



Alternative Frameworks for International Climate Cooperation: Country Positions in the Run Up to Durban

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Draft final version

November 2011

A policy paper for the project ICPIA "Coping with Complexity in the Evolving International Climate Policy Institutional Architecture" funded by the Austrian "Klima- und Energiefonds" and carried out in within the research programme "ACRP".

Acknowledgement

The authors wish to thank, without implicating, for useful comments and assistance: Claudia Kettner and Angela Köppl (Austrian Institute of Economic Research)



Abstract

The political differences on fundamental questions of a future climate regime remain high and the outcome of the latest climate conference in Durban is still uncertain. Important nations and groups of countries have come out with widely divergent proposals on their favored institutional trajectory for the future climate regime. This policy paper evaluates the positions of several countries or country blocks that are critical for the design and success of the future climate regime, including the EU, the BASIC countries and the US. It builds on a parallel *ICPIA* paper that provides a first conceptual framework for the systematic analysis of different regime architectures and applies the criteria defined therein to the proposals submitted by central actors in the current negotiations. The policy paper outlines the strength and the weaknesses of the different proposals. It concludes that the strengths of the current climate regime, such as a high participation and inclusiveness and political feasibility, can serve as a robust basis for a more comprehensive and ambitious international climate regime in the long-term.

Keywords: UNFCCC, Kyoto, Climate regime, post-2012

JEL codes: K33, P48



1 Introduction

Following two decades of international engagement on climate change, the highly anticipated Copenhagen summit held in December 2009 revealed the full extent of political divisions between states, causing many to doubt the suitability of traditional approaches to cooperation. In particular, critics questioned the process through which states sought to arrive at a concerted response, as well as the form and nature in which such responses were ultimately formulated. As its main outcome, the Copenhagen climate summit resulted in a document of uncertain legal status, the "Copenhagen Accord", elaborated by the heads of state and government of a narrow group of countries and merely "taken note of" by the parties to the current climate regime. Although a vast majority of states have since indicated their support for the Accord and all major emitters have provided information on their emissions reduction targets and other mitigation actions, this departure from the conventions of international climate diplomacy has nonetheless raised many questions about the shape of the future climate regime. The negotiations since the Copenhagen summit have seen progress on a number of technical issues, and the Cancún Conference (2010) was able to integrate major elements of the Copenhagen Accord into the United Nations (UN) climate process.

Still, the political differences on fundamental questions of a future climate regime remain as entrenched as ever, and the outcome of the latest climate conference in Durban is still uncertain. Important nations and groups of countries have come out with widely divergent proposals on their favored institutional trajectory for the future climate regime. Analytically often described through simplified models of "bottom-up" versus "top-down", polycentric versus centrally organized, fragmented versus harmonized, and legally binding versus voluntary or "politically binding", the actual reality is, as so often, far more complex. Indeed, the list of options discussed in research and academic analysis typically fails to adequately reflect the full range of proposals currently under discussion, located somewhere in the vast continuum between more traditional forms of multilateral cooperation through binding international agreements setting out specific obligations and procedures, and approaches more similar to that chosen under the Copenhagen Accord: non-binding, informal arrangements driven from the bottom-up through voluntary pledges and transnational cooperation among different coalitions of actors. The sheer range of options currently proposed from various sides, coupled with an absence of past experience in implementing many of these innovative models, highlights the need for a better understanding of their respective implications and transparent criteria to guide future policy decisions.

This policy paper builds on a parallel *ICPIA* paper that provides a first conceptual framework for the systematic analysis of different regime architectures (Mehling, 2011), and applies the criteria defined therein to the proposals submitted by central actors in the current



negotiations. It is strictly limited to political proposals formulated by formal participants in the international climate negotiations, namely sovereign nations, negotiating blocs composed of a group of states with similar interests, and regional organizations of economic integration. While only heuristic in stringency, these criteria allow for a first comparison and tentative assessment of different cooperation proposals along a uniform set of qualitative criteria that seeks to capture principal conditions and characteristics of any international effort to address the challenge of climate change. Specifically, these criteria are (Mehling, 2011):

- **Level of Ambition**
Understood as the ambition of objectives set out under a cooperative framework vis-à-vis accepted mitigation and adaptation imperatives, such as the decision endorsed by the international community in Cancún to hold the increase in global average temperature below 2 °C above preindustrial levels.
- **Compliance Facilitation and Control**
An assessment of the overall clarity and determinacy of commitments, the robustness of incentives for compliance, the mechanisms – whether facilitative or coercive – to address non-compliance, as well as the provisions set out to ensure sufficient transparency of efforts undertaken by participants.
- **Institutional Capacity**
Defined as the provision of mechanisms to perform procedural functions and facilitate the operation of regime elements, for instance through an infrastructure with proprietary resources and staff, technical knowledge, an institutional memory, and professional routines.
- **Participation and Inclusiveness**
Measured in terms of geographic scope and breadth of sectoral and stakeholder participation in cooperative efforts to address climate change.
- **Systemic Coherence**
Ability to address conflicts or tensions between different cooperative efforts, including measures to improve coordination between institutions, for instance through clear mandates and responsibilities, or through conflict clauses and procedures that address potential overlaps.
- **Political and Economic Feasibility**
A criterion integrating aspects of equity and fairness, expected economic burden and the distribution of costs and benefits as benchmarks for the acceptance of and adherence to a cooperative governance framework.



2 From Cancun to Durban: Options under Discussion

One year after the Copenhagen conference in Cancún, Parties adopted a set of pivotal decisions that integrated the substance of the Copenhagen Accord into the United Nations Framework Convention on Climate Change (UNFCCC) framework. They reflect all of its major elements, in particular economy-wide emission reduction pledges by developed countries, “nationally appropriate mitigation actions” (NAMAs) to be proposed and implemented by developing countries, the establishment of a Green Climate Fund, enhanced measurement, reporting and verification (MRV) of mitigation efforts and support provided, as well as the pledge by industrialized countries to mobilize US\$ 100 billion per year by 2020. Many issues regarding a future climate regime still remain highly contentious, however. For instance, significant dissent remains regarding the level of emission reduction targets of developed countries, the sources for long-term finance, and the legal form of the final outcome of the negotiations. Another divisive issue is the fate of the Kyoto Protocol (KP) beyond its first commitment period, which ends in 2012. Since the Bali Climate Conference in December 2007, negotiations have been conducted in two tracks, the KP Track and a track focused on long-term cooperative action (LCA) involving all parties to the UNFCCC. Under the KP track, new commitments for industrialized parties to the KP are being discussed, while the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) is focused on the main building blocks of a future climate agreement. Most developing countries are advocating the adoption of a second commitment period, but several important developed countries, in particular Japan, Russia and Canada, have expressed strong reservations against new emission reduction targets within the framework of the KP, in part because the United States – which is not a party to the KP – has made no comparable commitments. As the US has made it clear that it currently has no intention to enter legally binding commitments, the deadlock so far has not been overcome. A central question in Durban will be whether there can be a legally binding agreement for at least a small group of countries, or instead only a political agreement; and whether any arrangement will take the form of a single outcome or separate agreements. Possible options for a post-2012 regime therefore include

- a completely new treaty or protocol, which would essentially be an international treaty in its own right and require all the formal procedures required under international treaty law for its entry into force;
- a second commitment period of the Kyoto Protocol (“KP2”), which would be legally binding, but requires an amendment of the current KP following a formal process outlined therein;
- a second commitment period of the Kyoto Protocol (“KP2”) for a few countries and a COP decision under UNFCCC, setting out objectives, principles and expected behavior from parties, although the legal significance of such a decision remains controversial;



- only a COP decision under the UNFCCC, again with uncertain legal effect;
- no decision, meaning that the current legal framework remains in place, but the quantified commitments under the KP first commitment period will expire.

Crucial questions for a future regime will be whether and when a political or legal agreement will be achieved, to what extent a future regime might instead follow a bottom-up approach only, and which elements of the KP might be continued. While the KP's quantified emission limitation and reduction targets are set to expire in 2012, the protocol as a whole is not. Several mechanisms and institutional arrangements of the KP, such as the Clean Development Mechanism (CDM) or the Meeting of the Parties, could remain in operation even in the absence of future KP targets. Provisions that relate to targets may not have any continuing legal effect. Important elements of the Kyoto Protocol that relate to targets, such as the accounting provisions or the flexible mechanisms, could then be continued under the UNFCCC ("KP-like scenario") or only parts of it ("LCA scenario"). Two issues of particular importance – legal form of cooperation and rules on greenhouse gas monitoring and accounting – are described next in further detail.

Legal Options

At the most recent negotiations prior to COP17, parties have held an exchange of views on the issue of legal options, with disagreement on whether discussions on the legal nature of future cooperation can precede agreement on substance. Several parties support adoption of a formal negotiation mandate at the Durban climate summit to elaborate a legally binding agreement as the strongest expression of a state's commitment, although many differences remain when it comes to the details (Spencer, 2011). A majority of developing countries, for instance, advocate focusing on the KP and its binding and quantified mitigation commitments for developed countries before exploring similar requirements for themselves; but only few developed countries have indicated their willingness to consider new commitments under the KP, and only if such consideration is accompanied by a debate on a broader framework that also integrates developing countries over time (Bodansky, 2011). Meanwhile, some parties have called for more moderate expectations, suggesting negotiators focus on implementing the Cancún Agreements first.

Based on the views expressed by parties, a facilitator appointed by the AWG-LCA has compiled a document setting out a range of possible options for a Durban outcome, including: a legally binding instrument (LBI) and COP decisions, with various sub-options. These include: a mandate to conclude an LBI with a clear roadmap; a declaration regarding the future instrument, leaving the legal form open; continuing discussions to identify the appropriate form of the different elements of the agreed outcome; affirming the importance of an LBI; and continuing to address all the Bali Action Plan (BAP) pillars. Parties have been divided about the timing and scope of formal negotiations on this issue although there appears to be general support for further engagement on the matter of legal form. Issues to



be addressed by parties will include whether or not to adopt a formal negotiating mandate (as opposed to a mere discussion of options) regarding the question of legal form prior to conclusion of the negotiations on substance, and if so, whether to specify a timeline (see ENB, 2011).

Accounting¹

KP-like scenario

Rejection of a second commitment period under the KP by all parties would probably put an end to its international accounting framework, unless parties agree to take over all or a substantial part of its accounting rules under the LCA-track. For instance, they could agree to keep the International Transaction Log (ITL) and national registries operational subject to the criteria of the KP and an international review process of inventories and registries, but drop the legally binding mitigation targets and the corresponding compliance procedure (De Sépibus et al., 2011). Under this scenario, the integrity of the KP accounting system, as well as the role of the UNFCCC institutional framework as the main regulator for international credits, could be safeguarded. Further, it would probably improve the prospects of getting more countries over time to adhere to strict international accounting rules.

LCA-scenario

If Parties decide to renounce the KP accounting framework altogether, this will eventually entail the abandonment of a common allowance unit for all developed countries. Under this scenario, commitments by developed countries would be based on the pledges made under the LCA and their achievement would have to be demonstrated through the current UNFCCC system of inventory reporting, as amended by the current LCA negotiations.

3 Country positions

This chapter analyses selected country positions. It seeks to evaluate the positions of several countries or country blocks that are critical for the design and success of the future climate regime. Some of the country positions are new, such as Australia and Norway, and reflect the developments since the Cancún Climate conference; in other cases, countries or country blocks have merely adjusted existing positions to recent developments and expectations. Several important countries, such as Japan or Russia, were not considered as they have no comprehensive post-2012 concept (De Sépibus et al., 2011).

¹ For a detailed discussion on post 2012 accounting options see Prag et al. (2011).



3.1 Options proposed by the EU

Europe's central objective is to keep the increase in global average temperatures below 2°C so as to prevent the worst impacts of climate change, and this, for the EU, can only be achieved through a coordinated international effort (European Council, 2011b). The EU has expressed its intention to work towards an ambitious and balanced outcome at the Durban conference, building upon what was agreed last year in Cancún. According to the EU, it is of urgent importance that a process towards a comprehensive legally binding framework and a clear time line be agreed upon, ensuring global participation, including from major economies. In October 2011, the European Council confirmed the openness of the EU to a second commitment period under the Kyoto Protocol as part of a transition to such a framework (European Council, 2011b). The EU emphasizes that COP17 in Durban must agree on a roadmap and deadline for finalizing an ambitious, comprehensive and legally binding global framework for climate action by all major economies. Agreement on this roadmap is one of the reassurances the EU requires for entering into a second commitment period of the KP (European Council, 2011b).

Decision Making

The EU emphasizes that the UN process is essential for a broader global commitment to support action on climate change. This would imply ensuring broad participation and a stronger level of ambition from other countries, and addressing possible weaknesses, such as the rules for the accounting of forestry emissions and the handling of surplus emission budgets from the 2008 - 2012 Kyoto periods.

Regarding market-based mechanisms, the EU favors a more centralized approach under the auspices of the UNFCCC. It has proposed two different governance approaches. A centralized model, with common rules, possibly with a strong supervisory body, responsible for defining the mechanism and ensuring its smooth functioning (like the CDM) and a more decentralized model, where eligibility criteria for access to carbon credits for developed countries are set at the UNFCCC level, but more flexibility is granted with respect to the definition and functioning of the mechanism (UNFCCC, 2011)

Level of Ambition

The EU underscores the need to meet the 2°C target and concludes that even the higher, conditional pledges made so far under the Copenhagen Accord do not come close to the 25-40% reductions by 2020 that are required, based on the IPCC's assessment, to remain below a 2°C temperature increase (European Council, 2011b).

Legal Nature

While reiterating its preference for a single global and comprehensive legally binding instrument, the EU confirms in its Council Conclusion from October 2011 (European Council,



2011a) its willingness to consider a second commitment period under the Kyoto Protocol as part of a transition to a wider legally binding framework, provided that:

- the essential elements of the Kyoto Protocol are preserved, its environmental integrity is guaranteed and its architecture is further enhanced, including on Land Use, Land-Use Change and Forestry (LULUCF), surplus of Assigned Amount Units (AAUs), and market-based mechanisms;
- the Convention addresses the key outstanding issues and determines a roadmap, including a timeline with a final date and process taking into account the 2013 - 2015 review, for encompassing all the outcomes of this track in a multilateral, rules-based legal framework engaging all parties, with convergence with the Kyoto Protocol track after a second commitment period.

Geographic Inclusiveness

The EU emphasizes that a post-2012 framework should include mitigation commitments from, in particular, all major economies, in line with the principle of common but differentiated responsibilities and respective capabilities.

Criteria-based Assessment of the EU Post-2012 Position

Table 1 shows a criteria-based assessment of the EU post-2012 position as put forward in Mehling (2011). The level of ambition of the EU's proposals would be high, and provision for compliance facilitation and control under a UN-based system could, in principle, be strong. Likewise, the institutional capacity of UN-based options would be high by virtue of recruiting the existing infrastructure of the UNFCCC. The degree of participation and inclusiveness depends on the specific option. In the event of a second commitment period of the KP, participation and inclusiveness regarding binding targets would be rather low, something that would only change in case a single global treaty is adopted. The systemic coherence of the EU's proposal would be high, while the political and economic feasibility regarding a single global treaty or a second commitment period including major non-Annex-I countries remains low.



Table 1: Criteria-based assessment of the EU post-2012 position

Level of Ambition		
High	<i>Medium</i>	<i>Low</i>
Compliance Facilitation and Control		
Strong	<i>Medium</i>	<i>Weak</i>
Institutional Capacity		
High	<i>Medium</i>	<i>Low</i>
Participation and Inclusiveness		
High	Medium	Low
Systemic Coherence		
High	<i>Medium</i>	<i>Low</i>
Political and Economic Feasibility		
<i>High</i>	Medium	Low

Source: European Council (2011b).

3.2 G77 and China

The Group of G77 and China is the largest intergovernmental organization of developing countries in the United Nations, which provides the means for countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system. With more than 130 members the group includes most developing countries, except the Small Island States (SIDS), OPEC states, and a few other countries. While the G77 and China is the largest group of countries, it is also the most diverse group. This diversity has been the reason for several twists and misunderstandings at past climate conferences.



The Group of 77 and China in June 2011 published a statement reflecting its negotiating position for Durban arguing for constructive, party-driven and transparent negotiations in order to ensure that a second commitment period for the Kyoto Protocol is reached as part of a balanced and comprehensive outcome in Durban.² The G77 and China group also urged the US to join the KP. the group stresses that decisions must be in line with the Bali Action Plan,³ covering all its elements; that a balance between the two negotiating tracks must be respected, and the balance in decisions within each track must be maintained; and that whatever outcome is reached in it must not compromise the overall objective of a comprehensive, ambitious and legally binding outcome. In the last years G77 and China saw the rise of the BASIC coalition, with China having a leading role. BASIC and other coalitions within G77 and China contributed to more fragmentation of G77 on key issues. There is however a mutual dependency at work, as BASIC leader China depends on the G77 to enhance its geopolitical presence within a large pool of nation states that have similar development aspirations and pathways (Vihma, 2010).

Decision Making

For the Group of 77, it is incumbent particularly for the developed countries given their historical responsibility to address climate change within the UNFCCC and the KP.⁴ To do so, all parties have to adhere to the provisions and principles of the Convention, in particular the principles of equity and common but differentiated responsibilities and respective capabilities.

Legal Nature

For G77 and China, the continuity of the KP is an essential and basic element for the future of the climate change regime, and the group aims to avoid a gap between the commitment periods, as they reiterated in the Panama climate talks in October 2011.⁵ Defining new quantified emission reduction commitments for Annex I parties under the KP is seen as a legal obligation that must be met, and the KP must lead the way in this regard, serving as the cornerstone of the outcome of the negotiations as a whole. "Any other result would undermine the rules-based multilateral response to climate change under the UNFCCC and cast a shadow over our shared commitment to multilateralism."⁶

² <http://www.g77.org/statement/getstatement.php?id=110617b>

³ At the United Nations Framework Climate Change Conference (UNFCCC) on the island of Bali in Indonesia in December, 2007, the participating nations adopted the Bali Roadmap (also known as the Bali Action Plan) as a two-year process to finalizing a binding agreement in 2009 in Copenhagen.

⁴ Ibid.

⁵ <http://www.g77.org/nc/pressrelease/pr100711e%28b%29.html>

⁶ <http://www.g77.org/nc/pressrelease/pr100711e%28b%29.html>



Geographic Inclusiveness

The geographical inclusiveness of the regime architecture proposed by the G77 and China is relatively low in terms of the binding mitigation commitments it would result in, given that the KP Annex I currently cover only 27% of global emissions.

Criteria-based Assessment of G77 and China's Post-2012 Position

Table 2 shows a criteria-based assessment of the G77 and China position. The level of ambition under the G77 and China proposal would be high for the participating countries, compliance facilitation and control under a UN-based system generally strong, and again the institutional capacity of this UN-focused proposal high. As regards participation and inclusiveness, however, the G77 and China proposal would rank low as only developed countries would face binding targets. The systemic coherence of the G77 and China's position would be high, however, while the political and economic feasibility are likely to be low.

Table 2: Criteria-based assessment of G77 and China's post-2012 position

Level of Ambition		
High	Medium	Low
Compliance Facilitation and Control		
Strong	Medium	Weak
Institutional Capacity		
High	Medium	Low
Participation and Inclusiveness		
High	Medium	Low
Systemic Coherence		
High	Medium	Low
Political and Economic Feasibility		
High	Medium	Low

Source: G77 and China (2011).



3.3 The AOSIS Proposal

The AOSIS proposal was proposed at the Copenhagen climate conference by the Alliance of Small Island States (AOSIS)⁷. What the AOSIS proposal would do is essentially two things: amend the Kyoto Protocol to extend it until 2017 (the targets are set to expire in 2012) and set new emissions targets for all parties; and simultaneously create a new “Copenhagen Protocol,” a legally binding agreement that would “enhance implementation of the UNFCCC in a balanced and comprehensive manner by addressing mitigation, adaptation, technology, financing and capacity-building support.”

Level of Ambition

The AOSIS Proposal provides that the parties should limit temperatures to well below 1.5 degrees Celsius above pre-industrial levels and to long term stabilization of greenhouse gas concentrations in the atmosphere to well below 350 ppm CO₂e. To this end, the Parties would agree that global emissions should peak by no later than 2015 and will need to be reduced by at least 85 per cent below 1990 levels by 2050. Annex I Parties collectively must reduce their emissions by more than 45% of their 1990 levels by 2020 and by more than 95% of their 1990 levels by 2050. A substantial deviation from business as usual emissions in non-annex I Parties would be required by 2020.

Decision Making

The UNFCCC would be the main decision making process and the Conference of the Parties would periodically review the overall progress towards the achievement of the ultimate objective of the Convention and actions related to the shared vision on mitigation, adaptation, finance, technology transfer and capacity-building.

The AOSIS proposal provides that parties included in Annex I to the Convention that are also Party to the Kyoto Protocol would individually or jointly, ensure that for the second commitment period under the Kyoto Protocol (2013 to 2017) and subsequent commitment periods, their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A to the Protocol do not exceed their assigned amounts calculated pursuant to their quantified emissions limitation and reduction commitments inscribed in Annex B to the Kyoto Protocol. If, subsequent to the adoption of a new protocol under the convention, a Party addressed by the KP voluntarily proposes a national emissions limitation target for the assessment period 2013 to 2017 or subsequent assessment period, the COP would determine whether the proposal would contribute to the ultimate goals of the Convention – the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. This

⁷ AOSIS (2009) Alliance of Small Island States (AOSIS) Declaration on Climate Change 2009.



would take into account the need to ensure consistency and transparency with regard to the measurable, reportable and verifiable nature of the targets. In the case of a positive determination, the COP would take the necessary action to inscribe this target in Annex Z of the new protocol in the form of a national or sectoral voluntary emission limitation target expressed as a percentage of base year or period.

Legal Nature

The outcome of the AWG-LCA process would be an internationally-legally binding agreement that is comprehensive, ambitious and addresses all elements of the Bali Action Plan.

Geographic Inclusiveness

The geographical inclusiveness of the AOSIS proposal would be high. Also developing countries would have to reduce their emissions substantially.

Criteria-based assessment of the AOSIS proposal

Table 3 shows a criteria based assessment of the AOSIS proposal. The level of ambition of the AOSIS proposal would be high for the participating countries, the Compliance Facilitation and Control under a UN-based system in principle strong, and the institutional capacity of UN based options high. The Participation and Inclusiveness would be high, too. Also with respect to the systemic coherence of the AOSIS proposal the score is high, while the Political and Economic Feasibility are low.



Table 3: Criteria-based assessment of the AOSIS proposal

Level of Ambition		
High	<i>Medium</i>	<i>Low</i>
Compliance Facilitation and Control		
Strong	<i>Medium</i>	<i>Weak</i>
Institutional Capacity		
<i>High</i>	Medium	<i>Low</i>
Participation and Inclusiveness		
High	<i>Medium</i>	<i>Low</i>
Systemic Coherence		
High	<i>Medium</i>	<i>Low</i>
Political and Economic Feasibility		
<i>High</i>	Medium	<i>Low</i>

Source: AOSIS (2009).

3.4 The BASIC countries

The BASIC countries are a bloc of four large developing countries – Brazil, South Africa, India and China – formed by an agreement in 2009. The four committed to act jointly at the Copenhagen climate summit. This emerging geopolitical alliance, initiated and led by China who is also part of the G77 and China coalition, then brokered the final Copenhagen Accord with the United States. China thus forms part of multiple negotiating blocs (BASIC as well as G77 and China) and thereby holds a somewhat unique position, reflecting its ascendancy as a major economic and political power in international affairs. It also reflects the increasingly fragile binary distinction between developed and developing countries initiated under the



UNFCCC and continued under the KP, given the rapid rise in both economic prosperity and emissions of many emerging economies.

A month in advance of the COP17 in Durban, ministers from Brazil, South Africa, India and China, also known as the BASIC countries, have reached a consensus on a range of climate change issues – including the Second Commitment Period of the Kyoto Protocol⁸. The ministers of the BASIC countries share the view that developed countries should fulfill their commitment of providing US\$ 30 billion as fast start funding, ensuring new and additional funding and transparent information of its performance. The ministers of the BASIC countries reiterated the importance of ensuring the accounting of finance on the fast start funding is transparent, measurable, reportable and verifiable. They emphasized that adaptation is the most urgent task in developing countries and supported the African Group's position on prioritizing this issue in Durban. They called for immediate operationalization of the Adaptation Committee, which should contribute to adaptation policy development and implementation of adaptation actions in developing countries following the requests of developing countries and respecting a country-driven approach.

Level of Ambition

The level of ambition would be high for the countries with binding targets, but less stringent for developing countries. Given the rapid growth rate of developing country emissions, the preferred BASIC scenario would not be likely to incentivize mitigation efforts that are ambitious enough to achieve the 2°C target espoused by the scientific community. Hence, the overall level of ambition is categorized as “medium”.

Decision Making

The UNFCCC would be the main decision making process. It would continue and expand the institutional structure under the first commitment period of the Kyoto Protocol. The UNFCCC would review the adequacy of a global temperature goal and the effectiveness of ambitious quantified emission reduction commitments by Annex I Parties as well as the provision of finance and technology support by developed countries to enable developing countries to implement enhanced mitigation and adaptation actions under the UNFCCC.

Legal Nature

The BASIC countries emphasized that the Kyoto Protocol is the cornerstone of the climate regime and its second commitment period is the essential priority for the success of the Durban Conference. They called upon the Conference to clearly establish the second commitment period under the Kyoto Protocol where the developed country parties to the Kyoto Protocol shall undertake quantified emission reduction commitments. They called for

⁸ Ecopolity (2011) <http://www.ecopolity.com/2011/11/03/the-basic-countries-consensus-on-durban/>



the Durban Conference to accomplish the Bali Action Plan where developed country parties, that are not Parties to the Kyoto Protocol, to undertake comparable quantified emission reduction commitments under the Convention. For developing country parties they propose to implement enhanced mitigation actions in the context of sustainable development which are enabled and supported by finance, technology and capacity building.

Geographic Inclusiveness

Only Annex 1 countries would be part of a second commitment period with binding quantifiable reduction targets.

Criteria-based Assessment of the BASIC Countries' Post-2012 Position

Table 4 shows a criteria based assessment of the BASIC countries' post-2012 position. Similar to the G77 and China proposal the BASIC countries' proposal would lead to a high level of ambition for the participating countries, the compliance facilitation and control under a UN-based system may be strong, and the institutional capacity under the UN high. As regards participation and inclusiveness, however, the BASIC countries' proposal would rank low as only developed countries would face binding targets. The systemic coherence of the BASIC countries' position would be high. The political and economic feasibility are likely to be low.



Table 4: Criteria-based assessment of the BASIC countries' post-2012 position

Level of Ambition		
High	Medium	Low
Compliance Facilitation and Control		
Strong	Medium	Weak
Institutional Capacity		
High	Medium	Low
Participation and Inclusiveness		
High	Medium	Low
Systemic Coherence		
High	Medium	Low
Political and Economic Feasibility		
High	Medium	Low

Source: China.org.cn (2011).

3.5 United States

As the world's largest economy, the US is also one of the largest consumers of fossil energy sources and has above average per capita emissions of greenhouse gases. Although the only major developed country that has decided to withdraw from the KP, largely because it does not include quantified mitigation targets for major developing countries, the US has expressed a willingness to enter into negotiations on a broader climate agreement. Still, it has set very stringent conditions for the launch of such negotiations, acknowledging that these conditions virtually rule out an agreement on a robust mandate in Durban. An "Implementing Agreement" submitted to the UNFCCC prior to the 2009 Copenhagen climate summit outlined a number of elements that still define the US position in international climate



negotiations.⁹ Specifically, the US would only be willing to negotiate a legally binding agreement if the mandate provides that a negotiated outcome applies with equal legal force to all of the major emitters. Although it concedes that developing country commitments be differentiated from developed country obligations in terms of scope and intensity, the US nevertheless insists on symmetry of legal form, meaning that the provisions for major emitting developing and developed countries should have the same legal character (Bodansky, 2011). Meanwhile, the US is struggling to meet its already modest emissions reduction commitment of 17% below 2005 levels, and has been reluctant to discuss ways of meeting the \$100 billion by 2020 annual climate finance goal it committed to in Copenhagen.

Level of Ambition

For the US, the preferred regime architecture would be based on a bottom-up process of pledges submitted by parties implemented through domestic law, rather than a comprehensive multilateral treaty. This is very much in line with the approach chosen under the Copenhagen Accord, which was generally welcomed in the US as a step in the right direction. While flexible and potentially more attractive to countries hesitant to enter binding commitments they may be unable to attain domestically, experience with the Copenhagen Accord has also shown that this process is generally less likely to in commitments that add up to the aggregate mitigation efforts called for by climate science. Given the absence of central coordination in target definition, it tends to entail a trade-off between political feasibility and necessary level of ambition.

Decision Making

Decision making in the proposals submitted by the US is spread more evenly between central coordination at the multilateral level and legislation adopted at the domestic level. Compared to the approach chosen under the KP, in particular, less decision on commitments and their scope would be taken multilaterally, and more decision making would be left to each individual party and their domestic governance decisions. A strong central decision making body is therefore absent in this scenario, with international coordination focused more on common frameworks of reference and procedures and less on substantive commitments. Compliance facilitation and control are of substantial concern for the US, and hence any agreed outcome will have to include robust provisions on measurement, reporting and verification. Institutional capacity, by contrast, could be more limited: given that a significant part of decisions would be pursued at the domestic level rather than multilaterally, the international framework could become operational with fewer institutional structures than is currently the case e.g. under the KP.

⁹ <http://unfccc.int/resource/docs/2009/cop15/eng/07.pdf>.



Legal Nature

In terms of the legal nature of an outcome proposed by the US, it has stated that it would be willing to support a legally binding agreement that contains mitigation commitments which are symmetrically binding for all parties. While the exact meaning of legal symmetry remains unclear, it is likely to require that:

- commitments for developed and developing countries are contained within an agreement with the same legal form;
- all commitments are mandatory and unconditional;
- commitments should entail the same consequences for non-compliance (Spencer, 2011).

Formally, the implementing agreement as proposed by the US in 2009 would have been adopted by the Conference of the Parties, yet required domestic ratification. This suggests it was envisioned as a binding international treaty, albeit largely a framework for more specific action rather than an exhaustive agreement with material targets. In any event, domestic legislation adopted by individual jurisdictions would be the main form of binding governance.

Geographic Inclusiveness

The US favors an agreed outcome that binds all major economies in a symmetrical fashion with respect to their mitigation commitments, being unconditional to the provision of finance and a revision of the Annex 1, non-Annex 1 categories to reflect changing economic realities since 1992, when the original UNFCCC was adopted. Hence, it is unclear whether the US would give preference to an outcome that also includes other developing countries, or is purely interested in a framework that places commitments on the large industrialized and emerging economies.

Criteria-based Assessment of the US Post-2012 Position

Table 5 below reflects the US position in international climate negotiations against the backdrop of the criteria described earlier. As stated already, the level of ambition of the US provision is modest overall, given a number of conditionalities and reliance on voluntary submission of pledges by participating states. By contrast, the US has always been a strong advocate of robust compliance facilitation and control mechanisms, but it is doubtful that it would be in a position to support a strong institutional infrastructure with the required resources. Participation and inclusiveness would be fairly high, given the US insistence that all major emitters participate in a future mitigation regime, yet to reflect the less certain role for all remaining developing countries, it will only obtain a medium score. Systemic coherence, meanwhile, is difficult to assess, but actual language on an agreed outcome submitted by the US contains no clauses on how to deal with conflicts and tensions among regimes and



actors. Stronger reliance on domestic law and decision making suggests less coordination at the multilateral level, harboring a greater risk of systemic incoherence.

Table 5: Criteria-based assessment of the US post-2012 position

Level of Ambition		
<i>High</i>	Medium	<i>Low</i>
Compliance Facilitation and Control		
Strong	<i>Medium</i>	<i>Weak</i>
Institutional Capacity		
<i>High</i>	<i>Medium</i>	Low
Participation and Inclusiveness		
<i>High</i>	Medium	<i>Low</i>
Systemic Coherence		
<i>High</i>	<i>Medium</i>	Low
Political and Economic Feasibility		
High	<i>Medium</i>	<i>Low</i>

Source: USA (2009).



3.6 Searching for a Transitional Regime: The Proposal by Norway and Australia

In July 2011 Norway and Australia submitted a proposal to establish a transitional climate regime until a comprehensive legally binding treaty could be agreed upon in 2015¹⁰. They define the following steps:

- Have clear, complete and standardized information on all pledges for mitigation actions and targets by Durban
- Establish international guidelines and rules for accounting of quantified emission reduction targets and actions
- Quantify emission outcomes by 2013-2014, based on additional information in the first biennial reports:
 - a. Quantified emissions outcomes for developed countries
 - b. Estimated emission outcomes for developing countries
- Set out legally binding commitments in relation to emission reduction outcomes for developed country Parties and implementation of mitigation actions by developing country Parties in 2015
- Begin a process for scaling up the mitigation ambitions in context of the 2013-2015 review.

Level of Ambition

The mitigation outcome in Durban should be the starting point for anchoring mitigation pledges more firmly (eventually in a legally binding way) and stepping up ambition on mitigation to achieve the 2°C temperature increase or lower target. As a first step, towards this outcome, it is important to have clarity on what the mitigation effort currently envisaged means in terms of emission reductions. Developed country Parties have submitted their economy-wide emission reduction targets for 2020. These targets need to be further clarified and developed into quantified emission reduction outcomes with clarity on accounting for this outcome. This process could begin at Durban and conclude in 2013/14 after the first biennial report. It would be a step towards increasing ambition over time, firstly through the 2013-2015 review process. Non-Annex I Parties have submitted pledges for nationally appropriate mitigation actions by 2020. As a first step, there is a need for more complete and consistent information about these pledges, in order to estimate the expected emission

¹⁰ unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/australia_norway_mitigation_submission.pdf



reduction outcome. It would underpin options to enhance implementation and increase ambition over time.¹¹

Decision Making

From the point of view of decision making, the proposal by Norway and Australia would largely retain the UNFCCC as the main decision making process. This entails, among other features, a higher degree of formalized compliance control mechanisms and institutional capacity.

Legal Nature

Under the Norwegian and Australian proposal, a legally binding treaty would be adopted at the end of the process in 2015.

Geographic Inclusiveness

The Geographic Inclusiveness would be high, as a new global treaty would cover most countries under the UN.

Criteria-based Assessment of the Proposal by Norway and Australia

Table 6 shows a criteria based assessment of the proposal by Norway and Australia. The level of ambition would be high after 2015, the compliance facilitation and control under a UN-based system may be strong, and the institutional capacity under the UN high. At the same time the transition period without searching a global agreement with binding targets could maintain the currently high participation in the process. The systemic coherence of a Global Treaty may be high and the political and economic feasibility may be far higher than currently the case.

¹¹ Ibid.



Table 6: Criteria-based assessment of the proposal by Norway and Australia

Level of Ambition		
High	<i>Medium</i>	<i>Low</i>
Compliance Facilitation and Control		
Strong	<i>Medium</i>	<i>Weak</i>
Institutional Capacity		
High	<i>Medium</i>	<i>Low</i>
Participation and Inclusiveness		
High	Medium	<i>Low</i>
Systemic Coherence		
High	<i>Medium</i>	<i>Low</i>
Political and Economic Feasibility		
High	Medium	<i>Low</i>

Source: UNFCCC submissions by Norway and Australia (2011).

4 Analysis: From a Post-2012 to a Post-2020 Regime

There is emerging consensus on some of the building blocks of a future climate agreement, such as the institutional setting of the Green Climate Fund or the Technology Fund. However, there has been far less consensus on the overall shape of the future post-2012 global architecture. The most controversial issues are the timing and the legal status of a new climate agreement and its components, and the level of ambition of its targets. Proposals range from an international treaty under the convention – possibly accompanied by a second KP commitment period – to a set of decisions under the convention. From the broad set of conceivable post-2012 options, however, only a few outcomes are realistic in Durban. The proposals and negotiating texts show that the discussions for a post-2012 agreement are



moving to a climate agreement with in principle a far higher geographical inclusiveness than under the Kyoto Protocol, but internationally binding targets (legally or politically) only for a small group of countries in the short term. The reduction targets proposed so far by developed countries fall short of the numbers requested by science. Most countries would, at least during a transition phase, face no internationally binding targets. The UN would remain the main forum for decision making, possibly accompanied by fora outside the UN.

Several countries, including the EU, have started discussions on the future climate regime by envisioning two distinct timelines:

- a post-2012 transition period; and
- negotiations on a post 2015-2020 regime.

Realistically, the post-2012 phase may include a second commitment period for some countries and a COP decision for the others, or only a COP decision including rules and plans for the next few years. While developing countries, including G77 and China, as well as some developed countries (such as Norway) favor a second commitment period, the EU, Switzerland, Australia and Ukraine do so only under very specific conditions. For the EU, a prerequisite for signing up to a second commitment period would be that a mandate for a post-2017/2020 regime is adopted in Durban that will lead to a comprehensive and legally binding global framework for climate action by all major economies sometime between 2017 and 2020. A COP-decision in Durban could continue the Cancun process and could additionally include some of the Kyoto rules. Such a transitional regime under the COP, as for instance proposed by Australia, would not be based on a near-term legal agreement, but on a political understanding that may evolve over time into a legally binding regime. The dynamic of the Copenhagen and Cancun processes would be extended with a high geographical inclusiveness, but also with only moderately ambitious targets for Annex-I countries. A COP decision in Durban setting out a roadmap for the next few years could help identify common ground on accounting rules and new market mechanisms. While such a transitional regime is likely to be politically feasible, pronounced differences in the views on the overall climate architecture will likely not be resolved. The compliance facilitation and control framework would potentially be strong for those countries that sign up to a second commitment period, but low for other countries, who would potentially face a review process for their voluntary targets without sanctions for non-compliance. At the same time, however, such a transitional regime could continue the broad participation seen since Copenhagen.

The design of a post 2017/2020 regime would be based on a 2013-2015 review process of the reduction targets. The next IPCC assessment report to be published in 2014 would provide a scientific basis for the discussion of future reduction targets. Based on the strengths of the current regime and harnessing some of the features of post-2012 proposals, such as a high level of participation and inclusiveness and political feasibility, the international community may yet be able to design a more comprehensive and ambitious international climate regime.



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