

This text is an analysis of the outcomes of the 17th Conference of the Parties (COP17) to the United Nations Framework Convention on Climate Change (UNFCCC) which took place in Durban (South Africa) from November 28 to December 9, 2011.

## Durban climate talks: A small tectonic shift

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**T**he 2011 UN climate talks came to an end in Durban after a record-setting 36 hours, and two sleepless nights, of injury time. The grueling and at times chaotic talks yielded progress on several fronts, but much of the details of the agreements remain to be developed.

Firstly, countries finally reached a political compromise on the future of the Kyoto Protocol. A small group, including the EU, agreed politically to participate in a second commitment period of Kyoto, from 2013-2017. Legal adoption will wait until next year; full ratification until sometime thereafter. The institutions and mechanisms of Kyoto, including CDM, will continue. This agreement on a second commitment period will have little to no effect on actual climate policies, as the countries participating already have domestic policies in place. However, it does free up political space to focus on creating a more universal legal framework.

In this regard, Durban took important steps forward. In return for the politically important second commitment period, emerging countries agreed to a roadmap towards a “protocol, legal instrument or agreed outcome with legal force” to be adopted by 2015, entering into force by 2020.

The final, convoluted wording emerged from a bizarre 4 a.m. negotiating huddle in public view between India and the EU. Beyond the inevitable legal exegesis of the text, that public negotiation and previous statements from emerging powers such as China have created a sense of political consensus that we are moving towards a common, legally binding framework. Certainly, there is room for interpretation, as the Indian Minister made clear in her deposition to Parliament after Durban, saying “[t]he decision allows India the necessary flexibility over the choice of appropriate legal form to be decided in future”. However, from the willingness to consider a legally binding agreement shown by other emerging countries (*more on this below*) it is clear that such a position is becoming increasingly isolated. In terms of building consensus on the need to develop a common legally binding framework, Durban thus takes us well beyond the current process launched in Bali in 2007.

Indeed, even more than the legal wording, the true extent of this broadening of responsibility for addressing climate change can be seen in the treatment of “common but differentiated responsibilities” in Durban. On face value, this is a flexible principle allowing a spectrum of contributions. However, under Kyoto this principle was translated into a dichotomous and immutable distinction between developed and developing countries: developed countries were legally obliged to reduce emissions, while developing countries were absolved from any action under the international regime. In Durban, the US was absolutely adamant that any reference to “common but differentiated responsibilities” be removed from the final agreement, as it feared that any such reference, or reference to “equity”, would be subsequently used as a pretext for reverting to a Kyoto-style distinction between developed

and developing countries. For its part, the EU had also been pushing for “modernizing” the principle to reflect the changed reality of the world since the Convention was negotiated.

Thus, Durban represents a decisive, if still ill-defined, “globalization” of responsibility to address climate change. Certainly, countries will try to reinsert principles of equity into the negotiations. However, the framework in which they will take place has been fundamentally redefined; it is, as the Indian lawyer and analyst Lavanya Rajamani stated, “new process and with it, a clean slate on differentiation” between countries’ responsibilities. Henceforth, a dichotomous distinction between developed and developing country responsibilities, including their legal nature, will be difficult to maintain.

In terms of promoting action, this “globalization of responsibilities” may be just as important as Durban’s progress towards a legally binding agreement. The withdrawal of Canada from Kyoto, which has been rightly criticized, has shown that legally binding regimes cannot by themselves compel countries to act. Broad participation is potentially even more important, as the prospective breadth of cooperation strengthens the self-interest of each country to act.

Reconciling this globalization of responsibility with development imperatives for developing and emerging countries will be a key task for the current decade. Financial cooperation and technology improvements will be vital. In this regard, the establishment in Durban of the Green Climate Fund (GCF) was a small step forward. Currently, the GCF has no money, but it was given an independent board and legal status, and a remit to engage with the private sector. Filling the GCF with stable financing including from the public sector, and leveraging this financing to the fullest, are tasks for the coming years.

Durban achieved little in terms of concrete strengthening of emissions reduction policies. Indeed, analysis by the International Energy Agency and the UN Environment Program has shown that the world is off-track to meet the 2 degrees objective, even if all 2020 emissions pledges are fully met. And the window to shift course is rapidly closing, as new investments lock in future emissions.

Climate talks themselves do not reduce emissions; but they can create the conditions to support domestic emissions reductions policies, including a strong legal framework and broad participation. In this context, the Durban conference also agreed to a strongly worded and open-ended process to strengthen ambition; ratcheting up emissions reduction policies where possible is a key priority for the coming several years. At the same time, we need to recognize the timeframe on which critical

infrastructures and investment decisions operate. Countries therefore need to begin preparing the next round of targets for 2030 and beyond, which should then be anchored in the global accord to be adopted by 2015.

Finally, Durban will be remembered for an important geopolitical shift in climate change policy. A surprising first-week opening by China cornered more reluctant countries, in particular the US, and was thus instrumental in achieving the final agreement. This was more than a clever piece of public relations, as it left China on record at a stage where the willingness of other players, including the US, was unclear. Other developing countries, in particular Brazil, also demonstrated much greater willingness to adopt responsibility for the success of the process. Small, vulnerable developing countries were adamant and united in demanding more of the emerging powers, and created effective alliances with the EU.

This geopolitical adjustment, breaking apart traditional developed-developing country dichotomies, reflects reality. Emerging powers are increasingly taking strong action domestically, and are now starting to match this with responsibility for the international response to climate change.

Durban has been criticized for “postponing” meaningful action on climate change. This is a false interpretation for three reasons. Firstly, legally binding regimes are not *necessarily* more effective at promoting implementation; Canada’s exit from Kyoto shows this. Secondly, it does not mean that nothing will happen until 2020. All the major emitters have submitted pledges for 2020 emissions reductions at Cancún in 2010. In Durban, countries agreed to a transparency system to follow progress towards the implementation of these objectives. It is certainly not perfect, and will need to be improved over time, but it will allow a progressive assessment of where countries stand. This “soft law” system will guide, and hopefully reinforce, action until 2020. Thirdly, the international talks are not the sole benchmark of action. Countries are undertaking significant action domestically, which is sometimes not reflected in their positioning internationally.

In sum: Durban came at a highly fraught time in the global economy, with the EU and the US caught up in domestic concerns. Nonetheless, it showed that governments can achieve meaningful agreements when major powers are willing, and smaller countries act strategically. The Durban outcome by itself will not reduce emissions. But the accords achieved create a solid basis for strengthening short-term action as much as possible, and crafting long-term, ambitious cooperation. ■