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National Commitments, Compliance and the Future of the Kyoto Protocol

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Abstract

Among the many unresolved issues on the agenda of the forthcoming UN climate change negotiations in Cancún is the issue of what will happen to the Kyoto Protocol, since at present, there will be no targets for greenhouse (GHG) emissions from developed countries under the Protocol beyond 2012. To illuminate this aspect of the Protocol, this Policy Brief looks closer at the nature of the commitments and the compliance regime under the Kyoto Protocol. We argue that the compliance regime of the Protocol is not as robust as many of the Protocol's supporters might think. The precise legal form of the commitments in the climate regime may have little impact on whether countries actually achieve their targets. Instead, we argue, negotiators should focus on agreeing a framework of commitments that are credible and enforceable, rather than focus excessively on the legal form of those commitments.

Introduction

Next week, climate change negotiators will gather in Cancún, Mexico, for the latest round of UN climate change negotiations. Many issues remain unresolved going into the two-week conference, and for many months expectations have been progressively lowered in order to avoid a repeat of the Copenhagen climate conference last December. Among the range of matters yet to be agreed at the negotiations, an overarching issue concerns the legal form of a possible agreement, and the related issue of the future of the Kyoto Protocol.

The first commitment period of the Protocol runs until the end of 2012, after which there are currently no further commitments in the framework of the climate regime for emission reductions or limitations in respect of developed countries. Those who support the Kyoto Protocol's approach to tackling climate change wish to create a second commitment period, which would set targets for developed country emissions for the period beyond 2012. Supporters of the Protocol point to the fact that it represents the only legally binding international instrument to limit emissions. On closer examination, however, the consequences of *compliance* or *non-compliance* with commitments are less clear-cut than one might imagine. Looking at what is at stake in the debate over the future of the Kyoto Protocol, this paper argues that the nature of international commitments, the effectiveness of a compliance system and consequences of non-compliance need to be understood in an integrated manner.

1. Setting the context

The institutional architecture of the climate change regime

The existing international, legal and institutional architecture on climate change consists primarily of the United Nations Framework Convention on Climate Change (UNFCCC or the Convention) and the Kyoto Protocol to the UNFCCC. This international architecture has evolved over time with the adoption of new rules, procedures and

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mechanisms to operationalise the Convention and the Protocol,[1] such as the Marrakech Accords of 2001. Furthermore, corresponding domestic institutional frameworks for additional policies and measures have been developed, for example within the EU since 2001.

The overall objective of the Convention is "to achieve…stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". Yet beyond an aspirational target of returning global greenhouse gas (GHG) emissions to 1990 levels by 2000, the Convention did not contain specific emission reduction or limitation targets for each country. The Convention stipulates the principle of "common but differentiated responsibilities and respective capabilities" for developed countries and economies in transition, known as 'Annex I parties' (so-called because they are listed in Annex I of the Convention), and non-Annex I parties. To address this perceived shortcoming of the Convention, the Kyoto Protocol (Annex B) set quantified emission limitation and reduction obligations for Annex I parties. The overall target of Annex I parties is a 5.2% reduction below 1990 levels of GHG emissions, solely during the 'first commitment period' from 2008 to 2012.

What the architects did not anticipate then, however, was a long delay in the ratification of the Kyoto Protocol owing to the '55-55' rule.[2] While the Convention was agreed in 1992 and entered into force in 1994, taking just two years, the Protocol was initially adopted in December 1997 but only entered into force in February 2005, taking more than seven years. The text of the Protocol stipulates that negotiations towards a second commitment period should commence "at least seven years before the end of the first commitment period" (Art. 3.9). Since the first commitment period ends in 2012, the 1st Meeting of the Parties to the Kyoto Protocol (CMP1) took the decision to initiate consideration of further commitments for Annex I parties in December 2005 (see Art. 3.9).[3]

Near the end of 2007, a two-year framework for negotiations – the so-called 'Bali Action Plan' – was launched with a view to reaching an agreed outcome in Copenhagen in 2009. This involved a compromise solution of creating two negotiating tracks – the Ad Hoc Working Group on Further Commitments for Annex I parties under the Kyoto Protocol (AWG-KP) and the Ad Hoc Working Group on Long-term Cooperative Action under the UN Framework Convention on Climate Change (AWG-LCA). The AWG-KP, as the name suggests, aims at agreeing on targets for Annex I parties to limit and reduce GHG emissions during a second commitment period under the Kyoto Protocol (i.e. the period beyond 2012) while maintaining the clear differentiation of responsibilities between Annex I and non-Annex I parties, a key demand of developing countries. In return, developing countries accepted under the AWG-LCA that negotiations will address enhanced mitigation actions by both developed and developing countries, which was a key demand of the US, although these respective actions are framed differently.[4] The two negotiation tracks reported on progress in their work, but did not conclude in Copenhagen. The mandates of the two AWGs were extended until the 16th Conference of the Parties (COP) in Cancún and four meeting sessions were held during 2010, in Bonn in April, June and August, and in Tianjin, China in October.

The Copenhagen Accord, the text agreed by heads of state outside the two-track process, is short of yielding a legally binding power over formal commitments by parties, but provides political guidance for the continuation of negotiations for a future agreement without specifying an end date.[5] The legal status of the Accord is uncertain, as it was only taken note of by the COP rather than being adopted as a formal COP decision. Nevertheless, 140 parties have communicated their support for the Copenhagen

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[1] These decisions have been made by either the Conference of the Parties or the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol.

[2] To come into force, the Kyoto Protocol needed to be ratified by at least 55 parties to the UNFCCC, and by countries representing at least 55% of total Annex I GHG emissions (Art. 25.1). To date, the Protocol has been ratified by 193 parties (see UNFCCC website, "Status of Ratification of the Kyoto Protocol", UNFCCC Secretariat, Bonn, http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php).

[3] See Decision 1/CMP.1 in UNFCCC (2006b) (http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf).

[4] See the Bali Action Plan, Decision 1/CP.13, 1(b) in UNFCCC (2008):

> Enhanced national/international action on mitigation of climate change, includ[es], inter alia, consideration of: (i) Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances; (ii) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.

[5] For details, see Decision 2, CP.15, Copenhagen Accord, in UNFCCC (2010a).

Accord to the UNFCCC Secretariat,[6] some of which, be they developed countries or emerging economies, submitted pledges for quantitative commitments in the months following the Copenhagen summit.

Commitment periods of the Kyoto Protocol

As noted above, the negotiations under the AWG-KP track include consideration of a possible second commitment period under the Protocol. This would be likely to involve an amendment to Annex B of the Kyoto Protocol containing commitments for developed countries (Art. 3.9) in the form of a decision of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP). The decision will be then subject to acceptance by each party. .How long it will take to amend Annex B or whether the amendment can be made to update the commitments in 2013 is another matter. Art. 20.3 of the Protocol stipulates that "[t]he Parties shall make every effort to reach agreement on any proposed amendment to this Protocol *by consensus*. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted *by a three-fourths majority* vote of the Parties present and voting at the meeting" (emphasis added).[7]

The failure to agree at Copenhagen on further commitments for developed countries within the framework of the Kyoto Protocol has led to concerns that there may be a gap between the first and subsequent commitment periods under the Protocol. The implications of a gap go beyond the obvious fact that that those developed countries that have ratified the Protocol would be left without emission targets from 2013. Such a gap could also affect the functioning of the so-called 'flexible mechanisms' (the Clean Development Mechanism, Joint Implementation and emissions trading), and it would have further ramifications on the operation of the compliance mechanism of the Protocol (as discussed below).

These issues were raised in the recent negotiating sessions of the AWG-KP in Bonn in August 2010 and later in Tianjin, China in October. Upon parties' request, the UNFCCC Secretariat provided a note prior to the August 2010 negotiating session in Bonn that considers legal options to ensure there is no gap between commitment periods.[8] Such options include i) formally amending the Protocol, which would require acceptance of the amendment by at least three-quarters of the parties to the Protocol (as noted earlier); ii) provisional application of an amendment; and iii) extension of the first commitment period. It also discusses potential legal implications of a gap in commitment periods, including effects on the reporting obligations of parties, the operation of the flexible mechanisms and the functioning of the compliance system.

Entanglement between the legal form and the next commitment period

There is a range of views among parties on the possible future commitment periods of the Kyoto Protocol and the appropriate relationship between the potential outcomes of the two tracks. As the above sections show, these issues are distinct and deserve careful analysis on their own. At the same time, they are often entangled in continuing discussions on the two-track negotiation process.

While the two-track process was a carefully constructed compromise, it was never clear how the negotiating outcomes of the two AWGs would take respective legal forms and how they would relate to each other (see Müller et al., 2010, pp. 3-5 for a fuller discussion).

In principle developing countries are generally keen to see an amendment to Annex B of the Kyoto Protocol to establish a second commitment period, with a non-binding outcome in the AWG-LCA track. Many developed country parties support the creation of a 'single legal instrument' that would merge the Kyoto Protocol and LCA negotiating tracks, building upon successful elements of the Kyoto Protocol and including all parties in the legal framework, although with differing obligations.

The EU's position on this issue has shifted in recent months. Prior to Copenhagen, the EU argued for a single legal instrument, as above, together with other developed countries. At the most recent negotiating sessions in August and October 2010, the EU repeated its preference for a single, legally binding agreement, while pointing out that it could be flexible on the form

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[6] See the UNFCCC website, "Copenhagen Accord", UNFCCC Secretariat, Bonn, http://unfccc.int/home/items/5262.php for details.

[7] See the Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 10 December 1997, United Nations, FCCC/CP/1997/7/Add.1, 25 March 1998 (http://unfccc.int/resource/docs/cop3/07a01.pdf). For an example, the proposal by Belarus to amend Annex B is illustrative. Parties to the Protocol adopted the amendment by CMP Decision in 2006, but to date the amendment has not entered into force, being accepted by only 23 parties to the Protocol (see Decision 10, CMP.2, in UNFCCC (2007)). See also the UNFCCC website, "Amendment to Annex B of the Kyoto Protocol" (http://unfccc.int/kyoto_protocol/amendment_to_annex_b/items/4082.php).

[8] See UNFCCC (2010b).

of the outcome as long as it is legally binding.[9] However, the October meeting of the Environment Council marked a shift in the EU's orientation on this matter. The Council's conclusions highlighted the EU's willingness to agree to a second commitment period of the Kyoto Protocol, provided that a broader framework can be found to engage all major economies.[10]

Since so much is made of the fact that the Kyoto Protocol is a *legally binding* agreement, it is worth examining in greater depth what this means in practice. Specifically, what consequences flow from compliance or non-compliance with legally binding commitments in the case of the Kyoto Protocol?

2. Analysing key concepts in an integrated manner: Commitments, compliance and consequences under the Kyoto Protocol

Commitments and compliance could be seen as the two sides of one coin. The question of the legal nature of commitments is closely linked to the issue of compliance. Presumably, one of the principal reasons a legally binding climate treaty has so many advocates is because enshrining states' commitments in international law would seem to make compliance more likely.

There is an apparent anomaly in the Kyoto Protocol, however: on the one hand, the emission limitation and reduction obligations of Annex B parties (i.e. developed countries and economies in transition) possess a legally binding character, since they are precisely specified in an international treaty that the contracting parties have signed and ratified. On the other hand, the compliance mechanism of the Protocol is non-binding in consequences, stated as follows: "Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol" (Art. 18, Kyoto Protocol). If an amendment under this article were adopted to make the 'consequences' binding, the amendment would have to be ratified by parties to the Protocol. It would not enter into force until three-quarters of the parties had signed and ratified the amendment, i.e. more than 145 parties. It would only bind those parties that had ratified the amendment itself, and not any parties that had ratified the original Kyoto Protocol but not the amendment (Wang and Wiser, 2002, p. 196). In the negotiations that led to the creation of the compliance mechanism of the Kyoto Protocol, the legal character of the consequences of non-compliance was hotly contested. While the EU and the G77 & China supported legally binding consequences, parties within the 'Umbrella Group' (consisting of Canada, Australia, Japan, the Russian Federation and New Zealand, among others) opposed them (Halvorssen and Hovi, 2006, p. 164; see also Oberthür and Lefeber, 2010, p. 151).[11]

The compliance system of the Kyoto Protocol consists of a Compliance Committee, agreed upon as part of the Marrakech Accords in 2001 and established by CMP 1 in 2005, which is composed of two branches – a Facilitative Branch and an Enforcement Branch. The role of the Facilitative Branch is to assist parties in their implementation of the Protocol. The role of the Enforcement Branch is more judicial in nature. It considers whether a party has i) complied with its methodological and reporting requirements under the Protocol, ii) met the eligibility requirements for participating in the flexible mechanisms of the Kyoto Protocol (the Clean Development Mechanism, Joint Implementation, and emissions trading), and iii) met its emissions target (i.e. commitment) under the Protocol. It is the last of these that is most relevant to the subject of this paper and which is considered in detail here.

There will be three kinds of consequences triggered by non-compliance regarding the emissions target. If a party does not achieve its emissions target in the first commitment period, the Enforcement Branch is empowered to apply the following consequences:

i) for each tonne of emissions by which the party has exceeded its target, 1.3 tonnes will be deducted from the party's assigned amount

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[9] See "Summary of the Bonn Climate Talks, 2–6 August 2010", *Earth Negotiations Bulletin*, Vol. 12, No. 478, August 2010 (http://www.iisd.ca/vol12/enb12478e.html).

[10] The relevant text from the Conclusions adopted on 14 October by the Environment Council (Council of the European Union (Environment), 2010) is the following:

> [The Environment Council] CONFIRMS its willingness to consider a second commitment period under the Kyoto Protocol, as part of a wider outcome including the perspective of the global and comprehensive framework engaging all major economies, while reiterating, in this regard, its preference for a single legally binding instrument that would include the essential elements of the Kyoto Protocol, building on the Copenhagen Accord, reflecting the ambition and effectiveness of international action and responding to the urgent need for environmental integrity (capitalisation as in the original).

On 28-29 October the European Council endorsed the Environment Council conclusions and confirmed its willingness to consider a second commitment period under the Kyoto Protocol provided the conditions set out in these conclusions are met (European Council, 2010).

[11] For an overview of the history of the development of the compliance mechanisms and procedures of the Kyoto Protocol, see Wang and Wiser (2002).

units (AAUs, that is, its permitted level of emissions) for the next commitment period;

ii) the party will be obliged to prepare a detailed plan outlining how it will meet its reduced target for the next commitment period, and the Enforcement Branch will have the power to review this plan and assess its feasibility; and

iii) the party will be suspended from selling emission units.

While the shortcomings of the deduction approach were well recognised, it was adopted because no other politically feasible or realistic non-compliance response seemed possible (Wang and Wiser, 2002, p. 196). For example, proposals for payments into a 'compliance fund' by parties that are found to be non-compliant were deemed by negotiators to be too penalising in character and would have been difficult to enforce (Oberthür and Lefeber, 2010, p. 150).

So far, the Enforcement Branch has addressed questions of implementation with respect to four parties: Greece, Canada, Croatia and Bulgaria (Oberthür and Lefeber, 2010, p. 137).[12] Each of these cases concerned the monitoring and reporting obligations of the parties concerned under the Protocol.

The Enforcement Branch cannot address questions of implementation regarding emission targets during the relevant commitment period, since the issue of compliance only arises after the end of the commitment period. The issue of compliance with emissions targets for the first commitment period is unlikely to be raised before July 2015. The time frame leading to decisions over compliance looks like the following (Oberthür and Lefeber, 2010, p. 149):

December 2012	end of the first commitment period;
until 15 April 2014	submission of inventories for emissions in year 2012;
until April 2015	review by the Expert Review Team for up to one year after the submission of inventories;
April-July 2015	transfer and acquisition of AAUs for compliance for 100 days; and
July 2015 or later	consideration of compliance by the Enforcement Branch.

It is important to note that until the issue reaches the Enforcement Branch, it is the Facilitative Branch that is answerable for the potential or likely non-compliance of a state with its emissions target during a compliance period, known as the 'early warning' function. In other words, there are two police agents monitoring the Kyoto Protocol's compliance system: the Facilitative Branch responsible for addressing *likely* (non-) compliance *ex ante*, and the Enforcement Branch responsible for *actual* (non-) compliance *ex post*. To date the Facilitative Branch has failed to do so, because of the weakness of the system in that only parties can trigger the early-warning function, not the Expert Review Team in its reporting (Oberthür and Lefeber, 2010, p. 155). The Facilitative Branch is mandated to activate the early warning function, but has no power to go beyond recommendations (Oberthür and Lefeber, 2010, pp. 149, 155-156). Canada, for example, has publicly declared that it does not intend to meet its emissions target for the first commitment period of 94% of the 1990 level.[13] Despite the trajectory of emissions growth derailing the Kyoto Protocol target, it will not take additional policies or measures that would enable the country to get back on track. It is highly doubtful whether the Protocol would be capable of inducing compliance on the part of states that do not intend to adopt additional policies or measures to return to and stay on course. This example points to the need for strengthening the Facilitative Branch in a future reform of the compliance system.

A high degree of uncertainty about the timing of subsequent commitment periods and the level of further commitments would undermine the ability of the compliance system to function as regards emission targets for the first commitment period. If there is no agreement on commitments for the next period, the deduction approach will not be enforceable. Even if parties agree on the continuation of the Protocol, the structural design of the consequences for non-compliance provides an incentive for parties that were non-compliant in the first commitment period to negotiate a lower target for the second commitment period than they might otherwise have done, to take account of the added 'burden' of the carried-over emissions level. Furthermore, a party found to be non-compliant in the first commitment period could simply argue that the consequence is non-binding and refuse to be bound by the additional commitment in the second period (Halvorssen and Hovi, 2006, p. 168).

The Kyoto Protocol is believed to incorporate one of the most developed compliance mechanisms of any multilateral environmental agreement (Oberthür and

[12] See also the UNFCCC website, "Compliance under the Kyoto Protocol" (http://unfccc.int/kyoto_protocol/compliance/items/2875.php).

[13] In 2008, Canadian emissions were 124% of the 1990 level. Data derived from World Resources Institute (WRI) Climate Analysis Indicators Tool, WRI, Washington, D.C. (http://cait.wri.org/).

Lefeber, 2010). Still, it is highly doubtful whether the Protocol would be capable of inducing compliance on the part of states that are not on track and do not wish to meet their obligations, as the above example shows, or enforcing the consequences of non-compliance on them. Furthermore, although it is anticipated that the EU-15 in the aggregate will achieve its overall Kyoto Protocol commitment of an 8% cut in GHG emissions by 2008–12 from 1990 levels (although not all member states will do so), a strong argument can be made that much of this reduction is helped by factors unconnected to the Protocol. Such factors include the favourable choice of the base year of 1990 (e.g. the collapse of East German heavily-polluting industries after 1989 and the move from coal to gas in the UK owing to the closure of coal mines contributed significantly to declining emissions in the 1990s in Europe). There has also been a significant fall in output levels since 2008 because of the economic and financial recession. These reductions in EU-15 emissions would have taken place irrespective of the Protocol, which is one of the main reasons the EU is internally discussing whether to raise the 2020 target for GHG emission reductions from 20% to 30% in parallel with the international negotiations. The EU's example highlights the importance of the base year, the timing of the commitment period and the level of commitment, all of which affect the party's performance in compliance.

3. Integrated analysis in the context of negotiations ahead of Cancún

Based on the above analysis, the popular debate concerning a second commitment period for the Kyoto Protocol and the demand for legally binding targets for countries within the climate regime appear misguided. The 'compliance pull' of the Kyoto Protocol frequently seems misunderstood, with a simplistic view that a legally binding treaty will lead to punishment for states that fail to reach their targets. Within the multilateral framework of the existing climate regime or any currently realistic alternative, there is no credible 'stick' through which compliance could be enforced by the use of punitive sanctions. On the other hand, the UNFCCC framework will likely be silent about the possibility of a unilateral threat of punitive measures in bilateral relations. On the contrary, the Protocol's compliance system attempts to restore the lost balance between the initial commitment and the actual (under-) performance by requesting additional actions from the non-compliant party.[14]

It is certainly true that some consequences flow from whether agreement can be reached among parties on the creation of a second commitment period for the Kyoto Protocol. These include the continuance of the flexible mechanisms and the integrity of the compliance system, as noted above. But these are not typically the kinds of consequences that appeal to supporters of a global climate regime underpinned by legally binding commitments.

In the current landscape of the climate change negotiations, this approach in pursuit of legally binding targets might be a long shot unless a coalition of willing or like-minded parties can be formed. At present the EU 2020 target for emission reductions is legally binding in EU law and equipped with adequate means for compliance in the form of the energy and climate change package agreed in 2008 before the Poznan conference. The EU may raise the level of ambition from 20% to 30% in emission reductions, provided other major economies take equivalent measures. The EU's preference remains a single, legally binding instrument incorporating essential elements of the Kyoto Protocol and building on the Copenhagen Accord. Until there is a global and comprehensive framework, temporary solutions could be sought from unilateral declarations of domestic targets that are legally binding in domestic legislation, or those that are not necessarily legally binding but enforceable.

All of this is not to argue that legally binding targets have no consequences. Such targets can be symbolically important, and legally binding targets may be more politically difficult to evade than non-binding targets that would be agreed to in a 'pledge-and-review' kind of process outlined in the Copenhagen Accord. In other words, countries may try harder to meet legally binding targets, not because of the formal legal consequences of non-compliance, but because of the reputational costs associated with failing to comply with legally binding commitments. This dynamic can be seen in the approach India and China took when announcing their national carbon-intensity targets in advance of Copenhagen, and in their communication of their commitments to the UNFCCC Secretariat in the framework of the Copenhagen Accord. Both countries initially had reservations about formal association with the Accord, and orchestrated the timing of their submissions in March 2010. On each occasion, both countries were absolutely explicit that theirs were domestic targets, and were not internationally binding. Notably, however, both India and China set for themselves targets that are very likely to be achieved

[14] "The consequences of non-compliance with Article 3, paragraph 1, of the Protocol to be applied by the enforcement branch shall be aimed at the restoration of compliance to ensure environmental integrity, and shall provide for an incentive to comply" (Decision 27, CMP.1, UNFCCC, 2006a).

because of their potential links with respective five-year plans.

This prospect suggests that governments care a great deal about the reputational costs associated with failing to meet even voluntarily pledged, non-binding targets. In other words, once a target is committed to and is subject to international scrutiny, failure to achieve that target will generate reputational costs regardless of whether the target is binding.

Concluding remarks

At present, there is renewed interest in the Kyoto Protocol to explore options that could bridge the first commitment period and subsequent ones. Some consequences of (non-) compliance flow from whether there is a second commitment period (affecting flexible mechanisms and the integrity of the compliance system). Even if there is no agreement over the next period, the Protocol's compliance system will remain functional until the middle of 2015 to assess parties' performances in the first period.

The irony is that the Kyoto Protocol stipulates legally binding commitments with no legally binding consequences for non-compliance. The existing compliance system is well designed in theory but not functional in practice because the Enforcement Branch can intervene only after the end of the first period, and the Facilitative Branch cannot initiate early warning action on its own. Enhancement of the Facilitative Branch is therefore one option to strengthen the compliance system of the Kyoto Protocol.

The compliance system and more generally the compliance pull of the Kyoto Protocol frequently seems misunderstood, with a simplistic view that a legally binding treaty will lead to punishment for states that fail or are likely fail to reach their targets. On the contrary, the Protocol at best attempts to restore the lost balance between the original commitment and the actual (under-) performance by requesting additional actions from the relevant party in future commitment periods.

In general it is important to note that the symbolic politics of a legally binding commitment may be significant – i.e. countries may try harder to meet legally binding targets, not because of the formal legal consequences of non-compliance, but because of the reputational costs associated with failing to comply with legally binding commitments. But these reputational concerns have less to do with the fine detail of legal commitments, commitment periods, etc.; the legal form may not particularly matter, as long as the commitments are pledged in some public manner in the international process. In this respect the Copenhagen Accord can be seen as a docking station to which parties 'hook' their pledges.[15] As far as the pledges are hooked to an international accord on the one hand, and substantiated in domestic legislation on the other – not necessarily legally binding in domestic law but enforceable with sufficient resources available – they could increase the credibility of the parties' commitments.

Given that GHG emission commitments are by nature subject to regular review and adjustments because of unforeseen circumstances, as seen in the example of the EU's possible review of the 2020 target, what counts most in climate change negotiations would be the *credibility* of a party's pledge. Credibility would be gained through the party's national legislation, low-carbon strategies, action plans or coordination measures with other parties, along with its *openness*, ideally to a third party's review.

Some essential elements have been overlooked in the current focus on the legal form and commitment periods in the Kyoto Protocol's track of international negotiations: how to increase the credibility of parties' pledges by ensuring the openness of domestic low-carbon strategies, action plans or support measures. A shift in the focus from an end product to a process that is credible and enforceable would be a valuable outcome from negotiations in Cancún.

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[15] See Appendix 1 of the Copenhagen Accord, "Quantified economy-wide emissions targets for 2020" (http://unfccc.int/home/items/5264.php); Appendix 2 of the Copenhagen Accord, "Nationally appropriate mitigation actions of developing country Parties" (http://unfccc.int/home/items/5265.php).

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