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The European Union and Environmental Change: Sharing the Burdens of Global Warming

Paul G. Harris*

ABSTRACT

Ethical considerations like equity, fairness, and responsibility— notions not usually part of international discourse—are central to efforts to address global climate change. This paper examines whether the European Union (EU) and its member states are doing enough to share the burdens of global climate change. What ought Europe do given the consequences of its atmospheric pollution for the world? The second section of the paper introduces the notion of international environmental equity (IEE) in the context of the global climate change (GCC) agreements. The third and fourth sections look at how notions of burden sharing and IEE arguably should and do apply in this issue area. The fifth

* Paul G. Harris is Director of the Project on Environmental Change and Foreign Policy and an associate professor of politics at Lingnan University, Hong Kong. His essays on global environmental politics and foreign policy have appeared widely in scholarly journals and other periodicals. He is the author or editor of several books, including *INTERNATIONAL EQUITY AND GLOBAL ENVIRONMENTAL POLITICS: POWER AND PRINCIPLES IN U.S. FOREIGN POLICY* (2001), *CLIMATE CHANGE AND AMERICAN FOREIGN POLICY* (2000), *THE ENVIRONMENT, INTERNATIONAL RELATIONS, AND U.S. FOREIGN POLICY* (2001), *INTERNATIONAL ENVIRONMENTAL COOPERATION: POLITICS AND DIPLOMACY IN PACIFIC ASIA* (2002), *GLOBAL WARMING AND EAST ASIA: THE DOMESTIC AND INTERNATIONAL POLITICS OF CLIMATE CHANGE* (2003), *CONFRONTING ENVIRONMENTAL CHANGE IN EAST AND SOUTHEAST ASIA: ECO-POLITICS, FOREIGN POLICY, AND SUSTAINABLE DEVELOPMENT* (2005), and *EUROPE AND GLOBAL CLIMATE CHANGE: POLITICS, FOREIGN POLICY, AND REGIONAL COOPERATION* (forthcoming 2007). The author gratefully acknowledges support from Lingnan University via an Academic Program (Social Sciences) Research Grant and the assistance of Steve Chung in gathering documentary materials.

section suggests that Europe has been a leader on IEE in the GCC negotiations over the last decade and more. The sixth section points to what European states and the EU have done to take on some of the burdens of GCC. Europe's actions are then assessed from practical and especially normative perspectives in the seventh section of the paper. The eighth section looks at the theoretical implications of Europe's *relatively* equitable response to GCC. The upshot is that Europe is doing more than any other part of the world to address GCC and to share the associated burdens. However, while the EU can be relatively proud of its actions compared to some other countries, notably the United States, it is not doing nearly enough. Both practical and normative imperatives point to the need for much more urgent action by Europe to share the burdens of GCC. Broadly speaking, the paper shows how normative principles such as IEE can and should guide EU policies on global climate change.

I. INTRODUCTION

In this paper, Europe's policies and actions on global warming and climate change (GCC) are examined in the context of global, social, or distributive justice, generally, and international environmental equity (IEE) or fairness, in particular.¹ The concept of IEE refers to the fair and just sharing of the burdens associated with environmental changes.² The questions presented here are, first, what role do and should considerations of international (social and distributive) justice and IEE play in the climate change regime? Second, in what ways might ideas about global justice and IEE have shaped European policies on GCC? And third, are European countries and is the European Union (EU), as an organization and a community, doing enough to share the burdens of GCC?³ One can address these questions from both practical and

1. Many of these ideas are featured in EUROPE AND GLOBAL CLIMATE CHANGE: POLITICS, FOREIGN POLICY, AND REGIONAL COOPERATION (Paul G. Harris ed., forthcoming 2007) [hereinafter EUROPE AND GLOBAL CLIMATE CHANGE].

2. PAUL G. HARRIS, INTERNATIONAL EQUITY AND GLOBAL ENVIRONMENTAL POLITICS: POWER AND PRINCIPLES IN U.S. FOREIGN POLICY 25-43 (2001) [hereinafter INTERNATIONAL EQUITY].

3. Burden sharing is examined on the global level, in particular Europe's practical and ethical burdens relative to the developing world. Burden sharing within the EU is not examined in this paper. See Nuno S. Lacasta et al., *Articulating a Consensus: The European Union's Position on Climate Change*, in EUROPE AND GLOBAL CLIMATE CHANGE, *supra* note 1; TOKE AIDT & SANDRA GREINER, SHARING THE CLIMATE POLICY BURDEN (HWWA Discussion Paper No. 176, 2002); SVEN BODE, EUROPEAN CLIMATE POLICY: BURDEN SHARING AFTER 2012, (HWWA Discussion Paper No. 265, 2004), available at http://www.hwwa.de/Publikationen/Discussion_Paper/2004/265.pdf.

normative-ethical perspectives. From a practical perspective, it is reasonable to assert that Europe should do its part to act on the provisions of the United Nations Framework Convention on Climate Change (UNFCCC) calling for stabilization of atmospheric greenhouse gas (GHG) concentrations at a level that avoids “dangerous anthropogenic interference” with the Earth’s climate.⁴ From a normative perspective, one might argue that Europe should meet a number of commonly accepted ethical standards of international burden sharing. In the real world, of course, practical matters and ethical ones often overlap. Thus, the international negotiations leading to the UNFCCC, and subsequent measures to implement it, have been suffused with discussions about how to prevent GCC while fulfilling ethical demands that those who cause the problem act first and those who suffer from it most (and are least able to act) be afforded special consideration and assistance.

In their survey of analytical approaches to environmental foreign policy (EFP), John Barkdull and Paul Harris describe some of the scholarly work on the role played by ideas and values in shaping the policies and behaviors of states.⁵ From these perspectives, which often fall under the rubric of constructivism, ideas and values can shape the identities of states and in turn shape or define the international system, especially if those ideas are pushed by major international actors (e.g., hegemonic states or influential intergovernmental organizations). Ideas and values can cross-pollinate among states or emerge from international organizations and regimes, in turn having impacts on state behavior in particular issue areas. This paper assesses the degree to which IEE has started to permeate the GCC process and shape European behavior, the degree to which Europe has fostered these values, and even the degree to which IEE is becoming “embedded” in the climate change regime—much as economic liberalism has, for better or worse, become entrenched in the global trade regime. Under this “construction” of IEE, justice and fairness has arguably occurred in the context of GCC. IEE has contributed more to the GCC policies of European states and the EU than to the policies of other countries. The EU is in turn driving the construction of IEE more broadly as IEE becomes a European *interest* and a shaper of its internationally relevant domestic policies (e.g., on

4. U.N. Framework Convention on Climate Change, May 9, 1992, art. 2, 1771 U.N.T.S. 107, 31 I.L.M. 849, 851 (1992) (entered into force Mar. 21, 1994), *available at* http://UNFCCC.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf [hereinafter UNFCCC].

5. John Barkdull & Paul G. Harris, *Environmental Change and Foreign Policy: A Survey of Theory*, 2 GLOBAL ENVTL. POL. 63 (2002).

energy use and conservation) and foreign policies on GCC.⁶

The next section of this paper introduces the notion of IEE in the context of the GCC agreements. The third and fourth sections look at how these notions of burden sharing and IEE arguably should and do apply in this issue area. The fifth section suggests that Europe has been a leader on IEE in the GCC negotiations over the last decade, and the sixth section points to what European states and the EU have done to take on some of the burdens of GCC. These actions are then assessed from practical and especially normative perspectives in the seventh section of the paper. The upshot is that Europe is doing more than any other part of the world to address GCC and to share the burdens associated with it. However, while the EU can be relatively proud of its actions compared to some other countries, notably the United States, it is not doing nearly enough. Both practical and normative imperatives point to the need for much more urgent action by Europe to share the burdens of GCC. The eighth section of the paper looks at the theoretical implications of Europe's *relatively* equitable response to GCC. The aim of this paper is not only to show, or at least suggest, how ideas at the various levels have shaped European GCC policies, but also to show that ethical considerations in this context exist, that they can serve as one measure of Europe's responses to GCC, and that they ought to guide future action.

This paper discusses "European" policies and obligations with regard to GCC and refers to the EU organization, including the Commission, as well as the member states.⁷ Accordingly, this paper generally refers to the EU as a conglomerate,⁸ following Frank Biermann's definition of an international organization as a collectivity of bureaucracies and member states.⁹ There is much that distinguishes EU

6. I have argued elsewhere at some length about the degree to which equity considerations have permeated international environmental politics and started to shape EFP. See INTERNATIONAL EQUITY, *supra* note 2; see also Andrew Jordan et al., How 'New' Environmental Policy Instruments (NEPIs) Spread in the European Union: An Analysis of the Role of the EU in Shaping Environmental Governance (Mar. 2003) (unpublished paper), available at <http://aei.pitt.edu/2883/01/122.pdf>.

7. The European Parliament arguably is more radical on these (and many other) issues than the Commission and member states. This author has not looked at the Parliament as a separate force or "pressure group," but someone ought to. (I am grateful to Brian Bridges for pointing this out to me).

8. "European Union," as used here, encompasses the European Community, one of the EU's core pillars in the context of the Treaty of Rome and the legal entity that signed the UNFCCC. See Nigel Haigh, *Climate Change Policies and Politics in the European Community*, in POLITICS OF CLIMATE CHANGE: A EUROPEAN PERSPECTIVE 155, 156 (Tim O'Riordan & Jill Jager eds., 1996).

9. Frank Biermann & Steffen Bauer, MANAGERS OF GLOBAL GOVERNANCE: ASSESSING AND EXPLAINING THE INFLUENCE OF INTERNATIONAL BUREAUCRACIES 10

states from one another, especially with regard to many important issues of concern, such as energy policy. But, to an increasing degree, Europe does have a kind of common foreign policy, on environmental issues generally and particularly on collective policies with regard to GCC.¹⁰ And when it comes to GCC, the Commission has sought to place the EU in a leadership position, which helps explain European states' actions relative to other developed countries.¹¹

II. INTERNATIONAL EQUITY IN THE CLIMATE CHANGE AGREEMENTS

A generation ago, the world's governments came to recognize the need for international cooperation to address global warming and associated changes to the Earth's climate system. Toward that end, most of them, including those in Europe, signed the UNFCCC in 1992. The core objective of the UNFCCC is the

stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.¹²

(Global Governance Working Paper No. 15, 2005); see Haigh, *supra* note 8, at 156 (discussing "European Union" as encompassing the European Community).

10. See generally ENVIRONMENTAL POLICY IN EUROPE: THE EUROPEANIZATION OF NATIONAL ENVIRONMENTAL POLICY (Andrew Jordan & Duncan Liefferink eds., 2004) (discussing a study of common policies on environmental issues).

11. Haigh, *supra* note 8, at 181. The authors note that this leadership position and resulting actions occurred following the agreement of the UNFCCC; it was the member states, not the European Community/EU, that were heavily involved in negotiations resulting in the FCCC. See John Huw Edwards, Has the European Union Exercised Leadership in the International Climate Change Regime Since the Hague Conference? 13 (2002) (unpublished M.A. thesis, College of Europe, Bruges Campus) (discussing EU leadership in the context of GCC), available at <http://www.euractiv.com/ndbtext/sponsors/Thesis-EDWARDS-John.pdf>; Joyeeta Gupta & Lasse Ringius, *The EU's Climate Leadership: Reconciling Ambition and Reality*, 1 INT'L ENVTL. AGREEMENTS 281, 281-99 (2001); Sebastian Oberthur, *The EU as an International Actor: The Protection of the Ozone Layer*, 37 J. COMMON MKT. STUDIES 641, 641-59 (1999); Ute Preisitz, European Union's Climate Change Policy Towards the Implementation of the Kyoto Protocol and Its Role as an International Leader 58-65 (Sept. 2002) (unpublished M.A. thesis, University of Graz), available at http://www.wsr.ac.at/~sts/down/da/DA_Preisitz.pdf.

12. UNFCCC, *supra* note 4, art. 2.

Developed countries agreed to a nonbinding target of reducing their GHG emissions to 1990 levels by 2000.¹³ They failed to achieve that goal.

The UNFCCC's third Conference of the Parties (COP), held in Kyoto, Japan in December 1997, was an effort to make the voluntary commitments binding. Diplomats negotiated the Kyoto Protocol to the UNFCCC, which required that developed country Parties reduce their emissions of GHGs by about five percent below 1990 levels by 2012.¹⁴ The EU countries agreed to reduce their aggregate emissions by eight percent.¹⁵ At the 1998 fourth COP in Buenos Aires, and in subsequent meetings, the developed nations agreed upon a set of actions for implementing the Kyoto Protocol. However, even with full implementation, the UNFCCC and its Kyoto Protocol will result in reductions of less than five percent of the developed countries' emissions of GHGs. Global emissions will continue to rise precipitously. Climate change will continue, virtually unabated, short of new and much more aggressive cuts in GHG emissions. Indeed, some scientists say that emissions of carbon dioxide (CO₂) and other GHGs must be cut by at least sixty percent just to stabilize their concentrations in the atmosphere and prevent chaos in the global climate system.¹⁶

According to the UNFCCC, countries should protect the world's atmosphere from GCC "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities," with the economically developed countries taking the lead in addressing the problem and its effects.¹⁷ Explicit in the treaty was the understanding that the economically less developed countries would not be required to undertake commitments until the developed countries first do so in earnest. This notion of *common but differentiated responsibility* was agreed upon because the developed countries are most responsible for historic GHG emissions and their potentially adverse consequences.¹⁸

13. *Id.*

14. Kyoto Protocol to the U.N. Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf> [hereinafter Kyoto Protocol].

15. *Id.* annex B.

16. See World Resources Institute (WRI), *The Difficulty of Stabilizing Emissions* (1996), http://population.wri.org/pubs_content_text.cfm?ContentID=792; *Global Business*, BBC WORLD SERVICE, Jan. 2, 2005 (noting that some scientists, notably the Lamont-Doherty Earth Observatory's Wallace Broecker, argue that GHGs must be brought to zero later in this century).

17. UNFCCC, *supra* note 4, art. 3(1).

18. See John Ashton & Xueman Wang, *Equity and Climate Change in Principle and Practice*, in *Beyond Kyoto: Advancing the International Effort Against Climate*

Additionally, developed countries are less vulnerable to the impacts of climate change and more able to pay for necessary actions to cut GHGs. What is more, current per capita emissions in the industrialized world are much higher than in most of the developing countries, with considerations of IEE suggesting that those countries with higher per capita emissions should do more than those with lower emissions per person.¹⁹

As the poor and less affluent countries of the world develop economically, they are becoming major sources of GHGs. China is already the second largest emitter of GHGs and will take the lead in the next few decades.²⁰ Consequently, the developed countries cannot by themselves solve this problem; comprehensive participation of the developed countries *and* the major developing countries is required. Some countries—the United States in particular—see the immediate answer to global warming in cutting GHG emissions from the developing world, especially in China and India. However, the world's poor countries are unlikely to substantially reduce their emissions simply because the wealthy countries want them to do so. Developing countries have said that they will not join any future international climate protection agreement—such as another binding protocol to the UNFCCC or side agreement to the Kyoto Protocol—that is not fair and equitable based on commonly accepted notions of which country or countries are most responsible for the problem historically, namely, the United States, Europe, and other developed countries.²¹

Unlike the developed countries, which see GCC as an environmental problem, the developing countries tend to see it as a problem of human welfare. As Benito Muller points out,

[t]he harm is against humans, it is largely other-inflicted, and it is not

Change 64, 77 (Pew Ctr. on Global Climate Change, Working Paper, 2003) (noting that the industrialized countries are collectively responsible for eighty-five percent of historic GHG emissions and sixty-five percent of current emissions) [hereinafter *Beyond Kyoto*]; CLIMATE CHANGE 2001: IMPACTS, ADAPTATION, AND VULNERABILITY 87 (James J. McCarthy et al. eds., 2001), available at http://www.grida.no/climate/ipcc_tar/wg2/pdf/wg2TARchap1.pdf; Frank Biermann, 'Common Concern of Humankind': *The Emergence of a New Concept of International Environmental Law*, 34 ARCHIV DES VOLKERRECHTS 4, 426–81 (1996) (discussing in depth the concept of common but differentiated responsibility); Paul G. Harris, *Common but Differentiated Responsibility: The Kyoto Protocol and United States Policy*, 7 N.Y.U. ENVTL. L.J. 27, 28 (1999).

19. Ashton & Wang, *supra* note 18, at 69.

20. WRI, *supra* note 16, at 315–25.

21. Paul G. Harris, *Assessing Climate Change: International Cooperation and Predictions of Environmental Change*, 21 POLITICS 11, 11 (2001).

life-style, but *life*-threatening. In short, the chief victim of climate change is not 'Nature', but people, and the paramount inequity is one between human victims and human culprits. Climate change is a development problem, no doubt! But for the developing world it is *not* a problem of sustainable development—in the technical sense of “learning to live within one’s ecological means”—it is a problem of *unsustainable* development, in the non-technical sense of failing to survive.²²

For developing countries,

it looks as if those who had the party expect those who didn't to pick up the tab. Indeed, it is even worse than this. The party is still going on in the rich countries of the North. Poor people are expected to forgo necessities while the consumerism of the rich continues to increase.²³

As P.R. Shukla describes it, what is really in question is who must bear the burden of mitigating climate change, not whether mitigation must be done; it is a matter of justice.²⁴ Consequently, for international climate change negotiations to be successful in coming years and for them to result in actual, robust, and widespread overall cuts in GHGs, the developed countries must *demonstrate* that they acknowledge their “guilt” for damaging GHG emissions and that they are acting to substantively reduce those emissions. In addition, in accordance with the UNFCCC, the developed countries should assist developing countries in their efforts to deal with this problem.

As Hermann Ott argues, questions of equity—both international and intergenerational—are infused into every aspect of this issue, not coincidentally leading to repetition of many of the same debates that characterized the New International Economic Order of the 1970s.²⁵ Similar to that period, developing countries are demanding a more equitable international economic system and, in the case of international environmental negotiations, a greater say in the formation of environmental regimes. They want to be treated fairly: to benefit economically from—or at least not be disadvantaged economically by—international environmental agreements, particularly those on climate

22. BENITO MULLER, EQUITY IN CLIMATE CHANGE: THE GREAT DIVIDE 2 (2002) (original emphasis), available at <http://www.oxfordenergy.org/pdfs/EV31.pdf>.

23. DALE JAMIESON, MORALITY'S PROGRESS 301(2002).

24. P.R. Shukla, *Justice, Equity and Efficiency in Climate Change: A Developing Country Perspective*, in FAIR WEATHER?: EQUITY CONCERNS IN CLIMATE CHANGE 145, 157 (Ferenc L. Toth ed., 1999) [hereinafter FAIR WEATHER].

25. Hermann E. Ott, *Climate Change: An Important Foreign Policy Issue*, 77 INT'L AFF. 277, 278 (2001).

change. They want to be compensated for past exploitation by developed states, which are viewed as having benefited from pollution of the global environment in past centuries. Indeed, as diplomats continue to discuss what will follow the Kyoto Protocol (post-2012), the ability of states to face up to and resolve the “equity dilemmas” associated with climate change will determine the success or failure of future international negotiations.²⁶ As suggested earlier and as argued by the U.S. government, future efforts to commit large developing countries to emissions limitations will be required if the goals of the UNFCCC are to be remotely achieved. However, demands by the United States and a few other developed states for the poorer countries of the world to act on climate change *now* have made the developing world even more sensitive to equity, meaning that successful future negotiations on climate change requires that the perceived and real interests of developing states must be addressed at the outset.²⁷ There is also a question of *credibility* whereby, as Biermann describes it,

[s]ome governments will have to commit resources both domestically and through transnational transfer mechanisms for solving this problem based on the assumption that other governments will reciprocate when it is their turn (including governments to come in the future [namely, the large developing countries]). The climate governance system must thus produce the necessary credibility for governments to believe in this reciprocity over time.²⁸

The difficult situation described above shows that normative-ethical considerations like IEE, fairness, and responsibility, which have not been commonly perceived as essential to serious international discourse (or to most foreign policy practices and analyses), are absolutely central to efforts to address GCC. Most economically developed countries, particularly those in Europe, now at least recognize this proposition.²⁹ It is of course important to ask exactly what the largest polluters (especially on a per capita basis) ought to be doing to address global warming and

26. Ashton & Wang, *supra* note 18, at 2.

27. HERMANN E. OTT & SEBASTIAN OBERTHUR, BREAKING THE IMPASSE: FORGING AN EU LEADERSHIP INITIATIVE ON CLIMATE CHANGE 25 (2001), available at <http://www.boell.de/downloads/oeko/PapersNr3en.pdf>.

28. Frank Biermann, *Between the United States and the South: Strategic Choices for European Climate Policy* 8 (Global Governance Project, Working Paper No. 17, June 2005), available at <http://glogov.org/upload/public%20files/pdf/publications/working%20papers/GlogovWorkingPaper17BiermannClimatePolicy.pdf> [hereinafter *Between the United States and the South*].

29. Paul G. Harris, *Environment, History and International Justice*, 40 J. INT'L STUD. 1, 1–33 (1997).

the effects of climate change, especially for the world's most vulnerable people and countries.³⁰ With only about five percent of the world's population, the EU produces about fifteen percent of global GHG emissions and arguably has the wealth to spare to help those who suffer from climate change.³¹ In the European Commission's words, "[r]icher, industrialized nations have a duty to take the lead in cutting the emissions that could have the most serious impact on developing countries."³²

The EU's Climate Protection Program explicitly acknowledges that equity is fundamental to the climate challenge for four reasons.³³ First, it is a legal imperative based on the UNFCCC's obligations to act based on equity and common but differentiated responsibilities. Second, it is a moral imperative: "[c]itizens of the global community face a moral compulsion to engage on the basis of justice and equity. As global interconnectedness grows through globalization and shared environmental and geopolitical challenges, the moral imperative becomes further strengthened."³⁴ Third, it is a political imperative because the nature of the problem requires some countries to take the lead, as "countries will only participate if they perceive the climate regime to be equitable."³⁵ Fourth, it is a practical imperative that links GCC with the South's goal of sustainable development: "[t]he challenge of climate change may only be practically resolvable if equity—in its strongest sense—is addressed. Both pillars of addressing climate change—mitigation and adaptation—rely on a fundamental recognition

30. This author has tried to do some of this in *INTERNATIONAL EQUITY*, *supra* note 2. To put per capita emissions into perspective, consumption in the EU is very roughly twice that in China, but roughly half that in the United States. Shukla, *supra* note 24, at 151.

31. DIRECTORATE-GENERAL FOR THE ENV'T OF EUROPEAN COMM'N (DGE), EU FOCUS ON CLIMATE CHANGE 8 (2002), *available at* http://europa.eu.int/comm/environment/climat/pdf/climate_focus_en.pdf [hereinafter EU FOCUS ON CLIMATE CHANGE].

32. *Id.* at 8–9. It might be worth asking rhetorically whether one could possibly imagine the current U.S. government saying anything close to this. Words go only so far, of course, but the degree to which the EU and many of its member states have at least recognized their ethical obligations with regard to GCC, and have actually started to act upon them, is *relatively* very profound.

33. CLIMATE PROTECTION PROGRAMME (CPP), SOUTH-NORTH DIALOGUE ON EQUITY IN THE GREENHOUSE: A PROPOSAL TOWARDS AN ADEQUATE AND EQUITABLE GLOBAL CLIMATE AGREEMENT 15 (2004), *available at* http://www.wupperinst.org/download/1085_proposal.pdf.

34. *Id.*

35. *Id.*

of equity and sustainable development.”³⁶ The upshot is that IEE has now permeated the GCC regime and has started to shape the GCC policies of major countries, in particular the policies of a number of European states and of the EU itself.

III. SHARING THE BURDENS OF CLIMATE CHANGE: SOME NORMATIVE CONSIDERATIONS

What obligation do states have to share the burdens of GCC?³⁷ That is, to what extent are they ethically obligated to address the causes and consequences of GCC by cutting their emissions of GHGs and compensating those who have and will suffer from climate change caused by those emissions? It is impossible to state definitively what is a “fair” or “equitable” distribution of climate change burdens. There are too many disagreements about who is to blame and what should be done. That said, it is possible to approach some general resolution.³⁸ Regardless of the specifics, a seemingly unassailable starting point is to create a fair and equitable sharing or distribution of the burdens, decisionmaking authority, and potential benefits among countries. One can say “unassailable” because it is difficult to envision any reasonable person or government arguing that there ought to be an *unfair* or *inequitable* (as opposed to possibly *unequal*) sharing of burdens associated with GCC.

Ethical philosophers have endeavored to define what is fair and equitable in the context of GCC, both within and between countries, and the United Nations’ Intergovernmental Panel on Climate Change (IPCC) has also grappled with the question.³⁹ In simple terms, equity means the quality of being fair, impartial, or even-handed in dealings with others.⁴⁰ People will, of course, disagree about the precise definition or content of fairness and equity. Indeed, that disagreement has been much, or even

36. *Id.*

37. This author first exercised many of the ideas in this section and applied them to the U.S. case in Paul G. Harris, *Sharing the Costs of Climate Change: An Assessment of American Foreign Policy*, 12(2) CAMBRIDGE REV. INT’L AFF. 289, 289–310 (1999).

38. Cf. Joanne Linnerbooth-Bayer, *Climate Change and Multiple Views of Fairness*, in FAIR WEATHER, *supra* note 24, at 44.

39. See generally T. Banuri et al., *Equity and Social Considerations*, in CLIMATE CHANGE 1995: ECONOMIC AND SOCIAL DIMENSIONS OF CLIMATE CHANGE 79 (James P. Bruce et al. eds., 1996); EQUITY AND SOCIAL CONSIDERATIONS RELATED TO CLIMATE CHANGE (Richard Samson Odingo et al. eds., 1995) [hereinafter EQUITY AND SOCIAL CONSIDERATIONS].

40. NEW OXFORD ENGLISH DICTIONARY (Judy Pearsall & Patrick Hanks eds., 1998).

most, of the focus of climate change negotiations over nearly the last two decades.⁴¹ In the final analysis, what constitutes a fair and equitable sharing of GCC burdens will be the result of political bargaining among the states and other influential actors, such as corporations and nongovernmental organizations (NGOs). This negotiation will not suit ethical purists, but reality and ethics collide. Power does not make right in this circumstance any more than others, but bargaining and, yes, power, play a role in determining which normative principles actually shape outcomes. At the very least, as Henry Shue argues, fairness and equity mean doing no additional harm to other countries or other people and “the fundamental focus of equity is the protection of an adequate minimum for those unable to protect their own.”⁴² At the most basic level, fairness demands that Europe (among other developed parts of the world⁴³) act to limit and, ultimately, end the harm it causes by way of GCC, giving due consideration to the least well-off countries and people.

Discussions of fairness and equity often refer to two general categories of issues: procedures (or how decisions are made) and outcomes (or consequences). Procedural equity requires that basic rights of individuals or states be respected in decisionmaking and that those affected by decisions be allowed to participate in the formulation of those decisions. The fairness or equity of outcomes demands that there be a fair distribution of burdens and a fair allocation of benefits.⁴⁴ These conceptions apply both within and between generations and within and between states, with many pointing out that they also apply between humans and other species.⁴⁵ Again, what might we mean by “fair” or

41. See generally EARTHLY GOODS: ENVIRONMENTAL CHANGE AND SOCIAL JUSTICE (Fen Osler Hampson & Judith Reppy eds., 1996); Paul G. Harris, *Considerations of Equity and International Environmental Institutions*, 5 ENVTL. POL. 274 (1996); Paul G. Harris, *Defining International Distributive Justice: Environmental Considerations*, 15 INT'L REL. 51 (2000). Consistent with common usage, the term equity, as used here, refers to *distributive* justice, that is, the “fairness” or “rightness” of distributing benefits and burdens.

42. Henry Shue, *Equity in an International Agreement on Climate Change*, in EQUITY AND SOCIAL CONSIDERATIONS, *supra* note 39, at 385, 392.

43. This begs the questions of cosmopolitan justice, notably the obligations of *individuals* to one another. Arguably, well-off people, wherever they may reside, have obligations to act in ways analogous to the obligations of well-off states. To get individuals to act is very difficult and often requires government action, but this does not eliminate the obligation. Cf. PETER SINGER, FAMINE, AFFLUENCE, AND MORALITY (1972), *reprinted in* WORLD HUNGER AND MORALITY 26 (William Aiken & Hugh LaFollette eds., 2nd ed. 1996); Matthew Paterson, *International Justice and Global Warming*, in THE ETHICAL DIMENSIONS OF GLOBAL CHANGE 181, 190 (Barry Holden ed., 1996).

44. See generally Banuri, *supra* note 39.

45. While considerations of fairness and equity between generations

“equitable”? Among the many conceptions of international fairness and equity, six of the most common conceptions are considered here. They are premised on rights, causality and responsibility, utilitarianism, Kantian ethics, Rawlsian justice, and impartiality.⁴⁶

From a rights perspective, individuals have inherent rights, such as minimum nutrition, freedom from torture, and so forth, simply because they are human beings. Shue argues that individuals at least have the right to subsistence, for without it no other rights can be exercised. Thus, insofar as the burdens of climate change inhibit subsistence rights—as they will do for many as climate change manifests itself in droughts, floods, the spread of pests, and other detrimental effects on agriculture, notably in the poorest parts of the world—the distribution of benefits and burdens is not, at present and into the foreseeable future, fair and equitable. Under conceptions of fairness and equity based on causality or responsibility, adherents assert that those responsible for causing harm are responsible for ending and ultimately righting that wrong. According to Shue, “the obligation to restore those whom one has harmed is acknowledged even by those who reject any general obligation to help strangers . . . because one ought even more fundamentally to do no harm in the first place.”⁴⁷ The European states, the United States, and other developed countries acknowledged when they joined the UNFCCC that they deserve the bulk of the blame for climate change and they have some responsibility to aid other countries that will be negatively affected. On the other hand, Utilitarians argue that benefits and burdens should be distributed in such a way as to achieve the greatest good for the greatest

(intergenerational equity) and between species (interspecies equity) are important, here the author focuses on considerations of equity as they relate to contemporaneous sharing or distribution among states (*intragenerational* equity). For discussions of all three types, see JUST ENVIRONMENTS: INTERGENERATIONAL, INTERNATIONAL AND INTERSPECIES ISSUES (David E. Cooper & Joy A. Palmer eds., 1995). For a rare examination of intranational justice in the context of GCC, see Jiahua Pan, *Emissions Rights and their Transferability: Equity Concerns over Climate Change Mitigation*, 3 INT’L ENVTL. AGREEMENTS: POL., L., & ECON. 1 (2003).

46. Here this author does not pretend to take on the burdens of philosophical exegesis. This typology mirrors Paterson’s framework. See Paterson, *supra* note 43; Banuri, *supra* note 39; CHRIS BROWN, *INTERNATIONAL RELATIONS THEORY* (1992); Paul G. Harris, *Affluence, Poverty, and Ecology: Obligation, International Relations and Sustainable Development*, 2 ETHICS & ENV’T 121 (1997). In contrast, JAMIESON, *supra* note 23, at 298, believes that global environmental justice, which includes obligations to the environment and other species as well as (potentially) to other people, “does not lend itself naturally to the application of ‘big picture’ theories of justice,” such as JOHN RAWLS, *A THEORY OF JUSTICE* (1st ed. 1971), and ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

47. Shue, *supra* note 42, at 386.

number of individuals.⁴⁸ From this perspective, the burdens of climate change ought to be distributed in such a way as to maximize overall human "happiness."⁴⁹

From a Kantian perspective of equity and fairness, people should not be treated as means to one's own ends, but rather as ends in themselves.⁵⁰ Accordingly, it is unfair to exploit other people because they would not freely choose to be exploited. Thus, if the burdens of climate change are imposed on countries against their free will, then that distribution is not fair and equitable. In contrast, a Rawlsian conception of what is a fair and equitable distribution of burdens can be derived from assessments of self-interest decided in an "original position" behind a "veil of ignorance."⁵¹ Inequalities in distribution are acceptable insofar as they benefit the least advantaged in society, because that is what those in the original position (for example, not knowing what country or social class one would be born into) would choose.⁵² Applied to climate change, one might say that fairness and equity are being furthered if the requirements of weak, small-island and poor coastal countries, which are subject to sea-level rise and increased storms caused by global warming, are seriously considered in the context of GCC. However, so far, their demands have received too little serious attention by the developed countries, at least compared to the scale of suffering they are likely to endure with greater frequency. Finally, a conception of fairness and equity based on impartiality suggests that we ought to assess what is fair and equitable based on what is reasonable.⁵³ It is not reasonable to expect an equal power relationship between, for example, Europe and Vanuatu. European countries should aid Vanuatu to cope with climate change, "not because it is in [their] interest to do so but because justice as impartiality suggests that the case for such aid cannot be reasonably denied."⁵⁴

48. Cf. JOHN STUART MILL, UTILITARIANISM ON LIBERTY ESSAY ON BENTHAM (Mary Warnock ed., 1962); JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (J.H. Burns & H.L.A. Hart eds., 1970).

49. This begs the questions (to use one example that comes to mind) of who is happier, an affluent person with a big new car spewing CO₂, or a very poor person who finally has enough to eat, and what value we place on different kinds of happiness.

50. IMMANUEL KANT, THE MORAL LAW (H. J. Paton trans., Barnes & Noble, Inc. 1950).

51. RAWLS, *supra* note 46, at 136.

52. *Id.* Rawls argues that his theory does not apply much to international relations. Nevertheless, several scholars have argued otherwise. See, e.g., CHARLES R. BEITZ, POLITICAL THEORY AND INTERNATIONAL RELATIONS 126–83 (1979).

53. See generally, BRIAN BARRY, JUSTICE AS IMPARTIALITY (1995).

54. BROWN, *supra* note 46, at 181 (using the words of Chris Brown in an analogous

Various assessments of equity and fairness in the context of the GCC negotiations have mirrored the considerations outlined above. For example, John Ashton and Xueman Wang have distilled the determination of what is fair and equitable in this context to five dimensions: (1) responsibility—who is to blame for GCC?; (2) equal entitlements—to what extent does agreement and action on climate change bring us “towards such an equal entitlements world”; (3) capacity—those who are most able to act ought to do so; (4) basic needs—“the strong and well endowed should help the weak and less well endowed at least in meeting their basic needs Thus a fair climate change agreement would if possible help, and certainly not undermine, the efforts of the poorest countries to meet the basic needs of their people”; and (5) comparable effort—the requirements of some parties should not be more or less difficult to achieve than those of others; “the effort demanded of a party not only has to seem fair as an absolute expression of its record and circumstances but also in light of the deals secured by others.”⁵⁵

Biermann has summed up the “essence of a general concept of justice in international environmental policy” (from the perspective of practice and international law) as (1) more capable states shall accept more duties (stricter regulations), (2) more capable states shall assist others, and (3) equal participation shall be guaranteed and participation shall be transparent.⁵⁶ His characterization points quite strongly to the evolving practice of rich states aiding poor states (even if they are not responsible for the suffering of the latter). Lasse Ringius, Asbjorn Torvanger, and Arild Underdal argue that for any burden-sharing rule in the context of climate change to be acceptable it must at least be compatible with three principles of equity: responsibility, capacity, and need (including basic need). Beyond that, the rules are and have been open to substantial negotiation, including those influenced by national interests and power.⁵⁷ The upshot is that while debates about the precise content of IEE in the context of GCC continue, equity considerations are already being integrated into the GCC regime and the relevant policies of a number of major developed states, especially in Europe.

context).

55. Ashton & Wang, *supra* note 18, at 66.

56. Frank Biermann, *Justice in the Greenhouse: Perspectives from International Law*, in FAIR WEATHER, *supra* note 24, at 160, 163–69.

57. Lasse Ringius et al., *Burden Sharing and Fairness Principles in International Climate Policy*, 2 INT’L ENVTL. AGREEMENTS: POL., L., & ECON. 1, 17 (2002).

IV. SHARING THE BURDENS OF CLIMATE CHANGE: SOME ISSUES OF IMPLEMENTATION

These varied conceptions of fairness and equity are germane to the international politics and associated domestic burdens of GCC in a number of ways, including (1) the distribution of GHG emissions, (2) the transfer of financial resources and technology, and (3) compensation for harm resulting from climate change.⁵⁸

A. Distribution of Emissions

A fair and just solution to the climate change problem requires addressing the distribution of GHG emissions reductions and the costs that accompany those reductions. The disproportionate responsibility of European and other developed countries for causing the present global concentration of GHGs in the atmosphere has been invoked by most countries during international negotiations. Parties to the UNFCCC essentially agreed that the primary and initial burdens of emissions reductions should be borne by the developed countries. The preamble to the UNFCCC notes that most current and historical emissions of GHGs have originated in the developed world. It notes that "per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and developmental needs," and that actions to address global warming should first consider the "legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty."⁵⁹ The Convention calls on all parties to share the burdens, but to do so in such a way that those most responsible for historical emissions and those most capable of taking

58. See Paterson, *supra* note 43, at 182–86. See generally Shue, *supra* note 42. There are a number of other important measures of equity, such as participation in decisionmaking and procedural fairness, which are important but not included here due to space limitations. For several additional papers on applying equity and fairness considerations in the context of GCC, see generally Steve Rayner et al., *Equity Issues and Integrated Assessment*, in FAIR WEATHER, *supra* note 24; Ellen Wiegandt, *Climate Change, Equity, and International Negotiations*, in INTERNATIONAL RELATIONS AND GLOBAL CLIMATE CHANGE 127 (Urs Luterbacher & Detlef F. Sprinz eds., 2001). These other perspectives are germane. For example, the EU has as one of its objectives helping developing countries to participate in climate change negotiations. See *Council Conclusions: Climate Change in the Context of Development Cooperation*, at 15, Doc. No. 15164/04 (Nov. 24, 2004), available at <http://register.consilium.eu.int/pdf/en/04/st15/st15164.en04.pdf>.

59. UNFCCC, *supra* note 4, pmb1.

action (generally the same countries) bear the bulk of the burden.

Article 3(1) of the UNFCCC declares,

[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.⁶⁰

The developed countries affirmed the principle of common but differentiated responsibility in the Berlin Mandate, adopted at the first Conference of the UNFCCC Parties in 1995.⁶¹ They pledged to act first to reduce their GHG emissions before requiring developing countries to do so. Thus, negotiations for the subsequent Kyoto Protocol were premised on the principle of common but differentiated responsibility.⁶² The developed countries accepted this standard because they knew developing countries would not, and in many cases could not, otherwise join the climate regime and eventually limit their emissions.⁶³

Not surprisingly, there has been much dispute regarding how to allocate GHG emissions, as demonstrated by international negotiations on implementing the Kyoto Protocol. This was true in the case of the Kyoto Protocol but applies even more to follow-up agreements for the much greater cuts required to have a substantial impact on GCC. The most obvious allocation of GHG emissions, one proposed by developing countries and their advocates, was an equal global per capita allotment for allowable emissions. Accordingly, the rich countries would have to pay for the use of the developing countries' allotments. While the GCC negotiations so far have arrived at bargains short of codifying equal per capita rights to the atmosphere, Biermann believes (along with developing country diplomats) that only equal per capita allotments, which "have an inherent appeal due to their link to basic human rights of populations in both South and North," are "likely to have the normative power to grant the climate governance system the institutional stability it needs in the decades and centuries to come," not least because, in the words of a former Indian prime minister, it is unlikely that "the ethos of democracy can support any norm other than equal per capita rights to global environmental resources."⁶⁴ In contrast, Jean-Charles Hourcade

60. *Id.* art. 3(1).

61. *See id.* pmb1.

62. *See* INTERNATIONAL EQUITY, *supra* note 2.

63. *Id.*

64. *Between the United States and the South*, *supra* note 28, at 20; *see also* Paul Baer, *Equity, Greenhouse Gas Emissions, and Global Common Resources*, in CLIMATE

and Michael Grubb argue that for “political and economic reasons such a proposal has no chance of being accepted by developed countries because it leads to unacceptable costs for them.”⁶⁵

At some point, the most advanced developing countries will have to accept limits in their GHG emissions and, in the cases of the largest polluters (e.g., China), eventually make GHG *cuts* of their own. However, there is little chance that the developing countries will agree to GHG cuts that let the developed countries continue their disproportionate emissions or do not require assistance to help the poor countries (especially the least developed among them) to continue growing economically. As suggested above, the need for Europe and other developed regions to share more of the burden is manifest and is a necessary prerequisite for action by China, India, and other large developing countries that are growing sources of the problem itself.

There is also the important question of how emissions limitations should be distributed among developing countries themselves. Some of the newly industrialized countries and those with substantial wealth, such as Saudi Arabia and South Korea, as well as rapidly industrializing countries, such as Brazil and China, will presumably be expected to act long before the very poorest countries are seriously expected to do anything more than receive aid for mitigation of their suffering from climate change.⁶⁶

B. Financial Resources and Technology Transfer

Financial assistance for environmentally sustainable development and concessional transfers of clean technologies to the developing countries will be required to help them adapt to climate change and to assist them in eventually limiting their GHG emissions. These transfers are often justified based again on the North's disproportionate responsibility for the problem. The UNFCCC demands that industrialized countries help the developing countries by providing finance and technology to meet treaty objectives. Developing countries

CHANGE POLICY: A SURVEY 393, 401–05 (Stephen H. Schneider et al. eds., 2002) (arguing that equal per capita emissions rights are the only ethical option and noting that this has the practical benefit of offering options for developing-country emissions limits in the future).

65. Jean-Charles Hourcade & Michael Grubb, *Economic Dimensions of the Kyoto Protocol*, in CLIMATE CHANGE AND EUROPEAN LEADERSHIP 173, 199 (Joyeeta Gupta & Michael Grubb eds., 2000).

66. Hermann E. Ott et al., *It Takes Two to Tango: Climate Policy at COP 10 in Buenos Aires and Beyond*, 2 J. EUR. ENVTL. & PLANNING L. 84, 91 (2005); see also CPP, *supra* note 33.

joined the convention only after it was agreed that their development prospects would not suffer in the process.⁶⁷ There was an implicit understanding that some sort of international fund would be established to compensate developing countries for the costs of participation in the Convention.⁶⁸ Article 11 of the UNFCCC describes the financial mechanism envisioned to provide financing “on a grant or concessional basis, including for the transfer of technology,” to help poorer signatories fulfill treaty commitments.⁶⁹ The Global Environment Facility was subsequently designated as the funding mechanism for the UNFCCC.⁷⁰

In several articles, the Convention calls on participants to provide developing countries with aid to assist them in fulfilling their information and reporting requirements.⁷¹ Article 4 calls for new and additional resources delivered from the developed countries in an “adequate” and “predictable” fashion to assist developing countries in complying with their obligations under the Convention.⁷² Developed countries are to take steps to “promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how,” especially to developing countries.⁷³ The same article declares that developing countries’ effective implementation of the treaty “will depend on the effective implementation by developed country Parties of their commitments . . . related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities” of the developing countries.⁷⁴

By signing the treaty, developed country governments accepted these principles. The Bonn and Marrakech Accords, which lay out measures for implementing the Kyoto Protocol, established several new funding mechanisms to help poor countries adapt to climate change: the Special Climate Change Fund, the Least Developed Country Fund, and the Kyoto Protocol Adaptation Fund.⁷⁵ Importantly, the Parties to the

67. INTERNATIONAL EQUITY, *supra* note 2.

68. Richard Mott, *GEF and the Conventions on Climate Change and Biological Diversity*, 5 INT’L ENVTL. AFFAIRS 299, 302 (1993).

69. UNFCCC, *supra* note 4, art. 11(1).

70. *See* Mott, *supra* note 68, at 302–03.

71. UNFCCC, *supra* note 4, art. 4(3).

72. *Id.*

73. *Id.* art. 4(5).

74. *Id.* art. 4(7).

75. Saleemul Huq, *The Bonn-Marrakech Agreements on Funding*, 2 CLIMATE POL’Y 243, 243–44 (2002); *see also* Christiaan Vrolijk, *New Interpretation of the Kyoto Protocol: Outcomes from The Hague, Bonn and Marrakesh*, ROYAL INST. OF INT’L AFFAIRS 5 (2002); Suraje Dessai & Emma Lisa Schipper, *The Marrakech Accords to the*

UNFCCC have agreed that *new and additional* funding beyond that in existing aid programs would be needed and the EU and its member states, along with Canada, Iceland, New Zealand, Norway, and Switzerland, agreed to donate €450 million annually (some of it new money) to these new funding mechanisms by 2005.⁷⁶ The developed countries and their industries are, of course, looking for ways to achieve the objectives of the UNFCCC at minimum cost. Transfers were already part of joint implementation projects that permitted developed country firms to save money by reducing emissions at facilities in developing countries. As will be discussed shortly, these projects, endorsed by the Kyoto Protocol and clarified in subsequent international negotiations, have increased in number and scale in recent years. Joint implementation projects and tradable permit schemes will go some way toward actualizing financial and technology transfers, thereby assisting the developing countries while making emissions reductions less costly in the developed countries. However, the developed countries have been slow to act on these principles, and the sums of money and transfers of technology have been only modest so far.

C. Compensation

If one accepts several of the notions of fairness and equity outlined above, particularly those based on causality and responsibility, the developed countries ought to compensate those countries that will suffer from the effects of climate change. For example, the low-lying island and coastal states, will, and may already, feel the effects of rising seas.⁷⁷ These affected states want to be—and ethically ought to be—compensated for these adverse effects. However, this is one area where both the treaty and the stated intentions and actions of the developed

Kyoto Protocol: Analysis and Future Prospects, 13 GLOBAL ENVTL. CHANGE 149, 150 (2003); Hermann E. Ott, *The Bonn Agreement to the Kyoto Protocol: Paving the Way for Ratification*, 4 INT'L ENVTL. AGREEMENTS 469, 472–73 (2001).

76. John Ashton & Xueman Wang, *Equity and Climate: Change in Principle and Practice*, in *Beyond Kyoto*, *supra* note 18, at 72; see also INT'L ENERGY AGENCY, CLIMATE CHANGE AND THE BONN AGREEMENT: QUESTIONS AND ANSWERS FROM THE IEA 8 (2001). For a description of EU funding in the field of GCC, see *Third Communication from the European Community Under the UN Framework Convention on Climate Change* 147–61, SEC (2001) 2053 (Commission Staff Working Paper, Brussels, Nov. 30, 2001), available at <http://cepc.hispamat.com/Uploads/docs/3rd%20Com%20EU-UNFCCC.pdf>.

77. See SALEEMUL HUQ ET AL., MAINSTREAMING ADAPTATION TO CLIMATE CHANGE IN LEAST DEVELOPED COUNTRIES (LDCs) 9 (Int'l Inst. for Env't & Dev. 2003) (discussing the anticipated adverse impacts of GCC for very poor countries).

countries fall far short of many principles of IEE. The most the UNFCCC says about this predicament is found in Article 4(4): “[t]he developed country Parties and other developed parties . . . shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.”⁷⁸ The developed countries implicitly acknowledged that they ought to compensate those countries that will suffer from climate change, but in the foreseeable future there will be only modest actions toward this end. “In other words,” as Mathew Paterson points out, “compensation is only formulated [in the UNFCCC] as a vague principle without any concrete implementation scheme.”⁷⁹ What is more likely is additional financial assistance from the wealthy countries to the poorer ones to help them *adapt* to climate change. Europe has moved in this direction, but this is very different from compensation for harm.

V. EUROPE’S RESPONSE TO GLOBAL CLIMATE CHANGE: LEADERSHIP IN INTERNATIONAL NEGOTIATIONS

What has Europe done to equitably share the burdens of GCC? Several European states and the EU have arguably been global environmental leaders, with the EU in particular “championing the Kyoto Protocol on climate change despite U.S. opposition to the agreement”⁸⁰ along with other international efforts to deal with climate change.⁸¹ In the run-up to the Kyoto COP, the EU “tried to position itself as a global leader on climate change issues” after being pushed by some “progressive” member states.⁸² Gareth Porter, Janet-Welsh Brown, and

78. UNFCCC, *supra* note 4, art. 4(4).

79. Matthew Paterson, *Equity or Justice*, in INTERNATIONAL RELATIONS AND GLOBAL CLIMATE CHANGE 64, 67 (Potsdam Inst. for Climate Impact Res., Rep. No. 21, Detlef Sprinz & Urs Luterbacher eds., 1997), available at http://www.pik-potsdam.de/pik_web/publications/pik_reports/reports/reports/pr.21/pr21.pdf.

80. Regina S. Axelrod et al., *The European Union as an Environmental Governance System*, in THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW AND POLICY 200, 208 (Regina S. Axelrod et al. eds., 2005).

81. 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, 222 (Norman J. Vig & Michael G. Faure eds., 2004) [hereinafter GREEN GIANTS].

82. Ute Collier, *EU Energy Policy in a Changing Climate*, in ENVIRONMENTAL POLICY INTEGRATION: GREENING SECTORAL POLICIES IN EUROPE 175, 180 (Andrea

Pamela Chasek have defined the EU as a “lead state” on climate change issues because it was consistently ahead of other countries in calling for action to combat the problem through GHG cuts.⁸³ To be sure, not everyone would call Europe the GCC leader, but when contrasted with other state actors it has been relatively so.⁸⁴

A. *The Run-up to Kyoto*

By 1990, the European Commission, especially the environment commissioner, decided that Europe should be a leader in the GCC negotiations before the 1992 Rio Earth Summit.⁸⁵ This aligned with GHG emissions cuts adopted at the national level by some member states.⁸⁶ Formal international negotiations that would lead to the UNFCCC started in 1991 and, by 1992, members of EU committed themselves to stabilizing their GHG emissions at 1990 levels by 2000.⁸⁷ At the Earth Summit, the EU sought agreement among other countries to establish binding targets, by certain dates, for reducing GHG emissions.⁸⁸ The UNFCCC did not include these firm commitments. According to Farhana Yamin, in the early climate change negotiations, the EU tried to balance the U.S. demand that developing countries commit themselves to GHG emissions limits with those same countries' refusal to do so.⁸⁹ On one hand, the EU “supported the G-77 and China’s opposition to new commitments for developing countries . . . [and]

Lenschow ed., 2002).

83. GARETH PORTER ET AL., *GLOBAL ENVIRONMENTAL POLITICS* 114, 119 (3d ed. 2000).

84. For a proposal on how the EU could be a stronger leader on GCC, see OTT & OBERTHUR, *supra* note 27; Norichika Kanie, *Middle Power Leadership in the Climate Change Negotiations: Foreign Policy of the Netherlands*, in *EUROPE AND GLOBAL CLIMATE CHANGE*, *supra* note 1.

85. JOHN MCCORMICK, *ENVIRONMENTAL POLICY IN THE EUROPEAN UNION* 281 (2001).

86. *Id.*

87. Michele M. Betsill, *Global Climate Change Policy: Making Progress or Spinning Wheels?*, in *THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW, AND POLICY* 103, 106 (Regina S. Axelrod et al. eds., 2005) (citing INT’L ENERGY AGENCY, *CLIMATE CHANGE POLICY INITIATIVES*, VOL. I: OECD COUNTRIES 14 (1994)).

88. Schreurs, *supra* note 81, at 211. This author recalls that at the time some Americans were saying that the Europeans were doing this knowing full well that their efforts would fail. In other words, it was perceived to be an empty gesture. Subsequent events have shown that it was not.

89. Farhana Yamin, *The Role of the EU in Climate Negotiations*, in *CLIMATE CHANGE AND EUROPEAN LEADERSHIP: A SUSTAINABLE ROLE FOR EUROPE?* 47, 62 (Joyeeta Gupta & Michael Grubb eds., 2000).

dismissed demands for DC [developing country] commitments as premature because it argued the principle of common but differentiated responsibilities required effective leadership by Annex I [developed country] Parties.”⁹⁰ On the other hand, it argued that “regulation of DC emissions in the long term was an environmental necessity.”⁹¹ In the end, of course, the developing countries were able to avoid any commitments on the latter, and developing country emissions limitations will for the time being depend largely on projects in the context of the Clean Development Mechanism and the like, often financed by Europe.⁹²

In the period between the signing of the UNFCCC in 1992 and the Kyoto Protocol in 1997, the Europeans continued their efforts. They called “for an international agreement based on binding emissions targets and timetables and premised on the understanding that the industrialized states were to act first by cutting domestic emissions.”⁹³ According to Miranda Schreurs, “Germany was a particularly strong advocate of action,”⁹⁴ hosting the first COP in 1995, from which the Berlin Mandate emerged. Even before the Conference, the EU’s Council of Environmental Ministers pushed diplomats there to adopt a protocol to the UNFCCC that would set targets and timetables for reducing GHGs after 2000.⁹⁵ Alongside environmental NGOs and the Alliance of Small Island States (AOSIS)—whose members feared the devastating effects of sea-level rise—the EU was noteworthy for strongly arguing for binding targets and timetables for lowering GHG emissions.⁹⁶ Given that the only other group of states supporting emissions cuts were from the developing world, the EU states’ position put them at the forefront of pledges to act on climate change by reducing GHGs.⁹⁷ Describing climate change negotiations of the mid-1990s, Jeremy Leggett argued that “[t]he European Union had for a long time now been the most progressive force at the climate negotiations, outside the Alliance of

90. *Id.*

91. *Id.* at 63.

92. Wiegandt characterizes the CDM as “the convergence of two related principles: equity and efficiency,” achieving the former by shifting “resources from developed to developing countries, which will reduce the economic disparities inherent in the process of achieving global emissions reductions.” Wiegandt, *supra* note 58, at 138.

93. Schreurs, *supra* note 81, at 213.

94. *Id.*

95. Haigh, *supra* note 8, at 182.

96. Betsill, *supra* note 87, at 108, 112.

97. *Id.* at 108. Indeed, environmental NGOs pushing hardest for strict targets and timetables for GHG emissions cuts aligned themselves with negotiating blocks from the EU, AOSIS, G-77 and China, showing how the EU position was viewed as the most sympathetic within the developed world toward the developing world. *See id.* at 110.

Small Island States. If there were to be any prospect of a protocol with cuts in Kyoto, the EU would have to make the first move.”⁹⁸ They did so by calling for a fifteen percent cut in emissions of three main GHGs (CO₂, methane, and nitrous oxide) by 2010.⁹⁹

By early 1996, Germany was calling for CO₂ emissions cuts by developed countries of ten percent from 1990 levels by 2005 and fifteen to twenty percent by 2010, falling between the AOSIS proposal of cutting CO₂ emissions twenty percent by 2005 and the British proposal of five to ten percent by 2010.¹⁰⁰ According to Leggett, the EU gave support to Germany’s position, advocating going beyond “no regrets” actions to ensure stabilizing CO₂ concentrations in the atmosphere at a point less than double their historical level, which in practical terms meant “deep cuts” in the long term.¹⁰¹ During March 1997 international GCC negotiations, the EU opposed U.S. efforts to subject developing countries to emissions targets: “Developed countries should lead the way . . . and indeed [have] already agreed to do so in the Berlin Mandate itself.”¹⁰² In Robin Attfield’s view, “[i]n the negotiations leading up to the Kyoto Protocol agreement the European Union played a valuable role in persuading other developed nations to join a new greenhouse gas regimen on principles acceptable to the Third World.”¹⁰³ This may be a slight exaggeration of the degree to which the agreement fits the preferences of the developing world, but it at least suggests that the EU was considerate of developing country perspectives on equity in the context of GCC.

Differences between European and other developed states, notably the United States, were especially evident during the Kyoto negotiations. Shortly before the Kyoto conference, with the United States opposing GHG emissions cuts, top European diplomats said that they were “sick

98. JEREMY LEGGETT, *THE CARBON WAR: GLOBAL WARMING AND THE END OF THE OIL ERA* 259 (2001).

99. *Id.* This was a compromise between a Dutch proposal (supported by AOSIS and environmental NGOs) for making the cuts by 2005 and opposition to that deadline from Britain and France. See Loren Cass, *The Indispensable Awkward Partner: The United Kingdom in European Climate Policy*, in *EUROPE AND GLOBAL CLIMATE CHANGE*, *supra* note 1; Norichika Kanie, *Middle Power Leadership in the Climate Change Negotiations: Foreign Policy of the Netherlands*, in *EUROPE AND GLOBAL CLIMATE CHANGE*, *supra* note 1. Cuts were envisioned in an EU-wide “bubble,” meaning some would make larger cuts to allow other members to increase emissions. This idea for an EU bubble was opposed by other developed countries, as was the EU plan to limit cuts to only three GHGs. LEGGETT, *supra* note 98.

100. *Id.* at 236.

101. *Id.* at 236–37.

102. *Id.* at 260.

103. ROBIN ATTFIELD, *THE ETHICS OF THE GLOBAL ENVIRONMENT* 199 (1999).

with disappointment that the USA was being so backward.”¹⁰⁴ Schreurs notes that, while the United States was demanding that the developing countries undertake “meaningful measures” to limit their GHGs, the EU was a strong supporter of “the idea that the main responsibility for global warming lay with the developed states and that therefore they should set an example for the rest of the world by making sharp emissions cuts at home through a mix of regulations, incentives, and voluntary measures.”¹⁰⁵ At Kyoto, the EU followed through, pushing for a fifteen percent cut in GHGs by 2010 and putting pressure on other countries which, in Lorraine Elliott’s reckoning, gave the Europeans the “moral upper hand.”¹⁰⁶ During the Kyoto COP and in subsequent GCC negotiations, the Europeans also defied the United States in pushing for the majority of emissions cuts to be made at home, whereas the United States wanted a larger role for “flexible mechanisms,” notably emissions trading between states.¹⁰⁷ As Michelle Betsill points out, whilst the United States and industry representatives were pushing for flexible instruments for GHG emissions reductions during negotiations for the Kyoto Protocol, “the EU, most developing countries, and environmental groups objected, arguing that extensive reliance on such mechanisms would allow rich countries to buy their way out of making any meaningful commitments domestically, thereby violating the ‘polluter pays’ principle.”¹⁰⁸ Throughout the GCC negotiations during the 1990s, leading up to and through the 1997 Kyoto Conference, the EU led on GCC and “officially recognized its global responsibility in this area.”¹⁰⁹

104. LEGGETT, *supra* note 98, at 280.

105. Schreurs, *supra* note 81, at 215–16.

106. LORRAINE ELLIOTT, *THE GLOBAL POLITICS OF THE ENVIRONMENT* 88 (2004).

107. For a discussion of EU positions regarding flexible mechanisms, see Atle C. Christiansen, *The Role of Flexibility Mechanisms in EU Climate Strategy: Lessons Learned and Future Challenges?*, 4 *INT’L ENVTL. AGREEMENTS* 27 (2003). For a discussion of emissions trading in particular, see generally Atle C. Christiansen & Jorgen Wettstad, *The EU as a Frontrunner on Greenhouse Gas Emissions Trading: How Did It Happen and Will the EU Succeed?* 3 *CLIMATE POL’Y* 3 (2003); Loren Cass, *Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading*, 5 *GLOBAL ENVTL. POL.* 38 (2004), available at http://muse.jhu.edu/journals/global_environmental_politics/v005/5.2cass.pdf. The position of the EU remains that the majority of emissions reductions should come from domestic cuts, rather than through trading and carbon sinks, although trading *within* the EU is now a major component of its GHG reduction policies. ROSS GELBSPAN, *BOILING POINT: HOW POLITICIANS, BIG OIL AND COAL, JOURNALISTS, AND ACTIVISTS ARE FUELING THE CLIMATE CRISIS—AND WHAT WE CAN DO TO AVERT DISASTER* 94, 97 (2004).

108. Betsill, *supra* note 87, at 114–15.

109. *CASES IN CLIMATE CHANGE POLICY: POLITICAL REALITY IN THE EUROPEAN UNION 2* (Ute Collier & Ragnar E Lofstedt eds., 1997) [hereinafter *CASES IN CLIMATE CHANGE POLICY*].

However, progress toward *achieving* this goal was only modest at best during the 1990s.

B. After Kyoto

The Europeans seem to have taken GHG cuts even more seriously following the signing of the Kyoto Protocol. According to a May 1999 European Commission report on EU preparations for implementation,

[d]eveloping countries understandably oppose constraints on their economic development. A dialogue on the role of developing countries in the fight against climate change will therefore have to take into account the principles of equity and of common but differentiated responsibilities Furthermore, the EU is fully supporting the view that industrialised countries must show the way in addressing the problem In order to convince the 'non-Annex I' developing countries to participate in an open and constructive debate, the EU and other industrialized countries will need to show demonstrable progress [by the] 2005 [target date].¹¹⁰

The European Commission proposed, and European negotiators followed, a firm EU position on a number of issues at the sixth COP at The Hague during November 2000. They demonstrated substantial—even remarkable, relative to the United States and some other developed countries—dedication to equity and fairness in the developed world's response to climate change. The Commission proposed and the EU demanded at the COP that the use of “flexible mechanisms” by developed Parties be severely limited, thus requiring them to largely undertake their pledged emissions cuts.¹¹¹ The Commission recommended that European diplomats at the COP

ensure that industrialized countries take real action at home to reduce emissions by securing a primary role for domestic policies and measures . . . , limit the extent to which ‘sinks’ that absorb carbon, such as forests, can be used by industrialized countries to offset emissions . . . , establish a comprehensive and tough regime to oversee Parties' compliance with the Protocol, including effective penalties with a clear economic impact for non-compliance by

110. Eur. Comm'n, *Preparing for the Implementation of the Kyoto Protocol*, at 19, COM (1999) 230 (May 19, 1999), available at http://europa.eu.int/comm/environment/docum/pdf/99230_en.pdf.

111. See Eur. Comm'n, *Briefing Paper: The EU's Positions for COP6* (Nov. 3, 2000), available at <http://www.europa.eu.int/comm/environment/climat/pdf/eupositions.pdf> [hereinafter *EU's Positions for COP6*]; Ott, *supra* note 25, at 287.

industrialized countries with their emission targets [and] help developing countries meet their Convention [reporting requirement] commitments and adapt to climate change through capacity building, transfer of clean technologies and financial assistance.¹¹²

This sounds amazingly like a recipe for climate equity. The Commission acknowledged that large developing countries needed to be brought on board the climate change regime if it is to be effective in the long term, but it also argued that the UNFCCC accepts that “the extent to which developing countries will implement these commitments in practice depends on industrialized countries making good on commitments . . . to provide financial resources and transfer of technology.”¹¹³ According to the Commission, the EU wanted

to see COP6 develop a broad process to cater to the adaptation needs of developing countries, particularly the least developed and most threatened ones. The EU is sensitive to developing countries’ concerns and wants to work constructively to get a better understanding of their needs and how to address them.¹¹⁴

This falls short of meeting IEE obligations, but the concepts underlying EU policy are clearly (to this observer) guided by, or at least fit, those obligations to a significant degree.

Some observers of the international negotiations on climate change had assumed that Europe would join the United States in rejecting the Kyoto Protocol following President George W. Bush’s rejection in March 2001. However, the EU was able to persuade other Parties to the UNFCCC that the Kyoto Protocol should be kept alive.¹¹⁵ The EU immediately sent a letter to President Bush declaring that, for the EU, an agreement “leading to real reductions in greenhouse gas emissions is of the utmost importance The global and long-term importance of climate change and the need for a joint effort by all *industrialized* countries in this field makes it an integral part of relations between the USA and the EU.”¹¹⁶ As Schreurs describes it:

[t]he EU . . . surprised the Bush administration. Rather than joining the U.S. in abandoning the agreement, the EU’s resolve to move forward with ratification and win the support of other nations to do the same intensified Prior to the Bush announcement, cracks were evident in the EU regarding climate change. The Bush decision,

112. *EU’s Positions for COP6*, *supra* note 111, at 2.

113. *Id.* at 11.

114. *Id.* at 12.

115. EU FOCUS ON CLIMATE CHANGE, *supra* note 31, at 6.

116. GELBSPAN, *supra* note 107, at 94–95 (emphasis added).

however, so angered the Europeans that they were able to overcome internal disagreements and present a strong united block supporting the Kyoto Protocol. They called upon the Bush administration to do the same. Seldom in history has the EU criticized the U.S. as forcefully as it has over this issue.¹¹⁷

Admittedly, given the utter failure of the United States to show any resolve in addressing GCC, it is relatively easy to declare the EU the leader on this issue. Having said that, even without the U.S. comparison, the EU was at least at the forefront in the developed world—and even very far ahead of many developing countries' wishes (e.g., the oil producers).

VI. EUROPE'S RESPONSE TO GLOBAL CLIMATE CHANGE: CUTTING GREENHOUSE GASES

While the EU and its member states' implementation of GHG cuts has been less spectacular than the EU's plans, they have nevertheless been leaders in "long-term target setting and driving the international climate policy process."¹¹⁸ The EU has faced difficulties in acting on GCC, to be sure. A case in point is the failed effort to actualize a union-wide energy tax and other measures during the 1990s.¹¹⁹ Nevertheless, the EU has been much more active than other countries in moving to cut GHG emissions, and it is doing more to use the Kyoto mechanisms (e.g., joint implementation, the Clean Development Mechanism, emissions credits) and is providing more capacity-building funds.¹²⁰ Indeed, EU efforts to limit European GHG emissions began in the 1980s, and by 1990 the EU had set a goal of stabilizing CO₂ emissions at 1990 levels by 2000.¹²¹ In mid-1990, the European Council called for the implementation of "strategies and targets" for cutting GHGs, and a joint meeting of environmental and energy ministers later in the year agreed that CO₂ should be "stabilized at 1990 levels by the year 2000."¹²² Some

117. Schreurs, *supra* note 81, at 209.

118. Axel Michaelowa, *Can the EU Provide Credible Leadership for Climate Policy beyond 2012?*, in *KYOTO PROTOCOL: BEYOND 2012* 19, 23 (Pelangi ed., 2004).

119. See *CASES IN CLIMATE CHANGE POLICY*, *supra* note 109, at 50–58; MCCORMICK, *supra* note 85 at 282–84; ANTHONY R. ZITO, *CREATING ENVIRONMENTAL POLICY IN THE EUROPEAN UNION* 167–95 (2000); Sebastian Oberthur & Dennis Tanzler, *Climate Policy in the European Union: International Regimes and Policy Diffusion*, in *EUROPE AND GLOBAL CLIMATE CHANGE*, *supra* note 1.

120. Michaelowa, *supra* note 118, at 23.

121. Schreurs, *supra* note 81, at 210.

122. MCCORMICK, *supra* note 85, at 281.

EU member states went further; for example, in 1990 Germany stated its plan to cut its CO₂ emissions by “25 percent of 1987 levels” by 2005.¹²³ This was a reflection of the degree to which the precautionary principle (that preventative action to protect the environment should be taken even in the face of scientific uncertainty) and the belief that polluters should pay for pollution prevention (the “polluter pays” principle) had already permeated European thinking and its EFP.¹²⁴

In 1996, the EU Council of Ministers agreed that “global average temperatures should not exceed 2 degrees C[elsius] above [the] pre-industrial level.”¹²⁵ This is the measure against which the Commission sets its emissions objectives to meet the mandate of the UNFCCC. This mandate to keep to the two-degree maximum temperature rise was confirmed in March 2005.¹²⁶ Toward this objective, the European Commission has proposed and implemented for over a decade a number of programs designed to actually reduce GHG emissions across the EU. These efforts have met with some success.¹²⁷ They have included the European Climate Change Program, the Renewable Energy Directive, the Environmental Technologies Action Plan, and energy-efficiency guidelines, among a number of others.¹²⁸ In 2004, the EU also adopted

123. Schreurs, *supra* note 81, at 210, 228 (citing WILLIAM C. CLARK ET AL., RISKS—VOL. 1: A COMPARATIVE HISTORY OF SOCIAL RESPONSES TO CLIMATE CHANGE, OZONE DEPLETION, AND ACID RAIN (2000)); Michael T. Hatch, *The Politics of Climate Change in Germany: Domestic Sources of Environmental Foreign Policy*, in EUROPE AND GLOBAL CLIMATE CHANGE, *supra* note 1.

124. Schreurs, *supra* note 81, at 210–11.

125. *Communication From The Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Winning the Battle Against Global Climate Change*, at 3, COM (2005) 25 final (2005), available at http://europa.eu.int/comm/press_room/presspacks/climate/com2005_0035en01.pdf [hereinafter *Winning the Battle*].

126. Eur. Council, *European Council Brussels 22 and 23 March 2005: Presidency Conclusions*, at 15–16 (Feb. 2, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=DOC/05/1&format=PDF&aged=1&language=EN&guiLanguage=en>.

127. See CASES IN CLIMATE CHANGE POLICY, *supra* note 109, at 50–58.

128. For a list and summary of the various strategies and legislation see Eur. Cmty., *Third Communication from the European Community under the UN Framework Convention on Climate Change*, at 68–70, SEC (2001) 2053 (Commission Staff Working Paper, Dec. 20, 2001), available at <http://www.ccsr.u-tokyo.ac.jp/UNFCCCc4/pdfs/UNFCCCc.int/resource/docs/natc/eunc3.pdf>; Swedish NGO Secretariat on Acid Rain, *EU on Climate Change: Targets, Strategies and Legislation*, 1 ACID NEWS 11, 14 (2004), available at <http://www.acidrain.org/pages/publications/acidnews/2004/An1-04.pdf>. Some of these are significant. For example, one EU directive requires 22.1 percent of EU electricity to

an Action Plan on Climate Change and Development.¹²⁹ Arguably, the most serious development has been the EU-wide internal emissions-trading system that took effect at the start of 2005.¹³⁰ The scheme covers thousands of large factories, power production facilities and other major polluters. Member states set emissions limits for these facilities, and those that lower their emissions are permitted to sell the surplus. Although it is too early to assess the effectiveness of this scheme, the Commission has already demonstrated willingness and some capacity to fend off efforts by some member states to go easy on some of the affected industries.¹³¹

The EU as a whole was on a path of GHG reductions in the 1990s, but, without additional policies, its emissions were projected in 2002 to drop only 4.7 percent by 2010, 3.3 percent short of the EU's collective Kyoto target.¹³² However, a 2000 report on the European Climate Change Program projected that the EU "could exceed the target with

come from renewable sources by 2010. Michael J. Strauss, *Wind Spins Its Way into the Energy Equation*, INT'L HERALD TRIB., July 6, 2005, at 19, available at <http://iht.com/articles/2005/07/05/news/rsenwind.php>. For an analysis of the European Climate Change Program, see Eur. Comm'n, *Communication on the Implementation of the First Phase of the ECCP* (Oct. 23, 2001), available at <http://europa.eu.int/comm/environment/climat/eccp.htm#key>; Preisitz, *supra* note 11, at 53-57.

129. See generally Eur. Comm'n, *Climate Change in the Context of Development Cooperation*, Mar. 11, 2003, available at http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0085en01.pdf.

130. See EU FOCUS ON CLIMATE CHANGE, *supra* note 31, at 19; GERNOT KLEPPER & SONJA PETERON, EMISSIONS TRADING, CDM, JI, AND MORE: THE CLIMATE STRATEGY OF EUROPE 5 (2005), available at <http://www.feem.it/NR/rdonlyres/6F4C2CAF-9180-4F56-A153-A421F3E96258/1555/5505.pdf>; Richard Rosenzweig et al., A Paper on European Greenhouse Gas Performance, the European Union Emissions Trading Scheme, and Technology Policy 2-4 (paper for the Trans-Atlantic Conference on Energy Policy, Mar. 28, 2005), available at <http://www.ggcap.org/uploads/news/European%20Climate%20Policy%20Paper.pdf>; EUR. COMM'N, EU EMISSIONS TRADING: AN OPEN SCHEME PROMOTING GLOBAL INNOVATION TO COMBAT CLIMATE CHANGE (2004), available at <http://europa.eu.int/comm/environment/climat/pdf/emissionstradingen.pdf>; Guri Bang et al., *Meeting Kyoto Commitments: European Union Influence on Norway and Germany*, in EUROPE AND GLOBAL CLIMATE CHANGE, *supra* note 1.

131. *EU Emissions Trading: An Overview of the First Three Months*, JOINT IMPLEMENTATION Q., Apr. 2005, at 12, available at <http://jiq.wiwo.nl/jiq1-05.pdf>.

132. EUR. ENV'T AGENCY (EEA), GREENHOUSE GAS EMISSION TRENDS AND PROJECTIONS IN EUROPE: ARE THE EU AND THE CANDIDATE COUNTRIES ON TRACK TO ACHIEVE THE KYOTO PROTOCOL TARGETS? 5, 74 (2002) [hereinafter EEA 2002]; see Matthias Duwe, Climate Action Network Eur., *Climate Policy in the European Union: A Brief Overview of EU-Wide Policies and Measures* 10 (Nov. 31, 2004), available at <http://www.aef.org.uk/downloads/EU%20and%20Climate%20-%20Duwe.pdf>.

additional policies and measures."¹³³ European Union-wide actions are only now starting to have a real impact.¹³⁴ However, planned measures are likely to be enough for Europe to exceed its Kyoto obligations,¹³⁵ although most of this progress would be the result of actions by Britain, Germany, and Sweden.¹³⁶

Some members states have put in place domestic policies that are bringing their GHG emissions down, although some of their conditions are unique, as with the United Kingdom's (UK's) switch to natural gas, whereas others are acting later in accordance with EU-wide measures.¹³⁷ By 2000, half of the EU was moving toward exceeding their share of EU-wide (bubble) GHG emissions, notably Austria, Belgium, Denmark, Greece, Ireland, Italy, the Netherlands, Portugal, and Spain.¹³⁸ Spain has been one of the greatest laggards in the EU, with its emissions in 2000 almost thirty-four percent higher than a decade earlier. Only a few EU member states are on track to cut their GHG emissions in line with the internal burden-sharing agreement to reach Europe's eight percent Kyoto target, although several (Denmark, Germany, France, Luxemburg, Sweden, the UK, and the EU-15¹³⁹ as a group) have cut emissions relative to 1990.¹⁴⁰ Some countries have been especially ambitious.

133. EUROPEAN CLIMATE CHANGE PROGRAM (ECCP), SECOND ECCP PROGRESS REPORT: CAN WE MEET OUR KYOTO TARGETS? iv (Apr. 2003), *available at* europa.eu.int/comm/environment/climat/pdf/second_eccp_report.pdf [hereinafter ECCP 2003].

134. Duwe, *supra* note 132, at 6.

135. *Id.* at 29.

136. EEA 2002, *supra* note 132, at 74. Contrary to an oft-heard view, CO₂ emissions reductions in Britain and Germany are *not* necessarily mostly the result of special circumstances (i.e., the former's switch from coal to natural gas when energy markets were liberalized, and the latter's restructuring of East Germany following reunification). Eichhammer et al., *Reasons and Perspectives for Emissions Reductions in Germany and the UK* (paper presented at the 25th Annual International Association for Energy Economics Int'l Conference, University of Aberdeen, June 26–29, 2002), *available at* <http://www.isi.fhg.de/publ/downloads/isi02a08/emission-reduction.pdf>. The European Environment Agency determined that EU-wide GHG emissions dropped four percent between 1990 and 1999 ranging from remarkable reductions during this period of 43.3 percent in Luxembourg and 18.7 percent in Germany to increases of 23.2 percent in Spain and 22.4 percent in Austria. EU FOCUS ON CLIMATE CHANGE, *supra* note 31, at 11, 12. By way of comparison, during the roughly the same period, 1990–2000, U.S. emissions increased by 12 percent. Schreurs, *supra* note 81, at 226.

137. Duwe, *supra* note 132, at 6.

138. ECCP 2003, *supra* note 133, at 10.

139. EU-15 refers to the 15 members states of the European Union in the period prior to enlargement in 2004. See KLEPPER & PETERON, *supra* note 130, at 6.

140. *Id.* at 5. These comments apply to the EU-15; a number of new member states have seen emissions reductions simply because their economies declined relative to the

Germany was the first developed country to take “far-reaching steps towards a stringent climate policy,” and the Nordic states have followed its lead.¹⁴¹ By 2000, Germany was on track to achieve its twenty-one percent commitment within the EU burden-sharing agreement, already lowering its emissions by more than nineteen percent.¹⁴² While some of Germany’s emissions cuts resulted from economic declines in eastern Germany (relative to West Germany), about fifteen percent of the cuts in the first half of the 1990s came from overhauls of infrastructure in what was East Germany. The German government has implemented a relatively aggressive set of climate change-related policies, including energy taxes, cogeneration of heat and power, and measures to promote renewable energy.¹⁴³

The latest assessment on EU GHG emissions from the European Environment Agency, released in late June 2005, shows that EU-wide emissions increased 1.5 percent in 2003 after falling in 2002.¹⁴⁴ The EU-15 saw an overall increase of 1.3 percent relative to 2002.¹⁴⁵ This increase was attributed to increased coal use for power production and a colder than normal winter. Nevertheless, overall emissions of the EU-15 countries were down 1.7 percent relative to 1990 (down 2.9 percent if averaged over the preceding five years). While many of the new member states have much lower emissions than in 1990, as expected, several major EU-15 states were also down (Germany 18.5 percent, UK 13.3 percent, and France 1.9 percent).¹⁴⁶ Consequently, by 2005 the European Commission was reporting that the EU had reduced its emissions by three percent below 1990 levels.¹⁴⁷ Further cuts were expected from EU and state national policies, which included emissions trading and carbon sequestration projects,¹⁴⁸ and recent measures of the European Climate Change Program that were not in effect until 2003.¹⁴⁹ As of June 2005, the EU expected the EU-15 states to meet their overall Kyoto target of

1990 base year. *See id.*

141. Ott, *supra* note 25, at 278–79.

142. ECCP 2003, *supra* note 133, at 10.

143. Ott, *supra* note 25, at 292–93.

144. EEA, ANNUAL EUROPEAN COMMUNITY GREENHOUSE GAS INVENTORY 1990–2003 AND INVENTORY REPORT 2005: SUBMISSION TO THE UNFCCC SECRETARIAT 8 (2005) (Technical Report No. 4/2005) [hereinafter EEA 2005].

145. *Id.* at 8.

146. *Id.* at 8–9.

147. *Winning the Battle*, *supra* note 125, at 10.

148. EEA 2005, *supra* note 144.

149. EURO. COMM’N, CLIMATE CHANGE: MORE COAL USE PUSHES UP EU GREENHOUSE GAS EMISSIONS IN 2003 (2005).

eight percent¹⁵⁰ with the new member states likely to cut much more.

Most EU member states have joined Germany in adopting “climate protection programs with more or less far-reaching policies.”¹⁵¹ The plans by several member states for future (post-2012) emissions cuts are ambitious: the UK announced a goal of sixty percent by 2050, calling on other developed countries to do likewise; France referred to a target of seventy-five percent by 2050, also calling on other developed countries to undertake such a commitment; Germany announced a target of forty percent by 2020 (contingent on the whole EU cutting emissions by thirty percent in the same period); and the Netherlands proposed thirty percent by 2020.¹⁵² The European Commission acknowledged “the need for further emission reductions beyond 2012, by suggesting an EU target to reduce emissions by an average of 1 percent per year up to 2020 and a global target of twenty to forty percent reduction by 2020, both from 1990 levels.”¹⁵³ In a paper laying out post-2012 strategies on GCC, the European Commission reminded members that achieving the goal of limiting average global temperature increases to two degrees Celsius above pre-industrial levels would require significant cuts in emissions of GHGs.¹⁵⁴ Importantly, the Commission anticipated that the EU’s share of global GHG emissions would drop to below ten percent, from fifteen percent now, whereas emissions from the developing world would rise above fifty percent.¹⁵⁵ In March 2005, the EU Ministers of the Environment and the Heads of State and Government affirmed their desire to push for deeper cuts in GHGs by developed countries.¹⁵⁶ The European Council of Environment Ministers proposed that developed countries reduce GHG emissions fifteen to thirty percent below 1990 levels by 2020 and sixty to eighty percent by 2050.¹⁵⁷ The EU Heads of Government seconded the former sentiments¹⁵⁸ with an effort to start codifying early proposals for twenty to forty percent cuts in GHGs by 2020 (compared to 1990) and total cuts of seventy percent in the long term.¹⁵⁹

150. *Id.*

151. Ott, *supra* note 25, at 293.

152. SPECIAL COMM. ON A FUTURE FRAMEWORK FOR ADDRESSING CLIMATE CHANGE, SUSTAINABLE FUTURE FRAMEWORK ON CLIMATE CHANGE 13 (2004) (interim report).

153. EEA 2002, *supra* note 132, at 7.

154. Catrinus J. Jepma, *EU Council Proposes Ambitious Climate Policy*, 11 JOINT IMPLEMENTATION Q. 2, 2 (Apr. 2005), available at <http://jiq.wiwo.nl/jiq1-05.pdf>.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. EU FOCUS ON CLIMATE CHANGE, *supra* note 31.

VII. EUROPE'S RESPONSE TO GLOBAL CLIMATE CHANGE: A PRELIMINARY ASSESSMENT

Given that we can reasonably expect international negotiations and policy evolution on climate change to continue for a century or more, any assessment of Europe's response to the problem must be preliminary and based on the early stages of the process.¹⁶⁰ That Europe has started to recognize its responsibilities is demonstrated by repeated official declarations, its diplomacy over more than a decade, and actions on the part of several member states to reduce and, in the case of many laggards, at least limit their business-as-usual GHG emissions. But recognizing one's responsibility for harm to others is only the first step. The stated *policies* of Europe—particularly a few member states and the Commission in particular—have often fit, to varying degrees, with some conceptions of fairness and equity. The actual *behavior* of European governments and the EU, while moving in the right direction, is more difficult to assess, in part because it has only just started.

This section considers the following question: have Europe's policies and actions with regard to GCC been fair and equitable? Put another way, has Europe started to take on its fair share of the GCC burden? We can start to find answers by looking to the conceptions of international fairness and equity introduced earlier, namely those premised on rights, causality and responsibility, utilitarianism, Kantian ethics, Rawlsian justice, and impartiality. Although European actions were more fair and equitable than those of other major countries, most notably the United States under the George W. Bush administration, more must be done before one could comfortably say that Europe's sharing of climate change burdens has been adequately and appropriately fair and equitable.

One can begin by asking whether Europe's actions are enough to achieve the *practical* objectives of the UNFCCC, which have ethical importance given the scale of suffering that GCC will bring. On the matter of emissions reductions needed to prevent "dangerous anthropogenic interference" with the Earth's climate—the central feature of the UNFCCC—Europe has started to act, but it has hardly adopted a sufficiently robust set of policies. The cuts so far are simply nowhere

160. If suggesting that the GCC negotiations may continue for more than a century seems farfetched, bear in mind that much easier international negotiations on trade are far from finished after more than half a century. The question is whether the plight of some small island and low-lying states, among others most adversely affected by climate change, will have a speedier influence on negotiations than has the economic plight of poor countries on the trade regime.

near what is needed. While the developed states as a group agreed to an overall 5.2 percent cut in GHG emissions under the Kyoto Protocol, the EU accepted a bigger cut of 8 percent, to be met by burden sharing among member states. Even if the EU cuts are fully realized, which now seems likely but not certain, they are on the order of only one-tenth of the effort that is required of Europe. Looked at another way, Europe's actions are more than any other state or group of states having agreed to undertake commitments.¹⁶¹ Europe has focused much more on actually cutting its emissions—subscribing to the polluter pays principle—than other regions and states. That is, it is not only seeking cost-effective ways of taking credit for cuts it helps bring about outside Europe, but it is also implementing emissions cuts within the EU (although the bubble allows several of the members states to increase their GHG emissions). Without the involvement of the EU and its member states, the UNFCCC and Kyoto Protocol, limited as they are, would be even weaker and the UNFCCC might never have been agreed upon.¹⁶² But, despite Europe's actions and pronouncements on cutting its GHG emissions, the degree to which it lives up to its own rhetoric, let alone the requirements of global environmental equity, is hindered by continuing subsidies to the coal industry, funding for road transport, and export credits that add to climate change.¹⁶³ Europe's GHG limitations are important first steps, but given the scale of the problem, such limitations would have to be *much* greater to actually protect the Earth's climate system.

What can we say of Europe's actions from normative-ethical perspectives? Europe arguably acts much more ethically than do its developed-country counterparts. From the perspective of rights, Hermann Ott and Tilman Santarius characterize the equity considerations this way: "equity in its meaning of fundamental human rights will take center stage—the right to life, health and the protection of property."¹⁶⁴ It seems that threats to these basic rights are recognized by and are concerns of the EU, which has increasingly invoked the welfare of those vulnerable to GCC as an object of European concern and as justification for its GHG cuts and its development assistance to aid adaptation in the developing world. Europe has also said and done much more to demonstrate that it accepts substantial *responsibility for the causes* of climate change. The EU has acknowledged repeatedly that, along with

161. UNFCCC, *supra* note 4, annex B.

162. Haigh, *supra* note 8, at 182.

163. Duwe, *supra* note 132, at 26.

164. See Hermann E. Ott & Tilman Santarius, *Developments in International and European Climate Policy in 2003*, <http://www.wupperinst.org/download/HO-TS-developments.pdf>.

other major developed economies, its historic emissions are the cause of much of the ongoing changes to climate. For example, the EU's environment commissioner stated emphatically that

action has to be based on the principle of *common but differentiated responsibility*, as enshrined in the Climate Convention. We can not expect the developing countries to do something that many industrialized countries in the world, with all their research and technological capabilities, have not been able to do. The EU does not think this is realistic or fair, taking into account historical responsibility, current capability and actual per capita emissions.¹⁶⁵

Instead, the stated EU policy, and that of member governments, is to reduce EU-wide GHG emissions and to promote sustainable development by assisting developing countries through aid and technical know-how.¹⁶⁶ Toward that end, at the World Summit on Sustainable Development and the 2002 New Delhi COP, EU diplomats tried to push for greater commitments on the part of developed countries to undertake GHG reductions beyond those in the Kyoto Protocol. The EU's actions, limited as they are compared to the problem and associated ethical obligations, carry more weight (morally, arguably) because the European Commission has declared that it believes that carbon sinks, which would enable developed countries to offset emissions cuts and thereby avoid taking action, "should not become a loophole enabling rich countries to avoid cutting domestic pollution."¹⁶⁷

From the perspective of utilitarianism, Europe arguably has recognized that suffering in the developing world from climate change will outweigh the "happiness" derived from pollution-intensive lifestyles in Europe. Europe has started to cut its own emissions, recognizing that the world's poor must enjoy additional development, and it is starting to aid developing countries in reducing the suffering from GCC that will be experienced there. According to the Commission, climate change should be addressed "in a way that is coherent with the overarching objective of poverty reduction" in the developing world.¹⁶⁸ From a more Kantian-like

165. See Eur. Comm'n, *EU Reaction to the Speech of U.S. President Bush on Climate Change*, June 12, 2001, available at http://europa.eu.int/comm/external_relations/us/climat/ip_01_821.htm [hereinafter *EU Reaction to the Speech of U.S. President*].

166. Press Release, European Commission, Commission Reacts to US Statements on Kyoto Protocol (Mar. 29, 2001), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/01/475&format=PDF&aged=1&language=EN&guiLanguage=en>.

167. EU FOCUS ON CLIMATE CHANGE, *supra* note 31, at 18.

168. *Commission to Help Developing Countries Meet the Challenge of Climate Change*, EUROPA WORLD, Mar. 21, 2003, available at

perspective, Europe shares the U.S. view that the developing world is a means to an end: protection of the Earth's climate for all. But, unlike the United States, it sees the developing world as more than an instrument for promoting its own ends. In 2003, the European Commission adopted a strategy for helping developing countries cope with climate change, including a myriad of programs to assist with adaptation to, and mitigation of, the effects of climate change.¹⁶⁹ The strategy is quite explicit in stating more than once that "climate change concerns need to be fully mainstreamed into EU development cooperation and development staff made aware of the disproportionate impact climate change is likely to have on the poorest countries and on the poorest people in all developing countries."¹⁷⁰ What the developing world is experiencing, and will experience, seems to matter to Europe.

Considering again Rawlsian conceptions of justice, the EU increasingly seems to accept that the inequitable distribution of rights to use the global atmosphere are unfairly hindering the world's least well off, and this seems to be one motivation for the EU having started to act on GCC. The European Commission has argued, in effect, that those who are suffering from Europe's global pollution need to be aided to cope with the consequences: "developing countries are the most vulnerable given their high dependence on climate-sensitive economic sectors [agriculture, fisheries, forestry, and tourism] and their low capacity to adapt. Strengthening their adaptive capacity would contribute to their development."¹⁷¹ Margot Wallström, when she was the EU's environment commissioner, said, "developing countries are the most vulnerable to climate change and therefore deserve our full support in addressing this threat."¹⁷² In 2003, the EU's policy was "giving high priority to the issue of adaptation to the adverse effects of climate change, in addition to mitigation, in recognition of the fact that developing countries, in particular least developed countries and Small Island Developing States, are more vulnerable to climate change and adaptation is critical for them."¹⁷³ Upon adoption of its strategy to aid

<http://www.europaworld.org/week121/commissiontohelp21303.htm> [hereinafter *Commission to Help Developing Countries*].

169. *EU Reaction to the Speech of U.S. President*, *supra* note 165.

170. *Climate Change in the Context of Development Cooperation*, *supra* note 129, at 13. For a list of relevant development projects, see *id.*

171. Press Release, European Commission, Winning the Battle Against Global Climate Change 3 (Feb. 9, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/42&format=PDF&aged=1&language=EN&guiLanguage=en>.

172. *Commission to Help Developing Countries*, *supra* note 168.

173. *EU Presidency Statement: Environment and Sustainable Development*,

developing countries affected by GCC, Poul Nielson, former EU Commissioner for Development and Humanitarian Aid, said that the adverse effects of climate change

will disproportionately affect poorer countries with economies predominantly based on natural resources. What's more, the ability of developing countries to adapt to climate change is undermined by a lack of financial resources, adequate technology and stable and effective institutions. The Commission is committed to assisting developing partners in reconciling their legitimate needs for economic development with the protection of the environment and sustainable use of resources. We believe the best way to do this is by addressing climate change concerns within EU development cooperation activities in complete coherence with the overarching objective of poverty reduction.¹⁷⁴

Europe also seems to accept that fundamental notions of fairness preclude it from justifiably continuing business as usual. Impartiality suggests that Europe must change its ways. An EU minister is reported to have said that "[t]he EU believes that it is not realistic to ask the developing countries to reduce or limit their emissions if we cannot show that we, as the biggest emitters, have done something ourselves."¹⁷⁵ This seems obvious, but it is something that is rarely stated by the rich countries. This reveals an important practical matter: diplomats, politicians, and policymakers will seldom sit down and run through the sometimes disparate and complicated philosophical reasons for acting on climate change. They are more likely to take the IEE conceptions in their totality, with many officials leaning on the most clearly applicable ones, causality and responsibility, before the more nuanced arguments, human rights and impartiality, are invoked to bolster and strengthen the more obvious ethical and practical justifications for action.

Overall, in the context of climate change, the EU has been more forthcoming than other countries with regard to recognizing its responsibilities and rhetorically supporting the equity demands of developing countries. Ute Preisitz describes and promotes three elements of European leadership on climate change: early ratification of the Kyoto

EUROPA, Oct. 16, 2003, available at http://europa-eu-un.org/articles/cs/article_2922_cs.htm.

174. *Commission to Help Developing Countries*, supra note 168; see also HUBERT H. HUMPHREY INSTITUTE OF PUBLIC AFFAIRS, A CONSENSUS WORKSHOP REPORT ON THE GLOBAL CLIMATE AND ECONOMIC DEVELOPMENT 5 (2004) (a private report subsequently reaching the same conclusion).

175. Jayanta Bhattacharya, *Kyoto Protocol: Rich Nations Must Make Sacrifices*, STATESMAN (India), June 10, 2001, available at 2001 WLNR 6357579.

Protocol, domestic implementation of the Kyoto commitments, and addressing the “needs and interests” of developing countries.¹⁷⁶ While she does not put it in the terms of international environmental equity, that is what she describes: recognizing the harm, acting to bring the harm to an end or at least starting to reduce it, and aiding those who have suffered from the harm. However, it would be an overstatement to say that Europe has been *very* forthcoming in acting upon these sentiments. Actions by the EU countries over the last decade to reduce environmental impacts were greater than those of other major economies, and the EU certainly has been more supportive of developing country demands in international environmental negotiations. But many EU member countries, much like the United States, continue to increase their emissions of global pollutants. However, the Europeans are now committed to taking firmer, first steps toward sharing the burdens of climate change, much more so than the United States. What is more, some EU states, such as Germany, have started taking very serious and concrete measures to fulfill and exceed their GHG reduction obligations under the Kyoto Protocol.

Of course, the assertion here that Europe has started to recognize these normative considerations and to act upon them is based on an interpretation of statements and policies, and is therefore somewhat subjective. However, it seems safe to say that Europe is more willing to do the right thing than other developed countries. Without overstating European actions, Europe has gradually developed a more equitable attitude toward the developing world than have most developed countries, notably the United States, including equitable policy with regard to the environment.¹⁷⁷ The EU “is seen as more equitable just for showing sympathy for developing countries.”¹⁷⁸ Like the United States, Europe wants the large developing countries to join in limiting GHG emissions simply because doing so is critical to addressing the GCC problem in the long term. But the EU and some of its member states are setting examples and following the principle of common but differentiated responsibility, whereas the United States still expects much

176. Preisitz, *supra* note 11, at 62.

177. See Paul G. Harris, *International Development Assistance and Burden Sharing*, in GREEN GIANTS, *supra* note 81, at 253, 253–55. The Lome Convention, which aimed “to improve the conditions of some of the world’s poorest and most troubled countries” also comes to mind. Marjorie Lister, *Europe’s New Development Policy*, in EUROPEAN UNION DEVELOPMENT POLICY 17, 33 (Marjorie Lister ed., 1998).

178. Elim Papadakis, *Challenges for Global Environmental Diplomacy in Australia and the European Union* 14 (Nat’l Eur. Ctr. Paper No. 21, 2002) (paper presented at Conference on the European Union in International Affairs held July 3–4, 2002), available at <http://www.anu.edu.au/NEC/papadakis.pdf>.

poorer countries, at least the largest ones, to act first. Clearly the European perspective and policies are much fairer by almost any ethical measure. That other wealthy countries, notably the United States and Australia, have sought to constrain emissions of developing countries *before* restraining their own has “reinforced the perception that the EU occupies the higher moral ground and shows more understanding for developing nations.”¹⁷⁹

If one somehow concludes from what has been said here that Europe has adequately responded to the burdens of GCC, one should be disabused of this notion. Europe has started to take on burdens in this area, and it has recognized its responsibility to do so, consistent with practical and normative-ethical arguments. It has certainly been a leader in this respect compared to the United States and most other developed countries. But it has *not* done enough, and it has very far to go before its own actions make a big enough contribution to robustly reduce GHG emissions, address the suffering from climate change in the developing world, and help the developing countries advance in ways that will be less harmful to the planet in the future. The upshot is that some of the countries of Europe and the EU itself have done more to take on the burdens of climate change than the United States, Australia, and other developed country parties to the UNFCCC, but *far* less than what is required of them from both practical and ethical perspectives. Thus, we are left with a mixed bag—while Europe has failed to act sufficiently to meet the aims of the UNFCCC and has not fully lived up to a range of ethical standards that appropriately apply in this circumstance, compared to other global actors it has done the most to implement IEE principles in the context of global climate change. If it is not acting ethically, it is certainly acting less *unethically*.

VIII. INTERNATIONAL EQUITY IN EUROPEAN GCC POLICY: SOME THEORETICAL CONSIDERATIONS

Where does Europe's apparent concern for international environmental equity, at least relative to other major countries (e.g., the United States), come from? How can an idea like IEE permeate and become part of European GCC policy, and why does this seem to be happening? Looking at EFP theories summarized by Barkdull and Harris, the role of IEE in Europe's GCC policies fits with approaches focusing on ideas, particularly those theories arguing that objectives of foreign policy and even national interests are constructed from powerful ideas.

179. *Id.* at 4.

Every government enters international negotiations with its own expectations regarding what is the most desirable, and the most realistic, result of the deliberations.¹⁸⁰ The differences in each government's expectations are largely a consequence of "institutional cultures, which influence how a country will frame an issue, who will play the most significant role in shaping the debate, what the policymaking process will be like, and which instruments will be chosen to achieve the desired result."¹⁸¹ One way of conceiving this is in terms of worldviews. Anne Johnson has argued that the climate change policies of the EU, Japan, and the United States can be explained by the fact that "dominating national positions are related to worldviews, and that these differences go beyond national interests."¹⁸²

That *equity* would start to influence European foreign policy on GCC fits a pattern. David Lumsdaine, Alain Noel, and Jean-Philippe Therien have shown that countries that are generous at home—where people have a sense of responsibility toward one another and social welfare programs are broadly supported—are more likely to want to aid those abroad who are in need of help. Social democratic "welfare states," like those of Western Europe, have the most generous foreign aid programs focused on the poorest among the developing countries, while conservative welfare states, best characterized by the United States, tend to be least generous with foreign aid. For example, Noel and Therien show that the values and principles that are central features of social democratic institutions within countries had an effect on the foreign aid regime that developed during the second half of the twentieth century. Redistribution of financial resources based on need, not just based on markets, is a characteristic of many domestic societies *and* of international relations.¹⁸³ In short, those countries that are generous at home tend to be generous abroad. Looked at this way, Europe's relative willingness to take on its share of the burdens associated with GCC makes sense: it fits a pattern, which has developed over half a century, of increasing concern for those less well off at home *and* abroad. Europe's worldview includes concern for those who suffer in places far away.

This challenges major "realist" conceptions of foreign policy, which tend to discount the power of principled ideas and values in shaping state

180. Anne K. Johnson, *The Influence of Institutional Culture on the Formation of Pre-Regime Climate Change Policies in Sweden, Japan and the United States*, 7 ENVTL. VALUES 223, 242 (1998).

181. *Id.*

182. *Id.*

183. Alain Noel & Jean-Philippe Therien, *From Domestic to International Justice: The Welfare State and Foreign Aid*, 49 INT'L ORG. 523, 551 (1995).

behavior, at least externally. Conversely, it supports constructivist approaches to international relations, which argue that states have different national identities that can profoundly affect foreign policy and state behavior. According to Henning Boekle, Jorg Nadoll, and Bernhard Stahl,¹⁸⁴ different “national identities” of EU member states “generate different European and foreign policies as long as the social construction of collective identity takes place on the national rather than the European level. [A] European foreign policy takes shape inasmuch as identity is constructed on the European level and as the EU gains ‘actorness’ in international politics.”¹⁸⁵ Arguably, there is a European identity on climate change, increasingly bolstered by the European Commission, which is permeated with considerations of international environmental equity.

This “social construction” of IEE in GCC policies has been strengthened by the “public space” of international GCC negotiations in which “policy-relevant knowledge or ideas are made legitimate, motivate collective action and symbolize a common identity.”¹⁸⁶ Biermann describes what he calls a “climate governance architecture,” which requires the establishment of “universally accepted basic norms and problem frames among states.”¹⁸⁷ He points out that international relations research over the last decade has shown that

political behavior of states cannot be explained merely through plain calculations of material interests and power, as earlier theories in the framework of political realism had posited. Instead, states are guided in their behavior by international norms that prescribe and prohibit certain types of behavior and that create an international society that ‘socializes’ states.¹⁸⁸

184. Henning Boekle et al., *European Foreign Policy and National Identity: Detecting the Link 3* (paper prepared for the Fourth Pan-European International Relations Conference held in Canterbury, UK, Sept. 6–10, 2001), available at <http://www.diplomacia.hu/tan/2004/cfsp/doc/EFP-NatId.pdf>.

185. *Id.*

186. Michael Smith, *Institutionalization, Policy Adaptation and European Foreign Policy Cooperation*, 10 EUR. J. INT'L RELATIONS 95, 124 (2004).

187. *Between the United States and the South*, *supra* note 28, at 8.

188. *Id.*; see generally James G. March & Johan P. Olson, *The Institutional Dynamics of International Political Order*, 52 INT'L ORG. 943 (1998); Martha Finnemore, *Norms, Culture, and World Politics: Insights from Sociology's Institutionalism*, 50 INT'L ORG. 325 (1996); Peter A. Hall & Rosemary C.R. Taylor, *Political Science and the Three Institutionalisms*, 64 POL. STUD. 936 (1996); Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699 (1999); Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998).

While there are several norms that must guide responses to climate change, considerations of equity in general and, more specifically, the notion that the developed countries, including Europe, have special responsibility to act and aid the developing world in this issue area are now established and infused throughout European policy on GCC, even if other increasingly anachronistic norms based on old (and narrow and self-defeating) measures of national self-interest still compete.

Paterson has described equity in the GCC regime this way, suggesting that institutionalist theories also have traction in explaining how IEE enters GCC policy:

[m]ost contemporary commentators regard notions of equity or justice to be central to the successful formulation of global climate change policies. They also predominantly suggest that a position that explicitly aims to reduce existing international inequalities, through North-South transfers and a disproportionate burden sharing by the North, is most likely to satisfy the implications of justice. The empirical relevance of justice depends on which theoretical orientation . . . (realism, historical materialism, institutionalism) is considered most plausible Realists would need to demonstrate that the way that justice was used in climate change negotiations was purely rhetoric and had no substantive impact on the outcome. This would be a difficult claim to sustain in this policy field. Marxists would also be skeptical about the value of talking about justice in relation to international negotiation on global climate change. They would suggest that the reductions in international inequality cannot be achieved within the present world capitalist system. The argument in favor of equity or justice fits most easily with the liberal institutionalist perspective, which emphasizes the importance of norms. The challenge is posed by asking how questions of justice become institutionalized in international processes—that is, how the varying conceptions of justice produce stable norms over the long term. In the negotiations, justice was used to support specific arguments or positions, and sometimes was used to back up interests, as realists and Marxists would both emphasize. However, the reliance on a discourse of justice meant that not all positions could be supported. This approach also exerts a constraint on the outcomes of future negotiations on the further development of a global climate change regime.¹⁸⁹

As Ellen Wiegandt has argued,

[p]erceptions of [social] justice are an integral part of the design of

189. Matthew Patterson, *Principles of Justice in the Context of Global Climate Change*, in INTERNATIONAL RELATIONS AND GLOBAL CLIMATE CHANGE, *supra* note 58, at 119, 125–26.

climate change policy, which seeks to alter human influence on atmospheric processes without further aggravating differences in welfare among different countries and social groups. Part of the rationale is to foster compliance (the notion being that countries will only agree to do what they believe is fair); part of it comes from broader underlying notions of equity that describe overall societal relations.¹⁹⁰

The former rationale is nothing new and fits with realist views of the world; that the latter would take on so much importance in Europe is noteworthy. Even when equity considerations do not guide policy, as I believe sometimes is the case for some European governments and for the EU, they nevertheless limit policy choices to certain kinds of compromises. As Wiegandt suggests, “compromises on policy may be achieved because they lead to compatible ethical outcomes. Knowing, however, that policy alternatives are incompatible with deeply held principles of justice in different societies will, conversely, alert negotiating parties to the impossibility of reaching agreement on those actions.”¹⁹¹ The domestic attachment to equity and social justice and its effects on foreign policy as described by Lumsdaine,¹⁹² Noel, and Therien,¹⁹³ explains why “unjust” GCC policy alternatives are less palatable in Europe than in, say, the United States. As Michael Smith puts it,

if a foreign policy identity can be manifested as shared language, understandings, procedures and collective foreign policy actions, then Europe does exhibit such an identity. Here there is the possibility of a true constructivist interpretation, by which EU states reconstitute themselves in line with common values and create a new collective identity in the process.¹⁹⁴

International environmental equity is part of that new identity, at least when it comes to climate change.

Jon Burchell and Simon Lightfoot describe Ian Manners’ argument that understanding EU actions requires recognizing the normative foundation of an organization that evolved historically through the development of common policies and treaties.¹⁹⁵ Burchwell and

190. Wiegandt, *supra* note 58, at 147.

191. *Id.*

192. DAVID H. LUMSDAINE, *MORAL VISION IN INTERNATIONAL POLITICS: THE FOREIGN AID REGIME 1949–89* (1993).

193. See Noel & Therien, *supra* note 183.

194. Smith, *supra* note 186, at 124.

195. Jon Burchell & Simon Lightfoot, *Leading the Way? The European Union at the WSSD*, 14 *EUR. ENV'T* 331, 334 (2004) (citing Ian Manners, *Normative Power*

Lightfoot note that Manners argues that the “EU has been constructed on a normative basis” and that it is predisposed “to act in a normative way in world politics.”¹⁹⁶ Increasingly, European interests in the GCC policy field have been at least partly constructed from, or to include, international equity and justice. This has had a material impact on real-world policies, suggesting that ethical ideas can shape policies of member states and the EU. Europe’s relative embrace of equitable burden sharing has also (arguably) contributed to its integration into the environmental foreign policies of other major actors in this issue area, which through feedback loops can and should further bolster IEE in Europe’s GCC policies. This is difficult to prove, but the indicators, some introduced above, are strong. Regardless, equity and fairness are now well-established objectives of Europe’s GCC policies. More could and should be done to implement IEE in the context of GCC, but it now seems nigh impossible that we would return to the days when the EU and most of its member states would deny that the *differentiated* aspect of “common but differentiated responsibility” applies to them and requires them to move forward, not to dig in their heels as the United States and some other developed countries continue to do.

IX. CONCLUSION

In June 2005, the U.S. Senate passed a nonbinding resolution calling for “mandatory, market-based” policies to “slow, stop and reverse” GHG emissions by the United States (although during the Senate debate the basic GCC science was questioned).¹⁹⁷ Despite this development, there is little likelihood that the House of Representatives or even the Senate itself, let alone the president, would accept more than the ongoing U.S. policy on climate change: pronouncements on voluntary measures and more research, but no action to speak of. Toward this end, the following month President Bush reiterated his opposition to the Kyoto Protocol and any requirement that the United States cut its emissions of GHGs. Even two powerful hurricanes that battered southern U.S. states in mid-2005, the destructive power of which atmospheric scientists increasingly believe resulted from global warming, seem

Europe: A Contradiction in Terms? 40 J. COMMON MARKET STUD. 235, 252 (2002)).

196. *Id.*

197. Energy Policy Act of 2005, S. 6980-7063, 109th Cong. 1271 (2005), available at http://energy.senate.gov/public/_files/H6_EAS.pdf.

unlikely to spur significant action by the United States.¹⁹⁸ Indeed, at the late-2005 Montreal COP, U.S. diplomats were virtually alone in opposing further action on the developed world's obligations. This sharply contrasts with European policies, which by themselves seem modest at best, but when set alongside U.S. policies demonstrate a remarkable willingness to act upon and more equitably share the burdens of global climate change. The upshot is that European *policy* and *rhetoric* have moved into line with common conceptions of fair and equitable burden sharing. Europe's *actions* have begun moving in that direction, albeit in a modest way when compared to the continent's responsibility for the problems and the potential magnitude of GCC's effects. Europe has taken action at home and will very likely take substantially more in future. It has started to take on its fair share of the burdens of climate change

Given the complex institutional character of the EU, with member states competing amongst themselves and with the organization, as well as less than explicit responsibility for and competence on foreign policy issues, it is especially remarkable that considerations of equity and fairness have been able to have a significant impact. On one hand, GCC equity is an issue around which member states can generally agree; it is very difficult for member states to stand up, as the United States has done, and proclaim IEE a non-starter. And, as John Edwards argues, "external rhetoric has to be backed up with implementation The link between the internal and external aspects of the EU is therefore central to the question of [GCC] leadership."¹⁹⁹

There is a benefit for Europe in taking on its fair share of the burdens associated with GCC—its normative power will be increased. Katja Keisala suggests that

[e]ven though suffering from a lack of prestige due to the lack of military power, the EU gains normative power by being able to legitimate itself as overcoming the power policy created by the state-centered system, and by promoting norms and values that are internationally recognized as valuable—they are written in international law, and even states that do not respect them present excuses for not doing so.²⁰⁰

198. See Elisabeth Rosenthal, *Bush Takes Heat on Global Warming*, INT'L HERALD TRIB., Sept. 2, 2005, at 4, available at <http://www.iht.com/articles/2005/09/01/news/warm.php>.

199. Edwards, *supra* note 11, at 50.

200. Katja Keisala, *The European Union as an International Actor: Strengths of the European Civilian Power* 122 (Dec. 11, 2004) (unpublished dissertation, University of Tampere, Finland), available at <http://acta.uta.fi/pdf/951-44-6157-6.pdf>.

As European states internalize IEE as an important national and EU objective, IEE becomes more pronounced and in turn affects international affairs in general, and responses to global environmental changes in particular. Europe becomes the shaper of the GCC regime, much as the United States shaped the post-war free-trade regime.

What should Europe do in the future? It can and ought to do more. It can, of course, go much further with existing GHG cuts and aid to developing countries. But entirely new GCC policies are justifiable. For example, one important issue that Europe has an obligation to consider and to transform into new policy is that of GCC-related immigration. Because Europe is responsible for much of the suffering from climate change that will be experienced in the developing world, European states are ethically obligated to take in migrants who would otherwise experience that hardship. Europe would be obliged to take in at least tens of thousands—and more appropriately hundreds of thousands—of *additional* migrants from those countries most adversely affected by climate change (such as low-lying states suffering from sea-level rise and African states experiencing increased drought, and especially from the most affected areas within them).²⁰¹ This should be a policy specifically geared toward, and identified as, mitigation of suffering from Europe's atmospheric pollution.

Given the total failure of the United States to respond as it should to GCC, and the slow response in other countries where action is being taken, both the practical and normative burdens will have to be borne by Europe. Europe will have to set the example and send the strongest possible signal, through its own GHG cuts and its aid to the developing world, that the developed countries are taking on their share of the burden. Only then are we likely to see major action by the large developing countries to limit their own emissions and hopefully to avert disaster. As Ute Collier puts it, “[w]ith most greenhouse gases originating in the industrialized ‘Western’ capitalist societies, it is appropriate that it is from these regions of the world that the initiatives for change should come. If reasonably stable unions of peoples such as the EU cannot find ways of addressing the climate change issue it is difficult to see how it can be addressed at all.”²⁰² For better or worse, as things stand now, Europe is the only realistic hope—a realistic hope that derives from its nascent embrace of international environmental equity.

201. See Sujatha Byravan & Sudhir Chella Rajan, *Before the Flood*, INT'L HERALD TRIB., May 11, 2005, at 8.

202. Ute Collier & Ragnar E. Loftsetd, *Comparative Analysis and Conclusions*, in CASES OF CLIMATE CHANGE POLICY: POLITICAL REALITY IN THE EUROPEAN UNION 184, 199 (Ute Collier & Ragnar E. Loftsetd. eds., 1997).

