

# The EU's and China's institutional diplomacy in the field of climate change

Pietro De Matteis

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# Contents

Summary	5
1. Introduction	7
2. The EU, China and the climate change regime	11
3. The creation of a climate change regime: what role for the EU and China?	13
4. Riding the climate change regime: how have the EU and China benefited from it?	17
5. Shaping the post-Kyoto regime	23
6. The climate change regime from Kyoto to Durban: a path towards increasing legalisation	29
7. Climate change diplomacy beyond the UN-sponsored frameworks	37
8. Conclusions	43
Recommendations	47
Annex	51
Abbreviations	51



# Summary

This *Occasional Paper* aims at providing a new perspective on the relevance of climate change for the EU's external action. Considering its linkages with various areas such as energy security, economic growth and diplomacy, and indeed its importance in terms of future political stability, climate change is a major 'game-changer' in international relations. The issue of climate change, and how to deal with it, therefore presents governments with a significant opportunity to reshape the international order in the light of the major global transformations currently underway. The development of the climate change regime presents the EU with both an opportunity and a threat, in as much as it may either accelerate Europe's decline as a foreign policy actor or, on the contrary, reinvigorate its diplomatic ambitions.

In this framework, existing institutions are of strategic importance for the EU. Firstly, they can protect the *status quo*, and with it the privileges that EU Member States have gained as part of the legacy of the post-World War II and the Cold War eras (as reflected, for instance, in the over-representation of Europe in most international organisations). Secondly, institutions may reinforce the EU's foreign policy capabilities, allowing it to play an important role within those multilateral frameworks tasked with tackling new global challenges such as climate change. Despite its past successes, however, the EU faces increasing competition from new 'norm setters' such as China. Over the past two decades, in fact, the People's Republic of China (PRC) has played an increasingly pivotal role in international relations, and this is particularly the case in the field of climate change. China, in fact, has managed to influence the global negotiating strategy and discourse, and has been successful in building large coalitions in support of its views.

Due to its linkages with a wide array of policy areas, climate change has become increasingly important, not least because the evolving climate change regime now also has a significant impact on domestic policies. It follows that, to secure its domestic interests and to remain relevant at international level, the EU must be able to contribute effectively to mould those institutional frameworks that are designed to govern international relations in the twenty-first century. Therefore, climate change should not

be treated as a 'stand-alone' policy and diplomacy issue. On the contrary, the EU approach to climate change should feed into the wider debate on the development of a European Grand Strategy.<sup>1</sup> To this end, it is suggested that the EU streamlines its diplomatic action so to encompass the various areas of shared and exclusive competence (e.g. trade, energy, climate change), that it strengthens its coalition-building capacity, and that it reinforces the level of legalisation<sup>2</sup> of those international agreements and institutions that are deemed capable of protecting its competitive advantage and interests.

Given the increasing prominence of climate change in international relations as well as the relatively short timespan in which it has emerged as an urgent issue, analysing the evolution of the climate change regime makes it possible to identify some of the key elements of change in the international system. These include the emergence of new actors, their changing behaviour as they have become more influential (e.g. as in the case of China), and the evolution of the international environment towards more regulation and legalisation, as advocated by developed nations – and first and foremost the EU – in order to guarantee their interests. After having explored the above-mentioned aspects and focused on the role of the EU and China in the shaping of the climate change regime, this *Occasional Paper* offers some suggestions on how the EU may cope with this changing environment, including calls for increased EU coherence and a strategic approach to climate change-related issues. This analysis should help the Union to put its challenges and strengths into perspective, and contribute to the definition of a European Grand Strategy able to reinforce the EU's position in the years ahead.

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1. The term 'Grand Strategy' is discussed in James Rogers, 'From "Civilian Power" to "Global Power": Explicating the European Union's "Grand Strategy" through the Articulation of Discourse Theory', *Journal of Common Market Studies*, vol. 47, no. 4, September 2009, pp. 831-62, and in Jolyon Howorth, 'The EU as a Global Actor: Grand Strategy for a Global Grand Bargain?', *Journal of Common Market Studies*, vol. 48, no. 3, June 2010, pp. 455-74.

2. This refers to the level of obligation and precision of the relative rules, and the delegation of their implementation to third parties. For a detailed explanation of the concept of legalisation, see Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organization*, vol. 54, no. 3, pp. 421-5.



# 1. Introduction

Over the past 30 years the world has significantly changed, due to the rise of new global players and the emergence of new challenges. Climate change has certainly gained prominence in international affairs and initiatives to establish international institutions and rules governing the climate change regime have become a salient feature of today's foreign policy action. This was demonstrated, for instance, by the record-high participation of heads of state and government on the occasion of the Copenhagen Summit in 2009. This is arguably due to the fact that lasting solutions in this field can only be achieved by concerted action at global level. This implies the creation of *ad hoc* institutional frameworks able to provide sufficient incentives (and sanctions) to shape international actors' behaviour. However, the deep linkages between climate change, energy security, economic growth and, to some extent, political stability, imply that setting up those frameworks may reduce the discretion of the participating actors in terms of policy framing and implementation, and even lead to a change in the balance of power among existing international players. In other words, the establishment of institutions able to deal with climate change in a comprehensive manner may change the world of international relations as we know it today, and have an impact comparable to that produced by the creation of the Bretton Woods institutions in the mid-twentieth century. This time, however, the creation of such institutions would crystallise the current balance of power (and responsibility) among developed, developing and emerging countries.

The EU quickly recognised the importance of the fight against climate change, and has made it one of the cornerstones of its foreign policy and diplomacy. Since the pivotal role it played in the entry into force of the Kyoto Protocol in 2005 and thanks to the advanced legislation adopted and technology developed in the fields of climate change and energy efficiency (e.g. ETS, EURO standards on car exhaust gases, the EU Energy Label), the EU has become increasingly influential in the development of the climate change regime. Thanks to large investments, extensive cooperation with its Western counterparts and effective long-term planning, China has also been catching up quickly in renewable technologies, and has already become the leading producer of solar panels and wind tur-

bines.<sup>3</sup> In addition, through the climate change negotiations China has developed an increasing number of partnership and cooperative frameworks with other developing countries which have substantially improved its diplomatic credentials.

Therefore, it could be argued that by tackling this new challenge, the EU and the PRC have managed to raise their profile in international affairs, gaining a leading role among developed and developing nations. Today, however, while China's role in the international arena is clearly growing, the sustainability of European leadership, like its 'strategic endowment', is declining. At the domestic level, for instance, the financial crisis has highlighted some of the weaknesses of European Monetary Union, requiring further political integration, while the demographic trends in Europe point towards an ageing and shrinking population, set to put further strain on European economic recovery and on national European welfare systems. At regional level, the influx of refugees and economic migrants from across the Mediterranean in 2011 led to the current structure of the Schengen agreement, one of the major achievements of the process of European integration, being questioned. At global level, the role of European countries in international fora looks set to be reduced in order to make more room for the emerging giants, as happened on the occasion of the redistribution of IMF voting rights. At the same time, European industry's technological edge is being rapidly eroded by insufficient protection of Intellectual Property Rights (IPRs) worldwide, as is the case for its share of the global market, while at the same time the share of European CO<sub>2</sub> emissions is also steadily diminishing, paradoxically at the risk of leaving the floor open to the largest energy consumers and polluters (i.e. the US and China) at key negotiations.<sup>4</sup>

The picture that emerges is hence that of a Union that will have to face several domestic, regional and global challenges in the coming decades, and whose leverage in shaping those institutional frameworks designed to address most of these challenges is constantly diminishing. Certainly, not all of the above-mentioned challenges are directly linked to climate

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3. John Addison, 'China is New World Leader in Wind Energy', *Clean Fleet Report*, 2011; 'Solar Energy Booming in China', Worldwatch Institute, 2011.

4. China has turned out to be the world's major polluter and it is expected to overtake the US as the world's main consumer soon after 2010. See Roger Harrabin, 'China "now top carbon polluter"', BBC News, April 2008; International Energy Agency, *World Energy Outlook 2007: China and India Insights*, Paris, 2007.

change. Nonetheless, the linkages between climate change and international trade, energy security and environmental degradation,<sup>5</sup> as well as the ‘threat multiplier’ effect of climate change, may further destabilise a region that seems to struggle to project a vision of itself in the twenty-first century.<sup>6</sup> In this respect, the UN report on Climate Change presented by the Secretary General to the General Assembly in 2009 stressed that climate change increases the vulnerability of states and people in terms of health and food availability; it reduces the pace of development; it negatively affects migration and intensifies the competition for resources such as water or fuels, which might lead to increased international conflicts.

The EU, however, is certainly not the only international actor that is facing some serious challenges. Despite its consistent economic growth, the situation is not rosy in China either. In this respect Zhou Shengxian, head of the SEPA (State Environmental Protection Administration – now Ministry of Environmental Protection), confirmed that in 2005 there had been 510,000 disputes related to environmental pollution which ‘caused a great threat to social stability’<sup>7</sup> while Yi Gang, vice governor of the People’s Bank of China, pointed out that energy and environmental protection are the major challenges facing China despite its economic success.<sup>8</sup> The urgent need to deal with these matters is also reflected in the results of a poll carried out in 2006, in which 83 percent of Chinese responded that ‘steps should be taken to address global warming’, and 42 percent believed that global warming is a ‘serious and pressing problem’ that demands immediate action ‘even if this involves significant costs.’<sup>9</sup> Energy and climate change, and their linkages, may hence come to be seen as having crucial repercussions for political stability in China, affecting the legitimacy of the political leadership. In addition, the ‘threat multiplier’ effect is likely to be even more destabilising in China than in Europe.

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5. The energy sector is a prominent contributor to greenhouse gas emissions, with about 63 percent of the total related to transport, electricity and heating. See International Energy Agency, ‘CO<sub>2</sub> Emissions from Fuel Combustions: Highlights’, *IEA Statistics*, 2010 edition.

6. United Nations General Assembly, ‘Climate Change and Its Possible Security Implications: Report of the Secretary-General’, UN, September 2009.

7. Liu Dan, ‘China sees environmental accident every other day: SEPA’, *Xinhuanet*, 19 April 2006.

8. ‘Germany spurs EU recovery as China leapfrogs Japan’, *Euractiv.com*, 17 August 2010.

9. On this point see: The Chicago Council on Global Affairs and WorldPublicOpinion.org, ‘Can Europe and China shape a new world?’, 2006. Another poll reported that ‘among 22,000 young Chinese citizens between the ages of 16 and 35, 75% believed that China is suffering from the effects of climate change’. See Jing Men, ‘The EU and China: climate change and development’, *EU-China Observer*, no. 5, 2009, pp. 13-18.

According to the Climate Change Vulnerability Index, China is classified at number 49 as a 'high risk' country, considering that its wealthy Eastern coast is vulnerable to major adverse effects.<sup>10</sup> At the same time, its neighbouring countries Bangladesh, Nepal, India, the Philippines, Burma/Myanmar, Cambodia, Vietnam and Thailand are all in the top 14 of the list of the most vulnerable countries, which means that if a major environmental catastrophe were to occur China might have to contend with large numbers of 'environmental refugees' both from within and outside China, which would constitute a further risk to its social stability. The costs of climate change have been the object of various estimates, some of which have assessed the yearly cost of climate change in China at three percent of GDP,<sup>11</sup> while in the EU the cost of inaction may reach €65 billion by 2080.<sup>12</sup> These linkages with economic growth and political and social stability are certainly one of the reasons why the development of the climate change regime is such a contentious issue compared to other frameworks having a more limited scope like the Montreal Protocol on Substances that Deplete the Ozone Layer. Furthermore, an increasingly ageing population and high production costs in China may further hamper its production capacity and its exports, and, therefore, the ability of the Chinese government to ensure growth and jobs for its people.

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10. Jason McGeown, 'Big economies of the future – Bangladesh, India, Philippines, Vietnam and Pakistan – most at risk from climate change', Maplecroft, 20 October 2010.

11. Robert Ash, 'Resource pressures and China's environmental challenge', Europe China Academic Network, 2007.

12. 'Obama pledges US carbon cuts', *Euronews*, 25 November 2009. The total cost of global warming is expected to rise to € 5,500 billion between now and 2050 according to the Stern Report. See Nicholas Stern, *The Economics of Climate Change* (Cambridge University Press, 2007).

## 2. The EU, China and the climate change regime

Despite the success of the Kyoto Protocol, the future of the climate change regime is still uncertain. This is, arguably, because of the disagreement among the key players in the international system (i.e. the EU, China and the US) on the level of legalisation that the regime should have, and on who should be bound by its provisions. What must be noted, however, is that both the EU and China have very much focused on institutions in their attempt to tackle climate change. It is, in fact, within institutional frameworks that all efforts at international cooperation take place, and it is through institutions that expectations and choices are moulded, uncertainties and transaction costs reduced, and trust among players strengthened, hence reducing the likelihood of confrontation.<sup>13</sup>

If this key role for institutions was long ago endorsed by the EU, in China the official position of the government has been evolving. In the past China has refrained from actively contributing to shaping the rules and institutions of the international system, and has maintained a rather low profile in international relations. Over the last two decades, however, the PRC has become increasingly active, and this has been particularly the case since the Earth Summit and the related climate change negotiations in 1992.

Today it could be argued that the EU and China are two of the players that have most contributed to the development of the climate change regime, that have mostly benefited from its coming into being, and that have most to lose from the current uncertainties regarding the future of the regime. In light of the above, this paper focuses on EU and Chinese approaches to climate change, discussing how both players have increasingly come to influence the efforts made by the international community to address climate change through the creation (or the modification) of

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13. On these issues see: Douglass C. North, 'Institutional Change: A Framework of Analysis', *Economic History*, (9412001), 1994, pp. 1-23; James G. March and Johan P. Olsen, 'The New Institutionalism: Organizational Factors in Political Life', *The American Political Science Review*, vol. 78, no. 3, 1994, pp. 734-49; Stephen D. Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', *International Organization*, vol. 36, no. 2, pp. 185-205, and Robert O. Keohane, 'International institutions: two approaches', *International Studies Quarterly*, vol. 32, no. 4, pp. 379-96.

institutional frameworks and regimes. These, by influencing the balance of power (and responsibilities) between international actors in transversal areas such as climate change and energy, are central in allowing the EU to protect its 'strategic endowment', and maintain a sustainable win-win partnership within the international arena. Ultimately, the paper aims to provide some insights into how the EU can maintain its position of leadership in multilateral fora, which are today characterised by the increasing institution-building capacity of the PRC, as is the case in the field of climate change.

### 3. The creation of a climate change regime: what role for the EU and China?

Europe's awareness of and attention to energy and environmental challenges dates back several decades. In part due to its industrial development and economic wealth, civil society in Europe has been at the forefront of demands that more attention be paid to the environment. With the strengthening of its regulatory environment and of the business community dealing with green technology, the EU has been increasingly active also at the international level, in an effort to contribute to the development of an international framework able to cope with environment and climate change-related challenges worldwide. At a time of economic expansion, broad public consensus has made engaging in this area a winning strategy domestically, and has also allowed the EU to raise its profile in the international arena. Apart from trade, it is by speaking up during environmental and climate change negotiations that the EU has managed to profile itself as a key international player, thereby altering the general perception of the EU as a mere 'trading bloc'.

At the same time, the EU negotiating position has considerably changed over time, with the EU initially preferring to adopt top-down regulatory approaches to tackle climate change, and then, following the retreat of the US, becoming a champion of market-based ones, such as emission trading schemes, previously supported by the US administration. It is against this background that some scholars have argued that European leadership only became viable once the US had left the debate, and the EU could escape the trap that its past rhetoric had created.<sup>14</sup> Following the withdrawal of the US, the EU did not miss the chance to take a leadership position on climate change, and the entry into force of the Kyoto Protocol in 2005 became a major milestone for both EU diplomacy and for the creation of the climate change regime. The Kyoto Protocol, in fact, is con-

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14. On this point, see Loren Cass, 'Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading', *Global Environmental Politics*, vol. 5, no. 2, pp. 38-60 and Jørgen Wettstad and Seiner Andersen, 'The Making of the 2003 EU Emissions Trading Directive: An Ultra-Quick Process due to Entrepreneurial Proficiency?', *Global Environmental Politics*, vol. 5, no. 1, pp. 1-23.

sidered to be the first multilateral agreement that included international obligations requiring the reduction of greenhouse gas emissions below specified levels.<sup>15</sup> This was possible largely thanks to the EU's efforts to bring major players on board, including Russia.<sup>16</sup>

China's diplomatic relevance in the fields of the environment and climate change is not brand new, and was already reflected during the negotiations on the Montreal Protocol in the late 1980s and early 1990s. Then, together with India, the PRC framed its discourse around three key issues: the West's responsibility for the current environmental damage, China's right to tackle more pressing issues such as poverty and hunger first, and the need to receive funding and technology to cooperate in the new multilateral framework. However, it was only after the success of the Montreal negotiations that China became fully aware of its negotiating potential. A further key date was that of 19 June 1991, when 41 developing nations gathered in Beijing<sup>17</sup> to prepare their position ahead of the Earth Summit in Rio to be held in June 1992, and which eventually led to the signing of the United Nations Framework Conference on Climate Change (UNFCCC). The document that followed the Beijing meeting, the so-called 'Beijing Ministerial Declaration on Environment and Development' pointed out that poverty, underdevelopment and overpopulation are the main causes of environmental degradation, that the responsibility for the emission of greenhouse gases should be viewed in historical terms, that on the basis of the concept of equity developed countries must contribute more, and that developing countries have the right to develop, which *de facto* meant the refusal to accept binding commitments in the field of climate change mitigation and adaptation.<sup>18</sup>

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15. Stephen Hockman QC, 'How can commitments on greenhouse gas emission reductions be entrenched in the international legal system?', in Anthony Giddens, Simon Latham and Roger Liddle (eds.), *Building a Low-carbon Future: The Politics of Climate Change* (London: Policy Network, 2009).

16. Anna Korppoo, Christiaan Vrolijk and Jonathan Stern, 'Energy and Climate: Russian-European Partnership', in *Energy and Climate: Russian-European Partnership*, Moscow: Royal Institute of International Affairs, UK; The Centre for Energy Policy, Russia; the Ministry of Energy, Russia; The Ecological Committee of the State Duma, Russia, 2001.

17. Shouqiu Cai and Mark Voig, 'The Development of China's Environmental Diplomacy', *Pacific Rim Law & Policy Association* 3(Special Editions), 1993, pp. 17-42.

18. On these points see: Gørild Heggelund, Steinar Andresen and Sun Ying, 'Performance of the Global Environmental Facility (GEF) in China: Achievements and Challenges as seen by the Chinese', in 46<sup>th</sup> ISA Conference, Hawaii, 2005; and Tuula Honkonen, 'The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements', Alphen aan den Rijn, 2009.



These conclusions not only underlined the West's responsibility for today's environmental problems, but also backed developing countries' arguments regarding their right to develop and pursue economic growth. By agreeing on that phrasing in Beijing, China further demonstrated that it intended to be considered as a developing nation, and that, at the same time, it was also willing to lead the other developing countries in international negotiations. These arguments, thanks to China's continuous activism, were further reformulated in the principle of 'common but differentiated responsibility' (CBDR) which was later included in the UN climate change discourse, and has since significantly influenced further international negotiation as one of the core principles of the two-track climate negotiations.<sup>19</sup> In more detail, the CBDR principle has determined a shift towards a system that gives developing countries (and China) the prerogative to ask for preferential agreements on technology transfer and funding in order to comply with international agreements, and even to justify eventual requests for a waiver of IPR protection<sup>20</sup> while evading any sort of internationally binding commitment.<sup>21</sup>

This was possible thanks to the fact that China, by virtue of its prominent role in the G77+China grouping, and using a developing country rhetoric, managed to label itself as one of the developing countries, and thus to benefit from investments and transfer of know-how under conditions usually reserved for much poorer nations, in what could be defined as a 'lead and hide' strategy. The 'developed vs. developing' countries dichotomy, on which the abovementioned strategy was built, was one of the three main elements constituting the object of strict coordination among the G77+China countries, together with the support for the two-track negotiation system and the CBDR principle.<sup>22</sup> This further proves that China's claim to developing country status, and the protection of the prerogatives connected to it, have become cornerstones of its current foreign policy.

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19. The two-track negotiations include the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) and the Ad Hoc Working Group for further commitments for Annex I parties of the Kyoto Protocol (AWG-KP).

20. China and India before the Copenhagen negotiation argued that green technologies should be given to developing countries under 'compulsory licensing' as is currently the case only in certain cases for some medicines. 'China, India push for 'patent free' green tech', *Euractiv.com*, November 2009.

21. Premier Wen noted: 'Developing countries should, with the financial and technological support of developed countries, do what they can to mitigate greenhouse gas emissions and adapt to climate change in light of their national conditions'. See: 'Premier expresses China's sincerity at UN climate conference', *Xinhua*, 18 December 2009.

22. On this point, see Qin Xuan, 'Time for a plan', *China Dialogue*, 2010, and the comments of Chinese UN Ambassador Zhang in Xianzhi Li, 'China hopes to see positive outcome from UN Conference on Climate Change', *Xinhua*, 20 November 2009 and Ma Jun, 'To seal a deal, we need justice', *China Dialogue*, 2009.



## 4. Riding the climate change regime: how have the EU and China benefited from it?

As pointed out in the previous sections, both the EU and China had a central role in defining the current climate change regime. As might have been expected, once it entered into force, the EU and China were also those largely supposed to benefit from it. The EU has certainly benefited from the climate change regime in terms of image and status,<sup>23</sup> not least because it allowed it to gain some international leverage by becoming a strategic partner for a rising power such as China. Since the latter's entry into the World Trade Organisation (WTO) in 2001, in fact, it can be argued that the EU has lost a major area of cooperation with (and means of influence on) China, notably represented by China's need of EU support for its accession at the time. In particular, China's difficulties, or lack of zeal, in fulfilling its pre-accession commitments in areas such as Intellectual Property Rights protection and market access have substantially reduced the benefits that the EU expected to gain from China's accession, not least in areas such as energy-efficient technology and renewable energy technologies. For this reason, the EU withheld from granting China 'Market Economy Status' (MES), hence preserving an advantage *vis-à-vis* China in trade disputes. However, as MES will automatically be granted to China in 2016, the EU is doomed to lose yet another ace, unless a more comprehensive approach is framed to manage EU-China bilateral relations which includes climate change, energy as well as trade and industrial policy.<sup>24</sup>

Since the early 1990s the EU has supported China's transition towards a 'greener' economy, and their bilateral cooperation in the sectors of environment and climate change has become increasingly important. The establishment of the EU-China Strategic Partnership on Climate Change in 2005, later upgraded to ministerial level in 2009, is certainly a turning point. Through several bilateral dialogues and projects involving the

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23. This is certainly the case since Kyoto. In addition, despite the public diplomacy debacle in Copenhagen, the EU regained its key role during the Durban climate change negotiations.

24. The Partnership and Cooperation Agreement (PCA) between the EU and China has been under negotiation since 2007, but, to date, there has been insufficient progress to strike a deal.

transfer of know-how and technology, the EU has strongly supported China's transition, accounting for about half the transfers to China.<sup>25</sup> In addition, the EU has helped the PRC in the drafting of its legislation in the fields of renewable energy, energy efficiency (e.g. home appliances and building), car exhaust gases etc, and has supported China's involvement in the wider climate change regime through the CDM Facilitation Project, aimed at helping Chinese industries to benefit from the Clean Development Mechanism (CDM) under the Kyoto Protocol<sup>26</sup>.

Apart from the various bilateral cooperative frameworks, such as that with the EU, China has also managed to largely benefit from the regime and even mould it so as to better reflect its own policy priorities. An example is China's use of the previously mentioned CDM.<sup>27</sup> Along with 'emission trading' and 'joint implementation', the CDM allows 'Annex I countries' (i.e. industrialised nations) to meet their Kyoto targets, and 'non-Annex I countries' to gain in terms of technology and know-how transfer. The CDM is thus of particular interest as it established a complex institutional framework that involved both UN bodies as well as national administrations, and aimed at reinforcing the environmental and climate change regime by modifying the underlying economic tradeoffs of environmentally-friendly economic activities.

Apart from representing a source of investment, know-how and technology, the CDM is also a source of income, as CDM projects generate 'Certified Emission Reductions' (CERs), which are issued by the CDM Executive Board, and can be sold on the international market to Annex I countries. According to UNFCCC data, China has been the major recipient of CDM projects, with over 39 percent of the total projects registered, and a majority of them focusing on hydro, wind and generation.<sup>28</sup> The EU played a major role in helping China to achieve such a quota thanks to its

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25. Interview with academics, Renmin University. Beijing, 20 November 2008, and Beijing, 15 December 2008. A similar point is also raised by Rosemary Hollis, Richard Tarasofsky, Nick Mabey, Jennifer Morgan, Jiahua Pan, Kejun Jiang, Lawrence Tubiana, Michel Colombier and Antonella Battaglini, 'Changing Climates: Interdependencies on Energy and Climate Security for China and Europe', Chatham House, 2007.

26. An analysis of Sino-European bilateral cooperation in the field of energy and climate change can be found in: Pietro De Matteis, 'EU-China Cooperation in the Field of Energy, Environment and Climate Change', *Journal of Contemporary European Research*, vol. 6, no. 4, 2010, pp. 449-77.

27. Eva Lövbrand, Teresia Rindeljäll and Joakim Nordqvist, 'Closing the Legitimacy Gap in Global Environmental Governance? Lessons from the Emerging CDM Market', *Global Environmental Politics*, vol. 9, no. 2, pp. 74-100.

28. United Nations Framework Convention on Climate Change, 'Registered project activities by host party', 2010. Available at: <http://cdm.unfccc.int/Statistics/Registration/NumOfRegisteredProjByHostPartiesPieChart.html>.

CDM Facilitation programme; India, the second-largest market for CDM projects, has about half China's share. These high shares, and the amount of funding that they represent, clearly explain why there has been such strong opposition to a modification of the CDM or of the Kyoto Protocol itself as proposed, among others, by the European Commission.<sup>29</sup> China (as of July 2010) obtained over 49.22 percent of the overall CERs issued, totalling 207,269,840 certificates.<sup>30</sup> Each certificate represents the reduction of one tonne of CO<sub>2</sub>-equivalent emissions, and has a value that fluctuates on the markets. According to the European Union Chamber of Commerce to China, the PRC has set a floor price of €8 for its projects which goes up to €10.5 for wind projects.<sup>31</sup> Hence, it could be estimated that China has had the opportunity to gain over €1.7 billion by simply selling its CERs. According to Sandbag, a UK-based NGO, in 2009 most of these (53 percent) were bought by EU companies to meet their emission commitments.<sup>32</sup>

Despite their success, the CDM and the CERs have become increasingly controversial, primarily because major difficulties persist in the assessment of the respect of the 'additionality principle'. This deficiency in the system has led the competent national administrations, eager to attract investment, to pay little attention to the fact that the projects actually contribute to the reduction of the emissions. With the aim of assessing the effectiveness of the CDM in reducing greenhouse gas (GHG) emissions, CDM Watch analysed the projects involved in the destruction of a particularly dangerous greenhouse gas, HFC-23. Most of the plants involved in the process (i.e. 11 out of 19) are reported to be located in China, and have earned about €650 million for the Chinese government through CERs.<sup>33</sup> However, these credits are increasingly de-linked from actual emissions reductions, undermining the rationale behind the very existence of the CDM. In this respect, the Environmental Investigation Agency has

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29. See: Shaojun Zeng, 'Report of the International High-Level Strategic Dialogue Summit: Europe and China', in *Report of the International Strategic Dialogue Summit* (Brussels: Friends of Europe and the Security & Defence Agenda [SDA] - 2009); and 'Developing countries "not ready" for clean tech transfers', *Euractiv.com*, 2009.

30. United Nations Framework Convention on Climate Change, 'CERs issued by host party', 2010. Available at: <http://cdm.unfccc.int/Statistics/Registration/NumOfRegisteredProjByHostPartiesPieChart.html>.

31. European Union Chamber of Commerce in China, 'The European Business in China: Position Paper 2009/2010' (Beijing: European Union Chamber of Commerce in China).

32. 'China originated 53% of all CERs surrendered into the ETS in 2009. Of the 41.3 million exported, 86% of these were HFC and N2O credits.': see Rob Elmsworth and Bryony Worthington, 'International Offsets and the EU 2009: An update on the usage of compliance offsets in the EU Emissions Trading Scheme', Sandbag, 2010.

33. Eva Filzmoser, 'UN Delays Action on Carbon Market Scandal', in CDMWatch, 2010.

argued that the destruction of gases such as HFC-23 has become a profitable activity *per se*, and has therefore called for a reform of the carbon credit mechanism.<sup>34</sup> Any reform of the mechanism, however, has met the opposition of Japan and India within the CDM Executive Board, which, along with China, have a major stake in these kinds of projects.

This is just an example of how the PRC is managing to benefit from the current environmental and climate change regimes and maximise its domestic gains while at the same time opposing any modification of the regime that might reduce such gains. Another example is the definition of a tax system for CDM projects, which range from 2 percent to 65 percent, according to the sector involved.<sup>35</sup> By adding its own requirements on top of internationally-sponsored projects, China has managed to frame international cooperation within domestically-set priorities, and obtain substantial economic gains. In the light of the above considerations it is evident why the Chinese government has been pushing for a post-2012 Kyoto commitment period, while, at the same time, it has strongly opposed any discussion of the modification of the terms that made the current climate change regime as enshrined in the Kyoto Protocol so successful for China.<sup>36</sup> These include the lack of any distinction between developing countries and the BASIC group of advanced developing nations, and internationally binding commitments that applied only to developed nations.

By adapting the climate change regime to its domestic needs, the PRC has had the opportunity to facilitate the achievement of its own domestically-set policy priorities by channelling international financial resources and technologies. At the same time, its size makes it an 'indispensable player' in the environmental and climate change regime, thus further enhancing its role in the international community and its image as a responsible actor. It is nonetheless worth mentioning, however, that it is not only China has influenced the climate change regime; the regime itself has also influenced China, affecting in particular the Chinese bureaucracy and those institutions and procedures that are related to the actual management of

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34. Clare Perry, 'UN CDM Acts to Halt Flow of Millions of Suspect Hfc-23 Carbon Credits', Environmental Investigation Agency, London, 2010.

35. Eva Filzmoser, *op. cit.* in note 33.

36. China has maintained its position of blocking any attempt to open discussions over the modification of the Kyoto Protocol even in at the 2010 Tianjin Climate Conference. This is clear by reading, for instance, the intervention made by China at the Ad Hoc Working group on the Kyoto Protocol (AWG-KP). IISD Reporting Services, 'AWG 3', *Earth Negotiations Bulletin*, vol. 12, no. 481, 2010, pp. 1-2.

international initiatives. For instance, as one commentator has pointed out, ‘international regulation largely determines the institutional structures in which CDM projects can be developed, verified, and registered’<sup>37</sup> and, this being the case, China had to implement international standards and procedures in order to benefit from these frameworks.

From this perspective, the EU’s – and, more generally, the West’s – strategy of engagement *vis-à-vis* China seems to have been successful. However, as previously mentioned, a trade-off exists between engagement of new actors and the power of existing members. China has become not only an unavoidable player in climate change diplomacy, but has also remained a major beneficiary. In addition, over the past few years, buoyed up by state subsidies and a generous stimulus package,<sup>38</sup> China’s capabilities in the areas related to climate change (e.g. energy efficiency, renewable energy) have grown dramatically, making China the largest producer of energy-efficient light bulbs, the leader in wind energy and a major producer of solar panels.<sup>39</sup> EU Member States, in contrast, hit hard by the financial crisis, have tended to cut their incentives to renewable energies. Moreover, European companies have often been prevented from operating freely in the Chinese market, being either blocked from actually having access to the market, or being forced to operate in joint ventures, which often implies the loss of IPRs. Despite the fact that any improvement in Chinese technology in the field of renewable energies and energy efficiency is beneficial for the world as a whole as it reduces the future costs of climate change, and even though Chinese economic development is certainly important to continue improving the standard of living of those people living in the poorest western provinces of China, it must be acknowledged that, under the current conditions, this is not without consequences for the EU. European companies increasingly face competition from their Chinese counterparts, which, under the current prevailing conditions, do not play on a level playing field.

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37. Gudrun Benecke and Miriam Schröder, ‘Convergence and Divergence in Climate Politics – Varieties of Carbon Governance in China and India’, in ‘China and India in Energy and Environmental Politics’, Muenster, 18-19 June 2009.

38. 210 billion yuan, or 5.3% of the stimulus package was dedicated to the promotion of energy saving, greenhouse gas emission cuts, and environmental engineering projects. See ‘China’s Stimulus Package: A Breakdown of Spending’, *Economic Observer*, 2009.

39. John Addison, ‘China is New World Leader in Wind Energy’, Clean Fleet Report, 2011, and International Centre for Trade and Sustainable Development, ‘Anti-dumping measures on energy efficient Chinese light bulbs dropped’, ICTSD Reporting, 2008.

It is also in this context that the climate change regime may act as a 'game-changer' in international relations. This is the case not only because the negotiated part of the regime involves different levels of commitments and responsibility, but also, if not primarily, due to the fact that the advantages gained through European efforts concern public goods rather than specific EU interests. This situation is further highlighted by the fact that some of the benefits anticipated are failing to materialise (e.g. market access, IPRs protection), which requires the EU to decouple its own economic interests from the public goods that it defends during international negotiations. This is fundamental in order to properly assess the costs and the benefits of the EU's climate change diplomacy (e.g. in March 2012 China suspended its orders from European manufacturer Airbus following the EU proposal to charge foreign carriers flying in EU airspace under the Emission Trading Scheme). A likely result of such an assessment would be an increased awareness of the fact that the trade regime could make an important contribution to managing climate change, for instance, by providing the tools to fill the gaps that are hindering the interests of developed countries and hence affecting their willingness to sign up to a second commitment period of the Kyoto Protocol.



## 5. Shaping the post-Kyoto regime

It has been noted that the EU and China have largely contributed to the development of the climate change regime, and have largely benefited from it. However, some elements need to be reframed if the regime is to maintain its capacity to provide a win-win framework for cooperation for China, the EU and the rest of the international community.

This is due to the fact that many things have changed since the Kyoto Protocol, adopted in 1997, entered into force in 2005. While the EU and the US have been hit by the most severe financial crisis since 1929, China has for over a decade maintained high growth rates and large reserves, tilting the barycentre of the world's economy towards Asia, which already accounts for 30 percent of world GDP.<sup>40</sup> Politically speaking also the US and the EU have changed, with the election of a more environment-friendly administration in the US, and with the ratification of the Lisbon Treaty in the EU, which has strengthened the EU's competence in the fields of energy and climate change. In the light of these changes, it was not surprising to discover that, during the Copenhagen (COP15) and Cancun (COP16) negotiations, the consensus obtained back in 1997 no longer existed, and, on the contrary, there was far from unanimous agreement on the regime that should replace the Kyoto Protocol expiring in 2012.

As previously anticipated, the difficulties in agreeing to a 'balanced package', as it was dubbed during the latest negotiations, lie in the fact that, potentially, the climate change negotiations represent a major 'game-changer', whose effects go beyond climate change, but affect also trade, competitiveness, social cohesion and even political stability both in the EU and in China due to the social discontent that pollution and unemployment can create. It follows that, due to its cross-sectoral nature, the climate change regime is likely to increasingly affect the twenty-first century's international relations and domestic politics constellations, if only because of the domestic spillover effects of global decisions in this field. China, for instance, which has constantly claimed to be a developing country – with all that this implies in terms of limited binding commitments

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40. According to some estimates, by 2030 Asia will account for 40 percent of the world's GDP, more than Europe and the US combined. See International Monetary Fund, 'Asia's Importance Growing in Global Economy', *IMF Survey Magazine: Countries & Regions*, May 2010.

and responsibilities in the international arena – finds its status increasingly challenged by its peers. This is effectively tantamount to calling into question one of the cornerstones of China's foreign policy, which since the proclamation of the PRC has been centred on its role as the leader of developing nations often in competition with Western powers. Today, however, despite the fact that some Chinese provinces are still very poor, its leadership finds it increasingly difficult to convince the rest of the international community of the fact that China is still a developing country and historically a victim of the West (recalling China's 'century of humiliation'). On the contrary, China is today the world's largest energy consumer and polluter (in absolute terms), the second-largest exporter (after the EU), and the country holding the world's largest foreign exchange reserves, amounting to more than \$2.6 trillion. In this regard, in Copenhagen both Fredrik Reinfeldt, then the president of the European Council, and the US Secretary of State Hillary Clinton noted that the BASIC<sup>41</sup> countries should no longer be considered as 'poor countries'<sup>42</sup> and that China could no longer 'hide behind the status of developing nation'.<sup>43</sup>

Yu Qingtai, China's Special Representative for Climate Change, has underlined on various occasions that China shares 'common goals and common destiny' with third world countries,<sup>44</sup> even though doubts over China's status are rapidly mounting also among the poorest nations. In Copenhagen, for instance, behind the initial united front presented by the G77+China grouping, clear divisions arose by the end.<sup>45</sup> China not only opted to cap the rise in temperature to 2°C from pre-industrial levels instead of 1.5°C as suggested by the small island nations. According to some observers, it also impeded developed countries from pledging a reduction of emissions of 80 percent by 2050,<sup>46</sup> most likely as it expects to be unable to uphold its 'developing country status' until then. By 2050, in fact, China's *per capita* emissions will be equivalent to the sum of those

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41. Throughout the climate change negotiations the BASIC countries (Brazil, South Africa, India and China) have built up an increasingly coherent negotiating position *vis-à-vis* developed nations.

42. Leigh Phillips, 'Stalemate in Copenhagen as climate talks enter final stretch', *EU Observer*, 2009.

43. 'Kyoto pact in the balance in UN climate endgame', *Euractiv.com*, 18 December 2009.

44. Duncan Freeman and Jonathan Holslag, 'Climate for Cooperation: The EU, China and Climate Change', BICCS Report, September 2009, pp. 1-40.

45. 'Developing nations split at UN climate talks', *Euronews*, 10 December 2009.

46. John Vidal and Jonathan Watts, 'Copenhagen: The last-ditch drama that saved the deal from collapse', *The Guardian*, 20 December 2009.

of the EU and India put together.<sup>47</sup> Similarly, Ricardo Lagos, a former president of Chile and special advisor on climate change to UN Secretary-General Ban Ki-moon, is reported to have said: ‘You did not have the G-20 ten years ago. China and India are part of the G-20 and they should share part of the responsibility now.’<sup>48</sup> This sharply highlights how the development of the international climate change regime is shaping expectations regarding China’s behaviour, while the latter is still trapped in a ‘conflict of interest’ between its domestic and foreign policy priorities: namely, economic development and political stability versus its attempts to project a positive international image, be it that of a responsible stakeholder in the eyes of developed nations, or that of a country attuned to the needs of its fellows in the developing world.

Some Chinese commentators have attributed these new divisions among developing countries to Western powers, claiming that the latter were conspiring to split their unity.<sup>49</sup> Maybe the statements made by Todd Stern, the US Special Envoy for Climate Change, on the allocation of the Fast Start funds primarily to the poorest countries and not to advanced emerging economies (i.e. China), together with those of Hillary Clinton and Fredrik Reinfeldt, played a role.<sup>50</sup> However, whoever is responsible for the divergences arising within the G77+China grouping, be it the Western powers or the structural differences among the richest emerging countries and the poorest underdeveloped nations, it will be increasingly difficult for China to create a common front against the developed countries in the coming years. In 1991 when China invited all developing countries to Beijing to draft the ‘Beijing Declaration’ ahead of the Earth Summit, China was a much poorer country than it is today, and its needs were much closer to those of the other developing countries. Should these divergences become sharper, they would certainly affect the climate change negotiations, and China would find itself very much weakened in its bargaining position, as it would no longer be able to shy away from interna-

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47. ‘Factsheet: Tons per Capita CO<sub>2</sub>e (2020)’, Prayas, 2010.

48. ‘Kyoto pact in the balance in UN climate endgame’, *Euractiv.com*, 18 December 2009.

49. On this point see: Jonathan Watts, Damian Carrington and Suzanne Goldenberg, ‘China’s fears of rich nation “climate conspiracy” at Copenhagen revealed’, in *The Guardian*, 11 February 2010; Xin Benjian, ‘The test of strength of international policy behind the Copenhagen Agreement’, *Hongqi wengao*, 9 February 2010; and He Jingjun, ‘Lessons from the Copenhagen summit for the world and for China’, *Lianzheng liaowang*, 13 January 2010, quoted in: François Godement, Anne Rulliat et al, ‘Climate policies after Copenhagen’, *China Analysis*, no. 27, 2010.

50. ‘A Stern Warning?: No Money for China – No Problem’, *The Green Leap Forward*, December 2009.

tional scrutiny by claiming its 'developing country status'. This consideration explains China's continued attempts to coordinate the positions of the G77+China grouping and of the BASIC countries ahead of the various summits, including the COP 16 in Cancun. This was the case when China hosted a week of talks in Tianjin in October 2010, arguably hoping to avoid having to face pressures from both the developed and the least developed countries during the official negotiations in Cancun.<sup>51</sup>

It should be noted that, as far as the climate change regime is concerned, the division between developing and developed countries is not merely symbolic. If it is true that China has largely benefited from its image of developing country in its foreign policy, in particular in its relations with African countries, it is also true that the status of developing country in international regimes is often synonymous with 'more favourable' conditions compared to industrialised nations. This is clearly the case in the climate change regime, where industrialised nations (i.e. Annex I countries) are called on to support developing nations (non-Annex I countries) in deploying clean technologies under the principle of 'common but differentiated responsibility', according to a distinction earlier introduced by the UNFCCC and then used in the Kyoto Protocol. It follows that, under the current regime, Non-Annex I countries, including developing countries and the BASICs, are not bound by any legally binding commitment to reduce their emissions, but have simply committed themselves to non-binding mitigation measures, to be achieved with the support of developed nations. Annex I countries' Kyoto targets, in contrast, are legally binding and subject to international monitoring and yearly reporting.

Therefore, it is important that the EU, while strengthening its contribution to the spreading of good practices and green technologies to tackle climate change, also protects the actual implementation of those incentives that allow a win-win balance to be maintained in the EU's and China's efforts in the fight against climate change. As already noted, in the past China has failed to fulfil its commitments with regard to key aspects on which market economies were counting in order to benefit from the creation of international regimes, be it the trade regimes or the climate change regime. These include primarily IPRs protection, market access and the definition of a level playing field where Chinese and foreign companies

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51. See Xin Benjian, *op. cit.* in note 49.

could compete on an equal footing. In particular, despite some efforts at central level, local implementation remains scarce, and foreign companies are often treated more severely than their Chinese counterparts.

It is hence clear that the current regime is not sufficient to protect European interests. In such a context, increasing the level of legalisation is an option that should be seriously considered, and if this is not possible through the climate change regime, other options should be envisaged, including those provided by the trade regime. In particular, as some academics have noted, harder legalisation should be sought in certain cases, some of which resemble the current status of the climate change regime. Firstly, when the likelihood of opportunism is high (as well as its related costs) and when non-compliance can be monitored only with difficulty. Secondly, when the aim is to attract only committed actors; and thirdly when the executives share the same objectives while other elites have different positions on the same issue.<sup>52</sup> This three-fold framing is particularly useful if applied to analyse the evolution of relations between the EU and China, both at bilateral and multilateral level. In this perspective, a more legalised agreement under the climate change regime, or a wider one under the trade regime, would allow the EU to better monitor China's compliance and reduce opportunistic behaviour on its part.

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52. See Abbott and Snidal, *op. cit.* in note 2.



## 6. The climate change regime from Kyoto to Durban: a path towards increasing legalisation

The climate change regime has been the object of increasing legalisation, but this has in part been possible because China itself has progressively accepted increasingly binding commitments. This is arguably due to the fact that, as noted above, China is one of the major beneficiaries of the current climate change regime and has agreed to soften its position in order to ensure the survival of the key characteristics of the current regime. It follows that the shifts in China's position in the framing of the various climate change-related agreements over the past few years are particularly significant.

The Kyoto Protocol has a very strong compliance committee which has jurisdiction over legally binding and target-related commitments of developed countries. Such an arrangement was possible largely because it was strongly backed by developing countries,<sup>53</sup> as the Protocol was designed to be binding exclusively to Annex I countries, and thus not to China or the other BASICs. The situation was very different in Copenhagen, where the positions on the Monitoring, Reporting and Verification (MRV) measures were far from being unanimous. Resisting the pressures from the EU and the US, China opposed any sort of international monitoring, on the grounds that it would infringe its national sovereignty and would be against the principle of CBDR, as noted by Premier Wen.<sup>54</sup> He Yafei, the Chinese Vice Foreign Minister, further stressed that there would be a domestic and legally binding MRV regime instead.<sup>55</sup> In the last hours of COP15, China eventually accepted a slightly stricter form of MRV for Non-Annex I Parties, involving domestic MRV and reporting through national communications every two years,<sup>56</sup> hence marking a significant

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53. Olav Schram Stokke, Jon Hovi and Geir Ulfstein, *Implementing the Climate Regime: International Compliance* (London/Sterling, VA: Earthscan, 2005).

54. 'Premier Wen: China's climate action not subject to international monitoring', *Xinhuanet*, 18 December 2009.

55. *Ibid.*

56. The Conference of the Parties, 'Copenhagen Accord', Copenhagen, 2009.

change from China's previous position. In contrast to what had happened at previous summits, in COP15 major emerging economies such as China and Brazil made unilateral commitments to mitigation and adaptation measures, hence implicitly accepting responsibilities previously considered quasi-exclusively 'Western'.

Other significant steps forward were made by China a year later, during COP 16 in Cancun, which, building largely upon the Copenhagen Accord, resulted in a binding decision under the UNFCCC framework thereby restoring some confidence in the UN process. On that occasion China also made some important concessions, which ended up being indispensable to achieving the agreement. It accepted to bind its unilateral commitments to a UN resolution, it agreed to discuss 'peak emissions' in the run-up to COP17 in Durban, and it even accepted to reconsider the 1.5°C target instead of the current 2°C,<sup>57</sup> issues that had been dismissed by the PRC only a year earlier.<sup>58</sup> In addition, the UNFCCC decision agreed to establish an international system for providing Monitoring, Reporting and Verification procedures for both developed and developing countries. The Subsidiary Body on Implementation was tasked to consider parties' mitigation efforts through 'international assessments' for developed countries, and through a 'non-intrusive, non-punitive, and respectful of national sovereignty' process of 'international consultations and analysis' for developing countries.<sup>59</sup>

Despite the careful wording, it is clear that China has been increasingly keen to soften its position *vis-à-vis* its commitments to the climate change regime and their level of legalisation. These represent major shifts in China's negotiating position, especially if we consider that all these decisions may strongly affect China's policymaking autonomy. At the same time, these shifts are also in line with the process of legalisation observed in recent years. On the one hand, the climate change regime has become increasingly legalised, and, on the other hand, to protect the benefits it

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57. International Centre for Trade and Sustainable Development (ICTSD), 'Cancun Delivers After All, but Trade Issues Prove Too Difficult', *Bridges Trade BioRes*, vol. 10, no. 22, 14 December 2010; Andrew Willis, 'Cancun climate deal restores faith in UN process', *EU Observer*, 12 December 2010.

58. For instance it is reported that in Copenhagen China impeded developed countries from pledging a reduction of emissions of 80 percent by 2050. See John Vidal and Jonathan Watts, 'Copenhagen: The last-ditch drama that saved the deal from collapse', *The Guardian*, 20 December 2009.

59. Pew Center on Global Climate Change, 'Summary of COP 16 and CMP 6 prepared by the Pew Center on Global Climate Change', Cancun, Pew Center, 2010.



has acquired from the current regime China has become keener to compromise on its principles of national sovereignty and non-interference. China's shift in its negotiating position can be seen from the perspective of facilitating a compromise leading to the continuation of the Kyoto Protocol, which, as already noted, has largely benefited China, but needs to be updated in order to convince the rest of the international community of its mutually beneficial nature, and to persuade industrialised countries to accept a second commitment period. Should this fail to happen, China will lose a major source of support in its quest towards a greener economy, which may also affect the legitimacy of the CCP given the fact that the government has to take into account the concerns of a population increasingly aware of the lethal effects of pollution and of the dangers of climate change (e.g. sea rise, desertification etc). Thanks to this reading of the climate change negotiations, the continuation of the process of legalisation of the climate change regime did not come as a surprise and was further confirmed by the mandate given to the Ad Hoc Working Group on the Durban Platform for Enhanced Action following the conclusion of the Durban Summit (COP17). Despite the fact that no legally binding agreement was decided in Durban, an important step forward was taken, as it was decided 'to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention' by 2015.<sup>60</sup> The proposal to draw up a roadmap to deliver a comprehensive legally-binding framework by 2015 was presented by the EU at the beginning of the negotiations, but gained momentum when the Alliance of Small Island States and the Least Developed Countries openly joined the EU in a public statement supporting it.<sup>61</sup> In contrast to Copenhagen in 2009, the EU had a key role in Durban and, to ensure sufficiently wide support, it engaged in ongoing negotiations with China, Brazil, South Africa and India. More specifically the EU and BASICs (represented by India) managed to strike a deal on the implementation of the provisions under the Convention which would see the implementation of these start as from 2020. This means that, for the first time, the BASICs would also be legally bound under the Convention.

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60. United Nations Framework Convention on Climate Change, 'Draft Decision -/CP.17: Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action', UNFCCC, Durban, 2011.

61. IISD Reporting Services, 'COP17', *Earth Negotiations Bulletin*, vol. 12, no. 534, 2011, pp. 1-34.

This can certainly be considered as a major success for the EU, which has always been at the forefront of the 'quest for legalisation'. For the EU, in fact, considering the evolution of the balance of power in the international system, it is of key importance to maintain the framework that has been built over the past twenty years and push it towards further legalisation, involving not only developed countries but also emerging economies. This, which was not possible in 1997 is now on the verge of happening, with the BASIC countries having accepted international commitments subject to international monitoring (in Cancun) and even to be legally bound under the Convention (in Durban). The current regime has been able to influence the interests and behaviour of key international actors such as China and India (e.g. for instance through the CDM), and has given the EU a key role. Maintaining this regime is hence not only a key opportunity to reinforce the commitment of key energy consumers and polluters such as India and China, which are strongly backing a second commitment period of the Kyoto Protocol. It is also of vital importance for the EU in order to build upon its previous successes and reinforce its own international position.

As was the case during the Kyoto negotiations, the US inability to lead due to the lack of domestic support for action in the field of climate change must not prevent the EU from taking action. On the contrary, this can be another opportunity for the EU to play a major role in shaping the post-Kyoto regime, especially considering that the US position cannot change until after the 2012 presidential elections. Hence, EU proactive involvement is not only in the interest of the fight against climate change, which must aim at gaining the commitment of emerging (and most polluting) economies, but also in its own interest, as maintaining the foundation of the Kyoto Protocol would reconfirm the value of EU diplomacy in this area (while, at the same time, also reducing its adaptation costs). For the EU, maintaining the backbone of the Kyoto Protocol means safeguarding a competitive advantage *vis-à-vis* its main challenger in the field of international norm setting: the US. As such, the EU should not only look across to the other side of the Atlantic to decide whether to act and how. Rather it should also listen to emerging economies, which are those that will provide the EU with most opportunity for investments and which will account for the largest share of reduced pollution to the atmosphere in the coming years, avoiding environmentally costly 'carbon lock-in'.

Certainly China has not been the only party to make concessions. In contrast to Japan, Canada and Australia, which at the Cancun Summit openly opposed the continuation of the Kyoto Protocol, the EU, in order to break the deadlock, has shown itself to be increasingly willing to back a second commitment period.<sup>62</sup> Nonetheless, as voiced by Commissioner Hedegaard, this was seen as possible only on two conditions: reframing the principle of ‘common but differentiated responsibility’ (CBRD) which China holds dear, and ensuring that all major economies commit.<sup>63</sup> However this strategy is not a winning one. The first part of this strategy, focusing on the reframing of a principle defined over the years by China and the G77, is challenging, to say the least, and would trigger a sterile clash between developing and developed countries, as this principle enshrines the historical responsibility of industrialised nations *vis-à-vis* climate change and the rights of developing nations to obtain support. The EU should not look to reframe the definition *per se*, rather it should focus on what the CBDR principle will imply in the post-Kyoto regime in terms of commitments, and on who will be bound by it. As already noted, China and the other BASIC countries have increasingly agreed to sign up to binding commitments, but it is unlikely that they will accept the formal modification of a principle that is considered to be at the heart of the UNFCCC and at the foundations of their diplomatic relations with the world’s poorer nations. Discussing the reframing of the concept of CBDR is therefore a non-starter for the negotiations. This principle has gained symbolic value for China and the developing world, and keeping it is a matter of prestige, international justice, national interest and foreign policy strategy. Attempting to change it would strengthen the linkages between developing and emerging countries rather than highlighting their differences and responsibilities. Furthermore, the cost of modifying it openly through negotiations would be extremely high, as it would force China to review the whole of its foreign policy at once, which over the past 20 years has been based on its claim to status as a developing country. Finally, engaging in such negotiations is of little use for the EU, as it is already becoming obvious to China that it can no longer hope to be considered as just any other developing country. As demonstrated by previously mentioned statements made by Ricardo Lagos, its partners in the G77 are

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62. IISD Reporting Services, ‘COP16’, *Earth Negotiations Bulletin*, vol. 12, no. 493, 2010, and ICTSD, ‘Cancun Delivers After All, but Trade Issues Prove Too Difficult’, *Bridges Trade BioRes*, vol. 10, no. 22, 14 December 2010.

63. Andrew Willis, ‘EU sets sights on extending current climate deal at Cancun’, *EU Observer*, 15 October 2010.

also increasingly uneasy with such a definition including China. It follows that the credibility (and utility) of China's claim to be a developing country is doomed to disappear soon, even without the EU's intervention. The second strand of the EU's strategy is also questionable. The fact that the EU maintains that it is ready to sign up to a second commitment period of the Kyoto Protocol, if other major economies also commit, does not make the EU a leader. Rather it makes it a follower, as it means that other major players such as the US or Japan are those shaping the EU's climate diplomacy and not the other way round.

What the EU needs to do is hence twofold. First of all it needs to be able to engage the necessary number of countries to ensure the survival of the current climate change regime. Secondly, it should continue pushing for more legalisation of the current rules, increasing the extent to which these are binding especially in those areas that would allow the EU to benefit from its existing competitive advantage (e.g. IPRs protection, market access). This could be done by strengthening either the climate change regime or other regimes (e.g. trade). The reasoning behind this position is the objective of maintaining a balanced international system capable of providing long-term benefits to developed, developing and emerging economies. Furthermore, by maintaining the current regime the EU would not only strengthen its diplomatic status in the negotiations, but may also gain economic benefits thanks to the opportunity to reinforce its relationship with the rising powers, and primarily China and India. However, should the EU fail to act now, it stands to lose a lot. Under such a scenario, the efforts it made to set up the world's largest emission trading scheme, as well as to gain a leadership position in the fight against climate change, will become null and void. Also, once the US regains the opportunity to lead the game, it will not wait for the EU whose emissions are in any case diminishing, and the outcome is unlikely to be different from the Copenhagen summit, where, despite the fact that most of the EU's proposals were finally retained, the bloc was sidelined in the final and decisive stretch of the negotiations.<sup>64</sup>

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64. For instance, the idea of a fast-start fund was already discussed in October by EU leaders, and was defined before the beginning of the Summit in December. See 'EU leaders fail to hammer out climate funding details', *Euractiv.com*, 30 October 2009; Wang Guanqun, 'British PM proposes \$10 bln climate fund to support poor countries', *Xinhuanet*, November 2009; 'EU cobbles together climate aid for Copenhagen', *Euractiv.com*, 11 December 2009. Also, the 2°C cap for CO<sub>2</sub> emissions was already considered as a key target in an EC Communication dating back to 2007. See European Commission, 'Limiting Global Climate Change to 2 degrees Celsius the way ahead for 2020 and beyond', COM(2007) 2 final, 10 January 2007.

The potential for coalition building is yet another element that can contribute to make the architecture of the post-Kyoto regime a 'game-changer' for twenty-first century international relations. Through the UN process and the climate change negotiations China became the leader of the G77+China grouping. In the same frameworks progressively closer co-ordination was established among the BASIC countries, whose interests are increasingly similar to those of industrialised nations rather than to those of developing ones. Similarly, at the time of the ratification of the Kyoto Protocol and after the Copenhagen summit, the EU managed to create coalitions such as the 'Friends of the Accord' in order to support the ratification of the Kyoto Protocol or the operationalisation of the Copenhagen Accord.<sup>65</sup> Coalitions are hence pivotal in climate change diplomacy, and at this moment when the BASICs are becoming industrialised countries, the evolving climate change regime constitutes an opportunity to crystallise this change (i.e. the rise of the new global players) which is already happening and which is demonstrated by their increasing willingness to accept international commitments. At the same time, this is a golden opportunity for the EU to support the shaping of their policies in the field of environmental protection and climate change, where the EU still retains a competitive advantage. To the EU this means not only reinforcing the fight against climate change, but also extending its influence, in as much as the development of standards, legislation and market access are concerned. In other words, by contributing to build new coalitions in the fight against climate change the EU may benefit from a position of leadership not only among developed countries, but also emerging economies. At the same time, the fact that the US will not be in a position to actively put better proposals on the table due to the lack of domestic consensus, ensures that the EU will not be challenged by the US, even though it may certainly attempt to block such moves by attempting to mobilise the support of other countries or by creating a coalition itself (as was the case with the creation of the Asia Pacific Partnership on Clean Development and Climate after the US had left the Kyoto negotiating table). However, considering the fact that the G77+China support a second commitment period of the Kyoto Protocol, even though the US, Japan and Russia to date seem to disagree,<sup>66</sup> there is still room for the EU to create a

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65. 'Commission wants quick follow-up on Copenhagen', *Euractiv.com*, 15 January 2010 and 'New era for climate diplomacy as UN chief resigns', *Euractiv.com*, 19 February 2010.

66. ICTSD, 'Bangkok Meeting Recalibrates Pace of Climate Talks', *Bridges Trade BioRes*, vol. 11, no. 7, 18 April 2011.

new 'coalition of the willing' in support of a successful implementation of a second commitment period. The latter is likely to be a winning strategy considering that deciding not to join the new regime would be extremely costly, both in economic terms, due to the costs of being a latecomer in the market for green technologies, and in diplomatic terms in light of the increasing relevance of climate change in international relations as demonstrated by the large number of heads of state and government who attended the Copenhagen summit in 2009.

## 7. Climate change diplomacy beyond the UN-sponsored frameworks

Even though it is certainly the most comprehensive in terms of membership, the UNFCCC is not the only forum involved in the fight against climate change. As already noted, climate change is a transversal issue which touches upon several areas, which range from trade to security. In particular since Copenhagen the effectiveness of the UNFCCC has been called into question, and with it, the image of the Conference of the Parties (COPs) as the most appropriate forum to conduct negotiations, despite the large membership of both bodies and, thus, their legitimacy. Artur Runge-Metzger, the EU's Chief Climate Negotiator, noted that the key is to appear to be endorsing the UN process while still pushing for other fora to do the 'heavy lifting'.<sup>67</sup> Certainly some progress could be made at G-20 level, and in particular, more coordination could be achieved in order to later act in the framework of more formal international fora such as the WTO.

In the past China has refrained from engaging in smaller frameworks to deal with climate change, as this would limit the bargaining power it has built through large coalitions such as the G77+China. Nonetheless, some Chinese officials were open on this point, noting that, in principle, China is willing to use smaller fora such as the G-20, on condition that, at a later stage, the issue should be debated within the wider UN framework.<sup>68</sup> This position was later confirmed in October 2010 by Xie Zhenghua, China's Head Negotiator on Climate Change during the talks in Tianjin, when he noted that 'China is for full consultation in the UN framework but we are not against smaller consultations' in line with the principles of openness, transparency and full consultation.<sup>69</sup> The change in China's position can be explained by looking at what happened in Copenhagen. Despite China's efforts to tackle climate change by adopting an emission intensity target, it received a much colder welcome than it had expected, and found

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67. Leigh Phillips, 'Battling the "Multilateral Zombie" - EU climate strategy after Copenhagen', *EU Observer*, February 2010.

68. Interview, Chinese officials at the Chinese delegation to the EU, Brussels, April 2010.

69. Zhenhua Xie, 'Press Conference: UN Climate Talks in Tianjin', UNFCCC, Tianjin, 2010.

itself caught in a public diplomacy battle. The latter saw it losing face internationally because of its unwillingness to be bound by internationally-verifiable commitments. To avoid this happening again, in Tianjin Xie Zhenghua proposed that issues such as MRV, the claims of small islands or the status of developing countries 'should not be put forward at international occasions' but rather be dealt with in smaller fora.<sup>70</sup> These issues happen to be those that risk dividing the previously united front of 'developing countries' and which contributed to the image of China as the inflexible and non-cooperative party during the negotiations.

The opportunity to deal with climate change through non-UN fora opens the door to a wide array of possible institutional frameworks with various degrees of legalisation. These, even though they might be unable to table definitive solutions, can concretely contribute to advance the discussion on how to tackle climate change by facilitating the definition of shared understanding and common approaches. From this perspective even fora displaying low levels of legalisation such as the Asia-Europe Meeting (ASEM) can positively contribute to tackling the climate change challenges, even though, as previously noted, in order to respond to the EU's concerns, more legalised frameworks are needed. One option that deserves to be considered is to use the trade regime to deal with some key aspects of climate change. The trade regime could be used not only to regulate trade in environmental goods, but also, for instance, in passenger and freight transport. A similar practice would make it possible to internalise the costs of pollution and, at the same time, to increase the financial resources that could be channelled towards climate change mitigation and adaptation strategies. The price of pollution could be linked to the average price of CO<sub>2</sub> emissions as resulting from the various regional and transregional emission trading schemes, or according to efficiency standards, similar to the EU's EURO car exhaust gases standards, which have already been adapted to be used in China. At the same time, defining a global price for emissions would also shield the regional emission trading mechanisms from criticism hinting at the potentially protectionist nature of those measures. Clearly such an option may be greeted with some discontent in large exporting countries, but it would arguably be an effective way to complement existing emission trading schemes at global level in the attempt to deal with greenhouse gas emissions.

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70. Ibid.



Certainly there are some important obstacles to having the trade regime play a bigger role in this field, in particular due to the structure and rules of the regime. The WTO, which is currently the central institution in the trade regime, only has a Dispute Settlement Body, and it is therefore not equipped with a bureaucracy able to manage funds or projects. For this reason it is difficult to envisage that it could become the leading institution to manage climate change policymaking and implementation measures. Apart from regulating the trade in 'environmental goods' or eventually managing the tariffs applied to the transport sector, it would still need to largely rely on other UN bodies and existing funding institutions for the policy drafting and implementation part of the fight against climate change. In addition, as noted by an EU official during an interview, the UNFCCC, which is an institution dedicated exclusively to climate change, is already struggling to keep up with its tasks, a situation set to worsen with the increase in financial flows and resultant increase in workload.<sup>71</sup> Secondly, as one writer has pointed out, the WTO's 'current rules and procedures have not been designed with climate change in mind'.<sup>72</sup> This implies potential incompatibilities with the trade regime with regard, for instance, to which dispute settlement procedure should be used in case of disagreement. In this light the trade regime is not in a condition to fully replace the UN-led bodies in the fight against climate change. Nonetheless, a synergy between the two sets of institutions would certainly be beneficial in the effort to frame a coherent and consistent strategy.

Nonetheless, some may argue that, as shown by the current Doha negotiations, enlarging the trade regime so as to tackle part of the climate change challenge may be equally difficult. In this respect, some parallels could perhaps be drawn between the evolution of the climate change regime and the trade regime: following the difficulties experienced in the Doha Round, China decided to discuss trade in environmental goods and services (EGS) bilaterally with the OECD rather than exclusively in the WTO framework.<sup>73</sup> The same could happen for climate change.

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71. Interview, European Commission official working for DG External Relations and dealing with policy coordination, Brussels, 15 April 2010.

72. Richard Tarasofsky, 'Linking trade, investment and climate change policies', *Briefing Paper*, Chatham House, London, 2007. On the eventual role of the WTO and IMF in the climate change regime, see: Arunabha Ghosh, 'Making climate look like trade? Questions on incentives, flexibility and credibility', Centre for Policy Research, 2010.

73. International Centre for Trade and Sustainable Development, *Bridges Trade BioRes*, vol. 9, no. 17, 5 October 2009.

Apart from the UNFCCC, other *ad hoc* fora could be engaged in the effort to find specific (or sectoral) solutions on issues ranging from the deployment of specific technologies to the financing of specific initiatives. The forthcoming United Nations Conference on Sustainable Development (also known as Rio+20), for instance, building on the previous conferences in Rio (in 1992) and Johannesburg (in 2002) will deal with two main themes: the green economy in the context of sustainable development and poverty eradication, and the institutional frameworks for sustainable development. To do so it will focus on seven sectoral priorities, namely green jobs, access to energy, sustainable cities, food security and sustainable agriculture, water security, oceans management and disaster readiness. Also non UN-led fora could play a key role, such as the Carbon Sequestration Leadership Forum (CSLF), the Major Economies Forum on Climate Change (MEF), the International Renewable Energy Agency (IRENA) and the G-20.<sup>74</sup> The solutions agreed in those instances could eventually become part of wider frameworks negotiated in more representative fora. For instance, a first step in this direction was undertaken during the 2009 G-20 meeting in Pittsburgh, when discussions were held on the phasing out of subsidies to fossil fuels, which are a major source of CO<sub>2</sub> emissions and a considerable obstacle to the deployment of cleaner energy technologies.<sup>75</sup>

Despite the recent concessions, China and the BASICs are expected not only to keep 'containing' the legalisation trend of the climate change regime from gaining in terms of obligation and precision of the prescriptions and delegation of their implementation, but they are also expected to continue fighting the use of the trade regime to deal with climate change-related issues, for instance, by opposing any sort of Border Carbon Adjustments (BCAs).<sup>76</sup> Any of those changes would in fact have a major impact on domestic policy discretion, and would therefore be considered as an attack to the principles of sovereignty and non-interference while, at the same time, they would not be directly balanced by incentives as

74. To date the EU as such is represented in the MEF, the CSLF and the G-20 but not in the IRENA.

75. For additional information on the phasing out of subsidies to fossil fuels see: The Global Subsidies Initiative, 'Delivering on G-20 commitments: The path to fossil-fuel subsidy reform', *Policy Brief*, October 2010.

76. For example, Yao Jian, spokesman of the Ministry of Commerce of China, has said that 'carbon tariffs' are not only in violation of the basic rules of the World Trade Organisation but also run against the principle of 'common and differentiated responsibilities.' See Xuequan Mu, "'Carbon tariffs" cloud efforts to combat climate change', *Xinhuanet*, December 2009; and 'China repeats stance against proposed carbon tariffs' *Xinhuanet*, December 2009; International Centre for Trade and Sustainable Development, 'India's Khullar says Trade and Environment Should Not Mix', *Bridges Trade BioRes*, vol. 10, no. 3, 22 February 2010.

happens in the climate change regime (e.g. through the CDM). From this point of view, in order to see the light, these measures would need to rely on the support of large coalitions and the awareness of the fact that the beneficial effects of such policies only become manifest in the long term, unlike the costs. As far as BCAs are concerned, these would affect international trade, to the great detriment of export-led economies such as that of China (but also some European nations).

With regard to the BASIC countries, their position is less united than it might seem at first sight: India and China themselves are at two different stages of development, and their projected CO<sub>2</sub> emissions for the next 10 years are also very different. It is therefore understandable why, for instance, India has put forward the ‘one person, one emission right’ principle, a proposal that is rather unappealing to China considering that its emissions are expected to reach the combined amount of those of India and the EU by 2020.<sup>77</sup> In a similar attempt to reduce foreign interference, and contrary to the EU’s position, China is likely to continue opposing the ‘securitisation’ of the climate change debate, as its contribution to the UN report on Climate Change presented by the Secretary General to the General Assembly in 2009 revealed.<sup>78</sup> The report, which stressed the link between climate change and security, argued that climate change acts as a ‘threat multiplier’: it increases the vulnerability of states and people in terms of health and food availability, it reduces the pace of development, it negatively affects migration and intensifies the competition for resources such as water or fuels, which might lead to increased international conflicts. This is not surprising considering the fact that China abhors the idea that the UNSC might be able to gain a say on climate change-related matters, thus justifying eventual international intervention in breach of China’s pivotal principle of non-interference. As such, even though they may both be difficult paths to follow, the ‘securitisation’ option and BCA measures may still represent elements that can be used as bargaining chips by the EU, primarily in order to push China towards less intrusive alternatives.

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77. Regarding India’s *per capita* emissions proposal see: Anup Sam Ninan, ‘Discursive Construction of Climate Change Negotiations: The Indian Arguments in UNFCCC’, *China and India in Energy and Environmental Politics*, Muenster, 2009; For the forecast in CO<sub>2</sub> emissions in 2020, see: ‘Factsheet: Tons per Capita CO<sub>2</sub>e (2020)’, Prayas, 2010.

78. The wording used in the UN report is strongly inspired by a previous report presented by the HR and the Commission to the Council in March 2008: United Nations General Assembly, ‘Climate Change and Its Possible Security Implications: Report of the Secretary-General’, United Nations, September 2009.

Apart from bilateral frameworks, which are not dealt with in this paper,<sup>79</sup> and specific sectoral approaches, like those mentioned earlier with regard to clean coal and renewables (e.g. CSLF, IRENA), another way in which the EU could influence China's capacity to mitigate the impact of economic growth on the environment, is by contributing to the creation of a well-functioning energy market. It is here that the linkage between climate change and energy policy is further highlighted, hence calling for a more comprehensive approach.

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79. For a review of Sino-EU bilateral cooperation in the fields of energy, environment and climate change see: Pietro De Matteis, 'EU-China Cooperation in the Field of Energy, Environment and Climate Change', *Journal of Contemporary European Research*, vol. 6, no. 4, pp. 449-77.

## 8. Conclusions

When looking at the evolution of the climate change regime it is particularly interesting to see that in the past few years both the EU and China have played a pivotal role. This contrasts with the situation that pertained in the recent past when, on the one hand, the EU used to play a prominent role primarily when dealing with trade-related issues and, on the other, when China was still struggling to be recognised as a legitimate international player. Despite the fact that both the EU and China have increasingly relied on international institutions in their foreign policy, their preferences have generally diverged, not least because of their different levels of development, resulting in a different assessment of the level of legalisation that the multilateral frameworks should have. China has initially taken a rather defensive stance in international affairs, aimed at reducing foreign interference in its domestic discretionary power. In contrast, the EU has typically led the legalisation process within international fora, calling for more legalised institutions, often reflecting its internal structures.

Over the years however, and primarily in the field of climate change (and energy), China has increasingly assumed a proactive stance in international affairs; for instance, through the creation of new institutions or by exploiting existing ones. It has arguably been motivated to do this in the light of the anticipated potential effects of the challenges arising from climate change – and of the regimes poised to tackle them – on its own discretionary power. Equally, China's attitude has been influenced by its own positive assessment of the benefits that the regimes have provided in the past (e.g. CDM). It follows that China has increasingly accepted legalised agreements, involving international commitments and monitoring, as was the case on the occasion of the latest climate change negotiations in Copenhagen and Cancun. As has been outlined throughout this paper, these changes in China's negotiating position are primarily due to the fact that China has been socialised within this regime, and its interests have ended up coinciding with those of the survival of the climate change regime itself. This is the case for instance for the Kyoto Protocol, whose continuation has become a major objective of China's climate diplomacy. Against this background, if the EU wishes to further engage with China

it should pull those strings that are currently triggering China to act, and which largely implies building upon the existing frameworks in order to adapt them to better answer European interests.

Throughout this paper it has also been noted that, as the effects of climate change go beyond global warming, so do the potential effects of the climate change regime. In the light of its threat multiplier capacity, climate change is transversally linked to a wide array of policy areas, ranging from economic growth to health, from development to social and political stability, from energy to environmental degradation. As such, the climate change regime has the capacity to dramatically reduce (or reinforce) the 'strategic endowment' of international actors, including their policy discretion and capabilities (e.g. in terms of know-how and financing). It follows that contributing to the definition of those frameworks has gained strategic importance. In the past Europe and the US have been the key norm setters at international level. Today, however, China's increasing assertiveness and production capacity in the field of renewable energies calls for the EU to rethink its engagement strategy *vis-à-vis* emerging powers, in order to reassess what this power shift implies for the EU and its own competitive advantage (e.g. know-how, technology, soft power, institutional power, ability to innovate).

As noted at the beginning of this paper, the EU's margin of manoeuvre is constantly diminishing, reflecting its decreasing share of the global market, its shrinking demographics and the dwindling resources on which sustaining the European social model (including the provision of health-care and education and environmental protection) depends. It is hence increasingly clear that if the EU is to maintain its role in this changing world, and if it wants to be able to preserve its citizens' living standards, the EU must be able to shape those key international regimes so as to reflect its needs. In other words, while the EU is pursuing public goods such as the fight against climate change, it must not forget that achieving these objectives may imply some costs that must be assessed as part of a comprehensive Grand Strategy. The variables that compose such a strategy are those linked to energy security, climate change, environmental protection, as well as foreign policy and industrial policy. Defining the rules and legal frameworks that will regulate these interconnected challenges is arguably one of the most all-encompassing efforts that the international community has ever attempted, and it is here that the future

of the EU as a global actor in the twenty-first century is likely to be decided. From this point of view, only a distinctive European climate change strategy – one that feeds into a more comprehensive European Grand Strategy – may allow the EU to transform the costs incurred through the various sets of international negotiations into the components of a comprehensive long-term strategy, capable of tying Europe to the rising world powers in a win-win manner.

Throughout the paper it has also been noted that the climate change regime, and the coalition that it may produce, constitutes a potential ‘game-changer’ for the twenty-first century’s international relations landscape. The shape of the climate change regime is likely to determine whether the international arena is transformed into a zero-sum game or whether a win-win balance is maintained. This requires that an equilibrium be found between agreements displaying high and low levels of legalisation. An insufficiently binding regime may lead to a failure in tackling global challenges, not least due to the lack of incentives for potential leaders to act. For the EU, such a scenario may prevent it from taking the necessary steps to keep its leadership position, which would lead it to lose its competitive advantage *vis-à-vis* other developed and developing nations. In contrast, China and other emerging economies may regard an excessively legalised agreement as ‘tying their hands’, especially if insufficient incentives are put in place to sweeten the pill and compensate for the loss of discretionary power. It is hence clear that the issue of legalisation is central in the shaping of international regimes – and, primarily, the climate change regime. Only a carefully balanced combination of incentives and rules can provide a mutually beneficial regime, displaying on the one hand a sufficient level of legislation and, on the other, sufficiently wide membership to make the climate change regime relevant in international affairs.

In its engagement policy, the EU must not forget that existing institutional frameworks such as the Kyoto Protocol constitute an asset for its negotiation strategy, as they were created at a time when Europe’s weight in the world’s economy and politics was much larger than it is now. Certainly, however, further legalisation is needed, primarily in order to re-establish those guarantees needed to maintain the system as a win-win partnership among developed, developing and emerging countries. As things stand now, in fact, developed countries are likely to lose much of their competi-

tive advantage in return for very limited short-term economic gains. At the same time, maintaining a leadership position while tackling climate change is of key importance for the EU. To date, this is one of the few areas beyond trade in which it has managed to play a decisive role: it is through those frameworks that it has shaped its own international identity, and it is by dealing with those issues that it has also gained in terms of domestic and international legitimacy.

It must not be forgotten that, under current demographic, economic and CO<sub>2</sub> emissions forecasts, the rebalancing of the representation of global powers within international frameworks will inevitably reduce the weight of European nations. European leaders should be aware of the existence of this trade-off, pointing to the fact that, ultimately, while the engagement of rising players is inevitable, it is not free of cost for the EU. It follows that the EU's room of manoeuvre will inevitably be reduced, and with it its ability to influence countries of continental size such as China and India. These 'costs' may eventually be partially balanced (or delayed) through more effective and cohesive EU external action and EU-wide policymaking. However, it should be clear that action is now urgent, as the costs of non-action are constantly rising not least because the relative economic and demographic weight of the EU (and of its Member States) *vis-à-vis* the rest of the world is shrinking.

As happened on the occasion of the ratification of the Kyoto Protocol, it is important for the EU to act swiftly and to contribute to laying the foundations on which the post-Kyoto climate change regime will be based. The conjunctural inability of the US administration to lead the negotiations offers the EU a window of opportunity to consolidate its role in climate change diplomacy. This may be translated by the EU into consistent benefits in terms of image and credibility, allowing it to contribute to tackling a major global challenge while, at the same time, giving it the opportunity to strengthen its partnership with emerging countries – with all that this implies in terms of economic opportunities and long-term influence. Finally, it is suggested here that in the coming COP negotiations the EU should avoid being constrained by the reticence of other industrialised countries, and instead explore the opportunities for dealing with the rising global powers. The emissions of BASIC nations are in fact those that are likely to make the difference in the fight against climate change in the coming years, while, to date, among industrialised nations it is the EU



that has invested the most in the current regime. Therefore, it is arguably the EU that will lose out the most should a second commitment period fail to materialise.

To conclude, the following recommendations are offered to EU policy makers in order to tackle the above-mentioned issues.

## Recommendations

1. **Comprehensive vision.** EU institutions should increase efforts to adopt a comprehensive understanding and vision of the evolution of the EU's competitive advantage and strategic endowment in the medium-long term (e.g. demographic trends, capacity to innovate and protect innovation, economic growth, effects of climate change), including those elements that are likely to affect the EU's economic and political influence in world affairs in the coming years. An inter-institutional working group could be established in order to develop such a comprehensive vision and link it up with the 'Europe 2020' strategy.
2. **Policy coordination and leveraging.** The EU should increase its efforts to reconcile climate change, energy and trade policies, both at domestic level (e.g. through inter-service consultations) and at international level. A comprehensive solution is more likely to materialise if all the relevant variables are considered during the negotiations. More coherence is also needed between EU institutions and EU Member States in the fields of energy, the environment, trade and climate change. The EU should not refrain from using its weight in the trade regime to further its agenda on other policy areas to increase its leverage.
3. **The EU's institutional competitive advantage.** The EU's role in the creation of the climate change regime is an important competitive advantage and must be used as the foundation on which to build its global action in the twenty-first century. Instead of setting up brand new frameworks, it is proposed here that the EU try building on existing ones (e.g. the Kyoto Protocol, the Energy Charter Treaty – ECT), and strengthen their level of legalisation to better serve its interests.

4. **EU collective representation.** The Copenhagen Summit has shown that today it is essential for Europe to be able to speak with one voice; however this no longer gives the Union sufficient leverage to shape international affairs. In order to be able to influence international affairs, it is suggested that EU Member States use their voting rights (which are being progressively reduced) more effectively within international organisations, and opt more decisively for collective representation through the EU in an increasing number of areas so to ensure that their interests are accounted for in the set-up of the future institutions and regimes.
5. **Coalition building.** The EU must reinforce its capability to build international coalitions. As the dynamics that have led to the entry into force of the Kyoto Protocol have demonstrated, the EU should look increasingly towards emerging powers and avoid being constrained by the reticence of other industrialised countries. EU policy makers should drop the idea that the EU cannot back any given negotiating position unless the other developed countries do the same. This would make the EU a follower rather than a leader. Should a post-Kyoto regime come into being, the other developed countries will be compelled to follow anyway at a later stage, given the economic and diplomatic costs of being excluded from the opportunities provided by the new climate change regime. The climate change negotiations constitute for the EU an opportunity to strengthen its engagement with emerging economies while, at the same time, maintaining its competitive advantage *vis-à-vis* other developed nations. This was demonstrated in Durban when the EU and the BASIC countries (represented by India) struck a deal that made it possible to break the negotiation deadlock.
6. **Avoid seeking to negotiate non-negotiable issues.** In order to increase its negotiation capability it is suggested that the EU should not formally focus on the discussion of the principle of Common but Differentiated Responsibility, but rather aim at reducing its actual impact in the post-Kyoto regime. Openly discussing reframing the CBDR principle is a non-starter due to the intrinsic value that such a principle has for China and the developing world. At the same time, the relevance of such a principle is also increasingly being called into question by the once-united front of developing countries given the rapid industrialisation of the BASIC countries.

7. **EU strategic interest and the ‘global good’.** The EU should highlight more strongly the ‘public’ nature of the benefits of its efforts to tackle climate change. This should also allow it to define more clearly what constitutes its own strategic interest and to define strategies to protect it in the long term. EU policy in the field of climate change, in fact, may affect trade and diplomatic relations with third countries.
8. **A joint EU-China vision for the future.** The ‘EU-China Strategic Partnership on Climate Change’ needs upgrading. This could be done by establishing a high-level dialogue to discuss a joint vision for global governance in the area of energy and climate change with the objective of producing a Memorandum of Understanding and/or a common position ahead of the various negotiations.



# Annex

## Abbreviations

ASEAN	Association of Southeast Asian Nations
ASEM	Asia-Europe Meeting
BASIC	Brazil, South Africa, India, China
BCA	Border Carbon Adjustment
CBDR	Common but Differentiated Responsibility
CCP	Chinese Communist Party
CDM	Clean Development Mechanism
CERs	Certified Emission Reductions
COP	Conference of the Parties
CSLF	Carbon Sequestration Leadership Forum
DSB	Dispute Settlement Body (WTO)
EAS	East Asian Summit
EES	European Security Strategy
ETS	Emissions Trading Scheme
GATT	General Agreement of Tariffs and Trade
GDP	Gross Domestic Product
GHG	Greenhouse Gases
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
IRENA	International Renewable Energy Agency
KP	Kyoto Protocol
MEF	Major Economies Forum on Climate Change
MES	Market Economy Status
MS	Member States (EU)
MRV	Monitoring Reporting and Verification measures
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Co-operation in Europe
PCA	Partnership and Cooperation Agreement
PRC	People's Republic of China
UNFCCC	United Nation Framework Conference on Climate Change
UNSC	United Nation Security Council
WTO	World Trade Organisation



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