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AN INCONVENIENT TRUTH: UNITED STATES REFUSES TO NEGOTIATE

A civil society analysis of the state of the climate negotiations

At the UN climate talks in Bangkok the United States has confirmed that it does not intend to negotiate legally binding commitments to cut its climate pollution under the international climate regime. How should other countries respond?

At the 2011 Bangkok UN climate talks the United States has confirmed that it is unwilling to negotiate its contribution to the global effort to curb climate change, while at the same time continuing to call for major concessions from other countries.

According to Dr. Jonathan Pershing, US Deputy Special Envoy for Climate Change, the US will not change its current pledge of emission reductions of 17% by 2020 from 2005 levels (around 3-4% from 1990 levels).

These statements were made during a pre-sessional workshop held on 3 April 2011 to "clarify the assumptions and the conditions related to the attainment of these targets, including the use of carbon credits from the market-based mechanisms and land use, land-use change and forestry activities, and options and ways to increase their level of ambition".

They are the clearest confirmation yet of the US' intention not to engage in international negotiations to reduce greenhouse gas emissions, but rather to determine its mitigation contribution unilaterally.

United States "new climate diplomacy"

During 2010 Todd Stern, US Special Climate Envoy, called for a new climate diplomacy, including a "bottom up architecture" based on "domestically derived mitigation commitments," "robust transparency provisions for all countries" and an agreement that is "legally symmetrical" with "the same elements binding on all countries, except the least developed." This, according Stern, was "the basic bargain of a new climate architecture, as we see it" (Stern, Brookings, 18 May 2010).

This approach was reflected in the controversial Copenhagen Accord and later embodied in the outcomes of the December 2010 UN Climate Conference in Cancun, raising concerns about the future of the international climate regime and supplanting the legally binding Kyoto Protocol with a much weaker "bottom up" pledge and review system.

The approach – most clearly articulated by the US – is now supported by a number of developed countries, which are seeking to dismantle the Kyoto Protocol, relax the legally binding requirements applying to developed country Kyoto Parties, while constructing a host of new requirements and procedures for developing countries.

Concerns about the US position and intentions have now been confirmed in the pre-sessional workshop conducted in Bangkok, which allowed participants to ask a detailed set of questions to a senior US official, and exposed the inconvenient truth that the world's richest country and largest contributor to climate change is unwilling or unable to contribute adequately to a shared global solution.

No negotiation of commitments

The basic premise of the climate negotiations is that countries meet to negotiate. Their efforts should be equitable and comparable, and together they should add up to get the job done, in accordance with the principles and provisions of the UN Climate Convention. It is now clearer than ever that the US is unwilling to engage in negotiations on the most basic element of the climate talks – emission reduction targets.

During 2010 it stated its "mitigation contribution" would be the "domestically derived mitigation commitment" it has "chosen to list" in an appendix. It supported the Copenhagen Accord as "deferring to Parties in terms of deriving their respective mitigation undertakings." It achieved its goals in the Cancun outcome, which merely "takes note" of targets "to be implemented" by Annex I countries "as communicated by them."

Speaking at the Bangkok workshop this week Dr. Pershing confirmed that "we have a series of commitments and we have held to them and we are not deviating from them. They speak to 2005, 17% and 2020."

No internationally binding commitment

During 2010 the US proposed that targets would be achieved through various means including those "provided for under their respective laws and policies." In other words, the system

would lack comprehensive and effective international rules on how targets could be achieved. The US will have "targets" but they will not be bound in international law to achieve them.

The Cancun outcome (under the Convention track) notably includes the term "targets" and not "commitments", despite references to commitments in the Convention, Kyoto Protocol and Bali Action Plan. The outcome of the other track of negotiations (the AWG-KP) notes the need to covert "targets" into "commitments". No such reference is made in the outcome under the Convention track.

At the Bangkok workshop, the Dr. Pershing said "in the context of US regulation, compliance is a matter of domestic law … We are in the midst of developing that body of law." In relation to the consequences of a global regime, he said, "I'm frankly dubious that we'll come up with one because we are not having that conversation in a way that will apply on a global level."

In the absence of an internationally binding commitment, the world is apparently to take on trust that the US will keep a commitment set in a domestic laws and regulations, if and when it has them.

No comparability of efforts

The US has also retreated from its commitment in the Bali Action Plan to take on "comparable efforts" to other developed countries – in other words, to do its fair share. The US AWG-LCA proposals last year included no provisions ensuring comparable efforts among developed countries.

Rather than adopting the internationally agreed base year of 1990, the US set its target of 17% against a different year, 2005. Converted against a comparable1990 base year their reductions amount to a mere 3-4% reduction by 2020 from 1990 levels.

In Bangkok, Dr. Pershing acknowledged "We have chosen a different base year in no small part because we have taken inadequate actions in the period before our administration." "We based our commitment on 2005 because 1990 didn't work for us. Does that mean it's a bad measure for comparability, no it's a different measure for comparability." he said.

Addressing the US' contribution, Dr. Pershing said:

> The issue of comparability is independent... from the issue of adequacy… What we need to know is the global aggregate total of emissions, that's what's driving temperature…. Whether or not I have a metric… is much less important than whether the collective effort is moving the right way... The adequacy and comparability... are independent.

On the need for metrics, he said, "I am not persuaded that we can establish a single metric, nor that it's going to be desirable or helpful to have a metric in advancing domestic action."

No assurance of adequate efforts

The Convention calls for "equitable and appropriate contributions by each of these [developed country] Parties to the global effort." The Cancun outcome, in turn, urges Annex I countries to "increase the ambition of their … targets … to a level consistent with the Fourth Assessment Report of the Intergovernmental Panel on Climate Change," which is understood to be a reference to the range of 25-40% by 2020 from 1990 levels, as summarized in its Box 13.7.

The US proposed reduction of 3-4% by 2020 from 1990 levels is, at best, difficult to reconcile with this range. And the range itself is consistent not with a goal of remaining below 2 degrees, but with the lowest stabilization range considered in the IPCC report (i.e. 2 to 2.4 degrees C). The range reflects the outcomes of a handful of mainly-European funded studies on burden sharing. Much deeper reductions would be required as from the US towards a safer global goal.

Will the US maintain its current pledges? In response to a question from China, Dr. Pershing said: "I don't know... Congress has independent authority... It may modify on the margins the numbers.... but just as we are doing now we will stay with 17%."

To questions about the adequacy of the US pledge, the Dr. Pershing responded:

> On the issue of ambition it's very hard to say at this stage where a country should be on a trajectory toward 2C… It is extremely difficult to say that there is only one pathway and the pathway runs through a particular number based on a couple of models. It doesn't. There are an infinite number of pathways...

No effective rules on compliance

The US continues to oppose effective and enforceable compliance measures. Instead, according to its 2010 submissions, it prefers an approach in which "transparency" provides the "sunshine" to ensure that "Parties are carrying out their promises and the world is on track in relation to the ultimate objective of the Convention".

The US said during 2010 that inserting rules on compliance on Annex I countries is "not applicable". In Bangkok, Dr. Pershing confirmed his country's intention to adopt a purely domestic approach, stating:

> If we... all take domestic actions and make them part of a domestic legally binding regime... that would be a huge step forward... and then we can compare and assess how they work within our domestic contexts.

No aggregate target for developed countries

The US remains unwilling to agree to a science-based aggregate target for all Annex I countries. In Copenhagen it opposed a science-based aggregate target for 2017 or 2020 and inserted text saying the amount would equal "[x]" where this variable is merely the sum of pledges. It favored the Copenhagen Accord, which has no aggregate target, and

confirmed that the absence of certain mitigation issues "was critical to making the Accord acceptable."

The Cancun outcome, in turn, includes no aggregate target for Annex I countries, and no clear process for ensuring one, but rather merely "urges" developed country Parties to increased the ambition of their … targets" with reference to the IPCC Fourth Assessment Report.

A policy of polluters?

The US is negotiating within parameters set by powerful vested interests – including the energy, coal, oil, automotive, metals and other heavily polluting industries and the lobbyists and politicians they fund – which have undermined efforts to secure effective national climate legislation, attacked climate science and scientists, and are now seeking to de-fund the IPCC and other national and global efforts to tackle climate change.

Based on these parameters, the US is proposing to "deregulate" the global climate regime as it applies to the developed countries, while establishing new requirements for developing countries. It is, in effect, unwilling to negotiate its commitment, to bind its commitment in international law, to ensure its commitment is comparable to those of other developed countries, or adequate in terms of an aggregate contribution by the developed countries or in terms of the necessary global effort. According to Dr. Pershing in Bangkok:

> Getting the world to 2°C or 1.5°C is not going to be fundamentally affected by one country, not even by the second largest emitter, the US. It's going to be affected by a global effort

The US – the world's richest country and largest historical polluter – is asking the world to accept that it should reduce its emissions by a mere 3-4% by 2020 from 1990 levels under a domestic law, on the assumption that such a law will be agreed by Congress, and that Congress will actually endorse the target proposed by the Obama Administration. Such an approach of domestic targets, if adopted globally, would, according to Dr. Pershing, constitute "a huge step forward".

What to do with the United States?

Without the prospect of US climate legislation passing (or even being proposed) anytime soon, the US has lost almost all credibility on emission cuts, the provision of long-term climate finance, and, consequently, its leverage to make onerous demands of other countries, including developing countries.

The US seeks to "reinforce the perception" that it is "constructively engaged in UN negotiations", yet it remains basically unwilling to negotiate. Its approach risks a race to the bottom by inspiring an exodus from the Kyoto Protocol and lowering the ambition of other Parties. It claims not to take a position on the Kyoto Protocol but in practice its proposed "pledge-based" architecture is incompatible with a second commitment period for the Protocol.

The world therefore faces a simple question: What to do with the US? If developed countries fail to treat the Cancun outcomes as a floor rather than a ceiling, and opt for a Copenhagen Accord-style non-binding system of voluntary pledges, with no science- nor equity-based aggregate target, then they will be dangerously backsliding from a legally binding system solely in order to secure a commitment by the US to do whatever it was going to do anyway – nothing more and nothing less. If this is the case, then the "basic bargain" the US offers seems a bad one.

A better approach

A better approach is already provided in the Bali Roadmap (i.e. the Bali Action Plan and Kyoto negotiations), which the US agreed to under the Bush administration. This approach confirms that all countries will participate in future mitigation efforts – and that these must be nationally appropriate. Under this approach: 1) Annex I Parties would continue to take emission reductions under the Kyoto Protocol; 2) the US would take emission reductions under the Convention through paragraph 1(b)(i) of the Bali Action Plan, and; 3) developing countries would undertake nationally appropriate mitigation actions supported and enabled by financing and technology.

Under this approach, the world would not move forward without the US. It would simply recognize that the US remains unwilling or unable to ratify the Kyoto Protocol, but that it should still participate on a basis comparable comparable to that of other developed countries through a commitment under the Convention (e.g. in the form of a decision or unilateral declaration).

Following the Bali Roadmap,we can avoid the danger of a gap between Kyoto commitment periods and the potentially adverse implications for emission reductions and economic activity. It is a long-term strategic decision that retains the current climate architecture as the foundation for the stronger system the world needs and demands in the longer term. It protects this foundation from being dismantled and from the difficulty of any attempt at reconstruction.

All Parties should recommit to the promises they made in Bali -- not merely because promises must mean something, but because further diversion, dissembling and delay threatens the ambitious and early efforts needed to curb climate change and safeguard the lives of millions of people and the stability of the Earth's climate system.