

## The outcome of ADP 2-11 in Bonn Final step to Paris

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The 11th part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2-11) ended on the 23rd October with agreement on what could be viewed as a rather disappointing version of a negotiating text which the group undertook to put forward at the pivotal conference of the Parties to the UN Climate Convention scheduled for this December. The meeting was the fourth meeting of the ADP this year and the group should fulfil its mandate by 5 December, in order to enable Parties to the UNFCCC to close negotiations of the text of the new Climate Agreement by the end of the 11th December, 2015. Given that the negotiating text, featuring all of the positions and requests of the parties to the Convention adopted in Geneva in February 2015, remains the official negotiating text, the current draft version which the parties agreed as the outcome of ADP 2-11 is at least to that extent more concise. It is structured in two parts, one being the draft agreement and another one the accompanying draft decision that sets out the details of the future climate regime to enter into force from 2020. The second decision, which may be incorporated into the final decision text, covers the issues linked to raising pre-2020 ambition. The drafts are, however, much longer than at the starting point of ADP 2-11.

In advance of the ADP 2-11, the ADP Co-Chairs Ahmed Djoghlaif (Algeria) and Daniel Reifsnyder (US) prepared a non-paper to serve as the basis for negotiation of the draft Paris climate package and the draft decision on workstream 2 emanating from Bonn in October. However, the proposed text was strongly criticised by negotiating countries, with developing countries especially critical of its content, which they considered lopsided and unbalanced. A meeting of the Co-Chairs with Heads of Delegations in regional groups a day before the opening of the session led the Co-Chairs to propose at the last moment that the negotiations at ADP 2-11 proceed in the form of a contact group with parties making textual “surgical insertions” into the text where they felt their interests was not represented. To formalise this proposal, in addition to their scenario note (ADP.2015.7.InformalNote) prepared, as usual, before the session and outlining the proposed mode of work, the Co-Chairs issued another note, ‘Further Clarifications on the mode of work at ADP 2-11’, outlining the new proposal made at the meeting of the Heads of Delegations on 18 October. Developed countries were willing to go along with the proposal. However, developing countries did not accept the proposed procedure at the Contact Group meeting following the opening plenary. G-77 demanded that the work proceeds in an open-ended drafting committee, with text on the screen and delegates proposing their insertions to the text as the group screened it. The key complaint of the developing countries was that the drafts proposed by the Co-Chairs did not reflect the outcome of the previous session (ADP 2-10).

According to the African Group and Like-Minded Developing Countries (LMDCs), the text was lacking on **differentiation** and did not distinguish between the different circumstances of developed and developing countries. LMDCs complained that Article 2 of the Convention was not reflected in the Co-Chairs draft

adequately, and that the issues of **equity** and **common but differentiated responsibilities (CBDR)** were not clearly represented. The Alliance of Small Island States (AOSIS) and Least Developed Countries (LDCs) as well as the African Group considered that **adaptation** and **loss and damage** were not given enough attention or were side-lined, with mitigation given too much emphasis in the Co-Chairs draft. The text on adaptation in the draft decision on pre-2020 ambition was italicised by the ADP Co-Chairs. This was to remind parties that at the previous session they agreed to continue debating whether and how to include adaptation in the technical examination process (TEP) before 2020 without prejudging the outcome of such deliberation. Until this year, parties focused mainly on mitigation and closing the gap in pre-2020 emission reduction efforts, while adaptation was largely absent from consideration of parties in Workstream, 2 focussing on pre-2020 ambition. In September, developing countries strongly argued for building up a parallel adaptation TEP, and on closing the ambition in pre-2020 finance, technology transfer and capacity building. Now italics and brackets around the text that in fact was not yet agreed has led to a lot of criticism and accusations that the WS2 draft was unbalanced.

On the subject of differentiation and CBDR, developing countries stressed that the future agreement must safeguard the right of developing countries to sustainable development as the overriding priority of developing countries. Whatever other commitments are made by developing countries, sustainable development will remain their priority. Many countries, especially LDCs but also LMDCs, and African countries stressed that developing countries need to adapt to the changing climate. Mitigation as a benefit of adaptation, or **adaptation with mitigation co-benefits** could become developing countries' contribution to the global climate action. LMDCs defended the right of those developing countries that may perceive the global climate action as detrimental to their development, to **response measures** compensating them for these effects.

Some developing and developed countries promoted that such issues as **human rights and gender equality** are in need of special consideration under the new agreement. Bolivia and other South American states supported a place for consideration of indigenous peoples under the Convention and their right to development, while other countries, especially developed ones proposed to acknowledge the role played by non-state actors and the role they could play in the process. For developed countries, mitigation is a key priority, although they acknowledge the need for a special place for adaptation under the 2015 Agreement. Most of developed parties are however, against giving too much attention to adaptation in the pre-2020 process, wary of diluting the effort to close the pre-2020 mitigation gap and reluctant to create new processes and new institutional arrangements. Some developed countries were quite open in expressing their disappointment with the UNFCCC process, especially Switzerland and Norway, and to some extent New Zealand and Australia. Norway stated that the lack of progress under the UNFCCC may push it away from the UNFCCC and towards other multilateral processes which are developing outside of the UNFCCC framework. Indeed, the political activity of the Lima-Paris Action Agenda did a lot to build a political support on the intergovernmental level, involving heads of state and heads of governments. G-7, G-20 and the UN Summit of Ban-Ki-Moon have done a lot to promote the fight against climate change outside of the confines of the UNFCCC negotiations. Developed countries would like to see in Paris a strong multilateral agreement with all parties to the UNFCCC participating through their nationally determined contributions, which would be cyclically reviewed and strengthened in line with the distance to the long term goal (LTG). They would like to see a departure from a bi-polar developing-developed divide reflecting the historical situation of 1992, with those developing parties „in a position to do so” contributing also to finance, capacity building and technology transfer to poorer developing countries. Developing countries would prefer to keep the differentiation, if not through the Annexes of the UNFCCC, then through the recognition of the developed - developing juxtaposition. This explains why developing countries cling to the references to Article 2 of the Convention;

and want it to be recognised under the new agreement that sustainable development and poverty eradication are their overriding priorities. Those countries that want a gradual change of status of at least those developing countries that are in fact wealthier than countries traditionally recognised as belonging to the category of developed countries are seen by some developing states as questioning, or even undermining, the principles of the Convention. The situation is complicated by the fact that there is no clear UN-recognised definition of a developed country, and countries traditionally recognised as developing are not interested in discussing the issue of how to define the criteria deciding which countries belong to those categories. This applies not only to the UNFCCC but to other UN fora. There are clear UN guidelines on establishing the list of Least Developed States which is regularly reviewed and which are based on economic criteria. This could eventually help to differentiate among the states under the UNFCCC but for many (wealthier) developing countries this is a non-negotiable issue. However, the needs of poorer states are of the magnitude that requires effort which developed countries listed in Annex II to the Convention claim they are unable to meet. Currently, only countries listed in Annex II have an obligation to provide finance, technology transfer and capacity building to developing countries. Other countries listed in Annex I to the Convention have mitigation obligations but not financial or other obligations towards developing countries. Only countries in a position to do so, listed in Annex I but not listed in Annex II to the Convention, are invited to contribute towards developing countries adaptation and mitigation actions.

Following the language of the draft texts prepared in advance of COP.21 in Paris, a divide Annex I/non-Annex I with additional obligations for Annex II may be replaced under the new regime by a distinction between developed and developing countries. This would not increase much the power of support provided to developing countries, as many Annex I countries are only middle income countries which are relatively poor compared to several wealthy countries that enjoy the „developing” status. For example, Turkey, a middle-income country is elsewhere considered to be a developing country but it is both an OECD member and an Annex I country under the Convention. If all Annex I countries were automatically categorised as developed countries with obligations now attributed to Annex II parties, Turkey would have to provide financial and other MOI<sup>1</sup> support to some countries that have a much higher GDP, and GDP per capita than Turkey. In Durban and Doha, Turkey fought for a recognition of its special circumstances as a *de facto* developing country and was able to secure such recognition, although it was not granted the privilege of obligatory support from Annex II parties and international organisations. Non-Annex I countries were against giving such rights to Turkey as this would allow it access to support which is now given to developing countries and this is, of course, a matter of limited resources which are not sufficient to respond to the needs of developing countries.

Economies in Transition (EiT) is another such group of Annex I parties under the Convention that are at risk of losing their current status. For many years, Economies in Transition were given capacity building and financial support by Annex II countries, and until 2020 the enjoy a privileged position granted to them under the Bali Action Plan, and re-confirmed by decisions closing the Long-term Cooperative Action workstream in Doha COP. EITs are not obliged to provide support to developing countries, although they may do so, if they consider themselves in a position to, and conversely, Annex II parties and international organisations are invited to support EITs in their mitigation and adaptation activities. If the Annex II category disappears in the Paris Agreement, and all Annex I countries are called developed countries, EITs risk losing their special category. This would impact Belarus, Ukraine and Russia, of which especially Ukraine are in a difficult

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<sup>1</sup> MOI - Means of Implementation: finance, technology transfer and capacity building. Support provided under the UNFCCC to developing countries by Annex II countries

economic situation. Ukraine which has a shrinking economy and is in a need of economic support would then have to provide MOI to much wealthier countries, if such countries moved from Non-Annex I to the developing countries category automatically.

That is why definitions in the New Agreement are so important, and legal issues have to be followed closely by countries such as Ukraine and other middle income and poor states that may fall into the developed category with its expected obligations and implied lack of obligation to obtain support for the implementation of their mitigation and adaptation commitments/contributions.

Under mitigation, the long term goal and how to realign the joint efforts of the Parties with achieving it are of crucial importance. Nationally determined contributions and their aggregate impact will be measured against it, and the regular review of how countries are faring against LTG will serve to assess the overall progress in climate change mitigation. AOSIS and LDCs want 1,5 degrees as a long term goal which would necessitate more stringent pathways. These countries want also a greater role for the loss and damage mechanism after 2020. The Coalition for Reinformest Nations (CfRN) fights for a greater role of REDD+. And so on.

Preamble can be an important tool for conveying political messages, and therefore parties would like to see in the preamble messages that are in line with their political priorities. For all these reasons, finding a middle ground is extremely difficult, and, in the opinion of many parties, ADP co-chairs failed to do this in the text they prepared for ADP 2-11. In the course of four days, departing from the initial 20 pages of the Co-Chairs text, negotiators produced in spin offs a compilation text consisting of a draft input under WS1 of 52 pages - draft agreement and draft decision - and a draft decision on WS2 of 8 pages. In the final meeting of the ADP contact group, parties agreed that the Secretariat would prepare a technical paper proposing streamlining and consolidating options and that after this operation the text would be forwarded to Paris. The parties and the ADP Co-Chairs stressed that this would be a working text. The Geneva negotiating text remains the official text of the parties until they decide otherwise in Paris.

### **The preamble**

The preamble contains references to the objective of the Convention and bracketed language adding references to principles and provisions, and articles of the Convention referring to the principles and provisions, as well as to the CBDR and equity. There is also a bracketed reference to historical responsibility of developed countries. In general, developing countries tried to introduce this language in all parts of the text, while developed countries were trying to remove or bracket such references. The idea parties agreed to in Durban was that all parties will participate in the new climate agreement. This is still interpreted differently by parties and it is polarizing the views of parties. Developing countries do now reject the idea that only developed countries should make efforts under the Convention but the shift in developing countries participation is towards adaptation, and towards adaptation with mitigation benefits. That is why adaptation is so important in the negotiations of the Paris agreement. Some countries are of the view that adaptation is the contribution of developing countries before and after entry into force of the Paris agreement. Developing countries' main challenge is sustainable development, and they would like to see this point of view reflected in the new agreement. LDCs and SIDS wanted recognition of their status in the preamble. The preamble links the new agreement with science and a periodic review of the long term goal. There also are, at present, two options on the inclusion of the LULUCF and forests.



## Definitions

It looks as if the negotiators will have to decide on a definition of „countries in need of support’ Some countries (Mexico being one) proposed a reference in the definition to the climate forcers. There are also attempts to define „developed” and „developing” countries

## Purpose

Negotiators discussed at length the seemingly simple issue of the purpose of the agreement. The first option (second option is „no text”) is full of brackets and refers to the objective, to the long term goal of 1,5 or 2 degrees Celsius, the need for support, science and equity and it will be discussed further as these political issues will define the strength of the new agreement and how it will be applied. Article 2 bis states that all parties shall regularly prepare and submit their INDCs and that these INDCs need to be progressive, which seems obvious but the text is nevertheless bracketed in parts that still need to be decided upon. Developing countries secured an unbracketed point 3 stating that the extent of developing countries’ involvement in the implementation of this Agreement will depend on the provision of finance, technology transfer and capacity building (MOI) by developed countries. As signalled above, this means that definition of „developed” and „developing” is crucial in determining which countries will finance the actions of other countries. Under the Convention, Annex II parties are obliged to provide finance and support to non-Annex I parties and are invited to support EiTs, and Turkey (parties whose special circumstances have been recognised by the COP)

## Mitigation

Article 3 on mitigation has 3 options on a long term goal for the new agreement which are bracketed in many places. There are still to-be-clarified options on individual efforts (of the parties) and four options on differentiated efforts. Para. 4 states that each party should be more ambitious over time, so there should be a progression in the efforts of each party. A provision to secure information on INDCs/NDCs was included in the next paragraph. Options on what constitutes an INDC and what should be contained in the INDCs testify to the very diverse views of parties and the need to continue this discussion in Paris. At present these options are too numerous and unclear. Even on the timing of the submission of INDCs, parties are divided, with an option of cyclical re-submission every 5 years, favoured by some countries, including the EU, at present being one of a few options. Also such issues as accounting have to be still decided. In general, developing countries favour options differentiating between developed and developing countries, while developed countries support options in which similar rules apply to all parties. The long term goal is also debated in the context of mitigation, and how it is defined will determine the ambition of NDCs, as well as the gap between the effort necessary to achieve it on the global level. Parties interested in market, non-market mechanisms and REDD+ are supporting articles defining these issues under the mitigation part of the Agreement. However, a proposal for a new agreement on a mechanism for sustainable development found its way into the text, although it is not clear how it would relate to the achievement of the long-term goal on mitigation.

## Adaptation and loss & damage

Adaptation is seen by developing countries as the other side of mitigation. LDCs and SIDS see adaptation as their main contribution to the global agreement, with many other developing countries supporting a greater

role for adaptation with mitigation benefits. Developing countries support the adoption of a long-term adaptation goal, which is opposed by developed countries on the grounds that, in contrast to mitigation, adaptation is crucially a challenge that has to be addressed locally. Nobody questions the need to support adaptation through financial mechanisms and institutions globally, with support going especially to the most vulnerable and poor developing countries. AOSIS and LDCs want a special place in the new agreement to the mechanism addressing loss & damage. A special mechanism on loss & damage was adopted 2 years ago at the Warsaw COP. Developing countries would like to see more attention given to the issue of loss & damage post 2020, envisaging that its importance will grow with time. Adaptation and ways and means to address it are also debated under Workstream 2, where negotiators are trying to address the gap in ambition between the mitigation efforts of mainly developed countries in the period before 2020, and the current long term global goal of limiting the rise of global temperature by the end of this century to 2 degrees Celsius.

### **Finance**

Finance is one of the topics with most numerous options and this is the text where countries negotiate each comma with a lot of application. Under the Convention until 2020, only countries listed in Annex II to the Convention are obliged to support Non-Annex I countries and, under certain conditions, this support was also available to some Annex I countries. Developed countries would like to see the base of contributors to global climate finance broadened to other countries, including those countries that are at present Non-Annex I countries but are wealthy, often more so than some countries which are categorized as developed countries, including some of the EU Member States. One of the most controversial issues is how to categorize financial donors in the new agreement. On the table there is a category of *parties [in a position][with capacity] to do so* which should provide support to assist developing country Parties in need of support with respect to both mitigation and adaptation. Wealthy developing countries are against using the term of *parties in a position/ with capacity to do so*, and support the language keeping the distinction between developing and developed countries, as they see themselves keeping that status of developing countries also after 2020. That is why inevitably the new agreement should be able to define categories of „developed“ and „developing“, which should happen under the „definitions“ article. The discussion on finance includes the issue of how to mobilize private finance on top of that provided by governments, and how to track both, spending and mobilization of finance. At present these issues in the draft text are presented as many options and heavily bracketed.

### **Technology development and transfer, and capacity building**

At present, the issues of technology development and transfer, and of capacity building, are heavily bracketed in the draft text. As with finance, the key issue is to determine eligibility for support and obligation to provide such support under the new agreement. Under technology transfer, *intellectual property rights* are an important topic. Better use of institutional arrangements and the role of institutions is also to be determined.

### **Transparency**

Under transparency, parties are essentially discussing the communication of actions and needs, as well as reporting on the implementation of support provided and received. The issues of differentiation crop up also in this context, with some developing countries, notably LDCs but also other countries demanding less onerous reporting. Developed countries want to include provisions of reporting on how support is used, stressing also the need to demonstrate mitigation benefits and efficiency of actions undertaken by the

beneficiaries of support. There is also a debate on institutional arrangements ensuring transparency, based on a review of the information provided by each Party which would be carried out by an international technical expert review team. One of the options would ensure that the information is reviewed at least biennially by the expert review team. The information would cover mitigation, thus the implementation of the NDCs, but also of adaptation and support, with various options on what is reported and reviewed in the case of developed and/or developing countries.

### **Global stocktake and facilitating implementation and compliance**

Articles 10 and 11 cover global stocktake and facilitating implementation and compliance. Stocktake concerning how the agreement is implemented and recommending corrective actions will be complemented by measures facilitating implementation of agreed measures. The new agreement will necessitate a compliance framework, for which the compliance mechanism of the Kyoto Protocol is seen by many parties as the best example. However, most of details under these two articles have not been agreed yet, and the discussion will continue in Paris.

### **CMA and other institutional arrangements (Articles 12 to 15)**

The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to the Agreement. CMA will replace COP and CMP under the new agreement. Institutional arrangements are among those less glamorous but important issues that are still to be decided in Paris. The rules of procedure will have to be defined separately but even the main issues are still mired under many options.

### **Legal provisions (Articles 16 to 26)**

A number of articles cover legal provisions such as ratification, entry into force, decision making rights and so on. The text of the draft agreement is still bracketed here and will be further discussed in Paris.

### **Draft decisions**

Issues that cannot be specifically included in the agreement will have to be included in decisions accompanying the agreement. Both draft decisions - a decision accompanying the Agreement, and a decision on workstream 2 (raising ambition before 2020) will close the work of the ADP under the current mandate. Parties are divided on how to continue working from 2016 onwards. One of the options envisages that the ADP will not be replaced by another working group but will continue from 2016 under the new mandate accorded to it by the Paris COP. The ADP under this option will be tasked with preparation for the entry into force of the Agreement, with the convening of the first session of of the Conference of the Parties serving as the meeting of the Parties to the Agreement (CMA) and with conducting this work. Under another option, the ADP would not continue after the Paris COP and will be replaced by an Intergovernmental Preparatory Committee (IPC) tasked with preparations for the entry into force of the Agreement and with convening of the first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement (CMA). The third option envisages termination of the ADP mandate in Paris and the Subsidiary Bodies (SBI and SBSTA) taking over the implementation of the Agreement.

Decisions will regulate implementation of the work programme preceding entry into force of the Agreement, in order to facilitate it and to complete work by 2020. The relevant requests will be contained in section[s] III [and IV] of the decision and will refer to, *inter alia*, mitigation adaptation, finance, technology development and transfer, and capacity-building, and transparency of action and support. Some draft provisions are reflections of political thinking but may never go into the final adopted version. For example, a bracketed text under the INDC envisages for developed countries that their INDCs will contain information on the provision of the „Means of Implementation” to developing countries. This goes beyond what parties agreed to in Warsaw and in Lima. Draft para. 17 bis envisages a *force majeure* for developing parties which may fail to achieve their reduction targets. A „no backsliding” provision is at present included in the draft through a reference to the fact that the effort represented by each Party's nationally determined commitment shall be at least equal to that communicated through its intended nationally determined commitment.

It is important to note that INDCs have been transposed in this option to nationally determined commitments. Commitment envisages a compliance system, something that developing countries worry about and would prefer to see applied to developed countries' efforts only. There are, again, several options on facilitative dialogue assessing adequacy of the commitments, with an option envisaging that implementation of developing country commitments would be contingent on the availability of adequate finance and other means of implementation. These are detailed provisions which need to be agreed for the Paris outcome to become meaningful.

Chapter III of the draft decision lists all decisions which would give effect to the Agreement on mitigation, adaptation, loss and damage and the remaining elements: finance, technology and capacity building. Developing countries would like to see here an option on an international mechanism for capacity building under the Convention and the 2015 Agreement. Several options still to be decided exist under transparency of action and support, and under global stocktake.

The draft decision on enhancing ambition in pre-2020 period (Workstream 2) is focused on giving equal importance (to that of mitigation) and to raising the ambition of adaptation before 2020. The idea of raising ambition is also applied by developing countries to the provision of support from developed countries. Developing countries are pushing for creating a process for adaptation similar to the Technical Examination Process for mitigation. High level dialogue aimed at accelerating actions and two high level champions active in a similar way are envisaged in some options but the text is bracketed and will have to be cleaned up by negotiators in Paris.

The ADP closing textual negotiations will be convened in the first week of Paris COP and is expected to deliver its work by Saturday, 5th December. The streamlined versions of the text are expected to be discussed at the high level/ministerial session in the second week, where it is expected that difficult political issues will be ironed out. Then it is to the COP to agree and adopt the final text of both, the Agreement and of the accompanying decisions. Meanwhile, the incoming French Presidency of the COP is organising a pre-COP meeting and hopes to secure a political momentum through the meeting of the Heads of State and Heads of Government on the first day of the COP in Paris. Only three weeks remain to the most important COP in climate negotiations since Durban, where the ADP was set up and where parties decided to start negotiating the new agreement applicable to all parties.