



One Step Forward and Two Sideward

Regional Analysis of Climate Policy in 2010 and the Cancun Climate Conference (COP 16)

Tilman Santarius, Dawid Bartelt, Tigere Chagutah, Björn Ecklundt, Lili Fuhr, Chen Jiliang, Arne Jungjohann, Kulthoum Omari, Kasia Radzikowska, Ingrid Spiller, Sanjay Vashist, Jorge Villareal, Annett Waltersdorf

January 2011

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Abstract:

The year 2010 offered mixed results concerning global climate policy, with serious setbacks as well as some small victories. In the United States, plans on long-awaited domestic climate legislation were abandoned. In China and India, national climate legislation has made small advances, but expansion of fossil-based long-term infrastructure continues to rise steeply. International negotiators had to pick up the pieces left behind from the breakdown of UNFCCC negotiations in Copenhagen in 2009 (COP 15). Although the outcome of the UNFCCC conference in Cancun (COP 16) in December 2010 generated positive responses, the question remains whether the Cancun conference can be called a success – or whether it is merely symbolic of the sustained stalemate of international climate policy in the attempt to prevent dangerous human interference with the climate system. Final evaluation of the Cancun conference, it seems, depends on the regional and national perspectives. This paper contextualizes the Cancun conference within the landscape of the different regional climate policy developments during 2010, analyzes the different national expectations of the conference, explains negotiation positions, and analyzes how perceptions of the Cancun conference varied between key countries and regions. The paper concludes with an outlook on challenges to the international climate policy process on the road to COP 17 in Durban, South Africa, in 2011 and suggests rethinking current negotiation procedures in order to secure more ambitious climate policies in the years ahead.

1. 2010 – A year of climate setbacks

After the steep rise comes the steep fall, according to an old idiom. And this is how climate policymakers and observers may have felt during most of 2010. The year 2009, no doubt, will be remembered as an outstanding year for climate policy. Climate issues ultimately reached the highest levels of public awareness, and the UN climate change conference in Copenhagen (COP 15) was an unprecedented event in the history of climate diplomacy. Seldom before had the world focused so intensely on an international environmental summit; seldom before, however, had frustrations run so high as in the aftermath of Copenhagen – at least among those who had hoped that COP 15 would set the course for a far-reaching, fair, and legally binding climate treaty. Given the failure of Copenhagen, therefore, climate policy had a hard start in 2010.

This, however, was only the beginning. As if the failure of the Copenhagen conference was not enough, more crises to global climate policy transpired in 2010. First, the lack of a decisive outcome at COP 15 was exposed in January 2010 when countries registered their mitigation objectives and activities with the United Nations Framework Convention on Climate Change (UNFCCC) secretariat. Following that, analysts were clearly able to calculate the political ambitions at work: In sum, all national climate efforts would lead to a global warming of approximately 3.2 degrees Celsius (uncertainty range: 2.6 to 4.0 degrees). This lack of ambition does not come close in preventing dangerous human interference with the climate system. To the contrary, as climate science informs us, a warming of 3 degrees or more would not only bring about dramatic changes in climate conditions, but might also push the climate beyond a number of tipping points that could unleash uncontrollable, catastrophic climate change.

Politically, the weak country pledges registered at the UNFCCC secretariat mirror a real dilemma: The failure of Copenhagen showed that a top-down approach does not lead to a common global emissions target, but events of 2010 suggest that a bottom-up process of individual country pledges (pledge-and-review process) is not a viable option either.

This has become clearer after seeing that many of the respective country pledges were bound to conditionalities. For instance, many developing countries linked their emission reduction measures to the prerequisite that the industrialized countries, including the United States, take the lead and provide the necessary funding. This prerequisite, however, became practically obsolete in summer 2010, when another calamity reinforced the impasse of international

climate diplomacy. Up until then, the world was still hoping that US Congress would implement a comprehensive climate and energy law in the United States. In July 2010, however, it became clear that this endeavor would be abandoned. No further attempts are planned for the current legislative period; it will likely not be until after the next federal elections in 2012 that the United States will even try to move a comprehensive approach on the issue again. Yet, without a robust domestic climate policy to build on, the United States has little to offer in international negotiations.

In practice, climate diplomacy is thus facing a similar challenge as during the eight long years of Georg W. Bush's presidency, after Bush had withdrawn the United States from negotiations on the Kyoto Protocol in 2001. The overriding question again is: How can international climate policy move forward without the world's historic largest emitter and the last remaining superpower?

Given these enormous disruptions in the climate policy process, expectations for COP 16 in Cancun, Mexico, were rather low. Some said that the purpose of this conference was only to restore trust between parties and show the world that UN climate negotiations were not completely collapsing, but continuing. Those with slightly higher expectations hoped for some decisions about certain building blocks of the negotiations, for example, on climate finance, emissions from forests (REDD), adaptation, or technology transfer. COP 16 was not expected to bring about a comprehensive agreement, but was intended to foster negotiations through a set of pivotal decisions that would prepare the way for a deal to be made later, eventually at COP 17 in South Africa in 2011.

Yet doubts are rising whether a continuation of business-as-usual negotiations can lead to anything more ambitious than the current country pledges. With the United States offering little room for maneuvering, consensus will be very hard to reach at the multilateral level. What is needed, some experts therefore argue, is a new "coalition of the willing," a progressive alliance of countries that are willing to go ahead without the United States and those reluctant parties aligned with it. Announcements in the weeks before Cancun that a group of some 30 countries from the South and North had formed the Cartagena Group for Progressive Action spurred hope that COP 16 would set the course for a 'climate policy of different speeds.' This could allow forerunner countries to make a deal, while it keeps the door open for laggards to join thereafter.

Either way, what did ultimately emerge by the end of COP 16? What has been achieved in Cancun, what not, and how should this be evaluated?

After all, negotiations did not collapse entirely. Given the tough negotiations on whether to abandon the Kyoto Protocol or to keep it alive, it can be considered a great achievement of the Cancun climate conference that a second commitment period still provides a possible future road. However, final wording is so vague that it is still unclear what exactly will happen to the Kyoto Protocol.

The final decision mentions the 2 degrees Celsius goal for the first time in an official UN document. Moreover, after the next Intergovernmental Panel on Climate Change report is published, a review mechanism will explore whether a tighter target, e.g. 1.5 degrees Celsius, would be more scientifically and politically appropriate. Additional key decisions have been achieved regarding the building blocks. The Cancun Adaptation Framework has been established to foster the implementation of adaptation measures, and the Green Climate Fund has been created to provide finance for adaptation and mitigation measures. Gender equity and the rights of indigenous people as well as a reference to resolution 10/4 of the UN Human Rights Council have been anchored in the final text.

Despite these achievements, many key questions remain unanswered after Cancun. After all, the process is far from establishing a policy framework that can deter dangerous human interference with the climate system. Cancun did not bring about any progress on actual emission reduction commitments, nor has a process been established to close the “gigaton-gap” of about 12 billion tons of CO₂-equivalents; the gap marks the difference between the level of emissions expected for 2020 according to country pledges registered at the UNFCCC secretariat in January 2010, and the sought after emission drop of about 44 gigatons by 2020 in order to stay below the 2 degrees Celsius target. Yet delegates left COP 16 with no idea how to achieve more ambitious emission reductions in the future.

Similarly vague processes afflict climate finance. While the Copenhagen Accord had already mentioned that a potential US\$100 billion could be pledged in 2020, Cancun did not manage to turn this number from a good intention into a concrete commitment. Concrete pledges are missing – no process has been established to calculate each country’s respective share of the total sum, and there was no discussion about tapping innovative finance sources such as international bank levies or bunker fuel taxes. Some decisions had been taken concerning the Green Climate Fund’s governance structure, for example, that there should be equitable

representation of developed and developing countries on the Fund's board. But since the World Bank, whose governance structure is donor-driven, was appointed as interim trustee of the Fund, it remains uncertain whether the governance decisions decided in Cancun will be implemented, or whether the authority of the World Bank and its less democratic governance structures will eventually prevail.

Most notably, Cancun did not give birth to a progressive "coalition of the willing." Neither the Cartagena Group, nor the EU, the BASIC countries (Brazil, South Africa, India, China), or AOSIS (the Alliance of Small Island States) had started an initiative to set the course for a climate policy of different speeds. Delegates used their energy to hammer out a deal in the form of official COP decisions so as to show the world that UNFCCC negotiations were working. Too little energy was left, though, to rethink the whole process, in particular how international climate policy could ever produce something like a fair, ambitious, and legally binding agreement, given the failure of Copenhagen and the setbacks of 2010 described above.

How should the outcome of COP 16 be evaluated? Given the difficult context, should it be considered a success? Or should COP 16 be viewed as the type of stalemate that has come to characterize endeavors to truly protect the global climate? As the following regional analyses show, the evaluations of COP 16 also depend on the national and regional perspectives. As we will see in the following country-by-country analyses, final assessments are quite heterogeneous.

2. Regional Analyses

2.1 Mexico

It was quite interesting to follow the Mexican management of expectations for COP 16 during 2010. Immediately after the announcement that Mexico would be the host of COP 16, President Felipe Calderón raised expectations that an ambitious and legally binding outcome would be possible in Cancun. However, over the course of the following months, expectations decreased continuously. In summer 2010, the Mexican government announced that there would be no legally binding outcome and no real progress in mitigation, but that, nevertheless, there would be some progress in short-term and long-term finance and REDD-

plus – just enough to prepare the adoption of a new legal framework at COP 17 in 2011. Finally, shortly before the conference in Cancun began, Foreign Minister and COP President Patricia Espinosa declared that not even the prolongation of the Kyoto Protocol was very likely. The failure of Copenhagen had created so much resistance within the parties, she said, that the main aim of the Mexican presidency before and during COP 16 was to renew the level of trust and to save the UNFCCC process as such. To ensure this, Mexican officials developed an intensive travel diplomacy, talking to all stakeholders in the process, from government officials and negotiators to civil society actors.

Safeguarding the UNFCCC process turned out to be the main objective of the Mexican presidency during COP 16. Obviously, this goal was achieved successfully. Mexico had learned its lessons from the prior failures in Copenhagen: Transparency was given priority, doors to working groups were open, all ministers were able to participate, and developing countries were included in the process.

However, transparency as a guiding principle only applied to those registered for the official conference halls. Negotiation venues were spatially separated from the civil society forums more than at any COP before. Negotiations took place at the Moon Palace Hotel, whereas the NGO activities and official side-events were held 8 km away in “Cancun Messe.” This made it more difficult for civil society representatives to participate in both venues at the same time and to fulfill their watchdog function over their governments. The various alternative civil society forums such as “Dialogo Climático - Espacio Mexicano” and the forum of Vía Campesina – where especially Mexican and Latin American organizations and social movements met – were located in downtown Cancun. They were even further away and more difficult to reach than the official NGO Forum. All in all, NGOs and delegates “inside” the negotiations were completely separated from those “outside.” Mexico would not or could not close this gap and, therefore, endangered the legitimacy of the multilateralism process.

The Mexican government played a strong and neutral role in facilitating agreements by reinforcing its strategy of openness, transparency, and inclusion, at least for all parties and those NGOs that were inside the negotiation halls. This strategy was intelligently developed by Ambassador Luis Alfonso de Alba and then executed by COP President Patricia Espinosa. The message of transparency and inclusiveness throughout the process contributed toward dispelling the lack thereof in Copenhagen, thereby facilitating dialogue and consensus. One of the moments that clearly illustrated this was when Espinosa kept the doors opened for the

final plenary session, even though there were not enough seats and there was a risk of breaking security rules.

Since this strategy turned out to be very effective, and agreement could be reached – the Mexican government is, of course, proud of the results. Mexico has stressed the success of having achieved a fruitful negotiation process that, according to President Calderón, starts a new phase of international cooperation. The Mexican ministry of the environment, one of the many triumphant voices, highlighted the agreements on “fast start” finance as well as the creation of the Green Climate Fund.

Although some Mexican NGOs acknowledge that Cancun has generated a new agreement, most civil society organizations criticize the lack of progress on concrete emission reductions and are demanding a second commitment period of the Kyoto Protocol. Furthermore, the role of the World Bank as the interim trustee of the new fund has been widely criticized. Some organizations that supported Bolivia’s position lament the procedure by which the Cancun Agreement was adopted, in spite of Bolivia's objections.

After the intense and exhausting experience of COP 16, one of the future challenges is to strengthen the weak national climate policy in Mexico so as to prepare the groundwork for the implementation of Mexico’s international commitments. This is an outstanding task for the government as well as for civil society. It is still unclear whether the Mexican government will take advantage of this momentary success and move the national climate agenda forward, or if it will just go back to business-as-usual. Mexican NGOs need to move forward in their endeavors to form alliances in order to help formulate policy proposals for a low-carbon economy, pressure the federal and local governments to implement the international commitments, and develop effective adaptation and mitigation policies that combine social equity with environmental sustainability. COP 17 in Durban might offer a chance to reinforce these demands.

2.2 *The European Union*

The EU certainly was one of the biggest losers of last year’s Copenhagen summit. The EU, despite its comparably ambitious emission reduction targets, had lost its leadership role and was said to have merely watched China, the United States, and other parties prepare a deal – which failed to be concluded. In any case, COP 15 had generated high expectations in Europe

before the summit, so its outcome could therefore only be perceived as a clear failure of the process. As a result, European leaders mainly tried two things in 2010: First, to remake Europe's role in the negotiations, that is, reclaim leadership; second, to figure out how to reconsider some of the key positions of the EU in the negotiations, so as to adapt to the changing political context following the failure of both COP 15 and domestic climate legislation in the United States. For instance, the EU had thus far avoided a second commitment period of the Kyoto Protocol and favored a treaty that would integrate both the United States and major developing countries. However, now that it has become clear that there will not be an agreement on a legally binding treaty with the United States in the next few years, the EU has had to rethink its position and reconsider a continuation of the Kyoto Protocol.

Regarding the EU's potential for regaining leadership, during most of 2010 EU Climate Commissioner Connie Hedegaard continued trying to convince EU member states to take on a 30 percent instead of a 20 percent emissions reduction target for the Union, while maintaining Europe's climate finance commitments without reductions. The European Commission had estimated that as a result of the global economic downturn, the cost of meeting the current 20 percent target had dropped to €48 billion per year until 2020, down from an initial estimate of €70 billion when the package was agreed. Consequently, making the extra effort to reach 30 percent would now cost only €1 billion more than what EU governments signed up to two years ago. In addition, experts reported that, technically, reaching a 30 percent reduction goal in 10 years would be feasible, since current EU emissions already are about 17 percent below 1990 levels. However, the move to 30 percent was blocked by some of the member states, among them Germany and France – important opinion makers within the EU – as well as some of the Central and Eastern European (CEE) countries. They argued that the EU must first analyze how other countries' pledges compared before making a move, since many of the CEE countries were struggling to meet the 20 percent target, especially due in part to their heavy dependence on coal (e.g., Poland). In contrast, several Western EU member states, including the United Kingdom, Denmark, the Netherlands, and Sweden, believe it is in Europe's own interests to move to 30 percent. These countries tend to favor moves toward a global carbon trading system based on the existing European Union Emissions Trading Scheme, which could be linked up with a possible American, Japanese, or even OECD-wide scheme. However, the EU was not able to agree upon a more ambitious target.

Apart from the battle over the 30 percent reduction goal, the EU's leadership role in the past was also damaged because of disunity over a variety of other issues. Thus, shortly before COP 16, Connie Hedegaard's press release called for more unity in the EU's voice in the negotiations. In fact, the widening fissure within the European Union and its inability to act and to react promptly when negotiations change is alarming and poses one of the biggest challenges to the European Union's negotiating capacity in the coming years. Little wonder that only a few European countries (Belgium, France, Germany, Netherlands, United Kingdom) plus the European Commission joined the Cartagena Group for Progressive Action.

Most government officials and observers in Europe did not have much hope for the climate talks in Cancun. In Brussels, the fear is widespread that even the conference in South Africa in 2011 might not deliver a fair, ambitious, and legally binding agreement. The political realities in the United States as well as the EU's understanding of China's situation are important reasons for this. The development of the EU's negotiation strategy has not been remarkable. Few expected that the EU would offer more than it had in Copenhagen, or that it would fundamentally change its negotiation strategy.

Given these difficulties, the overall sentiment in Europe after the Cancun summit was one of great relief and reserved joy. Whereas Copenhagen was a complete failure, Cancun has proven that it is possible to advance this process in good spirit. Delegates characterized the atmosphere of the negotiations as open and fair, most European environmental ministers called COP 16 a great success, and even Greenpeace Germany announced that the outcome of Cancun was better than anticipated.

The EU was also relieved to see that the fact that it has not met its Copenhagen Fast Start Finance pledge did not lead to complete failure of the overall process – a fear that many negotiators voiced prior to COP 16. Nevertheless, the Cancun outcome quite rightly increases the pressure on the EU to move to a 30 percent target now and not wait any longer – a position that was also stated directly after Cancun by Germany's environment minister, Norbert Roettgen.

The EU even regained respect with many developing countries by changing its negotiating position of the past as it is now calling for a second commitment period of the Kyoto Protocol. Unfortunately, other developed countries such as Japan, Russia, and Canada still openly reject a continuation of the Kyoto Protocol.

2.3 The United States of America

President Barack Obama and his allies did not get their long-awaited domestic legislation through Congress, and observers do not expect any major climate legislation in the next years. In the recent midterms elections, the Republicans made significant gains, and a lot of the new members of Congress are climate skeptics. There might be smaller measures taken on energy, for example energy efficiency and renewable energies. However, the administration has some legal power to regulate greenhouse gases through the Environmental Protection Agency. This will be a messy fight and it is uncertain how much these measures could lower emission reductions. As there are more than 300 cases on climate change pending in different US courts, litigation will become an increasingly important factor.

Given the federal gap, states like California, Colorado, Vermont, and New York will move forward with renewable energy policies. The regional carbon markets will continue (e.g., Regional Greenhouse Gas Initiative on the East Coast) or get started in 2012 (Western Climate Initiative with California and some Canadian provinces). Under President Obama the United States may have constructively reengaged in the UN talks, but the lack of domestic support holds back further engagement. It is positive that the US administration sticks to its pledge of the Copenhagen Accord (minus 17% by 2020 in comparison to 2005), although this pledge was formulated in anticipation of passing a domestic climate bill. Thus, it remains to be seen whether the United States can deliver those emission reductions. Another challenge is climate finance. It is certain that the United States will not be able to contribute its appropriate share for fast track finance, as there is strong political resistance in Congress.

After the failure to pass a domestic climate bill, the US government will not sign a new legally binding climate treaty – no matter its content – because a new treaty would by no means be ratified by the US Senate. Given this restriction, the US government was not as important a player at COP 16 as it was at last year's Copenhagen conference. Consequently, public pressure shifted away from the United States to other countries that were blocking progress, for example Japan.

However, the US delegation was still engaged in constructive negotiations. Most important for the United States is its relationship with China. In 2010, the administration tried to intensify its bilateral energy relations with China. After some public tension between the

United States and China in October, recent news has suggested that the relationship of the “G2” is improving. A major piece of concern from the US toward China is transparent climate action (MRV – measurable, reportable, and verifiable). In addition, the majority of US policymakers demand the same legal status for the United States and China (and other emerging economies) in a new climate agreement.

With these particular, but overall low-ranging expectations for COP 16, US climate advocates brought two messages back home from Cancun: First, the international climate process is alive and moving forward; second, transparency for emission reduction efforts is being demanded of all countries, including China and other emerging economies. These messages are very important domestically to counter arguments from the political right that climate change policy is a threat to the United States or that other countries were not engaged.

Overall, the US administration was satisfied with the outcome of COP 16. Its goal was – according to their head of delegation, Todd Stern – to ensure that the Copenhagen Accord survived and was given a more definitive shape. The results allowed the administration to demonstrate that the United States is contributing with the move forward and that countries like China are being asked to make their actions transparent. US policymakers in favor of strong climate action emphasized the level of progress at COP 16 and called for the United States to get back in the game instead of being held back by obstructionism and divisive politics at home. It was noticed that China, in particular, was on a charm offensive in Cancun.

From a US perspective over the last years, the consensus rule was considered problematic and thus was blamed as a key reason why the UNFCCC process would not be as effective as other forums, for example the Major Economies Forum. The United States had raised this concern already after Copenhagen. The final plenary of COP 16 caught the attention of the United States because the Mexican presidency made a clear distinction between consensus and unanimity, which might have a long-term impact on UN negotiations. Some hope that Cancun’s outcome leads to a call for a wholesale revision of the voting rules of the convention.

Observers in the United States mostly focused on the China-US relationship as well as the role of the UN and the decision-making process. Many agreed that the UN process did not fail and that it will continue to play an important role in the fight against climate change. NGOs and think tanks were content with the outcome of COP 16 and interpreted it as a modest but significant step toward climate action that provides a foundation to build upon, though noting

that the agreement is fragile and that many complex challenges still need to be resolved. The outcome emphasized to the US Congress that the world was not just sitting around waiting for the United States to do something but moving ahead.

2.4 Brazil

Despite the failure at Copenhagen to deliver new international climate legislation, Brazil had left COP 15 last year as one of the “winners” of the conference, at least in political terms. Brazil was able to present itself as a leader in climate policy. This self-confidence remained throughout 2010, and Brazil intended to keep its leading role in climate politics. The Brazilian government announced that it was going to achieve its aims that it voluntarily committed to in Copenhagen: to reduce greenhouse gas emissions by 36 to 39 percent on a projected “business-as-usual” basis. In its Second National Communication to the UNFCCC, officially presented during COP 16 in Cancun, the Brazilian government highlighted that between 1990 and 2005, emissions increased around 60 percent, from 1.4 to 2.19 billion tons CO₂-equivalent, with an emissions peak in 2004 of 2.6 billion tons. Yet from 2005 to 2009, the value dropped to an estimated 1.775 billion tons. This decrease is seen mainly as a result of dropping deforestation rates in Amazonia. In 2010 “only” 6,450 sq km were cut down, compared to 25,000 sq km in 2004. Based on these numbers, President Lula da Silva said that Brazil will meet its promised reduction target of 36 to 39 percent presumably in 2016, four years earlier than planned.

Moreover, the regulation of the National Climate Change Fund (Fundo Clima) was concluded in October 2010. This fund has its own administrative body, which has already provided 226 million reais (about 100 million Euros) for 2011 for measures to tackle global warming and deforestation. This fund is to be financed by revenues from the deep-water oil production (pré-sal) as well as by international contributions. In addition, the Brazil government has started to prepare “strategic actions” to comply with its Copenhagen commitments: reducing deforestation of the rainforest in Amazonia by 80 percent; reducing deforestation by 40 percent in the second biggest biome in Brazil, the Cerrado; revitalizing 15 million hectare of unused pasture land and potentially adopt a low-carbon agriculture; intensifying the production of biofuels; and finally, replacing wood charcoal from primary forests by charcoal made from monoculture plantations in the steel production process.

Concerning the financing of activities to reduce greenhouse gas emissions, the Brazilian government has not announced any official position yet. Statements by the government have been inconsistent. The Brazilian environment minister, Izabella Teixeira, until recently expressed support for public financing. However, at the UN Convention on Biological Diversity in Nagoya, she and other government representatives expressed their wish to see the private sector to play an important role in the financing process.

Despite the extensive “homework” Brazil has done since COP 15 in Copenhagen, the Brazilian government was not expecting major progress on a follow-up to the Kyoto Protocol, let alone a breakthrough at COP 16 in Cancun. As announced by the Brazilian minister for foreign affairs, Mr. Celso Amorim, agreement on points included in the Copenhagen Agreement were all that was expected. Brazil’s chief negotiator, Luiz Figueiredo, even feared that after 2012 the international community could enter a period without a valid protocol.

Overall, Brazil made itself very visible during COP 16. The Brazilian delegation facilitated negotiations in the ad-hoc working group on the Kyoto Protocol, in which the most controversial question of COP 16 was hotly negotiated: a potential second commitment period of the Kyoto Protocol. Together with the United Kingdom and the Mexican presidency, Brazil tried to convince Japan, Canada, and Russia to reverse their positions to not participate in a second commitment period. Nevertheless, the Brazilians have their claim in the “success” of keeping the Kyoto Protocol alive at Cancun.

Overall, official and semi-official Brazilian representatives have concluded that Cancun was far from a success, but that the conference achieved what was possible. The Brazilian government is proud to have played a “vanguard” role in the process, especially among BASIC countries, also taking credit for the fact that India and China have shown more willingness to commit to binding mitigation activities.

Many Brazilian NGOs believe there was some progress at COP 16 but that an important issue like the creation of a Climate Fund has been hampered by the fact that the World Bank has been designated to run it. What’s more, the isolation and demonization of Bolivia’s position was criticized by many civil society organizations. “Bolivia has voiced the concerns of the people of the South at Cancun,” said climate specialist Maureen Santos from the Brazilian NGO FASE. “The Bolivian position that Nature – Mother Earth – cannot be transformed into a commodity is central to the global civil society.” Thus, heavy criticism of REDD and other market mechanisms to commodify Mother Earth was voiced during and after Cancun.

2.5 China

2010 is the last year of China's 11th Five Year Plan (FYP). One of the top priorities is "Jie Neng Jian Pai," that is, the targets on energy conservation (20% reduction of energy intensity compared to 2005 level) and emissions reduction (10% reduction of major pollutants emissions). In May 2010, the state council of China released an official announcement demanding that local authorities improve their work in order to safeguard the success of "Jie Neng Jian Pai." Premier Wen Jiabao also emphasized that manipulating data would not be tolerated. It was a difficult task and the local authorities had to take it seriously. In some areas, the government even took extreme measures such as blackouts in order to cut energy consumption. By November, although the official evaluation had not been released, some high-level officials said informally that the result might be slightly below a 20 percent reduction.

In 2010, China was also preparing the 12th FYP. In October, the Central Committee of the Chinese Communist Party released its recommendation on the 12th FYP. In the document, climate change is addressed in an entire chapter, and altering China's development path is mentioned in most content. The energy efficiency and renewable energy industries are included in the list of strategic emerging industries that should be prioritized. In 2010, China introduced large subsidies for electric and fuel-efficient cars.

After Copenhagen, "low-carbon" became one of the most popular slogans in China. The government has chosen five provinces and eight cities as pilot areas for low-carbon development. The private sector also actively uses the low-carbon slogan to promote products and explore the paths toward low-carbon production. Therefore, public awareness for the climate issue continued after COP 15 in Copenhagen.

Already in the run-up to COP 16, China was trying to play an "active and constructive" role in the negotiations. It showed its support for the multilateral process by hosting an intersessional meeting in Tianjin. China was still pushing for the second commitment period of the Kyoto Protocol, stronger mitigation commitments from developed countries, and a functional technology body. It understands the financial difficulties that the developed countries are facing and, therefore, has become relatively flexible on the finance issue. On transparency, China has an open attitude toward an MRV framework that is "comprehensive,

non-intrusive, non-punitive, facilitative and respective to national capacities.” On long-term targets, China would not get more specific than “2 degrees” unless the developed countries increased their mid-term targets dramatically to the level recommended by the IPCC.

During negotiations in Cancun, China worked together with the BASIC group to hold the G77 together. It showed flexibility and played a facilitative role. It also kept a low profile and avoided the spot light. Having learned from a suboptimal public communications strategy in Copenhagen, the Chinese government has also become more open to media and NGOs. Minister Xie Zhenhua, head of the Chinese delegation, met Chinese NGOs just before leaving for Cancun and also met representatives from the international NGO community during the conference. The minister even encouraged NGOs to criticize the government “as long as the criticism is based on facts.”

The Chinese government saw the Cancun outcome as “positive” and acknowledged its own constructive role in the process. However, the agreement was acceptable though not ideal, from China’s perspective. Negotiators criticized that the extension of the Kyoto Protocol was still uncertain, and that the barrier distinguishing the responsibilities of developed and developing countries was in danger of disappearing. This has been China’s bottom line since the Bali Action Plan in 2007. Therefore, it is unclear why China’s announcements after Cancun were quite positive. There are two hypotheses concerning China’s relatively positive attitude toward the Cancun Agreement: Either China thinks the UN climate process is more important than the Kyoto Protocol, or China has accepted that the discontinuation of the Kyoto Protocol is irreversible and is preparing to accept the pledge and review regime.

Chinese civil society cautiously welcomed the outcome of Cancun. NGO observers appreciated that the Mexican presidency kept the process transparent and inclusive. They also commended the parties for the compromises they made and their flexibility. Several NGOs were concerned about the lack of ambition on topics such as the insufficient mitigation commitments, the implementation of the Green Climate Fund, and the future of the Kyoto Protocol. Some also criticized the reinterpretation of “consensus” by adopting the text despite Bolivia’s opposition.

2.6 India

During 2010, India worked on bringing clarity to national-level policies that will ensure the integration of climate actions in development objectives. At the state (province) level, planning is underway on designing climate plans with the active engagement of bilateral aid agencies from developed countries. The central government has also established a “Low-Carbon Committee” under the Planning Commission to identify various options that India should pursue in the coming years to ensure that economic growth can be maintained while its carbon footprint is reduced at the same time. Most notably in 2010, a new tax was introduced as “coal cess” that is calculated to generate approximately \$600 million for investment in research and development of new green (climate-friendly) technologies.

While planning was initiated in India, the country’s expectations for the international climate regime was to provide adequate and predictable funds to facilitate the domestic transition toward a low-carbon economy without compromising economic objectives and to ensure transfer of appropriate technologies for mitigation and adaptation.

Although opinions among stakeholders in India on the outcome of COP 15 in Copenhagen was split, expectations for COP 16 in Cancun among businesses, NGOs, and the government were similar: to avoid any kind of legal commitment for greenhouse gas reductions for developing countries; to support legally binding commitments (with a Kyoto Protocol kind of architecture) for developed countries to ensure environmental integrity and continuance of carbon markets; to create technology transfer mechanisms that will support India in achieving its low-carbon development objectives; and to provide finances for mitigation and adaptation objectives. Yet despite these clear and far-reaching requests, India wanted to be seen politically as a “willing” country rather than a “demanding” country or a mere “follower” due to international pressure.

The Indian government was quite pleased with the outcome of COP 16. Full credit has been given to the Mexican presidency for reviving the multilateral process through excellent climate diplomacy. As the Cancun Agreement comprises two proposals submitted by India (formally or informally) – on a technology transfer mechanism and on an International Consultation and Analysis – India had achieved two major objectives: to continue representing developing countries (i.e., G77 and China), and, politically, to break the ongoing

deadlock between the BASIC countries and the United States on transparency of unsupported actions.

There were confused reactions from civil society. On the one hand, the faith in the UNFCCC process was restored. On the other hand, several NGOs perceived this as being achieved at the cost of almost letting the Kyoto Protocol expire. NGOs are concerned that in the future, the climate regime will increasingly consist of pledge and review elements. In addition, there was criticism that COP 16 did not advance mitigation targets, while the principle of historic responsibility was diluted along with the equity principle.

At the political level, Indian opposition parties criticized that founding the Green Climate Fund as such would not guarantee adequate and predictable funding in the future, and that the Cancun Agreement left a high possibility that some developed countries would opt out of the Kyoto Protocol. This increased the fear that the burden of greenhouse gas reductions would increasingly rest on developing countries.

2.7 South Africa

The position outlined by the South African delegation before COP 16 was not much different from what had been formulated a year earlier prior to COP 15 with the exception that there were more references to a 1.5 degrees Celsius warming target. The delegation emphasized that South Africa remains committed to, and informed by, the African position on all issues relating to the negotiations. According to the South African government, “The developed world is historically the main contributor to the levels of greenhouse gases in the atmosphere and thus has to bear the greatest responsibility to take urgent and real measures to address climate change.” South Africa has consistently led the charge for rich nations to bear the burden of concessions in a post-2012 treaty. South Africa is adamant on a second commitment period for the Kyoto Protocol and has argued that a central part of a post-Kyoto agreement would be the requirement for all developed countries to take the lead by making deep, legally binding, quantified emission reduction commitments with a mid-term target toward the upper end of the ranges of 25 to 40 percent below 1990 levels by 2020, and 85 to 90 percent below 1990 levels by 2050. In addition, South Africa argues that the financial support needed for implementation of a comprehensive response to climate change should not affect current development assistance levels.

In turn, South Africa, although not obliged, offered to undertake mitigation actions in a manner that is appropriate to its national circumstances, its sustainable development objectives, and its imperative for poverty eradication and economic growth. South Africa's mitigation plans arise from the Long-Term Mitigation Scenario exercise, initiated in 2006 and concluded in July 2008, which recommends a gradual weaning of the country off its huge dependence on carbon-based energy through a "peak, plateau, and decline" approach. According to the scenario, South Africa's greenhouse gas emissions must stop growing at the latest between 2020 and 2025. Then they must be stabilized for up to 10 years, before finally declining in absolute terms. Since COP 15, consequently, South Africa has offered to reduce its greenhouse gas emissions intensity by 34 percent by 2020 and 42 percent by 2025 – but only on the condition that rich nations commit to providing financial and technical support, and that a fair, effective, and inclusive global deal is reached.

On November 17, 2010, the long-awaited draft of the National Climate Change Response Green Paper finally appeared, though it had been expected since before COP 15. The Ministry of Water and Environmental Affairs invited civil society and the public to submit written comments on the paper. Following a period of consultation, a final climate change policy White Paper is expected to be completed by mid-2011. The government has promised to prepare a legislative, regulatory, and fiscal package ready for implementation by 2012.

Going to COP 16, the South African government was eager for some sort of positive outcome on which they could build momentum for a breakthrough at COP 17 in Durban in 2011. South Africa, which will hold the presidency for COP 17, was keen to see Cancun move toward a legally binding agreement. In trying to achieve such an outcome, South Africa sought to use its strategic alliances and influence within the BASIC group, the African Group, and the G77 and China, as well as utilize its amicable relationship with the EU. Citing unnamed sources, one of the major national papers, the Mail and Guardian reported that the South African delegation persuaded the two developing nation giants, China and India, in "robust" discussions, to accept legally binding agreements. They claim that through the efforts of South Africa, Jairam Ramesh, India's environment minister, was swayed to moderate his country's hardline position. Continuing, the paper reports that the South African delegation also played a critical role in persuading Japan to drop the Kyoto issue for the time being and concentrate on the bigger picture. South African delegation is reported to have actively engaged delegations from Australia, Brazil, China, Colombia, Egypt, the European Union, India, Japan, the Marshall Islands, Russia, the US and Venezuela in talks on the last day of

Cancún aimed at resolving the dilemmas of the Kyoto Protocol and forging a new treaty with legally binding commitments.

In the immediate aftermath of COP 16 in Cancun, South Africa praised the Mexican government for leading what it called a “transparent process... [which] built confidence and established an atmosphere of trust and cooperation.” At the same time, however, South African delegates bemoaned the absence of a concrete agreement on a second commitment period for the Kyoto Protocol. Nevertheless, South Africa celebrated the adoption of the Cancun Agreement as an extraordinary achievement that still left the door open for the possibility of a two-track, legally binding outcome. According to the South African delegation, “COP 16 has reinvigorated the multilateral process by reflecting the political will of the international community to seriously and urgently address the climate change crisis.”

Despite the progress made in Cancun, the outcome did not address the many difficult political questions such as the legal form of the final outcome of the negotiations in the Ad Hoc Working Group on Long Term Cooperation (AWGLCA), which raises the question whether or not an agreement will be reached on the second track of a Second Commitment Period under the Kyoto Protocol. South Africa has the challenge to then address the unresolved issues while at the same time ensuring that the agreements made in Cancun are further developed into something more meaningful

In terms of lessons learned from Cancún and the strategy going forward to Durban 2011 for the South African delegation, Alf Wills, South Africa's lead negotiator, has emphasized that it has become clear that “the world would get the treaty it was ready for,” explaining that South Africa would push for a legally binding agreement, with explicit targets, first and then seek to establish rules for the operationalization of such a framework/agreement later.

The South African delegation views thorough engagement with all stakeholders during the year as critical for success in Durban. The South African delegation will therefore seek to consult widely on what the world would accept, including holding informal meeting outside the UN's official preparatory talks. According to Alf Wills “once we have a good sense of the expectations, we can start to lobby.”

In terms of civil society, a common analysis and position on the role of South Africa at COP16 and the outcomes of Cancun is yet to be finalized. However, it is worth noting that going to Cancun, sectors within South African civil society were already disillusioned by

what was a clear exercise in management of expectations by many sources, among them the South African negotiating delegation and the UNFCCC. Cautious and unambitious statements from these sources were seen as deliberate attempts to diminish expectations of a breakthrough at Cancun. South Africa civil society are pushing for an unconditional, equitable, just and binding global agreement and there is thus, widespread disappointment with the failure to achieve such an outcome at Cancun. It is noted, however, that the Cancun Agreements, were a positive step in repairing the damage done to the multilateral system of negotiations by the process and outcomes of COP15. Notwithstanding the inadequacy of the Cancun Agreements, it is hoped, however, that they will provide the impetus needed for success in Durban.

3. Beyond Cancun – The road toward more ambitious climate negotiations

As the regional analyses show, the evaluations of the outcome of COP 16 do not differ fundamentally between the various parties. Last year, this was very different: The United States and Brazil, for instance, had celebrated COP 15 as an opportunity, while the countries of the EU, Mexico, other parties, and a large part of the international civil society had perceived it as a failure. The evaluations of COP 16, however, are more consistent. Many countries, at least those analyzed in greater detail above, tend to share the impression that COP 16 was a success, in particular given the difficult political circumstances after COP 15. In particular, COP 16 is considered to have safeguarded the UNFCCC process and displayed that the UN process is functioning.

At the same time, many countries share the opinion that COP 16 was not a great leap forward in terms of actual climate protection, and negotiations still lacked clarity on the most controversial questions – notably, more ambitious emission reduction targets and clear climate finance commitments for the developed world.

Regional diversity in the evaluations of COP 16 exist particularly when concerning the prolongation of the Kyoto Protocol, as well as on several details of the negotiations, for example, how to approach emission reductions from deforestation and forest degradation (REDD), or how to govern climate finance. Here, some argue that COP 16 did not really push negotiations forward, while others find that pivotal decisions had been achieved. Yet, vague

language on the future of the Kyoto Protocol as well as on the inclusion of potential loopholes in the negotiations on REDD cast a cloud over the official agreement of COP 16. In sum, at best COP 16 could be considered “one step forward and two sideward.”

Overall, many political developments arose in the key countries of the South in 2010, for example in China, India, Brazil, and South Africa, while political developments in key countries of the North, for example the United States, Japan, Canada, and Russia, were either lacking or at least far too slow to push the international negotiations forward. At the same time, COP 16 displayed that the UNFCCC process in general was working. What is lacking in particular is the political will – most notably of the developed country governments – to undertake significant steps toward fundamental economic reforms.

Yet another wrench has been thrown in the works of the UN: Bolivia has neglected to acknowledge the outcome of COP 16 as a multilateral consensus and announced a challenge of the legal status of the Cancun Agreement in an international court. Until the very last minutes of the negotiations, Bolivia raised objections, but the Mexican foreign minister, Patricia Espinosa, in her function as president of the COP, decided to just take note of Bolivia’s objections while still declaring the texts as official decisions by the parties to COP 16 and COP/MOP 6 respectively. It is doubtful that Bolivia can bring an accusal to the International Court of Justice, because this would presume that another state agrees to be accused by the body. Which state should this be? It is not likely that Mexico, as representative of the COP presidency, will consent to be taken to court. Nevertheless, the accusal by Bolivia – so far unprecedented in the history of the UN – questions the “success” of COP 16.

It questions the outcome of COP 16 not only in legal terms, but also in political terms. What, for example, if a more powerful country such as China, Brazil, or the United States were to have raised objections: Would the Mexican presidency have reacted differently? Moreover, the Bolivian accusal questions the content of the Cancun Agreement. For the argument of Bolivia is not that of a climate skeptic intending to impede progress on climate protection, as Saudi Arabia once questioned the agreement on the Kyoto Protocol in 1997. To the contrary, Bolivia argues that the decisions taken at COP 16 would not lead to a socially fair and environmentally ambitious outcome of the UNFCCC process that prevents dangerous human interference with the climate system. With this argument, a growing number of civil society organizations and representatives around the world – including hundreds of peasants, indigenous, environmental, and development organizations, in particular from the global South – share Bolivia’s doubt that the current UNFCCC process is still on the right path.

One could argue that there are no real alternatives to these UN negotiations. Nor do potentially weak UN decisions necessarily impede more ambitious climate protection engagement on other levels, that is, on the sub-national or local levels. Yet it seems that negotiations under the UNFCCC could be more ambitious. In particular, what COP 16 was lacking was a shift in the overall strategy, and a reconsideration of what should finally be achieved with negotiations under the Bali Action Plan. Given the failure of both COP 15 in Copenhagen and domestic climate legislation in the United States, it is very unlikely that negotiations under the UNFCCC will deliver a fair, ambitious, and legally binding climate protection treaty that involves most – if not all – parties within the next few years. If hope for this did not die at COP 15, it did so on July 22, 2010, when the US government stopped aiming for comprehensive climate legislation.

Negotiations in Cancun lacked a clear effort to aim for the second-best solution: a plurilateral agreement that sets the course for ambitious and legally binding emission reductions, adaptation, finance, and technology transfer commitments for a group of progressive countries that are willing to proceed. A number of delegations have already perceived the need for such a strategic shift, including those involved in the Cartagena Group for Progressive Action. Yet this shift in strategy was not mirrored in the official Cancun Agreement.

Thus, it seems negotiators, legal advisors, and policy consultants have plenty of work to do in 2011 and beyond. Not only do they have to analyze how a potential accusation by Bolivia might turn out. There is also a great need to explore the political, juridical, and practical possibilities to pursue an outcome that will eventually lead the world to a fair, ambitious and legally binding global agreement that does not let itself be held hostage by the United States and other reluctant parties. But this agreement should at the same time make it possible for these countries to join in later once a new level of *realpolitik* is reached in domestic politics and the race for the best solutions is running full speed.