



Don't Kill Kyoto

Why the UK and the EU must back a second commitment period of the Kyoto Protocol in Copenhagen

November 2009

In 1992 at the Rio Earth Summit, the UN Framework Convention on Climate Change (UNFCCC) was agreed as a global treaty to govern international action to tackle climate change.

In 1997, the Kyoto Protocol was agreed as a legal instrument to implement the Convention. The Protocol includes quantified emissions reduction targets for developed countries – known as Annex 1 Parties. It also specifies accounting methods and compliance mechanisms for the targets, as well as creating the basis for global emissions trading.

We have criticised many elements of the Protocol, including the problems caused by the carbon trading system and the loopholes in the accounting methods provided. However, Kyoto is the only existing legal architecture for setting legally binding emissions targets for developed countries. It must be preserved as the cornerstone of any agreement in Copenhagen.

Opinion is divided as to what can and will be achieved at the December 2009 UNFCCC meeting in Copenhagen, but it is clear that the fate of the Kyoto Protocol hangs in the balance. If there is to be an agreed outcome in Copenhagen then parties must decide and agree on whether the Kyoto Protocol is to be maintained and amended with a second commitment period as a central element of the international legal architecture for global action on climate change or if it is to be abandoned.

Developing countries are united in arguing that Kyoto should be the basis for any agreement in Copenhagen. Failure by developed countries to agree to a second commitment period with robust emissions reductions targets under the Kyoto Protocol could mean failure to reach agreement in Copenhagen. At best, it can only mean a weakening of already inadequate international action on climate change. It is essential that the UK and the European Union support the Kyoto Protocol and push for a second commitment period.

Legally bound

The Bali Climate Talks in 2007 launched a two year process with two separate negotiating tracks – with both expected to conclude in Copenhagen. One of these tracks – continuing work first begun in 2005 – is required to agree new targets for developed countries under a second commitment period of the Kyoto Protocol. The second track was established under the 'Bali Action Plan' – which principally set out to ensure the United States made

comparable reductions to other developed countries under the Kyoto Protocol, as well as to ensure finance and technology support was forthcoming to enable developing countries to tackle climate change.

The Kyoto track of the Bali negotiations clearly sets out that its legal outcome must be an amendment of the Kyoto Protocol. This is in line with the legal duties of signatories to Kyoto as set out in Article 3.9, where it clearly states that parties *shall* agree further commitments in subsequent commitment periods. Amending the protocol is part of the duties of the Ad-hoc Working Group on the Kyoto Protocol which was established under the UNFCCC in 2005.

Failure to comply with these provisions by failing to agree a second commitment period would mean that all Parties to the Kyoto Protocol - not just Annex I Parties – had breached their legally binding obligations.

Only the first commitment period of the Kyoto Protocol expires in 2012 – not the protocol itself. Countries now urgently need to reach agreement on how to strengthen and continue international climate cooperation after 2012. Agreement needs to be reached early – and ideally in Copenhagen in December – to avoid gaps between commitment periods and to respond to the urgency of the climate crisis.

Legally binding

Years of international negotiation and diplomacy went into securing the Kyoto Protocol - the only existing international tool that can legally require industrialized countries to reduce their greenhouse gas emissions. Developed countries are increasingly indicating that they would prefer legal alternatives to the Kyoto Protocol, but it is very unlikely that anything could be agreed that could match Kyoto's legal strength and fairness, especially given the limited time available.

As well as setting binding emissions targets for developed countries, Kyoto creates a framework to ensure that these targets are clearly and comparably calculated and that Parties' performance is subject to monitoring and international verification. Furthermore the Protocol identifies agreed methods of listing gases and calculating their global warming potentials. If Kyoto were abandoned, then debates on all these issues would be reopened – to the detriment of global action on climate change.

What is more there is a clear negotiating mandate to agree a second commitment period of the Kyoto Protocol – the only reason this has not happened is because of the reticence and foot dragging of developed countries. In the current political climate, there is no negotiating mandate or consensus for a stronger alternative legal architecture.

The science of climate change is clear on the urgency of action. There are less than 10 years to secure a peak in global emissions. This requires immediate and effective implementation of climate policies given that most investment has a delay of many years before impacting end-use greenhouse gas emissions. It is extremely unlikely that a new detailed and effective legal architecture can be put together in the necessary timeframe.

Given the inadequacy of current action on climate change abandoning Kyoto would represent a collapse in the multilateral architecture of climate change. All that could remain is countries taking action at a level that suited domestic circumstances – with inevitably disastrous consequences for all the world's people and especially those in developing countries, where the poorest and the most vulnerable people live.

Differentiated responsibilities

The Kyoto Protocol is also important because it makes a clear distinction between industrialised and developing countries and the types of international obligations they should have. The bulk of historic responsibility for the climate crisis and of capacity to act sits with industrialised countries. Because of this, and as a result of previous negotiations, they are the only ones with legally-binding obligations to reduce their emissions under the Kyoto Protocol.

Developing countries, which have not significantly contributed to climate change and which have scarce resources to deal with it, do not have legal obligations, but are entitled to receiving financial support to enable sustainable development. This reflects the priority that developing countries must put on poverty eradication and social and economic development.

The Protocol's different treatment of developed and developing countries is crucial as it enshrines the important principles of equity and climate justice, and safeguards developing countries' right to development.

It is important to note that many developing countries, including some of the largest, are taking unilateral actions which will reduce the emissions intensity of their economies. However convincing developing countries to quantify and internationally verify what they will achieve with these actions will prove difficult given developed countries' inadequate emissions reduction targets and reluctance to make clear offers of climate finance.

The only safe option

Countries like Australia and the USA support the idea of a single 'Copenhagen Agreement' that would be weaker and more unjust than Kyoto. Such an agreement would not impose the legally binding actions on rich countries but would seek to capture all actions by all countries in one instrument. The US, in particular, is keen on a 'pledge and review' approach to action – which would lead to emissions targets being set on the basis of domestic politics, rather than according to the science and international agreement.

Such an approach would ignore the vast differences between developed and developing nations and redefine the nature of industrialised countries' emission reduction actions. Developing countries will rightly resist any attempt to impose legally binding emissions reduction commitments on them, so attempting to treat them like developed countries will necessarily weaken the justice and effectiveness of any outcome.

Similar issues face the EU's recent attempts to push for a single new treaty to replace Kyoto. There is no negotiating mandate for a new treaty, and there is little support for this approach from developing countries. The terms of the UNFCCC require Parties to reach consensus to agree a new protocol and this is very unlikely, particularly on a tight timescale.

It is also certain that developing countries will strongly resist any attempt to impose legally-binding emissions actions on them. Conversely the US is likely to resist anything that puts legally binding targets on it but does not put comparable pressure on China to take action.

If Kyoto is to be replaced then it is unclear what new legal form could be found that is acceptable to all parties. Developed countries, including the US, must be held to account for delivering adequate commitments in the bright spotlight of publicity that will be shone on Copenhagen, as otherwise it is unlikely that they will do so at a later date. Indeed, the

US agreed to make comparable efforts to other developed countries under the Kyoto Protocol as part of the 'Bali Action Plan'.

The Danish government, which holds the Presidency of the Parties to the UNFCCC for the meeting in Copenhagen, has recently promoted the idea of a 'politically binding' agreement that could in time be replaced by a legally binding text. A successful Copenhagen outcome will almost inevitably be controversial in some country or another – a politically binding agreement could easily fall apart within weeks, if not days, of being struck. By contrast, using Kyoto as the basis of agreement would allow Parties to make a number of key legal commitments in Copenhagen through an amendment to the Protocol.

The need to maintain ambition

The US refusal to sign Kyoto is symptom of its unwillingness to acknowledge the greater responsibility that comes with its huge body of historic emissions and vast levels of wealth and consumption. Rather than leading the world in tackling climate change, it is demanding that developing countries such as China bear the burden of action, while it does only what is deemed acceptable in its domestic political sphere.

Pressure must be brought to bear on the US to take a level of action that is commensurate with its greater responsibility and capacity. In the mean time, other nations must not use US foot-dragging as an excuse for bringing global climate action down to the level of the lowest common denominator.

A foundation for a fair deal

What all of us - and especially the world's poor – need from Copenhagen is a strong commitment to build on and improve the existing climate architecture, as enshrined in the Kyoto Protocol. Any Copenhagen outcome must include a clear distinction between developed and developing countries, and legally binding emission reduction obligations for industrialised countries set at the international level, in accordance with the science, and with strong monitoring and compliance measures.

Even with a strong Kyoto amendment agreed there would still be a need for a good outcome in the second negotiation track of the talks - the 'Long-term Cooperative Action' (LCA) discussions. The LCA is where US commitments for post-2012 action could be enshrined, since it declines to join the Kyoto Protocol.

But the Kyoto Protocol must be the foundation stone of agreement in Copenhagen – anything less will be a gigantic gamble with the world's chances of preventing dangerous climate change, as well as global efforts to eradicate poverty. Our call to the UK, the EU and other industrialised countries ahead of Copenhagen: do not play roulette with the future of our planet.

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This briefing is based on the discussions with UNFCCC delegates, analysis contained in 'Copenhagen Legal Options & Equity: An evaluation of legal outcome options for a post-2012 climate change agreement from an equity and climate justice perspective', Aprodev, November 2009, as well as readings of the legal texts of the UNFCCC, the Kyoto Protocol and the Bali Action Plan.