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The obscure future of the Kyoto protocol

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Since it came into effect in 2005 followed by its first period of application from 2008 to 2012, the Kyoto protocol has been subject to debates and international negotiations about its post-2012 future. Many grey areas persist, even though the Durban conference, held in December 2011, and the Doha conference, held in December 2012, ratified the principle of a second period of application of the protocol and started negotiations for a new international treaty supposed to come into effect in 2020.

Introduction

Subsequent to the early warnings and concerns about Global warming, the World Meteorological Organization and the United Nations Programme for Environment created the Intergovernmental Panel on Climate Change (IPCC) in 1988. Its first report, published in 1990, highlighted the significance of global warming and the risks of climate change induced by the increase in anthropogenic greenhouse gas emissions. Even though the tone of this report was guarded on the whole, it had considerable impact on the media, the States and the scientists. It helped in developing the United Nations Framework Convention on Climate Change, which was adopted in 1992 with the aim of ensuring that the States “stabilize [...] greenhouse gas concentrations in the atmosphere at a level that prevents any dangerous anthropogenic interference with the climate system”. This convention asked the developed countries (the said Annex 1 countries) to undertake commitments to reduce greenhouse gas emissions, to bring them down to their 1990 levels. The convention neither specified reduction targets for the concerned countries nor did it indicate a time frame in which these reductions had to be completed. For monitoring its implementation, the convention created the Conference of the Parties (COP), a body that brings together every year, generally between November and December, all the States that have ratified the Convention.

During the COP of 1997 at Kyoto, a protocol, the Kyoto protocol, was adopted. It set targets for reduction in greenhouse gas emissions for each concerned country and specified that this must be achieved between 2008 and 2012, with the overall objective of at least 5% reduction in emissions as compared to the 1990 levels. The protocol indicates that the period 2008-2012 is the first period of application of the commitments to reduce the greenhouse gas emissions (Kyoto period 1 or KP1). It did not define any reduction commitments beyond 2012. But it mentioned periods subsequent to 2012 and made provisions for defining and establishing binding obligations to reduce greenhouse gas emissions for these post-2012 periods by indicating that review of these commitments has to start at least seven years before the end of 2012 (Article 3, para 9). The protocol even makes provisions for the eventuality whereby if a country reduced its greenhouse gas emissions more than what it committed to during a period, it could get the difference added to its assigned amount during the later periods (para 13 of Article 3). As for the convention, a framework was created to review the implementation of the protocol. This framework is called the Meeting of the Parties (MOP), which brings together all the countries that have ratified the protocol and is held once a year jointly with the COP.

The protocol complemented and reinforced the convention. The protocol, which came into effect in 2005, became the main instrument organizing the international struggle against climate change even though it was criticized and deemed ineffective or insufficient, all the more so because it was not ratified by the United States (20% of the overall CO₂ emissions in 2007) and it does not prescribe reduction to the developing countries such as China (22% of the overall CO₂ emissions in 2007).

From the first to the second ad hoc working group for post 2012 commitments

The question of the application of the protocol beyond 2012 was raised in the first MOP itself which was held in December 2005 at Montreal jointly with the 11th COP (Table 1). During this first MOP, a working group, called the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), was created to start discussions and negotiations culminating in the definition of new commitments for the developed countries in the post-2012 period (PK2). The AWG-KP concerns only those countries that have ratified the protocol. Therefore, it concerns neither the United States nor the emerging or developing countries. The scope and the ambition of its work can only be weak with respect to the overall objective of global reduction of greenhouse gas emissions. The AWG-KP was supposed to conduct and conclude its deliberations such that there would be a

PK2 and no hiatus between PK1 and PK2.

During the 2nd MOP, which was held in 2006 at Nairobi, jointly with the 12th COP, the AWG-KP meetings did not lead to the definition of commitments for an eventual PK 2. While negotiations continued under the leadership of AWG-KP, the Bali action plan, adopted in 2007 at the end of the 13th COP, opened another framework for discussions and negotiations by creating another working group called Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). The Bali action plan indicates that the AWG-LCA is responsible for launching a “comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session”. In other words, it was expected that this working group would engage in negotiations leading to an accord on the application of the Kyoto protocol beyond 2012. This accord was supposed to be adopted during the 15th COP in 2009 at Copenhagen. The States did not conclude an accord but agreed on the need to arrive at a joint agreement.

The AWG-LCA was created without disbanding the AWG-KP. Thus, since 2007, two working groups have conducted parallel negotiations for the future of the Kyoto protocol after 2012. Negotiations conducted by AWG-KP aim to define new commitments to reduce greenhouse gas emissions for the countries that already have commitments for the period 1 of the Kyoto protocol, while negotiations conducted by AWG-LCA aim to define new commitments for all the countries. AWG-KP falls under the Kyoto Protocol while AWG-LCA is under the leadership of the Convention and implicates all the countries that have ratified the convention, including the United States and the emerging countries.

The ambiguous Copenhagen and Cancun political agreements

The existence of two parallel negotiation frameworks for the future of the Protocol has hampered the effectiveness and the success of the negotiation process with efforts getting dispersed, contradictions, duplications and blockages appearing (Maljean-Dubois, Wemaere, 2012). Consequently, the Copenhagen conference of 2009 (15th COP), which should have led either to the extension of the protocol for a second period, or another protocol or a new international accord defining the commitments of the States to reduce greenhouse gas emissions post-2012, has led to a weak and vague political accord (Dahan, 2009; Dahan *et al.*, 2010). States, whether they are developed (Annex 1 countries) or developing (countries not in annex 1) voluntarily undertook commitments set out in the Annex of the Copenhagen accord to reduce their greenhouse gas emissions before 2020 without an overall objective of reduction being fixed and without taking into account the recommendations of the 4th report by the Intergovernmental Panel on Climate Change published in 2007. This report emphasized on the need for the Annex 1 countries to reduce their greenhouse gas emissions by 25 to 40% by 2020 as compared to the 1990 levels in order to ensure that the increase in the temperature is not more than 2°C.

The Cancun conference in 2010 (16th COP) did not enable a significant progress (Dahan *et al.*, 2011; Tsayem, 2011). The reduction commitments annexed to the Copenhagen Accord were taken into consideration and tacitly renewed in the Cancun accords. The fate of the Kyoto protocol continued to be ambiguous and was left unresolved. The mandates of the AWG-KP and the AWG-LCA were extended hoping that their work would lead to an accord during the 17th COP, which was held in December 2011 in Durban jointly with the 7th MOP.

The third ad hoc working group

The Durban conference in December 2011 (17th COP and 7th MOP), which was the second last one before the end of the Kyoto period 1, did not resolve the protocol's fate in clear terms. It decided to launch a new process in order to develop and adopt an accord whose nature is ambiguous: “a protocol, another instrument or an agreed outcome with legal force under the convention applicable to all Parties”. The principle of the States continuing to reduce greenhouse gas emissions post-2012 was hence endorsed in the perspective of a new global accord expected to result from the negotiations to be conducted in the larger framework of the convention. The Durban platform, which was a sort of political result of the Durban conference, is a new forum or a new site to decide and define the protocol's future. Another working group was created, Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-EA). It was asked to conclude its work latest by 2015 so that the new protocol, instrument or agreed outcome with legal force, comes into effect from 2020. This new working group was created without the earlier two being disbanded. In 2012, there were therefore three working groups working at the same time to decide the future of the protocol.

The start of the Kyoto protocol second period

Without making any clarifications, the Durban conference decided that a second period of commitments to reduce the greenhouse gas emissions by the States should start by 1st January 2013 for a duration of five to eight years. It will thus end either in 2017 or in 2020. Since the new treaty to be adopted in 2015 is expected to come into effect in 2020, a hiatus can be considered for the period 2018-2020 if the second period of commitments ends in 2017. For the 2nd period, which started in 2013, the Durban conference took account of the commitments of the States in the framework of the Copenhagen Accord and invited the States once more to submit their commitments till May 2012. It was expected that the 18th COP, held in Qatar in December 2012, lead to the adoption of an accord with considerable scope finalizing the commitments and specifying the contours of the second period of commitments (2013-2017 or 2013-2020). This 18th COP endorsed the second commitment period, which began in January 2013,

for a period of eight years (until 2020). States are called upon to continue negotiations in order to achieve, by 2015, a comprehensive and ambitious agreement committing both Annexe 1 countries and non-Annex 1 countries, particularly emerging countries. The framework for these negotiations is the Durban Platform, and not the two ad hoc working groups, whose mandates were not renewed.

Conclusion

The post-2012 future of the Kyoto protocol can be described as extremely ambiguous (Table 1). A second period of commitments was decided and started in 2013 for completion in 2020. Another commitment period is expected to start in 2021. Three working groups were functioning at the same time during the year 2012 to define the future of the protocol, but negotiations gave the impression of being stuck and losing credibility, struggling to arrive at an ambitious international treaty which requires the States to agree to the significance of reducing greenhouse gas emissions to mitigate climate change (den Elzen *et al.*, 2011; Rogelj *et al.*, 2011; UNEP, 2011). Canada, Japan, Russia and New Zealand have announced their withdrawal from the second period. . The United States are still in the fringes of the protocol since they have only ratified the convention. The European Union remains the “heavyweight” of the protocol, having succeeded at Durban to make the developing countries support its position (Maljean-Dubois, Wemaere, 2012). The countries that have made commitments for the period 2 represent around 15% of the greenhouse gas emissions (Dahan *et al.*, 2012). With significant weakening and the yet-to-be specified operational modalities, the protocol have started its second period of application in 2013. But its future is far from being clear, in particular, at the legal level, with the negotiations having to decide between a protocol (strong legal scope), another instrument or an agreed outcome (with or without a strong legal scope). It has been asked during the 18th COP in Doha that States engaged in the second period specify their quantified emission reduction by 2014. It is expected that in 2014, the UN organized an international conference on the subject. These quantified commitments will probably also be on the agenda of the 19th COP to be held in 2013 in Warsaw (Poland) and the 20th COP to be held in 2014 in Peru or in Venezuela. It will be possible to compare them with the magnitude of climate change as it will be presented in the fifth IPCC report announced for 2014. The year 2015 will be crucial if the goal of achieving a new international treaty by this year is actually performed. France sought to organize in Paris the 21st COP in 2015, which should lead to the new treaty for the Kyoto period 3 (post 2020 period). Despite the adverse effects of climate change yet almost unanimously recognized by the international community (all States), this international community seems to be bogged down and to use the diplomatic strategy of multiplying working groups and meetings, and to continuously postpone the elaboration and the adoption of an ambitious agreement to reduce GHGs by States.

Year	Key events
1992	Adoption of the climate convention enacting the principle of reduction of greenhouse gas emissions by the States.
1997	3 rd COP at the end of which the Kyoto protocol is adopted, giving figures to the commitments on the reduction of greenhouse as emissions by the developed countries for the period 2008-2012.
2005	11 th COP and the 1 st MOP after the Kyoto protocol came into effect; beginning of the negotiations for the new commitments for the developed countries for the period post-2012 (creation of a special working group for the negotiations: AWG-KP).
2007	13 th COP and 3 rd MOP; beginning of the negotiations for long term commitments (post-2012) for all the countries that have ratified the convention (creation of another special working group for the commitments: AWG-LCA).
2009	15 th COP and 5 th MOP; Copenhagen Accord with voluntary commitments for 2020 by the developed and the developing countries, but with considerable uncertainty on the legal nature.
2011	17 th COP and 7 th MOP; Durban decisions enacting a second period of application of the protocol (2013-2017 – 2020) and a third period from 2020 onwards, in the form of a protocol, another instrument or an agreed outcome (creation of a 3 rd special working group for the negotiations: AWG-EA).
2013	Beginning of the Kyoto period 2 (2013-2020) and initiation of negotiations to achieve in 2015 an international treaty that would take effect in 2020 for the Kyoto period 3 (post 2020 period)

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