met with domestic misgivings that turned out to be impossible to overcome, especially once the Clinton administration agreed to the negotiation of a protocol that would not include developing country commitments.\(^\text{49}\) Nonetheless, the United States was actively engaged in the negotiations and influenced significant aspects of the Kyoto Protocol, such as its emissions trading and compliance mechanisms.\(^\text{50}\) In fact, the emissions trading regime drew inspiration from U.S. domestic practice, although the American policy proposals were specifically adapted to the international setting, so as to promote broad participation and economic efficiency.\(^\text{51}\) The key features of the compliance regime were shaped in part by American efforts to ensure predictable consequences for non-compliance with emission reduction commitments and to carefully delineate the functions of the “enforcement” branch of the procedure.\(^\text{52}\)

The Clinton administration also attempted to solicit “voluntary commitments” from key developing countries, an effort that was ultimately unsuccessful.\(^\text{53}\) Thus, notwithstanding the influence it exerted on key features of the Kyoto Protocol, it was always unlikely that the United States would ratify the agreement. The Clinton administration was unable to forge bipartisan domestic support for the protocol.\(^\text{54}\) Indeed, concerns about the economic implications of the required emission reductions and about the efficacy of a regime without developing country commitments prompted a unanimous Senate resolution against joining an agreement like the Protocol.\(^\text{55}\) Therefore, when President Clinton nonetheless

\(^{48}\) See UNFCCC Ratifications, supra note 3 (evincing U.S. support for the UNFCCC negotiation).

\(^{49}\) See CASS, supra note 47, at 124-33.


\(^{53}\) See CASS, supra note 47, at 174-75, 205-06.


signed the Protocol in 1998, he did so with the proviso that he would not recommend ratification unless the Protocol was adjusted to address U.S. concerns.\textsuperscript{56}

The Bush administration took a far more hard-line stance on climate policy than its predecessor and, in 2001, rejected the Kyoto Protocol as unacceptably flawed.\textsuperscript{57} Subsequently, the U.S. approach to the international climate change regime ranged from mere observation of negotiations, to efforts to convince other states—notably developing countries—of the Protocol's flaws, to emphasis on domestic approaches to the issue.\textsuperscript{58} Thus, in 2002, in an effort to articulate an alternative policy approach, the Bush administration announced a national climate change initiative.\textsuperscript{59} The aim of this initiative was to reduce, within ten years, the GHG intensity—specifically, the GHG emissions generated per dollar of gross domestic product—of the American economy by 18\%.\textsuperscript{60} These goals would be achieved through voluntary research and technology promotion initiatives.\textsuperscript{61} However, from a climate protection perspective, the merits of the administration’s emissions intensity approach were questionable. As many commentators have pointed out, the initiative merely tracked an existing trend towards lower GHG intensity of the U.S. economy, bringing little progress over a “business-as-usual” approach.\textsuperscript{62} Furthermore, in view of projections for economic growth, the projected decrease in emissions intensity was likely to go hand-in-hand with an absolute increase in GHG emissions.\textsuperscript{63} Unfortunately, even the government’s own assessments of some of its flagship voluntary programs show that they have not lived up to expectations.\textsuperscript{64} Still, the Bush adminis-

\textsuperscript{56.} See Laura Campbell & Chad Carpenter, United States of America, 9 Y.B. INT'L ENVTL. L. 365, 367 (1998).
\textsuperscript{58.} See Greg Kahn, The Fate of the Kyoto Protocol Under the Bush Administration, 21 BERKELEY J. INT'L L. 548, 551-55 (2003); see also Atle Christen Christensen, Convergence or Divergence? Status and Prospects for US Climate Strategy, FNI REPORT (Fridtjof Nansen Inst., Lysaker, Nor.), June 2003, at 1, 18, available at www.fni.no/doc\&pdf\rapp0603.pdf (addressing U.S. efforts to influence developing countries).
\textsuperscript{59.} President’s Remarks Announcing the Clear Skies and Global Climate Change Initiative, 38 WEEKLY COMP. PRES. DOC. 232 (Feb. 14, 2002).
\textsuperscript{61.} See id.
\textsuperscript{63.} Id. (predicting a 12% increase in total emissions); Patrick Parenteau, Anything Industry Wants: Environmental Policy Under Bush II, 14 DUKE ENVTL. L. & POLY F. 363, 368 (2004) (predicting a 14% increase over 1990 levels).
\textsuperscript{64.} See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-06-97, CLIMATE CHANGE: EPA AND DOE SHOULD DO MORE TO ENCOURAGE PROGRESS UNDER TWO VOLUNTARY PRO-
administration’s climate policy continues to rely upon the promotion of research and development and a range of voluntary initiatives.\textsuperscript{65}

At the international level, the Bush administration has shown a similar preference for voluntary, technology-focused approaches. In 2005, it helped launch the Asia-Pacific Partnership on Clean Development and Climate. The arrangement is meant to promote direct engagement between the world’s fastest growing and probably largest future emitters of greenhouse gases in China, India, South Korea, the United States, Japan, Australia, and Canada.\textsuperscript{66} However, it has received mixed reviews from other states, due to the concern it could undermine UNFCCC processes and, in particular, the effort to extend the legally binding emission reduction commitments under the Kyoto Protocol.\textsuperscript{67} Similar concerns have been raised with respect to the administration’s September 2007 effort to launch a “major economies” process that would bring the largest industrialized and developing country emitters together to consider voluntary actions to promote research and technology development.\textsuperscript{68}

As far as the U.N. climate regime is concerned, the American approach has been to remain engaged in the deliberations under the UNFCCC but to resist any move towards future binding emission reduction commitments. As noted earlier, at the 2005 Montreal meetings of the Convention and protocol parties, it was decided to pursue a loose “dialogue” under the UNFCCC and separate discussions about potential future commitments under the Kyoto Protocol.\textsuperscript{69} The United States agreed to support the convention-based dialogue on long-term cooperative action,\textsuperscript{70} so long as it was clear that it would not inevitably lead to negotiations on new commitments.\textsuperscript{71}

In 2007, in light of the IPCC’s unequivocal evidence of climate change and of the urgent need for action, the Bush administration
began to change the tone of its policy. While it continues to insist that any future emission reduction commitments by industrialized countries would have to go hand-in-hand with developing country commitments, the administration has shown greater willingness to consider long-term action under the auspices of the UNFCCC. This shift in approach found expression in its decisions to support the 2007 G8 summit declaration and, most recently, the Bali Action Plan. 72

Of course, it is far from clear that the United States is in fact prepared to move from declarations of good intentions to an agreement that requires tough climate action. After all, it decided to support the Action Plan only once several developing countries had openly criticized it for pressing them to make commitments while refusing to do the same. 73

Moreover, the concession came only once references to the need to reduce industrialized countries’ emissions between 25% and 40% below 1990 levels by 2020 were dropped from the text. U.S. representatives indicated that they deemed even cuts of 25% to be unachievable, and the White House expressed its “serious concerns” about the Bali outcome. 74 Since the Bali meetings, the United States has indicated some new willingness to accept binding international obligations. However, the administration remains vague on the nature of those commitments and continues to insist that an effective framework requires the participation of “all major economies, developed and developing alike.” 75

The growing international isolation of the Bush administration coincided with a series of domestic developments that suggest the odds for a more significant international policy shift are improving. First, at the sub-national level, a wide range of local, state, and regional initiatives have sought to push beyond the Bush administration’s foot-dragging on climate change. 76 For example, a growing number of U.S. cities have committed to reducing their GHG emissions compared to 1990 levels, in some cases by percentages that

72. See supra note 39 and accompanying text; Hunter, supra note 13, at 83.
73. See supra note 15 and accompanying text.
76. See generally Robert B. McKinstry, Jr., Laboratories for Local Solutions for Global Problems: State, Local and Private Leadership in Developing Strategies to Mitigate the Causes and Effects of Climate Change, 12 PENN ST. ENVTL. L. REV. 15 (2004) (describing how despite the transboundary nature of greenhouse gas emissions, U.S. states have responded to the lack of federal action by establishing their own policies to address this environmental issue).
exceed the requirements of the Kyoto Protocol. At the state level, California has taken a leadership role, *inter alia*, by enacting the Global Warming Solutions Act. While not pegged to the Kyoto targets, the Act sets regulatory requirements for significant GHG emission reductions, likely to be complemented by a cap-and-trade program. Through the Western Climate Initiative, launched in November 2007, California is exploring collaboration on various climate change strategies, including emissions trading, with other western states and some Canadian provinces. Finally, a regional emissions trading program, the Regional Greenhouse Gas Initiative (RGGI), will begin operating in the Northeast and Mid-Atlantic regions in 2009, committing participating states to mandatory carbon dioxide (CO₂) emission reductions from power plants.

Second, recent developments suggest that some shifts will also occur in U.S. federal climate policy, most likely after the next president takes office. In a decision that could have far-reaching implications, the U.S. Supreme Court rejected the argument of the Environmental Protection Agency (EPA) that, because GHGs did not constitute “air pollutants” within the meaning of the Act, it did not have jurisdiction to regulate GHG emissions under the federal Clean Air Act. Leaving aside the question whether climate change could be addressed through existing federal legislation, a growing number of legislative proposals specifically aimed at climate change have been placed before the U.S. Congress. According to the Pew Center on Global Climate Change, the 110th Congress was particularly active with 235 bills, resolutions, or amendments having been proposed as of July 2008. While there are significant differences between the major bills, common themes are proposals for cap-and-trade systems and emission goals that are focused upon long-term reductions with a 2050 horizon. Last, but certainly not least, President Barack Obama has promised “vigorou...
administration will be on the long-standing U.S. insistence that other major developing country emitters make simultaneous climate commitments.84

B. The European Union

It is largely due to European determination that the Kyoto Protocol entered into force without the United States—the single largest emitter of GHG at that time.85 The EU, which accounts for roughly 14% of global greenhouse gases,86 lobbied hard for the buy-in needed to bring the protocol into force.87 The United States’s decision not to join the protocol was seen by many European policymakers as an affront and as further evidence of rising American “unilateralism.”88 Thus it is fair to say that European policy was motivated both by a desire to move the global climate regime forward and a desire to prove that even the most powerful state in the world could not determine international outcomes.89

The European “bubble” as a whole is projected to meet its Kyoto commitments.90 While some states, such as the United Kingdom and Germany, have reached or are on track to meet their EU-internal allocations,91 others, such as Italy, Spain, and Portugal, find it difficult to meet their targets.92 Thus, notwithstanding po-

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85. Recent figures suggest that China has now overtaken the United States in total emissions. See John Vidal & David Adam, China Overtakes U.S. as World’s Biggest CO2 Emitter, The Guardian, June 19, 2007, http://www.guardian.co.uk/environment/2007/jun/19/china.usnews. In per capita terms, however, China’s emissions are only about one quarter of U.S. emissions. Id.
87. See, e.g., Hermann E. Ott, The Bonn Agreement to the Kyoto Protocol – Paving the Way for Ratification, 1 INT’L ENVTL. AGREEMENTS: POL., L. & ECON. 469 (2001); see also infra note 173 and accompanying text.
88. See, e.g., Tony Karon, When It Comes to Kyoto, the U.S. Is the “Rogue Nation,” TIME (July 24, 2001), http://www.time.com/time/world/article/0,8599,168701,00.html; see also David D. Caron, Between Empire and Community – The United States and Multilateralism 2001-2003: A Mid-Term Assessment, 21 BERKELEY J. INT’L L. 395, 398 (2003).
89. See infra notes 172-75 and accompanying text.
tential difficulties with the bubble's internal allocations, since some member states can make greater emission reductions than required by the protocol, others can use these additional reductions to make up for shortfalls in their Kyoto performance. The countries that joined the EU more recently, and thus not included in the "bubble," are expected to meet their individual Kyoto targets.93

As for the EU’s overall greenhouse gas emissions profile, roughly 80% of emissions stem from the energy sector.94 Energy consumption is expected to grow in the coming years, with electricity demand likely to grow by 1.5% per year. The EU’s reliance upon energy imports is projected to increase from the current 50% to 65% by 2030.95 These trends, along with concerns about global warming, prompted concerted efforts to integrate climate and energy policies in Europe.96 The result has been a Europe-wide policy shift towards diversification of energy supply, carbon pricing, advancement of cleaner technologies and fuels, and promotion of behavioral changes through public information, education, and incentive programs. Germany even claims that a “third industrial revolution” is underway—a transition from carbon-intensive energy sources to a low carbon society built upon renewable energies and energy efficiency.97

An EU-wide cap-and-trade system, the European Emissions Trading Scheme (ETS), has become a central part of the European regulatory framework. The ETS was launched in 2005 to promote compliance with the individual targets assigned to each member state within the EU bubble.98 Approximately 45% of EU emissions, from four industrial sectors, are currently covered by the ETS.99 The system’s initial phase ran until 2007. It was designed to be a trial and error period for both private and public sector actors, readying them for Kyoto compliance. The ETS is now in its second

95. Id at 3-4.
96. See generally id. (calling for Europe to “act now, together, to deliver sustainable, secure and competitive energy”).
97. See GERMAN MINISTRY FOR THE ENV’T, NATURE CONSERVATION & NUCLEAR SAFETY, supra note 91, at 8.
phase, which runs from 2008-2012 and matches the first commitment period under the Kyoto Protocol.

When the United States introduced emissions trading into Kyoto negotiations in 1997, the EU was wary of the idea. But upon the United States's withdrawal from the Protocol, Europe became the main champion of GHG emissions trading, even modeling its approach on the United States's acid rain trading program for sulfur dioxide emissions. Of course, in view of the sovereignty concerns raised by an international trading program, the ETS is much more decentralized than the acid rain trading program. The Emissions Trading Directive requires member states to comply with certain objectives, such as national emission targets, but allows them to achieve these objectives through a broad range of national policies.

While the ETS has been an important testing ground for abatement strategies, trial has indeed been accompanied by a fair amount of error. Over-allocation of allowances and early abatement produced considerable price-volatility. At one stage, emissions were roughly 4% lower than the amount of allowances distributed, leading the price of a carbon ton to drop below €1. In October 2007, to avoid further collapse of the carbon price, the EU announced a 10% reduction in the amount of available allowances for the second phase of the ETS. Indeed, observers now expect carbon prices to rise due to a "net shortage in carbon credits through 2012."
Notwithstanding these start-up problems, between 2005 and 2007 the ETS became the largest single carbon market in the world, accounting for 67% of the volume of credits traded internationally and for 81% of the value of the global market.\textsuperscript{107} To further strengthen the ETS, the EU adopted a "Linking Directive."\textsuperscript{108} The directive is to enable emissions allowance or credit trading with other Annex I and non-Annex I parties, through the Kyoto Protocol's flexibility mechanisms. As of October 2007, the EU ETS has been linked with the trading schemes of Iceland, Liechtenstein, and Norway.\textsuperscript{109} The directive also keeps the door open to linking the ETS with trading schemes of states or sub-state entities that are not parties to the Kyoto Protocol. For the moment, such linkages have been permitted in other carbon markets opening themselves to ETS allowances. For example, in the United States, the Northeast and Mid-Atlantic RGGI will allow covered sources to purchase EU allowances for compliance.\textsuperscript{110} The EU has also joined several U.S. states, the Canadian provinces of British Columbia and Manitoba, Norway, and New Zealand in an "International Carbon Action Partnership." This Partnership, also launched in October 2007, is meant to promote exchange on best practices in design and implementation of emissions trading schemes and to explore linkage potential and barriers.\textsuperscript{111}

The ETS is central to European efforts both to implement existing Kyoto commitments and to lay the foundation for future commitments. European climate policy has not been exclusively inward looking. The EU has been extremely active in formulating proposals for international climate policy. Since 2005, EU policy development has been anchored in the goal of limiting global temperature increases to $2^\circ C$ above pre-industrial levels,\textsuperscript{112} a tempera-
ture target that is now widely seen as providing a reasonable chance of avoiding “dangerous” climate change. The 2°C target, therefore, has become linked to discussions about what is required to meet the objective of the UNFCCC, which is to stabilize GHG concentrations in the atmosphere at “a level that would prevent dangerous anthropogenic interference with the climate system.”

There is now broad consensus, reflected in the 2007 report of the IPCC, that CO₂ concentrations in the atmosphere must be stabilized at around 400 parts per million (ppm) to keep temperature increases at 2°C. If other GHG are included in the estimates, concentrations must stabilize at around 450 ppm CO₂ equivalent (CO₂-eq). While there continues to be debate about the medium and long-term emission reductions required to achieve these stabilization goals, there is general agreement that delayed reductions significantly constrain the stabilization opportunities and increase the risk of more severe climate impacts.

In light of this scientific evidence, the EU maintains that all major emitters must agree to take climate action. Yet, in its details, the EU position differs significantly from the United States’s insistence on developing country commitments. The EU is calling for global emissions to peak in the next ten to fifteen years, a benchmark it asserts is achievable through emission reductions of 30% below 1990 levels by industrialized countries by 2020. Developing countries would not be asked to commit to absolute emission reductions, but would be expected to begin reducing the growth of their emissions. However, by 2020, developing country emissions are projected to exceed the total emissions of industrialized countries. Therefore, the EU calls for developing countries to commit to emission reductions after 2020, along with measures to avoid emissions from deforestation.

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113. See Alan Carlin, Global Climate Change Control: Is There a Better Strategy Than Reducing Greenhouse Gas Emissions?, 155 U. PA. L. REV. 1401, 1430 (2007) (noting that “although there is no certainty that all abrupt changes can be avoided if temperature changes were kept below 2°C, there is believed to be a rapidly increasing risk above that level”).

114. UNFCCC, supra note 3, at art. 2.


116. See Lenny Berstein et al., supra note 115, at 19; see also M.G.J. DEN ELZEN & M. MEINSHAUSEN, MEETING THE EU 2°C CLIMATE TARGET: GLOBAL AND REGIONAL EMISSION IMPLICATIONS 2 (2005), available at http://www.mnp.nl/en/publications/2005/Meeting_the_EU_2_degrees_C_climate_target_global_and_regional_emission_implications.html (arguing that a delay of global efforts to stabilize and then decrease emissions by as little as a decade could require a doubling of the rates of abatement with concomitant costs).

117. See Commission Communication Limiting Climate Change to 2°C, supra note 112,
als, major developing countries should commit to reductions of 50% below 1990 levels by 2050, while industrialized states would reduce their emissions between 60% and 80%. This staged and differentiated approach to emission reductions, according to the European Commission, reflects industrialized countries' historical contributions to current GHG levels in the atmosphere and to deforestation, as well as their greater technological and financial capacity.\(^{118}\)

To prompt global action, the now twenty-seven EU member states pledged to reduce their emissions by at least 20% below 1990 levels by 2020 and 30% below 1990 levels if other industrialized nations join the effort.\(^{119}\) The EU currently projects that it will meet its new 2020 emissions target through a range of strategies,\(^{120}\) including increasing the share of energy derived from renewable sources to 20% of total use by 2020,\(^ {121}\) increased reliance upon biofuels to 10% in the transportation sector by 2020, efficiency standards, carbon capture and storage, and possibly banning incandescent light bulbs by 2010.\(^{122}\) The European Commission has also proposed to establish a single energy market, lifting trade barriers in an effort to encourage energy source diversification.\(^ {123}\) In addition, a third phase of the ETS is to run from 2013 to 2020.\(^ {124}\) Given that the ETS covers only about half of EU CO\(_2\) emissions, the European Commission suggests that the third phase of the ETS include mechanisms for curbing emissions from aviation, passenger cars, road freight transport and shipping, residential and commercial buildings, agriculture, forestry, and non-CO\(_2\) greenhouse gases.\(^{125}\) The EU's 2020 target, combined with the third ETS phase, are of global significance, as they reassure the private sector actors that a carbon price will exist after the Kyoto Protocol expires in 2012.\(^ {126}\)
IV. FACTORS SHAPING U.S. AND EU CLIMATE POLICY

The approach of the United States to global climate change differs significantly from that of the European Union. As the preceding section has illustrated, the United States has been at best a reluctant participant in international regime building efforts and has yet to develop a proactive national approach to GHG emission reductions. By contrast, the EU has been consistently supportive of the global climate regime. Over the last ten years or so, it has also worked hard to put in place a regulatory and policy infrastructure that could support its international goals and deliver region-wide emission reductions.

A. Beyond Interests and Power

At first blush, it may be tempting to put these policy differences down to the respective interests of the United States and the EU. After all, the assumption that states' conduct is determined by their relative power and the pursuit of their interests is common not only among casual observers of international affairs; it also finds support in the rationalist or even realist outlook that remains dominant among international relations (IR) theorists. Rationalism holds that states will only agree to international norms that meet their interests and will only comply with such norms as long as they do. States may turn to international law (IL) for predictable rules and stable institutional structures, and they may adjust their interest assessments as they interact within international institutions. Nonetheless, international law tends to be seen as weak in the face of countervailing interests because, in the absence of centralized enforcement, it must rely on the voluntary compliance of states. In short, international regimes and norms are seen as reflections of underlying power or interest balances, rather than independent factors influencing behavior. A strongly nationalist stream of U.S. constitutional law scholarship recently reasserted precisely this type of outlook as the proper way to understand the "limits of international law."
On this account, it seems plausible to conclude that U.S. climate policy is driven by the fact that it has quite simply not been in the American interest to commit to binding GHG emission reductions. In light of the upward trajectory of U.S. emissions, the required measures would have been costly, whereas the benefits of such actions were uncertain. The latter conclusion was initially buttressed by the lingering doubts about the evidence of global warming and may now be fed by assertions that it is uncertain that climate change can be averted through emission reductions. In any case, the argument contends that there is little point in making costly climate policy choices unless the emerging major emitters in the developing world do the same.

As for the European Union, it seems plausible that ratification and implementation of the Kyoto Protocol was a relatively easy step, given the emission trajectories of Eastern European countries and the fact that emission reductions in Germany and the United Kingdom could offset increases in other member states. Additional interests in supporting Kyoto might be chalked up to the desire to embarrass the United States after its rejection of the Kyoto Protocol and to assume a global leadership role. And yet, it is not clear that these considerations fully explain why the EU stuck with the climate regime after the United States dropped out, knowing that bringing the United States and other large emitters into the regime would be an uphill battle. After all, without the participation of the major emitters, there is little point in adhering to the regime.

An alternative account of international relations, which has been gaining ground among IR theorists and international lawyers alike, suggests that purely interest based explanations of state conduct are at least incomplete. Constructivists challenge rational-


132. See generally, Carlin, supra note 113 (arguing that the “Kyoto Approach” is unlikely to achieve its goals of averting climate change).


134. See Sunstein, supra note 131, at 36-37; see also Richard Benedick, Morals and Myths: A Commentary on Global Climate Policy, WZB-MITTEILUNGEN, Sept. 2005, at 15, 16 (contrasting the obligations of the EU bubble, in light of the UK, Germany, and Russia, with the daunting challenges facing the United States); Jonathan Baert Wiener, On the Political Economy of Global Environmental Regulation, 87 GEO. L.J. 749, 773-81 (1999).

ist IR theory to explain the origin of the interests that are said to be determinative of behavior. Constructivism views interaction as central to shaping human conduct.\textsuperscript{136} It does not deny the significance of interests and power in accounting for state conduct. Rather, the key claim is that interests are not simply given and then rationally pursued but that the social construction of actors' identities is a major factor in interest formation.\textsuperscript{137} Similarly, power is not simply a function of material factors but is relational and socially constructed in important ways.\textsuperscript{138} However, the ends of social interaction are not predetermined but can be discovered and learned.\textsuperscript{139} Constructivists show how, through interaction and communication, actors generate shared knowledge and shared understandings that then become the background for subsequent interactions. In the process, social norms emerge that help shape how actors see themselves, their world, their interests, and their powers. In other words, constructivism suggests that international legal norms and regimes have the potential to be more than merely dependant variables; rather, they have the potential to exert influence on states and their conduct.\textsuperscript{140}

The hypothesis of this Article is that—while interests do influence American and European climate policy—legal norms, too, have the potential to do so, including the norms enshrined in the UNFCCC and the Kyoto Protocol. Building on a review of salient comparative literature the discussion now turns to a consideration of some of the factors that might account for European and American policy trajectories and substantiate the hypothesis.\textsuperscript{141} The discussion moves from the internal politics of the EU and the United States, to respective identities of the EU and the United States as international actors and leaders, then to European and American

\textsuperscript{136} See Emanuel Adler, \textit{Constructivism in International Relations}, in \textit{HANDBOOK OF INTERNATIONAL RELATIONS} 95, 100-104 (Walter Carlsnaes, Thomas Risse & Beth A. Simmons eds., 1st ed. 2002).


\textsuperscript{138} See generally Michael Barnett & Raymond Duvall, \textit{Power in International Politics}, 59 INT'L ORG. 39 (2005) (arguing that international relations scholarship needs to recognize that there is not one, but four concepts of power that shape how global outcomes are produced); Ian Johnstone, \textit{The Power of Interpretive Communities}, in \textit{POWER IN GLOBAL GOVERNANCE} 185 (Michael Barnett & Raymond Duvall eds., 2005) (considering the impact of law in terms of three different forms of power).


\textsuperscript{141} I thank Josh Rosensweig for his invaluable assistance in fleshing out the typology of factors.
attitudes towards international law, and finally to the impact of international environmental norms on their policies.

B. Environmental Values and Domestic Politics

In comparative assessments of European and American environmental policy, including climate policy, it is often asserted that Europeans are more environmentally conscious, while Americans are more inclined towards individualism and commercialism and are suspicious of government intervention. Climate change is also said by some observers to be a much more significant issue in election campaigns in Europe than in the United States. In addition, American governmental, scientific, and even moderate environmentalist communities are seen to be more sympathetic to market-oriented approaches than their European counterparts.

And yet, a survey of public opinion polls about the severity of the climate change problem in the United States and the EU from the late 1990s through 2001 finds relatively little difference. Although, following the release of the IPCC findings in 2007, the differences in concern about climate change appeared to be more pronounced; it is difficult to draw firm conclusions about European

143. Carlarne, supra note 142, at 475-76.
146. According to a 2008 poll by the Pew Center for Research and the Press, 47% of U.S. respondents think of climate change as a very serious problem. Angus Reid Global Monitor, Americans See Global Warming as Serious Problem (Apr. 11, 2008), http://www.angus-reid.com/polls/view/americans_see_global_warming_as_serious_problem/. By contrast, 57% of respondents to a 2008 "Eurobarometer" poll conducted by TNS Opinion & Social in the twenty-seven EU countries listed climate change as their top environmental concern. Angus Reid Global Monitor, Europeans Concerned about Climate Change (Mar. 21,
and American environmental value structures. Some commentators also caution that current attitudes must be considered against the backdrop of broader patterns of EU and U.S. environmental policy.\textsuperscript{147} For example, while U.S. environmental policies actively developed in the 1960s and 1970s, slowed during the 1980s under Reagan, and appeared to grind to a halt in the 1990s, European environmental policy seems to have moved in the opposite direction.\textsuperscript{148} Others suggest that this account still paints an unfair picture of U.S. environmental policy, given that numerous environmental statutes were enacted in the United States since the 1980s and that on various issues the United States has pursued more precautionary approaches than Europe.\textsuperscript{149} In any event, given the increasing policy activity at the state level, it seems implausible that weaker environmental values account for the global climate policy of the United States.\textsuperscript{150}

Aside from the views of the general public and the broader policy trends, it is worth asking whether political processes in the United States and the EU predispose the latter towards stronger climate policy making. For many observers, the American democratic process is distorted because of government capture by large industry, which undercuts effective climate policy.\textsuperscript{151} By contrast, an effective network of environmental non-governmental organizations (NGOs) and politically influential "green" parties are seen to reinforce public support for climate action in Europe.\textsuperscript{152} It is not clear, however, that the differences between European and American climate policy can be explained on the basis of domestic poli-

\textsuperscript{147} See Brunée, supra note 14, at 620-28 (discussing the policy trajectory of the United States).
\textsuperscript{151} Miranda A. Schreurs, The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol, in GREEN GIANTS? ENVIRONMENTAL POLICIES OF THE UNITED STATES AND THE EUROPEAN UNION 207, 223 (Norman J. Vig & Michael G. Faure eds., 2004) (finding that the industrial lobby is a stronger force in the U.S. than in Europe); Engel & Saleska, supra note 150, at 214 (suggesting that capture of the U.S. government by special interests is one of two likely causes of the failure to act).
\textsuperscript{152} Harrison & Sundstrom, supra note 131, at 9; Schreurs, supra note 151, at 223.
tics. For some observers, both the industrial and environmental lobbies are better organized in the United States than in Europe. Others emphasize the power of the European industry, which often has greater access to and influence over EU political processes than does the environmental lobby.

C. Political Structure

Since the ratification of a treaty requires the "advice and consent" of a two-thirds majority of the U.S. Senate, environmental agreements can become entangled in the deliberations of the Senate's Foreign Relations Committee. As hinted above, they are also exposed to political lobbying by an array of domestic constituencies, especially when MEAs require reopening the carefully negotiated compromises that are contained in many U.S. domestic environmental laws. While the administration of George W. Bush is generally said to have neglected environmental protection, it is important to recall that even the more sympathetic Clinton administration was unable to navigate its international environmental priorities through the competing domestic agendas in the Senate. The unanimous support for the Byrd-Hagel resolution illustrates that these difficulties cannot simply be attributed to party politics. Determined pursuit of domestic priorities by actors from across the political spectrum appears to have replaced the consensus on internationalism in Congress. In addition, the push and pull of divided government between the President and Congress
seems particularly conducive to environmentally conservative policy outcomes.\textsuperscript{158}

These dynamics differ significantly from what unfolds in the European context. According to some observers, the parliamentary systems in European states make it easier for executive action on the international stage to be ratified at home.\textsuperscript{159} Arguably more important is the fact that the EU’s political and legal structure has promoted far greater inclination toward multilateralism than the U.S. constitutional framework and political processes.\textsuperscript{160} EU environmental multilateralism can be traced back to the late 1970s. The experience with the negotiation of an international ozone layer regime demonstrated to EU member states the benefits of collective policy-making, and that national interests need not fall victim to a European environmental policy approach. Thus, when climate talks picked up speed in the early 1990s, EU member states had already become comfortable with more flexible interpretations of sovereignty and were generally open to global solutions, even when inconsistent with short-term economic interest.\textsuperscript{161}

Some commentators stress the importance of EU institutional structures as forums for interaction. According to one observer,

[Although institutionalized EU foreign policy cooperation may have been created by intergovernmental bargaining, over time states have increasingly learned to define many . . . of their foreign policy positions in terms of collectively defined values and goals . . . ] Institutional mechanisms have both preempted the formation of fixed national foreign policy

\textsuperscript{158} See Daniel Bodansky, Transatlantic Environmental Relations, in EUROPE, AMERICA, BUSH: TRANSATLANTIC RELATIONS IN THE TWENTY-FIRST CENTURY 58, 65 (John Peterson & Mark A. Pollack eds., 2003).

\textsuperscript{159} See Kathryn Harrison, The Road Not Taken: Climate Change Policy in Canada and the United States, 7 GLOBAL ENVTL. POL. 92, 97 (2007); Wiener, Comparing Precaution, supra note 149, at 341.

\textsuperscript{160} But note that, rightly or wrongly, the involvement of the EU in environmental policy causes concerns among some U.S. observers that treaty ratification at the EU level—and EU policy more generally—is divorced from member state processes and hence less meaningful. See Vogler & Bretherton, supra note 142, at 11-12; see also Elizabeth DeSombre, Understanding United States Unilateralism: Domestic Sources of U.S. International Environmental Policy, in THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW, AND POLICY 181, 194 (Regina S. Axelrod, David Leonard Downie & Norman J. Vig eds., 2d ed. 2005) (arguing that the E.U. is more cavalier than the U.S. about ratifying treaties without the ability to implement); Sabrina Safrin, The Un-Exceptionalism of U.S. Exceptionalism, 41 VAND. J. TRANSNAT’L LAW 1307, 1324-41 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1018142 (illustrating through various examples the assertion that, while the EU readily joins international agreements, it frequently seems special accommodations).

\textsuperscript{161} Krämer, supra note 142, at 67.
preferences and... socialized its elite participants into articulating a common European policy.162

Others suggest that the involvement of a large number of different actors in climate policy (initially fifteen member states, the European Parliament, the Commission, and the Presidency) facilitates mutual reinforcement, with multiple spaces for policy discourse and multiple actors that can “strategically pass the leadership baton off to the next player” when so required.163 Different actors might play leadership roles at different times, and broader factors—such as favorable public opinion and media attention, active NGOs, or an industry open to compromise—come to be embedded in a process of multi-level reinforcement.164

D. International Leadership and Identity

The attitude of the United States vis-à-vis the global climate regime stands in some contrast to the leadership role that it tended to play in earlier environmental treaty making processes.165 Arguably, some of the reasons for its apparent retreat from global environmental leadership can be found in the characteristics of treaty-based international environmental lawmaking. Notably, with an institutional core and open-ended regulatory agenda, modern MEAs resemble international organizations in many respects.166 Regular meetings of MEA parties have become the forums in which most of the international environmental lawmaking activity now takes place.167 Treaty parties are engaged in continuously evolving information gathering, negotiation, and consensus-building processes that make it harder for individual parties to determine agendas, to resist regime development, and to extricate themselves from regime dynamics.168 Perhaps most importantly,


164. Id. at 40-42 (pointing to the Commission on emissions trading, a variety of states taking leads at different times, and the Parliament as a general avenue for green politics).

165. See Brunnée, supra note 14, at 620-28 (discussing U.S. involvement in key MEAs).


the ongoing interactions and negotiations among MEA parties tend to generate patterns of expectations and normative understandings that guide and constrain subsequent policy choices and legal development within the regime. In addition, these multilateral negotiations provide opportunities for coalition building that enable smaller states to influence outcomes and dilute the influence of more powerful states.

It might be said, then, that the United States was secure—perhaps even over-confident—in its identity as a singularly powerful state, seeing no need to curry favor with other states in the climate negotiations while looking to insulate itself from the treaty dynamics described above. This pattern is not unique to environmental issues. Operating from its position of geo-political strength, the United States has opted increasingly to exercise leadership through issue-specific “coalitions of the willing.” In the climate context, the Asia-Pacific Partnership and the Major Emitters Initiative may be illustrations of this brand of “distinctly American internationalism.”

By contrast, the European Union came to see climate change as an opportunity to assume the global leadership role. After the United States’s withdrawal from the Kyoto Protocol, the EU worked to bring fence-sitters such as Canada and Japan into the treaty, making numerous concessions on points on which it had insisted in its earlier negotiations with the United States. For some, these concessions suggest that “it was political benefits associated with leadership, rather than a sense of responsibility for the global environment, that was the major driving force for this course of action.” For others, the need to establish global leadership was not so much about prestige or political benefits as about the desire to forge a collective EU identity. Thus EU climate

Danish & Peter N. Barsoom, *The Transformational Model of International Regime Design: Triumph of Hope or Experience?,* 38 COLO. J. TRANSNAT’L L. 465, 466 (2000) (arguing that regimes based on the Transformational Approach actually have less cooperative depth than non-Transformational arrangements).

173. *See SCOTT BARRETT, ENVIRONMENT AND STATECRAFT: THE STRATEGY OF ENVIRONMENTAL TREATY-MAKING 371 (2005) (arguing that it was the departure of the United States from the Kyoto Protocol and the abrasive attitude of the Bush administration that prompted the EU to reinforce its efforts); see also Sibylle Scheipers & Daniela Sicurelli, *Normative Power Europe: A Credible Utopia?,* 45 J. COMMON MKT. STUD. 435, 446-50 (2007) (arguing that EU climate policy was substantially designed, and is perpetually positioned, in opposition to U.S. policy).
change policy provided an opportunity to transcend the perception of the EU as an anonymous bureaucracy and to cast it as a purposive and influential international player.175

These considerations are closely related to another factor that is unique to the character of the EU as a supra-national entity. Thus, in contrast to military or economic power typically wielded by states, an important element of EU power is considered by some commentators to be “normative,” resting in its ability to develop norms and to promote them internationally.176 This normative dimension to EU politics is said to be rooted in its origins in the immediate post-war period. Observers point to the European desire to transcend nationalist politics and to the creation of an “elite-driven, treaty based, legal order,” a supra-national political entity dedicated to respect for human rights and the rule of law.177 Accordingly, the consolidation and legitimation of the EU enterprise requires continuous reinforcement of its normative basis.178 The EU, therefore, consistently positions itself as in favor of multilateralism,179 international law, and binding international obligations.180 Evidence for the normative power thesis can be found especially in EU climate policy,181 which not only mirrors the above-mentioned broader positioning patterns but, as will be discussed shortly, also has strong normative dimensions.


177. Id. at 241.

178. The idea of normative power bears some resemblance to Joseph Nye’s account of “soft power.” See JOSEPH S. NYE JR., THE PARADOX OF AMERICAN POWER: WHY THE WORLD’S ONLY SUPERPOWER CAN’T GO IT ALONE 9 (2002) (explaining that soft power means “getting others to want what you want,” and “rests on the ability to set the political agenda in a way that shapes the preferences of others”). But while Nye’s argument may be said to be about the importance of soft power given the character of the times, Manners’ concept of “normative power” is tied more closely to the political and historical character of the European Union. See Manners, supra note 176, at 252-53.

179. See generally Lucarelli, supra note 162, at 316 (“[T]he existence of the European integration process, with its institutions, rules and actors has gradually become an institutional form that coordinates relations among states on the basis of generalized principles of conduct: that is multilateralism. Multilateralism has become a praxis of behaviour which represents normality; defections from normality occur, but are denounced as infringements of acceptable behaviour.”).

180. See generally Scheipers & Sicurelli, supra note 173, at 452 (connecting the EU stance to its concern for “the creation of binding rules for the global community, since it aims at international law-making, namely the establishment of multilateral treaties and legal institutions”); see also infra Part IV.E.

181. See generally Scheipers & Sicurelli, supra note 173.
E. Attitudes Toward International Law

The respective European and American attitudes toward international law have received extensive treatment in the literature. For some observers, the differences in attitude have interest or power-based explanations. For example, the European commitments to international law and multilateralism are said to be mainly reflections of "deep misgivings" about U.S. global hegemony.\(^\text{182}\) Europe, therefore, merely deploys international law strategically, both to tie the United States into restrictive institutional arrangements and to accuse it of violating its existing obligations.\(^\text{183}\) Although this perspective is quite common in the literature,\(^\text{184}\) it remains unclear why international legal rules would tend to favor weaker actors, such that Europe would be more inclined than the United States to invoke them.\(^\text{185}\) Nor does it explain why the EU appears to be equally inclined towards reliance on international law in its relations with the vast majority of other, weaker states.

Another set of perspectives on attitudes towards international law focuses less on the instrumentalism of weaker or stronger actors than on the intellectual traditions and deep ideational structures of European and American societies. Several commentators locate the differences between European and American attitudes in the contrast between the alleged European commitment to legalism and positivism and the alleged American rule-skepticism and pragmatic policy-orientation. According to this line of reasoning, Americans tend to understand law instrumentally and see international law as a means for the promotion of values that are taken to be universal.\(^\text{186}\) Meanwhile, for Europeans, only legal methodology ought to be universal, thus the enduring emphasis on positivism.\(^\text{187}\)


\(^\text{183}\) Id. at 43-44; see also Stephen M. Walt, Taming American Power: The Global Response to U.S. Primacy 144-52 (2005); G. John Ikenberry, Strategic Reactions to American Preeminence: Great Power Politics in the Age of Unipolarity (July 28, 2003), http://www.dni.gov/nic/confreports_stratreact.html.

\(^\text{184}\) See Martti Koskenniemi, Perceptions of Justice: Walls and Bridges Between Europe and the United States, 64 ZAORV 305, 311-12 (2004) (stating that "[i]nstrumentalism is the position of the powerful actor" and that "[[]egalism is the position of the weaker party").

\(^\text{185}\) See generally Shirley V. Scott, Is There Room for International Law in RealPolitik?: Accounting for the US 'Attitude Toward International Law, 30 Rev. Int'l Stud. 71, 87-88 (2004) (arguing that U.S. leadership in post-war international law-making and institution building was designed to consolidate and perpetuate U.S. dominance).

\(^\text{186}\) See Koskenniemi, supra note 184, at 311-12; see also James C. Hathaway, America, Defender of Democratic Legitimacy?, 11 Eur. J. Int'l L. 121 (2000).

\(^\text{187}\) See Koskenniemi, supra note 184, at 311-12; see also Guglielmo Verdirame, 'The Divided West': International Lawyers in Europe and America, 18 Eur. J. Int'l L. 553, 555-56 (2007).
Another stream in the literature relates European support of international law to either historical or political context. For some observers, then, contemporary European legal multilateralism is closely connected to the post-war goal of replacing recourse to raw politics and military confrontation with a rule-based administrative order. One commentator has suggested that the European commitment to international law is rooted in the fact that it knows it owes its very existence to international law. The institutions that structure it and enabled it to reconstitute itself after the war derive directly from international law, and each of the states that make it up has a very strong sense of its dependence on the others, something for which there is no equivalent in the United States . . . .

The European belief in supra-national governance stands in contrast to the American emphasis on national political community and democratic governance. Indeed, waning American enthusiasm for grand multilateral projects, such as ambitious MEAs, may have been further dampened by the fact that international environmental law has attracted the attention of those who are concerned about the encroachment of international law on U.S. sovereignty. While arguably not a majority view, concerns about international law are shared across the political spectrum. For example, some conservative commentators describe MEAs as "genuine threats" to American sovereignty and opine that increasing international environmental regulation "reduces the accountability that comes from a country's internal system of checks and

188. See, e.g., Verdirame, supra note 187, at 556.
189. Pierre-Marie Dupuy, The Place and Role of Unilateralism in Contemporary International Law, 11 EUR. J. INT’L L. 19, 21 (2000); see also Lucarelli, supra note 162, at 328 ("Dismissing the pillars of world order would have meant dismissing fundamental pillars of a European political identity still largely under construction.").
190. Direct evidence of these concerns can be found in Senate deliberations on multilateral environmental agreements. For example, some objections to ratification of the Biodiversity Convention were based on the fact that the COP "will meet after the treaty is in force to negotiate the details of the treaty," and this would contravene the Senate’s "constitutional responsibilities to concur in treaties." Robert F. Blomquist, Ratification Resisted: Understanding America’s Response to the Convention on Biological Diversity, 1989-2002, 32 GOLDEN GATE U. L. REV. 493, 544-45 (2002) (quoting Sen. Kay Bailey Hutchison).
191. See generally Oona A. Hathaway & Ariel N. Lavinbuk, Rationalism and Revisionism in International Law, 119 HARV. L. REV. 1404 (2006) (arguing that the significance of The Limits of International Law is its reflection on the deepening convergence between rationalist and revisionist approaches to international law).
balances, and increases international tension." In turn, a prominent center-left constitutional law scholar has argued that international law in general, given that its goals inherently lie beyond domestic political processes, is incompatible with the American constitutional commitment to democratic self-government. Similar concerns are evident in the ongoing debate over the application of international norms by domestic courts. In short, it appears that the apprehension, vis-à-vis MEAs in general and the climate change regime in particular, is being reinforced by generic concerns about international law.

F. International Environmental Norms

As noted earlier, a number of foundational principles of international environmental law underpin the global climate regime: common concern of humankind, common but differentiated responsibilities, and precautionary action. The response of the United States and the European Union to these principles has been markedly different.

While the EU accepted the inclusion of these principles in the UNFCCC and other international instruments adopted at the Rio Earth Summit, it has since sought to contain their impact by resisting claims that they may have acquired customary international law status and by challenging broad interpretations of the principles. For example, the United States insisted on qualifying the text of the precautionary principle in the Rio documents by inserting the requirement that precautionary measures be cost-effective. It has been suggested the "highly legalistic and adversarial" character of the American regulatory system is among the reasons why the United State is resisting an internationally binding precautionary principle. Specifically, resort to courts for citizen suits to enforce regulatory standards or tort actions for

193. Id. at 435.
196. See Wiener, Whose Precaution?, supra note 149, at 251.
197. See id. at 246.
pensation are considered far more common in the United States than in Europe. As for the concept of common but differentiated responsibilities, the United States has had several concerns. It is intent on avoiding any implication of legal responsibility for global environmental problems, such as climate change. Similarly, it is resisting claims that past contributions to a given environmental problem, or relative capacity to address it, predetermine MEA design such that developed countries must take the lead in assuming MEA obligations, that developing countries' responsibilities are always reduced, and that any action by developing countries must be financially and technically supported by developed countries.

At a more normative level, it is also possible that the concept of common but differentiated responsibilities and its redistributive implications are at odds with deeply held egalitarian values. In any case, while the United States may be supportive of individual MEAs that reflect precautionary approaches to environmental protection and provide for differentiated commitments, it has tended to be skeptical of the value of broad customary norms that would require such approaches as a matter of principle. As a result, in the international arena, the United States has maintained its resistance to the precautionary principle and to common but differentiated responsibilities. For example, at the 2002 Johannesburg Summit on Sustainable Development, it was against

198. See id. at 259-61. By the same token, negotiators may be concerned that Europe will not end up with genuinely equivalent commitments since enforcement by domestic actors is less likely. See Harold K. Jacobson, Climate Change: Unilateralism, Realism, and Two-Level Games, in MULTILATERALISM AND U.S. FOREIGN POLICY: AMBIVALENT ENGAGEMENT 415, 425 (Stewart Patrick & Shepard Forman eds., 2002).


The United States understands and accepts that principle/7 highlights the special leadership role of the developed countries, based on our industrial development, our experience with environmental protection policies and actions, and our wealth, technical expertise and capabilities.

The United States does not accept any interpretation of principle/7 that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries.

201. Jacobson, supra note 198.

strong American objections that endorsements of both principles found their way into the summit instruments.\textsuperscript{203}

By contrast, the aforementioned international norms have all been embraced by the EU and its member states. An arguably important factor has been the degree to which these principles resonated with norms that were already operational within the EU. For example, the precautionary principle is actually enshrined in the treaty constituting the EU.\textsuperscript{204} Similarly, it could be said that the EU’s very premise of environmental regionalism and collective priority setting recognizes environmental issues as “common concern[s],”\textsuperscript{205} thus disposing the EU toward this principle at the global level as well. Perhaps most importantly, EU practice in a wide range of policy areas suggests an acceptance of common but differentiated responsibilities\textsuperscript{206} and of the idea of international equity more generally. The EU comprises an economically diverse but nonetheless relatively homogenous group of states. Homogeneity has facilitated common identity formation and joint problem-solving. In turn, economic diversity, by exposing wealthier states to the limitations experienced by poorer countries, has injected the principle of equity into the EU’s international environmental policy.\textsuperscript{207} Indeed, some observers specifically point to the elaboration of an EU climate policy and demonstrate how significant differences were resolved through negotiation.\textsuperscript{208} Thus, through the internal burden sharing arrangement, some EU states agreed to heavier obligations in order to offset weaker commitments by more poorly placed states, illustrating the internal EU commitment to common but differentiated responsibilities-like principles.\textsuperscript{209}


\textsuperscript{204.} Jonathan B. Wiener, Precaution, in OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 597, 599 (Daniel Bodansky, Jutta Brunnée & Ellen Hey eds., 2007).

\textsuperscript{205.} Joyner et al., supra note 199, at 358.

\textsuperscript{206.} See Rio Declaration, supra note 200, at prin. 7.


\textsuperscript{208.} Axelrod, Vig & Schreurs, supra note 154, at 200.

\textsuperscript{209.} Id. at 206.
V. CONCLUSIONS

It is encouraging that large developing country emitters, like China and India, signed onto the Bali Action Plan and that the Plan suggests there is room for moving beyond the rigid categories of Annex I and non-Annex I states. Similarly, given the previous attitude of the Bush administration, the fact the United States joined the consensus and has since shown some willingness to consider binding commitments could be seen as major breakthroughs. Bringing more than 190 nations together in a process aimed at the adoption of a climate pact by 2009 will be difficult, but it is not quite the equivalent of the fall of "the Berlin Wall of climate change," as some have claimed. Aside from the need to secure credible developing country commitments, it is uncertain whether the Roadmap will lead beyond good intentions and whether Europe and the United States will be able to turn tense rivalry into constructive engagement.

Still, when the trajectory of the international climate change regime is considered in light of the range of factors that might account for the evolution of the EU and U.S. approaches to climate policy, at least some tentative conclusions can be drawn. While the interests of the EU and the United States clearly influence their respective policy choices, there is also evidence that normative factors play a significant role.

As this discussion has illustrated, these normative factors and their impact on EU and U.S. climate policy cannot be reduced to differences in environmental values or popular concern about climate change. Rather, a complex array of interrelated factors affect how each actor relates to the international climate regime. These pertain, first, to the manner in which the EU and the United States have actually been engaged in the regime and with its goals and principles. Secondly, these regime-based factors interact with the internal political structures and processes of the EU and the United States, respectively. Third, engagement with the regime and internal political features translate back into an international policy posture, including the outward projection of particular normative commitments. Finally, to stress the importance of these three interlocking layers is not to deny the importance of the interests pursued by each actor or of their relative power. Indeed, as will become evident, some of these interests and powers actually derive from normative factors or are reinforced or constrained by them.

210. Eilperin, supra note 74 (quoting U.N. Climate Chief Yvo de Boer).
A. Engagement with the Climate Regime and Its Goals and Principles

As this article has demonstrated, the European Union has been actively engaged in the U.N. climate regime throughout its long evolution, working to shape and, increasingly, to sustain and extend the regime. Against this backdrop, one feature of European climate policy should perhaps not come as a surprise: the extent to which it is built around the U.N. regime. Most obviously, EU policy is premised upon keeping the UNFCCC at the core of the global climate regime. Although the EU is not excluding the option of different commitment tracks (different speeds and approaches), its negotiating efforts are geared to maintaining the basic architecture of the Kyoto Protocol.\footnote{See, e.g., Angela Merkel, Fed. Chancellor of F.R.G., Speech at the “Mitigation” Panel of the U.N. Secretary-General’s High-Level Event on Climate Change (Sept. 24, 2007), available at http://www.bundesregierung.de/Content/EN/Reden/2007/09/2007-09-24-rede-bk-high-level-event.html.}

More importantly, however, European climate policy is actually framed in terms of the “ultimate objective” of the UNFCCC: to avert dangerous climate change.\footnote{See UNFCCC, supra note 3, at art. 2.} EU policy aims to keep global temperature increases to 2°C, which in turn requires both shorter and longer term action to limit GHG concentrations in the atmosphere.\footnote{Commission Communication Limiting Climate Change to 2°C, supra note 112, at 2-3.} To these ends, the EU proposes collective action to ensure that global GHG emissions peak in the next ten to fifteen years and decrease by 50% below 1990 levels by 2050.\footnote{Id. at 4-5.} EU policy, of course, is not entirely idealistic; EU members seek both to preserve the significant investments already made in climate policy and to gain competitive advantages from it.\footnote{See Brunnée and Levin, supra note 16, at 69-70.} Nonetheless, in building its policy around the environmental objective of an international agreement, the EU approach differs significantly from that of the United States.

EU policy is also framed in terms of the principles enshrined in the UNFCCC. In arguing for a global regime with commitments by all key players, European policy is not merely pragmatic but treats climate change as a common concern of humankind. Furthermore, EU policy statements acknowledge the greater economic and technological capacity of industrialized countries and their greater historical contributions to climate change. In effect, EU policy proposals are guided by the common but differentiated responsibilities principle and the idea that developed countries must take the lead
in combating climate change. These north-south equity principles underpin the differentiated 2020 and 2050 emission goals advocated by Europe. Presumably, the EU views significant action by industrialized countries, coupled with an approach that recognizes developing country concerns and grievances, as best suited to promoting genuinely global climate action.

The approach of the United States to the global climate regime has been very different. As shown earlier in this article, its attitude towards the U.N. climate regime has been one of reluctance and even resistance. While there has been engagement in the treaty process, American policy has consistently sought to avoid having its policy options tied down by the regime. This stance has been due in part to domestic political dynamics and in part to the long-standing rejection of the regime's core commitments. Thus while the United States has not challenged the treaty's objective of averting dangerous climate change, it has only recently come to fully accept the international scientific consensus on climate change and on the need for urgent action. More importantly, however, the United States has consistently challenged the principles that underpin the Convention, in particular the propositions that states have common but differentiated responsibilities to address climate change and that industrialized countries should take the lead in doing so. In other words, whereas the EU has fully embraced these propositions internally and then built its international policy around them, the United States has been hostile to them and its international policy has been to question, avoid, or even undermine them by promoting alternative approaches. It is important to note, however, that referring here to "the United States" masks the wide array of climate policy initiatives that have emerged in the domestic political arena, some of which embrace the U.N. climate regime. However, the domestic resonance of the regime is more likely to relate to its basic objective and its multilateral approach, than to the idea of common but differentiated responsibilities.

B. Internal Political Structure and Processes

The European Union's internal political structure and processes appear to be considerably more disposed toward global climate policy. It may be asked, in this context, whether the focus of this article on EU climate policy, rather than the policies of individual European states, is analytically sound. Of course, there are significant differences between the state-based structure of the

216. See supra notes 117-18 and accompanying text.
United States and the supra-national entity that is the European Union. Nevertheless, the EU has emerged as an increasingly important international actor, especially in the climate policy context. Furthermore, it is arguable that the supra-national structure of the EU and the multi-level engagement it fosters have been particularly conducive to dense engagement with the global regime and to the emergence of a strong European climate policy. The U.N. climate regime binds both the EU and its member states, and its requirements have come to be enshrined in EU and national laws. The legal framework of the EU produces continuous interactions between international, European, and national laws, as well as between various international, European, and domestic actors. In light of the policy patterns surveyed in this article, it is fair to say that the EU, its member states, and arguably even its public, have actually internalized the goals, values, and principles of the global climate regime to a significant degree. These norms have become woven into the legal and policy discourse within Europe and perhaps even into the identity of the EU as a member of a global climate community.

Another dimension to the EU’s supra-national character is important here. The EU as an actor is constituted by international law. Its member states have pooled significant aspects of their sovereignty. They have long been comfortable with a supra-national approach to law and policy-making. Indeed, support for international law, even for international “constitutionalization,” have at least some of their roots in the post-war desire of European states to embed nationalism in a collective, international enterprise.

Again, the contrast with the United States is notable. In the United States, there is no comparable range of internal political arenas in which the engagement with the climate regime could take place. The closest analogy to the EU’s multi-level processes may be the experimentation and regulatory competition that has been taking place among the local, state, and federal levels. However, unlike in the EU context, these processes are not specifically focused on the engagement with or translation of international norms into the domestic realm. Furthermore, the main arena in which such engagement should take place, the U.S. Senate, has been hostile to international regulation throughout the existence of the U.N. climate regime. Indeed, the domestic resistance to the UNFCCC and the Kyoto Protocol is tied into much broader discomfort with the threats that international law is seen, at least by some, to pose to American constitutionalism and sovereignty.

C. Outward Projection of Norms and International Leadership

As suggested above, the European Union has not only internalized the central norms of the global climate regime but has also built its international climate policy around these parameters. Given the resonance that the objective and principles of the U.N. regime have internationally, it is arguable that this approach has enabled the EU to articulate a policy that is more likely to be seen by others as persuasive and legitimate. In particular, the EU has accepted the premise of common but differentiated responsibilities and has focused its negotiating efforts on clarifying how this principle is to be translated into concrete commitments. Thus, especially in relation to the goal of bringing major developing countries to accept GHG reduction commitments, it stands to reason that the EU approach is more likely to be successful than the American posture. In short, global climate policy has provided the EU with an opportunity to cast itself as an international norm leader.

By contrast, the United States has tended to define itself in opposition to the regime, casting itself as a powerful actor that speaks frankly about the flaws of the international policy effort. Notably, the American approach has not been to attempt to shape the common but differentiated responsibilities principle in a particular way but to challenge it outright and to adopt instead a “we will not reduce emissions unless you do too” posture. This policy on developing country commitments is connected to a more broadly negative attitude towards the climate regime. Ironically, it may be that this policy stance actually honors the normative power of the regime in the resistance. That is, it may be precisely because the United States is aware of the potential power of internationally agreed principles and processes that it has sought to resist both.

Yet, whatever the reasons for the American approach, it would appear to have weakened rather than strengthened the United States’s ability to persuade and lead internationally. Ultimately, soft power depends on credibility. In this context, it matters that the American Kyoto withdrawal and its subsequent policies are widely seen as part of a broader pattern. A country’s ability to get others to want what it wants will be diminished if it is perceived as a purely self-interested actor, which is precisely what U.S. climate change policy has invited. In addition, “à la carte” multilateralism and over-reliance on coalitions of the willing, be it in the environmental context or beyond, undermine rather than enhance perception of the United States as a trustworthy, good-faith ac-

218. NYE, supra note 178, at 69.
This assessment applies in particular to U.S. relations with European and other states that perceive a duty to cooperate to be at the very heart of the international legal order. But as the "if for some reason you're not willing to lead, leave it to the rest of us... [p]lease get out of the way" rebuke to U.S. policy at the Bali meeting suggests, the damage has been much wider.

D. Norms, Interests, and Power

These concluding observations are not intended to suggest that the United States has pursued an interest and power-based climate policy whereas the EU has been engaged in an entirely idealistic policy exercise nor are they intended to suggest that interests and power play insignificant roles. The opposite is the case.

First of all, aside from the practical goal of designing a policy that can in fact avert dangerous climate change, there are other very pragmatic reasons for the European approach to global climate policy. Most notably, the EU investments in the Kyoto Protocol will not see a return unless an assertive post-2012 approach is adopted at the global level. Simply put, EU policy planning is banking upon the UNFCCC/Kyoto architecture, with present and future targets pegged to the 1990 baseline of the Kyoto Protocol and launching an emissions trading system that is premised upon the existence of hard emission caps. These policies entail considerable competitive advantages, such as accelerated technological innovation and accelerated conversion to a low-carbon economy. EU climate policies have also brought strategic advantages, especially in relation to the global carbon market. Any future global emissions trading system, as well as other national or regional systems, will likely be shaped with the ETS in mind. All of these advantages are best maintained by ensuring that a global climate regime builds on the existing foundations.

It should also be noted that the EU's unilateral pledge of 20% GHG emission cuts below 1990 levels by 2020, when examined more closely, is not as ambitious a commitment as it might appear at first glance. This pledge is rendered possible by the fact that the 2020 emissions of the new Eastern European member states are

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222. Revkin, supra note 15.
projected to be 32% below 1990 levels, giving the EU's collective commitment extra emissions room.

Finally, as discussed in the preceding section, normative dynamics play an important part in the leadership role that the EU has taken with respect to international climate policy, but that leadership role also greatly serves EU interests and indeed enhances its normative power. Having framed its policy in terms of the U.N. regime and built up its leadership on that basis, the EU is well placed to shape the future of the global regime. It has also enabled the EU to cast itself in opposition to perceived U.S. hegemony and, potentially, to further strengthen its policy position by tapping into broader international aversion to U.S. power politics.

Ironically, it appears that the normative dimension to EU climate policy is more likely to serve its interests than the much more explicitly interest-driven policy of the United States serves U.S. interests. Thus, while U.S. policy at first blush appears to serve its interests ("no costly commitments unless other major emitters do the same"), a closer look suggests that this policy may have come at a substantial cost. Not only has the United States lost a good deal of its "soft power," it also appears to have conceded international leadership ground to the EU. Moreover, it has allowed the EU to emerge as a center of gravity for much climate policy making. This is clearly evidenced by the ETS, which is the likely anchor for any future expansion of global emissions markets.

This is not to say that the United States cannot reclaim its leadership role or influence international climate policy. In fact, all indications are that this is precisely what it will begin to do now that President Obama has taken office. No doubt, the future climate policy of the United States will be driven to a considerable extent by domestic legislative initiatives. At the same time, American climate leadership will also require reengagement in the global regime and with its normative foundations. To be sure, the assessment of policy factors in this article suggests that it is unlikely that the United States would ever internalize global climate norms to the same extent as the EU. But it also suggests that the American ability to shape the international climate regime might actually be enhanced if U.S. policy was framed in terms of the principles that underpin the existing regime. This does not mean that the United States would not, or should not, look to flesh out or even reshape these principles in pursuit of its policy priorities. However, it does suggest that the U.N. climate regime and its

223. DAVID SUZUKI FOUND., supra note 91, at 2.
224. For this reason, some commentators have called for a unilateral pledge of a 30% cut by 2020. See OTT, supra note 34, at 36.
foundational principles are more influential than one might think, operating both to enhance and to constrain the interests, powers, and even identities of international actors.

If this assessment is correct, the prospects for the global climate regime may not be as dire as many observers have suggested. It remains to be seen whether the U.N. climate regime will succeed in drawing the EU and the United States, as well as other key actors, onto the same page. However, it is arguable that both the European Union and the United States, for different and yet interrelated reasons, will find themselves looking to the U.N. regime as they vie for global climate leadership. All together now?