

COP-OUT? DISAPPOINTMENT IN DUBAI ONLY--OR WITH THE WHOLE PROCESS?

DI JOSEPH F. C. DIMENTOⁱ

This note briefly comments on the results of the latest meeting of the Conference of the Parties of the Framework Convention on Climate Change [COP 28]. And it addresses whether it is time to move to an alternative approach to trying to combat the extraordinary effects of climate change.

Two decades ago when I was at a COP at the Hague [Sixth session of the Conference of the Parties (COP 6), November 2000] I endorsed the position--in the face of strong evolving dissatisfaction with continuing with the structure of the UN efforts at combatting climate change--to “Keep the Foundation” for moving toward **the world community commitment [Berlin, 1995] to “stabilize atmospheric concentrations of greenhouse gasses over time.”**ⁱⁱ Since then concentrations have increased from 375 parts per million (ppm) in 2003, [360.67 ppm in 1995] to over 420 ppm currently.

A. COP 28

The resulting COP 28 document was the *Global Stocktake* which indicated what must be done to limit global warming to no more than 2°C higher than pre-industrial levels, the less ambitious goal of the Paris Agreement.

COP 28 can be evaluated by progress in achieving iteratively the goals of the Paris Agreement. Did COP 28 achieve meaningful progress on this criterion?_

The results are disappointing.

As to the language of the decision on the Stocktake, like so many phrases in international environmental law, it is subject to interpretation most especially by those with the greatest economic interests in application of interpretation. Thus that countries need to “**transition away**” from fossil fuels will be interpreted quite variously as we approach deadline years. To be fair, that may be less demanding a phrase than “**phaseout**” favored by many developed nations but both would and will be subject to definitional contributions based on the commitment of the nation state or a group of states to truly ending the exploitation of fossil fuels.

As to the damage fund, who can argue with creating one in order to assist poorer nations,? On the one hand, from the point of media centered international cooperation, no one. But on the other hand, actual monies must be provided guided by internal political interests which include those, some very powerful, who don't believe in climate change and those who think that internal domestic needs should be prioritized over funding activities in far away places. Historically international funds, with some exceptions, allow nation states to "kick the can down the road" until we look into the can and see, there is very little in it.

To be fair, these weaknesses, among several others, are underscored by environmental activists, a position that in my view does not sufficiently recognize the legitimate needs of developing regions and countries.ⁱⁱⁱ

B. The overall international architecture of COPs for addressing climate change.

Diplomatic compromises, such as that of COP 28, are victories for political interests. And compromise in international public law may be satisfying, the best that can be expected. It may lead to work in the international community that may or may not correspond with physical reality. In this case, I fear they do not. If the threat is truly existential compromise makes no sense. So why not then call for a restructuring, a new architecture for global climate governance?

There have been deviations from the framework but in certain fundamentals it remains the same: delegations work independently in their nation states, come together in massive numbers with artificial and bureaucratically created time constraints, work in the light of the media to create something that can be declared a victory.

A serious concern is whether or not these activities either postpone or circumvent approaches that can be taken at the nation state and other levels immediately or at least sooner than if we wait for international requirements.

Certainly one can argue both can be pursued. However,

there are opportunity cost of relying on this worldwide circus approach to setting the agenda for climate change management. Preparing and sending thousands of delegates to international venues [often difficult and expensive to access] to seek or bless some new principle or formula that will finally move us in the direction of decreasing emissions of climate change gases comes with great costs. And national leaders can point to the international "obligations" as they postpone their own initiatives.

So should we abandon the structure? No:

A. Because that won't happen; entrenched interests are too strong [and many of them fully believe differently than I do]. The giant law firm Latham and Watkins advised its clients: at Dubai: *"...more than 80,000 people participated...This record-breaking attendance cements future COPS as the global, annual discussion forum for significant stakeholders."* And

B. Because if undertaken in a way that has different expectations, world leaders, (not tens of thousands of lobbyists, businesses, and narrowly solution oriented activists) can continue to meet to describe their successes, and their concerns within the existing architecture. This is not an anti-democratic position. Rather it is a logistical means of reaching goals agreed upon for years-at least somewhat democratically.

So I would put that giant international political question aside and focus on specific actions that have been considered, have been conceptualized fully, have been shown to make a difference in the atmosphere, actions that IPCC science says must be undertaken. For just one example, to get **in just over six years to tripling of renewable energy and a doubling of energy efficiency** we need not more COPS but continuing and greater actions by cities, states, provinces, federal governments, businesses, multinational corporations, and you and me—actions which have been identified by now for decades. Progress has been made by leaders like California, to some extent the European Union, a bit by litigation and petitions to international judicial bodies, a few enlightened multinational corporations and others who may attend COPs but do not wait for marching, or walking, orders from them.

ⁱ PhD. JD, Distinguished Professor of Law, University of California Irvine. Co-editor, *Climate Change: What it Means For Us, Our Children, and Our Grandchildren* [MIT Press] and *Polar Shift, The Arctic Sustained* [Anthem].

ⁱⁱ Joseph F. C. DiMento, "Global Warming: Keep the Foundation" *Los Angeles Times*, November 21, 2000

ⁱⁱⁱ The opponents of "phaseout" language are not only oil rich nations; they include African nations and others for which sustainability includes that of their own populations. They need to provide energy for people who lack the benefits it provides, taken for granted by developed nations. That energy may someday be from renewable but the Stocktake concludes to move to those sources sufficiently will cost trillions of US dollars annually.