

The Consequences of Country's Withdrawal from Climate Change Agreements: Implications for Carbon Emissions Reduction

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ABSTRACT At the end of the recently held UN climate change conference in Durban, South Africa in 2011, a number of key and important issues on global warming were discussed including an agreement to negotiate a new and more inclusive legally binding treaty and the establishment of a Green Climate Fund. Surprisingly, with regard to the existing agreements, some countries have pulled out and also decided not to be bound by subsequent agreements. It is against this backdrop that this article examines the consequences of some countries pulling out of the existing agreements aimed at protecting the environment and reducing the countries' carbon footprints. The article looks at the existing international legal framework mainly the Kyoto Protocol which has been ratified by about 192 countries and the legal regimes of the countries that have pulled out or refused to be legally bound by any agreement pertaining to reduction of carbon footprints. It examines the consequences such withdrawal will have on the set targets of reducing the global emissions by half in 2050.

INTRODUCTION

The 'Bridging the Emissions Gap' report, coordinated by the UN Environment Programme (UNEP) with climate modeling centres across the globe, underlined in the run-up to Durban indicated that the best available science indicates that greenhouse gas emissions need to peak before 2020 (Banks 2011). The report also concluded that bridging the divide is economically and technologically do-able if nations raise their emission reduction ambitions and adopt more stringent low-carbon policies across countries and sectors (Heggelund 2007).

Shortly after the climate talks in Durban in 2011, Achim Steiner, UN Under-Secretary-General and UNEP Executive Director, said: "The outcomes of Durban provide a welcome boost for global climate action. They reflect the growing, and in some quarters unexpected, determination of countries to act collectively. This provides a clear signal and predictability to economic planners, businesses and investors about

the future of low-carbon economies. A number of specific commitments agreed in Durban also indicate that previous decisions on financing, technology and Reduced Emissions from Deforestation and Forest Degradation (REDD+) are moving to implementation" (Kotoky 2012).

The report also pointed out what exactly countries need to do in order to achieve this reduction. By some estimates the cost of cutting emissions will cost four times more beyond 2020 than they would cost today with the price rising over time (Leahy 2011). It has been observed that the current emissions trajectories, unless urgently reversed, could lead to a global temperature rise of 3.5° Celsius or more sometime by the end of the century (Kotoky 2012).

In Durban, the international community was unable to come up with a new agreement but agreed to start talks aimed at having a legally binding document in place (Goldenberg 2011). The European Union and several other countries agreed to continue the Kyoto Protocol beyond 2012 if other governments, including major emitters from developed and developing ones agreed to negotiate a new legally binding treaty with deeper emission reductions by 2015 to come into force afterwards (UNEP 2001).

Climate change is something that affects everyone including smaller coastal countries however, these countries cannot be prevented from developing and growing their economies (Bäthge 2010). It must also be borne in mind

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when looking at reduction of emissions that in some cases closing down the industries would be cutting off the livelihoods of the people in those countries particularly in developing countries where technological advancements are still slow (Grasso 2011). Due to this the international Community agreed to create a Green Climate Fund (GCF) that will assist these countries to engage in industrial activities and at the same time ensuring cleaner and environmentally friendly environments. The GCF is key because it is a reconfirmation of the commitment of mobilizing the 100 billion US dollar to support developing countries by 2020 (Carrington and Vaughan 2011).

In order for all this to happen there is a need for countries to work together and this has been done through the entering of countries into various treaties aimed at establishing a common understanding and common goals for such countries. Countries enter into international agreements in order to provide for mandatory dispute resolution procedures, and establish monitoring mechanisms (Guzman 2005). States also do so as a way of exchanging promises about future conduct and these agreements have value only if the promises exchanged serve to bind the parties.

The International Court of Justice's Statute, provides in article 38, "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply [among other sources] international conventions [that is, treaties], whether general or particular, establishing rules expressly recognized by the contesting states" (Kirgis 1997). This position has been supported by the United Nations.

When countries breach the international agreements that they are party to, there are reputational implications to such actions as they present themselves as unreliable and unable to commit. Direct sanctions can also be ordered on a country in breach where such is provided for, like economic sanctions and travel bans.

Sanctions for violations of international law generally consist primarily of weak military or economic punishment and reputational losses; they are often too weak to achieve optimal compliance (Chayes and Chayes 1993). Under certain circumstances, however, sanctions can be rationalized and states can be given better incentives. In particular, states can at times be in-

duced to voluntarily submit to dispute resolution procedures and accept sanctions. This is possible where a failure to accept a sanction leads to an even greater loss (Guzman 2012).

Article 26 of the Vienna Convention states that, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." This should be used by the countries as a point of reference making them act in accordance with what was initially agreed on.

Article 27 of the Kyoto Protocol provides that;

- "1. At any time after three years from the date on which this Protocol has entered into force for a Party that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol"

This means that the Kyoto protocol made room for State Parties to walk away from the agreement if they realised that they could no longer be bound by it which is commonly referred to as the "get out clause."

LITERATURE REVIEW

The Kyoto Protocol was the world's first international agreement on tackling climate change (Education Scotland 2009). The outcome of climate change on the developing and the least developed countries are excessively high due to the geographical location (Mitra 2011), the high dependence of people on natural resources that are highly sensitivity to climate change, and also on the low adaptive capacity due to fewer amounts of resources available to them (Mitra 2011). The effects of these climatic changes pose an environmental threat which is why the Australian Government viewed the climate change as the challenge of our generation.

It is for this reason that the Australian government was amongst the first countries to ratify the Kyoto Protocol. Suffice to say that the world's economy and environment are highly susceptible to the impact of climate change and

as such countries which recognise their responsibility as a developed nation should play a leadership role internationally in responding to this challenge.

While on the other hand Robert Flawith pointed out that despite attempts to ameliorate the long-term trends of global warming, however climate change is set to play an increasingly central role in international politics (Flawith 2011). Flawith (2011) argues that this coming crisis represents a crossroads for the contemporary international political order, which is premised on the concept of state sovereignty. Peter Schwartz cautioned that certain environmental events such as tsunamis clearly demonstrate why climate change may be the most difficult challenge our civilization has ever faced and as such drastic measures in the form of binding agreement is crucial (Schwartz 2010). Schwartz opined that while drastic measures are the key, however the interests of many nations, large and small, and many important actors within and across them are not aligned, and indeed, are often in conflict (Schwartz 2010). This is mainly because the effective governance needed to bridge these gaps and negotiate an equitable compromise is not widely in place. Schwartz further argued that the institutions trying to manage this global issue of climate change are not adequate to the task and this leaves room for mavericks to unilaterally act and disrupt fragile arrangements by opting out of the international agreements on climate change (Schwartz 2010).

The international cooperation is the only way to deal with the climate change in a much more effective and efficient by coming up with a binding agreement to all member states while solidarity to deal with the climate change impacts and adaptation remains important (Wara and Victor 2008). However, a major setback on the climate change occurred in 2011, Durban, South Africa during the COP17 meeting when Canada became the first country to announce it would withdraw from the Kyoto protocol on climate change, dealing a symbolic blow to the already troubled global treaty (The Star 2011). Van Asselt laid an olive branch by arguing that Canada has its own right to opt out of any international agreement since as a matter of international law, the doctrine of *pacta tertiis nec nocent nec prosunt* (treaties do not create either obligations or rights for a third state without its consent) set out in Article 34 of the Vienna Conven-

tion on the Law of Treaties states that a treaty may only bind parties and may not create obligations for third states without their consent (Van Asselt et al. 2008). As such this does not spare any international agreement on climate change. What this doctrine sets out is the strict boundaries for any attempts to create new obligations to force member states to remain in the international agreements while the constellation of parties and non-parties will not be so clear-cut (Van Asselt et al. 2008). Eventually we are going to see a great deal of climate change over the next half century and beyond should there be no legally binding agreement on climate change as well as the persistent pulling out of countries in those agreements (Schwartz 2010).

CLIMATE CHANGE CONFERENCE IN DURBAN SOUTH AFRICA

Despite the historic nature of the agreement reached by the parties at COP17 in Durban in 2011, however the Durban Platform has been widely seen as a compromise deal (Parker 2011). The Durban conference explicitly recognised the global gap between countries' existing emissions reduction pledges out to 2020, and the global goal of limiting average temperature increases to below 2 degrees above pre-industrial levels (The Carbon Report 2011). This Conference further launched a work programme for ratcheting up ambition, a process which will be reinforced by a forthcoming review of the scientific evidence (The Carbon Report 2011). Furthermore the conference also agreed to adopt, in 2012, a second commitment period of the Kyoto Protocol (The Carbon Report 2011). Another thing that was resolved was the establishment of the Green Climate Fund to support policies and activities in developing countries and also to establish a work programme to look at sources of long-term finance for developing countries, with the aim of mobilising at least \$100 billion per year by 2020 (The Carbon Report 2011). The big success is that Durban pulled together all the key role players such as China and U.S who were forced to exercise and apply their minds and focus on the biggest threat ever faced by humankind (Frost 2011).

Unenforceability of Agreements

The main reason leading to the unenforceability of the Kyoto Protocol is that countries

do not like to be dictated to on what to do and when pushed they hide behind the sovereignty shield (Dvorsky 2010). Instead of acting proactively and taking a leadership role in climate change matters, many nations particularly those in the developed world are aligning themselves with what other countries are doing (Dvorsky 2010). So if countries continue to avoid these agreements then scientists predict that the climate change will rise by 6C by the end of the 21st century triggering a catastrophe including extreme weather, sea level rise, water shortages, food shortages and the extinction of up to a third of known plant and animal species (Kossoff 2009).

THE POSITION OF EMERGING ECONOMIES

India, China, Brazil and South Africa

In late 2009, Brazil, China, India and South Africa emerged as the so-called BASIC group, a central group of actors within climate negotiations. This group played a key role in the drafting of the main political outcome of the 15th Conference of Parties in Copenhagen (COP15) (Atteridge and Olsson 2009).

Again the Ministers of the Brazil, South Africa, India, China (Basic) grouping met to firm their position before further global climate change negotiating sessions and they reiterated that a second commitment period to the Kyoto Protocol was central to a comprehensive outcome at the 17th conference of the parties (COP17) in Durban in South Africa in 2011 (van der Merwe 2011). They added that the legally binding Kyoto Protocol, which outlined greenhouse gas emission reduction targets for developed country signatories, was critical to the environmental integrity of the climate change regime (van der Merwe 2011). The first commitment period to the Kyoto Protocol ends in 2012 and there is not yet any clarity on how the protocol will be taken forward, if at all (van der Merwe 2011).

The position of India and China, which have ratified the Kyoto protocol, is that they are not obligated to reduce greenhouse gas production at the moment as they are developing countries (Tangen et al. 2001). Again they were not seen as the main culprits for emissions during the period of industrialization thought to be the

cause for the global warming of today (Bloch 2009). This is a little odd given the fact that China is about to overtake the USA in emissions and as a result of this loophole, the West has effectively outsourced much of its carbon emissions to China and India (Bloch 2009). The Chinese government accepted the principle of taking on cuts after 2020 in the Durban talks, and even India agreed to a text that said such an agreement should have a legal force (Clark 2011).

However even before the COP 17 summit, these powerful BASIC group had agreed on a common position during a meeting in Beijing (Black 2011). Among other things, their ministerial declaration asserts that “unilateral measures on climate change, such as the inclusion of emissions from international aviation in the EU-ETS (emission trading scheme), would violate the principles and provisions of the convention and jeopardise the effort of international co-operation in addressing climate change” (Black 2011).

EFFECT OF THE WITHDRAWAL OF SOME COUNTRIES FROM THE EXISTING AGREEMENTS

The withdrawals of various countries from the Kyoto Protocol like Canada, Japan and China has very serious negative impacts towards achieving the set goals in the fight against climate change (Yingzi 2011). These countries have given various excuses for such actions and high amongst the reasons given is the fact that it is very expensive to put such necessary measures in place that will meet the goals of reducing each country's carbon footprint but this is a price that each country will have to pay (Bankes 2011). This reason then negates the need to accept that developing countries are hard hit by the cost of reducing their carbon footprint as it often affects the people's source of a livelihood. It is not surprising then that Canada, Japan and China have been condemned as irresponsible and reckless for pulling out of the Kyoto Protocol (Carrington and Vaughan 2011).

Canada pulled out of the Kyoto Protocol just a day after agreeing to be part of a future legally binding treaty on climate that was discussed at the recently held COP 17 in Durban, South Africa (Carrington and Vaughan 2011). Under the Kyoto Protocol, Canada was committed to cutting its greenhouse gas emissions by 6% by 2012, compared to its 1990 levels. But its actual

emissions have risen by over 30%, making failure inevitable (Carrington and Vaughan 2011). Canada's inaction was blamed by some on its desire to protect the lucrative but highly polluting exploitation of tar sands, the second biggest oil reserve in the world (Carrington and Vaughan 2011).

Canada's pledge was exactly the same as the United States of America one, a cut of 17% from 2005 levels by 2020 with the proviso that the number will change if the US passes legislation with a different target (Beck 2007). As the US is outside Kyoto, Canada's last act of mimicry was to leave as well (Black 2011). Canada's per capita emissions are the sixth highest in the world, just below the United States of America, more than twice those of Britain, four to five times those of China and about 60 times those of Kenya (Leahy 2011).

China has opposed any discussion about commitments for the developing countries (Heggelund 2007). Chinese negotiators have repeatedly emphasized that developing country follow up of the UN Framework Convention on Climate Change (UNFCCC) is contingent on the developed countries fulfilling their obligations, on new and additional funding, and on transfer of technology. Their main argument has been that China is still a developing country (Tangen et al. 2001). Russia's Foreign Ministry has supported Canada's decision to pull out of the Kyoto Protocol and reaffirmed that Moscow will not take new commitments citing as a reason the fact that the treaty does not cover all major polluters and thus cannot help solve the climate crisis (News 24 2011).

DELAY IN ACHIEVING SET GOALS

The pulling out of countries from any international agreement is a huge blow and a serious setback on what such agreement aims to achieve. When Canada pulled out of the Kyoto Protocol it set a bad example for the remaining member States and such an action will not encourage countries like United States of America that have not ratified the Protocol to do so.

It also has serious consequences on the possibility of a legally binding treaty on climate change in the near future as other countries may not want to make themselves criminally liable whereas other States have taken the easy way out by either pulling out or refusing to be party to the agreement.

This makes it impossible for the set goals in reduction of emissions to be met as those that have pulled out will no longer be making a committed effort to reduce their carbon footprints.

FAILURE TO REDUCE CARBON EMISSIONS

India's Civil Aviation Minister Ajit Singh points out India's position regarding the European Union's call for the submission of emissions details by Indian Carriers of their aircraft by March 31, 2012; he states that no Indian carrier is submitting them in view of the position of the government (Kotosky 2012). India's opposition to the Emission Trading Scheme (ETS), a major plank in the bloc's efforts to curb carbon dioxide emissions and combat global warming, is serious cause for concern in light of all the frantic efforts that are being made to achieve the reduction of emissions worldwide (Kotosky 2012).

India has also made it clear that it would reject any global pact legally binding it to cut greenhouse gas emissions as such a move could stifle economic growth needed to eradicate poverty (News 24 2011). This came after a UN conference in Durban, South Africa late last year where it was agreed that for the first time countries need to negotiate a legally enforceable agreement to control all nations' emissions. Emerging Asian giants India and China, which have become huge emitters of carbon over the last half-dozen years, have long resisted calls to reduce emissions (News 24 2011). India and China do not fall under existing 1997 Kyoto Protocol constraints aimed at fighting global warming as they are developing countries (News 24 2011).

CONSEQUENCES OF A COUNTRY'S WITHDRAWAL

A country that withdraws from an international agreement sends a message that it cannot be trusted to stand by its bargain, especially if the bargain involves deep commitments (that is a commitment to do something that we are not already obliged to do by domestic law rather than shallow commitments commitments already enshrined in domestic law (Clark 2011). Canada will find it difficult to induce other parties to make concessions in return for a proposed concession from Canada. The only thing that was

special about Kyoto is that it involved a deep commitment with an economic impact as it required State parties to reduce those commercial activities that lead to the production of gases like carbon dioxide and carbon monoxide. Other agreements such as trade agreements may demand similarly deep commitments (Bankes 2011).

It may also make it more difficult for such a country after pulling out to take the lead in any other initiatives later on that require international collaboration for example Canada takes the lead on agreements that matter to Canadians, like the Stockholm Convention on Persistent Organic Pollutants (POP) (Stockholm Convention on Persistent Organic Pollutants 2004). That was an agreement that Canada took a leading role in developing because Canada believed that persistent organic pollutants generated or applied in equatorial areas were being carried by long range atmospheric transport and then deposited in the colder higher latitudes causing human health concerns in arctic countries. By and large, the commitments of developed countries under the POPs Convention were shallow. In many cases the POPs in question were already banned in developed countries, but deeper commitments were demanded from developing countries a classic case of exporting environmental values in return for the promise of financial and technical commitments (Bankes 2011).

This withdrawal also sends out the wrong message altogether as it may encourage other countries to just walk away from any other conventions that are no longer convenient or important to them (Watts 2011). Withdrawal clauses are very common but they have never been put to use in the past until Canada was the first to pull out of the Kyoto Protocol.

CONCLUSION

The get-out clause is fairly standard in international treaties like Article 27 of the Kyoto Protocol but was scarcely ever used. Countries can trigger these release clauses, but it happens very rarely. For example, Norway and Iceland left the International Convention for the Regulation of Whaling in 1993 and 2006 respectively but such moves are rare.

It is a practice that should not be encouraged amongst member states to any agreement to just shun such agreement at any time when

such a country or state feels like it. The result will be countries will not be able to hold each other to their word which will have a very negative impact on their relations. This is a very undesirable position for everyone concerned.

The withdrawal of countries and refusal of some to be legally bound in any way with regard to climate change obligations is of grave concern. This will take the efforts that have been made so far back and hamper the achievement of set goals. It has been years since climate change debates started and very few people believed the scientific findings then but today most people are aware of the need to take care of their environment. When countries pull out it then becomes a problem as this encourages the business communities in those countries as well as the people there to stop taking environmental issues seriously which is bad as it ultimately affects their future generations and the world at large.

This practice ought to be denounced and countries come together to push those who choose to neglect their obligations to start taking them seriously by coming up with harsh sanctions like not trading with those countries who are not willing to take part in this serious matter.

RECOMMENDATIONS

There is a dire need for all the countries to work together in order to be able to achieve this reduction in emissions this can never be stated enough. It cannot be a responsibility that is pushed to a few countries as everyone is contributing to this climate change. Withdrawing from such an obligation due to the economic impact of taking steps to reduce emissions has been termed an excuse to shirk responsibility in tackling global warming.

This article has highlighted the need for countries to work together worldwide in a unanimous effort to achieve their set goals. There should be steps taken towards coming up with a legally binding document as a matter of urgency. Agreeing to be part of a non-existing document is one thing as is the case now after the recent COP17 in Durban where countries agreed to be bound by a future legally binding agreement but actually being party to a document that makes countries liable for transgressions is what is needed.

In order for the proposed Green Climate Fund to be able to wield results there is need for a legal framework that clearly indicates how funds will be administered and to whom by whom. This can only come about if there is a legally binding agreement amongst the countries which will indicate the necessary terms and conditions in handling this Fund and to ensure that it is used for its intended purpose.

The World has to stop adopting this lackadaisical attitude towards climate change issues as time is running out as indicated by the scientific findings that annual global emissions need to be around 44 Gt of CO₂ equivalent by around that date in order to have a running chance of achieving a trajectory that halves those emissions by 2050 below 2005 levels which was pointed out in the Bridging the Emissions Gap Report of the United Nations.

In order for this to be a success the countries need to work together and be supportive of each other's efforts as was agreed in the UNFCCC where developed countries had to make available technologies to developing countries in order to aid them in their development strategies.

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