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The Evolution of the Climate Change Regime: Beyond a North-South Divide?

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ABSTRACT

This research primarily analyses relevant climate bargaining dynamics that have been informed by a North-South impasse. This working paper argues that the first stage of negotiations for a climate convention indeed witnessed a North-South divide which became institutionalized in the Framework Convention on Climate Change. However, in subsequent negotiation rounds the key loci of bargaining struggles was centered between developed countries, in which relevant North-South cooperation dynamics were also present. Finally, this paper assesses the unfinished post-Kyoto bargaining process in which two trends are already being observed: both the emergence of a new geopolitics between the United States and major developing countries, and a fragmentation process within the South, in which the Copenhagen Accord itself has begun to institutionalize such fragmentation.

Keywords: North-South divide, Climate change negotiations, International regime.

RESUM

Aquesta recerca se centra en les grans dinàmiques de les negociacions sobre el canvi climàtic, caracteritzades per un punt mort Nord-Sud. El *working paper* sosté que la primera fase de les negociacions va ser l'escenari d'una divisió Nord-Sud que s'institucionalitzà en la Convenció Marc sobre el Canvi Climàtic. Tanmateix, en rondes posteriors de negociació, els principals antagonismes passaren a tenir el seu centre entre els països desenvolupats, amb una presència de dinàmiques de cooperació Nord-Sud. Finalment, aquest article avalua el procés inacabat post-Kyoto, caracteritzat per dues tendències que ja s'han posat de manifest: d'una banda, el sorgiment d'una nova geopolítica entre els Estats Units i els principals països en vies de desenvolupament i, de l'altra, entre els països del Sud, un procés de fragmentació que el mateix Acord de Copenhague ha començat a institucionalitzar.

Paraules clau: divisió Nord-Sud, negociacions sobre el canvi climàtic, règim internacional

RESUMEN

Esta investigación analiza las dinámicas de negociación del cambio climático que han sido enmarcadas dentro de un *impasse* Norte-Sur. El texto argumenta que la primera etapa de las negociaciones por una convención del clima presencié una división Norte-Sur, la cual fue institucionalizada en la Convención Marco de Cambio Climático. Sin embargo, en subsiguientes rondas de negociación el centro de tensiones se encontró entre países desarrollados, donde también tuvieron presencia dinámicas de cooperación Norte-Sur. Finalmente, este texto hace una valoración del proceso incompleto de negociación post-Kioto, en el cual ya se puede observar tanto el surgimiento de una nueva realidad geopolítica entre los Estados Unidos y los mayores países en vías de desarrollo, como entre los países del Sur. El Acuerdo de Copenhague institucionaliza dicha fragmentación.

Palabras clave: división Norte-Sur, negociaciones de cambio climático, regímenes internacionales.

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ACRONYMS

AGBM	Ad hoc Group on the Berlin Mandate
AOSIS	Association of Small Island States
BAPA	Buenos Aires Plan of Action
CDM	Clean Development Mechanism
CO ₂	Carbon Dioxide
COP	Conference of the Parties
ET	Emissions Trading System
FCCC	Framework Convention on Climate Change
G-77	The Group of 77
GATT	General Agreement on Tariffs and Trade
GCC	The Global Climate Coalition
GEF	Global Environment Facility
GHG	Greenhouse Gas
INC	Intergovernmental Negotiating Committee
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
JUSCANNZ	Japan, the United States, Switzerland, Australia, Norway, New Zealand
NAFTA	North American Free Trade Agreement
NIEO	New International Economic Order
OECD	Organization for Economic Co-Operation and Development
OPEC	Organization of the Petroleum Exporting Countries
QELRO	Quantified Emission Limitation and Reduction Objective
UNCED	United Nations Conference on Environment and Development
UNEP	United Nations Environment Programme
WMO	World Meteorological Organization
WTO	World Trade Organization

1. INTRODUCTION

During the Copenhagen Climate Conference and its aftermath, it has become clear that the defining negotiation dynamics were between major developing countries -led by China- in confrontation with the United States. This is new territory in climate politics and beyond, possibly signaling the long awaited debut of a new form of geopolitics (Athanasiou, 2010). However, two seemingly isolated announcements that did not attract much attention from the global media and climate experts may actually provide revealing clues as to the extent and depth of the changes occurring in the climate regime.

In his speech during the high-level segment in Copenhagen, Brazilian President Lula da Silva made a proposal to provide financial assistance to vulnerable developing countries through contributions to the climate fund and recommended other major developing economies to follow suit (Drexhage and Murphy, 2009). One month later, The Maldives, responding to a *voluntary* provision of the legally unbinding Copenhagen Accord, committed itself to carrying out *mitigation* actions to become the first carbon neutral country by 2020¹. By July 2010, other developing nations with quite different development profiles like Costa Rica and Ethiopia, also publicly committed to becoming carbon neutral by the same year.

In the context of the many dramas that unfolded at the Copenhagen conference, these seem to be rather irrelevant announcements; nevertheless, a closer look reveals a richer picture. Since the first negotiations for a climate change framework convention in the early 1990s, the South has united under two unalterable key bargaining positions: developing countries will not accept responsibility for climate mitigation – and thus, will not commit to Greenhouse gases emissions reductions-, and developed countries are responsible for financing the adaptation of the most vulnerable countries. In fact, the South succeeded in institutionalizing these provisions under the Framework Convention on Climate

1. See: <http://unfccc.int/home/items/5265.php> [Accessed on 25/04/ 2010]

Change and even further in the Kyoto Protocol. Taking this into account, the Brazilian and The Maldivian announcements signal that significant changes have occurred to the point where the previous and most fiercely defended Southern consensus has been given up by some key countries almost unnoticeably. It is true that relatively few developing countries have changed their traditional stances, but enough have done so to weaken what used to be the common position of all developing nations.

Accordingly, the aim of this working paper is to provide insight into bargaining dynamics between and within developed and developing countries, paying special attention to the so-called North-South divide in the process of the climate change regime formation and its subsequent evolution from the earliest negotiations of the late 1980s up to the second Bonn Talks in August 2010.

Due to the enormous complexity of the subject matter, this research does not attempt to be comprehensive or conclusive; rather, it is presented as a starting point for deeper revisions of the historic and current interactions of developed and developing nations in the climate regime.

For the purposes of this research, a rather restricted definition of regime is employed. Gareth Porter and Janet Brown (1996, 23) understand regimes to be systems of norms and rules specified through a multilateral agreement between relevant States with the purpose of regulating domestic actions in relation to an issue or group of related issues. Due to the state-centrism of this definition, this paper will incorporate the relevant interactions of non-state actors into its interpretation of regime. Nevertheless, the ultimate focus of scrutiny will remain on nation-states' negotiation dynamics in international forums.

As its title suggests, this research pays special attention to North-South (within and between) configurations and struggles in relation to official climate bargaining processes. There is an extensive literature that explores the centrality of a divide between developed and developing nations in the evolution and current dynamics of the climate change regime (Beyerlin, 2007; Huq, 2003; Müller, 2002; Najam, 2004; Prum, 2007). In this sense, this study aims to complement that literature by signaling relevant climate bargaining dynamics that are informed, but transcends and partly redefines the understanding of the North-South climate impasse.

This research begins with an exploration of key conceptual and historical aspects of the North-South divide, and then is organized chronologically in three other sections which follow the main negotiation stages that the climate regime has experienced. The first section covers the period from the scientific debates of the late 1970s until the entering into force of the Framework Convention on Climate Change in March 1994, when the institutionalization of the climate regime arguably became definitive. The next section includes the Kyoto negotiation process that began with the Berlin Mandate bargaining in 1995 and the Marrakesh Accords negotiation process, which ended when the provisions of the Accords were approved in the first Meeting of the Parties for the Kyoto Protocol in Montreal 2005. The complexity of each of these two negotiation rounds could have justified separate chapters; however, they are analyzed jointly because both are subsequent phases of the same process: namely obtaining agreement on the operationalization of the Convention. The final section covers from the same COP-11/MOP-1 in Montreal (2005), where negotiations for a post-2012 climate regime began, until COP-15/MOP-5 in Copenhagen, and its immediate aftermath up to the second Bonn Talks in August 2010. The development of this section is obviously constrained by the fact it focuses on a process that is still unfolding. Nonetheless, its analysis is enhanced by contextualizing the post-Kyoto bargaining process in reference to the evolution and changes the regime had undergone from previous negotiation phases.

2. CONCEPTUAL AND HISTORICAL CONTEXT OF THE NORTH-SOUTH DIVIDE

In order to provide a proper account of the uniqueness of the bargaining dynamics of developed and developing countries during the evolution of the climate regime, this chapter briefly outlines a conceptual

framework and partakes in a historical review of the North-South divide. This section does not attempt to present a comprehensive exposition of such, but rather, the most relevant aspects of the particular aims of present research are explored.

2.1 NORTH-SOUTH DIVIDE CONCEPTUAL CLUES

First of all, to categorize the socio-economic relationship between industrialized and developing countries in mutually exclusive terms of a North-South divide is an oversimplification to say the least. However, a general geographical distribution in terms of economic development is certainly observed. Developing countries, also referred as the “South”, are primarily located in sub-tropical or tropical ecosystems. Developed countries, or the “North,” occupy mainly temperate and arctic climates and ecosystems. Exceptions, for example, include Australia and the southernmost parts of the United States in the North, and extensive arid regions in the South (Karlsson, 2002, 7). Both categories encompass countries with vastly different levels of socio-economic development. The World Bank, for instance, uses four categories in its classification of economies by income.

Despite the shortcomings of oversimplification, the North-South divide has been extensively used as an analytical device for making accounts of the fluidly complex negotiation dynamics in the international arena. In fact, the environmental field is not necessarily where this divide has been most widely utilised. North-South divide approaches abound in studies of trade relations, first in the GATT process and recently within the WTO negotiations (Parks and Timmons, 2008, 625). Also structural and neo-Gramscian scholars, with an ontological stress on class and core-periphery relations, embrace the assumption that certain manifestations of a North-South divide should be the starting point for understanding the political economy dimension of many global issues.

With its reverberation from the polarizations of the cold war era, the North-South divide concept has been deemed outdated by some authors; arguing that, for example, the unity of the South was a function

of Cold War politics (Oxley, 1991). This conceptual dimension is also problematic in other terms, as it frequently presents the misleading assumption that global environmental negotiations are established between two homogenous blocks. Such a generalization sheds shadow rather than light when assessing the diverging positions within both blocks. For example, the contrasting environmental stances between the United States and the European Union; or within the South, with the very different agendas of oil-producing countries against those of small island states or the least developed countries.

With all its limitations, in general terms the North-South divide has proved to be a valid -albeit very limited- analytical device, and one that is strongly supported by empirical evidence. The average per capita income of the 31 OECD countries is about sixty times greater than that of the roughly fifty countries classified by the World Bank as 'low income economies'. In addition, industrialized nations have actively fostered this divide in their trade and donor relationships with developing nations.

Moreover, from the side of most developing countries, the desire for unity in the face of an international order that they conceive of as placing them at a systemic disadvantage has, for the most part, outweighed the internal confrontation of differences, therefore placing them and their negotiation stances within the narrative of a North-South relationship (Najam, 2004, 225). Nevertheless, and as this research will explore in the last chapter, recent developments in the negotiations of the climate regime -and beyond- concerning the bargaining power of some emerging economies, makes exclusive North-South analytical approaches increasingly insufficient and problematic for comprehending negotiation dynamics in global environmental politics.

2.2 RECENT HISTORICAL ACCOUNT

During the 1950s many developing countries, mostly in Africa and Asia, were gaining political independence and loosening their colonial ties with European powers. These recently independent nations expected to enter a path of rapid social and economic development.

However, these ex-colonial and developing economies were highly dependent on raw materials and primary production, in which they increasingly faced structural disadvantages that contributed to a worsening of their terms of trade with industrialized nations. This process took place in the context of the convoluted political climate of the Cold War, during which it was not uncommon that many developing countries felt compelled to build political and economic alliances that were at times counter to their long-term interests (Vihma, 2010, 3).

To counterbalance these realities, a new solidarity block within the Third World was formed in 1964 during the United Nations Conference on Trade and Development (UNCTAD) and took the label “Group of 77 and China”. Over the years, the G-77 would remain the developing countries’ principal negotiating caucus for most global development and environmental issues, with its membership growing to accommodate over 130 developing country members. The G-77 was not intended to be and has not become a policymaking body as such; rather, it aggregates the range of views of its members and prepares common positions in international negotiations. The common denominator that has held this group of vastly diverse countries together is its self-definition based on a “narrative of exclusion” from world affairs (Vihma, 2010, 4). In this sense, this research paper will explore the hypothesis that some of the contemporary issues that challenge the unity of the South under the G-77 come from the fact that some of its most prominent members, such as China, India and Brazil, are increasingly assuming a central position in official discussions of world affairs. Hence, the narrative of exclusion of the South is becoming more ambiguous and inconsistent.

Continuing with the historical review, by the late 1960s, the international community began to enhance its awareness of the close interdependence between development and environmental protection. This change in states’ attitude is clearly reflected in two important documents of the early 1970s. First, the so-called Founex Report on Development and Environment of 1971, produced by a group of notable Southern intellectuals, emphasized the need to incorporate environmental concerns into an expanded understanding of development; and secondly, in the insistent references to sustainable development and

proactive environmental action made in the landmark declaration of the UN Conference on the Human Environment in 1972.

During the early stages of international environmental negotiations, it was already evident that a consensus would not emerge between developed and developing countries on the issue of global environmental protection. 'Late-developers' feared restrictions on their economic growth, emphasized the North's wasteful use of planetary resources, and advocated for a redistributive programme that would benefit them economically and hasten the transition towards industrialization. Developed countries for their part wanted Northern consumption off of the negotiating table, Southern population growth on the agenda, and the use of nonbinding language on issues of financial assistance and technology transfer. Neither negotiating bloc was willing to concede in this adversarial negotiating atmosphere (Haas and Keohane, 1993, 57).

Despite (or possibly due to) Southern resistance to this new environmental international agenda, in the post-Stockholm era the economic and social concerns of developing countries became predominant in interstate relations. By the mid-1970s, the North-South divide had intensified even further. In 1974 the developing states, organized in the Group of 77, succeeded in their efforts to make the UN General Assembly -dominated by developing nations- adopt the Declaration on the Establishment of a New International Economic Order (NIEO). This instrument, legally non-binding in nature, was inspired by the idea of overcoming injustices in the then existing international law system (Beyerlin, 2006, 259).

The adoption of the NIEO could have been seen as an increase in the negotiation leverage of Third World states over their northern counterparts. However, their optimism was to dissipate in the 1980s, during the years of Thatcherism, Reaganism and neoliberalism, in a decade that coincided with a dramatic increase in the poor countries' debt burden. During this period, late developers also became strident in their criticism of Northern environmentalism, which they perceived to be 'pulling up the development ladder' (Parks and Roberts, 2008, 623). In effect, by the end of the 1980s, and as Mahbub ul Haq (1980) had expressed a decade earlier, "North-South negotiations deteriorated to a ritual and a skilful exercise in non-dialogue".

By the time climate talks were germinating in the late 80s, international negotiation processes entered a new phase of less divisive politics with the unexpected end of the Cold War. This brought with it a new momentum in global negotiations on key environmental issues, broadly opening up the prospects for developed and developing countries to engage in a revitalized dialogue.

3. THE CONSTRUCTION OF A DIVIDED REGIME

This chapter presents the early bargaining process that moved from establishing climate change as an issue with global priority to the institutionalization of the regime through the agreement of the Framework Convention on Climate Change. Following a chronological order, this section explores the negotiation dynamics between developed and developing countries and assesses the relevancy of the North-South lens to understand the outcomes observed at this stage of regime development.

3.1 ESTABLISHING CLIMATE CHANGE AS A GLOBAL ISSUE

In contrast with other environmental-related regimes like those formed on acid rain, hazardous waste trade, and the protection of the Antarctic, the climate change regime was not pioneered by specific nation-states. Instead, the leading role was assumed by two international organizations within the United Nations system: the UN Environment Program (UNEP) and the World Meteorological Organization (WMO). During the late 1970s, these two institutions organized the key events and promoted the publications that facilitated the definition of global warming as being an international issue and political priority (Sagar and Kandlikar, 1997).

The original premise that climate variations in the atmosphere can be produced by anthropogenic causes has been scientifically discussed

since the end of the XIX Century, when the Swedish chemist Svante Arrhenius (1896) hypothesized that anthropogenic carbon dioxide in the atmosphere would increase the surface temperature through the greenhouse effect. However, the formal process of defining this phenomenon can be traced more recently to the First World Climate Conference held in Geneva in February 1979, primarily organized by the WMO.

The process of establishing a definition for climate change accelerated by the mid 1980s due to the availability of more accurate and reliable research. In this sense, and with the purpose of providing an institutional scientific global framework for the climate change issue, the WMO and UNEP created the Intergovernmental Panel on Climate Change (IPCC) in 1988 giving it the mandate to “assess the magnitude and timing of climate changes, estimate their impacts and present strategies for how to respond” (IPCC, 2007a).

As an immediate response, a powerful industry coalition of British and American multinationals against climate change action “The Global Climate Coalition” (GCC) was set in motion in 1989, only a few months after the creation of the IPCC (Newell and Levy, 2005, 112). On the other hand, and assuming a political stance more reflective of the interests of developing countries, the most relevant network of NGOs working on climate change, “The Climate Action Network” (CAN), was also founded in 1989.

With states and non-state actors already active in climate regime struggles, the UN General Assembly definitively legitimized climate change as a priority issue in international politics by adopting Resolution 45/53, which recognized that “climate change is a common concern of mankind”, and determined that “necessary and timely action should be taken to deal with climate change within a global framework”.

3.2 THE BARGAINING ON THE CREATION OF THE CLIMATE REGIME

A North-South negotiation framework was not clearly in place at the initial climate dialogues which took place at the end of the 1980s. However, the successful negotiation process of the Montreal Protocol on Sub-

stances that Deplete the Ozone Layer² provided encouraging perspectives for a constructive negotiation process on climate change between developed and developing nations (Porter and Brown, 1996, 49).

At this early stage, developing countries did not explicitly block the proposal of a climate regime, nor did they assume a leading position. The global warming issue, the same as the ozone layer, was seen to be a “Northern” problem for which they had no causal responsibility. Their agenda reasonably prioritized poverty and development issues like sanitation, urban pollution and desertification (Najam, 2002, 48). However, once the climate epistemic community began extensively reporting on the potentially catastrophic impacts of climate change in the South, some developing countries firmly took sides and assumed regime leadership. In this sense, marked divisions erupted between the cartel of The Organization of Petroleum Exporting Countries (OPEC), whose economies were completely dependent on oil trade, and with the Association of Small Island States (AOSIS), whose very geographical survival was at risk, and which consequently demanded ambitious emissions reductions (Prum, 2007, 225). Unsurprisingly, the AOSIS was the first coalition to introduce a concrete proposal for legally binding emissions reductions, and eventually their paradoxical influence³ reached the point of becoming the official position of almost all developing countries when the G-77/China assumed a great part of their proposal as its official stance. In the end, the desire for unity in order to avoid a detrimental negotiation outcome outweighed internal diversity and differences, allowing for a quite unified Southern bargaining position at this early negotiation stage (Najam, 2004, 227).

From the side of the North, divisions manifested with the major emission emitters of the United States, Japan and the Soviet Union, rejecting the idea of explicit targets and timetables. This contrasted with the position of several European countries that had strong domestic environmental movements, particularly Denmark, The Netherlands and Germany, which recognized global warming as being

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2. The Montreal Protocol was signed in 1987 and entered into force in 1989, coinciding with the decision of the UN General Assembly to start negotiations for a climate convention.
 3. AOSIS members have, in average, the smallest population and economies of the world.

a real threat and consequently acknowledged the need for a legally binding international agreement (Grubb, 1995).

The political bargaining began visibly at a conference in Toronto in 1988 “The Changing Atmosphere: Implications for Global Security”, which was attended by government officials, scientists, and representatives of industry and environmental NGOs from forty-six countries, concluding with a proposal for a reduction in carbon dioxide emissions⁴ (Houghton and Woodwell, 1989, 43).

After several other conferences and changing negotiating positions from different actors, the regime bargaining finally entered the realm of an official framework when at the end of 1990, the UN General Assembly established by Resolution 45/212 that the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC) would be a single intergovernmental negotiating process. For the next fifteen months, states gathered in five different sessions in which they intensively discussed the shape of the climate regime.

During the first INC session in Washington in February 1991, the discussions reflected strong points of contention that can be conceptualized in terms of a North-South struggle. This divide became particularly visible when just days before the second INC session China organized a widely attended “Ministerial Conference of Developing Countries on Environment and Development”. The outcome was the “Beijing Declaration”, which more than explicitly framed the climate regime negotiations process in North-South terms by asserting that:

“The FCCC currently being negotiated should clearly recognize that it is developed countries which are mainly responsible for excessive emissions of greenhouse gases, historically and currently... Developing countries must be provided with full scientific, technical and financial cooperation to cope with the adverse impacts of climate change.” (in Prum, 2007, 230).

4. Reduce by 20 percent of 1988 levels by the year 2005, and proposed the establishment of a world atmosphere fund financed in part by a tax on fossil fuel combustion.

In the subsequent INC session held in Geneva in June 1991, the Beijing Declaration's main component was incorporated, namely the limitation and reduction of CO₂ emissions of Northern countries. This factor was included despite resistance and counterproposals from Northern parties; with for example, the UK and Japan proposing a “pledge and review” process which would allow countries to set their own targets and include not only industrialized but also rapidly industrializing nations. An idea fiercely rejected by China and India (Grubb, 1995).

After another three INC sessions, the Framework Convention on Climate Change (FCCC) was finally signed by 154 countries at the Earth Summit in Rio de Janeiro in June 1992, declaring its goal to be the restoration of greenhouse emissions in 2000 to ‘earlier levels’. Therefore, the FCCC did not commit any government to hold emissions to a specific level, despite the active role of the European negotiators that tried unsuccessfully to persuade the US to accept a binding commitment (Porter and Brown, 1996, 57). Ultimately, by December 1993, enough countries had ratified the Climate Convention to make it operational, coming into force in March 1994.

3.3 KEY EARLY REGIME OUTCOME: INSTITUTIONALIZED DIVISION

In terms of framing the future negotiation dynamics, possibly the most important outcome of this first early bargaining process was that the Climate Convention established a - legally non-binding- commitment exclusively for industrialized countries to stabilize their Greenhouse gases emissions at 1990 levels by 2000, therefore formalizing a North-South divide by separating signatory countries explicitly in two major categories. Developed countries were labelled Annex I and Annex II Parties⁵,

5. Annex II parties only included the OECD members by 1992: Austria, Australia, Belgium, Canada, Denmark, the European Economic Community (as an independent member entity), Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the UK and the US. Annex I parties, were Annex II plus the CEITs: Belarus, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Russian Federation and Ukraine.

including OECD members and countries with economies in transition (CEITs), which were expected to “adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases” (FCCC/INFORMAL/84). Conversely, the rest of developing countries were amalgamated as Non-Annex countries, with no financial and only voluntary responsive commitments.

This institutional North-South division was normatively sustained in the “Principles” section of the Convention text in which it was agreed that:

“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of *equity* and in accordance with their *common but differentiated responsibilities* and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof”. (Ibid)

The principle of *common but differentiated responsibilities* would play a unique role in the climate regime, framing asymmetric substantive environmental obligations at all levels, with no obligations from the South and allowing for differentiated commitments within the North. It can even be argued that components of this concept one-sidedly have benefited developing countries and have led to what may be understood as a “positive” discrimination of the Third World (Beylerlin, 2006, 278).

This formal and normative division between developed and developing countries, however, was far from straightforward since the Convention further differentiated responsibilities *within* developed countries, namely between Annex I and Annex II Parties in which: “a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy”. In this sense, the text of the Convention is very explicit in assigning financial commitments *only* to Annex II Parties. Therefore, the so called North-South divide was established alongside subdivisions within the developed countries bloc, produc-

ing a less conflict-ridden but not irrelevant North-North divide in which the principle of common but differenced responsibilities was manifestly implemented.

4. FIGHTING FOR THE DETAILS: THE KYOTO PROTOCOL AND THE MARRAKESH ACCORDS

This chapter reviews two independent but connected major negotiation processes: one that culminated in the Kyoto Protocol and the other which focused on its operational provisions crystallized in the political agreement of the Marrakesh Accords. The analysis of the developments of these two multifaceted processes is contrasted with the North-South divide logic that pervaded the previous stage of negotiations where the climate regime was institutionalized.

4.1 MOVING BEYOND THE CONVENTION

After the UNFCCC became operational in early 1994, the Intergovernmental Negotiation Committee (INC) had six more sessions before COP-1 in 1995. The original priorities of the INC were to define a “financial mechanism”, and to decide on the controversial “flexible mechanisms”, by which developed countries would push for cost-effective solutions to comply with their potential climate commitments, even outside their national frontiers. At the centre of contention was the issue of the developed countries’ struggle to define to what extent they would assume the costs of both mitigation and adaptive capacity in the Southern countries and economies in transition (Kiliparti, 2002, 58).

The Southern camp suffered some moments of friction when the AOSIS independently submitted a concrete proposal for a “protocol” demanding “new” commitments for developed countries (A/AC.237/

Misc.36) during the 10th INC session in Geneva in August 1994 ⁶. China, fearing that a new commitment would require a more active Chinese role, reacted at the INC-11 in New York in February 1995, by vigorously attacking the findings of greater certainty in the anthropogenic causality of climate change included in the IPCC Second Assessment published in early 1995 (Carraro, 2000, 62). Eventually, the G-77 and China accepted the AOSIS proposal as their own. However, for developed countries this was just the beginning of a long and painful North-North struggle.

A significant feature of this stage of the regime was the veto coalition interaction dynamics. The first and most prominent of such coalitions, the US-led JUSSCANNZ⁷, was ironically formed in part by countries which previously held progressive and leadership stances in the building of the Climate Convention like Norway, New Zealand and Australia (Porter and Brown, 1996, 45). The composition of this coalition showed the extent to which a shift in the domestic balance of political interests can affect the international level of negotiations. More fundamentally, this veto coalition building process also exemplified the perceived great economic implications that responding to the climate issue required.

Ultimately, COP-1 in Berlin in April 1995 assessed that the commitments of the Convention for developed countries (Annex I Parties) were not adequate and responding to considerable pressure from the South, with the strong support of key European countries, assured that *no new commitment would be introduced to developing countries*. This partial North-South cooperation move reflected a dramatic shift in the evolution of the climate regime, in which early negotiations followed a more overarching North-South divide logic. The “Berlin Mandate” initiated a new process and a new “Ad hoc Group on the Berlin Mandate” (AGBM) to negotiate a “protocol or another legal instrument” with binding “quantified emission limitation and reduction objectives” (QELROs) for reducing developed countries emissions (FCCC/CP/1995/7).

6. To reduce at least 20% of CO₂ to 1990 levels by 2005.

7. An acronym for Japan, the US, Switzerland, Canada, Australia, Norway and New Zealand.

4.2 THE NORTH-NORTH STRUGGLE FOR A PROTOCOL

Only at AGBM-6 in March 1997 were concrete binding proposals placed on the negotiation table when the EU, Japan, the G-77/China and JUSSCANNZ presented different alternatives⁸. In this moment the North-North confrontation between the EU and JUSCANNZ manifested itself more fiercely. The intense difference between these two Northern blocs can be partly explained by the unique capacity of the EU for extensively distributing the economic burdens between all its member states. The EU effectively implemented the principle of common but differentiated responsibilities with an internal burden-sharing accord in which energy inefficient countries like Greece, Spain and Portugal were allowed to become “uncommitted” by increasing their emissions from 15% up to 27% on a 1990 base, while energy efficient countries like Germany and Denmark “overcommitted” with -21% (FCCC/CP/2002/2).

On its part, JUSSCANNZZ protested to what it labelled the “EU bubble”, since no other grouping of Northern countries had the opportunity to distribute commitments in that way. The other issue that these Northern coalitions confronted was that environmental groups and NGOs had considerable political influence in key EU countries like Germany, The Netherlands and France (Porter and Brown, 1996, 71). This contrasted with the greater political weight that fossil fuel based industries had in most of the JUSSCANNZ countries, and emblematically in the United States where the Global Climate Coalition ran a very effective anti-Kyoto campaign (Newell and Levy, 2005, 117). In the end, and as a reflection of its overwhelming veto power, the JUSSCANNZ emission reduction proposal prevailed over all the others.

Ultimately, COP-3 adopted the Kyoto Protocol in December 1997, imposing on developed countries a legally binding reduction of their overall emissions of six greenhouse gases⁹ by an average of 5.2% below

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8. The EU proposed a 15% cut by the year 2010 of a basket combining three gases (carbon dioxide, methane, and nitrous oxide). Japan proposed a cut of 5% until 2010 of all three gases combined. From its side, the G-77/China called for a gas-by-gas reduction of 7.5% by 2005, 15% by 2010 and 35% by 2020 for the same three gases (ENB Vol. 12 No. 66).
 9. More precisely: CO₂, CH₄, N₂O, HFCs, PFCs and SF₆.

1990 levels between the 2008-2012 period. The specific targets varied from country to country. Nevertheless, countries like Russia, Ukraine and New Zealand managed to avoid any commitment on emission reductions; while Australia, Iceland and Norway were even allowed to increase their emissions. The fact that the regime was just barely able to commit to a modest target of global emission reductions, and one that was very far from what the scientific consensus was demanding, illustrated the enormous gap between science requirements and the incapacity of the international political system to meet them.

The Protocol also established three flexible mechanisms: an *Emissions Trading System* (ET), allowing countries that have emission units to spare -emissions permitted but not “used”- to sell this excess capacity to countries over their targets, effectively creating the “carbon market”; *Joint Implementation* (JI) of emissions-reduction projects between Annex B Parties (developed countries and countries with economies in transition including Russia); and the *Clean Development Mechanism* (CDM), which contemplated emissions reduction projects to be implemented in developing countries (FCCC/CP/1997/7/Add.1). The CDM was labelled by some seasoned negotiators as “the Kyoto surprise”, because it represented an unexpected relaxation of the UNFCCC institutional North-South divide (Prum, 2007, 237).

Although the Kyoto negotiation outcomes were mainly defined within Northern bloc struggles, it would be misleading to assert that relevant North-South contentions were absent. Actually, the United States’ position, which epitomized the North-South divide logic negotiation stance, was embodied in the US Senate Byrd-Hagel Resolution that passed in July 1997 by an outstanding unanimity of 95-0, in which it was unmistakably expressed that the US would not honour their Kyoto commitments unless key developing nations ‘meaningfully participated’ in the climate mitigation efforts¹⁰. This meant that

10. “The United States should not be a signatory to any protocol...--(A) unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period...” (105Congress/1rst Session/S.RES.98)

the protocol of the FCCC was defined between Northern parties, but a great deal of its effectiveness was already compromised in a North-South unresolved conflict.

4.3 THE SUDDEN DEATH AND REVIVAL OF CLIMATE NEGOTIATIONS

After the Kyoto Protocol was decided, a number of contentious issues were left for subsequent negotiation rounds under the “Buenos Aires Plan of Action” (BAPA) agreed upon at COP-4 in 1998. In these negotiations, the parties remained deadlocked on the difficult questions of the CDM, sinks¹¹, the conceptual issue of supplementarity¹², and compliance. The bottom line was how to make the Kyoto implementation as cost-effective as possible without compromising the environmental integrity of the regime (Dessai and Schipper, 2003, 151).

The arguable failure of COP-15 in Copenhagen has a precedent, since possibly the most visible regime crisis occurred at COP-6 in The Hague in November 2000, which ended up completely deadlocked without a single agreement being reached and with some commentators going so far as to forecast the end of the Protocol and “a descent into environmental anarchy” (ENB Vol.12 No.176).

Negotiations resumed at the Bonn Meeting (COP-6 *bis*) in July 2001. With the new Bush Administration’s definitive refusal for the US to ratify the Kyoto Protocol, the regime dynamics shifted considerably. Ironically, exclusion of the US from the process increased the commitment of the remaining parties to reach an agreement, allowing some negotiators to accept provisions which they had opposed when the US was perceived of as being the principal beneficiary (Prum, 2007, 239). Remarkably, this stage of negotiations also witnessed the continuity of a *North-South cooperation dynamic* between the Euro-

11. Technically known as LULUCF (Land Use, Land-Use Change and Forestry), refers to the issue of to what extent insert this provision as valid removal of anthropogenic GHG gases.

12. Currently referred as ‘additionality’.

pean Union and the G-77/China, which coincided in the position of promoting strong and ambitious implementation mechanisms (ENB Vol.12 No. 163). Another interesting North-South cooperation process materialized with the formation of a coalition between the Republic of Korea, Switzerland and Mexico clustered in the “Environmental Integrity Group” (EIG); exemplifying that the climate regime negotiation process at this phase was far from enclosed in a simplistic one-dimensional North-South struggle.

To the surprise of many observers, the Bonn negotiations were a relatively strong success, particularly taking into account the disastrous previous negotiation round in The Hague. Even more unexpected was that the agreement seemed to satisfy minimum expectations of the majority of both developed and developing countries regarding the thorny issues of sinks, finance, implementation mechanisms and a compliance system (Najam, Huq and Sokona, 2003, 14). One representative of a blocking state, Peter Hodgson, New Zealand’s Energy Minister, said referring to the Bonn Agreements: “we have delivered probably the most comprehensive and difficult agreement in history” (ENB Vol.12 No.176). Though most likely to be an exaggeration, this captures the sense of an extremely -and increasingly- complex bargaining process where the odds were against success.

Nevertheless, many regressive concessions were made by the EU and the G-77/China to seal that deal, in a bargaining dynamic where the Russian Federation- in the absence of the US- assumed the lead of the evolved veto coalition the “Umbrella Group”¹³, in which Australia, Canada and Japan also played very effective veto roles (ENB Vol.12 No. 176). This coalition retained such considerable leverage, partially because the Kyoto Protocol could only enter into force when ratified by at least 55 Parties accounting for 55% of 1990 emissions, making the consent of at least Japan and Russia imperative.

13. A veto coalition that evolved from JUSSCANNZ, incorporating Ukraine, Iceland and the Russian Federation, and excluding Switzerland.

4.4 MAKING THE REGIME OPERATIONAL: THE MARRAKESH ACCORDS

The Marrakesh meeting (COP-7) in November 2001 became the extension of the relevant negotiation process reached at Bonn. Since the beginning the EU, which was *again* supported by the G-77/China, had been pressing for an ambitious deal. However, at the same time the EU needed to attract enough consensus to ratify the Kyoto Protocol. On the other hand the Umbrella Group continued to seek additional flexibility in the fulfilment of their emission commitments.

With a prevailing veto power, the Umbrella Group managed to diminish the position of the EU and the G-77/China, and succeeded in lowering the eligibility requirements for mechanisms, undermined the opportunities for public participation and transparency, minimized the requirements for providing information on sinks, and weakened the compliance system (ENB Vol.12 No. 189). Notwithstanding these painful compromises, satisfactory agreements for all parties involved were reached on the issue of flexible mechanisms and financing, with the creation of three climate funds, a provision that mainly benefited developing countries. Under the Convention, two new financial mechanisms were decided upon: the *Special Climate Change Fund (SCCF)* to finance projects relating to adaptation, technology transfer, energy, forestry, economic diversification, etc.; and the *Least Developed Country Fund (LDCF)* which up until 2010 has mainly been used to finance National Adaptation Program of Actions (NAPAs). Also, an *Adaptation Fund* was nominally created; however, it would have to wait until the next phase of negotiations to be ultimately approved.

Outside the formal negotiation battles within the UN house, some positions of key non-state actors witnessed important changes in the climate regime-building process. This was the case of many business groups where many of the formerly most vocal antagonists considerably tuned down their blocking stances - notably oil multinationals in which even the quintessence of industry climate opposition, Exxon-Mobil, softened its public hostility towards progressive climate policy.

This significant shift was encouraged by the creation of market opportunities contained in the “flexible mechanisms” of the Marrakesh Accords, combined with the increase in scientific climate change certainty and public opinion support that the IPCC Third Assessment Report produced with its release in 2001. More tellingly, their most significant anti-climate network, the Global Climate Coalition, was deactivated in 2002.

Finally, with the US explicitly out of the negotiation process and the most sensitive operational issues having been defined, after Marrakesh the bargaining continued in the next COPs in Delhi (2002), Milan (2003) and Buenos Aires (2004) up to the ratification of the Kyoto Protocol. By May 2002, the EU and its member states made their ratification effective. Nevertheless, two years more were needed in order to satisfy the 55% of emissions clause: after a painstaking negotiation process and under very favourable terms, The Russian Federation finally ratified in November 2004, formally entering into the Kyoto Protocol in February 2005.

5. THE POST-KYOTO UNFINISHED STRUGGLE: OPENING PANDORA'S BOX?

This section presents the negotiation process, institutional outcomes and the observable regime evolution process in which the future of the climate regime is defined beyond the Kyoto commitment period that will end in 2012. This analysis is unavoidably limited due to the contentious negotiations that are still unfolding, and the disagreement on the nature and impact of the negotiations in Copenhagen. However, approaching recent events with the perspective of previous negotiation phases will prove to make better sense of seemingly unconnected factors, and to identify relevant trends and developments.

5.1 WARMING UP THE POST-KYOTO DISCUSSIONS

Formal discussions about the post-Kyoto climate regime began practically at the same time as the Kyoto Protocol entered into force. Such first deliberations occurred at the Meeting of the Parties to the Kyoto Protocol (COP/MOP-1) in Montreal in 2005, where an informal “dialogue” was launched on long-term cooperative action for all UNFCCC Parties. Discussions began regarding the reduction of emissions resulting from deforestation in developing countries (ENB Vol.12 No.291). In the subsequent COP-12 in Nairobi (November 2006), deliberations of the future of the regime became official with the launching of the *Ad Hoc Working Group on Annex I future commitments under the Kyoto Protocol (AWG-KP)*, focusing on three “building blocks”: specific emission reduction commitments, implementation mechanisms and the role of land use, land-use change and forestry (LULUCF).

The issue of Adaptation of most vulnerable countries, particularly the Least Developed Countries (LDCs) and small island states represented in AOSIS, became the topic where progress was most visibly achieved, when in Nairobi the creation of an *Adaptation Fund (AF)* was finally approved. This fund was placed under the direction of the UNFCCC and not the Global Environmental Facility (GEF), which directed the other climate funds, thus signaling a change reflecting years of unified protests from the South regarding the inadequacy of GEF coordination of the other climate funds (Müller, 2007a). Politically, this meant that the AF was the first fund to be outside the direct sphere of influence of the United States, which did not ratify the Kyoto Protocol. The AF is also unique in the way its revenue is generated, namely through a two per cent levy on CDM projects. This was meant to depart from the traditional North-South donor logic, however, by June 2010 the fund had generated so few resources that it requested direct fund contributions from developed country Parties.

Another notable sign of evolution in the negotiation dynamics at this stage was the fact that the majority of business groups pressing diplomats to ensure that outcomes of negotiations were sufficiently robust to underpin long-term investments for the financial sustain-

ability of the market mechanisms recently activated by the climate regime, mainly the EU Emission Trading System and the CDM (ENB Vol. 12 No. 318). This was in stark contrast to the reactive stance of industry groups in the previous negotiations of the Kyoto Protocol.

5.2 A FRAGILE REASON FOR HOPE: THE BALI ROADMAP

COP/MOP-3 in Indonesia marked the culmination of a year of unprecedented high levels of political, media and public attention to climate change science and policy. The Bali Climate Change Conference in 2007 produced a two-year “roadmap” which provided a vision and negotiating tracks to purportedly advance on in the future of the climate regime. In its Bali Action Plan (BAP), the Bali Roadmap outlined five key macro themes, each with its own “building block structure”. These themes were: *a) A shared vision* for long-term cooperative action, including a long-term global goal for emission reductions; *b) Enhanced national/international action on mitigation*, including Measurable, Reportable and Verifiable (MRV) and Quantified Emission Limitation and Reduction Objectives (QULROs), mitigation commitments by developed countries and Nationally Appropriate Mitigation Actions (NAMAs), and Reducing Emissions from Deforestation and Forest Degradation (REDD) in developing countries; *c) Enhanced action on adaptation*, especially in the most vulnerable countries; *d) Technology* transfer and diffusion of green technologies, and *e) The provision of financial resources* to support all previous points.

Discussions on all these issues were meant to culminate in a concrete agreement two years later at COP-15 in Copenhagen. Procedurally, at the heart of the Bali Roadmap were two parallel negotiating tracks: the *Ad Hoc* Working Group on Long-term Cooperative Action (AWG-LCA), carrying the BAP agenda; and the already existing *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Protocol (AWG-KP).

Despite its sense of ambition, the Bali Roadmap contrasted disappointingly with the stronger directive decided on a decade earlier by the *Ad Hoc* Working Group on the Berlin Mandate that resulted in the

Kyoto Protocol, which explicitly stated that the process should result in a legally binding instrument; an aim which was not specified in the Bali Roadmap.

The Bali conference also decided on relevant operational matters of the Adaptation Fund, establishing an Adaptation Fund Board with an institutional distribution where outstandingly the majority of its members came from the South. To be more precise, by August 2010, 70% (11 out of 16) of its members represented developing countries¹⁴. The bargain, however, was not a simple matter of North-South controversy. The ultimate fault line concerning the role of the GEF in the running of the Fund ran both through the developing and the industrialized world (Müller, 2008a, 4). One of the key factors for the early success of the negotiations was the EU's position of relaxing their bargaining muscles with their pre-Bali declaration that they would accept whatever model the G-77 endorsed, advancing *another* instance of EU/G-77 collaboration.

One of the most significant developments of Bali was the emergence of the proposal aimed at ensuring that *mitigation actions by developing country parties* were supported by technology, financing, and capacity building, subject to MRV procedures. The fact that this was one of the key points under discussion illustrates that the climate regime was already stepping in new territory, with the far-reaching implications of linking developing country participation in mitigation actions.

However, this proposal for the unprecedented participation of developing countries in mitigation actions was not discussed without controversy and division, particularly within the Southern bloc. Bangladesh proposed a reference to “differences in national circumstances”, which failed due to vehement opposition by China and India. Along these same lines, the United States insisted that the responsibility to mitigate must be differentiated “among developing countries in terms

14. The Board is composed of 16 members and 16 alternate members representing Parties: two representatives from each of the five UN regional groups; one representative of the small island developing states; one representative of the least developed country Parties; two other representatives from Annex I Parties; and two other representatives from non-Annex I parties.

of the size of their economies, their level of emissions and level of energy utilization, and that the responsibilities of the smaller or least developed countries are different from the larger, more advanced developing countries”(in Muller, 2008a).

At COP/MOP-4, the political context for the Poznań Conference in December 2008 was quite different from that at Bali, particularly in terms of urgency. The negotiations transpired against the backdrop of the hasty deterioration of the global financial system, and in spite of the election of a more climate-friendly Obama Administration in the United States, the official US negotiators came only with good intentions and without anything substantive to put on the negotiation table. The South did allow for some minor progress on MRV provisions and the idea of a registry for NAMAs in developing countries. However, suggestions for differentiation among developing countries mitigation actions were -again- firmly rejected by the group of major developing countries, while unsurprisingly being endorsed by the Umbrella Group (ENB Vol.12 No.395).

Before the Copenhagen meeting, both the AWG-KP and AWG-LCA held 5 negotiating sessions in 2009, three times in Bonn and once each in Bangkok and Barcelona, in which substantive issues barely progressed. In the AWG-LCA track and through the entire 2009 climate talks, the most notable struggle centered on the US insistence on a post-Kyoto “bottom-up” climate architecture. Disagreement between parties from all camps reached such high levels that, ultimately, this track produced the most complex document in the history of the UNFCCC, with nearly 200 pages and hundreds of brackets indicating areas of disagreement (ENB Vol.12 No.459). In practical terms, this negotiation text was one of the worst conceivable starting points for a COP negotiation process.

5.3 JUDGMENT DAY: THE COPENHAGEN DRAMA

The much awaited COP-15 in Copenhagen took place with unprecedented media coverage and non-state actors’ participation. With more than 40,000 people registered, it is the largest environment-related meeting in history (Bodansky, 2010, 3). However, using a venue with

capacity for only 15,000 people, it also became a logistical nightmare where the majority of civil society observers were denied participation during the most critical moments of negotiation. “Hopenhagen” began with extremely high expectations from the public sector, despite several previous attempts of Heads of State and high level negotiators to lower prospects to the achievement of a political agreement and not the concrete deal the Bali Roadmap had called for (Andrews, 2010, 11).

The bargaining dynamics remained stalled during most of the Conference. Developed countries (Annex I) were generally reluctant to accept a new round of emission targets under Kyoto for the post-2012 period unless other major emitters (including the United States and major developing countries) accepted legal commitments as well. Their expressed preference was for a single new comprehensive legal agreement that would replace Kyoto. However, developing countries were united in opposing a one-track approach. They feared losing one of the most relevant Kyoto provisions, namely the legally binding emissions commitments of the developed countries. Consequently, the G-77 repeatedly insisted during negotiations that the Kyoto track (AWG-KP) receive the same attention as the Convention (AWG-LCA) had.

Nevertheless, developing countries internally differed in their views about the outcome of the Convention track. The emerging and powerful coalition BASIC Group (formed by Brazil, South Africa, India and China) maintained that developed country parties agree to a second commitment period under Kyoto, but opposed the adoption of a new legal agreement addressing their own emissions. In contrast, some small island states supported the negotiation of a new legal agreement that would be more comprehensive in coverage, including mitigation commitments from the United States and the BASIC countries (Bodansky, 2010, 4). On the other hand, some issues did appear to have made relevant progress, as was the case of REDD-plus, in which negotiations did not divide along confrontational negotiation bloc lines (Andrews, 2010, 13).

Besides overwhelming substantive differences, the conference also confronted unique procedural issues. The Danish COP Presidency sparked controversy with most developing countries due to its insistence on disregarding the official negotiation texts of the working groups and by try-

ing to introduce other texts to the table. Using a tactic exercised in the pre-Copenhagen Talks, during the second week the African group and the LDCs group, supported by the rest of the G-77/China, called for suspending negotiations under the AWG-LCA (ENB Vol.12 No.459).

Ultimately, the arrival of 115 Heads of State and Government in the last days of the Conference considerably changed the dynamics of the negotiations. A “Friends of the Chair” group with roughly 25 countries in consultation at the highest political level resulted in an agreement¹⁵, with the last words on the deal arguably being decided solely by the US and the four major developing economies of the BASIC group (Hamilton, 2009). This signaled a significant change in the locus of bargaining tensions, moving from the EU and G-77/China vs. the Umbrella Group from the Marrakesh Accords previous phase, to a new geopolitical negotiation game exercised primarily between the US and the major developing countries.

The agreement was immediately announced to the media by US President Barack Obama, even before being officially communicated to most delegations. When the “Copenhagen Accord” was submitted for formal adoption it was rejected right away by a small number of developing nations, mainly countries from the Venezuelan-led ALBA¹⁶ group and Sudan at the forefront, voicing strong reservations to a “non-transparent and undemocratic” negotiation process (ENB Vol.12 No.459). This veto move occurred notwithstanding the fact that spokespersons of other Southern groupings such as AOSIS, LDCs and the African Group, recognized that the negotiating process had been legitimate and urged COP-15 to adopt the Accord. This disagreement is one of the most visible South-South divisions in the history of the climate negotiations with developing countries not coming together at the critical moment of a COP united under the G-77 umbrella.

15. No official record exists, just the report of the representative of Ghana which includes: the United States, China, India, Brazil, South Africa, the UK, France, Germany, Denmark, Sweden, Australia, Canada, Japan, Russia, Grenada (on behalf of AOSIS), Ethiopia (on behalf of the African group), Saudi Arabia, Colombia, the Maldives, and Mexico (ENB Vol.12 No.459).

16. The Bolivarian Alliance for the People of Our America formed by Venezuela, Cuba, Ecuador, Bolivia, Nicaragua, and the small Caribbean islands of Antigua and Barbuda, Saint Vincent and The Grenadines, and Dominica.

Ultimately, with the facilitation of UN Secretary-General Ban Ki-moon, COP-15 agreed to “take note” of the Copenhagen Accord and established a procedure, without precedent under the UNFCCC, for countries willing to do so to register their support for the Accord and submit their mitigation targets and actions by a deadline that was established as 31 January 2010. Due to the unique way in which the Accord came about, with pressing time constraints and Heads of State who lacked experience in drafting negotiation texts, the result was a poorly written agreement, which included unnecessary ambiguity in substance and confusion in terms of form (Müller, 2010a, 7). Despite its vagueness, the content of the Accord and some of its provisions signal the redefinition of the traditional “black and white” Annex parties vs. Non-Annex parties’ institutional regime divide by unmistakably differentiating between responsibilities within the South:

“Non-Annex I Parties to the Convention *will* implement mitigation actions... Least developed countries and Small Island developing States *may* undertake actions voluntarily” (Paragraph 5).

In the aftermath of COP-15, many conflicting visions of the Copenhagen Accord erupted, with appraisals moving from labeling it as a “disaster” to a “positive step forward” (Brown, 2010, 6). Also many commentators feared that with the precedence of Heads of State directly negotiating the Copenhagen Accord and the unique -and growing- level of procedural complexity, the UN negotiation process would become increasingly irrelevant and that negotiation dynamics would move to other multilateral and elite gatherings such as the Major Economies Forum on Energy and Climate¹⁷ and/or the G-20¹⁸, where deci-

17. The US-led grouping against global warming launched on 2009. Its members are the EU and the following 16 nations: Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russia, South Africa, the United Kingdom, and the United States.

18. Its members are the same as the Major Economies Forum plus Argentina, Saudi Arabia and Turkey.

sions could be reached just between the few countries that bear greatest responsibility and have the highest capacity to act in the climate change issue (Guérin and Wemaere, 2009; Andrews, 2010). However, in a firm attempt to resist this idea and reaffirm the UN negotiation process, the BASIC group submitted a joint statement on January 24th 2010 in which they “underscored the centrality of the UNFCCC process and the decision of the Parties to carry forward the negotiations... in 2010 leading up to COP-16 at Mexico”¹⁹.

By the time of the second Bonn Talks in August 2010, almost 140 countries had officially associated themselves with the Copenhagen Accord including the US, the EU on behalf of its 27 members, the BASIC group (which submitted mitigation action pledges but, in an intriguing diplomatic move, didn’t explicitly associate with the Accord), and many other developing countries representing around 85% of global emissions. Conversely, only 8 countries had officially rejected the Accord (Bolivia, Cuba, Cook Islands, Ecuador, Kuwait, Nauru, Tuvalu and Venezuela), representing only around 2% of global emissions²⁰. With this association rate and the BASIC group’s insistence on supporting the UN negotiation process, the Copenhagen Accord has become, in a very limited way, politically effective. Nevertheless, the question of the real efficacy of the Accord remains pending to be defined in future formal bargaining processes; particularly during the next COP-16/MOP-6 in Mexico, in which it will become clearer the extent to which the Accord will shape the immediate evolution of the regime. For example, how seriously parties will assume the operationalization of the many institutions the Accord arguably creates, and the transfer of the multi-billion dollar funds it promises.

Another point that remains to be seen is the orientation the negotiation process will take under the new UNFCCC direction that started in early July 2010, with the fresh leadership that Latin-American veteran negotiator Cristina Figueres will bring. On the other hand, and a fac-

19. To review the complete text see: <http://moef.nic.in/downloads/public-information/JointStatement.pdf> [Accessed on 12/05/2010]

20. For a real time update see: <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments> [Accessed on 03/08/2010]

tor that can have far reaching uncertain implications, is the decision made on July 23rd 2010 by the US Congress to abandon the intention of passing a climate change bill before COP-16. This announcement has had the immediate effect of the lowering expectations of both developed and developing countries for reaching a concrete and ambitious global climate deal in the near future.

6. CONCLUSIONS

This paper has attempted to present a synthetic review of the evolution of the climate regime from the lens of nation-states bargaining dynamics and by revisiting the extent to which a North-South divide has shaped such regime development. This section reflects on both the path the regime has followed and the trends that are currently observed in the shaping of the climate regime of the future.

6.1 CLIMATE REGIME EVOLUTION: BEYOND A NORTH-SOUTH DIVIDE

A key conclusion is that a North-South bargaining dynamic has not been the dominant negotiation feature in all key phases of the climate regime, as is usually assumed in many publications and academic papers. North-South tensions have certainly always been present, but such confrontation has not defined many of the most important outcomes of the climate regime. It is at the early stages of negotiations that such a North-South divisive framework is most clearly observed. Under the leadership of China and negotiating through a fairly united G-77, developing countries exerted great influence on the development of the foundations of the regime by centering key bargaining provisions on the question of distributional equity. This is made clear in the FCCC normative principles and the *institutionalization of a North-South divide* by officially separating developed countries as Annex I parties and developing countries as non-Annex parties.

In this context of an institutionalized divide, the subsequent stage of the Kyoto Protocol negotiation process can be better understood as a *North-North struggle*, where the countries responsible for bearing the costs of the regime (Annex I parties) fiercely fought at the negotiation table: the EU promoting a relatively ambitious protocol -partially reflecting the influence of domestic environmental movements-, and the veto coalition of JUSSCANNZ seeking maximum flexibility in both emission targets and the implementation mechanisms -with greater domestic pressure from fossil fuel dependent industries. Although the South under the umbrella of the G-77 actively engaged in the process, it mainly defended what it gained under the FCCC.

The Marrakesh Accords negotiations witnessed an unforeseen North-South cooperation dynamic between developing countries collectively engaging with the European Union, in a partnership that confronted the veto coalition of the Umbrella Group. At this stage the dominant characteristic of the negotiations is that of a multifaceted process in which a flux of complex coalitions interacted, and where both relevant North-South contentions and collaborative dynamics were present.

6.2 A CHANGE IN PROCESS: A NEW BALANCE OF POWER AND GREATER SOUTH FRAGMENTATION

The ongoing post-Kyoto bargaining process has reflected the changes of a new system of geopolitics where major developing countries exert increasing political leverage in global decision making. Copenhagen was the limelight of such new frontiers in international regime building, with the United States directly sealing the last words of a global agreement with Brazil, China, South Africa and India, and not with its traditional counterpart, the European Union.

This new bargaining dynamic could have implications way beyond the climate regime, in which China would finally confront the US as an equal challenger in global issues and negotiation struggles. In any case, the climate regime negotiations might just represent the clearest sign of a process that has been taking shape in other forums, where

global decision making has increasingly been opened from strictly pertaining to key developed countries to including major emerging economies.

On the other hand, the institutionalized North-South divide that has been present since the FCCC was signed is currently showing signs of blurring and being redefined by a dynamic of Southern fragmentation in which major developing and least developed countries are assuming markedly different positions. More specifically, the recognition and increased self-organization of major developing economies in the BASIC group as being a separate body of negotiation has brought a new fragmentation process to the South. With these few developing countries actively engaging in global decision making forums such as the G-20, and exerting such a defining influence in the outcome of Copenhagen, the main narrative of developing nations- historically constructed in terms of political marginalization from global decision making processes- has been made more ambiguous and inconsistent, if not completely contradictory.

This has led to the formation of different coalitions of developing countries, like the LDCs group, AOSIS and the Copenhagen Accord blockers of ALBA/Sudan, which are beginning to operate more independently outside the G-77 umbrella. In this sense the Copenhagen Accord has somehow institutionalized this Southern fragmentation, since it includes formal and explicit differentiation between major developing countries, which under the Accord are committed to implementing mitigation actions, and the most vulnerable ones, which are only to do so on a voluntary basis.

Moreover, it seems very likely that other key developing countries will join the BASIC dynamic, the obvious next candidates being Mexico and Indonesia, the former having a higher share of global CO₂ emissions than South Africa, and the latter even more than India (UNFCCC, 2009). Most telling is the fact that both have already submitted ambitious pledges for voluntary mitigation actions in the same areas as BASIC countries have. Nevertheless, this fragmentation of the South should be tempered considering the G-77 was never a cohesive but rather a quite loose network of countries with many diverging and

conflicting interests; furthermore, the BASIC group has already publicly claimed in a joint statement that it wants to work closely with the G-77 (noting the not insignificant difference between working *with*, and working from *within*, as was traditionally the case).

Nevertheless, the BASIC group has not been the only Southern coalition to exercise autonomous assertiveness. Traditionally, the OPEC, AOSIS, and to a lesser extent the LDCs have been the only groupings within the G-77 to take collective negotiating initiatives on their own, and with the exception of OPEC, these groups usually received the blessing of the larger G-77 in doing so. However, the post-Kyoto bargain has witnessed new blocking dynamics in which some developing countries have vetoed the positions of other Southern countries, as was the case with the ALBA members and Sudan rejecting the approval of the Copenhagen Accord as a COP decision, and thus conspicuously running against the positions of the rest of the G-77 groupings to -albeit with explicit dissatisfaction- vote yes on the Accord.

It is too early to make sense of all these new bargaining dynamics within the Southern camp, but it appears clear that the G-77 will confront increasing challenges to arriving at the negotiation table as strongly united as it used to be on certain issues; particularly since its main point of consensus for more than two decades has already vanished: that is, that no developing country would commit to mitigation response actions and financial support pledges.

Finally, the fundamental challenges for the definition of the immediate future of the climate regime remain curiously similar to some of the original obstacles the inexperienced negotiators were facing back in 1990. As Robert Stavins (2009) asserts, the key question remains whether the negotiators on the road to Mexico and beyond will be able to identify a policy architecture that is both *reasonably cost-effective* and *sufficiently equitable* to generate enough political support from both the developing and developed world.

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