

CLIMATE:

Would an emissions treaty stand a chance in the U.S.? *(Thursday, January 5, 2012)*

Jean Chemnick, E&E reporter

Congress' most prominent climate change skeptic, Sen. James Inhofe (R-Okla.) taunted U.N. negotiators working on a new emissions treaty in South Africa last month in a video message broadcast on the sidelines of the negotiations.

His bottom line: It doesn't matter what the United Nations does on climate change, the United States will never follow. Efforts to pass U.S. climate legislation, he crowed, are "done, gone, dead forever" ([Greenwire](#), Dec. 7, 2011).

Time will tell if Inhofe is correct. Sometime in the next few years, the United States will be asked to respond to a new climate treaty that is likely to combine three elements that are currently toxic in American politics: the regulation of greenhouse gas emissions, spending on international programs and the United Nations.

To be sure, political winds can shift quickly, but the platform negotiated last month during U.N. talks in Durban does not allow for a lot of time. It calls for a new emissions treaty by 2015 that would take effect in 2020. If all goes as planned at the United Nations, what will the United States do?

It takes a supermajority of 67 Senate votes to ratify an international treaty -- a towering hurdle in the divided chamber. Consider that the Senate has not ratified the 1982 U.N. Convention on the Law of the Sea, which has been supported by both Democratic and Republican administrations but opposed by a core group of Republicans, including Inhofe.

The climate change bill that the Democratic leaders yanked from the Senate's legislative agenda in 2010 had no firm bipartisan support and was expected to fall far short of the 60 votes needed to clear the chamber. It is likely that a binding U.N. treaty that combined emission curbs with a pledge that U.S. funds would help other countries cope with the effects of climate change would get even less support.

Prospects for climate legislation have plummeted since Republicans won big in 2010 congressional elections and have spent the last year promoting deregulation to spur economic recovery, a message that GOP presidential hopefuls are repeating in their primary campaigns.

"Securing congressional approval of a new global climate agreement will be a challenge because the treaty would probably regulate U.S. industry, send money abroad and strengthen global governance, each of which can be a rail in Congress," said Nigel Purvis, president of the consulting firm Climate Advisers and a former senior U.S. climate

negotiator in both the Clinton and George W. Bush administrations.

"If you put them all together in the same agreement, then one would have to go into that realizing there are serious risks that the U.S. might not be able to participate," he said.

But Purvis and others note that Congress and the White House have more direct paths to agree to a treaty.

If laws are already in place that allow the president sufficient latitude to implement the terms of the treaty, they say, no congressional action may be needed. Or, they say, Congress could move the treaty as a congressional-executive agreement, requiring 60 votes in the Senate and a majority in the House for passage.

That approach has been used to move several trade agreements. "It's usually the economically important agreements that end up not being treated like a treaty, precisely because the House wants its say," Purvis said.

The United States could also forgo becoming a formal party to the treaty but still implement policies that bring it into compliance with its terms, some observers said. This has been done in the past. For example, while the United States is not a party to the Law of the Sea, it has implemented several of its provisions.

Ned Helme, founder and president of the Center for Clean Air Policy, said this was the most likely outcome.

"I'm not putting my money on ratification," Helme said. "I'm putting my money on passing good laws that make sense for good U.S. economic reasons and happen to match up with what we'd like to achieve on climate."

Timing

The next two election cycles are likely to provide some clues about how the United States will respond to a climate treaty.

While climate change denial is a litmus test in the Republican Party now -- all GOP presidential contenders have said they do not believe the science showing human-induced global warming change is settled -- Helme said he hopes there might be consensus on the need to promote energy efficiency and other green-power policies.

He is urging environmentalists to reshape their message on climate change to emphasize how shifting U.S. policies might improve the nation's international industrial competitiveness and humanitarian efforts.

Jake Schmidt, international climate policy director for the Natural Resources Defense Council, said the United States might ultimately be in a position to ratify a treaty later this decade.

"I wouldn't wager on it," he said, "but I also wouldn't discount it."

As 2020 approaches, the United States will have implemented emissions reductions under the Clean Air Act, and the public will see that they did not destroy the economy as critics now predict, Schmidt said. So a U.N. agreement that tracks generally with what the United States is doing already will seem doable.

If the United States can become a formal party to the agreement it should, Schmidt said, in part because that would

afford it more opportunities to hold China and other countries accountable for their emissions.

"If you don't take the legal steps to enforce that at home through ratification, then it's hard to argue with other countries that they should also live up to their commitments," he said.

The United States has long made participation by other major greenhouse gas emitters a condition of its involvement in an emissions treaty. In 1997, the Senate voted 95-0 for a nonbinding resolution opposing U.S. involvement in any mandatory emissions treaty that did not assign similar responsibilities to major developing nations.

There are different interpretations of when a new treaty would have to take effect under the Durban agreement, which calls for a treaty to "come into effect and be implemented from 2020."

Andrew Light, who heads the international climate program at the Center for American Progress, said this wording left the door open for an agreement to be implemented any time after 2020. This could mean the United States would have several election cycles before having to decide whether to ratify or comply with an agreement.

Nonetheless, he said, political realities in Washington can change quickly. Environmentalists learned that the hard way in the 2010 midterm elections.

"In 2009 what we thought was, if the Democrats hold on to the House -- given that we got a climate bill through -- if we could get a treaty that would require the U.S. to do no more than it was already doing with respect to the House climate bill, then we should be able to get that passed in the House," he said. "And then we would only need 60 votes" in the Senate.

U.N. as wild card

But even if the next decade ushers in a new political reality where emissions-reduction policies are popular again and an agreement is crafted that syncs with U.S. policy, there is a big question of U.S. skepticism about the United Nations.

Purvis said that the U.N. label won't kill a climate change treaty.

"The U.N. is unpopular on the Hill, but I don't think that's the decisive factor in determining whether the U.S. joins a new agreement," he said. He noted that there is widespread support for much of what the U.N. does, most notably, its efforts to protect children.

"What will matter most is what a new climate agreement would require substantively of the U.S. and other key countries, such as China," he said.



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122 C St., Ste. 722, NW, Wash., D.C. 20001.
Phone: 202-628-6500. Fax: 202-737-5299.
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