

THIRD WORLD

RESURGENCE

ISSUE No. 279-280

KDN PP6738/01/2013 (031741)

www.twn.my

Warsaw UN climate change conference

A step forward, but rich countries still resist bold moves to avert disaster



UNITED NATIONS
CLIMATE CHANGE CONFERENCE
COP19/CMP9
WARSAW 2013



ISSN 0128-357X



Double
issue

Editor's Note

WHILE the incidence of climate-induced disasters grows exponentially, progress in intergovernmental United Nations climate change negotiations still continues at a glacial pace. Extreme weather may well have become the norm, but this has not been sufficient to nudge the rich countries to wake up to their responsibilities to tackle climate change.

To be sure, the UN climate change conference held in November 2013 at Warsaw (or the 19th Conference of the Parties to the UN Framework Convention on Climate Change or COP 19, as it is officially known) did register some progress in the battle against climate change. However, on the critical issue of climate finance, the rich countries did little to demonstrate a fundamental break with their previous pattern of irresponsible behaviour.

The major achievement of the Warsaw conference was the decision to set up an international loss-and-damage mechanism to help developing countries affected by climate change. This move towards alleviating the plight of developing countries which are the victims of typhoons, floods, droughts and other disasters was clearly a significant step forward.

While this development is certainly a welcome one, it still remains to be seen how generous rich countries will be in providing the necessary funding to make this a truly viable mechanism to help poor countries affected by climate change.

Wresting the consent of the developed countries at Warsaw to the establishment of such a mechanism required long and painstaking negotiations. There should be no illusions that the task of persuading these countries to fill the coffers required to sustain it will be an easy one. If the mechanism is unable to secure the necessary funds and technology to make it a viable entity, then the whole project may yet be stillborn.

There are good reasons to be concerned about whether the rich countries will ensure that sufficient funding for this mechanism will be forthcoming to make it truly viable. A major battle at Warsaw was the fight to ensure that this mechanism was established as an independent entity. The fear of the developing countries was that this mechanism would be treated as another aspect of climate adaptation and that the funding for this mechanism would be lumped together with that of the existing Adaptation Fund. The move to differentiate this mechanism was only settled after protracted negotiations and that too by a compromise which, while recognising that loss and damage 'in some cases involves more than ... adaptation', opens up the whole issue for review in 2016. Clearly, the financial viability of this mechanism is tenuous and far from settled.

The whole issue of climate finance was perhaps the major stain on the Warsaw conference. COP 19 had been dubbed the 'Finance COP' and there was expectation that there would be meaningful progress on the issue of climate financing. The hope was that the developed countries would pledge substantial sums to

support developing countries' efforts to curb carbon emissions and adapt to climate change.

Warsaw was the appropriate place for such a move since at the conference 48 of the poorest countries managed to finalise a comprehensive set of plans to adapt and deal with the impact of climate change. This provided a clearer picture of the needs of these countries and the support they required. While pledges at the conference by some developed countries of some \$100 million to replenish the depleted coffers of the Adaptation Fund will certainly help this effort, the fact is that this is still a drop in the ocean when placed in the context of original goals on financing climate change.

In 2009 at the Copenhagen UN climate change conference (COP 15), developed countries collectively pledged \$30 billion per year to support mitigation and adaptation efforts in developing countries. This was to continue until 2012 after which the rich countries would scale up their collective yearly sum to \$100 billion by 2020. However, there is no indication of progress along these lines and despite calls by developing countries, developed countries have refused to agree to any roadmap between now and 2020. This refusal to make any meaningful commitment on future climate financing is worrisome and a cause for major concern.

There was however one other positive development in Warsaw. This was the decision to help developing countries to reduce greenhouse gas emissions from deforestation and degradation of forests. A start has been made under a programme (known now as the Warsaw Framework for REDD) with pledges amounting to \$280 million to tackle these emissions which amount to nearly one-fifth of all human-generated emissions.

COP 19 was a preparatory conference for the conclusion of a new global climate agreement at Paris in 2015. The final days at the Warsaw conference witnessed protracted negotiations over, in essence, the shape of the 2015 agreement, a draft text of which is expected to be on the table at the next UN climate change conference in Peru. As expected, the rich countries tried to obliterate the distinction between developed and developing countries with regard to commitments. While the developing countries stoutly resisted this, a compromise was reached after extended negotiations. However, it is clear that this battle will be resumed in Peru and possibly even Paris.

In our cover story for this issue, we provide reports and analyses of the Warsaw conference. We also carry a number of articles which highlight the threat climate change poses to coastal and island states as well as to ocean life. In addition, we also publish an article which takes up the claim that nuclear energy is climate-friendly and essential to the fight against global warming.

— *The Editors*

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Third World RESURGENCE

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No 279/280 Nov/Dec 13 ISSN 0128-357X

Photo courtesy of IISD/Earth Negotiations Bulletin



While the UN climate change conference held in Warsaw in November (pic) established an international mechanism to address loss and damage associated with climate change impacts, its overall outcome fell far short of the actions needed to tackle global warming. 11

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THIRD WORLD RESURGENCE is published by the Third World Network, an international network of groups and individuals involved in efforts to bring about a greater articulation of the needs and rights of peoples in the Third World; a fair distribution of world resources; and forms of development which are ecologically sustainable and fulfil human needs.

THIRD WORLD RESURGENCE is published monthly by Third World Network, 131 Jalan Macalister, 10400 Penang, Malaysia. Tel: 60-4-2266728 Fax: 60-4-2264505. Email: twnet@po.jaring.my
Printed by Jutaprint, No. 2, Solok Sungai Pinang 3, 11600 Penang, Malaysia.
Cover Design: Lim Jee Yuan
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Publisher and Chief Editor: S.M. Mohamed Idris; **Managing Editor:** Chee Yoke Ling; **Editors:** T Rajamoorthy, Lean Ka-Min, Evelyne Hong; **Contributing Editors:** Roberto Bissio (Uruguay), Charles Abugre (Ghana); **Staff:** Linda Ooi (Design), Lim Jee Yuan (Art Consultant), Lim Beng Tuan (Marketing), Yap Bing Nyi (Editorial)

The struggle continues, 18 years after the death of Ken Saro-Wiwa

10 November marked the 18th anniversary of the state execution of Nigerian writer and activist Ken Saro-Wiwa and the 'Ogoni 8'.

NOT long ago, the governor of our state in Nigeria said to the Ogonis: 'Why can't you people move on?' The simple answer is that since Ken's death in 1995 nothing has been done to stop the devastation brought about by unwanted, dirty oil extraction in our homeland.

In the 1950s, before Nigeria won independence, Shell was given the right to drill oil. Ken Saro-Wiwa, like me, was from Ogoniland, an area of the Niger Delta which, like many others, was destroyed by the reckless exploitation of international oil companies, in particular Shell. Saro-Wiwa's tireless campaigning let the international community know about our struggle – the conflict, pollution, loss of livelihood, food and drinking water. Ken also gave us hope by inspiring us to mobilise against the military government and Shell.

In 1990, Ken wrote the Ogoni Bill of Rights, which catalogued the Ogoni people's demands for environmental, socio-economic and political justice. It was presented to the Nigerian government in the early 1990s, but there has yet to be any response to the document. Despite this, it has functioned as the bible of the Ogoni struggle and became an organising document to orientate our struggle. It eventually inspired other ethnic nationalities in the Niger Delta to produce similar charters as a peaceful way of pressuring the Nigerian government into dialogue and action.

Ken and the Ogoni 8 were murdered for standing up to Shell. But they were part of a movement that ultimately achieved a spectacular result: Shell was forced to leave Ogoniland. And, despite Shell's efforts, popular protest has prevented it from ever returning. Since then, we have served as an inspiration to communities all around the world who are resisting multinational companies.

Celestine AkpoBari



Ken Saro-Wiwa's (pic) tireless campaigning let the international community know about the Ogoni people's struggle for environmental, socio-economic and political justice.

But this victory has not brought an end to our suffering. Shell owns the pipes that cross Ogoni bringing oil from the rest of the region to the port for export to countries like Britain. Spills occur regularly. In a place where fishing and farming are the main livelihoods and where people drink from streams and wells, decades of oil spills mean hunger, disease and poverty. Many people have been forced to leave their communities. Oil companies are supposed to clean up spills whatever the cause but this has not happened.

In August 2011, the United Nations Environment Programme (UNEP) released the first scientific analysis of pollution in Ogoniland. It confirmed all that Ken had said – that Ogoni has been turned into an 'ecological disaster'. The report found that without exception all the water bodies in Ogoniland were polluted by the

activities of Shell and the Nigerian National Petroleum Corporation. The report stated that some drinking water had carcinogens such as benzene up to 900 times above World Health Organisation standards. It perhaps explains why life expectancy in the Niger Delta is about 45 years. Most people cannot even remember a time before their homeland was devastated. The report estimates that the clean-up will take about 35 years so even if it was started now, many people will not reap the benefits in their lifetime.

This report should have been the catalyst for action. But nothing has been done by Shell or the Nigerian government in the two years since it was released, despite the profits reaped on the oil taken from our land. This has prompted a House of Representatives investigation.

On 10 November we gathered to remember Ken and his dream of a clean, safe Ogoniland. But this date was also a deadline that we gave for our demands for the clean-up, land rights and political reform. If we do not see action we will be forced to resurrect the struggle in Ken's name through a campaign of peaceful protest and disruption of oil infrastructure in the Niger Delta leading up to 2015.

We are calling on the international community to stand in solidarity with our struggle and to organise to target the international oil companies that are operating with impunity in the Niger Delta. There is a cheque for the Ogoni people to cash in 2015 and it is written in blood. To repeat the last words of Ken Saro-Wiwa: 'The struggle continues.' ♦

Celestine AkpoBari is a community activist from Ogoniland. He is the founder of the Ogoni Solidarity Forum and is involved with Social Action. This article first appeared on the blog of New Internationalist magazine. Reproduced by kind permission of New Internationalist. Copyright New Internationalist. www.newint.org

The elusive recovery

No matter which way we turn, global capitalism appears to be in an inextricable situation, says *Prabhat Patnaik*.

THE world capitalist crisis which began in 2008 not only persists but is worsening. The second half of 2013 was supposed to be the period when growth in the major advanced countries would gather momentum. The International Monetary Fund (IMF) had predicted in spring that activity would 'gradually accelerate'. But the latest figures show that instead of a recovery we have an actual deceleration in growth.

In the eurozone, quarter-to-quarter growth, which had been 0.3% in the second quarter of 2013, fell to 0.1% in the third quarter. Germany, which had been the most successful eurozone economy, witnessed a decline in growth from 0.7% in the second quarter to 0.3% in the third; and France, which had grown 0.5% in the second quarter, actually shrank by 0.1% in the third. Italy and Greece of course continued shrinking in the third quarter as they have been doing for long.

Even worse news came from Japan, which, though caught in a recession of its own for a very long time, had withstood this particular post-2008 recession better than the other advanced capitalist countries because of substantial government expenditure. In Japan the growth rate in the third quarter halved in relation to the rate in the second quarter.

The United States was also expected to perform better than it had been doing for long. The Chairman of the US Federal Reserve Board, Ben Bernanke, had even talked about a possible winding up of 'quantitative easing', which refers to the purchase of government bonds by the Federal Reserve to pump money into the economy (to the tune of \$85 billion per month) to keep the long-term interest rates down for stimulating economic activity. But the recovery has not been up to expectations and Bernanke himself has gone back on



The monetary policy interventions of central banks like the US Federal Reserve (pic) have become totally inconsequential for combating the current world recession.

his word: 'quantitative easing' is to continue for much longer. The incoming Chairman of the Federal Reserve Janet Yellen in her 'confirmation hearing' before the Senate committee also indicated that 'quantitative easing' would continue into the future because the US economy and its 'labour market' were still performing 'far short of their potential', which is a euphemism for saying that the US is still caught in the grip of crisis and is saddled with massive unemployment.

In Britain, the Bank of England expects the economy to grow by 1.6% in 2013, a respectable figure no doubt in these dire times. Nonetheless the overall picture for the advanced capitalist world is captured by the *Financial Times*, not known for its radicalism, in the following words: 'Prosperity will prove elusive without action to establish a sustainable pattern of global demand.'

Cheap money

What is remarkable is that this setback to recovery has occurred even in the midst of a period when the 'tide of cheap money', to use an expression of the *Financial Times* in the context of 'quantitative easing', 'is lifting all boats'. The moment this 'tide' ebbs, the recession will get strengthened, because a lot of potentially

bankrupt businesses, which have been kept alive because of the 'forbearance' of the banks that are awash with liquidity at present, will then go under. The advanced capitalist world thus is in a situation where despite 'cheap money' its recession is worsening, but without 'cheap money' it will worsen even further.

Why has 'quantitative easing', while keeping the system afloat, not caused a recovery? This is because the money pumped into the economy by the Federal Reserve has disappeared into the banking system, but the loans of the banking system, which constitute the means through which the level of aggregate demand in the economy expands, have not increased. The banks have held on to excess reserves or made some changes in their balance sheets, in consequence of which some of this money has spread itself all over the capitalist world, including entering Third World economies to sustain currencies like the Indian rupee, the Indonesian rupiah, the Brazilian real and the South African rand. All this however has not increased expenditures and hence the level of world aggregate demand.

An example will make the point clear. If American banks enter, say, India, if not directly then at least indirectly via a chain reaction of balance sheet adjustments, to buy Indian equities in the stock market, then this may help in sustaining the present level of India's current account deficit, and hence in preventing the cut in world demand that would occur if India curtailed its level of activity to curb its deficit; but it does nothing to enlarge the level of world aggregate demand.

The reason banks do not increase loans to expand the level of expenditure and aggregate demand is that the private sector in the capitalist economies, in particular in the economies

of the advanced capitalist countries, is already in so much debt that they do not wish to borrow more for the purpose of spending. They would rather pay back their debts and thereby improve their balance sheets than increase their debts for the purpose of spending more, even for adding to the stock of their assets, i.e., for undertaking investment.

What this means is that monetary policy, which refers to the intervention of central banks, has become totally inconsequential for combating the current world recession. The short-term interest rate which is typically the instrument used by monetary policy is almost zero in the advanced capitalist world, hence it cannot be lowered any further and cannot play any further role. This was indeed the reason 'quantitative easing' was introduced: the idea was that since the short-term interest rate had lost its bite, central banks like the Federal Reserve should try intervening through the long-term interest rate by directly purchasing long-term government bonds. But even this, as we have seen, has become useless for expanding the level of activity.

This leaves fiscal policy as the only possible instrument left for combating recession. But the use of fiscal policy is precisely what is frowned upon by finance capital. Countries of the European Union, under the Maastricht treaty, have to adhere to certain limits with regard to their fiscal deficits relative to their gross domestic product (GDP). The Americans have been pressing Germany, a country with a current account surplus, to expand its domestic absorption, and implicitly accused it of being 'nationalist' for its refusal to do so. Even the *Financial Times* editorial quoted earlier makes a plea for an expansion of Germany's internal demand. But any such expansion will require an increase in government expenditure, which will not be to the liking of international finance capital.

If such an increase in government expenditure occurs through a larger fiscal deficit, then the opposition will be open and direct; in any case, such an expansion will violate the provi-

sions of the Maastricht treaty. If such an increase in government expenditure occurs not through an increase in the fiscal deficit but through larger taxes on the rich (government expenditure financed through taxes on the poor will not serve the purpose of increasing aggregate demand anyway), then the opposition of finance capital will be more subtle and indirect, such as what the Hollande government, which has embarked precisely upon such a course, is facing in France, with its credit rating getting downgraded because it has shown the effrontery of increasing taxes on the rich.

When it comes to the United States as a possible source of fiscal stimulus for enlarging world demand, there are even bigger problems. Since it is an economy with a massive current account deficit, such an increase in government expenditure, apart from being anathema for finance capital, will also be opposed by domestic public opinion on the grounds that it would worsen the current account deficit. It would invite the charge that the US is borrowing more from the rest of the world for the purpose of generating greater employment in the rest of the world.

A fiscal expansion in the US could possibly overcome such domestic opposition if it was accompanied by some protectionist measures, so that the government could claim that it is spending more in order to generate more American jobs. But that certainly cannot be to the liking of international finance capital, for it would mean the end of neoliberalism. Besides, given the bitter political struggles within the US over fiscal policy, which have already caused a government shutdown once, to expect a fiscal expansion from the US is utterly unrealistic.

It must also be remembered that the scale of fiscal expansion required to pull the capitalist world economy from its current morass will have to be quite substantial. As the example of Japan in the third quarter shows, even with robust government expenditure its growth rate has halved because of a decline in the stimulus

from exports and domestic consumption. To offset the sluggishness from the latter two sources, the increase in government expenditure, in Japan and elsewhere, will have to be even greater. This is a pipe dream in the current atmosphere of austerity.

Since none of the advanced capitalist countries is in a position to undertake larger fiscal expansion individually, only two other possibilities remain: one is a coordinated fiscal expansion by all of them in unison, which is an idea that had been mooted during the Depression of the 1930s but was shot down by finance capital. The opposition to such a proposal today, when finance capital itself has acquired an international character and hence even greater clout than it had at that time, would be far stronger.

The second possibility is for individual governments to undertake fiscal expansion within national boundaries, i.e., behind protectionist walls, with the promise to enlarge domestic employment, which could gather domestic political support for such an agenda. This however entails a reversal to postwar Keynesianism, a throwback to the past, which is precisely what the process of globalisation of finance has succeeded in overturning. Globalised finance will vehemently oppose any attempt to 'turn the clock back'.

It follows that no matter which way we turn, global capitalism appears to be in an inextricable situation. A new 'bubble' upon which it has pinned its hopes could pull it out of the morass in which it is stuck, but there is no sign of it as yet. Monetary policy, an instrument that finance capital approves of, has become ineffective. Fiscal policy, which could conceivably have an expansionary effect, is disliked by finance capital. The situation therefore is quite desperate. And it will become even more desperate if, as is not unlikely, segments of the world economy such as the eurozone get trapped in a state of deflation. ♦

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US jobless rate for November is nothing to cheer about

The announcement in December that the official US jobless for the third quarter of the year had dropped to 7% was greeted with much euphoria by the White House and media. *Dave Lindorff* shows why there is no cause for celebration.

The White House, and most headline writers around the country, are crowing that the US economy's November jobless rate of 7.0%, reported on 6 December by the Bureau of Labor Statistics (BLS), is the lowest since 2009 when President Obama took office, when it was 7.3% and rising.

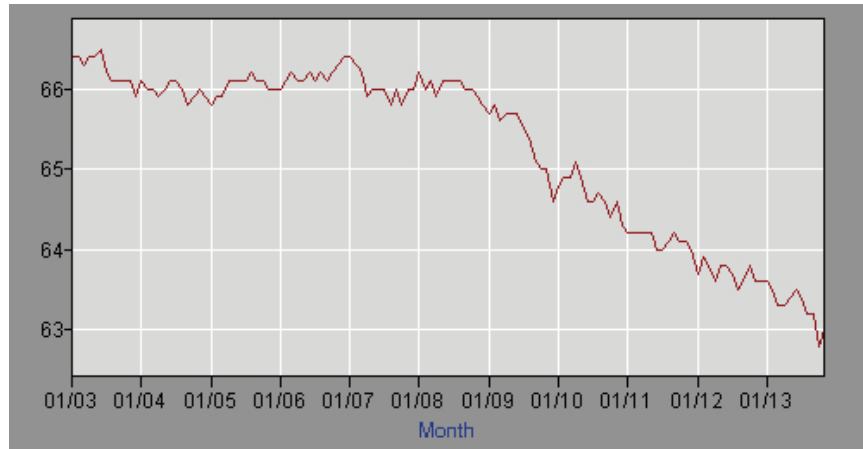
But is this number really something worth cheering? Not if you look behind it.

That 7.0% number is the BLS's so-called U3 figure, which is the percentage of the labour force currently unemployed, and it is significantly lower than the figure for November 2012, which was 7.8%. But U3, known as the 'official unemployment rate', doesn't really count everyone who is unemployed. It doesn't include, for example, anyone who has even one hour a week of work, or who has not had a job for more than six months, or who in despair has given up looking.

'Defined out of existence'

A better number to look at, in terms of getting a true picture of the health of society and the economy, is the BLS's U6 number, which also counts as unemployed those who are 'marginally attached to the labour force', meaning discouraged people who are not working and have given up looking for work, but who told BLS interviewers that they have looked within the past year and would take a job if one were available. U6 also counts as unemployed those who are currently working part-time for 'economic reasons', meaning that they want full-time work but cannot find it.

The U6 measure of unemployment for November is 13.2%, and



The crucial labour participation rate has been falling since at least 2003. Source: ShadowStats.com

while that too is down from 14.4% in November 2012, it is historically very high. Furthermore, as the analytical website ShadowStats points out, even U6 doesn't tell the whole story. The BLS U6 figure, as ShadowStats' John Williams notes, doesn't count long-term discouraged workers – people

who have given up trying to find work because they cannot find a job. This group was 'defined out of existence' by the BLS during the Clinton presidency in 1994. You can understand why that was done: adding these people to the total gives a current unemployment rate of a whopping 23% – a



A demonstration against unemployment in the US. The country's 'official unemployment rate' understates the unemployment situation as it does not count everyone who is unemployed.

number that, unlike U3 and even U6, has been continuing to rise since the start of the so-called Great Recession in late 2008, even through the last four years of 'economic recovery'.

Where those missing workers still show up in the BLS statistics is in a figure called the 'labour participation rate', which is the percentage of working-age people over the age of 16 who are working. This rate has been steadily falling since December 2007, when a record 66.0% of the labour force had jobs. The percentage fell to 64% in 2011 and 63.6% in 2012, and in November hit 63% – its lowest figure to date. Just between July and November – a four-month period – the labour force gained 455,000 people, according to the BLS and the US Census Bureau. Yet the report says only a net 203,000 jobs were added. In other words, while 203,000 unemployed people found jobs, there were another 252,000 people who joined the workforce – high-school or college students who graduated, cashiered troops, young people reaching working age or people who had given up looking for work who started actively looking for jobs again, for example – who could not find work.

Seven more years

The other thing not widely reported in the corporate media, which



Job seekers attending a job fair in the US state of Michigan. According to figures released by the US Bureau of Labor Statistics, there are nearly 11 million Americans looking for work who cannot find it.

tend to cheerlead every drop in the BLS's U3 number, is that a job gain of 203,000 is not much to crow about. At that rate, if it were to continue out into the future uninterrupted, it would take about seven more years to get back just to a jobless rate of 6%, which is where the U3 figure was in June 2009. (Economists claim that so-called 'full employment', where everyone who wants a job can find one, would require a U3 unemployment rate of 5% or lower.) And nobody expects this economy to keep going even

at its current anaemic pace for that long without another downturn.

Meanwhile, according to the BLS's stats, there are nearly 11 million Americans looking for work who cannot find it, and another 10 million working part-time only because they cannot find full-time work.

This helps explain why despite nearly four-and-a-half years of what is officially being called a 'recovery' since June 2009, the median wage in the US, in inflation-adjusted dollars, remains nearly \$1,000 lower than it was way back in 1998, some 15 years ago.

What exactly then is the White House boasting about?

And how are Americans supposed to intelligently discuss national politics if they aren't given these real facts about what is happening in the economy?

Oh yeah, that's why the White House, Democrats in Congress, and the corporate media are all cheering the November U3 number. ♦



Some 10 million Americans are working part-time only because they cannot find full-time jobs.

Dave Lindorff is an investigative reporter, a columnist for CounterPunch, and a contributor to Businessweek, The Nation, Extra! and Salon.com. He received a Project Censored award in 2004. He is also a founding member of the online newspaper ThisCantBeHappening! (www.thiscantbehappening.net), from which this article is reproduced.

Ecuador's highest court vs. a foreign tribunal: Who will have the final say?

As a result of an 'investor-state enforcement system' included in a bilateral investment treaty which Ecuador entered into with the US, a \$9.5 billion judgment upheld by the country's highest court against US oil giant Chevron for its devastation of Ecuador's Amazon forest stands in danger of being set aside by an extrajudicial foreign tribunal. In September, the three-man tribunal issued an interim ruling that the verdict lacked a legitimate legal foundation because Ecuador had released the oil company of all potential liability back in the 1990s.

IN November, after a legal battle spanning two decades and two countries, Ecuador's highest court upheld a ruling against Chevron that found the US oil giant responsible for the contamination of a Rhode-Island-sized section of Ecuador's Amazon. The court ordered Chevron to pay \$9.5 billion, which would provide afflicted indigenous communities with the clean-up and health care they desperately need.

Chevron is seeking to evade this ruling by asking three private sector lawyers to second-guess the decision of a sovereign nation's legal system.

Vaughan Lowe, Horacio Grigera Naón and VV Veeder – these are the three men who have assumed the authority to cast aside 20 years of litigation and court rulings against Chevron under two sovereign legal systems. To consider jettisoning the \$9.5 billion ruling against Chevron. To order Ecuador's government to violate its own Constitution and block enforcement of a ruling upheld on appeal in its court system. And, in a

Ben Beachy



A protest in Ecuador against Texaco. Chevron, Texaco's successor company, has sought to evade an Ecuadorian court ruling ordering it to pay \$9.5 billion for contaminating Ecuador's Amazon region.

ate. The men derive their sovereignty-trumping power from the 'investor-state enforcement system' included in a bilateral investment treaty (BIT) between Ecuador and the United States.

They recently set new standards of audacity by proclaiming that some of Ecuadorians' legal rights to mount a case against Chevron were unwittingly and permanently extinguished by a contract signed years before between the government and Texaco Petroleum Co., which became a Chevron subsidiary in 2001.

decision in September, to declare that rights granted by Ecuadorian law do not actually exist.

Under what country's legal system do these three men assume such astounding power?

Extrajudicial tribunal

None. The three have made all of the audacious decisions above as members of an extrajudicial tribunal that sits outside of any legal system and is unaccountable to any elector-

In ruling that the government's liability waiver also waived the rights of private parties to sue Chevron, the tribunal contradicted Ecuadorian court decisions on this very issue. In real courts, Chevron's attempts to raise this improbable argument failed. Chevron hopes that the tribunal's revival of this dead argument will lead the tribunal to order the taxpayers of Ecuador, an \$84 billion economy – not the shareholders of Chevron, a \$231 billion business – to pay billions to clean up the vast Amazonian pollution.

Evading justice

For 26 years, Texaco, Chevron's predecessor company, performed oil operations in Ecuador. Ecuadorian courts have found that during that period, the company dumped billions of gallons of toxic water and dug hundreds of open-air oil sludge pits in Ecuador's Amazon, poisoning the communities of some 30,000 Amazon residents, including the entire populations of six indigenous groups (one of which is now extinct).

For 20 years, those communities have sought a basic notion of justice – water that is safe to drink, the clean-up of the rivers and land on which their lives depend, and healthcare for the many stricken with pollution-related illness. They have demanded that the corporation that devastated their lives, livelihoods and ecosystem pay for rehabilitation. For 20 years, Chevron has tried to evade justice, seeking to have the case dismissed in both the US and Ecuadorian court systems. The company lost issue after issue under both legal systems. In 2011, after Chevron insisted that the US case be moved to Ecuadorian courts, deemed Ecuador's legal system 'fair and adequate', and committed to comply with a final court ruling there, an Ecuadorian court produced a \$19 billion ruling against Chevron for the massive contamination. In 2012 the ruling was upheld on appeal. The November 2013 ruling from Ecuador's highest court upheld the judgment against Chevron, but halved the fine after overturning the lower court's order of punitive damages against Chevron for misconduct during the trial and a refusal to apologise for its actions.

Instead of paying as agreed, after having lost in two countries, Chevron has turned to the country-less investor-state tribunal of Vaughan Lowe, Horacio Grigera Naón and VV Veeder in its quest to evade justice. How was this even possible? Chevron claimed that the ruling issued in the Ecuadorian legal process, a proc-



A protest in Quito denouncing Chevron for dumping 18 billion gallons of toxic oil waste into the Ecuadorian Amazon.

ess upon which Chevron had insisted, was a violation of extraordinary investor privileges enshrined in a US-Ecuador bilateral investment treaty.

Under the BIT, Chevron asked the three-person extrajudicial tribunal to order the Ecuadorian government to suspend enforcement of the multi-billion-dollar domestic court ruling. The tribunal granted that wish, ordering the government of Ecuador to violate its own Constitution, interfere with the independent judiciary, and somehow get it to stop the ruling. Such a manoeuvre would breach Ecuador's constitutionally-enshrined 'separation of powers', a legal concept that was probably not foreign to the panellists. (Imagine a foreign extrajudicial tribunal ordering President Obama to suspend a US Supreme Court ruling and you get the picture.) Reasonably, the government decided to heed its Constitution rather than the three lawyers.

Now Chevron is asking the same extrajudicial tribunal to order Ecuador's taxpayers to hand over to the corporation any of the billions in damages it might be required to pay to clean up the still-devastated Amazon, plus all the legal fees incurred by the corporation in its efforts to evade justice.

To justify such a request, the corporation alleges that Ecuador's decision to not block enforcement of the ruling violates a BIT obligation to afford Chevron 'fair and equitable treatment'. Nevermind the fact that Chevron's investment in Ecuador ended in 1992, the BIT did not take effect until 1997, and the BIT is not supposed

to apply retroactively to cover past investments.

Never mind the fact that 'fair and equitable treatment' is supposed to mean providing an investor due process in court – as Chevron was provided over years of litigation. Fair and equitable treatment does not mean the right to nullify any inconvenient rulings resulting from said due process.

But nullification is precisely what the three-person tribunal is contemplating. And under the investor-state system, there is no appeals process – only a 'Hail Mary'-style procedural option to seek 'annulment'. There is no established system of precedent. The investor-state regime makes these three lawyers, as an ad hoc tribunal, a law unto themselves.

Theory of Ecuadorians' extinguished rights

It would be bad enough if three panellists-for-hire deigned to second-guess a ruling rendered by a sovereign country's court system. (That, in fact, is what an investor-state tribunal has done to the United States in a past case filed by a Canadian corporation and what another tribunal is currently considering with respect to Canadian courts' rulings on two drug patents under the similarly extraordinary investor privileges of the North American Free Trade Agreement.)

But the extrajudicial tribunal siding with Chevron is going a step further: it is acting as if the sovereign court ruling and two decades of trial never happened. In its recent decision, the tribunal barely made mention of the domestic ruling in Ecuador, or of the preceding 18 years of litigation spanning two nations. Many of the arguments that Chevron is bringing before the tribunal are the very same ones the corporation used before Ecuadorian courts – arguments that were rejected. Rather than even examine the domestic courts' logic, the tribunal has invited Chevron to make the same arguments again as if

for the first time.

That includes Chevron's repeated claims that an agreement signed in 1995 between the Ecuador government and Texaco (later acquired by Chevron) extinguishes Ecuadorians' collective rights to sue over damage caused by the firm. The agreement committed the company to cleaning up some of its mass contamination of the Amazon and in exchange, the government agreed not to bring future environmental claims over the past pollution. (The contract waived all of Texaco's 'legal and contractual obligations and liability, towards the Government and Petroecuador, for the Environmental Impact arising from' the oil operations carried out under Texaco's partnership with the government.) But the \$9.5 billion case against Chevron for the remaining swaths of Amazonian pollution was not brought by the government. It was brought by 48 plaintiffs, in conjunction with the Amazon Defense Front, on behalf of thousands of indigenous people affected by the pollution.

Rewriting history

Under Ecuadorian law or US law, when a government signs a contract agreeing it won't sue, it does not extinguish the rights of other parties to do so unless it explicitly assumes the liability for any private claims. Not only did the Ecuadorian government not do this, but in a Memorandum of Understanding (MOU) that led to the 1995 agreement, the government expressly stated that the release of liability would not apply to private claims. The Ecuadorian government has always made clear in its arguments to the tribunal that its agreement with Texaco did not and legally could not have signed away in 1995 any rights of private parties to bring a case against the corporation that polluted their land. How did the tribunal deem otherwise? By rewriting history.

The tribunal argued that at the time the government signed the 1995 contract, the government was the only entity with legal standing to bring a specific legal 'cause of action' that Chevron says was later used by the

indigenous communities in the \$9.5 billion suit. According to the tribunal, since the government had a monopoly on this sort of legal claim when signing the 1995 agreement, and since that agreement waived the government's right to bring future environmental claims against the company, the government had inadvertently signed away anyone's ability to bring that claim against Chevron. Ever. That includes the indigenous groups who won the \$9.5 billion case against Chevron. Even worse, the legal provision the tribunal claims was extinguished was not some arcane statutory sub-clause, but a right established in the Bill of Rights of Ecuador's Constitution that, by its very nature, applied to and protected every Ecuadorian.

Audacious steps

To reach this astounding conclusion, the three panellists had to be willing to undertake several audacious steps:

Step #1: Disregard the actual legal basis for the \$9.5 billion case. The legal claim that the tribunal painstakingly argued had been extinguished by the government contract was not actually the core legal basis upon which the 48 plaintiffs relied in their successful case against Chevron on behalf of the affected indigenous communities. The legal claim the tribunal analysed – and that Chevron argued was the basis for the \$9.5 billion case – was based on the 'collective' or 'diffuse' right 'to live in a healthy environment' provided in the Ecuadorian 1998 Constitution and later 'implemented' in a 1999 Environmental Management Act.

However, as the original complaint in the case makes clear, the plaintiffs' claim as to Chevron's liability and their right to proceed 'collectively' are both founded in provisions of Ecuador's civil code that were in effect more than a century earlier. Indeed, the plaintiffs claimed Chevron's liability was rooted in 'the obligation to repair the resulting damage from willful misconduct or negligence,' a basic right that 'has existed

in the Ecuadorian Law since the beginning of the Republic'. The plaintiffs made reference to the constitutional right to live in a healthy environment, as well as other sources such as the International Labour Organisation's Convention No. 169 on the rights of indigenous peoples, as contextual and supplementary support for their case and the rightness of their cause, not as essential legal grounds without which the case would fail.

The Ecuadorian courts agreed that the civil code provided sufficient legal grounds for the plaintiffs' case. In a 2012 ruling on Chevron's appeal that upheld the 2011 judgment, the appeals court stated: 'the right granted by the Civil Code which provides that "in general, popular action is granted in contingent damages which threaten unspecified parties due to the carelessness or negligence of a party", is recognised. This right was in effect when Texaco operated in Ecuador. This is sufficient legal basis according to Ecuadorian law to provide legal justification for issuing judgments based on the remedies contained in the [2011] ruling...' While the investor-state tribunal explicitly refused to opine on the veracity of Chevron's history-defying claim that the case had relied on an entirely different law, the tribunal readily proceeded as if the false assertion were true.

Step #2: Contradict domestic rulings. Even if the indigenous Ecuadorians had relied on the rights enacted in the 1999 environmental law, as Chevron erroneously argued, Ecuador's courts already definitively dismissed the notion that any rights belonging to Ecuadorians could have been extinguished by the 1995 contract between Texaco and the government. In the 2011 ruling, the Ecuadorian court plainly stated, 'Certainly, the plaintiffs who do not appear as having signed the alleged settlements in the defendants' defence, have the right to take legal action and make petitions, as guaranteed by the Constitution because this right is inviolate...and this kind of legal transaction cannot be extended to third parties and is not applicable to inviolate rights.' The appeals court upheld the argument. And then the investor-

state tribunal pretended as if these rulings had never occurred, embracing the very argument that those courts had weighed and rejected after years of litigation – that a government contract with a private company could somehow destroy inviolable rights of Ecuadorians not party to the contract.

Step #3: Concoct theory of inadvertently extinguished rights. Ecuadorian law has long recognised Ecuadorians' ability to proceed collectively to challenge violations of rights that affect groups of people – that is, violations causing generalised harm to groups of unnamed individuals. As mentioned, one of the key century-old civil code provisions on which the \$9.5 billion case relied allowed for a 'popular action' in cases of 'damages which threaten unspecified parties...' International law has also recognised class, mass, popular, representative and other forms of 'aggregate' and 'collective' rights for decades. For example, the International Covenant on Economic, Social and Cultural Rights – which was ratified by Ecuador in 1969, which entered into force in 1976, and to which nearly all countries of the world are signatories – states, 'Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.'

But the tribunal paid no heed to the legal history enshrining Ecuadorians' ability to articulate and protect collective rights and instead focused on the government's responsibilities with respect to those rights. Deeming themselves qualified to interpret Ecuador's Constitution, Mr Lowe, Mr Grigera Naón and Mr Veeder decided that the Constitution had implicitly enshrined the government's duty to protect 'collective' rights back in 1995, though it was 'not framed in terms that explicitly confer any right of action'.

On this basis, the tribunal concocted a theory that because the government had a responsibility with respect to 'collective' rights, it necessarily had a monopoly over those rights in 1995 when it signed the agreement with Texaco. Based on its disregard for Ecuador's longstanding civil code and ratification of international laws (such as the International

Covenant on Economic, Social and Cultural Rights), the tribunal posited that Ecuadorians themselves could not claim these rights in 1995, nor act to protect them. Why not? Because, having ignored evidence to the contrary, the tribunal believed that Ecuadorians did not gain the ability to act on these rights until the 1999 Environmental Management Act. And voilà, the tribunal invented a government monopoly over Ecuadorians' 'collective' rights at the critical moment of the 1995 agreement between the government and Texaco.

Since the government released in that agreement all possible environmental claims it could make against Texaco, and since the government (according to the tribunal) at that point had a monopoly on the ability to exercise such 'collective' rights, the tribunal reasoned that the government had (inadvertently) released Chevron from 'collective' rights claims arising not just from the government, but from any Ecuadorian. That is, the loss of this right was all-inclusive, affecting any and every actor that might one day gain standing to pursue claims of violated 'collective' rights. So, though Ecuadorians' standing to bring such claims was confirmed a few years later (and though they had such standing all along under the civil code and international law), their 'right to make an environmental claim [against Chevron] based upon the diffuse [or collective] right' under Ecuador's Constitution 'had already been extinguished by the 1995 Settlement Agreement', according to the tribunal. The tribunal dispassionately concluded, 'It is not juridically possible for a person to exercise a right which no longer exists...'

The tribunal's theory that the government had a monopoly on its citizens' collective rights by virtue of having not formally recognised them via national law is as dangerous as it is baseless. According to the tribunal's logic, any government that has not yet enshrined a given right of its citizens into law could preemptively and permanently destroy that right for future generations, with agreements from one era suffocating the development of human rights in the next.

Audacity of investor-state system

For the Ecuadorians' case against Chevron, the tribunal's decision may seem innocuous, given that it used legal gymnastics to undercut Ecuadorians' ability to use a legal claim on which they did not actually rely (i.e. the 1999 Environmental Management Act, rather than the much older civil code that provided the core legal basis for the \$9.5 billion case). But such distinctions appear to be lost on many of the media outlets reporting on the tribunal's decision and, more worryingly, may even be lost on courts in other countries that may one day be called upon to enforce the \$9.5 billion judgment (given that Chevron has removed all its assets from Ecuador).

Moreover, the tribunal's willingness to employ such inventive logic to reach its aims hardly bodes well for what might still come in the investor-state case, which is far from over. The tribunal noted that it intends to still evaluate any individual rights that the plaintiffs may have relied upon, meaning that the Ecuadorians seeking justice for the devastation of their health and homeland could have their rights further questioned by the tribunal in future decisions.

The tribunal's ruling offers a stark warning to anyone who thinks that their legal rights should not be subject to nullification by three private lawyers sitting outside of any domestic court system. Will the three now attempt further erasure of rights belonging to the indigenous people of Ecuador? Will they grant Chevron's wish and order Ecuadorians themselves to pay for the poisoning of their ecosystem?

Whatever the answers, the tribunal's latest decision left one thing abundantly clear: the investor-state regime is not constrained by domestic court rulings, Constitutions, international law, or a basic sense of decency. ♦

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The Warsaw United Nations Climate Change Conference – An overview

The United Nations Climate Change Conference held its 19th yearly session (COP19) in Warsaw from 23 November 2013. *Martin Khor* assesses its outcome.



Photo courtesy of IISD/Earth Negotiations Bulletin

The Warsaw climate change conference (pic) established an international mechanism on loss and damage but yielded little in the way of concrete results on climate finance.

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

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

Other major outcomes of the conference were a decision on how to proceed with negotiations on the Durban Platform, and seven decisions on climate finance. On the latter issue, the developing countries were deeply disappointed that what they termed as

the 'Finance COP' yielded hardly any concrete results except a topping up of funds for the depleted Adaptation Fund.

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

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

The new mechanism is tasked

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

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

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

But funds have to be raised when these events take place and that takes time and the resources are not enough. Also, countries that are hit are often



Participants at the Warsaw conference observe three minutes' silence for the victims of Typhoon Haiyan, which struck the Philippines just days before the conference began.

too devastated or poor to respond quickly. It took many days before the victims of the Philippine typhoon or the tsunami in Aceh could be reached or helped with food, healthcare and shelter. And it will take years, if ever, for shattered houses, cities and farmlands to be rebuilt.

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

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

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

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

Delegates from developing as well as developed countries at the con-

ference were in jubilant mood when the decision to set up the 'Warsaw international mechanism for loss and damage associated with climate change impacts' was gavelled after a last-minute hitch in the negotiations.

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

Prolonged 'huddle'

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

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

After a prolonged 'huddle' between the US, the G77 and China and

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

paragraph 15, with an understanding (read out at the COP plenary by the secretariat prior to the adoption of the decision) that the issue of structure would include the placement of the loss and damage mechanism.

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

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

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

The final text adopted by the COP in its important operational paragraph 1 is as follows: 'Establishes the Warsaw international mechanism for loss and damage, under the Cancun Adaptation Framework, subject to review at the twenty-second session of the Conference of the Parties (November-December 2016) pursuant to paragraph 15 below, to address loss and damage associated with impacts of climate change, including extreme

events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change (hereinafter referred to as the Warsaw international mechanism), and in line with the provisions contained in paragraphs 2-15 below.'

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

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

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

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

There were two other pieces of good news – the adoption of a work programme for results-based financing for reducing emissions from forest-related activities (known as REDD-plus), and pledges from developed countries to meet the goal of



Civil society representatives march on the streets of Warsaw to highlight the need to take action against climate change.

having \$100 million for the Adaptation Fund whose resources had dried up after the drastic fall in carbon prices.

Climate financing issues

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

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

Some developed countries were even at one point not agreeing to continue with a work programme on long-term finance. Eventually a decision was adopted on continuing deliberations on long-term finance which includes in-session workshops on scaling up long-term finance; a biennial high-level ministerial dialogue on climate finance starting in 2014 and end-

ing in 2020; and a request to developed countries to provide biennial submissions on their updated approaches for scaling up climate finance from 2014 to 2020 including elements of a pathway.

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

Durban Platform negotiations

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

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

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

At the last minute, the countries agreed on neutral language on how all countries would put forward details

of their ‘contributions’ (rather than their ‘commitments’) for the future discussions on the details of the obligations or actions that Parties are asked to put forward to prepare for the outcome of the Durban Platform negotiations expected in December 2015 at COP 21 in Paris.

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

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

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

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

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

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

Convention’.

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

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

A crisis

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

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

After about an hour, when the plenary resumed, the Indian delegation announced that the ‘huddle’ had produced a result, with a new paragraph 2(b) as follows: ‘To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties toward achieving the objective of the Convention as set out in its Article 2 and to com-

municate them well in advance of the 21st session of the COP (by the first quarter of 2015 by those parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions.’

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

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

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

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

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

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

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Warsaw establishes international mechanism for loss and damage

The decision by the Warsaw climate conference to establish an international mechanism to address loss and damage caused by climate change was the culmination of a long struggle waged by developed countries.

Zhenyan Zhu explains.

IN the final hours of the Warsaw climate conference on 23 November, Parties decided to establish the Warsaw international mechanism for loss and damage associated with climate change impacts, after wrangling between developing countries and the United States over one word in the text.

Following ministerial-led consultations, paragraph 1 of the final draft decision text established the Warsaw international mechanism for loss and damage ‘under the Cancun Adaptation Framework’ (CAF), which did not find comfort among the developing countries, led by the Group of 77 and China.

The G77 and China had insisted that the mechanism be established as a third pillar of the Convention, noting that loss and damage is beyond adaptation (adaptation and mitigation are the current two pillars of the Convention), and rejected a framing under the CAF.

However, keeping any mechanism for loss and damage under the CAF was a very strong red line for the United States, which is concerned about the financial and legal implications of establishing a third pillar.

At the closing of the loss and damage agenda item, during the final COP plenary, opening comments centred on the word ‘under’. A compromise was found between the developing countries and the US with the addition of the following words after the CAF – ‘subject to review at the twenty-second session of the Conference of the Parties (November–December 2016) pursuant to paragraph 15 below’ – and other modifications. (See below for further details.)

With this decision, many Parties



Civil society representatives displaying a banner outside the press room at the venue of the Warsaw conference on 19 November. The eventual decision to set up an international loss and damage mechanism represented the culmination of years of work by developing countries to build on an existing mandate to consider means to address loss and damage associated with climate change impacts.

believe that a third pillar of the Convention has indeed been clearly established. Parties have agreed that adaptation contributes towards addressing loss and damage, but that loss and damage ‘in some cases involves more than that which can be reduced by adaptation’ (preamble paragraph 4). With the images of the destruction caused by Typhoon Haiyan on the mind of every delegate, it would have been difficult to conclude otherwise.

This decision to establish an international mechanism for loss and damage represents the culmination of many years of work by developing countries to build on the Bali Action Plan mandate (decision 1/CP.13) to consider means to address loss and damage, as well as earlier proposals by the Alliance of Small Island States (AOSIS) dating all the way back to 1991.

After slow but steady progress during the first week of the Warsaw conference under the UNFCCC’s

Subsidiary Body for Implementation (SBI), negotiations on loss and damage were carried into the second week, after the issue was transferred to the COP agenda during the closing of the SBI. The negotiations under the SBI were facilitated by Ambassador Ana Lindstedt (Sweden) and Ambassador Robert Van Lierop (St. Kitts and Nevis). Ministers Edna Molewa (South Africa) and Lena Ek (Sweden) formally took over the facilitation role once the issue was transferred to the COP, with continuing assistance from the ambassadors.

Parties worked hard over the course of the second week, with many late nights, and on 22 November, the co-facilitators launched their first version of a final compromise text. COP 19 was supposed to end on 22 November but spilled over to the evening of the following day. Bilaterals between groups of Parties continued overnight on 22 November, as Parties exchanged views on what improve-

Yvonne Miller



Delegates at the Warsaw conference 'huddle' to resolve the issue of loss and damage. Developing countries and the US had been divided over whether the loss and damage mechanism should be established 'under' the Cancun Adaptation Framework.

ments were still necessary to enable groups to accept the final decision.

As a result of the overnight bilaterals and consultations with the co-facilitators, Parties received a final 'take it or leave it' text, issued as document L.15, at around 11 am on 23 November. It was clear at that point that the gap between the positions of the G77 and China and the United States had not been completely closed in the crafting of the compromise text.

Fiji, on behalf of the G77 and China, reminded the COP plenary that vulnerable developing countries had been advocating for the issue of loss and damage over almost two decades. It agreed to every single word in the draft text except the word 'under [the CAF]', because 'the most vulnerable people from developing countries cannot find comfort to live with the "under"'. It requested more time from the COP President to find another word instead.

The Philippines, led by its climate change commissioner Naradev Sano, supported the G77 and China position and pointed out that a preambular paragraph acknowledging the difference between adaptation and loss and damage contradicted the paragraph 1 reference to the CAF. There was an acknowledgement that loss and damage is more than adaptation – that loss and damage associated with the adverse effects of climate change is more than those that can be addressed through adaptation.

He said that the one word 'under' would forever mean the difference between two paths – towards a spi-

ralling of distrust in the process or a bold step towards building trust. This was a mechanism that was very important to vulnerable developing countries, real people and real lives, and it now boiled down to one word. This was a defining moment and the Philippines requested to get that 'one word out of the way'.

The COP President said compromise was close and urged Parties to search for such compromise.

Bangladesh responded that it had reservations on several paragraphs but it could give concessions in the spirit of compromise, and in return it requested the deletion of the word 'under' in paragraph 1. It quoted the Charles Dickens novel *A Tale of Two Cities*, saying that 'this is the best of times and this is the worst of times'. It called for making this 'the best of times' by making a prudent decision.

Bolivia said the adverse effects of climate change resulted in prolonged threats, that all countries must be committed to protecting Mother Earth, and that countries causing the effects of climate change must display greater financial commitment. It said that loss and damage was beyond adaptation, and that the consequences of some extreme events would lead to permanent losses, which must be prevented. Addressing loss and damage could only be done by technology transfer, building information systems through an international mechanism, and finance from developed countries due to their historical responsibility. It said that this was the final stretch and developing countries could not

wait any longer and could not waste all the work over one word.

Nauru, on behalf of AOSIS, in response to the so-called 'red line' in paragraph 1 which the US insisted on, said that this was also a very real red line for AOSIS countries. AOSIS had compromised on many elements already and urged the US to show flexibility so that they could take good news back home.

The European Union proposed to have discussions in a 'huddle' on this issue as this model had seen success on other issues (referring to the negotiations under the Ad Hoc Working Group on the Durban Platform for Enhanced Action).

Nepal, on behalf of the least developed countries (LDCs), said it came to Warsaw with high expectations, one of the most important of which was for a loss and damage mechanism. It echoed what the Philippines had said, to let the single word get out of the way, and that loss and damage was beyond adaptation.

Nicaragua said Central America was a highly vulnerable region. Mitigation, adaptation and loss and damage were three distinctly distinguishable categories. It looked forward to the fulfilment of the decision made in Doha at COP 18. It echoed other comments about being one word away from agreement and appealed for flexibility from those holding up the decision.

Canada called for a motion for a 15-minute suspension to deal with this issue.

After an hour-long 'huddle', which involved the leader of the G77 and China, Sai Navoti of Fiji, Todd Stern of the US and many others from developed and developing countries, a compromise was reached.

A new preambular paragraph 4 was inserted into the decision text which read: 'Also acknowledging that loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation.'

Paragraph 1 was amended by adding the following words after 'under the Cancun Adaptation Frame-

work': 'subject to review at the twenty-second session of the Conference of the Parties (November-December 2016) pursuant to paragraph 15 below'.

In paragraph 15, after 'deciding to review the Warsaw international mechanism', a phrase more clearly specifying the content of review was added: 'including its structure, mandate and effectiveness'.

Fiji, speaking on behalf of the G77 and China, informed the plenary that there had earlier been one additional amendment to the text agreed to by all Parties that had not been reflected in the text of paragraph 5 subparagraph 3. The phrase 'including extreme weather events and slow onset events' was then added to the end of the paragraph.

There was a consensus on the language suggestions made by the G77 and China, and Parties adopted the text as amended.

In a closing statement, the Philippines stated its interpretation of the term 'review' in paragraph 15 of the decision. It said that establishing the Warsaw international mechanism for loss and damage under the CAF, as stated in paragraph 1, effectively limited the actions to be undertaken in addressing loss and damage to adaptation and risk management, which effectively omitted the actions required for the recovery and rehabili-

tation of lost and damaged livelihoods, communities and ecosystems. As such, the Philippines was of the view that the 'review' referred to in paragraph 15 also included a review of the mechanism's institutional placement vis-à-vis the CAF.

The COP President stated that the Philippines' statement would be reflected in the record of the session.

The US, in its statement on the final text, said that it recognised the critical implications of loss and damage. The US and other Parties had engaged constructively to establish for the first time an international mechanism to address loss and damage and areas of convergence and consensus had been found.

The Bahamas said loss and damage had been the single most important issue for AOSIS. At this meeting Parties addressed many technical gaps in their understanding of the issue and also bridged the philosophical gap. They had worked very hard to develop a shared understanding on the impacts of climate change, gathering knowledge that loss and damage was well beyond adaptation and required an urgent response. In Warsaw, they had achieved success. The spirit of Doha had not been lost and the spirit of reconciliation, though tested, was not damaged. ♦

Zhenyan Zhu is a researcher with the Third World Network.

Highlights of the Warsaw decision on loss and damage

'The Conference of the Parties, ...

Acknowledging the contribution of adaptation and risk management strategies towards addressing loss and damage associated with climate change impacts,

Also acknowledging that loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation, ...

1. *Establishes* the Warsaw international mechanism for loss and damage, under the Cancun Adaptation Framework, subject to review at the

22nd session of the COP (November-December 2016) pursuant to paragraph 15 below, to address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change (hereinafter referred to as the Warsaw international mechanism), and in line with the provisions contained in paragraphs 2-15 below;

2. *Establishes* an executive committee of the Warsaw international mechanism, which shall function un-

der the guidance of, and be accountable to, the COP, to guide the implementation of functions referred to under paragraph 5 below;

3. *Requests* the executive committee to report annually to the COP through the Subsidiary Body [for] Scientific [and] Technological Advice and the Subsidiary Body for Implementation and make recommendations, as appropriate;

4. *Decides* that, as an interim measure, the executive committee shall consist of two representatives from each of the following bodies under the Convention; ensuring that there is a balanced representation between developed and developing country Parties: the Adaptation Committee, the Least Developed Countries Expert Group, the Standing Committee on Finance, the Technology Executive Committee and the Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention;

5. *Further decides* that the Warsaw international mechanism shall fulfil the role under the Convention of promoting the implementation of approaches to address loss and damage associated with the adverse effects of climate change, pursuant to decision 3/CP.18, in a comprehensive, integrated and coherent manner by undertaking, inter alia, the following functions:

(a) Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts, by facilitating and promoting:

(i) Action to address gaps in the understanding of and expertise in approaches to address loss and damage associated with the adverse effects of climate change, including, inter alia, the areas outlined in decision 3/CP.18, paragraph 7(a);

(ii) Collection, sharing, management and use of relevant data and information, including gender-disaggregated data;

(iii) Provision of overviews of best practices, challenges, experiences and lessons learned in undertaking

approaches to address loss and damage;

(b) Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders by:

(i) Providing leadership and coordination and, as and where appropriate, oversight under the Convention, on the assessment and implementation of approaches to address loss and damage associated with the impacts of climate change from extreme events and slow onset events associated with the adverse effects of climate change;

(ii) Fostering dialogue, coordination, coherence and synergies among all relevant stakeholders, institutions, bodies, processes and initiatives outside the Convention, with a view to promoting cooperation and collaboration across relevant work and activities at all levels;

(c) Enhancing action and support, including finance, technology and capacity-building, to address loss and damage associated with the adverse effects of climate change, so as to enable countries to undertake actions pursuant to decision 3/CP.18, paragraph 6, including by:

(i) Provision of technical support and guidance on approaches to address loss and damage associated with climate change impacts, including extreme events and slow onset events;

(ii) Provision of information and recommendations for consideration by the COP when providing guidance relevant to reducing the risks of loss and damage, where necessary, addressing loss and damage, including to the operating entities of the financial mechanism of the Convention, as appropriate;

(iii) Facilitating the mobilisation and securing of expertise, and enhancement of support, including finance, technology and capacity-building, to strengthen existing approaches and, where necessary, facilitate the development and implementation of additional approaches to address loss and damage associated with climate change impacts, including extreme weather events and slow onset events;

6. *Decides* that the Warsaw international mechanism should comple-

ment, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention as well as on that of relevant organisations and expert bodies outside the Convention, at all levels;

7. *Also decides* that, in exercising the functions outlined in paragraph 5 above, the Warsaw international mechanism will, inter alia:

(a) Facilitate support of actions to address loss and damage;

(b) Improve coordination of the relevant work of existing bodies under the Convention;

(c) Convene meetings of relevant experts and stakeholders;

(d) Promote the development of, and compile, analyse, synthesise and review information;

(e) Provide technical guidance and support;

(f) Make recommendations, as appropriate, on how to enhance engagement, actions and coherence under and outside the Convention, including on how to mobilise resources and expertise at different levels;

8. *Invites* the Executive Secretary, in consultation with the President of the COP, to convene the initial meeting of the executive committee by March 2014, the meetings of which will be open to observers, and invite representatives of relevant international and regional organisations having the necessary skills in approaches to addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events;

9. *Requests* the executive committee to develop its initial two-year workplan for the implementation of the functions outlined in paragraph 5 above, including the scheduling of meetings, taking into account the issues outlined in decision 3/CP.18, paragraphs 6 and 7, for consideration at the forty-first sessions of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation (December 2014);

10. *Requests* the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation to consider the composition of, and procedures for, the executive committee, and to make rec-

ommendations thereon for adoption by the COP at its 20th session (December 2014), with a view to finalising the organisation and governance of the executive committee;

11. *Invites* relevant international and regional organisations, institutions and processes to integrate, where appropriate, measures to address the impacts of climate change and to explore and strengthen synergies in the context of addressing loss and damage associated with the adverse impacts of climate change, especially in particularly vulnerable developing countries;

12. *Also invites* Parties to work through the United Nations and other relevant institutions, specialised agencies and processes, as appropriate, to promote coherence at all levels in approaches relevant to addressing loss and damage associated with the adverse effects of climate change, including extreme events and slow onset events;

13. *Further invites* Parties to strengthen and, where appropriate, develop institutions and networks at the regional and national levels, especially in particularly vulnerable developing countries, to enhance the implementation of relevant approaches to addressing loss and damage in a manner that is country-driven, encourages cooperation and coordination between relevant stakeholders and improves the flow of information;

14. *Requests* developed country Parties to provide developing country Parties with finance, technology and capacity-building, in accordance with decision 1/CP.16 and other relevant decisions of the COP;

15. *Decides* to review the Warsaw international mechanism, including its structure, mandate and effectiveness, at the twenty-second session of the Conference of the Parties, with a view to adopting an appropriate decision on the outcome of this review;

16. *Takes note* of the budgetary implications of the activities to be undertaken by the secretariat pursuant to the provisions contained in this decision;

17. *Requests* that the actions of the secretariat called for in this decision be undertaken subject to the availability of financial resources.' ♦

Warsaw loss and damage mechanism: Addressing developing-country challenges

The establishment of a loss and damage mechanism – the major achievement of the Warsaw conference – is based on the recognition that climate change impacts can no longer be managed by mitigation or adaptation alone. However, it will remain ineffective unless there is a political will, especially by the developed countries to address the needs of those that this mechanism is set up to support. The following article by a group of developing country negotiators attempts to lay the groundwork for a constructive dialogue to make the mechanism truly meaningful for the vulnerable developing countries.

AS analyses of the COP 19 climate conference begin circulating, the establishment of the Warsaw international mechanism for loss and damage associated with climate change impacts (the mechanism) stands out as one of the key outcomes and milestones of the conference. This article offers our views as negotiators from developing countries who have worked on this issue in the past few years. Negotiating on the issue of loss and damage has always been very difficult if not emotional for many of us developing-country negotiators. But in light of these difficulties, there is also a community of individual negotiators from both developed and developing countries that work very closely on the issue.

The establishment of the mechanism was not a last-minute political compromise to break the deadlock at the talks, but rather was the result of a longstanding call for addressing unavoidable impacts of climate change that dates back to the early 1990s and the early days of the international talks. The concept originated with the small island developing states through the Alliance of Small Island States (AOSIS) and has over the last few years gained the overwhelming support of other vulnerable developing countries. As science has made it clear that there are now climate change impacts that can no longer be

Juan P Hoffmaister, Malia Talakai, Patience Dampney and Adao Soares Barbosa

managed by mitigation or adaptation, vulnerable countries have found common cause in the need to create the mechanism.

Not by finance alone

With the increased attention given to loss and damage at the international level, multiple perspectives and analyses have emerged, including those by the international media. Unfortunately, many of these perspectives seem to limit the loss and damage agenda to a matter of determining liability and seeking financial compensation for loss and damage. While liability and compensation form important elements of the loss and damage discussions, this perspective often trivialises the complexity of the issues and inaccurately reduces the issue to one of merely determining liability and seeking compensation.

In so doing, such framing leaves out some of the most important issues that vulnerable developing countries are trying to bring to international attention, such as the challenges in the medium and long term associated with permanent losses, loss of ecosystems, loss of livelihoods, non-eco-

nomic losses, loss of statehood and the associated challenges with migration and displacement, among others. Assuming that a compensation approach is established under the UNFCCC or other international forum, financial compensation may represent a normative solution to the peril of vulnerable countries, but it does not necessarily mean that the actual underlying needs are addressed.

Other observers have suggested that the absence of any reference to liability in the Warsaw decision on loss and damage represents a fatal flaw in the mechanism and even a failure of the negotiation process itself. We disagree. The Warsaw international mechanism has just been established and should be given an opportunity to deliver before its validity is questioned. In this regard, it is important for both developed and developing countries to continue to work together and double their efforts to ensure that the mechanism delivers concrete outcomes on the ground for those that need it most. What will be required is concerted action under the UNFCCC and its different bodies, including the Green Climate Fund, and also strengthening dialogue, coordination, coherence and synergies with actors outside the Convention.

Many of the complex issues described above cannot be adequately addressed by financing alone. There-

fore, we believe a more accurate (and productive) way for developing countries and civil society to discuss loss and damage is by referencing the full range of challenges and solutions it entails. A much more thorough conversation that weaves together the moral obligations of solidarity, scientific understandings of climate change attribution, and a serious consideration of the range of financial measures that will begin to address both economic and non-economic loss is long overdue. For instance, matters such as risk sharing, risk transfer and rehabilitation included in the Doha decision paragraph 7a(iv), and others, such as social safety nets, should be carefully considered under the different functions of the mechanism not as research topics, but conscious of their importance and with the goal of finding concrete solutions to developing-country needs.

Additionally, the discussion concerning whether loss and damage falls under adaptation is one of normative but not practical value. Parties have already agreed that there are relevant linkages and synergies between adaptation actions and approaches to address loss and damage, and that this relation needs to be explored appropriately. Such an exploration would necessarily address the need for a better understanding of the differences between these fields and the limits of each, particularly in addressing climate change slow-onset impacts.

Further, the Warsaw decision acknowledges 'the contribution of adaptation and risk management strategies towards addressing loss and damage associated with climate change impacts' and that 'loss and damage associated with the adverse effects of climate change includes, and in some cases involves more than, that which can be reduced by adaptation'. This recognition, which frames the establishment of the international mechanism, sets the stage where loss and damage is understood as more than adaptation, and it will be the work of the mechanism over the coming years, including the 2016 review, that will provide a more nuanced but clear foundation to continue to position ad-

ressing loss and damage in the larger context of the international efforts to respond to climate change. Meanwhile, the actions and functions identified in Doha and as part of the Warsaw decision need to advance to guarantee that the implementation of actions at multiple levels to address loss and damage begins to address the needs of vulnerable developing countries, without needing to condition action to a legalistic and semantic discussion.

With these points in mind, it is the intention of this article to help lay the groundwork for moving away from the current discussion following the Warsaw conference and towards a more constructive conversation that highlights the potential, importance and complexity of making the Warsaw international mechanism meaningful, particularly for vulnerable developing countries.

Setting expectations and direction

There is ample evidence of the impacts on human society when climate-related risks overwhelm our ability to cope, such as extreme weather patterns that affected world food production throughout 2010-12, extreme storms like Hurricane Sandy and supertyphoon Haiyan, extreme heat that contributed to massive forest fires in Russia, extreme flooding in Pakistan, Australia, and other areas of the world. Loss and damage is being experienced by developing countries. Moreover, given the continuing increase in greenhouse gas emissions and continuing temperature rise, it is clear that loss and damage from both extreme events and slow-onset events will continue to mount.

Slow-onset events, in particular, will continue to increase in severity and extent, and countries will need increasing financial resources and technical assistance from the international community in order to understand and address their growing impacts. Approaches to address slow-onset events should not focus only on the short-

term impacts but also on long-term impacts.

What is the mechanism expected to do?

In brief, the Warsaw international mechanism is to promote the implementation of approaches to address loss and damage associated with the adverse effects of climate change, in a comprehensive, integrated and coherent manner. This includes carrying out the work outlined in the Doha decision on loss and damage, including work to enhance knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow-onset impacts; strengthening dialogues, coordination, coherence and synergies among relevant stakeholders; and enhancing action and support, including finance, technology and capacity building to address loss and damage. The Warsaw international mechanism is to address loss and damage from both extreme weather events and slow-onset events.

Broadly, the mechanism will carry out three types of functions related to: enhancing knowledge and understanding of comprehensive risk management approaches; strengthening dialogue, coordination, coherence and synergies among relevant stakeholders; and enhancing action and support so as to enable countries to take action to address loss and damage. In exercising these functions, it was decided that the mechanism will facilitate the support of actions; improve coordination of relevant work of existing Convention bodies; convene meetings of relevant experts and stakeholders; generate, analyse and review new information; provide technical guidance and support; and make recommendations on enhancing actions and coherence, including on how to mobilise resources and expertise.

Given the significance of the issue and the complexity and magnitude of challenges posed in addressing loss and damage, a wide range of work, using a range of modalities, will need to be carried out under the direction

of the mechanism. For example:

- Through its mandate to provide leadership on the assessment and implementation of approaches to address loss and damage, the mechanism can promote the development of new information on existing approaches to address loss and damage, as well as the development of additional approaches, and coordinate other work relevant to assessment and implementation of approaches undertaken by other Convention bodies, such as the Technology Executive Committee, the Standing Committee on Finance, the financial mechanism, the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice.

- Through its convening modality, the mechanism should facilitate technical work to address gaps in the understanding of and expertise in approaches to address loss and damage, including in collaboration with outside experts. It should function to mobilise and secure the expertise necessary, with a view to providing technical guidance to countries, such as on risk transfer approaches and approaches to address impacts from slow-onset events.

- Two important objectives of the technical work and guidance under the mechanism should be to lead to improved capacity of countries to articulate needs related to addressing loss and damage; and to provide guidance to the COP and operating entities of the financial mechanism on specific implementation needs expressed by countries to enhance action and support to address loss and damage.

- Highlight relevance of linkages and set expectations for the work to be done in collaboration with experts outside the Convention from UN agencies and others.

The information-generating and convening functions and modalities of the mechanism will be particularly important in developing new knowledge and understanding on how to address permanent losses, loss of ecosystems, loss of livelihoods, non-economic losses, loss of statehood and the associated challenges with migra-

tion and displacement. The extreme importance of the work that will be done under the mechanism to develop understanding of and expertise in these areas cannot be overstated. Significant expertise in these areas lies outside the Convention bodies which should be mobilised and secured through the mechanism. While the procedures of the mechanism's executive committee are still to be developed, a number of useful suggestions have been put forward by Parties as to how the expertise might be mobilised. In particular, proposals to carry out specific work through task forces, which would include as members both Parties and outside experts, merit special consideration.

Key issue carried from Doha into the mechanism for further work

Another important function of the mechanism is to facilitate and promote action to address gaps in the understanding of and expertise in approaches to address loss and damage including the areas outlined in decision 3/CP.18, paragraph 7(a), which include enhancing the understanding of:

- The risk of slow-onset events, and approaches to address them;
- Non-economic losses and damages;
- How loss and damage associated with the adverse effects of climate change affects those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability, and how the implementation of approaches to address loss and damage can benefit those segments of the population;
- How to identify and develop appropriate approaches to address loss and damage associated with the adverse effects of climate change, including to address slow-onset events and extreme weather events, including through risk reduction, risk sharing and risk transfer tools, and approaches to rehabilitate from loss and damage associated with the adverse effects of climate change;
- How approaches to address

loss and damage associated with the impacts of climate change may be integrated into climate-resilient development processes; and

- How impacts of climate change are affecting patterns of migration, displacement and human mobility.

Key issues carried from Doha into the mechanism as part of what Parties can do

The mechanism is also mandated to facilitate enhanced action on the areas listed in paragraph 6 of the Doha decision, through provision of technical support and guidance, provision of recommendations to the COP and to the operating entities of the financial mechanism, and otherwise facilitating mobilisation of expertise and enhancement of support, including finance, technology and capacity building, to strengthen existing approaches and to develop and implement additional approaches to address loss and damage. As noted above, developing-country Parties should be assisted to identify their needs in the following areas, which can guide the mechanism in mobilisation of expertise and support:

- Assessing the risk of loss and damage associated with the adverse effects of climate change, including slow-onset impacts;
- Identifying options and designing and implementing country-driven risk management strategies and approaches, including risk reduction, and risk transfer and risk-sharing mechanisms;
- The systematic observation of, and data collection on, the impacts of climate change, in particular slow-onset impacts, and accounting for losses, as appropriate;
- Implementing comprehensive climate risk management approaches, including scaling up and replicating good practices and pilot initiatives;
- Promoting an enabling environment that would encourage investment and the involvement of relevant stakeholders in climate risk management;
- Involving vulnerable communities and populations, and civil soci-

ety, the private sector and other relevant stakeholders, in the assessment of and response to loss and damage; and

- Enhancing access to, sharing and the use of data, at the regional, national and subnational levels, such as hydrometeorological data and metadata, on a voluntary basis, to facilitate the assessment and management of climate-related risk.

Vision for workplan: to address key issues

The vision of the workplan of the mechanism is to start addressing the key issues. The workplan is not for the executive committee, but rather for the implementation of the functions of the mechanism. This distinction is key and needs to be reflected in the modalities employed in the workplan. In other words, it is not about the committee having meetings, but about putting further activities that bring life to the mechanism.

Many key issues are not explicitly mentioned in the Warsaw decision, and these will be part of the workplan, for example how to identify and develop appropriate approaches to address loss and damage associated with the adverse effects of climate change, including to address slow-onset events and extreme weather events, both an historic point and a point of departure – one part of the challenge has been to persuade the international community to agree to take on a global challenge (e.g., by creating the Warsaw international mechanism), but an equally important part is turning those words into concrete actions.

Making the Warsaw international mechanism meaningful will not happen overnight or from one COP to the next. Addressing the issue and ensuring concrete actions are taken to begin implementing the functions of the mechanism require political will. Moreover, the importance and complexity of these issues will require a concerted effort at all levels that touches actors outside the climate change community. These issues relate to the needs identified by developing countries and must be carried

forward into the workplan of the mechanism.

Making the mechanism matter: Five key elements for efficacy

Aligning mandates, undertaking long-term planning and taking fully into consideration the challenges associated with slow-onset impacts will require more than a COP decision can capture. Thus, in considering the way ahead, there are key elements that can shape the effectiveness of the mechanism:

1. As noted before, addressing many of the controversial and technically complex issues is essential for a mechanism to be responsive to scientific reality. In addition, the interim work of the executive committee over the course of 2014 and the work in preparation for the 2016 review are key.

2. The review of the mechanism is essential given the very nature of loss and damage. Bearing in mind the growing scientific evidence, there is no room to believe that in 2016 the challenge of loss and damage will be less urgent. New knowledge will become available through the work of the mechanism itself and through other forums. Setting out a mandate for this review represents more a recognition of the evolving nature of this matter.

3. The emphasis on ‘structure, mandate and effectiveness’, bearing in mind the interpretation of ‘structure’ captured by the COP President in the report of COP 19 as including ‘placement’ of the mechanism, provides space for considering where the mechanism fits in the context of work to achieve stabilisation of greenhouse gas concentrations at a safe level ‘within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner’.

4. In addition, the consideration of effectiveness will need to reflect on whether the functioning of the mechanism is responsive to the broad challenges faced by developing countries in addressing loss and damage.

5. Expectations for the interim executive committee and the work for 2014, including the ability to make strategic decisions to rapidly respond to country needs, etc. The needs of vulnerable developing countries and how to address those needs should be the focus of the workplan to be developed by the executive committee. In setting out its two-year workplan, the executive committee will need to identify immediate needs of Parties, relevant to paragraph 6 of decision 3/CP.18. It will also need to establish short- and medium-term priorities for work to be undertaken relevant to paragraph 7 of 3/CP.18.

Political will and leadership

Establishment of the Warsaw international mechanism will remain ineffective unless there is the political will and leadership, particularly of developed countries, to ensure that what has been established will deliver concrete actions and results to address the needs of those that this mechanism is set up to support. This is a grave responsibility and we must act with the urgency it demands. The Warsaw international mechanism creates the space and opportunity to understand and begin to effectively address multiple issues: How can vulnerable communities be supported when they face barriers and limits to adaptation? How can that understanding be channelled back into effective policy and practice at multiple levels? How can understanding of loss also evolve to align with realities and policy priorities in and beyond the 21st century? The benchmark of success will be whether this new policy space delivers new ways of framing the issues, new approaches of support and new kinds of solutions to help particularly vulnerable developing countries deal with the adverse effects of climate change. ♦

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Fight over developed-developing country differentiation in 2015 ‘agreement’

At the 2011 Climate Change Conference in Durban, governments decided to adopt a universal legal agreement on climate change by 2015. The group charged with this task (called the Ad Hoc Working Group on the Durban Platform for Enhanced Action) met at the final plenary of the Warsaw conference to determine the shape of this final agreement. As *Meena Raman* explains, the negotiations proved to be tough and protracted because of the attempts by the rich countries to obliterate the distinction between the developed and developing countries in the undertaking of commitments to reduce carbon emissions.

THE final plenary of the UNFCCC’s Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) took place in the afternoon of 23 November in Warsaw and saw the adoption of a decision, as well as conclusions by the Co-Chairs, which were agreed to by Parties. They were adopted almost two days later than the ADP’s scheduled closure on 21 November.

The final plenary saw a deep divide and exchanges between developed and developing countries in relation to preparations for the 2015 ‘agreement’ over attempts by developed countries to break down the ‘firewall’ and ‘differentiation’ between developed and developing countries, as currently exists in the UNFCCC and its annexes. A last-minute huddle to resolve differences during the plenary led to a text that allowed the decision to be adopted. The conflict over the issue of ‘differentiation’ is expected to intensify in 2014 and is central to the new agreement to be concluded in 2015.

Five versions

Parties had since 18 November been engaging without much sleep in open-ended consultations on negotiating a draft text proposed by the Co-Chairs of the ADP – Kishan Kumarsingh (Trinidad and Tobago)



Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) Co-Chairs Kishan Kumarsingh (left) and Artur Runge-Metzger giving each other a high-five after the adoption of a decision and Co-Chairs’ conclusions on 23 November.

and Artur Runge-Metzger (EU) – which comprised a draft decision, an annex with indicative elements for the 2015 agreement and draft conclusions. There were five versions of the draft decision, with the final sixth version amended during the closing plenary of the ADP session on 23 November afternoon. The ADP outcome decision was later adopted by the 19th session of the Conference of the Parties (COP 19).

The final version of the conclusions by the ADP Co-Chairs was

adopted at the ADP plenary without the ‘annex of the indicative elements for the 2015 agreement’ (later referred to as a ‘non-exhaustive list of areas for further reflection’) following disagreement to its inclusion especially by the group of Like-Minded Developing Countries (LMDC) and Singapore, who viewed the list of areas as premature for inclusion and preferred that it be contained in a reflections note of the Co-Chairs rather than in a decision or conclusions of the ADP.

During the ADP final plenary ses-

Photo courtesy of IISD/Earth Negotiations Bulletin

sion on 23 November afternoon, Kumarsingh asked Parties to consider the draft decision text, which he said was ‘sensitive to a diversity of views and does not prejudice the 2015 agreement’. He added that given the concerns raised by some Parties around the annex while others expressed the desire to capture the rich discussions for more focused work, the chapeau of the annex provided a non-exhaustive list of areas for further reflection and stated that it does not prejudice the content of the 2015 outcome.

Final version

The final version of the contentious annex contained the following list of areas:

- Institutional arrangements: ways of building on and strengthening them;
- Differentiation: ways of reflect-

ing;

- Commitments: ways of characterising them, including parameters;
- Mitigation: ways of putting forward intended nationally determined commitments and of considering ambition, equity and fairness, informed by science; means of implementation;
- Adaptation: exploring a global goal; ways of strengthening the implementation of national adaptation plans; linking national and global efforts;
- Finance: ways of enhancing mobilisation, scaling up, predictability and delivery of climate finance;
- Technology: ways of addressing barriers and enabling environments; facilitating access to and the deployment of technology; promoting innovation, delivery and education;
- Capacity-building: exploring institutional arrangements, country

ownership and development priorities;

- Transparency: ways of enhancing the measurement, reporting and verification of actions and support; developing accounting rules;
- Compliance and periodic review: the exploration thereof.

In response to the Co-Chair, India (represented by Ambassador Tirumurti), speaking for BASIC (Brazil, South Africa, India and China), raised a few areas of concern. He wanted to make suggestions to strengthen and ensure a more balanced text. India said the draft text seemed to overemphasise the mitigation element. The sense and context of the urgency needed was missing and called for the ratcheting up of the ambition by Annex I (developed) Parties in reducing emissions by at least 40% by 2020 based on 1990 levels. It

Highlights of the ADP decision entitled ‘Further advancing the Durban Platform’

‘The Conference of the Parties, ...

1. *Requests* the ADP to accelerate its development of a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties in the context of decision 1/CP.17, paragraphs 2-6, and its conduct of the workplan on enhancing mitigation ambition to identify and to explore options for a range of actions that can close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties in the context of decision 1/CP.17, paragraphs 7 and 8;

2. *Decides*, in the context of its determination to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties at its twenty-first session (December 2015) and for it to come into effect and be implemented from 2020:

(a) To request the ADP to further elaborate, beginning at its first session in 2014, elements for a draft negotiating text, taking into consideration its

work, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support;

(b) To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the twenty-first session of the COP (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions;

(c) To request the ADP to identify, by the twentieth session of the COP, the information that Parties will provide

when putting forward their contributions, without prejudice to the legal nature of the contributions, referred to in paragraph 2(b) above;

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

3. *Resolves* to accelerate the full implementation of the decisions constituting the agreed outcome pursuant to decision 1/CP.13 (Bali Action Plan), in particular in relation to the provision of means of implementation, including technology, finance and capacity-building support for developing country Parties, recognising that such implementation will enhance ambition in the pre-2020 period;

4. *Also resolves* to enhance ambition in the pre-2020 period in order to ensure the highest possible mitigation efforts under the Convention by all Parties by:

(a) Urging each Party that has not yet communicated a quantified economy-wide emission reduction tar-



One of the many 'huddles' that took place in the ADP talks to resolve differences among countries' negotiating positions.

lamented that there was no roadmap on finance or a goal of mobilising \$70 billion by 2016.

India recalled that the BASIC ministers (during the open-ended consultations) proposed text in relation to paragraph 2(b) of the draft decision and mentioned that they were extremely concerned at the way the paragraph was structured as it referred to all Parties and commitments in the same sentence. [India was referring to the fourth version of the draft decision text which provided in paragraph 2(b) as follows: 'To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined commitments towards achieving the ultimate objective of the Convention and to communicate them well in advance of the 21st session of the COP in a manner that facilitates the clarity, transparency and under-

get or nationally appropriate mitigation action, as applicable, to do so;

(b) Urging each developed country Party to implement without delay its quantified economy-wide emission reduction target under the Convention and, if it is also a Party to the Kyoto Protocol, its quantified emission limitation or reduction commitment for the second commitment period of the Kyoto Protocol, if applicable;

(c) Urging each developed country Party to revisit its quantified economy-wide emission reduction target under the Convention and, if it is also a Party to the Kyoto Protocol, its quantified emission limitation or reduction commitment for the second commitment period of the Kyoto Protocol, if applicable, in accordance with decision 1/CMP.8, paragraphs 7-11;

(d) Urging each developed country Party to periodically evaluate the continuing application of any conditions associated with its quantified economy-wide emission reduction target, with a view to adjusting, resolving or removing such conditions;

(e) Urging developed country Parties to increase technology, finance and capacity-building support to enable in-

creased mitigation ambition by developing country Parties;

(f) Urging each developing country Party that has communicated its nationally appropriate mitigation action to implement it and, where appropriate, consider further action, recognising that nationally appropriate mitigation actions will be taken in the context of sustainable development, supported and enabled by technology, finance and capacity-building;

5. *Decides* to accelerate activities under the workplan on enhancing mitigation ambition in accordance with decision 1/CP.17, paragraphs 7 and 8, by:

(a) Intensifying, as from 2014, the technical examination of opportunities for actions with high mitigation potential, including those with adaptation and sustainable development co-benefits, with a focus on the implementation of policies, practices and technologies that are substantial, scalable and replicable, with a view to promoting voluntary cooperation on concrete actions in relation to identified mitigation opportunities in accordance with nationally defined development priorities;

(b) Facilitating the sharing among Parties of experiences and best practices

of cities and subnational authorities, where appropriate, in identifying and implementing opportunities to mitigate greenhouse gas emissions and adapt to the adverse impacts of climate change, with a view to promoting the exchange of information and voluntary cooperation;

(c) Inviting Parties to promote the voluntary cancellation of certified emission reductions, without double counting, as a means of closing the pre-2020 ambition gap;

(d) Considering further activities to be undertaken under that workplan at the twentieth session of the COP;

6. *Notes* the convening of the climate summit on 23 September 2014 by the United Nations Secretary-General aimed at mobilising action and ambition in relation to climate change;

7. *Calls* upon Parties to intensify their high-level engagement on the Durban Platform for Enhanced Action through an in-session high-level ministerial dialogue to be held in conjunction with the fortieth sessions of the subsidiary bodies (June 2014) and another such dialogue to be held in conjunction with the twentieth session of the COP. ♦

standing of the intended commitments’.]

India said that the BASIC ministers wanted the words ‘in accordance with Article 4 of the Convention’ in the paragraph to bring some balance to the text as it was lopsided. In the spirit of being constructive and as a practical way forward, ‘we engaged in a huddle and the idea was to find compromise’, said India, adding that the draft text before the ADP plenary did not address its concerns. India reiterated that as long as there were the word ‘commitments’ and reference to ‘all Parties’, there needed to be a specific context and that context included the reference to ‘in accordance with the provisions of the Convention’.

[The final text for the consideration of the plenary in paragraph 2(b) read as follows: ‘To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined commitments in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance by the 21st session of the COP (by the first quarter of 2015 by those Parties in a position to do so) in a manner that facilitates the clarity, transparency and understanding of the intended commitments’.]

India also underlined the importance of paragraph 3(b), which was its proposal. (This paragraph in the decision referred to the resolve to accelerate the full implementation of the decisions from the Bali Action Plan, in particular in relation to the provision of means of implementation, to enhance ambition in the pre-2020 period.)

India added that when Parties start the detailed process (in relation to the 2015 agreement), they should start on ‘the right foot and without a false start’ in confronting the same problem.

On the draft conclusions by the Co-Chairs, India said that embedding the annex on the list of areas for further reflection disturbed the balance



Speaking at the ADP, Chinese representative Su Wei (pic) said that the ADP process and outcome must respect the principle of equity and common but differentiated responsibilities.

Parties were trying to strike, and called for the annex to be removed and including any reference to it in the conclusions. It suggested that the annex could be part of the Co-Chairs’ reflections note.

‘Nothing was captured’

China (represented by Su Wei) expressed surprise that at the end of long consultations on the text, the draft decision remained the same and was not a Party-driven outcome. Referring to textual changes proposed by the LMDC on several rounds of the text, it felt that ‘nothing was captured’ and expressed serious problems in relation to the balance with more emphasis on ‘mitigation’ and less on the ‘means of implementation’. It also referred to the proposal by the BASIC ministers, which was supported by many Parties but was not reflected.

China said that after the huddle during the consultations, when India presented the proposed text in relation to paragraph 2(b), China reiterated the insertion of the phrase ‘in accordance with Article 4 of the Convention’. In the course of the consultations, there were references to ‘commitments’ without the link to the Convention provisions.

It stressed that the whole ADP exercise was for enhanced action and not for a new climate regime in terms of mitigation, adaptation, finance, technology, capacity building and transparency of actions and support as contained in paragraph 5 of the Durban Platform decision. The ADP process and the outcome must respect the principle of equity and common but differentiated responsibilities (CBDR), and as it was under the Convention, its provisions would also apply. There was differentiation between developed and developing countries. For developing countries it was about enhancing actions while commitments would apply to developed countries. China referred to the compromise in Doha where the term ‘enhanced actions’ was agreed to in place of commitments and actions.

It also referred to ‘other serious flaws’ in the decision text and the imbalance between mitigation and adaptation for the pre-2020 time frame. It said there was no reference to effectively raise the emission reduction targets of Annex I Parties to a higher level. In the second commitment period (CP2) of the Kyoto Protocol, the emission reduction of Annex I Parties was only 18% while a study had shown that the EU had al-

ready achieved 18% reduction at the end of 2012. China wanted developed countries to be urged to raise their emission reduction targets to at least 40% by 2020. It also raised concern over the lack of implementation in relation to finance and supported India in the call for \$70 billion by 2016.

China also voiced concerns over the annex on the list of areas for further reflection, which it said contained elements which had not been negotiated. A number of the elements were selective, unbalanced and misleading. China said it did not want this to be put in a trashcan but suggested that it be captured in the reflections note of the Co-Chairs. It called for further consultations on the draft text.

Saudi Arabia and the Philippines supported the views of India and China. As regards the pre-2020 time frame, they referred to paragraph 4(c) of the decision and the need to reflect a 40% reduction in emissions by Annex I Parties by 2020, and, in paragraph 4(e), to set a target of \$70 billion by 2016 as a roadmap for mobilising finance. They also did not want the annex to be part of the conclusions of the ADP.

‘Appendectomy’

Singapore, represented by its Minister of Environment, Vivian Balakrishnan, referred to the need for an ‘appendectomy’ in parts of the text, and expressed similar views as India and China. It noted the omission in paragraph 2(b) on the reference to ‘under the Convention’. It also wanted the removal of the annex on the non-exhaustive list of areas, which it said was not discussed and may confer undue legitimacy on the issues, and asked that it be moved into the Co-Chairs’ reflections note. For the pre-2020 ambition, it echoed the call for inclusion in the text of emission reductions of 40% by 2020 for Annex I Parties and of numbers in relation to the roadmap for 2013-20 as regards the \$100 billion.

The United States, represented by Todd Stern, supported the draft decision and paragraphs 2(b) and 2(c) of the decision as well as the annex.

Stern said he was in the ‘famous huddle’ during the open-ended consultations and thought it landed on language which was pretty good. On the proposal by the BASIC countries to have the reference to Article 4 of the Convention in paragraph 2(b), the US was of the view that the ADP was ‘launching new negotiations’ and the suggestion was not helpful and made the negotiations ‘cloudier’. Stern asked what commitments meant under Article 4 where Article 4.1 referred to commitments that are common to all Parties or differentiated as in Article 4.2. He said that there was a great deal of un-clarity and this was not useful.

Stern said that the (BASIC) suggestion was a bad idea as it resulted in differentiation (between developed and developing countries) and the role of the annexes (Annex I and non-Annex I categories). There were strongly held views on how differentiation should be captured and how the annexes should figure in the new agreement. Language should be sought that would lead to serious discussions and not prejudice and tilt the playing field as what the BASIC suggestion would do.

He was astonished to hear China’s views that commitments were for developed countries and said that this was in the ‘Bali time warp’. Stern said that most countries understood the Durban Platform to be different from the Bali Action Plan with the use of the term ‘applicable to all’. He said that China’s response suggested that it would not assume new commitments in the 2015 agreement and this was not the impression it got from many of the conversations it had had with China. The US did not want a movement backwards in this regard.

The European Union referred to the huddle during the open-ended consultations and said it was true that BASIC had put forward their proposal but many times, the EU had responded that ‘it would not fly’. To do so in plenary would not lead to a conclusion. It had made concessions and was concerned that the decision lacked reference to markets and hydrofluorocarbons (HFCs). It ex-

pressed surprise that there were some countries that were against the reference to the ultimate objective of the Convention so there could not be an assessment (of the efforts) with the long-term goal (of limiting temperature increase). It could live with the text, including the annex on the list of areas for further reflection.

The EU said that the principle of CBDR and respective capabilities would continue to apply but the 2015 agreement had to take into account new and evolving realities. An approach which was binary forever (of developed and developing countries) in relation to mitigation, adaptation and means of implementation was not an approach which is negotiable or fair. There was a need for a conversation about how to reconcile this which would take place over the years and the decision should not prejudge that. Referring to the BASIC proposal, the EU said this would lead to a perception of loss of competitiveness. It also expressed disappointment with remarks that the EU was not showing ambition.

Concern and regret

Fiji, speaking for the G77 and China, reiterated that the 2015 agreement must include all elements.

Nauru, speaking for the Alliance of Small Island States (AOSIS), said that paragraph 5 of the decision unlocked the opportunity to limit warming to well below 1.5 degrees Celsius. Referring to paragraph 2(b), it wanted Parties to go home and do the homework for decisive action in relation to the new agreement.

Speaking for the least developed countries (LDCs), Gambia expressed concern that the need for urgency was not addressed in the text or the mobilisation of resources. It was a compromise text as it did not address the views of all Parties. On the BASIC suggestion that led to the huddle, Gambia said it raised the question of the status of the huddle but there was no answer. It said that nothing is agreed until everything is agreed.

It said that the national adaptation programmes of action (NAPAs)

of LDCs would need \$5 billion to be implemented by 2020. The text did not take into account what was required by science. It had called for the ADP process to take into account the principle of CBDR and respective capabilities due to the different capabilities of Parties. The issue of finance and implementation of commitments had not been adequately addressed and Gambia called for consultations on the text to resume and sought compromise.

Colombia, for the Independent Alliance for Latin America and the Caribbean (AILAC), expressed regret over the situation Parties were in. It said all Parties needed to work within their respective capacities and that the decision was within the framework of the Convention. It also supported the inclusion of the annex on the indicative list of areas for further reflection.

Bolivia supported the views of India, China, Saudi Arabia, the Philippines and Singapore, and stressed the need for reference to Article 4 of the Convention in paragraph 2(b) of the decision and for the deletion of the annex on the indicative list of areas. It was concerned about the uniformity in approach between developed and developing countries in communicating their nationally determined commitments, saying this was a big challenge for a small economy like Bolivia. In order to accept this challenge, it wanted to have clarity on the financial resources available for both the preparation and implementation of the commitments. Hence, reference to Article 4.7 of the Convention was important. Otherwise, it was at risk of taking on commitments without the resources to ensure compliance. Nicaragua also supported the proposal by BASIC.

Russia asked how Parties were to prepare commitments without knowing conditions for such commitments. It however supported the decision as it was, as it was a workplan to enable preparations to be done for the 2015 agreement.

Co-Chair Kumarsingh proposed that another effort be made to see if the issues could be resolved. In response, Venezuela (represented by its

Vice-Minister Claudia Salerno Caldera) raised a point of order saying that delegates had been working for more than 30 hours without sleep and for small delegations, this was a challenge. She said they were human beings and not machines, adding that many delegations were already leaving Warsaw. She asked how much more time was going to be spent on this, to wide applause from exhausted delegates.

Kumarsingh said without a consensus, there could be no decision from the ADP.

Swaziland, speaking for the African Group, said that its delegation size was very small and it had already lost its key negotiators who had left Warsaw. If they continued without sleeping, then delegations with small capacity could not think properly. There was a divergence of views and the decision should not prejudice the positions of Parties. The red lines of all Parties must be respected and not be closed.

Agreed changes

The Co-Chairs then allowed a half-hour break (that extended for about an hour) for an informal huddle among Parties to resolve issues over the draft text. Following the huddle, Tirumurti of India read out the changes agreed to:

* Paragraph 2(b) was to be amended to read: 'To invite all Parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties towards achieving the objective of the Convention as set out in its Article 2 and to communicate them well in advance of the twenty-first session of the COP (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the intended contributions, without prejudice to the legal nature of the contributions.'

• As regards paragraph 2(c), the

word 'commitments' would be replaced with 'contributions, without prejudice to the legal nature of the contributions'. Paragraph 2(c) would thus read: 'To request the ADP to identify, by the 20th session of the COP, the information that Parties will provide when putting forward their contributions, without prejudice to the legal nature of the contributions, referred to in paragraph 2(b) above.'

• In relation to the Co-Chairs' draft conclusions, the words in paragraph 2 – 'including on the non-exhaustive list of areas for further reflection contained in the annex' – were deleted, as was paragraph 3. India said that the annex could be captured in the Co-Chairs' reflections note.

Kumarsingh then invited Parties to adopt the decision and the conclusions as amended, noting in the ADP outcome decision a placeholder proposed by the Philippines, a reference to the COP 19 decision on the work programme on long-term finance.

Parties agreed to the adoption of the decision and the conclusions, to wide applause and relief as the Co-Chairs were seen giving each other a 'high five'.

Following the adoption of the decision (see box), Bolivia read out an interpretative statement as follows: Bolivia 'interprets that paragraph 2, sub-paragraph (b), contained in document FCCC/ADP/2013/L4.Ad1 shall be applied in strict accordance under Article 4, in particular with paragraph 7 of the UNFCCC'. Cuba also endorsed the Bolivian interpretation as regards paragraph 2(b) of the decision and wanted that recorded in the report of the ADP.

(Article 4.7 of the Convention states: '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 and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.') ♦

Meena Raman is a senior researcher with the Third World Network.

Lively exchange among ministers on the Durban Platform

At a dialogue session aimed at delineating the contours of the proposed 2015 universal agreement on climate change, ministers and envoys from developing and developed countries expressed divergent views. *Hilary Chiew reports.*



Photo courtesy of IISD/Earth Negotiations Bulletin

The High-level Ministerial Dialogue on the Durban Platform for Enhanced Action held on 21 November (pic) was billed as an opportunity for ministers to provide political direction and increase the momentum of the Durban Platform process.

THE High-level Ministerial Dialogue on the Durban Platform for Enhanced Action saw ministers and special envoys for climate change from both developed and developing countries reiterating their respective positions in the negotiations at the Warsaw climate conference, showing a divergence of views over the agreement to be concluded in 2015.

Several developing countries' representatives stressed the importance of not rewriting the United Nations Framework Convention on Climate Change (UNFCCC), respecting the Convention's principles and provisions, particularly the principle of common but differentiated responsibilities (CBDR) and equity. They called upon developed-country Parties to fulfil their commitments under the Convention in terms of mitigation and the provision of financial resources in order to deliver a successful outcome in 2015.

The speakers from developed countries, on the other hand, stated strongly that 'the world had changed' since 1992 (the year the Convention was adopted) and that the two annexes

in the Convention representing divisions between developed and developing countries (Annex I and non-Annex I) were outdated and unacceptable.

A brutally honest discussion

The High-level Dialogue held on 21 November was co-facilitated by Ministers Vivian Balakrishnan (Singapore) and Tim Groser (New Zealand), who said that the session was meant to create an opportunity for ministers to provide political direction and increase the momentum of the process under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP).

Taking the cue from Balakrishnan to 'have a brutally honest discussion as needs be to crystallise the differences and provide strategic guidance with a sense of urgency', the speakers were frank about their expectations.

Three questions were projected on the screen to guide Parties' interventions. They were: What kind of change should a successful and mean-

ingful 2015 agreement catalyse in the world and what elements of this agreement will secure such a change?; How can the 2015 agreement be made to stand the test of time for all and remain durable while adaptable to changing circumstances?; and How can ambitious pre-2020 actions provide for a transitional phase towards the post-2020 world?

The dialogue was preceded by a keynote address by President Jakaya Kikwete of Tanzania. He hoped that Paris (the venue of COP 21 in 2015) would provide the agreement that had proved elusive since Copenhagen (COP 15 in 2009). He reminded Parties that they agreed to begin working for a new climate treaty no later than 2015 and developed countries agreed to support the developing countries, especially the poorest and most vulnerable, to adapt to climate change. He noted that the agreement had to be comprehensive and balanced in terms of mitigation and adaptation actions, the latter taking into account millions of communities who were innocent victims of climate change.



In his keynote address at the ministerial dialogue, Tanzanian President Jakaya Kikwete (pic) said African nations were innovating and contributing in their own ways in fighting climate change but leadership must come from the industrialised nations in terms of support.

He also called for addressing the inequality in the current climate regime where Africa was left out from various opportunities in the climate actions particularly those under the Kyoto Protocol (referring to the Clean Development Mechanism).

President Kikwete said African nations were innovating and contributing in their own ways in fighting climate change but leadership must come from the industrialised nations in terms of support. He outlined three areas where attention should be given: (1) dynamism of all governments to increase emission reductions over time in accordance with the principles of the Convention, with Africa needing support in finance, skills and technologies; (2) broad approach to climate finance where public finance must be scaled up and developed more effectively and in the long term, effective policies to involve the private sector; and (3) addressing the ambition gap in terms of finance, technology and capacity building, with the low level of ambition of developed-country Parties remaining a matter of

great concern.

Balakrishnan invited three 'ice-breakers' to kickstart the dialogue, starting with China.

Sincere cooperation

Xie Zhenhua, Vice Chairman of China's National Development and Reform Commission, said scientific facts had shown that climate change had become a tangible and severe threat to sustainable development, and all countries should work together to tackle it through sincere cooperation. He made the following points: respect the principles of equity, CBDR and respective capabilities; funding was key for success and building trust; the funds from developed countries for the period 2013 to 2015 should be no less than the fast-start finance; a clear roadmap for providing \$100 billion each year by 2020; capitalisation of the Green Climate Fund (GCF) with public funds as the major source as soon as possible; ratification of the amendment to the second commitment period of the Kyoto Protocol

(KP) as soon as possible; launch the review process to further raise mitigation ambition; non-KP developed-country Parties to undertake comparable emission reductions (under the UNFCCC); and start the formal negotiation under the Durban Platform on the pillars of mitigation, adaptation, funding and technology in a balanced fashion, in accordance with the decisions made in Durban and Doha as a positive signal to assure the international community of a 2015 agreement.

Xie also highlighted China's emission reduction policies and actions and South-South cooperation towards combating climate change.

The United States climate change special envoy Todd Stern stressed that ambition should begin at home, noting that the US carbon emissions had fallen for two decades while its economy grew. He shared the country's new regulation in the energy and transport sectors. On the issue of hydrofluorocarbons (HFCs), he said the global phasedown presented a huge opportunity and urged use of the Montreal Protocol (on Ozone Depleting Substances) to phase down the production and consumption of the gas but keeping the accounting within the UNFCCC.

[Several developing countries led by India argue that HFCs are greenhouse gases (and non-ozone depleting) and should thus be dealt with under the UNFCCC.]

Stern said the 2015 agreement needed to include meaningful participation of all Parties, and was encouraged by the significant convergence in negotiations in 2013. He further noted that the idea of nationally determined commitments ensured that Parties could put forward self-differentiated commitments and this was fully consistent with CBDR, adding that the US was ready to submit its commitment well ahead of Paris.

He said quite a few Parties had argued that self-differentiation was not enough to satisfy CBDR, which was based on the two categories of countries (set in 1992) that could never be changed no matter how out of date those categories were in the

‘new world’. This, he said, was a prescription for orthodoxy and not for solving the problem. Therefore, it just would not work. If those categories were to be operational, then they must evolve according to circumstances. Alternately, they could remain unchanged if they were not operational.

Venezuela’s climate change envoy and Vice Minister Claudia Salerno Caldera expressed four points that she felt Parties should be tackling. She said in Durban (COP 17 in 2011), they agreed to negotiate a rules-based regime under the Convention which should be an essential part of the 2015 agreement, which included the principles and provisions that were part of the Convention such as its rules, annexes and structure. They were not negotiating the rules of the ADP. In her view, the ADP discussion and decisions should not pre-judge or limit the 2015 outcome. She recalled that in Durban, Parties agreed on three forms – a protocol, another legal instrument or an agreed outcome with legal force. Therefore, discussions and decisions should respect the fact that the three options would remain on the table until 2015.

She said developing countries had strong concerns regarding the issues of finance and technology transfer being held hostage in Warsaw and this was a bad signal as the ADP was not merely a mitigation agreement. She described the current state of the ADP negotiations, where developed countries were calling for flexibilities, as a revised form of the Copenhagen Accord, where an individual country’s mitigation commitment had no obligation for compliance, with every individual country doing ‘what they can, when they can and as they can’.

Co-facilitator Balakrishnan then opened the floor for interventions.

The European Union’s Climate Commissioner Connie Hedegaard said she appreciated the frank ministerial exchange but expressed concerns over where the negotiation was heading. Citing the discussions on the draft text in the ADP negotiations, she said they could not afford any backtracking from the Durban decisions.

She said Parties agreed that they

must respect CBDR but it was also clear that reaching far into the 21st century, they needed a more dynamic way than when they started in 1992. To close the mitigation gap, one key area lay in the phasedown of HFCs. She said the EU was phasing down HFCs and would like others to send a similar strong signal. She also wanted those that had not submitted their mitigation pledges to do so and hoped that at the ministerial session in June 2014 in Bonn, all Parties, not just those that were obliged to do so under the second commitment period of the KP, would be prepared to raise their efforts. She urged Parties to leave Warsaw and go back and do their ‘homework’ in time for the Paris COP (in 2015).

Too exotic to be understood

On the concern over a bottom-up regime where some said there was a risk it would not go far enough, she said there was also a problem with a top-down approach as there were too few participants. She said there must be some kind of a hybrid approach that would ensure enough was done to stay below the 2°C warming limit. She argued that while developed-country Parties had to deliver more than others for very good reasons, it could not be ensured that the world would stay below 2°C warming unless all were committed to doing their utmost in the post-2020 regime.

In response to China’s assertion that mitigation and adaptation must be balanced, Hedegaard said that did not mean less could be done on mitigation because, according to the science, it was not possible to adapt to a world with more than 2°C temperature rise. She stressed that Parties should leave Warsaw saying loud and clear that ‘we will go home and do our homework’, adding that it was not a fantastic outcome but a minimum one.

Nauru, representing the Alliance of Small Island States (AOSIS), said the language of the COPs was too exotic to be understood. It stressed that the ADP workplan under workstream 2 (on the pre-2020 mitigation ambition) provided an effec-

tive way to reduce greenhouse gas emissions and help each other to do it. However, developing countries needed funding and capacity building for the efforts. It did not understand why countries with greater wealth were not providing the promised finance, adding that AOSIS needed a clear outcome from Warsaw and asked for a workplan to deliver finance and capacity building.

Japan said the post-2020 framework must be fair, effective and transparent for all countries to ensure that commitments were evaluated and performance was reviewed, adding that it was important to foster mutual understanding of Parties to enhance transparency of commitments.

Malaysia’s Natural Resources and Environment Minister G Palanivel said the 2015 agreement must be firmly rooted in the understanding that historical activities that increased the atmospheric concentration of carbon dioxide, facilitated the amassing of wealth in developed countries and reduced the atmospheric space needed for other countries to sustainably develop, must form the scientific, factual and moral basis. Such an agreement would also ensure that developed countries take the lead in undertaking enhanced mitigation commitments and would provide certainty on the provision of the means of implementation to developing countries to undertake action, resulting in the desired upward spiral of ambition by all countries. He called for a clear workplan for the pre-2020 period to scale up mitigation in developed countries while scaling up mitigation and adaptation in developing countries through the provision of finance and technology development and transfer, together with the requisite capacity building.

Peru, the host for the next COP in Lima, said to produce a draft agreement by May 2015, there was a need for substantial results from Warsaw and for Parties to draw up clear deadlines of their mitigation ambition between now and Lima. It was equally important for developed countries to announce additional financial inputs and carry out appropriate mitigation



At the ministerial dialogue, the Bolivian representative said that the principle of common but differentiated responsibilities implied that developed countries must undertake quantified emission reduction commitments of at least 40% compared to 1990 levels.

action.

Bolivia said a work programme for 2015 was vital to ensure a legal instrument under the Convention which is governed by its principles and provisions especially CBDR. It stressed that CBDR also implied that developed countries must undertake quantified emission reduction commitments of at least 40% reductions compared to 1990 levels; otherwise the mitigation gap could not be closed before 2020. There must be clear decisions on finance and technology transfer to be adopted in Warsaw such as a finance target of \$70 billion by 2016 and \$100 billion a year by 2020. There must not be attempts to dilute these efforts by taking money for other sources like bank loans, carbon markets and private investments. It stressed that the operationalisation of a loss and damage mechanism was vital, considering what happened to the Philippines, in reference to the devastation caused by Typhoon Haiyan.

The UK's Secretary of State for Energy Ed Davey acknowledged that while developed countries needed to lead, they could not do it alone. In response to China on differentiating the actions of developed and developing countries in the 2015 agreement, it would like to pose the issue differently: how can the agreement be de-

signed so that it is fair – where big economies do more? He said a molecule of carbon, regardless of whether it was emitted in the past, present or future, would be equally damaging today and in the future. He urged Parties to look at things practically and not to split the world (into developed and developing countries), recalling that in Durban, it had been decided that the agreement would be applicable to all.

Intergenerational equity

To this, India's Environment Minister Jayanthi Natarajan, who took the floor following the UK, said Parties must consider intergenerational equity.

She asked about developing countries that had to face the consequences of historical emissions. She said equity and historical responsibility emerged from a moral obligation and a scientific fact. An ambitious agreement could not be achieved in 2015 unless both science and history were recognised and built upon. She stressed that the ADP must be guided by the principle of CBDR and they were not assembled here to rewrite the Convention. She said they needed to build on the edifice since 1992 and not preside over its demise in Warsaw. On technology transfer, she said India was putting forth a new proposal

which would reward innovators by calling for a new window in the Green Climate Fund for funding technologies protected by intellectual property to developing countries by paying the difference in cost.

On the issue of HFCs, Natarajan said that some countries from the G20 major economies grouping had opposed efforts to bring the gas under the Montreal Protocol. The issue, she added, should not be seen from a business perspective of providing markets to domestic companies (in developed countries). Developing countries needed clarity on identified substitutes, their costs, safety and economic feasibility. She said the decision of the last COP to set up a mechanism for addressing loss and damage must be taken to its logical conclusion.

Nepal, speaking for the least developed countries (LDCs), said only a new legally binding protocol would truly stand the test of time as it would ensure all Parties play their roles, with developed countries taking the lead. It said the 2015 agreement must incentivise developing countries to transit to a low-emission and sustainable pathway. It expressed concern over proposals for a non-binding pledge and review system, adding that the new agreement should include a continuous commitment period for a maximum of five years.

France, the host of COP 21 in 2015, said the Warsaw outcome should launch a work programme for the 2015 agreement. The Parties could not tell themselves there were still two years to Paris but had to start the work now, France said, adding that it hoped that by early 2014, the text would be ready for Paris.

Brunei, Colombia, Ireland, Fiji, Switzerland, the Marshall Islands, the Russian Federation, Kenya, Trinidad and Tobago, Argentina, Egypt, Palau, Norway, Iran, the Netherlands, Indonesia, Slovenia, Portugal and South Africa also shared their views.

In conclusion, co-facilitator of the dialogue Tim Groser said he heard nothing in the interventions that was irreconcilable. There had been more agreements than disagreements and he urged Parties to make progress. ♦

Hilary Chiew is a senior researcher with the Third World Network.

Developing countries express mixed feelings over Warsaw outcomes

While developing countries welcomed the establishment of an international mechanism on loss and damage caused by climate change, they were disappointed with the failure to agree on a roadmap on long-term finance.

AT the closing of the Warsaw climate talks that ended in the evening of 23 November, one day later than scheduled, country groupings delivered statements reflecting their views on the outcome of the talks.

While developing countries in general welcomed the decision to establish an international mechanism on loss and damage, disappointment was expressed over the lack of clear targets and a roadmap on long-term finance.

Concerns were also raised by developing countries on the inability of Parties to advance decisions on the Technology Mechanism and rules related to the second commitment period (CP2) of the Kyoto Protocol.

Developed countries were opposed to the Technology Executive Committee (TEC) having observer status at the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO), and this issue will continue to be considered by the Subsidiary Bodies in 2014.

The European Union was pleased with movement forward with a decision under the Durban Platform that paves the way for the new agreement expected to be concluded in 2015 in Paris.

India, represented by its Minister of Environment Jayanthi Natarajan, said that she had come to participate in this COP with expectations that it would indeed be an 'implementing' COP.

However, her expectations seemed to be belied. 'This COP has become a "holding" COP where commitments from developed country

**Hilary Chiew and
Meena Raman**



Indian Environment Minister Jayanthi Natarajan (pic): 'This COP has become a "holding" COP where commitments from developed country Parties have been put on hold or, even worse, there has been backsliding.'

Parties have been put on hold or, even worse, there has been backsliding. This is a most unfortunate situation,' added the Minister.

Equity

Referring to negotiations under the Durban Platform, Natarajan said that 'many countries talk of fairness but equity is something more than fairness and we must accept equity in all its manifestations'.

A joint plenary of the UNFCCC's 19th session of the Conference of the Parties (COP 19) and the 9th session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 9) was convened by the COP/CMP President

Marcin Korolec (Poland) on 23 November in the evening.

Korolec, referring to the talks as a marathon run, expressed satisfaction at having reached the finish line with results which Parties could be proud of.

Fiji, speaking for the Group of 77 and China, delivered a short statement expressing the Group's satisfaction with the COP President's conduct of the meetings which delivered transparency and efficiency, and said Parties had worked hard during this time.

Nauru, representing the Alliance of Small Island States (AOSIS), said there were still fundamental divisions among Parties, and chief among them was over the issue of finance. It said threats from the super typhoons were real as had been tragically witnessed and this was an area for more resources. However, it had reason to be optimistic that human solidarity would prevail in incidents of disasters, and was pleased that after 20 years (after the UNFCCC came into being), the international mechanism for loss and damage became a reality.

Nepal, speaking for the least developed countries (LDCs), expressed disappointment with the outcomes related to long-term finance where, without a mid-term target and a clear pathway, they were unable to understand how the target of \$100 billion annually by 2020 would be reached. It urged developed-country Parties to take all necessary steps for the initial capitalisation of the Green Climate Fund (GCF) as soon as possible.

It was pleased with the recent pledges to the LDC Fund by the United Kingdom and others who had

contributed to the fund in 2013. However, it called for further funds to expedite implementation of the National Adaptation Programmes of Action (NAPAs) and formulation of National Adaptation Plans (NAPs). It also thanked those countries which had enabled the Adaptation Fund to reach its target of \$100 million in Warsaw.

It recalled that at the opening of the COP, the LDC Group stated that it saw COP 19 as a stepping stone for urgently needed actions for finance and for loss and damage as well as paving the way to Paris where the world expects to arrive at a new agreement.

On the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) outcome, it said, 'We found ourselves again in a situation where we were forced to accept decisions that are not in favour of our countries. However, we accepted the decisions in the spirit of compromise. The Group believes that it is now urgent to accelerate the process of negotiations for the new agreement, starting from March 2014. The urgency of the issue and inadequacy of the current regime to address the climate change problem must guide all negotiations and we need to ensure that we build on progress achieved so far.'

It further said, 'We were disappointed and frustrated about the lack of convergence on important Lima [venue of COP 20 in 2014] deliverables at this session. In the context of adopted decisions this afternoon [23 November], in 2014 we need to see progress on the process regarding how to agree on commitments for the new agreement. We urge Parties to put forward their commitments well before the 20th session of the COP – not only those Parties who are ready to do so, but those Parties who are in a position to do so.'

It appreciated the hard work and flexibility of all Parties that resulted in the establishment of an international mechanism on loss and damage, which was crucial for the LDCs. It hoped that the international mechanism would have adequate support and would soon be able to start work-

ing to address loss and damage associated with impacts of climate change in developing countries that were particularly vulnerable to the adverse effects of climate change.

While appreciating the efforts made so far to operationalise the Technology Mechanism, it expressed its disappointment and dissatisfaction at the way issues linked with WIPO and the WTO that affect access to appropriate and environmentally-sound technology were addressed.

Swaziland, representing the African Group, said it was disappointed by signs that some Annex I Parties intended to renege on their agreement to ratify the CP2. It was important that all Parties ratify the CP2 and Swaziland called on those Annex I Parties that were contemplating reneging on the agreement reached in Doha to humbly desist from such thoughts and instead to immediately start ratification processes.

Disappointment

It further expressed disappointment at the outcome on matters related to the implementation of Articles 5, 7 and 8 of the Kyoto Protocol. It said Parties were close to an agreement but one Party changed its mind in the last hour and proposed a new text. It said this could not be a way of conducting business. It urged Annex I Parties to engage in good faith and keep to the agreements. It warned that the decision by one Annex I Party had an effect of delaying the ratification process by one year.

It expressed concern that some Parties wanted to include the Clean Development Mechanism (CDM) in the new market mechanism rather than making efforts to improve the CDM in a manner that would lead to projects and programme activities in those areas that up to now had not benefited from the CDM.

Scientific findings, it added, continued to point to the need to do more and therefore it urged Annex I Parties to raise their levels of commitment during the 2014 review such that they aligned with the latest scientific findings. Under no circumstances did it

expect developed-country emissions to grow.

India, represented by Minister Natarajan, said that she had come to participate in this COP with the expectation that it would indeed be an 'implementing' COP. Her expectation had been for the adoption of ambitious targets in a range of areas. However, her expectations seemed to be belied. This COP had become a 'holding' COP where commitments from developed-country Parties had been put on hold or, even worse, there had been backsliding. This was a most unfortunate situation. The expectation of quick ratification of the second commitment period of the Kyoto Protocol had been belied. The ratcheting up of ambition of Annex I Parties had not been in evidence; in fact, some countries had even reneged on their pledges. How, she asked, can we work in such an atmosphere of curtailing of ambition?

The Minister was, however, glad that a mechanism for loss and damage had been set up, and it would address one of the key concerns of the developing countries. Also, the ADP had moved forward towards the 2015 agreement. India looked forward to working together with all Parties in the ambitious task of creating a new arrangement for climate change – a protocol or an agreement or an agreed outcome with legal force, based on the above principles.

The Indian Minister said that the shared common goal was to tackle the challenge of climate change. Trust and confidence in each other would enable a better response from all. That was the spirit needed in engagement at the COP and UNFCCC. The principles and provisions of the Convention, especially equity and common but differentiated responsibilities (CBDR), must be adhered to in order to deliver meaningful results and also ensure pathways for sustainable development and poverty eradication.

The outcomes under the UNFCCC had to be based on equity, particularly inter-generational equity. Many countries talked of fairness but equity was something more than fairness and must be accepted in all its

manifestations, said the Minister. Needless to say, the new generation would look up to them with admiration if they handed over a healthy living environment to them. India wished that this process would yield a balanced outcome on adaptation, mitigation, finance, technology transfer, capacity building and transparency.

The European Union said the Warsaw conference contributed to the legal agreement in Paris (venue of COP 21 in 2015) in that Parties agreed to share each other's commitments (the final text under the ADP outcome was changed to 'contributions') in a clear, transparent and understandable manner as early as 2015, adding that Parties would still have to agree on the legal form of the agreement. The EU said it had consistently been a major contributor of climate finance where it provided 5 billion euros to developing countries in 2013 and had announced an indicative climate finance plan for 2014. It however noted its disappointment that the issues related to Articles 5, 7 and 8 of the Kyoto Protocol (on the rules) could not be resolved although the CP2 of the Protocol had been tabled for ratification in the member states' respective legislatures.

Australia, for the Umbrella Group, thanked the COP President for conducting a Party-driven process that led to agreement among all Parties building on from the Durban and Doha meetings.

Speaking for itself, Australia referred to the decisions adopted on long-term finance and the GCF and said that its participation in the decisions did not indicate acceptance of developed countries having to maintain and increase public climate finance as well as ambitious and timely contributions to enable the operationalisation of the GCF, including its initial resource mobilisation.

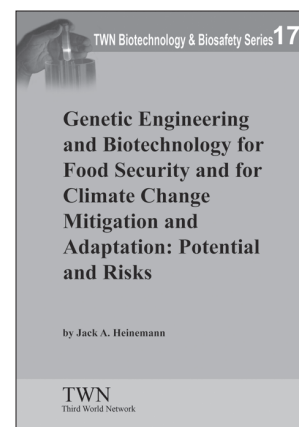
Canada, in relation to the decision on the COP guidance to the GCF, clarified its understanding that developed countries may also provide finance through other channels. ♦

Genetic Engineering and Biotechnology for Food Security and for Climate Change Mitigation and Adaptation: Potential and Risks

By Jack A Heinemann

World hunger is a multifaceted problem that cannot be solved by technological changes alone. Meanwhile industrial agriculture is unsustainable, and technological adjustments based on genetic engineering have not been able to achieve the relevant Millennium Development Goals; instead, they have introduced products that restrict farmer-based innovation, *in situ* conservation and access to the best locally adapted germplasm.

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Waiting for a global response to climate change

Ministers of the African, Caribbean and Pacific (ACP) states have expressed their frustration at the lack of a concerted response to the effects of climate change on their island nations. *Peter Richards reports.*

AS president of the Council of Ministers of the African, Caribbean and Pacific (ACP) states, Samoa's Prime Minister Tuilaepa Lupesoliai Sailele Malielegaoi had the perfect forum to voice his concerns about the effects climate change has had on his island nation.

Malielegaoi, who chaired a two-day ministerial conference in Brussels which ended on 11 December, said that climate change was responsible for the frequency of natural disasters that have befallen Samoa in recent years.

'This is the view shared by most, although sadly we are still waiting for a concerted global response that would at least halt climate change,' he told delegates. Samoa will host the United Nations Conference on Small Island Developing States (SIDS) in 2014.

He said that the extreme danger climate change, ocean acidification and environmental degradation posed to the world could not be overstated, adding that 'the consequences of this to our island states and all our ACP membership would be devastating' as some observers think 'the very existence of low-lying island countries could be in jeopardy'.

Malielegaoi said that assistance from partners such as the European Union (EU) was urgently needed by all ACP countries to support efforts to develop climate resilience through mitigation and adaptation measures 'if the sustainability of our development efforts and long-term prospects are to have any meaning'.

Jamaica's ambassador to the ACP, Vilma Kathleen McNish, told Inter Press Service (IPS) that the Caribbean has had to deal with the impact of climate change and it was 'ob-

viously a huge challenge'.

'For some of us ... it is existential. We rely so much on our coastline in terms of tourism, which is one of our major economic livelihoods,' she said.

She said that the impact of climate change was evident in the Caribbean with sea levels rising and the resultant depletion of fish stocks. There were also increased occurrences of hurricanes. She said that this disrupted the economy of the Caribbean and the livelihoods of its people.

'So for us, climate change at the individual and regional level is a major challenge.'

She said that the SIDS summit in Samoa would be critical for the Caribbean and other developing countries because it would look not only at climate change but at various issues that affect small island developing states leading up to the post-2015 development agenda.

'Most countries in the region [Caribbean] are now putting in place policies geared towards adaptation and mitigation. We still believe, however, that the international community has a responsibility to support our countries in our development,' McNish said.

South Africa's ambassador Mxolisi Nkosi told IPS that the ACP's engagement with the EU on this and other matters should be based on the principle of equality, non-conditionality, non-interference and mutual benefit.

'We should call on the international community to commit to limiting a global temperature rise to below two degrees Celsius in a legal instrument, and agree to a common global goal on adaptation as a way to

recognise that, despite its local and context-specific needs, adaptation is a global responsibility,' Nkosi said.

Malielegaoi said that Samoa, like other SIDS, remained highly vulnerable to the impacts of climate change and environmental degradation.

In the 1990s the Pacific Island nation suffered two devastating cyclones that wiped off industries and businesses that contributed 50% of GDP. Malielegaoi said this devastation reversed 'economic progress by more than a decade'.

In September 2009, the island was struck by a deadly tsunami that killed more than 140 people and left thousands homeless. In December 2012, another cyclone struck, killing people and wreaking havoc on the infrastructure and the economy.

'For a small island country with a small population, the losses and setbacks from these natural disasters are hardly bearable,' Malielegaoi told IPS.

He said while he was grateful to the EU and other developmental partners for coming to the aid of the island, 'Samoa's experience is repeated in all our Pacific Island countries and, I am sure, right across the ACP membership'.

In November, ACP countries agreed on a common position paper during UN climate talks held in Warsaw, Poland.

The 79-member grouping said adaptation to climate change and mobilising funding from a variety of sources were immediate and urgent priorities for ACP member states that should be addressed in a comprehensive manner at the global level with the same level of priority as mitigation. — IPS

The Asia-Pacific in the eye of superstorms

The world recently witnessed with horror the devastation superstorm Haiyan wreaked on the Philippines. But as *Tarique Niazi* reminds us, the Philippines is not the only Asian nation which has become ground zero for climate change.



The cumulative losses wrought by Typhoon Haiyan (pic) have no parallel in Philippine history.

SUPERSTORM Haiyan made a devastating landfall in the east-central Philippines on 8 November, leaving behind a trail of death and destruction that has draped the whole country in a pall of grief. The Philippines has since been reeling from this disaster.

The typhoon buffeted the most vulnerable of Filipinos, 40% of whom live below the poverty line (i.e., \$1.25 a day). Many of them fished for a living. Their means of livelihood compelled them to live dangerously close to the shoreline of the western Pacific. The highest ground on which some of them found their perch was just 1 metre above sea level. When the storm swelled, with waves as high as 6 metres, its poor victims were defenceless. The crashing walls of water swept away all that they possessed.

The cumulative losses in lives and livelihoods, homes and hearths, businesses and infrastructure have no parallel in Philippine history, just as

Haiyan has no precedent in the annals of meteorology. As of now, 13 million Filipinos, of whom 5 million are children, have been scarred by the destructive fury of Haiyan, while 600,000 have been rendered homeless. The number of deaths may climb past 10,000.

The staggering scale of humanitarian crisis that followed Haiyan's landfall was well beyond the capacity to respond of the underresourced and overstretched Philippine government. Oxfam found it overwhelming even for the global humanitarian assistance system. The largest brunt of recovery efforts, however, fell on the Philippines itself, which Haiyan had already bled of precious resources. As of 16 November, its economic losses alone were valued at a whopping \$15 billion, or 5% of the Philippines's Gross Domestic Product (GDP) of around \$300 billion. In the face of a slowdown in global and regional economies, it will take the country

many years of hard work before it recovers its bearing.

Future forecasts are even more sobering for average Filipinos and their leaders. As a nation of 7,100 islands, the Philippines sits on the frontline of global climate change. This tragically means that Typhoon Haiyan is not the last of nature's bites that Filipinos will have to endure. As climate change begins to impose dire costs, more such disasters loom ever larger on the horizon. The Philippines has already borne the brunt of worsening climate change in economic losses of \$1.6 billion a year from increasingly frequent and intense typhoons.

Ground zero of climate change

The Philippines is among the Asian nations that seem to have become ground zero for climate change. Many coastal and island nations in Asia are already among its fellow sufferers. In the Bay of Bengal, Bangladesh has become the most exposed country to worsening climatic events. Year after year, it is battered by cyclones of ever higher intensity and ever greater frequency. In a single event of extreme weather, hundreds, and sometimes thousands, lose their lives. Economic and social dislocation is visited upon millions, leaving them stranded for months and even years. If global mean warming exceeds 1.5 degrees Celsius, the largest chunk of coastal Bangladesh will begin to teem with 'climate refugees'. By Bangladesh's own reckoning, 20 million of its citizens may face climate migration over the next 40 years, for whom it proposes their 'managed migration' to Western countries. Rajendra



The low-lying island nation of the Maldives (pic) will vanish from the face of the earth in the next 50 years as the global average temperature continues to rise.

Pachauri, Chairman of the Intergovernmental Panel on Climate Change (IPCC), lends his voice to Dhaka's call. He asks Western governments to give 'managed migration' serious consideration.

Even worse, the island nation of the Maldives, which is barely 1.5 metres above sea level, will vanish from the face of the earth in the next 50 years as the global average temperature continues to rise. A nation of 1,200 islands, the Maldives has already seen 30 of its islands swept away in the tsunami in 2004.

Five years after, in 2009, Maldives President Mohamed Nasheed struck the world with a blunt call for ending fossil fuel consumption to save his country of 328,000 people: 'If the world can't save the Maldives today, it might be too late to save London, New York or Hong Kong tomorrow.' He pledged to make his nation carbon-neutral, running it on 100% renewable energy. Anticipating challenges that could forestall the passage to a carbon-free Maldives, he reasoned: 'Going green might cost a lot but refusing to act now will cost us the Earth.'

Nasheed was deposed in a coup in 2012. He again lost a presidential bid in November 2013 as beneficiaries of the status quo managed to keep him out of power. Nobody knows 'who' won the Maldives election, but everybody knows who lost it and why. Nasheed nonetheless retains his role as a climate crusader whom many revere. The Hollywood director Jon Shenk honoured his work for climate

justice in a memorable documentary, *The Island President*.

Like the Maldives, Sri Lanka also is precariously perched in the heart of the Indian Ocean, which makes it no less vulnerable. Known for its stunning scenic beauty, this island nation has long

been convulsed in a self-destructive war. It has just staunched its bleeding, but it still has a long way to go to bind up the deep wounds. At the same time, Sri Lanka has many bright spots. It leads South Asia in economic development (measured in per capita income), social progress (measured in adult literacy), gender equity and climate-readiness. It is a Kerala – the beauty spot of South Asian social democracy – on the national scale! Yet climate-induced disruptions stare at it as the greatest threat to its survival over the next half-century. 'Its agriculture, fisheries, and tourism are particularly vulnerable to rising sea levels and weather-related disasters,' reports the *Guardian*.

Likewise, the coastal communities of India and Pakistan – in that order – run the same risk of being deluged as sea levels rise. In 2010, Pakistan experienced a different kind of climatic event – a once-in-100-years flood that forced 20 million of its residents from their homes and cost the country \$20 billion (one-tenth of Pakistan's GDP of \$200 billion in 2010) in economic losses.

Climate change stalks the African continent

The fragility of the African continent is even more sobering. Drought, desertification, livestock fatalities, infectious diseases, food shortages and water scarcities already stalk the length and breadth of the region. Climate change is sharpening the lethality of these murderous chal-

lenges, and exacerbating the conditions of environmental decline in general. The giant nations of Africa, such as the Democratic Republic of Congo, Libya, Nigeria, Somalia and Sudan, are already in the throes of ecological depletion. Their political conflicts are deeply anchored in their fragile ecologies.

However, African sufferings may go unnoticed, as they are less likely to suffer visually spectacular disasters on the scale of Hurricane Katrina, Superstorm Sandy or Typhoon Haiyan. Climate-induced disasters may yet trigger epidemics, large-scale human fatalities or mass migration that would thrust the continent onto the world's retina. It will likely occur because of sudden overheating of the continent. It must be remembered that Africa is already the warmest continent on the planet. Libya is the continent's thermal powerhouse, whose citizens are known to have endured the world's peak temperature. Just as a water temperature rise of a few degrees in the Atlantic or the Pacific can spell disaster, so can a few degrees' increase in atmospheric temperature. For all these reasons, Africa is as much in the eye of superstorms as are Asian nations. Africa stands threatened by the warming of the atmosphere that can set off a trajectory of destructive events. It is particularly fraught with climatic threats of epidemics, human fatalities or mass migration, compounded by political conflicts that sear the entire continent.

The science of typhoons

A section of meteorologists are still dismissive of causal links between climate change and the production of cyclones, typhoons, hurricanes or superstorms like Haiyan. Such dismissals, however, only feed into climate scepticism. The science of typhoons and climate change is quite clear. When the IPCC released its fifth assessment report on 27 September, it confirmed warming of the atmosphere and overheating of the oceans – the latter is responsible for the production of cyclones. When sea surface temperature hits 26 degrees Celsius,



Drought is one of the climate-induced disasters that may trigger epidemics, large-scale human fatalities or mass migration in Africa.

a cyclone is formed. When oceans are a few degrees warmer than normal, superstorms begin to brew. Superstorm Sandy burst out of the Atlantic coastal water that was about 3 degrees Celsius warmer than normal. Similarly, the surface temperature of the western Pacific was 1-5 degrees Celsius warmer in 2013 than its average range in 1980-2000. Warmer oceans evaporate faster to power the storm, and warmer atmosphere holds more moisture to cause rainstorms.

The atmospheric scientist Kerry Emanuel at the Massachusetts Institute of Technology (MIT), who also serves on the IPCC, sees clear connections between the warming of the oceans and the production of high-velocity winds and storm surges as witnessed in Haiyan. He went so far as to suggest that developing nations such as the Philippines are suffering for the sins of developed countries that followed the path of carbon-heavy development. He stopped short, however, of suggesting compensation for climate mitigation to developing nations.

Financing climate adaptation

But financing of climate adaptation has been an important part of United Nations climate change talks since the Copenhagen conference in 2009. Haiyan's landfall only added to the urgency of this need, the typhoon happening to time its landing with climate talks in Warsaw, Poland, in No-

vember. These talks are held each year in the run-up to crafting a climate treaty in 2015. One important outcome of the Copenhagen conference was the financial commitments by developed nations to help less affluent nations in adapting to climate-induced disruptions. Initially, developed countries committed \$30 billion for 2010-12, and pledged to increase this commitment to \$100 billion a year by 2020. Oxfam, however, deflated such hopes in an analysis which showed that developed nations had begun to wriggle out of even a modest commitment of \$30 billion spread over multiple years. It further dampened any prospect for redeeming the grand pledge of \$100 billion a year in climate finance by 2020.

Disaster capitalism

These public commitments are likely to be relegated to transnational financial capital. Some saw the first sign of it in choosing Poland, which stands out for its pro-business, climate-sceptic, coal-fired development trajectory, as the site of the 2013 UN climate talks. No wonder that, at the talks in Warsaw, discussions were focused on 'mobilising private finance such as loans and equity investments'.

Private finance hotly pursues profits even in the midst of people's sufferings. It is no coincidence that risk management companies that specialise in 'catastrophe modelling' are proliferating. The chief research officer of one such company gloomily

noted meagre financial prospects in rebuilding the Philippines: 'The economic activity of reconstruction itself is much lower [in the Philippines] than it would be in a rich country where everybody's using insurance and claims assessors and getting quotes from builders. A lot of people [in the Philippines] will end up mending their own houses.' Naomi Klein famously described this profit-driven approach to human tragedies as 'disaster capitalism'.

'End this madness!'

The IPCC in its fifth assessment report concluded with 95% certainty that humans are at the root of climate change. This conclusion seems an official inauguration of Anthropocene, the age of human extravagance, in which humans have evolved (or, more appropriately, devolved) into a geological force on the scale of volcanoes, earthquakes and tsunamis in altering the atmosphere, hydrosphere and biosphere. In the process, this hubris has hung a huge question mark over the very survival of the human race on this planet.

Yet all humans are not equally destructive; nor are they equally vulnerable. Many, as in the Philippines, are victims of the actions of the few who are driving climate change and planning to profit from it at the same time. Sitting atop among the latter are the fossil fuel industry and its beneficiaries, who are accumulating \$1.9 trillion a year in subsidies in addition to immense profits. Climate change is the sin of their profiteering, for which the global poor are atoning with their lives.

As the Philippine delegate to the Warsaw climate talks tearfully pleaded, this madness must end. It doesn't make sense to sacrifice the primary Earth economy for the illusory secondary human economy that is measured in the piles of worthless paper money built by 'quantitative easing' (printing money). ♦

Tarique Niazi, Ph.D., is an Associate Professor of Environmental Sociology at the University of Wisconsin-Eau Claire in the US. This article is reproduced from The Asia-Pacific Journal (Vol. 11, Issue 48, No. 5, 2 December 2013, japanfocus.org).

Ocean study: 'Mass extinction event may already be underway'

The *State of the Ocean Report 2013* warns of 'extremely serious consequences for ocean life' (including 'the extinction of some species and decline of biodiversity') if the release of carbon dioxide does not fall. *Simon Butler* highlights the stark findings of this major scientific study.

MAINSTREAM media outlets gave substantial coverage to the UN's new report on the climate change crisis in late September, which said the Earth's climate is warming faster than at any point in the past 65 million years and that human activity is the cause.

Disappointingly, though not unsurprisingly, the news reports dried up after only a few days.

But another major scientific study, released a week later and including even graver warnings of a global environmental catastrophe, was mostly ignored.

The marine scientists who released the *State of the Ocean 2013* report on 3 October gave the starkest possible warning about the impact of carbon pollution on the oceans. They said: 'We are entering an unknown territory of marine ecosystem change, and exposing organisms to intolerable evolutionary pressure. The next mass extinction event may have already begun.'

'Developed, industrialised human society is living above the carrying capacity of the Earth, and the implications for the ocean, and thus for all humans, are huge.'

Report co-author Professor Alex Rogers of Somerville College, Oxford, said on 3 October: 'The health of the ocean is spiralling downwards far more rapidly than we had thought. We are seeing greater change, happening faster, and the effects are more imminent than previously anticipated.'

'The situation should be of the gravest concern to everyone since everyone will be affected by changes in the ability of the ocean to support life on Earth.'

The ocean is by far the Earth's largest carbon sink and has absorbed



The combined effects of acidification and ocean warming will lead to the 'terminal and rapid decline' by 2050 of the world's coral reefs, such as the Great Barrier Reef in Australia (pic).

most of the excess carbon pollution put into the atmosphere from burning fossil fuels. The *State of the Ocean 2013* report warned that this is making decisive changes to the ocean itself, causing a 'deadly trio of impacts' – acidification, ocean warming and deoxygenation (a fall in ocean oxygen levels).

Five mass extinction events

The report said: 'Most, if not all, of the Earth's five past mass extinction events have involved at least one of these three main symptoms of global carbon perturbations [or disruptions], all of which are present in the ocean today.'

Fossil records indicate five mass extinction events have taken place in the Earth's history. The biggest of these – the end Permian mass extinction – wiped out as much as 95% of marine life about 250 million years

ago. Another, far better known mass extinction event wiped out the dinosaurs about 66 million years ago and is thought to have been caused by a huge meteor strike.

Another big species extinction took place 55 million years ago. Known as the Paleocene/Eocene thermal maximum (PETM), it was a period of rapid global warming associated with a huge release of greenhouse gases. 'Today's rate of carbon release,' said the *State of the Ocean 2013* report, 'is at least 10 times faster than that which preceded the [PETM].'

Ocean acidification is a sign that the increase in carbon dioxide is surpassing the ocean's capacity to absorb it. The more acidic the ocean becomes, the bigger threat it poses to marine life – especially sea creatures that form their skeletons or shells from calcium carbonate, such as crustaceans, molluscs, corals and plankton.

The report predicts ‘extremely serious consequences for ocean life’ if the release of carbon dioxide does not fall, including ‘the extinction of some species and decline in biodiversity overall’.

Acidification is taking place fastest at higher latitudes, but overall the report says ‘geological records indicate that the current acidification is unparalleled in at least the last 300 million years’.

Ocean warming is the second part of the ‘deadly trio’. Average ocean temperatures have risen by 0.6°C in the past 100 years. As the ocean gets warmer still, it will help trigger critical climate tipping points that will warm the entire planet even faster, hurtling it far beyond the climate in which today’s life has evolved.

Ocean warming will accelerate the death spiral of polar sea ice and risks the ‘increased venting of the greenhouse gas methane from the Arctic seabed’, the report says.

Ongoing ocean warming will also wreak havoc on marine life. The report projects the ‘loss of 60% of present biodiversity of exploited marine life and invertebrates, including numerous local extinctions’.

Each decade, fish are expected to migrate between 30 kilometres and 130 kilometres towards the poles, and live 3.5 metres deeper underwater, leading to a 40% fall in fish catch potential in tropical regions.

The report says: ‘All these changes will have massive economic and food security consequences, not least for the fishing industry and those who depend on it.’



Ongoing ocean warming is predicted to wreak havoc on marine life, leading to a 40% fall in fish catch potential in tropical regions.

The combined effects of acidification and ocean warming will also seal the fate of the world’s coral reefs, leading to their ‘terminal and rapid decline’ by 2050. Australia’s Great Barrier Reef and Caribbean Sea reefs are likely to ‘shift from coral domination to algal domination’.

‘Dead zones’

The report says the global target to limit the average temperature rise to 2°C, which was adopted at the Copenhagen UN climate conference in 2009, ‘is not sufficient for coral reefs to survive. Lower targets should be urgently pursued.’

Deoxygenation – the third prong of the ‘deadly trio’ – is related to ocean warming and to high levels of nutrient run-off into the ocean from sewerage and agriculture. The report

says overall ocean oxygen levels, which have declined consistently for the past five decades, could fall by between 1% and 7% by 2100. But this figure does not indicate the big rise in the number of low-oxygen ‘dead zones’, which has doubled every decade since the 1960s.

Whereas acidification mostly impacts upon smaller marine life, deoxygenation hits larger animals, such as marlin and tuna, hardest.

The *State of the Ocean 2013* report cautions that the combined impact of this ‘deadly trio’ will ‘have cascading consequences for marine biology, including altered food webs dynamics and the expansion of pathogens [causing disease]’. It also warns that it adds to other big problems affecting the ocean, such as chemical pollution and overfishing (up to 70% of the world’s fish stock is overfished).

‘We may already have entered into an extinction period and not yet realised it,’ the report said.

‘What is certain is that the current carbon perturbations will have huge implications for humans, and may well be the most important challenge faced since the hominids evolved. The urgent need to reduce the pressure of all ocean stressors, especially CO₂ emissions, is well signposted.’ ♦



A fall in ocean oxygen levels will hit larger animals such as marlin (pic) hardest.

This article is reproduced from Green Left Weekly (No. 985, October 23, 2013, greenleft.org.au).

IEA slowly recognises the decline in coal's fortunes

A new report by the International Energy Agency indicates that there are signs that global coal consumption may reach its peak within the next two decades. *Lauri Myllyvirta* argues that while this trend by itself may not be sufficient to avert the worst of climate change, it holds out hope that if it is accompanied by determined action to bring down emissions further, key targets which seemed unrealisable a year or two ago may yet be realised.

SOMETHING very dramatic happened in 2012. After a decade of 5% annual growth, global coal consumption posted a modest 1% increase in 2012, in what seems the first sign of a more permanent downturn. Coal power generation flatlined in China and consumption in the US dropped by an astonishing 11%. The new developments give fresh hope of turning around the global carbon emission trends, which have been dominated by coal use growth.

The financial industry has been issuing one report after another, predicting a decline in coal's fortunes globally and in particular in China. While the International Energy Agency (IEA) is traditionally slow to change its forecasts, the agency's new global energy outlook still offers some fascinating insight into what's going on.

The IEA highlights that coal use in China, the US, the European Union and elsewhere is increasingly determined by policies to tackle air pollution, increase renewable energy and reduce carbon emissions. In the agency's central forecast, assuming a cautious implementation of announced energy and environmental policies, industrialised countries' coal use drops by one-third in the next 20 years. So much for the talk about coal bouncing back in Europe and Japan. Even globally, announced policies are projected to slow coal consumption growth down to less than a fifth of



A coal-fired power plant in the US. Industrialised countries' coal use is projected by the International Energy Agency to drop by a third in the next 20 years.

recent levels, 0.7% per year.

While the low 'business as usual' forecasts are a cold shower for the coal industry in their own right, much more will be needed to avoid the worst effects of climate change: global coal consumption will be cut by one third by 2035 in the IEA projection that is in line with climate targets, seeing 'King Coal's' kingdom shrink to a modest 17% of the global energy mix. And that is assuming carbon capture and storage becomes widely adopted in power generation – in the most likely case that the technology remains uncompetitive against renewable energies, the drop in coal use will be even greater.

The report highlights the impacts of China's air pollution policies on coal consumption and recognises that 'some industry analysts' are projecting peak coal in China before the end of the decade.

Coal power generation growth is projected to slow down to less than 2% per year, from double-digit

growth rates in the past decade. In the US, '[r]enewables and gas are expected to gradually displace coal for electricity generation as environmental restrictions on coal burning become more stringent'.

Bad news for the coal industry is good news for the planet. And for the coal industry, it does not get much worse. The IEA projects that China's net imports of coal will peak by 2020, and highlights increasing operating

costs in key coal producers, worsening quality of coal seams in Indonesia, as well as increased opposition to coal export infrastructure in the US.

We are definitely not on track to avoiding the worst of climate change. Indeed, the IEA says that announced policies still leave the world on track to 3.6°C warming with devastating consequences. Industrialised-country emissions are not going down fast enough, while massive coal investments are still being planned in other developing Asian economies besides China. However, while the gap between emission targets and coal consumption growth seemed impossible to bridge just a year or two ago, now it seems that determined action from key countries, along with the increasing competitiveness of renewable energy options, could realistically see global emissions peaking well before the end of the decade. ♦

Lauri Myllyvirta is an energy campaigner with Greenpeace International. This article is reproduced from the Greenpeace UK website (www.greenpeace.org.uk).

Nuclear vs climate

Peter Roche takes issue with the recent call by climate scientist James Hansen that environmental organisations should stop opposing nuclear power.

NUCLEAR power is back in the climate headlines after US climate scientist James Hansen was joined by three others in posting a public letter in which they jointly urge environmental organisations to stop opposing nuclear power. In the letter they say that more nuclear energy is urgently needed and essential in the fight against global warming — because, in their opinion, wind and solar ‘cannot scale up fast enough to deliver cheap and reliable power at the scale the global economy requires’.

Mark Jacobson, a professor at Stanford University in the Department of Civil and Environmental Engineering, finds that perspective to be ‘without foundation or factual support’. Research by Jacobson paints a completely opposite picture and says that wind, water and solar can replace fossil fuels quickly, without nuclear. He said that nuclear power actually takes ‘10-19 years to plan, permit, and install, compared with 2-5 years for a solar or wind farm’. Regarding next-generation nuclear power, Jacobson said that it ‘does not even exist, except in theory and in the lab, and there is no guarantee it will ever exist at the commercial scale’.

Dr Daniel Kammen, co-director of the Berkeley Institute of the Environment at the University of California, says: ‘Nuclear power is certainly low-carbon in the use phase, but the problems with the nuclear fuel cycle, as managed today, are of: cost and extreme accidents. Today, nuclear power plants can cost as much as \$10 billion for a 1,500 MW plant and take a decade to construct ... The climate crisis demands significant low-carbon deployment today, and it is not clear if nuclear can meet that immediate challenge.’

The US-based Natural Resources Defence Council (NRDC), said ‘The authors of this letter (and other nuclear energy proponents) are on the



A nuclear power station. The global history of the nuclear industry is littered with costly failures.

wrong track when they look to nuclear power as a silver bullet solution for global warming. To the contrary, given its massive capital costs, technical complexity, and international security concerns, nuclear power is clearly not a practical alternative. Instead, energy efficiency will always be the quickest, cheapest solution to our energy and climate challenges, and clean renewable energy is growing today by leaps and bounds. Inexplicably, Dr. Hansen and his colleagues ignore energy efficiency altogether.’

Costly failures

NRDC says the treatment of renewables is inaccurately dismissive. Wind farms and solar arrays can be installed much faster and typically at lower cost than new nuclear plants, and the consequences of any single unit’s failure are trivial by comparison. Hansen et al.’s contention that these resources cannot ‘scale’ rapidly enough to make a difference is belied by the recent record — windpower alone added nine times more genera-

tion than nuclear plants to the US grid from 2000-12. The National Renewable Energy Laboratory has concluded that ‘renewable electricity generation from technologies that are commercially available today, in combination with a more flexible electric system, is more than adequate to supply 80% of total US electricity generation in 2050 while meeting electricity demand on an hourly basis in every region of the country’.

The co-authors of the Hansen letter hold out the promise of ‘safer nuclear energy systems’ that will somehow turn things around. But the global history of the nuclear industry is littered with costly failures to create advanced reactor designs that could ‘reduce proliferation risks and solve the waste disposal problem by burning current waste and using fuel more efficiently’.

The Sierra Club said: ‘If Fukushima, Chernobyl and Three Mile Island have taught us anything, it’s that nuclear plants are too expensive, too slow to build, and too risky. That’s why countries like Germany — one of the largest economies in the



A worker at the stricken Fukushima Daiichi nuclear power plant being given radiation screening. 'If Fukushima, Chernobyl and Three Mile Island have taught us anything, it's that nuclear plants are too expensive, too slow to build, and too risky.'

world – are going all in on renewable energy sources and decommissioning dangerous nuclear plants.'

Joseph Romm, the lead climate blogger with the liberal Center for American Progress, focuses on the cost of nuclear plants in his own rebuttal to the scientists' letter: 'I think their letter is mis-addressed and also misses the key point about nuclear power – because it is so expensive, especially when done safely, the industry has no chance of revival absent a serious price on carbon.' He

writes that it's not the green movement that has prevented construction of new nuclear plants in the US in recent decades. 'As a practical matter, environmental groups have had little impact on the collapse of nuclear power in America. The countries where nuclear has dead-ended are market-based economies where the nuclear industry has simply been unable to deliver a competitive product,' he writes.

Meanwhile the pro-nuclear documentary *Pandora's Promise* by direc-

tor Robert Stone was released on 15 November. For all the globetrotting from Fukushima to Chernobyl to Three Mile Island, the film completely ignores the issue which is actually at the centre of today's nuclear debate: cost. Damian Carrington, writing on the *Guardian* website, says there is a serious debate to be had about whether new nuclear power stations are a vital tool in tackling climate change or a damaging distraction from a truly clean energy future. The debate needs to be about which technology should be used, in which countries, at what cost and at what speed of deployment. This film, with its scant cast of writers and octogenarian engineers, says nothing about any of these issues.

Not the answer

US group Beyond Nuclear says 'exchanging global warming for nuclear meltdown is not the answer. From a purely practical standpoint – and ignoring for a moment nuclear power's other showstoppers such as cost, unmanaged nuclear waste, atomic weapons proliferation and catastrophic accident – there simply isn't time to choose nuclear power. There are faster, affordable alternatives, including energy efficiency and renewable energy installations such as wind farms and solar arrays that can be completed in months to a few years.'

Beyond Nuclear has produced a series of briefings on the film which can be found here: <http://www.beyondnuclear.org/pandoras-false-promises/> ◆

Peter Roche is an energy consultant based in Edinburgh and policy adviser to the Scottish Nuclear Free Local Authorities, and the National Steering Committee of UK Nuclear Free Local Authorities. Until April 2004 he was a nuclear campaigner for Greenpeace UK for 13 years. He has an honours degree in Ecological Sciences from Edinburgh University. He was co-founder in 1976 of the Scottish Campaign to Resist the Atomic Menace (SCRAM), which organised some of the largest anti-nuclear power demonstrations in the UK at the Torness nuclear station outside Edinburgh in the 1970s and 80s. The above article is reproduced from nuClear News (No. 56, November 2013, www.no2nuclearpower.org.uk).



A wind farm in the United States. Wind farms can be installed much faster and typically at lower cost than new nuclear plants.

A bitterly divided nation

Although Thailand's premier, Yingluck Shinawatra has, in a bid to end the country's political crisis, dissolved parliament to pave the way for fresh elections, it is doubtful whether this move can heal the deep fissures in the country's body politic.

Tom Fawthrop explains the divisions.

THE relentless fury and bitter polarisation of Thai politics – in the struggle between anti-government 'yellow-shirts' and pro-government 'red-shirts' – has once more paralysed traffic in central Bangkok and severely disrupted the government.

Only a few weeks ago democracy achieved a rare triumph in Thai history when both red-shirts and yellow-shirts unusually combined to defeat an ill-judged government amnesty bill. Prime Minister Yingluck Shinawatra withdrew the bill in deference to popular indignation. It was a rare moment of unity, when the people's will triumphed.

But for the yellow-shirts this defeat of the government only emboldened them to expand their protest to demand the resignation of the government in the name of a 'people's will' based on a surge of die-hard protests largely confined to their stronghold in Bangkok.

Once again the millions of rural red-shirt voters who had put the prime minister in power were outraged that Bangkokians wanted to overturn the election result and bring down the government.

In 2010 the red-shirts had been the occupying force in Bangkok's city centre and for months had tried to bring down the military-backed Democrat Party-led government of Prime Minister Abhisit Vejjajiva. They also bitterly remember that their protest was brutally dispersed by the army and more than 90 people, the vast majority unarmed civilians, were shot dead in the final crackdown.

This time around, near-daily protests since November and the strategic occupation of several ministries by well-organised yellow-shirt groups have compelled Yingluck to dissolve parliament and set in motion the holding of new elections on 2 February.



Anti-government protestors in Bangkok. The relentless fury and bitter polarisation of Thai politics has severely disrupted the government.

In many countries bitter confrontations can be settled at the ballot box, with the voters making the final decision, but not in Thailand. The opposition – both the street protest organisations and the main parliamentary opposition party, the Democrat Party – are saying that without reforms to the political system, new elections cannot solve anything.

The street protests of the yellow-shirts have been led by Suthep Thaugsuban, a former deputy leader of the Democrat Party who has now resigned to focus on rebellion rather than the ballot.

At the heart of the Bangkok rebellion against the Yingluck government is an unswerving hatred towards the premier's brother Thaksin Shinawatra, a billionaire tycoon who himself ran Thailand from 2001 until he was toppled by a military coup in 2006.

Thaksin became the godfather of the rural poor in Thailand's north-east known as Isarn. Isarn people had always been looked down on by Bang-

kok's middle class and their interests largely ignored by all political leaders. Thaksin readily wooed them with populist policies based on an astute marketing strategy.

Before Thaksin, only the student movement and a group of dedicated rural doctors had campaigned for cheap or free healthcare for the poor and interest-free loans, but definitely not the traditional political parties.

These policies were subsequently hijacked by a new kind of leader in Thai politics – Thaksin the telecommunications tycoon. His plan to build a permanent political base in the vote-rich provinces of Isarn, now also known as the heartland of the red-shirt movement, has been so successful that it has generated a major faultline in Thai democracy.

As prime minister from 2001-06, Thaksin delivered on his promises of cheap healthcare and loans for thousands of Isarn villages. But he trampled on any checks and balances in the constitution; he intimidated and largely silenced independent media

and abused his position to enhance his crony business interests.

By 2005 the protests of Bangkok's middle class had become a new feature of Thai politics, calling for an end to Thaksinism. In 2006 a military coup ousted Thaksin when he was on a trip abroad. The red-shirt movement felt cheated that the government they voted for had been removed not at the ballot box but at military gunpoint.

The coup gave birth to a new constitution and new elections in 2007, which the party loyal to the ousted Thaksin won easily.

Wind the clock forward to December 2013 and you have exactly the same players and the same forces at play.

Thaksin, from his position of self-imposed exile since 2006 after he was convicted of corruption in absentia, still exercises a massive grip over Thai politics, guiding his sister Yingluck, advising and sometimes choosing her cabinet ministers, and provoking outrage from the Bangkok middle class and yellow-shirt supporters throughout the kingdom.

So what do the protest leaders in Bangkok want if they won't accept elections on 2 February?

Bangkok Post columnist Voranai Vanijaka writes of protest leader Suthep, 'Understand that he has no qualms, no pretensions about democracy. He's calling for a nationwide uprising to overthrow a democratically elected government. He then wants to suspend electoral democracy, introduce reforms, "eradicate" the Thaksin regime from Thailand, and then return to democratic elections.'

The view from Bangkok is that Thaksin and his political operators on the ground in the Pheu Thai party are unscrupulous politicians who buy success at the polls and then recoup their 'electoral investments' with a hefty profit from corruption when in office.

This may be one side of the coin of truth but the other side is that Thaksinism has also become unbeatable at the polls because of its loyal support base and policies, which Suthep and the yellow-shirts play down in order to focus exclusively on the money politics.

Former senator for the Democrat Party Kraisaak Choonhavan admits that the real fight is against the monopolisation of power by the Thaksin political machine and his oligarchy. 'Before, democracy in Thailand revolved around competing oligarchies but when the Thaksin family dominates everything, then democracy has no meaning anymore.'

The other oligarchy, gathered around the landed class and closely aligned to the royal family, the massive crown properties and the Privy Council, have been able to derail several pro-Thaksin governments by using the courts and the military.

But now the judges and the generals have generally backed off from further involvement and partisanship. The last military coup failed to stop a resurgence of Thaksinism, and now the army is far too divided to attempt another coup.

Still Suthep is invoking some kind of intervention from the palace to select a 'people's government' to administer the country on the basis of a vaguely Confucianistic ethic of commitment to good governance.

In reality it would mean replacing one oligarchy with another without an electoral mandate.

In the July 2011 elections the pro-Thaksin camp mustered roughly 15 million votes, and the Democrat Party and their allies only 11 million.

However, former senator Kraisaak told this writer, 'The credibility of Yingluck Shinawatra is cut to shreds. Her Pheu Thai party has been found guilty of faking documents by the Constitutional Court. They have abused their power steaming ahead with mega-flood control projects without proper parliamentary debate. They have lost their legitimacy as a government.'

Electoral victories have been achieved by many governments in the world that enjoy little legitimacy. From the first Thaksin government in 2001 to all the governments under the sway of Thaksin in exile, it has become almost a trademark that they ran roughshod over the checks and balances in the constitution.

That leaves Thai democracy as

stillborn and trapped in a stalemate between the yellow-shirts, who in their extreme support for the monarchy veer towards anti-democratic solutions, and the red-shirts, who have no interest in protecting the rights of the minorities and have used thuggish violence to block the Democrat Party from campaigning in rural red-shirt strongholds.

The oligarchic orchestration of the red-yellow divide is becoming all the more intense with the declining health of the Thai king, who has been a grand symbol of Thai unity for over 60 years. Behind the current conflagration is a clear agenda for each side to increase its respective political power before a new monarch ascends the throne.

In the short term it may be possible to establish a council of senior advisers and outstanding leaders who would have the respect of both sides to set up an interim government. It would then be mandated to implement some reforms in order to restore a semblance of legitimacy and set standards of good governance that all parties must agree to prior to holding the next elections.

However, as long as one side cries for eradicating Thaksinism to the point of excluding all members of the family from any further participation in Thai politics, any compromise will be impossible.

Hardline monarchism on the one hand and Thaksinism on the other do however share one thing in common – a mutual intolerance, a colour-coded prejudice and contempt for anyone who disagrees with them.

'We are heading towards a black hole,' sighs former senator Kraisaak, one of Thailand's more enlightened thinkers, 'but I just hope there is some light at the end of the tunnel.'

In South Africa the 'great liberator' Nelson Mandela created the concept of the 'Rainbow Nation' to transcend the colour divide. Thailand desperately needs to learn from such an inspirational leader to move the country beyond the red-yellow impasse. ♦

Tom Fawthrop is a journalist and filmmaker based in Chiangmai, Thailand.

Rebels, anti-rebels and refugees in the Central African Republic

Since independence in 1960, the Central African Republic has experienced five coups and six heads of state. The current turmoil in the country began in March when Michel Djotodia became the country's sixth President by staging a coup against his predecessor Francois Bozize. *Tendai Marima* explains the tragic plight of this country and its people.

HUDDLED in churchyard grounds or scattered across the country's thick bush and forests, 395,000 civilians are believed to be seeking refuge from the escalating conflict in the Central African Republic (CAR).

The latest fighting is largely between the Séléka rebels – the group that deposed President François Bozizé and replaced him with Michel Djotodia back in March – and forces known as the anti-balaka.

After Séléka's overthrow of Bozizé, the group looted and attacked many communities. Thousands fled their homes and the humanitarian crisis deepened.

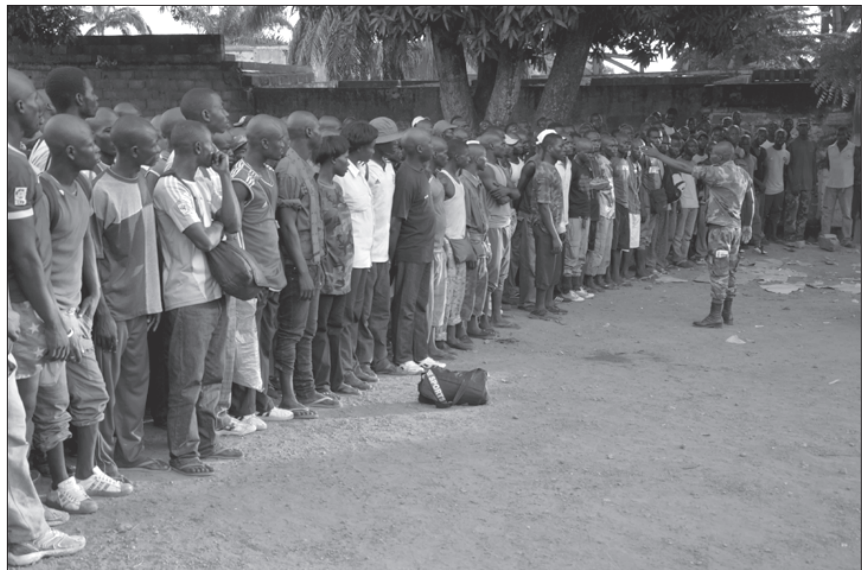
At the same time, a motley crew of local self-defence militias and anti-Séléka armed groups – which have come to be known collectively as the anti-balaka – emerged. In retaliation to Séléka's rampages, these local vigilante peasants – armed with machetes, rifles and other weapons – waged an armed resistance in the north.

This has only led the CAR's insecurity to escalate and the humanitarian situation in the country to worsen. Meanwhile the transitional government in Bangui continues to seem powerless to act.

The anti-balaka vs Séléka

The name 'anti-balaka' – which means anti-sword or anti-machete in the local languages of Mandja and Sango – is often used to describe self-defence units set up by communities to fight against bandits, cattle-raiders, rebels and poachers.

During the CAR's 2004-07 bush war, for example, the anti-balaka were



New recruits of the Séléka rebel army lining up to listen to orders. Disarming and reintegration a Séléka force of at least 20,000 has been an almost impossible task for the overwhelmed CAR government.

local vigilante groups who rose up in resistance to the abuses of the CAR's main rebel formation, the Armée Populaire pour la Restauration de la Démocratie (APRD). Militias – including the Union des Forces Démocratiques pour la Rassemblement (UFDR), a collective of dissident groups led by the current transitional president and then rebel leader Michel Djotodia – launched a major offensive in the north, seizing key towns but also committing atrocities including summary executions, abductions and forcible recruitment of child soldiers.

Since the launch of Séléka's insurgency in December 2012, the northwest has again been besieged with persistent raids, kidnappings and killings. This has led numerous militias made up of former soldiers, some

breakaway Séléka rebels, and certain groups of Christian vigilante farmers to combine their disparate units against a common and largely Muslim enemy. Today's anti-balaka also includes the Association of Central African Farmers (ACP), an anti-Séléka peasant movement, as well as the Front for the Return to the Constitutional Order in Central Africa (FROCCA). FROCCA is a militia made up of ex-army officers loyal to the former president as well as local vigilantes fed up with Séléka's continued violence; the group was formed in Paris this August by Bozizé.

Despite having these Bozizé elements behind it, the scope and size of the anti-balaka movement is still largely regional, and its armed attacks groups are not yet fully coordinated or capacitated to challenge Séléka in

full-blown combat. The northwest of the CAR – the home of Bozizé's traditional roots and ex-members of the Presidential Guard, the core of Bozizé's fighting force – remains the hotspot for violence between the anti-balaka and Séléka, with the most vivid and bloody battles occurring in Bossangoa, Bouca and Bouar where scores have been killed in the violence.

An attack on the market town of Bouar on 26 October, for example, left at least 40 dead. Destitute and fearful, 5,000 refugees crammed into a Catholic church compound. Although the joint regional peacekeepers – the Central African Multinational Force (FOMAC) and the Central African Armed Forces (FACA) – regained control of Bouar, simmering tensions resulted in Séléka burning two villages nearby, heightening fears of further revenge attacks.

Another factor often cited in the violence is the issue of religion, with the conflict sometimes framed as pitching the largely Muslim Séléka rebels against the predominantly Christian anti-balaka forces. But while religious tension is an important factor in some instances of violence, this framing is simplistic. For instance, along with Muslims from the CAR and abroad, Séléka also includes many non-religious rebels, other bandits and opportunists who have joined in the looting and vandalism since March. And while the rebels have committed some religiously-motivated atrocities against Christians, they are also driven by non-religious motivations and have attacked Muslim communities on occasion.

Intervention needed

As Séléka has terrorised populations across the northwest and the CAR as a whole, the Djotodia-led government in Bangui has lacked the capacity to discipline the former rebels or deploy a sizeable, equipped force to deal with the lawlessness.

The government's inability to contain Séléka as well as anti-balaka forces reveals a deep crisis of governance and points to Djotodia's lack of



An anti-balaka militiaman taking part in a training session. The scope and size of the anti-balaka movement is still largely regional.

authority as the president and as Séléka's former leader. Djotodia's attempts to disarm and reintegrate the militants have seen little cooperation from the rebels themselves, with demobilisation operations in Bangui often resulting in flare-ups between rebels or attacks on pro-Bozizé districts. With the lack of a clear national plan, disarming and reintegrating a Séléka force of at least 20,000, which includes bandits and foreign mercenaries, has been an almost impossible task for the overwhelmed government. In September, Djotodia officially disbanded Séléka, but the dissidents did not disarm and dissolve as ordered, but continued to run riot.

Although government officials insist they need military support rather than further foreign intervention, the CAR's small national army is too weak and poorly equipped to fight Séléka, whose execution of government soldiers in and around Bangui has been well-documented. Historically, the CAR has relied on international support through civil wars and coups, and without the support of stronger, better-equipped foreign forces, there is little hope of restoring order.

To help, France plans to increase its troop presence from 400 to 700-750 by yearend, but has made clear that it 'will not play the world's po-

lice' and that it does not want to get entangled in another military intervention. Instead, the French have increased calls for African states to provide personnel for an African-led mission. In July, the UN approved a force of 3,652 personnel to boost and transform the current regional peacekeepers into the International Support Mission in the Central African Republic (MISCA), but hampered by financial and logistical problems, MISCA is unlikely to be operational before 2014.

But while this international assistance is an encouraging sign, the CAR's crisis could require a more urgent and well-funded intervention and, critically, regional facilitation of talks between all conflicting parties. Almost half a million people have been made homeless by the fighting in the CAR, UN officials warn of the risk of genocide and anarchy if the conflict continues, and the CAR's transitional government seems unable to protect its own people. As one of the planet's poorest and most fragile states teeters on the brink of war, it's critical the world responds faster and more robustly to the crisis faced by 4.5 million Central Africans. ♦

Tendai Marima is a freelance journalist and post-doctoral researcher in African literature. This article is reproduced from the Think Africa Press website (thinkafricapress.com).

Rebels and love in the Central African Republic

France has over the decades been a key player in the violent drama of Central African Republic politics. But there are other interested parties involved. The CAR is a case study of how neo-colonial greed can destroy a country.

Okello Oculi

FRANCE, as a country exhausted by German colonial rule during the 1938-45 war, still dreamed of a world in which there was 'permanent exclusion of self-government of the African territories' she exploited as occupied lands. The 1944 Declaration made from Brazzaville in Congo said so. In 1958, this wish was rudely shattered by Ahmed Sekou Toure, a militant trade unionist, who aroused the people of Guinea to vote for independence. Humiliated French officials ripped phones from offices and destroyed or carried away furniture and government documents with a bitter notion of taking Guinea back to barbarism. In panic resulting from fears that Ghana's freedom in 1957 would infect its French-ruled neighbours, officials in Paris swallowed Sekou Toure's vision and forced allies like Houphuet Boigny of the Ivory Coast to accept rupture from France.

Paradoxically, France pursued this new conviction and made attempts to retain the federation of nine colonies ruled from Dakar in Senegal (Guinea, Upper Volta, Dahomey, Niger, Mali, Togo, the Ivory Coast, Mauritania and Senegal) and the four colonies ruled from Brazzaville (Chad, Cameroon, Congo and Ubangi Shari). Bathelemey Boganda, a Catholic priest turned leading politician in Central Africa and a passionate and charismatic advocate for a 'Latin Central Africa' (including Belgian Congo, Rwanda-Urundi and Angola), is believed to have been assassinated by the French. Boganda remained loyal to his love for a pan-African entity by renaming his country the Central African Republic (CAR).

France was the second raider to love the Central African Republic.

The CAR allocated vast tracts of land to 17 French companies charged with collecting resources for French industries. These companies forced hundreds of thousands of inhabitants to harvest the land. Jean Suret-Canale claims that over five million of them perished. Several administrators and journalists accused officials and companies of genocide and what is today labelled as committing crimes against humanity.

Boganda, who composed the country's national anthem, the E-Zingo (translated into French as 'Le Renaissance') in the widely spoken Sango language, injected his own love for his country into it by referring to his people as 'Long subjugated, long scorned by all/But from today, breaking tyranny's hold'.

Another lover of the CAR was Jean-Bedel Bokassa, self-crowned as 'His Imperial Majesty Bokassa the First, Emperor of Central Africa' in the belief that a monarchy would win global respect and make the CAR 'stand out' above other African countries. It cost \$20 million, including a golden throne, regalia and guests. One guest, Giscard d'Estaing, former French President, received as a gift one of the biggest diamond stones ever yanked from Africa's earth. Bokassa's love for France soured, however, when on 20 October 1976 he announced his conversion to Islam. Salah Eddine Ahmed Bokassa announced a developmental alliance with Muammar Gaddafi. On 20-21 September 1979 France mounted Operation Barracuda and threw Bokassa out of power, thereby denying

Gaddafi access to Bokassa's uranium deposits. Libya's love was France's poison.

Mounting military coups has continued to be France's bouquet of flowers to the Central African Republic's history. It put Bokassa in power and took him out as emperor. In 2003, Ange-Felix Patasse was overthrown in a coup by Francois Bozize who, in 2006, was kept in power by French military aircraft. This tradition paralysed the growth of a strong national army, and encouraged the mushrooming of militias in villages for the purpose of grabbing the minerals they saw foreign companies looting while inept central governments failed to collect rent for the people's development. Patriots for Justice, a 'rebel' group, were in 2012 mining diamonds in areas around Bria, Bamaingui and Samoundja. Over 100,000 people were in 2011 shifting diamond stones from riverbeds to hawk cheaply to agents of Indian companies.

France's love for the Central African Republic's rich array of minerals is matched by the love of other NATO countries. A Canadian company, Energem Resources, is among five companies mining diamonds, while Axmin Inc. is among five companies extracting gold. A British company Pan African Resources and an American company Tamija Gold & Diamond Exploration, Inc. are also mining gold. Other minerals looted for decades out of a weakly-governed Central African Republic include manganese, copper, iron ore, uranium, kyanite and tin. As evidence of a country being looted with brutal cynicism, 'donor countries', from which mining companies come, are aware that their 'aid' constitutes as much as 89% of the national budget. Bozize

may have lost power in March 2013 to better-armed 'rebels' because he was seen by NATO satellites to be walking on a red carpet in uranium-hungry China.

Love has cost this desperate country its dreams of a better life. Statistical indicators are brutal. Only 15% of children who enter primary school reach grade five. The population was wasted by Arab slave raids from the Darfur region of Sudan, Europe's slave trade across Congo to the Atlantic coast, and decimation by slave labour for French companies. In 2006, the population density was a paltry five persons per square kilometre. The 500,000 tons of cassava produced in 2011 were harvested by malnourished rural small-plot farmers by hand. 'Breaking poverty and tyranny', as promised by the E-Zingo, is not occurring.

The tragedy of neo-governance in the CAR is a divine gift to Africa's top woman, Dr Nkosazana Dlamini-Zuma. The Chair of the African Union Commission understands, in a special womanly way, the terrible statistics about 60% of the CAR's babies dying before the age of five years and 50% of women dying during childbirth. It should resonate with her and inspire her into setting up an 'African Union Reconstruction Fund for the CAR', and getting companies charged with 'Crimes against Material and Human Development of the CAR' due to decades of wilful expropriation and genocide.

The United States and the European Union have underlined the moral status of crimes against humanity. The African Union should launch 'crimes against Africa's human development' through 'blood-love', in which culpable Euro-American and BRICS corporations, individuals and governments shall yield compensation for economic and industrial reconstruction of victims like the Central African Republic. ♦

Okello Oculi is a poet, novelist and political scientist from Uganda. This article is reproduced from Pambazuka News (No. 626, 18 April 2013, pambazuka.org).

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization: Background and Analysis

The fight against biopiracy and its injustices was the main impetus for the push to have an international treaty to be developed under the Convention on Biological Diversity (CBD). The Convention's third objective of fair and equitable sharing of the benefits from the utilization of genetic resources is itself the result of tough negotiations in the early 1990s when the misappropriation, even theft, of the resources of developing countries and of indigenous peoples and local communities gained international attention. After almost 20 years, when the Convention's broad provisions proved to be inadequate, the Nagoya Protocol on Access and Benefit-sharing was forged in October 2010.

This new legally binding international treaty, however, was born in an atmosphere of controversy when its core content was ultimately decided by a few during the final days of the 10th meeting of the CBD's Conference of Parties in Nagoya, Japan. This book, co-authored by six civil society participants who were actively engaged with the government negotiators and negotiation process, provides a rich account of the background and development of the Protocol. It analyses the main provisions of the Protocol and recommends several actions that can be taken at the national and international levels to ensure that the Protocol objective of fair and equitable benefit-sharing can be delivered with justice restored.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization

Background and Analysis

ISBN: 978-967-5412-85-1 168pp

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Is NATO's trojan horse riding toward the 'Ukraine Spring'?

While Ukrainian citizens who have been protesting against President Victor Yanukovich for his refusal to sign an economic agreement with the European Union may be motivated by genuine concern for their future, the question is whether their plight is being exploited to usher in a military agreement under the guise of economic reform. Statements by neoconservatives (see box) appear to confirm fears that the push toward the EU is just a step to integrate Ukraine into military alignment with NATO.

Dennis J Kucinich

UKRAINIAN citizens have rallied in the bitter cold at Independence Square in Kiev to demand a better economic future and to protest President Viktor Yanukovich's failure to sign an economic agreement with the European Union.

But while the draft of the EU 'Association Agreement' is being sold as an economic boon for Ukrainian citizens, in reality it appears to be NATO's Trojan horse: a massive expansion of NATO's military position in the region. What's more, the Agreement occurs under the cover of nebulous economic promises for a beset population hungering for better wages.

In a country where the average monthly minimum wage stands at about \$150, it's not hard to understand why Ukrainians are in the streets. They do not want to be in Russia's orbit, nor do they want to be pawns of NATO.

But is the plight of Ukrainians being exploited to usher in a new military agreement under the guise of economic reform?

For NATO, the goal is expansion. The prize is access to a country that shares a 1,426-mile border with Russia. The geopolitical map would be dramatically reshaped by the Agreement, with Ukraine serving as the new front for Western missile defence at the doorstep of Russia. Should the US nuclear deal with Iran fall apart, Ukraine could be employed in larger



A protest in Kiev against Ukraine's failure to sign an economic agreement with the EU. The agreement could however pave the way for NATO expansion into the region.

regional disputes, too.

As an EU deal appears imminent, few people are asking questions about NATO's role in the deal, which was meant to facilitate jobs and trade. Economic conditions in Ukraine are dire: \$15 billion in IMF loans suspended, danger of default and a zero growth forecast.

While NATO is not specifically mentioned in the draft of the 'Association Agreement', the proposal, which was posted online by the Ukrainian cabinet in August, pledges convergence of foreign and security policy.

Read: NATO expansion.

For instance, in the draft of the Agreement, foreign and security policy mandates: 'The Parties shall explore the potential of military and technological cooperation. Ukraine and the European Defence Agency (EDA) will establish close contacts to

discuss military capability improvement, including technological issues.'

The draft of the Agreement's preamble links Ukraine to 'ever closer convergence of positions on bilateral, regional and international issues of mutual interest' including the Common Foreign and Security Policy (CFSP) of the European Union and the Common Security and Defence Policy (CSDP) – which underscores the military nature of the agreement.

Since 22 of 28 members of the EU have NATO membership, there is little doubt that Ukraine is being drawn into the broad military arrangement with EU nations.

If the EU Agreement is ratified, Ukraine will inevitably spend a higher percentage of its GDP for military purposes, steering critical resources from social programmes and job opportunities. In 2012, Ukraine's military budget already increased 30% –

to \$2 billion, representing a comparatively low 1.1% of GDP. NATO members agree to spend at least 2% of GDP on defence.

NATO members are also under pressure to contribute more and more of their GDP to military expenditures. 'It is time to move beyond the "2% rule",' says the Center for Strategic and International Studies.

The former US Ambassador to NATO, Ivo Daalder, in his farewell remarks in June 2013, described the sentiment: 'The gap between American and European contributions to the Alliance is widening to an unsustainable level. Something must be done. The trends need to be reversed.'

When military spending goes up, domestic spending goes down. The winners are unlikely to be the people

of Ukraine, but instead the 'people' of Lockheed-Martin, Northrop Grumman, Boeing and other defence interests. The Ukrainians didn't go to Independence Square to rally for NATO. Yet NATO's benefit is clear. Less clear is whether Ukrainians will receive key economic benefits they seek.

To wit, the preamble to the Agreement is hazy on the implementation of visa-free travel for citizens of Ukraine, a crucial incentive for struggling workers seeking better jobs. The draft of the Agreement is vague, calling for the visa issue to be introduced 'in due course'. It also asserts that EU nations could block the movement of self-employed Ukrainians to other job markets.

For Greece, Spain and others, EU membership hasn't turned out to be a shining economic saviour. The return of austerity policies reminds one of Naomi Klein's warning about the perils of disaster capitalism, in which instability opens the door for exploitation from outside forces.

For the protesters in Kiev, standing tall for democracy and economic opportunity, there's suddenly a new worry: Disaster Militarism. Ukrainians may be pro-EU, but are the EU and NATO pro-Ukrainian? ♦

Dennis J Kucinich is a former 16-year member of the US Congress and two-time US presidential candidate. Visit his website www.kucinichaction.com. This article is reproduced from The Huffington Post website (www.huffingtonpost.com).

What the neocons want from Ukraine

Nathan Lewis Lawrence

WITH the world turning its eyes toward Ukraine, numerous questions are being asked. What do protesters want? What is at stake for international politics? Neoconservative John Bolton, former US ambassador to the United Nations for the Bush administration, has already put his two cents into the conversation. In the *Los Angeles Times*, Bolton argues that what is currently happening in Ukraine is proof that NATO should have been expanded in 2008 at the Bucharest summit:

'Thus the West collectively made a terrible mistake at the NATO summit in April 2008 by not placing Ukraine (and Georgia) on a clear path to NATO membership. Had we done so, the question of EU economic relations would doubtless have been more easily resolved. Ambiguity over Ukraine, leaving it in a no man's land between Russia and NATO, obviously didn't lead to Ukrainian stability, domestically or internationally. And the same vital question for Kiev's citizens abides: Is their future with the West or Moscow?'

Is the push toward the EU just a step to integrate Ukraine into military alignment through NATO? There is undoubtedly an array of opinions among the protesters, but the question for someone like Bolton is not 'what do the protesters want?' but 'what do the powers-that-be want?' Historically, EU membership has been a step toward NATO membership, and it is also clear that the draft of the Association Agreement that the protesters seem to support includes military cooperation. Article X, section one, says:

'The Parties shall explore the potential of military and technological cooperation. Ukraine and the European Defence Agency (EDA) will establish close contacts to discuss military capability improvement, including technological issues.'

The right-wing think-tank the Heritage Foundation has also released a policy statement on the situation in Ukraine. The author of the report, Dr Ariel Cohen, senior research fellow for Russian and Eurasian studies and international energy policy, writes that the United States should 'stand with the Ukrainian people' as part of a broader struggle against Moscow. Cohen recommends that the United

States 'increase coordination of Ukraine policy with its European allies, including an offer of a comprehensive economic reform package, such as a technical assistance programme to repair the ailing economy, a significant increase in trade with Europe and the US, and the IMF loan'.

Those concerned about seeing a protest movement turn into an excuse for an expansion of NATO military power ought to be vigilant against neoconservatives seeking to use the protests to justify their worldview in the wake of the failed military adventures in Iraq and Afghanistan. Activists in the United States, if they are concerned about the outcome of the protests currently underway in Ukraine, ought to defuse these attempts by neoconservatives to write their own narrative into the story. ♦

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So many secrets in the East China Sea

The decision by China to declare an air defence identification zone (ADIZ) in the East China Sea has given rise to charges of 'provocation' by the US and its allies. *Pepe Escobar* unravels the complex background to the whole crisis and suggests that it is Japan that has been the real provocateur.

IT's been a source of endless fascination to follow the game of geopolitical Go being played since China declared an air defence identification zone (ADIZ) in the East China Sea.

The spin in the United States is relentless; this was no less than 'saber-rattling', a 'bellicose' posture and a unilateral 'provocation'. The 4 December meeting between Chinese President Xi Jinping and US Vice-President Joe Biden in Beijing may have done nothing to dispel it.

For what the White House says Xi and Biden talked about, see www.scmp.com/news/china/article/1373555/xi-and-biden-what-white-house-says-they-talked-about-full-transcript; Beijing did not release a transcript. On the hysteria front, a 3 December op-ed in the *Financial Times* titled 'China must not copy the Kaiser's errors' – reflecting a warped consensus in the City of London – even managed to crank it up to pre-World War II levels.

Now compare it with the official Chinese media view, from a more conciliatory take in *China Daily* to a no-holds-barred assertion of sovereignty in the *Global Times*.

Which brings us to the scenario that the original provocation may have been actually Japanese, and not Chinese.

Mr Xi, tear down this wall

The whole drama is far from being just about a few islets and rocks that China calls Diaoyu and Japan Senkaku, or the crucial access to the precious waters that surround them, harbouring untold riches in oil and natural gas; it concerns no less than the future of China as a sea power ri-



Meiji-era documents prove that the Japanese government not only admitted that the Diaoyu/Senkaku islands (pic) were Chinese but was also plotting to grab them.

valling the US.

Let's start with the facts on the sea. Meiji-era documents prove without a doubt that the Japanese government not only admitted that these islands were Chinese (since at least the 16th century) but was also plotting to grab them; that's exactly what happened in 1895, during the first Sino-Japanese war, a historical juncture when China was extremely vulnerable.

After the Japanese occupation of China and World War II, Washington was in control of the territory. A document signed by the Japanese promised the return of the islands to China after the war. It was never fulfilled. In 1972, the US handed over their 'administration' to Japan – but without pronouncing itself about who owned them. A gentlemen's agreement between Chinese premier Zhou Enlai and Japanese prime minister Kakuei

Tanaka was also in effect. It was also ignored.

Tokyo ended up buying the islands from a private landowner, the Kurihara family, nationalising them in September 2012 only a day after a summit between then Chinese President Hu Jintao and PM Yoshihiko Noda, and this after Hu had told Noda not to change the status quo.

Recently, to make matters worse, the Obama administration issued yet one more of its absurd 'red lines', affirming it would support Japan in the event of a war revolving around the islands.

Geostrategically, it's even more complex. Virtually all of China's sea trade flows through choke points whose borders are controlled by either close US allies or nations that are not exactly allied with China.

Imagine yourself as a Chinese naval strategist. You look at the sea-



A cargo ship is docked at the Chinese port of Qingdao. Virtually all of China's sea trade flows through choke points whose borders are controlled by either close

scapes around you and all you see is what strategists call the First Island Chain. That virtual arc goes from Japan and the Ryukyu islands and the Korean peninsula, in the north, moving southwards via Taiwan, the Philippines and Indonesia towards Australia. It's your ultimate nightmare. Assuming any serious confrontation along this arc, the US Navy will be able to move its aircraft carriers around and seriously compromise China's access to its oil transported via the Straits of Malacca.

Territorial disputes are the norm in the East and South China Seas. In the East China Sea the focus is on the Diaoyu/Senkaku. In the South China Sea it's the Spratly Islands (China opposed to Taiwan, the Philippines and Vietnam) and the Paracel Islands (China opposed to Vietnam). Not to mention other disputes now on the backburner with Malaysia and Brunei.

So from the point of view of our Chinese naval strategist, what is deployed is a sort of Reverse Great Wall, an expression, by the way, immensely popular in circles such as the US Naval War College. It's like an invisible sea wall from Japan to Australia that can in theory block China's access to the Pacific.

And if – and that's a major, long-term if – there ever would be a US blockade, with its sea trade lanes closed, the Chinese economy would be in tremendous trouble.

They know it in Beijing, and they are willing to do anything to prevent it.

In search of good PR

What Biden, not to mention US corporate media, is not telling world public opinion is how, for Washington, this has a lot to do with Okinawa – the key hub from which the US is capable of projecting power west of Japan. It's as if Okinawa was the US's Hadrian's wall.

In reverse, Okinawa is also essential for Japan to remain indispensable to the US. It's as if Tokyo was employing the Pentagon as mercenaries – as much as the Pentagon uses mercenaries in its global shadow wars. Talk about a low cost/high return business model. Japan thus keeps its defence spending at 1% of GDP (yet it's now rising while for most countries this may be at 3% or more).

Were Beijing to actually enforce for good its aerial jurisdiction around the Diaoyu islands, that would be the beginning of the breach of this aquatic

Hadrian's wall. For the moment, though, the ADIZ is a message to Washington, part of the much-vaunted *xinxing daguo guanxi* – the 'New Type of Great Power Relations' being implemented slowly but surely by President Xi Jinping.

Beijing may be right on principle and certainly does want to create facts on the sea. What happened was essentially a PR disaster – an inability convincingly to 'sell' the ADIZ to world public opinion. Absolutely nothing will convince any Chinese administration that this is not about Japan encroaching upon a territory and sphere of sovereignty that have been Chinese for centuries.

Instead of the usual ritualistic pilgrimages to revere 'heroes' in shrines accused of committing hair-raising massacres, Tokyo could easily defuse the problem by admitting to its appalling imperial adventures in Asia. Tokyo could also redefine its role in Asia by behaving like an Asian power – and not some obedient Western appendix, as it's perceived by millions across the continent, and not only by the Chinese.

Ultimately, the only way to defuse the Diaoyu/Senkaku/ADIZ problem would be for Beijing and Tokyo to sit at the table and work out a security treaty for these East China Sea lanes – ideally arbitrated by the United Nations. The problem is, Tokyo simply does not admit there is a problem. Now Beijing's strategy is to force the Japanese to do it. Perhaps Beijing should consider hiring an American PR agency, like everyone does. ♦

Pepe Escobar is the author of Globalistan: How the Globalized World Is Dissolving Into Liquid War (Nimble Books, 2007), Red Zone Blues: a snapshot of Baghdad during the surge (Nimble Books, 2007), and Obama Does Globalistan (Nimble Books, 2009). He may be reached at pepeasia@yahoo.com. This article is reproduced from Asia Times Online (www.atimes.com).

Four Chilean student leaders make the jump to parliament

The recent election of Michelle Bachelet as president is not the only sign that change is coming to Chile. With four students now elected to Congress and with thousands of students ready to march and protest for free and quality education, Chile is now recovering the spirit of community organising long smashed by the Pinochet regime.

Jonathan Franklin

CHAMPAGNE. Cumbia music. Street parties. The Chilean student leaders who upended their nation's political agenda in 2011 with dozens of street protests on 17 November 2013 transformed their activist power into a mini bloc of student activists. Four of the young students – Giorgio Jackson, Camila Vallejo, Karol Cariola and Gabriel Boric – won congressional offices and will take seats in the Chilean Congress in March.

'We have battled for some time for our ideals for what we think Chile deserves and the transformations that Chile needs,' said Vallejo, the 25-year-old former student body president as she celebrated on 17 November evening in Santiago. 'It has been a long fight to open up the [political] spaces to win this via the elections process and the street fight. In those two environments we have advanced and won.'

'It is time for big changes in the economic model and the political system,' said Vallejo, who first came to fame as the charismatic leader of massive street protests calling for free university education for all Chilean students. 'The right wing is in the Intensive Care Unit. You can see it in the polls and in the streets,' said Vallejo. 'They are unleashing pure propaganda in an attempt to salvage the low turnout they maintain. It's sad ... they could have taken the high road and formed a serious debate and a discussion about political platforms.'

With four student leaders now holding power in Congress and tens



Former student body president Camila Vallejo speaking during what would ultimately be a successful campaign for election to the Chilean Congress. 'It is time for big changes in the economic model and the political system,' Vallejo has said.

of thousands of students ready to march and protest for free and quality public education, Chile is now recovering the spirit of community organising long smashed by the Pinochet dictatorship.

A new era

The four young leaders, who ran peaceful and clean campaigns using thousands of college-aged volunteers, are still stunned by their victories. Giorgio Jackson, the former Catholic University student union president, sprayed champagne into the crowd. Then, a few minutes later, as he prepared his first press conference with CNN, he was seen dancing in the hallways while rock music blasted around him. As he grabbed a beer and leaned out the window, the crowd roared, and the jubilant street party continued be-

low. In Chile, the balance of power has shifted.

'Our country has started to live a new [political] era... as youth and student leaders we were the protagonists of this new political era,' said Karol Cariola, a 26-year-old nurse who came to fame during her organisation of student protests in 2011.

'We are part of this social movement that shook up and awoke this country. In some ways it is necessary that we arrive in Congress to shake up a Congress that has been tremendously hermetic and conservative over the years.'

Asked about the agenda for the young leaders, Cariola cited free university education, tax reform, a full overhaul of the Pinochet-era constitution and reform of election laws that are tailored to protect pro-Pinochet



Former Catholic University student union president Giorgio Jackson registering his candidacy for the Chilean Congress back in August.

right-wing political parties.

While economic growth in Chile over the past quarter-century has been phenomenally stable – often topping 5% a year – key social institutions, including public education and prisons, are widely seen as failures. An invigorated populace is now demanding a radical overhaul of Chile's market-oriented ideology.

Chilean Senator Victor Perez of

the right-wing UDI party is vocally opposed to these new political forces. Perez called on party loyalists to defend what he called the 'Christian values' that have allowed Chile to develop 'a moral and ethical model which has allowed us to have an orderly society... and that today are at risk by the programmes of a leftist government that promotes abortion and same-sex marriages'.

A strong progressive grassroots movement

Perez argued that the priority of the Chilean state was 'the protection and promotion of the family, which is formed when a man and a woman opt for a common life and have children, that is not possible with same-sex couples'. He described marriage as 'an institution designed to form families'.

It was exactly those types of retro concepts that caused Perez's UDI party to lose eight congressional seats and highlighted a strong progressive grassroots movement that will only be more emboldened after the string of victories in the 17 November elections.

Presidential candidate Michelle Bachelet, who supports gay marriage, abortion and free day care, is expected to win the second round of voting on 15 December in a landslide. Governing the now-enervated Chilean electorate, however, will remain a challenge. 'There is this very successful country that we see in the news, but that is not always what we see in our own homes,' said Bachelet during her final campaign rally.

She called on supporters to 'confront the inequality' and vote for the 'New Majority' coalition that she heads up. 'We have to vote for a new Constitution that is much more than a text,' said Bachelet, who recognised the challenges of pushing her agenda through a congressional system still ruled by arcane procedures from the Pinochet dictatorship.

'Some changes we can complete, others we will launch' said Bachelet, who called on citizens to vote for those 'who measure up to the challenges' now facing Chilean political leaders. ♦

Jonathan Franklin is an author and reporter based in Santiago, Chile. He writes frequently for the Guardian and is author of 33 Men, the chronicle of 33 Chilean miners trapped underground. He is currently working on a book about solutions to post-traumatic stress disorder in US war veterans. He can be contacted at chilefranklin2000@yahoo.com. This article is reproduced from the Truthout website (truthout.org). Copyright, Truthout.org. Reprinted with permission.



Massive street protests in 2011 called for free university education for all Chilean students. The sign in the photograph reads 'Education is not for sale'.

Why Palestine should seek justice at the International Criminal Court

Since its admission into a UN in November 2012 as a 'non-member observer state', Palestine has been in a position to invoke the jurisdiction of the International Criminal Court to seek redress against Israeli crimes. It has not done so because of US and Israeli pressure. *Bill Van Esveld* makes the case why it should.

FOR almost a year, since obtaining upgraded status at the UN, the Palestinian leadership in Ramallah has had a chance to open the door to justice for serious international crimes committed on Palestinian territory.

They could seize this chance to deter future abuses tomorrow by giving the International Criminal Court (ICC) jurisdiction.

Palestine first lodged a declaration seeking ICC jurisdiction in late January 2009, after the devastating 22-day Gaza conflict that started the month before. In April 2012 the then-ICC prosecutor stopped considering Palestine's declaration, stating that he couldn't decide whether Palestine was a 'state', a necessary condition for jurisdiction.

But in November 2012, the UN General Assembly resolved the matter by voting to admit Palestine as a 'non-member observer state'. Soon after the UN upgrade, the current prosecutor, Fatou Bensouda, said that the 'ball is now in the court of Palestine' to seek the court's jurisdiction.

Palestinian rights groups urged her to act on the 2009 declaration, but on 25 November 2013, her office published a report that closed that door.

The prosecutor has placed the onus on Palestinian leaders to actively pursue the court's jurisdiction anew, by either formally becoming a member of the ICC or filing a new declaration recognising the court's jurisdiction. Palestine could seek jurisdiction starting from any date since 2002 when the court opened its doors.

Why isn't Palestine playing ball in The Hague? Those responsible for



A Jewish settlement in the West Bank. The ICC's statute categorises the 'direct or indirect' transfer of civilians by an occupying power into occupied territory – like the Israeli government's transfer of Jewish citizens into the settlements – as a war crime.

rocket launches from Gaza targeting Israeli population centres could be held criminally responsible at the ICC, but that should not deter the Palestinian leadership in Ramallah from seeking the court's jurisdiction, since it has stated that it is against such attacks.

"Don't touch it"

The main reason, current and former Palestinian officials say, is that Israel has threatened unspecified retaliation if it seeks the court's jurisdiction, and the US has reinforced the threat. As a former Palestinian legal adviser told me, 'The US said to us clearly, conveying Israel's position, "Don't touch it".' US Secretary of State John Kerry said during his Senate confirmation hearings that the US was 'very, very strongly against' any 'effort to take Israel for instance ... to the ICC'.

Other countries that, as ICC members, should be pushing for universal ratification of the court's stat-

ute – including the UK, France, and most recently Canada – have instead also pressured Palestine not to seek justice through the ICC.

The Israeli and US threats cannot be taken lightly, given Israel's control over Palestinians' lives – at checkpoints, border crossings, and during arrest raids in their homes – and the Palestinian economy's heavy reliance on foreign donations, including from the US.

But the consequences should be weighed against the alternative – impunity for crimes fuelling further abuses. The ICC's jurisdiction would cover serious crimes under international law on Palestinian territory by all parties, such as widespread torture, or indiscriminate attacks on civilians whether committed by Palestinian armed groups or the Israeli military.

Notably, the ICC's statute categorises the 'direct or indirect' transfer of civilians by an occupying power into occupied territory – like the Israeli government's transfer of Jewish citizens into the settlements – as a war

crime. Another war crime under the statute is the 'forcible transfer' of protected people in an occupied territory off their lands, such as by demolishing their homes and preventing them from returning.

Since Prime Minister Benjamin Netanyahu of Israel came to power in 2009, construction has begun on 8,575 settlement homes. Israeli demolitions during the same period left more than 4,000 Palestinians homeless. Both trends are accelerating. There were 1,708 settlement housing starts in the first half of 2013, up by 70% over the same period in 2012, and demolitions have left 933 Palestinians homeless so far this year, up from 886 in all of 2012.

Palestinian leaders have said they would seek ICC jurisdiction at the present time if – and apparently only if – Israel builds settlements in the so-called E1 area just east of Jerusalem, which many analysts say would effectively cut the West Bank in half.

But settlement-building is not only relevant to a future two-state solution: it takes a terrible, daily toll on people's lives. Israel has granted settlements jurisdiction over 39% of the entire West Bank, making those areas off-limits to Palestinians who own land there or traditionally had access for farming and raising livestock. Meanwhile, as an Israeli rights group recently reported, the area used for settlement agriculture has increased by 35% since 1997, to 9,300 hectares. Some Palestinian farmers have no recourse but to lease land from settlers, who got it from Israel for free.

Israel, the US, and other countries have justified their calls for Palestine not to use its new UN status to pursue ICC jurisdiction by claiming it would undermine peace negotiations. But during 20 years of on-and-off negotiations, impunity for rights abuses and laws-of-war violations has fuelled animosity and made negotiators' jobs more difficult. The absence of credible accountability mechanisms has hardly proven an advantage in bringing the conflict to an end.

Potential ICC involvement could change the political calculus of those responsible for such violations by

Health crisis in Gaza deepens

THE World Health Organisation (WHO) has expressed its concern over the deteriorating humanitarian health crisis in Gaza due to critical shortages in essential supplies and services that are putting a severe strain on the health system.

'The accumulation of shortages in basic supplies in the Gaza Strip is leading to rapid deterioration in the social determinants of health for the population of 1.7 million Palestinians,' said WHO in a statement released on 8 December.

While the chronically ill, newborns, transplant recipients, the elderly, persons with disability, emergency patients, and the poor are most vulnerable, the mental health and public health of the whole population is also not spared.

Gaza lacks about 30% of medicines and 50% of medical disposables while their resupply has been sporadic due in part to chronic shortages caused by the Palestinian Authority budget deficit and a lack of medical donations and medical missions from charities.

For instance, the Palestinian Authority resupply of drugs and disposables has been reduced over the past six months to one shipment of \$1 million compared to \$5 million in the previous half year.

Large generators for powering hospitals during 14-hour electricity cuts frequently break down. One of two generators powering the Gaza European hospital has burned out while the remaining generators can only meet partial needs, according to WHO.

In recent months, government hospitals have reduced non-urgent

surgeries by almost 50% in an effort to conserve fuel and medical supplies for urgent cases, it adds.

The problem of power shortages meant that water supplies are curtailed, sewage pumps rendered inoperable, and ground transportation, even for basic public health services such as solid waste removal, becomes less frequent.

The economic blockade imposed by Israel since 2006 had severely limited the movement of goods and people in and out of Gaza and this has led to constant humanitarian crises and hardships for Gazans.

'The severe and prolonged shortages of fuel, electricity and medicines along with widespread poverty stem from six years of tight restrictions into and out of Gaza's borders for people and goods,' WHO said.

WHO calls for 'long-term systemic solutions to the chronic humanitarian crisis of shortages, rather than short-term aid which relieves but fails to improve the underlying social determinants of health in the Gaza Strip'.

Meanwhile, the current winter weather has worsened the situation in Gaza and is putting a greater strain on an already stretched health infrastructure.

'We are on the verge of a complete breakdown in the health sector...', the General Director of military medical services in Gaza Atef al-Kahlout was reported to have said.

He called on the international community to extend assistance to Gaza in the form of medicine and supplies. – TWN

sending a clear message that the commission of grave crimes will lead to serious consequences.

Palestinian leaders are under pressure, but they have not publicly pushed back and made the case that seeking the ICC's jurisdiction would serve justice and perhaps assist peace talks. They have not explained why they feel unable even to actively seek the ICC's jurisdiction.

If the ICC has jurisdiction, the prosecutor can open an investigation of her own accord, but that seems

highly unlikely. If Palestine became a member of the court, it's far more probable that it would need to take a second step and ask the prosecutor to investigate. But taking the first step of seeking jurisdiction could still ratchet up pressure against impunity for serious crimes.

It's time for the Palestinian leadership to inform its public about how it is keeping the accountability ball in play. – Ma'an News Agency

Bill Van Esveld is a senior Middle East researcher at Human Rights Watch.

Femicides hit civil war proportions

The number of femicides – gender-related murders – in Brazil has reached civil war-like proportions. In just 10 years 40,000 women were killed in this country merely for being women.

EVERY year, between 25 November and 10 December, the international community and women's rights groups organise 16 days of activism against gender violence.

The idea originated with the Centre for Women's Global Leadership, which in 1991 urged that the interval between 25 November – International Day Against Violence Against Women – and 10 December – International Human Rights Day – be dedicated to this issue.

In Brazil in 2013 the activities have taken on special importance because on 3-4 December a meeting will be held in the southern city of Porto Alegre to draft the civil society shadow report to be presented to the committee on the Convention on the Elimination of Discrimination against Women (CEDAW), when it meets in February in Geneva.

The alternative civil society report is aimed at providing support for the CEDAW committee's assessment of the Brazilian government's actions to combat trafficking in women and improve women's health.

'These days of activism give greater visibility to the gender rights agenda,' Ingrid Leão, the coordinator in Brazil of the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), told Inter Press Service (IPS). 'Violence against women has come out from under the rug, and society now sees it as a reality and not something that people have invented.'

A study by the Avante Brasil Institute found that 40,000 women were murdered in this country of 200 million people between 2001 and 2010. In 2010 alone, a femicide was committed every hour, 57 minutes and 43 seconds, which translates into 4.5 homicides per 100,000 women.

And the projection for this year in Brazil is 4,717 femicides, which are

Fibula Ortiz

defined as 'the killing of females by males because they are female'.

But violence against women is broader than that, noted Leão, who cited other manifestations, such as psychological, economic, sexual or symbolic.

A law stiffening penalties for domestic violence has been in effect in Brazil since 2006.

The 'Maria da Penha Law'

It is known as the 'Maria da Penha Law' for the name of a pharmacist who was beaten by her husband for 14 years. In 1983 he tried to kill her twice, leaving her paraplegic after shooting her in the back while she was sleeping, and then trying to electrocute her in the shower when she returned from the hospital.

With CLADEM's support, Penha filed a complaint before the Inter-American Commission on Human Rights (IACHR). It was the first gender violence case taken up by the regional body which forms part of the Organisation of American States, and led to a 2001 landmark ruling that held the Brazilian state guilty of negligence and failure to take action against domestic violence.

Besides CEDAW, which was adopted by the members of the United Nations in 1979, Brazil signed the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women in 1994.

'How can we still live with this level of violence against women, despite 40 years of denunciations of this problem?' Têlia Negrão, an expert with the National Feminist Network for Health and Sexual and Reproduc-

tive Rights, remarked to IPS.

She said there is no typical profile of a domestic violence victim, because the problem cuts across all social classes, races and age groups. 'All women, just because of their gender, are vulnerable and are objects of violence,' she told IPS.

But Negrão, who is also the head of the Coletivo Femenino Plural, a women's rights group, stressed that the degree of vulnerability is exacerbated by social inequality, poverty, low educational level, limited jobs opportunities, low incomes and living in areas where levels of violence are high.

'These women have few social instruments to resort to. For women without a degree of autonomy it is harder to escape from a violent situation,' she said.

In August 2013, President Dilma Rousseff enacted a law requiring all public hospitals to provide treatment against sexually transmitted diseases and HIV/AIDS for rape victims.

The victims must also be given access to emergency contraception, and in case of pregnancy, they have the right to an abortion, which is generally illegal in Brazil.

'Full citizenship means the enforcement of human rights. We have achieved a great deal, but not enough,' argued Negrão, who since 1985 has taken part in monitoring Brazil's compliance with international conventions.

In the shadow report for the CEDAW committee, 'we will include concrete incidents [of discrimination] that the Brazilian state won't mention, because no government wants to expose itself in the international sphere,' she commented.

In its 2012 meeting the CEDAW committee stressed two points: internal and international trafficking of women, for which it called for con-

crete measures, and the need for unified legislation regarding women's health.

In a report released in early October, the Secretariat for Women's Policies ascribed to the Office of the President underlined that reports of trafficking increased by over 1,500% in the first half of the year, from the same period in 2012.

Between January and June, the dedicated 180 hotline for victims received 263 calls, of which 173 referred to cases involving international human trafficking and the rest to cases inside Brazil. In 34% of the cases, the victim's life was considered to be at risk.

'The pace with which measures related to trafficking are being adopted is very slow, and the responses are too. We do not currently have the capacity to assess the magnitude of the problem,' Negrão said.

Estela Scandola, a civil society representative on the National Committee to Fight Human Trafficking, told IPS that Brazil has not managed to put into practice a state policy to address the crime.

'We have a government policy thanks to a decree. We need external pressure. Trafficking in persons highlights flaws in a country's development process,' she said.

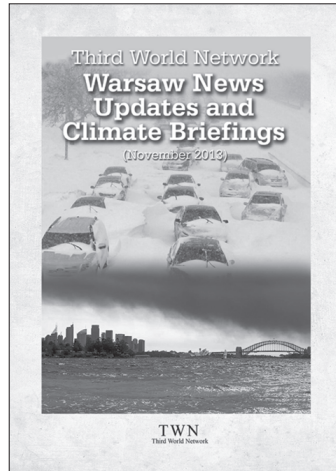
She argued that it is civil society's role to denounce the Brazilian state's failure to implement adequate policies to tackle trafficking.

'The impression is that getting anything done takes a long time. The red tape is never-ending,' she complained, referring to the delay in implementing the Second National Plan to Combat Trafficking in Persons and in creating the National Committee against Trafficking, which has been held up by a lack of funds.

She said the authorities have the means to prevent trafficking and exploitation of women in high-risk areas, such as the big hydropower dams and other infrastructure construction projects around the country, which have attracted large numbers of workers from other regions. – IPS ◆

Warsaw News Updates and Climate Briefings

(November 2013)



ISBN: 978-967-5412-93-6 184 pp

This is a collection of 35 News Updates and five Briefing Papers prepared by the Third World Network for and during the recent United Nations Climate Change Talks – the nineteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP19), the ninth session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 9), the thirty-ninth sessions of the Subsidiary Body for Implementation (SBI 39) and the Subsidiary Body for Scientific and Technological Advice (SBSTA 39), as well as the third part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2-3) – in Warsaw, Poland, from 11 to 22 November 2013.

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Mandela requiem

The eulogies which have been sung for Nelson Mandela (1918-2013) particularly by those who previously opposed him are a reminder that dead heroes and martyrs, however highly their qualities are esteemed, are always destined to become the playthings of the powerful of posterity.

Jeremy Seabrook

ONE of the swiftest media clichés to have crystallised around Nelson Mandela is that he was a ‘secular saint’. His capacity for forgiveness of his former enemies, his absence of rancour and his instinctive egalitarianism have left an afterglow, in which the grief of his millions of admirers was mingled with thanksgiving for his long life, while even those who had been most loud in their condemnation of him declared he was the inspirational hero of their lives.

The praises sung by the heirs and successors of people for whom he was terrorist and subversive until his release from prison in 1990, show the extent to which his former detractors now claim him as their own (with a few exceptions, like former Conservative MPs Norman Tebbit and Terry Dicks, too old now to change their discordant tune). Perhaps this is because his spectacular magnanimity suggests that if the horrors of apartheid could be pardoned through the exaltations of Truth and Reconciliation, so, perhaps, could all other colonial wrongs, both past and present.

The mild forgivingness of Mandela’s person exercised a wonderful cleansing power; which is why prime ministers, presidents and heads of state, those still occupying those high offices and those long out of them, flocked to his memorial. What were they looking for? Were Britain’s four prime ministers seeking absolution for Britain, not merely for having supported the former apartheid regime, but also for the many other distasteful memories of a long imperial history?

This was not hypocrisy on the part of the penitents of racial su-



A mourner at the 10 December memorial service for Nelson Mandela holds up a copy of a newspaper carrying his photograph. Mandela ‘radiated a benign humility onto a world which had treated him so unjustly’.

premacry who, in death, have clasped Mandela to their bosom; the psychological phenomenon it reveals goes deeper than this. If such generosity of spirit could make good, as it were, the ravages of the first age of colonialism, then surely its second coming – in the guise of globalisation – which has, after all, been voluntarily embraced by the representatives of nations, supposedly long free of imperial coercion, can more readily be made acceptable and even welcome.

Rewriting contemporary experience

It is upon this newer form of dominance that the eulogies over Mandela are calculated to call down a blessing. Rewriting history is one thing, but rewriting contemporary experience is far more important, and the revered dead are not exempt from being pressed into this noble enter-

prise.

Those who have lamented the woes of post-Mandela South Africa – a period which has already been long under way, since his withdrawal from the presidency in 1995 – have complained of growing inequality, violence and corruption; and the heirs of Mandela have shown themselves unable to match his human qualities, even when they have invoked him as inspiration and guiding spirit.

One of the most telling incidents of the ‘new’ South Africa, which indicates disturbing continuities with a past which was to have been left behind forever, was the shooting dead by police of 44 workers at the Lonmin platinum mine in August 2012. The images from that incident were reminiscent of the Sharpeville shootings of 91 children, women and men of the African National Congress (ANC) in 1960 under the apartheid regime. A new generation has grown up since



British Prime Minister David Cameron speaking to the media before the start of the memorial service for Mandela. 'Were Britain's four [current and former] prime ministers [at the memorial] seeking absolution for Britain...?'

the end of apartheid which has also been born to a legacy of unemployment, exploitation and loss. For them the struggle is against an economic oppression which was certainly not lifted by the end of apartheid; and although opportunities have facilitated the emergence of a substantial black middle class in South Africa, the gross injustices perpetrated in the name of racial superiority have their analogue

in those that result from the 'integration' of the sometime pariah state into the comity of nations which form 'the global economy', that euphemism for universal and uncontested capitalism.

It is always clear what liberation movements aspire to be freed from, but into what they are entering becomes plain only long after the event. Mrs Thatcher's detestation of the ANC was because she perceived it as

an organisation that professed a version of Communist ideology, which, true to her heritage, she found more abhorrent than a racism that was familiar since it had run through centuries of British dominion. When Mandela was released from prison, Thatcher could afford to be magnanimous, since the Cold War had been won, and Mandela had no option but to forswear the values he had once espoused of a socialism which had withered even as he languished in jail. The admiration he inspired in the West was a consequence, less of his victory over his captors and tormentors, than of his tacit acknowledgement of the triumph of a 'free' economy, which also takes its prisoners and hostages and locks them away, not in island fortresses but in the carceral suburbs and townships of poverty.

Relief at the transition of South Africa to its role as major regional hub in the elegant structure of globalisation was, possibly, the most significant feature which earned for Mandela his secular beatification, which had begun long before his death, when world leaders beat a path to his door, to celebrate his forbearance and generosity of spirit, and perhaps to reassure themselves that he was free of vengeful intentions, as they would have been, and to bask in his effulgence which might add some lustre to their own, not always honourable, doings.

'Acceptable' economic apartheid of globalisation

The figure of Nelson Mandela, humble yet charismatic, astonishingly intimate as well as elevated, radiated a benign humility onto a world which had treated him so unjustly. His presence suggested new beginnings, *tabula rasa*, on which the hopes of humanity would cancel out old ideologies and ruinous beliefs in racial superiority. But as many commentators observed, the rainbow nation which came to pay homage to him in the vigil outside his home and at his lying in state consisted not only of black and white, but also of rich and poor.



Poverty in South Africa. 'A new generation has grown up since the end of apartheid which has also been born to a legacy of unemployment, exploitation and loss.'

The ideology that creates this latter divide is not, as is sometimes averred, 'a legacy of apartheid', but is a reflection of the 'acceptable' economic apartheid of globalisation, which separates the wealthy from the poor by gates, bolts, guards, savage dogs, razor wire and guns – the same paraphernalia that enforced racial segregation. The struggle against this form of inequality has to be waged all over again in the world; not least in a country where the top 10% earn almost 60% of national income, where between a quarter and one-third of people have no work and 42 peo-

ple are murdered each day, one of the murder capitals of the country being the sadly named Nelson Mandela Bay.

Mandela has been referred to in the same breath as Gandhi, whose non-violence has been, after his death, universally venerated and almost as widely disregarded; but a more apt comparison might be with Ambedkar, who died almost to the day 57 years ago, on 6 December 1956 – that fateful day when the leaders of Congress were arrested in South Africa and charged with treason. Ambedkar's memorial in Mumbai was visited by over a million people in the first week

of December 2013. He, too, worked for the uplift of the downtrodden and humiliated; and the country whose exemplary and progressive constitution he helped to frame exhibits the same regressive inequalities as the 'new' South Africa; a fate which suggests that, however highly their qualities are esteemed, dead heroes and martyrs are always destined to become the playthings of the powerful of posterity. ♦

Jeremy Seabrook is a freelance journalist based in the UK. His latest book is Pauperland: Poverty and the Poor in Britain (Hurst, 2013).

The CIA and Mandela: Can the story be told now?

BACK in 1990, US media watch group FAIR noted that the media coverage of Nelson Mandela's release from prison failed to mention there was strong evidence that the CIA had tipped off South African authorities to Mandela's location in 1962, resulting in his arrest.

So with coverage of Mandela's death dominating the media now, can the story of the CIA's role in Mandela's capture be told?

Mostly not.

The link between the CIA and Mandela's capture – reported by CBS Evening News (5 August 1986) and in a *New York Times* column by Andrew Cockburn (13 October 1986) – was almost entirely unmentioned in media discussions of his death.

There were a few exceptions. MSNBC host Chris Hayes mentioned it on 5 December ('We know there's reporting that indicates the CIA actually helped the South African police nab Mandela the first time he was captured'). On Melissa Harris-Perry's MSNBC show on 7 December, *Democracy Now!* host Amy Goodman brought it up:

'The US devoted more resources to finding Mandela to hand over to the apartheid forces than the apartheid forces themselves. It was the CIA that actually located

Mandela, and he was driving dressed up as a chauffeur when he was stopped, and he was arrested and ultimately serves 27 years in prison.'

And on CNN's *Outfront* (6 December), Cornel West told guest host Jake Tapper, 'Keep in mind, though, Brother Jake, the CIA colluded with the apartheid regime to find Nelson Mandela when he was disguised as a chauffeur in 1961.'

So the lesson might be that the kinds of guests rarely included in corporate media are the ones more likely to bring up this history.

In the *New York Times*' long obituary on 6 December, Bill Keller presented it as a story that is yet to be confirmed: 'There have been allegations, neither substantiated nor dispelled, that a CIA agent had tipped the police officers who arrested Mr. Mandela.' He reiterated that on NPR's *Morning Edition* (6 December): 'I have not seen utterly convincing confirmation or refutation of it.'

Keller – who was convinced about Iraq's WMDs – has presumably read the accounts of CIA involvement in Mandela's capture, including a 10 June 1990 Cox News Service report of a retired CIA official admitting that a CIA operative told him of the operation ('We have turned Mandela over to the South African security branch') the day it happened.

So with Mandela's death making headlines everywhere, there is still very little coverage of this part of the Mandela story. One place you can find it, though – the *New York Times* letters to the editor section on 10 December, where the following letter by Stephen Ellis appeared under the headline 'CIA and Mandela's Arrest':

'Nelson Mandela's membership in the South African Communist Party in the early 1960s was acknowledged by the Communist Party itself last week, confirming the findings of my own historical research, reported by Bill Keller ("Nelson Mandela, Communist," column, Dec. 8).

'Perhaps the United States government will now confirm the role of the Central Intelligence Agency in Mr. Mandela's arrest in August 1962, which is also indicated by my research. It was the height of the Cold War, and it was all a long time ago, but the truth still counts.'

'The truth still counts' shouldn't just guide government decisions about what it chooses to reveal about its own history. It's something journalists should consider too. Much of the coverage of Mandela is focused on his remarkable ability to forgive his opponents. It would be especially useful for US media to spell out which US government actions might have to be forgiven. – FAIR (*Fairness & Accuracy In Reporting*)

Known as the 'poet of the people', *Ahmed Fouad Negm* (1929-2013) made use of colloquial Egyptian Arabic to articulate the feelings of his countrymen on the fundamental concerns which affected their life. His poems were set to music and were a major influence on the youth who were behind the Arab Spring.

Who are they and who are we?

Ahmed Fouad Negm

Who are they and who are we?
 They are the princes and the Sultans
 They are the ones with wealth and power
 And we are the impoverished and deprived
 Use your mind, guess...
 Guess who is governing whom?
 Who are they and who are we?
 We are the constructing, we are the workers
 We are Al-Sunna, We are Al-Fard
 We are the people both height and breadth
 From our health, the land raises
 And by our sweat, the meadows turn green
 Use your mind, guess...
 Guess who serves whom?
 Who are they and who are we?
 They are the princes and the Sultans
 They are the mansions and the cars
 And the selected women
 Consumerist animals
 Their job is only to stuff their guts
 Use your mind, guess...
 Guess who is eating whom?

Who are they and who are we?
 We are the war, its stones and fire
 We are the army liberating the land
 We are the martyrs
 Defeated or successful
 Use your mind, guess...
 Guess who is killing whom?
 Who are they and who are we?
 They are the princes and the Sultans
 They are mere images behind the music
 They are the men of politics
 Naturally, with blank brains
 But with colourful decorative images
 Use your mind, guess...
 Guess who is betraying whom?
 Who are they and who are we?
 They are the princes and the Sultans
 They wear the latest fashions
 But we live seven in a single room
 They eat beef and chicken
 And we eat nothing but beans
 They walk around in private planes
 We get crammed in buses
 Their lives are nice and flowery
 They're one specie; we are another
 Use your mind, guess...
 Guess who will defeat whom?

Translated from the Arabic by Walaa Quisay