

The Barcelona Negotiations on Climate Change:

Where the Spirit is willing?

An IISD Commentary

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The time for the Copenhagen Climate Talks has finally arrived. With the conclusions of the UN Framework Convention on Climate Change (UNFCCC) negotiations in Barcelona on November 6, we are now officially in to the final stretch before the 15th Conference of the Parties (COP) meeting to be held this December in Copenhagen. Unlike the previous two negotiating sessions held in Bonn, Germany, this past August, and in Bangkok, Thailand, last month, the tone and spirit of this month's negotiations ended on a more positive note.

This is not to say that we are closer to reaching a comprehensive global agreement on climate change. Slow progress was made by the Ad-hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) as Parties moved line-by-line through the negotiating text in an attempt to reach agreement wherever possible. But previously entrenched positions were maintained regarding the identification of a shared vision of global emission reduction targets and limits on average temperature increases. Still, some progress was made with respect to the development of new market mechanisms to support mitigation efforts, with several “flags” planted in the text for further discussion and elaboration. And the reducing emissions from deforestation and forest degradation discussion progressed as Parties felt they had a text that they could use as a basis for negotiations. Discussion on finance and investment was buoyed by an announcement by Spain at the opening plenary that it was committing €100 million for climate change financing by 2012, but neither this or the EU Commission's announcement of US\$74 billion annually were able to provide much momentum to these tough discussions.

Nor is it to say that we are substantively closer to resolving the critical “faults” in the negotiations—far from it. But at least there appears to be a real concern amongst all the major players about the potential for Copenhagen to end in failure—something that was questionable in the past. But now, perhaps with the exception of Saudi Arabia and its OPEC allies, there can be no doubt that the major players are deeply concerned that we might very well witness a “meltdown” of the international negotiations at Copenhagen; they have gone to the precipice, seen what lies beyond, and have decided to see what can still be salvaged. Most now are talking about a political declaration complemented by a framework agreement that lays out the contours of an eventual legal instrument addressing mitigation, finance and investment, technology transfer, adaptation and capacity building.

Still, the two major hiccoughs that I identified in my last [commentary on the Bangkok negotiations](#) as having the potential to stand in the way of a successful conclusion in December—expectations regarding the future of the Kyoto Protocol and the U.S. insistence on a “bottom-up” architecture—still very much exist.

After the brouhaha that followed the EU officially stating in Bangkok that it would not sign up to a set of new commitments under the Kyoto Protocol as it does not include the U.S., it is not surprising that the issue of Annex I targets continued to dominate the discussions related to the future of

the Protocol (AWG-KP). This issue was brought to a head early in the week when the African Group walked out of the negotiations based on its belief that Annex I pledges were not strong or coherent enough to facilitate further negotiation. The Group felt that there was no way to discuss other issues without first reaching some sort of resolution on this issue. It was only after a deal that the EU helped to broker that the Africans came back to the table with a pledge that 60 per cent of all remaining meetings of the AWG-KP would be dedicated to the issue of Annex I targets. While this agreement enabled the discussions to go forward, the gap between Annex I pledges¹ (particularly if we look at what the U.S. and Canada are likely to put on the table) and developing country demands is still large and will be the central issue of discussion again in Copenhagen.

The U.S. insistence for a regime that is very much guided by a “bottom-up” architecture, where virtually all the main policy initiatives are managed at the domestic level, was reiterated and even more forcefully made this time around. And this is putting the rest of the international community in a real quandary. We are being asked to take the international regime in a significantly different direction from the top-down approach of Kyoto with *no* assurance that if we were to do so that the U.S. would be able to ratify such a decision through its legislative processes. This is not inconsistent with the history of the U.S. in multilateral negotiations over the years. We can go all the way back to the founding of the League of Nations after World War I,² where the U.S. set the rules only to then not be able to support a regime of its own making. The history of the Kyoto Protocol further reinforces the international community’s uncertainty about the reliability of U.S. brokered international agreements. Many, particularly in North America, are under the impression that the Kyoto Protocol was an agreement carved in its essence by the EU. As someone who had the privilege of serving on the Canadian delegation in those negotiations, I can confidently confirm that this is simply not an accurate characterization. In fact, it was the U.S. that insisted on legally binding targets with consequences in the run up to Kyoto;³ virtually the rest of the world then took on these targets and commitments but, as we all know, without the U.S.

The core concern with the current U.S. proposal is that it is so weighted toward a domestically based architecture that it will provide countries with a “carte blanche” on the accounting rules that they will use to meet their targets. The example that is regularly raised is the ill-fated Canadian initiative to count toward its Kyoto targets exports of clean energy (mostly of natural gas and hydro to the U.S.), arguing that these exports would supplant “dirtier emissions” that would be released in their absence. To agree to such a “loophole” would have unalterably compromised the overall integrity of the greenhouse gas (GHG) accounting regime that the international community has carefully con-

¹ Also in Barcelona, Annex I Parties submitted an analysis of their pledges, including information such as base year, percentage from 1990 by 2020, and the percentage of the emissions reductions to be reached through international offsets.

² See Margaret MacMillan’s seminal work “Paris, 1919” for an excellent portrayal of this dynamic.

³ See “Geneva Declaration” from the Second Conference of the Parties to the UNFCCC (1996).

structed over many years of negotiations, starting with the UNFCCC in 1992. Thankfully, Canada's proposal was roundly rejected by other countries, and successfully resisted.

Now under the proposed regime, the concern is that if GHG accounting rules are ultimately determined at the domestic level—if it is left up to countries to decide how they will be counting their emissions and emission reductions—that the regime will be weakened. This is particularly important given that the U.S. will almost certainly be developing offset rules for agricultural activities, including soils and biofuels, which may very well not pass the rigour of an internationally devised system. It's not that offsets should not be addressing agricultural activities; rather the issue is that if there are no international standards for recognizing legitimate activities, the integrity of the system will be lost. It can be expected that other countries will essentially have to simply cut and paste from the rules devised in Washington DC, and not in the international negotiations themselves, if there is to be some level of international consistency. The EU in particular is concerned about the implications of a “bottom up” regime for the overall integrity of the agreement, and is pressing the U.S. hard on these issues privately. So far, however, it appears to be having little impact on the positioning the U.S. is taking.

At the end of the day, we seem to be faced with a set of options that, at first glance, appear to be equally untenable: strengthen an internationally binding regime under the Kyoto Protocol, with an almost 100 per cent certainty that it will never be ratified by the U.S.; or build domestically driven regimes that have the potential to seriously compromise the overall integrity of the global GHG regulatory framework, with the prospects of U.S. ratification improved to 50-50 at best. Those of a more pragmatic bent are likely to conclude that we have little choice but to accept the latter scenario. But if that is to be the case, it would not be unreasonable to ask the U.S. delegation to come to Copenhagen with a clearer assurance that the new regime will in fact be also adopted in the U.S. And it would also be incumbent to ensure that there are robust review provisions in the new agreement to allow the regime to be strengthened without many institutional barriers. And finally, the U.S. also needs to address accounting provisions and try and ensure that the rules for accounting are as consistently applied. The Montreal Protocol is a good precedent in this respect. It too was criticized for being too weak in addressing ozone depletion, but its review provisions allowed for an effective “ratcheting” up of commitments through the London and Copenhagen amendments. The result is arguably the most successful multilateral environmental agreement currently in place.

But of course the U.S. is not the only critical variable in these negotiations. And in that respect, the profile and performance of China and the Africa Group in these negotiations merits special consideration. Somewhat surprisingly, the Africa Group has become the most vocal and strident apologist for the Kyoto Track negotiations, as witnessed by its walkout during the AWG-KP negotiations. Unwittingly, the impact of this tactic was only to further marginalize the Kyoto Protocol negotiations, while the AWG-LCA talks continued unabated. And it remains a complete mystery to this

author as to why the Africa Group members, most of whom are Least Developed Countries, would be the most strident defenders of the Protocol. It would make more sense for the major developing economies to be at the head of the pack, given that the Protocol helps to provide them with institutional protection from taking on binding commitments—something that the vast majority of Africa Group members are currently in no danger of being under pressure to take on. But be that as it may, the Africa Group's strong profile in these discussions has elevated its stake in these negotiations, making the Africa Group a significant player whose concerns will need to be addressed in Copenhagen.

With respect to China, the continuing struggles in the U.S. to show its hand on targets and financial timetables offers a real opportunity for the Chinese to play a strong leadership role at Copenhagen. And it appears they are actively considering doing so. At the last plenary on Friday evening, China came out with a strong statement claiming that it has already taken on a suite of actions that put its mitigation efforts ahead of many developed countries. The challenge, from China's perspective, is for developed economies to start catching up to its efforts. Well, yes, China is seriously concerned about climate change (at my last visit to China a few months back, I was surprised by the extent to which the media regularly ascribed climate change as a main cause of weather related incidents) and China plans to implement a suite of actions over the next decade that will definitely place it in a leadership position.

But China's commitments only go so far. The Chinese have so far not shown any remote inclination to inscribe any of these actions as internationally binding; that responsibility, they insist, must only reside with developed countries. And that is the crux of the reason why the U.S. cannot, at this point, champion a strong internationally binding regime. The Senate would never accept such a distinct set of approaches and responsibilities between the U.S. and China. The U.S. delegation's response has not been to press (at least publicly) China to agree to internationally binding provisions, but to go in the opposite direction: insist that it too, along with other developed economies, cooperate under an international regime that is for all intents and purposes domestically determined. If China were now actually to turn the negotiating dynamics on its head and indicate that China would consider inscribing its actions under a more stringent international regime, it would confirm China's role and profile as a leader in the multilateral world.

In any case, we are already seeing a new global contest in the works: a clean "technology race" for the 21st century in which major powers will use domestic measures and bilateral investment agreements as the basis for ensuring growing prosperity while also strengthening their areas of influence and economic power. Again, the real action may be taking place outside the UNFCCC regime. One day after the talks in Barcelona, China met with African countries in Egypt to significantly increase its aid support in Africa, including a strong commitment to "invest in clean energy projects across

the African continent.”⁴ So while the U.S. and other developed countries continue to be criticized for not being able to indicate how much they will provide to developing countries to address climate change under the provisions of the UNFCCC, China works outside the regime and enjoys widespread and positive publicity on its bilateral ventures.

So where does this leave us? First of all, both in terms of what countries will actually be willing to commit to in terms of targets and in terms of the legal form of the agreement, as I have said before, expectations for Copenhagen must be seriously tempered. A political declaration with a global commitment that further clarifies what “dangerous anthropogenic interference with the global climate” actually means, with a framework for action in the areas identified under the Bali Action Plan, will be no mean achievement. Secondly, when all is said and done, at least for the foreseeable future, we are likely to see actions and financing for climate change initiatives being provided through forums outside of the UNFCCC regime as much as inside it. Despite the warnings of Sudan, as Chair of the G77 and China, that the *only* legitimate forum for negotiating and implementing multilateral actions on climate change is the UNFCCC, the reality is likely to be much different. And over the short term, that might not be the worst of results. It may be the only way we have to move forward toward a stronger international regime over the long term.

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⁴ Associated Press. 2009. China promises billions in aid, loans to Africa. 9 November 2009. Accessed at: http://www.msnbc.msn.com/id/33767221/ns/world_news-africa/.