

Processed, Refried – Little Substance Added

Cancún Climate Conference Keeps United Nations Process Alive but Raises More Questions than It Answers

*By Wolfgang Sterk, Christof Arens, Urda Eichhorst,
Florian Mersmann, Hanna Wang-Helmreich*

Wuppertal, March 2011

Content

1. <i>Introduction</i>	3
2. <i>One Treaty, Two Treaties, No Treaty? The Legal Form of a Future Agreement</i>	4
3. <i>Mitigation</i>	7
4. <i>Measuring, Reporting and Verification</i>	11
5. <i>Adaptation</i>	14
6. <i>Financing</i>	17
7. <i>Technology</i>	20
8. <i>Reducing Emissions from Deforestation and Forest Degradation (REDD)</i>	22
9. <i>What Future Climate Regime?</i>	24
<i>References</i>	30

1. Introduction

Going down as yet another all-nighter in the history of the UN climate negotiations, the 16th Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) (COP 16) and the 6th Conference of the Parties Serving as Meeting of the Parties to the Kyoto Protocol (CMP 6) in Cancún came to a close at around 3.30 on Saturday morning with the adoption of the “Cancún Agreements”. With the future of the international climate regime hanging in the balance, the conference had seemed to be on the verge of breakdown for a long period of time due to the intransigence of key industrialised countries. Expectations had been low to begin with as the USA did not have anything to bring to the table. The US Congress had failed to pass climate legislation before the mid-term elections and after the Republican election victory, which brought in a huge number of new members of Congress who severely question whether there even is a climate problem, there will hardly be any new attempts at crafting legislation for the next two years at least. The prospect of the USA ratifying any international climate treaty is even further out of reach given that ratification requires a 2/3 majority in the Senate. Nobody therefore expected that Cancún would deliver a new global climate treaty. Instead, the hope was that it would be possible to achieve convergence on technical and implementation issues and thus generate new momentum which would then hopefully lead to the adoption of a new agreement at the next conference in Durban.

On the other hand, it was feared that another failed conference similar to Copenhagen might prompt countries to sideline the UNFCCC process and instead seek cooperation through bilateral and plurilateral channels, leading to a fragmentation of international climate policy. To head off such a scenario, COP President Espinosa kept repeating day after day that the conference would be conducted in a completely transparent fashion and that there would be no Mexican text parachuted in.

However, Japan delivered a solid body blow to the proceedings on the very first day when it announced that it would not inscribe its emissions targets for the time after 2012 into the Kyoto Protocol under any circumstances. This was followed suit by a similar announcement from Russia later in the conference. While the opposition of Japan and Russia to continue the Kyoto path is not new, these vocal announcements cast a further shadow over the conference as the continuation of Kyoto is a red line for developing countries.

Many delegates and observers therefore breathed a deep sigh of relief when the Mexican presidency tabled a compromise proposal on the last evening of the conference and one delegation after the other declared that they supported the proposal – with the notable exception of Bolivia, who vocally denounced the text for its lack of sufficient

ambition. The texts were in the end gavelled through despite Bolivia's objections. This is a violation of the consensus rule and experts of international law will be very busy to work out what this means for the legitimacy of the Cancún Agreements.

Politically, the wisdom of Bolivia's position may be questioned. In the situation the only alternative to overruling Bolivia's opposition would have been another train wreck like in Copenhagen and it is hard to see what positive result that should have had. But on the substance it is hard to find many faults in Bolivia's arguments. The Cancún outcome is certainly too weak to effectively combat climate change. Crucially, the outcome does not set a deadline for concluding the negotiations, nor does it specify the legal form the eventual outcome is supposed to take. Most of the other developing countries also highlighted that the texts were far from meeting their expectations, but they were willing to swallow their objections in order to keep the process alive and hopefully achieve better results in the future.

This article lays out the main developments in Cancún as well as an assessment of the outcome. The paper discusses the negotiation process on the following central "building blocks" of the Bali Action Plan: mitigation, measuring, reporting and verification, adaptation, finance, technology and reducing emissions from deforestation and forest degradation (REDD). The most crucial question, however, is what legal form the future agreement should take. This will therefore be discussed first.

2. One Treaty, Two Treaties, No Treaty? The Legal Form of a Future Agreement

Ever since the start of the climate regime, negotiations have been characterised by fundamental differences of opinion on who should contribute how much to the fight against climate change and in particular who should go first. The so-called developing countries point to the historical responsibility of the so-called developed countries (listed in Annex I of the UNFCCC and hence called Annex I countries) for creating the climate problem and insist that Annex I countries should therefore take the lead in combating climate change, as they have committed to in Art. 3.1 of the UNFCCC. Annex I countries for their part point to the rising emissions in the large rapidly industrialising countries of the South and demand that they need to step up their efforts as well.

According to the Bali Action Plan that was agreed at the Bali climate conference in 2007, the mitigation negotiations are proceeding under two tracks. First, the Ad Hoc Working Group on Further Commitments by Annex I Countries under the Kyoto Protocol (AWG-KP), which was established at the conference in Montreal in 2005, is negotiating future emission targets for Annex I countries. As the Kyoto Protocol's first

commitment period expires in 2012, the AWG-KP is to agree on new targets for a second commitment period post-2012. Second, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) also negotiates commitments for Annex I countries, intending to cover those that have not ratified the Protocol – i.e. the USA. In addition, the LCA negotiates “Nationally appropriate mitigation actions” of developing countries, which are to be supported by Annex I countries with technology, financing and capacity-building. Both the actions and the support are to be “measurable, reportable and verifiable”.

However, based on their fundamentally different views on who has which responsibility Parties hold equally different views on what should be the outcome of these negotiations.

As a matter of general principle the EU and developing countries are in favour of a top-down approach. In their view, first an overall mitigation target should be decided, which would then be broken down to individual countries according to their relative responsibility and capability.

However, the Annex I countries that have ratified the Kyoto Protocol are not prepared to go any further without significant action by the USA and the rapidly industrialising countries of the South. Ideally, they want to have the Protocol replaced by a new universal framework that also covers the USA and the rapidly industrialising countries. In particular Japan and Russia have explicitly stated that they refuse to be bound under a second Kyoto period. Australia and the EU have stated that they would prefer a universal framework but could also accept a two-track outcome under the condition that it provides for sufficient efforts by all major emitters.

The G-77 and China want the Kyoto Protocol to continue as a reflection of industrialised countries’ historical responsibility, in parallel to a separate outcome under the LCA. They see the Kyoto Protocol as the only binding instrument for emission reductions the international community has so far been able to create and reject any suggestion to abandon it. They also see a continuation of the Protocol as a key prerequisite for maintaining the distinction between industrialised and developing countries. Creating a unified treaty would in their view blur this distinction and create a “slippery slope” where developing countries would soon also be asked to adopt binding emission targets. In their view the two AWGs should have two separate results: On the one hand new emission targets for Annex I countries under the Kyoto Protocol and on the other hand an agreement under the UNFCCC. The latter would cover commitments by the USA, mitigation actions by non-Annex I countries, adaptation, as well as financial and technological support from Annex I to non-Annex I countries. Developing countries have also posited that no agreement will be possible under the AWG-LCA unless there is an agreement on a second commitment period under the Kyoto Protocol.

There are also differences within the G-77. The countries that are most vulnerable to the impacts of climate change, the small island developing states (SIDS) and the least developed countries (LDCs), have submitted proposals for a new legally binding protocol under the Convention that would work in parallel to the Kyoto Protocol. By contrast, China, India and Saudi Arabia have held that COP decisions would be sufficiently binding and that first the content of the agreement should be determined before discussing its legal form. Their position strongly depends on the (lack of) willingness of the USA to commit to a sufficiently ambitious emission target in a legally binding form.

The USA for their part have demanded a new structure that should be “very different” from the Kyoto Protocol. They reject the top-down approach favoured by the EU and developing countries. According to the USA, the future regime should be based on a “pledge and review” bottom-up approach. In this version, each country would basically determine its own level of ambition and the international system would mainly serve as a notary to collect and regularly review the implementation of these pledges. The USA also insist that the degree of bindingness must be the same for all the major emitters – a demand that is vehemently rejected by developing countries.

Due to these differences the Bali Action Plan does not specify the legal nature the outcome is supposed to take and only talks about an “agreed outcome” instead. These differences once again came to a head in Cancún. On the very first day of the conference Japan announced that it would not inscribe its emission reduction pledge under a second commitment period to the Kyoto Protocol. This announcement was later followed by a similar announcement from Russia. While these positions are not new, having them stated in such a forceful way created significant tensions as the continuation of the Kyoto Protocol is a *conditio sine qua non* for developing countries.

The question of the legal nature of the LCA track outcome track also came to the fore once more. Tuvalu, Grenada on behalf of the Alliance of Small Island States (AOSIS), and Costa Rica had submitted proposals for legally binding protocols in 2009 with the purpose of having them adopted as the outcome of the LCA negotiations. They pushed for having a contact group, i.e. a dedicated working group within COP 16, on the legal nature of the LCA outcome, arguing that once this question was settled negotiating the substance would become much easier. China, India and Saudi Arabia reiterated their position that these discussions would be premature as the form should follow the function. However, many other countries such as Venezuela, Cuba, the EU, Australia, Norway, and South Africa supported the idea to have a dedicated discussion on legal form.

After lengthy discussions Parties agreed to establish a contact group after all. The aim of AOSIS and Costa Rica was to adopt a decision committing Parties to adopting a legally binding instrument in Durban that would be complementary to the Kyoto Protocol. The call for a legally binding outcome was supported by many other

countries, including the EU, Japan and Australia. However, India, China and Saudi Arabia held fast to their position. In addition, the USA posited that they were not able to accept a mandate that focused only on the legal form if it did not specify that all major economies would take on mitigation efforts with the same legal force as those by developed countries.

In the end, the question was again postponed to the next conference. The COP extended the mandate of the AWG-LCA and requested it to “continue discussing legal options with the aim of completing an agreed outcome based on decision 1/CP.13 (Bali Action Plan), the work done at the sixteenth Conference of the Parties and proposals made by Parties”.¹

The mandate of the AWG-KP was also extended for another year.² Nevertheless, due to the vocal opposition by Japan and Russia the prospects for agreeing to a second commitment period under the Kyoto Protocol have been significantly dimmed in Cancún.

3. Mitigation

The discussions on mitigation revolved around several crucial questions:

- Agreement on a global temperature target
- Agreeing on aggregate global mid-term and long-term targets, in particular a global emission goal for 2050 and a goal for when global emissions should peak
- “Anchoring” the emission reduction pledges that had been made in the Copenhagen Accord in the UNFCCC process
- Strengthening the level of ambition

The broad agreement on keeping global warming to 2°C above pre-industrial levels at most was one of the few advances of the Copenhagen conference. While Art. 2 of the UNFCCC commits Parties to stabilizing greenhouse gas concentrations in the atmosphere “at a level that would prevent dangerous anthropogenic interference with the climate system”, so far there is no agreed definition of what constitutes a “dangerous” interference. The EU adopted the 2°C target as its interpretation of

¹ Draft decision [-/CP.16], Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para. 145. Available at: http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf.

² Draft decision [-/CMP.6], Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its fifteenth session, Advance unedited version, para. 1. Available at: http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_kp.pdf.

“dangerous” a long time ago, but up to Copenhagen most of the major emitters outside the EU held back on endorsing this objective. In addition, in 2008 small island developing states and least developed countries started to call for keeping global warming below 1.5°C. They argued that even an increase of 2°C would have unbearable consequences for many of them. The controversial Copenhagen Accord contained an endorsement of the 2°C target as well as a reference to the 1.5°C target. Consideration of strengthening the temperature target was to be included in a review that was to take place in 2015.

However, in addition to setting a temperature target there is the question of how to achieve it. The most ambitious scenarios so far considered by the IPCC, which are associated with a temperature increase of 2.0-2.4°C, envisage a global peak of CO₂ emissions in the timeframe 2000-2015 and a reduction of global CO₂ emissions by 50-85% by 2050 compared to 2000 levels.³ However, developing countries have so far refused to agree to any specific language on a peak year for global emissions or 2050 targets as they would have to contribute to meeting such global targets. They argue that first an equitable paradigm for sharing the necessary effort should be worked out. The often-quoted figures of reducing industrialised countries’ emissions by 80% by 2050 and global emissions by 50% would result in per capita emissions in industrialised countries still being several times higher than per capita emissions in developing countries.

The Copenhagen Accord does not include any figures on emission targets but instead contains two empty appendices. Annex I countries were to inscribe emission targets for 2020 into Appendix I by 31 January 2010. Non-Annex I countries, except LDCs and SIDS, were to inscribe nationally appropriate mitigation actions in Appendix II by the same date. All the major emitting countries have met the January deadline and by now 84 countries have submitted pledges under the Copenhagen Accord.⁴

As the Copenhagen Accord was not adopted by the COP plenary in Copenhagen due to resistance by several countries, the question in Cancún was how to transfer these pledges to the formal AWG negotiations and thus give them greater weight and make them more binding, at least in a moral sense if not in a legally binding sense. Achieving this goal in Cancún was seen as especially important as it was feared that the US pledge of reducing emissions by 17% below 2005 levels by 2020 might no longer be on the table in 2011.

However, this so-called “anchoring” of the pledges was caught up in the controversies about the legal form of the final outcome. As noted above, Japan and Russia refuse to inscribe new commitments under the Kyoto Protocol and subsequently opposed

³ Intergovernmental Panel on Climate Change (IPCC) (2007): Climate Change 2007: Synthesis Report. Summary for Policymakers.

⁴ Information provided by Parties to the Convention relating to the Copenhagen Accord, <http://unfccc.int/home/items/5262.php> (accessed 7 February 2011).

anchoring their pledges under the AWG-KP track. Another question arose about whether to list pledges of Annex I and non-Annex I in one document or keep them separate and whether to have separate listings or one listing of Annex I pledges for both AWGs. In particular developing countries called for separate documents in order to preserve the existing differentiation between Annex I and non-Annex I, as well as the differentiation between the USA and the other Annex I countries that have ratified the Kyoto Protocol.

In addition to the lack of formal standing of the pledges, a series of reports that came out in 2010 unanimously conclude that the pledges countries made under the Copenhagen Accord fall 5-10 Gt short of what is needed to maintain a good chance of staying below 2°C⁵. In particular the pledges of industrialised countries fall far short of the reduction of 25-40% by 2020 compared to 1990 considered in the IPCC's fourth assessment report, especially when taking into account the various loopholes that exist under the Kyoto Protocol. One of the largest loopholes is the presence of "hot air", the surplus assigned amount units (AAUs) allocated to the Central and Eastern European economies in transition (EIT). The AAUs of many of these countries exceed their emissions by far even without mitigation efforts. For example, the Kyoto targets of Russia and the Ukraine are stabilisation of emissions at 1990 levels. However, due to the economic collapse in the 1990s Russia's current emissions are about 30% below 1990 levels and the Ukraine's even 50%. According to the Kyoto rules, these surpluses can be carried over to the next commitment period, thus weakening the necessity to reduce emissions even in the years to come. The targets Russia and the Ukraine have pledged for 2020 would create further surpluses: While Russia has pledged a target of 15-25% below 1990 levels by 2020, the Ukraine has pledged 20%. This target implies that even without the surplus AAUs carried over from the first commitment period, Russia and the Ukraine could in fact still increase their emissions significantly. Another important loophole are the accounting rules for land use, land-use change and forestry (LULUCF). Most Annex I countries have proposed to account their LULUCF emissions based on projections rather than historic emissions. As these projections often include increased logging, countries would thus effectively be able to hide emission increases.

While it was generally accepted that it would not be possible to strengthen these pledges in Cancún, the question was whether it would be possible to acknowledge the so-called "gigatonne gap" and to establish a process to assess the pledges over the course of 2011 and subsequently increase their level of ambition.

On the positive side, the conference managed to reaffirm the goal to keep global warming below 2°C – the first time this goal was endorsed in an official UN document.

⁵ For a discussion see e.g. Wolfgang Sterk, Christof Arens, Sylvia Borbonus, Urda Eichhorst, Dagmar Kiyar, Florian Mersmann, Frederic Rudolph, Hanna Wang-Helmreich, Rie Watanabe (2010): *Something Was Rotten in the State of Denmark*. Wuppertal: Wuppertal Institute for Climate, Environment, Energy. One of the most prominent ones was the "Emissions Gap Report" released by UNEP immediately prior to Cancún: <http://www.unep.org/publications/ebooks/emissionsgapreport/> (accessed 7 February 2011).

The Cancún Agreements also make reference to the 1.5°C target that is demanded by the small island states and the least developed countries. Consideration of strengthening the temperature target is to be included in a review that is to start in 2013 and to be concluded in 2015.⁶

The conference further managed to anchor on UN paper the pledges many countries had submitted under the Copenhagen Accord. They are to be collected in an information document that is to be compiled by the Secretariat.⁷ Under the AWG-KP, Parties also agreed that the base year for the reduction targets of industrialised countries shall (continue to) be 1990. In addition, another reference year may be used by a Party on an optional basis for information purposes. Several countries outside the EU had wanted to shift to another base year to make their pledges look more ambitious, so this is one major stumbling block of the negotiations from previous years that was removed.⁸ Nevertheless, the fact that agreement on such details took years highlights the severe lack of political will and ambition among Parties.

Pledges are to be implemented (i.e. supposed to be effective immediately) and industrialised countries are urged to increase their ambition to bring it in line with IPCC figures. That is, the pledges have been framed as minimum targets that should be strengthened. However, Parties failed to close the Kyoto Protocol's loopholes related to creative accounting on LULUCF and "hot air", the over-generous allocation of compliance units to the former Eastern bloc countries. Instead, the UNFCCC Secretariat is to organise workshops to clarify the assumptions and conditions related to the pledges, including use of carbon credits and land use, land-use change and forestry. The Secretariat is to prepare a technical paper to facilitate understanding of the pledges and comparison of efforts. In addition, Japan and Russia inserted language and footnotes into the Cancún Agreements that make clear that this listing of pledges does not prejudice Parties' positions on the continuation of the Kyoto Protocol.⁹

More positively, it was agreed that industrialised countries should develop low-carbon development strategies or plans. Given that much of climate change mitigation relates to long-lived infrastructure like power plants and roads, long-term planning is essential to prevent lock-in to high-emission infrastructure. However, a binding "shall" would have

⁶ Draft decision [-/CP.16], Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para. 4.

⁷ Ibid., para. 36; Draft decision [-/CMP.6], Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its fifteenth session, Advance unedited version, para. 3.

⁸ Draft decision [-/CMP.6], Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its fifteenth session, Advance unedited version, para. 6(a).

⁹ Ibid., para. 4; Draft decision [-/CP.16], Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para. 36-39.

been better than the non-binding “should”. Also, there is no specification what exactly such strategies or plans should entail.¹⁰

There was no resolution to the controversial questions of when global emissions are supposed to peak (peak year) and how much emissions are to be reduced by 2050. These questions are to be considered at the next conference in Durban.¹¹

Emission reduction pledges by developing countries are also noted in an information document. Similar to industrialised countries, developing countries are “encouraged” to develop low-carbon development strategies or plans in the context of sustainable development. Developed countries are to provide financial, technology and capacity building support, as per the Bali Action Plan. The Secretariat is to organise workshops to understand the mitigation actions submitted, underlying assumptions and support needed. Nationally appropriate mitigation actions (NAMAs) by developing countries seeking support from developed countries are to be recorded in a registry. Modalities for the facilitation of support are to be developed, but again no timeline was set.¹²

4. Measuring, Reporting and Verification

Closely linked to the mitigation package, a further controversy revolved around the question of measuring, reporting and verification (MRV). The Bali negotiation mandate was to negotiate “nationally appropriate mitigation actions by developing country Parties ..., supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner”.¹³ That is, developing countries agreed in Bali to take verifiable mitigation actions if these are supported by industrialised countries in an equally verifiable manner. However, the details of this deal “MRV for MRV” remain to be worked out. A further MRV question was posed by the non-participation of the USA in the Kyoto Protocol, which has significantly stronger MRV requirements for Annex I countries than the Convention. Annex I countries that have ratified the Protocol have therefore generally desired the Annex I MRV provisions under the Convention to be brought in line with those under the Protocol.

MRV had emerged as a major bone of contention over the course of 2009. While non-Annex I countries held the view that only actions that are supported by Annex I countries should be subject to international MRV, Annex I countries demanded that non-Annex I countries should also submit those actions to international MRV that they

¹⁰ Ibid., para. 45.

¹¹ Ibid., para. 5-6.

¹² Ibid., para 48-57 and para. 65.

¹³ Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2009, Addendum, Part Two: Action taken by the Conference of the Parties at its thirteenth session Decision 1/CP.13, Bali Action Plan, p.5, para. 1bii, FCCC/CP/2007/6/Add.1, 14 March 2008.

support through their own resources. Non-Annex I countries rejected this demand as being incompatible with their national sovereignty.

The Copenhagen Accord outlined the sketches of a compromise. According to the Accord, non-Annex I countries are supposed to report on the implementation of their unilateral actions through biannual national communications including national inventory reports, “with provisions for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected.” Actions seeking international support are to be recorded in a registry, together with technological, financial and capacity building support. These supported actions are to be “subject to international measurement, reporting and verification in accordance with guidelines adopted by the Conference of the Parties.”¹⁴

The task for Cancún was to define what exactly “international consultation and analysis” (ICA) and MRV should look like. In particular the USA defined a satisfactory outcome on ICA and MRV to be a red line. The “Umbrella Group” of countries (Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, Ukraine, USA) proposed ICA to cover both Annex I and non-Annex I countries, including developing country unsupported actions and mitigation actions of Annex I countries that are not party to the Kyoto Protocol. The Umbrella Group proposed ICA to be an objective analysis, conducted by experts, of the extent to which the Party has implemented its actions and the effect on emissions, and “consultation” to be conducted by the Parties at the Subsidiary Body for Implementation (SBI). It suggested that the process should result in a public summary report. Non-Annex I countries for their part insisted on keeping a clear differentiation between what is required of Annex I and non-Annex I countries respectively.

In fact, over the course of 2010 key developing countries such as Brazil, China and India had revoked their support of the MRV provisions of the Copenhagen Accord. At the beginning of November 2010 India adopted a more constructive stance and published a proposal on ICA that was meant to bridge the impending deadlock. The Indian proposal stresses that ICA should be a facilitative process with no punitive implications and that only the impact and not the suitability of action should be discussed. The mechanism was suggested to be anchored within the SBI and the ICA to be based on “ICA reports” by Parties. This report was to include an emissions inventory, description of all mitigation actions, analysis of impact of the mitigation actions, progress on achieving the emission reduction pledges and further actions under consideration where appropriate. According to the Indian proposal, the consultation would be handled by a panel of experts from the North and South. SBI would send written comments on a country’s ICA report and the country would send a written response. On this basis the SBI would convene a 2-3 day meeting, at the end of which

¹⁴ Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Addendum, Part Two: Action taken by the Conference of the Parties at its fifteenth session, Decision 2/CP.15, Copenhagen Accord, para. 5, FCCC/CP/2009/11/Add.1, 30 March 2010.

the ICA report, the written comments, the response and an agreed summary would be made public.

Parties finally compromised on enhancing both Annex I and non-Annex I MRV. Developed countries are to submit annual GHG inventories and biennial reports on their progress in achieving emission reductions as well as on the provision of financial, technology and capacity-building support to developing countries. However, the USA managed to keep requirements weak. Thus, the reporting requirements for countries that take action under the Convention are not equivalent to the reporting requirements under the Kyoto Protocol. The USA had also struggled against common reporting formats but had to give in to its inclusion in the end. In addition, the Cancún Agreements establish an international process for the assessment of emissions and removals by developed countries. This provides a tool to call out countries that are not on track to reduce emissions but there is no mention of compliance. Indeed, the title of this section is “Nationally appropriate mitigation commitments or actions by developed country Parties” – the USA had long struggled against the word “commitments”. There is also no timeline for the development of modalities for the assessment process.¹⁵

Developing countries are to submit national communications every four years. Flexibility is foreseen for least developed countries and small island developing states. As per the Convention, developed countries are to cover the full costs of preparing developing country national communications. Developing countries should also provide biennial update reports with updates on their national GHG inventories, information on mitigation actions, needs and support received.¹⁶

Internationally supported mitigation actions will be measured, reported and verified domestically and will be subject to international measurement, reporting and verification according to guidelines that remain to be developed. Domestically supported mitigation actions will be measured, reported and verified domestically in accordance with general international guidelines that are also still to be developed.¹⁷

The final compromise on ICA stipulates that the SBI is to conduct international consultation and analysis on the biennial reports in a manner that is non-intrusive, non-punitive and respectful of national sovereignty. In detail, technical experts are to analyse the biennial reports in consultation with the Party concerned. The information to be considered is to include mitigation actions, the national GHG inventory, an analysis of impacts, the associated methodologies and assumptions, progress in implementation and domestic MRV. The end result will be a summary report. The Cancún Agreements clarify that ICA will concern the implementation of policies and measures only, not

¹⁵ Ibid., para. 40-44.

¹⁶ Ibid. para. 60

¹⁷ Ibid. para. 61f.

their appropriateness. Detailed modalities for MRV and ICA are to be elaborated in the future negotiations.¹⁸

5. Adaptation

Progress was made in Cancún in the field of adaptation mainly in the following three respects:

- Adoption of an Adaptation Framework and establishment of an Adaptation Committee
- Establishment of a work programme on loss and damages caused through the impacts of climate change
- Removal of all references to response measures from the adaptation text

Much of the discussion on adaptation was expected to focus on deciding on a Framework for Adaptation in order to improve the coherence and effectiveness of adaptation actions under the convention and negotiate a mechanism on loss and damages of those climate impacts that cannot be avoided even through active adaptation measures. These include in particular extreme weather events and sea level rise.

Loss and damages has been one of the most contentious issues under adaptation. The issue has been pushed by AOSIS and the Small Islands Developing States (SIDS), who are at risk of being inundated with increasing sea-level rise. Not surprisingly, developed countries have had a different view on loss and damages than developing countries since they would largely be made accountable for compensation payments. In particular the USA had long blocked an open debate on the issue.¹⁹

The issue of response measures has agonised adaptation negotiations for a long time. The Convention text links adaptation to the adverse effects of climate change and adaptation to the impact of the implementation of response measures, i.e. adaptation to emission reduction policies. Mainly OPEC countries such as Saudi Arabia have continuously pushed for the inclusion of response measures under adaptation and claimed that support for adaptation must also be used to compensate economic losses due to reduced profits in oil-producing economies. This strategy has stalled negotiations on support for adaptation for years.

¹⁸ Ibid. para. 63-66.

¹⁹ Ibid.

In addition, in Cancún tensions arose within the G77 regarding the definition of who are the countries “particularly vulnerable” to climate change. For a few days discussions on adaptation got stuck around the definition of vulnerability (without any outcome) leaving less time for more substantive discussion in the other areas. Nonetheless progress was made on all three of the above issues.

The establishment of the Cancún Adaptation Framework significantly strengthens adaptation under the Convention and is a great improvement compared to the Copenhagen Accord that did not include any concrete decisions apart from finance for adaptation, even though much of the text on the adaptation framework was already established in Copenhagen.²⁰

In detail the Adaptation Framework invites parties to enhance action on adaptation through²¹:

- Planning and implementation of adaptation actions identified in national adaptation planning processes;
- Impact, vulnerability and adaptation assessments, including assessments of financial needs;
- Strengthening institutional capacities and enabling environments;
- Building resilience of socio-economic and ecological systems;
- Enhancing disaster risk reduction strategies;
- Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation,
- Technology development and transfer and capacity building;
- Improving access to climate-related data.

The Adaptation Framework also includes explicit institutional support for LDCs by establishing a process to support least developed country Parties to develop longer-term national adaptation plans, building upon their experience with national adaptation programmes of action (NAPAs).²²

It also invites Parties to strengthen or establish regional centres and networks for adaptation, in particular in developing countries.²³

²⁰ Christoph Bals (2010) Cancún legt Grundlage für eine Aufwärtsspirale im internationalen Klimaschutz – Jetzt ist die EU am Zug. Ein Resümee des Klimagipfels in Mexiko 2010. Bonn: Germanwatch e.V.

²¹ Draft decision -/CP.16 Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para. 14.

²² Ibid. para. 15.

²³ Ibid. para. 30.

The Cancún Agreements further establish an Adaptation Committee to promote implementation of enhanced action on adaptation in a coherent manner under the Convention, inter alia by collecting information and experiences and developing recommendations for consideration by the COP.²⁴ This is an enhancement compared to the scientifically-oriented Nairobi Work Programme on Adaptation, which does not have a mandate to formulate recommendations.²⁵ Details on the composition, modalities and procedures of the Adaptation Committee will need to be negotiated in 2011. Parties are invited to submit their views to the Secretariat by 21 February 2011.

On loss and damages, many SIDS and LDCs feared that loss and damages would be entirely blocked by developed countries in Cancún, but this was not the case. Many Parties supported a proposal by AOSIS to establish an international mechanism to address loss and damage associated with climate change impacts in vulnerable developing countries and requested clarification of its elements, while others found the proposal immature.

In the end the Cancun Agreements establish a work programme on loss and damages. Even though the request of AOSIS to establish an international mechanism that would ensure concrete actions on loss and damages was not achieved, the establishment of a work programme must still be seen as a great success for island states and an anchored basis to push the issue forward. Possible elements of the work programme include:

- Possible development of a climate risk insurance facility to address impacts associated with severe weather events
- Options for risk management, reduction and risk sharing, including micro-insurance
- Approaches for addressing rehabilitation measures associated with slow onset events

Parties are invited to submit their views to the Secretariat by 21 February 2011.²⁶

Reference to response measures was finally removed from the adaptation section in the Cancun Agreements after heated debate and the continued resistance of Saudi Arabia – a step forward for the interest of the most vulnerable countries in real need for adaptation support.

Overall, the Cancún negotiations represent significant progress in the area of adaptation. Nonetheless, success in the implementation of the new Adaptation Framework will only materialise if the long-promised increased financial support by developed countries will in fact be provided.

²⁴ Ibid. para. 20.

²⁵ Christoph Bals (2010) Cancún legt Grundlage für eine Aufwärtsspirale im internationalen Klimaschutz – Jetzt ist die EU am Zug. Ein Resümee des Klimagipfels in Mexiko 2010. Bonn: Germanwatch e.V.

²⁶ Draft decision -/CP.16 Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para. 26-29.

6. Financing

Financing ways for developing countries to adapt to and mitigate climate change has been one of the main stumbling stones of the climate negotiations of the previous years. Developing countries stress that, in addition to GHG emission reductions, providing sufficient financial support is the other side of the responsibility of industrialised countries in combating climate change. Receiving financial support is therefore a key condition for developing countries to commit to mitigation actions.

While there are various negotiation items, they ultimately all relate to two main topics: mobilisation of the needed amount of financial resources and the institutional structure of funding.

On the mobilisation issue, a report on financial flows produced by the UNFCCC Secretariat puts the financial resources needed in 2030 at 130 billion USD for mitigation activities and several tens or possibly hundreds of billions for adaptation in developing countries only.²⁷ Other estimates come to similar or even higher results.²⁸ These figures go far beyond the total amount of resource flows provided by the existing mechanisms within the climate regime – the Global Environment Facility (GEF) Trust Fund, the Special Climate Change Fund, the LDC Fund, and the Adaptation Fund – and the resources provided through the funds established outside of the Convention, most notably the World Bank's Clean Technology Fund and Strategic Climate Fund/Pilot Program for Climate Resilience.

One of the main causes of the lack of sufficient resources is that under the current climate regime industrialised countries provide financial contributions on an ad hoc basis, through replenishment negotiations in the case of the GEF Trust Fund and on a pledge basis in the case of the other funds. In order to ensure sufficient financial flows, it is indispensable to establish a new scheme that creates financial flows at a much higher scale and on a mandatory basis.

Regarding the institutional structure of the funding body, developing countries and industrialised countries have still not overcome the conflict they have had since the establishment of the GEF. Industrialised countries want to provide financing through bilateral or established multilateral channels such as the World Bank and the GEF. They argue that the expertise of these institutions should be used and point to the costs and effort involved with establishing new institutions. By contrast, developing countries perceive the existing institutions to be donor-dominated. They also complain that the procedures to access funding through these institutions require too much effort. They

²⁷ United Nations Framework Convention on Climate Change (2008): Investment and financial flows to address climate change: an update, Technical paper FCCC/TP/2008/7, 26 November 2008.

²⁸ See e.g. Project Catalyst, Towards a Global Climate Agreement, Synthesis Briefing Paper June 2009, 2009; United Nations Department of Economic and Social Affairs, World Economic and Social Survey 2009, Promoting Development, Saving the Planet, 2009.

have therefore proposed to establish a new fund that would be fully accountable to the COP and operate according to the rule of one country one vote. Furthermore, in their view only resources provided through such a new fund should be counted towards industrialised countries' financing commitments under the UNFCCC and the Bali Action Plan.

In Copenhagen, developed countries pledged up to 30 billion USD for fast-start finance over three years, and a long-term commitment to “mobilise” 100 billion USD per year “from various sources” by 2020. There was also a general agreement in Copenhagen to establish a new fund. However, as the Copenhagen Accord was not an official COP outcome, these pledges were only weakly binding. Furthermore, developing countries fear that fast-start financing will come from already existing instead of “new and additional” sources and will partially be provided as a loan. Another bone of contention resulted from the need to have an overview body for climate finance.

To promote the finance discussion, UN Secretary-General Ban Ki-moon in 2010 established a “High-level Advisory Group on Climate Change Financing (AGF)”. The AGF was chaired by Prime Minister Meles Zenawi of Ethiopia and Prime Minister Jens Stoltenberg of Norway and composed of eminent experts such as George Soros and Lord Nicholas Stern. The task of the AGF was to evaluate options for how to mobilise the 100 billion USD pledged in the Copenhagen Accord. The AGF published its report in November 2010. The report concludes that mobilising 100 billion USD is difficult but feasible and emphasises innovate public sources that could yield a double dividend in terms of mobilising funds and incentivising emission reductions, such as carbon taxes and auctioning of emission allowances from emission trading systems.²⁹

Negotiations in 2010 focused on fast start finance, an overview body and the new fund. The question of sources was deferred until after the publication of the AGF report. In Cancún, negotiations on the finance issues were stalled for a long time. Countries continued to particularly disagree on the institutional structure, especially on the level of involvement of the COP and the role of the World Bank in the new fund. Industrialised countries emphasised their view that above a certain amount of money only the World Bank could serve as trustee while developing countries stressed their preference for a bidding process to determine the trustee. While in particular the USA was adamant on the role of the World Bank, the question was in the air whether the fund should even be designed to fit the USA's needs as long as it was unclear whether the USA actually wanted to put money into the fund. Although a lot of industrialised countries held positions similar to the USA's, they did not fight their position on all relevant issues themselves but instead used the USA as cover during the conference.

²⁹ United Nations (2010) Report of the Secretary-General's High-level Advisory Group on Climate Change Financing, 5 November 2010, New York: United Nations, <http://www.un.org/wcm/content/site/climatechange/pages/financeadvisorygroup/pid/13300>, accessed 3 March 2011.

Another bone of contention between Parties were possible sources and the scale of financing. While developed countries highlighted the crucial role of private finance,, developing countries continued to demand mandatory contributions from industrialised countries in the order of 1.5% of their GDP.

Things moved forward only in the last day and a half of the conference. First and foremost, the financing pledges made in Copenhagen were formalised and are now part of the outcome of COP 16. The Cancún Agreements take note of the developed countries' fast-start pledges as agreed upon in Copenhagen. Adaptation and mitigation shall be receive a balanced allocation and the most vulnerable countries are to have priority access to adaptation funding. Furthermore, Parties are invited to provide information on their fast start funding sources through an information document in order to heighten the transparency of their actions, albeit there is as yet no common reporting standard.³⁰

On long-term financing, the pledges as recognized in the agreement confirm those made in the Copenhagen Accord – by 2020, 100 billion USD shall flow annually to cover climate change costs in developing countries. The AGF-Report was taken note of in Cancún, but the decision does not take the report up in any substantive way. Indeed, the text leaves the question of sources completely open. This topic will have to be resolved in the year to come.

The agreement establishes a Green Climate Fund, to which a large part of this funding, especially for adaptation, is to be channelled. The text remains as yet unclear if mitigation will be covered as well. Crucially, the decision includes the possibility for developing countries to get direct access to funding, instead of having to go through intermediary implementing institutions like the World Bank or United Nations agencies. The Fund is established as an operating entity of the existing financial mechanism of the UNFCCC, but shall have an independent governing board, consisting of 24 board members with equal representation of developing and developed countries. Its relation to the COP has not been defined yet. Developing countries agreed to invite the World Bank to act as interim trustee to the Fund, subject to review after three years.³¹ It was feared, however, that the review might not be very thorough and only confirm the World Bank's role as trustee instead of opening up the possibility of a bidding process for the determination of the trustee.

A transitional committee is established in order to finalise the design of the Fund by the time of the next COP in Durban.³² Terms of reference for the design of the Fund as drafted in Cancún outline that the Fund shall, inter alia, manage a large amount of financial resources, have an independent evaluation process, take into account expert

³⁰ Draft decision -/CP.16 Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, para 95.

³¹ *ibid*, paras 102-107.

³² *ibid*, para 109.

advice, and ensure a wide participation of relevant stakeholders. Countries eligible for financing through the Fund shall have direct access to these resources. The text leaves open the question of how funding is to be provided. Instead, the terms of reference merely refer to a number of sources, but do not specify which.³³

Finally, a Standing Committee is to be established to serve as overview body for climate finance. The purpose of the Standing Committee is rationalisation of resources and funding channels, coherence amongst them, mobilisation of financial resources, and enhancement of the MRV of the funding resources that are provided in support of developing countries. That is, the Standing Committee is going to assist the COP in ensuring sound work of the financial mechanism, and is not tied to the Green Climate Fund. However, its functions are not yet fully defined. Parties are to work out its specific role, possibly by the next COP in Durban.³⁴

All in all, substantial progress has been made on finance in Cancún. Even though substance remains weak, the design process for the new Green Climate Fund now has a definitive timeframe. It may be hoped that the transitional committee will be able to complete its work in just one year. The fact that developed countries' pledges have been taken up in the official outcome puts more pressure on developed countries to deliver on their promises. The newly-established Standing Committee will serve a similar purpose in hopefully starting an MRV process for climate finance.

7. Technology

Another important step was taken in the area of technology transfer and development. Agreed as another building block in Bali in 2007, technology transfer had started as one of the fastest-moving issues in the negotiations for the future climate regime but negotiations ground to a halt in the following years: Developing countries call for a strong technology transfer system, including an independent financing scheme to support it. Some developing countries, including China, have in the past asked for a weakening of the international intellectual property rights (IPR) system established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organisation (WTO). Industrialised states, by contrast, argue that strong protection of intellectual property is a precondition for fostering innovation.

Governance options for the proposed Technology Mechanism cover a wide range of proposals, from a largely independent and strong political body preferred by developing countries to a mere network of experts without political power preferred by

³³ *ibid*, Annex III.

³⁴ *ibid*, para 112.

industrialised countries. In Copenhagen, some progress was made, but consensus could not be reached on a few crucial points, including the link to finance and intellectual property rights. The Copenhagen Accord states that “a Technology Mechanism is hereby established”, but does not specify what this means. During the following negotiations, some steps were even taken backwards, with old passages being moved into the negotiations text again. Thus, expectations for Cancún were rather low, and the negotiations took a slow pace over almost the whole duration of the conference. It nearly came as a surprise that a substantial agreement was reached on the subject in the Cancún Agreements.

The most important outcome in the technology area surely is the establishment of a new Technology Mechanism. Picking up from some crucial design points specified in Copenhagen, the new Mechanism will consist of two main components. The Technology Executive Committee (TEC) takes over its work from the discontinued Expert Group on Technology Transfer (EGTT) immediately, while the design and work of the new Climate Technology Centre and Network (CTCN) is as yet largely undetermined.³⁵

The TEC will provide, *inter alia*, recommendations on actions on technology, recommend guidance, foster collaboration among public and private stakeholders and play a leading role in the development of technology roadmaps. It will consist of 20 expert members, 11 of which shall come from developing countries. As the Technology Mechanism is still in its infancy design-wise, the final mandate of the TEC and criteria for qualification of the TEC’s members will have to be developed in more detail over the course of 2011.³⁶

As its name implies, the CTCN consists of both an information centre and a network of possible regional nodes. It shall, *inter alia*, serve to provide advice to Parties, identify best methods and technologies, facilitate training and enhance cooperation with existing initiatives and technology centres, as well as facilitate partnerships of the public and private sector. Its governance structure and terms of reference will have to be determined in the coming meetings of the LCA’s Ad Hoc Working Group on technology development and transfer this year.³⁷

Not only the CTCN’s governance structure, but also some more controversial points have been set aside in the Cancún Agreements. One concerns the relationship between the two elements of the Technology Mechanism: Will the TEC act as an oversight committee to the CTCN, or will they both be independent entities? While industrialised states have repeatedly stated that they would like the two bodies to be independent of each other, developing nations have tried to establish a clear hierarchy among them. In general, developing countries have tried to strengthen the TECs political importance,

³⁵ *ibid*, para 117.

³⁶ *ibid*, para 121, Annex IV.

³⁷ *ibid*, para 123, 124.

whereas industrialised states see it mainly as a specialist and administrative body. This issue shall also be dealt with in the LCA's technology working group. It will also consider a potential deal-breaker for the technology issue: its relationship and potential links to the financial mechanism. As yet, the final agreement omits any language concerning the funding of technology activities under the Convention. This has been one of the largest points of contention in the past negotiations. Developing countries consider it crucial that the Technology Mechanism has independent access to finance delegated to it, whereas some industrialised states see the financial authority clearly within the Financial Mechanism and do not wish to grant the Technology Mechanism direct access to its financial resources, as it would create a body with too much independent political power. It remains to be seen if an effective agreement of this issues can be reached over the course of 2011.

Another issue that Parties have been divided over has been taken out of the final negotiating text completely. The role of IPRs in the transfer of environmentally sound technologies has been a major point of dissent among Parties. This issue has produced some highly emotional debates and widely divergent views over the last few years, ranging from complete denial of the relevance of the issue to calls to suspend IPRs completely for technology transfer cases. Apparently, the Mexican presidency decided to omit this controversial issue on its own authority when it tabled its compromise proposal on the last day of the conference. The lack of any reference to IPRs was in fact one of the reasons Bolivia gave for its opposition to the Presidency's proposal. It can therefore be assumed that the issue will crop up again in the next negotiating sessions and it remains to be seen if delegates will be able to deal with the topic in a manner satisfactory for all.

8. Reducing Emissions from Deforestation and Forest Degradation (REDD)

Avoiding deforestation in developing countries is one of the essential building blocks of the Bali Action Plan. This agenda item has thus been negotiated in several fora since 2007. While a well-advanced draft on Reducing Emissions from Deforestation and Forest Degradation (REDD) was discussed at COP 15 in Copenhagen, the text could not be adopted due to the controversies about the fundamentals of the new regime as a whole (Sterk et al. 2010).

While in 2010 additional sections and new options found their way into the Copenhagen text, many Parties supported the AWG-LCA's chair's initial draft at the beginning of the Cancún conference (FCCC/AWGLCA/2010/CRP.1). Parties discussed, among other things, the scope of a future REDD mechanism, financing issues, the role of national versus subnational approaches, as well as the way social and biodiversity safeguards

should be measured, reported and verified. As in several other negotiations of COP 16, the role of market-based solutions was a controversial issue, with many of the ALBA countries (Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Nicaragua, Saint Vincent and the Grenadines, and Venezuela) being strongly opposed and also Brazil being very sceptical. Moreover, the question on how to set reference levels again was on the table. Here as well, the question is whether to introduce national or subnational reference levels; the latter is linked to greater risks of leakage but at the same time provide better opportunities to integrate, for example, local forest communities and involve private businesses in REDD activities. While the EU pushed for national reference levels, the USA and many developing countries advocated for sub-national approaches. One particular advocate for sub-national approaches has been Colombia where due to the internal conflicts large parts of the country are not under the control of the government. On safeguards, Papua New Guinea opposed introducing a transparent system to monitor and inform on how safeguards are addressed, calling instead for a system for “sharing information”.

The final text³⁸ first of all clearly defines the scope of REDD in that it includes conservation, sustainable forest management and enhancement of forest carbon stocks, thus providing the broad REDD+ definition which had been discussed for so long. The main part of the text, however, lays out the elements developing countries need to develop in order to prepare their REDD engagement process: these begin with a national strategy plan, followed by the development of a forest reference level and a corresponding monitoring system, and the introduction of an information system on safeguards, such as respecting the rights of indigenous peoples and other stakeholders. Concerning the reference level, subnational approaches are accepted as an interim measure only.

This mirrors the phased approach to REDD which many forest experts had called for, i.e. developing a policy framework and capacity building first, followed by demonstration activities and, in a third phase, fully MRV-able results-based actions. All these steps are explicitly referred to in the text. All the actions are to be financially supported by developed countries.

The safeguards mentioned in the decision are further detailed in an annex; they provide REDD actors with environmental and social principles, making reference, inter alia, to the UN Declaration on the Rights of Indigenous Peoples and to issues of biological diversity and forest conservation. Unfortunately, the language is not very strong. In particular, the safeguards have non-binding “should” rather than binding “shall” provisions and no explicit reference is made to the UN Convention on Biological Diversity (CBD). Furthermore, how these provisions are to be operationalised remains unclear.

³⁸ Draft decision -/CP.16 Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version, Section III.C

As for the drivers of deforestation, the agreement in its third paragraph appeals to all countries to reduce pressure on forests resulting in GHG emissions. This language clearly opens up the perspective to the demand side, i.e. consumers and industry, mainly in developed countries. Finally, SBSTA is assigned a work programme on, *inter alia*, modalities for reference levels and monitoring systems as well as for MRV issues.

What the text does not state is a quantified mid-term target or a long-term goal as Parties were not able to agree on this. While most industrialised countries have been pushing for quantified targets, developing countries have emphasised that forests are a national resource and perceive targets as putting constraints on their future development. Instead, the text sets an unspecified goal of halting and reversing forest loss. Moreover, a couple of other issues also remain unresolved, such as the connection to NAMAs or the way results-based activities in phase three will be financed, i.e. via public funding or involving market-based approaches. These financing aspects, however, are to be explored by the AWG-LCA, which is to report on them at COP 17.

9. What Future Climate Regime?

One thing that will certainly enter the collective memory of Cancún is the series of standing ovations COP President Espinosa received on Friday evening. However, the deep sense of relief that washed through the room and was palpable in every statement probably came more from a desperate desire to avoid another Copenhagen rather than from the substance of the text — as late as Friday afternoon another train wreck seemed all too likely and journalists were already sharpening their pencils to write obituaries. Many countries therefore accepted the text from a sense of a weak deal being better than no deal. “Let’s leave Cancún with something workable” was a sentiment that was echoed in many of the plenary statements. For most, this desire to achieve an outcome also weighed heavier than the unhappiness about being presented with a “clean” text on a take it or leave it basis with no possibility for discussion.

On substance, the list of positive outcomes does look impressive at a first glance:

- For the first time, the below 2°C target was endorsed in an official UN document
- The text includes provisions for a review, including consideration of the 1.5°C target, which is to start 2013 and end 2015
- The Copenhagen emission reduction pledges have been „anchored“ in UN text
- There is a recognition that in particular the pledges of industrialised countries are too weak and they are urged to bring their targets in line with the IPCC figures
- MRV provisions have been strengthened, including a process to evaluate actual progress

- The Green Climate Fund and the Technology Mechanism have been established and there is a clear process for agreeing details on the Fund by Durban. In addition, a Standing Committee is to be established to provide some much-needed co-ordination to the currently very decentralised bi- und plurilateral climate financing flows.
- An adaptation committee has been established to promote implementation
- There is a work programme on loss and damages, including the possibility of an insurance facility
- There is a work programme on deforestation

However, most of these agreements exist only at the level of institutional arrangements, with little to no detail on implementation. In particular, the Cancún Agreements do not lose any word on how these new institutional arrangements are to be financed and there is no dedicated process for addressing this issue during the negotiations in 2011. There is therefore no clarity at all on how the fast-start financing is supposed to be scaled up to the 100 billion USD by 2020 that industrialised countries have pledged – another post-2012 gap. Quickly putting flesh on the bare skeletons of these institutions will therefore be crucial to maintaining the constructive atmosphere created in Cancún. In particular, to avoid a post-2012 financing gap and ensure a continuous process of building up an investment pipeline under the new financial architecture, industrialised countries should make interim upscaling pledges for the period after 2012, for example 2013-15, which could for example be based on a linear trajectory from 10 billion USD in 2012 to 100 billion USD by 2012.

On mitigation, Cancún saw major movement on the framework of non-Annex I mitigation while there was hardly any movement on Annex I mitigation. MRV provisions for non-Annex I countries were fleshed out to a significant amount of detail and have become much more stringent than they used to be. While the Umbrella Group did not fully realise its goal of burying the distinction between Annex I and non-Annex I MRV, the distinction was blurred to a significant extent. By contrast, if anything, the future of the Kyoto Protocol is now even more uncertain than before Cancún due to the strong opposition from Japan and Russia. This ambiguity is also reflected in the formal outcome: Instead of listing industrialised countries' pledges in two separate documents under the KP and LCA and ideally only having the US pledge under the LCA, both AWG decisions refer to the same document. This breaks down the "firewall" between the USA and the Annex I countries that have ratified the Kyoto Protocol and must be clearly seen as a step by Japan, Russia and Canada to move out of the Protocol.

Yet, developing countries have been very clear in saying that from their point of view the work under the LCA is proceeding on the understanding that there will be a second commitment period to the Kyoto Protocol. If there is no resolution to this question, it is therefore conceivable that developing countries might start to dig in their heels or even go back on the items that were agreed in Cancún.

In terms of emission reductions, the pledges have not moved an inch since Copenhagen and are much too weak to give a good chance of staying below 2°C. There is hardly any mention of a top-down science-based approach to setting targets in the text and no indication that countries are considering to raise their pledges. One possible exception is the EU, but here as well there is strong internal resistance to increasing the target from 20% to 30%.

In summary, agreement in Cancún was possible by papering over the fundamental issues and focusing on more technical aspects. However, it should be emphasised that all these weaknesses are no fault of the UN process as such. The UN is simply a negotiation platform and the results are determined by the domestic politics of countries. If countries do not have the political will domestically to seriously tackle climate change, there is no way they are going to let commitments be imposed on them by international negotiations. The main problem is that the USA is fundamentally unable to move forward and most other countries tie their position directly to what the USA is doing. This goes especially for the former frontrunner EU, who nowadays is obviously too busy with its internal issues to be able to develop a sharp outward profile.

Given recent developments in the USA, the time window for a “grand bargain” as had been hoped for from Copenhagen has probably closed for the foreseeable future. Given the deep anti-climate mood currently prevailing in the Republican Party, the USA would probably at the moment not be able to ratify any kind of climate treaty, even if China and other major emitters did commit to legally binding emission targets.³⁹ The USA finger-pointing to China is merely a fig leaf to cover up the USA’s own inability to commit to anything.

On this basis, several scenarios for the future development of the UNFCCC regime may be thought of, such as:

- A degeneration of the international regime from the binding Kyoto approach, with the possibility to determine targets top-down based on science, to a non-binding bottom-up “pledge and review” approach as advocated by the USA
- A repetition of the Kyoto scenario where the rest of the world decides to move ahead without the USA
- A hybrid where ambitious industrialised countries commit to a second Kyoto period while other countries follow a pledge and review approach

Scenario 1 is where the UNFCCC is currently at by default. The Cancún Agreements have laid down the pledges and contain the basic parameters for an iterative review

³⁹ A good overview of the domestic situation in the USA and other major players is given by: Tilman Santarius, Dawid Bartelt, Tigere Chagutah, Björn Ecklundt, Lili Fuhr, Chen Jiliang, Arne Jungjohann, Kulthoum Omari, Kasia Radzikowska, Ingrid Spiller, Sanjay Vashist, Jorge Villareal, Annett Waltersdorf (2011): *One Step Forward and Two Sideward. Regional Analyses of Climate Policy in 2010 and the Cancun Climate Conference (COP 16)*. Berlin: Heinrich-Böll-Stiftung.

process. The problem with a pledge and review approach is not only the lack of certainty whether the pledges will in fact be honoured. The main problem is that leaving it to countries to decide for themselves how much they want to reduce their emissions gives up any hope of achieving an outcome that is grounded in climate science. It also goes against the UNFCCC's principle of common but differentiated responsibilities, according to which those countries that have contributed most to climate change should be the fastest and most ambitious in cutting their emissions. The current state of play illustrates what happens if pledges are hardly, if at all, informed by notions of environmental adequacy and equity. In addition, the MRV and accounting rules under the Convention allow much more room for gaming than those under the Kyoto Protocol.

Scenario 1 is the one scenario where all countries would move ahead at the same (slow) pace. The other scenarios imply that progressive countries move ahead irrespective of what some others are doing. However, Cancún did not show much indication that such a "coalition of the willing" might be forming. Possibilities may lie in the "Cartagena Dialogue", an informal forum of progressive developed and developing countries that formed in 2010 with the aim of exchanging views and building trust among Parties. However, so far the emphasis of the Cartagena Dialogue was on bridge building rather than on forming a "green coalition" that would if necessary also be willing to move forward independently.

Any outcome other than scenario 1 will require that somebody does some heavy lifting. The prime candidates for such lifting are the EU and China. The EU for its part likes to pronounce its readiness to commit itself internationally but is rather weak on substance. The EU has so far not even been able to lift its target from 20% to 30%, even though the 20% target has essentially already been achieved and even 30% is below what most effort sharing proposals would consider an equitable contribution. In fact, most effort sharing proposals conclude that a "fair share" of the EU in the global effort to move to a 2°C trajectory would be a target of at least 35%.⁴⁰ In addition, the EU position has so far had as main priority to get the USA on board. By contrast, Chinese domestic climate policy is becoming increasingly ambitious but China refuses to internationalise its actions in any way. What China wants is a binding commitment from the USA at a sufficiently ambitious level. And since the USA does not have anything to offer, the Chinese do not see why they should make any move of their own. The future of the climate regime will therefore hinge on whether China and the EU can break away from their fixation on Washington and work out an arrangement to move ahead without the USA.

The best way forward seems to lie in combining top-down and bottom-up strategies. As for the top-down element, it is essential to secure and further build on the UNFCCC achievements:

⁴⁰ Niklas Höhne and Christian Ellermann (2008): The EU's emission reduction target, intended use of CDM and its +2°C target. Brussels: European Parliament.

- The Cancún Agreements need to be implemented as quickly as possible. Countries need to implement their emission reduction pledges and operationalise the decisions on the Green Climate Fund, REDD, technology, and adaptation. While these elements are far from sufficient, implementation can nevertheless achieve substantial emission reductions and contribute to building trust – trust between Parties and trust that reducing emissions is possible without wrecking the economy.
- At the same time, progressive Parties need to keep on pushing for strengthening the pledges and clarifying the legal form. The latter should in particular include agreeing on a second commitment period for the Kyoto Protocol and US agreement on bringing Annex I MRV provisions under the Convention in line with the MRV provisions of the Protocol.
- Finally, the review in 2013-2015 needs to be earnestly seized as an opportunity for honest stock taking and raising the level of ambition.

In addition, the international process is clearly in desperate need of getting new momentum injected. As international policy is determined by domestic politics, it will be necessary to change domestic politics. It will be necessary for progressive actors at all levels to step up their efforts, from individual citizens, to cities and regions up to alliances of frontrunner countries.

The good news is that many have already set out – despite the slow progress of the UNFCCC negotiations. While Copenhagen failed to deliver the anticipated climate treaty, the summit was not without successes if seen in a broader context. For one, the deadline imposed by the Copenhagen conference injected a significant momentum into national discussions. One country after another elaborated domestic targets and actions, and presented them to the international audience. These last two years have hence resulted in a much better understanding of national mitigation potentials, available policy options and actions that countries are prepared to take. This momentum would hardly have materialized without the positive pressure exerted in the run-up to Copenhagen. Indeed, who would have expected a mere two years ago that countries such as China and India would voluntarily put forward mitigation targets?

Even more importantly, many countries are currently enacting policies and measures to achieve their Copenhagen pledges despite the absence of a legally binding international treaty. And this momentum is not confined to the national level. While climate legislation is stalled at the federal US level, many US states are implementing climate actions. Most prominently, the North-Eastern states have had a binding emission trading system up and running since 2009 and the West coast is set to follow suit by 2012. More and more cities around the world are developing municipal climate action programmes and companies are contributing as well. Achim Steiner has dubbed this rising groundswell the “silent momentum on climate change”.⁴¹ The more participate in

⁴¹ Achim Steiner, Silent Momentum on Climate Change, <http://www.project-syndicate.org/commentary/asteiner10/English>, accessed 8 February 2011.

such initiatives, the more this patchwork of regimes will grow into an effective response to the climate challenge. High hopes are currently being placed in particular on the next Chinese Five-Year-Plan that is to be adopted in spring 2011. Optimists hope that this plan will contain radical steps in the direction of creating a “green economy” and will prompt other key countries to follow suit.

One may hope that this drive will gather further steam and ultimately culminate in a corresponding strengthening of the international framework. Crucially, the review foreseen in the Cancún Agreements for the years 2013-2015, which coincides with the next assessment report of the Intergovernmental Panel on Climate Change, provides a formal hook for ratcheting up both the level of ambition and the degree of bindingness.

References

- Bals, Christoph (2010) Cancún legt Grundlage für eine Aufwärtsspirale im internationalen Klimaschutz – Jetzt ist die EU am Zug. Ein Resümee des Klimagipfels in Mexiko 2010. Bonn: Germanwatch e.V.
- Höhne, Niklas and Ellermann, Christian (2008): The EU's emission reduction target, intended use of CDM and its +2°C target. Brussels: European Parliament.
- IISD, ed. (2010): Summary of the Cancun Climate Change Conference. <http://www.iisd.ca/download/pdf/enb12498e.pdf>, accessed 8 March 2011.
- Intergovernmental Panel on Climate Change (IPCC) (2007): Climate Change 2007: Synthesis Report. Summary for Policymakers.
- Project Catalyst (2009): Towards a Global Climate Agreement, Synthesis Briefing Paper June 2009.
- United Nations Department of Economic and Social Affairs (2009): World Economic and Social Survey 2009, Promoting Development, Saving the Planet. New York: United Nations.
- Santarius, Tilman, Dawid Bartelt, Tigere Chagutah, Björn Ecklundt, Lili Fuhr, Chen Jiliang, Arne Jungjohann, Kulthoum Omari, Kasia Radzikowska, Ingrid Spiller, Sanjay Vashist, Jorge Villareal, Annett Waltersdorf (2011): One Step Forward and Two Sideward. Regional Analyses of Climate Policy in 2010 and the Cancun Climate Conference (COP 16). Berlin: Heinrich-Böll-Stiftung.
- Steiner, Achim (2011) Silent Momentum on Climate Change, 05 January 2011, <http://www.project-syndicate.org/commentary/asteiner10/English>, accessed 8 February 2011.
- Sterk, Wolfgang, Christof Arens, Sylvia Borbonus, Ura Eichhorst, Dagmar Kiyar, Florian Mersmann, Frederic Rudolph, Hanna Wang-Helmreich, Rie Watanabe (2010): Something Was Rotten in the State of Denmark. Wuppertal: Wuppertal Institute. http://www.wupperinst.org/en/publications/entwd/index.html?beitrag_id=1350&bid=170, accessed 8 March 2011.
- United Nations (2010) Report of the Secretary-General's High-level Advisory Group on Climate Change Financing, 5 November 2010, New York: United Nations, <http://www.un.org/wcm/content/site/climatechange/pages/financeadvisorygroup/pid/13300>, accessed 3 March 2011.
- United Nations Framework Convention on Climate Change (2008): Investment and financial flows to address climate change: an update, Technical paper, FCCC/TP/2008/7, 26 November 2008.

UNFCCC documents

FCCC/AWGLCA/2010/CRP.1 - Possible elements of the outcome, Note by the Chair, 24 November 2010.

Draft decision -/CP.16 Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention, Advance unedited version.

Draft decision -/CMP.6, Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its fifteenth session, Advance unedited version.