



Durban Deal-Breakers

With COP17 commencing on 28 November 2011, UCL Students' Climate Forum takes the opportunity to explore the key issues on the table at this year's climate change talks

SUMMARY

- International agreement on greenhouse gas emissions reductions remains a key issue for COP17. The absence of political will makes reaching agreement on legally binding targets unlikely; therefore other, voluntary pledges will need to be pursued
- Voluntary pledges arguably represent the first truly global action to reduce greenhouse gas emissions; the COP will have an important role in scrutinising these pledges
- It is important for COP17 to establish an appropriate framework for the measurement, reporting and verification of pledges which recognises the concerns of developing countries
- Reducing emissions from deforestation and forest degradation is an important component in mitigating greenhouse gas emissions; however, considerable challenges persist in its implementation
- The operationalisation of the technology mechanism will be a key objective for COP17
- Delivery on developed countries' financial commitments and the implementation of the Green Climate Fund poses a particular challenge for the COP
- It is essential that COP17 makes progress on these key issues and, in particular, clarifies the future framework for pledges to reduce greenhouse gas emissions

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Introduction

The United Nations Framework Convention on Climate Change (UNFCCC), agreed at the 'Earth Summit' in Rio de Janeiro in 1992, established a framework for intergovernmental efforts to tackle climate change. Since its entry into force in 1994, parties to the UNFCCC have met at an annual Conference of the Parties (COP) to assess its implementation. This year's conference in Durban, South Africa, is the 17th COP, and is commonly referred to as 'COP17'.

The UNFCCC's 1997 Kyoto Protocol created legally binding greenhouse gas (GHG) emissions reduction obligations for certain developed countries (known as Annex I or Annex B Parties). As has been well documented, the USA signed, but failed to ratify, the Kyoto Protocol, thereby avoiding binding emissions reduction targets.

The Kyoto Protocol envisaged GHG emissions reductions being made over a series of 'commitment periods', the first being the period 2008–2012. Preceding COPs at Copenhagen (2009) and Cancun (2010) have failed to reach agreement on the extension of obligations under the Kyoto Protocol to a second commitment period. The extension or expiry of the Kyoto Protocol is likely to be the defining issue which falls for consideration at COP17.

The purpose of this note is to explore this, and other related issues on the agenda at COP17, namely:

- the ascendance of an alternative system of voluntary commitments initiated at Copenhagen in 2009
- Measurement, Reporting and Verification (MRV)
- Reducing Emissions from Deforestation and forest Degradation (REDD+)
- technology transfer
- climate finance.

The death of the Kyoto Protocol?

The expiry of the first commitment period in 2012 necessitates agreement at COP17 as to the future (if any) of the Kyoto Protocol and its legally binding emissions reduction targets.

Guided by the principle of common but differentiated responsibilities (CBDR)¹, developing countries are pushing for developed countries to accede to a second commitment period of binding emissions reductions. Developing states argue that the existing distinction between developed states (who have legally binding emissions reduction commitments) and developing states (who have merely aspirational goals) should be maintained. In their view, owing to historic GHG emissions and current financial capabilities, developed states should act immediately to reduce emissions whilst developing countries should be allowed to continue to emit as part of their right to develop.

The EU is willing to consider such an extension to the Kyoto Protocol, but only 'as part of a transition to a wider legally binding framework'². However, certain Annex I parties, including Russia, Canada and Japan³, have openly declared that they will not participate in a second commitment period. The refusal of Russia to support a second commitment period is particularly symbolic as it was Russia's ratification that brought the Kyoto Protocol into force in 2005.

Moreover, the USA has maintained that it is not willing to engage in a system of legally binding emissions reductions without the participation of China, India and other key emerging economies. The USA contends that climate change is a global problem and should, consequently, be met with a global response.

There is therefore a growing recognition that **a second commitment period commencing in 2012 is unlikely to attract sufficient support to render it a realistic possibility**. As a result, COP17 should also consider the legal consequences of a possible gap between the first and any subsequent commitment period as discussed by the UNFCCC Secretariat⁴.

The current ambiguity in how the responsibility to curb GHG emissions should be allocated creates a major hurdle for successful negotiations. Whilst a settled concept of CBDR could prove a useful tool in securing global participation, **the current lack of political will to commit to legally binding targets presents a significant challenge**. Consequently, since COP15 in Copenhagen, political preference appears to have shifted towards a system of voluntary commitments.

A shift to a system of voluntary commitments?

If no agreement on a second commitment period under the Kyoto Protocol can be reached, then the only remaining international commitments will be those made under the Copenhagen Accord. These 'pledges' are grounded in a different set of principles to those made under the Kyoto Protocol: they are voluntary (as opposed to mandatory), and pledged by the state (as opposed to agreed by the international community).

COP16 'took note' of the pledges made by countries under the Copenhagen Accord, thereby embedding the notion of voluntary commitments within the UNFCCC architecture⁵. This was perceived as a success for the USA who had pushed to ensure a transition to a system of voluntary commitments since their inception at Copenhagen in 2009⁶.

The system of voluntary commitments initiated under the Copenhagen Accord has received criticism. Critiques have focused on the following:

- **countries' pledges are merely voluntary**. This has two consequences: (i) countries are not legally obliged to reduce their GHG emissions, and (ii) there are (as yet) no consequences if countries do not reach their pledges
- it has been calculated that, at present, **current Annex I Party pledges fall short of those required to cap the rise in average global temperatures to 2°C** (as was the intention under the Copenhagen Accord)⁷. This shortfall is referred to as the 'gigatonne gap'
- **there are difficulties in comparing countries' respective pledges, both within the developed countries group and between developed and developing countries, as the form of pledges made is not consistent**. By way of example, the EU have committed to reduce economy-wide emissions by 20% by 2020. This can be contrasted with China, who has opted to use a 'carbon intensity' metric, pledging to 'lower [their] carbon dioxide emissions per unit of GDP by 40–45% by 2020 compared to the 2005 level'⁸. The carbon intensity metric adopted by China has faced criticism for permitting gross GHG emissions increases as a result of China's continued rapid economic growth⁹.

Whilst this system of voluntary commitments does not represent a strictly legal framework, it does have its advantages. Most parties to the UNFCCC, including the USA¹⁰, China and India, have associated with the Copenhagen Accord and have made pledges. This approach can therefore be said to be the first truly global effort to mitigate GHG emissions. Constructive discussions between American and Chinese delegations have also been heralded as a notable success¹¹. Further, **consensus on the nature of future mitigation actions has the potential to restore trust and confidence in multilateralism**. As a result, Bodansky and Diringer suggest¹² that such multilateral action, however limited at first, represents the bedrock of any future comprehensive strategy to address climate change.

If, as expected, COP17 presides over the expiry of binding emissions reductions obligations under the Kyoto Protocol, it is hoped that the COP will increase its scrutiny of voluntary commitments. Whilst the emissions reductions obligations under the Kyoto Protocol will expire in 2012 should the parties not agree a second commitment period, the substantive provisions and institutional architecture will remain valid. A challenge for COP17 is to think creatively about adapting the existing institutional structure (notably the non-compliance procedures overseen by the Compliance Committee, MRV and the flexibility mechanisms¹³) to the Copenhagen pledges. Further, pledges made by states under the Copenhagen Accord are for the period 2010 to 2020¹⁴. It is therefore hoped that these pledges will be tightened at COP17 in accordance with parties' common but differentiated responsibilities and respective capabilities.

Measurement, Reporting and Verification (MRV)

The MRV of developed country mitigation commitments and developing country nationally appropriate mitigation actions (NAMAs) is a topic for continued debate at COP17.

COP16 decided that developed country mitigation commitments should be measured, reported and verified internationally by the Subsidiary Body for Implementation¹⁵. However, for developing country NAMAs, COP16 drew a distinction between (i) internationally funded NAMAs, which shall be measured,

reported and verified both domestically and internationally, and (ii) domestically funded NAMAs which shall be reviewed only domestically¹⁶. China has been outspoken in this area, warning against intrusive international measures and demanding that MRV procedures respect developing countries' national sovereignty¹⁷.

The MRV of mitigation actions, particularly developing country NAMAs, requires further clarification at Durban. **It is hoped that COP17 will lay down an appropriate framework for transparent MRV of NAMAs, whilst remaining sensitive to the legitimate concerns of developing countries.**

Reducing Emissions from Deforestation and forest Degradation (REDD+)

It is estimated that the world's forests remove 2.4 billion tonnes of carbon from the atmosphere per annum, which equates to one third of current emissions from fossil fuels. Additionally, deforestation is responsible for emitting an estimated 2.9 billion tonnes of carbon per annum¹⁸.

REDD+ is the global framework for Reducing Emissions from Deforestation and forest Degradation. The '+' indicates that the REDD programme includes the implementation of sustainable forest management initiatives¹⁹. REDD+ aims to facilitate payments from developed countries to developing countries to protect, restore and sustainably manage their forests. **REDD+ is considered to be one of the most cost-effective options for cutting GHGs.**

At COP16 it was agreed to formally incorporate REDD+ under the UNFCCC umbrella, but the details of the scheme remain unclear. There are three key issues to be addressed at COP17:

- First, **how the REDD+ mechanism will be funded**. Currently, about 5 billion USD has been committed to supporting REDD+, much of it through bilateral assistance by Norway²⁰. However, this is a small percentage of what is needed to support REDD+ on an annual basis. Several options for finance will need to be explored, including: multilateral activities; the Green Climate Fund; bilateral funds; and perhaps most radically, private sector finance
- Second, the **measurement, reporting and verification of the REDD+ regime** will need to be considered
- Third, **how to implement appropriate system safeguards** (taking into account various social, environmental and governance concerns) within the REDD+ programme will need to be finalised.

Technology Transfer

Commitments on technology transfer exist under both the UNFCCC²¹ and the Kyoto Protocol²². Previous COPs have, however, found it difficult to move beyond general language and implement specific international policies on technology transfer.

A step towards addressing this implementation deficit was taken at COP16 in Cancun, which established a new Technology Mechanism²³. COP16 detailed that the Technology Mechanism will consist of (i) the Technology Executive Committee and (ii) the Climate Technology Centre and Network, whose combined function is to enhance national and international cooperative action on the development and transfer of environmentally sound technologies.

At their plenary sessions held throughout the year, the Ad Hoc Working Group on Long-term Cooperative Action has been working on outstanding issues, such as the relationship between the Technology Executive Committee and the Climate Technology

Centre and Network, and the potential links between the Technology Mechanism and the financial mechanism.

In Durban, it is expected that the COP will adopt decisions addressing these outstanding issues in order to make the Technology Mechanism fully operational in 2012.

A major obstacle to successful negotiations remains industrialised countries' concerns that technology transfer can affect their competitiveness. This fear has been heightened in recent years given China's growing technological capabilities. Intellectual Property Rights (IPRs) are at the heart of this polarised debate, between developed countries (who support strong IPRs) and developing countries (who stress developed states' obligation to transfer technology regardless of legal hurdles).

The exact role IPRs will play in the Technology Mechanism was not addressed in the final text of the Cancun Agreements and remains unclear. In advance of COP17, the Sixth BASIC Ministerial Meeting on Climate Change made it clear that the BASIC countries (Brazil, South Africa, India and China) consider the issue of IPRs key²⁴. India, supported by the BASIC group, has added this item to the agenda for COP17²⁵. It is clear that to accelerate the delivery of mitigation and adaptation technologies to developing countries, resolution of legal issues surrounding IPRs will be necessary.

Climate Finance

The incoming President of COP17, Ms Maite Nkoana-Mashabane, has already flagged climate finance as a 'very contentious issue' for the Durban conference²⁶. Following the principle of CBDR, developed countries have agreed to help finance developing countries' costs of mitigation and adaptation. By way of example, costs of adaptation may relate to project-based activities such as sea defences, or wider policy development such as national hazard response policies.

The Copenhagen Accord, struck at COP15 in 2009, was a watershed in developed countries' efforts to provide appropriate funding for developing countries' needs. The provisions of the Copenhagen Accord were reiterated in the the Cancun Agreement on Long-Term Cooperative Action²⁷, thereby bringing them formally within the UNFCCC architecture. Those targets are:

- a '**commitment**' for developing countries to provide **30 billion USD during the period 2010–2012** (so called 'fast-start' finance)
- a '**goal**' for developing countries to raise **100 billion USD per year by 2020** (so called 'long-term' finance)
- the **establishment of a Green Climate Fund (GCF)** to operationalise both public and private investment.

Durban is the time to cut through the rhetoric and assess developed countries' commitment to delivering effective and appropriate finance. It is also thought that COP17 will seek to address the funding gap that arises between short-term finance (that should be delivered by 2012) and the long-term finance. Specifically, it is thought that there could be a proposal to 'ramp up' the current level of financing to the 2020 level²⁸.

Further, COP17 will be invited to consider the report of the Transitional Committee, who were tasked with the design of the Green Climate Fund at Cancun. It is expected that COP17 will agree 'the first cut'²⁹ of the design of the Green Climate Fund.

Significant progress on both the financing and the institutional structure to support its effective application is necessary at Durban.

Conclusion

This briefing note has sought to address some of the key issues on the agenda at COP17. It is by no means exhaustive, and other matters are expected to include the operationalisation of the Cancun Adaptation Framework and proposed EU unilateral action on aviation and shipping.

As can be seen from the above analysis, there remains a tension between those supportive of a legally binding system of emissions reductions, and those who support a system of voluntary commitments. COP17 provides parties to the UNFCCC an opportunity to clarify the future nature of emissions reductions commitments.

Without the support of the major emitters, the Kyoto Protocol's approach seems unlikely to survive. However, **out of the ashes of the Kyoto Protocol may grow a new species with arguably greater power: global consensus on the appropriate route to achieve emissions reductions.**

UCL Students' Climate Forum look forward to COP17, and to bringing you our analysis of COP17 in due course.

The UCL Students' Climate Forum is: James Nierinck, Harry Campbell, Laura Skoratko, Chris Mayne, Eva van der Marel, Ben Du Feu and Join Sinkaseam.

It is our opinion that climate change, one of the most pressing issues of our time, has slipped off the political agenda. This briefing note is part of our wider effort to maintain awareness of climate change and its impacts on society.

Please also visit our blog (<http://uclcop17forum.blogspot.com/>), follow us on Twitter (<https://twitter.com/#!/UCLCOP17>) and support our stall on Monday 28 November in the UCL Front Quad.

NOTES

- 1 See, inter alia, Art.4 UNFCCC and Art.10 Kyoto Protocol
- 2 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/envir/125026.pdf
- 3 <http://www.eubusiness.com/news-eu/g8-summit-un.a89>
- 4 <http://unfccc.int/resource/docs/2010/awg13/eng/10.pdf>
- 5 Decision 1/CP.16 at paras 36, 49, available at <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2>
- 6 <http://motherjones.com/blue-marble/2010/12/cancun-agreement-climate-UN>
- 7 *ibid* n5, part III
- 8 <http://www.guardian.co.uk/environment/2010/feb/02/climate-change-target-copenhagen-un>
- 9 http://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/chinacphaccord_app2.pdf
- 10 <http://www.businessweek.com/news/2011-10-04/china-emissions-rising-while-carbon-intensity-falls-report-says.html>
- 11 See the USA's pledge document here: http://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/unitedstatescphaccord_app.1.pdf
- 12 <http://www.wri.org/stories/2010/12/what-cancun-means-china-and-us>
- 13 Daniel Bodansky and Elliot Diringer (2010), *The Evolution of Multilateral Regimes: Implications for Climate Change*. Available at <http://www.pewclimate.org/publications/report/evolution-multilateral-regimes-implications-climate-change>
- 14 Joint implementation, the clean development mechanism and emissions trading
- 15 Copenhagen Accord, paras 4, 5
- 16 *ibid* n5 at para 44
- 17 *ibid* n5 at paras 61-63
- 18 <http://unfccc.int/resource/docs/2011/smsn/ngo/285.pdf>
- 19 http://www.nrs.fs.fed.us/pubs/jrnl/2011/nrs_2011_pan_002.pdf
- 20 Decision 1/CP.13,1(b)(iii)
- 21 <http://blog.cifor.org/4861/3-sticking-points-to-tackle-on-redd-in-durban-says-facilitator/>
- 22 See, inter alia, Arts 4, 1.(h) and 3. UNFCCC
- 23 Art.3,14 and Art.11,2.(b) Kyoto Protocol
- 24 *ibid* n5 at para 117. See <http://unfccc.int/ttclear/jsp/TechnologyMechanism.jsp> for further details.
- 25 <http://moef.nic.in/downloads/public-information/BASIC-Stat-6.pdf> at para 8
- 26 <http://unfccc.int/resource/docs/2011/cop17/eng/inf02a01.pdf> at agenda item 11
- 27 <http://www.dfa.gov.za/docs/2011/pre-cop1024.html>
- 28 http://unfccc.int/files/press/news_room/press_releases_and_advisories/application/pdf/110919_ny_pc_intro.pdf (press conference of UNFCCC Executive Secretary Christiana Figueres)
- 29 *ibid* n28