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## Transcript

# An International Climate Treaty: Is it Worth Fighting for?

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**Michael Jacobs:**

Good afternoon ladies and gentlemen. Thank you very much for coming. Welcome to Chatham House. My name is Michael Jacobs. I am a visiting professor at the Grantham Research Institute on Climate Change and the Environment at the London School of Economics. It's my pleasure to introduce our speaker this lunchtime.

Yvo de Boer is I'm sure familiar to anybody who has been following debates about climate change over the last decade. He was until 2010 the Executive Secretary of the UN Framework Convention on Climate Change [UNFCCC], which is the international body responsible for climate change negotiations and the climate change regime. He was appointed to this position in August 2006 and presided over UN negotiations until 2010. He is now with the international consulting group KPMG, as global advisor on climate and sustainability. Yvo's career started in the Dutch civil service, where he eventually became director of international affairs in the Ministry of Housing, Spatial Planning and Environment. In the Netherlands he was responsible for Dutch and European policy towards climate change in a variety of different forms from about 1994. So he is coming up to 20 years in this field. In his new role with KPMG he takes a very wide overview of issue, not just on climate change, but on the wider issues of environment and sustainability. It is a great pleasure and honour to have him with us today.

The subject of his talk is, 'An international climate treaty – is it worth fighting for?' The subject today is one of intense interest and debate within climate change circles where more or less everybody thinks there should be an international agreement to cover climate change, but exactly what form should it take, and in particular, what legal form should it take.

The blurb for this session was written before the Durban conference at the UNFCCC conference in December. The original blurb for this says, and I quote;

*'In recent years there is an increasing express of interest that an international legal binding treaty is unlikely to be agreed and is therefore perhaps not worth fighting for.'*

And a rather interesting thing happened in Durban which is that this sentence became slightly less true. That is, up to Durban and following the Copenhagen conference an international legally binding treaty, which many people had believed was the goal, was not agreed. At Copenhagen it was actually written out of the goals of future negotiations in a very difficult

negotiation at the end of that conference. And since then it has been very widely believed that it was no longer possible to have a legally binding agreement – a treaty – covering all countries and comprehensively covering the climate change field.

In Durban in December that goal was re-established at least as a potential goal of a new round of international negotiations, which are to be set up this year and run through to 2015. The language around the legal form is ambivalent, or constructively ambiguous as all negotiation texts are – that is how you get agreement in these conferences. It talks about a protocol, a legal instrument or another decision with legal force. And the phrase ‘legal force’ was inserted right at the end of the negotiations in Durban as a compromise effectively between those who were very committed to a legally binding agreement, and those who were not.

And so the context for this debate today has slightly changed since Durban. With all that ambiguity around the language, this is very timely moment to consider what kind of agreement, what kind of legality is not just possible but would also be useful and is therefore worth fighting for. It is my great pleasure to introduce Yvo de Boer to talk about that.

### **Yvo de Boer:**

I think what you just said – by way of introduction – ought to inspire me to throw away my notes and rather respond to what you’ve just been saying, for a number of reasons. First of all, because I am not convinced that everyone thinks an international treaty or an agreement is desirable or feasible. I think there is a great deal of scepticism around that, and I’d like to go into that a little bit.

Secondly, I’ve had a life-long belief that form should follow function. You first need to decide what you want to do on a particular topic, whether it is nationally, regionally or internationally, and then you create the architecture – the form – that goes with that. And perhaps that is why in Durban, that little sentence you referred to was formulated in such an open way – talking about a treaty in protocol or talking about another decision with legal force – because the substance at the moment is insufficiently clear to determine what exactly the legal outcome needs to be at the end of the day needs to be. But we’re not there yet.

What I wanted to do was to stick to the title of the presentation and perhaps that is mainly because that may be why you decided to have come here – so I

shouldn't cheat you by talking about something completely different. What I would like to do is to start off by asking the question, 'Is an international, legally binding treaty, or some international agreement worth fighting for?' I will then go a little in to the question and think well if it is, then how do you actually get to that? How do you get to an international agreement, an international approach that makes sense?

My sense is that there has been a considerable amount of scepticism out there for a number of years on the question of whether an international treaty or an international agreement in the context of the UN is feasible or, indeed, desirable. I think there are a number of reasons for that. I think the first is that although we have been negotiating on climate change since the Rio Earth Summit in 1992, we are still at a point in time where we don't have anything that even remotely begins to resemble a global solution to the climate change issue. So we have been negotiating for twenty years and we don't have something that closely resembles a solution.

That goes to a second point of scepticism, that I run in to a great deal, which is a very broadly held feeling that the multilateral process that we have in place at the moment to negotiate climate change is actually incapable of delivering a result. That it is so cumbersome, so complex, that it is not a platform that can come to that kind of a multilateral agreement. And I think partly for that reason we have seen a number of examples in recent years, including those engineered by the Americans to see: Can't we think of something different? Can't we think of a major economies forum? Can't we think of a clean energy ministerial? Or shouldn't the G8 or G20 be taking up this topic simply because the multilateral process hasn't yet proved that it is able to deliver on this topic?

*Why* is the multilateral process struggling so hard to deliver on this topic? That is at least, in part, first of all because there are such vast differences of interest amongst the people at the negotiating table. You have small island nations who are about to disappear because of sea level rise; you have oil producing countries that would like to keep pumping oil as long as they possibly can; you have industrialised countries who have come to the conclusion that maybe their growth path isn't the best one out there and that things need to change; you have major emerging developing countries whose primary concern is economic growth and poverty eradication. In other words, there are a large number of interests at that very complicated negotiating table – interests which often seem to be irreconcilable. In such a complicated setting, can you then come to a treaty or a protocol with legal force?

Another thing that I feel has been fuelling a great deal of scepticism certainly in recent years is the preoccupation with a number of economic problems that we have at the moment. Large parts of the world are in the middle of an economic crisis; significant parts of the world are in the middle of a financial crisis; and if you are a lucky Dutchman like me, you get to be in the middle of a financial crisis and economic crisis and a eurozone crisis on top of that. And as a consequence of that, I've seen people like Angela Merkel, who I've admired for many years, decades even, and who I think has been a major driving force in the climate change process, basically for economic, for financial, for political reasons having to put her attention elsewhere. I am seeing the preoccupation with economic concerns of today is fuelling reluctance to boldly engage in an international process around climate change. That, I think, goes to the fundamental issue that we are basically not in a position to take the kinds of hard economic decisions today that would allow us to make the international community climate proof.

So I think that these are some of the reasons why, at least some people are asking themselves, 'Is an international agreement feasible and is an international agreement or treaty worth fighting for?'

Having raised the question, I think I also hold the responsibility to try and answer it. I think that my answer is a resounding 'yes'. An international treaty, protocol, or decision with legal force is worth fighting for, from a number of perspectives. So, I would like to go a little bit in to the question whether an international agreement is worth fighting for and how, what needs to happen to safeguard the negotiating process in order to ensure that we actually get there, and also touch on how can businesses can be more closely involved. The reason why I want to dwell on that is because what I see in everyday reality is that 85% or more of investments in the energy sector, infrastructure, health care, or IN pretty much everything, are private rather than public. And as a consequence, my strong feeling is and has been for many years, that unless we can engage the private sector more actively in the international process then it will be difficult to get to a result.

So then logically, the question should be 'why is an international treaty/agreement worth fighting for from a business perspective?' I think there are three reasons for that:

The first one relates to predictability, predictability in the context of long-term investment decisions which the private sector is making every day. Although you could argue that some of the goals that have been formulated, like a maximum 2% temperature increase, or the goal to reduce global emissions

by 50% by the middle of the century, or a strongly held feeling on the part of the industrialised countries that they need to reduce their emissions by 80% by the middle of the century. Although you might justifiably have the feeling that those goals are rather vague, I do believe they are of significant importance in terms of giving the business community at least a slightly better sense of where the policy frameworks might be going.

A great deal of the capital stock that we need to be talking about in order to address climate change: power stations, cement factories, etc, is capital stock that has a life of 30-50 years. If you are going to build something today, you do not just need to consider the economics of the investment in the context of today, but also in the context of what the policy environment might look like in 20, 30 or perhaps even 50 years. In that sense, from a predictability point of view, I think an international agreement in one shape or form or another is very important when making those kinds of long term investment decisions. And that is very much related to the fact that if you look at some of the technologies that you need to deploy, that do not make any economic sense from the view of our reality today, those technologies might look very different in the context of the longer term perspective. This goes to the point of predictability. Investors want to understand the direction of policy; they want a long term understanding of where policy is likely to go. So in that sense, an international treaty can help to provide the business community with very important predictability.

The second reason why I think an international agreement of some kind is important to the business community relates to the issue of stability. We had predictability first, and now stability. That is because – and you see it in every country around the world – it is very difficult to plot a course, including an investment course, purely on the basis of national politics. We've seen feed-in tariffs change dramatically in Spain and in a number of other countries in recent years. In many European countries, because of the economic and financial crisis, fiscal regimes have fundamentally changed, basically meaning that green investments that were possible at one point in time are no longer possible consequence of investments. We've seen Germany dramatically – because of what we saw in Fukushima – change its position in nuclear energy.

So, in other words, national politics are very difficult to plot an investment course by. Whereas if you look at an international regime, I think that does give you much better insight of the longer term stability by which to plot your course. Even though you might question the effectiveness of the Kyoto Protocol, it is the only instrument we have at this moment in time on climate

change. The reality is still that only one country, Canada, has formally decided to withdraw from that regime. And all of the others are still working towards achieving their targets and in that sense, providing a sense of stability that is very difficult to achieve only through national politics.

The third reason why I would argue that an international treaty or agreement is important to the business community relates to the level playing field. You hear companies talking about a level playing field all the time and you know that a level playing field doesn't exist. A level playing field doesn't exist in the sense that there are no two countries where energy prices, labour costs, tax regimes and a whole host of other things are identical. In other words the operating conditions are different and the circumstances are different in countries. The reason why the private sector refers so often to that level playing field is because it is really important for companies that are competing internationally to have the sense that the whole international community is at least pulling its weight, that it's taking a share of the effort towards some commonly agreed goal. In that sense, an international treaty where you have the commitments, the targets, the promises to engage from all countries on the table, and where those can be discussed and negotiated, gives you more of a sense that countries are pulling their weight and that an international agreement does not simply lead to the displacement of economic activity from one part of the world to another.

So in other words for reasons that relate to predictability, stability and a level playing field – or at least a sense of a level playing field – I believe that an international agreement or treaty is of great significance to the business community.

What about civil society? I also believe that an international agreement or treaty is critical to civil society. If you go to one of the conferences of parties to the framework for climate change, what you'll see is that civil society – NGOs in the shape of environmentalists, farmers, women's groups, youth, religions, vegans and indigenous people – vastly outnumber the delegates representing the governments that are doing the actual negotiation. And that is critical because – at least to some extent – the openness of that process gives civil society an opportunity to provide input on the process. So in that sense I think having an international treaty process, or having an international negotiating process, does give civil society a unique opportunity to engage in a way that civil society cannot engage in a G8, or G20, or major economies forum, or some of the other platforms that are in place.

And as a result of that presence, getting me to my second point, it also places civil society in the position to bring more balance into the agenda of the negotiations. For example, I think that the shift we have seen in recent years in the negotiations, where we have begun to put increasing emphasis on questions of adaptation and technology transfer are, to at least some extent, thanks to the engagement of civil society. Civil society has helped to shift the agenda away from only emission reductions to look more broadly at the concept of climate change and how it is likely to have an impact on different countries around the world. So in that sense, I think that the treaty process is an important way for civil society to exert influence and ensure that there is balance in the process.

And that then, through that civil society engagement leads, to very important transparency in that international process. What civil society basically does is put the negotiators and the nations at the negotiations under a public spotlight and ensures that those who are there to play the game are actually playing *the* game as oppose to playing games. So in that sense, the civil society engagement – the transparency in the context of a negotiating process – helps to ensure that governments are serious in how they engage in that process.

The fourth and final reason, of why an international process is in the interest of civil society, relates to adequacy. I referred to the fact that we are nowhere near a solution – an international solution – that measures up to the climate change challenge. The Kyoto protocol leads to roughly a 5% reduction of emissions below 1990 levels. If you look at what was agreed in Copenhagen, Cancun and Durban, that is nowhere near good enough to get us to a maximum two degree temperature increase, which generally, people feel should be the goal. There is a tendency on the part of political negotiators to say, 'Let's put that aside and concentrate on getting a deal and then we can return to the adequacy of that deal at a later moment in time'. One of the important roles of civil society, I think, in that process, is to ensure that negotiators are continuously confronted with what they should be negotiating and what they should be working towards if we are to get this issue under control. So for those four reasons I think an international process, or international treaty is also critical from a civil society point of view.

Now, what about governments? If you look at the issue of climate change – although the impacts and consequences may be mainly in the environmental domain – the things that we need to do to address climate change are mainly in the economic domain. Given that many of those interventions are in the economic domain, we need a platform for governments to have that kind of



an economic discussion – a kind of a discussion about how can we move the process forward in a balanced way. And I strongly believe that although a number of countries and organisations have been advocating a regional approach to the issue of climate change – saying, ‘Let’s move this forward incrementally, let’s move this forward in regions and later see if we can weld it together in the context of an international process’ – I believe that it will be even more difficult to come to an answer to the challenge of climate change if we focus only on the national and the regional level. In other words, the higher the degree of international cooperation, the more ambitious the steps are that we can take together.

We tend to focus very much in the climate change negotiations on targets, on goals, on issues that relate to legally binding aspects of an agreement. In the context of that, what I think is often forgotten, which is also critical to government components, is how do you actually organise all of the architecture around that? How can you use an international treaty, not only to set international goals, but also to create the operating architecture that will allow you to deliver on those goals? What are you going to agree in terms of monitoring, reporting, verification? How do you create structures, functions, around market-based mechanisms? In other words, I think that from a government perspective, a treaty provides a very important means – not only to focus on this issue of target setting – but also it allows you to put in place the operating architecture and the mechanisms that will ultimately allow you to deliver, including issues that are critical to developing countries around finance, technology and capacity building and putting in place the architecture that will deliver on those kinds of things that actually make it possible for developing countries to engage.

So, if you can argue – and I would argue from the perspective of business, civil society and governments – that an international agreement of one kind or another is worth fighting for, then where do we stand in that process at this moment in time, and where do we seem to be going?

If I look back at the history of the climate change negotiations, I think the first conference of parties was held in Berlin, in 1985, was probably one of the better ones in the sense that it produced the first of many mandates that we’ve seen in the negotiating process. It also provided the clearest one. What that first conference of parties provided was something called the ‘Berlin Mandate’ which basically said that there needs to be a protocol on the table in two years’ time. That made it incredibly clear for everyone what they were working towards. Then we saw the results of that in Kyoto, in 1997.

The next time we got a mandate was at the 13th Conference of Parties in Bali, and there were stark difference between Bali and Berlin. One of the many stark differences was the fact that in Bali, the mandate was formulated in very different terms. What the Bali Mandate talks about is working towards an agreed outcome in Copenhagen, without specifying what the nature of that agreed outcome needed to be in Copenhagen. And what you actually saw happening between Bali and Copenhagen, was close to two years of fighting about what actually we are supposed to be working towards. And that, I think, is at least one of the many reasons why the Copenhagen climate change conference ended up where it was.

Now how does Durban, the most recent climate change conference, compare with COP 1 and COP 13? First of all, I think it does represent an absolute sea change in the negotiating process. What we saw happening in Durban was basically ministers refusing to leave until there was a meaningful agreement. We are quite used to climate change conferences running significantly later than they are supposed to. They are supposed to finish at 6 o'clock on Friday afternoon, they never do. Generally they run in to Saturday morning. What we saw this time was the conference running in to Sunday morning basically because a significant constituency of ministers said, 'We are unwilling to walk away from this meeting without an agreement', and that, I think, was significant.

The second thing that was significant was that we saw a completely new alliance emerge in the context of the negotiations; an alliance to work towards a result in 2015 which can enter into force in 2020 through a treaty, or protocol, or decision with legal force. What we saw, I think for the first time, was Europe able to realise a very strong pact with least developed countries, small island nations, and the vast majority of developing countries to say, 'We need to be working towards a comprehensive international approach that entails obligations for all countries. We need to move away from this black and white world of 1992 where you have countries with targets and countries without targets and nothing in between. We need to move in to full technicolour in the context of the climate change negotiations.'

But at the same time, the mandate provided in Durban was happily less clear than the mandate provided in Berlin, but much clearer than the mandate provided in Bali. Having said that, it leaves a great deal of room for discussion and negotiation on where the national process needs to go from here on. That is critical because we are still at a moment in time where many people perhaps intellectually and emotionally sign up to the concept of green, or sustainable growth, but very few people deep in their hearts – and I would

argue even very few environment ministers deep in their hearts – can actually argue or believe how green growth can be made to work for their particular country. In other words, I think that part of the challenge that we face is to make that green growth case convincing, including through the architecture of an international agreement. And until we succeed in doing that, I think it is going to be very difficult to come to an international agreement of one kind or another.

The next question then is, how do we cross that hurdle? How can we safeguard the agreement that was reached in Durban? How can we ensure that the process moves forward towards a meaningful result that is more in line with the longer-term goals that we are trying to achieve? In that context, at least three things are critical.

The first thing that I see as critical is more engagement by political leaders in the climate change process. People generally feel that climate change is one of the most important issues facing humanity at this moment in time. People generally feel that this is one of the most important international negotiating processes. But at the same time it is a process in which ministers only engage for three days of an entire year. Basically the only moment they have to come together collectively is during the higher-level segment at the conference of parties at the end of the year. I strongly believe that it is impossible to get the process moving – whether it is towards a treaty, protocol or decision with legal force unless we see a much stronger political engagement in that process. How can you expect a negotiator on behalf of the UK or Mali to move in a negotiating process when there is not a clear mandate to make that move? So the first thing I would argue that is of critical importance is to have more political engagement, and broader political engagement in guiding that process.

The second thing I would argue that we need is a much more open dialogue between the world's major emitters on the issue of how we shape commitments going in to the future. There is psychologically a sense on the part of many developing countries that what the industrialised world is out to do is to impose on developing countries emissions reduction targets in absolute terms, which will constrain their economic growth going in to the future. That is a broadly held perception. For example in that context, many countries' have forgotten that in Europe, at the time of Kyoto, we approached the questions of commitments in a very diversified way. Under the Kyoto protocol, Portugal had an emission target of +27%, Greece +25%, Spain +15%, Ireland +13%, and Sweden +4%. I give that as an illustration of the fact that there is a recognition out there that we need to differentiate. In the

case of some countries a target in the context of the climate change regime may mean a growth target, but that sense is insufficiently there in the negotiating process at this moment in time. Therefore, I would argue that the second thing we need is a much more open dialogue amongst the major emitters about what can be achieved, how can it be achieved, and how can more be achieved by working together.

I remember that when I was involved with negotiating the Kyoto Protocol on behalf of the European Union we went into that negotiating process with a very fixed and narrow position. We felt we should on focus only on CO<sub>2</sub>: we ended up focussing on six gases. We felt that every country should reduce its emissions by 15%: we ended up with a diversity of targets. We felt, as Europeans, that all emission reduction efforts should be made at home: we ended up with flexibility to reduce emissions abroad. We felt there should be a target here, in 2010: we ended up with a budget period. In other words, the very frank process of discussion which led up to the Kyoto protocol, helped I think to instil a great deal of confidence that we also need today.

The third thing I think that we need to do in order to move this process forward is to focus much more strongly on helping developing countries make the green growth case at home. In other words, to stop talking about green growth or sustainable growth as an intellectual concept, but to begin to make it real in the context of Mali, Nigeria, Vietnam or whoever. In other words, to begin to design those green growth and sustainable growth strategies at the national level in a context those countries' can understand and mobilise finance, technology and capacity building towards those goals.

My final point is that we can only make that case for developing countries convincingly at the national level if we begin to see climate action, nationally appropriate mitigation actions – the strategies that developing countries are supposed to develop – as much more of an agenda for economic growth – more sustainable economic – growth rather than a climate change agenda alone. That, I strongly believe, is only going to be possible if we put the private sector much more at the heart of those national strategies. If at the moment 85% of investments in the energy sector are private not public, then why should that be any different in the context of a national climate change plan, or in the context of a nationally appropriate mitigation action? So, in other words, I think there are opportunities to ensure that those nationally appropriate mitigation actions, those national plans in developing countries, really become real strategies for economic growth in a way that fully engages the private sector.

In conclusion, I would argue that yes, an international treaty in one shape or form is very much worth fighting for. I think that we are only going to get to a successful outcome on that very ambiguous Durban language if we first of all have more political engagement in the process. Secondly, we must have a much more frank and open discussion amongst the major emitters of the world on what can be achieved and how. Thirdly, if we act much more significantly to help developing countries make the case at home that yes, indeed, green growth is not just a theoretical concept but something that we can actually turn into a meaningful reality for developing countries individually. Thank you.