


*by Dustin Maghamfar, UCLA Law delegation — one in a series of posts from COP 15 in Copenhagen:*

Before preparing for this trip to Copenhagen, I conceived of UN international negotiations as massive plenary sessions where countries debate various proposals in an open forum. While I think this is a somewhat commonly held perception, the reality differs significantly – but not always. At a typical plenary session, party delegates give prepared statements (called “interventions”) and rarely get into substantive details. The real negotiations take place behind the scenes, beyond the view of observers, so that by the time the plenaries take place, resolution (if not on substance then on how to proceed) has been reached and there is little excitement at the plenary. 

Sometimes, however, the drama reaches the plenary floor. For one fun example and story about Chinese and Saudi Arabian opposition to the logo of the conference, visit our [Facebook page](#). And at Wednesday’s plenary, a deep division within the G77 + China negotiating bloc became public and erupted into open debate, a very rare occurrence.

During the plenary, parties debated five proposals submitted by countries in June for what would be the next agreement under the UNFCCC. Of these, Tuvalu’s proposal calls for a new protocol requiring significant emissions reductions to be written under the convention, to exist alongside the Kyoto Protocol. Tuvalu’s proposal is strongly supported by the Alliance of Small Island States, who usually advocate for the most aggressive emissions reduction actions, since their nations are literally disappearing due to sea level rise.

Tuvalu made a request at the plenary that the Chair form a contact group to discuss its proposal for a new protocol. Contact groups are official committees that hold formal meetings, typically open to observers. AOSIS, supported by NGOs, believes contact groups are ideal because they are open and transparent. The alternative to contact groups is “informal consultations,” which are the backroom closed-door negotiations I mentioned earlier.

China, India, Venezuela and Saudi Arabia strongly opposed the creation of a contact group, and suggested instead that informal consultations be held. Because of the COP rules (technically provisional rules, which haven’t even been adopted at COP15 – look for a future blog on our Facebook page on this topic), decisions must be made by consensus. AOSIS would not withdraw its objection to informal consultations, and the China-led bloc would not withdraw its objection to establish a contact group. Accordingly, the COP President had no choice but to accept Tuvalu’s suggestion that the COP be suspended entirely, pending resolution of this impasse.

The lead Danish negotiator was tasked with working with the parties to attempt to find a resolution. At the scheduled time for the next plenary, numerous NGOs organized a rapid response rally in support of Tuvalu. In response, observers were blocked by UN security from entering the plenary. At the time of this posting, no resolution has been found and the COP remains suspended.

Although the debate is about whether to proceed with informal consultations or a contact group, the underlying issues are much more significant. China et al. adhere to their position that the Bali Action Plan and the Kyoto Protocol are all that is necessary, and the focus of the COP should be on the full implementation of those agreements. AOSIS and Tuvalu are adamant about a new protocol, one that calls for new commitments to limit warming to 1.5 degrees Celsius and significantly increases funding and new mechanisms for adaptation.

Today, and in a sign of how deep this divide is, a separate but similar debate about how to proceed erupted in the CMP plenary. Tuvalu and AOSIS requested an additional contact group to discuss amendments to the Kyoto Protocol. China, Brazil and OPEC countries offered a compromise wherein only certain topics would be discussed in the contact group. Tuvalu and its supporters were not satisfied with this proposal, so the agenda item was suspended and the meeting of the CMP adjourned.

The present debate reflects a fundamental division: do the parties proceed with a second commitment period under the Kyoto Protocol? Do they narrowly or broadly amend Kyoto? Do they create a new protocol under the convention (one treaty or two)? This leads to yet a different question, which is the particular outcome of COP15: Will the negotiations result in a new legally binding treaty, or will parties move forward on the basis of only (non-binding?) decisions of the COP? The extent to which COP decisions are legally binding is itself a thorny legal question that is very difficult to disassociate from intense political debate.

This is the first instance during this conference when the parties have entered into high profile, open debate over the outcome of COP15. Perhaps the most important question is what impact the suspension of the COP has on the negotiations. The answer is not much. Relating back to the very beginning of this post, the real negotiations take place behind closed doors, where parties can attempt to reach compromise. The substantive, technical work of this conference continues in anticipation of the arrival next week of ministers and then heads of state. Open plenaries are opportunities for political posturing and media headlines. Normally we'd expect the battles to be fought between the developed industrial countries and the developing world, but instead this battle is within a normally united bloc. When the COP and CMP will resume are open questions, as is how these bodies will move forward, but for now, the key battles continue to be fought out of sight.

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