

## **THE CLIMATE CHANGE BATTLE IN PARIS: An Updated Analysis of the Paris COP21 and the Paris Agreement**

*By Meenakshi Raman*

### **1. INTRODUCTION**

The Paris Agreement adopted by the 21<sup>st</sup> Conference of Parties (COP21) under the United Nations Framework Convention on Climate Change (UNFCCC) on 12 December 2015, was the outcome of major battles on a multitude of issues, especially between developed and developing countries.

Developing countries by and large had these negotiating objectives. They wanted to (a) defend the Convention and not let it be changed or subverted; (b) ensure that the Agreement is non-mitigation-centric with all issues (including adaptation, loss and damage, finance and technology, besides mitigation) addressed and in a balanced manner; (c) ensure differentiation in all aspects be reflected, with the principles of equity and common but differentiated responsibilities and respective capabilities; (d) ensure that developed countries enhance the provision of finance and technology transfer (f) ensure that 'loss and damage' is recognised as a separate pillar apart from adaptation and (g) have legally binding provisions, especially on the developed countries.

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

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

A major concern was how the French Presidency of COP 21 would behave, in light of the polarised positions. Towards the end, an important meeting took place between the LMDC and the French Presidency (who were crafting the final compromise) during the night of Friday, 11 December, where the LMDC presented its 'super-redlines'. These included: that the purpose of the Agreement is to enhance the implementation of the Convention in accordance with the principles and provisions of the Convention; reflection and operationalisation of equity and CBDR across all elements; clear differentiation between developed and developing countries on the mitigation efforts; commitment by developed countries on provision of finance, technology transfer and capacity-building with no transfer or extension of obligations to developing countries to provide finance.

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

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

This is the 'should incident' where the US wanted the word 'shall' to be replaced with the word 'should' in Article 4.4 of the Agreement that related to the mitigation efforts of Parties. The US wanted developed and developing countries to be treated in a like manner legally, as the original version referred to 'shall' for developed countries and 'should' for developing countries. Instead of raising the issue from the floor of the plenary, the US request was accommodated by the COP Presidency by what was termed a 'technical correction' and the word 'shall' was then replaced with 'should' and was read out by the Secretariat. This was viewed with dismay by some LMDC delegations, but as there was no formal objection, the US-inspired amendment stood.

Another incident was when Nicaragua put up its flag in the final session of the Paris Committee<sup>1</sup> that adopted the Paris Agreement but it was ignored by the Chair. The Minister of Nicaragua made a strong statement protesting against his being ignored, after the Agreement had been passed by the Committee.

After adopting the Paris Agreement, the Paris Committee then forwarded it to the COP which in turn adopted the Agreement.

## **2. HIGHLIGHTS OF THE PARIS AGREEMENT**

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

According to the decision adopted at COP 21, the Agreement will be open for signature by Parties in the UN in New York from 22 April 2016 to 21 April 2017. The Secretary-General of the UN is invited to convene a high-level signature ceremony for the Agreement on 22 April this year.

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

Parties also agreed to establish a new body called the Ad Hoc Working Group on the Paris Agreement which will be responsible to prepare for the entry into force of the Agreement and this group will start meeting in 2016, in conjunction with the Convention's subsidiary bodies on 16 to 26 May 2016.

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

The following is an article-by-article description, background and analysis of some of the important Articles of the Paris Agreement. It includes brief accounts of the differences of views and positions among Parties

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<sup>1</sup> A committee set up during the COP by the COP President to deal with the Paris Agreement issues, following the closure of the work of the Ad Hoc Working Group on enhanced action on the Durban Platform (ADP). The negotiations that led to the Paris Agreement in COP21 had been conducted under the ADP from 2012 to COP21 in December 2015.

(especially as between developed and developing countries generally) on the issues that form the content of the Articles.

## 2.1 Purpose of the Agreement (Article 2)

Article 2 of the Agreement (known generally as ‘purpose’ during the negotiations) states in sub-paragraph 1 that: *‘This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*

- (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
- (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and*
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.’*

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

The purpose of the Agreement was a major area of contention between developed and developing countries. It was clear from the four years of work leading to the Paris Agreement under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), that the common refrain of developing countries under the G77 and China was for the Agreement not to ‘rewrite, replace or reinterpret the Convention’. The G77 and China, including its sub-groupings especially the LMDC and the African Group, constantly stressed that the purpose of the Agreement is to enhance the implementation of the Convention on the elements of mitigation, adaptation, finance, technology transfer, capacity-building, and transparency of action and support. Developed countries, on the other hand, appeared to focus more of their attention on the ‘objective’ of the Agreement, which was perceived by developing countries as a mitigation-centric approach linked only to the temperature goal, with an attempt to weaken the link to the Convention provisions and the obligations of developed countries under the Convention, especially on the means of implementation (finance, technology transfer and capacity-building).

Hence, the reference to ‘enhancing the implementation of the Convention’ is seen as a positive win for developing countries. **However, it would be important to assess each of the Articles of the Agreement to ascertain if in fact the Convention has been enhanced in operational terms or whether there is a weakening in real terms in the provisions of the Convention.**

Although limiting temperature rise to well below a 2°C goal above pre-industrial levels is clear, reference to pursuing efforts to limit the increase to 1.5°C is seen as a major victory for many developing countries, especially the Small Island Developing States, the Least Developed Countries, Africa and the ALBA countries. Developing countries wanted the focus to also be on adaptation and finance and to ensure that the global response is in ‘the context of sustainable development and efforts to eradicate poverty’.

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

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

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

Developed countries had been insisting that the Agreement must reflect the 'evolving economic and emission trends' of countries in the post-2020 timeframe, while developing countries continued to argue that given the historical emissions of developed countries, developed countries continue to bear the responsibility in taking the lead in emission reductions and in helping developing countries with the provision of finance, technology transfer and capacity-building as provided for under the UNFCCC.

At the last COP in Lima in 2014, where the issue of differentiation was also hotly contested, Parties underscored their commitment to reaching an ambitious agreement in Paris that reflects the principle of CBDR-RC, in light of different national circumstances. This was the 'landing-zone' arrived at in reflecting the CBDR principle, following the China-United States joint statement issued last year prior to Lima and that has accordingly found its way to the Paris Agreement.

## **2.2 Nationally determined contributions (NDCs) (Article 3)**

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

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

The LMDC was the major proponent of what was then Article 2bis for all Parties to regularly prepare, communicate and implement their intended NDCs (INDCs) towards achieving the purpose of the Agreement. It also proposed that INDCs will represent a progression in light of Parties' differentiated responsibilities and commitments under the Convention.

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

## **2.3 NDCs and Mitigation (Article 4)**

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

*'1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of GHGs as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.'*

The recognition that peaking will take longer for developing countries implicitly acknowledges the principle of CBDR and is also a phrase that developing countries advanced, following the decisions reached in Cancun (decision 1/CP.16) and Doha (decision 1/CP.18). However, the aim is to achieve a balance between emissions by sources and removals by sinks of GHGs in the second half of this century, which is to be on the basis of equity and in the context of sustainable development and efforts to eradicate poverty.

The notion of balance between emissions by sources and removals by sinks of GHGs is not defined.

In the earlier versions of the negotiating text, various options on how the collective long-term goal is to be achieved were reflected. Proposals included reductions by certain percentages by a specified year; notions such as ‘achieving net zero or zero GHG emissions’; reaching the temperature goal through a ‘long-term global low emissions transformation’; ‘climate/emissions neutrality’; ‘decarbonisation’ over the course of the century (which is what the US was advocating) as well as a proposal by Bolivia and Ethiopia on achieving the temperature goal through an ‘equitable distribution of a global carbon budget based on historical responsibilities and climate justice’.

The final language in the Agreement adopted was not in the earlier versions of the negotiating text and would be subject to interpretation post-Paris.

It is likely that various Parties will suggest that the notion of balance in emissions and removals by sinks would be net zero emissions, given that a balance refers to the total net (of human-caused) emissions to the atmosphere being zero. If this is how it is to be understood, then the goal would mean that by the second half of the century, any ongoing emissions must be balanced by an equivalent level of sequestration. As the capacity of forests and other ecosystems to sequester carbon is finite, the goal effectively means we need to bring emissions as close to zero as possible, including from deforestation. Sectors that cannot be reduced to zero emissions such as agriculture, will need to compensate through sequestration.<sup>2</sup>

Of concern is whether this notion of balance in emissions and removals by sinks opens the door for a form of geoengineering known as carbon dioxide removal, if large-scale monoculture plantations or bioenergy crops with carbon-capture and storage are used to remove significant volumes of carbon from the atmosphere.<sup>3</sup> This will indeed be a matter of much debate in the coming years among Parties.

For developing countries, the emphasis will be on the ‘context’ of how the temperature goal will be achieved, viz. ‘on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty’. The last part of the paragraph reflects the call by developing countries to set out the context for their emission reductions.

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

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

One major issue that arises here is the notion of the NDCs referred to here in the mitigation section of the Agreement. Article 3 refers to ‘nationally determined contributions...’ as reflecting a more comprehensive scope as discussed above, with a non-mitigation-centric focus. In this paragraph, the NDC notion appears to be referring to only the mitigation element. It has to be argued that consistent with Article 3, an NDC is not mitigation-centric and since Article 4 deals with the mitigation element, the context of the NDC therefore refers to mitigation. This does not mean that NDCs are only about mitigation, as expressed under Article 3 above.

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

<sup>2</sup> See Forest Watch Special Report on Paris Climate Conference, Dec 2015, by Kate Dooley

<sup>3</sup> Ibid above

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

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

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

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

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

Also noteworthy is that in the original version of the text for adoption on Article 4.4, the reference was that developed countries 'shall' and developing countries 'should'...

According to sources, the US wanted the word 'shall' in the first sentence to be replaced with the word 'should', so that developed and developing countries will be treated in a like manner legally. Instead of raising the issue from the floor of the plenary, the US request was accommodated by the COP Presidency by what was termed a 'technical correction' and the word 'shall' was then replaced with 'should' in the Article which was hastily read out by the Secretariat together with several minor corrections. (For more details see TWN Paris Update 17 at [www.twn.my/](http://www.twn.my/) ).

*'5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.'*

It is important that this paragraph ensures the provision of support to developing countries for the implementation of the obligations under Article 4, and also recognises that enhanced support allows for higher ambition. Developing countries during the negotiations had stressed the importance of Article 4.7 of the Convention, which provides that 'the extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology.'

What the above sub-para does not explicitly state is that it is the developed countries that should provide the support. It does however say that it should be in accordance with Articles 9 (on finance), 10 (technology transfer) and 11 (on capacity-building), which are set out below. Article 9(1) makes clear that developed countries 'shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention'.

*'6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.'*

As pointed out above in Article 4.4, developing countries are encouraged to undertake economy-wide emission reductions over time. Article 4.6 provides the option for LDCs and SIDS to undertake low-emission development strategies, plans and actions that reflect their special circumstances.

*'7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.'*

The idea of mitigation co-benefits from adaptation actions and economic diversification plans contributing to mitigation outcomes were proposals that the Arab Group had been stressing during the negotiations.

*'8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement (CMA).'*

The reference to decision 1/CP.21 must refer to paragraph 27 of the decision which refers to the information to be provided by Parties in communicating their NDCs, which is actually a repeat of what was agreed to in Lima (decision 1/CP. 20, para 14). The Ad Hoc Working Group on the Paris Agreement (APA) is to develop further guidance for the information to be provided to facilitate clarity, transparency and understanding of the NDCs for the consideration and adoption of the CMA (See para 28 of decision 1/CP.21.)

*'9. Each Party shall communicate an NDC every five years...'*

Some developed and developing countries have communicated an INDC which is for a timeframe of 10 years. This sub-paragraph requires all Parties to communicate an NDC every five years. The communication period is thus standardised regardless of the timeframe of the NDC. So, for countries whose NDC is for a 10-year period (as in the case of their first INDC), they will still have to communicate their NDC again – midway through their 10-year implementation.

*'10. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall consider common time frames for NDCs.'*

What this suggests is that in the preparation of the next NDC (following from the first NDC), there could be common timeframes set for NDCs as to whether it should be a five-year or 10-year or other period, as this issue could not be resolved in Paris.

*'11. A Party may at any time adjust its existing NDC with a view to enhancing its level of ambition...'*

During the negotiations, the LMDC had also proposed that developing countries could adjust their NDCs '...when severely affected by an extreme natural event, force majeure, or when adequate finance, technology development and transfer, and capacity building support is not available', signalling that the adjustment could be a downscaling of its level of ambition, instead of 'enhancing' it. This proposal did not make it to the final Agreement.

*'12. NDCs communicated by Parties shall be recorded in a public registry maintained by the secretariat.'*

The US had maintained throughout the negotiations that it could not have its NDC 'housed' in an annex to the Agreement as this could mean that the emissions reduction target is legally binding. Hence, the recording of the NDCs in a public registry outside of the Paris Agreement, which means that the targets are not legally binding.

*'19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their CBDR-RC, in the light of different national circumstances.'*

## 2.4 Forests (Article 5)

The following paragraphs provide for matters relating to forests.

*'1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.'*

*'2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.'*

There were many developing countries led by the Coalition for Rainforest Nations (CfRN) who were pushing hard for forests to be in the Agreement and wanted to secure financing channels for REDD+ (Reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries).<sup>4</sup> Other developing countries did not want any reference at all to REDD+ given that all decisions, including the methodological framework and safeguards information system, have been completed under the COP flowing from the decisions in Cancun, where REDD+ was agreed to. Brazil, for instance, did not want any language on REDD+ that would require interpretation or lead to new negotiations on this issue.<sup>5</sup>

There were also other developing countries, such as Bolivia, who were not in favour of REDD+ as the only approach to forests where payments are results-based and have been advancing the notion of joint mitigation and adaptation approaches.

Article 5(2) covers both REDD+ as well as joint mitigation and adaptation approaches. The Article does not make any special reference to the financing of forest-related approaches and leaves this to be covered generally under Article 9 on finance below.

## 2.5 Cooperative approaches including market and non-market (Article 6)

*'1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.'*

This paragraph recognises that Parties can choose to pursue 'voluntary cooperation' in the implementation of their NDCs. The nature of this 'voluntary cooperation' is elaborated in the paragraphs that follow below.

*'2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.'*

The reference to the use of 'internationally transferred mitigation outcomes' and to avoidance of 'double counting' all make clear that the door has been opened in the Agreement for the establishment of an international carbon market, despite years of lack of consensus on this among Parties in the negotiations under the COP since Cancun.

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<sup>4</sup> Ibid above.

<sup>5</sup> Ibid above.

The EU has been a major proponent of new market mechanisms, along with Japan and other members of the Umbrella Group, while countries such as Bolivia, Venezuela, China and Brazil among others have strongly resisted such mechanisms, primarily because they allow for offsets – developed countries who transfer their mitigation actions to be done in developing countries by paying for them, with the consequent emission reductions in developing countries being counted as the emission reductions of developed countries.

With developing countries having to undertake their own emission reduction targets under the NDCs, how these new mechanisms will evolve remains to be seen.

*‘3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.’*

It is unclear what the role of the COP or the CMA would be in relation to this voluntary arrangement among Parties, other than in relation to the development of accounting rules as set out in sub-paragraph 2 above.

*‘4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, and shall aim:*

- (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;*
- (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;*
- (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and*
- (d) To deliver an overall mitigation in global emissions.’*

This sub-paragraph clearly establishes a mechanism similar to that of the Clean Development Mechanism under the Kyoto Protocol. This mechanism is to be supervised by a body designated by the CMA, similar to that of the CDM Executive Board that currently exists under the Kyoto Protocol. It allows for offsets, as made clear in sub-para (c).

*‘5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party’s nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.’*

This paragraph is meant to address the concerns of many Parties who were against double-counting, where both the host country and the other Party count the emission reductions achieved as contributing to their respective NDCs. How this is going to be designed and supervised to ensure no double-counting and the preservation of environmental integrity remains to be debated and negotiated.

*‘6. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.’*

Several African countries and Small Island States have been major proponents of the proposal to have a share of the proceeds from the activities under the mechanisms be used to cover the costs of adaptation, similar to the idea of the share of proceeds from the CDM that goes towards the Adaptation Fund under the Kyoto Protocol.

*'7. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.*

*8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:*

- (a) Promote mitigation and adaptation ambition;*
- (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and*
- (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.*

*9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.'*

Sub-paras 8 and 9 relate to non-market approaches, and are meant to appease those Parties who have opposed new market mechanisms and have instead called for non-market approaches. The Subsidiary Body for Scientific and Technological Advice (SBSTA) is to undertake a work programme to consider how to enhance linkages and create synergy between, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building and how to facilitate the implementation and coordination of non-market approaches. (See paragraph 39, decision 1/CP.21).

## **2.6 Adaptation (Article 7)**

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

Developing countries had been pushing for a long-term goal or vision on adaptation to ensure that there is parity between adaptation and mitigation and to avoid having only a mitigation-centric goal linked to the temperature goal (of holding the rise in temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.). This goal also links the adaptation response to the temperature goal.

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

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

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

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

In sub-paragraph 7, Parties agreed to ‘*strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:*

- (a) *Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;*
- (b) *Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;*
- (c) *Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;*
- (d) *Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices;*
- (e) *Improving the effectiveness and durability of adaptation actions.’*

Sub-paragraph 9 provides that: ‘*Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:*

- (a) *The implementation of adaptation actions, undertakings and/or efforts;*
- (b) *The process to formulate and implement national adaptation plans;*
- (c) *The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;*
- (d) *Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and*
- (e) *Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.’*

Parties also agreed in sub-paragraph 10 that ‘*Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.’*

Also noteworthy is sub-paragraph 11 which states that ‘*The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.’*

According to sub-paragraph 12, ‘*The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.’*

Sub-paragraph 13 provides that ‘*Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.’*

## **2.7 Loss and Damage (Article 8)**

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

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

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

The compromise reached is found in paragraph 51 of the decision text which provides that Parties agree ‘*that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation*’.

According to one source, the deal was between the US, EU, Maldives, Saint Lucia, Jamaica, Marshall Islands, and Tuvalu. It seems that most developing countries were completely unaware of the deal being done until it was too late. According to the same source, the deal might have also been linked with getting reference to 1.5°C in the long-term temperature goal in the Paris Agreement in Article 2.1 (a).

In a strong retort to this compromise, Nicaraguan Minister Paul Oquist, after the adoption of the Agreement at the closing plenary of COP21 on 12 December, called for the deletion of paragraph 51. Referring to the low level of ambition of the intended nationally determined contributions, the Minister said that ‘this would mean giving 3°C temperature increase to our grandchildren and they are not able to ask for compensation and we strip them of any legal rights for legal action for the liability of other countries that caused the damage.’

The Nicaraguan Minister’s call for deletion was not heeded and the COP 21 President responded to say that his remarks will be noted in the report of the meeting.

According to several experts who have been following the UNFCCC negotiations, the clause in paragraph 51 on exclusion of liability and compensation does not preclude financial resources from being allocated through the Financial Mechanism of the Convention and the Agreement for developing countries to seek funds to address the adverse impacts related to loss and damage.

The sub-paragraphs of Article 8 are as follows:

*‘1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.*

*2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.*

*3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.*

*4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:*

- (a) Early warning systems;*
- (b) Emergency preparedness;*
- (c) Slow onset events;*
- (d) Events that may involve irreversible and permanent loss and damage;*
- (e) Comprehensive risk assessment and management;*
- (f) Risk insurance facilities, climate risk pooling and other insurance solutions;*
- (g) Non-economic losses;*
- (h) Resilience of communities, livelihoods and ecosystems.*

*5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.'*

## **2.8 Finance (Article 9)**

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

In the final Agreement, some highlights of what was agreed to in the sub-paragraphs on finance are as follows:

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

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

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

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

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

Sub-paragraph 3 provides that *'As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.'*

Many developing countries including the LMDC preferred the reference to the provision of financial resources by developed countries instead of the focus on the 'mobilisation' of climate finance. The Paris Agreement provides for both the provision of support by developed countries and the mobilisation of climate finance. In the earlier version of the draft agreement (version 2 issued on 10 December by the COP 21 President), there was reference that the provision and mobilisation of climate finance 'shall represent a progression beyond previous efforts from a floor of USD100 billion per year...' and 'towards achieving short-term collective quantified goals for the post-2020 period to be periodically established and reviewed...'

It is notable that the reference to the US\$100 billion per year as a floor did not make it to the Agreement but is found in paragraph 53 of the COP 21 decision which states as follows: *'Also decides that, in accordance with Article 9, paragraph 3, of the Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD100 billion per year, taking into account the needs and priorities of developing countries.'*

In Cancun in 2010, Parties had agreed to developed countries mobilising US\$100 billion per year by 2020. With the Paris Agreement, a five-year extension has been obtained to reach this target and a new quantified goal will be set for the period after 2025. Senior developing country negotiators also point out that the mobilisation of existing climate finance as stated above is conditional on 'meaningful mitigation actions

and transparency on implementation’, which was actually previously agreed to under the Copenhagen Accord (in 2009) and later affirmed in the decision in Cancun.

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

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

There were also efforts by developed countries to ‘integrate climate considerations’ into ‘international development assistance’. This was strongly resisted by developing countries and there is no reference to international development assistance in the Paris Agreement.

However, under Article 2.1(c) of the Agreement which relates to the purpose of the Agreement, there is reference to ‘making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’. The meaning of ‘finance flows’ can be expected to be a matter of intense debate in the years ahead.

Sub-paragraph 4 of Article 9 of the Agreement provides that *‘The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.’*

During the negotiations, there were attempts by developed countries to limit the scope of developing countries who are recipients of finance under the Convention to those ‘who are particularly vulnerable to the impacts of climate change’, and are ‘capacity-constrained developing countries, least developed countries (LDCs), Small Island Developing States (SIDs) and Africa’.

Negotiations were intense especially among developing countries until the final hours on the need to expand the list to not only include Africa but to cover other regions of the developing world. Countries in Africa were also unhappy that they were not mentioned in the final Agreement, which was a compromise crafted by the COP 21 Presidency.

In sub-paragraph 5, it was agreed that *‘Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.’*

Although the provision of support by ‘other Parties’ is voluntary, the paragraph above ‘encourages’ these countries ‘to communicate biennially such information on a voluntary basis’. At issue will be how ‘such information’ will be used and for what purpose, when the resources provided are purely voluntary and not linked to the UNFCCC.

Sub-paragraph 6 provides that *‘The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.’*

According to sub-paragraph 7, *‘Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions*

*biennially in accordance with the modalities, procedures and guidelines to be adopted...Other Parties are encouraged to do so.'*

It was also agreed in sub-paragraph 8 that *'The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.'*

The operating entities of the Financial Mechanism currently include the Green Climate Fund and the Global Environment Facility.

Sub-paragraph 9 states that *'The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.'*

On the issue of the Adaptation Fund (a fund established under the Kyoto Protocol), paragraph 60 of the decision states as follows: *'Recognizes that the Adaptation Fund may serve the Agreement, subject to relevant decisions by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).'*

Paragraph 60 of the decision invites the CMP to consider the issue and make a recommendation to the CMA at its first session.

In paragraph 52 of the decision, it was also decided *'that, in the implementation of the Agreement, financial resources provided to developing countries should enhance the implementation of their policies, strategies, regulations and action plans and their climate change actions with respect to both mitigation and adaptation to contribute to the achievement of the purpose of the Agreement as defined in Article 2'*.

## **2.9 Technology transfer (Article 10)**

In the negotiations on technology transfer, developing countries had been very proactive in coming up with various proposals to enhance technology development and transfer to developing countries. Developed countries opposed the proposals of developing countries and only wanted a very weak outcome relating to technology cooperation.

The Like-minded Developing Countries (LMDC) had called for the establishment of a global goal on the transfer of technologies by developed countries and know-how as well as for the provision of financial resources for collaborative research and development of environmentally sound technologies and enhancing access of developing countries to such technologies that match their technology needs.

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

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

These proposals from developing countries were opposed by developed countries with options for no text in the agreement.

Finally, what was agreed under technology transfer in the Agreement is as follows:

*'1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.'*

*2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.*

*3. The Technology Mechanism established under the Convention shall serve this Agreement.*

*4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.*

*5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.*

*6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.'*

Clearly, from the above, the real value for developing countries in this regard is the establishment of the technology framework in providing guidance to the Technology Mechanism (which comprises the Technology Executive Committee and the Climate Technology Centre and Network) in promoting and facilitating enhanced action on technology development and transfer.

One of the aspects to be elaborated in relation to the technology framework is 'the assessment of technologies that are ready for transfer' (See para 67(c) of decision 1/CP.21). Although this is an important gain in assessing what technologies are ready for transfer, what is silent is how those technologies which are ready for transfer will be effectively transferred to developing countries. This needs to be further worked out during the negotiations by developing countries.

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

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

## **2.10 Capacity-building (Article 11)**

Some highlights of the Agreement on capacity-building are as follows.

*'1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.*

3. *All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.*

4. *All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.*

5. *Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement...*

The G77 and China had during the negotiations called for an international capacity building mechanism to enhance and coordinate capacity building. Developed countries did not want the creation of any new mechanism.

However, in the decision adopted, in paragraph 71 of the COP 21 decision, it was decided that ‘*the Paris Committee on Capacity-building*’ be established, ‘*whose aim will be to address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhancing capacity-building efforts, including with regard to coherence and coordination in capacity-building activities under the Convention*’.

The US was keen to establish a ‘*Capacity-building Initiative for Transparency*’ and this found way in the decision adopted in paragraph 84 ‘*in order to build institutional and technical capacity, both pre- and post-2020. This initiative will support developing country Parties, upon request, in meeting enhanced transparency requirements...*’.

## **2.11 Transparency of action and support (Article 13)**

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

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

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

Options included a differentiated framework between developed and developing countries building on existing arrangements (proposed by the Like-minded Developing Countries); a unified system with built-in flexibility to take into account Parties’ differing capacities and applicable to all (proposed by the US and New Zealand); a tiered system based on self-differentiation with no backsliding (proposed by the Arab Group) and a framework, building on existing arrangements that takes into account Parties’ different capacities (a proposal from Brazil and the African Group).

In the Agreement, what was agreed to is as follows:

*‘1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties’ different capacities and builds upon collective experience is hereby established.*

2. *The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.*

3. *The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.'*

By the above sub-paragraphs, it appears that what has been agreed to is a transparency framework with flexibilities taking into account the different capacities of countries and builds on the existing transparency arrangements (that is currently differentiated between developed and developing countries).

Sub-paragraph 5 states that *'The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.'*

Sub-paragraph 6 states that *'The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14.'* (Article 4 relates to 'mitigation', Article 7 to 'adaptation', Article 9 to 'finance', Article 10 to 'technology transfer' and Article 11 to 'capacity-building'.)

Sub-paragraph 7 relates to the mitigation contributions of Parties and states that *'Each Party shall regularly provide the following information: (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement; (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.'*

Sub-paragraph 8 relates to adaptation and states that *'Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.'*

In sub-paragraph 9 which relates to the means of implementation, it is provided that *'Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Article 9, 10 and 11.'*

What is problematic in this sub-paragraph is the reference to information from 'other Parties that provide support' who 'should' also provide information on such support.

Under Article 9 on 'finance', the support provided by 'other Parties' (referring to developing countries) is supposed to be voluntary but the provision of information under this sub-paragraph in the 'transparency' section appears to change the notion of the voluntary support.

Moreover, under Article 9 (5), the Agreement provides that *'Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.'*

Clearly, based on the above, the provision of such information is on a voluntary basis. In the coming years, intense debates can be expected on this issue of whether the information by 'other Parties' should be provided or if it is to be purely voluntary and up to the countries to decide.

Whether in fact, ‘other Parties’ will provide information on their voluntary support remains to be seen. At issue will be how ‘such information’ will be used and for what purpose, when the resources provided are purely voluntary and not linked to the UNFCCC obligations.

Sub-paragraph 10 states that *‘Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.’*

According to sub-paragraph 11, *‘Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.’* (Article 9 relates to ‘finance’.)

In sub-paragraph 12, *‘The technical expert review...shall consist of a consideration of the Party’s support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information... taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.’*

Sub-paragraph 13 states that *‘The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.’*

This sub-paragraph is expected to generate further debate on what is meant by ‘common modalities, procedures and guidelines’ when it is to be built on the experience from current arrangements under the Convention, which is differentiated between developed and developing countries.

Sub-paragraph 14 provides that *‘Support shall be provided to developing countries for the implementation of this Article;’* sub-paragraph 15 states that *‘Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.’*

In the COP 21 decision, there are lengthy provisions on transparency and for further work to be undertaken by the Ad Hoc Working Group on the Paris Agreement (APA), pending entry into force of the Agreement. Paragraph 84 of the decision states that Parties have decided to *‘establish a Capacity-building Initiative for Transparency in order to build institutional and technical capacity, both pre- and post-2020. This initiative will support developing country Parties, upon request, in meeting enhanced transparency requirements as defined in Article 13 of the Agreement in a timely manner’.*

This initiative was a proposal advanced by the US.

In Paragraph 89, it is agreed that *‘in accordance with Article 13, paragraph 2, of the Agreement, developing countries shall be provided flexibility in the implementation of the provisions of that Article, including in the scope, frequency and level of detail of reporting, and in the scope of review, and that the scope of review could provide for in-country reviews to be optional...’.*

According to paragraph 90, *‘all Parties, except for the least developed country Parties and small island developing States, shall submit the information referred to in Article 13, paragraphs 7, 8, 9 and 10, as appropriate, no less frequently than on a biennial basis, and that the least developed country Parties (LDCs) and small island developing States (SIDs) may submit this information at their discretion’.*

The information referred to in paragraph 90 above relates to mitigation, adaptation and means of implementation. Except for LDCs and SIDS, all Parties have to submit the information on a biennial basis.

## **2.12 Global Stocktake (Article 14)**

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

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

For the EU, the proposal was for a review process every five years to assess if Parties' mitigation contributions are on track in meeting the long-term mitigation goal and for enhancing (or ratcheting up) the contributions of Parties accordingly.

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

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

Highlights of what Parties agreed to under the Agreement are as follows.

*'1. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.'*

It is noteworthy that the global stocktake is to be comprehensive and undertaken in the light of both equity and the best available science. This will avoid a mitigation-centric process which also takes into account considerations of equity.

In sub-paragraph 2, it is agreed that the CMA *'shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided...'*

According to sub-paragraph 3, *'The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.'*

In a related matter, it is also vital to note that in the COP 21 decision, under the section on INDCs, paragraph 17 *'Notes with concern that the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the INDCs do not fall within least-cost 2°C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and also notes that much greater emission reduction efforts will be required than those associated with the INDCs in order to hold the increase in the global average temperature to below*

*2°C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5°C above pre-industrial levels by reducing to a level to be identified in the special report referred to in paragraph 21 below’.*

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

This appears to be an ex-ante process to inform the preparation of the NDCs.

Paragraph 21 invites the ‘*Intergovernmental Panel on Climate Change to provide a special report in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways’.*

### **2.13 Facilitation and compliance (Article 15)**

On the issue of facilitation and compliance, the Agreement provides as follows.

- 1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.*
- 2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.*
- 3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session and report annually to the CMA.’*

During the negotiations, some developing countries had been calling for differentiated mechanisms for developed and developing countries, with a compliance mechanism for developed countries and a facilitative mechanism for developing countries. Developed countries, particularly the US, did not want such a differentiated approach.

In the final outcome, as seen from above, there is no differentiation between developed and developing countries in this regard.

## **3. CONCLUSION**

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

- The Paris Agreement is not mitigation-centric as desired by developed countries, although in some aspects mitigation does get pride of place;
- The developing countries to a significant extent successfully defended the Convention and stopped the plans of developed countries to drastically rewrite the Convention.
- Differentiation between developed and developing countries was retained in the main, although weakened in some areas.

- The principles of equity and CBDR were mentioned in a specific clause in the important Article 2 on purpose of the Agreement, and operationalised in some key areas of the Agreement.
- Sustainable development and poverty eradication as important objectives of developing countries were referred to as the context of actions by developing countries in some key areas.
- Developed countries should take the lead in mitigation and finance is referred to in the Agreement.
- Although the temperature goal is to limit temperature rise to well below 2°C from pre-industrial levels, the reference to pursuing efforts to limit temperature rise to below 1.5°C (this 1.5°C as the target was called for by Small Island States, LDCs, Africa and ALBA countries) is significant;

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

The Agreement also fails to provide actions that fulfil the 2°C pathway, let alone 1.5°C. The emissions gap between what countries in aggregate should do and what they pledged to do in their INDCs up to 2030 is very large. This has led many commentators to condemn the Paris COP21 as a failure.

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

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

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

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

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

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*Meenakshi Raman is Senior Legal Adviser and Coordinator of the Climate Change Programme of the Third World Network. The contribution of Martin Khor is gratefully acknowledged.*