

■ outlook: perspective

Irresistible forces and immovable objects: a debate on contemporary climate politics

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The pervasive mistrust with which the Copenhagen Conference ended does not augur well for post-Copenhagen negotiations. This commentary explores existing fault lines and proposes creative ways of moving forward. The Copenhagen impasse, which is likely to continue, involved attempts by developed countries to overturn the template of historical responsibility and replace it with a reciprocity-based regime that was met with resistance from developing countries. Thus, realistically, Cancún can only serve as an opportunity to rebuild trust and seek areas of convergence, rather than being the occasion for a possible deal. Focusing attention on some limited areas of consensus may create a more congenial environment for future negotiations. Possible ways forward include promoting technological collaboration through a network of innovation centres, supporting the Least Developed Countries (LDCs), Small Island Developing States (SIDS) and Africa, encouraging extensive bilateral cooperation and cooperation under the auspices of the UN on climate change action and renewable energy, forging a commitment not to resort to trade protection, and making a firm commitment to the UN process.

Keywords: BASIC; climate finance; climate negotiations; COP-16; post-Copenhagen; UNFCCC

Le climat de méfiance générale dans lequel la conférence de Copenhague s'est terminée est de mauvais augure pour les négociations post Copenhague. Cette critique commentaire examinée les lignes de fracture et propose de nouvelles débouchées pour avancer. L'impasse de Copenhague, qui va sans doute durer, fut provoquée en partie par les tentatives des pays développés à annuler la structure des responsabilités historiques et la remplacer par un régime fondé sur la réciprocité, auquel les pays en développement se sont opposés. De ce fait, et avec réalisme, Cancún ne servira qu'en tant qu'occasion de rebâtir un climat de confiance et de trouver des domaines de convergence, plutôt qu'une occasion pour bâtir un possible accord. Le fait de se concentrer sur quelques domaines limités de consensus, pourrait favoriser l'établissement d'un environnement plus propice aux négociations futures. En terme de débouchées possibles, celles-ci comprennent des actions vers la promotion d'une collaboration technique par un réseau de centres d'innovation, le soutien aux PMA, aux PEID et à l'Afrique, le soutien à une coopération bilatérale élargie et à la coopération sous l'égide des Nations Unies dans l'action sur le changement climatique et les énergies renouvelables, un engagement à ne pas se résoudre aux protections commerciales, et un engagement ferme au processus des Nations Unies.

Mots clés: BASIC; CCNUCC; COP-16; finance climatique; négociations sur le climat; post Copenhague

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CLIMATE POLICY 10 (2010) 678-683

doi:10.3763/cpol.2010.0136 © 2010 Earthscan ISSN: 1469-3062 (print), 1752-7457 (online) www.climatepolicy.com

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1. Introduction

The 15th Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC), held in Copenhagen, marked the end of an age of innocence with respect to climate change. Prior to Copenhagen, the debate was suffused with soaring rhetoric on how climate change represented an urgent global challenge requiring a global, collaborative effort transcending inter-state rivalries. At Copenhagen, this rhetoric evaporated rather quickly, as countries and groups such as the USA, the European Union (EU), BASIC (Brazil, South Africa, India and China), Small Island Developing States (SIDS) and Africa each asserted their perceived interests with a rare tenacity and open suspicion of other negotiating partners.

The Copenhagen Accord, which was negotiated between a group of about 25 Heads of States/Governments away from the formal multilateral negotiating process, only succeeded in papering over the fault lines between positions. The pervasive mistrust with which the Conference ended does not augur well for the post-Copenhagen negotiating process. In fact, the fault lines have remained clearly visible, as evidenced by statements of the Parties at various meetings post-Copenhagen (BASIC, 2010; ENB, 2010: 11; PWMME, 2010). In this article, I present my perspectives on the major fault lines going forward, with a prognosis for each.

2. Is the UNFCCC passé?

The UNFCCC represents the last of the series of post-World War II economic treaties and legal instruments which recognized the unique and overriding objectives of poverty eradication and the rapid economic growth of newly independent, post-colonial developing countries. These instruments were built around non-reciprocal, development-centred global economic and trade mechanisms. They obliged developed, industrialized countries to extend preferential access to their markets to developing-country products. They acknowledged import substitution-led growth policies in developing countries by acquiescing to the latter's high tariff walls and protection for local industry. The Bretton Woods institutions were designed to support growth through concessional financial transfers and technology transfer. This did not, in this period, lead to concerns about intellectual property rights (IPR) protection.

However, the Uruguay Round on global trade marked a clear transition from such non-reciprocal regimes to regimes that were explicitly reciprocal in character, where concerns over maintaining a level playing field, market access and IPR protection became the main agenda of multilateral

negotiations. Against this background, the UNFCCC or the Rio Convention of 1992 is an anachronism. It incorporates what some developing countries characterize as a legal 'firewall' between the obligations of developed, industrialized countries, on the one hand, and the large category of developing countries on the other (Algeria, 2009: 12). The Convention, in its Preamble, which sets the context in which the Convention was concluded, explicitly recognizes the historical responsibility of developed countries for the accumulated greenhouse gas (GHG) emissions in the Earth's atmosphere, which are causing climate change (UNFCCC, 1992). Among the principles recognized in the UNFCCC, Article 3 – which is the important principle of 'common but differentiated responsibilities and respective capabilities' – forms the basis of the burden-sharing arrangement between developed and developing countries.

The UNFCCC's burden-sharing arrangement differentiates between developed and developing countries in that only developed countries have an obligation to reduce their GHG emissions with the aim of returning individually or jointly to their 1990 levels of GHGs. Furthermore, developed countries are required to assist developing countries in undertaking climate change actions through the provision of financial resources and transfer of technology. In other words, while developed countries have an obligation to reduce emissions, mitigation actions are voluntary and conditional for developing countries, whose overriding priority of economic and social development and poverty eradication is explicitly recognized in UNFCCC Article 4(7). The UNFCCC also recognizes the needs of those developing countries that are particularly vulnerable to the adverse effects of climate change, and which require developed countries to assist them in meeting the costs of adaptation to climate change. While legal wrangling continues on the exact interpretation of these various obligations and the differences among them, it is hard to dispute the overall intended thrust of the UNFCCC: developed countries have an obligation to act first and to enable mitigation and adaptation action in the developing world.

This template is 'out of sync' with other components of the current global economic and trade regime. The Copenhagen impasse, which is likely to continue, involved attempts by developed countries to overturn the template of what the G77 and China considered to be the basis of the UNFCCC, historic responsibility, in order to replace it with a reciprocity-based regime. This, needless to say, was met with determined resistance from developing countries.

Prognosis: Developed countries will never accept the implementation of the UNFCCC as it now stands. If their

attempts to replace it with another, reciprocity-based, template do not succeed, they will simply ignore the UNFCCC and render it irrelevant. The developing countries, including the larger emerging economies, have insufficient political clout to be able to pressure their developed-country partners in this respect. However, developing countries do increasingly have the political clout to prevent a new template from being foisted on them. Therefore, the impasse is likely to continue. The BASIC countries are probably realistic in anticipating a possible deal only by 2011, at the 17th Conference of Parties in South Africa. It may make sense therefore, to use the Cancún process to focus on rebuilding trust, seeking areas of convergence, and deciding upon practical issues. These include detailing procedures for the measurement, reporting and verification (MRV) of actions and financial support to developing countries, enabling the quick delivery of fast-track finance for developing countries, as agreed upon in Copenhagen, and the establishment of technological innovation centres and mechanisms for capacity-building in developing countries. Seeking closure on the Bali mandate appears to be unrealistic at this stage.

3. The level playing field in different contexts

Copenhagen could not achieve any substantive results as a result of two separate asymmetries at work. First, while the EU countries and other industrialized countries have signed and ratified the Kyoto Protocol to the UNFCCC, the USA has failed to ratify it. Thus, while the other developed countries are legally bound under the Protocol to reduce their emissions by a target amount in the first commitment period, the USA is under no such legal obligation and has, in fact, continued to increase its emissions. The Kyoto Protocol Parties are also bound by an international compliance procedure. Any shortfalls in meeting targets would have to be carried over to the second commitment period and there would be an additional 30% penalty. In order to address this asymmetry, Parties agreed at COP-13 in Bali that developed-country Parties to the Kyoto Protocol, and non-Parties such as the USA, would both take on commitments or actions that ensure comparability of efforts between them (UNFCCC, 2007). Many countries interpreted the Bali Action Plan as requiring the USA to take on quantitative emission reduction targets similar to those of other developed countries in the post-2012 period and to accept the same level of compliance, thereby ensuring comparability. In the two-year negotiating period, post-Bali, there was no clarity about the USA's climate legislation and therefore about the prospects for true comparability. This led to a prolonged wait-and-see position on the part of other developed

countries regarding their willingness to sign up to significant emission reduction targets for the second commitment period. Then in October 2009, at Bangkok, the USA made it clear that it would not accept internationally binding, multilaterally negotiated emission reduction targets (USA, 2009). Nor would it subject itself to an international compliance and enforcement procedure. It suggested, instead, a domestically determined emission reduction target, which would be subject only to 'international review and verification'.

The EU and other developed countries also became more vocal in expressing their preference for a new instrument that would supplant the Kyoto Protocol, in a manner attractive to the USA. There was no willingness among other developed countries to lock themselves into a higher level and scope of commitment when the largest economy in the world was framing its own position in such diluted 'pledge and review' terms. With the USA having set the bar very low, it was inevitable that other developed countries would all gravitate to this lowest common denominator.

The other asymmetry related to the developed countries, on the one hand, and the large emerging economies on the other. Most developed countries insisted that since large emerging economies were now significant emitters of GHGs, and since their emissions would increase rapidly in the coming years, dealing with climate change required the latter to accept mitigation obligations as well. At the least, they argued that these countries must sign on to a significant deviation from the business-as-usual emissions trajectory (G8, 2008). In fact, the USA, Japan, Australia and Canada all made their own willingness to take on emission reduction targets conditional upon the reciprocal readiness of the emerging economies to accept comparable commitments or actions (Australia, 2010; Canada, 2010; Japan, 2010; USA, 2010a). The USA also proposed that its 'pledge and review' format should apply to the emerging economies as well. Moreover, since these countries were seen as posing a major competitive threat to US and European industry, it was made clear that these countries would not be eligible for any significant funding or technology transfer. Exemption from any mitigation obligations and access to concessional finance and technology, it was argued, would only sharpen their competitive edge in a manner unfair to mature economies. The last-minute negotiations at Copenhagen between President Obama, on one side, and the BASIC leaders, on the other, were aimed at somehow reconciling this asymmetry, but were only partially successful.

The large emerging economies are in a unique situation. Their macroeconomic strengths identify them as major powers, which are increasingly in political and economic competition with mature economies. On the other hand, in terms of per capita income, social and welfare indicators,

and poverty levels, they still have a long way to go. In terms of perception, however, the lines between developed and developing countries as envisaged in the UNFCCC, and in line with the logic of historical responsibility, have become blurred.

Prognosis: These asymmetries will endure and will continue to influence the negotiating process. The tendency, inevitably, will be to gravitate towards the lowest common denominator. The USA's proposed 'pledge and review' framework conforms to such a description, which is a pity because this approach is unlikely to yield the scale of effort required to address climate change. It is difficult to see a way out. One possible line of seeking convergence might be for the USA to gravitate closer to the European position, while the major emerging economies indicate their willingness to take on emission limitation obligations at the end of the second commitment period. These would, of necessity, be modest, but would signal a willingness on their part to contribute to the global effort even though they did not cause the problem in the first place. This willingness would be conditional upon the developed countries delivering on their respective targets at the end of the second commitment period. The USA may find it difficult to counter this proposal, since this would address its main concern, which is that the major emerging economies should assume some mitigation responsibilities in any global regime. The assumption here is that, on balance, it is better for developing countries to have a strict and enforceable regime in which to bind the most powerful economies, rather than settling for a weak regime, which may appear superficially attractive.

4. Who pays?

Any global regime represents a burden-sharing arrangement, explicitly or implicitly. The UNFCCC captures an equitable burden-sharing arrangement, discussed earlier, based on differential treatment between developed and developing countries. Based on this burden-sharing arrangement, it is arguable that the provision of financial resources to developing countries should be viewed as entitlements and not as foreign aid or assistance. Consequently, such financial transfers must be based on public resources, and not on those generated through the market, which bring attendant risks of unpredictability.

This concept has been seriously diluted at Copenhagen. The Accord speaks of 'multiple sources' of finance, putting public resources, institutional finance and market-generated resources on a par with each other (UNFCCC, 2009: para. 8). The political reality is that electorates in developed countries, particularly in the midst of a severe financial and economic

crisis, are simply not willing to accept large financial transfers to developing countries, and certainly not to large emerging economies. Copenhagen made it clear that whatever limited funds may be available from public resources would go to Least Developed Countries (LDCs), SIDS and Africa. For the rest, the flow of funds would come mainly from carbon markets, based on a cap-and-trade or emissions trading regime.

Even if this were to be acceptable to large developing countries, the size of the carbon market and the price of offsets (and therefore the benefit to enterprises in developing countries) would be dependent upon how significant, binding and predictable emission reduction targets would be in developed countries. If, as is currently the expectation, the targets are modest and the enforcement mechanism weak, then the carbon market would be limited in scope. There would be less incentive to seek cost-effective offsets.

Moreover, if the Kyoto Protocol does not survive beyond 2012, then it is not clear what would be the international legal basis for a truly global carbon market. We might end up with a series of national carbon markets, based on national legislation and differing rules and guidelines, entry into which by developing-country enterprises would be difficult and complicated. Regulating entry into such markets could become a non-tariff barrier, subject to political considerations.

Prognosis: Under the prevailing national political conditions in developed countries, there will be limited funds available to special categories of developing countries such as LDCs, SIDS and Africa. The rest will have to fend for themselves. Financial flows generated through carbon markets are likely to be limited in a regime of modest emission reduction targets, weakly enforced. From the standpoint of developing countries, it may be necessary to settle for ad hoc decisions on financial flows, postponing longer-term solutions on scale and sources of finance to a hopefully better global economic environment a couple of years from now. The cost of this pragmatism, however, may be a proportionately diminished political enthusiasm for early mitigation within the developing world.

5. Consumption patterns versus lifestyles

The modern industrial economy is based on the use of carbon-based fossil fuels, which are the source of GHG emissions. Therefore, unless there is a significant and strategic shift from a fossil fuel-based economy to one progressively based on renewable sources of energy such as solar and wind, and clean sources of energy such as nuclear, it would be difficult to meet the challenge of climate change.

The current discourse on climate change focuses attention on supply-side production patterns – how to increase the efficiency of current energy use, raise the proportion of renewable energy and clean energy in the energy mix, and lower the energy-intensity of gross domestic product (GDP) growth. But what about the demand side, or the consumption patterns?

Continuing high per capita energy consumption in developed countries is closely tied to energy-intensive lifestyles, including private vehicular traffic, air conditioning, and the use of energy-intensive appliances. In both developed and developing countries, there is a lack of political will to persuade the electorate that current lifestyles and consumption patterns are unsustainable. However, given the vast disparity in per capita energy consumption across the world, the insistence by developed countries that developing countries also take on mitigation obligations is often perceived by the latter as an attempt to freeze the existing inequalities in living standards between them. For example, it is difficult to persuade a country such as India to restrict private car ownership, even though it makes eminent sense in the Indian context, if there is no similar encouragement to public transportation in developed countries. Demonstrated efforts in industrialized countries to address flagrant overconsumption will smooth the path to similar actions in the developing world.

Prognosis: The global economic crisis may have created an opportunity in this area. Among practitioners and academics, there is a growing tendency to question the sustainability of current lifestyles, which are based on assumptions of infinite availability of, and access to, resources (McDonough and Braungart, 2002; Rees, 2009). Resource security has become an important theme in global discourse, although the impact on climate change negotiations may be limited in the short term. Since sustainable lifestyles are as critical to developing societies as they are to developed ones, the discourse can avoid the usual binary divide between the two. Among developing countries, there should be a willingness to address issues of consumerism, extravagance and waste, even while demanding that affluent societies stop evading these issues. Focusing on serious engagement with questions of consumption and lifestyle common to both contexts offers some common ground for furthering efforts to limit climate change.

6. What is a ‘realistic’ outcome at Cancún?

Even with such productive steps, each of the major negotiating blocs will have to face difficult questions about

their future stance. The USA will continue to be a critical player in the negotiations. It is unlikely that other major players will show their hand unless there is clarity on what the USA is likely to accept as its role and commitment in a global climate regime. Its current posture is to insist that the predetermined outcome at Cancún should be to make the Copenhagen Accord a legally binding document (USA, 2010b). In that case, the ongoing multilateral negotiations would be useful only to the extent of elaborating some of the agreed elements in the Copenhagen Accord, for example those relating to the Global Climate Fund and the technology transfer mechanism. The USA’s objective is to obtain legal status for its ‘pledge and review’ system, thereby consigning the Kyoto Protocol to the annals of history. Finally, in the face of continuing uncertainty over the pending climate legislation before the US Congress, it is unlikely that other countries will be ready to sign up to a climate regime which may then be undercut by the US legislature.

The EU is far too preoccupied with the Eurozone financial crisis to focus seriously on the climate issue. There is also a certain passivity, and even wariness, which has taken hold after the disappointing experience of Copenhagen. The European preference continues to be for an instrument which, like the Kyoto Protocol, incorporates international, legally binding emission reduction obligations, with a compliance procedure no less strict than in the Protocol. It would appear, however, that if the only way of including the USA in a new climate regime is to settle for the pledge and review system, the Europeans would go along with it rather than risk isolating the Americans.

The BASIC countries feel that the USA is holding the rest of the world to ransom, by refusing to make any commitment itself while trying to extract stronger commitments from others. The BASIC countries continue to give primacy to the multilateral negotiating process and insist that the USA-supported Copenhagen Accord is only an input into these negotiations and a useful point of reference. They are also not prepared to abandon the UNFCCC template and its principles and provisions, which are advantageous to developing countries (BASIC, 2010). However, it is possible that, while holding firm on this formal position, the BASIC countries may be willing to settle for a practical, but interim, outcome at Cancún if this represents an additionality in terms of resource transfer, in particular in the category of climate-friendly technologies.

In the run up to Cancún and beyond, there will need to be a considerable lowering of sights, in terms of the ‘Agreed Outcome’ envisaged by the Bali Road Map. Over the next few months, intensive engagement will be required, in informal fora, bilateral as well as multilateral, to overcome

the mutual distrust and suspicion which is currently undermining prospects for an agreement. Focusing attention on some limited areas of consensus will be necessary, e.g. promoting technological collaboration through a network of innovation centres; supporting LDCs, SIDs and Africa through significant financial and technological resources; promoting more extensive bilateral cooperation and cooperation under the auspices of the UN in the field of renewable energy; forging an unambiguous commitment not to resort to trade protection under the guise of preventing climate change; and making a firm commitment to the UN process rather than seeking agreement in more limited fora.

There has to be some recognition among the developing countries that the ongoing economic and financial crisis makes it difficult for developed-country partners to deliver anything more than a modest contribution to their climate change efforts. However, neither should the crisis become a pretext for the wholesale repudiation of a historic climate change treaty, the UNFCCC. If Cancún succeeds in setting the stage for more substantive action in the future, if it can begin to look creatively at possible new avenues for consensual solutions and focus on achieving modest but practical results in the interim, it would qualify as a success.

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