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The "Cloud" over the Climate Negotiations: From Bangkok to Copenhagen and Beyond

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Introduction

After months of faltering and incremental progress on negotiating text, two months before the end of the two year process leading to the Copenhagen Climate Conference, 2009, diplomats in Bangkok finally started debating the substantive ideas underlying Parties' proposals. In the process they unearthed the fault lines of what is already a deeply divisive set of negotiations. The divisions are now focused squarely on the fate of the Kyoto Protocol.

The Bali Action Plan which launched the process towards an "agreed outcome" in Copenhagen left the legal form of that outcome uncertain.[1] By June 2009, in compliance with the six month rule,[2] five agreements – Protocols from Japan,[3] Australia,[4] Tuvalu,[5] and Costa Rica[6] and an Implementing Agreement from the United States[7] – were submitted for communication to Parties and will appear on the agenda of the fifteenth Conference of Parties (COP – 15) in December 2009. While it had become clear by June that these countries, among others, favoured a new legally binding instrument under the Framework Convention on Climate Change,[8] the fate of the Kyoto Protocol[9] and its relationship to such a new agreement remained ambiguous.

Much of the popular reportage has assumed – inaccurately – that the Kyoto Protocol expires in 2012,[10] but it is not until the Bangkok negotiations that this was formally mooted as a possibility. The EU argued in Bangkok for a single integrated instrument that would build on and strengthen the Kyoto architecture by incorporating key elements of the Kyoto Protocol.[11] The EU was not alone in its bid. Australia, Canada, Japan, New Zealand and Russia had indicated in informal consultations in June that they preferred a single instrument. And, the US has long sought a replacement for the Kyoto Protocol, which it believes to be "ineffective and unfair," in part because it does not include mitigation commitments for major "population centers" such as China and India.[12] Most developed countries with varying degrees of conviction but gathering insistence are now advocating a single integrated instrument at Copenhagen. The G-77/China, rarely speaks with one voice, but it is united and unequivocal in its opposition to such a single integrated instrument.[13] On this issue, more than any other on the table, the battle lines have been clearly drawn, they run firmly along north-south lines, and its resolution is a sine qua non to a successful agreement in Copenhagen.

The anatomy of the G-77/China's opposition to a single integrated instrument at this juncture in the climate negotiations is worth exploring. If Kyoto is to be formally terminated[14] or allowed to wither away because developed country Parties do not agree to targets for the second commitment period,[15] it will need to be replaced by a new instrument. A new instrument is likely, given emerging political realities, to have a fundamentally different character to the Kyoto Protocol. It is likely to reflect a bottom-up rather than top-down approach, to breach the Bali firewall, and to cherry-pick from the Kyoto Protocol. In the process, if developed countries prevail, the new instrument will alter the nature, scope and extent of differential treatment embodied in the climate change regime, and thereby modify the burden-sharing arrangement captured in the FCCC and its Kyoto Protocol.

The Likely Contours of a Single Integrated Instrument

A Bottom-up Approach

A new instrument is likely to reflect a bottom-up rather than a top-down approach, and to be sensitive to differences across *all* countries, not just between developed and developing countries. The Australian schedules approach, around which many developed countries are coalescing in the lead up to Copenhagen, is reflective of this turn in thinking.[16] In the schedules approach, each Party would have a national schedule containing its long term emissions pathway, and its mitigation commitments and actions. Mitigation commitments and actions could be expressed in a variety of ways ranging from economy wide targets (obligatory for developed countries) to technology standards. Mitigation commitments and actions would be tailored to and shaped by national circumstances. The schedules approach in Australia's view will embrace a "spectrum of effort" from all countries based on national circumstances.[17]

The schedules approach has considerable political appeal in that in its open –textured format it has the potential to attract both the US and large developing countries. The US is reluctant, in the absence of domestic legislative support, to commit to anything beyond inscribing its actions in an appendix (or schedule), and fulfilling these "in accordance with domestic law."[18] For their part, large developing countries are reluctant to undertake mitigation "commitments" but may be persuaded to register their proposed mitigation actions in a national schedule, in particular if, as is now being discussed, the nature of schedules, and perhaps even the terminology, differs for developed and developing countries. The schedules approach, given its flexible, non-prescriptive, bottom-up character, has synergies both with the US draft implementing agreement and the registry proposal,[19] and is therefore likely to lend itself to a compromise solution in Copenhagen. It remains unclear however whether such a non-prescriptive Bottom-up approach is more or less likely to foster mitigation on the scale required to address the climate challenge.

Breaching the Bali Firewall

A new instrument is likely to breach the Bali firewall. Most developing countries perceive the Bali Action Plan as distinguishing between developed country mitigation commitments and developing country nationally appropriate mitigation actions. The Bali Action Plan uses different formulations in paragraphs 1(b)(i) and 1(b) (ii) for developed and developing country commitments/actions, and the distinction between them has come to be characterized as the "firewall." Some, notably the US, however, perceive the Bali Action Plan as representing a bridge, rather than a firewall, between developed and developing country mitigation commitments/actions. And, it prefers to trace its negotiating position to the common obligations identified in FCCC Article 4(1) rather than the text of the Bali Action Plan. Several developed countries have in their recent submissions sought to breach this perceived firewall between developed country commitments and developing country actions by advocating the same types of actions (even if these are not identical in content or stringency), of the same legal character (whatever that might be) and offering the same flexibility (or lack thereof) across Parties. Thus far, such proposals were textual orphans as they could find no defined place in the negotiating text which, by mandate, follows the structure of the Bali Action Plan.[20] The Chair of the AWG-LCA characterized such proposals as "cloud" issues, as they hover over both 1(b) (i) and (ii) but could not be shoehorned into either.

In the Bangkok negotiations, however, the US, among other developed countries, insisted that these proposals be discussed and reflected in the negotiating text. This resulted for the first time in a substantive discussion on "general mitigation," that is mitigation requirements applicable to *all* Parties, and led to a non-paper, Non-Paper 28, collating proposals, primarily from the US, Australia, Canada and Japan, as a basis for negotiation in the next session in Barcelona.[21]

In Bangkok the US introduced a proposed structure for measurement, reporting and verification (MRV) of mitigation actions, captured in Annex I to Non-Paper 28, which illustrates the ways in which the proposals contained in this Non-Paper are perceived as breaching the Bali firewall and contravening the FCCC.[22] The US MRV proposal, citing FCCC Articles 4.1(a) and 12, applies to all Parties. It requires all Parties, except Least Developed Countries (LDCs), to provide annual inventories.[23] It also requires all Parties to report on their "low carbon strategy."[24] It prescribes a differentiated reporting timetable, but one that differs from the FCCC. It requires "developed country Parties and those Parties with greater than [X] per cent of world emissions" to report every two or three years, other countries to report every six years, and LDCs at their discretion.[25] In doing so it seeks to erode the distinction between Annex I and some non-Annex I Parties, and to create a new category of Parties - developing countries "with greater than [X] per cent of world emissions".

The Australian schedules proposal also reflects a similar attempt. Australia's proposal requires "developing country Parties whose national circumstances reflect greater responsibility or capability" to at a minimum take "nationally appropriate mitigation commitments and/or actions aimed at achieving substantial deviation from baselines."[26] In addition to the fact that this proposal creates a new category of Parties, it also seeks to extend mitigation "commitments" to developing countries, contrary to the Bali Action Plan that prescribes only mitigation "actions" for developing countries. It is interesting to note that in this, the Australian approach differs from the American one. Whilst Australia is seeking to extend "commitments" to a wider group of Parties, the US is seeking to extend "actions" to all Parties. Commitments signify acts that bind, while actions do not, and it is in this differentiated sense that they were used in relation respectively to developed and developing countries in the Bali Action Plan. The word "commitment" in relation to mitigation, however, is conspicuous by its absence both in the US draft implementing agreement as well as in its MRV proposal. Needless to say, developing countries have consistently resisted attempts by developed countries to differentiate amongst them, on the grounds that such differentiation is inconsistent with the FCCC.[27]

Cherry-Picking from Kyoto

A new instrument is likely to cherry-pick from the Kyoto Protocol. If Parties decide to terminate or supersede Kyoto they will have to determine which parts of Kyoto they would like to incorporate in the new instrument, and which parts of it they will discard. This cherry-picking is evident in the proposed Japanese Protocol[28] as well as in Australia's preferred one-treaty model.[29] Such cherry-picking between substantive Kyoto provisions in itself may well be a contentious exercise,[30] but in addition, Parties will have to decide which decisions taken by the Parties, and to what extent, and by what means will be carried forward. In the process some pillars of the Kyoto Protocol's institutional architecture will be lost and many of the rules of the game will change. Since the negotiated instruments, whether the Kyoto Protocol itself or COP decisions represents a careful balancing of interests and trade-offs, if selective importation of provisions is mooted, all once-resolved issues will be re-opened for negotiation – effectively undoing the product of the entire phase of negotiations stretching from 1997 to 2005. This, in the G-77/China's view, will destabilize the entire climate regime, [31] not least since it raises the spectre of back-pedalling on earlier gains.

The first of the Kyoto pillars likely to be discarded is the compliance system. A hint of this is offered in the US MRV proposal. It envisages "regular independent review by an expert panel," for national inventories and implementation information.[32] But, it only requires the expert panel to "conduct an assessment of a Party's implementation of its actions as reported by the Party."[33] The expert panel's report will be submitted to the Subsidiary Body for Implementation, discussed in an in-session country review, and after back and forth between Parties, it will eventually be forwarded to the COP where the process ends.[34] The review process is based on self-reporting by Parties, and is designed to ensure that a Party undertakes those actions that it has "inscribed" in its schedule/appendix.[35] It is not designed, as in the case of the Kyoto Protocol, to lead to a compliance procedure.[36]

The Kyoto Protocol compliance system contains both a facilitative and an enforcement branch. The latter exercises functions of a quasi-judicial character, and entails (limited) punitive consequences. Admittedly the Kyoto Protocol compliance system is atypical and rests on uncertain legal basis. The vast majority of the compliance systems across multilateral environmental agreements are designed to facilitate compliance rather than to punish non-compliance. And, the adoption of Kyoto's rigorous compliance system was controversial at the time. Article 18 of the Kyoto Protocol authorized the first COP acting at the Meeting of Parties to the Protocol (CMP) to approve procedures and mechanisms relating to compliance, but required procedures and mechanisms entailing binding consequences to be adopted by an amendment to the Protocol.[37] Absent agreement, however, CMP 1 adopted the procedures and mechanisms in a CMP decision, and postponed the decision to seek an amendment.[38] Formal legal analysis would suggest that the consequences that the committee applies could not "bind" (that is, lend itself to judicial enforcement).[39] This is an argument that Canada, likely to be in non-compliance with its Kyoto target, has deployed in domestic fora.[40] Given its provenance, the Kyoto compliance system had a shaky start and may well come to a sticky end.

It is arguable on the basis of its submissions thus far and its interventions in the negotiations that the US does not envision a compliance system as part of the agreed outcome in Copenhagen. It prefers a system of MRV for all built primarily on transparency. It expects countries to "stand behind" their commitments[41] but in unspecified ways. It is not just the compliance system that may be left by the wayside, there are

indications that the US has little interest in any of the provisions of the Kyoto Protocol save those relating to the market mechanisms. A single integrated instrument, if the US is to be accommodated, is therefore likely to involve a renegotiation of the bulk of that which has been negotiated since the Kyoto Protocol was adopted in 1997.

For Developing Countries - A Leap of Faith too far?

It is not surprising that the G-77/China is balking at the prospect of renegotiating the fundamental contours of the climate regime at this late stage in the negotiations. It is also understandable that the G-77/China would choose that which it has in hand – the legally binding Kyoto Protocol – over a single integrated instrument that is certain to have a different architecture to that of the Kyoto Protocol, that breaches the Bali firewall and favours an interpretation of the FCCC that they do not subscribe to, and that cherry-picks as yet unspecified "key elements" from the Kyoto Protocol.

To place this in context, developed countries, with few honourable exceptions, have yet to come forward with either ambitious mitigation pledges or credible financial offers. The mitigation pledges announced thus far by developed country Parties to the Kyoto Protocol are expected to result in aggregate emissions reductions of 16-23% below 1990 by 2020.[42] If the US Waxman-Markey target is included, the aggregate reductions fall to 10-23% in one estimate,[43] and 11-18% in another.[44] If the worst impacts of climate change are to be avoided, stabilization levels of 450ppm CO_2 eq and a reduction target of 25-40% for Annex I countries are called for.[45] 37 developing countries have submitted a proposed amendment to the Kyoto Protocol requiring developed countries to reduce their aggregate emissions by at least 40%.[46] The Alliance of Small Island States, among others, has called for Annex I Parties collectively to reduce their emissions by at least 45%.[47] Even the higher end of the aggregate reduction estimates of current pledges falls below the lower end of the IPCC's range, and far below AOSIS demands. Disappointing in themselves, these low ambition levels also leave a large mitigation gap for developing countries to bridge.[48]

Kyoto developed country Parties are arguing for a single integrated instrument at Copenhagen, embodying the characteristics listed, in large part to engage and accommodate the US. They believe it unlikely that the US will ratify the Kyoto Protocol, even in a comprehensively amended form. And, since they consider it essential that they are in the same legal instrument as the US - subject to the same flexibility and constraints (or lack thereof) - they are willing to transition to a new integrated instrument.[49]

Developed countries are also arguing for a single integrated instrument because they view the two-track process to be burdensome and unwieldy. A new instrument incorporating key elements of the Kyoto Protocol, they believe, would ensure greater policy coherence and institutional coordination in the climate regime. Their position is ultimately based on the political judgment that if they were to transition to a single integrated outcome which captures market-friendly elements of the Kyoto Protocol, permits flexible approaches tailored to national circumstances, and defers to domestic political constraints, the US will participate in it. It is clear, however, the G-77/China does not share this political assessment, and it is reluctant to renegotiate the architecture of the climate regime for the uncertain promise of US engagement. Their political assessment has two dimensions to it. Developing countries are sceptical that the US will participate in a new instrument, however it is restructured. But, they also believe in any case, that the cost to them of US engagement on its stated terms is far too high. Renegotiating the entire climate architecture, requires a leap of faith for them which may be a leap of faith too far, and is certainly not one they appear willing to take at this juncture in the negotiations. Their position, of course, does not address the question of what else, if anything, can be done to draw the US in.

In conclusion the Bangkok negotiations brought to the fore the uncertain future of the Kyoto Protocol, an issue that been lurking in the shadows since Bali. The prospect of killing Kyoto, however softly, has the potential, as evidenced in the closing plenary meetings in Bangkok, to inspire high emotion, impassioned rhetoric and many a morbid metaphor. The battle lines have been clearly drawn. Until Parties resolve it one way or another, this overarching issue is likely, not just to cast a shadow on the detail-oriented work in other areas – financing, adaptation, technology, deforestation, NAMA mechanisms, among them – but also to shrink the space for collaborative engagement between Parties.

Endnotes

1 Decision 1/CP.13, *Bali Action Plan*, in Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, Addendum, Part Two: Action taken by the Conference of the Parties at its

thirteenth session, FCCC/CP/2007/6/Add.1 (14 March 2008).

[2] FCCC Article 17 requires that the "text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before such a session." *See* below note 8

[3] Draft protocol to the Convention prepared by the Government of Japan for adoption at the fifteenth session of the Conference of the Parties, FCCC/CP/2009/3, 13 May 2009, available at, http://unfccc.int/resource/docs/2009/cop15/eng/03.pdf

[4] Draft protocol to the Convention prepared by the Government of Australia for adoption at the fifteenth session of the Conference of the Parties, FCCC/CP/2009/5, 6 June 2009, available at, http://unfccc.int/resource/docs/2009/cop15/eng/05.pdf

[5] Draft protocol to the Convention presented by the Government of Tuvalu under Article 17 of the Convention, FCCC/CP/2009/4, 5 June 2009, available at, http://unfccc.int/resource/docs/2009/cop15/eng/04.pdf

[6] Draft protocol to the Convention prepared by the Government of Costa Rica for adoption at the fifteenth session of the Conference of the Parties, FCCC/CP/2009/6, 8 June 2009, available at, http://unfccc.int/resource/docs/2009/cop15/eng/06.pdf

[7] Draft implementing agreement under the Convention prepared by the Government of the United States of America for adoption at the fifteenth session of the Conference of the Parties, FCCC/CP/2009/7, 6 June 2009, available at, http://unfccc.int/resource/docs/2009/cop15/eng/07.pdf

[8] United Nations Framework Convention on Climate Change, 29 May 1992, A/AC.237/18 (Part II)/Add.1, reprinted in (1992) 31 ILM 849 [hereinafter FCCC]

[9] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, FCCC/CP/1997/L.7/add.1, reprinted in (1998) 37 ILM 22 [hereinafter Kyoto Protocol]

[10] The first commitment period of the Kyoto Protocol, and not the Protocol itself, comes to an end in 2012. Kyoto Article 3(9) requires Parties to negotiate targets for the second commitment period. The Ad Hoc Working Group on the Kyoto Protocol - launched in 2005 and scheduled to come to an end at COP-15 - is engaged in this exercise. *See Consideration of Commitments for Subsequent Periods f or Parties Included in Annex I to the Convention under Article 3, Paragraph 9 of the Kyoto Protocol*, Decision 1/CMP.1, FCCC/KP/CMP/2005/8/Add.1 (2006)

[11] Statements by Sweden, on behalf of the European Community and its member states, AWG-LCA 7 and AWG-KP 9, Bangkok Climate Change Talks, 28 September to 9 October 2009

[12] Text Of A Letter From The President To Senators Hagel, Helms, Craig, And Roberts, The White House, Office of the Press Secretary, March 13, 2001; See also Byrd Hagel Resolution, S. Res. 98, 25 July 1997

[13] *See Statement on behalf of the G-77/China*, by Ambassador Ibrahim, Republic of Sudan, Closing Plenary of the Ninth Session of the Ad Hoc Working Group under the Kyoto Protocol, Bangkok, Thailand, 9 October 2009

[14] The Kyoto Protocol does not contain a provision on its termination. In its absence, its termination may take place "by consent of all the Parties after consultation with other contracting States" or by "conclusion of a later treaty relating to the same subject-matter." See Articles 54 and 59, Vienna Convention on the Law of Treaties, 23 May 1969, *reprinted in* 8 ILM 679 (1969)

[15] *See* supra note 10

[16] *See* supra note 4

[17] Penny Wong, Australian Minister for Climate Change and Water, Speech to the New York University School of Law, "Australia's role in developing the legal framework of the post-21012 agreement," New York University, 21 September 2009

[18] *See* supra note 7

[19] The registry of developing country mitigation actions and pledges was initially proposed by South Africa. *See* Submission by South Africa, in Ideas and proposals on the elements contained in paragraph 1 of the Bali Action Plan, Submissions from Parties, FCCC/AWGLCA/2009/MISC.4 (Part II) at 95. This proposal, and others in a similar vein, are captured in Non-paper 20, *Nationally Appropriate Mitigation Actions by developing country Parties*, Draft Consolidated Text, paragraphs 44-54, available at, http://unfccc.int/meetings/ad_hoc_working_groups/lca/items/5012.php

[20] *See* Enabling the full, effective and sustained implementation of the Convention through long-term cooperative action now, up to and beyond 2012, *Draft Conclusions Proposed by the Chair*, in FCCC/AWGLCA/2008/L.7 (27 August 2008)

[21] Non-paper 28, Non-paper by the Chair, Revised Paragraphs 1-37 of Annex III to Document FCCC/AWGLCA/INF.2, 9th October 2009, available at, http://unfccc.int/meetings/ad_hoc_working_groups/lca/items/5012.php [Hereinafter Non-paper 28]

[22] Annex I to Non-paper 28, *ibid*. Needless to say, both the Bali Action Plan and the FCCC are subject to diverse interpretations.

[23] Paragraph 3, Annex I to Non-paper 28. This contravenes FCCC Article 12(5) read with Article 4(3), which contains a differentiated reporting time table for Annex I and non-Annex I Parties, and links reporting by non-Annex I countries to the provision of the agreed full costs of preparing such reports.

[24] Paragraph 6, Annex I to Non-paper 28

[25] Paragraph 5(a), Annex I to Non-paper 28; It is worth noting that in the its proposed implementing agreement, the US requires developing countries mitigation actions to be consistent with the levels of ambition needed to contribute to meeting the objective of the Convention, but for developed countries it prescribes "emissions reductions/removals in the 2020/[ ] timeframe, in conformity with domestic law." Article 2, supra note 7

[26] Paragraph 34, Non-paper 28

[27] See for an analysis of Parties' proposals relating to differentiation, Lavanya Rajamani, *Differentiation in the post-2012 Climate Regime,* 4(4) POLICY QUARTERLY 48 (2008)

[28] *See* supra note 3

[29] *See* supra note 4

[30] Parties do not have the mandate either under the Bali Action Plan that established the AWG-LCA or under Decision 1/CMP 1 that established the AWG-KP to engage in such an exercise. *See* supra notes 1 and 10

[31] *See* supra note 13

[32] Paragraph 7, Annex I to Non-paper 28

[33] Paragraph 7(b), Annex I to Non-paper 28

[34] Paragraphs 9 – 15, Annex I to Non-paper 28

[35] Paragraph 7(b), Annex I to Non-paper 28

[36] *See* Decision 27/CMP.1, *Procedures and mechanisms relating to compliance under the Kyoto Protocol, in* Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session, held at Montreal from 28 November to 10 December 2005, Addendum, Part Two: Action taken, FCCC/KP/CMP/2005/8/Add.3 (30 March 2006), 92, at 102

[37] Article 18, Kyoto Protocol, 1997

[38] *See* supra note 36 at 92; Saudi Arabia had proposed amending the KP in accordance with Article 18, *see* Proposal from Saudi Arabia to amend the Kyoto Protocol, FCCC/KP/CMP/2005/2 (26 May 2005)

[39] *See* J. Brunnée *COPing with Consent: Law-Making under Multilateral Environmental Agreements*, 15 LEIDEN JOURNAL OF INTERNATIONAL LAW 1-52 (2002), at 29

[40] *See* Court File Number T 1683-07, Federal Court, Between *Friends of the Earth* and *The Minister of the Environment*, Memorandum of Fact and Law, at 5 (paragraph 9)

[41] Remarks by the US President At United Nations Secretary General Ban Ki-Moon's Climate Change Summit, United Nations Headquarters, New York, 22 September 2009.

[42] *Compilation of information relating to possible quantified emission limitation and reduction objectives as submitted by Parties*, Informal Note by the Secretariat, 29 September 2009

[43] Kelly Levin and Rob Bradley, *Comparability of Annex I Emission Reduction Pledges*, World Resources Institute Working Paper, September 2009

[44] Alliance of Small Island States, Aggregate Annex-I reductions for 2020, 28 September 2009 (on file with the author)

[45] S*ee* Terry Barker *et al*, CLIMATE CHANGE 2007: MITIGATION OF CLIMATE CHANGE. CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (Cambridge University Press, 2007), Box 13.7 at 776

[46] Proposal from Algeria, Benin, Brazil, Burkina Faso, Cameroon, Cape Verde, China, Congo, Democratic Republic of the Congo, El Salvador, Gambia, Ghana, India, Indonesia, Kenya, Liberia, Malawi, Malaysia, Mali, Mauritius, Mongolia, Morocco, Mozambique, Nigeria, Pakistan, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sri Lanka, Swaziland, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe for an amendment to the Kyoto Protocol, FCCC/KP/CMP/2009/7, 15 June 2009

[47] Submission by AOSIS et al, in Submissions by Parties, Views on possible elements for amendments to the Kyoto Protocol pursuant to its Article 3, paragraph 9, FCCC/KP/AWG/2009/MISC.7, 7 April 2009

[48] Harald Winkler et al, *Who picks up the Remainder? Mitigation in Developed and Developing Countries*, 9 CLIMATE POLICY (2009) (forthcoming) (noting that implicit in the IPCC numbers is a formula that non-Annex I countries would pick up the difference between a global emissions pathway that avoids the worst impacts and the quantified ranges for Annex I; and arguing for higher ranges for developed countries and increased funding).

[49] Other developed countries would not, for instance wish to undertake legally binding commitments under the Kyoto Protocol 's second commitment period if the US were subject to non-legally binding aspirational commitments in a COP decision under the FCCC.

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