

A clash of paradigms – UN climate negotiations at a crossroads

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UN Photo/Evan Schneider

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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 in order 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 it is vehemently opposed by the United States, which is supported by several other countries.

This article builds on articles previously written by the author and published in various magazines including *South Bulletin* and *Economic and Political Weekly (India)*. The latter part also builds on contributions by Meena Raman, Third World Network (2011).

UNFCCC and the Bali Action Plan

The yearly ministerial negotiations among the 193 member countries – the ‘Parties’ – of the UN Framework Convention on Climate Change (UNFCCC), which take place in December, are in fact a combination of several meetings of the Convention and its Kyoto Protocol. The most important of these are the Conference of Parties (COP) of the Convention, the Meeting of the Parties of the Kyoto Protocol (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 whose aim is 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 has been seen as a keystone by developing countries, as it is 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.

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.

COP 15 Copenhagen (December 2009)



The Copenhagen Climate Conference failed to deliver... because the presidency of the conference and Western political leaders essentially tried to hijack the legitimate, multilateral process of negotiations.

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, such as 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 both of mitigating and of 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.



Kris Krüg

More than 100 000 people demonstrated peacefully on the streets of Copenhagen. In clashes with police many were arrested.

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 member 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.



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.

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 would 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 presented 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 overturnings 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 had to 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.'¹

¹ This account of the proceedings and the statements made is based on the author's own recollections, from being present at the meeting.

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 providing 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 Accord² 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 for 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 the light of recent climate science),³ the national pledges by developed countries amounted to (and still amount to) only 13-19 per cent in aggregate.

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.



2 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.

3 See article by Kevin Anderson in this volume.

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.⁴ 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.

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°C, 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.

4 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>

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 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.

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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, have, 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.



Kris Krüg

COP 16 Cancun (December 2010)

The 2010 climate conference of the UN Framework Convention on Climate Change (UNFCCC) which took place in Cancun (Mexico) from 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.⁵



Sheila Menon

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 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.

⁵ See http://unfccc.int/meetings/cancun_nov_2010/items/6005.php for the package of Cancun decisions.

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.⁶ 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.

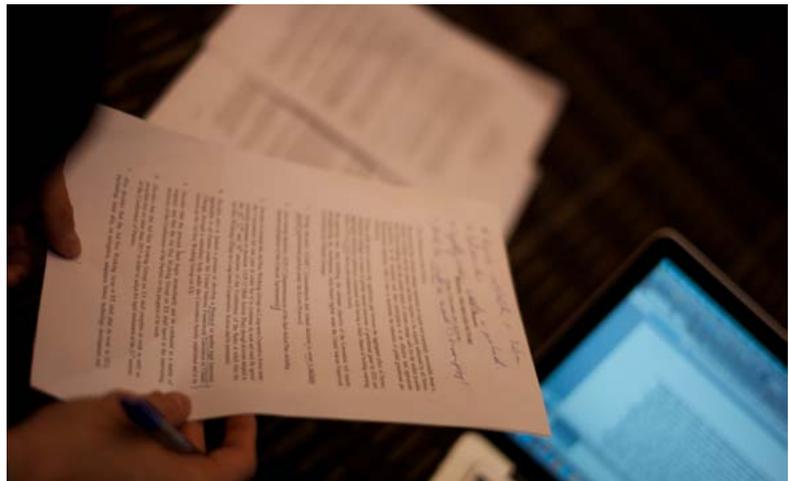
⁶ At the WTO itself, where decision-making by consensus has been the rule, consensus is also defined in the usual way. A footnote in the Marrakesh Agreement that established the WTO defines it as such: 'The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting, when the decision is taken, formally objects to the proposed decision'.

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 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 at 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 final document was given to delegates with only a few hours to consider at the very end of the conference, on a take-it-or-leave-it basis.





At the final plenary, Bolivia rejected the text, and its ambassador, Pablo Solón, made a number of statements giving detailed reasons why.

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 it 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 from 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 1 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 set 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 requires⁷ 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 3–5°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.

7 This is generally taken to be the estimate in the report of the Intergovernmental Panel on Climate Change (IPCC, 2007) of 25–40 per cent by 2020 compared to 1990, with a more ambitious 40–50 per cent for 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 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 measures 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 US) 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 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 UN-FCCC'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 have already

reached an emissions peak and are now reducing emissions, what is new is the national peaking by developing countries. The agreement to achieve their national peaking as soon as possible when many of them still have very low levels of emissions (and are at a low economic level) raises many questions as to whether and when they can 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 is the proposal of developed countries, whereas the G77 and China had advocated for an 'equitable representation', which



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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 is 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 has been a key US demand, 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 effect 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 have been suspicious that this is a move to enable the shifting of market mechanisms now being used or discussed in the Kyoto Protocol to the Convention track under the AWG-LCA, so that if the Protocol is discontinued, the market elements (such as the use of carbon offsets through the Clean Development Mechanism and other market instruments that some are seeking to introduce) can be installed in a new protocol or agreement. They thus want 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 is settled. This option was included in earlier drafts. However, the option not to have market approaches in the AWG-LCA text has 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.

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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 now serious threat to close the legally binding and top-down Kyoto Protocol system and to replace it with a voluntary pledge system.

COP 17 Durban (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 2020.⁸

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 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 US 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 is its 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 forward 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

⁸ See http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php for decisions and other official UNFCCC documentation from the Durban summit.

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).

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 Jan 2013 and can last for five or eight years (this will 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 requests 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’.



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At the plenaries on the night of 10 December, several developing countries expressed concern about 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 will 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.⁹ 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?'

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.'

⁹ Or if they are submitted, the Conference of Parties might end up not accepting the QELROs if they are not ambitious enough; or if the Conference adopts the QELROs and the amendments to the KP, it is not possible they will be ratified and enter into force before 1 January 2013, so there will be a legal gap between the first and second periods.

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.



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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 Action.¹⁰

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.

¹⁰ 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>

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 can 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 will insist that the absence of the word ‘equity’ in the decision means that there is 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, will 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 form the Bali Road Map.

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

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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 have 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 is that these issues or proposals should not be revived, as their treatment had already been settled in Durban.

Some developing countries' delegates have 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's 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 (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.

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 the joint informal plenary meeting of the COP 17 and the CMP 7 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 the Kyoto Protocol, AWGLCA, Green Climate Fund and the 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 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 are now 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 can 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 COP 17 and the CMP 7 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.

Conclusion

This article 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 have 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.

The recent 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 de-

cisions 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 has become 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 interrelated 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.

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