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UNFCCC COP-18

Marginal Progress and Challenges Ahead

by Annalisa Savaresi*

The UNFCCC COP-18 held in Doha in December 2012 is likely to be remembered as a marginal advance in the chaotic path towards a more ambitious climate change regime. The meeting was largely expected to be a procedural transition towards “a protocol, another legal instrument or a legal outcome under the Convention” to be adopted by 2015 and implemented from 2020.¹ Once more, Parties managed to salvage the process from the brink of collapse, with yet another *coup de théâtre*. As already happened in 2010, the Presidency had to prevent a single opposition party from blocking the adoption of a set of decisions at the closure of the meeting. Observers to this troubled international process are getting used to these procedural skirmishes, which are engendered by the fact that, 20 years on from the adoption of the Convention, the UNFCCC COP still lacks rules of procedure on voting. Without attempting to exhaustively cover all decisions adopted in Doha, this review summarises developments at COP-18, as well as outstanding questions remaining on the negotiation table.

Ad Hoc Working Group on Long-term Cooperative Action Closes

COP-18 wrote the closing words of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA). This process, established with the Bali Action Plan in 2007, held the promise of bringing more Parties towards emission reductions, by abandoning the dichotomy between Annex-I and Non-Annex-I Parties embedded in the Kyoto Protocol, in favour of a more sobering distinction between “developed” and “developing” countries. The negotiation agenda for the AWG-LCA centred around five core elements, namely: a shared vision on long-term cooperative action to achieve the ultimate objective of the Convention; and enhanced action on mitigation, adaptation, technology development and transfer, and the provision of financial resources. Whereas the AWG-LCA was expected to conclude its work at COP-15 in Copenhagen in 2009, its mandate was extended at subsequent meetings, sparking fears that the machinery set up by the Convention may be on the brink of collapse.

Over the years, in fact, the Bali Action Plan was increasingly perceived as a perpetuation of the so-called “firewall” between developed-country Parties’ “commitments” and developing-country Parties’ “actions”.² Conversely, an increasingly large number of Parties opined that the distinction between the obligations of developed and developing-country Parties should be revisited. In 2011, to disentangle the deadlock affecting negotiations,

Parties decided to rewrite the negotiation agenda set in Bali and establish a new negotiation platform (the so-called Durban Platform for Enhanced Action (ADP), see *infra*).

Before this work could start in earnest, however, it was necessary that the AWG-LCA should formally come to a close. At COP-18, therefore, the AWG-LCA was officially closed, without providing definitive answers to the thorny questions it had been asked to address. As shall be seen, these matters are now left to the ADP and the subsidiary bodies.

The decision marking the inglorious conclusion of the AWG-LCA features a 20-page text of little substance.³ The section on a “shared vision for long-term cooperative action” remarkably consists of three short paragraphs reasserting the commitment to keeping the increase in global average temperature to less than 2°C above pre-industrial levels, and takes steps to ensure that global greenhouse gas emissions peak, globally, “as soon as possible”. While it had been hoped that Parties might agree upon a timeline for surmounting that peak, and starting down the other side, the decision only vaguely mentions that such a time-frame “will be longer in developing countries”. Another notable feature is confirmation that Parties’ efforts should be undertaken “on the basis of equity and common but differentiated responsibilities and respective capabilities”. This reference to principles entrenched in the UNFCCC was opposed by the US, who accepted this text only “to the extent that it is not read in a manner that is inconsistent with the Convention or the Cancun agreements”.⁴

The lengthiest section in the decision is that concerning mitigation. The text “takes note” of the quantified economy-wide emission reduction targets reported by Annex-I Parties, urging them to increase the level of ambition. The text, however, does little to address the question of comparability of efforts. The so-called “pledge and review” approach famously inaugurated with the Copenhagen Accord has enabled Parties to define their commitments unilaterally, with the UNFCCC machinery functioning as a notary.⁵ It has, however, become apparent that States have reported their pledges as they see fit – for example, by choosing different years as a baseline to measure their emission reductions – thus engendering a great deal of confusion as to what they are actually committing to. The AWG-LCA was tasked to address this issue, but failed to reach an agreement. COP-18 has established a new working programme, with the objective to “continue the process of clarifying” the emission reduction targets of developed-country Parties, identifying common elements and ensuring comparability of efforts. The Subsidiary Body for Scientific and Technological Advice (SBSTA) will present the outcome of its work on the issue at COP-20 in 2014.

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A similar dithering approach characterises the text on mitigation actions by developing-country Parties. Here also, the COP established a work programme, this time under the Subsidiary Body for Implementation (SBI), to “further the understanding of the diversity of nationally appropriate mitigation actions”.

Little progress was made also on “policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries” (so-called REDD+). Once considered a rare ground for REDD+ negotiations and consensus, Doha stalled upon questions concerning “results-based finance”; incentives for “non-carbon benefits”; “non-market-based approaches” to support REDD+ activities; and the quest for a new institutional home, after the closure of the AWG-LCA. These thorny issues will now be addressed under different umbrellas, involving the SBI, the SBSTA and a newly established work programme. The inclusion of incentives for non-carbon benefits and non-market-based approaches on the agenda for negotiation may be regarded as a victory by those Parties (like Bolivia) that have consistently tried to shift the discussion on REDD+ away from a focus on carbon markets. Nevertheless, these developments may further engulf negotiations, which are now five years in the making and faced with an uncertain outlook. The fate of the nascent REDD+ mechanism may ultimately depend upon the adoption of an all-encompassing approach to forestry, agriculture and land-use activities in the framework of the ADP.⁶

The future of negotiations on “various approaches” to mitigation, including the so-called new market mechanism first announced at COP-17, seems equally elusive. These issues will now be addressed by two separate working programmes of the SBSTA, which are expected to result in draft decisions to be considered at COP-19. The negotiation of these programmes may still provide a propitious opportunity to concretely discuss the establishment of market mechanisms under the Convention, in addition to those under the Kyoto Protocol. On the economic and social consequences of mitigation, the only notable development was that Parties seized an opportunity to reassert their concerns over unilateral action – such as that undertaken by the EU in connection with emissions from aviation – which “should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade”.

The sections of the AWG-LCA decision on enhanced action on adaptation, technology development and transfer, and the provision of financial resources are even scarier than those on mitigation, with just a few paragraphs devoted to each issue. On all these matters, delegates did little more than see through and consolidate the considerable institutional developments that took place under the AWG-LCA, such as the Green Climate Fund (to be headquartered in South Korea) and the Climate Technology Centre and Network (to be hosted by a UNEP-led consortium). In themselves, however, these institutions provide little hope

for significant enhanced action, until a solution to the vexed question of finance emerges. COP-18 marked little progress towards mobilising US \$100 billion for adaptation and mitigation by 2020, discussed under the Copenhagen Accord. Only marginal improvements were recorded on interim finance, with a small group of countries making little more than symbolic pledges up until 2015.⁷ This disappointing outcome is certainly not the result of lack of effort, given the large number of finance discussions on-going under the Convention. Faced with a formidable gap in finance, the scenario for future negotiations seems rather bleak.

Some positive developments may come from the review of the long-term temperature goal, which will start in 2013 and conclude in 2015, thus benefitting from input from the forthcoming IPCC report, as well as from a “structured expert dialogue” agreed in Doha.⁸ Other positive outcomes may come from “institutional arrangements” to address loss and damage associated with climate change impacts in developing countries, which are to be established at COP-19.⁹ There is, however, considerable concern that migration of AWG-LCA to other institutional homes may lead to the re-opening of questions that have already been debated at length, and a consequent loss of precious negotiating time.¹⁰

The Second Commitment Period of the Kyoto Protocol

Although Parties had already agreed upon a second commitment period for the Kyoto Protocol in 2011, the details were left almost entirely for decision at the Doha meeting. In 2012, therefore, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) convened for the last time to



COP President Abdullah bin Hamad Al-Attiyah speaking with delegates

Courtesy: IISD

address a long list of contentious issues, including the term of the second commitment period; access to the flexibility mechanisms; and the carry-over of Assigned Amount Units (AAUs).

Eventually, delegates reached a hard-won compromise over an amendment to the Kyoto Protocol.¹¹ The amendment includes a new Annex B, listing quantified emission reduction commitments from 2013 to 2020 for Belarus, Kazakhstan, Liechtenstein, Monaco, Norway, Switzerland and Ukraine. The European Union stuck to its pledge to reduce emissions by 20 percent below 1990 levels. Overall, these Parties must now individually or jointly ensure that their aggregate emissions “do not exceed their assigned amounts”, with a view to “reducing their overall emissions by at least 18 per cent below 1990

levels in the commitment period 2013 to 2020".¹² This commitment is well below the thresholds recommended by the IPCC and, reportedly, the pledges undertaken by this coalition of the willing are not a significant departure from business as usual.¹³

Several Parties, however, reiterated their willingness to increase the level of ambition, provided that certain conditions were fulfilled. These declarations are collected in footnotes appended to the amended Annex B. To enable future adjustments, the amendment includes a *sui generis* procedure, whereby Parties may propose increases of their quantified emission limitation or reduction commitments, which will be adopted by the Conference of the Parties serving as the meeting of the Parties (COP-MOP), unless more than three-fourths of the Parties object.¹⁴ To enhance the possibility of increased ambition, all Annex-I Parties have been requested to "revisit" their emission reduction commitments by 2014. While the ratification process is expected to be lengthy, Parties may already provisionally implement the amendment.¹⁵ In line with its extant legislative framework, the European Union has already announced its intention to do so.¹⁶

Another especially vexed question related to the treatment of Parties that refuse to accept quantified emission reductions for the second commitment period (*i.e.*, Japan, New Zealand and the Russian Federation). The main issue was whether these Parties should continue to enjoy access to the flexibility mechanisms established under the Kyoto Protocol. Eventually it was agreed that all Parties included in Annex I may continue to participate in Clean Development Mechanism project activities, but that only Parties with a commitment inscribed in the amended Annex B are eligible to transfer and acquire certified emission reductions (CERs).¹⁷ An analogous decision has been made also with regard to Joint Implementation.¹⁸ These restrictions, however, are not expected to have a major impact.¹⁹

Reaching an agreement upon the carry-over of surplus AAUs from the first to the second commitment period was even more difficult. The question of surplus AAUs in former Eastern bloc countries has plagued implementation of the Kyoto Protocol from the very beginning. Over the years, Parties have unsuccessfully tried to reach an agreement on how to tackle the problem of so-called "hot air". Negotiations on the second commitment period provided a propitious opportunity to address the problem. The issue, however, threatened to derail the whole process.²⁰ Former Eastern bloc countries (particularly the Russian Federation, Belarus, Poland and Ukraine) were determined to maintain the possibility to benefit from AAUs in excess during the second commitment period. Their plea was met with the opposition of a large front of Parties concerned with the environmental integrity of emission reduction commitments. Compromise was reportedly gavelled by the European Union, which was itself torn between environmental integrity concerns and the need to accommodate the interests of Poland.²¹ Eventually, it was agreed to limit the amount of surplus units that may be carried over, and only Parties that have undertaken emissions reductions for the second commitment period

have been allowed to do so.²² Most Parties have declared, however, that they do not intend to purchase/use AAUs carried over from the first commitment period.²³ The Russian Federation tried to block the adoption of the AWG-KP outcome decision, and subsequently protested against an alleged violation of the rules of procedure by the Presidency.²⁴ It remains to be seen whether disgruntled Parties will now decide not to ratify the amendment to the Kyoto Protocol.²⁵

Limited Progress under the Durban Platform for Enhanced Action

The ADP was launched in 2011 with the mandate to develop "a protocol, another legal instrument or a legal outcome" applicable to "all Parties" and expected to be adopted by 2015 and implemented from 2020.²⁶ This newly established platform has potentially opened the way to a new geometry of commitments, based on a "clean slate on differentiation" between Parties.²⁷ The adoption of a legally binding agreement that includes emission reduction commitments for all Parties, however, remains but one of the possible outcomes opened up by the new negotiation scenario.

At its first meeting in 2012, the ADP organised its work in two streams: one addressing the elements and modalities of a post-2020 regime and the other enhancing the level of ambition for the pre-2020 period. ADP negotiations in Doha followed this binary track. Cohabitation with the AWG-LCA and the AWG-KP, however, caused a few delays in work under these mandates.²⁸ Negotiations were also weighted down by the re-emergence of contentious issues that had already afflicted the AWG-LCA.

The debate under the first post-2020 stream was dominated by issues of principle. Parties' views diverged over the role that principles embedded in the UNFCCC should play in the new instrument to be developed by the ADP. The ADP mandate does not make any reference to such principles. Some States have tirelessly argued that Parties' common – but – differentiated responsibilities should be revised in light of the changed reality compared with the time when the Convention was adopted, emphasising the infamous firewall between developed and developing-country Parties' obligations. Conversely, several developing-country Parties, captained by China and India, have strenuously insisted that the ADP is not a forum to "renegotiate, rewrite or reinterpret" the principles underpinning the Convention.²⁹

In Doha, however, the developing-country Parties' front initially appeared increasingly split. Although two new groups had emerged in the course of 2012, they were able to achieve a level of consolidation. On the one hand, the emergence of the "Association of Independent Latin American and Caribbean States" was reportedly inspired by "a collective conviction that a strong and robust Convention is the most effective way to achieve the objective of a below-2 degree world".³⁰ On the other, the "Group of Like-minded Countries" (comprising of members of the Arab Group, some Latin American countries, as well as India and China) pursues the objective to uphold the Convention's principles of common but differentiated responsibilities and equity, as well as developed countries'

historical responsibility for climate change.³¹ As a result of these divisions, the eventual outcome was a lean two-page decision³² in which the Parties acknowledge that the work of the ADP “shall be guided” by the principles of the Convention, in spite of fierce opposition by the US who announced the intention to reject any attempt to invoke this provision in the ADP’s further work.³³

On a positive note, Parties agreed to move to a “more focused mode of work” in 2013.³⁴ A work plan comprising additional sessions was adopted,³⁵ and elements for a draft negotiating text will be considered “no later than” COP-20, with a view to making a draft text available “before May 2015”.³⁶ The first stream of the ADP’s work has been asked to address mitigation; adaptation; finance; technology development and transfer; capacity building; and transparency of action and support – thus inheriting the unfinished work of the AWG-LCA. Parties and accredited observers have been invited to make submissions on issues such as application of the principles of the Convention; building on the experiences and lessons learned from other processes; the scope, structure and design of the new agreement; and ways of defining and reflecting undertakings.³⁷ Under the second (pre-2020) stream, Parties and accredited observers have been asked to make submissions on options to enhance ambition before 2020, including again considerations over the application of the principles of the Convention to the ADP; mitigation and adaptation benefits, barriers and ways to overcome them, and incentives for action; as well as finance, technology, and capacity building to support implementation.³⁸

Some observers have expressed concern over the suitability of this timeline to ensure the adoption of a new instrument by 2015.³⁹ Given the sluggish pace of negotiations, however, a tighter timeline would not have been realistic. As ever, the problem may not so much lie in the process, but in the lack of supporting political will. To confer much needed momentum to the ADP, in Doha the UN Secretary General announced his intention to convene world leaders in 2014, to help ensure that the 2015 deadline is met.⁴⁰

Looking Ahead

With procedural questions addressed and the dismissal of the AWG-LCA and AWG-KP, the substantive work of the ADP may now begin without further ado. If, however, negotiations in Doha give a flavour of times to come, the road ahead is steep. Lack of common ground on the core of a future agreement – i.e., finance and wider commitment to reduce emissions, beyond the narrow path traced by the Kyoto Protocol – leads one to infer that the ADP is unlikely to succeed. The process initiated in Bali was officially closed in Doha without much progress towards a shared vision for long-term cooperative action to achieve the ultimate objective of the Convention. If anything, the humbling fate of the Kyoto Protocol and the difficult outlook for the ADP seem to show that Parties are more distant than ever from reaching consensus. It can only be hoped that the numerous opportunities for dialogue scheduled in preparation for COP-21 in 2015 will provide

the scope to finally overcome the impasse that has affected this troubled international process for so long.

Notes

- 1 Decision 1/CP.17. Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, Proposal by the President (FCCC/CP/2011/9/Add.1, 15 March 2012), at 2. At the time of writing, the draft COP18 decisions mentioned in this piece are available at http://unfccc.int/meetings/doha_nov_2012/meeting/6815.php#decisions.
- 2 Decision 1/CP.13, Bali Action Plan (FCCC/CP/2007/6/Add.1, 14 March 2008), paragraph 1(b)(i-ii).
- 3 Draft decision -/CP.18. Agreed outcome pursuant to the Bali Action Plan. Available at http://unfccc.int/files/meetings/doha_nov_2012/decisions/application/pdf/cop18_agreed_outcome.pdf.
- 4 IISD Reporting Services. 2012. “Summary of the Doha Climate Change Conference: 26 November–8 December 2012”. *Earth Negotiations Bulletin*, 11 December 2012, at 9. Available online at <http://www.iisd.ca/download/pdf/enb12567e.pdf>.
- 5 Decision 2/CP.15, Copenhagen Accord (FCCC/CP/2009/11/Add.1, 30 March 2010). For this terminology, see e.g., Bodansky, D. and Diringer, E. 2010. “The Evolution of International Regimes: Implications for climate change”. Pew Center on Global Climate Change Report. Available at <http://ssrn.com/abstract=1773828>.
- 6 Holmgren, P. 2012. “COP18 was not good enough: Time to rethink green sectors’ approach for 2015”. *FORESTS news*, 11 December 2012. Available at <http://blog.cifor.org/13133/cop18-was-not-good-enough-time-to-rethink-green-sectors-approach-for-2015/#.UMb2EIOTy8A>.
- 7 United Nations Climate Change Secretariat. 2012. “At UN Climate Change Conference in Doha, governments take next essential step in global response to climate change”. Press Release, 8 December 2012. Available at http://unfccc.int/files/press/press_releases_advisories/application/pdf/pr20120812_cop18_close.pdf.
- 8 *Supra*, note 3, at para. 82.
- 9 Draft decision -/CP.18. Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity.
- 10 Boyle, J. 2012. “A mirage in the deserts of Doha? Assessing the outcomes of COP 18”, at 4. IISD.
- 11 Draft decision -/CMP.8. Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9. Available at <http://unfccc.int/resource/docs/2012/cmp8/eng/109.pdf>.
- 12 *Ibid.*, at Article 3, paragraph 1 bis.
- 13 “Two more nails in the 20% coffin”. Available at <http://www.sandbag.org.uk/blog/2012/nov/1/two-more-nails-20-coffin/>.
- 14 *Supra*, note 11, Article 3, paragraph 1 quarter.
- 15 *Ibid.*, at 5–6.
- 16 See http://ec.europa.eu/clima/events/0062/index_en.htm.
- 17 *Supra*, note 11, Article IV, at 12–13.
- 18 *Ibid.*, at 15.
- 19 Sterk, W. *et al.* 2012. “Sands are running out for climate protection: The Doha Climate conference once again saves the UN climate process while real climate action is shelved for later”, at 9. Wuppertal Institute.
- 20 *Supra*, note 4, at 27.
- 21 *Supra*, note 19, at 10.
- 22 *Supra*, note 11, Article 3, paragraph 1 quarter, at 23–26.
- 23 *Ibid.*, Annex II.
- 24 *Supra*, note 4, at 27.
- 25 Carr, M. 2012. “Ukraine may join Russia to shun Kyoto as credits fall”. *Bloomberg Businessweek*, 14 December. Available at <http://www.businessweek.com/news/2012-12-14/ukraine-may-join-russia-to-shun-kyoto-as-credits-fall>.
- 26 Decision 1/CP.17, at 2 and 4.
- 27 Rajamani, L. 2011. “Decoding the Durban Platform”. *EJIL: Talk!* Available at <http://www.ejiltalk.org/decoding-the-durban-platform/>.
- 28 *Supra*, note 4, at 16.
- 29 *Ibid.*, at 28.
- 30 *Ibid.*
- 31 *Ibid.*
- 32 Draft decision -/CP.18. Advancing the Durban Platform. Available at http://unfccc.int/files/meetings/doha_nov_2012/decisions/application/pdf/cop_advanc_durban.pdf.
- 33 *Supra*, note 19, at 12.
- 34 Ad Hoc Working Group on the Durban Platform for Enhanced Action, Planning of work. Draft conclusions proposed by the Co-Chairs. 7 December 2012. UN Doc FCCC/ADP/2012/L.4, at 8. Available at <http://unfccc.int/resource/docs/2012/adp1/eng/104.pdf>.
- 35 *Ibid.*
- 36 *Supra*, note 32, at 9.
- 37 *Ibid.*, at 13.
- 38 *Ibid.*, at 15.
- 39 *Supra*, note 10, at 5.
- 40 *Supra*, note 7.

