



# The EU and the progressive alliance negotiating in Durban: saving the climate?

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## Acronyms

ADP	Ad Hoc Working Group on the Durban Platform for Enhanced Action
AOSIS	Alliance of Small Island States
BASIC	Brazil, South Africa, India and China
BATNA	Best Alternative to a Negotiated Agreement
CDKN	Climate and Development Knowledge Network
CDM	Clean Development Mechanism
CEPS	Centre for European Policy Studies
COP	Conference of the Parties
DAC	Development Assistance Committee
EEAS	European External Action Service
EC	European Commission
EDCSP	European Development Cooperation Strengthening Programme
EU	European Union
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
IMF	International Monetary Fund
IMO	International Maritime Organization
IPCC	Inter-governmental Panel on Climate Change
LDC	Least-developed Country
MDG	Millennium Development Goal
NGO	Non-governmental Organisation
ODA	Official Development Assistance
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum-exporting Countries
QELRO	Quantified Emission Limitation and Reduction Objective
SIDS	Small Island Development States
SLCP	Short-lived Climate Pollutant
UK	United Kingdom
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNFCCC	UN Framework Convention on Climate Change
US	United States
WPIEI	Working Party on International Environmental Issues
WTO	World Trade Organization



## Executive summary

This paper applies theory from the field of international relations to try and understand the role of the European Union (EU) in the Durban climate talks. In particular, it analyses the role of the EU's alliance with groups of developing countries in facilitating an agreement on the Durban Platform for Enhanced Action.

The climate change negotiations bring together parties with different approaches and interests, related to the science of climate change; objectives of international agreement; measures needed; burden sharing; and mechanisms to ensure compliance. It is important to understand the drivers of collective action on these topics, on which there are two schools of thought.

The realist school of thought sees international negotiations primarily in terms of self-interest, with negotiators analysing the balance of gains and losses they are likely to experience. The constructivist and sociological schools are more focused on how values and norms underpin the different positions. From a realist perspective, agreement is unlikely when countries believe they can gain a strategic advantage from non-cooperation (e.g. by benefiting from proprietary technology); from a constructivist perspective, agreement may result because of public pressure or a sense of international responsibility.

Coalition building plays an important part in negotiations, but also presents dilemmas: if the coalition is too small, it can be ineffective; if it is too large, it can contain parties with too many different and irreconcilable viewpoints.

The EU itself is more than a coalition but less than a state. This leads to complex internal negotiations between Member States, and also limits the toolbox available to the EU: historically, it has relied on 'soft power' and normative standards rather than 'hard power'. In some fields, the EU has exclusive competence. In climate change, however, both the EU and its Member States have a say in the negotiations, working together as 'Team EU'.

On the developing country side, new coalitions have emerged to supplement and in some cases replace the traditional grouping of the G77 and China. These include the BASIC countries (Brazil, South Africa, India, China), the Alliance of Small Island States (AOSIS), the Least Developed Country (LDC) group and the African Group of Negotiators (AGN). In addition, the Cartagena Group of about 45 developed and developing countries seeks ambitious outcomes from the climate negotiations.

Key issues in Durban included the future of the Kyoto Protocol and the possibility of a replacement agreement, imposing greater responsibilities, especially on larger emitters among developing countries. The EU's negotiating position, the result of long deliberation within the EU, contained both realist and normative elements: in favour of an extension of the Kyoto Protocol, but only if others agreed to a roadmap for future negotiations, which would include agreement of a legally binding outcome of these negotiations by 2015 with commitments starting from 2020. With regard to its commitment to a second period of the Kyoto Protocol, to start from 2013 onwards, it reiterated its aim to reduce emissions by 20% by 2020 and to step up this effort to 30% if comparable emitters would do the same.

The roadmap was largely agreed, partly because the EU was able to form an alliance with the AOSIS and LDC groups, as well as other members of the Cartagena Group. The strength of this alliance made it more difficult for China and India, among others, to dissent.

The EU's engagement with developing country groups can be seen as largely normative in nature, since these countries are not large emitters or competitors for markets. It has been based on trust generated through previous partnerships, and by the EU's past commitments to emissions reductions and to fast-starting finance. At the same time, the EU used its support for a second commitment period of the Kyoto Protocol as a bargaining chip, and in this sense adopted a realist approach.

The alliance provided legitimacy to convince others to agree to the establishment of the Durban Platform for Enhanced Action. It guaranteed the EU a seat in the inner circle of the negotiations, from which, according to some, it was excluded in Copenhagen. What also helped was the relative modesty of the objective: an agreement to negotiate rather than the substance of a deal.

The key question for the future is about the strategic choices the EU must make to foster eventual agreement. Is the realist or normative perspective more useful? And have the limits of existing partnerships been reached?

The paper concludes that both realist and normative elements will be needed. In the former category, options include conditions before emissions targets are accepted, conditionality with respect to carbon finance, new standards for carbon content and energy efficiency and various trade-related measures. On the normative side, emphasising the importance of climate science, encouraging an open process, supporting a possible opinion on climate change from the International Court of Justice (ICJ) as proposed by Palau and discussing non-legally binding commitments might all be possibilities. A differentiated strategy of climate diplomacy will be needed for different groups of countries, especially to sustain the trust and the coalitions built up during the negotiations. Such climate diplomacy should take an inclusive view of international relations so as to include the UN Framework Convention on Climate Change (UNFCCC) negotiations as well as other fora and linkages with economic, political and security issues.



# 1 Introduction

The European Union (EU) has taken a prominent role in climate change, and the issue has had a great influence on its international image and credibility. After Copenhagen, the EU shifted its attention (back) to its traditional allies within international climate negotiations, the least-developed country (LDC) group and the Alliance of Small Island States (AOSIS). These countries have come together with other small and medium-sized countries with a relatively progressive agenda, such as Australia, Chile and Norway, in the so-called Cartagena Dialogue. Even though they do not represent a large share of global greenhouse gas emissions (approximately 16%),<sup>1</sup> and in essence have little 'hard power' compared with key stakeholders such as the US and the emerging economies, the Cartagena group's cooperation has been viewed as the reason behind agreement being reached on the Roadmap for Future Action at the Durban Summit of December 2011. This outcome has also been seen as having saved the UN's climate negotiation process from collapse.

In the roadmap, parties agreed to further negotiations on a new international climate treaty by 2015 and to a second period with emission reductions under the Kyoto Protocol, whose first commitment period expires this year. According to EU Commissioner for Climate Action Connie Hedegaard, the EU's strategy worked. Polish Minister of the Environment Marcin Korolec went so far as to deem the outcome of Durban a 'significant success of the Polish EU Presidency together with the European Commission, the EU and the global community as a whole' (EU, 2011). Generally, the outcome of Durban was considered to be beyond expectations, despite it being far from certain that an inclusive international agreement with meaningful emission reduction commitments would be agreed on by 2015. It also remains unclear to what extent resources can be generated for adaptation to climate change effects, potentially jeopardising longer-term cooperation between the EU and the LDCs and AOSIS.

This paper acknowledges the difficulties involved in agreeing to collective action to combat climate change, especially when judging the issue at hand from a rational choice or realist point of view on international politics. At the same time, it uses sociological and constructivist views on international cooperation to explain why progress has nevertheless been made in UN climate negotiations centred around the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. In particular, it investigates the alliance between the EU and other progressive, but relatively small emitters that allegedly helped secure a positive outcome at the Durban Summit, despite this making little sense from a rational choice-based realist perspective on international politics.

The main question of this paper is: to what extent did the alliance formed by the EU contribute to agreement on the roadmap, and why this was the case?

Sub-questions are:

- Can the outcome truly be viewed as having saved the UN climate negotiation process?
- Could the alliance also contribute to future agreement by 2015, and in what way?
- What other incentives exist or could emerge that would lead to meaningful international cooperation on climate change mitigation,<sup>2</sup> and what specific levers of influence could the EU bring to bear to contribute to this?

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1. The combined emissions of the group in 2005 are estimated at around 6,676 Mt CO<sub>2</sub> equivalent or 15.6% of global greenhouse gas emissions. This is a sum of the emissions of the EU (5,149) + Australia (528) + South Africa (422) + Colombia (233) + New Zealand (75) + Chile (59) + Norway (54) + AOSIS (156) = 6,676, taken as a percentage of total emissions in 2005 (42,629). These calculations are based on Den Elzen et al. (2012).

2. For example an agreement that reduces emissions in line with the EU's objective of a rise in the Earth's temperature not exceeding 2°C.

In order to answer these questions, the study starts with a brief review of theoretical insights on why states cooperate and how coalitions can further international cooperation. To illustrate this, it uses examples of previous rounds in the climate negotiations. It then goes on to discuss specifically how the EU can influence international politics, as well as the inherent limits in its functioning. This section also discusses why gaining support from the LDCs and AOSIS can strengthen the EU's position within climate negotiations, and why they would be willing to team up with the EU: to what extent is this a coalition of shared interests, and what can the LDCs and AOSIS ask in return for their support to the EU? Subsequently, the paper analyses what happened in Durban, and gives an overview of options to strengthen international cooperation on climate change. A concluding chapter sets out specific policy recommendations for negotiators from the EU, the LDCs and AOSIS.

The study reviews scholarly work on the climate negotiations and adds fresh empirical findings on how the EU operated at the Durban Summit. The empirical part is based on reports of the Durban negotiations and on in-person and telephone interviews with over 15 officials who were involved in the negotiations on behalf of an EU Member State, the European Commission (EC) or one of the EU's strategic allies.

## 2 Negotiating the climate: building on insights on international cooperation

Negotiating is about reciprocity – that is, give and take. International cooperation is a situation whereby parties agree to work together to produce new gains for each of the participants that would be unavailable to them through unilateral action (see Zartman and Touval, 2010). International cooperation might involve international negotiations, but these are likely to take place only when the parties believe it will be possible to overcome differences to address a commonly perceived policy problem.<sup>3</sup> In such negotiations, parties are generally willing to make concessions as long as others do so as well. Game theory illustrates the importance of repeated negotiations, since this can help parties realise short-term costs of disagreement or defection from negotiations, as well as the longer-term benefits of cooperation. Repeated negotiations can help build trust as well, an essential element in negotiations (Maxwell, 2005).

Usually, negotiations take place to define the common policy objective(s), the problem this seeks to address, the measures that could be undertaken, what parties could contribute to achieve this and what will happen if the agreement is breached. For instance, on climate, parties may negotiate:

- Climate science: is climate change happening and in what way and to what extent, is it caused by emissions of greenhouse gases, at what level can we speak about dangerous climate change and how bad are the consequences?
- Objectives: mitigation of emissions and adaptation to negative consequences, and the extent.
- Measures: what scale and type of emission reductions and adaptation activities?
- Contribution: who should contribute what (and who receives/benefits) and when?
- Compliance: what will happen if a contributor breaches their obligation?

On all these issues (and many more), parties can have different views, which may change as a result of changing (scientific, economic and political) insights or negotiations with others. The question is whether there is a willingness to concede on specific points to reach an outcome that includes other preferences. Actors who are seen as conceding the least and obtaining the most can be considered to have exerted the most influence.

A key issue is why parties concede and, more generally, what motivates their positioning within international negotiations. We discuss this below and then outline five strategic choices for parties that influence their position within negotiations. The concepts are illustrated with examples from past climate negotiation rounds and are used in Section 5 to analyse the EU's performance in Durban.

### 2.1 Why cooperate? Rational choice and sociological motives

Scholars disagree on whether actors operate mainly on the basis of interests within negotiations or primarily on the basis of what they perceive is appropriate (March and Olsen, 1998). According to the rational choice perspective, actors operate according to the logic of consequence and are able to identify their interests, those of others and the effects of decisions taken. According to the sociological perspective, actors operate according to the logic of appropriateness and are unable to fully grasp the problem at hand, the possible range of solutions and the effects of their decisions. Cooperation in the first strand would be the result of interest convergence; in the second, it would be the result of social pressure, persuasion and informal norms to seek agreement (see also

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3. Theoretically, international cooperation could also happen without negotiations, that is, when all states agree and have identical viewpoints on what to agree on.

Gillinson, 2004). In international relations, rational choice insights have inspired realist theories, whereas sociological insights have inspired liberal and constructivist theories (Hopmann, 2010).

From a realist perspective, international cooperation on climate change will emerge only when countries consider it to be in their interests to reduce emissions and for others to do the same. This might be to further their economic and/or security interests, for example because it lowers the costs of energy imports and reduces their dependency on foreign energy suppliers. From this viewpoint, cynics might see climate change negotiations merely as window dressing for states' energy security concerns. The EU would be a logical advocate for reducing emissions, as it largely imports its (fossil fuel-based) energy (Eurostat, 2011).<sup>4</sup> The same is the case for the LDCs and AOSIS, but they import far less in comparison.<sup>5</sup> For AOSIS, a clear security interest exists in mitigating climate change, since the existence of the low-lying island states is directly threatened by the rising sea level. The LDCs are already feeling the consequences of climate change (extended drought periods, etc.), but they also fear what still is to come. Both have an interest in obtaining funding for adaptation activities.

From a realist perspective, international cooperation is unlikely to emerge when states believe they can obtain a strategic advantage when implementing unilateral action (i.e. the green growth paradigm of greening economic activity in order to create new markets, improve productivity and resource efficiency). However, when they believe they already possess the competitive advantage, they may become interested in international cooperation so other countries buy their technological innovation. Competitiveness considerations may also induce international cooperation – such as when an emission reduction policy has been put in place and companies believe this reduces their competitiveness because of the costs involved. In this case, companies are likely to advocate an extension of the emission reduction to countries where their competitors are based. The latter two arguments might explain the EU's position from this perspective, since the EU does possess cutting-edge energy efficiency and renewable energy and has firm emission reduction policies in place.

Nevertheless, these rational choice motives do not seem strong enough to explain why the EU would pay for adaptation in poor countries. The EU has little to fear or gain in terms of competitiveness from these countries, but it does need their votes in a consensus environment. At the same time, having their votes is insufficient to achieve agreement as long as other parties, such as the US and China, do not shift position – which, from a realist perspective, they would be unlikely to do so as long as they have a veto and do not consider participating to be in their interests. Others have argued that, if the US and China participate, financial transfers from richer to poorer countries in return for greenhouse gas emission reductions would be cost effective (Carraro et al., 2005). Paying for climate mitigation in developing countries would be cheaper than reducing emissions in industrialised countries, and the costs involved would outweigh the future costs of adaptation measures countries would face without emission reductions. However, politically, it seems difficult to foresee transfers from the US to China. Therefore, from a realist perspective, using funds to obtain support from developing countries does not make much sense. Forming a coalition with AOSIS, the LDCs and other medium and small emitters is unlikely to yield much result either, if considered purely from a realist point of view. To see the added value of such a strategy, the sociological perspective provides more insights.

The explanatory value of the rational choice perspective in general seems limited when analysing cooperation on climate change.<sup>6</sup> When international cooperation concerns a common pool resource, realists would expect parties to free ride (e.g. Dellink, 2011), whereas in reality we have

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4. According to Eurostat (2011), more than half (53.9%) of the EU's gross inland energy consumption in 2009 came from imported sources.

5. According to the World Factbook, the EU buys about 10% of globally traded oil. The share of imports of developing countries and small island states is negligible ([http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_oil\\_imports](http://en.wikipedia.org/wiki/List_of_countries_by_oil_imports)).

6. In a similar vein, a rational choice perspective has little explanatory power in terms of why states give development aid (or finance adaptation), since this is ultimately based on altruistic motivations (despite there being some benefits to be obtained from it for states when disbursing aid, etc.).

seen instances of international cooperation on climate change emerging, for example on the UNFCCC and the Kyoto Protocol. States have never completely abandoned the process, even though US and Canadian withdrawal from the Protocol can be seen as free riding, and the emerging economies have thus far not taken up a reduction commitment. Apparently, the US, China and other big emitters still believe in the possibility of international cooperation in the area of climate change. As these big powers typically claim to behave on the basis of their national interests, they apparently perceive it to be in their interests to stay part of the process.

Section 4 further discusses the extent to which the alliance of progressive countries built around the EU may have affected these countries' perception of what is in their interests. We then see that, for instance, their concern for international reputation provides a key motivation for their continued participation in international climate negotiations. Indeed, sociological aspects such as public pressure and international responsibility are also likely to provide an explanation for their actual behaviour in such negotiations.

Social factors in general are seen as key to international cooperation. The issue should not be overrated though, and much depends on who pressurises key players and if these are the ones who impress them. On the one hand, attention to climate change by the (Western) media and non-governmental organisations (NGOs) is likely to explain why states have thus far not completely abandoned the climate negotiations. On the other hand, it makes it difficult for them to shift position (e.g. the US on the Kyoto Protocol). Media pressure is also not equally significant for all states. For instance, the survival of Chinese government leaders is unlikely to be much related greatly to its performance within international climate negotiations. This may explain why Chinese Premier Wen Jiabao refused to leave his hotel room in Copenhagen to negotiate with Western political leaders (Spiegel, 2010). Nevertheless, the Chinese do care about their international identity; did not like being accused of blocking the negotiations; and realise that the international climate negotiations affect their general international image, which they like to see as being strengthened in line with their growing economic and military power (Chen, 2009).

Social and behavioural aspects play a role at the level of individual negotiators as well. Successful negotiators exhibit stronger use of listening and summarising skills, for instance. They plan negotiations that are longer in term and more oriented towards mutually acceptable solutions and are less rigid in terms of the issues discussed (Saner, 2000). Leadership by individuals has at times occurred in climate negotiations, with those involved quite often driven by a strong personal conviction. An example is the contribution of Al Gore to the Kyoto Summit in 1997, where he concluded the final negotiations on the Protocol on behalf of the US despite domestic opposition and a high likelihood of the US Congress not ratifying the treaty. Such elements of leadership contribute to the building of trust between parties in negotiation – another social factor.

## **2.2 Strategic choices for parties in international negotiations**

It is essential to analyse what motivates states to cooperate, since this is likely to explain their actual behaviour in negotiations. This influences the strategic choices of states willing to further international cooperation, in particular those concerning levers of influence, the identification of the likelihood of cooperation, the coalition partners to cooperate with, the management of negotiations and the choice of forum in which these should take place.

### **2.2.1 What levers of influence?**

Realists qualify only substantial power resources as sources of influence: threatening with military intervention, handing out economic sanctions or trade preferences and giving development aid (Cox and Jacobsen, 1973; Holsti, 1988). Persuasion or social and diplomatic pressure do not count as power sources if seen from this perspective. Realists also see negotiations primarily as a distributive game of bargaining, whereby parties strive to claim as much as possible at the expense of the other and defending against its claiming (Meunier, 2000; Odell, 2010).



However, constructivists would argue that, since interests, preferences, alternatives and bottom lines are not static and subject to perception, they can also be influenced by other levers, such as new (scientific) insights, economic development, status, government ideology and public pressure. The willingness of states to cooperate is in this view inherently subjective, and this aspect needs to be taken into account when considering what levers of influence can be brought to bear within climate negotiations. Negotiation is also about persuasion, bringing in social norms and identifying issues where common or complementary interests, and possibly even common solutions, exist. It affects the social relationship between parties (Odell, 2010). For instance, in climate negotiations, we have witnessed several instances of big powers not wanting to be portrayed as spoiling the process. The US gave in after it realised it was isolated at the 2007 Bali Summit when Papua New Guinea asked it to 'get out of the way' if it was not willing to lead, and China was unhappy about being blamed for the weak outcome of the 2009 Copenhagen Summit. In the literature, this phenomenon is known as 'network closure' (Coleman, 1990).

### **2.2.2 Defining and identifying BATNAs and bottom lines**

According to (rational choice-based) negotiation theory, actors are more likely to find agreement if they are able to define their best alternative to a negotiated agreement (BATNA). A BATNA allows them to identify the conditions under which a certain deal is better than no deal (Maxwell, 2005; Odell, 2010); this bottom line can be considered closer to the positions of others in the negotiations. Cooperation is thus more likely if you know your own BATNA and accompanying bottom line in negotiations, and have a good insight into what the BATNA of other key players is likely to be. This might also facilitate a realisation of issues on which agreement (at a certain point in time) is not possible. For instance, trying to get the US to re-join the Kyoto Protocol is generally considered to be beating a dead horse.

In order to identify the bottom lines and BATNAs of other parties, an accurate estimate of the preferences and motivations of other parties is needed. What do they consider the main problem to be, what do they see as a fair distribution of efforts and what type of commitments do they envisage? In climate negotiations, discussions on the operationalisation of principles such as common but differentiated responsibilities and equity could help in obtaining a better insight into preferences and motivations. In the past, they were not very helpful, since they merely intensified the divide between the industrialised countries, which looked mainly at future emissions, and developing countries, which focused on historic contributions (Cantore and Padilla, 2010). With the emerging economies' share of emissions rising, the relevance of this divide is decreasing, and a more constructive debate on a fair distribution of efforts may now start in earnest.

### **2.2.3 Building workable coalitions**

Parties to negotiations need to decide if they are willing to seek partners within negotiations or want to try to act on their own. With partners, they may be able to exert more pressure on others to progress or block international negotiations, but they may need to concede to others' agendas to the detriment of their own preferences (Odell, 2010; Sebenius, 1983). In a realist perspective, the consensus rule prevents any rationale for seeking alliances, but operating in blocs is a well-known characteristic of multilateral negotiations, including climate negotiations. Apparently, there are good reasons for operating jointly (including to split others). Nevertheless, it remains difficult to find the right size for a coalition, one that strengthens a position but does not require compromise on too many points. This phenomenon is known as the 'alliance dilemma' (Stein, 1990), and within climate negotiations has been seen with regard to the G77, for instance, which over the years has become composed of too many different (and irreconcilable) viewpoints (Hurrell and Sengupta, 2012; Vihma, 2010). The alliance dilemma is increasingly relevant within the EU too: since the EU expanded include to 27 Member States in the 2000s, it has become increasingly difficult to bring preferences into line.

Another question regards the permanence of coalitions. Here, a trade-off exists between cooperating with reliable partners and shifting in order to identify *ad hoc* coalitions on sub-items in order to find agreement. A related question is whether to operate through coalitions also used in other international discussions or whether climate negotiations merit their own coalitions. The coalition of the emerging economies Brazil, South Africa, India and China (BASIC) and AOSIS are typical examples of coalitions established primarily for the climate negotiations.

#### **2.2.4 Linking negotiations or seeking agreement on sub-items?**

One way to find agreement within negotiations is to link them to other negotiations or to break them up into smaller sub-items. Within climate negotiations, for instance, a choice was made to include both mitigation and adaptation, although the latter could also have been treated as a developmental issue to be addressed in other international platforms. Without doubt, the two are closely interconnected, and taking them into account simultaneously within negotiations provides opportunities for trade-offs. For instance, a high emitter can offer to pay off some of its mitigation efforts.

Linkages to other sets of international negotiations have been made as well, such as those on aviation and maritime emissions taking place in the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO), respectively. Climate change has also been on the agendas of the G20, the UN Security Council and other international bodies. In general, though, it has proven difficult to achieve tangible progress outside the UNFCCC and to link trade-offs in climate negotiations to trade-offs in other international negotiations. Reasons seem to include the complexity of the matters discussed, and those in charge not having the authority to make concessions in other sets of negotiations (owing to a division of labour within governments) and/or a lack of will to make concessions in climate negotiations. Nevertheless, it may not be possible to avoid the option of linking climate negotiations to other sets of international negotiations to overcome long-lasting points of disagreement.

Agreement can also be sought on sub-items. Reducing international aviation and maritime emissions could be examples, or efforts in the forestry sector to combat illegal logging and to avoid deforestation in general. A recent and promising initiative aims at reducing emissions of Short-lived Climate Pollutants (SLCPs),<sup>7</sup> inspired by the fact that the Montreal Protocol has thus far contributed more to reducing greenhouse gas emissions than the Kyoto Protocol, because it is a relatively simple treaty aiming at phasing out just one key gas. The aim is to undertake a similar initiative for other sources, such as black carbon. These are not covered by the UNFCCC process. The SLCP initiative, which is supported by Sweden and US, among others, is thus complementary to it.

#### **2.2.5 Shopping for the best international forum**

Finally, a strategic element in international negotiations is the preferred forum. The literature identifies several advantages and disadvantages of the traditional multilateral system (e.g. Abbott and Snidal, 1998). The UN system, for instance, promotes inclusiveness, legitimacy, economies of scale and a set framework for negotiations, principles and working methods for measuring emissions, etc. These aspects provide an argument for those who consider it vital to keep the Kyoto Protocol alive and the UNFCCC process going, on top of their actual provisions on climate change mitigation and adaptation.

Nevertheless, many observers realise that the UNFCCC negotiations are far from the ideal venue for international negotiations. It is extremely cumbersome to negotiate with over 180 states, and the public character of the official sessions results in parties merely reiterating well-known

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7. This initiative is called the Climate and Clean Air Coalition to Reduce SLCPs. For more information, see <http://www.unep.org/ccac/> (accessed 24 May 2012).

positions. The complexity of the issues is aggravated by a complicated structure accompanied by perhaps the most sophisticated set of abbreviations and separate groupings ever seen in an international negotiations context. Few manage to keep abreast of the bigger picture. Decision making by consensus also strengthens the powers of those willing to block the negotiations (Odell, 2010). Climate negotiations therefore take place largely outside the official sessions of the UNFCCC negotiations process. According to some, the whole process needs to be abandoned in order to get negotiating parties out of their trenches and create new momentum (e.g. Kürzinger, 2011). Others argue that agreement needs to be sought outside the UNFCCC, but be brought back in to anchor it firmly within a formal institution. Meanwhile, the value of the ongoing sessions is that they continue to get all parties together, to keep the UNFCCC and Kyoto Protocol and its reporting commitments and infrastructure alive and to maintain the issue on the international agenda. Indeed, the annual Conferences of the Parties (COPs) have become gigantic events for creating awareness about climate change, bringing together not only many officials but also climate change experts from NGOs, the private sector and the scientific community.

In addition to other, often *ad hoc*, initiatives, three prime venues exist where international cooperation on climate change is discussed:

1. The **G20**, where discussions centre around climate finance and phasing out fossil fuel subsidies. The G20 is a forum primarily for the discussion of economic policies. It brings together the big powers, and if they agree this can make a difference. Points of criticism include its voluntary character (i.e. agreements are not always translated into binding commitments), the domination of economic arguments, its donor-driven character and the fact that it is not representative of the world's poorest countries.
2. The **Major Economies Forum** is similar in terms of participants, but focuses solely on climate change. It was initiated by the US and progress is currently seen as very slow. Perhaps this is not surprising, as discussions focus on mitigation, on which issue the positions of the big players are still miles apart.
3. The **Cartagena Dialogue** brings together countries with a relatively progressive agenda on climate change, meaning they want to further climate mitigation in line with Intergovernmental Panel on Climate Change (IPCC) scenarios to avoid dangerous climate change. This group brings together about 45 countries from Europe (e.g. the UK, Norway), Africa (e.g. Kenya), Latin America (e.g. Colombia) and the Pacific (e.g. Australia, Tuvalu) about four times a year for informal discussion of the state of play in international climate change negotiations. The group also meets at the UNFCCC meetings. There is no agenda and the alliance is not fixed.

The difficulty lies in avoiding these platforms merely being 'talking shops', and instead enabling them to contribute to collective action in the areas of mitigation and/or adaptation. Since the UNFCCC is still perceived as the prime venue for the codification of an eventual deal, those participating in informal meetings still take into account whether they can eventually translate agreements into this context or whether they are supplementary to it. In this respect, the perspective of legal rules, procedures and consensus rule at the UNFCCC process in particular may prevent parties from sticking their neck out when negotiating elsewhere, since they realise a possible agreement may still need to be brought back to the UNFCCC.

Another possible international venue where some analysts think pressure could be mounted to catalyse progress in climate negotiations is the International Court of Justice (ICJ) (Schwarte, 2011). In February 2012, the small island state of Palau announced its intention to work towards a UN resolution asking for the advice of the ICJ within the UN General Assembly. Building on previously established international environmental law, such advice might strengthen calls for further action on a new climate treaty (Korman and Barcia, 2012). However, at this stage, it is still too early to assess the possible effects of an ICJ advisory opinion if Palau were to be successful in getting its resolution adopted.

## 2.3 Summing up

International cooperation on climate change is likely to emerge only when social pressure results in states considering it appropriate to sign up to it, unless one believes that all parties have a (short-term) interest in lowering greenhouse gas emissions and will cooperate for this reason. Nevertheless, parties may still argue that they operate on the basis of interests, and in the long term it certainly seems to be in everyone's interest that states reduce their emissions to such an extent that dangerous climate change is avoided.<sup>8</sup> An international agreement is likely to facilitate this, as it codifies parties' commitments and stipulates what happens if they decide to defy these and free ride instead of fulfilling them. For states willing to foster such an agreement, it is of key importance to:

1. Consider the levers of influence they can bring to bear and that others could be interested in.
2. Define their own BATNA and bottom line and identify the likely bottom lines of others (and to seek agreement only when feasible).
3. Build coalitions that help in bringing key objectives in negotiations closer without having to concede too much.
4. Consider the management of negotiations in terms of linking or delinking issues to negotiate and the order of the agenda.
5. Choose the right forum for negotiations.

Section 5 will use these elements of a comprehensive strategy for international negotiations to identify the strategic choices of the EU in climate negotiations. Before getting there, we first analyse general features of the EU operating internationally and its performance in Durban.

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8. In this study, the findings of the IPCC are taken as a reference point for what can be considered dangerous climate change, since the IPCC is an intergovernmental body and the UNFCCC has explicitly acknowledged this work.

### 3 The EU as an international actor: the challenge of cooperation internally and externally

Before testing the propositions laid out above, it is important to understand that the EU is more than a coalition but less than a state. This plays out in particular ways with respect to climate change negotiations. First of all, it complicates the division of tasks between EU Member States and the EU, at times undermining the EU's ability to be flexible in negotiations and to speak with a strong single voice. Second, it has led to a rather fragmented way of making policy, with agreements often facilitated by organising decision making along sectoral lines, in this case within the EU Environment Council. Third, it has resulted in a rather civilian or normative orientation in world politics, since military power is largely absent. The EU is largely unable to rely on hard power levers of influence and has no choice but to use persuasion as its main lever of influence on issues such as climate change. Finally, it affects the EU's ability to engage in coalitions, since this may demand concessions that are difficult to obtain from the EU.

#### 3.1 Who speaks for Europe?

The EU has increasingly spoken with a single voice internationally (Bretherton and Vogler, 2006; Van Schaik, forthcoming). On many issues, Member States are no longer allowed to operate single-handedly, since external competences should mirror internal ones. The European Court of Justice reasoned back in 1971 that legal inconsistencies could emerge when states would take differing positions internationally from what is agreed to in EU legislation.<sup>9</sup> To safeguard the EU 'acquis', the EC is to be involved during international negotiations, possibly affecting EU legislation. In terms of foreign politics, such as on the EU's position on human rights, no legislative powers are in place, but the duty of cooperation still requires Member States to operate in concert, even though legally they cannot be forced to do so.

Given the existence of EU legislation in the field of climate change, the EU has to speak with a single voice in climate negotiations, but when Member States do not fully support this voice, this dilutes its strength. On the issue of climate change it is well known that Poland and a number of other countries in Central and Eastern Europe, together with Italy, are less ambitious when it comes to reducing greenhouse gas emissions and providing finance to developing countries. Recently, support in other Member States for stepping up financial means has also diminished, notably those hardest hit by the economic crisis. As a result, it has become increasingly difficult to define not only a position but also a BATNA and bottom lines. Given internal divergences, the chances of leakage have also increased.

EU positions are decided on within the EU Council, which is composed of representatives of the Member States. Since the entry into force of the Lisbon Treaty, the Foreign Affairs Council has been presided over by the EU's High Representative, currently Catherine Ashton, who also represents the EU on foreign and security policy externally, with EU Council President Herman Van Rompuy taking over when discussions take place at the highest political level. For other issues, the EC is usually in the lead when legislative competences are fully transferred to the EU level (e.g. on trade). According to the EC, this should also be the case for issues of shared and complementary competence, following the entry into force of the Lisbon Treaty. However, EU Member States contest this view, insisting on having their own representatives as their leads. According to them, this also applies to the climate negotiations.

In practice, this means the Chair of the Environment Council, normally a climate or environment minister from the country holding the rotating presidency of the EU, is the EU's prime representative externally. Nevertheless, EU Member States and the EC still quarrel behind the

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9. This was decided on in the so-called ERTA case (see Eeckhout, 2004).

scenes about who should be driving and representing the EU externally on climate change. On the one hand, it could be argued that, since the adoption of the EU's climate and energy package, the thrust of legislative competence has shifted towards the EU. This would allow the EC to take over external representation and take the lead in proposing mandates for negotiations, to be adopted by qualified majority voting. On the other hand, not all issues discussed in international climate negotiations are subject to EU competence (e.g. providing finances), and Member States are allowed to increase their level of ambition since environmental legislation is subject to minimum harmonisation. This means Member States are free to adopt more ambitious environmental policies, and thus also to advocate these abroad.<sup>10</sup> If combined with a view that the EU's Lisbon Treaty has not affected Member States' freedom to endow authority for external representation to the rotating presidency, this means the presidency is in charge, with the position decided by consensus and written down in Council Conclusions.

Related to this debate is how Member States feel about the EC having its own agenda on international climate change. The EC advocates a relatively progressive emission reduction ambition and the use of emissions trading as key instrument to achieve reductions. Emissions trading is also one reason why the EU prefers that commitments agreed on internationally are legally binding. This facilitates linkages, since it reduces legal uncertainty over the emission reduction target, which could prevent markets from functioning properly, something particularly undesirable when these targets are translated to private sector entities, as is the case in the EU. The UK is one of the most supportive states with regard to the content of this agenda. At the same time, it is probably the strongest advocate for keeping Member States in the lead on climate change – meaning not handing over external representation to the EC.

The EC believes it could win a legal dispute over competence on climate change in the European Court of Justice, but politically does not yet dare to pick such a fight. As a result, it comes up with Communications that set out its viewpoints for international negotiations, but does not table draft negotiating mandates that would indicate it being in the lead. It also seeks to influence the draft Council Conclusions prepared by the EU presidency, which contain the EU's position. During climate negotiations, it is well represented and visible. According to some, the EC's role could be expanded, since it could be considered inefficient that all 27 EU Member States send considerable delegations, whereas probably only 20–30 Europeans really influence the climate negotiations, with much double work conducted.

The rotating presidency chairs the Environment Council and also its most important preparatory body, the Working Party on International Environmental Issues (WPIEI). To accommodate concerns regarding the rotating presidency system leading to discontinuity of people in charge during negotiations, it was decided to appoint some permanent chairs of expert groups to advise the WPIEI, as well as EU lead negotiators for the main negotiation tracks. Recently, the number of expert groups and lead negotiators was reduced, with key positions divided between the most active EU Member States and the EC. Formally, the rotating presidency is still in charge of coordination and the WPIEI is the main platform for negotiating Council Conclusions on international climate change.

In reality, the key players of what is referred to as 'Team EU' have the most influence on the EU's day-to-day positioning in the field. This is rather confusing, especially for outsiders, but appears to function rather well as it provides maximum flexibility to negotiate. This is necessary since, despite internal divergences over stepping up its mitigation ambition level and climate finance, the EU's position within international climate negotiations is still relatively progressive. A negotiator who constantly has to argue that EU coordination requirements tie its hands is unlikely to be very effective in such a context.<sup>11</sup> A positive effect of EU coordination is that it provides a good opportunity for rehearsal; the EU usually comes to the table with well-specified and well-thought-

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10. Article 193 of the Treaty on the Functioning of the EU.

11. Meunier (2000) suggests that a hands-tied strategy is fruitful only when a party is willing to block progress in negotiations.

through positions, and its lead negotiators have their arguments ready to hand, given previous internal discussions.

### 3.2 Environmental focus

The Environment Council and the WPIEI are the main venues for deciding on the position of the EU in international climate negotiations. Other Council formations sometimes discuss aspects of the EU's position as well, such as the Foreign Affairs Council on the link with security and climate diplomacy, the Economic and Finance Council on climate finance and the European Council on the EU's objective to keep temperature increase below 2°C.

The central role of the Environment Council is noteworthy since international climate negotiations could also be considered a foreign, development, economic or energy issue. In some countries and in the EC, climate change has already been separated administratively from environmental policy, and has its own departments, ministers and climate commissioner. Within the European Parliament in the period 2007–9, a temporary climate change committee was established, but from 2009 onwards climate change was again brought under the Environment Committee. In latest Treaty revision it was also decided to mention climate change explicitly as an objective in the Environment Chapter.<sup>12</sup>

The predominance of the environmental focus regarding climate change has several implications:

- Within the EU, climate change is considered primarily as a regulatory issue and not as a distributional issue in line with other environmental issues.
- External contacts are naturally established with other environment ministers and NGOs.
- Climate change policy is shaped predominantly by experts with a background in environmental policy; this sometimes hampers the EU's ability to deploy diplomatic strategies.
- Environment (or climate) ministers have limited access to resources as their budgets are small.
- It is difficult to establish links to other international negotiations where concessions can be made.

From this perspective, the attention from other Council formations and the European Council is very positive. This is the result of the heavy politicisation of climate change in the 2000s, for reasons including the ability of the EU to position itself as the saviour of the Kyoto Protocol, heightened concerns over Russia stopping energy supplies to the West and the EU looking for a new project on which to demonstrate its ability to address cross-border policy issues of concern (Van Schaik and Van Hecke, 2008). Now climate change has become less important politically, the question is whether it will be possible to sustain the interest and commitment of colleagues in other EU Councils. A good thing about the centrality of the Environment Council is that it remains high on the agenda of this formation, and that its ministers keep on promoting their agenda to other formations.

### 3.3 Levers of influence the EU can bring to bear

The EU is generally characterised as a civilian or normative power. A civilian power is an actor lacking military capability but able to influence other international actors through diplomatic, economic and legal means (Duchêne, 1973). According to realist scholars, some military power is ultimately needed to exert influence internationally (e.g. Hill, 1993; Van Ham, 2009), but others

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12. Article 191 of the Treaty of the Functioning of the EU.

argue that the EU's economic muscles can also yield influence (Smith, 1998). These latter point to the EU being the biggest economy in the world, and the largest development donor when the funds of Member States and the EC are combined. The EU's main levers of influence are related to this power and include the ability to set production standards that need to be adhered to by all companies willing to sell their products on the European market; making aid conditional on issues such as human rights protection, economic sanctions (negative incentive), capacity-building programmes (positive incentive); offering preferred trade access to the European market (positive incentive); or installing trade barriers (negative incentive). In the area of climate change, the EU's energy efficiency standards for electronic consumer goods and climate finance are examples of levers of influence. Another example is the EU's support to Russia's World Trade Organization (WTO) bid, which was allegedly linked by the EU to its ratification of the Kyoto Protocol (Groenleer and Van Schaik, 2007). Also, the recent decision to include aviation, including flights from and to the EU, of foreign airline companies in the EU's emissions trading scheme is an example of the EU's external influence in the area of climate change.

Scholars looking at the EU's influence from a more sociological perspective also point to other sources of influence. According to Manners (2002), the EU is a normative power given its ability in certain cases 'to define what passes for "normal" in world politics'. The EU is changing norms at least partially because of its own construction as a model of intensified interstate cooperation. It would be able to inspire others and persuade them to see the virtues of values, such as sustainable development, effective multilateralism and the precautionary principle (to undertake measures when environmental pollution is likely to be harmful, even in the absence of full scientific consensus).

The EU would be able to 'lead by example' (e.g. Oberthür and Roche Kelly, 2008), which in the run up to the Copenhagen Climate Summit even became its official mantra (Oberthür and Dupont, 2011; Parker and Karlsson, 2010; Vogler, 2009). In the mid-2000s, the EU was successful in persuading Japan, Canada, Russia and others to continue with the Kyoto Protocol, despite the US withdrawal (Groenleer and Van Schaik, 2007; Oberthür and Roche Kelly, 2008). In Copenhagen, the leading by example strategy no longer proved effective, however. Other key actors, including the US and the BASIC countries, operated under a logic of consequence, and were less prepared to commit to what might be scientifically sound activities on climate change and more interested in protecting their countries' short-term interests. In such a context, there is little, if any, space for persuading other actors (Van Schaik and Schunz, 2012). In other international negotiations also, the EU's normative impact has been found to be limited (e.g. Falkner, 2007). Others may also consider the EU's principles a nuisance factor, testifying for the EU's neo-imperialistic attitude and its using norms to disguise interests.

### **3.4 A coalition of shared interests: cooperation with developing countries**

Throughout the history of climate negotiations, the EU at several crucial moments has managed to broker deals through alliance with developing countries. Famous examples are the agreement on the Berlin Mandate in 1995 on the start of the negotiations that ultimately resulted in the Kyoto Protocol, the Bonn Agreement in 2001, which essentially saved the Kyoto Protocol, and the agreement on the Bali Action Plan in 2007 (see also Verolme, 2012).

The question is what benefits can be obtained for the EU and developing countries from cooperating and what jeopardises such an alliance. Before answering this, it is first worthwhile to look briefly into how the developing countries are organised and what there are interests in the climate negotiations.

Historically, developing countries have operated through the G77/China. This group was established in the 1970s in the UN Conference on Trade and Development (UNCTAD) to plead for the interests of the South. The Small Island Development States (SIDS) soon decided they needed their own voice on climate change, as their interests did not coincide with those of some G77/China partners, such as the Organization of Petroleum-exporting Countries (OPEC) and the emerging economies. Together with other islands, they formed AOSIS in 1992, which has



continuously asked for more ambitious mitigation policies to save their islands from rising sea levels. More recently, another divide emerged, with the LDCs, the African group and other progressive countries breaking away from the rest of the G77/China. This was reinforced by the establishment of the BASIC group in the run-up to the Copenhagen Summit, which clearly illustrated the opposition of the emerging economies to taking up mitigation commitments. Conversely, the LDCs and others realised their interest lay in mitigation action from these emitters, who were responsible for an increasingly large share of emissions. Whereas the BASIC countries liked to present themselves as the spokespersons of the developing world, in reality they competed with their poorer cousins for funding for adaptation and mitigation projects (notably through the so-called Clean Development Mechanism, CDM).

The interests of the EU and of these poorer countries on mitigation thus overlap, at least partly. In the past, the EU was interested in cooperation with developing countries since the costs of mitigation in these countries are generally lower than they are in the EU; this is still the case, but in terms of scale, most relatively cheap emissions can be made in the emerging economies (notably China and India).<sup>13</sup> However, politically speaking, it has become less acceptable to make transfers to these countries, since their economic growth figures greatly exceed those of the EU, the US and other industrialised countries. Today, the EU prefers climate aid to go to the countries most in need, and is not happy about CDM projects being undertaken mainly in the wealthier developing countries, which in turn explains its willingness to operate jointly with the LDCs in negotiations. Even though AOSIS plays a minor role in the overall system of international relations, it – just like the EU – was keen on and good at getting and keeping climate change on the international agenda. It can be considered a longer-term ally, even though it also asks the EU to take up a more ambitious mitigation target and to put more money on the table for adaptation (see below). For the EU, it is generally rather difficult to respond to such demands, given the need to find internal consensus first. The EU is currently also deeply divided over the question of stepping up its mitigation objective and unable to deliver more funds owing to the severe economic downturn in a number of Member States.

### 3.5 Summary

As the EU is not a federal state but a regional integration organisation, where Member States constantly have to coordinate EU positions and the lead negotiator is subject to half-yearly change, its negotiating capacity is somewhat diluted. On top of this, its ability to exert influence is hampered by its environment ministers taking centre stage and it ultimately not being able to resort to military power. The EU has used trade and aid incentives as levers of influence in climate negotiations, but has largely relied on normative leadership aspirations. It has proven to be very skilled in persuasion, but this method can work only if others are open to this and do not see it as an EU strategy driven by mixed motives. Despite all its shortcomings, however, the EU has managed to remain attractive as a coalition partner. It is generally seen as a benign power with a progressive agenda on sustainable development-related issues. On climate change, it has shared interests with the LDCs, AOSIS and other countries with a progressive agenda.

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13. See, for instance, Stern et al. (2011).

## **4 The EU's cooperation with the LDCs and AOSIS in relation to its negotiating performance in Durban**

The key outcome of the Durban Climate Summit of 2011 was the agreement to establish the Durban Platform for Enhanced Action, which stipulates a roadmap for future climate negotiations, thereby saving the UNFCCC process from collapse. The EU appears to have been the main engineer of this roadmap, together with the presidency of the Durban Summit and a small number of others. As a result of its ability to gain and maintain support from the LDCs, AOSIS, the Africa group, Latin America and other progressive countries, the EU managed to persuade the US, China and eventually India to join. Reaching agreement on whether a future deal would need to be legally binding proved most controversial. A compromise was reached only about 36 hours after the summit's scheduled closure. In a small circle of negotiators, centred around the EU on the one hand and India on the other hand, it was agreed to negotiate by 2015 at least an 'agreed outcome with legal force' to enter into force by 2020. Parties also agreed to a second commitment period of the Kyoto Protocol running until 2017 or 2020, under which the EU and a few other relatively small emitters would take up emission reduction commitments. Notably, Canada, Japan and Russia have already indicated that they will not sign up to a second commitment period, and the participation of Australia and New Zealand is uncertain as well.

### **1.1 Strategic and normative elements in the EU's position in Durban**

In the EU, in the run-up to the Durban Summit, a heated debate took place on whether the EU should make its support to a second commitment period of the Kyoto Protocol conditional on an agreement on a roadmap for further negotiations on a global, comprehensive and legally binding instrument. It was believed crucial to cooperate closely with a larger group of countries, that is, those participating in the Cartagena Dialogue, to gain legitimacy for the EU's overall position, and specifically to create a large 'middle ground'. This would avoid the risk of the EU becoming isolated and would prevent the BASIC countries from portraying themselves as the interest defenders of the developing world.

According to some within the EU, notably Belgium and Sweden, it would be good to proclaim support to a second commitment period of the Kyoto Protocol anyhow. This would help maintain a good relationship with the LDCs and AOSIS, and to rebuild the thrust lost in the run-up to Copenhagen, when the EU focused its attention mainly on the BASIC countries and the US (and took a hard stance on not going it alone with regard to a second commitment period of the Kyoto Protocol). It would not cost much, since the EU has had a firm emission reduction policy in place since the adoption of the climate and energy package in 2009. It therefore has little to fear from committing internationally to a 20% emission reduction in 2020. It would be awkward, these countries argued, if the EU did not openly support a treaty whose survival it had fought hard for and which sets out a firm architecture for international cooperation on climate change.

However, others, notably the EC and the big EU Member States, argued that agreement on a second commitment period should be used as a bargaining chip. The EU would after all likely be its only signatory making significant emission reductions and would become the main entity to provide the resources needed to keep the Kyoto Protocol and its bodies (e.g. the compliance committee, annual Meetings of the Parties, etc.) operational. Moreover, a continuation of the Kyoto Protocol was a clear demand from the emerging economies; notably, China and India have advocated this point. With AOSIS and the LDCs, a common interest already prevailed regarding a future deal in which all big emitters would take a fair share; they, and other Cartagena partners, would support the EU's call for a roadmap for future negotiations. Furthermore, if the EU immediately agreed to a continuation of Kyoto, this could open up a debate on the need for the EU to sign up to a more ambitious target than the 20% already enshrined in EU legislation. On this issue, the EU is hopelessly divided internally, with Poland strongly opposing a more stringent target.

The EU eventually decided that a continuation of the Kyoto Protocol should be made conditional on an agreement on future negotiations leading to a global, comprehensive and legally binding instrument. The position for Durban specifically mentions that a roadmap be determined, including a timeline with a final date and process (EU Council, 2011). It could be argued that a moderately realist view won, in which the EU took the strategic decision to go for negotiations instead of persuasion. It adjusted its strategy to the realist language of those parties from which it wanted to obtain concessions in the negotiations: the BASIC countries and the US.

Another realist position of the EU within climate negotiations is its decision to go from a 20% to a 30% emission reduction objective when other industrialised countries do likewise and the emerging economies take up meaningful commitments. The inclusion of aviation in the EU's emissions trading scheme can be considered a punishment for the lack of progress on curbing emissions from international aviation globally. Idealist elements include the EU's willingness to provide climate finance and technology transfer to developing countries, and its general aim to go for a legally binding treaty with action on mitigation and adaptation. Table 1 gives an overview of realist and idealist elements. Choices made for either one may be complementary, but they may also be in opposition. For instance, the EU's choice to include international aviation in the EU emissions trading scheme soured the atmosphere in the international negotiations to the detriment of the EU's potential for exerting normative influence.

**Table 1: Realist and constructivist elements in the EU's current international position in climate negotiations**

<b>Realist/strategic elements</b>	<b>Idealist/normative elements</b>
A continuation of the Kyoto Protocol if others agree on the roadmap for future negotiations (conditionality strongly advocated for by the EC)	Unilateral commitment to reduce emissions in 2020 by 20%
Increasing emission reductions to 30% in 2020 when other industrialised countries do the same and emerging economies take up a meaningful commitment	Providing finance for climate activities and offering technical cooperation
Inclusion of aviation in the EU's emissions trading scheme, whereby all flights within the EU and from and to the EU are covered, as well as those operated by foreign airline companies	A legally binding treaty with measurable emission reduction commitments

## 1.2 The Durban negotiations

The Durban negotiations centred on the question of whether a roadmap for future action could be agreed on. The EU brought in the idea for a roadmap for future negotiations and was supported on this point by the South African presidency of the summit and its partners from the Cartagena Dialogue. The aim was not to achieve an international agreement, but to agree to further negotiations on a new climate treaty for the period beyond 2020 with meaningful emission reduction commitments by all major emitters. The EU managed to convince Brazil and other key Latin American countries to join in, which subsequently helped in bringing the US on board, leaving China and India isolated.

China certainly did not want to become the spoiler, and had recently indicated its willingness to take up international responsibility. It therefore quickly shifted sides. India wanted to avoid a

bilateral clash with the EU, but was stronger-headed in its opposition to the roadmap. According to India, developing countries, including the emerging economies, should not be asked to sign up to any legally binding emission reduction commitment; if they contribute to mitigation, this should be purely on a voluntary basis. The richer developed countries would need to demonstrate action first. This is how India interprets the principles of *common but differentiated responsibility and respective capabilities* and sees *equity* in the context of the climate negotiations. The debate on these principles hides a somewhat realist perspective, as it shows that India prioritises other interests than climate mitigation at this stage of its development, such as expanding the opportunity to use energy for a larger share of its population (Engelmeier and Roth, 2011). It explains why India opposed even the notion of having to become part of any future treaty with legally binding emission reduction commitments.

Eventually, after 36 hours negotiating in overtime, a huddle emerged centred around the EU on one side and India on the other. The remaining disagreement concerned the form of the future agreement. The EU insisted on mentioning explicitly that it should be a protocol or legal instrument,<sup>14</sup> whereas India wanted to keep options open at this stage in this regard. Allegedly, it was the US legal advisor who suggested adding text on a third possible outcome, namely, an 'outcome with legal force', a provision vague enough to be acceptable to all. Agreement was then finally reached on the establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). The ADP (UNFCCC, 2011) commits parties to 'a process to develop a protocol, another legal instrument or an agreed outcome with legal force applicable to all parties' to come into effect from 2020 onwards. In return, the EU announced its support for a second commitment period of the Kyoto Protocol, thereby saving this treaty from its ashes.

### 1.3 The Durban deal: a major achievement?

The alliance between the EU, the LDCs, AOSIS and other progressive countries provided sufficient ground, and legitimacy, to convince others to agree to the establishment of the ADP. The coincidence of interest was the reason the alliance stayed together, and the EU's sustained efforts on climate finance helped cement trust and credibility. This cooperation guaranteed the EU a seat in the inner circle of the negotiations, from which, according to some, it was excluded in Copenhagen. What also helped was the relative modesty of the objective to obtain 'just' a roadmap for future negotiations and the support of one of the BASIC countries from the start, the South African COP president.

What many hailed as a major achievement was the final tearing-down of the 'firewall' between the categories of developed and developing countries. The distinction between developed and developing countries no longer reflects a geopolitical reality, given that the emerging economies are increasingly powerful, are responsible for about a third of global greenhouse gas emissions and are engaging in donor activities. Within climate negotiations, the North–South divide was still hindering progress, even though countries such as South Korea and Chile have long accepted that they must give up their developing country status in the UNFCCC context. The fact that OPEC states and other countries are still part of the G77/China group and block any progressive positions of this group has no longer proved sustainable. Durban illustrated the G77's inability to portray itself credibly as the representative body of developing countries. The BASIC countries on the one hand and the LDCs, AOSIS and the Africa group on the other developed their own positions, and these are widely diverging.

Yet another major achievement was that Durban kept the UNFCCC negotiating process alive. This allows for a new round of repeated negotiations, trust building and continued annual meetings, keeping the issue on the international agenda. It also commits the US and the BASIC countries

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14. This language resembles language used in the Berlin mandate for the negotiations on what eventually became the Kyoto Protocol.

morally to the climate negotiations process: withdrawing from this process, or being portrayed as spoiling it, will damage their international reputation.

## 1.4 Key outstanding challenges

Despite the major achievements made in Durban, it is evident that several challenges still need to be addressed. First, there is still a debate over the commitment the EU will sign up to under the second commitment period of the Kyoto Protocol. The LDCs and AOSIS strongly demand that the EU step up its ambition level and that the period run only to 2017 and not to 2020. The EU is anxious simply to codify internationally the 20% reduction commitment by 2020, because this target is enshrined in EU legislation, and taking up a more ambitious target internationally could mean opening Pandora's box. There is a risk of EU Member States, such as Poland, Hungary, the Czech Republic and Slovakia, using the international agreement, and its possible ratification at Member State level, to backtrack from the current commitment, which they find difficult and costly to reach. When it was agreed on in 2008, EU countries still believed in the possibility of other major economies taking up some kind of emission reduction commitment, but this has turned out not to be the case. This has resulted in ever-stronger calls to end the EU's unilateral climate policy. The EU is also still divided over the question of whether, to what extent and how surplus emissions from the first commitment period can be carried over to the second commitment period, with its new Member States asking for full use of this option. The old EU15 countries oppose this, since they consider these surplus emissions the result of a technological restructuring caused not by climate policy but by a need to restructure Soviet-style industries for economic reasons.

Second, the EU finds it very difficult to address calls by the LDCs and AOSIS to commit more public finance to climate activities (Bulletin Quotidien 10616, 2012). Even though it has delivered relatively well on the fast-track financing commitment, it remains extremely vague on where the \$100 billion per year promised in Durban will come from. The EU argues that only a small part of this would be public financing, but it is uncertain what part it can contribute in these times of economic austerity, with EU governments struggling to avoid bankruptcies. Private sector financing needs to be taken into account and leveraged, but there has been little progress on how this could be counted and promoted. Current rules on what constitutes climate finance and how it can be distinguished from aid targeted at poverty reduction appear inadequate. Up for debate is whether such rules should be set by the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC), the UNFCCC or another international body, and how to measure innovative financing mechanisms and private sector investments. Agreement has been reached on the establishment of a new flexible mechanism, but it is unclear what this will look like and if it will contribute to climate finance ambitions.

Third, the demands of the LDCs and AOSIS regarding the EU's emission reduction commitment under the second commitment period and on stepping up climate finance are driving a wedge in the cooperation between the parties. This is particularly dangerous, since the negotiations on a future agreement are likely to revise the debate on principles such as equity. Such discussions have often operated as the magnet bringing the G77 together. If the Cartagena Dialogue countries are once more split into developed and developing countries, this will undermine the EU's authority and strength within the negotiations. Indeed, the alliance with these countries is the EU's best insurance that it will keep a seat at the negotiation table.

Fourth, the decision of the EU to include aviation in the emissions trading scheme has spoiled the atmosphere between the EU and the BASIC countries and the US, since they disagree that their airline companies should be subjected to the new rules. On top of this, the idea of a carbon tariff resurfaced after the French elections, meaning a push for an import levy on goods produced in countries without an emission reduction target, equal to the costs European industries incur in order to meet the EU's requirements. This idea is strongly opposed by the UK and a few other liberal EU Member States, but is generally seen as an option to create new government revenues in a time where they are much needed. The idea is also supported by the European Parliament,

and validated by a study from the renowned think-tank the Centre for European Policy Studies (CEPS) (Gros and Egenhofer, 2009), and legal studies argue it would not interfere with WTO rules.

Fifth, and perhaps most importantly, despite there now being a roadmap for future negotiations, it is still far from certain that a comprehensive global agreement with commitments high enough to avoid dangerous climate change will be reached. The odds are against it simply because the positions of parties and their bottom lines still seem miles apart. It is doubtful that the US Congress will support any international agreement with the required two-thirds majority, even if the BASIC countries take up a firm and credible emission reduction commitment. The two-thirds threshold for ratification is difficult to reach, vested energy interests are strong and a considerable minority of US politicians are still contesting climate science. The BASIC countries in turn will continue to use the US deferral as an excuse for not taking up commitments. On top of this, China still seems hostile to the idea of taking up a commitment that could be measured and verified, as this would infringe on its national sovereignty. A Kyoto-type of agreement therefore seems difficult to envisage in the near future.

Nevertheless, emission reductions might still take place, given technological innovation, higher oil and gas prices and bottom-up initiatives by engaged citizens, local authorities and progressive countries and companies. A legally binding agreement could still be kept in mind as an ideal scenario, even though it will be difficult to achieve. Only big and threatening events, such as extreme weather catastrophes or a severe fossil fuel energy supply disruption, are likely to bring this ideal closer to reality. The release of the Fifth Assessment Report on the status of climate science by the IPCC foreseen in 2014 could also create new political momentum. Pressure could also be mounted if Palau manages to have its resolution adopted within the UN General Assembly and the ICJ comes up with a strong advisory opinion urging states to take reducing greenhouse gas emissions more seriously.

The next section discusses what the progressive alliance could do to contribute to the likelihood of intensifying emission reduction in the absence of a global comprehensive deal and how important it is to stick together to achieve this. It will also ask what could still be done to foster a legally binding agreement, and if there is perhaps a trade-off between this objective and that of emission reductions. Could the focus on negotiating a legally binding deal, and other 'strategic' elements of the EU's international position, perhaps spoil the atmosphere to such an extent that it distracts parties and thus undermines international cooperation? Should the idea of reciprocity be abandoned or reinforced within the EU's negotiating strategy, and to what extent does it jeopardise its alliance with the LDCs and AOSIS?

## 5 Negotiating the climate: improving the atmosphere?

The EU's strategy for the Durban Summit centred on the realist choice to use its support for a second commitment period of the Kyoto Protocol as a bargaining chip. At the same time, it relied on earlier investments in the relationship with AOSIS, the LDCs and a number of other progressive allies. This cooperation was grounded in the trust that had emerged from the EU delivering reasonably well on climate mitigation (albeit with only modest targets) and fast-track financing, and it being open to listening to the concerns of other countries. It was cemented in the Cartagena Dialogue, which also included other small and medium countries with a relatively progressive agenda. This approach, based on a mix of realism and persuasion, yielded results.

The question now relates to which strategic choices to make to turn the ADP negotiations into a success. Is the rational choice perspective or the sociological perspective more useful in helping the EU regarding these strategic choices? Is the cooperation with the Cartagena Dialogue partners a crucial element, or have the limits of what this alliance can achieve been reached?

### 5.1 Realist and idealist options in the EU's negotiating strategy

Ultimately, the EU's strategy will be composed of both realist and idealist elements. The former seem needed when there is willingness to engage in real negotiations, whereas the latter contribute to the EU's credibility, trust building and other social factors that help in fostering cooperation and changing perceptions of what parties believe to be in their interest. Table 2 presents some realist and idealist elements that could be considered for a future EU strategy for climate negotiations.

**Table 2: Possible realist and idealist elements of a future climate strategy**

<b>Realist/strategic elements</b>	<b>Idealist/normative elements</b>
Threatening with a carbon inclusion mechanism	Advocating a global tax on aviation
Making the EU's post-2020 target conditional on the commitment of the emerging economies and the US	Declaring a continuation of unilateral emission reductions no matter if others join
Standards for energy efficiency and carbon content extended/created, including to agriculture, for example	Promoting the green growth/resource efficiency paradigm, also through strengthened climate diplomacy
Making climate finance conditional on having an agreement in 2015	Emphasising the importance of climate science (especially in light of the 2014 IPCC report)
Calling on the BASICs to no longer consider themselves developing countries	Being open to discussions on how to operationalise principles such as common but differentiated responsibilities and equity
Linking concessions in other international negotiations (e.g. seat distribution in the International Monetary Fund (IMF), discussions on the future of the Millennium Development Goals (MDGs)) to the climate negotiations	Being open to discussing non-legally binding commitments with a view to obtaining some kind of agreement bringing emissions down

### 5.2 Strategic choices

It is clear that the EU now needs to make new strategic choices, and at some points trade-offs may emerge between available options. We now look specifically at questions concerning the levers of

influence the EU can bring, the identification of bottom lines and a BATNA, potential coalitions, the management of negotiations and preferred venues.

### **5.2.1 Levers of influence**

The EU has to consider what levers of influence could lead to a shift in position of its main negotiating opponents and what it is willing to bring. Durban illustrated the usefulness of distinguishing between what is offered to countries with which it can quite easily identify a shared interest in mitigation and what is offered to those with which it cannot.

For the Cartagena Dialogue members, it is most important that the EU keeps delivering on mitigation (i.e. a continuation of the EU's climate policy) and climate finance. Keeping the alliance alive is vital since it provides the best insurance for the EU keeping a seat at the negotiation table, and gives it legitimacy in the negotiations. The amount of funds the EU currently makes available for climate finance justifies calling it 'the new official development assistance' (ODA). This implies it has also become potentially as a new channel of international influence for the EU. At the same time, negotiators from LDCs do not always have a good overview of what is being done in their country in terms of climate financing; EU negotiators are not always aware either. This is an area where more can be done and that could contribute positively to a strengthening of cooperation.

The US and the BASIC countries are unlikely to be impressed by the EU's climate policy commitments and efforts in the area of climate finance. With them, the challenge is to identify common interests (e.g. on energy security) and possible exchanges in relation to their preferences in other negotiations. Additional 'sticks', such as trade sanctions, could be considered as well, but these may reduce the prospects for international cooperation on climate change by spoiling the atmosphere. Nevertheless, a more realist negotiating strategy seems warranted. The key question is which levers can best accompany such a strategy, be they trade measures or concessions in other international negotiations. An alternative would be to accept a rather different design of a future deal, with non-legally binding commitments and no independent verification of efforts. But what is the likelihood of such an agreement still leading to meaningful emission reductions?

In any case, what seems needed is to step up efforts for a more full-grown climate diplomacy. The capacity of the newly established European External Action Service (EEAS) on climate change needs to be seriously strengthened and the green diplomacy network reactivated, and EU delegations should become more knowledgeable on the EU's international climate agenda. The EU's performance in international climate change negotiations has great repercussions for its overall global image, but this aspect is badly incorporated into its overall diplomacy. The EEAS cannot leave climate diplomacy completely to the over 90 diplomats working on climate change on behalf of the UK and networks of Germany and France, as these cannot connect the climate agenda to the EC's right of initiative on climate policies and the EU's trade and aid agenda. Foreign services need to step up efforts to identify how international processes tie together. It would be odd, for instance, if EU Member States took up different positions in the UN General Assembly on Palau's resolution for an advisory opinion of the ICJ on climate change.

### **5.2.2 Identifying bottom lines and a Plan B**

The EU needs to identify its own bottom lines on issues such as mitigation levels and the legal nature and type of commitments and compliance rules. It should also try to identify and map the likely bottom lines of others, and aim at seeking agreement only when feasible. Are there conditions under which India, China and the US can subscribe to an international climate treaty with meaningful obligations for them to reduce their greenhouse gas emissions? What would be considered a fair distribution of efforts by different parties? Should the focus be on emission intensity (in relation to economic growth or to energy use?) or on absolute emissions, or investment decisions leading to future emissions?



Given the persistent unlikelihood of a meaningful US comeback to an international climate treaty it might be wise to start considering what a BATNA would be. Such a Plan B might entail intensified bilateral or interregional cooperation, the EU openly abandoning the UNFCCC process for its lack of progress, and seeking agreement on sub-items, such as emissions from different sources or topics such as deforestation, adaptation and/or the promotion of renewable energy. Such a strategy might reduce the relevance of the alliance with the LDCs and AOSIS. An alternative would be to increase the pressure on big emitters by using the international courts. Cooperation with the LDCs and AOSIS would be essential in following this course of action, since these are the countries that can contribute to building a case related to unjustifiable suffering from non-action by big emitters.

### **5.2.3 Build and maintain relevant coalitions**

Reviewing the history of climate negotiations, it is clear that the EU can benefit from cooperating closely with the developing countries that are most vulnerable to climate change. The current friendships that have emerged from the Cartagena Dialogue are extremely valuable, but might be difficult to sustain if the EU cannot meet demands to reduce emissions at greater speed (i.e. beyond 2020) and step up climate finance by 2013. The negotiations on a post-2020 climate agreement have now brought up the question as to the extent to which the EU needs to reinforce cooperation with others.

Progressive middle-income countries with a progressive climate agenda (e.g. South Korea, Chile, Mexico) might help the EU first of all to convince Brazil and South Africa to take up meaningful emission reduction commitments and subsequently increase pressure on the US, China and India. In discussions on technology and financing, the EU already cooperates with other donor countries.

### **5.2.4 Management of the negotiations**

In the near term, it appears impossible to avoid negotiations on key principles such as common but differentiated responsibilities and equity. The challenge is to keep such debates out of the sphere of accusations, for example regarding who has been responsible historically for climate change and who has the highest per capita emissions. Even though these are justifiable issues for discussion, they generally do not lead to a constructive atmosphere and progress on the reasonable division of labour concerning mitigation and adaptation efforts among parties. A focus on where future emissions can best be avoided at the lowest costs and how the Green Climate Fund could contribute to this might be more fruitful. The EU seems currently under-prepared with regard to entering into this debate because it does not have an interest in debates on principles and climate funding.

A related question is whether to treat climate change primarily as an environmental regulatory issue or as a distributional economic and development issue. The first approach might help in depoliticising debates on climate change, making discussions more technical and science based. However, it seems impossible to avoid addressing the much more difficult and political questions related to how efforts to address climate change are to be distributed and who will receive climate finance and for what type of activities. Consider, for instance, the idea of all countries devising Quantified Emission Limitation and Reduction Objectives (so-called QELROs) that can be measured, reported and verified objectively, so that the aggregate is certain to lead to a predefined emission reduction objective. Implicitly, this builds on the EU's own experience of climate regulation based on centralised, legally binding and detailed targets set at Member State level (e.g. the effort-sharing directive). However, uncertainties over science, countries' differences in governance capacity, lack of trust in what countries would report, weak legal enforcement systems and value-laden questions regarding what constitutes a fair distribution of efforts make it difficult to translate such an approach to the global level.

In addition, more thinking seems to be justified on what linkages can be envisaged between items within climate negotiations and other international processes. Trade-offs on concessions made in

the areas of mitigation, adaptation, types of commitments, measuring progress, reporting, verification, compliance, forestry, aviation, shipping, etc. might be conceivable. Linkages could possibly be established with the debate on the future of the MDGs beyond 2015, the reform of international finance institutions and the stalled WTO negotiations. One might consider agreements on sub-items as well, or on related issues such as the recent initiative on black carbon.

### **5.2.5 Choosing the right forum for the negotiations**

In 2003, the EU set out 'effective multilateralism' as a core objective of its international orientation. The EU has always been a staunch supporter of the UN system and fostering interstate cooperation appears to be in its DNA. For others, the belief in multilateralism is less strong; for the EU also, it now seems to be the right time to discuss how to make the multilateral governance system operate better. In this respect, it is increasingly recognised that the EU often tries to export its own way of working, even though the world does not necessarily want to do things in the European way (see also the discussion above on the EU advocating its regulatory approach). Working towards a legal instrument to address climate change with binding targets and timetables may just not be in reach, and the UNFCCC process may not be the right forum for international climate negotiations. If it remains the main platform for international climate change, reform of decision-making processes may deserve further attention, for instance by means of the Mexican proposal to introduce voting.

Since the G20 and Major Economies Forum also have their own fallacies with regard to tackling climate change, this might be a good time to explore new platforms for discussions on mitigation. Because of its adherence to the principle of effective multilateralism, the EU was previously opposed to taking the initiative on such non-inclusive platforms; now it may be more open to the idea. The EU might also consider supporting Palau's initiative to ask for ICJ advice as a way of increasing the pressure on international partners who thus far have refused to take measures resulting in meaningful emission reductions.

The question is also what forum is most suitable for negotiations on sub-items and related issues. For instance, is the OECD DAC, the UNFCCC or yet another forum the best place to decide on what counts as climate finance and how to leverage private sector funds? The EU is currently being criticised for being rather slow in this debate. Another example is the desire of the EU to seek agreement in the ICAO and the IMO on how to reduce emissions from aviation and shipping. Little progress has been made here (design efficiency standards aside), which begs the question of where else to discuss these matters.

## 6 Conclusions and recommendations

This paper has discussed international climate change, and in particular the UN Durban Climate Summit held in December 2011, from an international relations perspective and by drawing on the literature on negotiations and EU foreign policy. It illustrates the contribution of the alliance between the EU, the LDCs, AOSIS and a number of other progressive countries to securing a deal on future negotiations on climate change. The alliance guaranteed entry into the inner circles of the negotiations for the EU and helped ensure it was not isolated. In turn, this helped put pressure on the US and the emerging economies, which one by one were pressurised into shifting position, India being the last. In order to achieve this, the EU had to consent to a second commitment period of the Kyoto Protocol. According to some, this was not a great sacrifice, as the EU already had a firm emission reduction policy in place for the period until 2020, and it would look awkward if it abandoned an agreement whose survival it had fought for so fiercely. Yet others point to the costs of a second commitment period and to the EU being its principal signatory, with other big emitters not participating or being exempted.

In its strategy, the EU has relied on a mix of realist and idealist elements. The latter have greatly helped improve the atmosphere and enabled it to stay on friendly terms with negotiators from the LDCs and AOSIS. Nevertheless, the EU's conditionality regarding a second commitment period of the Kyoto Protocol has yielded fruits as well. A good atmosphere might contribute positively to further negotiations but, eventually, making mutual concessions (reciprocity) will be unavoidable if a deal is to be struck. Such a deal might look very different in terms of types of commitments, the compliance regime and reporting requirements.

On the basis of the findings outlined above, the following conclusions and recommendations can be made for negotiators from EU Member States, the LDCs and AOSIS:

- Since the EU is unlikely in the near future to increase its emission reduction commitment beyond the 20% reduction anchored in EU legislation, only individual EU Member States can be asked to step up their efforts (i.e. beyond what they subscribed to under the effort-sharing directive).
- On climate financing, more clarity is warranted on the contribution of states and the private sector, the overlap with traditional ODA geared towards poverty reduction and the possible role of innovative mechanisms. What is the EU's preferred venue for discussing the labelling of climate finance and what innovative mechanisms could it envisage for generating large sums?
- The alliance between the LDCs, AOSIS and the EU has contributed positively to securing a roadmap for future negotiations in Durban and yielded results in past climate negotiations as well. However, the relationship requires active sustenance. New common initiatives could be considered, as well as joint thinking about the meaning and operationalisation of principles such as common but differentiated responsibilities and equity.
- The EU needs to make up its mind about whether or not to use trade measures as an instrument to pressure for progress within the climate negotiations.
- More thinking is required with regard to what type of agreement could be reached and to what extent different types of commitments are comparable, can co-exist and are politically acceptable and measurable. A regulatory approach in which commitments are set at the international level, legally binding and accompanied by detailed rules for measuring, reporting and verification might not be realistic given the redistributive character of the climate change problem, its complexity and different governance systems and capacities.
- To keep the agenda alive. progressive states could capitalise on developments outside the UNFCCC, such as the growth of renewable energy, local initiatives, intermediary findings of the IPCC (but only when these are reliable) and the possible outcome of the ICJ case regarding the responsibility of states in the area of climate change.
- The EU should reconsider its model for climate diplomacy and strengthen the contribution of the EEAS, the Green Diplomacy Network and EU delegations. This should include taking a wide view of international climate change to cover not only the UNFCCC but also economic, political and security issues as well.

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