



Third World Network Cancun News Updates and Climate Briefings

(November/December 2010)

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(NOVEMBER-DECEMBER 2010)**

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NOTE

This is a collection of 20 News Updates, three articles and two Briefing Papers prepared by the Third World Network for and during the recent United Nations Climate Change Talks – the Sixteenth Conference of the Parties (COP 16) and Sixth Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 6), as well as the Thirty-third Sessions of both the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA), and the Thirteenth Session of the Ad Hoc Working Group on Long-term Cooperative Action under the UN Framework Convention on Climate Change (UNFCCC AWG-LCA 13) and Fifteenth Session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 15) – in Cancun, Mexico from 29 November to 10 December 2010.

Cancun News Updates and Articles

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Cancun News Update **1**

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What to Expect in Cancun: Some Key Issues

Cancun, 28 November (*Martin Khor) – A year after the chaotic Copenhagen summit, the 2010 UNFCCC (United Nations Framework Convention on Climate Change) climate conference begins in Cancun. Expectations are low this time around, especially compared to the eve of Copenhagen.

That's probably both good and bad. The conference last year had been so hyped up beforehand, with so much hope linked to it, that the lack of a binding agreement at the end of it and the last-day battle over process and text made it a near-disaster.

Few expect this year's meeting in the seaside resort of Cancun to produce anything significant in commitments either to cut greenhouse gas emissions or to provide funds to developing countries. Thus if Cancun ends with few significant decisions, it won't be taken as a catastrophe. It will however be seen as the multilateral system not being able to meet up to the challenge. And that system will be asked to try harder, next year.

The atmosphere at the end of the meeting will of course be crucial. The events, especially at the Ministerial segment, and how the presence of heads of states is handled, should be organised in a transparent and inclusive way, without the surprises of Copenhagen. That way, Cancun will end with the goodwill needed to carry on the work, even if there are no spectacular outcomes here.

It would be unwise (to say the least) to try a repeat (or a variation) of the exclusive high-level small-group process of selected political leaders that clashed with the inclusive multilateral negotiating process in the last days of Copenhagen, and that produced the chaotic ending.

The process in the first week, when negotiators are expected to work hard on the 13 August text and the Tianjin revisions to the text, that were both member-driven, will also be important. An inclusive,

transparent process driven by members themselves is required. Even if this takes time, it is time well invested. Attempts to shorten this process by methods not agreed to or that are not transparent may instead produce a short circuit and a fire, waste even more time and result in loss of goodwill and confidence.

The lowering of expectations

On the other hand, the lowering of expectations indicates how low climate change has sunk in just a year in the world's political agenda. And that is bad indeed, because the climate problem has got even worse.

2010 is already rivaling 1998 as the hottest year since records were kept. And there have been so many natural disasters in 2010; some of them, like the catastrophic flooding in Pakistan, are linked to climate change.

Other events, especially the spread of the financial crisis to Western Europe, and the persistent high unemployment in the United States despite economic growth, have taken over the attention of the politicians and public in the developed countries. The counter-attack by climate skeptics in questioning the science, and by politicians that don't like climate actions, has also affected the public mood to some extent.

Also, the chances of getting a global climate change agreement appear much more dim, as the issues are shown up to be more difficult and complex than earlier envisaged. And when a problem seems intractable, most politicians tend to lose interest because like other people they don't like to be associated with failure. And the problems in the negotiations are many, and they will re-emerge again in Cancun. While the need to address climate change is urgent, there is also the need for patience in getting a successful outcome.

The Fate and Shape of the Global Climate Regulatory Regime

The main problem is the inability of the United States administration to make a meaningful commitment to cut its country's emissions to an adequate extent, because it is now clear that Congress will not adopt a comprehensive climate bill.

This makes the other developed countries reluctant to firm up their own commitments, or even retain the existing regulated system. Many of them are still dragging their feet in stating how much they should cut their emissions, individually and as a group, in the Kyoto Protocol's second period that is to start in 2013.

Worse, Russia and Japan have openly stated they do not want to continue with the Kyoto Protocol, because the US is not in it and major developing countries do not have to join the binding disciplines. A most depressing Kyodo agency news item was published on the eve of Cancun, under the headline "Japan will oppose Kyoto extension at COP16". It quotes a Vice Minister and senior climate negotiator as saying Japan will not agree to extend the Kyoto Protocol beyond 2012 even if it means isolating itself at the UN.

Australia, New Zealand and Canada among others have also been unwilling or reluctant to commit to Kyoto's second period. That leaves the European Union, which says it prefers to shift to a new system too but is still open to remaining in Kyoto if others do. Only Norway has said firmly it agrees to a second Kyoto period.

The death of the Kyoto Protocol, under which the developed countries except the US have legally-binding targets to cut their emissions, is something the developing countries cannot accept. They want the developed countries to cut their emissions as a group by more than 40% by 2020 (compared to 1990), and for each country to do an adequate cut, under the Kyoto Protocol. The figures have to be recalculated to fit 2013-2017 as the second period proposed by the G77 and China.

The US was supposed to take on a "comparable effort" in mitigation as the other developed countries, but under the Convention since it is not a KP member. Para 1b(i) of the Bali Action Plan was designed for that.

This was a crucial part of the overall understanding on mitigation reached in Bali: (1) that the Annex I Parties in the KP would take on adequate 2nd period commitments on aggregate and individual reduction targets consistent with what science requires; (2) that the US would make its own comparable commitment in the Convention, in

accordance with para 1b(i); and (3) developing countries would undertake enhanced mitigation actions with financial and technological support, both of which would be measurable, reportable and verifiable (MRV).

This three-piece Bali understanding is now unraveling with alarming speed. The KP is in mortal danger, as most of its Annex I members show clear signs of abandoning ship. The new vehicle they are looking to join is vastly inferior. It is the voluntary pledge system that the US had been advocating, in which individual developed countries state how much reduction they would like to set as their targets.

In the system, there is no aggregate target to be set in accordance with what the science says is required. There is no mechanism to review the commitments (individual and aggregate) and to get Parties to revise them so that they meet adequate levels. The mild discipline is that there will be a periodic review on whether the Parties meet their pledged targets, but not a review as to whether the pledges are adequate.

There has been a major battle, quite indirect and off the radar screen at first and then fierce and open after that, over the model of climate regime for Annex I mitigation – the KP model of binding aggregate and individual cuts versus the pledge-and-review voluntary system. At Bali the first model was adopted, but increasingly challenged in the many 2009 sessions before Copenhagen. Then the fight reached boiling-point in Copenhagen, when the US-led pledge system gained the upper hand for the first time when the Copenhagen Accord seemed to be firmly on the side of the pledge system, in its para 4.

However, the balance of forces in this battle of models was to some extent restored after Copenhagen when the major developing countries that assisted in the birth of the Accord reaffirmed that they needed the KP to continue into a second period, and that they wanted the binding system of aggregate and individual commitments that are comparable, and with reduction figures consistent with the science. The EU has indicated it also wants this binding system; this is important as the EU is a prime architect and was a champion of this system. For these Parties, para 4 of the Accord and the binding system are complementary and not contradictory.

For the developing countries the retention of the binding system for Annex I Parties is a touchstone, a litmus test to prove that those that are responsible for most of the stock of emissions in the atmosphere, are serious about the much-proclaimed "taking leadership in the fight against climate change". If the developed countries downgrade their

mitigation commitment from a binding system based on adequate efforts, to a voluntary pledge system without a review of adequacy, then it would be tantamount to giving up leadership, and to a deregulation of the system, and at the worst possible time – when there is growing scientific and empirical evidence of the seriousness of the climate problem.

Disastrous Projection of Pledges

Top climate scientists in a new UN Environment Programme report show how disastrously off-mark such a voluntary system can be. Instead of cutting their emissions by at least 25-40% below 1990 levels in 2020 as required (or by more than 40%, as demanded by developing countries), the developed countries will **actually increase** their emission by 6% in a bad scenario (based on the lower end of pledges and the use of loopholes) or will only cut by 16% in the good scenario (based on the upper end of pledges and without the use of loopholes). The calculations are based on the pledges the developed countries made under the Copenhagen Accord.

These pledges, together with the figures from announcements made by some developing countries, show that the world is moving in the direction of a global temperature increase of between 2.5 and 5 degrees Celsius before the end of this century, according to the UNEP report. This is far removed from the 1.5 or 2 degree “safe limit”, and is a recipe for catastrophe.

In 2005 the global emissions level is estimated at 45 Giga tonnes (i.e. 45 billion tonnes) of CO₂ equivalent and in 2009 it is estimated at 48 Gton. With business as usual, this will rise to 56 Gton in 2020, which is on the road to disaster. The scientists in the UNEP study agree that emissions have to be limited to 44 GtCO₂e by 2020 to stay on a 2 degree limitation course. Based on the Copenhagen Accord pledges, the emissions in 2020 could be 49 Gton under a good scenario, but as high as 53 Gton (almost like business-as-usual) in the bad scenario.

It is evident that all groups of countries have to contribute to improving this disastrous situation. However the Annex I countries are obliged to take the lead, and show the way. But their pledges so far are deficient, as a group. And the intended downgrading of the regulated system to a deregulated system goes in the wrong direction.

A major turn-around in the attitude of most developed countries towards their own emission reduction will be the most important and the hardest problem to resolve in Cancun.

The Obligations Proposed for Developing Countries

Another contentious issue will be the proposed new obligations to be placed on developing countries. At Bali, it was agreed the developing countries would enhance their mitigation actions, and have those actions that are internationally supported to be subjected to MRV. The finance and technology support provided by developed countries would also be subjected to MRV. The mitigation actions that developing countries fund themselves do not have to be subjected to an international MRV system.

However Bali-Plus obligations on developing countries are also now being proposed by developed countries. These proposed obligations include an “international consultation and analysis” (ICA) system to be applied to mitigation actions that are unsupported, and a much more rigorous system of reporting on overall mitigation actions through national communications (once in four years) and supplementary reports (once in two years). Since the most important elements of the national communications are also to be in the supplementary reports, this in effect means reporting once in two years.

The Bali-Plus obligations also include proposals by the EU that developing countries together have a mitigation target of “deviation from business as usual” by 15-30% by 2020. And many developing countries have voluntarily announced targets for reducing emissions growth, reducing the emissions-GNP intensity, or even reducing emissions.

The situation has become complicated. There are many developing countries which did not sign on to the Copenhagen Accord, so the need to undertake ICA does not apply to them, unless the ICA becomes accepted by all. Many of the developing countries that associated with the Accord do not agree with the stringent MRV and ICA systems proposed by the developed countries, as reflected as options in the various texts.

More importantly, the MRV concept was agreed to as part of the three-element Bali understanding on mitigation that includes the KP continuing into a second period, and the US making a comparable commitment under the Convention. These two crucial parts of the understanding involve the commitments of developed countries and they are now under threat. Many developing countries are questioning why they should continue to agree to upgrading their obligations if developed countries want to downgrade their own system of commitments.

Another obligation that developed countries are seeking to place on developing countries is to give the latter a large contributory role in the overall meeting of long-term global emission goals, such as a 50% global cut by 2050 compared with 1990. If Annex I countries take on an 80% reduction, while the global goal is a 50% reduction, this means developing countries would have to undertake a per capita emissions cut of over 50%, and a “deviation from business as usual” of over 80%.

These are very onerous targets for developing countries, which also have priorities for economic development. Their development prospects would suffer if the targets designed for them are accepted, unless there is a sufficiently massive transfer of financing and technology. The implications of these targets are still not fully understood. The discussions on a global goal are taking place under the shared vision issue.

Cancun Deliverables? New Structures in Finance, Technology and Adaptation

Developing countries are also saying they are willing to enhance their mitigation actions and to prepare more detailed reports, but they need the funds and affordable access to new technologies to do these. The provision of finance and technology, which is a commitment of the developed countries, is also needed for adaptation and capacity building.

The possible bright spot in Cancun could be a decision to create a new climate fund in the UNFCCC and under the authority of the Conference of Parties. The discussion on this is quite advanced. Agreement to establish the new fund would be a limited gain, as the details of the fund (including its governance and the amounts it will have) would still have to be worked out later, through a process that Cancun can also decide on.

Nevertheless, it would be an advance if Cancun can make this significant decision to establish the

new fund. But Cancun may be deprived of even such a simple outcome. The US made clear in Tianjin, and this was confirmed by a recent speech by its special climate envoy Todd Stern, that there cannot be an “early harvest” in Cancun such as setting up a fund.

For the US to agree to that, there must be a Cancun agreement on mitigation, in which developing countries agree to the stringent obligations on reporting and international analysis, and in which developed countries undertake a pledge-and-review system.

At Cancun, it can be expected there will be an appeal to the US to allow the fund to be set up, and not to tie this to conditions that its demands in other areas be met first. The US will be told not take the funds that can get actions going in the developing world as “hostage” or conditional on its getting its way in other areas of the negotiations.

On technology transfer, another key issue for developing countries, there has been progress on the technology mechanism to be set up, an Executive Body and a Centre and Network. Again, a decision to establish these bodies is within reach in Cancun, and it should not be stalled on the ground that progress must first be made in other areas.

The developing countries also want a new Adaptation Committee as well as a new international mechanism to address loss and damage caused by climate change. This has yet to be agreed to.

If Cancun can deliver the establishment of these new structures in finance, technology and adaptation, it would have something to show, and we would not leave empty handed. These are only relatively small measures, but they are still significant, if only to demonstrate that there are still results possible from international cooperation in climate change. If these are not delivered in Cancun, the smoke signals to the world will not be good at all.

*Note: * Martin Khor is the Executive Director of the South Centre.*

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Cancun News Update **2**

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A New Chair's Text as Cancun Meetings Begin

Cancun, 29 November (Meena Raman) – The annual set of UNFCCC meetings begins in Cancun today, with hopes that this year there will be a better negotiating atmosphere, especially at the end, than last year's Copenhagen conference.

Problems relating to process and procedures were mainly responsible for the bad ending in Copenhagen, so the participants in Cancun hope there will not be similar problems here. Process and substance are not separate issues, of course. A different process can give advantage to or even determine a particular choice of substance.

The UNFCCC meetings in Cancun include the 16th session of the Conference of Parties (COP 16), the 6th session of the Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP 6), and meetings of subsidiary bodies – the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA), the Ad-hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol (AWG-KP), the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA).

It is learnt that the Mexican hosts have invited some Heads of States for the high-level segment of the Cancun talks on 9 December. The list of invitees and the response to the invitations are not publicly known. In addition, several political leaders, especially from the neighboring countries, have made their own decision to come to Cancun.

There is corridor talk on whether “new texts” will emerge “from above”, if there is a perceived need to break an impasse in the negotiations, so as to produce a success in Cancun. However, the Mexican hosts have pledged there will be a transparent process and there will be no surprises. Many delegates believe that the best chance for success is to allow the negotiators to do their work. In the AWG-LCA, this would be on the basis of the Party-driven text of 13 August, complemented by

the revisions of text arising from the Tianjin meeting of the AWG-LCA.

A surprise complication has emerged in the form of a new text produced by the Chair of the AWG-LCA, Ms. Margaret Mukahanana-Sangarwe of Zimbabwe, on 24 November called “Note by the Chair on possible elements of the outcome”. This is surprising as there was no mandate given to the Chair to produce a new text. Earlier this year, the Chair had also produced a “facilitating text”, and it evoked significant controversy, and eventually a process was agreed on to produce a member-driven text (the 13 August text).

The new Chair's text is in the form of a draft decision to be adopted by the COP and is issued as a CRP document or a Conference Room Paper. According to some senior delegates, a document is only issued as a CRP paper when it is drafted by Parties, and this is not the case as regards the Chair's note.

At the end of the last AWG-LCA meeting in Tianjin in October, it was the understanding that the basis of continued negotiations would be the 13 August text, supplemented by the revisions to it as a result of the work in Tianjin. Parties had not given any mandate to the Chair to produce a fresh text.

In her scenario note for the meeting on 12 November, Mukahanana had indicated the possibility for the Chair to present “elements of the outcome in a more elaborate form” to help Parties “in resolving outstanding difficult issues and to offer ways forward”. This seemed like the Chair was preparing the ground to seek a mandate in Cancun to draft a new text. But in a surprise move, the Chair issued a text through placing it on the Internet on 24 November without waiting for the Parties to give her the mandate.

The note by the Chair states that “this document contains the results of an effort by the Chair, under her own responsibility, to elaborate possible elements

of the outcome to help the negotiations move forward and to contribute to the resolution of outstanding issues.” The note expresses the hope that it will “facilitate convergence on an outcome to be presented to the Conference of the Parties”.

It is debatable if the note will assist in achieving its aim. Firstly, there are already texts that the Parties have compiled, and negotiations based on the options in these texts are more likely to lead to a durable outcome, rather than another attempt by a Chairperson’s new draft.

Secondly, a careful reading of the paper shows that it is imbalanced, as it rejects or weakens the position of developing countries in many important areas, without even placing their positions or proposals as options or within square brackets.

Areas in Chair’s paper which excluded or diluted developing countries’ positions

The Chair’s paper is presented in 33 pages with text on the various elements (except that relating to the mitigation of developed and developing countries under paragraphs 1(b)(i) and (ii) of the Bali Action Plan).

Some of the ideas and language in the draft are derived from the Party-driven text of 13 August and further work done in Tianjin. It does try to capture some of the areas of convergence, such as in several parts of the technology mechanism and its functions.

However in some other key areas, the Chair’s draft has weakened or disregarded the proposals of developing countries, for example in shared vision, adaptation, finance, capacity building, climate and trade measures and intellectual property rights as related to technology transfer, and the use of market mechanisms in mitigation. This is elaborated on below.

Shared vision: Under the shared vision on the long-term global goal, keeping temperature rise to below 2 degrees C is the only option proposed, with the option of the 1.5 degrees being removed.

The developing countries have proposed that the determination of the long-term global goal must be preceded by a “paradigm for equitable access to global atmospheric space” and allocation of the remaining carbon budget according to criteria to be determined, which are in the 13 August text.

However the Chair’s draft only refers to “the taking account of historical responsibilities and equitable access to global atmospheric space”, thus weakening considerably the proposals by developing countries.

Adaptation: The 13 August text contained a proposal by developing countries “to establish an international mechanism to address loss and damage associated with climate change”. The other option was the proposal by developed countries on “the need to strengthen international cooperation and expertise to address loss and damage ...”, which in the Tianjin climate talks was modified to reflect “the need to strengthen international cooperation and expertise to understand and reduce loss and damage associated with the adverse effects of climate change...”.

The Chair’s text rejected the developing countries’ text on an international mechanism to address loss and damage and instead chose the developed countries’ weaker proposal for “the need to strengthen international cooperation and expertise to understand and reduce loss and damage...”.

The Chair’s draft “requests the AWG-LCA to consider arrangements to address loss and damage and to make recommendations on this matter” to the COP next year, thus depriving Cancun of making a decision on this matter.

Finance: On the quantum of finance required by developing countries, the Chair’s note refers to launching a process “to mobilize sources of long-term finance to arrive at a level of USD 100 billion per annum by 2020”. This is far below the G77 and China proposal, reflected in the 13 August text, that there be assessed contributions of at least 1.5% of the GDP of developed countries, while Bolivia had proposed at least 6% of the GDP of developed countries. These proposals have been excluded from the Chair’s paper.

Capacity building: The developing countries’ proposal to establish a technical panel on capacity building was reflected in the 13 August text. But the Chair’s paper does not refer to this. Instead it requests the AWG-LCA “to further consider possible arrangements for enhancing the delivery of capacity-building support ...with a view to developing recommendations for consideration by the COP” at its session next year.

Market mechanisms: Within the mitigation issue, there is a sub-issue on the use of various approaches including markets. Two options were included in the text from Tianjin. One was for a market-based approach, which was mainly advanced by developed countries; the other was for postponing a decision on this until matters under the AWG-KP are resolved. This second option was proposed by developing countries, which did not want the establishment of market mechanisms inside the AWG-LCA (at least at this stage) as this would

facilitate the transfer of the market mechanisms, which now exist only in the Kyoto Protocol, to the AWG-LCA, thus facilitating the demise of the KP.

The Chair's text has rejected the important second option and instead only provides for a decision to establish new market-based mechanisms in the Convention. The Chair also includes a decision for non-market-based mechanisms to be established. But the draft does not include the 13 August option of not considering non-market-based mechanisms. Thus an option that is more favourable to developed countries has been chosen.

Climate and trade measures: Under the issue of the economic and social consequences of response measures, there were proposals in the 13 August negotiating text by a large number of developing countries for strong language forbidding the use of unilateral trade measures such as border tax measures taken against imports on the grounds of climate change. However the Chair's text has disregarded these proposals and instead chosen text on this issue that merely reiterates language of the existing Article 3.5 of the Convention.

Intellectual property rights: On the issue of technology transfer, there were various proposals by developing countries to address the issue of intellectual property rights. These proposals were included as options in the 13 August text. They include proposals that IP agreements shall not be interpreted in a manner that prevents climate action measures; that specific measures be taken to remove barriers to technology transfer arising from IP; that Parties can exclude IP on climate-related technologies and that developing countries can fully use TRIPS flexibilities.

Some developed countries, especially the United States and Japan, had proposed having no reference at all to IPRs in the text, and this option is also in the 13 August text.

The Chair's text disregards the proposals by developing countries and merely proposes the continuation of "... dialogue among Parties in 2011 on ways to enhance technology innovation and access to technologies for mitigation and adaptation".

Resolving the mitigation impasse or compounding the problem?

A glaring omission in the Chair's paper is the absence of any text on the key issues of mitigation actions of developed countries (para 1b(i) of the Bali Action Plan) and of developing countries (para 1b(ii) of the BAP).

On reason for this is that in Tianjin there had not been progress in texts on these two issues. In her note the Chair states that "the elements of such a package would need to be advanced to a comparable level of detail. The elements elaborated in this document will not alone provide the desired balance. Such a balance can be achieved by elaborating the remaining elements in the course of the thirteenth session. The Chair is prepared to offer possible ways of taking forward the sections on mitigation and measurement, reporting and verification during the session."

Given the highly contentious issues in mitigation, it is important to know the approach to be taken by the Chair. The Note does not spell out this approach, but an indication of this is in the speech on "elements for a balanced outcome" given by the Chair in the pre-COP meeting in Mexico on 4-5 November, to which selected countries were invited.

The Chair said that there is a "need to address BIG questions, otherwise nothing will move forward. However, agreement in these areas will not be reached without movement on the difficult issues, which are at the core of a package in Cancun, namely mitigation, including measurement, reporting and verification or MRV and finance, including governance and long-term financing.

"It is my assessment that in order for Cancun to deliver an outcome, we need to address the apparent deadlock over mitigation commitments by developed country Parties under the Convention and the Kyoto Protocol. There are two central challenges in the area of mitigation. First, the relationship between the AWG-KP and AWG-LCA when it comes to mitigation by developed country Parties and second, the balance between mitigation commitments by developed country Parties and mitigation actions by developing country Parties.

"I understand the difficulties surrounding commitments under the Kyoto Protocol. Parties need to come to an understanding of how to make incremental progress on that question in Cancun in order for progress on developed country mitigation in the context of the AWG-LCA. Agreement on a step forward on developed country mitigation in the context of the LCA is also dependent on progress on actions by developing country Parties. In turn, progress on developing country mitigation depends strongly on progress on mitigation by developed country Parties as well as on long-term finance. This creates a series of interconnected chicken-and-egg situations, which calls for compromise and political leadership to seek a middle ground."

This conclusion by the Chair is highly problematic as the developed country mitigation commitments should not be predicated on the mitigation actions of developing countries.

Firstly, the obligation under the Kyoto Protocol by Annex 1 Parties is an independent legal obligation and should not therefore be tied to what developing countries do (as this also in turn depends on what finances and technology are made available to them, in line with Article 4.7 of the UNFCCC).

Secondly, there is nothing in paragraph 1(b)(i) of the Bali Action Plan which conditions the mitigation actions of the United States (which is not a Party to the Kyoto Protocol) on the actions of developing countries. What paragraph 1(b)(i) of the Bali Action Plan requires is the comparability of efforts among developed countries as regards their mitigation commitments or actions.

The tying of the mitigation commitments of developed countries to the actions of developing countries is a political strategy by the developed countries. It should not be accepted as a legal interpretation or as a principle of the negotiations. Its apparent acceptance by the Chair of the AWG-LCA is thus troubling.

The developing countries have strongly and justifiably insisted that unlocking the current impasse in the negotiations can be possible if developed countries who are Parties to the Kyoto Protocol commit to take the deep emission cuts needed for the second commitment period of the Kyoto Protocol. A commitment to make a comparable mitigation effort by the US under the Convention, since it is not a KP member, is also expected.

The Chair in her speech further states that “this circle can be broken by working simultaneously on incremental progress on Annex I mitigation under the Convention and under the Protocol. This can be done by adopting a decision capturing the information on mitigation targets and actions currently on the table and providing direction to further work in both AWGs post-Cancun.”

What this apparently seeks to do is to adopt and legitimise the Copenhagen Accord approach in which developed countries have pledged their mitigation targets in a pledge and review system. This is problematic for a number of reasons.

The voluntary pledge system of the Copenhagen Accord is contrary to the top-down obligatory approach as agreed to under the AWG-KP in which there would be an aggregate target accompanied by individual country commitments, both of which have to be adequate and consistent with what science requires. If the voluntary pledge

system is accepted in the Convention process, it would undermine the negotiations under way in the AWG-KP, and eventually alter and restructure the existing climate change architecture.

This approach also seems to indicate that the negotiations on a second commitment period of the Kyoto Protocol can be dealt with post-Cancun in an incremental way with the mitigation targets for the Protocol being established in Cancun through the voluntary pledge approach via a bottom-up process. This is contrary to the principle-based top-down approach for determining the cuts needed by the Annex 1 Parties.

Such an approach holds the danger that the weak targets and low ambition levels of most of the Annex 1 Parties would become the new commitments in the Kyoto Protocol. Analysis by the UNFCCC Secretariat shows that the Copenhagen Accord pledges of the Annex 1 Parties (not including the US) will amount to only 17-25% below 1990 levels by 2020, without taking into account the loopholes.

If the US pledge is taken into account, the emission target of developed countries would only amount to 12-18% below 1990 levels by 2020. Taking into account loopholes, there would hardly be any reduction. The voluntary-based approach of bottom-up pledges by developed countries will lead to a temperature rise of 3 degrees Celsius or more, a disastrous outcome.

If the Chair’s suggestion is also to apply to the developing countries, this would then oblige developing countries to reflect their mitigation pledges in an appendix in the style of the Copenhagen Accord, in a format placed under the Convention. This opens the door to setting targets for developing countries, which could be as binding or non-binding as the pledges of developed countries. Developing countries would be placed in a status quite similar to that of developed countries, and blurring the lines would be counter to the common but differentiated responsibilities principle.

In addition, many of the pledges made by developing countries since Copenhagen are conditional and not comparable to one another as there is no standard methodology to express their voluntary mitigation actions.

This information is already available on the UNFCCC website and can be contained in the national communications of developing countries without further need to inscribe this in a separate appendix that begins the slippery slope of establishing semi-binding targets for developing countries.

International consultations and analysis (ICA)

The Chair in her speech further states that in her assessment, “agreement is possible on enhancing reporting, on guidance to develop rules for reporting, including detailed reporting on the provision of support, on accounting and review, and on the purpose and scope of international consultations for developed country Parties, bearing in mind that ICA is part and parcel of MRV.

“Similarly, for developing country Parties, agreement is possible on enhanced reporting, including predictability of support for reporting efforts, on guiding principle for domestic verification, and on the purpose and scope of MRV including international consultations and analysis for developing country Parties. Agreement in these areas would enable Cancun to launch a process to develop specific guidelines and modalities.”

The Chair’s conclusion that the ICA is part and parcel of MRV is a major presumption that has not been agreed to by the AWG-LCA. Legally, this is not correct as paragraph 1(b)(ii) of the Bali Action Plan introduced the concept of MRV but not ICA. The latter is a concept arising from the Copenhagen Accord and is meant to apply to mitigation actions, which are not internationally supported.

But the Bali Action Plan only mandated that an international MRV procedure be applied to internationally supported mitigation actions of developing countries. The ICA is a Bali-Plus obligation that many developing countries do not subscribe to. It is problematic for the Chair to assume that the ICA is part of the MRV system and that this is something agreed to by all. Instead, this attempt to transfer a key aspect of the Copenhagen Accord into the Convention through the AWG-LCA may cause serious problems.

Will the new fund be agreed to, or be held hostage to agreement on mitigation?

In her scenario note for the organization of work for the AWG-LCA, the Chair was of the view that “the appropriate way for the AWG-LCA to present its outcome to the COP 16 would be through one draft decision that encompasses the full scope of the outcome of the work of the AWG-LCA.”

The way the Chair’s 24 November text is presented, it seems that there needs to be consensus on all the elements of the Bali Action Plan and in a single decision.

The most contentious of all the elements has been the mitigation issue, relating to paragraphs 1(b)(i) and (ii) of the Bali Action Plan on the mitigation commitments of developed countries and actions of developing countries respectively.

A fundamental concern is whether advances in other elements will be held hostage to decisions on mitigation in Cancun. In Tianjin, developing countries had already expressed concern that the decision to set up a new climate fund would be held up by the United States which wanted its demands on mitigation (including the MRV and ICA of developing country actions) to be accepted in return.

The United States has clearly indicated that for it no agreement is possible without agreement on the entire package of elements as contained in the Copenhagen Accord (which was not adopted in Copenhagen but only taken note of). This presents a major obstacle in achieving good outcomes in Cancun, such as the establishment of a new climate fund and of the technology mechanism. Such outcomes could be in the form of separate decisions or as annexes in an overall decision.

Cancun Meetings Begin with Call for “Balanced Outcome”

Cancun, 29 November (Hilary Chiew) – The Cancun climate-related meetings were launched at a welcome ceremony by the Mexican President Felipe Calderon, and with opening plenaries of the various bodies of the UN Framework Convention on Climate Change (UNFCCC).

Indicating its priorities, the G77 and China called for a balanced outcome between the two negotiating tracks (in the working groups on the Kyoto Protocol and on Long-term Cooperative Action under the Convention) and stressed the need to establish a new climate fund under the Convention and an oversight mechanism for climate financing overall, as well as new institutional arrangements for adaptation and technology transfer.

The main meetings in Cancun are the 16th Conference of the Parties of the UNFCCC (COP 16) and the 6th session of the Conference of Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP 6). The working groups (on the Kyoto Protocol and long-term cooperative action under the Convention) and subsidiary bodies (on scientific and technological advice, and on implementation) will also be meeting.

At the welcoming ceremony, Mexican President Felipe Calderon said climate change is beginning to make us pay for the fatal error that humanity has committed against the earth and billions of human beings are expecting the Parties meeting in Cancun to speak for all humanity and for the people who are suffering the ravages of climate change.

Evoking the characteristics of Mayan goddess Ixchel – reason, creativity and weaving – UNFCCC executive secretary Christiana Figueres urged Parties to weave together the elements of a solid response to climate change using both reason and creativity.

She said the tapestry is urgent as concentration of greenhouse gases in the atmosphere had reached its highest level since pre-industrial times; because

the poorest and most vulnerable need predictable assistance to face a serious problem and the multilateral climate change process needs to remain the trusted channel for rising to the challenge.

The task, she added, isn't easy but is achievable as demonstrated in past achievements in the form of the Convention and the Kyoto Protocol.

However, Figueres acknowledged that there are a number of politically charged issues that have not yet benefited from a willingness to compromise, notably the need to avoid a gap after the first commitment period (for greenhouse gas emissions reduction) of the Kyoto Protocol, the mobilisation of long-term finance and the understanding of fairness that will guide long-term mitigation efforts.

The President of COP 16, Patricia Espinosa, who is also the Foreign Minister of Mexico, warned that the credibility of the multilateral system is at stake. At this juncture, she said, Parties have to make concrete commitments and she urged for flexibility. Achieving this commitment doesn't mean we give up our goal; it will be a demonstration that dialogue and cooperation are the best ways to face major challenges, she added.

She said as the host, Mexico will conduct the process in a transparent manner as it has done until now to foster cooperation and encourage confidence.

Chair of the Intergovernmental Panel on Climate Change (IPCC) Dr Rajendra Pachauri warned that delaying mitigation actions will only increase costs globally and unfairly to some regions in the world where the communities had hardly contributed to greenhouse gas emissions increase in the past.

He said even limiting temperature rise to 2°Celsius would still mean that some impacts would not be avoided and reiterated that the IPCC's 4th Assessment Report clearly estimated that global emissions should peak no later than 2015 and decline thereafter.

On the 5th Assessment Report, Pauchari said 3,000 nominations were submitted for the AR5 and 831 selected as lead authors and review editors and the scope of research has been expanded to include focus subjects like potential impacts of geoengineering. The next four years would be marked by intense actions of the IPCC and the first report would be ready by September 2013 while the synthesis report would be completed by November 2014.

At the COP opening session a debate took place on decision-making procedures (regarding consensus and voting). During the adoption of the rules of procedure, **Papua New Guinea (PNG)** raised its concern over the maintenance of the position of Parties in setting aside draft rule 42 (which relates to decision-making procedures that have not been agreed to yet after all these years) as contained in document FCCC/CP/1996/2.

PNG said it made a proposal regarding the draft rules of procedure at COP 15 in Copenhagen. However, while Parties acknowledged that the adoption of the rules of procedure was important, delegations maintained that the draft rules should continue to be applied with the exception of draft rule 42.

It said that there are several decisions to move forward in Cancun, and the exclusion of draft rule 42 is akin to some Parties holding the process hostage. Unfortunately, it said, as climate change is such a challenge we cannot move forward at the pace of the sloth. Citing the rejection of the Copenhagen Accord on the last day of COP 15 in the Danish capital last year, it said the situation could have been averted with rule 42.

When all else fails and when consensus is not possible, rule 42 could help in moving important decisions forward, it said.

Rule 42 states: *The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting ...*

In response, **Bolivia** said it was obliged to take the floor to clarify that what happened at Copenhagen was due to the fact that the rule of multilateralism was not followed. It said a group of countries tried to impose their views on others and tried to twist our arms at 3 am on 18 December (2009) with a document (the Copenhagen Accord). Hence, it said, after Copenhagen, it is more essential that the rule of consensus is preserved.

India said consensus is the paramount principle that we have always operated and held together. It said in Nagoya (COP 10 of the Convention on Biological Diversity in October 2010 and the Meeting of Parties of the Cartagena Protocol on Biosafety), it was the basis of consensus that led to the protocols (on access and benefit sharing, and on liability and redress for damage caused by genetically modified organisms).

Supporting Bolivia and India, **Saudi Arabia** reminded that consensus didn't prevent Parties from adopting the UNFCCC and the Kyoto Protocol in the past.

PNG said the point it raised is to deal with the concept of last resort and conceded to letting the President of the COP undertake consultations on this matter.

The COP President urged Asian delegations to continue discussion to decide the host for COP 18. Initially, Qatar made an offer but South Korea has also made a similar offer at the Tianjin climate meeting in October. Meanwhile, South Africa confirmed its hosting of COP 17 in Durban from 28 November to 9 December next year.

Representing the Group of 77 and China, Yemen said it is time to secure an outcome that fulfils the mandate that Parties agreed upon in Bali (COP 13).

It stressed that balance between the two negotiation tracks – the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) and the Ad Hoc Working Group on Long term Cooperative Action under the Convention (AWG-LCA) – must be respected and that balance in the degree of details of decisions within each track must be maintained.

It added that whatever outcome we might reach in Cancun must not compromise or prejudice the overall objective of reaching a comprehensive, fair, ambitious and legally binding outcome in the future.

It said one of the key components of the Cancun outcome is finance, reiterating its proposal for the New Fund and for Governance and Oversight of Climate Finance, and the provision by developed countries through a percentage of their GNP to address climate change in developing countries.

A decision to establish a new climate change fund must address the four components – structure, scope, scale and sources.

It said the group also supports the establishment of a Standing Committee to be supervised, at present, by the AWG-LCA and ultimately by the Subsidiary Body on Implementation.

The steering committee would provide guidance to the operating entities of the Financial Mechanism, make recommendation to other organisations dealing with climate change finance to ensure coherence in delivering of climate finance, assure the accountability of the operating entity, assess the adequacy of climate finance for the developing countries, manage registry for measuring, reporting and verifying the fulfilment of contributions by developed countries and flow of total financial resources, and review the contributions by the developed countries.

The Group, it said, would like to reiterate its desire to immediately engage on the two issues, the establishment of the new Fund under the Convention and a mechanism for continued governance of this fund, with a view to their finalisation at the earliest.

It also stressed the importance of establishing the adequate institutional arrangements for adaptation and technology transfer.

It underlined the fact that developing countries continue to suffer from the adverse impacts of climate change while there is a lack of inflow of capital to the Special Climate Change Fund and the Least Developed Countries Fund, bearing in mind that these funds are under-funded to start with. It called for more contributions particularly for the latter and to treat adaptation in an equal manner as the case for mitigation.

It also expressed its concerns on the trends visualised in the report on national greenhouse gas inventory data from Annex I Parties (developed countries) for the period 1990 to 2007 where it showed an increase of 11% of emissions excluding Land-use, Land-use Change and Forestry (LULUCF) and by 12.8% including LULUCF, a tendency that goes against their commitments. Therefore, further actions are needed in order to assure the fulfilments of existing commitments of developed country Parties and their compliance.

Speaking on behalf of the Alliance of Small Island States (AOSIS), Grenada said evidence of climate change is all around with the World Meteorological Organisation (WMO) describing 2010 as a year with an unprecedented sequence of extreme weather events. The evidence is clear that climate change is happening at an unprecedented rate and if left unchecked could bring damage to many people.

Referring to the hurricane that destroyed 60% of the GDP of St Lucia and the cyclone that hit the Cook Islands and damaging 80% of houses, it said Parties could and must do better and work with a heightened sense of urgency. Business as usual must

end; we the small island states must be able to survive, it added.

We need actions now that radically limit growth of GHG and peaking of emissions by 2015. We need actions to bring global emission down to a level that will ensure survival of our countries and our culture, it stressed.

To do this, it said two critical outcomes are necessary in Cancun – a legally-binding instrument as the main outcome of the AWG-LCA and a work programme to conclude in South Africa (in 2011) a new protocol.

The Democratic Republic of Congo speaking on behalf of the African Group said Parties must continue working towards achieving concrete results to achieve a legally-binding agreement in South Africa next year.

It said agreement of a comprehensive framework is a priority outcome in Cancun and it would need developed countries to agree to new obligations and predictable funding that is additional to Official Development Aid (ODA), and committed to ensure that COP 16 will produce concrete results in key areas that advance the global climate change agenda.

On the conclusion of the first commitment period of the Kyoto Protocol, Parties must ensure that a second commitment period enters into force, it said.

Venezuela, speaking on behalf of the ALBA (Bolivarian Alliance for the Peoples of Our America), stressed the importance of the Kyoto Protocol and said the UN cannot allow it to disappear due to boycott by one country (referring to the United States).

It said ALBA and other G77 and China countries stand united to achieve consolidation of the second commitment period as this should be the concrete outcome of Cancun so that there is no legal vacuum between the first and second commitment periods of the Protocol.

Lesotho representing the Least Developed Countries (LDC) said it is not in favour of those who want to see Cancun as the demise of the UNFCCC process as this is cannot be accepted. It said Cancun should provide fresh impetus as climate change will not disappear by itself and the UNFCCC should remain the central platform to address the problem. Continuation and completion of the Bali Roadmap is critical to the Convention.

It said LDCs attached high expectation to the adaptation plan and called for establishment of a new global climate fund and an ad hoc finance committee to operationalise the fund. The issue of IPRs

(intellectual property rights), which are a barrier to technology transfer, should be dealt with.

Speaking for the Umbrella Group, Australia said the group is committed to legally-binding mitigation commitments by all major economies which include many countries around this room that represented 80% of global emissions as reflected in the pledges in the Copenhagen Accord and that Parties should now anchor these pledges as the basis for future work.

Recognising the importance of finance for developing countries, it said collectively the contributions for fast-start are already close to the US\$30 billion (pledged in the Accord) and a number of the group's members had published details of the financing through the range of bilateral and multilateral channels including REDD-plus (Reducing Emissions from Deforestation and Forest Degradation) activities.

Belgium representing the European Union said making progress for a post-2012 regime is urgent as science tells us that the window is closing as indicated by the recent World Meteorological

Organisation findings which show continuing increase in greenhouse gas concentration in the atmosphere even with the economic recession in 2009.

It is expecting a balanced package in both negotiation tracks and the meeting in Cancun must put in place institution and architectural arrangements on the ground. Parties must capture progress and make incremental steps needed for all issues including MRV (measuring, reporting and verification), finance, adaptation, REDD-plus and capacity-building.

It said the negotiation documents and elements suggested by the Chair (of the AWG-LCA) should enable Parties to start immediately to construct the balanced package and to limit the number of key issues for political decisions (in the second week when ministers arrive).

It said multilateralism within the UN framework remains in the core of finding solutions and the EU is optimistic and believes that Cancun can deliver a substantial outcome. The EU role is to make a legally-binding outcome in line with the 2°C objective.

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AWG-LCA Opening: Parties Voice Expectations for Cancun

Cancun, 30 November (Meena Raman) – At the opening session of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) under the United Nations Framework Convention on Climate Change on 29 November, developing and developed countries expressed varying views on the outcome from Cancun, Mexico.

The G77 and China stressed that Parties could not leave Cancun empty handed and that failure, as that which happened in Copenhagen last December, was not an option. Many developing countries stressed that for a successful outcome in Cancun in the AWG-LCA, there was a need for developed countries to commit to greenhouse gas emission reduction targets for the second commitment period under the Kyoto Protocol. They also strongly called for a decision in Cancun to establish the new climate fund under the UNFCCC.

On the note by the Chair of the AWG-LCA on 'Possible elements for the outcome', some developing countries as well as developed country Parties expressed the view that there was a lack of balance in the elements presented. The Chair clarified that it was not a negotiating text and that Parties could make use of it as they wish.

Ms. Margaret Mukahanana-Sangarwe of Zimbabwe, the AWG-LCA Chair, had on 24 November prepared a new document called 'Note by the Chair on possible elements of the outcome'. The new Chair's text was in the form of a draft decision to be adopted by the Conference of Parties and was issued as a CRP document or a Conference Room Paper.

Mukahanana, in the opening of the 13th session of the AWG-LCA, said that her note on the possible elements of the outcome was not a negotiating text and was not a formal document. She said that Parties could use the document as appropriate, as it was an effort to facilitate solutions. The Chair said that the negotiating text was the text produced on 13 August.

She said that there was a large spectrum of issues to be dealt with, and for an agreed outcome there was a need for compromise. She informed Parties that the Mexican Presidency would also be holding consultations.

Yemen, speaking for the **G77 and China**, said that Parties cannot afford to leave Cancun empty handed. It stressed that balance between the two negotiating tracks (of the AWG-LCA and the Ad-hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol) must be respected and that balance in the degree of details of decisions within each track must be maintained.

It believed that whatever outcome Parties reach in Cancun must not compromise or prejudge the overall objective of reaching a comprehensive, fair, ambitious and legally binding outcome in the future.

The Group also stressed that in order to succeed, the work process must be open, Party-driven and transparent and that the centrality of the multilateral process under the UNFCCC in addressing climate change must be respected and maintained.

Lesotho speaking for the **Least Developed Countries (LDCs)** said that there was a need to identify areas where possible decisions could be reached in Cancun and areas for continued negotiations next year. It stressed the importance of the issue of adaptation for the LDCs.

It insisted on the establishment of an Adaptation Framework and provision of financial and technical support for LDCs to formulate and implement national adaptation plans.

Lesotho also called for an international mechanism to be established to address loss or damage associated with climate change impacts.

It wanted financing to be scaled up and to be new and additional and called for the establishment of the new Climate Fund that ensures direct access of funds.

It also called for the establishment of a technical panel to ensure capacity building, which is a stand-alone element. It called for Cancun to be a success, stressing that the process should be inclusive and transparent.

Grenada, speaking for the **Alliance of Small Island States**, said that recent scientific literature such as the UNEP 'Emissions Gap' report showed the inadequacy of the current pledges of Parties for emission reductions and pointed to the need for urgent collective action. Any package of decisions must be ambitious and balanced and must not comprise a legally binding agreement in South Africa.

Referring to the Chair's note on possible elements of the outcome in Cancun, Grenada considered the document as an input. It said that the document failed to reflect many views that were key for AOSIS as it did not address the special needs of SIDs and LDCs.

Grenada identified priorities for a balanced outcome. On mitigation, referring to the pledges of developed and developing countries, it said there was a need to strengthen these proposals in the light of the long-term global temperature goal. Any recognition of the pledges should not undermine the Kyoto Protocol track.

It also called for enhancing the process of international consultations and analysis, which should be part of the mitigation package of Cancun.

On adaptation, an empty framework was not acceptable and Grenada expressed concern that Parties were opposing the call for establishing a mechanism to address loss and damage.

On finance, it said that the creation of the new Fund was an important deliverable in Cancun, while Parties strive to agree on the composition and design aspects of the Fund. It also wanted transparency in the delivery of fast-start financing.

The Democratic Republic of Congo, speaking for the **African Group**, said that decisions in Cancun should not compromise on a legally binding outcome. It said that there was a need for a fair outcome under the AWG-LCA and for developed countries to commit to a second commitment period under the Kyoto Protocol with deep emission cuts consistent with the science.

It said there was a need for a set of decisions that can capture the emerging consensus on the need for new and improved institutional arrangements, particularly for adaptation and the means of implementation, such as finance, technology transfer and capacity building.

For Africa, finance was a cornerstone for achieving a balanced deal that ensures the

enhancement of the climate change regime and supports developing countries' efforts to adapt and to take voluntary actions to reduce their emissions as part of the global effort to deal with the issue of climate change. It also wanted to see a decision on reducing emissions from deforestation and degradation (REDD-plus).

The African Group thanked the Chair for her efforts in preparing her note on the possible elements for an outcome. However, it said that several key elements contained in the 13 August negotiating text from the Bonn meeting have been lost in the Chair's text, particularly in relation to shared vision, mitigation, finance, and capacity building. DRC said that the African Group had considered the Chair's text and concluded that it will continue to engage with the text and sought an opportunity to close the gap between the work done in Bonn and the text presented by the Chair.

Belgium, representing the **European Union**, welcomed the Chair's initiative on presenting the possible elements of the outcome but expressed strong concern that the Chair's text missed the right balance. It said that mitigation commitments for developed countries and mitigation actions by developing countries and their respective MRV (measuring, reporting and verification) are key elements for the EU. It said that the Chair's note merely contained placeholders for these important topics. While the Chair's note could guide negotiations, it has to be clearly understood that this is under the assumption that any balanced package will need to include a satisfactory and substantial outcome for mitigation and MRV.

It said that Parties needed to anchor all their proposals (referring to the mitigation pledges) in the UNFCCC process, and initiate discussions to clarify them, to mobilize support and to initiate a process for strengthening the collective level of ambition, which is insufficient in the light of the 2 degree C goal. This, it said, was without prejudice to the discussions on further commitments under the Kyoto track. Nor would it mean that it would accept a pledge-and-review approach for Annex 1 Parties, said the EU.

It also wanted a framework for enhanced MRV, establishment of new market mechanisms and progress on REDD-plus.

Australia speaking for the **Umbrella Group** said that there was a need for a substantive and progressive outcome in Cancun. It said that the pledges under the Copenhagen Accord (an agreement which was not adopted by COP 15 but only taken note of) prepare for a legally binding agreement for all major emitters, including the scope and frequency

of reporting. It wanted parameters for 'international consultations and analysis' (ICA) and a workplan with detailed operational guidelines to be worked out in South Africa.

It also said that decisions were needed on a Green Fund, a framework for adaptation, details of the technology executive committee and a technology centre and network and REDD-plus mechanism. It also welcomed the report of the UN Secretary-General's Advisory Group on Finance.

As regards the Chair's note on the possible elements for the outcome, Australia said that it could help discussions but mitigation and MRV needed to be further elaborated. It looked forward to a new iteration of the Chair's text based on inputs.

Egypt speaking on behalf of 22 **Arab states** said that the Kyoto Protocol was the main legal framework for emission reductions of developed countries and developed country Parties who are Parties to the Kyoto Protocol must reflect their commitments under the Kyoto Protocol and the non-Kyoto Protocol Parties (referring to the US) must reflect a comparable commitment under the Convention.

Referring to the Chair's note on the possible elements of the outcome, it said that many proposals were not reflected and this note was done without the request by Parties. It stressed that negotiations must be based on the 13 August text along with the work advanced in Tianjin, China.

Venezuela speaking for the **ALBA (Bolivarian Alliance for the Peoples of Our America)** group said that Parties cannot allow the disappearance of the Kyoto Protocol because of a lack of political will among a small number of countries. Progress in the AWG-LCA should not be made in such a way as to contribute to destroying the Protocol. It expressed concern that some countries were coming to Cancun with minimum ambition. It said that the multilateral system can and must deliver results and it did not want "surprise documents" that can sabotage work, and for decisions in Cancun to be held hostage.

Belize, speaking for the **Central American Integration System (SICA)**, said that it was open

to creative solutions to break the impasse on the mitigation element but this should not undermine either track (of the AWG-KP and the AWG-LCA) and allow for low ambition.

Micronesia speaking for the **Pacific Islands** said that Annex 1 Parties must raise their level of ambition in terms of emission reductions and said that there was a wide gap between the emission pledges and what was needed as according to the UNEP report on 'Emissions Gap'. It said that with the current pledges, the world will head for a 3 degree C temperature level. It said that last year in Copenhagen, despite the presence of many world leaders, Parties fell short of reaching their goals. It said that their Heads of States were coming to Cancun.

Saudi Arabia said that for a success in Cancun, Parties should not deviate from the Convention's principles and the Bali Action Plan. It said that there were moves to renegotiate the Convention and its principles such as the references to the creation of different annexes among developing countries.

In relation to the idea of international consultations and analysis, there was nothing in the Bali Action Plan for such an idea for unsupported actions.

On finance, the obligation was for developed countries in Annex 2 to meet their commitments and not for developing countries to also contribute. There should be equal treatment given as regards the impact of response measures, including reference to the trade issue where developed countries should not take discriminatory measures.

Further, it stressed that if developed countries do not commit to a second commitment period under the Kyoto Protocol, there cannot be an outcome from Cancun.

The AWG-LCA session was then adjourned and resumed as the meeting of the contact group where four drafting groups were launched to carry on work focusing on shared vision, mitigation, adaptation and finance, technology and capacity-building. The main work of the AWG-LCA in the next several days is expected to be carried out in the drafting groups.

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We'll Never Accept 2nd Kyoto Period, Says Japan, Sparking Doubts on KP's Survival

Cancun, 30 November (Lim Li Lin) – At the opening of the Kyoto Protocol Working Group, Japan shocked participants of the Cancun climate talks by stressing that it would never accept a second commitment period of the Kyoto Protocol and that it would never agree to place its emission reduction target under the Kyoto Protocol.

Some delegates and observers felt this was a significant moment equivalent to the sounding of the death knell of the Protocol named after a city in Japan in which the Protocol's negotiations had been concluded.

The working group has been negotiating the further commitments of the Annex I members of the KP in a second commitment period which was scheduled to begin in 2013 after the present first period expires at the end of 2012. Developing countries consider progress in this group to be a litmus test of developed countries' mitigation commitment, and a condition for success in the Cancun talks.

The Ad hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) opened its fifteenth session on Monday, at the UN climate change conference which is being held in Cancun, Mexico from 29 November to 10 December. The Working Group's legal mandate is to determine the emission reduction commitments of Annex I (developed countries) Parties for a second commitment period after 2012, when the first commitment period expires.

Japan said that climate change is a global issue that needs global solutions. It acknowledged the historical role of the Kyoto Protocol, but said that the situation is changing rapidly, and that setting emission caps on a small part of global emissions can never be effective. The pledges under the Copenhagen Accord cover 85% of global emissions, and as such is the point of departure, it said.

It called for a new, single legally binding instrument with all major emitters based on the Copenhagen Accord. In Cancun, it said there should be a balanced package of COP [Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC)] decisions, respecting the balance in the Copenhagen Accord, and marking a milestone of progress in the AWG-LCA (Ad hoc Working Group on Long-term Cooperative Action under the Convention). It said that emission reduction numbers can only be addressed in the AWG-LCA (where negotiations for enhanced implementation of the UNFCCC are taking place).

(The controversial Copenhagen Accord was "taken note" of by the COP in 2009 after being rejected by a number of developing countries.)

Japan said that its 2020 target is under the Copenhagen Accord, and that it will not inscribe its target in the Kyoto Protocol under any circumstances, or under any condition. It said that it will never accept any CMP (Meeting of the Parties to the Kyoto Protocol) decision implying a second commitment period or provisional extension of the first commitment period as this would pre-judge the legal outcome.

It said that it supported the establishment of the "Copenhagen green fund", provided that there is progress in the discussions on MRV (measurement, reporting and verification) and mitigation by developing countries.

In stark contrast to Japan's statement, the developing countries unanimously called for the second commitment period for Annex I Parties' emission reductions under the Kyoto Protocol, insisting that this is a legally binding obligation, and had to be adopted in Cancun.

Among other developed countries, Norway expressed support for the second commitment period

of the Kyoto Protocol, and the European Union said that it was willing to consider having a second period.

The Chair of the AWG-KP, Ambassador John Ashe from Antigua and Barbuda, had issued a scenario note prior to the start of the session that indicated that he would make a proposal “on all aspects of the work of the AWG-KP in the form of a draft decision, aimed at substantially advancing the work of the group”. He also proposed to establish a single contact group covering all aspects of work of the AWG-KP.

Yemen, speaking for the G77 and China, said that it looks to the AWG-KP to fulfill its mandate, and adopt conclusions on the aggregate and individual emission reduction targets for Annex I Parties for the second commitment period of the Kyoto Protocol. It said that Annex I Parties must fulfill their legal obligations, and show the necessary will and leadership. The second commitment period must have truly ambitious quantified emission reduction commitments for developed countries.

It stressed the importance of the continuity of the Kyoto Protocol and the need to avoid a gap between the commitment periods, as any gap would have serious implications for markets, the climate system and Mother Earth. Yemen said that new quantified reductions is a cornerstone of the Cancun outcome, which the Group insists upon and will not compromise on. Failure to adopt a second commitment period would send a negative signal from Annex I Parties, and the AWG-KP must deliver results for adoption by the CMP at this session, it said.

The Democratic Republic of Congo, speaking for the Africa Group, said that agreement on the second commitment period of the Kyoto Protocol is absolutely essential to facilitating agreement in the AWG-LCA for non-Kyoto Parties which are comparable in terms of ambition, accounting and compliance rules. (The US is the only Annex I party of the Convention that is not a party to the KP).

It said that the Group’s expectations for Cancun are the adoption of the amendment to the Kyoto Protocol for the second commitment period, and the strengthening of emission reduction commitments in accordance with science. It stressed the importance of the two-track approach, and that reaching agreement on the second commitment period is essential to agreement in the AWG-LCA.

Grenada, speaking for the Alliance of Small Island States (AOSIS), said that we must agree on ambitious, transparent and comparable emission reductions for Annex I Parties through amending Annex B of the Kyoto Protocol. It supported the two-

track approach, and a legally binding ratifiable instrument under the AWG-LCA. It said that there should be no gap between the commitment periods, and that the outcome of the AWG-KP should be adopted here in Cancun to leave time for ratification of the amendment.

It said that any further delay would cast doubts on the sincerity of Annex I Parties, who have the moral responsibility to reduce their emissions. Cancun must adopt the amendment for the second commitment period from 2013-2017 with a single legally binding base year of 1990.

It stressed closing loopholes in LULUCF (Land-use, Land-use Change and Forestry) accounting, addressing surplus AAUs (Assigned Amount Units), including new gases and improving the mechanisms. It referred to the recently released report by the UN Environment Programme that showed that emission reduction pledges so far fall far short of a 2 degree C pathway, much less a 1.5 degree C pathway, but that it is feasible to bridge this gap through more ambitious domestic actions, and closing the loopholes related to LULUCF and surplus AAUs.

Lesotho, speaking for the least developed countries (LDCs), said that the entry into force of the Kyoto Protocol amendment for the second commitment period should be given the utmost attention so that there is no gap between the commitment periods. It said that Cancun should be the stepping-stone towards the legally binding agreement in 2011, and that Annex I Parties must meet their commitments under the Kyoto Protocol. It referred to a 2010 UNCTAD (UN Conference on Trade and Development) report on LDCs that said that for every degree of temperature increase, annual average growth in poor countries will drop by 2-3%. It stressed on improved access to clean development mechanism projects for LDCs.

Bolivia, speaking for the Bolivarian Alliance for the Peoples of Our America (ALBA), said that the cornerstone of Cancun is the adoption of the second commitment period with ambitious and domestic reductions for Annex I countries. It said that laws must be complied with, not negotiated. Article 3.9 of the Kyoto Protocol requires an amendment to Annex B for the second commitment period, and there is no doubt about the legal mandate. It said that it is unacceptable that Annex I countries continue to try to shirk their obligations, and have increased their emissions by 12.8% while seeking to impose new conditions and greater flexibility for themselves. There should be an aggregate target for domestic emission reductions.

It expressed concern with the Chair's scenario note which proposes dealing with all matters as if they have the same legal standing. The work on Annex I emission reductions in the second commitment period cannot be diluted with the other technical issues. As such, it said that it could not agree to work within a single contact group.

Papua New Guinea said that as we approach 2012, there is increasing uncertainty around a possible gap between the two commitment periods, which is leading to a decrease in participation in the Kyoto Protocol's mechanisms. It said that it would present a proposal that would be a political resolution that would give continuity to the Kyoto Protocol's flexible mechanisms, and encourage the private sector.

Belgium, speaking for the European Union (EU), said that it was committed to making progress in both negotiating tracks as a constructive step toward a global, binding and comprehensive framework. Its position is that developed countries' aggregate emission reductions should be 30% below 1990 levels by 2020, in an international agreement where other developed countries make comparable emission reductions, and advanced developing countries contribute adequately according to their responsibilities and respective capabilities. The Cancun outcome in the AWG-KP should clarify proposed emission reduction objectives, and inscribe them in the AWG-KP process.

It said that the EU's heads of state and governments prefer a single legally binding instrument, but are willing to consider a second commitment period of the Kyoto Protocol as part of a global outcome including all major economies. It stressed the importance of LULUCF accounting rules, the continued use of the flexible mechanisms and their improvement, new market mechanisms, addressing surplus AAUs, new gases and confirming the Kyoto Protocol's institutions.

Belgium said that it looked forward to the Chair's proposal for one decision that addresses all the issues under the AWG-KP in a balanced manner. The package in Cancun should preserve the institutional architecture of the Kyoto Protocol, stepping up ambition for Annex I Parties. Annex I emission reductions in the Kyoto Protocol alone are not enough, and there should be progress towards a legally binding outcome and balance in both negotiating tracks (the other being the AWG-LCA) with broad participation, it said.

Australia, speaking for the Umbrella Group (which also includes the US, Japan and Canada among others), said that it was committed to a

balanced, fair and effective and comprehensive global deal, and that discussions under the Kyoto Protocol take place in this context. Progress made on these discussions including the markets, and also mitigation by all major emitters, is necessary. It said that we need to ensure that discussions under the AWG-KP take into account the AWG-LCA, as they are directly relevant. All Umbrella Group countries intend to take on emission reduction commitments under a "comprehensive climate change framework beyond the expiry of the first commitment period". These pledges are reflected under the Copenhagen Accord, which are the most substantial emission reductions ever put forward, it said.

Liechtenstein, speaking for the Environmental Integrity Group (which also includes Switzerland and Korea among others), said that there should be clarification and agreement on transformation of pledges into QELROs (quantified emission limitation and reduction objectives), LULUCF accounting rules, agreement on the flexible mechanisms, the basket of gases and the length of the second commitment period, as part of the balanced outcome in Cancun. It also stressed addressing the carry-over of surplus AAUs. It supported the Chair's scenario note, and a comprehensive and balanced package of decisions in Cancun, "containing elements of a future comprehensive climate regime having in mind the importance of the contribution of the second commitment period under the Kyoto Protocol". It stressed the need for interrelation between the AWG-KP and the AWG-LCA.

Norway said that it is prepared to move into the second commitment period of the Kyoto Protocol as part of a balanced outcome, that includes major emitters. It said that there should be balance between the two negotiating tracks, and that there should be outcomes from both tracks. It supported a single contact group, and finalising rules for LULUCF and other issues. It said that it would reduce its emissions by 40% by 2020 on 1990 levels as part of a global and comprehensive agreement.

Saudi Arabia stressed the legal mandate of the AWG-KP in Article 3.9, and said that the second commitment period must be adopted in Cancun to avoid a gap between the two commitment periods. It also stressed the importance of potential consequences, including spillover effects of response measures, and urged for a decision on this with an effective programme of work.

Mexico restated its explicit support for the Kyoto Protocol, and supported the Chair's proposed text. It said it is important to send a clear signal that

the Kyoto Protocol regime and its mechanisms will continue. There should be agreement on the numbers and rules, and this should be approached in a comprehensive manner, as they go hand in hand.

Tuvalu stressed the need to eliminate the LULUCF accounting loophole, and said that it would present a proposal that would allow issues that lacked maturity to be passed on to the second commitment period. It said that we cannot afford to have a process decision that leads us down endless discussions, creating more loopholes.

The Chair of the AWG-KP informed the Group that he had prepared a proposal based on his previous proposal to facilitate preparations for negotiations (document 17), that covers all aspects of work in order to reach a balanced outcome. He said that the work of the AWG-KP should be focused on the scale of emission reductions, and that the Mexican Presidency will assist in achieving outcomes in both negotiating tracks by undertaking consultations on emission reduction numbers. The AWG-KP will also meet to discuss LULUCF, emissions trading and the project-based mechanisms, methodological issues and response measure, he said.

The Chair proposed that the AWG-KP meet in a single contact group, and said that he will present his proposal at its first meeting. His intention is to ensure that the text will serve as the basis for discussions at this session.

Bolivia, Saudi Arabia and Cuba objected to a single contact group. Bolivia said that this would not respect the mandate of the AWG-KP, and would reduce the legally binding obligation for the second commitment period for Annex I Parties' emission reductions. It suggested working in the same way as in previous sessions, in two contact groups.

This issue was resolved after consultations between these countries and the Chair, with agreement on having a single contact group.

The contact group then began its meeting immediately after the closing of the working group's meeting. The Chair's proposal was distributed. According to the Chair, the document is identical to document 17, with the exception of Chapter I on the amendment to the Kyoto Protocol for the second commitment period where a list of outstanding crunch issues has been proposed for focused discussions, and Chapter II on LULUCF where proposals which are virtually identical have been streamlined.

The Chair proposed that work would be done on each chapter in informal consultations, and there would be a stocktaking meeting on Friday. He said that the exact date of the closing meeting has not been defined, and that work should reach conclusions and present draft decisions for a balanced outcome to the CMP.

SBI Starts Work, Debates Finance, Technology, National Communications, etc.

Cancun, 1 December (Hilary Chiew) – The 33rd session of the Subsidiary Body for Implementation (SBI) of the United Nations Framework Convention on Climate Change opened on 30 November with developing countries calling for more financial and technical support from developed countries to assist them in improving their abilities to mitigate and adapt to effects of climate change.

Developing countries expressed much discontent over the ineffectiveness of the Global Environmental Facility (GEF) in disbursing funds and said that the GEF requirement for co-financing was punishing the poorest developing countries.

The G77 and China also said that analysis of the greenhouse gas (GHG) inventories of developed countries showed unequivocal evidence of an increase in GHG emissions by Annex I Parties that are not Parties with economies in transition.

Several African countries also stressed the need to address the issue of intellectual property rights as this posed a barrier to technology transfer.

The SBI discussed 13 items concerning matters of implementation of the Convention, which included the fourth review of the financial mechanism (which relates to the GEF), development and transfer of technologies, national communications, issues relating to LDCs and participation of observer organisations.

Speaking on behalf of the Group of 77 and China, Yemen at the opening plenary said as Parties deliberate on the future of the financial architecture of the Convention (under the Ad-hoc Working Group on Long-term Cooperative Action, AWG-LCA), there was a lack of inflow of capital to the existing funds, which are the Special Climate Change Fund (SCCF) and the Least Developed Countries Fund (LDCF), bearing in mind that these funds are underfunded to begin with.

The G77 and China called for more contributions to these funds from developed

countries, in particular for the LCDF, to assist developing countries to deal with the adverse impacts of climate change. It called on developed countries to show flexibility and commitment towards the adaptation needs of the developing countries, especially LDCs and SIDs (Small Island Developing States), and to treat adaptation in an equal manner as mitigation.

The Group said that although Parties could not come to a clear outcome on the review of the Adaptation Fund (set up under the Kyoto Protocol) during the last session as envisaged, the Group will continue to constructively engage in this session to build on the steps that have already been undertaken so far with an aim of providing direct access of funds to developing countries.

It emphasised that developing countries faced difficulties in terms of technical and financial support to enable them to prepare their national communications. Predictability of funding and the provision of the agreed full costs for the preparation of NCs from Annex I Parties are crucial, it said.

The Group said that combating climate change would require scaling up of development and transfer of technology for adaptation and mitigation by the developed countries. It was important that this support should be funded by public resources of developed countries and that synergies with the private sector would be complementary.

On the national communications and GHG inventory data from Annex I Parties, the G77 and China said that it found, in a chronological analysis of reported inventories of GHG in the countries, repeated and progressive technical reports, tables and figures that show unequivocal evidence of increased GHG emissions of Annex I Parties which are not Parties with economies in transition.

It said that the SBI, in accordance with Article 10.1 and 10.2 of the Convention, has a mandate to complete the assessment and review of the effective

implementation of the Convention. The Group expects that in the 33rd session of the SBI, a report will be developed with an aim of ensuring compliance of commitments to reducing GHG emissions by developed countries.

It also urged Annex I Parties to reveal or make available in their NCs the level of improvement, or lack of, in emission reductions.

Grenada, speaking for the Alliance of Small Island States (AOSIS), said although there has been improvement in access to funding under the financial mechanism, many of its members still had problems with the implementing agencies. Hence, it welcomed the plethora of new reforms within the GEF and hoped that all are implemented as soon as possible.

It said its members are currently reviewing the report of the Consultative Group of Experts (CGE) (on NCs from developing countries) with the aim of making concrete recommendations for improving the work programme of the CGE over the next two years. It said that the CGE has provided critical support in the past in the preparation of NCs and anticipated the same for the third and subsequent NCs.

Completing the review of the amended New Delhi work programme at this session was critical to AOSIS, given the importance of education, training and public awareness in helping its members to adapt to the adverse impacts of climate change.

Lesotho speaking for the LDCs said existing methods and procedures for accessing the LDCF need revamping despite some improvement. The time it takes for processing National Adaptation Programmes of Action (NAPA) projects for implementation needs a closer look, including by streamlining or removal of some steps in the process.

The LDCs looked forward to continuing financial and technical support, especially more contributions to the LDCF and engagement of even wider organisations in supporting the implementation of the LDC work programme. However, the group believed that the concept of co-financing is inappropriate for NAPAs and should be removed. It called for the operationalisation of the Adaptation Fund and sought, as a matter of urgency, to enable it to access the funds including identification and strengthening of the National Implementing Entities.

It said it expects the current session of the SBI to approve and recommend to the Conference of Parties (COP), the extension and expansion of the mandate of the LEG (LDCs Expert Group). It said LDCs greatly appreciate the work of the LEG in supporting preparation, and now, the implementation of NAPAs. A total of 45 NAPA documents were completed and a good number of LDCs are now in

the process of implementing their first NAPA project under the LDCF.

The LDCs believe that the NAPA process, the LDCF coupled with the LEG, is the best practice in implementing programmes. Therefore, the extended mandate remains a matter of highest priority for the LDCs.

Conclusion of the agenda item (of the SBI session) on the review of the financial mechanism of the Convention, technology and capacity building should allow for LDC full implementation of NAPAs, full implementation of the LDC work programme including its systematic review to accommodate lessons learned and new challenges.

It said it would like to see promotion of regional technical support programmes that include the LEG to support adaptation programmes in LDCs.

Speaking on behalf of the African Group, the Democratic Republic of Congo said across the board the scale of fund for developing countries is insufficient. The current estimate of funding required for 53 NAPAs is US\$2bil, which is considerably larger than the allocated US\$200mil.

It reiterated concern that the time taken from project conception and delivery of funds is too long and a reform of the GEF to address urgent issues of the continent is crucial. It spoke of the on-going concern of the lack of commitment of developed countries to support developing countries in the implementation of adaptation actions despite the emphasis that adaptation is a priority. It also said that it was worried that the GHG inventories submitted by Annex I countries still indicate an aggregate increase in GHG emissions since 2003. In addition, most countries are lagging behind in submitting their emission inventories.

Belgium, speaking for the European Union, said with regard to the financial mechanism, it welcomed the conclusion of the negotiations for the 5th replenishment of the GEF earlier this year, where climate change has now become the biggest activity area.

It looked forward to concluding the 4th review of the financial mechanism, the assessment of the LDCF and of the SCCF, as well as to providing focused additional guidance, in order to improve the effectiveness and efficiency of the GEF.

The EU believed that the LDCs should be further supported in their efforts to address climate change. Therefore, the LEG mandate should be renewed and Parties should find the appropriate measures to speed up the delivery of the LDCF.

On development and transfer of technologies, the EU will focus on issues relevant for the

discussions under the AWG-LCA. On capacity building, the EU reaffirmed its will to maintain the current capacity-building framework as the guiding structure for capacity-building activities and was looking forward to the completion of its second comprehensive review.

Review of the financial mechanism

The Philippines speaking for the G77 and China questioned the effectiveness of the GEF and other UN agencies in financing climate change activities. Citing the example of the Philippines, it said the GEF report itself showed that it only played a minor role for the country compared to bilateral and multilateral donors. It finds this a matter of concern that it is unable to get financing through the UNFCCC's only financial operating entity.

It said that due to the co-financing requirement, statistics showed that it was developing countries who were subsidising the GEF, as Parties have to raise three times the amount requested in order to be able to access the GEF money. On top of that, there are administration costs, exchange rate costs and 'corporate activities', which take money out of the project.

The requirement for co-financing would be punishing the poorest of the poor, said the Philippines. Therefore, the criteria for predictability of financing need to be reviewed to allow for full implementation of the Convention.

Algeria said while Africa benefitted from greater interests in recent years from GEF funding, there was a need to highlight the obstacles and deficiency in the funding cycles. The GEF needs greater reform to simplify its procedures and conditionalities.

The Democratic Republic of Congo said there was a significant gap between promises of funding and funding needed. It urged developed countries to commit to financing activities at the level of 1.5% of their GDP. It also noted that there was a great inequity among countries and regions in the allocation of funds and this must be dealt with so as to make necessary corrections in the next cycle of replenishment of the GEF.

In the specific debate on the LDCF, **Lesotho speaking on behalf of the LDCs** expressed its concern on some of the elements of the GEF report. It said that the LDCs were concerned about the unpredictability of the funds in the LDCF, which has led to the delays in the full implementation of the NAPAs and the rest of the work programme in a timely manner.

With delays, the NAPAs are no longer 'urgent and immediate needs', hence, requiring the need to review or revise the NAPAs, which implies additional costs and delays in this process. It urged other donors to contribute to the LDCF for the full implementation of the LDC work programme.

Bhutan said it was among the first LDCs to start implementing its NAPA with a project to reduce the threat of rapidly melting glaciers and the phenomenon called Glacial Lake Outburst Floods. It reminded parties that the mandate of the LDCF is not just about NAPAs but there are six elements in the work programme: strengthening or establishing national climate change secretariat and focal point; training on an on-going basis on negotiating skills and languages; preparation and implementation of NAPAs; promoting public awareness and dissemination of awareness of climate change; development and transfer of technology, particularly for adaptation and strengthening the capacity of meteorological and hydrological services.

Thus, it said, the full implementation of the LDC work programme is essential to ensure effective and efficient use of the limited resources to reduce the vulnerability of the LDCs. The full work programme is needed to be implemented through the LDCF to reduce barriers that delay the timely preparation and implementation of the NAPAs as originally envisioned at COP 7.

National Communications

Brazil, speaking for the G77 and China, said any further implementation of Article 12.5 of the Convention (which relates to the submission of NCs) must take into account the principle of common but differentiated responsibilities. NCs should not be more onerous to Non-Annex I Parties than to Annex I Parties. It also pointed out that Article 12.5 is not only related to periodicity or frequency of the submission of NCs but is also related to finance which is crucial. In discussions on any additional obligations related to NCs from Non-Annex I Parties, there is a need to make sure that not only are financial resources provided in a timely manner and significantly scaled up, but technical support, under the Convention, is also provided in a sustainable manner.

It said the Group has constantly reiterated that one of the main difficulties that developing countries face in this regard is the access to funding through the GEF, which is an operating entity of the financial mechanism of the Convention.

For instance, the determination by the GEF of a fixed amount of money under the expedited procedure regardless of whether countries are big or small actually denies the right of developing countries to ‘agreed full costs’ and indicates that the GEF has not been able to deal with different national realities of countries.

The Group has constantly reiterated that the best way to make progress on the matter of provision of financial and technical support as a whole, is to ensure timely disbursement of funds to meet the agreed full costs incurred by developing country Parties. The financial support that is currently available is certainly insufficient and the procedures in having access to them are inadequate.

Technology transfer

During the discussions on development and transfer of technologies, the European Union said it was looking for quick progress on this matter under the AWG-LCA and is in favour of convening discussions at the joint consultation group between the SBI and the Subsidiary Body for Scientific and Technological Advice.

The Democratic Republic of Congo said intellectual property rights (IPRs) were a hindrance when it comes to implementation of pilot projects.

Echoing similar frustration, **Zambia** said in most developing countries especially those in Africa, access to technology remains a challenge. Access to technology has hampered progress in terms of implementing adaptation and mitigation efforts. It called upon developed countries to remove barriers that hinder the transfer of technology. IPRs have been a huge barrier making technologies too costly for poor countries that need the technology. Technology development and transfer under the Convention should be developed by the public sector and not left to the private sector who are not Parties to the Convention, it said.

Nigeria said that the IPR issue has been a taboo subject since the beginning of the Convention and hoped that Parties have reached the moment of being realistic and transparent as technology transfer is a key area of the Convention that needs to be implemented.

Speaking for the environmental movement constituency, the Climate Justice Network said environmentally-sound and socially-just technologies that integrate and respect traditional knowledge and livelihoods of local communities and indigenous peoples are part of the solution to climate crisis and need to be supported.

But often, technology transfer seems to be a way for big companies to expand their markets and patent monopolies. An agreement on technology that is not precautionary will result in the release of untested and high-risk technologies such as carbon capture and storage, bio-char, industrial plantations and other forms of so-called ‘bioenergy’. It warned that multinational companies are stockpiling patents on ‘climate-ready crops’, undermining the ability of farmers to adapt to climate change by making them dependent on patented seeds. Increasing industrial agriculture and the corporate grab on biomass will increase, not decrease, GHG emissions, it said.

Matters relating to LDCs

Bangladesh for the G77 and China said it would like to see an extension and expansion of the mandate of the Least Developed Countries Expert Group (LEG). It said that 45 countries had submitted NAPAs and guidance is required from the LEG. It said that some NAPAs were formulated in 2004 and were outdated, as those urgent needs had become more urgent due to the ground reality of LDCs in different continents. This proposal was supported by many LDCs like Malawi, Liberia, Nepal, Timor Leste, Bhutan and Togo.

Participation of observers

On further participation of observer organisations, **Mexico representing the Environmental Integrity Group** said over the years observer groups had made significant contribution but participation is limited and does not truly reflect the value of their contribution. It fully supported the establishment of a platform for more intensive dialogue and will be tabling two draft proposals for discussion.

Nigeria cautioned that the UNFCCC is an intergovernmental process and the role of observer organisations should be limited.

The International Indigenous Peoples’ Forum on Climate Change said it had made four applications to the UNFCCC secretariat for greater participation in the climate negotiation process but they were all rejected.

It presented four proposals which would enhance the indigenous communities’ voices through the creation of an Indigenous Peoples’ Advisory Group to report directly to the COP and provide consistent recommendations in the discussions, dialogues and drafting at this and future COPs and intercessional meetings.

Mexican Presidency “Small Group” Meets on Mitigation; Co-facilitators Issue Non-papers on MRV

Cancun, 2 December (Meena Raman) – In attempts to break the log-jam over mitigation, the Mexican Presidency of the Conference of Parties of the UNFCCC has formed a “small group” of selected delegations to discuss how to address the mitigation efforts of Annex I parties, that apparently involves issues of both the AWG-LCA and the AWG-KP tracks.

Ambassador Luis Alfonso de Alba of Mexico convened the first meeting of this small group at noon on 1 December. According to diplomats, the meeting was attended by about 30 Parties that had been invited. It is unclear which delegations were invited and how they were selected. The Chairs of the two working groups, Ambassador John Ashe of Antigua and Barbuda and Ms. Margaret Mukahanana Sangarwe of Zimbabwe, were present.

Sources say that the main focus of the small-group meeting was on how Parties viewed the issue of the “anchoring of the mitigation pledges” of countries under the AWG-LCA and the AWG-KP. It was not clear as to whether this was only about the “pledges” of developed countries under the Copenhagen Accord or also included the “pledges” of developing countries.

Several delegates have dubbed the newly formed group a “Green Room” meeting, the name given to a controversial practice in the WTO in which a small, exclusive group of selected countries is invited by the Secretariat to discuss and make decisions, which are later given to the wider membership to endorse. Some delegates, especially those who were not invited to the meeting, and even some of those who were, expressed unease at the “Green Room” method being used in the UNFCCC due to its lack of full transparency.

Meanwhile, in a separate development, two papers were issued on 1 December late afternoon on the MRV (measurement, reporting and verification) of developed and developing countries by the

cofacilitators of the drafting group on mitigation (under the AWG-LCA). They contain the cofacilitators’ views on possible elements of parts of the outcome (i.e. the MRV aspects) on paras 1b(i) and 1b(ii) of the Bali Action Plan that deal with mitigation of developed and developing countries respectively.

The convening of the mitigation meeting by the Mexican Presidency that includes a discussion on issues common to the AWG-LCA and AWG-KP is a sensitive development because developing countries have for a long time been resisting the breaking of a “firewall” between the two working groups. Their main concern is that this would be an initial step to “merge” the two tracks and could eventually lead down a slippery slope to the demise of the Kyoto Protocol (which has legally binding mitigation commitments for Annex I parties) and the wholesale transfer of the Annex I mitigation issue to the AWG-LCA, which in turn could lead to an inferior non-binding system of individual pledges by Annex I parties.

The decision to form the small group did not seem to arise from formal decisions of the AWG-LCA or the AWG-KP, and took many delegates by surprise, and several did not even know of its existence.

On Wednesday (1 December) late afternoon, and after the first meeting had been held, the Mexican Foreign Affairs Minister Patricia Espinosa informed Parties during a session of the Conference of Parties that Mexican Ambassador Luis Alfonso de Alba was holding consultations on issues common to the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) and the Ad-hoc Working Group of the Kyoto Protocol (AWG-KP).

It would appear that discussion on the issue of the numbers for developed countries’ mitigation commitments was not taking place either in the AWG-LCA (whose mitigation drafting group is now

focusing on the MRV issue) or the AWG-KP (in which the numbers for the commitments of Annex I Parties has traditionally been its top issue).

Many developing country delegates were expecting negotiations on the ‘numbers’ under (AWG-KP) to determine the developed country commitments for emission reductions in the second commitment period of the Protocol, which is a critical outcome for Cancun. The ‘numbers’ issue was also supposed to be a key issue to be discussed at the drafting group on mitigation under the AWG-LCA, which is mandated to discuss the mitigation commitments of developed countries, particularly the commitments of Parties of the Convention which are not Party to the Kyoto Protocol (i.e. the United States).

The attempt to “anchor” the pledges made by countries under the Copenhagen Accord, in an outcome document of Cancun, appears to some delegates to have emerged as a major or even the top priority of some developed countries.

According to several delegates and observers, this “anchoring” exercise is problematic for several reasons. First, many countries have not associated with the Copenhagen Accord, and do not see why the pledges made under it should be transferred to the Convention. Second, there is the concern that “inscribing” the pledges of Annex I Parties in the AWG-LCA or in the COP would pave the way for the demise of the Kyoto Protocol. Third, the “pledges” by developing countries that were placed on the UNFCCC website are mainly taken from letters sent to the Secretariat and are in different formats and with different conditions, and were not “made” in a formal way nor were they expected to end up in a formal ‘schedule’ or annex of the Convention.

Meanwhile, according to some delegates, at the meeting of the drafting group on mitigation under the AWG-LCA, some developing countries raised the issue of how the Mexican consultations on mitigation were linked to the work of the drafting group. Ambassador de Alba is said to have attended the meeting of the drafting group on 1 December and informed Parties that his role was strictly complementary and not intended to take away the role of the drafting group.

Meanwhile, the drafting group on mitigation under the AWG-LCA, which met on 30 November and 1 December, had an exchange of views among Parties only on the issue of measuring, reporting and verification (MRV). Two non-papers were produced by the co-facilitators from New Zealand and Tanzania on ‘possible elements of part of the

outcome’ on paragraphs 1(b)(i) and 1 (b)(ii) of the Bali Action Plan.

According to some delegates, questions were raised by some developing countries as to what was being MRVed when the issue of the mitigation commitments of developed countries was not being negotiated or addressed, and what was the relationship or link between the facilitators’ papers and the negotiating text of 13 August.

Some delegates raised the concern that the elements were not balanced as the non-paper for developing countries had more issues than that for the developed countries.

An issue in the paper on MRV of developed countries is the enhanced reporting and review of fulfillment of commitments to ensure rigorous, comparable and transparent accounting of emission targets. One option is for taking account of relevant Kyoto Protocol rules, and another option is applying these rules.

Another issue is whether to enhance the current process of reviewing developed countries’ national communications through a new multilateral forum under the Convention or through a compliance process. The review would cover both their mitigation commitments and their provision of financial, technological and capacity-building support to developing countries.

The paper on MRV of developing countries addresses 8 aspects linked to possible elements related to MRV of developing countries’ NAMAs (nationally appropriate mitigation actions) and MRV of support.

Among the proposed issues and options listed by the facilitators are different options to set up a registry on mitigation actions and provision of support and enhanced reporting in developing countries’ national communications.

One proposed point that is sensitive is that supported actions will be MRVed in accordance with the requirements of the entity providing support.

Another major point is that developing countries will submit biennial greenhouse gas inventories and information on mitigation actions. At present they only submit information in their national communications, which developing countries submit once in many years, and depending on availability of funds.

The paper also has an option for the creation of a multilateral forum under the Convention, which would consider the biennial submission of the developing countries. It would seem that in this proposal, the establishment of this forum would be an implementation of a process of an international

review of the developing countries' mitigation actions (whether these actions are internationally supported or domestically funded). Under this option, the paper proposes launching a process to develop modalities and guidelines for such a "consideration".

It is apparent that this proposed point is an elaboration of the "international consultation and analysis" (ICA) of developing countries' mitigation actions, whether internationally supported or not, which is a part of the Copenhagen Accord. This is confirmed by an alternative option in the paper for having no process for international consultation and analysis.

According to some delegates, concerns were raised during the meeting that the MRV process for developing countries should not be more onerous than that for developed countries.

One senior developing country delegate said that the non-papers were leading to more confusion and were creating a loss of focus in the negotiations as there is already a negotiating text (known commonly as the 13 August text put together by the Parties) but the Parties are currently not negotiating on the text. Instead, there is now a facilitators' paper. And discussions are jumping from one issue to another such as that of MRV, the registry for mitigation actions of developing countries and so on.

Contact Group Established under COP on Proposals for New Protocols

Cancun, 3 December (Lim Li Lin) – At the plenary session of the 16th session of the COP on Wednesday, 1 December, in Cancun, the issue of new protocols under the UNFCCC as proposed by countries was discussed. The meeting agreed to establish a contact group to discuss the proposals.

Following the COP session, the 6th session of the COP acting as the Meeting of Parties to the Kyoto Protocol (CMP) considered the issue of formal proposals by countries for amendments to the Protocol for the second commitment period of emission reductions by Annex I Parties. It was decided that the CMP would wait to hear the report of the AWG-KP Chair on the progress of work before deciding what to do about them.

Parties were also informed by the COP President, Patricia Espinosa, the Minister of Foreign Affairs of Mexico, that the Mexican Presidency is undertaking closed small group consultations on mitigation under the AWG-LCA and AWG-KP (See TWN Update 7).

Many countries are seeking a new treaty instrument under the UNFCCC as the outcome of the AWGLCA. However, there is no consensus yet on the form of the legal outcome.

Many countries that spoke at the current COP session said that the contact group should explore the legal form issue of the final outcome of the AWG-LCA, which has not been determined.

Some countries, however, expressed caution about setting up a contact group on this issue as it might duplicate or prejudice the negotiations under the AWG-LCA, and take away valuable time needed for the AWG-LCA negotiations. Moreover, the survival of the Kyoto Protocol is under serious threat, particularly since Japan recently announced in no uncertain terms that it would never agree to a second commitment period of the Kyoto Protocol. This should be the focus of discussions, according to some countries.

A total of six new protocols have been proposed by Japan, Tuvalu, the United States, Australia, Costa Rica, and Grenada (on behalf of the Alliance of Small Island States -AOSIS). The proposal by Grenada was officially notified to the Secretariat and the Parties in May 2010. The other five proposals were notified in 2009, and were considered by the 15th COP session in Copenhagen.

In Copenhagen, the five proposals for protocols were not adopted. As such, this issue is still outstanding and was up for discussion again in Cancun, together with the AOSIS proposal from Grenada.

The proposed protocols are all legal instruments envisaged as the outcome of the AWG-LCA. According to the developing countries, their proposals are intended to be legal instruments that sit alongside the existing Kyoto Protocol, and are not intended to replace it.

At the start of the Cancun plenary session, **Grenada** proposed that an open-ended contact group under the guidance and facilitation of the Mexican COP Presidency should be set up to discuss the proposed protocols. It said that it was not efficient or useful to consider this issue in plenary, as this needs its own discussion, and a contact group would facilitate transparency, full participation, and ensure the legitimacy of the outcome.

Grenada said that there is no place for proposals that deal with architecture, or legal form, and that a contact group would anchor such a fundamental discussion in this process, and position Parties on the issue of legal form at the next COP in South Africa.

It said that there is a need for legal clarity and certainty as there are deeply different views on substance, especially on mitigation, and no understanding of the end game of the Bali Action Plan. As such, it said that it is important to capture and take forward the general convergence on the end

goal for a legally binding outcome, in a process decision that would set out an appropriate strategy toward a legally binding instrument in South Africa. It said that the contact group should discuss legal issues and the inter-linkages with existing instruments already in force.

This proposal for a contact group was supported by many countries including the African Group, Costa Rica, Tuvalu, Cuba, Guatemala, Maldives, Venezuela, Nauru, Cook Islands, Dominica, Solomon Islands, Dominican Republic, Vanuatu, Marshall Islands, Saint Lucia, Guyana and Norway. Venezuela said that the work of the contact group must not contradict the on-going work under the AWG-LCA.

Norway and the EU cautioned that the contact group should not duplicate on-going consultations by the Mexican Presidency.

Brazil stressed that in the AWG-KP, a legal outcome is required as mandated by Article 3.9 of the Kyoto Protocol. Under the AWG-LCA, there are doubts about the nature of the legal outcome, as its substance concerns enhancing the implementation of the UNFCCC. It said that it was important to find a space to look into options, and discuss the need for a legal outcome. It said that Brazil would like to see a legal outcome in the AWG-KP and the AWG-LCA, and welcomed a space to discuss the legal form issue.

South Africa supported a space to discuss essential aspects of the issue, and said that the value of the proposed protocols is that they provide an opportunity to discuss the future architecture and legal nature of the AWG-LCA outcome, and future steps. The fact that the legal status of the AWG-LCA outcome is in question is a major obstacle, and a decision on the legal nature would unlock many obstacles, it said.

South Africa supported taking a “pragmatic approach”, and said that the COP, CMP, and the two AWGs are complementary and mutually supportive and the proposals should be assessed against the work already done. It said that the determination of the legal status of the outcomes of both the AWGs should be included, and they must be of the same legal status to ensure a balanced and fair approach. It said that our response must be legally binding and in line with science.

China said that the issue of legal form should be discussed. It said that under the AWG-KP, Parties should adopt the legally binding amendment for the second commitment period, and under the AWG-LCA Parties are discussing how to strengthen the UNFCCC and its implementation. It said that it could accept a legally binding outcome, with legally

binding force. More time should be spent on solving the issues so that there can be a meaningful and balanced outcome, it said, and that it did not want a new formal discussion on this, which will compete with the two AWGs. It said that these issues can be resolved under the two AWGs, and suggested finding a more realistic way such as informal consultations by the Chair or for the AWG-LCA to consider this issue.

India said that there were actually two things being proposed -the proposals for new protocols, and legal form. The proposals for new protocols were discussed last year, and there was no agreement among Parties. It said that time should be spent on the outcomes for Cancun, and the serious issue is the threat to the Kyoto Protocol’s continuation and survival. Clouds are hanging over the Kyoto Protocol, and this should be addressed, to manage the balance of the Cancun outcomes. The AWG-KP has fallen way behind the AWG-LCA, it said, and many of the issues are actively being considered under the AWG-LCA and it has not completed its work. It said that we should focus on the two texts from the last meeting in Tianjin, and at this point of time, the proposals for new protocols should be allowed to rest.

On the second issue, India said that “form should follow substance”. All outcomes will be binding, that is how we have always operated, it said. The Marrakech decisions are all binding, and are being implemented. Once we know the nature of the obligation, we can subsequently figure out the form, it said. First, get the substance right, and then the form will follow, it added. It said that practically, there is so much work to do in the two AWGs, and that there could be consultations on this issue.

Saudi Arabia said that there is limited time, and there is a clear threat to the continuation of the Kyoto Protocol. Some member states have declared that under no circumstance will they accept a new commitment period under the Protocol. It said that we should first discuss how to maintain the Kyoto Protocol before we discuss or debate a new legally binding agreement. By the end of the Conference we must have an agreement on the second commitment period, with emission reduction figures of Annex I countries.

Australia said that it supported a legally binding post-2012 outcome, which includes binding contributions by all major emitters. It supported a process for robust discussion on this issue which brings together all the proposals.

The Mexican COP President Minister Espinosa proposed setting up a contact group, to be chaired by Michael Zammit Cutajar of Malta, to discuss the

proposals, specifically the proposals by AOSIS, Costa Rica and Tuvalu, since they requested a discussion space. She said that they (the proponents) have clearly expressed that a result of this kind is not something we can achieve at this session, but the discussion is to give direction to our substantive work. The discussion should not determine the issues in the two AWGs, she said.

Minister Espinosa also said that the Mexican Presidency is conducting consultations on mitigation, and the close link between the AWG-LCA and the AWG-KP.

Grenada confirmed that the proposal for the contact group is intended to support the consultations of the Mexicans, and would facilitate that work.

The 6th session of the CMP began immediately after the close of the COP plenary to discuss the issue of the amendment proposals to the Kyoto Protocol for Annex I Parties' second commitment period of emission reductions.

A total of 13 proposals have been officially notified. Grenada on behalf of AOSIS submitted their proposal in 2010. In 2009, 12 proposals were made by the European Community, Tuvalu (2 proposals),

the Philippines, New Zealand, a group of 37 developing countries, Colombia, Belarus, Australia, Japan, Bolivia (on behalf of Venezuela, Paraguay, Malaysia and Sri Lanka) and Papua New Guinea.

Grenada proposed that this issue should be left open, while the AWG-KP continues its work, and until a report is received by the Chair of the AWG-KP. It said that urgent guidance by the CMP is needed to break the deadlock. This was supported by Tuvalu and Saint Lucia.

Tuvalu also wanted the CMP to receive a report from the Chair of the SBI as some of its proposals relate to issues now under consideration by the SBI. Tuvalu insisted that the AWG-KP must conclude its work in Cancun.

The Mexican COP President proposed that the CMP leave this matter open, and hear the reports of AWG-KP and SBI Chairs in order that a decision can be taken on where and how to approach the proposals on the table. She reiterated that the Mexican Presidency is undertaking consultations on the issues that are common to the AWG-LCA and AWG-KP, particularly mitigation. Parties agreed to her proposal.

Impasse over More Finance for Capacity Building May Affect Other Negotiations, Warn Developing Countries

Cancun, 4 December (Hilary Chiew) – Developing countries warned that postponing the decision to provide stronger commitment for capacity-building will have a serious effect on negotiation of other issues including those in the long-term cooperative action working group (AWG-LCA) under the United Nations Framework Convention on Climate Change (UNFCCC).

The contact group on Capacity-building under the Convention, of the Subsidiary Body for Implementation (SBI) could not agree on a draft decision containing 15 paragraphs when they met for the last time yesterday (3 December). Contact groups formed by the SBI are to submit their draft conclusions and decisions to the Chair to be presented at the closing plenary tonight.

Disagreement was over paragraph 12 which reads: “*Request [Reiterate the request] the Global Environment Facility, as an operating entity of the financial mechanism, to [increase] [continue to provide financial] its support to capacity-building activities in developing countries in accordance with decisions 2/CP.7 and 4/CP.9*”.

Speaking on behalf of the Group of 77 and China, Tanzania said the word “increase” should not be bracketed. It said increase in funding was critical for developing countries to respond to impacts of climate change and it is reasonable given that the Global Environment Facility (GEF) is the only operating entity of the financial mechanism under the UNFCCC.

Furthermore, it said that increase in climate change impacts requires increase in support and believed that increase in support is meant for those countries already suffering and need more support, hence the allocation has to be doubled.

The **European Union** said while the language is something that it can live with, it wanted the brackets to stay and proposed the option of “*continue to provide financial*” instead.

It later said the paragraph was not needed as the need was already reflected elsewhere.

The **United States** agreed with the EU to delete the paragraph.

Zambia said Parties are here to lobby and negotiate and it hoped the EU will reconsider its position as it believed the GEF will be able to meet those demands.

Liberia said for the Least Developed Countries (LDCs) capacity-building means looking at systemic implementation of support for understanding issues of climate change for farmers and to assist them to respond efficiently to climate change. “I want to plead with the EU to reason with us that we have lots of challenges and the need for support is important to us,” said the delegate.

The EU said the GEF had allocated US\$1 billion for climate change and over US\$250 million for capacity-building and it called on developing countries to prioritise capacity-building.

The G77 and China requested for the meeting to continue later in the evening and said it was prepared to continue working on the issue, stressing that capacity-building is important for the Group.

The contact group co-chair, Marie Jaudet of France, said the meeting can only continue with the agreement of all Parties.

The EU reminded that the rule is no late-night meeting but should others agree it would be prepared to follow, while Japan and the US said they would not be able to attend.

Although it is in the Umbrella Group, **Australia** said it cannot make decisions for the others as the Group is a loose arrangement but expressed disappointment that the matter cannot be concluded.

The G77 and China said Parties were here deliberating on the issue one year later and the matter has been lingering for two years now, conceding that a short text would have to be prepared for the Chair (of the SBI) to postpone it to the next SBI session.

It however said the impasse will impact on other issues, even those being negotiated under the AWGLCA. It hoped that there will be movement in capacity-building. Otherwise, it is difficult for the Group to move on other issues.

In the contact group for matters relating to the least developed countries: extension and expansion of the mandate of the Least Developed Countries Expert Group (LEG), Parties decided to extend the mandate of the LEG.

It was also decided that the LEG should be mandated to provide technical guidance and advice on the revision and update of national adaptation programmes of action, the identification and implementation of medium- and long-term adaptation needs and their integration into development planning, strengthening gender-related consideration, and consideration regarding vulnerable groups within least developed country Parties.

The LEG is requested to develop a two-year rolling programme of work for consideration by the SBI and to report on its work to the SBI at each of its sessions. It was also decided that at least one member of the LEG should also be a member of the Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention.

The contact group agreed on the draft conclusion of the co-chairs and the draft decision to be adopted by the 16th Conference of the Parties in Cancun.

Parties also agreed on the draft conclusions and draft decision in the contact group on the Least Development Countries (LDC) Fund.

In the draft conclusions by the co-chairs, the SBI requested the LEG to discuss, with the GEF and its agencies, ways to further improve access to funds from the LDC Fund, the disbursement of funds, the design of implementation strategies for national adaptation programmes of actions using a programmatic approach, ways to best communicate co-financing requirements under the Fund and remaining challenges faced by LDCs in working with GEF agencies, during the first meeting of the LEG in 2011.

On Thursday (2 December), the **Philippines** representing the **Group of 77 and China** raised the

issue of the inconsistency between the timeline of the review of the LDC Fund's performance and the extension of the role of the World Bank as trustee to the Fund, and sought clarification.

It noted that although there is a possibility of extending the timeline of the review and appointment of an interim trustee for three years, that could prejudice the review of the Adaptation Fund which will be completed by CMP 7 in South Africa next year. The Adaptation Fund Board is proposing an extension of 3 years for the World Bank as trustee, from its expiry date in March 2011.

It said it is in favour of changing the terms of the memorandum of understanding (with the World Bank) rather than changing the review period.

The Chair of the Adaptation Fund Board, Farrukh Khan of Pakistan, explained that extension of the trusteeship was necessary as the Fund has financial management where it sells CER (Certified Emissions Rights) with different timeline and sequencing and that the sale of the CER will be halted if trustees were not there. He said a continuation and harmonisation phase would be needed if two sets of trustees were to arise. He said the extension should be long enough so as not to pose a hurdle to the operation of the Fund.

He reminded Parties that the Adaptation Fund was a difficult but heart-warming struggle for developing countries to have direct access to the Fund and it is now shown to be working.

The Philippines said that as a group, the G77 and China would like to continue the support to members of the Alliance of Small Island States (AOSIS) and requested the AOSIS to extend its experience relating to the Adaptation Fund to other countries of the G77 who are not members of AOSIS.

It further said that the 2% contribution from the CDM (Clean Development Mechanism) projects to the Adaptation Fund is a solidarity gesture of the G77 with its fellow members who needed urgent attention in adaptation. It described the achievement of the Adaptation Fund, so far, as a shining example.

(CDM projects are carried out in developing countries where the credits generated from avoided emissions are sold in the compliance market as offsets to assist Annex I Parties – developed countries – in meeting part of their emission reduction commitment.)

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Divergent Views in Contact Group on New Protocols under the UNFCCC

Cancun, 4 December (Chee Yoke Ling) – Divergent views remain over proposed new protocols under the UN Framework Convention on Climate Change, with several developing countries concerned that a new protocol would undermine or even replace the Kyoto Protocol.

The contact group established by the plenary of the 16th meeting of the Conference of the Parties (COP) on 1 December to consider proposals by Parties under Article 17 of the Convention, met from 11.30 am to 1 pm on Friday (3 December) under the chairmanship of Michael Zammit Cutajar of Malta. (See TWN Cancun News Update #8.)

At the end of the exchange of views, Cutajar said that he did not think it would be productive to have further discussions, and proposed to convey his summary of the views of the Parties to the COP 16 President, Patricia Espinosa, Minister of Foreign Affairs of Mexico. The Alliance of Small Island States (AOSIS) expressed their disappointment, preferring to continue discussions in the afternoon. Cutajar said that there was no facility for another contact group meeting, but for informal consultations that he decided would not be held.

Many countries are seeking a new treaty instrument under the UNFCCC as the outcome of the working group on long-term cooperative action under the Convention (AWG-LCA). However, there is no consensus yet on the form of that outcome, with options including COP decisions and a protocol.

Over the past 18 months, six new protocols have been proposed under Article 17 of the UNFCCC by Japan, Tuvalu, the United States, Australia, Costa Rica, and Grenada (on behalf of AOSIS). The proposal by Grenada was officially notified to the Secretariat and the Parties in May 2010. The other five proposals were notified in 2009, considered but not adopted by COP 15 in Copenhagen.

(Article 17 of the UNFCCC provides that the COP may, at any ordinary session, adopt protocols to the Convention.)

Echoing the words of the COP 16 President when she wound up the 1 December plenary session, Cutajar said at the start of the contact group meeting that the contact group is an opportunity for the proponents of the six proposals to explain the main thrust of their proposals, taking into account developments over the past months. It was a chance for those proponents to update the UNFCCC Parties.

He reminded Parties of the President's call to bear in mind efficiency, time and avoidance of overlap with the work in other bodies (the AWG-LCA and the working group on further commitments for Annex 1 Parties under the Kyoto Protocol), and also the related consultations being conducted by he President.

He said there was another time slot in the afternoon (for informal consultations if needed) but he hoped that there would be no need to use it. He then invited proponents to make presentations of about 5 minutes each.

Grenada on behalf of the Alliance of Small Island States (AOSIS) welcomed further dialogue on the matter, and said that this process must anchor the legal form for South Africa. Its proposal submitted in May 2010 is an input to the work of the AWG-LCA to enhance the implementation of UNFCCC, and it stressed that the AOSIS position on the continuation of the KP in a second commitment period (of emission reductions) is very clear.

It said that its proposal is not only a compromise, but also to provide a package that the group thinks can be suitable for Parties, and its draft protocol covers all the key elements of the Bali Action Plan with additions.

Grenada reminded all delegates that a few weeks ago, the international community, the multilateral process, successfully adopted two new protocols based on clear mandate and the willingness of parties (referring to the access and benefit sharing protocol as well as the supplementary protocol on liability and redress adopted under the Convention on Biological Diversity and the Cartagena Protocol on Biosafety respectively, in Nagoya, Japan in October).

It said that with deep respect to complete our work in the AWGs (the LCA and Kyoto Protocol tracks), SBSTA and SBI, we wish this contact group to reflect on how to take the process forward.

Japan agreed that the contact group should not duplicate work and said that in May last year Japan submitted its proposal with the objective to adopt a single legally binding framework that involves participation of all major economies. It said that it is committed to continuing in the AWG-LCA for a concrete outcome.

Tuvalu emphasised that its proposal submitted in June 2009 does not replace the KP, and is part of the 2-track process, saying that it has also proposed amendments to the Kyoto Protocol. It said that its proposed protocol text has many elements including definitions, pointing out that one definition that could help the AWG-LCA work is on Parties vulnerable to climate change.

It added that its proposal is for a global framework, and an attempt to ensure that all Parties play a role. It acknowledged that certain Parties will play a role in the Kyoto Protocol and other Parties will play a role in this (new) protocol (referring to the United States in particular that is a UNFCCC Party but not a Kyoto Protocol Party).

It highlighted three tiers of nationally appropriate mitigation actions for developing countries (those financed internationally, financed nationally, and pledged) and how these relate to emissions trading, adding that the current AWG-LCA text on safeguards can be considered.

It said that one thing that has not come up in the AWGLCA is to “climate-proof” development assistance.

Its proposal on risk management and risk reduction is not unlike the AOSIS proposal, and is a better elaboration, closer to where Parties are in discussion now (in the AWG-LCA).

Tuvalu endorsed the AOSIS statement on how it sees the way forward – that these proposals are a guide for work forward and the need for a mandate for a legally binding agreement.

Australia said it believed in a legally binding outcome at the AWG-LCA. It has heard how developing countries are justifiably worried about how they can develop and that there are different national circumstances and capabilities. It sees national schedules as how this can be done, as a way to gain national consensus.

It said schedules can be accompanied by flexibilities, and should recognise that developed and developing countries are not the same. Its proposal would build on the Kyoto Protocol. We can take the AWG-LCA process to make decisions that can be the next steps and building blocks for a final outcome, and this is the best place to take this forward and also decide on the legal form.

Costa Rica said that its proposed protocol submitted in June 2009 is intended to complement and not to replace the Kyoto Protocol but to complement it. It said it does not claim full ownership over this protocol as it also considered the text in its entirety prepared by the AWG-LCA chair. It said its text constitutes a good starting point for inputs from other Parties with regard to both content and the structure of the framework.

It said its proposed protocol is consistent with common but differentiated responsibilities and capabilities, and the leadership of developed countries to achieve quantified reduction based on science.

It also said that the AWG-LCA should continue work with a renewed sense of urgency and a mandate to work on the legal form of its outcome, and in COP 17 to adopt a legally binding instrument to attain enhanced and long-term implementation of the Convention.

The **United States of America** said it would not go through its proposal, explaining that it continued to like many elements of its proposal for a legally binding agreement and that some are essential for any such future agreement. It referred to the evolving capability of Parties to take on mitigation commitments.

It said that its proposal was in a specific context, and that if Copenhagen (COP 15 in 2009) had no AWG-LCA outcome then a protocol would provide an option.

It said that the elements in its proposal almost overlap completely with those at the AWG-LCA, and that many key issues relate to the way the Bali Action Plan will be given form.

“Our thinking and the thinking of many other Parties have developed. It won’t be productive at this time to take these issues into a new process,” the US said.

It added that it is most focused to achieve progress at this (Cancun) meeting and not to have diversion that could very well lead to incoherence.

It welcomes more discussion in the AWG-LCA track saying that discussion should continue under that track.

At this point, chair Cutajar observed that each proponent in his way has related the content and objective of the respective original proposals and related this to what is going on now. They refer in that context to what is going on in the AWG-LCA, with some Parties mentioning gaps in the AWG-LCA work.

He said that the main distinction in substance is not new – some are looking at a unified decision, and some on a 2-track approach of the AWG-KP and the AWG-LCA. He said it may be useful to further discuss in this contact group the process.

India said the presentations were clearly illuminating. It said that we are essentially meeting to discuss Article 17 amendments; we are already discussing the issues in the Kyoto Protocol and LCA tracks.

It did not agree that “binding-ness” only comes from a protocol. Whatever we have decided – Bali Action Plan, the Marrakesh Accord – these are decisions that we are all bound by and abide to, it said. The intention is extremely important, and India has always intended to be bound by the UNFCCC and the decisions of the COP.

It said further that the subject matter of the contact group’s discussion is already under discussion in the 2 working groups and that we really should be spending time to work towards deliverables in Cancun. It asked whether Parties really believe that we should be scattered in different places at this point, agreeing with the US on this.

India stressed that the continuation and fate of the Kyoto Protocol is at stake. How can we even consider Article 17 amendments when the fate of the Kyoto Protocol is hanging in the air?

It repeated its statement at the COP plenary session on 1 December, that the form follows the substance – if we know the substance and we have a clear picture of our capacity then we can decide on the form.

It also said that actions will be taken nationally and the UNFCCC, the Kyoto Protocol, the Bali Action Plan, etc are all binding.

It said that it does not want any new instrument that will dilute, supplant or marginalise the Kyoto Protocol. We must very clearly focus our attention and not be writing a new instrument.

The **European Union** said that in the ongoing discussions on mitigation proposals, it shared the

view that when deciding on those proposals we should also capture the legal binding nature of paragraph 1b(ii) of the Bali Action Plan (referring to the nationally appropriate mitigation actions of developing countries).

It said that its position on the legally binding outcome of the AWG-LCA goes hand in hand with a second commitment period under the Kyoto Protocol. The Cancun outcome should clearly express legally binding outcomes for both tracks, and not in the form of (COP) decisions.

It also said that on the second commitment period, it supports a global framework engaging all major economies, that addresses weaknesses in the Kyoto Protocol and where we see work progressing such as on the base year (from which to measure emission reductions) and constructive discussion on AAUs that for the EU is very important.

The EU said it is also willing to take a step forward and that the numbers in the information paper by the Secretariat can be captured in the Annex of the Kyoto Protocol to show we are moving in the KP track.

It said that it can be seen from discussions in both the working groups that there is support for legally binding outcomes in both tracks, and that from the COP Presidency it can be seen that there might be work for next year after Cancun.

The Marshall Islands in associating with Grenada said that the AOSIS proposal reflects an outcome that is legally binding. The AOSIS proposal submitted this year and amendments to the Kyoto Protocol are aimed at a balanced outcome. It said that careful comparability is included and the US proposal also allows for developing countries to come forward with NAMAs.

However, it said that Parties are still faced with a question before us – how does form follow substance?

It said the COP can include in a decision the guide towards South Africa (venue of COP 17 in 2011) and a clear orientation can be provided for our work. The AWG-LCA work should be extended taking into account proposals under Article 17 of the Convention.

Chair Cutajar sought clarification that the Marshall Islands is asking for a decision from COP on organization of work for COP 17, explaining that a contact group has no life beyond a COP session.

China supported India, saying that the AWG-LCA is already discussing all these hard nutshells – without understanding all these difficult issues how can we discuss legal form? If we cannot have a clear understanding on the usefulness of the substance how can we discuss form, it asked.

It said that at this critical point Parties should not be diverted or distracted from work that is needed. It expressed full sympathy with the proposals from AOSIS, Costa Rica and Tuvalu, and assured the Parties concerned that these will be discussed in the AWG-LCA.

Every issue we are discussing here is being discussed in the AWG-LCA – so how are we avoiding duplication, China asked.

Singapore in supporting AOSIS (of which it is a member) highlighted the issue of architectural form, saying that a legal architecture underpins the UNFCCC and this must be ensured. It supported comprehensive coverage and global participation. It said that it is essential to implement pledged actions and a multilateral rules-based framework to ensure actions.

It hopes that Cancun will crystallize consensus for a legally binding agreement to implement the Bali Road Map.

South Africa said it had a practical suggestion that it also raised in (the COP) plenary. We have to be very pragmatic – this is the elephant in the room and that is the legal form of the outcome (of the AWG-LCA).

It said that most of those elements heard in the contact group presentations can be brought into the AWG-LCA work. The key to resolving these issues is a balanced outcome: for the Kyoto Protocol we need an amendment, in the AWG-LCA we need the same legal weight. It said that without the clarity of what the outcome of the AWGLCA will be, it is not fair to ask proponents (of the protocol proposals) to take their issues to the AWG-LCA.

It also said that because these matters link to the COP and the CMP, we need to take them to that level. If we decide to dissect the proposals we would waste a lot of time and won't come up with any outcome that we would like. So, it called for taking this to COP consultations for a bigger blueprint and to be ensured that sovereign states can have their proposals fully taken into account. It said again that we should be pragmatic in our approach.

Colombia said we need a decision in Cancun that will lead to a legally binding agreement. It sees many difficulties in reaching agreement if we do not have legal certainty as to where we going. That was the problem last year (at COP 15). If there is legal certainty then negotiators know where to go, it added.

Mexico said that it has listened carefully to the opinions of the Parties and that the COP President created this contact group as an acknowledgement of the importance to listen to the proposals – there had been no space to consider these and there is

legitimate interest. It hoped that the chair will convey all these views to the COP President.

Sri Lanka said that a legally binding protocol from the AWG-LCA is very important for it. If we do not know the legal form of the outcome it won't help us in moving the discussion forward. The UNFCCC is legally binding, the Kyoto Protocol is legally binding so we all know the difference between that and (COP) decisions.

Bolivia said it is important to remember that we have a mandate to finish our work in the 2 tracks and that is to discuss in the context of the Bali Action Plan, and clear compliance with the Kyoto Protocol. We are discussing now to complement or replace the Kyoto Protocol in the context of another protocol. If the Kyoto Protocol is not complied with then this discussion is out of the mandate given to us, it said.

It also said that we have to fulfill the great job of whether the Kyoto Protocol is complied with. In the AWG-LCA we are precisely in the middle of discussion. It agreed with India that it is premature to discuss an instrument that could replace the Kyoto Protocol. It added that on substance we are dealing with content, the issues that are important. So let us work on that and then see the context of legal form afterwards.

The **Philippines** said that it is still agnostic on the form. We believe that any decision on the process and the form of the agreed outcome must necessarily be determined by what kind of operationalisation and what kind of compliance regime we want to see and this will define the type of instrument we want.

It emphasized that the work of the AWG-LCA should not result in any weakening of the Convention or Kyoto Protocol, or the shifting of the balance of obligations. There should be an instrument with immediate effect and not one that will need waiting; with substantive obligations of developed countries and how they will implement those. There should be no replacement of the Convention or Kyoto Protocol.

Norway said that legal form is very important and there must be no duplication. It said the contact group is to prepare for next year and the work of this group should continue in 2011.

Chair Cutajar said again that this is a contact group and its life ends with the COP session.

St. Lucia supported other island state Parties for a legally binding treaty outcome at the AWG-LCA as well as in the AWG-KP to co-exist. But clearly we need a process to get us there, to achieve a legally binding agreement. It said that it would be good to have a decision on intersessional work. In response to (South Africa's) suggestion to refer to

the COP President, it said that this needs to stay within this contact group, and that this group could look at what is needed in intersessional work.

St. Kitts, Trinidad and Tobago, Jamaica and Nauru also spoke in support of a legally binding agreement from the AWG-LCA.

After further interventions by India, Tuvalu and the US chair Cutajar gave his summary. He said that the group had had some interesting presentations on the subject of the proposals on the table, situating those proposals in the context of ongoing work, especially the work in the AWG-LCA. Some Parties pointed out elements covered in the AWG-LCA, others pointed to legal elements not covered in the AWG-LCA.

He reminded Parties that the agenda item on consideration of amendments under Article 17 of the Convention will remain open at the next COP session unless it is completed in this COP session. For those who are concerned, as long as proposals are on the table they remain open. Other Parties can put in proposals too.

He said that there are a few points of difference in the interpretation of what is meant by “legally binding” and the debate continues, so he will only take note of this.

He said that some Parties do not want to lose sight of legal gaps that are not dealt with in the AWG-LCA and that there should be a legally binding agreement.

On the question of one track or 2 tracks, he said that we are clearly committed to 2 tracks and that this is a well-known situation.

He said that Parties need to deal with process issues, and agreed with the South African delegate that this is part of the big picture. That is in the hand of the COP President – she is President of the COP and the COP MOP (CMP); she has the big picture and she has mentioned that there is a consultative process.

He then said that the important thing for all Parties is that this issue of legal form is not lost. There is one specific proposal from Costa Rica, a decision that could extend the mandate of the AWG-LCA. Some Parties want to have a decision on legal form here in Cancun. Some want to take the issue to the AWG-LCA and others want a distinct process.

He then said that given the difference of opinion and given that this is part of a big picture, and has been enjoined not to have duplication of work, he will convey as fairly as he can the views that he has summarized and seek the advice of the COP President.

He concluded that he did not think it would be productive to have informal consultations in the afternoon. But he would discuss more deeply with those Parties with interest so that he can have a better understanding if this work is to continue.

Grenada said that we hear you very clearly but would like to record our disappointment that there will not be a discussion this afternoon.

Chair Cutajar reiterated that there was no facility for the contact group but for informal consultations and he had decided not to do that.

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SBI Session Closes on a Positive Note, with More to be Done

Cancun, 6 December (Hilary Chiew) – The 33rd session of the Subsidiary Body for Implementation (SBI) under the United Nations Framework Convention on Climate Change (UNFCCC) closed on the night of 4 December with the adoption of 14 conclusions and decisions respectively.

Overall, Parties have found the session to be effective and useful as it allowed Parties, particularly the Group of 77 and China, to be engaged constructively in discussions in order to achieve real progress on different issues under the SBI.

Developing countries underscored the importance of the work of the SBI, the need for more efforts towards implementation-oriented decisions and conclusions on important issues to be adopted by the Conference of Parties (COP) in enabling them to deal with the effects of climate change.

The key decisions were the extension and expansion of the mandate of the Least Developed Countries Expert Group (LEG) by 5 years and the highlighting of Annex I (developed countries) Parties' poor records in emissions reduction based on the review reports of their greenhouse gas inventory data for the periods 1990-2007 and 1990-2008.

Representing the G77 and China, Yemen said the SBI is the body responsible for implementing climate-change-related activities and it underlined the word implementation.

Therefore, it would like to see more efforts towards implementation-oriented decisions and conclusions on important issues to be adopted by the Conference of Parties (COP) in enabling developing countries to deal with the difficulties they are facing in terms of lack of technical and financial support, predictability of funding and the provision of the agreed full costs for national communications. This, it said, will eventually allow them to overcome the barriers on implementing activities and

programmes on adaptation and mitigation of climate change.

The Group, it said, considers the operation of the Adaptation Fund and the direct access to funding to be an excellent example of successes that Parties have achieved, which will help pave the road for an equal and balanced treatment of adaptation, in providing funding as it has been historically given to mitigation.

It welcomed the review process of the Adaptation Fund and its institutional arrangements that will be conducted in 2011 as important steps.

It reiterated the group's concerns articulated in its statement at the opening plenary (30 November) of key issues, namely, review of the financial mechanism; governance of long-term finance; review of the Adaptation Fund and its institutional arrangements; implementation of decision 1/CP.10 (Buenos Aires programme of work on adaptation and response measure); lack of inflow of capital to the Special Climate Change Fund and the LDC Fund to enable developing countries to deal with the adverse impacts of climate change; predictability of funding; and the provision of the agreed full costs for the preparation of National Communications from non-Annex I (developing) countries.

On development and transfer of technology, it called for the creation of a technology mechanism consisting of the key elements that are necessary for scaling up of development and transfer of technology for adaptation and mitigation by the developed countries. Hence it is important that financing technology transfer should come from public resources of developed countries.

In recognising the work of the Global Environment Facility (GEF) carried out under the Poznan Strategic Programme on development and transfer of technologies, the Group strongly recommended the GEF to align these activities with

those of the Technology Mechanism to be established under the UNFCCC.

It said future sessions of the SBI must switch from the habitual 'to take note of documents' to a proactive action to raise (findings of those documents and reflect them) as COP decisions. It was referring to the National Greenhouse Gas (GHG) inventory data for the period 1990-2007 which showed Annex I Parties with an increased trend of GHG emissions. A strong message must be sent to all Parties for such countries to limit and effectively reduce their anthropogenic emissions of GHG, enhance their GHG sinks and establish a mechanism to ensure compliance.

At the same time, the Group considers that it is urgent to adopt a COP decision to implement the recommendations prepared by the Consultative Group of Experts on National Communications (NC), for non-Annex I Parties to cope with the constraints and gaps affecting non-Annex I Parties in the process of and preparation of their NCs and the assessment of their capacity-building needs.

Lesotho speaking on behalf of the Least Developed Countries (LDCs) said the SBI is a key component of the UNFCCC process as it oversees implementation of climate change activities on the ground. In our view, the 33rd session of the SBI has been a tremendous success and therefore, Cancun has registered some success already.

It said the item on matters relating to LDCs addressed issues fundamental to the LDC programme particularly to assist the effort of this group of countries with acknowledged extremely limited capacity to adapt to the effects of climate change.

It further said the LDC work programme provides for the Group an opportunity to implement programmes to respond to the challenges of climate change. The NAPA (National Adaptation Programme of Actions) story is a success story. Forty-four countries have their NAPAs approved by the Global Environment Facility Council with a number of them already under implementation.

The agenda item on LDC Fund was debated and completed to the satisfaction of the LDC Group. It appreciates the decision for the GEF to facilitate in the implementation of the remaining broader elements of the LDC work programme. These include development of longer term national adaptation plans that aim at deepening the efforts to mainstream climate change in the LDCs.

It welcomed the decision to expand the LEG membership from 12 to 13 which included three experts from Annex I countries in addition to 9 and

now 10 experts from the LDC Group. The varied and diverse backgrounds of this membership result in the LEG becoming a very effective tool to build and to transfer capacity.

It said further that the LEG has ably performed its mandate to support the LDC Group in preparation and implementation of NAPAs, and welcome the draft decision of the SBI to extend the mandate of the LEG by 5 years.

It said it is now clear to the world and also a source of pride to submit that the NAPA process, the LDCF and the LEG, are the best practices in implementing programmes, and it hopes for a continuation of this practice.

It thanked countries that have made financial contributions to the LDCF and those that have offered financial, technical and expert support to the work of the LEG. It further requested other countries that have not yet done so to make contributions in support of the LDC work programme.

Belgium, representing the European Union (EU), said it was encouraged that Parties were able to extend the LEG mandate as well as come to a positive conclusion on the review of the LDCF as it showed that Parties have the capacity to build consistent adaptation support for developing countries.

It said the 4th review of the (UNFCCC) Financial Mechanism has been successfully concluded as well as the assessment of the Special Climate Change Fund and additional guidance to the GEF was issued, all of which should enhance the provision of financial resources for the implementation of the Convention.

It welcomed the conclusions of the Poznan strategy programme on technology transfer and on the long-term programme on technology transfer. It is pleased with the spirit of compromise demonstrated by Parties and the outcome of the discussion on national communications and inventories for both Annex I and non-Annex I Parties.

It is further pleased to see the progress made with regard to ways for enhancing the participation of observer organisations in the UNFCCC process during the coming year and welcomes the workshop to be held in 2011.

Despite these positive results, the EU regretted that once again there is lack of progress on the completion of the 2nd comprehensive review of the capacity-building framework.

It stressed that work to support the implementation is key to any climate change policy and Parties have to assure that even when negotiating a future regime, due attention is given to advance implementation.

In the intervention on increasing observer organisations' participation, **Mexico** said the move should also include the idea of creating a new government constituency for parliament and legislative assemblies.

Tebtebba, representing the indigenous peoples' caucus, called on Parties to support and strengthen indigenous peoples' participation in the UNFCCC process. It said in other UN conventions, these same Parties had recognised indigenous peoples' contribution and it looks forward for these examples to be replicated in the UNFCCC.

On capacity-building under the Convention, co-chair Marie Jaudet of France reported that the contact group made limited progress as Parties' views differ considerably. Therefore, they will deliberate on the issue again at the next SBI session and hope to conclude the work by COP 17 (next year in South Africa). She said Parties expressed their disappointment for not concluding the agenda item on the second comprehensive review of the capacity-building framework.

She also reported that another agenda item – capacity-building under the Kyoto Protocol – failed to produce an agreement. Due to time constraint Parties decided to continue at the 34th SBI session, based on the draft text from the 32nd session of the SBI with the view to recommend a draft decision for adoption at COP 17.

On the agenda item dealing with NCs and greenhouse gas inventory data from Annex I Parties, **Bolivia** pointed out that not only are developed countries historically responsible for climate change, it is also clear that the emission levels from various Annex I Parties which are not economies-in-transition continue with a growing trend of emissions, some even doubling their emissions from 1990 levels.

As such, it said the FCCC/SBI/2009/12 report that registered emissions of Annex I Parties for the period 1990-2007 must be taken seriously by the SBI

as that constitutes the main source of information for the implementation of the Convention.

While it had approved the draft conclusion and decision, Bolivia said it is frustrated and wanted to express concern that Parties can't reach consensus on the need to highlight the failure of specific Annex I Parties in the draft texts.

The draft decision, however, requests Parties included in Annex I with increased trends of GHG emissions for the period 1990-2007, to adopt national policies and take corresponding measures on the mitigation of climate change, by limiting and effectively reducing their anthropogenic emissions of GHG and protecting and enhancing their GHG sinks and reservoirs in compliance with their commitments.

The draft decision also invites Parties and admitted observer organisations to submit to the secretariat, by 28 April 2011, their views on possible ways to address the fact that some Annex I Parties are not fulfilling their commitments of reducing their GHG emissions, established under the Convention.

Bolivia had stressed throughout the three-day Contact Group meetings on this matter that it isn't enough that Parties 'take note' of those reports. It also preferred to have the draft conclusion make specific reference to the national GHG inventory data for the period 1990-2007 instead of the report that captured data for the period 1990-2008 (FCCC/SBI/2010/18) as the latter was an 'incomplete' report given that the review process was still on-going.

Between 1990 and 2007, total aggregate GHG emissions for Annex I non-economies in transition, excluding LULUCF (Land-use, Land-use change and Forestry), increased by 11.2% and GHG emissions including LULUCF increased by 12.8%.

The review for the period 1990-2008, meanwhile, showed that for Annex I non-EIT Parties, GHG emissions excluding LULUCF increased by 7.9% and GHG emissions including LULUCF increased by 8.3%.

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COP President Announces Ministerial Inputs, Assures Transparent Process

Cancun, 7 December (Chee Yoke Ling) – In announcing that newly arrived ministers will help to move the climate negotiations forward, Mexican Minister Patricia Espinosa, President of the Conference of Parties, also reassured Parties that the process will be transparent and inclusive.

She announced that she had asked some ministers to help her in consultations in five areas – shared vision; adaptation; mitigation; finance, technology and capacity building; and items under the Kyoto Protocol, with two ministers to assist in each issue. A stock-taking plenary will be held on Tuesday to review the situation.

Inclusiveness and transparency were central in the discussions at three informal meetings held over the weekend, with repeated assurances that there is “no hidden text and no secret negotiations”. These assurances were given by Patricia Espinosa, Minister of Foreign Affairs of Mexico, who is President of the 16th session of the Conference of Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC), and the 6th session of the COP acting as the Meeting of Parties to the Kyoto Protocol (CMP).

The lack of transparency and the manner in which the last COP and CMP sessions in 2009 were conducted, with the resulting controversial Copenhagen Accord that was not negotiated by all UNFCCC Parties in accordance with UN rules and processes, has created mistrust among many developing countries.

Since then, key issues remain unresolved with divergent views in the two tracks of negotiations in the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad Hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol (AWG-KP).

The Mexican COP 16 Presidency has been holding a series of informal consultations over many

months before the Cancun conference, and since the COP 16 and CMP 6 sessions started on 29 November they have undertaken informal consultations on some issues too.

On Sunday morning (5 December) Minister Espinosa convened an informal stock-taking meeting that focused on the organization of work over the next few days. She stressed that the meeting was not about substance. Her statement was subsequently posted on the UNFCCC website entitled “Informal meeting of the President, Statement by Her Excellency, Mrs. Patricia Espinosa, COP 16/CMP 6 President”.

The day before she had presided over informal stock-taking meetings of the COP 16 and CMP 6 sessions to assess the progress of work after one week of negotiations and informal consultations. The UNFCCC’s subsidiary bodies – the Subsidiary Body on Implementation and the Subsidiary Body for Scientific and Technological Advice – concluded their work that same night and numerous decisions were adopted, marking welcome progress in the implementation of the Convention.

The stock-taking of the COP 16 and the CMP 6 also focused on assurances of transparency and inclusiveness by the COP President, with concerns voiced by some developing country Parties.

(A High Level Segment of COP 16 and CMP 6 will begin on Tuesday afternoon and end on Friday afternoon, with some ministers already arriving over the weekend.)

Espinosa informed Parties at the Sunday informal meeting that she has invited some ministers to support the efforts of the Presidency and those of the two Working Groups, “to carry out consultations in order to help us identify the areas where solutions may lay, and thus to lead to further progress”.

In her statement read out at the beginning of the informal meeting, she said that “the scheme I will present follows what we have agreed upon with

the Chairs of the Working Groups, after valuable conversations with the coordinators of the negotiating groups and in close consultation with the Secretariat”.

She reiterated, “All of us are fully aware of and respect the fact that this is a two-track process and will continue to maintain balance within and between each of them.”

She said, “No international conference can succeed without there being confidence among the parties and in the process itself. We believe that, after much hard work by all, current conditions should allow, indeed must allow for the reaching of understandings. This is in no small measure due to a commitment by all to transparency and inclusiveness, principles that the Mexican Presidency will continue to honor throughout.”

She said that ministers are already in Cancun, and at a welcoming dinner for them on Saturday night, “no papers were distributed and no negotiations took place”.

(In Copenhagen last year, a welcoming dinner for selected heads of states was reportedly the beginning of the “secret negotiations” resulting in the Copenhagen Accord.)

Espinosa went on to say, “Starting today, however, the presence of high-level officials must be capitalized, as they can provide the necessary political guidance to push forth on several key issues.”

On the consultative role of the selected ministers, she stressed that the ministers “will contribute to the work that is already under way, in which we have made important progress but still require political decisions to be taken in order to forge ahead” (referring to the work of the two AWGs).

She emphasized, “Ministers will not be expected to draft compromise language, but to help identify where balance is to be found. Ministers will not convene informal sessions of any sort, but will instead approach every delegation they believe ought to be consulted at each specific moment and remain accessible to all.”

To concerns expressed informally over the past few days that many ministers will be arriving later, and some delegations will not have ministerial level representation, Espinosa said, “Ministers will not limit their contacts to other ministers, but will be open to dialogue with all and they will reach out to the representatives that each party has decided to appoint.”

She also said, “Ministers will not relieve the Chairs (of the AWGs) of their responsibilities in any way, but will support their efforts to resolve matters

that have so far not advanced in a more formal setting.”

She then listed the pairs of ministers (one from a developed country and another from a developing country for selected issues) who will be helping her in relation to the AWG-LCA work: Sweden and Grenada on matters related to shared vision; Spain and Algeria on adaptation; Australia and Bangladesh on finance, technology and capacity building; New Zealand and Indonesia on mitigation, including MRV (monitoring, reporting and verification).

On items under the Kyoto Protocol, the ministers from the United Kingdom and Brazil will be assisting.

She added that other ministers, among them those from Ecuador, Singapore, Norway and Switzerland, could support on other specific issues as they arise.

She reiterated her statement made the day before at the informal stock-taking of COP 16 that, “there will be no separate or parallel ministerial process, no selective segmentation of issues, and no duplication of negotiations.”

On the role of the Mexican Presidency, she said it “will help facilitate communication among ministers, through constant dialogue with all, with the Chairs (of the AWGs), with the groups (of Parties), and with individual delegations”.

“Once again, I must state that there is no hidden text and no secret negotiations,” she said. “The Mexican Presidency will continue to work with full transparency and according to established United Nations procedures.”

She concluded by saying, “I believe we can complete the package, or at the very least make significant advances, before the opening of the high-level segment on Tuesday afternoon.”

She expressed optimism that “we will move forward very quickly in the next two days” with the “positive results ministerial participation can bring” and “the inclusiveness and technical capacity that the formal negotiating environment can provide”.

She said that she would fulfill her “responsibility of closely monitoring the state of our discussions and proposing the further steps that might be required so that we can reach our goals”.

Yemen on behalf of the Group of 77 and China said that the Group trusted the COP 16 President’s leadership which so far has been notable for its transparency. It stressed that the Group’s participation seeks to ensure that the inputs of the Group are reflected in the final product.

It emphasised that there must be transparency; the Group will not look favourably on parallel or

shadow ministerial processes. Ministers have a pivotal role to play but it must be within the Working Group processes.

It said that the principle of the sovereign right of nations must be respected and adhered to, in functions and activities organized to advance the negotiations.

It also said that the two Ad Hoc Working Groups must continue their work in line with the Bali Roadmap (comprising the Bali Action Plan for enhanced implementation of the UNFCCC and the second commitment period for emission reductions by developed countries of the Kyoto Protocol).

The **European Commission** represented by Connie Hedegaard (Commissioner for Climate Action, former Danish Minister for Climate and Energy) supported the COP President's next steps and welcomed the "early involvement of ministers".

She also said that while the upgraded text has all the elements of a balanced package, it is also concerned that the texts on the table are not ready for ministers to agree to a deal and are not of equal status. It said that the Kyoto Protocol text contains options on all issues, but the mitigation and MRV in the AWG-LCA text have mere options that still need to be in the legal text.

She also said that "we are here to negotiate and not to restate national positions".

Venezuela's Claudia Salerno spoke intensely about the state of emergency in her country due to floods, and called on Parties to rise to the multilateral and environmental challenge. She said that the UN system can generate appropriate responses in due time, and there is no other alternative but to sit down together and resolve the issues. She added that this will be a new historical responsibility for the Convention, needing all to sit together – negotiators, diplomats, professional bodies.

(Several Parties in their statements expressed sympathy and solidarity with Venezuela.)

Egypt on behalf of the Arab Group raised several questions on the procedures. Emphasising that there must be open, transparent and accessible consultations, it asked: How can we access these ministers, will they organise meetings? Or will they consult on their own?

On Espinosa's statement regarding resolving issues before Tuesday when the High Level Segment starts, what is the status of the AWG-LCA and AWG-KP if these issues are not resolved, especially since they are the proper venue to resolve the issues that have not been resolved?

It disagreed with the EU on the balance between the AWG-KP and AWG-LCA texts, saying

that with regard to the former, it does not look like it will lead to a decision at this meeting.

Egypt cautioned that in Copenhagen we had a process that was a little similar to this – un-clarity of the AWGs process and inclusiveness of all Parties.

In response, Espinosa read from the relevant parts of her statement again saying that it would be made available to everyone. She added that before the opening of the High Level Segment, they could meet again to assess progress. She will closely monitor the situation and propose further steps. She will hear stocktaking messages from the Working Group chairs, and then collectively take necessary action.

Grenada on behalf of AOSIS agreed with the call to treat discussions with urgency and decisiveness, supporting the principle of transparency and inclusiveness, and stressing that there can be no parallel processes.

The Democratic Republic of Congo representing the African Group said that transparency is critical for the success of our work in Cancun and the longer term success of the multilateral system. Expressing trust in the COP President's leadership it said it is also essential that work continues in the two AWGs and that the pace of negotiations should accelerate.

Cuba welcomed the assurances of the COP President regarding the procedures next week and said that this reflects her work in restoring confidence in the negotiations. It stressed the importance of Parties negotiating directly with Parties and not have facilitators (referring to the role of facilitators in the Tianjin, China meeting of the AWG-LCA in October).

Nigeria stressed that the key word is transparency. While we are dealing with process and procedures we must be very clear and be right on target, it said. Negotiations must be driven by Parties, and not facilitators coming up with text.

It said that the negotiations must continue beyond Cancun, and it must be clearly understood that the two AWGs must continue. All the elements are not there so we must have a channel where negotiations will not cease but continue.

On the role of ministers, it endorsed the words of the COP President – facilitation and guidance roles. But we must also be clear that work by ministers must not be selective, and all delegations, whether ministers or heads of delegations, have equal right to participate, it said.

Nigeria also expressed puzzlement over the EU's statement that ministers will finalise a deal. Reiterating that transparency is critical, it said that

whatever we do with the Kyoto Protocol will determine the result.

Colombia said that the elephant in the room is Copenhagen – the ghost of Copenhagen. Saying that we have now managed to overcome what happened in Copenhagen we must support the Mexican Presidency and use all the tools that we have. It said Parties should not only drop extreme positions, but stop threatening to walk out or ask where text comes from.

Pakistan asked how the ministers (invited by the COP President to consult) are to report back to the AWGs.

The COP President replied that there will be communication permanently with the chairs of AWGs – particularly as all the issues are so interconnected.

The Philippines also stressed the importance of a common understanding of inclusiveness, balance and transparency to move forward. It said that ministers only give political guidance to their own negotiators, not other sovereign nations, and that Parties must work within established UN procedures.

Malaysia expressed concern over comments that Parties are taking national positions, saying that the principles of the UNFCCC and Kyoto Protocol are not national positions but that they represent negotiated and multilateral positions. These, it said, define the balance.

Bolivia said that all agreed that there should be negotiations among the Parties. What do we mean? That means that among us we must deal with all the questions – the crucial issue of numbers of the Kyoto Protocol (on emission reduction numbers)

should be examined by all Parties, it explained. We cannot limit such consideration to a few and in informal consultations.

It said that we need several negotiation meetings among Parties and that the text should also be about the text of the Parties, and not of facilitators, so that we do not duplicate the failure in Copenhagen; that is the only way we can put the ghost of Copenhagen behind us.

Bolivia said that consultations among ministers could serve to support the negotiations but cannot substitute for them. The delegations that are us must find points of coming together. Welcoming the COP President's assurances, it said, "Let us definitively put this ghost behind us, the ghost of the Copenhagen Accord."

India said that work should continue in the AWG-LCA and AWG-KP tracks. It stressed that the clouds over the Kyoto Protocol must be dispelled and these must not handicap Cancun over balance. It reiterated that substance comes first and Parties must figure out substance before we enter into questions over legal form.

Indonesia said that work should be done through the AWGs.

Switzerland on behalf of the Environmental Integrity Group supported the COP President's process but said that this does not replace the Working Groups.

Australia on behalf of the Umbrella Group said that the views of Parties should be appropriately reflected and that there must be balance, of which MRV is an important part. It said that it is important to have ministerial influence in the decision-making.

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Transparency and Inclusiveness Take Centre Stage in Stock-taking

Cancun, 6 December (Chee Yoke Ling and Lim Li Lin) – The informal stock-taking of the first week of the ongoing climate talks under the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol focused on issues of transparency and inclusiveness as well as the integrity of a Party-driven process.

The two meetings on Saturday (4 December) were presided by Patricia Espinosa, Minister of Foreign Affairs of Mexico who is President of the 16th session of the Conference of Parties (COP) to the UNFCCC, and the 6th session of the COP acting as the Meeting of Parties to the Kyoto Protocol (CMP).

The UNFCCC's subsidiary bodies – the Subsidiary Body on Implementation and the Subsidiary Body for Scientific and Technological Advice – concluded their work that same night and numerous decisions were adopted, marking welcome progress in the implementation of the Convention.

[Following the two stock-taking meetings, the Mexican COP President convened an informal meeting on Sunday (5 December) to inform Parties on the next steps in the process related to the two Ad Hoc Working Groups under the UNFCCC and Kyoto Protocol. See TWN Cancun News Update #12.]

Minister Espinosa in opening the informal stock-taking of the first week of the work of the COP 16 said that good progress has been made. The results from the work of the two subsidiary bodies completed that afternoon will be transmitted to the COP plenary.

She said that Parties have been active in deliberations in the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) as well as deliberations under Article 17 of the Convention (relating to six proposals for new protocols submitted by several Parties: See TWN Cancun News Update #10). She also said that

Ambassador de Alba has been carrying on consultations with regard to future mitigation commitments.

On the purpose of the meeting she said that as we reach the half-way mark of the Conferences we must evaluate where we stand and chart the workdays ahead. She said that she realized the importance of clarity in order to maintain unity of purpose.

From the beginning the Mexican government has been committed to ensuring that every view is listened to and taken into account, she said, and stressed that there is no hidden text, and that the Presidency has done its best to provide guidance. This is how we will act throughout. Today's stock-taking will leave us with a clear picture of what has been achieved and all that must be done for a broad, balanced discussion.

Remarking that ministerial-level representatives have begun to arrive in Cancun, she said their political guidance is indispensable in several key issues. We will do our best that this is provided in a timely and effective manner to chairs and facilitators. She gave her personal commitment that there will be no separate parallel process, no selective segmentation of issues, no duplication of negotiations and no lack of transparency.

She promised to consult with all Parties and announced that she would offer dinner that evening to ministers but that there would be no working papers and no negotiations would take place. She also said that the next steps would be discussed on Sunday in another informal meeting (where she repeated much of what she said at the COP 16 stock-take).

Margaret Mukahanana-Sangarwe of Zimbabwe, the AWG-LCA Chair, in her informal report said that she had at the beginning of the (current) session presented a paper under her own responsibility to help the negotiations to move

forward. That paper built on the paper from the negotiating text and work from Tianjin (where the AWG-LCA last met in October).

She said that after a week of work it was useful to prepare a revised version building on the progress made, and this is the CRP 2. She hoped that Parties will read it over the weekend and brief their ministers for the work ahead next week, including individual drafting groups. (Some parts are not revised yet as there has not been sufficient information from the groups to do so.) She proceeded to give a summary of the status of the main issues where some are close to compromise and others need more work next year, concluding that in her assessment there is progress, but also areas where national positions are maintained, in some cases going backward. She said that negotiations need to move and that Parties should come back on Monday so that we can finalise the work of the AWG-LCA.

In inviting Parties to make their statements, the COP President said that the intention of these statements is not to examine the elements that the AWG-LCA Chair has presented.

Yemen on behalf of the G77 and China said that the Group was not in a position to give a thorough and objective view on possible elements in the CRP document. "We have just received it. It deserves careful attention. We will not present a view at this stage."

Grenada on behalf of the Alliance of Small Island States (AOSIS) said it had just seen the text and would need time to do justice with adequate response. It said that this is negotiation under the Bali Action Plan. In general, looking at the text in a cursory way, it lacks sufficient ambition for urgent protection of islands and the world in the context of the threat of climate change. It represents a step forward but requires more work in shared vision and adaptation, those two areas need to be strengthened.

Bolivia said it will study the document carefully, and regretted that the imbalance of the previous text (CRP 1) is not removed. It listed several examples of such omission not a balanced text and stressed that this is not a negotiating text of Parties. We are (a) small (country) but we have the same rights, it added.

It called for the beginning of negotiations of the 14 August 2010 text which contains positions of Parties. This (CRP 2) does not reflect Bolivia. We cannot negotiate through facilitators or the chair of the AWG-LCA. This is a negotiation between states. It is high time we began negotiations between states. Facilitators and chairs have the right to bring Parties together but Parties have the right to negotiate. If

we analyse what is happening in the AWG-KP for balance, there need to be two commitment periods in the AWG-KP. (The last comment evoked applause in the room.)

China said a stock-taking plenary is important to assess what we have achieved for the past week. It expressed appreciation for the COP Presidency efforts to lead in a full and open, transparent and inclusive manner. This is very important for a good outcome of Cancun. It said it is important to keep the Party-driven process. It is time to change the process from an iterative into a negotiation mode; there is a need to change gear to speed up the process of negotiation. We are all here to secure a balanced outcome of the conference. Indispensable is the second commitment period of the KP and we should follow strictly and sincerely the Bali Road Map.

Tajikistan speaking for landlocked countries said that the text lacks balance and consistency, and fails to acknowledge the vulnerabilities of mountainous, landlocked countries and these gaps are unacceptable. **Bhutan** supported this concern.

Saudi Arabia said that the transparency and inclusiveness of the Presidency is very important, and there is big relief because of the COP President. It said that the LCA text is not mandated and is a non-paper.

Tuvalu said the CRP 2 represented a narrowing of perspectives. There are differences of views as to whether it represents views of Parties. It is a CRP document, a document of the chair of the AWG-LCA and the views of co-facilitators. It does not represent proposals by Parties. It is time for us to change the mode of negotiations. We have to take ownership of documents and have the views of Parties reflected. We have passed the time of iterative process to consider if Parties' views are reflected. Parties have to have ownership.

Venezuela reserved its position as it is difficult to give views with such a short time to look at the document. It thanked Mexico for trying this week and this year and has shown a clear willingness to bring Parties to arrive at a consensus. But having said that, it agreed with AOSIS on the lack of general ambition.

It did not know how Parties are going to manage text. What is the methodology that we are going (to use) to insert these proposals? What is the value of groups of countries; if countries produce new text, this should have higher status. How are we going to move forward? There should be clarification and certainty on the role of ministers. It hopes that they are coming here to give guidance but not to substitute the work done in negotiations. It said it is prepared to negotiate as soon as possible.

Nigeria expressed concern over secret rooms and secret outcomes, and said it did not want a repeat of the previous situation. “When we see the paper on the KP (Kyoto Protocol) we will know if you are for real.” It stressed that it is necessary for Parties to have ownership. No matter how good the leadership, the process belongs to the Parties. Ministers must not take over negotiation of substance but give guidance.

The COP President restated that there is no hidden negotiation, there will be no secret or hidden text in this negotiation.

Argentina said that a frank debate preceded the consultation and hopes to see a balanced outcome in Cancun with principles of the Convention and the Kyoto Protocol. It will study the chair’s text, noting that views of all Parties are not reflected.

Guatemala supported the (COP President’s) commitment to keep the process transparent, welcoming the information that there will be no hidden text.

The European Union said that at this time, its shared objective for a balanced and comprehensive package on the Kyoto Protocol and the Convention is within reach. As ministers arrive it will brief them on willingness to compromise as it has observed. It said the new text is a further effort to that goal. It reiterated that the Cancun outcome needs legally binding results in both tracks.

It said that the second commitment period of the Kyoto Protocol is clear. Considerable progress has been made in adaptation, technology, finance and REDD Plus, and these have the necessary ingredients for a deal. We need textual proposals including in mitigation and MRV. The sooner the proposals emerge the easier for ministers to make compromises. It reiterated the European Council position for a global and comprehensive framework engaging all major economies under the second commitment period (of the Kyoto Protocol) and a strong outcome under the AWG-LCA.

Australia on behalf of the Umbrella Group said that there are really substantial achievements and that this process works and that this should not be jeopardized, reiterating that mitigation and MRV are less advanced.

It said that ministers expect clear text and can provide clear guidance for work next year.

Singapore welcomed the reiteration of the principle of transparency. It said the climate change negotiation is at crucial crossroads and we need an outcome here in order to preserve the credibility of the UNFCCC. The status of the text is not the fundamental question. The question is how do we build, compromise and reach discussion.

The Maldives agreed with Singapore about transparency and was sure there is no hidden text. “We have not read the text but are sure it reflects the Parties. We do see progress in Cancun and do not want the same sort of situation of Copenhagen in Cancun.”

At least 10 other Parties also made statements.

New protocols – amendment under Article 17 of the UNFCCC

The contact group established by the COP 16 plenary on 1 December to consider proposals by Parties under Article 17 of the Convention, met on Friday (3 December) under the chairmanship of Michael Zammit Cutajar of Malta (See TWN Cancun News Update #10).

At the end of the exchange of views, Cutajar said that he did not think it would be productive to have further discussions, and proposed to convey his summary of the views of the Parties to the COP 16 President. The Alliance of Small Island States (AOSIS) expressed their disappointment.

At the informal stock-taking meeting of the COP session, following an oral report by Cutajar, Espinosa proposed that informal consultations be held by Mexico’s climate envoy Ambassador Luis Alfonso de Alba on further work that could be done. Grenada on behalf of AOSIS objected and requested that discussions be continued in a contact group.

Espinosa then appealed to the Parties to agree, with de Alba’s participation to advance the process. India queried such a change of decision since the gavel had been lowered (signifying an adopted decision). Espinosa replied that she had not seen the request from Grenada to speak, and Tuvalu said that it had also indicated its desire to speak before the gavel.

China asked if a plenary at an informal stock-taking could make decisions. Espinosa agreed that this cannot be done. However the informal stock-taking ended with the contact group tasked to resume discussions on Monday (6 December).

Many countries are seeking a new treaty instrument under the UNFCCC as the outcome of the working group on long-term cooperative action under the Convention (AWG-LCA). However, there is no consensus yet on the form of that outcome, with options including COP decisions and a protocol.

Stock-taking of CMP 6

At the informal stock-taking plenary of CMP 6 that followed immediately, Minister Espinosa informed the meeting that the Presidency had been

conducting informal consultations on mitigation, including on emission reduction figures in the framework of the Kyoto Protocol. She said that flexibility, creativity and a true sense of compromise are needed, and that national positions are known and we now need to find common ground.

The Chair of the AWG-KP, John Ashe from Antigua and Barbuda, then reported back to the CMP. He said that on Monday, at the start of the meeting, he had tabled a proposal based on the document from the last meeting of the AWG-KP that was held in Tianjin, China in October. He said that his proposal covered all aspects of the work of the AWG-KP, and is balanced and comprehensive.

Ashe said that consideration of Annex I Parties' emission reduction commitments is the main task of the Group, and that there has been some substantial progress on issues being considered by the Group related to the length of the commitment period, the base year, and surplus assigned amount units (AAUs). He said that the Group was close to compromise on proposals with fundamentally different concepts, and has streamlined clear options.

According to Ashe, the AWG-KP had requested Ambassador de Alba from Mexico to assist the Group with informal consultations on the issue of emission reduction numbers. He said that the consultations are still on-going, and that Ambassador de Alba had reported to him on initial consultations.

(However, the Chair in his scenario note for this session had reminded the AWG-KP of the "offer" of the Mexican President to assist Parties in "arriving at outcomes in negotiations under both the AWG-KP and the AWG-LCA". During the sessions of the AWG-KP in Cancun, the Chair informed the Group that the Mexican Presidency was undertaking informal consultations on the emission reduction numbers.)

Ashe said that on the other issues, there had been substantive progress but further work was still required. He informed the Group that he intended to revise the proposal that he had tabled on Monday. The document was issued on Sunday, 5 December.

According to Ashe, the AWG-KP requested assistance at the ministerial level on the key political issues that are before the Group on numbers, land use, land use change and forestry (LULUCF), market mechanisms and methodological issues. He said that the ministerial will not supersede the work of the AWG-KP, but would assist the Group with options or compromise options to achieve a balanced outcome.

A number of countries expressed concern about the process.

Venezuela expressed concern that guidance would be sought through ministerial meetings to produce compromise versions, as it sounded as if the ministers are going to draft text. If this is the case, it asked, how will the Presidency ensure that the ministers' draft will not undermine the work that is being done in the AWG-KP. It noted that not all ministers will be here on the same days. It said that sovereign countries are equally represented by heads of delegations, and that the sovereign rights of equal representation by all states under the UN system must be guaranteed.

The Chair of the AWG-KP responded saying that he did inform the contact group yesterday where political guidance was urgently needed, and that (some) Parties have asked for political guidance. As such, he has invited the Mexican Presidency to seek ministerial consultations.

The COP President said that the negotiations will continue to be conducted by working groups where all countries are represented, and where the drafting takes place. Texts have to be approved by the working groups. However, there are a considerable number of ministers already in Cancun, and the Group would benefit from some guidance, on political issues, she said. (The High Level Segment is scheduled to begin on Tuesday, but the Mexican Presidency has invited some ministers to arrive early, at the weekend.)

According to the COP President, the ministers will not be drafting or duplicating the negotiating process, which will take place within the negotiating groups. Ministers from developed and developing countries will jointly lead in these discussions, she said, and they will make contact with delegations whether or not they are represented at the ministerial level. So, the inputs from ministers will be submitted to the working groups for consideration, and will be brought to the plenary for consideration, she said.

Nigeria pointed out that if the ministers will lead the discussions, this is inconsistent with saying that they will provide guidance. It referred to the statements by the Umbrella Group, the European Union and the Environmental Integrity Group and said that taken together the implications are very worrying, and perhaps the COP President has inadvertently joined in.

It said that there should be no more text from facilitators and even from the Presidency, and emphasized this as the major issue. It stressed on the transparency which the COP President has engineered, and which Ambassador de Alba has done everything to continue. It noted that out of all the consultations undertaken by Ambassador de Alba,

there has been no text on emission reduction numbers, and asked what would be submitted to ministers. Would it be text by Ambassador de Alba or John Ashe?

Tuvalu said that we are still dealing with text that is not formal negotiating text, and there is a need to move into a formal negotiating mode and negotiate paragraph by paragraph. It said that we can no longer have facilitators making arbitrary decisions about what are and aren't the views of Parties, and that we need to have a process that is owned by Parties.

Bolivia expressed concern that the negotiations are not making progress on any substantive issue. The crucial issue is emission reduction numbers, but up till now, there have been no official negotiations on it. There have only been informal consultations, where only a small group participates. The informal consultations should in no way substitute for the

formal negotiating process, where all participate, it said.

Statements of positions were also made by the G77 and China, the Umbrella Group, the European Union, the Environmental Integrity Group, the Alliance of Small Island States (AOSIS), the least developed countries (LDCs), India, Malaysia, Australia, China, New Zealand, Norway, Egypt, the Maldives, Japan, Vietnam, Peru and Benin.

The COP President concluded by saying that we do need a political decision to achieve the balance between and within the two negotiating tracks so that we can move ahead, and take a decision that will allow for enhanced global action. This will benefit those that need it most. It would give greater credibility to the multilateral process and the UN system as a whole.

Contributions by Meena Raman

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Political Leaders Disappointed in Climate Finance and Slow Progress

Cancun, 8 December (Hilary Chiew) – President Meles Zenawi of Ethiopia lamented that the promise of Copenhagen has been lost and called for the US\$30 billion fast start finance to be made available immediately.

Revealing personally for the first time the delivery status of the US\$30 billion fast start finance, Zenawi said the general opinion in Africa is that the money has yet to be delivered and that reports of money delivered have little evidence to the ground.

Speaking at the High Level Segment of the 16th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) and the 6th COP acting as the Meeting of the Parties under the Kyoto Protocol (CMP) which opened yesterday, Zenawi said the fast start finance has to be delivered if we want to deliver trust and there has to be transparency in the delivery to address this concern.

(Zenawi was referring to the financial pledges made by developed countries under the controversial Copenhagen Accord at COP 15 last December. The document was not adopted by the COP but only “taken note of”.)

Echoing Ethiopia’s concern, Kenya’s Prime Minister Raila Amolo Odinga told the assembly comprising several heads of state and ministers of environment that it was learnt that only 30% of the US\$30 billion fast start finance was delivered but it is not at all clear how much of the money is truly additional money, and that they are more in the form of loans than grants.

In her welcoming speech at the opening of the High Level Segment, the UNFCCC’s executive secretary Christiana Figueres said the stake in this COP is high and so is the political stake as the multilateral process is in danger.

She said the world must not assess the effects of climate change on the most privileged but on those most vulnerable. Tuvalu, the Maldives and Kiribati

are having to move their citizens due to saltwater; the floods in Pakistan and Venezuela are all wake-up calls but has the world woken up and responded, she asked? The answer, she said, lies in the hands of Parties negotiating in Cancun.

Figueres said much good had come out from the Subsidiary Body for Implementation (SBI) and Subsidiary Body for Scientific and Technological Advice (SBSTA) negotiations (these are the bodies under the UNFCCC). Hence, Parties have reached a crucial stage of their work.

She urged them to converge on all outstanding elements by conciliating on the avoidance of a gap beyond 2012 with anchoring proposals that had been put forward this year, by conciliating financial support and assistance for developing countries and those most vulnerable, and by conciliating response measures with fairness in guiding mitigation efforts.

She said the eyes of the world are monitoring the Parties’ work and they will be reporting and certainly verifying their efforts.

UN Secretary-General Ban Ki-Moon said Parties must act as a united nations, showing courage and compromise and urged every country to be part of the solution. He said the climate negotiation has been a long journey and it will not end in Cancun. However, Parties cannot let the negotiation run into complacency. Status quo will not do and a new future must take place here to move forward.

He said despite political and economic constraints at home, Parties must make progress as they are here to protect people against the adverse effects of climate change. He reminded that the longer the delay, the more we have to pay economically, environmentally and in the loss of human lives.

Since Bali (COP 13, 2007), he added, the health of our planet has continued to decline and greenhouse gas (GHG) emission continues to rise. And the Intergovernmental Panel on Climate Change (IPCC)

has warned that global emission must peak within the next decade and decrease substantially if we are to limit global temperature rise to 2°C. To achieve that, we need results now to curb emissions and the ability to create a more sustainable future; results that help especially the poor and the most vulnerable.

He warned that the world cannot sustain progress towards the Millennium Development Goals without solving climate change. It will not be able to reduce poverty, ensure energy security and international security without climate security. He said climate, energy, food and water security cannot be achieved in isolation.

Ban said there is a need for a balanced set of outcomes in Cancun and tangible progress is possible, pointing to decisions on Reducing Emission from Deforestation and Forest Degradation (REDD-plus), adaptation, technology transfer, creation of a new fund for long-term financing, anchoring of national commitments and clarity on the future of the Kyoto Protocol.

He urged Parties to use the report generated by the High Level Advisory Group on Climate Finance spearheaded by him as an input to the negotiation on financial mechanism as it has shown how to raise the US\$100 billion (pledged in the Copenhagen Accord) by 2020.

He said the time for waiting while keeping an eye on everyone else is over. The world cannot let the perfect be the enemy of good. Actions now and movement on as many actions as possible must be our aim in Cancun as every country can do more.

Mexican president Felipe Calderon said the work so far has been substantive and that Parties are not negotiating alone. While their eyes and ears are fixed upon the negotiating table, there are billions of people requiring a clear response from them that they cannot fail again.

He said, let's not postpone what can be achieved in Cancun. Quoting the Chinese proverb – *The journey of a thousand li began with a single step* – he called upon Parties to take the first step in Cancun.

He said we are all on the same boat and it is time to act as a single crew and steer in the same direction. He urged Parties to make the last effort to come to an agreement and build a strong voice that will give the world the response that it deserves.

Several heads of states and ministers then made statements.

Yemen's Minister of Water and Environment, Abdulrahman Fadel Al-Eryani, speaking on behalf of the Group of 77 and China, said the time has come to secure the outcome and mandate stipulated in the Bali Action Plan, stressing

that balance between the two negotiating tracks (the AWG-LCA and the AWG-KP) must be respected and balance within each track must be maintained.

He said whatever outcome in Cancun must not prejudice achieving a legally binding and fair outcome in the future. The central goal of the AWG-KP is for the second commitment period and he stressed the urgency of delivering the result for adoption at Cancun as it is the cornerstone of a successful outcome.

He said developed countries must show leadership to make economy-wide emission reductions and provide new financial resources for developing countries according to relevant provisions of the Convention.

Prime Minister Tillman Thomas of Grenada, representing the Alliance of Small Island States (AOSIS), said the 43 member states are most vulnerable to climate change. He said we must act now and act fast or the rising tide of climate change will overtake us. Cancun presents an opportunity to respond decisively to this challenge and this is a moment we must grab with both hands.

He said that Parties should not settle for a token decision that will not impact climate change, and said that what is focused on in Cancun is not enough. For example, adaptation does not have enough to support immediate adaptation actions and there is a need to go beyond an adaptation framework. He called for an Adaptation Committee to do work, provision for loss and damage already experienced and a mechanism to address this in terms of risk insurance.

On financial resources, he said a new fund is necessary during this meeting, with adequate provision for priority access of SIDs and LDCs.

He stressed the urgent need to address emissions, referring to the UNEP Gap report that showed emission reduction pledges are not enough to reach the goal of 1.5 degrees C as advocated by 106 countries. He called for an increase in the level of ambition.

He said that the second commitment period under the Kyoto Protocol is one of the central ingredients for Cancun to deal with, and that the results of the AWG-LCA must be legally binding by South Africa (at COP 17).

President Marcus Stephen of Nauru (on behalf of 14 small island states in the Pacific) said that his region is rich culturally, and the 10,000 people who speak his native language may soon disappear. However, climate change negotiation speaks in a strange language that carries the power to determine which of our nations may thrive or which may vanish below the waves. Without bold

action it will be left to children to come up with words to describe the tragedy if we do not act.

He said that as members of the Alliance of Small Island States (AOSIS) they use science, and are not seeking charity, nor selling to the highest bidder. He called for a fair solution and efforts towards a two-track legally binding solution in Durban: a new Durban protocol for the LCA, and an amendment to the Kyoto Protocol.

President Johnson Toribiong of Palau said that his country is safe for now but we must face the stark scientific reality that much damage has already been done to the planet and sea levels in the Pacific are rising faster than other parts of the world. He awaits agreement on long-term and fast financing and called for a follow-through on financial commitments made. He said that just as climate change is a global challenge, efforts to reverse it must be global.

President Álvaro Colom Caballeros of Guatemala talked about the more than 100 extreme rain events in his country that have cost ¼ of the national budget to rebuild infrastructure and other needs. We cannot wait to fill out sentences in a paragraph, as we search for words we are burying more and more dead, and this is happening in Mexico, Guatemala, Cuba and Venezuela.

He said that we must make an effort to reach an agreement; to answer one question: what are we going to tell our grandchildren 20 years from now about this meeting? The answer will depend on the conclusion reached at this conference today, he stressed. He called for an alliance for our common future and integrated human development, not to make money with but to change culture so new generations can have well-being and deal with climate change. This is a crisis of principle of values, not how much money I am going to make but how many lives we are going to save.

Ethiopia's President Meles Zenawi said, in addition to issues related to financing, that Africa contributed less than 2% of GHG, which is virtually nothing to global warming. Yet, it is suffering the most as a result of global warming created by others. He said for Africa, climate change is not about future risks that may or may not happen. Many countries are facing increasing drought and an unprecedented level of flooding and this bizarre combination has already devastated agriculture outputs, causing starvation. Every day of delay in the negotiation is paid in the lives lost. He said the African delegations want a legally binding agreement at the earliest possible time.

Kenya's Prime Minister Raila Amolo Odinga said he sensed an air of despair and cannot but feel a sense of resignation. He said a long-term solution is certainly vital but called on Parties to deliver results tomorrow. Parties must stop the blame game and compromise to save the future as we all live in one village.

He said large economies must accept the fact of their share of emissions and blaming the past will not solve the problem of the future and that two wrongs do not make a right. He also said the most vulnerable countries must realise that crying victims will not stop the rising sea level and must embrace the spirit of self-help.

Therefore, he said the key outcome from Cancun is an agreement to move decisively to achieve a legally binding treaty under the Ad Hoc Working Group on Long-term Cooperative Action.

He said since a second commitment period of the Kyoto Protocol will be difficult (to be achieved in Cancun), Parties could possibly extend (negotiations of) the Kyoto Protocol until the legislation of the LCA is completed. However, he felt the establishment of a climate fund is within reach in Cancun.

He announced that Kenya and France will jointly launch a partnership on green energy to mobilise financing for 100% generation, distribution and connectivity of the African continent by the year 2020.

He also recommended that an endorsement be made in Cancun to establish a single authoritative body on global environmental governance to be located in Nairobi as currently the elements are scattered over many conventions.

Lesotho's Minister of Natural Resources, Monyane Moleleki, representing the Least Developed Countries (LDCs) said while it may be true that the COP may not have been successful, the restored trust and candid exchanges in Cancun had provided fresh impetus for success, particularly for COP 17, and stressed that the centrality of the UNFCCC in combating climate change must be maintained.

He said Cancun should approve the establishment of an adaptation framework and committee and the establishment of an international mechanism to address loss and damage. He also said the new climate fund must be under the authority and guidance (of) and be accountable to the COP.

To operationalise the said fund without commitment from the developed countries would be hollow.

He further said the major objective of the AWG-KP is to define economy-wide quantified emission reduction for Annex I Parties for the second commitment period.

Speaking for the Umbrella Group, Australia's Minister of Climate Change and Energy Efficiency, Greg Combet, said Parties must respect the agreement made one year ago when many issues had been resolved at the (political) leaders level which provided the parameters for ensuing discussions.

He said Parties must capture the progress but acknowledged that countries have different views as to where to anchor their targets and must find a way to resolve this in the coming days.

He said Parties must focus on issues that need most deliberation, which are mitigation and transparency including International Consultation and Analysis (ICA). He believed there is a deal to be done in Cancun and urged Parties to be flexible. There is a need to work on text that is clean with clear options, he added.

European Union Commissioner for Climate Change, Connie Hedegaard, said although the EU was ready to commit to a legally binding deal in Copenhagen it realised that it cannot get it done even here in Cancun.

However, to come out with nothing in Cancun is not an option and she is wary of how the world

will judge the Cancun meeting if Parties leave empty-handed. She said it's easy to see how complicated and how slow the UN process is but much harder to see an alternative that can deliver results faster. Thus, for the sake of credibility, Parties must ensure that this process lead to progress and they have 72 hours to do so which is not eternity but certainly enough to do a lot.

Belgium's Minister of Environment, Nature and Culture, Joke Schauvliege, representing the EU said the group is willing to consider a second commitment period as part of a wider outcome, which should include a global and comprehensive framework including all major economies. He said several Parties had made constructive proposals in laying the foundation to enhance measurable, reportable and verifiable (mitigation actions) that respects the principle of common but differentiated responsibilities.

He also said a balanced package must contain the essential elements of technology transfer, finance, REDD-plus and capacity building.

Venezuela's Special Presidential Envoy for Climate Change, Claudia Salerno Caldera, representing the Group of Latin American and Caribbean (GRULAC) countries pledged the region's support for the work needed to be done.

With contributions from Mariama Williams of the South Centre.

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Cancun Conference Moves into Small Group “Consultations”

Cancun, 9 December (Meena Raman) – A small group of about 50 delegations was convened in the afternoon of Wednesday 8 December by the Presidency of the UNFCCC talks being held here in a process termed “informal consultations under the Presidency”.

The group later broke up for smaller meetings on specific issues (mitigation, finance, adaptation, legal form), and reconvened twice to hear reporting back on these specific-issue discussions. The meetings went on until 1 a.m. early on Thursday.

Earlier, the President of the 16th Conference of Parties (COP) and of the 6th COP acting as the Meeting of Parties to the Kyoto Protocol (CMP), Patricia Espinosa (Foreign Minister of Mexico), told an informal plenary of all members that she expected an outcome document to be ready by Friday morning, and that the meetings would conclude in time by Friday 6 p.m.

Wednesday (8 December) began with the holding of two early morning informal stock-taking plenary meetings of the COP under the UNFCCC followed by the CMP.

New texts were presented at these two meetings. At the COP meeting, the Chair of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) Margaret Mukahanana Sangarwe of Zimbabwe presented a revised note by her (known as CRP3) on elements of the outcome. At the CMP meeting, the Chair of the Ad-hoc Working Group under the Kyoto Protocol (AWG-KP) Ambassador John Ashe of Antigua and Barbuda presented a revised Chair’s text.

At the COP meeting, the COP President, Patricia Espinosa, announced that at 3 p.m. she would start informal consultations involving ministers, the secretariat and the LCA chair, which would help reach compromises to be reflected in the reports of the AWG-LCA and the COP. She said a balanced package was not in grasp yet. Referring to CRP3,

she said that in some areas there were formulas to reach the understanding and in others options were provided; and in a number of matters, there could be no advance without political guidance. She said that the Mexican Presidency had been carrying out inclusive and transparent consultations and these are in support of the formal negotiations.

[On Sunday, 5 December, the COP President announced some ministers had been selected to facilitate informal consultations on shared vision, mitigation, adaptation, finance, technology and capacity building. It was clarified that the ministers would not be expected to draft compromise language, would identify where balance is to be found, and they would not convene informal sessions. Since then, these ministers (in each topic, one from a developed country and one from a developing country) have been having informal bilateral consultations with various countries and groupings. Some delegates referred to these sessions as “confessionals” in the jargon of the World Trade Organisation, in which Parties are asked by the ministers to clarify their positions on the issues. Two ministers were also assigned to facilitate consultations relating to the Kyoto Protocol.]

On the informal consultations, Espinosa said there would be no parallel and overlapping discussions, the positions of all Parties would be taken into account, no group can make decisions in the name of everybody else and Parties can present their views to the consultations. The outcome must be ready by Friday morning. She closed the COP meeting without opening the floor for questions or comments.

She then convened the informal CMP meeting, made similar remarks to Parties and informed them about the conduct of informal consultations to be held in the afternoon.

After these meetings closed, several delegates were still uncertain about how the informal

consultations would be conducted (particularly the 3 pm meeting), who would be invited to take part, how these would affect the work of the drafting groups in the official negotiating process, which documents would be used and whether new documents would emerge in the consultations.

At around 3 pm the small-group meeting (now termed “informal consultations”) started in a room in the Azteca building of the Moon Palace hotel complex. According to some delegates, it was chaired by Espinosa, and about 40-50 delegations were present, as well as the Chairs of the two AWGs.

A large crowd was seen outside the room pushing to enter, with a developing country delegate saying in exasperation that, “we have been reduced to this to find out from the COP President what is happening”.

There was some confusion as to which countries had been invited. One head of delegation from a developing country said he went to the room before the meeting and was not allowed in. Another delegation which was not invited, heard about the meeting from others who were invited and went into the meeting and took part, even though its name plate was not on the table.

Another country, Bolivia, was invited, and its Ambassador to the UN, Pablo Solon, said at the opening that the process was not inclusive or in line with UN procedures, and said his delegation would not take part in the meeting. At a press conference later in the afternoon, Solon said the informal consultation could not replace the official negotiating process, but this was now happening because there were hardly any more official meetings taking place,

and there was no venue for the 192 countries to negotiate. He called for the resumption of the official negotiations.

At the afternoon meeting of the small group, according to some delegates, the focus was on the issue of the “anchoring of pledges” on mitigation by both developed and developing countries, and finance. In the late afternoon, the main meeting was suspended to allow two smaller meetings to be held on finance and on mitigation. Ministers facilitating these two issues were understood to consult and try to come up with drafts of textual language.

It is understood that some of the ministers that had been assigned the task of consultations suggested that the pledges of Annex I countries, made under the Copenhagen Accord, would be placed in information documents (INF) of both the Convention and the KP, while the pledges of developing countries would also be placed in an INF document. There were various responses to this proposal. Another issue in the consultations was long-term finance, which included the sources of finance. Later the issue of setting up of the new climate fund was also discussed.

The main group convened again at 8 pm to hear reports back on the mitigation and finance consultations. After about an hour and a half, it was suspended again to allow for smaller meetings to be held on various issues, including mitigation, adaptation, finance and legal form of the outcome.

At midnight the main group convened again and for about an hour listened to reporting back on the discussions held on the various issues.

The informal consultations resume at 9 am on Thursday.

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Bolivia Strongly Calls for Return to Party-driven Negotiations

Cancun, 9 December (Chee Yoke Ling) – Amidst confusion, the cancellation of two scheduled negotiating groups' meetings and the convening of small-room consultations involving ministers, Bolivia made an urgent and emphatic call for a return to Party-driven negotiations in the final days of the climate talks in Cancun, Mexico.

In a press conference at 4.30 pm on Wednesday (8 December) Bolivia's head of delegation, Ambassador Pablo Solon, stressed that an informal consultation cannot take the place of the official negotiations of the Conference of the Parties (to the UN Framework Convention on Climate Change).

Solon said that at 2.30 pm his delegation received an invitation to participate in an informal meeting of about 40 to 50 delegations. "We attended and very respectfully stated that we have a problem, that we only have an informal meeting that the (COP) President has called. But that cannot substitute the formal negotiation process. Where was the place to discuss the text?"

"So we stated our apologies to the President and we left the meeting – we also said we hoped it is a clear message to re-establish the official place for 193 countries to participate, where no one is left outside."

The COP President, Mexican Foreign Affairs Minister Patricia Espinosa, convened a small-group meeting of about 50 Parties.

The Chairs of the two working groups were also present (the Ad hoc Working Group on Long-term Cooperative Action under the Convention and the Ad hoc Working Group under the Kyoto Protocol). (See TWN Cancun News Update No. 15.)

(A large crowd was seen outside the room pushing to enter, with a developing country delegate saying in exasperation that, "we have been reduced to this to find out from the COP President what is happening".)

Solon said that in the morning a new paper had come out (a note on possible elements of the outcome of the AWG-LCA that was prepared by the AWG-LCA chair, Margaret Mukahanana Sangarwe of Zimbabwe, under her own responsibility).

There was confusion, according to Solon, because although this text is not a negotiating text, in reality it has some importance. The problem is where do we go to discuss this paper if there are no more formal meetings? What do we do with the text? Where will our negotiators go to negotiate with other negotiators? he asked, pointing out that there were scheduled meetings that had been cancelled.

At the same time an informal meeting with 4050 delegates had begun, Solon related. He reiterated, "We are not against informal meetings that can bring inputs into the final process. But if there is no more formal meeting who is going to draft the text (for negotiation, consensus and adoption)?"

He said that his technical people did not come to Cancun to take a vacation, but were here to negotiate. "That is why we are announcing (at the press conference) that a few minutes ago we tabled 3 proposals, on shared vision, forests, and various approaches related to mitigation actions on what we want."

Solon said he hoped this signal would contribute to going back to the official formal process that involves all the Parties. He emphasized that consultations are welcome and supplementary but can never replace the official negotiations.

To several questions from the press, he said that his delegation does not want to go into any process of finger-pointing. "We want to give constructive suggestions, we want to see the different groups negotiating again tomorrow. We believe that process can be participatory and transparent, with 194 states.

"It is not about a blame game but about a save (the conference) game," he added.

"All we know is work on COP and CMP, but not the work on the AWG-LCA – we do not know how the informal consultations carried out by the COP President is going. We in G77 do not want to repeat the situation of a year ago – where we as G77 were negotiating and did not know what was happening in another process." (Referring to Copenhagen last year).

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Wide-ranging Views at High Level Segment and “Mexico Dialogue”

Cancun, 9 December (Hilary Chiew) – Tuvalu’s Deputy Prime Minister Enele Sosene Sopoaga reiterated his country’s rejection of the Copenhagen Accord as “it is a hollow document designed to serve short-term political needs”.

At the joint high-level segment of the 16th meeting of the Conference of Parties to the UN Framework Convention on Climate Change and the 6th COP acting as the Meeting of Parties to the Kyoto Protocol yesterday (8 December), Sopoaga said in Copenhagen (last year), the small island state rejected the Copenhagen Accord and it continues to do so.

He said that it is a document for the demise of nations like Tuvalu. “We come to Mexico with renewed interest that the international community will not repeat Copenhagen.”

He said Tuvalu seeks a clear mandate to continue the Kyoto Protocol and a new mandate to create a legally binding agreement to implement the Bali Action Plan. The two-track process must result in two legally binding agreements and it can only be done by revitalising the Kyoto Protocol and creating the new one for countries not included in the Kyoto Protocol.

He said Tuvalu’s entire economy is threatened by the impacts of climate change and it has no means to rebuild itself. Therefore, it is requesting for a loss-and-damage mechanism to address this concern.

He said Parties cannot afford to have endless meetings but do nothing; and Tuvalu cannot afford to be held hostage by countries that have caused climate change crunching figures (endlessly). This is life and death for Tuvalu. It is time to save Tuvalu and the world.

Bruno Eduardo Parrilla, Minister of Foreign Affairs of Cuba, said the recently revealed classified document of the United States diplomatic cables by Wikileaks is interesting as it mentioned Cuba. Waving the document, he said climate change is a global threat that requires a global solution and the principle of common but differentiated

responsibilities is as valid today as it was in the beginning.

He said the people’s conference at Cochabamba, Bolivia (in April 2010) made essential proposals that had to be taken into consideration by the meetings in Cancun. Agreement in Cancun must assure the sustainable development of developing countries and not add restrictions on their development.

It’s a selfish pretext of developed countries that wanted to liquidate the Kyoto Protocol by saying that it covers only 26% of global emissions but ignoring the fact that the UNFCCC covers 100% of the emissions, he said.

Parrilla said the present world order is unsustainable and human societies must organise themselves in a different way.

Malaysia’s Minister of Natural Resources and Environment Douglas Uggah Embas said it has been a long journey from Malaysia to Mexico and he wishes to return home with a lasting memory of Cancun where convergence of critical issues was achieved collectively.

The essential element needed is the leadership of Annex I countries that will lead to deeper cuts. What we see thus far doesn’t reflect the level of ambition required by science to achieve a 2°C temperature rise target. As it stands the second commitment period (of the Kyoto Protocol) is a legal requirement and should not be linked to mitigation actions of developing countries. Central to developing countries is the creation of the new climate fund under the direct supervision of the COP.

He urged Parties to bring a successful conclusion on REDD-plus as it will complement and support existing mitigation actions in developing countries and reaffirmed Malaysia’s commitment to maintain 50% of its land areas as forests through sustainable management of forests and good agriculture practices. “Our government has strived for a low-carbon society.” Among the on-going

programs is renewable energy and energy-efficiency, he said.

Vice Chairman of the National Development and Reform Commission of China, Xie Zhenhua, said as a developing country, China is also a victim of climate change. It has strong sympathy for the negative impacts of climate change faced by LDCs, small island countries, African countries and other developing countries.

He said the Chinese government has identified proactive tackling of climate change as a key strategy for economic and social development. It has put forward a target in the 11th five-year plan to reduce energy consumption per unit of GDP by 20% by 2010 from the level of 2005, which includes optimising industrial structure, eliminating outmoded production capacity, enhancing energy conservation and improving energy efficiency, accelerating development of clean energy and increasing forest carbon sink.

He said its per capita GDP is only US\$3,700 and only ranks around 100th place globally, and China still has a huge population living in poverty and is confronted with multiple challenges of economic development, poverty eradication, livelihood improvement and climate protection.

He said China will incorporate the 40% to 45% emission intensity cut by 2020 from the 2005 level as a domestic obligatory target in the medium and long-term plan for national economic and social development.

China, he added, will continue to follow a path of sustainable development and will never repeat the old path taken by developed countries in their industrialisation process, which emitted greenhouse gases in an unchecked manner. China will adopt comprehensive policies to slow down the speed of emission growth and try to reach emission peak as early as possible.

He said Parties must insist on the Convention and the Kyoto Protocol as the basis for negotiation. Parties need to follow the mandate of the Bali Roadmap. Parties must also insist on achieving common development as the target. The ultimate solution to climate change can only be achieved through the common sustainable development of all countries. Developed countries should take the lead in substantial emission reduction so as to leave necessary room for the development of developing countries.

He said as long as we insist on the principles of the Convention and the Protocol, as well as the mandate of the Bali Roadmap and the principles of

Party-driven, transparency, inclusiveness and consensus through consultations, the Cancun COP is sure to achieve positive outcomes.

India's Minister of Environment and Forests, Jairam Rames, said it hopes to engage constructively in the negotiation and has made a detailed proposal on MRV (measurable, reporting and verification) and ICA (international consultation and analysis) of its emission reduction targets to stimulate discussion on the issue.

He said India announced in Copenhagen that it would reduce its emission intensity by 20 to 25% by 2020 from the 2005 level and had already set in motion a low-carbon strategy which is available in the public domain, keeping in mind the need for transparency. India's energy mix would still include coal but would see an increase in natural gas and nuclear power is expected to double over the next decade.

India has a new strategy governing forests of up to 70 million ha in supporting the livelihood of 250 million people that depend on the forests.

Norway's Prime Minister Jens Stoltenberg said Parties risked losing the confidence of the world that they are capable of meeting the challenges of climate change if they don't use the meetings in Cancun to move forward on the key elements of finance, mitigation, adaptation and MRV (measurable, reportable and verifiable).

He said financing is not about funding but balancing economic interests, responsibilities and creating trust among all countries. He said Norway's report concluded that mobilising the promised US\$100 billion a year by 2020 is challenging but feasible. It will require a combination of sources – scaling up of existing public instruments and increase in private investment. And that pricing carbon emission has a double climate effect – curbing the potential sources of emission in developing countries and providing incentive for reducing emission in developed countries.

He said reducing deforestation can provide the largest and cheapest cuts. Since Copenhagen, more than 70 countries had come together to form a partnership to stop deforestation and recognise the rights of indigenous peoples and that progress needs to be secured in Cancun.

Singapore's senior minister S. Jayakumar said Parties had reached the crossroads in Cancun, as what happens here will determine the future of climate change negotiations. Although the Copenhagen Accord is not perfect, it did represent a modest step and contained important elements to move negotiations forward.

He pointed out that political will and political convergence on the key issues are needed to stitch all the elements together in a legally binding nature without which there will be no agreement.

He said it is important to send a strong signal on the continuity of the Kyoto Protocol but how Parties choose to proceed is up to the sovereign rights of the states.

German Minister of Environment, Nature Conservation and Nuclear Safety, Norbert Roettgen, said its strategy of renewable energy has proven to be successful even in time of financial crisis. “We had come out even stronger. Due to our strength in exporting environmental technology, we hold 30% of world market share and the share is rising.” Its energy policy has laid the foundation for transfer of economy up to 2050 where it could reduce (fossil) energy consumption by 95% by 2050 and create up to 500,000 new jobs and saving up to €20bil in energy imports.

In Cancun, he said, Parties need to prove that they are capable of acting in a multilateral manner as climate change can be addressed together to achieve more ambitious results.

Dialogues on the side

The first of two dialogue sessions was held on Wednesday, organised by the Mexican Presidency on the side line of the 16th Conference of Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) and the 6th COP acting as the Meeting of the Parties under the Kyoto Protocol (CMP).

The dialogue titled *Consequences of inaction: our responsibility to act now* provided a platform for countries from the Alliance of Small Island States (AOSIS), African Group and Least Developed Countries to share their experiences in coping with severe climatic events and their expectations of the UNFCCC negotiations.

The second session – *The struggle against climate change, what should our legacy be?* – is scheduled for 9 December.

The panel of six speakers, five from Parties to the UNFCCC and Sir Nicholas Stern (former economic adviser to the British government and who now heads the UN Secretary-General’s High Level Advisory Group on Climate Finance), was chaired by Mexican President Felipe Calderon.

Calderon shared that the country had already used up its annual budget of 1 billion pesos for post-disaster infrastructure reparation this year on just one hurricane event in January and had already spent

another 1.5 billion pesos after another hurricane disaster. As such, Mexico is planning a special reconstruction fund of 5 billion pesos for next year.

Stern said many developing countries are facing a challenge of development in an increasingly hostile climate. As such, adaptation and mitigation actions are bound together intricately whether we look at agriculture, infrastructure development or transportation.

He said as we tackle those problems, we must not forget how closely they are linked together.

Therefore, he said, high-carbon growth before long will kill itself and the serious growth route forward is the low-carbon pathway.

If we are going to explore the idea of a green industrial revolution, we have to collaborate and this spirit of collaboration is to be valued and enhanced as Parties move forward in the on-going negotiation for the remaining 48 hours.

He said not only do rich countries have to set an example but they have to support this collaboration through finance.

The President of Ethiopia, Meles Zenawi, said there is no other option but to adapt to climate change but should the temperature increase in the range of 5°C, it would simply be inadaptable.

He said as far as Africa is concerned, it has to adapt under a 1°C increase, it may manage under a 2°C increase but beyond that it would be impossible to do so. So, it will have to start mitigation now too as it cannot have one or the other (referring to adaptation) and that effort has to be replicated throughout the world as we will perish or survive together.

This, he said, is the obvious agenda that we all need to work together. If we can’t manage climate change as a global community, it’s clear that we can’t manage other international cooperation as climate change is about common survival.

Zenawi said it would be difficult to get a perfect agreement and Parties will have to make do with what is possible. He added that Africa would prefer a perfect agreement and recognised that it has more at stake with a quick and tolerable agreement but it is already facing the consequences of climate change.

President Johnson Toribiong of Palau said as a country made up of islands and atolls, Palau is particularly vulnerable to sea level rise. He also said the warming sea, which led to coral bleaching, affects not only the fish stocks but also the tourism industry.

He said the Pacific islanders felt helpless because as a region with limited resources they cannot address the problem alone as it requires the whole world to reverse the process (of global warming).

Prime Minister of Grenada, Tillman Thomas, said climate change is a planetary emergency that requires collective actions. He said vulnerable countries are not in a position to respond to disasters. He is concerned that it would take more resources to respond if we delay taking actions now.

Porfirio Lobo, the President of Honduras, agreed that there is no way of doing it (addressing climate change) in isolation, as it needs to be properly coordinated. He said 70% of logging in Honduras is to produce firewood for the poor and the threats from climate change will even be greater if we don't resolve poverty.

Chairman of the Commission of African Union Jean Ping said the African continent emits only as much as the state of Texas in the United States but yet it is suffering so much.

Noting the predicament of the small island states, he said some parts of Africa are also experiencing sea level rise. He said Niger is currently suffering from drought and people are dying and Lake Chad on which seven countries depend for fisheries is drying up.

He said these issues are neglected but instead Parties are focusing on forests in the Congo Basin as that is in their interests, referring to the attention paid to the forests under the proposed REDD (Reducing Emissions from Deforestation and Degradation in Developing Countries) mechanism as a mitigation measure with financial support from developed countries.

However, he noted that very little attention is paid to outlying islands (in west Africa) that are hit by droughts where the inhabitants are forced to migrate and cross the Atlantic Ocean.

He said the 53 countries of Africa decided to come to Cancun to speak with one voice and ask

people to be serious. He said Africa is ready to move to green energy but to do so it would need technologies that it doesn't possess.

Ping said developed countries must bear the responsibilities for causing climate change by helping poor countries to adapt and mitigate as the crisis deepens. He urged rich countries to put their hands into their pockets and the issue will be resolved. (Otherwise) If the boat sinks, you will sink with your hordes of money.

Zenawi said Ethiopia's development strategy is based on achieving zero emission by 2025 when it achieved middle-income status by then. He said Ethiopia has massive potential for renewable energy in the form of hydro, wind and solar power. For example, he said, in the Sahara where there is intense sunlight and boundless space to establish solar panels, it can generate enough electricity for the continent and for export to Europe.

He also said Ethiopia will rehabilitate its degraded land which could create a major carbon sink and at the same time produce biofuel. It would also retain moisture and manage the flow of rainwater to improve agriculture activities. He said Ethiopia is planting a billion trees annually and plans to do more.

He also said Ethiopia had achieved double-digit growth and believed it can maintain the growth in an environmentally responsible manner but to build the dams and (wind) turbines it would need assistance. Resources must be mobilised in such a manner that countries that provide the fund benefit from it as well and he suggested that the best way is by pricing carbon. Auctioning of emission rights, reducing subsidies for fossil fuel, and taxation on international transport are all options on the table of a financing mechanism that will address the concerns of both developed and developing countries.

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Copenhagen Accord Fails to Deliver, Say Some SIDS and LDC Leaders

Cancun, 10 December (Hilary Chiew) – Political leaders from some least developed countries and small island states that have associated themselves with the Copenhagen Accord expressed their disappointment with the promised fast-start finance that remains elusive and they are also concerned that the pledges are insufficient to keep temperature rise below a safe limit for them.

The second session of the Heads of State dialogue organised on the side lines of the 16th meeting of the Conference of Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) and the 6th Conference of Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP) by the Mexican COP presidency saw the participation of six developing countries, Norway, the President of the World Bank and the secretary-general of the Organisation for Economic Cooperation and Development.

Chaired by President Felipe Calderon, the panelists today discussed the topic titled “*The struggle against climate change; what should our legacy be?*”

Guyana’s President Bharrat Jagdeo said Guyana attended the Cancun meeting with lower than normal expectation. He said he heard a lot about partnership but noted that the lack of trust is so palpable especially between the developed and developing countries.

On fast-start finance, he said he had seen some dubious accounting of how developed countries are disbursing the money. “We saw the Copenhagen Accord as a compromise. Although it is not perfect there is some money there but (until today), not a cent has been disbursed to vulnerable countries.

“We have not determined the criteria for vulnerability and propaganda will not solve the climate change problem,” he said. The way forward is to have an aggressive fight to restore the momentum before Copenhagen. That momentum is

now replaced by disappointment and malice; and filled by climate skeptics. “We should not let skeptics prevail. The only way to have tough actions is to have as many people as possible put pressure on developed countries leaders who are laggards to make the right decisions,” the President added.

Illustrating the excuses used by developed countries in disbursing funds, he said Guyana has a world class MRV (measurable, reportable and verifiable) system in its forest management. Whatever you pay, you will receive a report right down to the last tonne (of CO₂). Yet, he had heard nightmare stories about financing.

Sometimes (the stories) get worse the smaller you are. Small countries, he said, have to jump through many hoops but this was not the case with big countries like Indonesia and Brazil.

He warned that we risk taking away the biggest incentives to the carbon market if there is not going to be a legally binding agreement on emissions reduction. He said a carbon price signal is needed to mobilise private funding as public funding alone cannot do the job.

He stressed that climate change poses an existential threat to the developing countries. It’s a matter of life and death, people eating or not; sometimes we lose that perspective here.

Recalling UN Secretary-General Ban Ki-Moon’s remarks, “The perfect not being the enemy of the good”, **Nauru President Marcus Stephen** said for small island states the ‘good’ is their survival. It is important that it is the starting point. He said they are not in Cancun to derail the process but they support limiting temperature rise to below 1.5°C as that’s what the science says and he urged Parties not to ignore the science.

Prime Minister of the Central African Republic Faustin Archang Touadera said his country was expecting technology transfer in the field of renewable energy as compensation for

sacrificing its forests in efforts to reduce greenhouse gas emissions.

“We need to realise that efforts need to be made by the rich as they had polluted more and that brought about the problem of climate change. We call upon Annex I countries to honour their commitments so that we can survive,” he urged.

Kiribati President Anote Tong said the issue of vulnerability has to be addressed as all countries considered themselves to be vulnerable. We have to at some stage define vulnerability.

He said his country did not sign the Copenhagen Accord for the simple reason that keeping temperature rise below 2°C is not acceptable, but later associated with it as there was understanding that association would trigger the flow of funds.

He however had not seen a cent and had to disappoint his people who requested for the construction of seawalls. “We had done the study and know the costs but we do not have the money to build the seawalls,” he said.

Despite most small island states’ demands for 1.5°C to be the limit for temperature rise, he believed that even if that is achieved in the pending agreement, it would be too late for a country like Kiribati.

Samoa’s Prime Minister Tuilaepa Lupesoliai Sailele Maliegaoui said direct access for Parties is long overdue and there is a need for clarity of fast-start finance and increase in the CDM (Clean Development Mechanism) proceeds to the Adaptation Fund.

While welcoming the 5th replenishment to the Global Environment Facility (GEF), which is the only financial operating entity of the UNFCCC, he said replenishment to the Least Developed Countries Fund and Special Climate Change Fund must be through assessed contributions and not via pledges as is currently the case.

He said technologies must be appropriate, affordable and suitable for the population sizes of the Pacific Islands. The islands, he added, must not be used as dumping grounds for obsolete and untested technologies.

Referring to the plight of the vulnerable island states, **South African President Jacob Zuma** said it has been the case that the most vulnerable countries once again make a very compelling case and we must take note of their situations. Unfortunately, they can’t do it on their own but if Parties work together, we can achieve more. Acting now costs far less than acting later, he said.

He stressed that as agreed in Bali, the politically accepted way for the climate regime to go forward is through an amendment to the Kyoto Protocol to establish a second commitment period and a legally binding outcome under the Convention.

We must leave Cancun having agreed to the overarching position and the continuation of negotiation of the second commitment period of the Kyoto Protocol. This will enable Durban to build on what is achieved in Cancun and ensure future generations inherit a world that is sustainable and climate resilient.

(South Africa will host the 17th COP and the 7th CMP in Durban in 2011.)

World Bank President Robert Zoellick said cooperation is needed among countries in promoting lower carbon growth. He stressed on the role of the market in allocating resources (in fighting climate change) efficiently such as through carbon pricing, incentives and disincentives. There is also the need to integrate development programmes and the poverty eradication agenda. He said it would be sad if one or two countries hold the climate negotiation hostage (and prevent) progress (in the multilateral process).

In conclusion, President Calderon said even if developed countries bring down their emissions to zero, as developing countries grow and continue to emit, the problem will be worsened. Island states are not only vulnerable to the impacts of climate change but may disappear. He said the logical thing to do is to stop global warming.

Likening the fight against climate change as a vehicle without a driver, he said somebody has to take control of the situation and steer it to safety. He said an ‘all-or-nothing posture’ (referring to specific demands of various Parties) should not prevail.

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Cancun Texts Adopted, Overriding Bolivia's Objections

Cancun, 13 December (Meena Raman) – Two decisions under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, which the Mexican host government dubbed as “the Cancun Agreements”, were adopted in the early hours of Saturday, 11 December, despite a lack of consensus following objections by Bolivia to their adoption.

The outcome was heralded by Mexican Foreign Affairs Minister, Patricia Espinosa, who presided over the Cancun climate conference, as “a new era of international cooperation on climate change”. The conference comprised two main meetings, the 16th meeting of the Conference of Parties (COP 16) and the 6th Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol (CMP 6).

The two draft documents had been put together by the Mexican presidency of the Conference, and were “clean texts” (without square brackets or options). They were issued on a “take it or leave it” basis as a final package, and not as drafts for possible amendments.

The documents were initially presented by Espinosa at an informal plenary meeting of the COP and CMP convened at 6 pm on Friday, 10 December. Delegates were given 3 hours to review the texts before the next informal plenary at 9.15 p.m. The first plenary had been scheduled at 8.30 am but the draft texts were not ready.

The draft text for the Ad-hoc Working Group under the Kyoto Protocol (AWG-KP) outcome was issued around noon, while that for the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) was distributed around 5 pm. The notes at the front of each of the draft texts state that the documents “had been prepared in direct response to requests from Parties urging the President to present a text that covers all the issues and paints the whole picture of the outcome”.

At a later informal plenary of the COP/CMP which started at 9.15 pm on Friday, Espinosa said that these texts were the product of a collective exercise of drafting and that any change needs the support of others. At the start of this informal plenary, and at various times of the night, Espinosa received a standing ovation from large sections of the participants, and there was an atmosphere of near euphoria. This was understood to be a sign by advocates of the documents to urge all delegations to adopt them.

However there was not unanimity, as Bolivia raised strong objections to the adoption of both the documents, first at the informal plenary of the COP/CMP, then at the formal sessions of the AWG-KP and AWG-LCA and then at the final plenary meetings of the COP and the CMP. Bolivia's Ambassador to the United Nations in New York, Pablo Solon, presented detailed reasons why he found both texts unacceptable.

While many delegations urged for the documents to be adopted without changes, some requested that Bolivia should be allowed to voice its concerns in the spirit of inclusiveness. Bolivia insisted that there was no consensus as it objected to the documents. However, Espinosa gavelled both decisions, signifying adoption, after indicating that the objection from one delegation did not constitute a lack of consensus.

After the adoption of the documents, Norway said that many in the audience shared Bolivia's concerns but these concerns could be addressed in years to come and that this was not the final agreement but a major step in the right direction.

Many countries, both developed and developing, expressed support for the two texts, saying they reflected balance, pragmatism and compromises, while many also used qualifications such as that they were “imperfect” or that they felt

“guarded optimism”. A few countries, notably Cuba and Ecuador, raised concerns over several issues in the texts. Several countries also said that following the failure to reach agreement in Copenhagen, the Cancun outcome restored confidence in the multilateral process. Other countries were even more upbeat. Australia called the agreements “a game-changing moment for the climate change”.

The mood among many delegations appeared to be that the texts should be adopted in order to avoid the collapse of another climate conference, following the failure of the Copenhagen conference last year. Several delegates privately said that another failure would further dent the image of the UNFCCC and multilateralism, and that it would be difficult for the talks to regain momentum. In this atmosphere of having “all or nothing”, many developing countries decided to go along with the drafts even though they had concerns on various parts.

The highlight of the long night’s proceedings was an intense exchange between the COP President and the Bolivian delegation over the President’s gaveling of the decisions as being adopted despite the objection, giving rise to argument as to what the meaning of consensus was. In the practice of the UNFCCC, decisions have been taken on the basis of consensus.

Bolivia’s Ambassador Solon said that consensus required the absence of explicit rejection or objection to a decision proposed for adoption and that consensus did not mean a majority being in favour of adopting a decision. In contrast, Mexico’s Foreign Minister Espinosa was of the view that consensus did not mean unanimity or the right of a Party to veto a decision.

Joining the exchange on this issue was US climate envoy, Todd Stern, who supported the adoption of the agreements and suggested that the “practice in this body has been general agreement rather than consensus”.

At the conclusion of Cancun meetings, Mexican President Filipe Calderon said that “a good agreement is one in which all Parties are left equally dissatisfied”.

The following are highlights of the various meetings in the final plenary meetings.

The CMP meeting

When the draft decision on the Kyoto Protocol process under the AWG-KP was presented by Espinosa for adoption under the CMP, **Bolivia** gave its reasons why it was opposed to the decision. Solon said that this decision did not represent a step forward

but was a step backwards as what was being done was to postpone indefinitely a decision under the Kyoto Protocol and it opened the doors to a regime which will be flexible and voluntary for a pledge and review approach and not a system where all Annex 1 Parties will fulfill a set target.

Referring to paragraph 3 of the text where Parties took note of “quantified economy wide emission reduction targets to be implemented by Annex 1 Parties as communicated by them and contained in document FCCC/SB/2010/INF X”, Solon said that this document did not exist and that Parties “do not know what these commitments will be and if these commitments will lead to a stabilization of greenhouse gas emissions which will be sustainable for human life and plants”.

He added that if what was being referred to in the document were the Copenhagen Accord pledges, this would only amount to a 13 to 17% reduction in emissions compared to 1990 levels, which will lead to a temperature rise of 4 degrees C.

[Earlier, at the 9.15 pm informal plenary COP/ CMP meeting held by Espinosa, Solon said that such a temperature level could lead to a situation of “genocide and ecocide”. Bolivia could not agree to an agreement “which will put more human lives in a situation close to death”. Bolivia had come to Cancun to ensure that there would be a decision to guarantee a second commitment period under the Kyoto Protocol and this document did not guarantee that.]

Solon at the CMP plenary said that his government wanted modifications to the text, which was received just hours ago and which it was asked to adopt without any modification or amendment. “If the document represented a step forward, we would have supported it. What is going to emerge is not a stronger regime for reducing emissions in mitigation but a voluntary regime which is less demanding on developed countries that are responsible for global warming,” he added. “We represent a small country which has principles and will not sell our country and we speak with the peoples of the world. There is no consensus for approval of this document.”

Espinosa in response said that the text was the result of collective work and the concerns of Bolivia would be reflected on the record. She then said that if there was no other opinion on this, the text would be approved. She gavelled and announced the adoption of the decision.

Solon took the floor again and said that consensus meant that no state was explicitly stating objection or rejection to the decision. He added: “You cannot say there is consensus. You can only take note.

This is an attempt to violate rules of the Convention and the United Nations. Consensus is not by a majority. There must be an absence of explicit rejection of a decision. Despite our objection, the decision was adopted. We are going to apply to all international bodies to preserve the rules of consensus. We came here to negotiate and not to gavel an injustice. Not even in Copenhagen was this done and there was respect for the rule of consensus. The (Copenhagen) Presidency did not have the gall to hammer through a decision. Now there is a violation of rule. This is an unhappy conclusion. I ask you to review your decision and return to the path of law.”

In response, Espinosa said that on the matter of procedure, consensus did not mean unanimity, and far less does it mean the right of veto. At this point, she said that she could not disregard the request of 193 Parties to adopt the decision, which had been duly adopted.

The COP meeting

At the final session of the COP, Parties were asked to adopt the decision of the AWG-LCA.

Bolivia, represented by Rene Orellana, said that his delegation had already given their arguments for why they could not agree to the forwarding of the proposed draft text for adoption of the COP at the meeting of the AWG-LCA.

He said Bolivia had opposed the approval, as the text did not represent the discussions in which they had been engaged. He stressed that Bolivia was in no way expressing the right of veto. Bolivia had asked for an opportunity to discuss issues with technical arguments, scientific data and legal arguments and not political positions. It said that it respected those who opposed its views but felt that its positions had not been properly considered. He asked the President to respect the formal mechanism for approval.

He said that in relation to the issue of technology transfer, Bolivia had wanted Parties to address the issue of intellectual property rights. As a compromise to the various proposals on IPRs on the table, Bolivia said that it had requested for at least a workshop to be held and a process for discussions to begin in 2011 on the IPR issue. Even this basic proposal was disregarded and he questioned how democratic this process was. Bolivia wanted a formal process where doors were not closed to the proposals it had presented.

Espinosa said that the concerns of Bolivia would be reflected in the record of the COP and proceeded to gavel the adoption of the agreement.

[Earlier, at the session of the AWG-LCA (chaired by Margaret Mukahanana Sangarwe of Zimbabwe) to consider the draft text, Solon had elaborated on Bolivia’s opposition. He said that Parties did not mandate anyone to produce the document, and that the 13 August text was the negotiating text which contained Parties’ positions. On substance, Bolivia could not support the 2 degree C temperature goal as according to various studies, this would mean a 3 degree C situation for Africa. Referring to the IPCC fourth assessment report, he said a 2 degree C target would mean a 50% chance of stabilizing the climate and no one would send his or her child on a plane if it had a 50% chance of crashing.

[He referred to the text on the mitigation commitments of developed countries where paragraph 36 refers to taking note of “quantified economy wide emission reduction targets to be implemented by Annex 1 Parties as communicated by them and contained in a document FCCC/SB/2010/INF X”. He said that this document was yet to exist and that it was not possible to have a decision that states that the list is to be drawn up later. He asked how much is the commitment of reductions and over what period of time and upon what baseline. “This is the crux and must be circulated so we know what is being listed. We cannot come here and have a blank cheque where the Annex 1 Parties fill up whatever they want which is not related to the shared vision.”

[Solon said that on the financial mechanism, the text states that \$100 billion per year would be mobilized by 2020 but does not state whether this will come from developed countries or from the carbon markets. Referring to the Green Climate Fund to be established, Solon said that however well designed a Fund is, it cannot be effective without funds. Further, the text invites the World Bank to serve as the interim trustee and Bolivia could not accept this as the Bank was an institution dominated by donors.

[On technology transfer, Solon said that the new Technology Executive Committee to be established is not even able to address IPR issues. He said that in most clean technologies, 70-80% of that is in the hands of developed countries and it is they who held the patents.]

Australia said that the package of decisions adopted in Cancun was a game-changing moment for the climate regime. **Pakistan** said that the agreement reflected pragmatism and hope. It cannot satisfy all Parties but it was no doubt a decisive step to the future. It also stressed the need for a more

solid outcome by adopting a second commitment period for Annex 1 Parties under the Kyoto Protocol.

Informal plenary of the COP/CMP (held before the formal meetings of the 2 working groups and of the COP and CMP)

Bolivia said the documents did not include its proposals. The Kyoto Protocol paper did not guarantee a second commitment period. It implied a list of pledges that would lead to a 4 degree global temperature rise. It could not go along with a text with these two features, as it would make us responsible for genocide and ecocide. The text allows the KP's market mechanisms to continue, whereas countries that do not accept a second commitment period of the KP should not be allowed to use flexibility mechanisms like emissions trade and the Clean Development Mechanism. Bolivia would not accept a document which means a temperature increase that puts human lives close to death. It had come here to guarantee a second KP period instead.

Grenada welcomed the texts for adoption, saying that though they are imperfect, the "perfect should not be the enemy of the good." The Minister from Grenada said it was "not a done deal but we can say we leave Cancun with something we can live with".

Switzerland, speaking for the Environmental Integrity Group, said that the solution was a compromise. **Australia**, indicating support for the AWG-LCA outcome, called it well-balanced.

Nicaragua (referring to Bolivia's concerns) said that it was important to make last efforts to hear positions of all Parties with flexibility and mutual understanding. **Saudi Arabia** agreed on the need for all Parties to be included in agreement, saying that the two working groups could discuss minor details and thus guarantee that all Parties can agree.

Lesotho for the LDCs said the package laid a good foundation for further work at the next COP in Durban. It supported the recognition for the adequate treatment of the issue of vulnerability, the adaptation framework and committee and the establishment of the Green Climate Fund and applauded the inclusion of LDCs in the Transitional Committee of the Fund.

Cuba, referring to the Bolivian leadership of President Evo Morales, said that it represents the demands of the indigenous peoples of the Americas. It said that Bolivia speaks on behalf of movements in Latin America and therefore deserves attention.

Cuba expressed dissatisfaction with the text of the AWG-LCA. It said that the text did not have clear GHG emission reduction goals. Referring to the

pledges under the Copenhagen Accord, it said that the emissions could rise by 6% compared to 1990 levels (taking into account the loopholes) and could lead to a temperature rise of 2.5 to 5 degrees C. It expressed profound concerns over the document. It said that it is key to have the second commitment period under the Kyoto Protocol. On the issue of finance, it said the language in the document was ambiguous on the source of the \$100 billion for the Green Climate Fund.

India's Minister of Environment, Jairam Ramesh, quoted a Mexican hero who said that Mexico is "far from God", but, coming from a country that had many Goddesses, he would say that tonight a Goddess has been present. He said Espinosa had restored confidence in the multilateral process at a time when confidence was at a historical low. He said that Parties could confidently look ahead and approach the challenge of climate change in a spirit of constructive compromise. He said that not all Parties had gained and that all had compromised. Espinosa in response said that Ramesh's proposals were key to unlocking difficult gridlocks in the negotiations.

Singapore said the text was not perfect but in any negotiations, not everyone will get what they want. It said that there were some missing elements that would need to be clarified. It said the document was not the end but a step forward for a legally binding outcome in Durban.

EU Climate Commissioner, Connie Hedegaard, said that multilateralism had shown results. The EU came to Cancun hoping for a balanced package that has been achieved.

Bangladesh said that the text did not fully reflect the concerns of LDCs. Nevertheless, it was a good outcome as there was agreement on the Adaptation Framework and committee and the Green Climate Fund.

The **US** said that the text was not perfect but it provided a good basis to move forward. Parties had agreed to launch the Green Climate Fund; there was a technology mechanism and progress in adaptation and on the issue of reducing emissions from deforestation and degradation (REDD); and the anchoring of mitigation pledges and a system of MRV (measuring, reporting and verification) and an ICA (international consultations and analysis).

The **Philippines** commented on the process and said that confusion enveloped the venues and postponement of meetings. It received the text with guarded optimism. It said that the Green Climate Fund was a progress. **Kenya** said that the text was not perfect but was a delicate balance.

China represented by Minister Xie Zhenhua said that Parties had demonstrated good political will for a balanced result. The text provided a sound basis for future negotiations. There were short-comings but it was satisfied that the negotiations had adhered to the Bali Roadmap.

Afghanistan said that though it had concerns in relation to the issue of finance and the vulnerability of mountainous systems, it was flexible in making progress. **Japan** expressed support for the text.

Algeria on behalf of the African Group said that confidence in the multilateral system was shown. The text did not meet all its expectations but it could support it.

Ecuador said that it did not like all the results and said that Parties must redouble their efforts to

ensure the health of the planet. It stressed the need for the second commitment period of the Kyoto Protocol to be confirmed and to come into effect after 2012. It said that the Green Fund should be established and for effective technology transfer, it was important to have flexibilities as regards IPRs. It supported the observations of Bolivia on the various deficiencies in the text and said that it must be improved.

Zambia thanked Mexico for lifting the spirits from the depression of Copenhagen and for restoring confidence in the multilateral process.

Brazil said that the document was balanced in essence although not perfect and there was a sense of realism and pragmatism.

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Strange Outcome of Cancun Climate Conference

Cancun, 14 December (Martin Khor*) – The United Nations' Cancun climate conference, which adopted a text early on 11 December, had a strange outcome.

It was acclaimed by many for reviving the spirit of multilateralism in the climate change system, because another collapse after the disastrous failure of the Copenhagen talks a year ago would have knocked another hole into the reputation of the UN Framework Convention on Climate Change (UNFCCC).

Most delegations congratulated one another, for agreeing to a document in Cancun.

But this Cancun text has also been accused of falling far short, or even going backwards, in controlling the greenhouse gas emissions that cause climate change.

The Cancun conference suffered an early blow from Japan's announcement that it would never ever agree to making another commitment under the Kyoto Protocol (the first commitment period for emission reductions ends in 2012 and the deadline for the second commitment period to be agreed was 2009 in Copenhagen).

The conference never recovered from that blow. The final text failed to ensure the survival of the Protocol, though it sets some terms of reference for continuing the talks on the second commitment period next year.

The Cancun meeting in fact made it more likely for the developed countries to shift 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.

The Cancun text also recognised the emission reduction targets that developed countries listed under the Copenhagen Accord. But these are overall such poor targets that many scientific reports warn that the developed countries by 2020 may decrease their emissions by only a little or even increase their

levels. The world is on track for a temperature rise of 3 to 5 degrees, which would lead to a catastrophe.

But even as it prepared the ground for the developed countries' "great escape" from their commitments, the Cancun text introduced new disciplines for developing countries.

They are now obliged to put forward their plans and targets for climate mitigation, which are to be compiled in a document and later in registries.

It is a first step in a plan by developed countries (they have been quite open about it) to get developing countries to put their mitigation targets as commitments in national schedules, similar to the tariff schedules in the World Trade Organisation.

The Cancun text also obliges developing countries to report on their national emissions every two years as well as on their climate actions and the results in terms of emission avoidance.

These reports are to be subjected to a detailed scrutiny by other countries and by international experts. The Cancun text in fact gives a lot of space to the details of these "measuring, reporting and verification" (MRV) procedures as well as "international consultations and analysis" (ICA).

These are all new obligations, and a great deal of time was spent in Cancun by the developed countries (especially the United States) to get the developing countries to agree to the details of MRV and ICA.

Many developing-country officials were increasingly worried in Cancun about how they are going to implement these new obligations, as a lot of people, skills and money will be needed.

In fact the developing countries made a lot of concessions and sacrifices in Cancun, while the developed countries managed to have their obligations reduced or downgraded.

Cancun may be remembered in future as the place where the UNFCCC's climate regime was changed significantly, with developed countries

being treated more and more leniently, reaching a level like that of developing countries, while the developing countries are asked to increase their obligations to be more and more like developed countries.

The ground is being prepared for such a new system, which could then replace the Kyoto Protocol. Cancun was a milestone in facilitating this.

The Cancun conference also agreed on establishing a new global climate fund under the UNFCCC to help finance the mitigation and adaptation. A committee will be set up to design various aspects of the fund. No decision was taken on how much money the fund will get.

A technology mechanism was also set up under the UNFCCC, with a policy-making committee, and a centre. However, the Cancun text avoided any mention of intellectual property rights (IPRs), which have an influence over developing countries' access to and cost of technology.

The United States had insisted that there be no mention whatsoever of the IPR issue, and it got its way in Cancun.

The Cancun conference was also marked by a questionable method of work, quite similar to the WTO but not used in the United Nations, in which the host country, Mexico, organised meetings in small groups led by itself and a few ministers that it selected, who discussed texts on the various issues.

The final document was produced not through the usual process of negotiations among delegations, but compiled by the Mexicans as the Chair of the meeting, and given to the delegates for only a few

hours to consider, on a take-it-or-leave-it basis (no amendments are allowed).

At the final plenary, Bolivia rejected the text, and its Ambassador, Pablo Solon, made a statement giving detailed reasons why. Despite there not being consensus on the text, the Mexican foreign minister declared the text was adopted, to which Bolivia lodged an objection.

The Mexican way of organising the writing and later the adoption of the Cancun text raises a lot of questions about openness and inclusiveness and the future of UN procedures and practices.

The importation of WTO-style methods may in the immediate period lead to the "efficiency" of producing an outcome, but also carries the risk of conferences collapsing in disarray (as has happened in several WTO ministerial meetings) and in biases in the text, that usually have been in favour of developed countries.

When the dust settles after the Cancun conference, a careful analysis will find that its text may have given the multilateral climate system a shot in the arm and positive feelings among most participants because there was something to take home, but that it also failed to save the planet from climate change and helped pass the burden onto developing countries.

From this low base level, much work needs to be done in 2011 to save the world from climate change, and to re-orientate the international system of cooperation to address the climate crisis.

** Martin Khor is the Executive Director of the South Centre. This article was first published in The Star, Malaysia on 13 December 2010.*

The Flaws in Japan's Position

by Dr Sivan Kartha*

Japan's argument for discarding the Kyoto Protocol is wrong on the numbers and on equity, Stockholm Environment Institute senior scientist *Dr Sivan Kartha* explains.

JAPAN has stated, in no uncertain terms, that it is willing to let the Kyoto Protocol die. It is claiming that the Kyoto Protocol is an outdated instrument, because its targets do not cover the United States or any developing countries. Since it fails to cover three-quarters of global carbon emissions, Japan argues, the Kyoto Protocol cannot be a viable basis for solving the climate problem.

Japan's argument is doubly flawed. First, it neglects the fact that while the United States is not a Party to the Kyoto Protocol, it is a Party to the United Nations Framework Convention on Climate Change (UNFCCC) and did in fact agree under the Bali Action Plan to negotiate an emissions limit comparable to other developed countries' Kyoto targets.

Thus, with all Annex I countries coming under quantified emission limits, the fraction of global carbon emissions covered by the Bali process would be actually closer to one-half.

Missing the point of Annex I

But more fundamentally, the Japanese argument confuses emissions with obligations. Annex I was never intended to be a grouping of countries with the highest emissions, but rather those with the greatest moral obligation to address the climate problem. The UNFCCC is unequivocal in this regard:

'The Parties should protect the climate on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.'

If we talk of developed countries' responsibility for the climate problem, then surely we must consider not just their direct emissions, but also emissions in developing countries that arise from activities that

produce goods for consumption in developed countries. Under a 'consumption-based' accounting of emissions, developed countries are responsible for around 60% of global emissions.

Furthermore, climate change is caused not just by today's carbon emissions, but by carbon accumulated in the atmosphere due to years of emissions. If you gauge emissions on a historical basis, developed countries are responsible for more than 75%.

If we talk of countries' capability with respect to solving the climate problem, it is clear that the great majority of financial and technological wherewithal resides in the North. The developed world controls approximately three-quarters of the world's GDP. If one takes into account that a much higher fraction of GDP goes toward meeting very basic needs, such as food, shelter, and medical care, then the North controls more like six-sevenths of the world's discretionary GDP.

It is precisely because Annex I is intended to reflect obligation, not merely emissions, that the UNFCCC and its Kyoto Protocol commit them not only to undertake domestic reduction targets, but to provide international support as well, through finance and technology, to enable all countries to curb their emissions.

The UNFCCC, with its Kyoto Protocol, if implemented earnestly, completely and in good faith, does provide an equitable and effective way of reducing emissions in all countries, and taking important steps toward solving the climate problem.

Dr Sivan Kartha is a senior scientist at the Stockholm Environment Institute. This article was published in Third World Resurgence, Issue No. 244, December 2010. It was first released at the Cancun climate conference in response to Japan's rejection of the second commitment period under the Kyoto Protocol (see TWN Cancun News Update #5).

Cancun Meeting Used WTO-type Methods to Reach Outcome

by Martin Khor*

Of concern to many supporters of multilateralism at the United Nations is a precedent that may have been set in the Cancun climate conference, whereby the methods and processes usually seen at the World Trade Organisation were used to obtain an outcome. Below is an article by Martin Khor, Executive Director of the South Centre, assessing what happened at the Cancun conference, in terms of process and substance.

Geneva, 15 December (Martin Khor*) – The Cancun climate conference ended early on 11 December, setting a precedent of sorts for a UN meeting and “international governance” by using World Trade Organisation-style methods and processes to reach an outcome.

Throughout the two-week conference, there was a mixture of small “Green Room” meetings, “confessionals” and informal consultations conducted by pairs of ministers and by the Presidency of the conference (Mexico), informal plenaries as transparency exercises to inform all participants on what was going on, and texts written or issued by facilitators and eventually by Mexico.

But the Cancun meeting had one more novelty: a new definition of “consensus”.

When Bolivia alone objected to the adoption of the final text, the President of the conference, the Mexican Foreign Minister Patricia Espinosa, brought down the gavel anyway, saying that a single country could not prevent a consensus decision, and declared that the text had been adopted!

[The concept of consensus decision-making came into vogue in post-war international systems at the General Agreement on Tariffs and Trade (GATT - 1947), a provisional treaty. The Marrakesh Treaty for the WTO (concluded in 1994 and came into being in 1995), which mandated the continuance of the GATT consensus decision-making, provided specific international treaty language for the term.

[Article IX: 1 of the Marrakesh Treaty for the WTO stipulates that “The WTO shall continue the practice of decision-making by consensus followed by GATT 1947...”. A footnote defines it as “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”. In mandating the continuance of the consensus decision-making practice, the Marrakesh treaty, however, also specifically provided in the

same Article IX: 1, “where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting”. – *SUNSI*]

The convening of a group of 40-50 delegations mid-way through the conference was reminiscent of many past WTO ministerial meetings, where the practice was dubbed the “Green Room”. This was accompanied by the selection of pairs of ministers to co-facilitate consultations on particular issues, which is what was done at the WTO ministerials in Doha in 2001 and in Cancun in 2003.

As at the WTO meetings, the co-facilitating ministers at the climate talks in Cancun were not selected by the members, but appointed by the host country, Mexico.

In various ways, the Cancun meeting was more transparent and inclusive than the Copenhagen conference a year ago: more countries were included in the Green Room meetings, there were many consultations, and informal sessions open to all were held to inform participants as to what was happening.

But in one way, there was less openness in the process.

At Copenhagen, it was clear that the Copenhagen Accord was crafted at a meeting between the US President and the political leaders of BASIC (Brazil, South Africa, India and China) and given to the EU and others in the Green Room to go along with it. When it was presented to the full plenary, the process was objected to by some countries, and the text was only taken note of.

At Cancun, the events of the last day were not and are still not clear generally to the participants. One of the key draft texts (covering issues of the ad-hoc working group on long-term cooperative action - AWG-LCA) that was scheduled to be issued at 8.30 a.m. on the final day (10 December), was only issued at 5 p.m.

There were various rumours that the draft or parts of it were being shown to various delegations (or at least their heads) to be cleared or amended.

Up to now, it is not known which countries or persons did the drafting or the overall piecing together of the final text.

Despite the highly unorthodox methods, as far as the UN processes and meetings are concerned, the final texts found general agreement with delegations except for Bolivia.

One reason perhaps was the involvement of several ministers who were concerned more with the general political aspects, rather than the nitty-gritty content of the many issues. The political concern was to avoid the failure of another climate conference, following last year's Copenhagen disaster.

The acceptance of an inadequate text was seen by many as the price to pay for getting a result at Cancun, because another collapse would have knocked another hole into the reputation of the UN Framework Convention on Climate Change (UNFCCC) and set back the multilateral process.

The Mexican hosts also decided on a risky all-or-nothing approach, in which it was not possible to get results in one area unless there were results in all other areas. In a way, this was forced on them by the strategy adopted by some developed countries.

In particular, the United States made it clear from the start that meeting the very modest demands of developing countries (to establish a new climate fund, a technology mechanism and an adaptation committee) would require acceptance of the US demands of anchoring the pledges made under the Copenhagen Accord into the Convention, and getting a strong system of MRV (measuring, reporting, verifying) and of ICA (international consultation and analysis) of mitigation actions of developing countries.

Although most delegates were either relieved or glad that multilateralism had been revived at Cancun, many negotiators from developing countries were privately expressing disappointment and 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.

Moreover, there was serious concern that from a climate-environmental point of view, the texts fell far short, or had even gone backwards, in terms of controlling the greenhouse gas emissions that cause climate change.

One senior negotiator of a developing country summed up his feelings, as he was leaving Cancun: "We saved the system but the climate and people were sacrificed."

The Cancun conference suffered an early blow from Japan's announcement that it would never ever agree to making another commitment under the Kyoto Protocol. Its first commitment will end in 2012 and the deadline for finalising the emission-reduction figures for the second period had long passed in 2009.

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 the finalisation in 2011. However, this goal was rudely swept aside by Japan's aggressive stand on Day 1 and the conference never recovered from that blow.

The final text failed to ensure the survival of the Protocol, though it sets some terms of reference for continuing the talks next year. The Cancun meeting in fact made it more likely for the developed countries to shift 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 (KP) system agreed to for the second period, a top-down aggregate reduction figure based on what science requires (taken to be the Intergovernmental Panel on Climate Change report's 25-40%, and taken by developing countries to be a more ambitious 40-50%) would first be agreed on, and then developed countries would have to make their commitments (comparable with one another) and these would have to add up to the aggregate.

In the voluntary pledge system, there would not be an agreed prior aggregate figure, and no system of ensuring comparability of efforts or that the sum of pledges is ambitious enough to meet the scientific requirement.

The Cancun text also recognised the emission-reduction targets that developed countries listed under the Copenhagen Accord.

But these are overall such poor targets that a recent UN Environment Programme report warned that the developed countries by 2020 may decrease their emissions by only a little (16%) in the best scenario, or even increase their level (by 6%) in a bad scenario. The world would be on track for a temperature rise of 3 to 5 degrees by century's end, which would be catastrophic.

The text urges developed countries to raise their mitigation targets, and makes an indirect reference to the 25-40% aggregate emission-reduction figure, and thus points to a process of taking the pledges so far made as only an initial starting point. This is

weaker than the KP's binding system, and the AWG-LCA's obligation for non-KP developed countries to make a comparable effort.

Even as it prepared the ground for the "great escape" of developed countries from their commitments, the Cancun text introduced new disciplines for developing countries.

They are now obliged to put forward their plans and targets for climate mitigation, which are to be compiled in a document and later in registries.

It is a first step in a plan by developed countries (they have been quite open about it) to get developing countries to put their mitigation targets as commitments in national schedules, similar to the tariff schedules in the World Trade Organisation.

The Cancun text also obliges developing countries to report on their national emissions every two years as well as on their climate actions and the results in terms of emission avoidance.

These reports are to be subjected to detailed scrutiny by other countries and by international experts. The Cancun text in fact gives a lot of space to the details of these MRV and ICA procedures.

These are all new obligations, and a great deal of time was spent in Cancun by the developed countries (especially the United States) to get the developing countries to agree to the details of MRV and ICA.

Many developing-country officials were increasingly worried in Cancun about how they are going to implement these new obligations, as a lot of people, skills and money will be needed.

In fact, the developing countries made a lot of concessions and sacrifices in Cancun, while the developed countries managed to have their obligations reduced or downgraded.

Cancun may be remembered in future as the place where the UNFCCC's climate regime was changed significantly, with developed countries being treated more and more leniently, reaching a level like that of developing countries, while the developing countries are asked to increase their obligations to be more and more like developed countries.

The ground is being prepared for such a new system, which could then replace the Kyoto Protocol. Cancun was a milestone in facilitating this.

The Cancun conference also agreed on establishing a new global climate fund under the UNFCCC to help finance mitigation and adaptation. No decision was taken on how much money the fund will get.

However, the text mentions that the developed countries agreed to mobilise \$100 billion by 2020,

with conditions of appropriate mitigation and transparency by developing countries. It is unclear how much of this will be from the public or private sectors, or from grants versus loans and investments.

A committee is mandated to design various aspects of the fund. However, it was agreed beforehand that the initial trustee of the fund will be the World Bank, a key demand of the United States which many developing countries had been opposing, as they wanted competitive bidding rather than appointing the Bank upfront.

A technology mechanism was also set up under the UNFCCC, with a policy-making committee, and a centre.

However, the Cancun text avoided any mention of intellectual property rights (IPRs), which have an influence over developing countries' access to and cost of technology.

The United States had made it very clear that it would not accept even the mere mention of IPRs in any text, while the developing countries wanted to at least ensure that the discussion on IPRs be continued. The no-mention demand triumphed.

The Cancun conference was also marked by a questionable method of work, quite similar to the WTO but not used in the United Nations, in which the host country, Mexico, organised meetings in small groups led by itself and a few ministers that it selected, who discussed texts on the various issues.

The final document was not produced through the usual process of negotiations among delegations, but compiled by the Mexicans as the Chair of the meeting, and given to the delegates for only a few hours to consider, on a take-it-or-leave-it basis (no amendments were allowed).

At the final plenary, Bolivia rejected the text, and its Ambassador, Pablo Solon, 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 to accept the low pledges they had made, which would lead to a disastrous degree of global warming, which its President had termed ecocide. It could also not accept an undemocratic process through which its proposals (on mitigation, the use of market mechanisms, and on the need to address IPRs) had been swept aside.

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

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 WTO-style methods may in the immediate period lead to the “efficiency” of producing an outcome, but also carries the risk of conferences collapsing in disarray (as has happened in several WTO ministerial meetings) and in biases in the text, which usually have been in favour of developed countries.

When the dust settles after the Cancun conference, a careful analysis will find that its text may have given the multilateral climate system a shot in the arm and positive feelings among most participants because there was something 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.

Many delegates and observers, however, were looking positively to the future work. From this low base level of ambition in climate terms, there is much work to be done in 2011 to raise the level of ambition in both environmental and development terms, save and to reorientate the international system of cooperation to address the climate crisis.

** Martin Khor is the Executive Director of the South Centre. The above article was first published in SUNS #7062 dated 16 December 2010.*

Next Year's Battle will be More Uphill

*by Martin Khor**

Now that the dust is settling from the climate conference in Cancun, it is sobering to analyse its results. In both content and process, it will have ramifications for years to come.

Many commentators have given the verdict that the multilateral system was saved, but not the climate. They were referring to the avoidance of another collapse, following last year (2009)'s disaster at Copenhagen.

But I heard an even sharper version of this view from a diplomat as he was leaving the Cancun airport: "We saved the system but we sacrificed the climate and the people."

If this were true, it would be a strange and self-contradictory result indeed. It reminded me of a saying by a foreign soldier in a war in an Asian country: "We burned the village in order to save it."

Climate change is leading to the worst environmental disaster the world has known. This calls for increased global regulation, with the richest countries doing the most to curb their emissions and coming under the most binding regime. The developing countries, most of which are still at the start of their industrialisation, would do their best, aided by financial and technology transfers.

That was the bargain in Bali in 2007, when the latest round of climate talks began. By Cancun, however, the developed countries' commitment to take the lead had dwindled. Unbelievably, at a time when they should be doing more, they were plotting to dismantle the only legally-binding regime, the Kyoto Protocol, and preparing in its place a non-binding national pledge system in which they would volunteer to do whatever they choose.

The Kyoto system agreed to for this round has a top-down approach of first determining the developed countries' aggregate emission cut, based on what the science requires, and having each country commit, with the total of national commitments having to match the aggregate. At Bali it was agreed that all developed countries (including the United States, which is not a Kyoto member) would make a comparable effort.

The European countries say they prefer to retain the Kyoto Protocol. But they won't remain in it alone. Other countries want to shift from Kyoto's regulated system to a loose system of pledges, without the top-down aggregate and the comparability principle.

Cancun did not decide on this titanic battle of models of action once and for all. But it gave a great advantage to the voluntary pledge model. It laid the groundwork for establishing this model and thus made possible the demise and replacement of the Kyoto Protocol. And with that, the crumbling of the foundation of the architecture agreed to at the Bali climate conference.

It weakened in operational terms the cornerstone principles of equity and "common but differentiated responsibilities" by blurring the careful distinctions between the different levels of obligations of developed and developing countries in their respective mitigation efforts to combat emissions.

Why was it said that the climate was sacrificed? Because the loosening of regulation of developed countries' emissions is likely to lead to less efforts on their part just at the time when more efforts are needed.

Their individual pledges add up to an emissions cut of only 16% (taking the high end of the pledges) or an increase (not decrease) of 6% (taking the low end), when they should be cutting by at least 25-50% (by 2020 compared to 1990).

With these pledges, and those of some developing countries, made under the Copenhagen Accord, the world is on track for a temperature rise of 3 to 5 degrees by century's end. A 2 degree rise is considered dangerous enough, so many scientists and most countries are now advocating a 1.5 degree limit. It is impossible to envisage living in a 3 degree world, let alone 5 degrees.

Why was it said that the people were sacrificed? Because the majority of the world's people, living in developing countries, are now asked to take on the burden of adjustment. Having given up the regulated top-down approach for their own emission cuts, the developed countries focused in Cancun to shift the burden onto developing countries.

Of course the developing countries must play their part, and many of them have announced plans to lower the emissions intensity of their GNP, provided they are provided with the promised funds and technology to do the job. And also provided the rich countries take the lead by cutting their own very high emissions.

At Cancun, the highest pressure was put on getting developing countries to take on obligations,

even more than was agreed to in Bali. They are now obliged to put forward their plans and targets for climate mitigation, which are to be compiled in documents to be regularly updated.

It is a first step in a plan to get them to place mitigation targets in national schedules, similar to the tariff or services schedules in the World Trade Organisation. The aim is to eventually get them to be as binding as the targets of developed countries.

The Cancun text also obliges developing countries to report on their national emissions and mitigation actions every two years. These reports (on mitigation actions, details of emissions, analysis of impacts, methodologies and assumptions, progress on implementation, etc.) are to be subjected to scrutiny by other countries and international experts.

These are all new obligations, and were the most important outcome of Cancun, together with the downgrading of developed countries' own obligations.

The Cancun conference text also agreed to achieve the peaking of global and national emissions as soon as possible, with the time-frame to be worked out within a year. Since many developed countries have already reached an emissions peak, 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 are still at very low levels of emissions (and of economic levels) raises many questions as to whether and when they can achieve such a target.

Finance and technology are crucial to support the developing countries' efforts, but on these issues Cancun made only small steps. A new climate fund was agreed to, but there was no concrete commitment on the amount of money, or where it would come from.

A technology board is to be set up. But the functions are more in the nature of "recommending

actions" rather than making decisions. The Cancun text avoided any mention of intellectual property rights on climate-related technology, thus bowing to the demand of the United States, whereas the developing countries had argued, up to the last day, that this crucial issue must be addressed.

Did Cancun save the system? This will be argued over for years to come. The binding climate regime of the Kyoto Protocol was not saved.

The conference was also marked by work methods that are unusual for the United Nations, with small-group meetings, texts drawn up by a few in various settings, over-taking the texts already compiled by the delegations in an open setting, and by a new precedent in which the objections of a country (Bolivia) to the final texts were over-ruled even though decisions are meant to be taken by consensus of all Parties present.

By setting new precedents, the nature of negotiations and decision-making in the UN may change, with ramifications that have to be seriously considered.

There is a follow-up question to the comment made at Cancun airport. What does it mean to save a system if the climate and people are to be sacrificed?

This does not mean that one should give up on the climate talks. On the contrary, it means that the developing countries in particular should gather more of their energies and efforts, recover ground, and fight harder, before and when the Climate Convention meetings resume, probably in March.

Next year, the climate battle will be even more uphill. The stakes are high, for the planet and the people, and also the system.

** This article was first published in the Star, a leading Malaysian English daily, on 20 December 2010. Martin Khor is the Executive Director of the South Centre.*

Climate Briefings for Cancun

Form Follows Function

A note on the legal form of the Bali Action Plan outcome

Mandate of the Bali Action Plan

The Bali Action Plan launched the Ad hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), which is "... a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, now, up to and beyond 2012, in order to reach an agreed outcome and adopt a decision at its fifteenth session..."

The legal outcome mandated by this decision of the Conference of the Parties (COP) is to reach an *agreed outcome* and *adopt a decision* at COP 15 (Now extended to COP 16, in December 2010 in Cancun, Mexico). The nature of this outcome is not specified, because countries could not agree in Bali.

Legally binding treaty outcome?

In the negotiations, many countries and observers are calling for a "legally binding" outcome, often referring to a treaty outcome. Some countries would like agreement or a clear mandate in Cancun that a new legally binding treaty/agreement/instrument will be concluded as the outcome of the AWG-LCA.

Misinformation has been spreading in the media to the public that the AWG-LCA outcome is actually supposed to be a treaty (often stated to replace the Kyoto Protocol), and hence a failure to achieve this would be a failure of the process. As such, expectations for the AWG-LCA outcome at the Cancun meeting among some countries are that a COP decision/set of decisions would be adopted, as a step towards achieving a legally binding treaty in South Africa in 2011 or after, as there is insufficient time to complete negotiations for a new treaty by Cancun.

In reality, the legal form of the agreed outcome of the AWG-LCA has yet to be determined, and is a matter to be decided by the Parties in the negotiations. In reality, the Kyoto Protocol is not expiring, and there is a specifically mandated negotiating track established two years before the AWG-LCA, that has been negotiating the second commitment period (starting in 2013) of developed countries' emission reduction commitments.

In reality, now that Parties are moving forward towards adopting COP decision(s) in Cancun, the following are the legal form options for the outcome of the AWG-LCA:

- COP decision(s) in Cancun that fulfill the mandate of the AWG-LCA
- COP decision(s) in Cancun, and further COP decision(s) in South Africa that fulfill the mandate of the AWG-LCA
- COP decision(s) in Cancun that are a stepping-stone towards a treaty in South Africa or beyond.

Parties are legally obligated to implement COP decisions

The COP is the supreme decision-making body of the Convention, which is an international treaty that is legally binding on the countries that are Party to it. Its decisions have a legally binding effect on Parties.

A decision is a formal agreement between Parties to a legally binding international treaty that creates a variety of obligations on Parties. Its operational effect is to lead to various concrete implementation actions. The work of the COP is then guided by the Convention text as well as COP decisions.

The UNFCCC website confirms that a COP decision is a “formal agreement that (unlike a resolution) leads to binding actions. It becomes part of the agreed body of decisions that direct the work of the COP”.

Among other things, decisions of the COP may be considered as a ‘subsequent agreement between the Parties regarding the interpretation of the treaty or the application of its provisions’ (Vienna Convention on the Law of Treaties, 1969).

Why do developed countries want a treaty as the outcome?

Developed countries would like a treaty as they would like issues of importance to them to be established in international law. Their level of ambition is far lower and less equitable than that proposed by developing countries, and they seek to lock this into a treaty.

Other developed countries that are Kyoto Protocol Parties also hope that the United States will consent to be bound to mitigation commitments, comparable to theirs, under a new treaty. The Kyoto Protocol contains legally binding mitigation commitments with internationally determined targets and a compliance system that is enforced internationally. Parties have agreed to a “top-down” approach for the current negotiations on the second commitment period, whereby an aggregate emission reduction figure would first be agreed on, followed by the individual targets for developed country Parties. This is in recognition of the needed deep cuts as determined by science.

On the other hand, the US would simply like to legitimise its contrary proposal of discretionary pledges in a treaty with no compliance system. This would result in an international treaty that legally allows developed countries to only undertake voluntary domestic mitigation targets. As already demonstrated by such pledges made so far, this “bottom-up” approach utterly fails to meet the urgent requirements of science and equity in order to ensure the future of the planet and humanity.

This is the system of the Copenhagen Accord, which the US and some other developed countries are determined to transform into a legally binding treaty. However, it is even uncertain now, given domestic US politics, whether the US will be able to agree to such a new treaty.

At the same time, developed countries including the US would like some developing countries to also legally take on mitigation commitments or be subject to more stringent mitigation action. Many of their own mitigation pledges are conditional on this. Many developed country proposals would therefore alter the fundamental principles of the Convention, in particular, “common but differentiated responsibilities”.

The European Union particularly, is interested in an outcome that is a treaty to ensure the continuation of the carbon market (especially if the Kyoto Protocol is terminated or superseded) and the creation of new market mechanisms that it proposes is necessary to be established in international law.

Developed countries want to terminate or supersede the Kyoto Protocol. Their preference is for a new Protocol under the Convention that replaces the Kyoto Protocol, or even a new treaty that would replace or substantially alter the balance of commitments in the Convention and its Kyoto Protocol. This new treaty would likely significantly shift away from the fundamental equity and development principles of the current international climate change architecture.

Why do some developing countries want a treaty as the outcome?

A treaty is an international law that is legally binding on countries that are Parties to it. A breach of its legally binding obligations is more clearly actionable. However, any determination of non-compliance, sanctions and their enforceability is still subject to political realities and the strength of the compliance regime.

Some developing countries would like issues of importance to them, with regard to the implementation of the Convention, to be enshrined in an international treaty, including enhanced action on:

- Adaptation, including the establishment of a comprehensive and structured approach to adaptation and appropriate new institutional arrangements under the Convention;
- Technology development and transfer, including the establishment of a comprehensive technology mechanism under the Convention;
- The provision of financial resources and investment, including the implementation of an enhanced financial mechanism under the Convention;
- Mitigation commitments or actions, including comparability of efforts among developed countries; and
- Expression of a shared vision including a long-term global goal for emission reductions, in accordance with the Bali Action Plan and the Convention.

Developing countries are also particularly concerned about the following issues:

1. The US is not a Party to the Kyoto Protocol, and the hope is that it will consent to be bound, like other developed countries in the Kyoto Protocol, to mitigation commitments under a new treaty.
2. The quantum of financial obligations. The obligation of developed countries to finance developing countries is contained in the Convention itself. Developing countries are seeking for a specified amount or assessed contributions to be determined to ensure adequacy and predictability, and to operationalise the delivery of these resources.
3. Compliance issues under the Convention. In particular if the US is to make comparable mitigation commitments under the Convention, it should also have comparable compliance to other developed countries under the Kyoto Protocol. Negotiations in the AWG-LCA include these options. The Convention's multilateral consultative process is a weak facilitative mechanism and is not yet operational because agreement could not be reached on it at the COP. As such, some developing countries would like a new treaty to incorporate strong compliance provisions.

Developing countries are firmly behind agreeing to a legally binding amendment to the Kyoto Protocol for a second commitment period, as mandated. Those developing countries that prefer an AWG-LCA treaty outcome are asking for another Protocol under the Convention that would co-exist with the Kyoto Protocol.

How to achieve what developing countries want?

The form of the outcome must be sufficient to “enable the full, effective and sustained implementation of the Convention”, and to achieve the goals of developing countries in the negotiations. The agreed outcome must address all these elements in a balanced manner, and enable action commencing “now, up to and beyond 2012” as required by the Bali Action Plan. Given the growing impacts on developing countries, early action “now” to implement the Convention is particularly urgent.

Most, if not all, of the objectives of developing countries – including enhanced actions, and institutional arrangements for mitigation, adaptation, technology and finance – can be addressed adequately, and indeed have been in the past and in other UN Conventions, through COP decisions.

The Convention has considerable experience establishing institutional arrangements (e.g. the Clean Development Mechanism Executive Board and the Joint Implementation Supervisory Committee) and financing mechanisms (e.g. the Adaptation Fund) through decisions.

In relation to the issues that developing countries are particularly concerned about:

1. There are a variety of means that legally binding mitigation for the United States could possibly be addressed, including through internationally binding national actions (e.g. a unilateral declaration of States capable of creating legal obligations – see Annex 1) and through appropriate institutional arrangements for ensuring actions/commitments are strictly internationally measurable, reportable and verifiable. These would not require a treaty outcome. There should be further efforts to explore these options and to evaluate their political feasibility.
2. The quantum of financial obligations. Developed country Parties have unambiguously assumed the obligation to provide new and additional financial resources and to ensure adequacy and predictability of such resources under the Convention. However, political will and good faith in honouring those obligations are lacking.
3. On compliance, the work has been done on the Convention's multilateral consultative process. All that remains to be done is to adopt a decision that would make it operational, based on the agreement that was achieved for the Kyoto Protocol's compliance regime. Further work can be undertaken to develop a more stringent compliance regime, including through COP decisions and amendments to the Convention.

Compliance mechanisms in environmental agreements are usually of a facilitative nature. The Kyoto Protocol's compliance mechanism is comparatively robust on paper, but may suffer from implementation problems. This suggests that political will and other issues besides the legally binding nature of a strict compliance regime are at play.

Dangers of a treaty as the outcome

Adopting a legal instrument as an outcome of the Bali Action Plan also has implications for the timing of the outcome:

- Legal treaties usually take years to negotiate, and the text of a new legal instrument will have to be communicated by the Convention secretariat to the Parties at least six months before the meeting which is to adopt it.
- A new legal instrument also implies delays in implementation. A new legal instrument usually takes an average of three years to enter into force after its adoption.
- In addition, it may never enter into force if there are not enough ratifications, acceptances, approvals or accessions.

A decision of the COP, by contrast, is simply adopted by the Parties and has immediate direct legal effect as the COP is the supreme decision-making body of the Convention, which is an international treaty that is legally binding on the countries that are Party to it. It does not need to be ratified etc. In this sense, a decision would better fulfill the mandate of the Bali Action Plan for action commencing “now”.

As well as delay, there is a range of more fundamental dangers:

1. A new treaty as the AWG-LCA outcome may supersede the Kyoto Protocol. Already, many elements of the Kyoto Protocol have been migrated to the AWG-LCA text. If a legally binding instrument under the Bali Action Plan process is concluded, including key elements of the Kyoto Protocol, then the Kyoto Protocol may effectively be rendered dead or meaningless (see Vienna Convention on the Law of Treaties, Article 30 on Application of successive treaties relating to the same subject matter). Developed countries would have effectively cherry-picked the elements of the Kyoto Protocol that they like, such as the market mechanisms, and transposed them into a new legal instrument.

A second commitment period of the Kyoto Protocol does not guarantee its survival. In the absence of a legally binding treaty in the near future, some developed countries may agree to move forward on a second commitment period, to ensure continuity of the carbon market. For them, a second commitment period is merely an interim stepping-stone towards the new treaty that they seek.

There is momentum toward inscribing developed country mitigation proposals or pledges in decisions to be adopted in Cancun. It is critically important *where* mitigation commitments are inscribed, as this could determine whether or not the Kyoto Protocol is terminated or superseded.

For countries that are Kyoto Protocol Parties, their mitigation must be inscribed in the Kyoto Protocol track, and not under the AWG-LCA. Only non-Kyoto Parties can be allowed to inscribe their mitigation under the AWG-LCA. Inscribing the mitigation of all developed countries under the AWG-LCA paves the way for the eventual termination or superseding of the Kyoto Protocol, allowing developed countries to relocate their mitigation commitments/actions to the AWG-LCA outcome.

2. A new treaty containing US mitigation efforts may also mean that other developed countries may decide to “jump ship” from the Kyoto Protocol to this treaty. If there is no alternative, there is nothing for other developed countries to abandon the Kyoto Protocol for. Developed countries could withdraw from the Kyoto Protocol at any time, however this would have significant political implications. “Ship jumping” would be the easy way out for countries that no longer wish to be bound by the Kyoto Protocol, without facing a political backlash for not being part of the international climate change regime.
3. It is clear that the US will only become a Party to a treaty that essentially legalizes the Copenhagen Accord, with its pledge and review system. This would be many steps backwards from the existing climate regime of the Convention and its Kyoto Protocol, which sets internationally binding quantified mitigation targets for developed countries that are subject to enforcement.

There is momentum toward inscribing developed country mitigation proposals or pledges in decisions to be adopted in Cancun. While there is value in capturing progress, and holding developed countries to their pledges, it should be noted that developed countries’ mitigation pledges have so far not been formally adopted in any decision, and for a reason.

In the Kyoto Protocol negotiations, developing countries are arguing that a top-down approach based on scientific and equitable parameters should determine the scale of developed countries’ mitigation commitments. Developed countries, however, have only put forward bottom-up pledges, many with conditions, based on what they are politically prepared to do. The pledges are dangerously inadequate, and in addition, some developed countries are attempting to lock in many loopholes that would allow them to avoid real emission reductions, and even increase their emissions. Anchoring a system of pledges is the start of locking in a pledge and review system, fundamentally shifting away from the top-down principled approach that is needed.

4. The goal of “getting the US on board” is fraught with many difficulties. Current US politics indicate that the US will not agree to a new treaty at this point. It is indeed a sorry and immoral situation that the US continues to refuse to join the rest of the world, by taking on binding mitigation targets. However, if the price of “getting the US on board” is too high, then again, the world should proceed without the US. It would be highly unfortunate to engage with US demands for a new climate change architecture, weaken the outcome and be faced with non-ratification by the US again.

Conclusion

There are some advantages to a treaty outcome, but also many disadvantages. It is quite clear that the US will not agree to a treaty outcome at this point. Should the rest of the world again risk pinning all their hopes on a treaty outcome that the US will not ratify?

If a treaty outcome is still the preferred option, however, one way to avoid the dangers of a treaty outcome (superseding the Kyoto Protocol, “ship jumping”, accepting a pledge and review system) would be to conclude a new treaty under the Convention that co-exists with the Kyoto Protocol that deals with finance, technology and adaptation. Mitigation elements can conclude with COP decisions and other options such as a unilateral declaration for the US’ mitigation efforts, or perhaps conclude in a treaty at a later stage, when the political conditions are better.

Another way could be to finalise a treaty that has all elements of the Bali Action Plan, and put in place certain safeguards and conditions that would ensure that the Kyoto Protocol is not superseded and that other developed countries do not “jump ship”. It is unclear however, if this could guarantee the survival of the Kyoto Protocol, and its system of internationally binding commitments.

The future climate change architecture is what is at stake – whether or not science and equity determine the scale of emission reductions; whether or not emission reductions are internationally binding or voluntary and domestic; and whether or not developed countries continue to take the lead in combating climate change, in accordance with their moral and historical responsibility.

A set of decisions as the final outcome of the Bali Action Plan therefore warrants serious consideration by all Parties. There is only a slim and ever diminishing hope that the US will finally accept its responsibility for climate change. The political reality of the situation very unfortunately points us in this direction.

Annex 1

Creating Comparable Legal Obligations from Unilateral Declarations

In the context of the Bali Action Plan process, many countries would prefer that the legal character of developed countries’ mitigation commitments or actions is of a legally binding and mandatory character. This would mean a continuation of the existing mandatory character of the mitigation commitments for developed countries under Art. 4.2(a) and (b) as well as under the Kyoto Protocol for those that are also Parties to the Protocol.

However, for developed countries that are not Parties to the Kyoto Protocol such as the United States, comparable binding obligations could be generated through a unilateral declaration under international law. For such a unilateral declaration to create legal obligations for the declaring State, it:¹

- should be done formally and publicly, orally or in writing;
- should express the intent to be bound and produce obligations under international law;
- must clearly and specifically state the obligations to which the State will be bound;
- must be made by an authority vested with the authority to do so (e.g. head of State, head of Government, or foreign ministers); and
- must not conflict with a peremptory norm of general international law (a *jus cogens* norm).

The COP, as part of the outcome from the AWG-LCA process, could decide to invite Annex I countries which are not Kyoto Protocol Parties to unilaterally declare to the COP their intention to enhance their implementation of Art. 4.2(a) and (b) by undertaking binding emission reduction commitments and implementing such commitments through appropriate domestic policies and measures.

¹ For such a unilateral declaration to have binding legal effect on the declaratory Party and for other Parties to be able to rely on the binding nature of such a declaration under international legal effects, the declaration should be consistent with the “Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations” adopted by the UN General Assembly’s International Law Commission in 2006. The Guiding Principles were reported by the ILC to the 61st session of the UN General Assembly (see Report of the International Law Commission, 58th Session, UN Doc. No. A/61/10 (2006)), which then took note of such Guiding Principles and commended their dissemination (see UN General Assembly Resolution No. A/RES/61/34, 18 December 2006, para. 3. For the text of these Guiding Principles, see http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf. These guidelines are based in part on the 1933 decision of the Permanent Court of International Justice in the case of Norway vs. Denmark and the 1974 Nuclear Test Cases decided by the International Court of Justice.

Agriculture is Not a Carbon Commodity

Lim Li Ching and Doreen Stabinsky

Agriculture is the most important sector in many developing countries. It is central to the survival of hundreds of millions of people in most parts of the developing world.

Agriculture, first and foremost, is about livelihoods

In most developing countries, agriculture, which provides the bulk of employment, is not a commercial activity per se, but a way of life. Most agriculture production in these countries involves small land holdings, mainly producing for self-consumption. Women are the key agricultural producers and providers. Hence agriculture is critical for food and livelihood security, and for the approximately 500 million smallholder households, totaling 1.5 billion people, living on two hectares of land or less.¹ Smallholdings account for 85 per cent of the world's farms.

Agriculture is also deeply connected with issues of development and poverty alleviation, as about 75 per cent of the world's poor live in rural areas where agriculture is the main economic activity.² Paradoxically, women, despite playing a crucial role in agricultural production, make up over 60 per cent of the hungry.³ The World Bank has warned that the agriculture sector must be placed at the center of the development agenda if the Millennium Development Goals of halving extreme poverty and hunger by 2015 are to be realized.⁴ For the poorest people, GDP growth originating in agriculture is about four times more effective in reducing poverty than that originating outside the sector. The large share of agriculture in poorer economies suggests that strong growth in agriculture is critical for fostering rural development and overall economic growth.

The UN Special Rapporteur on the Right to Food has highlighted the need to support smallholder farmers and means of agricultural production that are sustainable, particularly in the context of climate change.⁵ This is because agricultural science and technology, and related investments, have hitherto mainly benefited large-scale enterprises and have not focused on the specific needs of the rural poor in developing countries.

¹ Report of the Special Rapporteur on the right to food, Olivier De Schutter. 2008. Building resilience: A human rights framework for world food and nutrition security. Report to the UN General Assembly (A/HRC/9/23).

² Submission to the World Trade Organization by the G-33. 2010. Refocusing discussions on the Special Safeguard Mechanism (SSM): Outstanding issues and concerns on its design and structure. 28 January 2010. (WTO, TN/AG/GEN/30).

³ Hunger stats, World Food Programme <http://www.wfp.org/hunger/stats>

⁴ World Development Report 2008: Agriculture for Development. World Bank, Washington, DC.

⁵ Address by the UN Special Rapporteur on the Right to Food, High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy, Rome, 3-5 June 2008.

In particular, women are the primary agricultural producers in many developing countries and play a major role in securing household food security, thereby requiring special attention.

Small-scale ecological farming is key to world food security

Despite the general neglect of agriculture – both in terms of policy and development assistance – and the marginalization of the needs of smallholder farmers in developing countries, they are key to the world's food security. For example, in Latin America, about 17 million smallholdings occupying 34.5 per cent of the total cultivated land with average farm sizes of about 1.8 hectares, produce 51 per cent of the maize, 77 per cent of the beans and 61 per cent of the potatoes for domestic consumption.⁶ Similar data are evident from Asia, where the majority of the more than 200 million rice farmers, each cultivating around two hectares of rice, make up the bulk of the rice produced by Asian small farmers. In Africa, which has approximately 33 million small farms, representing 80 per cent of all farms in the region, the majority of African farmers (many of them women) are smallholders and produce a significant amount of basic food crops.

The diversified farming systems of smallholders in developing countries are more productive than large farms if total output is considered rather than yield from a single crop. A salient feature of these farms is their high degree of biodiversity, in the form of polycultures and/or agroforestry patterns, which are endowed with a variety of organisms that perform various beneficial ecological functions.⁷ These include nutrient-enriching plants, insect predators, pollinators, nitrogen-fixing and nitrogen-decomposing bacteria.

This biodiversity is also crucial to ensuring agricultural resilience, which is needed for the adaptation efforts by developing country farmers, who will suffer disproportionately more from the effects of climate change. Agrobiodiversity allows farms to mimic natural ecological processes, enabling them to better respond to change and reduce risk. Thus, farmers who increase interspecific diversity suffer less damage during adverse weather events, compared to conventional farmers planting monocultures.⁸ Moreover, the use of intraspecific diversity (different cultivars of the same crop) is insurance against future environmental change. Diverse agroecosystems can also adapt to new pests or increased pest numbers.

Women play an important role in managing biodiversity and in adapting to climate change. For example, women from many indigenous communities possess repertoires of “coping strategies” that they have traditionally used to manage climate variability. In Rwanda, women are reported to produce more than 600 varieties of beans, and in Peru, Aguaruna women plant more than 60 varieties of manioc⁹.

At the same time, smallholder farmers in developing countries usually treat their soil with organic compost and green manures, practices that sequester carbon into the soil. They also rely on organic manures, legume-based rotations and beneficial insect diversity, which allows them to reduce or even forego synthetic fertilizer and pesticide use, hence contributing to climate mitigation. This is in sharp contrast to the industrialized, fossil fuel- and energy-intensive agriculture that characterizes much of developed country agriculture, and for which serious domestic mitigation actions are necessary.

⁶ Altieri, M.A. 2008. Small farms as a planetary ecological asset: Five key reasons why we should support the revitalization of small farms in the global South. TWN Environment and Development Series 7. Third World Network, Penang.

⁷ Altieri, M.A. 2008. Ibid.

⁸ Altieri, M.A. and Koohafkan, P. 2008. Enduring farms: Climate change, smallholders and traditional farming communities, TWN Environment and Development Series 6. Third World Network, Penang.

⁹ CBD. 2009. Biodiversity, gender and climate change. Convention on Biological Diversity, Montreal. <http://www.cbd.int/climate/doc/biodiversity-gender-climate-change-en.pdf>

Soil carbon should not be turned into a commodity

In the search to commodify every last corner of the planet, and indeed the atmosphere, carbon traders and marketers are developing methods to create a commodity out of the carbon found in soil. To them, this was likely a logical extension of their markets, which already exist for the carbon embodied in trees.

The idea is fairly simple in concept and complicated in practice: quantify the amount of carbon in agricultural soils. When farmers adopt certain crop management practices that will increase the amount of soil carbon, they receive payment for the amount of carbon they are able to sequester in the soil. Those carbon credits purchased as “offsets” can then replace developed country mitigation obligations, or they can be traded as commodities on the speculative market.

There is no doubt that particular crop management practices warrant financial support, for example, those ecological agricultural practices of small-scale farmers described above that are essential to building resilience of cropping systems, such as the incorporation of composts, manure, cover cropping, and crop rotation. It is true that compost and manure ARE the source of the carbon that becomes sequestered in soils. But creating a commodity out of soil carbon is an inappropriate means to provide support to small-scale farmers for their climate-resilient practices.

Offsets and carbon markets help developed countries evade responsibilities and obligations and threaten food security and livelihoods

Developed countries have legal obligations, set out under the UN Framework Convention on Climate Change (UNFCCC), to provide financial resources for adaptation efforts:

The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects. (UNFCCC, Article 4.4)

Developed countries are looking for means to escape these public financial obligations, through promoting “innovative” sources of financing *and* by transferring the focus of attention from adaptation to mitigation.

Among these innovations in escaping legal and moral obligations is the use of offset projects in the developing world: by paying for mitigation practices in the global South, developed countries can avoid their own reduction commitments, thus continuing their unsustainable production and consumption patterns, rather than make the transition to low-carbon lifestyles. This increases both the adaptation and mitigation burdens of developing countries, when their priorities are poverty eradication and development.

Carbon credits generated in this manner could be subsequently traded on a global carbon market, ostensibly to generate money for climate financing. However such markets, with their inherent instability, combined with the complexity of agriculture markets, could mean disaster for food security and livelihoods in developing countries.

Soil carbon credits are unlikely to reflect actual carbon sequestration

Promoters make it seem as if there is easy money for the earning in the soil carbon market. However, many hurdles stand in the way of creating a market for soil carbon.

Quantifying the amount of carbon in the soil is not a straightforward technical matter. Baselines must be established – how much carbon existed in the soil prior to the introduction of particular practices? And fluxes of soil carbon must be understood – how do soil carbon concentrations vary according to seasons or as surface temperatures warm due to climate change?

Offset credits are much more valuable if the mitigation practice can permanently sequester a known amount of commodified carbon. Because this is impossible in the case of soil carbon, elaborate accounting systems are constructed to discount the amount of soil carbon that might be sequestered to take into account both impermanence and problems of measurement. This difficulty in accounting could also allow developed countries to account for emission reductions when in fact these reductions have not occurred, or are less than what is accounted for.

To create marketable soil carbon, farmers are aggregated into large groups and contracts are signed. The contracts state that farmers will follow a series of prescribed practices. Those practices most commonly have been low-till or no-till weed control practices. Practices associated with the greatest increase in soil carbon – the addition of compost and manures that actually ADD carbon to soil¹⁰ – are actually not required. The actual carbon sequestered in current schemes is negligible, providing little to no compensation for farmers who have undertaken these practices and ensuring that carbon credits generated are worth a fraction of other carbon being traded on markets.¹¹ What results at the end is a marketable commodity that is worth little more than the piece of paper it is printed on.

Soil carbon in the CDM?

Proponents of commodifying soil carbon are looking eagerly to rewrite the rules of the Clean Development Mechanism (CDM) to expand eligibility to soil carbon sequestration mitigation projects. At the very least this is a dangerous distraction from the more urgent needs of agricultural adaptation. At its worst, this is a fundamental shirking of responsibility of the developed world to undertake mitigation domestically, in economies that still massively over-occupy the remaining atmospheric space, and a shirking of responsibility to provide public financing for the enormous adaptation needs facing the poorest and most vulnerable agriculturalists on the planet.

The centrality of adaptation¹²

The end of creating an agriculture that is climate-resilient is very distinct from the end of creating a marketable commodity. This is the essential unresolvable conflict in promoting a market for soil carbon, based on “mitigation” practices adopted by farmers in the developing world. Farmers in the developing world must receive support for their adaptation efforts. The support must be provided without constraint or caveat. Tying adaptation support to the exigencies of a carbon market is not only illogical, but given the severity of the climate crisis, it is immoral.

Agriculture is central to developing countries, as are the millions of smallholder farmers and women who provide the food we depend on, nurture biodiversity, and provide practical, just and affordable solutions to the problem of climate change. They should not be treated as commodities.

Note: an earlier version of this briefing paper was distributed at the Global Conference on Agriculture, Food Security and Climate Change (31 October - 5 November 2010, The Hague)

¹⁰ Howitt, R.E., R. Català-Luque, S. De Gryze, S. Wicks, J. Six. 2009. Realistic payments could encourage farmers to adopt practices that sequester carbon. *California Agriculture* 63(2): 91-95.

¹¹ Prices for soil carbon on the Chicago Climate Exchange have ranged from \$5 a ton to \$0.15 per ton. “Soil carbon market is of ‘little value’ to farmers.” *Carbon Offsets Daily*, August 19, 2010. <http://bit.ly/9DHQY>

¹² Campbell, B. 2009. Beyond Copenhagen: REDD+, agriculture, adaptation strategies and poverty. *Global Environmental Change* 19: 397-399.

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