

Looking beyond Durban: Where To From Here?

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The lesson for India after Durban is that it needs to formulate an approach that combines attention to industrialised countries' historical responsibility for the problem with an embrace of its own responsibility to explore low carbon development trajectories. This is both ethically defensible and strategically wise. Ironically, India's own domestic national approach of actively exploring "co-benefits" – policies that promote development while also yielding climate gains – suggests that it does take climate science seriously and has embraced responsibility as duty. However, by focusing on articulating rigid principles rather than building on actual policies and actions, it only weakens its own position.

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The recently concluded Durban climate negotiations accomplished the unlikely feat of changing everything and nothing at the same time. Everything has changed, in that a "Durban Platform" set in motion a new round of negotiations based on a parsimonious eight paragraph text, which leaves open the scope to revisit several contentious issues from past negotiations. At the same time, very little has changed, in that the global climate regulatory framework for the next eight years remains the one that existed prior to Durban. Only the most optimistic could hope that simply starting the firing gun on a new round of negotiations heralds a dramatic shift in the incentives for global climate action. Nonetheless, it is true that by establishing a new process, the climate negotiations have entered relatively new, and uncharted territory. This is an important moment, therefore, to pause and reflect on India's approach so far, and, if necessary to make course corrections.

In this article, I explore what such a course correction might focus on. In brief, I argue that India needs to re-articulate and enrich its position on equity in climate negotiations, as a prelude to developing informed views on key aspects of the negotiations going forward. First,

however, I briefly summarise the Durban outcomes, and clarify what I take to be India's interests in the negotiation process. Both are necessary steps prior to looking forward.

Multiple Outcomes, Multiple Interpretations

Much has already been written in the Indian and overseas media about the Durban outcome, the fraught process of reaching that outcome, and India's role in the waning moments of the negotiations (Bidwai 2011; Raghunandan 2011; Rajamani 2011a; Sterk, Arens et al 2011; Werksman 2011; Winkler 2011). The intent here is less to reproduce that story and more to flag issues that are relevant to India going forward.

The Durban Platform for Enhanced Action, which launches a process to be negotiated between 2012 and no later than 2015, and intended to come into effect in 2020 to develop "a protocol, another legal instrument or an agreed outcome with legal force" (UNFCCC 2011), the last phrase inserted at India's insistence. As this convoluted wording suggests, at stake was the extent to which the outcome of any new process would have a legally binding nature. The phrase "agreed outcome with legal force" cracks open the door, however marginally (and lawyers are still debating the size of the crack) to an outcome that is not a legal instrument as contemplated under the overarching UN Framework Convention on Climate Change (Rajamani 2011b; Werksman 2011).

At least as important are two other, closely linked, ambiguities latent in the text. There is little clarity on the content

of *what* will be legally binding and *who* (which countries) will take on such obligations. This lack of clarity has allowed various sides in the debate to declare victory simultaneously (Ghosh and Dasgupta 2011). Commentators from industrialised countries tend to interpret the text as calling for all countries to take on emission reductions – a construction of symmetric responsibility – while developing countries see the principle of differentiated responsibility as alive and well.

Such different interpretations are enabled by the actual text of the Durban Platform. On *what* is to be done, the document does not use the word “commitments” but instead calls on parties to “explore options for a range of actions” that are intended to increase the “ambition” of mitigation actions. This phrasing allows for emission reduction commitments, but also certainly does not preclude various other formulations including intensity targets. Based on the text, an interpretation that all countries have agreed to commit to emission commitments, let alone reductions, does not seem warranted. The question of *who* does what is more complex. That the Durban Platform is explicitly rooted “under the Convention”

provides a basis to preserve the idea of differentiation. However, importantly, the document also specifically notes that the new outcome will be “applicable to all” and does not include even a rote invocation of the principle of “common but differentiated responsibilities”, which has been a staple of documents produced under this process so far (Rajamani 2011a). The Durban Platform appears tilted towards symmetry between countries rather than differentiation between rich and poor nations.

While the Durban outcome represents the rather fuzzy, post-2020, future of the global climate regime, the other two documents produced at Durban represent the present. A resuscitated Kyoto Protocol, which received a lease on life as part of the quid pro quo for the Durban Platform, forms the first half of the current climate regime. The decision at Durban established a second commitment period for the Protocol (to run for either five or eight years), with concrete commitments to be put forward by countries by 2012. In some ways, this is a significant outcome, as it keeps in place the only legally binding element of the climate framework requiring hard commitments.

However, the victory may be more symbolic than real, for at least three reasons. First, the scope of coverage is limited and shrinking. Japan and Russia have signalled their intent not to participate in a second commitment period (Goldenberg 2010; Morales and Biggs 2010), and Canada formally withdrew from the Protocol within days of Durban (AFP 2011), leaving the European Union as the lonely bedrock of the Kyoto Protocol. Second, the content of commitments for the second commitment period are as yet unknown, and much depends on whether actual numbers put forward by parties in the coming year are adequate improvements over those agreed to for the first commitment period.¹ Third, Durban failed to adequately address the problem of “hot air,” the surplus “assigned amount units” (AAUs) allocated to economies in transition in the first commitment period, which, if carried over to the second commitment period, would effectively undermine the environmental worth of the Kyoto Protocol.

The second piece of the current regime is the outcome on Long-Term Cooperative Action (LCA), which is built around voluntary pledges by countries, followed by



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various systems for review. It also importantly addresses adaptation. At Durban, steady progress was made on various aspects of the LCA process, including the basis for “measurement, reporting and verification” (MRV) (called “International Consultation and Analysis” for developing countries and “International Assessment and Review” for developed countries), the governance mechanism for the Green Climate Fund, and the mechanism for delivering finance for “Reducing Emissions from Deforestation and Forest Degradation” (REDD+).

Taken collectively, the Durban outcomes have elicited a wide range of reactions. Environmentalists tend to view it as far too little, and rather late, as “...a compromise which saves the climate talks but endangers people” (Christian Aid 2011). Veteran watchers of negotiations view the outcome as the best that could be expected, given the circumstances, although not nearly enough (Winkler 2011). Several voices are concerned with the downgrading of equity, with one describing the Durban outcomes as “phasing out climate change frameworks based on equity and launching talks for a new treaty whose contours are yet to be defined” (Khor 2011). All agree that there is considerable uncertainty about the future.

India's Interests

In order to clearly evaluate India's stakes coming out of the Durban negotiations, it is necessary to be clear about what India's interests are in this process. In my view, our interests fall under two broad heads.

First, India must ensure that, as a result of the climate negotiations, prospects for development and alleviation of high poverty levels of much of our population are not restricted. This concern stems from the fact that the poverty burden in India remains extremely high and, given current technology, poverty alleviation and development requires the ability to emit carbon. While other countries may make similar claims, India's relative position in the global context helps buttress the case. In 2000, Indian levels of GDP per capita were 42% of the global average, total primary energy supply per person was 32%, electricity consumption per capita was 22%

and per capita CO₂ emissions were 32% of the global average.² When compared to industrialised countries, of course, these ratios are much lower. As discussed below, this claim need not be nor cannot be open-ended and unqualified, but there is little doubt that, to address poverty concerns and support development aspirations, India's emissions should not be capped in the short to medium term.

Second, however, India also has a strong interest in an effective global climate response. Whether in terms of vulnerability of food systems, water availability, disease burden, sea level rise or weather events, India has a great deal to lose from unchecked climate change. And, at low-levels of development, the ability of our population to respond is diminished.

Measured against these objectives, the outcomes of Durban are disappointing. The failure of the Durban Platform to explicitly recognise the continued salience of the principle of common but differentiated responsibility implies that India will have to work harder to achieve the first objective. With regard to the second objective, while some view the promise of harder legally-binding commitments as a positive signal, the form of commitments, their cumulative consistency with the global emission benchmarks set by climate science and their acceptance by countries all remains to be settled. Given the fraught nature of past global climate politics, it is unlikely that all these outstanding issues will be positively or speedily resolved. Further, the renewed Kyoto Protocol seems unlikely to leverage much enhanced climate action. The effectiveness of the LCA process depends on countries following through on their emissions pledges and on ramping them up, and on the supporting mechanisms around adaptation, technology, finance and REDD+.

India's negotiating position has long prioritised the first objective – staving off caps. In pursuing this objective, India has often been called obstructive, and made a scapegoat for collective failure to achieve the second objective (Narain 2011). While this is palpably unfair, particularly given the track record of countries like the US on climate change, it does point to a challenge of substance and perception. Developing a climate negotiating position

that simultaneously promotes the dual objectives above takes rather more nuanced argumentation and alliance building than promoting a single-point agenda. How might India develop such nuanced positions in the future?

Re-conceptualising Climate Equity

One important way forward is to re-conceptualise India's stance on climate equity. India has long insisted that a global regime should be based on equitable access to atmospheric space, based on a per capita allocation (Agarwal and Narain 2011; Government of India 2011). We correctly argue that contribution to the global stock of greenhouse gas emissions constitutes historical responsibility for the problem and, indeed, that past ignorance of climate science (among industrialised countries) is no defence against accepting responsibility for past actions. Since India has contributed relatively little to the stock of global emissions on a per capita basis, this formulation would essentially guarantee that our emissions would remain uncapped for the next few decades.³ However, over 20 years, this argument has failed to win sufficient adherents. While the core of the argument remains relevant, it could be strengthened by addressing conceptual flaws that also translate to strategic weaknesses.

First, a negotiating position based *solely* on allocating atmospheric space to countries on a per capita basis implies that knowledge of climate science and potential future impacts confers no responsibility on a country to assess its choice of development path; all that matters is the space available to a country. But the ethical basis for an argument that past polluters should pay, which is the logic of the atmospheric space argument, is strengthened by recognising that knowledge of climate science and impacts provides an imperative for all countries to explore lower carbon paths, and to adopt them if costs are comparable. Not to do so would be to argue that knowledge of climate change and impacts is irrelevant to development planning. By insisting only on allocation of atmospheric space, we wrap our position in a morality of development, which then invites an angry counter morality of vulnerability, which at Durban was articulated by a cluster of

small island and least developed countries. Even though India surely counts as one of the most vulnerable nations, the representative from Granada was widely reported as rebutting our minister's defence of a right to develop by stating "While they develop, we die; and why should we accept this?" (Black 2011).

Second, carbon is only useful to the extent it helps enable development. While there is a close correspondence between development and carbon emissions given current technology, as technology develops each unit of carbon will yield more development. Focusing on atmospheric space rather than development prospects exposes us to the charge of supporting a right to pollute into the future, independent of changes in technological context. Instead, it is far more defensible to focus on the ultimate objective of development and poverty alleviation, rather than the proximate and contingent objective of emitting carbon.

A re-formulated approach to climate equity should embrace an important distinction between responsibility for an action or culpability and responsibility to

respond, or a duty (Rajamani 2011b). An approach that combines attention to industrialised countries' historical responsibility for the problem with an embrace of the responsibility to explore low carbon development trajectories is both ethically defensible and strategically wise. Ironically, our own domestic national approach of actively exploring "co-benefits" – policies that promote development while also yielding climate gains – suggests that we do take climate science seriously and have embraced responsibility as duty. However, by focusing on articulating rigid principles, rather than building on our actual policies and actions, we weaken our own position.

Is accepting a responsibility (understood as duty) to explore low carbon development pathways (as part of a larger package that keeps focus on industrialised country culpability) a slippery slope towards ever more onerous commitments? The answer depends, in part, on the domestic policy and regulatory framework that India establishes to implement its chosen approach of pursuing co-benefits. If this framework is

robust, leads to domestic actions that actively explore low carbon options, and to tangible carbon gains, then India is well placed to defend itself against further demands. Moreover, under the Cancun Agreements, India is already committed to taking "nationally appropriate mitigation actions" when "supported and enabled by technology, financing and capacity-building". A clear domestic regulatory framework that provided an analytical basis for separating when we would take co-benefits based actions without external support, and when we would require external support, would also help limit future unfunded obligations.

The lesson from Durban, surely, is that hewing to a rigid position that focuses only on fending off any form of responsibility for action risks exposing India to a far worse position. By arguing for a strict form of differentiation under which not only India, but also its BASIC (Brazil, South Africa, India and China) partners, are shielded, the end result was a negotiation mandate that side-stepped the idea of differentiation entirely. In terms of development

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parameters India has more in common with the least developing and vulnerable countries than with countries like China, Brazil, and South Africa. In the future, it will be in India's interest to develop and articulate a more graded form of differentiation, one that recognises India's co-benefits based approach as a legitimate response to the imperative of climate mitigation given our current levels of development, but also one that provides a pathway to more rigorous and ambitious actions at enhanced levels of development.

Preparing for the Road Ahead

Re-conceptualising equity and differentiation are a necessary first step to a renewed Indian climate strategy. But a great deal of detailed strategic and legal work needs to be done to be effective in what promise to be intense and fraught negotiations in the coming years.

India must be involved from the beginning in shaping the operationalisation of the Durban Platform. While there are no easy answers or obvious strategic ways forward, the issues on which we must rapidly develop clarity are apparent. First, do we persist with our objection to a legally binding instrument, and on what credible basis? So far, our objections to a legally binding outcome have revolved around the fear of being tied to onerous commitments, a defensive concern. But, to be taken seriously by a broad range of Parties, we must also develop and articulate our perspective on a legally binding instrument with regard to environmental effectiveness. It may be more effective, even now, to articulate the conditions under which we feel a legally binding instrument safeguards both our development and climate interests. Second, does a legally binding instrument mean legally binding quantitative commitments, or could it mean legally binding procedures that buttress voluntary commitments? Which of these options would make most sense from an Indian perspective? Third, what will be the form of commitments to be taken by countries? It will be particularly important to put on the table an articulation of how differentiation in commitments or actions can be operationalised across countries that accounts for India's relatively low levels of development.

Fourth, what is our political reading of how different countries will engage with the Durban Platform? Will a legally binding outcome work against itself by discouraging ambitious target setting by countries? Will any gains be undone by high hurdles to ratification of a new instrument in several countries, notably the us? These are all issues on which India needs to develop informed analysis as a prelude to formulating a position and strategy.

In the short run, it is also important over the next year to be engaged with the articulation of the Cancun agreements-based climate regime that will be put in place for the next eight years. First, we must work with our allies to seal off remaining loopholes in the Kyoto Protocol and ramp up pressure on Annex 1 countries to put in place strong second round commitments. These are issues on which BASIC and least developed economies can make common cause. Second, we need to develop a focused strategy on how to use the MRV provisions of the LCA outcome to keep the pressure on industrialised countries for effective climate action, and to maintain pressure on them to meet their obligations to contribute to the climate finance mechanism, the Green Climate Fund. Third, we should proactively shape the operationalisation of the international consultation and analysis framework for developing country pledges to be consistent with our co-benefits approach to climate mitigation.

Since the post-Durban gruelling process promises to be a long and gruelling process of negotiations, it is also important that India develop the capacity to engage in a long-term and sustained engagement with the negotiating process. This involves setting objectives, and then developing a legal and political strategy to achieve those objectives. A long and complex negotiation round such as the one we are about to embark on will require continuity in personnel, long range strategic thinking, and a willingness to leave the comparative safety of the high road to think through and engage in the ambiguities of the middle ground. At Durban, we negotiated for principle, and failed to achieve a desirable outcome. After Durban, we must find a way of making our principles more robust, and use them

strategically to achieve real outcomes, and not just rhetorical victories.

NOTES

- 1 An oft-cited goal is that industrialised countries' emissions should be reduced by 25-40% over their 1990 levels by 2020, as articulated in the IPCC's Fourth Assessment Report.
- 2 Computed from International Energy Agency, *Key World Energy Statistics*, 2011.
- 3 There are several attempts to model the implications of different allocation formulas. For an overview and one influential approach that uses past contributions to stock as the basis for determining how fast future emissions decline, see Jayaraman, Kanitkar et al (2011).

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