

A CLASH OF PARADIGMS – UN CLIMATE NEGOTIATIONS FROM BALI (2007) TO PARIS (2015)¹

Martin Khor

¹ This paper is an updated version of the article “A Clash of Paradigms: UN Climate Negotiations at a Crossroads”, published in *Climate, Development and Equity, (What Next, Vol. III, Sept 2012)*, edited by Niclas Hallstrom. This paper builds on articles previously written by the author and published in various magazines including *Third World Resurgence*, *South Bulletin* and *Economic and Political Weekly (India)*. The chapter on COP 21 in Paris, that resulted in the Paris Agreement, was written by Meenakshi Raman.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	COP 13 BALI (DECEMBER 2007)	2
III.	COP 14 POZNAN (DECEMBER 2008).....	7
IV.	COP 15 COPENHAGEN (DECEMBER 2009)	11
V.	COP 16 CANCUN (NOVEMBER – DECEMBER 2010)	16
VI.	COP 17 DURBAN (NOVEMBER – DECEMBER 2011)	25
VII.	COP 18 DOHA (NOVEMBER – DECEMBER 2012)	31
VIII.	COP 19 WARSAW (NOVEMBER-DECEMBER 2013.....	37
IX.	COP 20 LIMA (DECEMBER 2014)	43
X.	COP 21 PARIS (DECEMBER 2015) BY MEENAKSHI RAMAN	58
XI.	CONCLUSION.....	66
	REFERENCES.....	68

I INTRODUCTION

This paper presents a description and brief analyses of the negotiations that had taken place at the recent annual meetings of the United Nations Framework Convention on Climate Change (UNFCCC), known as the Conference of the Parties (COP) of the Convention and the Meeting of the Parties of the Kyoto Protocol (CMP). The period covered starts in December 2007 at COP 13 in Bali that launched the Bali Road Map, continues to December 2012 at COP 18 in Doha which marked the last meetings of the Bali Road Map, and ends with December 2015 at COP 21 in Paris, whose outcome was the Paris Agreement.

Since the 2007 summit in Bali, the climate talks have been characterised by a clash of perspectives and paradigms, mainly along North-South lines, although there have also been considerable differences among developing countries. Generally, developing countries have stressed the need to base the talks on the equity principle, arguing that developed countries have to take the lead in mitigation by committing to deep emission cuts by 2020, and by providing substantial finance and technology to developing countries (so far there has been little of this since the Convention was born in 1992). Developing countries have seen this as necessary to enhance their own climate actions, while pursuing their development priorities.

Developed countries have emphasised the need for developing countries to take serious mitigation action and argued that a category of developing countries (sometimes called advanced developing countries, major economies, or major emitters) should take on binding or almost-binding targets, and that all but the most vulnerable should be subjected to having their actions measured, reported and verified (MRVed) by an international process.

Some developed countries (notably the Europeans) have traditionally also called for a more disciplined, top-down approach to Annex I Parties' mitigation commitments, whereby an aggregate goal of emission reduction for all these countries taken together is agreed upon, based on what the scientific research indicates is needed to limit global temperature rise within safe limits, and each country makes a national commitment comparable to those of the others, which would all add up to the aggregate. This approach is also strongly advocated by the developing countries, and was agreed to as the one to be used when negotiating commitments for the Kyoto Protocol's second period. But this is vehemently opposed by the United States, which is supported by several other countries.

The Copenhagen Conference, which ended in chaos in December 2009, saw the near-triumph of an alternative United States-led approach, in which each developed country would pledge what it could do and a review would be conducted on whether its actions met the pledge. This bottom-up, individual approach is contrary to the top-down, collective approach agreed to in the Kyoto Protocol process.

The yearly ministerial negotiations among the 193 member countries – the 'Parties' – of the UNFCCC, which take place at the end of the year, are in fact a combination of several meetings of the Convention and its Kyoto Protocol. The most important of these are the COP, CMP and, more recently, the sessions of the two *ad hoc* working groups on long-term cooperative action (AWG-LCA) and on the further

commitments of Annex I Parties in the Kyoto Protocol (AWG-KP). The AWG-KP was formed in 2005 to negotiate the new emission-reduction goals (to take effect as of 2013) of those developed countries that are Parties to the Kyoto Protocol (all are, except the United States and – recently – Canada, which at the end of 2011 announced its withdrawal from the Protocol). The AWG-LCA was formed at the Bali conference in 2007 to follow up on the Bali Action Plan which aim was to fully implement the Convention's objectives.

The Bali conference clearly demarcated that the global climate talks would be maintained under the two tracks of the AWG-LCA and AWG-KP, known together as the *Bali Road Map*, and that both tracks would complete their work in 2009. This two-track road map had been seen as a keystone by developing countries, as it was intended to ensure legally-binding and deep emission cuts by Annex I Parties under the Kyoto Protocol track and a 'comparable' mitigation effort by the United States under the Convention's AWG-LCA track, since it is not a Kyoto Protocol member (which the US was forced to concede to under the very tough, final negotiations in Bali in 2007). In exchange, the developing countries would agree to enhance their mitigation actions, supported by finance and technology transfers, with both the supported actions and the support being subjected to a process of measurement, reporting and verification.

II. COP 13 BALI (DECEMBER 2007)

The Bali meeting of UNFCCC (COP) and Kyoto Protocol (MOP) was an important event. It involved complex and sometimes contentious and controversial issues and events.

The most important decision at Bali was the establishment of a new ad hoc working group (AWG) on long-term cooperative action (LCA) under the UNFCCC to undertake a 'comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session' (i.e. in 2009).

The Bali Climate Change Conference concluded dramatically one day late on Saturday, 15 December 2007, afternoon after a dramatic day of events. The day (as the night before) was filled with the tension of deal making and deal breaking.

It saw tempers rising to boiling point, an accusation of mismanagement by the Secretariat that led to its top official taking leave temporarily in tears, a direct intervention of the UN Secretary-General and the Indonesian President to appeal to the countries to make a final deal, a seemingly recalcitrant United States holding the entire meeting to ransom, before several dramatic and angry appeals led finally to its announcement that it would 'join the consensus.'

In the end, the conference agreed to launch a 'comprehensive process' to tackle a long list of issues, including how to mitigate and adapt to climate change, as well as provide the financial resources and technology to developing countries to do so.

The Bali conference marked the fact that all the governments present accepted the scientific findings that global warming is ‘unequivocal’ and that delay in reducing emissions increases the risk of more severe climate change impacts. At previous meetings of UNFCCC, it was still being debated by a few governments whether climate change is really occurring or how serious it is.

The most significant result at Bali was the creation of an ad hoc working group on long-term cooperative action to discuss a wide range of issues under the four ‘building blocks’ of mitigation, adaptation, finance and investment, and technology transfer.

Despite its low-key name, the group would carry much of the power of the UNFCCC in the next two years, and the talks it would hold (whether they took the form of formal negotiations or informal dialogues or probably a combination of the two) might well shape the structures and content not only of climate politics but also have ramifications for global economic and development issues, besides a range of environmental issues.

What was left out in the final document was as important as what managed to get in, after the many hours of wrangling. At least three controversial issues were set aside, because there was no consensus, but were bound to re-appear when the group convened its first meeting in March/April 2008.

The first was whether issues other than the four building blocks would be included in the agenda of the group. Many developed countries had proposed topics such as the further commitments or contributions of developing countries, a level playing field for economic competitiveness, energy security and stronger cooperation with other international organizations (which some saw as meaning the WTO, among others).

Several of these topics had been looked at with suspicion or opposed by many developing countries as being not in the mandate of the UNFCCC or not ‘mature’ enough for negotiations. An annex in an initial draft had contained sub-headings with the four traditional issues (mitigation, adaptation, finance, technology) as well as a fifth heading ‘Other Issues’, all to be filled in at Bali.

But in the end, the annex was dropped altogether. Perhaps there was too little time and too much controversy on what to add or leave out in such a list that would determine the agenda of the crucial next years. At the group's first meeting, which would establish its work programme, these issues would be discussed, and the proponents of the ‘other issues’ (actually ‘new issues’) were bound to put their proposals again on the table.

The second was whether the new process would lead to a new ‘comprehensive’ agreement (which was what many developed countries expressed they wanted). Or whether the existing treaties governing climate change - the UNFCCC and its Kyoto Protocol - would be retained largely unscathed and the focus would be on strengthening the implementation of decisions already adopted but not implemented (this was favoured by the G77 and China).

The developed countries made it clear that they wanted to radically change or replace the Kyoto Protocol and even parts of the Convention. The developing countries were deeply suspicious of this intention, as the two treaties are relatively friendly to their interests.

Under these treaties, the developing countries do commit to take measures to fight climate change but they are not obliged to undertake legally binding emission reduction targets, and their efforts are conditioned by the extent to which the developed countries provide finance and technology.

Throughout the two weeks' talks in Bali, the United States, Japan, Canada, European Union and Russia continuously pressed the developing countries to take on more obligations. Some called for binding reduction commitments.

In the final outcome, there was no mention that the working group would come up with a new 'agreement', but the pressures to alter some of the basic tenets of the existing treaties would resume at the group.

Many of the developing countries, in contrast, were adamant that the existing commitments of developed countries to their own emission reduction, and to providing finance and technology, be implemented. Thus, the emphasis placed by the G77 and China on a work programme on technology inside the subsidiary body on implementation, and on the monitoring of the finance and technology obligations through 'measurable, reportable and verifiable' means.

Thirdly, the Bali document did not set a global target of reduction of greenhouse gases, nor a target for developed countries.

Originally, a 50% global cut by 2050 was proposed, and later the phrase 'well below half' was used. The Europeans and NGOs were also pushing strongly for mentioning an 'indicative range' of 25-40% emission cuts by 2020 (from 1990 levels) for developed countries.

But strong objections from the United States led to the removal of any figures. The battle between the US on one hand and the Europeans (supported by the G77 and China) on the other hand became the most politically charged exercise in the Bali conference's last two nights and days. In the end, a footnote referring to the related data and targets from the Intergovernmental Panel on Climate Change (IPCC) was placed in the text as a compromise.

The main criticism against the US in Bali was the watering down of the text relating to the scientific facts. The next prominent criticism was its unreasonable demands on the developing countries, an attitude that led to the final dramatic exchanges on the plenary floor.

In the last two days in particular, the US became everyone's (including former Vice President Al Gore's) favourite target. On 13 December night, on the very eve of the scheduled conference closure, when things were supposed to be tidied up, the US threw in a bombshell of a proposal to amend the paragraphs on mitigation.

It wanted to do away with the distinction between developed and developing countries, which is a fundamental tenet in the UNFCCC, and it suggested new ways of categorizing countries (for the all-important purpose of allocating mitigation responsibilities) according to emissions, energy use and levels of development. The US also advocated non-binding action, which would overthrow the principle and practice of binding emission reductions of developed countries.

The American proposal was rejected by the Europeans and the developing countries. It also caused intense outrage among the NGOs, which saw it as a ploy to wreck the Bali meeting, and move in its own rival non-binding approach through continued meetings of its 'Major Economies' initiative.

This threat was eventually deflected. Perhaps the biggest achievement of Bali was the ability of the rest of the world to contain the US, get it to withdraw its proposal, and on the final day, pull it into accepting a consensus. The last was done by the other governments, supported from the floor by applause and boos from the NGOs.

At the end, the US agreed to take (or at least discuss) its own emission reduction commitment under the UNFCCC umbrella, although it had pulled out of the Kyoto Protocol (which is where the legally-binding targets for emission reduction by developed countries are set).

How to engage with the US, in process and substantially, would be a major challenge in the working group. Most delegates (government and NGOs) openly hoped that the next US Administration would act differently than the present one, and a kind of one-year 'holding position' in which to continue engagement with the US until change happened would be one of the delicate acts of the new working group.

The Bali outcome¹ says that a comprehensive process to enable the full implementation of the Convention through long-term cooperative action up to and beyond 2012 in order to reach an agreed outcome would be launched by addressing several issues that are then described.

The first two items, known as para b (i) and para b (ii), drew much of the energy and attention of the delegations in the final two days, and right up to the end.

Para b (i) deals with the mitigation actions of developed countries. The final text is as follows: 'Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances.'

This is weaker than the previous text which in straightforward fashion asked for 'Quantified national emission limitation and reduction commitments... by all developed country Parties...' The US had objected to this language and to the reference to the efforts by Parties to the Kyoto Protocol in the previous text.

¹ The document FCCC/CP/2007/6/Add.1 (UNFCCC, 2008) provides decisions of the Conference of the Parties at COP 13, including the Bali Action Plan.

The final compromise was accepted by all as a means to get the US on board. It had to abandon its proposal for a non-binding multilateral system that did not specifically categorise countries as developed or developing.

Para b (ii) deals with the mitigation actions of developing countries. The final text reads: 'Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported by technology and enabled by financing, in a measurable, reportable and verifiable manner.'

A large part of the drama of the final day was led by the G77 and China in their striving to get this language. According to G77 sources, this paragraph had been agreed to in long talks of the previous night in a small contact group of Ministers and officials. At the least it had been understood that the G77 would be given the opportunity to put in an amendment to a previous text which would be bracketed to denote that there was no consensus and therefore that delegates could propose amendments.

But on Saturday morning, to the shock of the members of the G77 and China, an un-bracketed text appeared which had the words 'measurable, reportable and verifiable' up front, and which thus implied that only the mitigation actions by developing countries were referred to in this way. The G77 and China wanted both this and the actions by developed countries to provide technology and finance to be 'measurable, reportable and verifiable.'

When behind-the-scenes consultations between Ministers and officials from China, India and Pakistan with the Indonesian Foreign Minister were taking place, the President of the Conference of Parties, the Indonesian Environment Minister, opened the plenary and placed this most sensitive document for adoption.

This was objected to on procedural grounds by the G77 and China members. After suspension of the plenary, it was re-convened again with the aim of adopting the draft decision, at which point China angrily asked why this was happening a second time when high-level consultations were still going on, and demanded an apology from the Secretariat.

The UN Secretary General and the Indonesian President made a dramatic entry and pleaded for flexibility and decisive action. When the plenary finally convened, the G77 and China asked for their amendment to be adopted, i.e. that the words 'measurable, reportable and verifiable' be placed at the end and not at the start of the sentence.

The EU said that it could accept the change. But the US said that it could not and wanted further consultations to be held. The hall gave out a loud boo, which is quite unprecedented in a diplomatic setting. Many developing countries spoke out, including an eloquent response by South Africa's environment minister.

Some developing countries reminded the hall that the paragraph marked an important step forward for developing countries to undertake new mitigation responsibilities. Most effective of all was the plea from the heart by Papua New

Guinea, which told the US delegation that everyone was looking to it for leadership, and that it should now: ‘Either take the lead or get out of the way!’

In the end, swamped by criticisms and appeals from all sides, in the glare of the world media, the US gave in, and the Bali conference could then proceed to its end.

No country got from Bali what it really wanted, and no one was forced to take on something it found unacceptable. But many of the battles that were fought here were not settled and the ball was now in the feet of the new working group. It would meet in March/April 2008 and three other times the next year. The work programme could be expected to be even more intense in 2009, when it was mandated to reach a decision.

III COP 14 POZNAN (DECEMBER 2008)²

Talks under the UNFCCC started at the ancient Polish town of Poznan on 1 December 2008, at the half way mark between the Bali meeting in December 2007 and the Copenhagen meeting in December 2009 which was scheduled to produce an outcome from the Bali Roadmap to address the global climate crisis.

The 14th Conference of Parties (COP) of the UNFCCC opened with speeches made by the Polish Prime Minister Donald Tusk as well as Anders Rasmussen, the Prime Minister of Denmark that would host the next year's important 15th COP.

Tusk urged the Parties to ‘show patience and understanding with one another’ in a spirit of solidarity, alluding to tough negotiations expected, as there were many deep-seated divisions, especially on North-South lines.

Rasmussen said the financial crisis should not divert from combating climate change, which he described as the right environmental and economic choice. While developed countries must show the way, we need a global approach involving all nations to solve this problem, he said. He was alluding to the need for developing countries, or at least some of them, to contribute to climate-related actions.

Statements were also made by the Chair of the Intergovernmental Panel on Climate Change (IPCC), the UNFCCC executive secretary Yvo de Boer, and representatives of major groupings, including the G77 and China, the EU, the Africa Group, the LDC Group, the Umbrella Group (Australia speaking) and the Environmental Integrity Group (Switzerland speaking).

The opening plenary of the ad hoc working group on long-term cooperative action (AWG-LCA) was also held that afternoon. This was the group mandated by the Bali meeting to follow up on the Bali Action Plan, which aim was the full implementation of the commitments in the Convention, and which was being discussed under the five issues of ‘shared vision’, mitigation, adaptation, finance and technology.

² The document FCCC/CP/2008/7/Add.1 (UNFCCC, 2009) provides decisions of the Conference of the Parties at COP 14.

The climate talks in December 2007 launched the Bali Action Plan, which committed governments to conclude a deal by the end of 2009 on mitigation (actions to avoid and reduce emissions), adaptation (actions to deal with effects of climate change), finance and technology (the means by which developing countries are to be assisted by developed countries to take action).

The next fortnight's talks in Poznan took place under the shadow of the global financial crisis. It had a mainly negative aspect as governments were so preoccupied with the disastrous economic situation and were spending so much money to counter it that they were tempted to shelve actions on climate change.

But it had positive aspects too. The trillions of dollars spent by the United States and European countries to bail out their banks showed that if there is a serious enough cause (in this case, saving the economic system), the governments can come up with the funds.

There is thus little excuse for the developed countries not to provide funds and technology in large quantities to developing countries to help them undertake the technological and organisational revolution required to address climate change.

Besides the effects of the financial crisis, there were several other key issues that were expected to dominate the Poznan talks, in the official meetings and the corridors.

First was the role and stand of the United States, which has for many years been the 'problem member' of the Convention. It pulled out of the Kyoto Protocol years ago, thus depriving the framework of binding commitments from the world's chief emitter. The Bush administration had also been a 'climate skeptic', and the country's emissions had been rising.

With President-elect Barrack Obama promising a big change in the US' position on climate change, there were big hopes that the US would in some significant way join the other countries in fashioning a new set of emission reduction commitments for developed countries after the first Kyoto commitment period ended in 2012.

There was no expectation of any change in position of the US delegation at Poznan. However, several Obama or pro-Obama persons (including senior Congress staffers) were expected in Poznan, and the other participants would be looking out for some positive smoke signals from the incoming US administration and the new Congress.

Second, there would be references in Poznan to the failure of many developed countries to take sufficient action, as greenhouse gas emissions had continued to rise in many countries (such as the United States, Canada, Japan). A UNFCCC report just two weeks before revealed that there was hardly any progress in reducing the developed countries' overall emissions in the most recent five years.

Neither had the developed countries met their commitments on financial and technology transfers to developing countries. They were thus not in any good

position to lecture to developing countries or to pressure them to take on new commitments.

Third, there was an anticipation that some significant progress must be made on finance and technology. This was especially because the Group of 77 and China had tabled two detailed proposals to establish a financial architecture and a technology transfer mechanism within the UNFCCC.

The proposals were aimed at getting the Conference of Parties to establish new institutions to get the all-important finance and technology issues off the ground after too many years of talking, without any significant progress. The G77 and China was pressing the developed countries to implement their finance and technology transfer commitments, as a condition for serious discussion on some other issues that developed countries were pushing for.

The developing countries wanted Poznan to focus on making progress on finance and technology. They expected the developed countries to respond, and positively, to their new proposals, which had been presented at the end of the Accra talks in August 2008.

If there was no such positive response, the developing countries would be most disappointed at Poznan and the atmosphere would be soured.

The developed countries meanwhile had their own priorities. The fourth issue at Poznan would be the proposed ‘differentiation’ of developing countries.

Japan had issued a paper stating that many developing countries must commit themselves to take targets for reducing emissions or improving energy efficiency.

Australia also submitted a paper proposing new categorising of developing countries, naming Singapore, Malta and Korea as among ‘advanced economies’ that were not members of Annex I countries (which are obliged to undertake binding emission reduction commitments under the Kyoto Protocol). The paper also had three lists of developing countries which respectively had higher per capita income than Ukraine and Portugal and a greater Human Development Index than Turkey.

Ukraine and Turkey are Annex I countries and Portugal is an Annex II country. As Annex I and Annex II of the Kyoto Protocol are lists of developed countries that have binding and quantified commitments to reduce their emissions, the implication was that the developing countries listed in the Australian paper should also undertake commitments.

Since Bali, the United States and the European Union had also made a similar demand that various developing countries should undertake greater commitments.

The developed countries had been demanding that the meetings agree to ‘differentiation’ among developing countries, with the aim to get selected developing countries to undertake new emission-reduction or mitigation commitments.

However, the developing countries generally were refusing to be 'differentiated'. They did not recognise the methods by which the categorisation exercise was being carried out by the developed countries. They also pointed out that developed countries are historically responsible for most of the greenhouse gases in the atmosphere and that they should therefore be the only ones to undertake binding commitments to reduce emissions, in line with the present Convention and the Kyoto Protocol.

The developing countries also pointed to the inadequate actions of the developed countries so far, and insisted that in the next few years the focus of the UNFCCC should be to get the developed countries to fully implement their obligations.

The developed countries were positioning themselves to further advocate their demand on differentiation at the Poznan meeting, and most of the developing countries were expected to continue their strong resistance. The mood had soured considerably when this issue was brought up at the Accra meeting, and there was the danger that a further souring would take place if the issue surfaced again at Poznan.

A fifth issue was the developed countries' top priority to get agreement on a 'global goal' for emission reduction. The most cited figure was a 50% global cut in 2050 compared to the 1990 level. The EU failed to get this goal accepted at Bali and since then. It would try again in Poznan.

Many developing countries did not want such a long-term goal to be adopted, at least not at this stage of the talks. They believed that setting a global goal would also result in developing countries accepting a reduction target for themselves, since the developed countries were also setting a target for themselves.

For example, if the global goal was a 50% reduction and the developed countries set a target of 70% for themselves, the developing countries might implicitly be asked to take on a residual cut of 30%. And this would be a much deeper cut for developing countries on a per capita basis. The developing countries were not willing to take on such an onerous target for themselves, especially when there was no confidence that the required and promised technology or finance was forthcoming.

The global goal issue was incorporated in the wider issue of a 'shared vision'. And this shared vision appeared to be the main theme of the Poznan programme, since it was featuring in a workshop and a 'contact group' (during which negotiations are more detailed, usually aimed at getting a decision). Most of all, it was the theme chosen for a Ministerial Roundtable during the high-level segment on 11-12 December.

The inter-related questions of the shared vision and the global goal could thus be expected to dominate the Poznan talks.

IV COP 15 COPENHAGEN (DECEMBER 2009)

The Copenhagen Climate Conference failed to deliver, not just because there was no final, complete agreement, not even because there was no ‘legally binding’ political declaration on which a future agreement could be built, but because the Presidency of the conference and Western political leaders essentially tried to hijack the legitimate, multilateral process of negotiations that had been taking place before Copenhagen and during the conference.

The hijack attempt failed and a weak Copenhagen Accord, which a small group managed to come up with from their enclave during the conference, was unable to get through the Conference of Parties, made up of the 193 members of the UN Framework Convention on Climate Change.

It was the intention of the Copenhagen conference chairman - the Danish Prime Minister, Lars Rasmussen - first to get a small group of leaders to reach an agreement and then to ram it through the Conference of Parties, giving the full membership little time to consider the document. However, decisions at the COP are made by consensus and objections from several developing countries first to the undemocratic process and second to the content of the Accord meant that the COP only ‘took note’ of the document, and did not ‘adopt’ it.

In UN terms, ‘taking note’ of a document gives it a low status. It means that the meeting did not approve or pass it, and did not view it either positively or negatively.

The non-adoption of a three-page document emanating from a secretive small meeting of some 26 leaders that should not even have taken place should not have spelt disaster. Unfortunately, though, in the immediate aftermath of the conference, it was being projected in the Western media by Western leaders and many commentators that a good deal had been blocked by some developing countries, with some blaming China for its stand in the small meeting and others blaming the countries that spoke up against the process in the COP, like Venezuela, Bolivia and Sudan.

The reality is that almost everyone knew that a full agreement, or even the core of an agreement, could not be reached in Copenhagen, simply because there were still many fundamental points of disagreement that could not be bridged in time. The climate talks had been following two tracks – the continuation of commitments made under the Kyoto Protocol, for four years; and the Bali Action Plan on long-term cooperative action, for two years.

Those involved in or following the process knew that Copenhagen could not conclude the negotiations in both of the working groups dealing with the issues, and that the talks would have to continue the following year.

It should not have been cause for recrimination, therefore, that the deadline set for end-2009 proved unrealistic and that the talks needed to continue along the same open, inclusive, multilateral lines for another year. Copenhagen should have been designed as a stepping stone, and not as a conclusion. Unfortunately, the host country Denmark and the UN leadership had the highest ambitions, and called on heads of state and government to come to ‘seal the deal’, and 110 top leaders duly came. The

Danish Presidency selected 26 of them and asked them to agree on an accord.

The real outcome of Copenhagen – negotiating texts from the AWG-LCA and AWG-KP

The proper procedure would have been to make use of the two weeks in Copenhagen to close as many of the gaps as possible and then to bring forward the most up-to-date documents arising from the two working groups (with the differing positions on unsettled issues as options or in square brackets) for extended work in the two working groups, and to set a new deadline for completion of the work for either June or December 2010.

For most of the two weeks at Copenhagen in December 2009, the work of the two groups on KP (Kyoto Protocol), and on LCA (long-term cooperative action) had been proceeding under the multilateral process, in an inclusive manner with all Parties able to submit proposals and language for the drafts, and to participate in drafting and in decisions. The meetings were conducted in a broadly transparent manner, being mostly open-ended (open to all members) and when they were in small groups the full membership normally chose their representatives to attend. Most of the thousands of delegates from governments were diligently working on the many texts on the issues of the Bali Action Plan (involving mitigation, adaptation, finance, technology and a shared vision) and on the Kyoto Protocol's continuation.

Of course, being so participatory, the discussions tended to take time. And since the issues are so important and complex, involving not just the science of climate change but also the political economy of sharing the burden of curbing emissions and paying for the costs of both mitigating and adapting to climate change, the negotiations were inherently difficult. With issues involving massive transformations of national economies and growth strategies, the climate talks became the most complex global negotiations ever, more so than those at the WTO.

The G77 and China and its component countries continuously voiced their opinion that the working groups and their documents, painfully put together through the bottom-up process that recognised the rights of members states big or small, should continue to be the basis of the negotiations. They continuously sought assurances from the Danish Presidency that a small group would not hijack the work carried out in the working groups. The Chairs of the working groups produced up-to-date reports containing draft Decisions with texts that in their view represented the latest state of play. These reports went through hours of discussion by thousands of the delegates representing all the members (throughout the two weeks at Copenhagen, meetings often went on way past midnight) and were prepared for adoption by the Convention's COP and by the Kyoto Protocol's meeting of the Parties. They were eventually adopted and ready to be presented to the final 'ministerial segment' of the meeting, because they had gone through the democratic process, and the members had ownership.

The reports that were adopted should have formed the major reference points when the negotiations resumed the following year. The adoption of these two reports, together with two brief Decisions extending the mandate of the two working groups and setting the new deadlines on conclusion of the work would have been sufficient. The Danish Prime Minister could have declared in a closing speech that the issues

were complicated, that consensus had been found in some areas, and significant progress had been made in other areas in the last two years, but that more time was needed for a full set of agreements. He could have exhorted everyone to do his or her utmost to complete the work within half a year or a full year. No one should have blamed him for this reflection of reality.

If, on top of this outcome, the Danish Presidency wanted a brief political statement to take into account the presence of the political leaders, it could have logically asked the Chairs of the working group to consult with the delegates and extract the core elements where there was consensus in the approved documents and make it the basis of a separate political statement. The statement could also have reaffirmed the main principles underlying the negotiations, laid out the main challenges ahead, such as the major issues of contention requiring urgent attention, set new deadlines, and reaffirmed the highest political commitment to finishing the work.

Such a declaration, reflecting the reality of the bottom-up negotiating process and its results, could have given a political impetus to the climate talks, based on a spirit of goodwill and international cooperation.

Collision of two processes

Instead, the organisers of the conference chose to convene the small group of heads of state (who of course did not have a full grasp of all the technical details), hoping that they would produce a consensus on the many key contentious issues where the negotiators could not. But it was a major gamble, as an exclusive meeting will always justifiably be open to criticism for not being legitimate, and for producing as its outcome a document that did not enjoy consensus and was biased. That the meeting itself was taking place in the last two days of the Conference was not announced, nor who had been invited, nor what they were going to produce.

At some stage, the secretive process of the small exclusive meeting would have to collide with the open process of the multilateral Convention members. The two processes crashed, with explosive results, at the final official plenary convened at 3 a.m. on 19 December, as the conference was going on overtime (it was supposed to have ended on 18 December).

When Rasmussen placed the Copenhagen Accord to the Conference of Parties, he was severely criticised by many countries for embarking on an exclusive and illegitimate process that violated the UN Charter, principles and practices. A battle then ensued between those Parties that rejected the Accord, both for the flawed process and its inadequate contents, and those Parties (mainly Western) that insisted that the Accord be adopted even if it did not enjoy consensus.

The Danish Prime Minister did not distinguish himself for consistency or fairness, first making one ruling and then making a contradictory one, and repeating these overturning of decisions continuously as the night turned into morning.

When it was clear at the concluding plenary that the Accord would not be adopted, some of the Western delegations were quick to link the funds they were offering to the developing countries' acceptance of the Accord, or what a developing country delegate called a 'bribe'. Ed Miliband, the UK's Climate Minister, was

particularly blunt about this linkage and demanded that those who supported the Accord should register this support. The concerns he raised must be duly noted ‘otherwise we won’t operationalise the funds’. The United States said it wanted an arrangement through which Parties would associate with the Accord. It affirmed that there were funds in the Accord and that these were ‘open to any Party that is interested.’³

This implied that Parties not registering their endorsement of the Accord would not be eligible for funding. This attempted linkage of finance to the acceptance of the Accord is of course not in line with the rules of the Climate Convention, in which the developed countries have committed themselves to provide developing countries with the funds needed for them to take massive climate-related actions.

Eventually when it was clear that the rules of procedure made it impossible to convert a non-adoption into an adoption of the Accord, a compromise was reached for the Copenhagen Accord to be merely ‘noted’ and not adopted by the Conference.

Understanding the Copenhagen Accord

The actual Copenhagen Accord⁴ itself is only three pages in length. What is left out is probably more important than what it contains.

The Accord does not mention any figures of the emission reduction that the developed countries are to undertake after 2012, either as an aggregate target or as individual country targets. This failure to attain reduction commitments is the biggest failure of the document and of the whole Conference.

It marks the failure on the part of the leadership of developed countries, which are responsible for most of the greenhouse gases retained in the atmosphere, to commit to an ambitious emissions target. While the developing countries have demanded that the aggregate target should be over 40 per cent reductions by 2020 compared to 1990 levels (which would, in fact, be insufficient in light of recent climate science)⁵, the national pledges by developed countries amounted to (and still amount to) only 13-19 per cent in aggregate.

Earlier versions of the Accord (‘the Danish texts’) contained an indication that there would be an aggregate figure (denoted as X in the draft) for Annex I countries collectively.⁶ The US effectively had this removed and the final version did not have this figure or an indication that it would be filled in later.

³ This account of the proceedings and the statements made is based on the author’s own recollections, from being present at the meeting.

⁴ The document FCCC/CP/2009/11/Add.1 (UNFCCC, 2010) provides decisions of the Conference of the Parties at COP 15, including the Copenhagen Accord.

⁵ See Kevin Anderson, “Climate change going beyond dangerous – Brutal numbers and tenuous hope”, in *What Next Volume III: Climate, Development and Equity*, Niclas Hållström, ed., development dialogue no. 61 (Uppsala, Dag Hammarskjöld Foundation and the What Next Forum, 2012).

⁶ A copy of the leaked ‘Danish text’ can be found at <http://www.guardian.co.uk/environment/2009/dec/08/copenhagen-climate-change?INTCMP=ILCNETTXT3487>

This system of unilateral national pledges for emission reduction is extremely dangerous and represents a significant departure from the Kyoto system where Annex I Parties are set a binding aggregate target and then binding national targets for each country.

In its place, the Accord only asks each country to inform the rest what it is prepared to do. There is no collective assessment of whether each country's pledge is adequate, no system of ensuring there is comparability of effort and no mechanism to assess whether the aggregate level of emission is adequate to meet the scientific requirement (let alone ensure that it is).

The only 'peer review' by members is on whether the developed countries implement what they have announced they will do. There is to be no review of the pledges themselves.

Another omission was the lack of assurance that the Kyoto Protocol would continue, with developed countries taking on emission reduction commitments in a second period starting 2013. The continuation of Kyoto was, as we have already seen, a top priority demand of the G77 and China as well as a considerable number of civil society organisations around the world.

The Accord recognises the broad scientific view that global temperature increase should be held below 2° Celsius, and agrees to enhance cooperative action on the basis of equity. This only echoes the view affirmed by India, among others, that accepting a target of temperature limit, whether it be 2° or 1.5°, has to come with a burden-sharing framework, with equity as its basis. However it does not include the explicit Indian proposal at that time, for a paradigm to be agreed on for the equitable access to global atmospheric space, which would accompany acceptance of a global temperature goal.

The Accord stated the collective commitment of developed countries to provide new and additional 'fast-start' funds totalling US\$30 billion in 2010-2012 through international institutions.

It also introduced the idea that the developed countries would jointly mobilise US\$100 billion a year by 2020 for developing countries. This is weak, as the commitment is only to mobilising funds, not to actually transferring the funds. The amount is also below what is required; moreover, the sources are to include public and private sectors and alternative sources. Thus, it is doubtful whether the new commitment meets the criteria in the Convention for fulfilment of the developed countries' commitment to transfer financial resources. The US\$100 billion is not said to be 'new and additional', so it may include existing funds or already planned funds.

The Accord also contains a lengthy paragraph on the mitigation actions by developing countries, and how these should be measured, reported on and verified (MRV). This was reportedly a heated topic at the small heads-of-state meeting, with US President Obama pressing the developing countries, particularly China, to undertake more MRV obligations.

The Accord is a thin document, containing hardly any new commitments by developed countries, with a weak global goal, and paving the way for a shift of paradigms to a weak pledge and review system. It is a sad reflection of the Copenhagen Conference that this problematic document was afterwards held up as a main achievement.

In the immediate days following the Conference, some developed countries, particularly the UK, targeted and blamed China for the failure of Copenhagen. They accused China of leading a blockage of certain items from being included in the Accord, especially a target of a global emissions cut of 50 per cent by 2020 compared to 1990, and a target of an 80 per cent emissions cut by developed countries in the same period.

In fact, these targets, especially taken together, had, for good reasons, been highly contentious during the two years of discussion in the LCA working groups. The acceptance of 2050 targets of a 50 per cent global cut and 80 per cent developed countries' cut, as pushed by some developed countries, would have locked in a most unfair sharing of the remaining global carbon budget as it would have secured a continued overallocation to the developed countries, while freeing them from their historical responsibility and their carbon debt.

They would thereby have been allocated the rights to a large amount of 'carbon space' without facing up to the responsibility to undertake adequate emission cuts or to make financial and technology transfers to developing countries to enable and support them in their mitigation and adaptation actions.

V COP 16 CANCUN (NOVEMBER – DECEMBER 2010)

The 2010 climate conference of UNFCCC which took place in Cancun (Mexico) on 29 November to 11 December was problematic and complex in both process and content, and in both aspects it will have ramifications that will take several years to unfold.⁷

In substance, the conference outcome strengthened the shift in paradigm that came to the fore in Copenhagen the previous year, and had direct consequences for the international climate regime. In particular, it may have prepared the way for the demise of the Kyoto Protocol (or for its temporary survival in extremely weakened conditions) and thus of the crumbling of the foundation of the architecture agreed to in the Bali climate conference in December 2007, which launched the Bali Road Map. In general, it weakened in operational terms the critical principles of equity and common but differentiated responsibilities by blurring the distinctions between developed and developing countries in their respective and qualitatively different types and levels of commitment and responsibilities, especially the reduction of emissions of greenhouse gases.

In terms of process, the Cancun conference saw the use of a combination of methods of work and decision-making that are not normally used in United Nations

⁷ See http://unfccc.int/meetings/cancun_nov_2010/items/6005.php for the package of Cancun decisions.

conferences. It has clearly set a precedent of sorts for a UN meeting by using old World Trade Organization-style methods and processes to reach an outcome. Even recent WTO ministerial conferences no longer use these methods.

In the final sessions, the Mexican Chair of the conference gavelled through the key decision documents despite the strong objection of one country, Bolivia, in so doing stating that this was in line with the consensus principle. But at the UN as well as at the World Trade Organization, consensus is taken to mean that no member present formally objects to a key decision.⁸ The Cancun conference Chair's interpretation of consensus may have ramifications for decision-making not only for future meetings of the UNFCCC but for other UN fora as well.

All (on US terms) or nothing

At the start of the Cancun conference, the developing countries and their groupings insisted that the continuation of the Kyoto Protocol (and its top-down approach) and an agreement on ambitious figures for its second period would be a condition for a successful outcome. In contrast, the United States stressed two priorities: ensure that the mitigation targets that all developed countries and some developing countries had pledged under the Copenhagen Accord were accepted as the targets inside the Convention; and getting developing countries to agree to its proposal of a strong system of MRV (measuring, reporting and verifying) of their mitigation actions supported by international financing, and of ICA (international consultation and analysis), a weaker form of MRV, of their domestically funded actions. The US made it clear that unless these goals were met, there could be no decisions taken on other areas, including finance, technology transfer and adaptation. According to the worldview of the US, developing countries should be treated in similar fashion to developed countries, and vice versa. This means the principles of equity and common but differentiated responsibilities would be greatly weakened in crucial operational terms.

Developing countries and civil society groups at Cancun criticised the US for holding the developing countries hostage and insisting on getting its own way on the issue of mitigation.

Thus a minimal or modest result on issues already agreed on could not be accepted by the US. It was to be all or nothing, and the threat of a collapse was held out to be a real possibility; this threat was used by developed countries as leverage to get more and more of what they wanted. In a way this US strategy forced the Mexican hosts to decide to manage the conference, overall, on this risky all-or-nothing basis.

The US strategy paid off. It seemed as if the conference was organised to revolve around meeting the requirements of the most powerful country, the United States, allowing very modest progress to be made in other areas, which would prevent Cancun from being described as a total failure. This was perhaps the greatest irony at Cancun: that the developed country with the weakest political capacity to offer

⁸ At the WTO itself, where decision-making by consensus has been the rule, consensus is also defined in the usual way. A footnote in the Marrakesh Agreement that established the WTO defines it as such: 'The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting, when the decision is taken, formally objects to the proposed decision'.

anything concrete or adequate in its own climate mitigation commitment should be calling the shots. Instead of Cancun becoming a forum where the US would be pressured to take on more action, it became a venue in which the US could extract the maximum price out of developing countries just so that some very modest progress (mainly the establishment of institutions) could be shown to the world. And in the process, the world and its climate paid the heaviest price, the downgrading of developed countries' mitigation from a binding and top-down system of disciplines to one of voluntary pledges.

Complicated WTO-type processes used in Cancun

The acceptance of a set of decisions at Cancun that were so weighted against the developing countries would probably not have been achieved if the open and participatory process normal in the UN had been used, with the negotiators and experts in charge. Usually the negotiators would have almost-finalised texts for ministers to consider and adopt, or else a decision would be taken to transfer the unfinished work to another round of negotiations. At Cancun, a few drafting groups (especially on finance) were still doing their work in attempts to narrow the differences. However, most of the negotiators and their processes were overtaken by a series of new methods of work that are often used at the World Trade Organization but not at United Nations meetings.

The host country, Mexico, organised meetings in small groups led by itself and a few ministers whom it selected. There were small 'Green Room' meetings, informal consultations and 'confessionals' (in which individual delegations are asked their positions) conducted by pairs of ministers and by the Presidency of the conference (Mexico), informal plenaries to inform all participants on what was going on, and texts written or issued by facilitators and eventually put together by Mexico.

The final document was produced not through the usual process of negotiations among delegations, but compiled by the Mexicans (it is still unclear who took part in the drafting), and given to the delegates with only a few hours to consider at the very end of the conference, on a take-it-or-leave-it basis (no amendments were allowed).

At the final plenary, Bolivia rejected the text, and its ambassador, Pablo Solón, made a number of statements giving detailed reasons why. Bolivia could not accept a text that changed the nature of developed countries' commitments to a voluntary system of pledges; nor could it accept the low pledges they had made, which would lead to a disastrous degree of global warming, which its president had termed ecocide and genocide. It could also not accept an undemocratic process through which its proposals (on mitigation, the use of market mechanisms, and on the need to address IPRs) had been swept aside.

Bolivia made clear it could not adopt the text and that there was thus no consensus. The Mexican Foreign Minister Patricia Espinosa, said that Bolivia's views would be recorded, but that one country could not prevent a consensus, and declared the text adopted.

At Cancun, the events of the last day were not and are still not clear to most of the participants. The Mexican way of organising the writing and later the adoption of the Cancun text raises questions about the future of UN negotiating procedures,

practices and decision-making. The importation of old WTO-style methods carries the risk of conferences collapsing in disarray (as has happened in several WTO ministerial meetings) and in biased texts, which have usually been to the advantage of developed countries. Despite the unorthodox methods as far as the UN processes and meetings are concerned, the final texts were in the end accepted by all the delegations (though some registered their concerns and reservations) except for Bolivia.

The approval of developed countries is easy to understand, for most of their positions are reflected in the final texts. The acceptance by developing countries, however, is a more complex issue. One significant factor was the involvement of several ministers who were concerned more with the general political aspects than the nitty-gritty detailed content of the many issues and their implications. The acceptance of an inadequate and imbalanced outcome was probably also seen by many developing country delegations as the price to pay for getting a result at Cancun, because another collapse would have further undermined the UNFCCC and seriously set back the multilateral climate change process from which they feared it might not recover. The choice presented to them was a take-it-or-leave-it text in an all-or-nothing approach, accompanied by an appeal not to sink the multilateral system – and with some small achievements in their interest. The risk (and political price) of being blamed was perceived to be too high for those delegations that may have wanted to raise concerns or even an overall objection.

Inadequacies and imbalances in the Cancun outcome

Although most of the delegations were relieved that multilateralism seemed to have been preserved at Cancun, many negotiators from developing countries were privately expressing deep disappointment and serious concern that the final texts did not reflect a balanced outcome, that in fact the developing countries had made major concessions and that the developed countries had largely got their way and escaped from their commitments. Moreover, there was serious concern that from a climate-environmental point of view, the texts fell far short of what was required, and had actually gone backwards in terms of controlling greenhouse gas emissions. One senior negotiator of a developing country summed up his feelings, as he was leaving Cancun: ‘We saved the system but the climate and people were sacrificed.’

Inadequate emissions reductions

The Cancun conference suffered an early blow from Japan's bold announcement that it would never agree to making another commitment under the Kyoto Protocol. With the Protocol's first commitment period ending in 2012 the deadline for finalising the emission-reduction figures for the second period had long passed in 2009 (Annex I countries had committed to come up with an aggregate figure in line with science, by March of 2009, but were still refusing to discuss any figures during the negotiations). The developing countries had made it their main demand that the figures for the Kyoto Protocol's second period be finalised in Cancun, or at least that a clear road map be drawn up for their finalisation in 2011. However, this goal was swept aside by Japan's uncompromising stand on day one and the conference never recovered from that blow.

The final text failed to ensure the survival of the Protocol, though it sets some terms of reference for continuing the talks in 2011. The Cancun meeting in fact made

it more likely that developed countries would move away from the Kyoto Protocol and its binding regime of emission reduction commitments, to a voluntary system in which each country only makes pledges on how much it will reduce its emissions.

In the Kyoto Protocol system, it had already been agreed that for the second commitment period, a top-down aggregate reduction figure based on what science requires⁹ would first be agreed on, and then developed countries would have to make their national commitments and these would all have to add up to the aggregate. In a voluntary pledge system, there would be no agreed prior aggregate figure, and no system of ensuring that the sum of pledges is ambitious enough to meet the scientifically required level.

The Cancun text also ‘took note’ of the emission reduction targets that developed countries gave under the Copenhagen Accord and has placed them in a document under the Convention, thus for the first time ‘anchoring’ the Accord’s pledges inside the Convention, thus fulfilling a prime goal of the US. But these are overall such poor targets that a UN Environment Programme report (UNEP, 2010) warned that if they are implemented the developed countries by 2020 may decrease their emissions by only a little (16 per cent) in the best scenario (that is, if the top end of the range of pledges is implemented), or even increase their level (by 6 per cent) in a bad scenario (if the bottom end of the range is implemented and if various loopholes are allowed). The world would be on track for a temperature rise of 3 to 5 °C by the end of the century, which would be catastrophic.

The text urged developed countries to increase the ambition of their mitigation targets, and refers to the IPCC recommended target (thus making an indirect reference to the 25-40 per cent aggregate emission-reduction figure), and hints that the pledges made should be taken as only an initial starting point. But this ‘urging’ is far weaker than the Kyoto Protocol’s binding top-down system, and the AWG-LCA’s obligation for developed countries that are not Kyoto Protocol Parties (i.e. the United States) to make a comparable effort. In fact, this ‘urging’ paragraph is what is left of the two pillars of developed-country mitigation in the three-pillared Bali mitigation architecture. With the crumbling of these two pillars, the developed countries are now focusing on shifting the weight to the remaining third pillar – the mitigation actions of developing countries.

Many earlier drafts (for example the 13 August 2010 text which compiled the proposals made by Parties) contained the option that developing countries put forward or endorsed, that the developed countries’ commitments must achieve the reduction of their aggregate emissions by either 30, 40, 45 or 50 per cent (reflecting the various proposals) by 2020 and that the developed countries which are Kyoto Protocol members shall make their commitments in the second period of the protocol, while non-Protocol developed countries (the US) would have its reduction figure reflected in the AWG-LCA’s decision under the Convention. This option was eliminated in the Cancun outcome. The replacement of this option with the voluntary national pledging system (accompanied by a weak ‘urging’ paragraph) in which the Kyoto Protocol was not even mentioned prepares the ground for the replacement of one regime with

⁹ This is generally taken to be the estimate in the report of the Intergovernmental Panel on Climate Change (IPCC, 2007) of 25-24 per cent by 2020 compared to 1990, and taken by developing countries to be a more ambitious 40-50 per cent.

another. This laying of the foundation for ‘regime change’ is perhaps the single most important implication of the Cancun outcome.

Even as it facilitated the ‘great escape’ of developed countries from their commitments, the Cancun text introduced new disciplines for developing countries. Indeed what is really new in the Cancun outcome is the vastly expanded mitigation obligations placed on developing countries. The developing countries are now obliged, through the Cancun text, to put forward their plans and targets for climate mitigation, which are to be compiled in a document and later in several registries to be regularly updated. It is a first step in a plan by developed countries (which they have been quite open about) to get developing countries eventually to turn their mitigation targets into commitments in national schedules.

New obligations for developing countries for MRV and ICA

The Cancun text also obliged developing countries to report on their national emissions, mitigation actions and their effects in national communications reports once every four years, and also to submit biennial update reports on the same topics. In other words, the reporting will be once every two years. These reports (to include information on mitigation actions, details of emissions, analysis of impacts, methodologies and assumptions, progress on implementation and information on domestic ‘measuring, reporting, and verification’ (MRV) are to be subjected to scrutiny by other countries and by international experts. The Cancun text in fact gives a great deal of space to the details of these MRV and international consultation and analysis (ICA) procedures.

These are all new obligations, and a great deal of time was spent in Cancun by the developed countries (especially the United States) in getting the developing countries to agree to the details of MRV and ICA. While international MRV of internationally financed mitigation actions by developing countries was agreed to by all in Bali, it was understood that there would not be an international scrutiny of actions that are domestically funded. The Copenhagen Accord changed this understanding, adding on the obligation of international consultation and analysis (ICA) for domestically financed mitigation actions. Many developing countries still have not associated with the Copenhagen Accord and thus have not agreed to an ICA system. The Cancun decision, however, now obliges all developing countries to be part of an ICA regime. Many developing-country officials were increasingly worried in Cancun about how they were going to implement these new obligations, as a lot of people, skills and money will be needed to prepare the reports, while the mitigation actions themselves may involve major changes in their production and economic systems. While the new mitigation obligations on developing countries were expanded in detail in Cancun, there was no corresponding clarity that funding and technology support (that developed countries committed to) would be forthcoming. This of course has added to the anxiety of developing countries.

In fact, the developing countries made considerable concessions and sacrifices at Cancun, while the developed countries managed to have their obligations reduced or downgraded.

Cancun may be remembered in future as the place where the UNFCCC's climate regime was changed significantly, with developed countries being treated more and more leniently, while developing countries are asked to increase their obligations. The ground was being prepared for a new system that would blur the differences currently existing between the mitigation commitments of developed countries and the mitigation actions of developing countries, and then replace the Kyoto Protocol and change the meaning of the Convention itself. Cancun will be seen as a milestone in facilitating this regime change.

Shared Vision

In the section on 'shared vision', the Cancun text recognised the need to limit temperature rise to 2 °C and that Parties should take action to meet this goal consistent with science and on the basis of equity. Although the crucial principle of equity is recognised here, the proposal that India and many other countries had made (and that had been placed as an option in earlier drafts) that the goal should be 'preceded by a paradigm for equitable access to global atmospheric space' has been eliminated.

Also in this section, the Parties agreed to achieve the peaking of global and national emissions as soon as possible, with the timeframe to be worked out within a year. Since many developed countries had already reached an emissions peak and were reducing emissions, what was new was the national peaking by developing countries. The agreement to achieve their national peaking as soon as possible when many of them still had very low levels of emissions (and were at a low economic level) raised many questions as to whether and when they could achieve such a target.

On the demands of developing countries for actual implementation of developed countries' commitments to transfer finance and technology, the Cancun decision falls far short of concrete action or even concrete commitments. The measure agreed to is only to establish new institutional arrangements. Actual implementation is not addressed.

Climate finance

The Cancun conference agreed to establish a new Green Climate Fund to function under the UNFCCC to finance mitigation and adaptation actions in developing countries.

No decision was taken on how much money the fund will get. However, the text repeats the Copenhagen Accord language that the developed countries commit to a goal of mobilising US\$100 billion per year by 2020. While developing countries have insisted that most of the financing should be in the form of grants or payments and not loans, and should be sourced from the public sector rather than from the private sector or markets, the Cancun text mentions a wide variety of sources of funding, 'public and private, bilateral and multilateral, including alternative sources'. Moreover the commitment is only to a 'goal of mobilising', and not to actual payment of the funds mentioned, and even this weak goal is made conditional by being in the 'context of meaningful mitigation actions and... transparency.' This implies that the funds will be raised only if developing countries take on 'meaningful' actions and implement 'transparency' mechanisms (presumably involving MRV and ICA) to the

satisfaction of the developed countries. The US\$100 billion amount is far below what many studies estimate is needed by developing countries for their climate actions (UN-DESA, 2010; UN-DESA, 2012; World Bank, 2010a; World Bank, 2010b; Montes, 2012), and also far below the G77 and China's proposal that developed countries contribute 1.5 per cent of their GNP (which currently adds up to US\$600 billion).

A transitional committee was also set up to design various aspects of the Green Climate Fund. One important issue is the governance of the Fund. The Cancun decision is that a 24-member Board will govern the Fund, with equal representation between developed and developing countries. This was the proposal of developed countries, whereas the G77 and China had advocated for an 'equitable representation', which would have meant a majority of Board members would be from developing countries. In the Cancun decision, developing countries, with four-fifths of the world's population, would only have half the seats on the Board, which was yet another example of developed countries' proposals holding sway.

It was also agreed in Cancun that the initial trustee of the fund would be the World Bank. This had been a key demand of the United States which many developing countries had been opposing, as they have had negative experiences with the Bank. The developing countries wanted competitive bidding for choosing the trustee, rather than appointing the Bank up-front.

Adaptation

On adaptation, the Conference of Parties decided to establish an Adaptation Committee to promote enhanced adaptation action, with views on its composition, modalities and procedures to be agreed on in the coming year. In relatively weak language, it also 'recognises the need' to strengthen cooperation to understand and reduce loss and damage associated with climate change, including extreme weather events. The developing countries were advocating a stronger decision, to establish an international mechanism to deal with loss and damage. The text, however, mentions a work programme of workshops and meetings to address this issue.

Technology

A technology mechanism was also set up under the UNFCCC, comprising a technology executive committee of 20 members, and a technology centre and networks. The executive committee as originally envisaged by developing countries was to have decision-making powers. The functions as elaborated in the Cancun text are more in the nature of 'recommending actions' and 'recommending guidance'. The Cancun text avoids any mention of intellectual property rights (IPRs), although the developing countries have argued that IPRs have an important influence on their access to climate-related technologies, and have made it a priority issue in the technology transfer negotiations. Even on the day before the conference closed, a draft text prepared in ministerial-led consultations had three options in a section on IPRs; one was to leave out any mention of IPRs whatsoever; the second was to accept the strong position of many developing countries on reviewing the IPR regime and on the use of TRIPS flexibilities; and the third was to continue the dialogue on IPRs over the next year, or to hold workshops to be organised by other international organisations. It was expected that at least the third option would be accepted.

However, the extreme US position, of no mention whatsoever, triumphed. The Cancun text gave up any recognition of the developing countries' position on IPRs, without even accepting a very diluted compromise to keep talking about the issue.

Markets and trade

On introducing market mechanisms as an issue to be discussed in the AWG-LCA, developing countries had been suspicious that this was a move to enable the shifting of market mechanisms being used or discussed in the Kyoto Protocol to the Convention track under the AWG-LCA, so that if the Protocol was discontinued, the market elements (such as the use of carbon offsets through the Clean Development Mechanism and other market instruments that some were seeking to introduce) could be installed in a new protocol or agreement. They thus wanted the issue to remain in the Kyoto Protocol group, rather than being transferred to the AWG-LCA, or at least to postpone a decision on whether to discuss it in the AWG-LCA until the issue of continuing the Kyoto Protocol was settled. This option was included in earlier drafts. However, the option not to have market approaches in the AWG-LCA text had been eliminated in favour of the developed countries' option to launch market based mechanisms, with details given in the text.

The link between climate change and trade measures is another important issue for developing countries. The earlier negotiating texts contained the proposals by a large number of developing countries in strong language forbidding the use of unilateral trade measures such as border tax measures imposed on imports on the grounds of needing to take climate change actions. However the Cancun decision has totally disregarded these proposals and instead chosen text on this issue that merely reiterates the language of the existing Article 3.5 of the Convention, namely that measures to combat climate change should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade. This is seriously inadequate, as it does not add anything new to the Convention to fight against climate-linked protectionism.

- - - - -

When the dust settles after the Cancun conference, a careful analysis will find that the adoption of an outcome may have given the multilateral climate system a shot in the arm and created positive feelings among most participants because there was something for them to take home, but that it also failed to save the planet from climate change and helped pass the burden of climate mitigation onto developing countries. Instead of being strengthened, the international climate regime was weakened by the serious threat to close the legally binding and top-down Kyoto Protocol system and to replace it with a voluntary pledge system.

VI COP 17 DURBAN (NOVEMBER – DECEMBER 2011)

The UN Climate Change Conference held in Durban concluded on the morning of 11 December (two days after its scheduled end) with the launch of negotiations for a new global climate deal to be completed in 2015, and to take effect in 2020.¹⁰

The new deal aims to ensure ‘the highest possible mitigation efforts by all Parties’, meaning that the countries should undertake deep greenhouse gas emissions cuts, or lower the growth rates of their emissions. It will take the form either of a protocol, another legal instrument or an outcome with legal force.

In a night of high drama, the European Union tried to pressurise India, China and other developing countries to agree to commit upfront that the new talks would lead to a legally binding treaty such as a protocol, and to agree to cancel the term ‘legal outcome’ from the list of possible results, as it said this option was too weak and unacceptable.

The EU had insisted that there would be a legally-binding agreement covering all countries, as a quid-pro-quo for its member countries to remain in the Kyoto Protocol and take part in a second commitment period.

During the Durban negotiations, the EU and the United States made clear they wanted all major economies (a code term to include China, India, Brazil and other unspecified developing countries) to undertake similar emissions-cutting obligations. Inclusion of developing countries is a departure from the Climate Change Convention, which distinguishes between the binding commitments that developed countries have to undertake and the voluntary climate actions that developing countries should do.

Kyoto Protocol bargaining

Much of the Durban conference was caught up in the EU’s bargaining, that it is agreeing to a second commitment period of the Kyoto Protocol only on the condition that new talks be launched on a ‘new legally binding treaty involving all’. And the most important discussion took place in a consultation chaired by the South African Foreign Minister, Maite Mashabane, in small rooms involving some 30 Parties.

The initial KP proposals put up by the Chair met with angry responses from almost all developing countries, because they did not enable Durban to definitively launch the second KP period. Countries were only ‘invited’ to provide their emission-reduction commitments by May 2012, and the KP working group was to be shut down at the end of the Durban conference. Moreover, the draft showed two countries (Australia and New Zealand) taking a wait-and-see approach while three others (Japan, Russia and Canada) were definitely out of the second period. (After the Durban conference, Canada announced it was withdrawing altogether from the Kyoto Protocol.)

¹⁰ See http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php for decisions and other official UNFCCC documentation from the Durban summit.

In the final session, a text on KP was presented which did not much differ from the initial draft. It stated that the second period starts on 1 January 2013 and can last for five or eight years (this would be decided in 2012). It took note (i.e. neither approved nor disapproved) of the proposed amendments (arising from the working group) of rules on forest (Land Use, Land-Use Change and Forestry - LULUCF), flexibility mechanisms and methodological issues. It only 'invites' (does not mandate) developed country Parties to submit their emission-reduction commitments (known as QELROs) by May 2012 to be considered by the KP working group in June; and requested the group to submit these figures to the Conference of Parties (in December 2012) 'with a view to adopting these QELROs as amendments to Annex B of the KP'.

At the plenaries on the night of 10 December, several developing countries expressed concern over the weakness of this text and asked for revisions. However, no revisions were allowed (except a request by the EU to allow the duration of the period to be five or eight years) and the text was gavelled through as part of the Durban package.

This KP decision gives no clear assurance that a second period would actually occur because the developed country Parties might not submit their emission-reduction commitments (QELROs) in time to be considered by the KP Working Group.¹¹ The non-participation of several important developed countries in the Kyoto Protocol's second period is of course a major blow to the Protocol and what it stands for.

Establishment of the Durban Platform

The Kyoto Protocol was thus barely kept alive. In exchange for this, the EU (backed by several developing countries including members of the Alliance of Small Island States) pushed for a decision that negotiations would start immediately for a new legally binding treaty involving all Parties. It called for deletion from the draft decision of the option of 'legal outcome', and the retention only of two options, a protocol or other legal instrument.

Conspicuously absent from the draft decision was any mention of the principles of equity and common but differentiated responsibility (CBDR), which are cornerstones of the UNFCCC and of critical importance to developing countries. The US in particular insisted that these principles should not be mentioned, while India led several developing countries in insisting that they should be included.

At the closing plenary on 11 December, India's Environment Minister, Jayanthi Natarajan, gave a passionate defence of why India was against committing to a legally binding protocol, and of the need to base the new talks on equity. She argued: 'Why should India give a blank cheque by agreeing upfront to joining a protocol when the content of that protocol is not yet known? We are not talking about changing lifestyles but about the effects on the livelihoods of millions of poor farmers. Why should I sign away the rights of 1.2 billion people? Is that equity?'

¹¹ Or if they were submitted, the Conference of Parties might end up not accepting the QELROs if they were not ambitious enough; or if the conference adopted the QELROs and the amendments to the KP, it was not possible they would be ratified and enter into force before 1 January 2013, so there would be a legal gap between the first and second periods.

Ms. Jayanthi said that the resolution on the new round of talks did not even contain the words ‘equity’ or ‘common but differentiated responsibility’, an expression in the Convention meaning that rich countries should contribute more than poor ones in the fight against climate change. If such a protocol is developed, in which poor countries had to cut their emissions as much as rich countries, Ms. Jayanthi argued, ‘...we will be giving up the equity principle. It is goodbye to common and differentiated responsibility. It would be the greatest tragedy.’

Several countries, including China, the Philippines, Pakistan and Egypt, supported India’s position. The EU, however, still insisted on removing ‘legal outcome’ from the text, but it agreed to discuss the equity concerns raised by India. After a half-hour break where several countries tried to arrive at a compromise, it was agreed that the term ‘legal outcome’ be changed to ‘outcome with legal force’. The US insisted that equity should not be mentioned in the document. The Conference then approved the launching of the new talks.

The key paragraph of the decision on the Durban Platform was that Parties agreed to:

launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention hereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action¹²

Several legal experts and senior negotiators from developing countries are of the view that even though equity and CBDR are not explicitly mentioned in the decision, in fact the reference to ‘under the Convention’ means that the provisions of the instrument or agreed outcome have to be consistent with and reflect the UNFCCC’s principles and provisions, including those that relate to equity, CBDR and the different responsibilities of developed and developing countries.

Details of the framework for the new negotiations were not spelt out in the decision, which mandates that these be worked out in 2012. Thus, it could be expected that there will be a major battle on the principles and major contours of the framework of the new deal. On the one hand, the US would insist that the absence of the word ‘equity’ in the decision meant that there was to be no ‘firewall’ between the obligations of developed and developing countries, which should be treated in the same way. On the other hand, many developing countries, including India and China, would argue that the equity and CBDR principles should be central to any deal.

Controversial winding down of the Bali Road Map

The Durban conference also took steps to wind down the current framework of climate talks, comprising the Kyoto Protocol’s second period and the Bali Action Plan, which together formed the Bali Road Map.

The Kyoto Protocol was saved from extinction by a weak decision to consider the commitments that those remaining developed countries were invited to submit. But

¹² The document Decision 1/CP.17 Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action can be accessed at <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=2>

Kyoto has been significantly and perhaps fatally weakened. With perhaps only the European countries left, the Kyoto protocol may live on till 2017 or 2020, but by then it may already be overshadowed by the new Durban Platform.

The other ad hoc working group - on long-term cooperative action - was apparently given only one more year of life, to wind up its work, even though many important components (especially on equitable access to sustainable development space, long-term finance and technology transfer) have yet to be elaborated. The relevant paragraph (Para 1 in Decision 1/CP.17) states the decision to extend the AWG-LCA for one year 'for it to continue its work and reach the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan) ...at which time [the AWG-LCA]...shall be terminated'.

In fact this decision did not emanate from negotiations, and the developing-country delegations did not see the text on the closure of the AWG-LCA until the final hours of the Conference. Moreover, the report prepared by the Chair of the AWG-LCA, Daniel Reifsnyder of the United States, had been rejected by several developing countries at the final plenary meeting of this group, as being biased against them and not reflecting their views on many issues. Moreover, the report implied that on some issues of crucial importance (for example, intellectual property rights in relation to access to technology; unilateral trade measures; comparability of mitigation efforts by all developed countries), there would be no need for any further discussion or decision. In a move unprecedented in the prior history of the UNFCCC, the Chair ignored the explicit objections of several members of the group and sent the report, 'on his own responsibility', to the Conference of Parties for it to adopt (the same procedure also took place in the AWG-KP session). Consequently, a few hours later, it was adopted by the COP as part of a package of adoption of several documents. This explains why many developing countries' delegations had been fighting to revive several of their issues and proposals in the resumed meetings of the AWG-LCA in May and August/September 2012. However, the response of most developed countries was that these issues or proposals should not be revived, as their treatment had already been settled in Durban.

Some developing countries' delegates had also argued that the Durban decision was not definitively to close down the AWG-LCA at the end of COP 18 in Doha in November-December 2012. The language in the paragraph is that the AWG-LCA should continue its work and reach the agreed outcome of the Bali Action Plan. Thus only when the agreed outcome is reached would the group be terminated, according to this interpretation. However, at the post-Durban negotiations in Bonn (May 2012) and Bangkok (August/September 2012), many of the developed countries made it clear they want the AWG-LCA to be closed down by COP 18.

One achievement in Durban was the finalisation of the governing instrument of the new Green Climate Fund. The draft instrument submitted by the Transition Committee to design the Fund was accepted, but with the addition of some important clarifications contained in a Decision by the COP. It was also agreed that the UNFCCC secretariat and the Global Environment Facility would jointly run the interim secretariat for two years, after which an independent secretariat would operate.

Controversial process, lacking transparency¹³

At times the Durban talks looked as if they were going off track, with disagreements on many issues. Even at the last session, there were grumbles about how resolutions and texts were being pushed through without allowing for changes.

The basic differences were most evident in the discussions on the reports of the working groups, and on the draft COP decision on the Durban Platform during the plenary meetings on the final night running into the morning of Sunday, 11 December. These sessions all took place long after the Conference was scheduled to end (Friday, 9 December) and when the ministers and senior officials of many developing countries had already left Durban. The Durban Platform proposal was given to participants along with three other draft decisions (relating to the AWG-KP, the AWG-LCA and the Green Climate Fund) as a package on a take-it-or-leave-it basis, which allowed no time or opportunity for them to consult among themselves and within and between their groupings.

At the closing sessions of the AWG-KP and AWG-LCA working groups held on Saturday evening before the Conference of Parties (COP)/Parties of the Kyoto Protocol (CMP) joint informal session, many Parties raised several concerns they had on the respective reports by the Chairs of the two working groups, which they felt did not fully reflect the outcomes of the work. Several delegations expressed frustration that their concerns were not being heard. In the case of the AWG-KP session, several developing countries wanted amendments to be made to the outcome document but none was entertained by the Chair, Adrian Macey from New Zealand, except for an amendment suggested by the EU on the duration of the second commitment period. The report and the outcome of the work of the AWG-KP were presented ‘under the authority and responsibility of the Chair’, that is, the document was taken forward to the concluding session without the endorsement of all countries, which was an unprecedented move.

Likewise, in the case of the outcome of the work of the AWG-LCA, as described earlier, the Chair of the working group, Mr. Reifsnyder, ignored calls by several developing countries not to adopt the report and to allow for further work to be done the following year on the outcome document to rectify the existing imbalances, especially as the document had only been presented to Parties in the late morning of the last day (10 December). The Chair did not agree with this proposal to extend and reconvene the meeting and proceeded, just as in the other working group, to transmit the document to the COP President under his own responsibility.

The often heated exchange on the Durban Platform, including the ‘huddle’, took place at a joint informal plenary meeting of the COP17 and the CMP7 convened by the COP/CMP President, Ms. Mashabane, immediately following the closing sessions of the two main working groups (AWG-KP and AWG-LCA).

Ms. Mashabane outlined the elements of the ‘Durban package’ (the four documents on Kyoto Protocol, AWG-LCA, Green Climate Fund and Durban Platform) and asked Parties to adopt each of the decisions without further debate and amendments when they were to be presented during the concluding formal sessions of

¹³ This section draws on an article by Meena Raman (2011).

the COP and the CMP that would follow thereafter, saying that Parties required ‘assurances from each other to agree to all the draft decisions’, clearly suggesting a ‘take-it-or-leave-it’ approach. She said that this was needed to ‘make history and strengthen multilateralism’.

The formal concluding sessions of the CMP and the COP were convened one after another. At both the CMP and COP, several concerns were raised over the process and outcome of work but these concerns were not addressed by Ms. Mashabane, who proceeded to gavel the adoption of the outcomes.

The decision on the Durban Platform and how it was reached will be debated for a long time to come. It was also unusual that a decision to launch such an important negotiation was made with very few terms of reference to frame the talks or their outcome. The details of the terms of reference were scheduled to be worked out in the coming year. Given the circumstances in which the Durban Platform was launched, these talks on the framework to underpin the new regime could be expected to be tough and lengthy. This is all the more likely because different Parties have different paradigms on the substance and shape of a fair and effective climate change regime.

During and after the meeting, negotiators of many developing countries expressed deep concern about the procedures for adopting decisions in Durban. The conference had been extended for almost two days, and ministers and officials of many countries had already left. The closed-door meeting of about 30 Parties left many others, who were not invited, in the dark.

The documents for the decisions in the final plenary meetings were distributed late, and some Parties complained they did not have the papers. There was no time for the Parties to study the papers. The Chairs of the AWG-KP and AWG-LCA did not take into account the disagreements that most Parties registered on the draft decisions but decided to transmit their reports almost unchanged to the final plenary of the COP and CMP. When the COP and CMP meetings were convened, there was little opportunity to re-open the reports, with the use of the argument that all the four documents had to be adopted together as parts of a single Durban package. Some attempts made by developing countries were ignored, while the only opportunity to re-open discussion was provided to the EU over the ‘legal outcome’ issue.

While COP17 and the CMP7 did not fall apart as many had predicted in the last day of the conference, the manner in which the decisions were achieved may be debated including what it means for the future of decision-making in a UN multilateral setting for years to come.

VII COP 18 DOHA (NOVEMBER – DECEMBER 2012)

The annual United Nations climate conference held in 2012 in Doha concluded on 8 December with low levels of commitments by the developed countries in two crucial areas -- emission cuts by them, and provision of climate financing for developing countries.

The Doha meetings of the 18th Conference of Parties of the UN Framework Convention on Climate Change (dubbed COP 18) can thus be described a climate summit of ‘low ambition.’

The conference adopted many decisions.¹⁴ The main ones were on Kyoto Protocol’s second period in which some developed countries committed to cut their emissions of greenhouse gases for the period 2013-2020; on remaining Bali Action Plan issues in the working group on long-term cooperative action, which has now terminated its work; on a new set of activities on assisting developing countries suffering from ‘loss and damage’ resulting from climate change; and on the work programme of the Durban Platform, which will be the main arena of new negotiations starting in 2013.

Many delegates left the Doha conference quite relieved that they had reached agreement after days of wrangling over many issues and an anxious last 24 hours that were so contentious that most people felt a collapse was imminent. The relief was that the multilateral climate change regime has survived yet again, although there are such deep differences and distrust among developed and developing countries.

The conflict in paradigms between these two groups of countries was very evident throughout the two weeks of the Doha negotiations, and it was only papered over superficially in the final hours to avoid an open failure. But the differences will surface again when negotiations resume in 2013. Avoidance of collapse is a poor measure of success. In terms of progress towards real actions to tackle the climate change crisis, the Doha conference was another lost opportunity and grossly inadequate.

The conference was held at the end of a year of record extreme weather events, including Hurricane Sandy in the United States and heavy rainfall and flooding in many parts of Asia. Scientists are increasingly linking these extreme events to climate change. As the Doha conference started, news of the typhoon in the Philippines which caused over 600 deaths and made 300,000 homeless reminded the participants of the present reality of the climate crisis. Before the conference began, a new report by UNEP reaffirmed that there was an enormous gap between what countries had pledged to do to curb emissions, and what is needed to be done if the average global temperature rise is to be restricted to 2 degrees Celsius above pre-industrial levels. The World Bank released its own report warning that the world is heading towards global warming by 4 degrees if countries do not offer to do more.

Despite the clear signs that the climate crisis is already with us, and that greater disasters are just round the corner, the dictates of economic competition and

¹⁴ See http://unfccc.int/meetings/doha_nov_2012/meeting/6815.php for decisions and other official UNFCCC documentation from the Doha summit.

commercial interests unfortunately were of higher priority, especially among developed countries, which explains their low ambition in emission reduction. They also broke their promises and commitments previously made to provide adequate funds and to transfer technology to developing countries. The prospects for effective actions are thus rather gloomy, post-Doha.

Kyoto Protocol's second commitment period

The most important result in Doha was the formal adoption of the Kyoto Protocol's second period (2013 to 2020) to follow immediately after the first period expires on 31 December. However, the elements in the agreement are weak. With original members Canada, Russia, Japan and New Zealand having decided to leave the Kyoto Protocol (in the case of Canada) or to remain but not to participate in a second period, only the European Union and other European countries, Australia, and a few other countries (totalling 35 developed countries and countries in transition) are left to make legally binding commitments in the second period.

Also, the emission cuts these Annex I countries agreed to commit to are in aggregate only 18% by 2020 below the 1990 level, compared to the 25-40% required to restrict global temperature rise to 2 degrees Celsius. The countries in the main submitted the low end of the range of the pledges they had made in the previous climate conferences in Copenhagen (2009) and in Cancun (2010) as their Kyoto second period commitments, which was a bad disappointment although expected, and this was a major component to the overall 'low ambition' status of the Doha conference.

A saving factor in the Kyoto Protocol decision is the 'ambition mechanism' put in by developing countries, that the countries will 'revisit' their original target and increase their commitments by 2014, in line with the aggregate 25-40% goal. It was this provision that persuaded the developing countries to go along with the decision, as otherwise they gave notice that they found the draft with the low numbers on emission reduction unacceptable. Of course, whether the 2014 review of commitments results in higher figures eventually remains to be seen.

There were at least two other points that the developing countries had to fight for in the Kyoto Protocol decision. Firstly, the decision severely limited the amount of credits or surplus allowances that can be used during the second period. These credits were accumulated in the Kyoto Protocol's first period by countries that cut their emissions more than the targeted level. According to the decision, these countries cannot use or trade most of the surplus allowances as a means to avoid current emission cuts. The most important country affected is Russia, and in the final plenary session it strongly objected to the way the President of the Conference, Abdullah Hamad al-Attiyah of Qatar, bulldozed through the Kyoto Protocol decision even though it and two other countries tried to object.

Secondly, the developing countries were adamant that Annex I countries that are not party to the Kyoto Protocol or that decided not to participate in the second period should not be allowed to make use of the protocol's 'flexibility mechanisms' that enabled countries to offset their domestic emission reduction commitments by paying other countries to do the mitigation on their behalf, such as through the Clean

Development Mechanism. Some developed countries wanted this flexible mechanism to be open to these parties.

In the draft decision floated on the eve of the closure, the Kyoto Protocol draft decision did not contain many of the demands of developing countries. A determined effort by these countries, including a like-minded group, to make their grievances known to the Ministers coordinating the issue, yielded a result that was just about acceptable to them.

No commitment on new finance

A major criticism of the Doha decisions is the very unsatisfactory results on the issue of financial resources for developing countries to enable them to take climate actions. In Cancun in 2010, the Conference of Parties decided that developed countries would mobilise climate finance of US\$100 billion a year for developing countries, starting by 2020. It also agreed that US\$30 billion of ‘fast start’ finance would be provided in 2010-12.

The fast-start period will end in 2012. There is a gap between 2013 and 2020, with no commitment for that period. The G77 and China, representing all developing countries, made a demand that this gap be filled up, with a benchmark of \$60 billion by 2015. However, at Doha, the developed countries were in no mood for giving any numbers or even any qualitative commitment. The decision on finance at Doha only ‘encourages’ developed countries to provide at least as much as they had in the 2010-12 period. This ‘encouragement’ is thus for only \$10 billion a year in aggregate, which is a climb-down from the previous fast-start period in which the annual \$10 billion was at least a commitment. Moreover there is no road map of a progressive increase towards the \$100 billion target in 2020.

The lack of a credible finance commitment led to an outcry by developing countries on the plenary floor. This lack of commitment on funding leaves a major gap in the chain of undertakings and actions in the climate regime. Under the Convention, developed countries made a commitment to finance the incremental costs of mitigation actions by developing countries, the full cost of preparing national communications (reports on emissions and actions by countries) and to help meet the costs of adaptation. Estimates by UN agencies and other international organisations show that the mitigation and adaptation costs by developing countries are in the order of many hundreds of billions of dollars, or even exceed a trillion dollars a year. Thus even the \$100 billion goal for 2020 is an under-estimate, while the lack of any clear commitment or even target for the 2013-2020 period goal became a major factor for the mood of despondency among developing countries at the close of the Doha conference.

Decisions on Long-Term Cooperative Action

The Doha conference also adopted a set of decisions under its ad hoc working group on long-term cooperative action (AWG-LCA), which was formed to negotiate on the Bali Action Plan adopted in December 2007. Before and at Doha, the developed countries were insisting that there were only very few outstanding issues left to be decided on based on a report at the end of the previous Conference of the Parties in Durban in December 2011. The controversial report had been prepared by the then

Chair of the AWG-LCA, Dan Reifsnyder of the United States, ‘on his own responsibility’ (meaning that it had not been approved by the members of the AWG-LCA) and which many developing countries had considered one-sided, as it had ignored their views on several key issues and had also omitted several issues altogether. Before and at Doha, a like-minded group of 25-30 developing countries (including India, China, the Philippines, Malaysia, Pakistan, Egypt, Saudi Arabia, Mali, Democratic Republic of Congo, Argentina, Bolivia, Ecuador, El Salvador, Venezuela, Nicaragua, Cuba) proposed two major things: that several outstanding issues of interest to them that were unresolved since the launch of the Bali Action Plan in 2007 should be decided on, and that other issues be transferred together with their contexts and frameworks to other bodies of the UNFCCC. Only then could there be a successful conclusion of the work of the working group. The chair of the working group, Aysar Tayeb of Saudi Arabia, produced a succession of drafts that were heatedly debated at Doha, as the developed countries were adamant that he should not produce texts while developing countries were strongly in favour of them. In the end, the developing countries were satisfied with several of the decisions, including specific issues or paragraphs, including on equity in the context of long-term global mitigation targets, the need to continue discussions on unilateral trade measures taken on the grounds of climate change, and the need for technology assessment. On the contentious issue of intellectual property and technology transfer, developed countries led by the United States, were very adamant in rejecting any text on intellectual property, even a mere mention of this term. They even rejected any mention of the concept of access by developing countries to affordable technology. The final draft contains only a reference to a report of the UNFCCC’s Technology Executive Committee, which itself has a reference to barriers to technology transfer, including the possibility to discuss IPRs based on evidence and on a case-by-case basis. This debate on and treatment of technology transfer shows that the developed countries, particularly the United States, does not have an intention to fulfil their commitments to technology transfer to developing countries on concessional terms.

Even though the decisions on these issues were extremely weak, the United States registered its disagreement or reservations on many of them, after the adoption of the text in the final plenary, giving a foretaste of how it will continue to object to future discussions on these issues.

Advance on issue of ‘Loss and Damage’

A positive decision made in Doha was to prepare for the setting up by the Conference in 2013 of an ‘international mechanism’ to help developing countries deal with loss and damage caused by climate change. So far, loss and damage suffered by developing countries as a result of the effects of climate change, such as increased incidence and level of strength of storms, hurricanes, heavy rainfall, flooding and drought, have been largely excluded from the scope of the adaptation issue in the Convention. They are thus not included in the discussions for financing under the Convention. At Doha, the developing countries fought hard to get greater recognition and more detailed elaboration of the issue, and to affirm that loss and damage would be eligible for financing under the Convention. Several developed countries, particularly the United States were resistant to elements of the concept, particularly any link to the notion of liability by countries responsible for a significant stock of emissions in the atmosphere.

It was thus a considerable advance for developing countries that there was an agreed decision on loss and damage, with a preamble ‘highlighting the important and fundamental role of the Convention in addressing loss and damage associated with climate change impacts’, and an operational decision acknowledging the need to enhance finance and technology for actions. The decision includes the establishment at the next Conference of ‘institutional arrangements, such as an international mechanism’ to address loss and damage in developing countries that are particularly vulnerable. Meanwhile the Secretariat is asked to carry out interim activities, including an expert meeting and preparation of technical papers on non-economic issues and gaps in existing institutional arrangements on this issue.

Battles on the Durban Platform

The Doha conference also adopted a work plan for the new working group on the Durban Platform, which is the new negotiating process launched at the Durban climate conference in December 2011. The negotiations are targeted to end in 2015 with a ‘protocol or another legal instrument or an agreed outcome with legal force under the Convention, applicable to all Parties’, and which would take effect from 2020.

There were major fights in Doha over the decision on the work plan, which continued the battles that had begun in Durban itself during the plenary session that launched the Platform and that had continued through two sessions in Bonn and Bangkok during 2012. Many developing countries, led by a like-minded group, insisted that mention be made in the Doha decision that the Durban Platform will operate on the basis of equity and common and differentiated responsibilities (CBDR). They proposed that the Doha decision on Durban Platform refer to the Rio Plus 20 summit’s outcome that in a section on climate change recalled that ‘the UNFCCC provides that parties should protect the climate system... on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.’

However, the developed countries were adamant in rejecting this reference to the Rio plus 20 climate text. They even refused to accept a compromised weak reference to merely ‘taking note’ of the Rio plus 20 outcome without any mention of the climate section, let alone the terms equity and common but differentiated responsibilities. What was eventually placed in the text, as proposed by Uganda and supported by China, was a reference that the Durban Platform’s work will be ‘guided by the principles of the Convention.’ This was a small gain because in Durban the decision only referred to the fact that the Durban Platform’s outcome would be ‘under the Convention’ without mentioning the key word ‘principles’. The understanding of the developing countries is that equity and CBDR are among the fundamental principles of the Convention. Even then, the United States in the final plenary placed a reservation that reference on ‘guided by the principles of the Convention’ has no effect on the mandate for the negotiations agreed to in Durban, and that the provision cannot and will not be the basis upon which the US will engage in the work of the Durban Platform group.

Another fight in the Durban Platform negotiations in Doha was over whether there remains a difference in the nature of mitigation obligations between developed and developing countries in the outcome of the new Durban Platform. In the last

plenary session on the Durban Platform, India proposed to amend the text on ways of defining and reflecting the ‘undertakings’ of the parties to ‘commitments and actions’ (instead of the single term undertakings). To observers, it was clear that the Indian proposal was referring to the understanding in the Convention and in previous negotiations (including under the Bali Action Plan) that there is a difference between the more binding commitments of developed countries, and the voluntary actions of developing countries, supported by finance and technology. The Indian proposal to amend was supported by several developing countries including China and Argentina. However the US strongly rejected the wordings ‘commitments and actions’, stating that this was language used in the Bali Action Plan but that the Durban Platform is not the Bali Action Plan, which elicited a response from China that the Bali Action Plan was not ‘poison’ and that the title of the Durban Platform decision referred to ‘enhanced action’ and it could thus not understand why the word ‘actions’ could not be used. In the end, it was agreed that the term ‘undertakings’ be amended to ‘ways of reflecting enhanced action.’

This reveals how much lacking in the spirit of international cooperation that the United States and some other developed countries have become. They are no longer willing to assist the developing countries, and incredibly are even objecting to the principles of the Convention being applied to negotiations to set up a new agreement that will be under the Convention.

More than anything else, this shows the tragic paradox of the Doha conference. It succeeded in adopting many decisions and kept the functioning of multilateral regime alive, but the actual substance of actions to save the planet from climate change was absent, as was a genuine commitment to support the developing countries.

The process in Doha

On the process in Doha, a positive feature was that the developing countries were more united and coordinated than in previous Conferences of the Parties, often speaking with one voice on some critical matters including loss and damage, finance and the Kyoto Protocol. There was also the emergence in this COP of a group self-designated as ‘like-minded developing countries’, which operated on several negotiating fronts.

The developing countries found the management of the COP to be more transparent and participatory because of the connection between the negotiators’ process (in contact groups and their ‘informal’ spin-off groups) with the ‘Ministerial process’ (in which a few Ministers or high-level officials were requested by the Presidency of the COP (the host country Qatar) to hold consultations to resolve outstanding issues that could not be settled by the negotiators). In the final official plenary session, the President of the COP gavelled through all the decisions of the working groups and the COP one by one in quick succession. There was a serious objection by Russia, on the issue of carry-over of the surplus allowances, in the Kyoto Protocol decision, but this was over-ruled by the President of the COP. There thus remains the uncomfortable issue of the procedure of how formal decisions are adopted at the final moments of COPs. Since the Copenhagen COP in 2009, each Conference has had its own way of adopting decisions, and each of these has been controversial.

VIII COP 19 WARSAW (NOVEMBER-DECEMBER 2013)

The United Nations Climate Change Conference held in Warsaw has set up a new international mechanism to help developing countries affected by loss and damage from climate change, such as the Philippine typhoon.

The setting up of a loss and damage international mechanism was the major achievement of the 19th Conference of the Parties (COP 19) to the United Nations Framework Convention on Climate Change (UNFCCC) that ended on 23 November evening, a full day after its scheduled conclusion.

Other major outcomes of the conference were a decision on how to proceed with negotiations on the Durban Platform, and seven decisions on climate finance. On the latter issue, the developing countries were deeply disappointed that what they termed as the 'Finance COP' yielded hardly any concrete results except a topping up of funds for the depleted Adaptation Fund.

The new loss and damage mechanism to help victims of typhoons, floods, drought and other effects of climate change was set up after many days of negotiations. The landmark decision will open the road to international coordination of efforts to assist countries affected by extreme weather events and slow onset events.

The over 5,000 deaths and devastation to homes and towns in the Philippines caused by Typhoon Haiyan just as the conference started on 11 November were a grim backdrop that helped spur the delegates as they worked to create the mechanism to deal with 'loss and damage', in the parlance of the UN talks.

The new mechanism is tasked with providing countries with technical support, facilitating actions and improving coordination of work inside the UNFCCC as well as with other organisations.

Most importantly, it will also mobilise and secure funds, technology and capacity-building activities to address loss and damage associated with climate change impacts.

There are already official UN humanitarian and disaster-related agencies as well as voluntary groups such as the Red Cross, Medecins Sans Frontieres and Oxfam that spring into action whenever a disaster such as the Philippine typhoon, the Asian tsunami of 2004 or the Haiti earthquake takes place.

But funds have to be raised when these events take place and that takes time and the resources are not enough. Also, countries that are hit are often too devastated or poor to respond quickly. It took many days before the victims of the Philippine typhoon or the tsunami in Aceh could be reached or helped with food, healthcare and shelter. And it will take years, if ever, for shattered houses, cities and farmlands to be rebuilt.

The loss and damage mechanism is meant to fill in the organisational and financial gaps within the UNFCCC, which is the world's premier body dealing with climate change.

The UNFCCC presently mobilises funds for climate change mitigation (reduction of carbon emissions responsible for global warming) and adaptation (preparing for the effects of climate change such as building sea-walls and drainage systems) but until now it did not have a clear mandate for helping countries recover from loss and damage.

With the new mechanism, a burst of pent-up energy and organisational efforts can be expected at least from developing countries which will also request for funding for this newly accepted issue of loss and damage inside the framework of the UNFCCC, and to complement the work of other agencies.

Damage caused by natural disasters has risen from about \$200 billion a year a decade ago to around \$300-400 billion annually in recent years. Climate scientists say that climate change is exacerbating the incidence and strength of extreme weather events.

Delegates from developing as well as developed countries at the conference were in jubilant mood when the decision to set up the 'Warsaw international mechanism for loss and damage associated with climate change impacts' was gavelled after a last-minute hitch in the negotiations.

Developing countries, led by the Group of 77 (G77) and China and supported by several groups including the least developed countries (LDCs), the African Group and the Alliance of Small Island States (AOSIS) and individual countries like the Philippines and Bolivia, made an impassioned plea to amend the text that the loss and damage mechanism would be 'under the Cancun Adaptation Framework'.

Prolonged 'huddle'

In the long days of negotiations, the developing countries made clear they wanted the loss and damage issue to be separate from adaptation because conceptually and operationally it should be treated on its own. As such, they did not want the implication of the mechanism being 'under' the adaptation framework.

All developed countries except the United States had agreed that a different term than 'under' be used instead. In the COP plenary on the loss and damage issue, developing countries spent a long time arguing the case for a different term than 'under', which was a proxy for a fight for an independent treatment in the UNFCCC for the loss and damage concept and mechanism.

After a prolonged 'huddle' between the US, the G77 and China and other developing- and developed-country delegations, a compromise was worked out that included three components: (i) adoption of a new preambular paragraph, (ii) the acceptance of the term 'under' the adaptation framework but subject to a review of this in three years at COP 22 in December 2016, and (iii) specific reference to a review on the structure, mandate and effectiveness in paragraph 15, with an understanding (read

out at the COP plenary by the secretariat prior to the adoption of the decision) that the issue of structure would include the placement of the loss and damage mechanism.

An interpretative statement by the Philippines clarified its view that the review referred to in paragraph 15 includes a review of the mechanism's institutional placement vis-a-vis the Cancun Adaptation Framework.

The important new preambular paragraph, emerging from the 'huddle' and adopted by the COP, is as follows: 'Also acknowledging that loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation.' For developing countries, this means that the loss and damage concept and issue can go and does go beyond the adaptation issue in the UNFCCC.

Up to now, the UNFCCC recognises the two major elements of mitigation and adaptation. That loss and damage in some cases involves 'more than adaptation' is a significant acknowledgement by the COP decision.

The final text adopted by the COP in its important operational paragraph 1 is as follows: 'Establishes the Warsaw international mechanism for loss and damage, under the Cancun Adaptation Framework, subject to review at the twenty-second session of the Conference of the Parties (November-December 2016) pursuant to paragraph 15 below, to address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change (hereinafter referred to as the Warsaw international mechanism), and in line with the provisions contained in paragraphs 2-15 below.'

The decision also, in paragraph 2, established an executive committee of the Warsaw international mechanism, which shall function under the guidance of and be accountable to the COP, to guide the implementation of functions.

As an interim measure, the executive committee shall consist of two representatives from each of the following bodies under the UNFCCC, ensuring that there is a balanced representation between developed- and developing-country Parties: the Adaptation Committee, the LDCs Expert Group, the Standing Committee on Finance, the Technology Executive Committee and the Consultative Group of Experts on National Communications from non-Annex I Parties.

The Warsaw international mechanism is given many functions, including: (a) enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow-onset impacts; (b) strengthening dialogue, coordination, coherence and synergies among relevant stakeholders; and (c) enhancing action and support, including finance, technology and capacity building, to address loss and damage associated with the adverse effects of climate change, so as to enable countries to undertake actions.

This decision on loss and damage lifted the general gloom that had been prevalent during most of the two-week negotiations at the Warsaw conference.

There were two other pieces of good news - the adoption of a work programme for results-based financing for reducing emissions from forest-related activities (known as REDD-plus), and pledges from developed countries to meet the goal of having \$100 billion for the Adaptation Fund whose resources had dried up after the drastic fall in carbon prices.

Climate financing issues

The gloom was caused mainly by the lack of progress on the main issues of finance – how to mobilise funds up to the already pledged \$100 billion a year by 2020, to help developing countries take climate actions. So far there has only been a trickle of funds and no roadmap between now and the 2020 deadline.

The developing countries had persisted in asking that milestones on a roadmap be established, mentioning \$70 billion by 2016, on the way to the \$100-billion-by-2020 target. This was not accepted by developed countries that did not agree to any roadmap or milestone. This gave rise to expressions of disappointment and frustration by many developing countries and their groupings. The G77 coordinator for finance mentioned this lack of figures and commitments as a 'great failure' in what was supposed to be a Finance COP.

Some developed countries were even at one point not agreeing to continue with a work programme on long-term finance. Eventually a decision was adopted on continuing deliberations on long-term finance which includes in-session workshops on scaling up long-term finance; a biennial high-level ministerial dialogue on climate finance starting in 2014 and ending in 2020; and a request to developed countries to provide biennial submissions on their updated approaches for scaling up climate finance from 2014 to 2020 including elements of a pathway.

In fact a major test of climate finance will be the developments in the Green Climate Fund in the next one to two years, as the GCF is supposed to become the major climate finance entity, and so far it has not received any substantial contributions.

Durban Platform negotiations

A lot of the energy of COP 19 was focused on discussions on how to take forward the talks in the next two years (dubbed the Durban Platform) that will lead to a new climate change agreement in December 2015.

Some of the rich countries were determined to break the differences in mitigation obligations between developed and developing countries. On the other hand, many developing countries were fighting to retain the 'firewall' between the commitments of developed countries (which carry a higher legal obligation) and the enhanced actions of developing countries (which are to be supported by finance and technology).

The inability to agree on a crucial paragraph of the decision on this issue almost led to a collapse in the talks on the Durban Platform.

At the last minute, the countries agreed on neutral language on how all countries would put forward details of their 'contributions' (rather than their 'commitments') for the future discussions on the details of the obligations or actions that Parties are asked to put forward to prepare for the outcome of the Durban Platform negotiations expected in December 2015 at COP 21 in Paris.

The term to describe the nature of the obligations is seen as very significant to the major political issue of whether there will be a continued 'firewall' between the developed and developing countries.

Many developing countries have long maintained that under Article 4 of the UNFCCC there is a clear difference between the legal commitments in mitigation of developed countries and the mitigation actions of developing countries supported by finance and technology transfers.

Developed countries argue that in the Durban Platform decision (adopted in Durban in December 2011), the difference had disappeared. Most developing countries maintain that since the decision is 'under the Convention', the differentiated responsibilities remain.

At COP 18 in Doha in December 2012, more than a day was spent by delegates wrangling over the description of the obligations, with developed countries led by the US insisting on describing this simply as commitments (implying this applies to all Parties) while many developing countries led by China proposed the terms 'commitments and actions' (implying the continuation of the difference between developed and developing countries).

Eventually it was agreed in Doha that the neutral term 'enhanced actions' be used, a term that is also in the title of the decision establishing the Durban Platform.

The battle over terms resumed in Warsaw in the consultations in the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP). The BASIC (Brazil, South Africa, India and China) ministers made it known through their negotiators that they could accept the term 'commitments' only if it was accompanied by 'in accordance with Article 4 of the Convention'.

A Co-Chairs' text dated 5.45 am of 22 November led to a whole-day discussion on 22 November, with paragraph 2(b) still being the main bone of contention.

The Co-Chairs issued their final text on 23 November, and the final plenary of the ADP debated it, with many developing countries expressing deep concerns with its paragraph 2(b): 'To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined commitments in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the 21st session of the COP (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended commitments.'

A crisis

It was clear that the text was not going to be accepted, and a crisis was imminent.

The Co-Chairs called for a break and invited interested Parties to meet in a 'huddle' (the 'new normal' method of trying to resolve differences). The 'huddle' involved the delegations of developed countries and many developing countries, with 30-50 taking part within the conference room itself.

After about an hour, when the plenary resumed, the Indian delegation announced that the 'huddle' had produced a result, with a new paragraph 2(b) as follows: 'To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties toward achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the 21st session of the COP (by the first quarter of 2015 by those parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions.'

Eventually the ADP plenary (and then the COP plenary) adopted this sub-paragraph, as well as the rest of the decision, to applause by the hall of relieved and exhausted delegates.

Two other sub-paragraphs related to this were also adopted:

Paragraph 2(c): 'To request the Ad Hoc Working Group on the Durban Platform for Enhanced Action to identify, by the twentieth session of the Conference of the Parties, the information that Parties will provide when putting forward their contributions, without prejudice to the legal nature of the contributions, referred to in paragraph 2(b) above'.

Paragraph 2(d): 'To urge and request developed country Parties, the operating entities of the financial mechanism and any other organisations in a position to do so to provide support for the related activities referred to in paragraphs 2(b) and 2(c) above as early as possible in 2014'.

The use of the neutral term 'contributions' to replace the loaded term 'commitments' has provided for a more level playing field for the future negotiations on whether there is a difference or 'firewall' between the responsibilities of developed and developing countries.

The battle on how various countries will have to 'contribute' their efforts to addressing mitigation and adaptation activities - especially whether there is to be differentiation and, if so, what type of differentiation - and the issue of securing financial and technological support for developing countries, will be the subject of very intense talks next year. The ADP is scheduled to meet on 10-14 March next year, as well as June and December, with possibly an extra session.

IX COP 20 LIMA (DECEMBER 2014)

The annual United Nations climate conference, held in Lima, ended early on Sunday morning, 14 December 2014, after over two weeks of intense negotiations and the trauma of an almost total collapse of this round of talks that was supposed to be an important step towards a new climate change agreement scheduled to be adopted in Paris in December 2015.

If the 20th Conference of Parties (dubbed COP20) of the UN Framework Convention on Climate Change (UNFCCC) had ended without an outcome on its most important issue, the “Durban Platform”, it would have sent a negative signal that the world is unable to come to grips with its most important challenge – tackling runaway climate change.

At the time the conference was scheduled to close, on Friday night (12 December), the majority of developing countries told the plenary session that they could not accept a draft decision that had been prepared by the Co-Chairs of the Durban Platform working group. They found the draft did not contain the issues that were important to them, and that it was skewed in favour of the developed countries.

Accepting such a draft would put the developing countries at a serious disadvantage when the negotiations resume this year. There will be intensive meetings in 2015 that will climax with the signing of the Paris agreement in December.

One by one, the developing countries and their groupings spoke up in criticism of the Co-Chairs’ draft. They included the Africa Group, the least developed countries, and the like-minded developing countries (LMDCs) whose diverse members include India, China, Pakistan, Sri Lanka, Malaysia, Vietnam, Egypt, Saudi Arabia, Algeria, Jordan, Kuwait, Iran, Iraq, Qatar, Sudan, Mali, Democratic Republic of Congo, Argentina, Bolivia, Ecuador, Venezuela, Cuba, Nicaragua, and Dominica.

The Co-Chairs, Artur Runge-Metzger (Germany) and Kishan Kumarsingh (Trinidad and Tobago), had to concede that their draft could not be passed by the house, and handed the task of finding a solution to the President of the Conference of the Parties, who was the Environment Minister of Peru, Manuel Pulgar Vidal.

It was already 4 a.m. on Saturday, 13 December. The conference should have ended on Friday 6 p.m. The conference had thus moved into “extra time”, and with a new referee. Could the President salvage an agreement which could not be reached after two weeks of fierce contest under the Co-Chairs?

The Minister quickly got into the act on 13 December morning, meeting with all the groups with their different views, and with the Ministers of key countries like the United States, European Union, China and India. A breakthrough came when a critical demand of the developing countries seemed to be accepted by the President, and more importantly, by the United States.

It was the issue of “common but differentiated responsibilities” (CBDR), a term that is prominent in the Climate Change Convention denoting that all countries have

to act, but the developed countries have to undertake greater emission-reduction commitments because of their role in creating the climate crisis (they are responsible for most of the cumulative emissions in the atmosphere) and of their higher economic status. Developing countries also have to act, but their actions are to be supported by finance and technology transfer. In fact, a key provision of the Climate Change Convention (article 4.7) states that the extent to which developing countries take climate actions depends on the extent to which developed countries meet their commitments on providing financial resources and on technology transfer to developing countries.

This basic CBDR tenet of the Convention is being challenged by the US, European Union and other developed nations. They want to end the “differentiation”, so that developing countries take on similar obligations as the developed nations, and moreover they want to cut the integral link between the finance they provide and the extent of actions of developing countries.

They obtained an advantage when the terms “equity” and “common but differentiated responsibilities”, which are prominent in the Convention itself and in major decisions of the UNFCCC, were conspicuously left out when the decision (known as the Durban Platform) was adopted in 2011 to launch negotiations for a new climate agreement in 2015. That decision does mention that the 2015 agreement will be “under the Convention”, which the developing countries have clung to, in order to argue that the agreement will have to be in accordance with the principles of equity and CBDR; while developed countries led by the United States have counter-argued that the new agreement will not have differentiation between the developed and developing countries.

Since then, the developing countries have fought hard to get the CBDR term back on the agenda. It was not included in the previous 12 December draft, which was a reason that draft had been rejected. When they met the COP20 President, Minister Vidal, the developing country groupings, especially the G77 and China, the LMDC and the Africa Group, insisted that CBDR and “differentiation” be referred to in the final draft.

When the final plenary meeting was convened at 11.30pm on Saturday, 13 December, delegates found that a separate paragraph had been added, that the Conference of Parties “underscores its commitment to reaching an ambitious agreement in 2015 that reflects the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.”

This is an important paragraph. The mention of CBDR and especially the reference that it be reflected in the 2015 agreement was seen by many developing countries as a significant victory. The developing countries generally were also pleased with a paragraph in the preamble, “Reiterating that the work of the ADP shall be under the Convention and guided by its principles”, since equity and CBDR are among its principles. However, some countries (particularly in the African Group) were unhappy with the accompanying phrase “in light of different national circumstances”, which they felt diluted the CBDR principle or conditioned its use, opening the door to differentiation among developing countries and the argument

(which the developed countries can be expected to make) that some developing countries should no longer be eligible to be treated specially as developing countries.

At the final plenary, Malaysia, representing the like-minded developing countries, stated that the inclusion of the paragraph on CBDR and also another paragraph in the preamble that the work of the Durban Platform is guided by the principles of the Convention, “together suggests to us cumulatively that the CBDR principle has been restored and it has been given its rightful place in the context of the Convention and the work that we are going to continue in relation to the new agreement.” The Indian Minister of Environment and Climate Change, Prakash Javadekar, stated that Parties had achieved consensus on differentiation and the continuity of the Convention.

Other demands of the developing countries that were met in the new text were that the contributions to be made by each country could be balanced between mitigation, adaptation and finance and technology transfer, and that the text should not be “mitigation-centric”; “loss and damage” caused by climate change was given due mention in the new draft, which was interpreted by least developed countries that it could be considered as a component in the 2015 agreement; there would not be an officially-sanctioned process of assessment of each country’s intended contributions prior to COP21 in Paris; and the terms and information linked to the “contributions” that each country will provide would not be as onerous on developing countries as originally promoted in the earlier draft.

There were, however, still major deficiencies in the Decision, including that there is only a very weak reference to the provision of financial resources. Developed countries are only urged to provide and mobilize enhanced financial support to developing countries for mitigation and adaptation actions.

These factors persuaded the developing countries to go along with the decision put forward by the COP President. The developed countries also agreed, although most of them were disappointed that their attempts to overload the Decision with issues and procedures of their interest, did not succeed. The conference ended at 2.00 am on Sunday, 14 December, 32 hours after its scheduled end.

In fact, as critics pointed out, there is not much new in the adopted decision, except perhaps that the CBDR principle would be reflected in the 2015 agreement. That this is seen by developing countries as a gain shows how disadvantaged they have become in the negotiations, since CBDR has all along been recognized as a key principle that is in fact put into practice in the structure and differentiated obligations of the Convention, and it should thus have been accepted and explicitly mentioned right from the start of the Durban Platform process in December 2011.

The proceedings in Lima show how difficult the negotiations will be throughout 2015. If it took two whole weeks to reach consensus on a simple text in Lima, how much more contentious and difficult the negotiations will be for an entire new agreement this year.

Issues of substance and process that dominated the Lima Conference (and that will dominate the 2015 negotiations)

The most important and most fought over outcome of the UN Climate Conference in Lima was a decision adopted by the Conference of the Parties (COP) which the Peruvian Minister in charge of the conference termed ‘The Lima call for climate action’.

The crisis that developed in Lima that almost caused the collapse of COP20 had its roots in the fight over the substance and the process of the negotiations in the ad-hoc working group on the Durban Platform (ADP), which is the track in the UNFCCC that leads to the new climate change agreement in 2015.

This COP20 decision would normally have been prepared and agreed to by the ADP and then the COP itself would simply endorse the draft thus prepared.

But what was significant at Lima is that the ADP could not agree on the draft decision. Indeed, a supposedly final draft produced by the Co-Chairs of the group met with widespread criticisms and outright rejection by a majority of developing countries, and had to be abandoned on the last night of the Conference. This forced the COP President himself to take over the process and eventually to obtain an approval of his own draft, that was different in some significant points from the Co-Chairs’ final draft and even more so from their earlier drafts.

Perceived biases in the Co-Chairs’ drafts

The Co-Chairs’ drafts, and the process they had overseen since March 2014, had met with opposition from a large number of developing countries, which perceived them as biased in favour of positions of most developed countries. For example, earlier drafts of the Co-Chairs made it mandatory for countries to include mitigation in their contributions, whereas adaptation, finance and technology transfer were optional. The 8 December draft says intended mitigation contributions of each country should represent the highest level of ambition; and the contributions should reflect efforts that they are to make “unilaterally.” Taken together this means that developing countries would have to commit to high mitigation actions without conditioning this on obtaining adequate finance and technology transfer from developed countries. It also mentions CBDR in the light of “evolving” national circumstances, and agrees that “parties with greatest responsibilities and those with sufficient capability” are to take on absolute economy-wide mitigation targets, implying that some developing countries are to be treated similarly with developed countries. Moreover, developed countries starting in 2019 should consider annual quantitative contributions on means of implementation to support developing countries’ actions. (This is extremely flexible for developed countries on their finance commitment, with a very late deadline, especially compared with the mandatory mitigation actions developing countries have to submit by an early 2015 deadline). The 11 December draft says that developed countries and “other Parties in a position to do so” will provide support for developing countries. Taken together, the texts proposed by the Co-Chairs would make developing countries (or at least some of them) take on similar obligations as developed countries, thus obliterating the “differentiation” between the two sets of countries.

The developing countries felt that if the Co-Chairs' drafts were adopted, they would give an early and undue advantage to the developed countries in the design of the elements and framework of the 2015 Paris agreement itself, and indeed would already determine key aspects of the agreement and against their interests.

Lima, a proxy fight for the Paris agreement

The wrangling over the Lima decision between developed and developing countries was a proxy fight for what would be the core elements of the Paris agreement, without a direct negotiation on these elements themselves. An underlying issue is whether Parties would be treated in a differentiated manner in their obligations, as clearly set out in the Climate Change Convention, or whether (as desired by developed countries), the Parties would all be treated in a similar manner in the agreement for post-2020 actions; another issue is whether the INDCs (and by extension, the elements of the Paris agreement itself) would be only or mainly be on mitigation, while neglecting the other issues.

This proxy fight took place through the issue of 'intended nationally determined contributions' (INDCs), a term that was adopted a year earlier at the 19th Conference of Parties in Warsaw. Countries are required to submit the climate change actions they are prepared to undertake, with these being called "contributions."

Scope of issues in the INDCs and the Paris agreement

All countries have also agreed that the 2015 agreement should contain provisions on mitigation, adaptation, finance, technology development and transfer, capacity building and transparency of action and support. The developing countries insist that all these topics should be given equal status and treatment. While they agree with the importance of mitigation, they consider adaptation as equally important, and that finance and technology are critical to their ability to implement the new obligations in a 2015 agreement. They are concerned that the developed countries want a "mitigation-centric" agreement, with prominence given to mitigation, or even an agreement with only mitigation, thus marginalizing adaptation. They are also concerned that the developed countries would like to very significantly downgrade their commitments to provide finance and technology to developing countries, and that they want to de-link the actions that developing countries put forward from the extent of finance and technology that is provided. These concerns are justified, because of the pronouncements and proposals that the developed countries have been putting forward in the past two years since the Durban Platform negotiations began. These countries have also tried to eliminate the "differentiation" in the obligations of developed and developing countries that are contained in the Convention, with the aim of pushing more of the overall obligations onto developing countries, particularly the middle-income countries.

Throughout the Lima meetings, the developed countries continued to make many proposals to reduce or eliminate the differences between their own commitments and the obligations of developing countries. These included:

Doing away with the distinction between the types of commitments on climate actions to be made by developed and developing countries.

Removing the link between the actions by developing countries and the funding and technology support they are to get from the developed countries.

Introducing the concept that “major economies” and “emerging economies” should be treated in the same way as the developed countries in reducing their emissions and even in providing funds to poor countries.

Removing or diluting references to “common but differentiated responsibilities” and “equity”, which are key principles of the Climate Convention.

If these attempts succeed, they would undermine the main features of the presently balanced Convention and pave the way for a new agreement in 2015 which would be unfair to the developing countries.

However, the developing countries put up a stout defence of their interests. They were insisting on maintaining the “differentiation” between developed and developing countries, and on rejecting new categorization of countries such as “major economies”, “emerging economies”, “countries with the greatest responsibility” and “countries in a position to do so”, which are not recognized in the Convention. They particularly insisted on the importance of finance and technology and on maintaining the link between these and the level of actions by developing countries.

The issue of correct sequencing of issues: elements, contributions, information

This proxy fight over substance was accompanied by a fight over the process that was used during the ADP negotiations. A very significant component of the process fight was over the sequencing of issues for discussion and for reaching agreement on.

The 2013 Warsaw COP decision in fact laid out three major tasks for 2014: for the ADP (the Durban Platform working group) to elaborate the elements of the 2015 agreement; for countries to prepare their INDCs; and for the ADP to identify the information that countries should provide when putting forward their INDCs.

The like-minded developing countries argued, starting in March 2014, that there must be proper sequencing of these three tasks. First, the elements of the agreement should be negotiated, including the scope, the principles, the various topics that constitute the provisions, and the defined roles of the different Parties. When the elements are clarified, this would then also clarify the nature of the “contributions” (obligations on climate actions) that countries should make, and in which differentiated manner. Following this sequence, secondly, countries could then prepare their specific contributions; and then thirdly the information that should accompany the “contributions” can be decided on. However, the developed countries wanted the opposite sequencing. They wanted to focus on INDCs and the information accompanying them; to define INDCs as only in relation to mitigation; and to have all countries treated in the same way with regard to the contributions they put forward.

By getting agreement first on INDCs, and in this interpretation, they would de facto be determining that the 2015 agreement would be mitigation-centric and that there would be little differentiation between developed and developing countries in mitigation, as well as a delinking of developing countries’ actions from finance and

technology. The Co-Chairs, through their draft texts, were going along with the developed countries' approach.

Based on their logic on correct sequencing, during last year's negotiations in the ADP, the like-minded developing countries insisted on the sequencing of completing the negotiations on elements first, and they put forward their own detailed proposal on elements, which they invited other delegations to engage with as a matter of first priority. However at the meeting of June 2014, the Co-Chairs tabled their own version of a draft Decision on contributions, while they conducted the discussion on Elements in the form of countries continuously giving their views and which were not based either on Members' draft texts nor on the Co-chairs' texts. The message was clear: the issue of "contributions" was to be given priority, with text-based negotiations, while the issue of elements were treated only generally. And in the discussion on contributions, the developed countries made it clear that they considered only mitigation to be the subject of these contributions, thus wanting to eliminate adaptation, finance and technology.

The developing countries perceived these procedural steps as suiting the developed countries' tactics of avoiding a direct negotiation on Elements first. During such an Elements negotiation, the key issue of whether CBDR applies, or whether all Parties have to undertake the same type of commitments, and the key issue of whether finance, technology and adaptation are to be given their proper status in the 2015 agreement, were bound to occupy front-door and centre stage status. These issues could be avoided through focusing first instead on "Contributions" and "Information on Contributions", and through these side doors, usher in a mitigation-centric 2015 agreement, with no differentiation made between the mitigation obligations of developed and developing countries, and no mention of adaptation, finance or technology.

The 19th COP in Warsaw in 2013 adopted a decision which invited "all Parties to initiate or intensify domestic preparations for their INDCs without prejudice to the legal nature of the contributions", in the context of adopting the 2015 agreement. The Warsaw decision did not prescribe the scope or nature of the 'contributions', whether these contributions relate to mitigation, adaptation, finance, technology transfer and capacity building, which are the items for the Paris agreement, or only to one or some of them.

Developed countries, in the course of discussions last year, wanted to confine the scope of the INDCs to only mitigation, while developing countries wanted all the elements to be covered, including on what developed countries will provide as regards their contributions for finance and technology transfer to support the developing countries' mitigation and adaptation actions in the post 2020 period.

Throughout the four meetings of the ADP in 2014, there were concerted attempts by developed countries to make use of the issue of INDCs to shape the larger issue of the nature of the mitigation component of the 2015 agreement, even before the mature negotiation or conclusion of negotiations on this mitigation issue per se. The developed countries insisted that INDCs are only about mitigation contributions and that all countries will have to forward their INDCs together with the up-front information accompanying them, by early 2015.

Ex ante assessment issue

Some developed countries also proposed a system by which these intended contributions would be assessed and reviewed (referred to as a process for an ‘ex-ante assessment’) in mid-2015 June, to see if they would be adequate in the aggregate to limit temperature rise to below 2 degrees Celsius.

Though some developing countries supported an ex-ante review, many others (especially the LMDC) were against it. The latter viewed the push by developed countries for an ‘ex-ante assessment’ ahead of Paris as being outside the Warsaw mandate. They also considered this to be prejudicial to the negotiations to be conducted for the 2015 agreement, in Paris, especially as regards how the mitigation element of the Paris agreement is to be approached; how the principle of CBDR would be applied across all the elements of the Paris agreement, including that relating to the contributions that Parties will make, as well as the up-front information relating to the **contribution for the purpose of transparency.**

They pointed out the imbalance of having developing countries’ mitigation “contributions” assessed (and subjected to pressure for upgrading) whereas there was to be no assessment (or even information) on how much financial and technological support the developed countries are to provide. How could developing countries be expected to submit what they can do on mitigation when they do not know whether financial support is forthcoming and if so, how much?

In the October 2014 session of the ADP, China had stated that there can be no ‘early harvest’ by focusing only on mitigation when all elements of the 2015 outcome are “a package”. It said that INDCs cannot be focused only on ‘mitigation’, isolated from the consideration of the provision of finance, technology transfer and capacity building support. Otherwise, it stressed, this would lead to a rewriting of the Convention. This view was widely shared by other developing countries, and reiterated in Lima.

Besides the ex-ante assessment issue, a major issue of basic importance was that of “differentiation”. Developing countries across the board wanted assurances in the decision that the CBDR principle would be applied in the Paris agreement and in the INDCs. They insisted on this as a “red line.”

Clash of approach on negotiating method

Another major issue of contention, that had consequences at the Lima COP, was over the method of negotiation being used at the ADP. Developing countries wanted the negotiations to be directly among the Parties. This is normally done in the UN system, at which Parties put forward texts which are then commented on and amended by other Parties, usually in real time and on a screen in the hall. This is the essence of a “Party-driven and transparent system of negotiation.” However the developed countries preferred a process that was left in the control of the ADP Co-chairs, to produce draft texts, without clarity or transparency on how they were arrived at. Co-Chairs themselves insisted on the latter method, to the frustration of the developing countries. This was perceived by developing countries as a negotiating process that unfairly gave the advantage to developed countries, especially since the

developed countries' views were seen to be given more prominence in the successive versions of the Co-Chairs' drafts on the ADP/COP decision.

This clash over the method of negotiation had been brewing over the whole year, and finally it came out in open and dramatic fashion mid-way through the first week of the Lima conference. The Co-Chairs continued to insist that they be the ones to write the texts of the ADP decision. But many developing countries were increasingly disgruntled because their views were not or were poorly represented in the Co-Chairs' drafts and they lost confidence that fair representation would ever be made. Their fear was that the Co-Chairs would keep producing drafts which eventually would have to be accepted by all, and that the final draft would be biased against the developing countries. The battle over process or procedure was thus also a battle over substance. Many developed countries, which were happy with the Chair-driven process, countered that time should not be wasted on procedural issues and should instead be spent on substance. But substance and process are in fact inter-twined in the ADP.

Towards the end of the first week at Lima, several of the developing countries asked the Co-Chairs to stop the discussion at the ADP and insisted that the proposals and texts of the countries be put on the screen in the room and also be compiled in a paper which would be the basis for detailed negotiations towards the final decisions.

In the face of this "rebellion", the Co-Chairs had to reluctantly agree to change the negotiating method. Then, for several days after, the different proposals and texts of various Parties were put on the screen during the discussion on specific issues, in the normal UN way, and the Parties were then talking to one another and not only through the Co-Chairs. However since this Member-driven process started so late, the lengthy document compiling the various positions became unmanageable as the limited time left would not allow a consensus to be reached. Two days before the scheduled end of the Conference, the COP President directed the Co-Chairs to again produce their draft text of the Decision. They produced two drafts, on 11 and 12 December. However, though welcomed by the developed countries, these drafts were rejected by the developing countries, which led to the crisis of a near collapse and to the COP President taking over the drafting process.

This clash of approaches over the negotiating method and decision-making process may recur when negotiations resume in 2015. Developed countries are likely to argue that leaving the Co-chairs to draft is more efficient and takes less time, while developing countries are likely to argue that if the transparent Member-driven process had been adopted from the start of 2014, and been given the proper opportunity, it would have worked better and that this is the best way for inclusiveness, transparency and eventually ownership of the outcome.

The final Co-Chairs' 12 December draft were viewed by most developing-country groupings as not acceptable. On Saturday, 13 December, when the ADP convened, many developing countries and their groupings criticised and rejected the draft on grounds it was imbalanced and did not reflect key issues such as differentiation between developed and developing countries, the principles of equity and CBDR; that there was lack of any financial contribution for the post 2020 period; the draft on INDCs was mitigation centric with adaptation downgraded; there was a

failure to include the issue of ‘loss and damage’; and a very weak reference to pre-2020 climate action.

With the clock ticking beyond the closing time of the conference, many developing countries appealed to Vidal to help resolve the deadlock, as the talks were clearly on the brink of collapse. The ADP closed without adopting a text, and the COP Presidency then took over the process. The President’s draft decision, which was finally adopted on Sunday at 1 a.m., was viewed by developing countries as being more balanced as it dealt better with the issues of concern to them. The principle of CBDR was mentioned (it had been absent at the original decision launching the Durban Platform at COP17 in 2011); the scope of the INDCs is now open-ended; there is no provision for an ex-ante review of the INDCs; and there is reference in the preamble to the Warsaw Mechanism on Loss and Damage.

Thus was the Lima COP20 saved from a collapse, and a much simpler text adopted as a Decision, with a lot of the over-loaded paragraphs and an Annex discarded. The adopted decision does not settle in advance some key issues that earlier drafts would have, and thus allows for more options when negotiations resume on the contents of the 2015 agreement. At the same time, the issue of differentiation and CBDR is now more firmly grounded.

Looking ahead to 2015

What happened at COP20 is a prelude to the bigger battles that can be expected in the meetings scheduled in 2015 (February, June, August, October and December) to negotiate the new climate agreement.

The developed countries can be expected to give mitigation a higher status, perhaps proposing that it be in an agreement with greater legal standing while the other issues of adaptation, finance and technology be of a different category of legal-bindingness, perhaps even contained in a different document. They will probably try their best again to marginalize the finance and technology issues and de-link their commitments under the Convention on these issues from the “contributions” or obligations of developing countries on mitigation. Above all, they will insist that “the participation of all Parties” in the agreement (as mentioned in the Decision launching the Durban Platform) should mean the jettisoning of “differentiation”, and that developing and developed countries take on similar obligations, perhaps with some flexibility only for LDCs.

The developing countries are likely to counter this by insisting on a balanced agreement with all issues on board, and with finance and technology linked to developing countries’ actions, as well as the maintenance of differentiation in accordance with CBDR and equity.

In the final plenary at Lima, Bolivia (speaking for the Group of 77 and China) stressed the importance of five key issues for the Group in the 2015 agreement. One, it underscored the importance of principles and provisions of the Convention in the 2015 agreement, in particular equity and CBDR, and for the agreement to be under the Convention. Two, the agreement should be consistent with the Convention, including differentiation among developed and developing country Parties. Three,

adaptation and loss and damage are key to the 2015 agreement and should be given their due space. Four, technology and capacity building are essential for the 2015 agreement and it must be clear that developed countries shall provide finance, technology development and transfer and capacity building support to developing countries. Five, the agreement must have an ambition to achieve sustainable development and poverty eradication.

There is clearly a paradigm clash between what the developed countries and the developing countries envisage for the new agreement.

Another major problem is that in the 2015 agreement, the need for an ambitious overall mitigation outcome that adequately addresses the climate change crisis is going to be sidelined, due to the “bottom-up approach” that seems to be implicitly accepted in the way countries are asked to submit their “contributions”, which are to be “nationally determined” and can be explained according to their “national circumstances.” This is in contrast to the top-down approach which for the initial three years (2008-2010) of the Bali Road Map and the Bali Action Plan (the predecessor to the Durban Platform) had been the approach favoured by the majority of members, including most of the developed countries especially the European Union. In the top down approach, the extent of global emission reduction which is required according to the conclusions of scientific analysis, is taken and then the overall effort required is shared out among the Parties, with developed countries taking the lead and also supporting developing countries’ actions with finance and technology. Developing countries had insisted that the global effort should be within the framework of equity, or “the equitable access to atmospheric space” and the “equitable access to sustainable development.” However the bottom-up approach, otherwise known as “pledge and review”, whereby each country chooses to put forward what it can do, according to its own circumstances, was championed by the United States. It emerged in the Copenhagen COP in December 2009 (in a draft decision that was however not adopted), became legitimized in the Cancun COP in 2010 and entrenched in the Warsaw COP in 2013 through the “intended nationally determined contributions” concept and then more deeply established in the Lima COP in 2014 through the procedures for submitting the INDCs.

According to the IPCC’s latest reports, finalized in 2014, future global emissions have to be restricted to a total of 1,000 billion tonnes of carbon dioxide if there is to be at least a 66% chance of limiting global warming to 2 degrees Celsius above pre-industrial levels. But global Greenhouse Gas emissions are running at about 50 billion tonnes a year, and in 20-25 years the “atmospheric space” available to absorb the Greenhouse gases would be exhausted. Unless an equitable way is found and agreed to on how to share this remaining atmospheric space, especially between developed and developing countries, the 1,000 billion tonnes limit is going to be exceeded soon, and significantly so. To design a new agreement that incorporates the ambitious global target and that is also equitable and seen by all to be so, and to get this accepted as a package, is the greatest challenge for reaching a 2015 agreement.

The developing countries are increasingly worried that the developed countries are trying to escape from their previously agreed roles of cutting emissions deeply and quickly, and of providing funds and technology to developing countries to support their climate actions.

The US has announced its plans to cut its emissions by an equivalent of about 3% by 2020 and around 14% by 2025 as compared to 1990, a far cry from the 20-40% by 2020 that the scientists in IPCC (the panel on climate change) had said the developed countries have to do. Japan, Canada, Russia and Australia have indicated they no longer prioritise climate change in their national agendas, with the first three of these countries withdrawing from the second commitment period of the Kyoto protocol. Even the European Union, usually the global leader in climate actions, has slackened, having put forward targets that are less than ambitious.

The developed countries have also pledged about US\$10 billion for the Green Climate Fund to help developing countries. This is however for four years, so there will be \$2.5 billion a year. Although there are also funds through other channels, this is far below the US\$100 billion a year that in 2009 they had pledged to mobilise by 2020. Estimates for the annual costs of mitigation and adaptation actions in developing countries are multiples of this \$100 billion level. Though the developing countries have regularly called for a “finance road map”, with targets from now to the \$100 billion in 2020 as to how the financial resources for climate change will be scaled up, this has met with silence so far by the developed countries.

Given these trends, and what transpired at the Lima COP, deep and fundamental differences exist, especially between the developed and developing countries, so the prospects of an agreement that is both ambitious and equitable are not bright.

Another issue that has to be confronted early in 2015 is the method of negotiations. The procedure of the Co-Chairs listening to the views of Parties and then deciding themselves what should be put in a text has not been workable. The Chairs should facilitate negotiations among members and not take on the role of being the oracle of the truth, to which Members must petition and hope to get their prayers answered. Although the inclusive and democratic process appears to take more time, in the end it saves time by allowing the members to negotiate among themselves and get to grips with their areas of differences and convergence. A lot of time was spent in 2014 with members asked to air their views, without getting to grips with negotiating with one another. The near collapse in Lima, using the Chair-led process, is a warning that a genuine Member-led process is required in 2015.

X COP 21 PARIS (DECEMBER 2015)

Climate Change Battle in Paris

By Meenakshi Raman

The Paris Agreement adopted by the 21st Conference of Parties (COP 21) under the United Nations Framework Convention on Climate Change (UNFCCC) on 12 December, was the outcome of major battles on a multitude of issues, especially between developed and developing countries.

Developing countries by and large had these negotiating objectives. They wanted to (a) defend the Convention and not let it be changed or subverted; (b) ensure that the Agreement is non-mitigation centric with all issues (including adaptation, loss

and damage, finance and technology, besides mitigation) addressed and in a balanced manner; (c) ensure differentiation in all aspects be reflected, with the principles of equity and common but differentiated responsibilities and respective capabilities; (d) ensure that developed countries enhance the provision of finance and technology transfer' (f) ensure that 'loss and damage' is recognised as a separate pillar apart from adaptation and for (g) legally binding provisions, especially on the developed countries.

The United States and allies (especially those under the Umbrella Group) wanted the opposite. They mounted an onslaught on the Convention, seeking to weaken the provisions and their obligations; redefine differentiation so as to blur the different obligations of developed and developing countries ; and a legal "hybrid" (in terms of what clauses are and are not legally binding), mainly to suit the US administration's relations with the US Congress which is hostile to the climate change issue.

COP21 was a battleground that involved an onslaught (with both defensive and offensive interests) of the US and its allies versus the resistance and offensive by the Group of 77 and China, and especially the Like-minded Developing Countries (LMDC) (which includes India) that had comprehensive negotiation positions and a well operating machinery.

A major concern was how the French Presidency of COP 21 would behave, in light of the polarised positions.

Towards the end, an important meeting took place between the LMDC and the French Presidency (who were crafting the final compromise), during the night of Friday, 11 December, where the LMDC presented its "super-redlines". Among them included that the purpose of the Agreement is to enhance the implementation of the Convention in accordance with the principles and provisions of the Convention; reflection and operationalisation of equity and CBDR across all elements; clear differentiation between developed and developing countries on the mitigation efforts; commitment by developed countries on provision of finance, technology transfer and capacity-building with no transfer or extension of obligations to developing countries to provide finance.

The LMDC conveyed the message that with 30 countries in its grouping representing more than 50% of the population of the world and 70% of the poor, it wanted the COP to be a success but that the outcome must be balanced, and not depart from its super-redlines. In the end French took the LMDC points, and got the US to agree.

The COP 21 Presidency was generally viewed as playing a fair and difficult role in securing a delicate and balanced outcome, except for an incident in the final plenary that somewhat marred the process.

This is the 'should incident' where the US wanted the word "shall" to be replaced with the word "should" in Article 4.4 of the Agreement that related to the mitigation efforts of Parties. The US wanted developed and developing countries to be treated in a like manner legally, as the original version referred to "shall" for developed countries and "should" for developing countries." Instead of raising the

issue from the floor of the plenary, the US request was accommodated by the COP Presidency by what was termed a “technical correction” and the word “shall” was then replaced with “should” and was read out by the Secretariat. This was viewed with dismay by some LMDC delegations, but as there was no formal objection, the US-inspired amendment stood.

Another incident was when Nicaragua put up its flag in the final session of the Paris Committee that adopted the Paris agreement but it was ignored by the Chair. The Minister of Nicaragua made a strong statement protesting against his being ignored, after the agreement had been passed, to be forwarded to the COP to be adopted.

Highlights of the Paris Agreement

To understand the COP21 outcome, a reflection on the key clauses of the Paris Agreement and the decision that adopted it is important. Below is an initial assessment of the issues that form the context of the clauses, and the final outcome, with an assessment as to whether the views of developed or developing countries (or both) prevailed.

Given that the Agreement is a new legal instrument, it will have to be ratified by Parties for it to come into effect. It will enter into force after at least 55 Parties to the Convention, accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification or acceptance. (The Agreement is expected to come into effect post-2020.)

The Agreement (12 pages) was adopted as an annex of a decision (19 pages) of COP21.

Purpose of the Agreement (Article 2)

Article 2 of the Agreement states in sub-paragraph 1 that: *“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”

Sub-paragraph 2 states that *“This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), in the light of different national circumstances.”*

The purpose of the Agreement was a major area of contention between developed and developing countries.

In the four years of negotiations, the common refrain of developing countries under the G77 and China was for the Agreement not to “rewrite, replace or reinterpret the Convention.” The G77 and China, including its sub-groupings especially the Like-minded Developing Countries (LMDC) and the African Group constantly stressed that the purpose of the Agreement is to enhance the implementation of the Convention on the elements of mitigation, adaptation, finance, technology transfer, capacity-building, and transparency of action and support.

Developed countries, on the other hand, appeared to focus more of their attention on the ‘objective’ of the Agreement, which was perceived by developing countries as a mitigation-centric approach linked only to the temperature goal, with an attempt to weaken the link to the Convention provisions and the obligations of developed countries under the Convention, especially on the means of implementation (finance, technology transfer and capacity-building).

Hence, the reference to “enhancing the implementation of the Convention” is seen as a positive win for developing countries.

Although limiting temperature rise well below 2 degree C goal above pre-industrial levels is clear, reference to the pursuit of efforts to limit the increase to 1.5 degrees C is seen as a major victory for many developing countries, especially the Small Island Developing States, the Least Developed Countries, Africa and the ALBA countries.

Developing countries also wanted the focus to also be on adaptation and finance and to ensure that the global response is in “the context of sustainable development and efforts to eradicate poverty”.

Several senior developing country delegates did express their unhappiness over the reference to “finance flows” in the Article 2(1)(c) of the Agreement rather than a reference to the provision of financial resources from developed to developing countries, the commitment language of the Convention.

A major win for developing countries is Article 2.2 that states that the Agreement will be implemented to reflect equity and the principle of CBDR-RC, in the light of different national circumstances.

A key issue throughout the Durban Platform process and at COP21 was whether and how the principle of CBDR-RC will be operationalised in all the elements of the Agreement.

Developed countries had been insisting that the agreement must reflect the “evolving economic and emission trends” of countries in the post-2020 timeframe,

while developing countries continued to argue that given the historical emissions of developed countries, developed countries continue to bear the responsibility in taking the lead in emission reductions and in helping developing countries with the provision of finance, technology transfer and capacity-building as provided for under the UNFCCC.

At the COP in Lima in 2014, where the issue of differentiation was also hotly contested, Parties underscored their commitment to reaching an ambitious agreement in Paris that reflects the principle of CBDR-RC, in light of different national circumstances. This was eventually the ‘landing-zone’ arrived at in the Paris Agreement.

Nationally determined contributions (NDCs) (Article 3)

Article 3 (previously known as Article 2bis during the negotiations) states that, *“As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.”*

Article 3 symbolizes the ‘battle’ over the nature of the agreement to ensure that the NDCs are not viewed only as being ‘mitigation-centric’ (Article 4 refers to the element of ‘mitigation’, Article 7 to ‘adaptation’, Article 9 to ‘finance’, Article 10 to ‘technology development and transfer’, Article 11 to ‘capacity-building’ and Article 13 to a ‘transparency framework for action and support’).

The LMDC was the major proponent for all Parties to regularly prepare, communicate and implement their intended NDCs (INDCs) towards achieving the purpose of the Agreement. It also proposed that INDCs will represent a progression in light of Parties’ differentiated responsibilities and commitments under the Convention.

It was an uphill task during the negotiations to get developed countries to see the viewpoint of the LMDC in this regard. The proposal was to ensure that the contributions of Parties are viewed in a comprehensive manner, reflecting the respective obligations they have under the provisions of the Convention, and not to confine the contributions only to mitigation as desired by the developed countries.

Mitigation and NDCs (Article 4)

The following sub-paragraphs of Article 4 are among the main highlights in relation to mitigation:

“1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of GHGs as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of

greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

“2. Each Party shall prepare, communicate and maintain successive NDCs that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.”

The US was against any reference that each Party shall implement the NDCs that it has communicated, as this would make it an obligation for the US and others to implement the emissions reduction target communicated. To accommodate the US ‘problem’, all Parties have to do is to “pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.” What this means is that there is an obligation to take the measures necessary, **with the aim of achieving** the emissions reduction target, but not to achieve the target itself (emphasis added).

“3. Each Party’s successive NDC will represent a progression beyond the Party’s then current NDC and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

“4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.”

Article 4.4 was another major paragraph of contention between developed and developing countries. Many developing countries wanted the nature of the mitigation efforts to be differentiated between developed and developing countries, reflecting the existing provisions of the Convention that are based on historical responsibility and CBDR.

The US and its allies in the Umbrella Group were opposed to any form of differentiated efforts, preferring that Parties “self-differentiate” among themselves, while recognising that those who have undertaken absolute emission reduction targets before should continue to do so in the post-2020 timeframe.

While this sub-paragraph continues to provide the policy space for developing countries in undertaking any type of enhanced mitigation efforts (including relative emission reduction targets which are economy-wide and non-economy wide actions), over time, developing countries will have to move to economy-wide targets, in light of their different national circumstances.

The term “over time” is not precisely defined and there is also no reference that developing countries have to undertake “absolute” emission reduction targets, which was what developed countries and some developing countries were pushing for during the negotiations.

Adaptation (Article 7)

In sub-paragraph 1 of Article 7, Parties agreed to “*establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.*”

Developing countries had been pushing for a long term goal or vision on adaptation to ensure that there is parity between adaptation and mitigation and to avoid having only a mitigation centric-goal linked to the temperature goal. This goal also links the adaptation response to the temperature goal.

In relation to the global goal on adaptation, developing countries had during the negotiations proposed “an assessment of the adequacy of support” from developed countries to developing countries as well as the “recognition of increased adaptation needs and associated costs in the light of mitigation efforts...”

What eventually found its way in the adaptation section (in sub-paragraph 14 of Article 7) is the reference to the global stocktake (in Article 14) which states that the stocktake “*shall*” “*review the adequacy and effectiveness of adaptation and support provided for adaptation*” as well as “*review the overall progress made in achieving progress made in achieving the global goal on adaptation...*”

According to sub-paragraph 3, “*the adaptation efforts of developing country Parties shall be recognised...*”, with the modalities to be developed for such recognition.

Developing countries during the negotiations wanted to ensure that the adaptation efforts they are undertaking with or without international support is recognised as their contribution to climate action.

Loss and Damage (Article 8)

One major victory for developing countries is the recognition of ‘loss and damage’ as a separate article to the Paris Agreement, distinct from ‘adaptation’. Developing countries had been arguing very hard for ‘loss and damage’ to be separately recognised.

(The term ‘loss and damage’ refers broadly to the entire range of damage and permanent loss associated with climate change impacts in developing countries that can no longer be avoided through mitigation nor can be avoided through adaptation.)

The anchoring of ‘loss and damage’ as a distinct article in the Agreement came at a costly price when a deal was made behind closed doors between the US, European Union and some Small Island Developing States and Least Developed Countries in the final hours, prior to the draft agreement being released to Parties for consideration and adoption.

The compromise reached is found in paragraph 52 of the decision text which provides that Parties agree *“that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.”*

According to one source, the deal was between the US, EU, and five small island states. It seems that most developing countries were completely unaware of the deal being done. The deal might have also been linked with getting reference to 1.5 degree C in the long-term temperature goal in the Paris Agreement in Article 2.1 (a).

According to several experts who have been following the UNFCCC negotiations, the clause in paragraph 52 on exclusion of liability and compensation does not preclude financial resources from being allocated to developing countries seeking funds to address the adverse impacts related to loss and damage.

Finance (Article 9)

Prior to the final outcome in the Paris Agreement, the thrust of the developed countries position on the issue of finance was to increase the scope of countries (to include developing countries) who should be ‘donors’ of climate finance by proposing terms in the text like ‘all Parties in a position to do so’ should provide financial resources or that the mobilisation of climate finance is a “shared effort” of all Parties.

The key sub-paragraphs on finance which were agreed to are:

“1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”

This paragraph continues to ensure that developed countries are not absolved from their existing financial commitments under Articles 4.3 and 4.4 under the UNFCCC.

However, the G77 and China, had during the negotiations, pressed for the provision of these resources to be “new, additional, adequate, predictable, accessible and sustained” but these terms were did not find place in the Agreement, except for a reference in sub-paragraph 4 on “the provision of scaled-up resources” (see below).

Sub-paragraph 2 states that *“Other Parties are encouraged to provide or continue to provide such support voluntarily.”*

Instead of the reference to “all Parties in a position to do so” also having to contribute to climate finance (which was opposed to by many developing countries), the above paragraph was agreed to, which stresses the “voluntary” nature of such support.

Sub-paragraph 3 provides that *“As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public*

funds through a variety of actions, ... and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts."

Many developing countries including the LMDC preferred the reference to the provision of financial resources by developed countries instead of the focus on the "mobilisation" of climate finance. The Paris Agreement provides for both the provision of support by developed countries and the mobilisation of climate finance.

In the earlier version of the draft agreement (version 2 issued on Dec. 10 by the COP 21 President), there was reference that the provision and mobilisation of climate finance "shall represent a progression beyond previous efforts from a floor of USD 100 billion per year..." and "towards achieving short-term collective quantified goals for the post-2020 period to be periodically established and reviewed..."

It is notable that the reference to the USD 100 billion per year as a floor did not make it to the Agreement but is found in paragraph 54 of the COP 21 decision which states as follows: *"Also decides that, in accordance with Article 9, paragraph 3, of the Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries."*

In Cancun in 2010, Parties had agreed to developed countries mobilising USD 100 billion per year by 2020. With the Paris Agreement, a five year extension has been obtained to reach this target and a new quantified goal will be set for the period after 2025. Senior developing country negotiators also point out that the mobilisation of existing climate finance as stated above, is conditional on "meaningful mitigation actions and transparency on implementation", which was actually previously agreed to under the Copenhagen Accord (in 2009) and later affirmed in the decision in Cancun.

Developed countries, with the US in particular, were against the indication of any quantified target on the scale of resources in the Paris Agreement.

Developing countries, through the G77 and China on the other hand, pressed for clear "pathways to annual expected levels of available resources towards achieving short-term collective quantified goals for the post 2020 period to be periodically established and reviewed" and for "financial resources to be scaled up from a floor of USD 100 billion per year, including a clear burden-sharing formula, and in line with needs and priorities identified by developing country Parties..."

Technology transfer (Article 10)

In the negotiations on technology transfer, the LMDC had called for the establishment of a global goal on the transfer of technologies by developed countries and know-how as well as for the provision of financial resources for collaborative research and

development of environmentally sound technologies and enhancing accesses of developing countries to such technologies that match their technology needs.

There was also a proposal from India for developed countries to provide financial resources to address barriers related to intellectual property rights (IPRs) and facilitate access to technologies.

The African Group proposed a technology framework to be adopted that will provide direction and guidance in relation to technology assessments, including in identifying options for enhancing access and to address barriers.

These proposals were opposed by developed countries.

The real value for developing countries is the establishment of the technology framework that includes “the assessment of technologies that are ready for transfer” (as reflected in paragraph 68 of the COP 21 decision).

In addition, there is now a link established between the Technology Mechanism and the Financial Mechanism to allow for collaborative approaches in R and D and for facilitating access to technologies, which somewhat reflects the call by India to provide financial resources to address barriers related to IPRs and facilitate access to technologies.

The IPR issue has been a long-standing battle between developed and developing countries under the UNFCCC process, with strong opposition by developed countries led by the US in particular, to even mention the words ‘IPRs’.

Transparency of action and support (Article 13)

With a ‘bottom-up’ system in place for countries to nationally determine (not multilaterally determined) their contributions to climate change efforts under the Agreement as advanced primarily by the US, there was a push by developed countries to have a common and unified system in place (which is not differentiated between developed and developing countries) on ‘transparency of action’- which is a ‘top-down’ rules-based system in providing clarity on the content and information regarding those efforts.

Developing countries on the other hand were pressing for a transparency framework which is differentiated between developed and developing countries and better rules on ‘transparency of support’ which relates to information from developed countries on the means of implementation (finance, technology transfer and capacity-building).

The main bone of contention therefore was whether such a transparency framework should be differentiated between developed and developing countries.

What was agreed to is a transparency framework with flexibilities taking into account the different capacities of countries and builds on the existing transparency arrangements (that is currently differentiated between developed and developing countries).

Global Stocktake (Article 14)

During the negotiations, the main issue around the global stocktake was around its purpose and scope. (Stocktake is a ‘code’ for taking stock of the implementation by Parties collectively of their progress). The idea was for a periodic stocktake of the implementation of the Agreement and there were options as to the purpose of the stocktake: whether to assess the overall/aggregate/collective progress towards achieving the objective of the Convention or the Agreement’s long-term goal.

On the scope, for developed countries, the stocktaking was primarily for considering the aggregate effect of the mitigation contributions of Parties in light of the long-term mitigation goal linked to the temperature goal, while for developing countries, it was to consider the overall implementation of obligations of Parties (consistent with the differentiated responsibilities), in relation to mitigation, adaptation and the means of implementation.

Under the Agreement, the global stocktake, which will be conducted every 5 years, is to be comprehensive, considering mitigation, adaptation and the means of implementation and support, and undertaken in the light of both equity and the best available science. This will avoid a mitigation-centric process which also takes into account considerations of equity. Thus the developing countries’ viewpoints prevailed in this clause.

In a related matter, in the COP 21 decision under the section on intended nationally determined contributions (INDCs), paragraph 17 notes with concern *“that the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the INDCs do not fall within least-cost 2 °C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and also notes that much greater emission reduction efforts will be required than those associated with the INDCs in order to hold the increase in the global average temperature to below 2 °C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5 °C above pre-industrial levels by reducing to a level to be identified in the special report referred to in paragraph 21 below.”*

In paragraph 20, Parties agreed that a facilitative dialogue among Parties will be convened in 2018 *“to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to Article 4(1) of the Agreement [which relates to the long-term temperature goal and the mitigation goal] and to inform the preparation of nationally determined contributions (NDCs) pursuant to Article 4, paragraph 8, of the Agreement* (which relates to the communication of the NDCs).

The “facilitative dialogue” above appears to be an ex-ante process to inform the preparation of the NDCs, and is only about mitigation, unlike the global stocktake.

The EU has been a major proponent of a review process every five years to assess if Parties’ mitigation contributions are on track in meeting the long-term mitigation goal and for enhancing (or ratcheting up) the contributions of Parties accordingly.

Many developing countries, especially from the LMDC were worried about such a ratcheting up process due to concerns that with developed countries not doing their fair share of the effort (taking into account their historical emissions), the pressure would be on developing countries to plug the emissions gap to limit the temperature rise. Due to this concern, they had been opposed to any ex-ante process to review the INDCs prior to their communication by Parties.

Clearly, the EU has got its way, against the concerns of the LMDC.

Conclusion

The developing countries started the Paris talks with some clear objectives and principles. Though some aspects were diluted, it got its red lines protected, though it did not get some of its offensive points accepted (for example, clearer targets on finance or a reference to IPRs as a barrier to technology transfer). Some of the important points gained by developing countries was that:

- The Paris agreement is not mitigation-centric as desired by developed countries, although in some aspects mitigation does gets pride of place;
- The developing countries to a significant extent successfully defended the Convention and stopped the plans of developed countries to drastically re-write the Convention;
- Differentiation between developed and developing countries was retained in the main, although weakened in some areas;
- The principles of equity and CBDR were mentioned in a specific clause in the important Article 2 on purpose of the Agreement, and operationalised in some key areas of the Agreement.
- Sustainable development and poverty eradication as important objectives of developing countries were referred to as the context of actions by developing countries in some key areas.
- Developed countries should take the lead in mitigation and finance is referred to in the agreement;
- Although the temperature goal is to limit temperature rise to well below 2 degree C from pre-industrial levels, the reference to pursuing efforts to limit temperature rise to below 1.5 degree C (this 1.5 degree as the target was called for by small island states, LDCs, Africa and ALBA countries) is significant.

True, the Paris Agreement also means that big pressures will be put on developing countries, and especially the emerging economies, to do much more on their climate actions, including mitigation. But these enhanced actions need to be taken, given the crisis of climate change that very seriously affect developing countries themselves.

The Agreement also fails to provide actions that fulfil the 2 degree Celsius pathway, let alone 1.5 degrees. The emissions gap between what countries in

aggregate should do and what they pledged to do in their INDCs up to 2030 is very large. This has led many commentators to condemn the Paris COP21 as a failure.

However another perspective is that COP21 is only a start, and the Agreement represents an agreement internationally to enhance individual and collective actions to face the climate catastrophe. A real failure would have been a collapse of the Paris negotiations, Copenhagen-style, or an outcome that only favours the developed countries with the rewriting of the Convention.

The Agreement, from this perspective, has laid the foundation on which future actions can be motivated and incentivised, a baseline from which more ambitious actions must flow. There are mechanisms in place in the Paris agreement, such as the global stocktake, that can be used to encourage countries to raise their ambition level.

International cooperation, however inadequate and flawed, remains intact from which much more cooperation can flow in future.

The outcome represented by the Paris Agreement, that a bottom-up approach is taken on enabling each country to choose its “nationally determined contribution” with presently very weak or even no compliance, was the only possibility, given the state of many governments (including the United States) generally not being ready or willing or able to undertake legally binding targets.

It can be expected that developed countries will pile pressure on developing countries, especially emerging economies, and also try to shift or avoid their obligations. For the developing countries, they should invoke the overall context of what will make a low carbon pathway a reality--- finance, technology transfer, capacity building plus adaptation, loss and damage, all in context of sustainable development and poverty eradication. They must also remain firm and united in the negotiations and other processes ahead, starting from now, even before the signing and ratification of the Agreement.

Note: This chapter was written by Meenakshi Raman who is Senior Legal Advisor and Coordinator of the Climate Change Programme of the Third World Network. The contribution of Martin Khor is gratefully acknowledged. The article was published in the Economics and Political Weekly, Vol. 51, Issue No. 2, 9 January 2016.

XI CONCLUSION

This paper has described the twists and turns of negotiations at the COP of the Convention and the CMP of the Kyoto Protocol in recent years. At these important meetings, the interests of a large number of developing countries had lost ground. While developed countries were able to have their commitments (especially in mitigation) downgraded, new significant obligations were placed on developing countries in terms of their ‘nationally appropriate mitigation actions’, with an elaborate system of monitoring, reporting and verification. The original architecture

for mitigation (a top-down science-based set of emission reduction commitments for all developed countries, with comparable efforts being made by each of them, and more obligations in mitigation and reporting for developing countries) has not been maintained. Furthermore, the Convention's principles of equity and common but differentiated responsibilities and respective capabilities are also being weakened, and attempts are being made by some developed countries to undermine them further by treating all countries similarly in the new Durban Platform.

Some of the COPs also show that various procedures and processes have been used to push through important decisions and documents which would have been opposed successfully by many developing countries if normal participatory processes of the UNFCCC and the UN in general had been followed. The attempt to force through a document emanating from closed-door small meetings failed in Copenhagen. New methods used in Cancun and in Durban succeeded in having decisions and documents adopted by the COP and the CMP. Too much power and authority have in practice been accumulated by the officials of the country that hosts the COP. Instead of being a host and provider of facilities in a venue of meetings, the host country often became the prime determinant of process and substance through the new practice of providing the President with draft texts and then having them adopted.

This also shows that processes and substance are inter-related because certain processes or procedures can push through decisions containing substance that would otherwise have been rejected.

Both in process and substance the multilateral system for addressing climate change is in a state of flux, which has often been on the borders of crisis. Ownership of the process by all is important, otherwise decisions that many believe were not reached fairly can lead to the later re-opening of the decisions, or to problems of implementation. For the developing countries, there is still a long way to go to ensure that global climate negotiations lead to fair and effective agreements and actions, backed up by the required financial and technological support. Reforms are obviously needed. Unfortunately there is no time left to waste in humanity's common fight against destructive climate change, as the recent extreme weather events demonstrate.

REFERENCES

- 📖 IPCC (2007). *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Core Writing Team, Pachauri, R.K. and A. Reisinger (eds.)). Geneva.
- 📖 Khor, Martin (2007). Bali conference ends, new group to take up unresolved issues. *South-North Development Monitor (SUNS)* (17 December).
- 📖 _____ (2008). Key issues expected to dominate UNFCCC's Poznan talks. *SUNS* (2 December).
- 📖 _____ (2010). Copenhagen and After. *South Bulletin*, Issue No. 43 (8 February).
- 📖 _____ (2011a). Complex implications of the Cancun climate conference. Policy Brief, No. 5 (March). Geneva: South Centre.
- 📖 _____ (2011b). New Round of Climate Talks Launched at Durban. *South Bulletin*, Issue No. 58 (20 December).
- 📖 _____ (2012). "A Clash of Paradigms: UN Climate Negotiations at a Crossroads" published in **Climate, Development and Equity**, (What Next, Vol. III, Sept 2012; pg 76-105), edited by Niclas Hallstrom.
- 📖 _____ (2013). Doha 2012: A Climate Conference of Low Ambitions. *Economic and Political Weekly (India)*, Vol. XLVIII, No. 2 (12 January).
- 📖 _____ (2013). The Warsaw UN Climate Change Conference – An Overview, *Third World Resurgence*, Issue No. 279-280 (Nov/Dec 2013).
- 📖 _____ (2015). Understanding the Lima Climate Conference: A Proxy Battle for the 2015 Paris Agreement, Climate Policy Brief 16 (January 2015). Geneva: South Centre.
- 📖 Montes, Manuel (2012). Understanding Climate Change Financing Requirements of Developing Countries. Geneva: South Centre.
- 📖 Raman, Meena (2011). Clash of Paradigms in Durban Climate Talks. *South Bulletin*, Issue No. 58 (20 December).
- 📖 _____ (2016). Climate Change Battle in Paris. *Economic & Political Weekly (India)*, Vol. 51, Issue No. 2 (9 January).

- United Nations Department of Economic and Social Affairs (UN-DESA) (2009). *World Economic and Social Survey 2009: Promoting Development, Saving the Planet*. New York. Available from http://www.un.org/en/development/desa/policy/wess/wess_archive/2009wess.pdf.
- _____ (2012). *World Economic and Social Survey 2012: In Search of New Development Finance*. New York. Available from http://www.un.org/en/development/desa/policy/wess/wess_current/2012wess.pdf.
- UNEP (2010). *The Emissions Gap Report: Are the Copenhagen Accord Pledges Sufficient to Limit Global Warming to 2° C or 1.5° C? A preliminary assessment* (November). Available from http://www.unep.org/publications/ebooks/emissionsgapreport/pdfs/GAP_REPORT_SUNDAY_SINGLES_LOWRES.pdf.
- UNFCCC (2008). *Report of the Conference of the Parties on its thirteenth session, held in Bali from 3-15 December 2007*. Available from <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf>.
- _____ (2009). *Report of the Conference of the Parties on its fourteenth session, held in Poznan from 1-12 December 2008*. Available from <http://unfccc.int/resource/docs/2008/cop14/eng/07a01.pdf>.
- _____ (2010). *Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7-19 December 2009*. Available from <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>.
- _____ (2011). *The Cancun Agreements*. Available from http://unfccc.int/meetings/cancun_nov_2010/items/6005.php.
- _____ (2012). *Durban Climate Change Conference – November/December 2011*. Available from http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php.
- _____ (2013). *Doha Climate Change Conference – November 2012*. Available from http://unfccc.int/meetings/doha_nov_2012/meeting/6815.php.
- World Bank (2010a). *The Costs to Developing Countries of Adapting to Climate Change*. Washington D.C.
- _____ (2010b). *World Development Report 2010: Development and Climate Change*. Washington D.C.