

COP 25 Ends amidst Major North-South Differences

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THE annual climate talks under the United Nations Framework Convention on Climate Change (UNFCCC) held in Madrid, Spain in 2019 ended almost two days later than scheduled on Sunday, 15 December. Some key decisions could not be adopted, mainly because of clashes of opinion between developed and developing countries.

Some of the draft decisions were put forward by the Presidency of the 25th session of the Conference of Parties to the UNFCCC (COP 25) to the delegates at the closing plenary, but since these drafts did not enjoy the consensus of all Parties, the controversial agenda items were forwarded to the COP in 2020 for further work.

Also, a few draft decisions that were tabled and put forward to the plenary for adoption could not be adopted due to disagreements on what actually had been agreed to during negotiations the day before.

The final plenary saw the closing of COP 25, the 15th session of the Kyoto Protocol Parties (CMP 15) and the second session of the Conference of Parties to the Paris Agreement (CMA 2).

Earlier in the second week of the talks, the UNFCCC's Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA) finished their work, and forwarded draft conclusions to be adopted by the respective bodies of the COP/CMP and CMA, leaving the controversial sticky issues to be dealt with by the Chilean COP Presidency.

Several decisions on finance, such as that on long-term finance, were dealt with under the COP through a contact group in the first week which went into 'informal-informal' consultations directly among Parties in the second week of the talks and then to Presidency-led consultations.

Among the main agenda items that revealed the North-South divide were on finance-related decisions particularly on long-term finance, the review of the Warsaw International Mechanism on Loss and Damage (WIM), Article 6 of the Paris Agreement (PA) dealing with market and non-market approaches and mechanisms, and pre-2020 implementation and ambition gaps.

The main divide between developed and developing countries was over the push by most developed countries on all countries, for the raising of the ambition level on emission reductions (or mitigation) only.

While the North talked about ambition (by which they mean ambition in mitigation), the South stressed their frustration that the finances they require were not forthcoming to take mitigation or adaptation actions.

At the same time they were being pushed to report more mainly on their mitigation obligations under the term ‘transparency’, with no corresponding ambition on funds to be provided to developing countries. Some developing countries observed that there appeared to be on the part of developed countries ambition in rhetoric but not with respect to implementation in practice, as the most important implementation was on the means of implementation viz. of finance. Many saw the North as being hypocritical, mouthing ambition to appease their public but not meaning it, as they are not willing to provide the means of implementation for developing countries.

Developing countries also countered by stating that the principle of ‘common but differentiated responsibilities’ (CBDR) must be adhered to, and that the UNFCCC and the PA should not be just mitigation-centric. What is most important for developing countries is the required means of implementation, including finance, technology transfer and capacity-building, so that they can fulfil their mitigation and adaptation needs. They also wanted an effective loss and damage mechanism to avert, minimise and address the impacts of climate change.

The developing countries and their various sub-groups criticised developed countries for not fulfilling their obligations in relation to their own mitigation commitments and especially in trying to escape from their obligations to the developing countries under the Convention. They felt that developed countries were trying instead to shift more of their obligations to the developing countries through strict reporting obligations and assessment or stocktaking of their mitigation actions. Meanwhile, the much-needed financial resources were not forthcoming, including on technology transfer, which has been downgraded.

The most dramatic confrontation in the final closing plenary came during the discussion on long-term finance, which was an agenda item under the COP.

Long-term finance

When the COP 25 Presidency tabled the draft decision on long-term finance for the consideration of Parties for adoption, a critical paragraph of the draft decision only noted ‘the importance of continued discussions on long-term climate finance’ and that Parties will decide ‘to consider the matter (of long-term finance) ...’ at COP 26 the next year. This made it clear that there was no certainty that long-term finance would be a standing item on the COP agenda after 2020.

The African Group raised objections, and was supported by other developing countries including from the Arab Group and the Like-minded Developing Countries (LMDC). They maintained that in negotiations the previous night (on Saturday, 14 December) on this item, there was agreement to ‘affirm the importance of climate finance, and that the matter would continue to be discussed under the COP’.

Meanwhile, some developed countries, led by the United States (US), the European Union (EU), Japan, and Canada countered that there was no such agreement reached in the negotiations. Several of them said that the draft decision tabled by the COP 25 Presidency was consistent with their understanding of what prevailed in the negotiations.

Many developing countries were visibly upset with efforts by developed countries to drop the consideration of long-term finance under the COP agenda. Their strong feeling was that whilst developed countries used the rhetoric of wanting high ambition, this was only for mitigation targeted at developing countries. The developed countries did not even want to discuss where the financing would come from to help developing countries in their implementation of both mitigation and adaptation efforts.

Given the divergence of views on the matter, the COP President had no option but to invoke Rule 16 of the UNFCCC’s Rules of Procedure which provides that ‘any item of the agenda..., consideration of which has not been completed at the session, shall be included automatically in the agenda of the next ordinary session...’

Egypt speaking for the Africa Group expressed that it was ‘unfortunate and disappointing’ that there could be no decision to continue the long-term finance discussions under the COP post-2020. It said that it was ‘really surprised that we are not even agreeing to affirm the importance of climate finance’, adding that this was indeed ‘becoming worrisome for a lot of countries’.

It stressed that when developed countries asked developing countries ‘to raise their ambition, and to take more actions, be more transparent (in their reporting of actions), to pay more from their own pockets for adaptation’, this was a ‘very unfortunate message that was being sent to the COP that is calling for ambition’ when ‘we are not even able to affirm or even decide to continue discussions on climate finance’.

Egypt said further that when ‘we ratified the PA, we did not walk out of it and are committed to it and the Convention’, adding that ‘we are not backsliding or rolling back on the commitments but it seems this is not the same for all Parties’. In response to developed countries calling ‘for more ambition’ and ‘for addressing the climate emergency’, the Africa Group said that ‘we are not here for nice statements applauding nice words’ but ‘we are here to work and make sure that we deliver the right package to enhance the ambition and have things move forward’. It said that it was very obvious that when it came to issues of finance, technology transfer or capacity-building, there was ‘very limited space to even discuss them or even affirm them’.

The Africa Group said emphatically that it wanted ‘to put on record that it will engage on this agenda item again (on long-term finance), but not with a very benign language just calling to affirm or simply request for discussions to continue’. Instead, it wanted ‘strong language’ that will make clear that ‘climate finance is a core component for any ambition particularly in Africa’.

The Africa Group sentiments were echoed and shared by other developing countries including the Arab Group and the LMDC.

Saudi Arabia, speaking for the Arab Group, also expressed disappointment, stressing that when addressing the issue of ambition, it cannot only be about ambition in mitigation, but must also be about ambition in adaptation and on the means of implementation. It said it was unfortunate that ‘developed countries talk the talk but they do not walk the walk’ and do not deliver on their commitment in providing finance, recalling that they have a ‘historical responsibility’ for doing so, as a ‘debt’ to be paid to developing countries to adapt, enhance their resilience and to contribute to mitigation if there are sufficient, adequate and predictable finance provided to them.

Warsaw International Mechanism on Loss and Damage

Another important issue that occupied much attention was on the review of the Warsaw International Mechanism on Loss and Damage (WIM). It saw a somewhat positive decision adopted of importance to developing countries, mainly through the hard work and united efforts of developing countries under the umbrella of the G77 and China.

In the decision adopted, among other things, there is text that ‘urges the scaling-up of action and support, as appropriate, including finance, technology and capacity-building, for developing countries that are particularly vulnerable to the adverse effects of climate change for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change’.

The G77 and China had tabled a much stronger proposal requesting developed countries for ‘adequate, easily accessible, scaled up, new and additional, predictable finance, technology and capacity building... (for) addressing loss and damage’ but due to opposition by developed countries especially the US, the final decision is a much watered-down version of the original proposal. The US did not want any ‘bifurcation’ of responsibilities to be attributed to only developed countries.

The decision adopted, among other matters, agreed to the establishment as part of the WIM of ‘the Santiago network for averting, minimizing and addressing loss and damage...to catalyse the technical assistance of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches at the local, national and regional level, in developing countries that are particularly vulnerable to the adverse effects of climate change’. This network is intended to make it easier for developing countries to obtain needed support and technical assistance in relation to loss and damage.

The decision also mandated the WIM Executive Committee to set up, by the end of 2020, an expert group under its auspices to work on action and support issues in relation to loss and damage; and also mandated the WIM Executive Committee to strengthen its collaboration with and provide inputs to the finance-related bodies and operating entities under the Convention and its Paris Agreement in order to ensure that loss and damage issues are addressed by these bodies and entities. These were proposals from developing countries under the G77 and China going into COP25 which had to be intensely negotiated and pushed due to opposition from developed countries.

However, an issue that could not be resolved in Madrid was the governance of the WIM. Developed countries wanted the WIM to be under the governance of the CMA only (Parties under the PA), while developing countries wanted the WIM to continue to also be under the COP governance.

In the decision adopted, it was noted that ‘considerations related to the governance of the WIM will continue ... (in Nov 2020)’. Hence, this issue remains to be decided in 2020.

The G77 and China, in response to the governance decision of the WIM, noted that ‘discussions on this issue here at COP25 and CMA2 did not produce any outcome and ... such discussions do not prejudice any further consideration of this matter under the COP and the CMA’.

Tuvalu, in a strong response to the governance issue, said that the decision ‘does not suggest that COP does not have ongoing role’ as it is ‘the COP that established the WIM’. It also made the observation that ‘during the consultations, a Party (referring to the US) who has been insisting that the WIM operates solely under the PA, ironically or strategically will not be a Party to the PA’, adding that ‘if they get their way, they will wash their hands in assisting countries who would be impacted by climate change’. It emphasised further that ‘this is a tragedy and adversity to the millions of people who are already suffering the impacts of climate change. Denying this fact could be interpreted as a crime against humanity’, drawing applause from those present in the plenary hall.

Pre-2020 implementation and ambition gaps

While mouthing the need for higher ambition in closing the emissions gap to limit temperature rise by 1.5-2°C above pre-industrial levels, developed countries refused to acknowledge their responsibility for the existence of such a gap by having low mitigation ambition levels in the pre-2020 period. The developed countries had agreed to revisit and raise their emissions reduction ambition under the Doha Amendment to the Kyoto Protocol in 2012.

Several developing country groupings called for a two-year work programme to identify and address the gaps of developed countries in the pre-2020 time frame, but there was much opposition from developed countries, with some saying that there is a need to be ‘forward-looking’ and not ‘backward looking’. They were implying that the focus should be on the post-2020 time frame as regards the nationally determined contributions (NDCs) under the PA and for all Parties to address the gaps, and to not take a differentiated approach between developed and developing countries in the pre-2020 period as set out under the Convention and the KP.

During the negotiations, the LMDC, BASIC (Brazil, India, South Africa, China), ABU (Argentina, Brazil, Uruguay), the Africa Group and the Arab Group had jointly submitted a proposal mandating a two-year work programme under the SBI on ‘Pre-2020 Implementation and Ambition’, ‘to identify the progress and

gaps on mitigation, adaptation, finance, technology development and transfer, and capacity building of the pre-2020 commitments by developed countries, and to make arrangement on closing the gap’.

In relation to the pre-2020 mitigation targets of the developed countries, the joint submission said, ‘The Doha Amendment (of the KP) requires the Annex I Parties (referring to developed countries) to cut their GHG emissions at least by 18% relative to 1990 levels during the second commitment period (2013-2020); and to cut their greenhouse gas emissions (GHG) emissions by at least 25-40% below 1990 levels by 2020; and to revisit their 2020 targets no later than 2014. However, Annex I Parties have not accomplished these commitments. No Annex I developed country have revisited their 2020 targets up to now.’

The submission stated further that the ‘EU committed in their NDC to reduce GHG emissions by 40% by 2030 on the level of 1990, i.e. resulting in a 10-year lag in implementation compared to what it should be achieving by 2020.... Canada committed to reduce GHG emissions by 30% by 2030 on the level of 2005, resulting in a 10-year lag in implementation relative to 2020, and constitutes a 25-year delay relative to the baseline year. Although the US has already officially started the withdrawal process from the Paris Agreement, its NDC thereunder as communicated during the Obama Administration in 2016 was to reduce GHG emissions by 36-28% below 2005 levels by 2025, a target that constitutes a 5-year delay relative to 2020, and a 20-year delay relative to the baseline year’.

During discussions, however, according to several developing country delegates, the developed countries were not interested to discuss the issue of their pre-2020 implementation of commitments and ambition.

The EU was of the view that many of the pre-2020 elements were covered under existing processes and decisions and that there was no reason to duplicate them. Canada apparently said that Parties were gathered to discuss enhancement of NDCs (which take effect from 2021 under the PA); it was ‘at a loss’ to see the idea of a work programme and did not see any value in this. Australia expressed views along the same lines and did not see it ‘helpful’ to establish a work programme since Parties needed to be ‘forward focused’. Apparently, Norway was against the proposal as well.

The US asked Parties to use ‘pragmatism’ as regards the decisions, saying that Parties may see some as priority issues, but others did not view them as such. It added that there was no point duplicating pre-2020 discussions in the COP decision. It apparently said that it was concerned with the use of the term ‘gaps’ and that Parties could find a better way to discuss ‘urgency and enhanced ambition’, adding that it did not support the work programme.

Following further discussions and heavy resistance from the developed countries in relation to pre-2020 climate action, the decision adopted was very weak, with agreement to convene at COP 26 ‘a round table among Parties and non-Party stakeholders on pre-2020 implementation and ambition’.

According to some developing country delegates, developed countries led especially by the US did not want to have a ‘bifurcated’ approach in the decision, or for the developed country ambition gaps to be explicitly addressed.

Ambition – should not be mitigation-centric

Under the CMA, there was intense political discussion over the language on increased ambition in the overall decision to be adopted, known as the number 1 decision.

Earlier drafts of possible elements for the draft decision included calls for ambitious updating of the NDCs in 2020. This found support among the developed countries led by the EU, the Alliance of Small Island States (AOSIS), the Least Developed Countries (LDCs) and the Independent Alliance of Latin America and the Caribbean (AILAC).

However, developing countries led by the LMDC, the Arab Group and the Africa Group called for more nuance in making such calls. They were of the view that ambition was not just about mitigation, and wanted

an integrated approach to say that calls for mitigation ambition should be in sync with calls for increased support on the means of implementation. They also expressed disappointment that the proposed text had nothing on adaptation and means of implementation and that it was heavily mitigation-centric.

They wanted the recalling of Article 3 of the PA, which establishes that NDCs are not mitigation-centric and asserted that all aspects of ambition must be included. They were of the view that while nothing stopped countries from submitting ambitious NDCs, the mandates from the PA and its decision must be respected, i.e. decision 1/CP.21 requests Parties 'to communicate or update by 2020' their NDCs.

The groups were also of the view that even though they were undertaking ambitious climate action in their countries despite challenges of sustainable development and poverty eradication, forcing ambition on developing countries was unfair especially since the developed countries had not done their bit in terms of raising their ambition level on mitigation and in providing adequate and predictable support to developing countries.

Malaysia for the LMDC stressed that the basic principle is that any framing around ambition must respect previous mandates, and Parties must not go beyond those. It also stated that the issues of adaptation, loss and damage and means of implementation need to find reflection in the draft text.

According to developing country delegates, China welcomed the issue of ambition, but also wanted the focus on implementation. On the issue of the communication and updating of NDCs, China said that these had already been mandated by previous decisions, so the issue was a matter of implementing past decisions. In addition, China warned against 'changing of the PA goalposts'.

India was of the view that there was no bar for a country to change its NDCs, but the Paris decision was clear that countries with NDCs of a 10-year time frame would communicate or update it in 2020. It also said that the framing of ambition must be proper, in that, equity and CBDR must be the frame, along with action and support.

It was concerned that there was no raising of ambition in the pre-2020 period, and asked what will happen to the gaps. India said that while the world is looking for an ambitious outcome, ambition stems from implementation and there was no zeal from developed countries to address this. It stressed the importance of talking about the historical gaps and shortfalls that have brought Parties to this situation and did not want a repeat of history.

India recalled that the Convention started in 1992, and what followed was the first commitment period of the KP, the second commitment period of the KP and then the PA, with the latter's implementation beginning in 2021. It also said the world was staring at an imploding problem of disconnect and three lost decades, with the real issue being one of implementation.

It lamented that developed countries have not been on target to meet their KP commitments and that there are attempts to block items linked to finance, stressing that this was a great source of discomfort. India emphasised that there were unmet promises of the past and in looking forward, Parties must not forget the bedrock principles of equity and CBDR, adding that the problem that is being faced is in the shirking of responsibilities by developed countries.

Following several rounds of discussions, the CMA decision that was adopted re-emphasised 'with serious concern the urgent need to address the significant gap between the aggregate effect of Parties' mitigation efforts in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.

The decision adopted recalled the request to Parties contained in the Paris decision on the communication or updating of NDCs, and urged Parties to ‘consider the gap..., with a view to reflecting their highest possible ambition when responding to this request’.

The decision also recalls that ‘each Party’s successive NDC will represent a progression beyond the Party’s then current NDC and reflect its highest possible ambition, reflecting its CBDR and respective capabilities, in the light of different national circumstances’.

On adaptation, the decision ‘calls on Parties to engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions in accordance with Article 7.8 of the PA, with a view to continue making progress towards the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change’.

The decision also requests the ‘Adaptation Committee to consider approaches to reviewing the overall progress made in achieving the global goal on adaptation and to reflect the outcome of this consideration in its 2021 annual report’.

In relation to means of implementation, the CMA decision adopted ‘underlines the importance of implementing commitments under the PA related to finance, technology transfer and capacity-building to address the mitigation and adaptation needs and priorities of developing countries’.

The decision adopted ‘urges developed country Parties to provide financial resources to assist developing country Parties with respect to both mitigation and adaptation, in continuation of their existing obligations under the Convention, and encourages other Parties to provide or continue to provide such support voluntarily’.

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

Article 6

Negotiations on Article 6 were embroiled in many difficult and contentious issues, making the path to reaching an outcome agreeable to all Parties a rather challenging task.

Article 6 of the PA generally deals with what is known as cooperative approaches among Parties, which include the use of market and non-market mechanisms in the implementation of their NDCs. Parties had initially agreed that rules for the implementation of the mechanisms would be adopted in 2018 in Poland. However, negotiations in this regard had proved difficult then and continued to be so in Madrid, with Parties having different understandings on how the mechanisms are to be implemented.

Despite protracted negotiations that began on 3 December in the first week of the talks under the SBSTA, Parties were nowhere closer in resolving the issues. In the second week, consultations with Parties were led by ministers from New Zealand and South Africa, who were appointed by the COP 25 Presidency.

According to a developing country negotiator, since the evening of 10 December, groups of Parties and some Parties were being consulted one-on-one. The New Zealand minister made clear that consultations will only be with ministers and not with heads of delegations or negotiators who had been involved in the negotiations during the first week.

This approach drew serious concerns especially from some developing country delegations since the issues under Article 6 were complex and technical, and unfamiliar to most ministers. Concerns were raised with the Chilean COP 25 Presidency in this regard.

The Presidency's proposal was for ministers to handle the following issues, which signalled the areas where there were major differences of views among Parties:

- Adaptation financing in the context of the cooperation under Article 6;
- Accounting aspects;
- Issues relating to metrics;
- Use of the approaches for other international mitigation purposes (apart from the purpose of achieving a Party's NDC);
- Transition of activities under the Kyoto Protocol (such as the emission reduction credits from the Clean Development Mechanism [CDM]);
- Delivering on the overall mitigation in global emissions; and
- The governance of the framework for non-market approaches

Article 6.2

Article 6.2 of the PA allows Parties to engage 'on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes (ITMOs)' towards their NDCs, to promote sustainable development, ensure environmental integrity and transparency and avoid double-counting.

The foremost contentious issue is the definition of ITMOs and whether the mitigation outcomes to be transferred can be measured in other metrics than the metric tonnes of carbon dioxide equivalent (tCO₂eq), which are consistent with the NDCs of the participating Parties.

Developed countries (but not including Japan) and the AOSIS were opposed to having any metrics other than tCO₂eq, while some developing countries such as the LMDC, the Arab Group, India, and South Korea support the use of other metrics as well.

The other key issue is over the application of corresponding adjustments to emission reductions and removals from sectors and greenhouse gases not covered by the NDCs.

While developed countries and the AILAC supported this proposal, some developing countries such as the LMDC, the Arab Group, Brazil, India and China were opposed to it.

It is important to note that the decision adopted in Paris in 2015 requested the SBSTA to develop and recommend guidance as regards Article 6.2 '*to ensure that double counting is avoided on the basis of a corresponding adjustment by Parties for both ...emissions by sources and removals by sinks covered by their NDCs*'. Also noteworthy is the fact that Article 6.2 does not make any reference to the use of ITMOs for purposes other than towards a Party's NDC.

A further matter relates to the issue of overall mitigation in global emissions with the AOSIS as the key proponent of this, while developed countries were against it. The PA in relation to the Article 6.4 mechanism makes clear that the mechanism shall aim 'to deliver an overall mitigation in global emissions', whereas Article 6.2 does not make this explicit, thus giving rise to the problem over this issue.

One of the most contentious issues in relation to Article 6.2 is over the share of proceeds (SOPs) to be levied on the ITMOs to assist developing countries to meet the costs of adaptation and which will contribute to the Adaptation Fund. In the PA, Article 6.7 makes clear of this in relation to the Article 6.4 mechanism but is silent on this in relation to Article 6.2.

Developing countries such as the Africa Group, the LMDC and AOSIS were proponents of proposals for the SOPS to also apply to Article 6.2 to ensure a balanced treatment between both approaches (under Articles 6.2 and 6.4), while developed countries were all against it, especially the US.

Article 6.4

Under Article 6.4, another mechanism has been agreed to in order to ‘contribute to the mitigation of greenhouse gas emissions and support sustainable development’. Some Parties see this as an expansion of the Clean Development Mechanism (CDM) under the KP.

A major issue with divergent views is in relation to the transition from the KP as regards the transfer of pre-2020 credits from the CDM into the Article 6.4 mechanism.

Most developed countries and some sub-groups of developing countries such as the AOSIS, Africa Group and AILAC were opposed to this transfer, with countries like India in favour of this.

The issue of corresponding adjustments to avoid double-counting is another sticky issue in relation to the Article 6.4 mechanism, with many developed and developing countries supporting its application to both Article 6.4 and Article 6.2. However, the LMDC (including India) and Brazil were not in favour of this.

Article 6.8

Article 6.8 of the PA deals with non-market approaches and states that ‘Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their NDCs... including through, *inter alia*, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate...’.

The governance of the framework is the key contentious issue and relates to whether or not to have a ‘permanent’ institutional arrangement to implement the framework and the work programme.

Developed countries were opposed to having a ‘new’ permanent governance arrangement, while developing countries were proponents of some new arrangements, such as a ‘forum’ or a ‘taskforce’ under the SBSTA. Given the above and despite the intense negotiations over the two weeks, Parties could not find agreement on the many issues and only managed to adopt a procedural decision under the CMA, that requested the SBSTA to continue the consideration and adoption by the CMA of decisions next year, ‘on the basis of draft decision texts’ which were prepared by the Presidency in Madrid, while ‘recognizing that these draft texts do not represent a consensus among Parties’.

Hence, the can has now been kicked down the road to COP 26 in 2020, on the Article 6 issues.

COP 25 – many decisions deferred

COP 25 was also loosely referred to by some delegates as a COP of ‘Rule 16’, referring to the UNFCCC Rules of Procedure, where if an item on the agenda of a session’s consideration has not been completed at the session, it shall be included automatically in the agenda of the next session.

Rule 16 was applied to several important agenda items including the following: long-term climate finance; common time frames for NDCs; report of the Adaptation Committee; rules for the operation and use of a public registry relating to NDCs as well as adaptation communications; revision of the UNFCCC reporting guidelines on annual inventories for Parties included in Annex 1 to the Convention; several issues related to the PA transparency framework; procedures for the CDM; and report on the high-level ministerial round-table on increased ambition on the KP commitments.

Other decisions which were adopted with substantive outcomes, although weak in some instances, included: the second periodic review under the Convention, the Forum on the implementation of response measures, guidance to the Global Environment Facility and the Green Climate Fund, the report of the Standing Committee on Finance and the report of the Adaptation Fund Board.

Scope of the 2nd periodic review under the Convention

On the scope of the second periodic review, in the decision adopted, Parties agreed that it should be ‘in accordance with the relevant principles and provisions of the Convention and on the basis of the best available science: (a) Enhance Parties’ understanding of: (i) The long-term global goal and scenarios towards achieving it in the light of the ultimate objective of the Convention; (ii) Progress made in relation to addressing information and knowledge gaps, including with regard to scenarios to achieve the long-term global goal and the range of associated impacts, since the completion of the 2013–2015 review; (iii) Challenges and opportunities for achieving the long-term global goal with a view to ensuring the effective implementation of the Convention; and (b) Assess the overall aggregated effect of the steps taken by Parties in order to achieve the long-term global goal in the light of the ultimate objective of the Convention’.

Parties also agreed that ‘the outcome of the second periodic review will not result in an alteration or redefinition of the long-term global goal stated in decision 10/CP.21’ (‘the goal is to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels’).

Developing countries have been insisting on a review of the overall progress and implementation of actions of Parties in the pre-2020 period under the Convention and the Kyoto Protocol, while developed countries have been opposing the need for such a review.

Forum on Response Measures

The impacts of implementation of response measures is understood as the effects arising from the implementation of mitigation policies and actions taken by Parties under the Convention, the KP and the PA, and how these mitigation policies/actions could have impacts on countries, particularly developing countries, including cross-border impacts. COP 17 (in 2011) established a Forum on the impact of the implementation of response measures.

Decisions were adopted in Poland in 2018 to relaunch the work of the Forum on the impact of the implementation of response measures. The decisions identified four areas for the work programme viz. (a) economic diversification and transformation; (b) just transition of the workforce and the creation of decent work and quality jobs; (c) assessing and analysing the impacts of the implementation of response measures and; (d) facilitating the development of tools and methodologies to assess the impacts of the implementation of response measures. The decisions also provided for the creation of the Katowice Committee of Experts on the Impacts of the Implementation of Response Measures (KCI) to support the work programme of the forum.

In June 2019, the Forum began to develop a six-year work plan. However, opposition from developed countries prevented the work plan from being finalised. In Madrid, agreement was reached after much wrangling so that the forum can start its work. In addition, Parties also reached agreement in adopting the rules of procedure of the KCI.

Other finance issues

Apart from the long-term finance issue, all other finance matters, viz. the Standing Committee on Finance (SCF), the Green Climate Fund (GCF), the Global Environment Facility (GEF) and the Adaptation Fund (AF) were contentious between developed and developing countries, with intense protracted negotiations, with no clarity on the process forward or the possibility of any agreement in sight, until the final closing day of the talks.

During the latter part of the first week and the week that followed, consultations were predominantly carried out in Party-only ‘informal-informal’ settings, closed to observers. However, at the negotiations on the AF under the CMP, the US, although an observer Party to the KP, was allowed to actively engage on the decision-making issue of membership of the AF Board, which drew heavy criticism and opposition by developing countries.

Although negotiations were launched on all finance matters at their respective first contact groups at the start of the first week, there was a glaring absence in the convening of a final contact group to arrive at conclusions on all matters besides the AF, which was the normal practice, according to a senior negotiator close to the process.

Parties, therefore, did not have a final say on the proposed ‘bracketed’ (not agreed) draft decision texts on all matters developed by the respective co-chairs who were facilitating the consultations, which then got transmitted to the COP 25 Presidency for further work. The highly contested co-chairs’ draft texts were eventually transmitted in the evening of Thursday, 12 December, well past the deadline of 9 December. Several developing country delegates who were following in the negotiations told TWN that the process to arrive at any consensus draft texts was ‘extremely flawed and lop-sided’, as only developed countries’ proposals got included in the evolving iterations of the texts, while those of developing countries were ignored and not reflected. They complained that the co-chairs’ draft texts were therefore imbalanced, and were contested by developing countries. According to a delegate, the entire process was designed to accommodate primarily the interests of the US, followed by the EU and other developed countries. Requests by developing countries for their amendments to texts were apparently ignored.

On the morning of Thursday, 12 December, Parties were requested to arrive at ‘compromise’ texts, by working in two parallel sessions: one on the LTF and SCF decisions and the second on the guidance to the GCF and the GEF.

The Presidency-led consultations after 12 December were also driven to accommodate the US, shared many developing country negotiators with TWN. They further expressed much frustration and viewed the process as being ‘totally unfair’ given that the US is already in the process of exiting the PA. This, they said, ‘was a dent on multilateralism’.

On Friday, 13 December (when the talks were initially scheduled to end), Parties were provided with draft texts proposed by the Presidency on all finance matters for consideration. Concerns and repeated red-lines of developing countries were again not reflected. In the late afternoon of Saturday, 14 December, the Presidency’s proposed texts were shared with Parties, followed by an informal consultation where divergences continued, limiting any progress forward. Finally, in the morning of Sunday, 15 December, a couple of hours before the joint closing plenary, final draft decisions from the Presidency were circulated and published online for consideration and adoption by Parties.

According to developing country delegates, although the decisions were watered down and highly imbalanced especially for developing countries, they were adopted on matters relating to the SCF, the GCF, the GEF (under both the COP and the CMA) and the AF (which was a decision under the CMP). In addition, draft conclusions on the AF (under the CMA) were also postponed for consideration the next year.

Decisions under the COP and CMA

Matters relating to the Standing Committee on Finance (SCF)

Key contentious issues revolved around the ‘common’ definition of climate finance; the synthesis report to the COP for setting a new collective quantified goal on finance from a floor of US\$100 billion per year in accordance with decision 14/CMA.1; reference to the Warsaw International Mechanism on Loss and Damage (WIM) in relation to inputs by its Executive Committee to draft guidance; and participatory liaison between the SCF and constituted bodies going beyond the appointed focal points.

One issue of utmost significance was the continued importance of the determination of the climate finance needs of developing countries, to be reflected in the decision. This was highlighted at the outset by **Palestine** on behalf of the **G77 and China**, stating that it should be ‘comprehensive’, serving as a ‘tool amongst others to guide the replenishment process of the operating entities (of the Financial Mechanism under the COP and the CMA)’. In addition, developing countries also wanted the determination to include ‘their needs on loss and damage’, which was also strongly opposed by the **US** and **Japan**.

The push for a ‘common’ definition on finance (which was in brackets in the draft texts) was led by **India** for the **LMDC** and supported by **South Africa for the Africa Group and Malawi** for the **LDCs**. The **US**, **Japan** and the **EU** were opposed to this proposal citing already ‘existing’ language referring to the different definitions within the Biennial Assessment Report and overview of climate finance flows.

South Africa for the **Africa Group** advocated strongly a proposal (which was also supported by other developing countries) as follows – ‘requests the SCF to prepare a synthesis report to inform the COP’ to inform the CMA 3 (in 2020) in its ‘initiation of its deliberations on setting a new collective quantified goal from a floor of USD 100 billion per year in accordance with decision 14/CMA.1’. This proposal was met with opposition from the **US**, **the EU**, **Japan** and **Australia**, and the final decisions which were adopted had no text on the preparation of the synthesis report by the SCF.

(In decision 14/CMA 1 adopted last year, Parties had agreed ‘to initiate [in] Nov 2020, in accordance with Article 9(3) of the PA, deliberations on setting a new collective quantified goal from a floor of USD 100 billion per year...’.)

The reference to ‘loss and damage’ vis-à-vis needs determination was also removed from the decisions.

As opposed to agreeing on the need for a ‘common’ definition of climate finance, **para 10** of the adopted decisions reads, ‘underscores the important contribution of the SCF in relation to the operational definitions of climate finance, and invites Parties to submit via the submission portal, by 30 April 2020, their views on the operational definitions of climate finance for consideration by the SCF in order to enhance its technical work on this matter in the context of preparing its 2020 Biennial Assessment and Overview of Climate Finance Flows’.

Para 13 of the decisions carries a rather weak language on reference to the WIM inputs which reads, ‘looks forward to the inputs that may be provided by the Executive Committee of the WIM.....to the work of the SCF for its consideration in preparing elements of draft guidance for the operating entities’.

Para 16 of the decisions only ‘take note of the appointment of SCF focal points to liaise with the other constituted bodies under the Convention and the Paris Agreement’.

Guidance to the GCF

One of the key contentious issues on the GCF guidance was the long-standing issue of the lack of clarity on the status of the provision of privileges and immunities (Ps & Is) for the GCF.

According to developing country delegates, they were concerned that despite the Governing Instrument (GI) of the GCF providing that the Fund ‘will enjoy such Ps & Is as are necessary for the fulfilment of its purposes’, ‘the GCF Board has reported that there has been an absence of such privileges and immunities which creates an increased risk that legal action may be taken against the GCF, its Board members and other officials’.

Palestine for the **G77 and China** clearly stated in the initial contact group that the issue of Ps & Is is a critical matter to deal with given that there have been no conclusions even after deliberations on this for a number of years. It referred to the GCF’s GI which clearly articulates the need for Ps & Is under the legal status of the Fund. Since the Fund is designed as neither a multilateral development bank nor a UN agency, it is difficult for countries to deal with Ps & Is with some requiring to enact new parliamentary legislation. Palestine urged the GCF Secretariat to explain the lack of success in securing them, with their existing

bilateral approach. It also underlined that Ps & Is are ‘extremely important for the Fund to ensure that it is secure’, not only for recipients and contributors but also extended to the staff for their functions.

South Africa for the African Group echoed the G77 and China, further calling on the Secretariat to report back on their progress since ‘this is the third report (referring to the GCF report to the COP) clearly telling us that the bilateral system is not working’. It also pointed out that a number of developing countries will not be able to grant bilateral Ps & Is as it requires domestic legislation. Further, it pointed out that it will be the ‘COP’ which will ‘clarify’ on this outstanding issue as it was a COP decision which established the GCF.

Iran supported the previous speakers and also drew attention to developing countries under unilateral sanctions or embargoes, which could pose risks besides being a political issue. **Saudi Arabia for the Arab Group** and **Liberia** aligned with the G77 and China as well as the Africa Group. **South Korea** and **Armenia** also stated that this issue needs to be resolved by the COP in a legal way.

Switzerland for the Environmental Integrity Group (EIG) suggested moving forward with the Africa Group’s proposal on having a session with the Secretariat to get the ‘full story’ on why its approach did not yield the right results.

The **US** urged the Secretariat to provide ‘a full analysis’ and for further bilateral arrangements to be made, and referred to the case of South Africa. To this the **South African** delegate responded that it had been engaging with its Parliament for two years and ‘frankly, it is not as simple as your analysis’.

In the next informal consultation, the Secretariat provided its response on the Ps & Is and also sent a note later, containing supplementary information. Sources told TWN that a ‘placeholder’ remained on the insertion of text on Ps & Is in the decision text until the very end.

In this regard, in the final decision adopted, **para 8** of the text ‘*encourages* the Board of the GCF to continue its efforts to ensure that the GCF enjoys immunities and privileges’. **Para 9** further ‘*takes note* of the engagement of the President of the COP’ with the UN Secretary-General on the matter through a ‘possible institutional linkage’ between the UN and GCF and ‘requests the President to report on this engagement’ at COP 26. **Para 10** of the decision provides for the continued consideration of this matter (and refers to para 9) at COP 26.

The other contentious issue was having a reference to the WIM and addressing loss and damage in the decision text, which also had a ‘placeholder’. According to developing country negotiators, the **US, Australia, the EU, Switzerland** and **Mexico** opposed any text on loss and damage, with **Antigua and Barbuda** for AOSIS as the main proponent supported by **Burkina Faso** for the LDCs as well as by the **African Group** and the **G77 and China**.

In this regard **para 21** of the decision adopted ‘*invites* the Board of the GCF to continue providing financial resources for activities relevant to averting, minimizing and addressing loss and damage in developing country Parties, to the extent consistent with the existing investment, results framework and funding windows and structures of the GCF, and to facilitate efficient access in this regard, and in this context to take into account the strategic workstreams of the five-year rolling workplan of the Executive Committee of the WIM ...’. A similar decision was adopted under the CMA for guidance to the GCF.

Another sticky issue which was challenged by **Palestine** for the **G77 and China** was over the factual reflection of the first replenishment (GCF-1) nominal pledge of US\$9.66 billion as opposed to the ‘existing inflated figure of USD 9.78 billion’ (arrived at with a speculative notional credit of US\$118.47million) by the GCF Secretariat. Palestine expressed that the notional credit figure was ‘speculative’ and ‘that may be earned’ is premised upon the assumption of early encashment by the contributors.

The other related matter which Palestine on behalf of the G77 was pushing for was the inclusion in the decision text of the unfulfilled commitments of the preceding initial resource mobilisation (IRM) pledges which Parties were urged to ‘confirm’ as a ‘matter of urgency’.

The decision adopted under the COP managed to successfully capture the fact of the GCF-1 ‘nominal pledge of USD 9.66bn and a notional credit of USD 118.47m that may be earned in the event all contributors make early encashment’. The decision however did not contain any text on the unfulfilled IRM pledges which had been in brackets throughout the various iterations of the text.

Guidance to the GEF

One of the key concerns as regards the GEF revolved around the ‘inadequacy of resources’ with dwindling amounts in every replenishment cycle and which was evident in the current GEF-7 (seventh replenishment) cycle compared to GEF-6.

At the opening contact group, **Palestine for the G77 and China** highlighted the track record from GEF-5 to date with ‘regression’ of over 36% decline in the climate allocation. ‘Adequacy of resources is important for Convention commitments as well as for the global environment component,’ said Palestine, adding that ‘developing countries were facing difficulties in resources to meet their commitment requirements’ and that ‘there has been no response from the GEF since the last two years’.

The Maldives for AOSIS, Malawi for the LDCs, India for the LMDC, China and Iran echoed the G77 and China on this matter.

The most contentious issue however was in relation to the ‘changes’ made to the GEF ‘eligibility criteria’ without the consent of the COP, in particular, changes made to the STAR allocation (System for Transparent Allocation of Resources) following the GEF-6 replenishment and the update to the STAR allocation following the GEF-7 replenishment process.

Palestine for the G77 and China strongly emphasised that the GEF approach was ‘unacceptable’ since the COP was not consulted and did not consent to the changes made, calling for a reflection of these views in the draft decision text. It made clear that the eligibility criteria are ‘not determined by contributors’ and further pushed for the GEF to ‘cease’ the application of the updated eligibility criteria and to report to the COP on steps taken in this regard.

India for the LMDC echoed the G77 and China views, while **Brazil for Argentina, Brazil and Uruguay (ABU)** stated that no ‘new category’ (of countries) should be created in line with the ‘Convention language’ vis-à-vis eligibility criteria. The **EU** was of the view that the STAR allocations were ‘agreed’ in Poland last year. **South Africa for the African Group** countered this, saying ‘this change is made by the GEF Secretariat which is not acceptable’.

The other sticky issue was the increasing co-financing requirements being imposed, currently being in the ratio of 1:7, which was contested by **Palestine for the G77 and China** and supported by **Malawi for LDCs**. As in the GCF and the SCF, reference to WIM and addressing loss and damage was resisted by the **US, Australia, Canada** and the **EU**. **The Maldives for AOSIS** and **Burkina Faso for LDCs** were the key proponents supported by the **G77 and China, Saudi Arabia for the Arab Group** and the **Africa Group**. Sources told TWN that a placeholder on the loss and damage text appeared until the last iterations of the text, and was eventually dropped with no text in the final draft decision circulated by the Presidency.

The decision adopted a very watered-down language on eligibility criteria with **para 5** reading as, ‘urges the GEF to continue to report to the COP any change or update to the eligibility criteria for accessing the GEF resources, including the STAR country allocation, in its future reports to the COP’.

Para 6 on co-financing reads as, ‘encourages the GEF, as part of the overall performance study of its seventh replenishment, to analyse any challenges faced and lessons learned by the GEF and its implementing agencies in applying the updated policy on co-financing of the GEF and report back to the COP on the outcomes of the study’.

Decisions for adoption under the CMA and CMP

Matters relating to the Adaptation Fund (AF)

The main contentious issue on the AF was over the proposed changes in membership of the AF Board by developed countries and with the US actively engaged in negotiations when it only has observer status to the CMP as it is not Party to the KP having withdrawn in 2001. The AF is currently serving both the KP and the PA, and therefore under the purview of the CMP and the CMA. (See TWN Madrid Update 8.)

The problematic ‘para 8’ dealing with membership in the proposed decision text under the CMP was opposed by **Palestine** for the **G77 and China** as well as **South Africa** for the **Africa Group**, supported by **India** for the **LMDC**, **China** and **Saudi Arabia** for the **Arab Group**. The **EU** and **Canada** wanted to maintain para 8. However, the **EU** accepted the ‘deletion’ of para 8 eventually and agreed to ‘continue work’ in Bonn in June 2020.

(The controversial para 8 was as follows: ‘Decides that the AF shall comprise of 16 members representing Parties to the KP or Parties to the PA, taking into account fair and balanced representation among these groups as follows: (a) Two representatives from each of the five UN regional groups; (b) One representative of the small island development States; (c) One representative from least developed country parties; (d) Two other representative from developed country Parties; (e) Two other representatives from developing country Parties’.)

The adopted decision under the CMP does not contain paragraph 8.

Under the CMA, when the second meeting of the contact group on 10 December was convened to conclude the agenda item on the AF, there was a proposal by the **EU** to have a similar decision adopted as under the CMP.

This proposal was rejected by the **G77 and China**, the **Africa Group**, **India** for the **LMDC**, **Saudi Arabia** for the **Arab Group**, **China** and **Malawi** for **LDCs**. The **US** supported the EU proposal, backed by **Switzerland** for the **EIG**.

At the third contact group convened on 11 December, Parties retained their respective positions, which led the co-facilitators to conclude that ‘it is clear now that there is no consensus on the way forward and there is no agreement on the draft text reached’. Hence, the draft conclusions with the EU’s proposal still on the table will be taken up at the next session in June 2020.

Conclusion

Given the strong North-South divide on many issues, negotiations on the road to and at Glasgow in the United Kingdom (which is the host of COP 26 to be held later in November 2020) will not be easy. The stance of the US in particular will be keenly watched, as it will no longer be a Party to the PA effective 3 November 2020. It will however continue to be a Party to the Convention. So, how the US behaves in the negotiations and how other Parties, especially the developed countries, intend to accommodate the US concerns remains to be seen.

Coincidentally, 3 November 2020 will also be when the US Presidential elections will take place. The outcome of its elections and what influence this will have at the Glasgow talks is another factor that will shadow the COP in 2020.

* *With inputs from Prerna Bomzan, Indrajit Bose and Vice Yu*