Third World Network
Panama Climate News Updates
(October 2011)

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NOTE

This is a collection of 18 News Updates prepared by the Third World Network for and during the recent United Nations Climate Change Talks – the third part of the 14th session of the Ad Hoc Working Group on Long-term Cooperative Action under the UN Framework Convention on Climate Change (UNFCCC AWG-LCA 14), and the third part of the 16th session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 16) – in Panama City, Panama from 1 to 7 October 2011.

TWN
Panama News Update 1

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First Meeting of the Technology Executive Committee Ends with Compromise and Progress on Modalities and Procedures

The first meeting of the Technology Executive Committee took place in Bonn from 1-3 September and wrestled with the issue of who would be chair and vice-chair of the Committee. It also saw an intense exchange on the issue of intellectual property rights (IPRs) and the relationship of the TEC to the Climate Technology Centre (CTCN). The meeting also made progress on elaborating the modalities and procedures of the Committee.

Panama City, 1 October 2011 (Meena Raman) – The first meeting of the Technology Executive Committee (TEC) under the United Nations Framework Convention on Climate Change (UNFCCC) kicked off in Bonn, Germany on 1 September, with a tussle between developed and developing countries over the issue of whether the chair of the Committee should be from a developed or developing country.

On the final day of the meeting held on 3 September, a compromise was reached among members of the Committee that the chair and vice-chair "will collaborate in chairing the meetings and in executing the work of the Committee so as to ensure coherence between the meetings".

Based on this collaborative arrangement, members agreed to the appointment of Mr. Gabriel Blanco of Argentina as the TEC's first chair and Mr. Antonio Pfluger of Germany to be the vice-chair.

This compromise was reached following an intense tussle and exchange between members over whether the chair of the Committee should be from a developed or developing country.

Developed countries had initially wanted the chair of the TEC to be from an Annex 1 country, while developing countries wanted a member from a non-Annex 1 country to lead the Committee.

This issue threatened to derail progress in the discussions; with one senior member from a developing country expressing disappointment during the meeting that it seemed that developed countries did not regard developing country members as having the competence to lead the TEC.

While being consistent with the decision adopted in Cancun, Mexico at the meeting of the 16th Conference of Parties for the TEC to "elect annually a chair and a vice-chair from among its members for a term of one year each, with one being a member from an Annex 1 Party and the other being a member from a non-Annex 1 Party", the agreement reached in Bonn reflected what Mr. Jukka Uosukanien of Finland described as "confirming the spirit of how we are working", which in effect was a co-chairing arrangement.

It was also agreed that after the completion of the term of the chair (for 1 year), the chair will be nominated as vice-chair and vice-versa and after the two-year cycle is complete, the TEC will put forward two new nominees, unless otherwise decided.

The tussle over whether the first chair should be from a developing or developed country began when the TEC met to address the agenda item on "election of officers".

At the 16th Conference of Parties in Cancun, Mexico, Parties agreed to establish the TEC comprised of 20 expert members (with 9 members from Annex 1 countries and 3 members each from the 3 regions from non-Annex 1 countries of Africa, Asia and the Pacific, and Latin America and the Caribbean, 1 member from a small island state and 1 member from an LDC country). According to the Cancun decision, the TEC was to "elect annually a chair and a vice-chair from among its members for a term of one year each, with one being a member from an Annex 1 Party and the other being a member from a non-Annex 1 Party". The decision also states that "the positions of chair and vice-chair shall alternate annually between a member from an Annex 1 Party and a member from a non-Annex 1 Party".

The Cancun decision tasked the TEC to implement the framework for meaningful and effective actions to enhance the implementation of technology transfer in developing countries.

The meeting was opened and initially chaired by Ms. Christiana Figueres, the Executive Secretary of the UNFCCC.

Developed countries led by Germany, the United States and Japan argued that the chair of the TEC should be from an Annex 1 country.

Mr. Pfluger of Germany said that having a chair of the TEC from an Annex 1 country would have a "good mobilising effect in industrialised countries, which would then be willing to speed up technology transfer". The US representative, Dr. Rick Duke, said that following consultations with business groups, there was strong interest from the groups in engaging on technology issues and having a chair from an Annex 1 country would boost this engagement. Mr. Kunihiko Shimada of Japan echoed these sentiments.

In response, members from Argentina, Sudan and the Small Island States made the case for having the chair from a developing country.

Mr. Gabriel Blanco from Argentina wanted the TEC to be led by a member from a non-Annex 1 country as the Committee's task is to enable technology transfer in developing countries and having a developing country chair would "send the right message". He also reminded members that the Expert Group on Technology Transfer (EGTT) was chaired by an Annex 1 Party member and so are the current chairs of the Ad-hoc working groups under the UNFCCC and the Kyoto Protocol.

Mr. Nagmeldin El-Hassan of Sudan expressed similar views as Argentina and said that since the chairs of the EGTT in the past have been from Annex 1 countries, it was only fair that for a start, the TEC be chaired by a non-Annex 1 member.

Mr. Albert Binger of Jamaica, representing the SIDs, said that persons from an Annex 1 country would not understand the technology needs of developing countries. There was a need for mobilisation of technology on the basis of the needs of developing countries.

In response to interventions from members, Ms. Figueres reminded Parties that the role of the chair was not to take on positions of either Annex 1 or non-Annex 1 Parties but to listen and take on the views of everyone and help move the process forward.

Following several attempts during the course of the first day to find a solution to the issue, late in the evening, members agreed to have a co-chair arrangement in the interim during the course of the meeting, pending a final resolution of the matter by the end of the meeting on its last day.

The representatives from Argentina and Germany then co-chaired the meeting and discussions proceeded on other agenda items involving "strategic issues and mandated deliverables for Durban" that included the "elaboration of modalities and procedures" of the TEC.

The UNFCCC Executive Secretary had earlier informed members that the nomination of one representative from Asia was still pending with Iran and the United Arab Emirates still in consultations to determine which one of them would be a member of the Committee. (The other two representatives from Asia are China and Kazakhstan.)

Figueres in her opening remarks stressed the importance of the TEC in shifting the global economy towards the development, diffusion and transfer of climate technologies on a massive scale through the Technology Mechanism, which involved the TEC as well as the Climate Technology Centre and Network (CTCN). She stressed the need for these two components to work hand-in-hand with the TEC as the policy arm. She said that the "TEC was not about enabling the next steps in technology transfer and deployment but was about ensuring a quantum leap" in technology transfer to developing countries and asked members to bear in mind what measures were going to make the transformation happen.

Elaboration of modalities and procedures

The meeting also made progress on elaborating the modalities and procedures of the Committee, which will be subject to a final review by electronic means among members of the TEC prior to it being presented and considered at COP17 in Durban, South Africa, as there would be no further meetings of the TEC this year.

Six main elements of the modalities were agreed to for elaboration based on the functions of the TEC: analysis and synthesis; policy recommendations; facilitation and catalysing; linkage with institutional arrangements under the Convention; engagement with stakeholders; and information and knowledge sharing.

Some of the main issues that saw an intense exchange were the issue of intellectual property rights (IPRs) and the relationship of the TEC to the CTCN.

(The Cancun decision established a Technology Mechanism, which consists of the TEC and the CTCN.)

On the issue of IPRs, Mr. Kanat Baigarin of Kazakhstan wanted this issue included so that the Committee could perform its function of providing an overview of the technological needs and analysis of policy and technical issues. This was supported by China, Ecuador, Kenya and Algeria.

Mr. Can Wang of China said that the issue of IPRs in addressing technology development and transfer could not be avoided. IPRs could be seen as an incentive for technology innovation but it could also be a barrier for developing countries especially in relation to new technologies.

He said that no one could say that IPRs are not a barrier. It was an issue that needed to be addressed by the TEC, as this was the body to discuss policy recommendations.

Japan, Germany and the United States raised strong objections to having any reference to the issue of IPRs in the document elaborating the modalities of the TEC.

Mr. Kunihiko Shimada of Japan said that "the talking of IPRs by the TEC is not mandated and is under heavy negotiation". He said that neither the TEC nor the UNFCCC was the right body for setting rules on IPRs and it was for other bodies like WIPO (the World Intellectual Property Organisation).

Mr. Rick Duke of the US said that IPRs are not a barrier to technology diffusion and transfer and supported Japan.

Mr. Antonio Pfluger of Germany said that a lot of technology transfer takes place without IPRs and where this was an issue, arrangements could be found to deal with it. He also said that the TEC had no mandate to address the issue. He proposed that there was no need to have specific mention of IPRs in the modalities document but when members dealt with a specific technology, this issue could be addressed.

In response, Mr. Nagmeldin El Hassan of Sudan suggested that instead of mentioning IPRs, this issue could be discussed in relation to addressing the barriers to technology transfer. This compromise was eventually agreed to. On the issue of the CTCN, Shimada of Japan raised concerns that the modalities document frequently mentioned the CTCN although the role of the CTCN had yet to be clarified and was pending negotiations.

Mr. Niyazi Ilter of Turkey also said that the relationship between the TEC and CTCN was still not clear, questioning if the TEC was going to be purely advisory, having no implementation role. He said that if the TEC was purely advisory, it would not have real effect.

Mr. Brendan Morling of Australia was of the view that the relationship between the TEC and the CTCN should be one of information exchange.

Uosukainen of Finland said that the Cancun decision makes clear the functions, mandate and separate roles of the CTCN and the TEC. The TEC is serving the Conference of Parties and is a strategic body, while the CTCN will be serving countries and is the operative arm of the Technology Mechanism.

He said that as a TEC member, Parties should be able to talk about policy, finance and the CTCN. The TEC should be looking at what the CTCN is doing and what money is going to technology, as it was the role of the TEC to provide guidance and advice.

He said that the TEC has no money, while he expects the CTCN to have money and dedicated experts to respond to the requests of countries for advice.

Mr. Albert Binger of Jamaica, representing the Small Island Developing States (SIDS), also raised the issue of technology assessment and wanted the modalities to include the production of technical papers on this matter. There was no objection to this from members.

Following the discussions, it was agreed that the document on the modalities and procedures of the TEC will be reviewed by members via electronic means and that there would be no further meetings this year.

The meeting ended with the hope that the TEC would be able to meet early next year to advance further work.

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Developing Countries Submit Document for Green Fund Establishment at Second Meeting of Transitional Committee

Panama City, 1 October 2011 (Meena Raman) – A group of 13 developing countries formally tabled a document on the operational elements for the establishment of the Green Climate Fund on 14 July 2011, the final day of the 2nd meeting of the Transitional Committee (TC) in Tokyo, to design the Green Climate Fund (GCF) under the United Nations Framework Convention on Climate Change (UNFCCC).

The document was tabled by the Egyptian member of the TC, Dr. Omar El-Arini, on behalf of Argentina, Burkina Faso, China, the Democratic Republic of Congo, Egypt, El Salvador, Gabon, India, Morocco, Nicaragua, the Philippines, Saudi Arabia and Zambia. Brazil, Pakistan, Singapore and Peru gave support to the document from the floor, and Japan welcomed the initiative of the developing countries as an input to the work of the TC.

(The TC was established under the Cancun decision adopted last year by the Conference of Parties (COP) of the UNFCCC to develop and recommend to the 17th session of the COP for its approval operational documents relating to the design of the GCF. The TC is comprised of 40 members, 25 of whom are from developing countries.)

In formally tabling the document on behalf of the 13 developing countries, Dr. El-Arini of Egypt said that he hoped that "the submission at this stage in our discussions will help to advance our work by collecting the views of a number of Parties, and encapsulating these in a form that can contribute to the operational documents we are mandated to prepare for consideration of the Conference of the Parties".

He explained that "the first part, entitled 'Operational Elements for the Establishment of the Green Climate Fund', sets out our collected views on the items described in our terms of reference, including those we are addressing in each of the work-streams. It addresses issues such as: 'Objectives, principles and scope'; 'Governance and institutional arrangements (including the Board, Secretariat, Trustee, expert and technical input)'; 'Financial and operational modalities'; as well as 'Arrangements for monitoring and evaluation'. The document also responds to our specific mandate to develop rules of procedure for the Board, which are set out in an Annex."

"In preparing this contribution to our work, we have drawn extensively on the experience of developing countries with a wide range of funds, including the Global Environment Facility, the Adaptation Fund, Multilateral Fund (of the Montreal Protocol) and other funds. We have also sought to draw on many of the excellent submissions by various TC Members as well as information prepared by the Technical Support Unit and observer organisations including civil society," added Dr. El-Arini.

Dr. El-Arini stressed that "this document is a draft document and compilation of initial views and proposals by many TC members, and it does not preclude any further submissions by the TC members supporting it. In this regard we note good alignment between some of our proposals and those put forward by members and co-facilitators."

Dr. El-Arini also wanted the formal tabling of the document reflected in the report of the TC meeting and requested that copies of the document be made available to all TC members.

Some of the highlights of the document (which was made available to TWN) are as follows:

On the **legal status** of the GCF, "The Fund, as a body under international law, shall be endowed with a juridical personality. Consequently, the Fund shall enjoy such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in particular the capacity to enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of its interests."

As regards the **objectives**, "The Fund will contribute to the full, effective and sustained implementation of the UNFCCC, in relation to implementation of commitments for the provision of financial resources to developing country Parties, as mandated under relevant provisions of the Convention, including its Articles 4.3, 4.4, 4.5, 4.8 and 4.9 and in accordance with Article 11 of the Convention."

"The Fund will manage the large scale of financial resources from a number of sources and deliver through a variety of financial instruments, funding windows and access modalities, including direct access, with the objective of providing adequate and predictable financial resources to developing countries for the implementation of climate-related policy measures, activities and actions, and achieving a balanced allocation between adaptation and mitigation. The Fund will contribute to the goal of achieving coherence in the global financial architecture for the financing of climate-related activities, under the authority and governance of the Conference of Parties."

The **principles** to guide the Fund include: "The Fund will operate under the authority and guidance of, and be fully accountable to, the Conference of Parties; The Board of the Fund will have an equitable and geographically balanced representation of all Parties within a transparent and efficient system of governance; The Fund will enable direct access to funding by the recipient countries; The Fund will be country-driven and demand-driven, with recipient countries being involved during the stages of identification, preparation and implementation, and responding to the needs and circumstances of the developing countries; The Fund will recognise, promote and strengthen the significance of engagement at the country level, in order to give effect to the principles of a country-driven approach, and direct access to funding; The Fund will make optimal and appropriate use of the full range of means of implementation available to allow for large scale of implementation; and the Fund would facilitate linkages between the various funding sources and separate funds in order to promote access to the variety of available funding sources and reduce fragmentation."

On **governance**, "The Fund shall be governed by a Board which shall supervise and manage the Fund, under the authority and guidance of the Conference of the Parties, and shall be fully accountable to the Conference of the Parties which shall decide on its overall policies in line with relevant decisions. In implementing the principle of accountability to the COP, the Board shall submit annual reports to the Conference of the Parties for its consideration and deliberation, on various operational matters…"

The **functions of the Board** shall include: "To administer the Fund in accordance with the policies, programme priorities and eligibility criteria related to the Convention as decided by the Conference of the Parties; To develop specific operational policies and guidelines, including programming guidance and administrative and financial management guidelines, and to report to the Conference of the Parties; To decide on projects, including the allocation of funds, in line with the Fund's principles, criteria, modalities, policies and programmes; To oversee the operation of all relevant organs of the fund including the trustee, secretariat, sub-committees, implementing agencies, and expert, advisory and evaluation panels; To develop draft legal and administrative arrangements for secretariat services and the interim trustee for approval by the Conference of the Parties."

In relation to ensuring a **country-driven approach,** "The Fund shall adopt an approach that is driven by recipient countries to support them to more effectively implement climate policies, measures, actions and activities. Consequently, the Fund shall allocate resources in the most appropriate forms and for the most appropriate uses that are suitable for the recipient countries. The Fund shall tailor its strategy and approach to the needs and circumstances of each country; therefore a country-approach is required, with the full participation of the countries concerned."

On the **scope and mandate, "**The scope and the thematic areas of the Fund shall be based on the mandate established in the Convention, as well as relevant decisions of the Conference of the Parties, and any future decision relating to the Fund. The Fund, as an operating entity of the financial mechanism of the Convention, shall address the following thematic areas: (a) Adaptation activities; (b) Mitigation activities; (c) Technology development and transfer; (d) Capacity building of and institutional development in developing countries; and (e) Information and processes taken to implement the Convention. The COP and the Board can designate sub-themes linked to the above."

On the **size and scale of the Fund, "**The Fund shall manage a large scale of financial resources from a number of sources and deliver through a variety of financial instruments. The Fund shall take into account the various commitments made in relation to climate financing, including the commitment by developed countries to provide new and additional resources, approaching USD30 billion for the period 2010–2012; that scaled-up, new and additional, predictable and adequate funding shall be provided to developing country Parties; that developed country Parties commit to a goal of mobilising jointly USD100 billion per year by 2020 to address the needs of developing countries; and that a significant share of new multilateral funding for adaptation should flow through the Fund."

"The Fund shall make arrangements to determine in a predictable and identifiable manner the amount of funding necessary and available for the implementation of the Convention and the conditions under which that amount shall be periodically reviewed taking into consideration financial needs identified by the developing country Parties in accordance with Article 11 of the Convention. The Fund will also seek to mobilise financial resources.."

As regards **full and incremental costs,** "The Fund shall provide information relevant to the determination of the amount of funding necessary for the implementation of the Convention including, *inter alia*, through an evaluation, in relation to each of the thematic areas covered by the Convention and collectively, of the type of costs to be covered including those which are to be financed at agreed "full costs" and at agreed "full incremental costs", as well as financing required to address other commitments described in the Convention for consideration by the COP. Drawing on recommendations by thematic bodies on the areas and types of costs to be covered, and on the methodologies and guidelines established, the Fund may estimate the scale of financing needed in accordance with Article 11.3(d) of the Convention. The Fund shall make a plan for the phasing in of the volume of resources, including activities that require funding in the initial phase of the Fund, and the next phases."

On the **operational modalities** in relation to the **sources of finance, "**The financial contributions should be principally in the form of grants. To the extent concessional finance is provided, only the grant or concessional element should be counted as new and additional (as is the historical practice of key donors)."

"In accordance with Article 4.3 and relevant decisions of the COP, the provision of financial resources shall reflect appropriate burden sharing among the developed country Parties. The Fund shall develop a more systematic method for assessing and allocating the responsibility among the developed countries to provide adequate and predictable, new and additional financial resources."

"The Fund shall utilise a systematic method in evaluating the level of financial resources required to implement the Convention, which shall address: (a) consideration of the scale of financing required in aggregate to reflect the total scale of financing necessary for the implementation of the Convention by developing country parties to the Convention; and (b) consideration of the means for the appropriate burden sharing among developed country Parties which can be assured through the development of a scale of assessed contributions, similar to the practice adopted within the United Nations."

On the **delivery and uses of funds**, as regards **direct access, "**Eligible Parties shall be able to submit their project proposals, prepared in accordance with project preparation eligibility criteria agreed by the Board, either directly to the Fund Board or through an implementing or executing agency chosen by them."

"In accordance with the Convention, including its Article 4.3, all developing countries, without discrimination or any form of exclusion, are eligible to receive financial resources for the implementation of measures set out in Article 4.1 of the Convention…"

On **fiduciary standards and financial management**, **"**The implementing entities designated to receive the funds and to allocate and use them shall abide by the principles of financial accountability and good fiduciary standards. These principles and standards may cover financial integrity and management, institutional capacity and implementation."

In engaging with the **private sector and other economic entities**, **"**The private sector in developed countries is encouraged to make supplementary contributions and donations to the Fund. However, resources of the Fund should not be used for subsidising corporations or financial institutions of developed countries (as the Fund is established to provide resources to developing countries). Such contributions shall not include payments by companies for offsetting in the carbon trade, as financial resources provided by carbon markets are to enable developed countries to implement their mitigation commitments and are not contributions towards the financing commitment of the developed countries in accordance with the Convention."

"The Fund will encourage governments in developing countries to make use of a variety of instruments to engage with their economic public and private institutions and units, including major companies, small and medium enterprises, the urban informal sector, and the rural farmers, and to support their engagement in national efforts for mitigation, adaptation, technology development, capacity building and institutional development. A variety of financing instruments such as subsidies, tax breaks, concessional loans, public investment in agricultural programmes, may be employed at the national level in order to incentivise the economic units of developing countries. The incremental cost to the public and private sector to make changes for mitigation or adaptation, and various types of the relevant public-sector expenditure in incentivising the private economic units, may be eligible to be financed through the Fund."

On **monitoring and evaluation, "**The Board is responsible for the strategic oversight of projects and programmes implemented with resources from the Fund. The Board or a designated sub-committee of the Board, with support of the Secretariat, will monitor the Fund's portfolio of projects and programmes… There shall be periodic independent evaluations of the performance of the Fund, which shall address factors including, *inter alia,* the performance of the Fund; evaluation of the Secretariat and the interim Trustee; assessments of the appropriateness of the Fund's structures, operations and policies; the effectiveness of the work of the thematic windows and areas, and the impacts on the recipient countries of the activities and programmes supported by the Fund."

On **environmental and social safeguards, "**The programmes and projects to be funded should be environmentally and socially appropriate, and in line with the objectives and principles of the Fund. However, the assessment and procedures to ensure they meet minimum environmental and social standards should not become conditionality. The Fund through the technical and expert panels provided by the thematic bodies under the Convention will ensure the applications of environmental and social safeguards to the Fund's activities, including for the technology transfer and development."

The tabling of the document took place in the afternoon session of the TC meeting which was chaired by South African Minister, Mr. Trevor Manuel. Mr. Manuel, referring to Dr. El-Arini, said that "If you look around the room, anyone of us could have drafted the document." He said that what was needed was an inclusive process that takes collective ownership through a process that is open and transparent. He said that it was important to work through the document in stages and that the document distributed by Dr. El-Arini could be considered but "members were not there yet in the level of detail".

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Third Meeting of Climate Fund's Design Committee Ends with Roadmap to Durban

The third meeting of the Transitional Committee to design the Green Climate Fund met in Geneva from 11-13 September and ended with the adoption of a roadmap for the adoption of a draft report for the 17th meeting of the COP in Durban. The meeting also saw the emergence of divergences between developed and developing countries over key issues in the design of the GCF.

Panama City, 1 October (Meena Raman) – The third meeting of the Transitional Committee (TC) to design the Green Climate Fund (GCF) under the United Nations Framework Convention on Climate Change (UNFCCC) ended in Geneva on 13 September, with the adoption of a roadmap that sets out the process for the preparation and possible adoption of a draft report of the Committee for the 17th meeting of the Conference of Parties (COP) to be held in Durban, South Africa, late November this year.

The fourth and final meeting of the TC is to be held in Cape Town, South Africa, from 16-18 October, where the members will consider and adopt the draft report, which will include any operational documents that the TC deems appropriate for the approval of the COP.

Given the strong and divergent views among TC members on several key aspects in the design of the GCF and with only two negotiating days set for the final meeting in Cape Town, some members of the TC from developing countries have expressed grave concerns over the process for the drafting of the final report.

Ms. Bernarditas Mueller of the Philippines stressed the need for a transparent and inclusive process that will ensure a balanced outcome.

The 40-member TC was mandated by the decision in Cancun last year to develop operational documents according to its terms of reference for the design of the GCF and make recommendations for the COP's approval.

For the meeting in Geneva, the Co-chairs and Vice-chairs of the TC had prepared a "Draft outline of the report" which contained various elements.

From the start of the meeting on 11 September till the morning of the final day (on 13 September), TC members had intense discussions on five key issues: (i) the relationship between the GCF and the COP; (ii) legal status of the GCF; (iii) the establishment of an independent secretariat including the selection of its head; (iv) the use of funding windows; and (v) engagement of the private sector.

There were major disagreements among TC members in several key areas as in the relationship between the GCF and the COP, the legal status of the GCF and the engagement of the private sector.

The Co-chairs, Vice-chairs and Co-facilitators (of four work-streams) presented a document in the afternoon on their "reflections", which they said was "based on the work done in previous sessions, discussions held and submissions presented".

The document states that "it reflects areas that would be included in the final outcome of the TC and, to the extent possible, provides guidance on the content without prejudice to the specific language, placement or final format. It is expected that this document be complemented by the TC members, through further discussions and interactions, and serves to facilitate the preparation of the draft report that would be considered" at the next TC meeting in Cape Town.

The "reflections" document is basically similar to the earlier "draft outline report" prepared by the

Co-chairs for the Geneva meeting, with some changes in the details.

The main headings of the elements in the document are: objectives, guiding principles, scope, governance and institutional arrangements, legal status, participation/membership, financial instruments, operational modalities, engagement of the private sector, environmental and social safeguards, monitoring and evaluation, accountability mechanism and stakeholder input and participation.

There were strong initial reactions from several TC members, from both developed and developing countries, on critical aspects of the elements which showed a clear divergence of views on areas such as the objectives, guiding principles, governance and institutional arrangements, legal status and engagement of the private sector. (Further details will be in a forthcoming article.)

According to the roadmap, the Co-chairs, Vice-chairs and the Co-facilitators (comprising a group of 12 persons) will prepare an initial draft report by 23 September, based on the discussions held at the Geneva meeting and submissions received.

From 23 September to 5 October, the group of 12 persons "will consult all TC members, individually or in groups, on elements of the draft. The draft will reflect the outcome of these consultations."

The draft report will then be circulated on 7 October for consideration at the fourth TC meeting.

At the fourth meeting in Cape Town from 16-18 October, the draft report will be considered for adoption.

The Co-chair of the current meeting, Mr. Trevor Manuel from South Africa (who co-chaired the Geneva meeting with Mr. Ketjil Lund from Norway) described the process as "putting members in a pressure cooker" so that the final meeting will have a document for members to consider.

Ms. Bernarditas Mueller from the Philippines, in response to the roadmap, stressed the need for a transparent and inclusive process to ensure the participation of TC members in the development of any text of the report.

She said that the Co-facilitators had an important role to play in ensuring this. Referring to the joint submission by 13 countries on the design of the GCF, she said that it covered all aspects of the elements and hoped that the Co-chairs, Vice-chairs and Co-facilitators would produce a balanced document, reflecting all the submissions.

Mr. Jorge Ferrer of Nicaragua expressed concerns over how the process was going to incorporate the views of 40 TC members. He was also worried about the duration of the final meeting (which was only set for two days), as the draft report will have serious legal implications.

Legal personality

Several members from both developed and developing countries called for the Fund to be endowed with legal personality so as to enable it to fulfil its objectives and functions effectively.

This call was made during the third meeting of the TC in Geneva on Monday, 12 September.

Most of the developing countries on the TC including Egypt, Pakistan, the Philippines, Brazil, China, India, the Democratic Republic of Congo (DRC) and Barbados called for the GCF to have legal personality, learning from the experiences of other funds such as the Multilateral Fund under the Montreal Protocol.

Barbados drew reference to the Global Environment Facility (GEF) which was disadvantaged by not having a legal status and depended on the World Bank for its legal capacity.

Some developed countries echoed the sentiments of developing countries and these included Sweden, Switzerland and Russia. Sweden said that if the TC members were serious about the GCF being ambitious, then the issue of it having legal personality could not be avoided.

The United States wanted more consultations with its lawyers on the matter, saying that the issue was complex. This drew sharp criticisms from the DRC, Brazil and China, while Russia said that the problem was political and not legal.

Day two of the meeting saw an intense exchange of views on 4 of the 5 issues identified as key by the Co-chairs. The four issues discussed were (i) the relationship between the GCF and the Conference of Parties (COP); (ii) legal status of the GCF, which involves the issue of the legal personality or legal capacity, as well as privileges and immunities for the GCF and/or its officials; (iii) issues related to the establishment of an independent secretariat including the selection of its head and (iv) the use of funding windows.

The 5th issue on "the structures and processes for the engagement of the private sector" was expected to be discussed on 13 September, which is the final day of the meeting.

In considering the issue of the legal status of the GCF, Mr. Trevor Manual of South Africa, who co-chaired the meeting with Mr. Ketjil Lund of Norway, provided 3 options.

Option 1 is for the GCF not to have any legal personality, in which case the Fund would depend on another body for its legal capacity as is the case with the GEF and the World Bank.

Option 2 is for the GCF to have legal capacity but not juridical personality as is the case with the Adaptation Fund (established under the Kyoto Protocol) where legal capacity is derived through German law. (The Adaptation Fund Board has been granted legal capacity by the Government of Germany under its national laws) and Option 3 is for legal personality to be endowed through a decision of the Conference of Parties (COP) or through a new treaty or the national law of a Party.

Dr. Omar El-Arini of Egypt (who served as the first Chief Officer of the Secretariat of the Multilateral Fund of the Montreal Protocol from 1991 till 2003) stressed the need for the GCF to have legal personality so that it has the capacity to enter into agreements with international, regional and national organisations; the capacity to enter into contracts with implementing entities and with the trustee; to enable the Fund to be able to borrow or lend money; issue guarantees; employ staff; acquire property and institute legal proceedings in defence of its rights. It was necessary for the GCF to act as an independent entity. He said that it was not difficult for the GCF to be conferred juridical personality and referred to the experience of the Multilateral Fund (MF) where a simple decision of the Meeting of Parties of the Montreal Protocol conferred such personality.

Mr. Farrukh Khan of Pakistan (who was former Chair of the Adaptation Fund Board) also supported the call for the GCF to have legal personality, as this would enable the GCF to enter into contractual agreements with the private sector and have capacity to float climate bonds. This was also important to ensure direct access for it to enable direct contractual agreements with entities. He stressed the need to identify the host country of the GCF and for criteria to be developed to determine this.

Mr. Jan Cedergren of Sweden said that if members were serious about the GCF's objectives of being ambitious, then the issue of the Fund having a formal legal personality could not be avoided. The TC should declare its intent to create the legal personality and how this was to be done was another matter.

Ms. Bernarditas Mueller of the Philippines also echoed the need for the GCF to have legal personality and referred to the joint submission of 13 countries in Tokyo, which supported this. She also said that there was no need for a memorandum of understanding between the GCF and the COP as suggested by some developed countries as it was the COP that established the GCF and the legal personality of the GCF could be conferred through a COP decision.

Ambassador Sergio Serra of Brazil echoed support for the call for the GCF to have legal personality, stressing that it was the only route to achieve the objectives of the Fund. He said that legal personality should be conferred by a decision of the forthcoming COP.

Dr. Yaga Reddy of India also echoed the call for the GCF to have legal personality.

Mr. Selwyn Hart of Barbados agreed with Sweden and said that it was clear, from the experience with the GEF, that the GCF needed legal personality. He said that members had heard from a senior official of the GEF, that one of its disadvantages or failings was the absence of legal personality and TC members should not replicate this mistake in the case of the GCF.

The representative from Switzerland made similar comments as Barbados in relation to the disadvantages of the GEF and supported the need for the GCF to have legal personality.

Alexey Kvasov of Russia said that there were many legal options but the issue was a political one. He said that there was a need for an interim solution as a full-fledged international treaty to confer legal status was not possible. There was a need for high aspirations and he was "inspired" by "hints of a solution" by Dr. El-Arini.

Mr. Andrzej Ciopinski of Poland said that it was premature to decide on the issue of legal personality and the best way to enable such personality was through an international treaty.

Mr. Gilbert Metcalf of the United States said that the issue was complex and wanted more time for consultations with lawyers before deciding on the issue. He said that legal attributes of the GCF would depend on the key operational attributes of the Fund. If legal personality is to be through a treaty, this could take years, as there would have to be negotiations with every country.

In response to the US, Mr. Tosi Mpanu Mpanu of the Democratic Republic of Congo (who is also Chair of the African Group) said that it was unacceptable that members were being asked to go home and consult their lawyers before deciding at this 3rd meeting of the TC and delay the possibility of a successful outcome. He said that much reference has been made to the example of the establishment of the Multilateral Fund and members can learn from that.

Ambassador Serra of Brazil supported the DRC representative saying that the decision is political and as suggested by Sweden, if the TC members were serious, a decision can be made to confer legal personality on the GCF.

Mr. Wu Jinkang of China echoed the sentiments of the DRC, Brazil and Sweden that if members were serious about the GCF, legal personality can be conferred and a way out for this could be found, as suggested by Egypt. This was an issue for the TC members and not for lawyers.

Germany also wanted more information and clarity on the issue. Ms. Alicia Santamaria of Spain said that there was no need for a legal discussion now as form followed functions, but it was open to all options and possibilities. Bangladesh echoed similar concerns as Spain and the US. France also was not ready to take a decision on the issue and wanted more clarity.

Mr. Manuel said that it was clear that members knew what was wrong with the GEF and do not want to take that route. He wanted the issue of the legal personality to be concluded at this meeting in Geneva. He proposed that the matter be discussed further on 13 September.

Divergences on key issues

Views from members of the TC to design the GCF revealed clear disagreements on critical aspects of the elements for the design of the Fund.

There was divergence of views on elements such as the objectives, guiding principles, governance and institutional arrangements, legal status and engagement of the private sector.

The Co-chairs, Vice-chairs and Co-facilitators (of four work-streams) presented a document on the final day of the meeting on 13 September, which contained their "reflections", "based on the work done in previous sessions, discussions held and submissions presented".

The document states that "it reflects areas that would be included in the final outcome of the TC and, to the extent possible, provides guidance on the content without prejudice to the specific language, placement or final format. It is expected that this document be complemented by the TC members, through further discussions and interactions, and serves to facilitate the preparation of the draft report that would be considered" at the next TC meeting in Cape Town to be held on 16-17 October 2011.

The main headings of the elements in the document are: objectives, guiding principles, scope, governance and institutional arrangements, legal status, participation/membership, financial instruments, operational modalities, engagement of the private sector, environmental and social safeguards, monitoring and evaluation, accountability mechanism and stakeholder input and participation.

Co-chair Mr.Trevor Manuel from South Africa told members that the document was "not for adoption but for enrichment". He asked for reactions to the document, which saw many TC members expressing their views.

Mr. Gilbert Metcalf of the US and Mr. Remy Rioux of France expressed strong reservations over the whole document.

Metcalf said that the "reflections" document did not reflect a consensus or convergence. He said that there were many issues that were not discussed. Rioux said that he could not agree to a "stand-alone instrument" and that he could not agree to the "package" and "had strong reservations".

Among the elements that drew much reaction from developing countries was reference to "transformational change" in several parts of the elements including the objectives, guiding principles, and funding windows.

Mr. Wu Jinkang of China said that "contribution to transformational change" as an objective was not in the Convention and asked for deletion of the phrase. He noted a similar reference in the "guiding principles" which referred to "catalyse transformational changes". He said that trillions of dollars would be needed to make this happen which is more than what the GCF could handle. He also called for the deletion of reference to "activities for transformational change" under the element of "funding windows".

Mr. Jorge Ferrer of Nicaragua said that there was no definition of what is meant by "transformational change" and that everyone had a different interpretation. Ambassador Sergio Serra of Brazil, Dr. Yaga Reddy of India, Ms. Bernarditas Mueller of the Philippines and Dr. Omar El-Arini of Egypt all expressed similar views in this regard.

On the "guiding principles", some members had concerns over the term "results-based approaches". Serra of Brazil said that "results-based approaches" should not be a principle as this could hinder access to funds, especially for adaptation and it was better for this to be reflected under "monitoring and evaluation". Mueller of the Philippines also expressed similar concerns, adding that several aspects of the "guiding principles" appeared to be conditionalities.

In relation to the "scope" which had a reference to "mobilising and leveraging of private sector investment and other finance, especially domestic private sector", Wu of China questioned what "other finance" was and whether the reference "to domestic private sector" meant that the private sector in developing countries are expected to make contributions to the GCF. Serra of Brazil said that there was no mention at all under the scope to "public funds" and this was "an obvious imbalance".

On the "engagement of the private sector", the document provided three elements, which were: the "GCF to engage the private sector through a private sector facility; advisory committee of private sector actors and non-voting members of the Board". These proposals were mainly advanced by developed country members of the TC.

Mr. Ahmad Abdulkader of Saudi Arabia said that there was no consensus on the engagement of the private sector in the GCF.

Ferrer of Nicaragua said that the Cancun decision made no reference to "non-voting members" and to call for this now would "open a Pandora's box". He said that some developed countries had called for the private sector to be a non-voting member of the Board but there was no consensus on this as the issue of private sector engagement had been controversial during the discussions.

Wu of China had similar views, saying that the Cancun decision had no reference to the private sector being represented on the Board. In his earlier intervention during the day, Wu referred to comments from some developed country delegates who talked of the private sector being involved in "bankable activities". He said that climate change projects are not bankable nor are they all economically viable. Mitigation, technology development and transfer are not necessarily economically viable or financially bankable unless supported by governments. He referred to the Chinese government's decision to close some coal power plants which involved the government having to pay for this. Wu said that the role of the private sector should not be over-emphasised. On the suggestion by some developed countries that the GCF should be attractive to pension funds, he said that if such funds could have done the job in the first place (in climate financing), there was no need for the GCF.

Reddy of India clarified that during the discussions, the proposal for an advisory committee for the private sector was an alternative proposal to the private sector being a non-voting member of the Board. Serra of Brazil expressed concerns over the suggestion for an advisory committee for the private sector. He suggested both the private sector and civil society could be called for advice if the Board needs it. El-Arini of Egypt also said that he did not understand what an advisory committee for the private sector was.

Mueller of the Philippines said that the engagement of the private sector should be considered under the element of "stakeholder input and participation" along with civil society.

(Several developed countries including the US had also suggested that CSOs have a seat on the Board as a non-voting member but this was not reflected in the document.)

In contrast to the views of developing countries, Metcalf of the US wanted more modalities to deal with the private sector. He said that a funding window for the private sector should be part of this. Ms. Naoko Ishii of Japan stressed the need for private sector engagement and asked how the private sector facility related to the GCF. Mr. Nick Dyer of the United Kingdom also echoed the need for the right modalities for the engagement of the private sector. He said that "engaging the private sector must signal to business that we mean business".

Another problem issue was the "relationship of the COP" to the GCF, which is addressed under "governance and institutional arrangements".

Mueller of the Philippines was of the view that this element was the "weakest part of the document". She said that the GCF must be guided by and be accountable to the COP and this means a "strong relationship and touches upon the activities of the GCF". "Ensuring accountability is not simply about reporting by the GCF to the COP and there was a need to address this."

Similar sentiments were expressed by Wu of China who said that the Board of the GCF was accountable to the COP and the Board therefore must have clear obligations in relation to its role and functions in decision-making. El-Arini of Egypt said that the Geneva meeting did not conclude discussions on the relationship between the Board and COP.

While developing countries stressed the need for a strong relationship between the GCF and its Board with the COP, Metcalf of the US expressed concerns. In his earlier intervention during the meeting on this issue, Metcalf said that the COP should have no role in choosing the members of the Board, on issues related to the trustee or in the hiring of the head of the secretariat. The accountability mechanism is for the Board to report to the COP as is the case with the Global Environment Facility. This view was supported by several other developed countries including France, the UK, Germany and Australia.

In relation to the legal status of the GCF, the document refers to two elements: the GCF to be endowed with legal status and the form of legal identity to be based on specific functions of the GCF. It states that the form of the legal status of the GCF should be discussed.

Most developing country members of the TC want the GCF to be endowed with legal status, while many developed countries including the US, UK and France want its "form to follow function", and not decide on the issue at this stage.

In his reactions to the document, Reddy of India drew attention to the proposals from several developing countries to follow the model of the Multilateral Fund of the Montreal Protocol and said that this should be flagged as an option.

Another area of contention related to the issue of "financial instruments". The document has two elements in this regard: the GCF to provide grants, non-grant instruments, including concessional loans, guarantees and others; and results-based financing mechanisms, including payment for verified results.

El-Arini of Egypt said that he was unclear as to what "results-based financing mechanisms, including payment for verified results" was and added that this was outside the scope of the terms of reference of the TC. Mueller of the Philippines expressed similar views and said that if this element was to be applied, then there could be no adaptation funding, and this concept was totally contrary to the provisions of the Convention.

Serra of Brazil said that there was convergence among members that grants would be the most important instrument and suggested that the GCF should provide mainly grants. Reddy of India said that in dealing with "financial instruments" it was important to consider the type of risk that the GCF would bear and there was a need to address what risks are permitted and what are not. He said that there should not be "currency risks" and there were also "reputational risks". Hence, there was a need to introduce the concept of risk and to address who bears what.

The representative from Zambia said that the GCF should not be another institution that leaves LDCs in debt and stressed the importance of grants.

Given the lack of convergence on key issues relating to the design of the GCF, there are concerns among some developing country members as to how the drafting of the final report by the Co-chairs, Vice-chairs and Co-facilitators is going to reflect a balanced outcome for the consideration of the members at their final two-day meeting in Cape Town in October.

TWN
Panama News Update **4**

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UNFCCC Working Group to Focus on Developing Draft Texts for Decision

Panama City, 2 October (Meena Raman) – The last meeting of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) under the United Nations Framework Convention on Climate Change (UNFCCC) kicked off in Panama City, Panama, on 1 October with Parties agreeing to focus work on developing draft decision texts for consideration at the 17th meeting of the Conference of Parties (COP) to be held in Durban, South Africa in late November this year.

The Panama City meeting of the working group is scheduled for 7 days, ending on 7 October.

AWG-LCA Chair, Mr. Daniel Reifsnyder of the United States, said that the Panama meeting was the last meeting of the working group and that it was important to concentrate work in the preparation of draft decision texts on elements of the outcome, which would be ready for adoption at the 17th meeting of the COP.

While there was agreement among Parties to focus work on draft texts in the working group, developing countries expressed strong views that progress under the AWG-LCA was not possible without success in the Kyoto Protocol working group (AWG-KP) on agreement by Annex I Parties to commit to a second commitment period of targets for emission reductions following the expiry of the first commitment period in 2012.

Several developing countries led by Venezuela also stressed that Parties should not abdicate from their obligations under the Convention and the Kyoto Protocol and legalise a bad deal that does not solve climate change or preserve the planet. Developing countries also expressed opposition to a renegotiation of the Convention and its principles. They also called for an increase in the level of ambition in emission reductions by Annex I Parties, consistent with the science, equity and their historical responsibility.

(Many developing countries are concerned that the existing legally-binding climate change regime on mitigation under the Kyoto Protocol may be replaced by a future regime which is based on a voluntary pledge-and-review system under the UNFCCC and in which the distinction between the mitigation commitments of developed countries and actions of developing countries is blurred, contrary to the principle of "common-but-differentiated responsibility and respective capabilities".)

Ambassador Jorge Arguello of **Argentina**, speaking for the **G77 and China,** expressed the Group's readiness for focused negotiations, working on concrete texts, in order to achieve the implementation of the Cancun decision and work for a successful, balanced and comprehensive outcome for Durban.

He also said that the G77 and China expected submissions by all Parties to be dealt in their entirety, and that the basis for the texts to be worked on will be produced by Parties, in keeping with the open, party-driven, transparent and inclusive manner in which the negotiations are being conducted.

Arguello drew attention to the fact that the G77 and China had presented two draft decisions that needed to be addressed: one, on the role and functions of the Standing Committee of the Financial Mechanism and the other on the Technology Mechanism.

Arguello also said that technical and political issues could not be delinked, and progress in the one will not be possible without progress in the other, referring to the issue of mitigation in which even progress under the two negotiating tracks was essential.

He also stressed the need for Annex I Parties to increase their level of ambition to overcome the wide gap between the pledges put forward and what is required by science, equity and historical responsibility.

He said that the Group's Ministers emphasised only a few days ago that the mandate of the AWG-

LCA is to enable the full, effective and sustained implementation of the Convention through long-term cooperative action now, up to and beyond 2012 as per the Bali Action Plan (BAP). The full and prompt implementation of Cancun, as well as finding appropriate solutions to issues not addressed at Cancun, would be vital to fulfilling the mandate of the BAP, he added.

The Group reiterated that all issues under the AWG-LCA agenda are relevant and must be addressed meaningfully in Durban. In this regard, the Group appreciated the assurances of the Chair that the list of subjects listed in his scenario note was not exhaustive, and that Parties will continue to be guided by the full agenda, as adopted in Bangkok (in April this year).

The Group reiterated the necessity of Palestine's active participation in the UNFCCC process and for every effort to be made to grant Palestine access to funding from different climate change sources.

Venezuela, speaking on behalf of the group of countries in the Bolivarian Alternative for the Peoples of Our America (ALBA-TCP), said that Cancun was a meeting that resulted in a text that reflected a lack of political will by developed countries to take steps to save this planet and humanity. It said that intentions to "legalise those disabilities" were unacceptable and that the goal of Parties should be to implement the BAP and the Bali Roadmap without further delay and with no more excuses and conditionalities. These legal obligations were non-negotiable.

Venezuela said that this exercise by developed countries of placing infinite conditions before they meet their legal obligations must end in Panama. It wanted to advance in the negotiations but would not do so at any price that will destroy the existing climate change regime to meet the "political disabilities" of some developed countries. It urged Parties not to abdicate their obligations under the Convention and the Kyoto Protocol and to legalise a bad deal that does not solve climate change and/or preserve the planet.

Referring to the Green Climate Fund, it stressed the need for this fund to have legal personality and to act under the guidance and authority of the COP. Venezuela expressed regret that developed countries say they have no resources to meet the limited promises that their Heads of State and senior officials made (in Copenhagen) in 2009 and they now emphasise the need for money to come from private sources and even propose that developing countries themselves should now fund the promises developed countries had made.

Venezuela said that it was appalling to hear the words of a US Congressman that the war in Libya cost US$500 million during the first week alone. Instead of spending money on this war, it said, thousands of lives in the entire Horn of Africa who suffer from hunger could have been saved. Venezuela noted that there were no resources for climate change and life, but there was money for war and death.

Saudi Arabia, speaking for the **Arab Group,** also stressed the need for the negotiations to ensure balanced and comprehensive results in all the elements of the agenda of the AWG-LCA. It said that there could not be a re-negotiation of the principles and obligations of Parties under the Convention. It said that the success of negotiations under the AWG-LCA was intrinsically linked to success in the AWG-KP for Annex I Parties to commit to a second commitment period under the Kyoto Protocol for emission reductions.

The Democratic Republic of Congo, speaking for the **African Group,** stressed the need to ensure an outcome in Durban is a balanced one, based on science, that implements both the Convention and its Kyoto Protocol. It also expressed deep concern with the lack of attention given to the priority issues for Africa in the Chair's scenario note. It expected a comprehensive outcome on all issues, including, among others, the Cancun Adaptation Framework, sources and scale of finance, and comparable mitigation efforts for all Annex I Parties. The focus of adaptation must shift from the institutional arrangements to the implementation of adaptation programmes on the ground.

Grenada for the **Alliance of Small Island States** said that recent studies have shown that since 1990, global emissions of $CO2$ have increased 45% and there was therefore a need for increasing the mitigation ambition for stabilising the temperature level at well below 1.5 degrees C. The financing issue was one of priority with the GCF making progress but there was a need also to ensure progress in discussing sources of long-term finance and transparency regarding fast-start finance, which ends in 2012. It also called for the outcome of the AWG-LCA to be captured in a legally-binding instrument.

El Salvador, speaking for the countries in the **Central American Integration System (SICA)**, stressed the need for the GCF to have legal personality. It supported the G77 and China submission on the Standing Committee (on finance) and said there was a need to identify the existing loopholes with other climate-change-related funds and to address this.

Gambia for the **LDCs** said that there was a need for an ambitious package for Durban that was substantively and politically balanced as per the BAP and the Cancun decision.

Poland, speaking for the **European Union,** said that developing draft texts was key and that swift progress was needed towards establishing a comprehensive legally-binding framework, which would engage all Parties and especially major economies in taking on necessary commitments and actions. Legal certainty, predictability, reciprocity and comparability must be ensured and a top-down approach was essential. It called for the "ambition gap" to be addressed as well as the use of common accounting rules for understanding targets. It also wanted a robust, transparent and rigorous measurement, reporting and verification framework (MRV). It also wanted to see progress on adaptation, technology, finance, capacity building, international aviation and maritime, agriculture, HFCs and new market-based mechanisms. It said that the time had come to talk about the legal form, including the options for Durban.

Australia, for the **Umbrella Group**, said that the Cancun Agreement laid down much groundwork and Durban has to operationalise all parts of the decision. On mitigation, it stressed the need for ambitious action by all major emitters. In relation to mitigation, it said that Parties must leave Panama with draft texts on international consultation and analysis (ICA), international assessment and review (IAR) and biennial reports. It also stressed the importance of market approaches to mitigation for ensuring lowest costs and for mobilising climate finance.

Mr. Daniel Reifsnyder, Chair of the AWG-LCA, in response to Parties, said that the issues that he listed in his scenario note were not prescriptive or exhaustive and that elements should be treated in a balanced and comprehensive manner as in the BAP.

He proposed the organisation of work to proceed under one contact group with respective informal groups to cover all the substantive and sub-items of the agenda. The contact group will also hold frequent informational "touch base" meetings to provide an overview of the work being undertaken in the informal groups. This proposal was agreed to by Parties.

The contact group held its first meeting later in the afternoon where Parties were informed about the various informal groups and the facilitators. The informal groups are shared vision; mitigation actions of developed countries; mitigation actions of developing countries; reducing emissions from deforestation and degradation in developing countries etc. (REDD-plus); cooperative sectoral approaches and sector-specific actions; various approaches including opportunities for using markets; economic and social consequences of response measures; adaptation; finance; technology development and transfer; capacity-building; review; legal options and other matters relating to economies in transition.

It was also agreed that observers will be allowed to attend the first and last meetings of the informal group sessions.

Earlier in the morning, a welcoming ceremony was held which was attended by Mr. Roberto Henriquez, the Minister of Foreign Affairs of Panama and Ms. Christiana Figueres, the Executive Secretary of the UNFCCC.

Figueres said that under the Kyoto Protocol, negotiations are beginning to work against the clock. Durban needs to address both further commitments of developed countries under the Kyoto Protocol and the evolution of the mitigation framework under the Convention for developed and developing country Parties, in the context of common but differentiated responsibilities and respective capabilities. This may require immediate interim arrangements that safeguard environmental integrity and ensure continuity of the regime. It should also begin to glimpse the evolution of the legal framework in the medium term, she added.

Mr. Henriquez said that Parties could not take minimalist steps and was disturbed that there was no agreement yet on the second commitment period of the Kyoto Protocol. He said that political will was needed to ensure a good outcome in Durban.

TWN
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Kyoto Protocol under Threat but Developed Countries Insist on Continuity of Market Mechanisms

Panama City, 2 October (Lim Li Lin) – The Kyoto Protocol negotiations opened in Panama City on 1 October with developing countries continuing to insist that the second commitment period of emission reductions for Annex I (developed country) Parties is the cornerstone of the Durban outcome at the end of the year, and that this must be part of the two-track outcome. Developed countries instead pressed for a single comprehensive framework which includes all major economies.

The opening plenary meeting of the Ad hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) was followed by a contact group meeting in the afternoon, where a heated debate between developed and developing countries ensued concerning the continuity of the Kyoto Protocol's market mechanisms in the absence of a second commitment period.

At the opening plenary, several groupings of countries expressed strong views.

Argentina, speaking on behalf of the **G77 and China**, said that the primary objective of this session is to reach a second commitment period under the Kyoto Protocol, and stressed that the Kyoto Protocol is a key cornerstone of the multilateral climate change regime. It said that substantive discussions on the scale of emission reductions in aggregate as well as joint and individual contributions of Annex I Parties must be concluded to overcome the wide gap between the pledges put forward by Annex I Parties and what is required by science, equity and historical responsibility. It said that it is clear that the political will to have a second commitment period is the key for the technical issues to go forward productively.

The Democratic Republic of Congo (DRC), speaking for the **African Group**, said that agreement to a second commitment period under the Kyoto Protocol is absolutely essential. This has been confirmed by African Ministers representing over 50 countries at the African Ministerial Conference on Environment and Development. They stated that "the UNFCCC and its Kyoto Protocol constitutes the fundamental global legal framework" and that the climate negotiations "should produce two outcomes in line with the Bali Roadmap, regarding an agreed outcome on long-term cooperative action … and an amendment to Annex B of the Kyoto Protocol regarding further mitigation commitments of Annex I Parties for a second commitment period from 2013 to 2017…".

The DRC said that the most visible obstacle is the lack of political will by developed countries to meet their legal obligation under the Kyoto Protocol, and that without a second commitment period, there is no legally binding instrument for the reduction of emissions of Annex I Parties. This failure in leadership is unacceptable to the future of the multilateral process, it said.

The DRC said that developed countries must reduce greenhouse gas emissions by at least 40% below 1990 levels by 2017 and at least 95% below 1990 levels by 2050. There must be full separation between the two negotiating tracks (AWG-KP and the Ad hoc Working Group on Long-term Cooperative Action under the Convention, AWG-LCA) and the AWG-LCA should not be used as a way to delay the negotiations on the second commitment period. It expects the international community to have a precise strategy for adopting the amendment for the second commitment period, and this must be agreed here in Panama.

The **European Union** said that there should be continuity from the first commitment period. It said that there is a strong link between the two negotiating tracks, and there is a need for both to deliver in a balanced way in terms of process and substance. It said that it was willing to consider a second commitment period but it alone cannot solve the problem as it is only responsible for around 16% of emissions. It emphasised that there should be a post-2012 global and comprehensive framework based on coherent and stable rules, including all major economies. It supported a multilateral-rules-based approach based on the Kyoto Protocol, and said that the Kyoto Protocol should be reformed to preserve environmental integrity.

Australia, speaking for the **Umbrella Group**, said that it was committed to making a transition from the past to the new global framework with all major emitters, although a new global agreement is not a prospect in Durban. It said that the Kyoto Protocol cannot provide for environmental integrity as only 27% of emissions, and falling, are covered. It said that all developed countries have put forward ambitious economy-wide emission reduction pledges, and many of them are contained in national laws and implementing policies and tools. As such, they will continue with their mitigation efforts even without a new agreement. Progress on rules and cross-cutting issues that will promote a comprehensive outcome was important, it said.

Gambia, speaking on behalf of the **LDCs**, attached great importance to reaching conclusion on the Kyoto Protocol work in Durban. Panama is the last opportunity to resolve all the issues, and present the necessary amendments to the Kyoto Protocol in Durban, it said. It also said that legal issues should be addressed, including ways to ensure that there is no gap between the commitment periods.

Grenada, speaking for the **Alliance of Small Island States (AOSIS)**, said that internationally binding mitigation commitments by Annex I Parties under the Kyoto Protocol must be delivered in a timely manner. The second commitment period from 2013 to 2017 should be part of the two-track outcome that includes a legally binding outcome under the AWG-LCA. There should be provisional application of new and more ambitious commitments in the amendment for the second period pending its ratification and entry into force, in order to avoid a gap between the commitment periods.

Grenada rejected the idea of a "political commitment period", and said that any outcome that is based on decisions only is a "non-starter", and would be a major step back for the regime and a blow to tangible emission reductions. Only a legally binding outcome can deliver emission reductions consistent with what science demands. Temperature rise limited to well below 1.5 degrees C from pre-industrial levels is a goal supported by over 100 countries, it said.

Bolivia, speaking for the **Bolivarian Alliance of the Peoples of Our America (ALBA),** said that the work must meet the needs of all, and not just the interests of some. Rules must be complied with and not ignored as they were in Cancun. It said that a second commitment period is the key objective and must be adopted in Durban. A legal vacuum in the ratification of the second commitment period must be avoided. It is essential to discuss applying international legal mechanisms to address the failure of developed countries to comply with their obligations, and the negative impacts that this will have on the planet, it said.

In the afternoon, the first contact group meeting under the AWG-KP was held. The Chair of the working group, Mr. Adrian Macey from New Zealand, identified a number of issues for discussion. He asked to what extent it is possible to quantify the mitigation pledges as quantified emission limitation and reduction objectives (QELROs).

On rules and commitments, he said that both need to happen together, but if Parties achieve the rules set they are seeking, would it be sufficient or are there other conditions as well? On increased mitigation efforts, how do we move from the lower to the higher end of the mitigation pledges? There is also the issue of the aggregate level of emission reductions, he said. On the gap between the commitment periods, he said that it was difficult, if not impossible, to avoid a gap between the commitment periods, and there are a number of options to ensure continuity including provisional application. Is this viable, he asked, and are there other options? He also said that the spin-off group on numbers should resolve the current differences on Option B of the text on the amendment for the second commitment period.

Brazil said that on Option B, there is no consensus that it is under the mandate of the AWG-KP. However, St Lucia and the EU supported discussing Option B, as they had made proposals contained in that option. The EU considered that the mandate of the AWG-KP was broad enough to cover proposals made under Option B.

Brazil said that it was premature to discuss the gap between the commitment periods before Durban, as there is still time to avoid the gap. St Lucia supported discussing provisional application in order to ensure that there is no gap.

A heated debate also took place on the future of the Clean Development Mechanism (CDM) in the absence of a second commitment period. The EU said that instead of talking about a gap, the better starting point should be how to ensure continuity after 2012, as it already has legislation and will seamlessly move from 2012 to 2013. As such, there would be continued demand for the CDM and emission reduction credits.

Australia said that the gap is inevitable as it has made clear its conditions for a second commitment period which is that there must be a balancing agreement that covers all major emitters, and this has not been met yet. It agreed that there should be work towards practical continuity, as it has a target which will continue and access to the market mechanisms is important, and this has broader relevance, and is not just restricted to the Kyoto Protocol.

Venezuela said that without a second commitment period, there would no longer be a CDM. It said that the purpose of the CDM is to help Annex I Parties comply with their emission reduction commitments. There should not be selective application of the Kyoto Protocol. This was supported by Bolivia, Brazil, Nicaragua and China.

The EU responded that it was better to have internationally recognised credits, approved through the machinery of the UN. If this ends in 2013, there would have to be duplication of the structure to ensure environmental integrity. A lot has been invested to set up a credible crediting system, which should be allowed to continue with the CDM, as a multilateral rules-based system. A broad application of the system would take us forward, while developing another system would take us backwards, it said.

Venezuela said that the issue is a multilateral versus a bilateral approach. The Kyoto Protocol rules are multilateral, but a domestic approach for emission reductions is being proposed after 2012. A list of pros and cons of each approach should be produced, it said.

The EU argued that some Parties are no longer interested in staying with the Kyoto Protocol, and in order to ensure that Parties stay committed to the battle against climate change, it might require that they have access to emission reduction mechanisms. With a bilateral approach to the markets, they will be fragmented and complicated, and this would be expensive for the private sector. This would not attract countries to join the battle against climate change, and would look like a disaster to the outside world. It stressed that continuity of the CDM is important after 2012, and that predictability and certainty to the private sector is important. The mechanism should not be abandoned but improved, it said.

Japan said that the CDM is supposed to assist developing countries in achieving sustainable development and to help Annex I countries comply with their targets.

In relation to increasing the level of ambition, St Lucia said that loopholes should be closed and there should be discussion on the aggregate level of ambition. In addition to moving to the higher end of the pledges, there should also be discussion of moving beyond the ranges pledged. However, Japan and Australia questioned the necessity of discussing the level of ambition as they said that this should be discussed in the larger context. Australia also said that the quantification of QELROs should be discussed in the larger context of what all other major emitters are doing, as the accounting rules should be linked.

New Zealand said that it was prepared to undertake a second commitment period in the context of a comprehensive global agreement by all major emitters. This cannot be concluded by Durban, either under that new agreement or the Kyoto Protocol. It said that the second commitment period will not be followed by a third, and that the agreements will merge.

It said that one group had said that the only acceptable outcome was a full legally binding amendment with provisional application of QELROs. It appealed for not rejecting a political CMP (Conference of the Parties serving as the meeting of the Parties) decision, and asked if a legally binding second commitment period is not possible, was it better to have nothing at all? Don’t let the perfect be the enemy of the good, it said. One Party’s perfection is another’s impossibility. This risks no agreement or only one that cannot be ratified. We should focus on what is achievable to protect the Kyoto Protocol that we value so highly, it said.

New Zealand said that its domestic programme for domestic action does not end in 2012, whether or not there is a legal agreement in Durban. It said that there would be certainty of reciprocity in a global agreement, and we need a transition to a comprehensive global framework. There are national circumstances, but Parties have much in common, and all want a rules-based system. What we do here forms the basis for the bridge to the bigger agreement, it said.

At the opening session of the AWG-KP, Ambassador Mxakato-Diseko from South Africa briefed Parties on the informal consultations that it has been conducting since the last meeting in June. She said that the climate conference in Cancun last year had mandated South Africa as the incoming Presidency of the Conference of the Parties (COP) to conduct informal consultations. She informed Parties that consultations have been conducted in

Berlin, Auckland, Pretoria and New York. In Pretoria, the consultations were preceded by consultations with stakeholders and also included Ministerial-level consultations. In New York, consultations were with Heads of State representing the major groupings.

Diseko stressed the importance of multilateralism and reaffirmed the integrity of the UN Framework Convention on Climate Change (UNFCCC) process. She also emphasised the principle of transparency and need for inclusiveness, and said that the consultations were not meant to supplant the formal negotiating process. The central issue is the resolution of the second commitment period of the Kyoto Protocol, she said, and this cannot be discussed in isolation, as it is inextricably linked with the legal status and form of the future climate regime.

At the consultations in Germany, it was emphasised that Durban should provide political guidance to the future shape and legal form of the climate architecture. A multilateral rules-based system, building on existing work with an agreed time frame and milestones was also emphasised, she said.

She said that in New Zealand, the focus was on key mitigation issues – measurement, reporting and verification (MRV). The rules-based system needs to be flexible to accommodate national circumstances, she added. The inadequacy of the mitigation pledges was of concern, and the difficulty from moving from pledges to formal targets was also identified.

Diseko said that in South Africa, President Zuma called for the Durban outcome to adhere to the following principles: (1) preserving and strengthening the multilateral response, (2) environmental integrity, (3) common but differentiated responsibilities and respective capabilities, (4) equity, and (5) honouring international commitments. Ministers stressed that progress on finance should not be confined to institutional arrangements only. The Green Climate Fund should be capitalised and operational by 2012, and there should be delivery and disbursement of fast-start finance. The technology mechanism should be fully operational in 2012, as well as the Cancun adaptation framework.

She informed Parties that in New York, Heads of State exchanged views on the future climate change regime, with a focus on operationalising the Cancun agreements.

Diseko said that she planned to continue informal consultations in Panama. Parties would be asked to respond to specific questions and stakeholders will also be consulted. Her Minister will be arriving in Panama, and interacting with Parties.

TWN
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Continuity of Kyoto Protocol Key for Developed Country Mitigation

Panama City, 3 October (Meena Raman) – Developing countries stressed the importance of ensuring the continuity of the Kyoto Protocol (KP) and emphasised the importance of ensuring the comparability of efforts among developed countries as regards their mitigation commitments in negotiations under the United Nations Framework Convention on Climate Change (UNFCCC).

Developing countries led by Brazil and supported by Mali for the African Group, St. Lucia for the Alliance of Small Island States, China, India and Venezuela expressed these views on 2 October in Panama City, at the climate negotiations under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA).

In the informal group on mitigation commitment or actions of developed countries, Brazil said that it would be a mistake to engage in the technical items in the discussion without having the political dimension as the technical approach cannot be a way to park the political discussion on the continuity of the KP.

(Developed countries such as Japan, Russia and Canada have declared in the KP working group that they will not commit to a second commitment period under the Protocol, while the European Union and other developed countries including Australia, Norway, New Zealand and Switzerland have pre-conditioned their willingness to consider such commitments upon the emergence of a new mitigation regime that includes all "major emitters", including the United States who is not a Party to the Protocol and "advanced developing countries". Developing countries have expressed concern that developed countries are planning to "jump ship" and "escape" their Kyoto commitments to a new mitigation regime under the Convention.)

Since the opening plenary and contact group meetings of the two working groups under the UNFCCC and the KP on Saturday, 1 October, Parties have been in informal and spin-off groups to conduct negotiations. The KP spin-off groups have been closed to observers, while the first meetings of the informal groups have been open to observers.

The informal group on the mitigation commitments or actions of developed country Parties met in the morning of 3 October and was followed by the mitigation actions of developing countries in the afternoon. The sessions were co-facilitated by Mr. Jose Garibaldi Fernandez of Peru and Ms. Karine Hertzberg of Norway.

International Assessment and Review

One issue under discussion is that of international assessment and review (IAR) of emissions and removals by sinks of greenhouse gases related to quantified economy-wide emission reduction targets of developed countries. The Cancun decision agreed to establish the IAR process and to develop the modalities and procedures.

Fernandez, who co-facilitated the session, suggested that Parties address the following: define objective, scope and principles of the IAR; relation of the IAR to the "review" which is being under considered under the "shared vision", international consultations and analysis (ICA) relating to developing countries' mitigation actions, and existing review process under the Convention; list of possible elements of inputs and outputs of the IAR process; procedures for the IAR process and further consideration of outcomes of the IAR.

Brazil said that on the objectives, scope and principles, one idea that many countries had expressed was the objective of enhancing the comparability of efforts among developing countries as part of the IAR. On the scope, Brazil said that consideration of a wide variety of information of the

IAR was a strong point. Another important aspect in enhancing the comparability of efforts was the establishing of common accounting rules.

Brazil said that one item to highlight was the need to address compliance (in meeting emission reduction targets). It said that it was important to build on the review process for developed countries that exists today. It also stressed the need to have a clear distinction between the IAR and the ICA processes, which are distinct processes and expressed doubts about any relationship between the two processes.

Brazil said that the IAR element becomes more relevant as some developed countries are choosing to present their mitigation actions no longer in the context of the Kyoto Protocol. Establishing compliance through the IAR becomes more and more relevant, said Brazil. The output of the IAR and the report has to address compliance in the review process as in the KP, including the need to make possible adjustments and corrections.

Brazil said that options being considered (in relation to the development of texts for a decision) must reflect the comparability of efforts with the KP. It would be a mistake to engage in the technical items in the discussion without the political dimension, as the technical approach cannot be a way to park the political discussion on the continuity of the Kyoto Protocol. The IAR must be based on the continuity of the KP and is compatible with the Article 8 review in the KP. It stressed that the KP reference offers the basis for the IAR and significant time would be lost to re-invent matters that have been identified in the KP through many decisions of the Parties.

India and **Venezuela** in echoing the sentiments of Brazil also emphasised the distinct nature of the IAR and the ICA. India said that it was not comfortable in having any "parallelism" between the two processes. Venezuela was not comfortable in giving the co-facilitators the mandate to prepare any non-paper on the matters under discussion if there was no certainty that the options to be reflected in the non-paper reflect the continuation of the KP.

The **United States** in response said that Parties were not operating under the KP system and regardless of the KP, they were "moving under the UNFCCC and the Cancun agreement is the basis forward".

The European Union and Norway echoed the views of Brazil in relation to the lack of need for duplication of the review processes which currently exist.

Upon conclusion of the discussion on the IAR, the co-facilitators said that they will prepare a non-paper to advance further work.

Biennial reports

The discussion on biennial reports of developed countries was facilitated by Ms. Helen Plume of New Zealand and was focused on the objective purpose, scope and principles of biennial reports; relation of the biennial reports to the existing reports by Annex 1 Parties such as national communications and national GHG inventories.

Brazil said that the Cancun decision refers to the consideration of biennial reports as part of the general revision of the current guidelines for the preparation of national communications of Annex 1 Parties. It stressed the importance of the revision of the guidelines including the need to address issues such as common accounting rules.

On elements to include in the biennial reports, Brazil suggested reference to policies and measures and issues related to the provision of financing through common reporting formats. On the application of common accounting rules, it underlined that the need for information on effects of implemented commitments and on the achievement of targets and the total effects of the measures is important. On the national inventories, it said that it was relevant to have additional information on the GHG inventories through the biennial reports.

Mali, speaking for the **African Group,** said that the objective of the biennial reports is to ascertain progress in the performance of the commitments of developed countries. In this regard, progress as regards the provision of financial resources to developing countries is also very important.

South Africa agreed with **Mali** and **Brazil** that supplementary information from developed countries was important in relation to the achievement of the quantified economy-wide reduction target.

India and **Singapore** supported Brazil, Mali and South Africa. India stressed that the biennial reports are linked to the IAR.

Lebanon said that biennial reports must relate to the ambition level of the developed countries and the progress they have achieved on low-carbon development strategies and targets.

The **US** said that there was a good degree of commonality among Parties and that it made sense to look at the targets, the summary of the effects, the accounting rules and the enhancing of the provision of support.

The **EU** said that the biennial reports were important for the IAR process and there was a need for common accounting rules.

The co-facilitators will provide a non-paper synthesising the views of Parties.

In the organisation of the work of the informal group, developing countries including Brazil and the Alliance of Small Island States and the European Union stressed the importance of having in-depth discussions on the issue of the scaling up of the level of ambition of developed countries of their economy-wide emission reduction target.

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Developing Countries Stress Need for Different Treatment

Panama City, 4 October (Meena Raman) – Developing countries strongly expressed differences in the treatment of their obligations in relation to mitigation actions as being distinct from that of developed countries following the decision in Cancun last year under the United Nations Framework Convention on Climate Change (UNFCCC).

They expressed these views at the first informal group meeting on mitigation actions of developing countries, which took place in the afternoon of 2 October in Panama City. The meeting was co-facilitated by Ms. Karine Hertzberg of Norway and Mr. Jose Garibaldi Fernandez of Peru.

Parties at the meeting focused on discussions on international consultations and analysis (ICA) of their mitigation actions and on biennial update reports (BURs).

(In Cancun, Parties had agreed to the conduct of ICA of developing country biennial update reports relating to their mitigation actions under the Subsidiary Body for Implementation.)

Developing countries pointed out the differences between the ICA process and that of international assessment and review (IAR) of developed country mitigation actions. They also stressed differences between the biennial reports to be submitted by developed countries and BURs of developing countries.

Developed countries during the session expressed the need for addressing the overall ambition level of the mitigation pledges of developing countries.

Australia said that there was a gap between the pledges indicated by Parties and what they would deliver in terms of limiting the temperature rise to below 2 degrees C. It referred to its joint-submission with Norway to build on the pledges made in Cancun.

(The joint-submission calls for a legal agreement with binding mitigation commitments by both developed and developing countries, especially from "major economies", which includes a formal way of capturing Parties' targets and actions in annexes attached to decisions, and a periodic process for scaling up ambition levels and mitigation efforts over time.) It said that there was a need for more details on the underlying assumptions of the pledges including relevant metrics such as base year or other reference value, gases covered and sectors and duration of commitment so that there was a way to compare the actions and what they add up to. It wanted a legally binding outcome that can be scaled up to a new treaty.

The **European Union** said that there was a need to address the overall ambition level of developing countries and the process for clarifying their mitigation actions. It said that the pledges of developing countries had not been really understood and wanted sufficient time to discuss this.

Cuba in response to proposals for the scaling up of ambition of developing country pledges said that there was nothing in the Cancun decision in this regard. It was opposed to the idea of a spin-off group to discuss such elements, as there is no common understanding among Parties.

International consultations and analysis

Discussions were held on the issue of international consultations and analysis. The co-facilitator suggested that Parties focus discussions on the objectives and principles of the ICA, possible elements of inputs and outcomes of the process and procedures for the ICA.

Brazil said that the ICA is a process that leads to transparency, as distinct from that which leads to a review (of mitigation actions). This has clear implications on the outcomes of the ICA. On the principles, the notion of the process being non-intrusive, non-punitive, non-confrontational and respectful of national sovereignty is an important part of the process. These adjectives and characteristics are important in the nature of the ICA process as distinct from the international review and assessment (IAR) (of developed country mitigation actions). The ICA leads towards a greater sharing of information on actions than actually offering corrections to what developing countries are implementing in their mitigation actions. The Cancun decision makes clear that the ICA process is not for the evaluation of the domestic policies of developing countries.

On inputs for the process, Brazil said that the Cancun decision was clear in indicating the BURs are an input for the ICA process. The ICA discussions are intended to generate international consideration and transparency of domestically supported actions. In the case of internationally supported mitigation actions, they are subject to measurement, reporting and verification (MRV). The output of the ICA would be a summary report, which is an objective recording of the process. On the process, the consultation phase is before the technical phase, said Brazil.

China supported the views of Brazil and said that the ICA is a technical process, in which the consultations come first and then the analysis. The consultations are held between the technical experts through a facilitative sharing of views. Technical support is given to developing countries as well as further financial and technical support to improve the BURs. Following the consultations, there is the technical analysis, which aims at increasing transparency and will result in a technical summary report.

Pakistan also supported Brazil in stressing that the ICA is not a review process and is distinct from the IAR and that the ICA is not done in the context of compliance and comparability of efforts but in the context of transparency and capacity in providing information. The frequency of the ICA depends on the voluntary nature of the mitigation actions, the frequency of the national communications of developing countries and the BURs. Flexibility is based on the level of support provided for the national communications and BURs and the capacities of developing countries.

Mali for the **African Group, India, Singapore, Saudi Arabia, the Marshall Islands** and **Mexico** all echoed the view that the ICA and IAR are distinct processes.

Ethiopia, speaking for the **least developed countries (LDCs),** said that the ICA should be less onerous than the IAR and that there should be flexibility in the reporting for LDCs in terms of the content and timing.

Australia said that there was a clear need for flexibility as to who would participate in the ICA. It said that one criterion could be based on the share of a developing country's contribution to global emissions. **Canada** and **Japan** also expressed similar views. **Norway** said that there was a need for flexibility regarding the frequency of the participation of developing countries in the ICA process depending on national circumstances.

The **United States** said that there was a need for clarity on the ICA process and that the first step is an analysis by experts of the information on the mitigation actions and associated methodologies and that the second step was the facilitative sharing. **New Zealand** echoed the views of the US in this regard.

The **European Union** agreed that there were differences between the ICA and the IAR but said that both needed to be robust. It said that the analysis phase preceded the consultations phase. It was also open to exploring flexibilities for LDCs and small island developing states (SIDS) and others too if there were practical purposes for this.

The co-facilitators will prepare a non-paper for further discussion.

Biennial update reports (BURs)

Brazil said that the Cancun decision was clear on what the core elements of the BURs are – which are the provision of updates, information on actions, financial, technology and capacity-building needs and information on the support received. On the issue of guidelines for the BURs, they are part of the national communications and there are existing guidelines for this. There was a need to ensure early and sustainable provision of resources for the BURs.

Pakistan shared similar views as Brazil.

China also said that the BURs are part of national communications and that the current guidelines could be used. On the content, it said that it was an update of the greenhouse gas (GHG) inventory and was not a full update of the inventory. This depended on the national circumstances and the ability of developing countries to provide the information. On the frequency and time frame, the provision of support was key to early submissions and happens two years after the national communications. Where there is a full national communication, there was no need for the BUR as this would be duplication.

South Africa agreed with China and stressed that there should be maximum flexibility for developing countries on the content as there was a diversity of mitigation actions among developing countries with a wide variety. Standardised templates and harmonisation of information are at odds with the notion of diversity of actions of developing countries.

Brazil said that on the relationship between the national communications and BURs, the information would be different and the BURs are not a subset of the national communications. BURs are updates where the information is available. It also agreed with South Africa that the notion of harmonisation or standards or generating of comparability is being out of touch with the concept of nationally appropriate mitigation actions of developing countries, as the idea of "nationally appropriate" must be respected.

India supported Brazil and China and voiced similar views.

Mali speaking for the **African Group** said that the group only accounted for 4% of the GHG emissions of the world and there was a need for the BURs to reflect the support needed and support received.

Australia said that priority in the provision of BURs is for developing countries with high emissions and for this to be done every two years. It said that there were strong practical reasons for BURs not to be contingent on support.

The **United States** said that the frequency of the BURs should be every two years. SIDS and LDCs could be provided with flexibility, as well as those who cannot do this in the first stage.

The **European Union** also said that the frequency should be every two years and that it did not see the distinction between the biennial reports of developed countries and the BURs, which are part of the national communications.

The co-facilitators will prepare a non-paper for the next session to reflect the views of Parties.

TWN
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Developing Countries Push for Decisions on Fast-start and Long-term Finance

Panama City, 4 October (Marjorie Williams) – Developing countries, led by the G77 and China at the Panama climate change talks under the United Nations Framework Convention on Climate Change (UNFCCC), called for decisions to be stepped up on fast-start and long-term financing.

This call was made at the first meeting of the informal group on finance, which met on 2 October under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA).

Developing countries said that much time had been spent in previous sessions on the issue of the Standing Committee on Finance and Parties had textual proposals on this. They said that in Panama, there was a need for much more focus on the issue of fast-start financing and long-term financing.

(Developed country Parties had in Copenhagen committed to providing $30 billion for the period 2010-2012 and to a goal of mobilising $100 billion per year by 2020.)

In response, developed countries wanted to only focus discussions on the Standing Committee.

The informal meeting on finance focused on how to organise the work for this week in Panama.

The co-facilitator, Mr. George Borsting of Norway, requested Parties to present any new thinking on the topic since the last meeting in Bonn (in June) and to also indicate whether and when they plan to make new submissions. The key issues under consideration of the group were the Standing Committee on Finance (SC), long-term and fast-start finance.

Borsting noted that there was progress on the SC and a draft decision text had been submitted by the G77 and China, the Africa Group, India, Pakistan, the European Union and Turkey. He informed Parties that on long-term finance, there were submissions from Saudi Arabia and India, which were not previously discussed but would be discussed here in Panama.

On fast-start finance there was a need for more elaboration on what to focus on to have on any decision for Durban. In this regard he noted that there were no written submissions.

The Philippines for the **G77 and China** expressed hope that its submission on the SC would form part of the basis of negotiation along with other submissions. It noted the importance of moving towards the operationalisation of the SC in Durban (at the next Conference of Parties).

With regard to fast-start finance, the Philippines noted that given the work done in Bonn, work could move forward for a draft decision. It raised the question on the gap between the fast-start and long-term financing, as well as the issue of the sources and basis for long-term finance.

It said that the G77 and China proposal of 2008 could be useful to bridge the gap as well as upscale long-term financing. The Philippines further noted that the Cancun decision on financing also tasked the Transitional Committee to design the Green Climate Fund. The Durban COP will seek to approve the work of the TC.

Egypt, speaking for the Africa Group, noted that on the matter of the SC, Parties had a thorough deliberation in Bonn. It said that there was convergence of elements. It drew attention to the Africa Group proposal on long-term financing (including medium-term financing) and the gap as well as raised the issue of how to scale up financing to 2020.

Barbados (on behalf of AOSIS) said there had not been sufficient focus on the elements of a draft decision on long-term finance. It said that the Africa Group had a good draft on this aspect. It said that there was value judgment on what long-term was and was not. Barbados said that the G77 and China proposal on the SC provided a very useful basis for discussions.

Barbados highlighted that addressing the gap between 2012 and 2020 and the $100 billion goal should be part of the Durban decision. It urged Parties to pronounce that there will be no gap. It noted that there had been comments from developed countries that there will be no gap but that it was important to have that assurance in writing.

Barbados further noted that there was a need to look at various options in terms of sources, and if possible a work programme. It argued for initial capitalisation of the GCF and said that it is looking into creative ways to address this issue. It also said that there was a need for much greater transparency in the reporting on the provision of financing, learning from the fast-start finance experience.

Malawi (on behalf of the LDCs) echoed the views of developing countries that much of the work and time thus far was dedicated to the issue of the SC, with a lot of work going into the architectural part of finance such as the SC and TC. Malawi said there was a need to start discussion on long-term finance. It noted that while institutions are being put in place, there needs to be a decision made on sources of long-term financing and how it will operate. Malawi said that the G77 and China and the Africa Group submissions on both the SC and long-term finance have inputs from the LDCs. It called for moving forward on the discussion on sources and scale of finance.

India shared the view of Egypt, Barbados, the Philippines and other developing countries that there was a good sense of common ground to start moving issues forward on the matter of the SC. It said that the long-term finance issue will be something that the group can get to grip with in order to have meaningful work out of the session in Panama. **China, Tanzania** and **Peru** had similar views.

Bangladesh said that the finance issue could be looked at in terms of supply side, demand side and governance (a combination of both supply and demand side issues). It said that the proposals on the table had good elements that the co-facilitators could combine into a text. On the transparency of sources, it flagged the report by the International Institute for Environment and Development (IIED) on transparency of fast-start finance, which noted that fast-start finance was not very transparent about elements of what was new and additional. Bangladesh said there was a lot of wiggle room on this and proposed a finance registry so that there can be a uniform format by developed countries. In terms of demand side, it said that Cancun gave a clear indication of which countries should be supported. Finally, Bangladesh argued that there is a need for a democratic and just governance structure. The financial mechanism must also be well financed, otherwise it is meaningless. It noted that the $100 billion (under the Cancun decision) was out of the blue and is hence a ballpark. Ultimately, there is a need for indications of mending the gap and scaling up financing.

Pakistan said that its submission built on the G77 and China document and had commonalities between various positions. It said that its submission highlighted three areas that strengthened the G77 and China's submission: (i) on providing oversight of the operating entity of the financial mechanism to ensure that it is proactive and effective. Pakistan noted that this was important given past experience with the GEF; (ii) the measuring, reporting and verification of support (MRV), and (iii) linkage of thematic bodies to be operationalised in Durban. Here, Pakistan called for a practical linkage between these thematic bodies and the SC including the sharing of information, both ways.

The **European Union** agreed that the work in Bonn on the SC had made progress. There was some convergence as well as reduction of areas of divergence with regard to issues for decision in Durban. It said that there was also significant difference on what the SC would do to assist the Conference of Parties. Therefore, it wanted more work done on the SC issue.

In terms of fast-start finance, the EU said that there was not much work to be done in this area and there was not much scope for decision around this issue for Durban. On long-term finance, the EU said it was a crucial area of work but that there was no gap. It also noted that there was no straight line to 2020 for the goal of mobilising $100 billion. In this context, the EU said that there was a need to go beyond public finance and stressed that private finance can leverage public finance and flagged the carbon market and innovative financing. Public policy can help drive the mobilisation of financing.

New Zealand urged Parties to focus on the SC for the rest of the time in Panama. **Canada** agreed with the EU on fast-start finance. It also wanted focus on the SC.

The **United States** supported the views expressed by the EU and Canada. It said Cancun was a pragmatic outcome which required three follow-up pieces of work on finance: the Transition Committee, the SC and submission of information on fast-start finance by developed country Parties. The latter had been accomplished and is now available in an INF document. (The US has provided information for 2010 and will submit information on 2011.) It said that the work of the GCF is elsewhere and fast-start finance is done and complete. Only the SC remained for the group to work on. It said the US and Australia are working together on a draft to be submitted. On long-term finance, the US said it agreed with the EU that there was no gap problem. It said that there had been many discussions and proposals on long-term finance in the LCA for several years. It also flagged that the UN Secretary General's Advisory Group on Finance at the request of the G20 is elaborating on its earlier report on long-term finance. The US further said that Cancun gave developed countries a collective goal to mobilise $100 billion contingent on meaningful mitigation actions by developing countries. **Japan** echoed similar views as the US.

Saudi Arabia in response to the US intervention cautioned that the work of the G20 or other external bodies is not the forum for climate finance and hence there should be no intervention by these other entities in climate finance. It argued that there is a need for a long-term financing regime.

Malawi (on behalf of the LDCs) in response said that the Cancun decision on long-term finance did not sound like a long-term provision of finance and was not predictable and was conditional. It said that the requirement of developing countries did not end in 2020. In terms of fast-start finance, not many of LDC countries have access to even a single dollar, it added.

TWN
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Developing Countries' Proposal on Unilateral Trade Measures Draws Strong Opposition

Panama City, 4 October (Meena Raman) – A submission by a large group of developing countries to address unilateral trade measures was strongly opposed by developed countries as well as developing countries like Singapore at the climate negotiations taking place in Panama City under the United Nations Framework Convention on Climate Change (UNFCCC).

The issue arose at the first meeting of the Parties in an informal group on "economic and social consequences of response measures" under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA), which met on 3 October and was facilitated by Mr. Crispin d'Auvergne of St. Lucia.

Led by India, a large number of developing countries had submitted a proposal for a decision on unilateral trade measures to be considered in Durban at the meeting of the Conference of Parties later this year. They wanted their submission to be the basis of negotiations in Panama but this was opposed by developed countries as well as Singapore, saying that discussions on this matter could be dealt with by the Subsidiary Bodies. In addition, they said that the UNFCCC was not the proper forum to deal with trade issues as this was in the competence of the WTO.

The G77 and China said that the Cancun decision provided the first path in addressing the concerns of developing countries on the impacts of response measures by developed countries to address climate change but further political guidance was needed from the COP to advance the Cancun decision and the mandate of the Bali Action Plan.

Developed countries disagreed with the developing countries that further work was needed by the AWG-LCA as they said that the Cancun decision had tasked the Subsidiary Bodies of the UNFCCC to provide a forum to address the impacts of response measures.

Argentina, speaking for the **G77 and China,** said that the economic and social consequences of response measures is an important issue for developing countries and merits the full consideration by Parties of their concerns. The Cancun decision in this regard is the first path in addressing these concerns but there are further issues that must be addressed in line with the Bali Action Plan. It wanted the Panama meeting to resolve the political issues for the result that is needed in Durban, which include the establishment of the forum on response measures, assistance to developing countries affected by such measures and the trade issue. This is the package developing countries want to see in Durban, said Argentina, emphasising the need for political direction to be given by the COP.

India said that one of the effects of response measures is on international trade. It referred to a submission by a large number of like-minded countries on this and said that the submission should be treated as a negotiating text for further discussions, which was supported by other developing countries including China, Saudi Arabia and Venezuela.

(The submission referred to by India on trade and climate change was submitted as a Conference Room Paper and had the support of Argentina, China, the African Group, the OPEC countries, the Arab Group, Thailand, Malaysia, Uruguay and the Philippines. The proposal by these countries was for a decision to be adopted that "developed country Parties shall not resort to any form of unilateral measures, including tariff, non-tariff, and other fiscal and non-fiscal border trade measures, against goods and services from developing country Parties on any grounds related to climate change, including protection and stabilisation of climate, emissions leakage and cost/or cost of environment compliance; recalling the principles and provisions of the Convention, in particular Article 4, paragraphs 1, 4 and 5, Article 4, paragraphs 3, 5 and 7, and taking into account the principles of equity, common but differentiated responsibilities and respective capabilities and the obligations of the developed country Parties to provide financial resource, transfer technology and provide capacity building support to the developing country Parties".)

Australia did not support the Indian proposal, saying that it was unusual for Parties to base texts on the CRP document.

In response to the G77 and China and India, the **European Union** said that it was not unwilling to discuss the range of issues raised but said that in Cancun, Parties had agreed to settle the addressing of these issues under the Subsidiary Bodies and it had trouble understanding what further work was needed under the AWG-LCA. In terms of substance, it had difficulty in seeing issues such as trade that belong to the WTO being discussed under the UNFCCC as this went beyond the Convention's competence.

The **United States** made similar comments as the EU and said that the Subsidiary Bodies had been given tasks through workshops, which have been held on response measures, and it was not the time yet to discuss the Indian CRP document. It did not understand what developing countries wanted the AWG-LCA to do further.

In response, **Argentina,** speaking for the G77 and China, said that the national communications of developed countries were incomplete as they did not report on the consequences of response measures on developing countries, giving the example of the European Union's Emissions Trading Scheme that had no assessment of the implications and impacts on developing countries. That is why there was a need for an institutional forum to discuss such issues. The Cancun decision provided the first step but it asked how this decision was going to be implemented to avoid the impacts and that needed concrete political guidance. There was a need for a structured approach on how to avoid the negative consequences, it added.

Argentina (speaking for itself) said that the WTO was not negotiating climate change and trade and it was aware that the WTO was waiting for a signal from the UNFCCC in relation to the interpretation regarding trade and climate change. It said that developing countries were not challenging the WTO rules but the issue is related to climate change and the proper forum for that is the UNFCCC. It stressed the need for the UNFCCC to send signals to the WTO and give the political guidance on the issue of trade measures related to climate change.

India supported Argentina and said that the submission provided was based on principles and guidelines under the Convention and hence there was a need for guidance from the UNFCCC COP on this issue.

South Africa supported Argentina and said that national communications were inadequate in addressing the consequences of response measures and there was a need for direct exchange of views in a public space and stressed the need for the establishment of the forum for this.

In response to South Africa, the **US** asked what the difference was in this (AWG-LCA) forum and the forum under the Subsidiary Bodies. It said that it could not understand why the Subsidiary Bodies in developing the work programme could not discuss these issues.

The **European Union** echoed the sentiments of the US and failed to see how a forum under the Subsidiary Bodies could not address the issues raised. It said that it failed to understand the procedural game as the process (under the Subsidiary Bodies) was set up in Cancun.

Argentina in response stressed that Parties had a mandate under the Bali Action Plan to discuss these issues and it was also part of the agenda agreed to in Bangkok. It said that the Subsidiary Bodies had several tasks but what was needed here (under the AWG-LCA) was to discuss the political parameters and how to improve the existing channels such as the national communications and how developed countries were going to assist developing countries in addressing the impacts. The AWG-LCA was the space to define the political parameters, said Argentina. China, Saudi Arabia and Venezuela supported Argentina in this regard.

Despite these clarifications, Canada, Australia, New Zealand, the US and the EU all said that they could not understand the need for the AWG-LCA to be discussing these matters when the Subsidiary Bodies were tasked to deal with the issues. New Zealand said that on the trade issue, there was no evidence yet that this was a problem and therefore, it was too premature for this matter to be considered.

Singapore also shared the views of the developed countries and said that the proper forum to discuss the trade issue was the WTO and not the UNFCCC.

Saudi Arabia said that in Bangkok, Parties had agreed to the AWG-LCA agenda, recognising that additional work needed to be done under the working group and that the Chair of the AWG-LCA hoped to see negotiating texts from Panama for Durban. It said that in all informal groups, negotiating texts were being prepared and it did not mean that Parties have agreed to the texts but what was needed was a paper that reflected the divergent views of Parties as a starting point.

Given the divergence of views on the matter, the co-facilitator proposed further discussions on how to move forward.

TWN
Panama News Update 10

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Legal Form Should Not Re-write Climate Convention – Say Developing Countries

Panama City, 5 October (Meena Raman) – Several developing countries including China, India, Saudi Arabia, Bolivia, Venezuela, Egypt and the Philippines expressed strong views that the legal form of the outcome of the negotiations of the working group under the United Nations Framework Convention (UNFCCC) should not re-write the Convention. They also stressed that the UNFCCC and its Kyoto Protocol were existing legally binding treaties for the global climate change regime and there should be no new mandate for a new agreement to replace them.

These views were expressed at an informal group meeting held on 4 October in Panama City under the Ad-hoc Working Group on Long-term Co-operative Action (AWG-LCA) to discuss legal options for an agreed outcome based on the Bali Action Plan.

The United States however wanted a legal agreement that binds all "major economies" in a symmetrical fashion where the commitments of Parties were unconditional and not linked to the provision of finance. The US wanted a revision in the current differentiation between non-Annex 1 and Annex 1 countries "to reflect today's and tomorrow's economic realities".

The US said clearly that it will not agree to launch negotiations in Durban on an agreement that it could not join.

Many countries stressed that the discussion on the legal form was premature, as the form of the legal outcome depended on the substance of the agreement reached.

Several developed countries such as Australia, the European Union, Norway, Japan and New Zealand wanted a new single binding treaty for all Parties which would replace the KP, arguing that the Protocol was "not comprehensive" as it did not include all "major emitters". (The US is not a party to the KP and the mitigation actions of developing countries are not part of the Protocol.)

Venezuela and Bolivia expressed opposition to the replacement of the KP with a weak mitigation regime under a new agreement for developed countries that allows for a "pledge-and-review" system that advanced a "do-as-you-please approach" in terms of determining emission reduction targets instead of doing so through a top-down science-based system as is in the KP.

The Alliance of Small Island States wanted a ratifiable legally binding treaty under the Convention that would co-exist with the Kyoto Protocol.

The **United States** said that it continues to support a legally binding agreement that contains mitigation commitments that are symmetrically binding for all Parties with respect to their mitigation commitments. Aspirations must face reality and the reality is that an outcome in Durban must fulfil the promise of Cancun and meet Parties' bottom lines. The form of the outcome is related to content. The US contemplated a legal agreement that binds all major economies in a symmetrical fashion with respect to their mitigation commitments being unconditional to the provision finance and a revision of the Annex 1, non-Annex 1 categories to reflect today's and tomorrow's economic realities, and not that of 1992. It expected that the content of the Parties' commitments would differ, but not its character.

For the US, a legally binding approach cannot mean that the US is bound and others are not (in an obvious reference to developing countries). It said that there was no basis for such an approach in the Convention as all Parties had obligations under Article 4.1. It was inconsistent with the present economic realities and with solving the climate problem to have such an approach, it said.

The US did not see any meaningful compromise on this issue by Durban. It said that it heard many big developing countries take a position that the obligations fall only on Annex 1 countries and cite the Bali Action Plan for that proposition. The US disagreed with that reading and since others have that reading, this meant that it could not negotiate a legal agreement that is tied to the Bali Action Plan.

The fundamental question was whether Parties have agreement on the kind of regime that the US is envisioning. The US needed a clear and explicit mandate that incorporates the ideas it had spelt out and it was clear that others do not accept that. The US said it would like to avoid entering into a deep cul-de-sac in Durban because of this.

It said that in Cancun, the Parties agreed to carry out undertakings on mitigation, adaptation, finance, and technology. Those undertakings represent real action and real progress on climate change. The US did not see how Parties can move to have a mandate for a legally binding agreement in Durban. The US will not agree to launch negotiations on an agreement that it could not join. It did not want to dismiss the possibility of making a statement in Durban about a collective aspiration for the future regime provided that it was on terms it could accept.

China said that it was important to have a discussion of the legal options with the aim to complete the agreed outcome (of the AWG-LCA) based on the Bali Action Plan, the Kyoto Protocol and the Convention. The principle guiding the discussion should be the Bali Roadmap and the two-track process recognising the principle of common but differentiated responsibilities.

(The Bali Roadmap refers to the mandate of the AWG-LCA under the Bali Action Plan and the mandate of the working group under the Kyoto Protocol.)

China said that the discussion must focus on the mandate of the informal consultations, which relates to the legal options to complete an agreed outcome of the Bali Action Plan. It was not useful to discuss matters outside this mandate. On the legal form of the agreed outcome, China said that this could be in the form of decisions of the Conference of Parties, a protocol or an implementing agreement. The essential point was what Parties were going to do to ensure the full, effective and sustained implementation of the Convention. The mandate does not allow the re-writing of the Convention.

China said that commitment of Annex 1 Parties to a second commitment period under the Kyoto Protocol for emission reductions was essential for any outcome in Durban and beyond. It said that the KP and the UNFCCC form the legally binding global regime on climate change and there was no need to create a new one. It said that there were proposals by some Parties to create a new mandate for starting a new process to replace the UNFCCC and the KP. This was not the mandate of the AWG-LCA. Parties had the right to make any proposal and they could do that under the Convention or the KP but this was not within the mandate of the Bali Roadmap. Such a new mandate would be tantamount to creating a cemetery for the KP, the UNFCCC and the principle of common but differentiated responsibility. In an obvious reference to the US call for symmetry in the commitments of developed and developing countries, China said that “cemetery and symmetry were quite different”.

India agreed with China and said that the problem was the faith or loyalty some Parties had to the idea that a legal treaty was binding and good and a decision of the Conference of Parties was bad. It drew reference to the Marrakech Accords (which were decisions) of the Kyoto Protocol that created the Clean Development Mechanism in which billions of dollars’ worth of trade is involved. India said that substance and form must go together and Parties needed to know what they are deciding and then clothe it in the form of a COP decision or treaty. To have a new law and to get it ratified by Parties may be a problem involving constitutional issues and despite the best of intentions, there could be problems of ratification for some countries.

On the issue of the “economic realities” of countries, India said that its first priority was to eradicate poverty where each human being would have a roof over one’s head and a next meal. Anything which stands in the way of poverty reduction was not doable. There was also a need to have a sense of reality of the real world in terms of GHG emissions, it said. Referring to how it was common for a bus in India to have 50 people inside and another 20 on its top, the emissions from this bus could not be compared with the emissions of a limousine in a rich country with one person in it that included a bar.

The Philippines said that the mandate of the informal group was to continue to have discussions on the legal options consistent with the Bali Action Plan and the Cancun decision. The objective was not to launch a new negotiating process. The objective was to discuss what the legal options are to conclude the work on substance. There is a range of instruments under the UNFCCC which Parties could use to reflect the substantive content. For the moment, there was no clarity on the substantive content and hence, the issue of what was the appropriate legal instrument was still up in the air.

Venezuela said that the G77 and China has been repeating that the second commitment period of the KP is a key outcome. There are "conditions and prices" that developing countries are being asked to pay for this to happen. Some Parties are willing to pay anything while some are not. In the consideration of legal options, Venezuela asked if Parties were going to have a legally binding agreement in the AWG-LCA that would legalise a "pledge-and-review" regime that would not limit the rise in temperatures and could lead to a 4 degree C world, contrary to the ultimate objective of the Convention. That was not a price it was willing to pay for a second commitment period under the KP.

Bolivia agreed with Venezuela and said that in order to advance on the legal form, there needs to be an advance on substance. It expressed concerns over the proposal for a single legal instrument that could undermine the KP. It was also against a legal instrument that would legalise a "pledge-and-review" system on mitigation. In response to countries that say that the KP was "not comprehensive as it did not have all the major emitters", Bolivia expressed concern that the new mitigation framework that was emerging was for all countries to pledge and review their actions where they would do what they liked and determine as they please their mitigation pledges. This did not preserve the environmental integrity and it was misleading to say that this was a comprehensive framework that would lead to a high mitigation ambition when what it does is to downgrade the top-down approach of the KP (in determining emission reduction targets) to a "do-as-you-please" approach. Bolivia also did not want the Annex 1 Parties who are in the Kyoto Protocol to "jump ship" to a weaker regime that would replace the KP.

Egypt said that it was open to discuss the legal form after it was sure of the content. It agreed with Bolivia, as it was not really sure what the substance would be. Parties could not say that a COP decision was not legally binding. It also said that it was not useful to only focus on mitigation. There were many other building blocks under the AWG-LCA referring to adaptation, finance, technology transfer and capacity building. It said that movement in the negotiations on these other elements was not reassuring. In the KP, Parties were withdrawing from commitments, shifting the burden on to developing countries and dismantling the KP with a new system. Egypt drew reference to the WTO where developed countries were "constantly shifting the goal posts" and carrying on re-negotiating and nothing is achieved.

Saudi Arabia said that there were divergent views on this issue and others have indicated that it was premature to talk about a legally binding agreement. Some say that there is no legally binding agreement but there was the KP, which was comprehensive and consistent with the principle of common but differentiated responsibility. There was reluctance by some Annex 1 Parties to engage in the second commitment period and others were laying conditions for making the commitment. There needs to be seriousness on the part of Parties under the KP if they will make the commitment and ratify it. Only then was there a possibility to see if there could be a legally binding agreement under the Convention. The Convention cannot be re-written on the notion that the world economic reality has changed.

Grenada for the Alliance of Small Island States wanted a mandate for a comprehensive legally binding agreement that is ratifiable. It had submitted a proposal for such a new agreement under the Convention, which would not replace the KP.

Uganda supported the two-track approach and said that it was better to "deal with the devil you know than the devil you don't", referring to the KP. It said that some Parties said that the KP was good but they want to abandon it. It supported the need for the second commitment period under the KP and for non-KP developed countries (referring to the US) to make comparable mitigation efforts.

The **European Union** agreed with AOSIS for a comprehensive legally binding framework. It was willing to commit to a second commitment period as part of a wider legal framework under the AWG-LCA. It was in favour of a single legally binding outcome. It also stressed the need to take into account economic realities that have changed since 1992. It said that most Parties wanted such a framework and if there were some who do not want progress, there was a need to consider how to make progress and maintain a roadmap for that.

Norway, Switzerland, Australia and **New Zealand** made similar comments as the EU.

Ms. Maria del Socorro of Mexico facilitated the informal group and proposed that discussions proceed on 5 October.

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Developed Countries Blocking Progress on Key Issues

Panama City, 6 October (Meena Raman) – Mid-way in the climate change negotiations in Panama City, developing countries expressed deep concerns that some developed countries were blocking progress on key issues relating to long-term finance, adaptation and impacts of response measures under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA).

Frustration and exasperation ran high among many developing country delegations as movement on these key issues, critical for a balanced outcome in Durban, was being blocked as some developed countries did not want to engage with formal submissions by developing countries on these issues. Parties have therefore not been able to produce any negotiating texts on long-term finance, adaptation and impacts of response measures, which also dealt with the issue of unilateral trade measures. (See TWN Panama News Update 9 on the unilateral trade issue.)

As progress on these issues is blocked, the atmosphere in Panama does not bode well for the climate talks in Durban, with developing countries, led by Venezuela and supported by the Least Developed Countries, the Africa Group, the Alliance of Small Island States (AOSIS), China and Saudi Arabia, expressing the lack of good faith and political will on the part of developed countries to advance the decisions reached in Cancun last year on these issues.

In an emotional plea for progress, Gambia, speaking for the LDCs (at the informal group meeting on "legal options" held on 5 October) said that the confidence and trust that was built in Cancun was dissipating as developed countries were backtracking on the decisions reached there and were not translating their words into action. If this was the atmosphere here in Panama, it warned that it was difficult to make compromises in Durban at the forthcoming meeting of the Conference of Parties.

These views were expressed during the contact group meeting of the AWG-LCA held on 5 October to take stock of progress in the various informal groups, as well during an informal group meeting on "legal options".

At the contact group meeting, which took place in the morning, **Venezuela** said that developed countries were strategically blocking progress on finance, adaptation and in addressing the economic and social consequences of response measures by ignoring the formal submissions of developing countries which had textual proposals for decisions to be adopted in Durban.

Egypt, speaking for the **Africa Group,** said that the issue of finance was part of a comprehensive package for Durban and it was important to have a negotiating text on long-term finance and appealed to developed countries to be more constructive in this regard.

AOSIS, China and **Saudi Arabia** echoed the views of Venezuela and the Africa Group.

At the informal group meeting on "legal options" which met in the afternoon, Venezuela said that any legally binding agreement has to have good faith and the political will to respect the legal outcome. It said that some developed countries were stepping away from the Kyoto Protocol, the Convention and even from the "Copenhagen Disaccord". It said that the US at the finance informal group (in relation to long-term finance) was raising procedural issues and the European Union was asking to have a discussion on what climate financing was and there was no movement on any text in this regard. This was sad, it said, as if there was no finance, there could be no mitigation or adaptation and there was nothing to measure, verify or report (MRV).

Among the informal group meetings that were open to observers were the group on "legal options" and the group to address the “economic and social consequences of response measures”.

Intense exchanges took place in these two groups and there was no progress on any negotiating texts as there was no consensus among Parties.

Informal group on “legal options”

In the informal group on “legal options”, Parties were asked to focus on a menu of options available on the form of the legal outcome for the AWG-LCA. (See TWN Panama News Update 10 on the legal options issue.)

The facilitator of the session, Ms. Maria Flores del Soccoro of Mexico, circulated a paper on the menu of options which included the option for (i) a legally binding instrument and (ii) a COP decision.

Grenada speaking for AOSIS referred to its proposal for possible elements for a protocol or another legally binding instrument under the United Nations Framework Convention on Climate Change (UNFCCC) as the “agreed outcome” from the AWG-LCA.

The proposal by Grenada drew interest from several developed countries including the European Union, the United States, Switzerland and Norway.

China said that Parties needed to be clear on what the terms of reference was of this group. The mandate was to have continued discussions of the legal options with the aim of completing the agreed outcome based on the Bali Action Plan (BAP), the Cancun decision and submissions of Parties. It was not to create a new mandate or process. It said that Parties were discussing the legal options, which related to the procedural legal issues and not enter into the substance or content of the proposals, as it was only about the legal form to reflect the outcome of the negotiations under the AWG-LCA.

It reminded Parties about the history of the Bali negotiations where the original version of the BAP referred to reaching an “agreement” and was later revised to an “agreed outcome” through a compromise reached among Parties. On the various forms to reflect the results under the AWG-LCA, China was flexible on various legal options whether it was in the form of a COP decision, an implementing agreement under the Convention or even a protocol but that depended on the content and not the other way around and must relate to the full, effective and sustained implementation of the Convention.

The **United States** said it found common ground with the AOSIS proposal, which reflected symmetry in relation to the obligations of developed and developing countries. On the issue of “symmetry” the US said that this was needed so that Parties could solve the global problem of climate change where there was a need to build confidence that all Parties were acting. It stressed however that what was needed was for the “capture” of the largest economies, those that were responsible for 80% to 90% of the emissions. The content of the obligations was, however, not the same. While developed countries took economy-wide actions, major developing countries could take actions commensurate with their national circumstances. This reflected the “common” part of the principle of common but differentiated responsibilities and the “differentiated” was based on national circumstances. Any obligation to take mitigation action had to have the same legal character – it was “shall” for developed countries; it must also be “shall” for developing countries and this could not be conditional or contain escape patches. The need for funding to take mitigation actions did not reflect symmetry, it added.

The US also explained that another aspect that was important was the idea of “modernisation” of the UNFCCC. The world, it said, had changed since 1992 and as of 2009, 4 of the top 10 and 9 of the top 20 emitters of CO2 from fossil fuels were from non-Annex I. There were two ways to accomplish this modernisation and it could imagine either keeping the Annex I/non-Annex I approach or adopting a continuum approach. If it were to retain the Annex I/non-Annex I approach, there would need to be a way to move countries to Annex I upon meeting certain criteria just as under the Montreal Protocol, which was about “graduation”.

The other option would be to eliminate the Annex I/non-Annex I distinction and take more of a continuum approach. The continuum would apply common but differentiated responsibilities and respective capabilities, by reflecting the respective responsibilities and capabilities of the Parties along a spectrum, and their responsibilities would reflect where they stand.

Membership in the Annex I or non-Annex I categories would no longer determine such responsibilities. The US said these ideas were consistent with the UNFCCC as all Parties had legally binding obligations under Article 4.1 (b).

The **Philippines** in response said that the specific legal form depended on what Parties have agreed on in relation to the content. It said that it was not convinced that the Convention was not symmetrical. It said that Article 4.1(b) of the Convention reflected the word “shall” for all Parties and that the US could not choose to read the Convention in parts and not look at the entire context of the provisions of the Convention which had other articles relating to the mitigation commitments of developed countries as well as the need to provide finance and technology transfer to developing countries. The Convention was a legally binding instrument and had the element of symmetry as well as “differentiation”. In order to reflect the changing realities, Article 4.2(g) of the Convention provides for non-Annex I Parties who are interested in being bound to take commitments on mitigation to use this and there was no need for a new protocol for this.

Saudi Arabia said that it was important to recognise historical responsibility and that Parties know where most of the GHGs have come from in the past but the future was not clear. It echoed the view that it was premature to discuss the type of legal instrument needed without dealing with the content first.

Venezuela in reference to the issue of “major economies” said that the level of development has many criteria and is not only related to GDP per capita. It was not the mandate of the UNFCCC or the KP to resolve this issue.

India, in response to the issue of changing realities, said what was clear is that in the emissions of the past, a large part of this was due to developed countries and that was why there was a differentiation between Annex I and non-Annex I countries. It said that there was a need to continue discussion on the legal options but this depended on content, coverage, compliance and consequences. On content, the question was what was being covered. Was it only mitigation and symmetry or will it also cover adaptation, finance and technology transfer? In relation to technology transfer, the issue of intellectual property rights as a barrier is important and this was not even being discussed.

It said that on the issue of financial resources, India has to mobilise scarce resources and needed to address if it would spend money on poverty alleviation or on adaptation, given that 300 million people in the delta are vulnerable to sea-level rise and 400 million are affected by glacial melt. India asked if there was to be a treaty or a protocol, could Parties agree to ratify this. It said that there was a need for more clarity on the type of legally binding instrument Parties wanted.

Gambia, speaking for the **LDCs,** said that there was a need for a legally binding agreement on the two tracks (the AWG-LCA and the KP). The outcome under the AWG-LCA was contingent on agreement under the KP for a second commitment period. Under the AWG-LCA, the focus should not only be on the issue of mitigation but also on the other pillars of adaptation, finance, technology transfer and capacity building and if the focus was only on mitigation, the other pillars would be empty. The legal form was important but so was the substance.

The informal group will continue to meet on Thursday, 6 October.

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Statement by the Third World Network at the AWG-LCA Informal Group on Legal Options, 6 October 2011, Panama City

We do not support any outcome that undermines or terminates the Kyoto Protocol, or that enshrines a weaker system than the Kyoto Protocol in international law. A bottom-up domestic pledge-and-review system represents just such a weak, deregulated system. And the negotiations certainly seem to be headed in that direction.

Developed countries say that a new comprehensive treaty is necessary as the Kyoto Protocol only covers 27% of global emissions. But this was exactly why in Bali, a three-pronged approach was agreed to by *all* Parties, to deal with 100% of emissions from all countries – 1) Kyoto Parties would undertake emission reduction commitments under a second commitment period of the Kyoto Protocol, 2) the United States would undertake emission reduction commitments or actions in a comparable manner under the Convention (1bi), and 3) developing countries would undertake NAMAs under the Convention, enabled and supported by technology, finance and capacity building (1bii). That was only 4 years ago, but the goalposts are already being shifted.

In addition, a number of detailed studies have clearly demonstrated that developing country pledges amount to more mitigation than developed country pledges. So, the problem lies not with developing countries, and yet attempts are being made to shift the burden from developed to developing countries through a new treaty. The mandate of these negotiations is to *implement* the Convention, not to renegotiate it.

In this respect, we also do not support agreeing up-front to a legally binding mitigation treaty that will sit alongside the Kyoto Protocol (the so-called two-protocol approach), as it is likely to have the same effect of terminating the Kyoto Protocol, by legally superseding it. Such a treaty may provide a new ship for Annex I Kyoto Parties to jump to, thus rendering the Kyoto Protocol a meaningless shell. Unless there are assured and credible ways to safeguard against Annex I Kyoto Parties abandoning the Kyoto ship, this would mean agreeing up-front to the eventual demise of the Kyoto Protocol.

Attempts to re-negotiate Annex I and non-Annex I, and hence the Convention, are likely to lead to much further delays and risks the collapse of the system. Categorising countries as “major emitters” fails to take into account a fair and principled burden-sharing approach which includes historical responsibility and per capita emissions.

One African negotiator reminded me of the story of the dog and the bone – a dog, carrying a bone in its mouth, saw its own reflection in a river. It hastily dropped the bone it was carrying in an attempt to get the bone from the other dog it thought was carrying a larger bone. In doing so, the greedy dog lost the bone it already had, and watched it sink to the bottom of the river.

TWN
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Disagreement over Linkage between Mitigation Ambition of Developed Countries and Developing Country Actions

Panama City, 7 October (Lim Li Lin) – Disagreements arose between developed and developing country Parties over the insistence by developed countries to link discussions on their mitigation ambition to developing country mitigation actions at the meeting of the informal group on mitigation actions of developed countries under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) held on Thursday, 6 October.

Developed countries wanted to have the discussion on the ambition in a global context, and not just in relation to Annex I (developed) countries. In this regard, they supported a broader setting for the discussion. Most developing countries on the other hand insisted that the mandate of the group was to discuss developed country mitigation and not that of developing countries.

A summary paper was produced by the co-facilitators on "matters relating to paragraphs 36-38 of the Cancun Agreements" to facilitate discussions in the informal group. The session was co-facilitated by Karine Hertzberg from Norway and Jose Alberto Garibaldi Fernandez from Peru.

The co-facilitators' paper contains a summary of the discussions of the group on paragraphs 36-38 of the Cancun COP decision. The paragraphs concerned are:

"36. Takes note of quantified economy-wide emission reduction targets to be implemented by Parties included in Annex I to the Convention as communicated by them and contained in document FCCC/SB/2011/INF.14 (to be issued);

37. Urges developed country Parties to increase the ambition of their economy-wide emission reduction targets, with a view to reducing their aggregate anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol to a level consistent with the Fourth Assessment Report of the Intergovernmental Panel on Climate Change;

38. Requests the secretariat to organize workshops to clarify the assumptions and the conditions related to the attainment of these targets, including the use of carbon credits from the market-based mechanisms and land use, land-use change and forestry activities, and options and ways to increase their level of ambition;"

The co-facilitators' paper summarises the discussion of the group generally, and the discussion on quantified economy-wide emission reduction targets, level of ambition and accounting framework.

The **United States** said that the language on ambition needs to apply to developed and developing countries, as it is a global ambition gap. We are now in the Cancun mandate, and are discussing something different, it said. It said that the section on ambition in the summary paper implies some process to close the ambition gap, and some would see it as process matter in the context of the review. It said that it should be clear that the intention is not to mandate an immediate process now.

The US supported a technical paper to understand better the targets put forward. It said that there should be a common template-based approach for recording the assumptions behind the pledges, not the pledges itself, and that this was not part of any process, but for clarifying new information. It said that the IPCC serves as the common accounting framework under the Convention currently and that there was no convergence around having a common accounting framework.

It concluded it was looking for similar language on Annex I and non-Annex I activities, and that many of these issues cannot be resolved just in the context of Annex I countries, and that a broader setting to discuss these issues was necessary. In that context, it questioned the helpfulness of the listing by the co-facilitators at this stage.

Australia supported having a common space to talk about ambition as ambitious targets should be met by all "major emitters", not just Annex I countries. It said that there could be a technical paper on options to close the ambition gap, and this is a global gap that applies to all, not just Annex I countries. It said that the accounting framework should also apply to "major economies", to provide certainty and to understand what others are doing. It supported common accounting rules, subject to national circumstance, which would allow countries to come forward with more ambitious pledges. It also supported identifying a process moving forward.

Canada expressed similar views as the US and Australia.

China said that this discussion is on the mitigation of developed countries, and should not include developing countries, as paragraphs 36-38 of the Cancun decision were on developed country mitigation. It said that there are mechanisms under the Convention, and provisions for developing countries under separate articles. It said that there should be no conditions attached to the domestic mitigation pledges of developed countries. The listing under "level of ambition" in the co-facilitators' summary includes both developed and developing countries, and did not accurately reflect options for increasing the ambition of developed country mitigation. For example, supporting implementation of nationally appropriate mitigation actions (NAMAs) by developing countries has nothing to do with developed countries and should not appear in the listing. It stressed on the importance of closing the mitigation gap between developed country pledges and the range mentioned in the IPPC report, and on ways to do so.

Mali agreed that ambition in this context refers only to developed country Parties. It said that there should be a common understanding of those pledges and how they transform to tonnes of CO2 equivalent, and supported having submissions on that process in order to reflect that in our work. It supported a common accounting framework for monitoring progress, and comparability. It suggested that papers such as those by UNEP and the Stockholm Environment Institute could be synthesised to clarify the ambition gap, and what the implications of delaying are. Then, there should be a process to convert the assigned amounts into a calculation of the carbon budget, in order to understand the consequences on our economies and sustainable development, it said. It said that there should be a decision on a work programme based on this for next year which will also help the review process.

South Africa supported the idea that the technical paper needs to be translated into assigned amounts under a carbon budget, and that the amount in tonnes is required as this is the basis for comparability to quantified emission limitation and reduction objectives (QELROs) under the Kyoto Protocol. Without a clear and robust starting point, there will be no environmental integrity, and without a budget, there cannot be trade, it said. It said that we should have common accounting rules, and that there was no need to wait until Durban. It said that the African Group's proposals which are in the form of a detailed text have not been reflected in the co-facilitators' summary.

Saudi Arabia agreed that the discussion on the level of ambition cannot go beyond the mandate which is in respect of developed countries only.

Brazil expressed concerns with views that developed and developing country mitigation should be mirrored and needed a similar structure.

Bolivia said that other texts from the group on biennial reports and international assessment and review are much more developed, but are secondary issues. It stressed the importance of the work on the level of ambition. It said that QELROs are to be undertaken by Annex I Parties under the Kyoto Protocol, and not under the Convention unless a country is not a Party to the Protocol.

It said that the ambition gap must first be defined, and then how to share the burden between Annex I and non-Annex I Parties in a framework for equitable sharing defined. It said that non-Annex I Parties can undertake mitigation as far as it does not affect their sustainable development, and if they receive financial support. However, these issues are linked to discussions on shared vision and finance which are being blocked by developed countries. Even so, it said, non-Annex I Parties are doing more than Annex I Parties in terms of mitigation. Annex I Parties should not hide their own inaction behind non-Annex I Parties, it said.

On process issues, Switzerland requested the Secretariat to put together current knowledge on the ambition gap. Colombia said that it was important to have a paper on the ambition gap and ways of closing it. Chile asked what elements could be translated into a negotiating text. It said that the ambition gap should be closed and that this analysis should be done through the UNFCCC process, through a workshop or a technical paper, pulling in outside expertise for example from UNEP.

TWN
Panama News Update 14

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Progress in Panama but Big Challenges Ahead in Durban

Geneva, 10 October (Meena Raman) – The last day of the climate talks in Panama on 7 October under the Ad-Hoc Working Group on Long-term Cooperative Action (AWG-LCA) saw some progress in producing some texts by Parties to advance further negotiations in Durban, South Africa, where the talks will resume in late November.

Although the mood was generally positive that advances were made in producing texts in Panama on several key elements under the Bali Action Plan, big challenges remain in Durban to arrive at an agreed outcome on all the critical issues which are – shared vision; mitigation for developed and developing countries; mitigation related to forest activities; sectoral approaches; market and non-market mechanisms; economic and social consequences of response measures; adaptation; finance; technology transfer and capacity building.

At the closing plenary of the AWG-LCA, **Ambassador Jorge Arguello** of **Argentina,** speaking for the **Group of 77 and China,** said that "although there has been indubitable progress in the work in Panama", the Group had "concerns over the uneven progress in the negotiations and called for decisive leadership to ensure that all submissions from the Parties are discussed and that there is a positive basis for successful negotiations in Durban". He stressed that a serious imbalance in the progress of issues could not be conducive to a successful outcome that is comprehensive and balanced.

Arguello was referring to how there were draft texts or non-papers for negotiations in the case of several issues, but there was no progress on some issues such as that relating to economic and social consequences of response measures, which included the issue of addressing unilateral trade measures by developed countries on the grounds of climate change.

At a contact group meeting of the AWG-LCA held at noon before the closing plenary, facilitators reported on the outcomes of the respective informal groups.

In relation to the element of **shared vision,** Parties worked on the facilitator's notes, which led to the production of a non-paper for further work. The facilitator of the session welcomed more suggestions for further streamlining of the document in order to have a draft decision text.

(The divergences that arose in this informal group among developed and developing countries included the one over the scope of the shared vision. Developed countries wanted the focus to be only on the issue of determining the long-term global goal for emission reductions and the time frame for global peaking. Developing countries on the other hand wanted the shared vision to also operationalise the principles of equity and historical responsibility including through having a fair sharing and equitable allocation framework in relation to emission reductions, and the establishment of global goals for finance, technology transfer, adaptation, and capacity building. In addition, developing countries also wanted the issue of unilateral trade measures and intellectual property rights to be addressed.)

On the **mitigation** of **developed countries,** the co-facilitators reported progress in textual work and in-depth discussions on biennial reports and international assessment and review (IAR). A non-paper was prepared on "possible elements of draft guidelines for biennial reports" and another non-paper on "possible elements of modalities and procedures for IAR". The co-facilitators said that discussions were also held on the pledges of developed countries, their ambition level and the accounting framework (relating to paragraphs 36-38 of the Cancun decision) and a co-facilitators' summary of the discussions was produced. The co-facilitators acknowledged that the co-facilitators' notes (regarding paragraphs 36-38) were less elaborate than the other two non-papers and were not as mature (in terms of the discussions).

(Many Parties recognised the existence of an ambition gap in relation to the pledges of developed countries and the need to raise the ambition level. However, developed countries insisted on the consideration of this issue in the context of encompassing all Parties, including developing countries with a significant share of emissions. Developing countries on the other hand were opposed to the attempts by developed countries to link their ambition level to that of developing countries.) (See TWN Panama Update 13 in this regard.)

The co-facilitators said that Parties had requested a second reiteration of these non-papers, which would be done by 14 October. Parties were asked to provide further concise draft proposals, additions and deletions including any structural changes to the non-papers by 21 October. They said that the non-papers would be revised on the basis of submissions by Parties latest by 18 November.

The situation was similar in the case of mitigation actions of developing countries. Parties had discussions on biennial update reports (BURs); international consultations and analysis (ICA); the registry to record the nationally appropriate mitigation actions (NAMAs) seeking international support; and the pledges of developing countries including the assumptions underlying them (which related to paragraphs 48 to 51 of the Cancun decision).

According to the facilitators, 4 non-papers were produced on the "possible elements of draft guidelines for biennial update reports", "possible elements of modalities and procedures for international consultations and analysis"; the registry and a co-facilitators' summary of the discussion related to paragraphs 48-51. Parties asked for a second iteration of these documents. The co-facilitators welcomed further specific, concise drafting proposals, additions, deletions and suggestions for structural changes to the non-papers which are to be submitted by 21 October. The revisions would be made before regional groups meet in Durban by 18 November. It was also acknowledged that the summary note on paragraphs 48-51 was less mature compared to the others and revisions of the summary note should reflect this.

On the issue of **reducing emissions from deforestation and forest degradation in developing countries (REDD-plus),** according to the report back by the facilitator of the informal group, Parties had explored financing options for results-based actions in implementing forest-related activities and considered what results-based actions were. A vast majority of Parties wanted a decision on REDD-plus finance for its full implementation. The facilitator was able to produce a non-paper, a "placeholder text" which was an outline rather than a negotiating document. The facilitator asked Parties to submit views and proposals, which the secretariat will compile so that Parties can begin work in having a full text for negotiations in Durban.

On the issue of **"cooperative sectoral approaches",** the facilitator of the informal group reported that Parties discussed the general framework, agriculture and international aviation and shipping. A consolidated text provided by Parties was produced in which the options reflected captured a divergence of views. (Some Parties wanted decisions on agriculture and international aviation and shipping while others did not want any decision in this regard.)

On **"various approaches including market and non-market-based mechanisms"**, a draft text was produced which contained a compilation of submissions from Parties which, according to the facilitator, provided ingredients for negotiations. Parties could review the text further and see how streamlining could be done. (One major area of disagreement among Parties is whether offsets should be allowed in relation to market-based mechanisms.)

On the issue of the **"economic and social consequences of response measures"**, the facilitator said that there was a need to continue discussions further for a textual note. The facilitator prepared a note under his own responsibility, which summarised the discussions and there were also 3 submissions from developing country Parties as draft decision texts. (This was one of the most controversial issues during the Panama meeting where developed countries were opposed to any texts for negotiations. They did not even want the submissions of developing countries to be compiled into a document. One issue which was firmly resisted by developed countries and Singapore was that of "unilateral trade measures" as they insisted that the UNFCCC was not the proper forum to discuss this matter but the WTO.) (See TWN Panama Update 9 on this issue.)

On **"adaptation"**, the facilitator reported that a consolidated text was produced as the basis for further discussions, which was a well-advanced draft decision text. The facilitator hoped to see further common ground reached on the composition of the Adaptation Committee. (Parties had disagreements on how the Committee is to be composed.)

As regards the issue of **"finance"**, the co-facilitators reported that Parties discussed "long-term finance" and the "Standing Committee on Finance". As a result of time constraints for further discussions, the co-facilitators said they would incorporate Parties' comments in the meetings along with additional submissions into a draft text which will be presented for negotiations. All the submissions by Parties as conference room papers would still be on the table. They said that there were different views on long-term finance. (Some developed countries, including Australia, Japan and Canada, were initially opposed to any text on long-term finance, but relented after insistence by developing countries.)

As regards **technology development and transfer**, the facilitator reported that based on the submissions of the G77 and China, the European Union and the joint-submission by Japan and the United States, he produced a draft decision text for negotiations. He said that Parties engaged in a first reading of the text and there was a good exchange of views on the governance structure of the Climate Technology Centre and Network (CTCN) and on the criteria for the host of the CTCN. He said that there were divergences over the role of the Technology Executive Committee (TEC) in governing the host of the CTCN and this was an issue that still needed to be resolved.

(Developing countries want the CTCN to be governed by the TEC while this was opposed to by developed countries.) The facilitator said that further technical work was needed to enhance the clarity on the call for proposals to host the CTCN and criteria for evaluation in this regard. The text was detailed on the international selection procedure and he said that Parties have to make an effort to hammer down concrete ideas.

On **capacity building,** the facilitator reported that 3 groups of Parties had proposals for a draft decision text, which were compiled for further discussions.

As regards the issue of the "**review to define its scope and development of its modalities"** the facilitator reported that a non-paper was produced and hoped that there would be agreement on the scope of the review. (Parties were divided on the scope of the review as the Alliance of Small Island States wanted the review to only be confined to a review of the adequacy of the long-term global goal in relation to the temperature goal while a large number of developing countries were in favour of a review of the adequacy of the implementation of the commitments under the Convention as a whole.)

On the **legal options** for the agreed outcome of the work of the AWG-LCA, the facilitator reported a divergence of views on the matter. Parties are to continue discussions on the menu of options. (This issue was one of the "hottest" issues in Panama, as some Parties wanted Durban to launch a new mandate and process for a new legally binding instrument under the Convention while other Parties wanted the content of the outcome to be agreed to first before determining the legal form of the outcome.) (See TWN Panama Update 10 on this issue.)

Following the report back from the contact group, Parties expressed their views on how they saw the Panama meeting at the closing plenary held on 7 October.

The last day of the Panama meeting also saw the launch of an alliance between the African Group, the Least Developed countries (LDCs) and the ALBA group of Latin American countries to ensure that the Durban climate conference delivers outcomes that strengthen the climate regime, cut emissions and deliver on climate finance. At a press conference held on 7 October, the leaders of these developing country groupings announced that they have developed a "Statement of Common Position" outlining areas of unity and defining a common position covering key areas of the negotiations.

The **G77 and China** at the closing plenary said that the (Panama) session proved to be of great added value, with positive results in terms of making concrete progress in order to arrive in Durban with greater clarity, an improved mutual understanding and concrete texts to work on, in several cases. The Group reaffirmed the strong commitment of the members to move forward in Durban in both tracks (of the United Nations Framework Convention on Climate Change and its Kyoto Protocol), based on some fundamental tenets: the Convention and the Kyoto Protocol must be preserved. The Bali Road Map and the two-track negotiation are to be followed, and the Cancun decision rendered operational. It said that multilateralism is a political tool that has proved beneficial to all and must be safeguarded. The second commitment period (for Annex I Parties under the KP) is paramount for the G77 and China. Efforts must be made in order to achieve its adoption.

The G77 and China expressed that in Durban, there must be a fair and equal treatment of all issues that are important to all Parties. A serious imbalance in the progress of issues can clearly not be conducive to a successful outcome that is comprehensive and balanced.

The Group was ready to work on the draft negotiating texts on the very important issue of **finance**, those of the Standing Committee and long-term finance, both crucial enabling means of implementation for developing countries. It is clear that without financing, including for technology development and transfer and capacity building, the extent to which developing country Parties will be able to effectively implement their commitment under the Convention will be directly affected, it said.

The same applies to other new responsibilities, such as measurement, reporting and verification (MRV) of nationally appropriate mitigation actions of developing countries (NAMAs), that should be accompanied with clear indications of how much, how, and when new financial resources would be provided to developing countries, said the G77 and China. The oversight of the implementation of commitments related to financing, technology development and transfer and, in particular, adaptation should be ensured through the Standing Committee. Long-term finance would include the initial capitalisation of the Green Climate Fund and its predictable financing so that it can become operational in Durban.

Regarding **mitigation**, the G77 and China believed that the level of engagement in mitigation was positive especially in the mitigation actions of developed countries and that of developing countries, but insufficient in others, such as the social and economic consequences of response measures. The Group highlighted the need for balance, both within mitigation and between mitigation and other building blocks, including adaptation and financing. It called for the willingness of Parties to engage on concrete text and good faith must exist from all Parties and on all issues.

In connection to the discussions on the development and **transfer of technologies**, the G77 and China said that negotiations were positive, and hoped that the two outstanding issues remaining can be resolved in Durban, so that the Technology Mechanism can be fully operationalised.

The Group of 77 and China emphasised the importance of the issue of **economic and social consequences of response measures** for all developing countries, and therefore, the need to give full consideration under the AWG-LCA to what actions are necessary to meet the specific needs and concerns of developing countries arising from the impact of the implementation of response measures. In this respect, it expressed its disappointment at the unwillingness of developed countries to make progress in Panama on this issue in the AWG-LCA, which led to not having an outcome on this issue during this session.

The **Democratic Republic of Congo,** speaking for the **African Group,** said that it was concerned that progress in Panama has been uneven on different issues. On some, there was considerable movement, on others some movement and on others, the negotiations had almost ground to a standstill. It said that there was foot-dragging by some Parties.

It was concerned in particular that there has been inadequate progress on finance and, under the other track of our negotiations, on mitigation commitments by Annex I parties under the Kyoto Protocol. The African Group said that we cannot build a table on two legs. There was a need to ensure strong outcomes on both tracks and all pillars of our negotiations – particularly the two key commitments of Annex I countries – mitigation and finance. On mitigation, we need to increase the ambition of Annex I mitigation targets across the board. In particular, work under the AWG-LCA must focus on converting Annex I non-Kyoto Parties in converting targets into a carbon budget and a common accounting framework, it said.

There was also a need to establish a robust MRV regime to ensure environmental integrity and comparability of efforts among Annex I Parties and avoid double counting. This should serve as an early warning mechanism in tracking mitigation and support.

On finance, we need progress on the sources and scale of public financial resources to be provided by developed countries for the period commencing in 2013, on enhanced transparency in the provision of new and additional financial resources through a common reporting format, and on the operationalisation of the Green Climate Fund and the Standing Committee on Finance. It expressed concerns that it took most of the week here in Panama to start work on a text. Adaptation is a priority for Africa and it called on developed country Parties to urgently scale up support for the implementation of adaptation measures and plans.

Ecuador, speaking for the **ALBA**, was concerned that developed countries who were clamouring for a legally binding outcome under the AWG-LCA were themselves not respecting the law in not making their further commitments under the Kyoto Protocol. It said that there was a need for a clear decision on the provision of long-term finance and it could not accept the excuse that there were not enough resources when billions of dollars were being used to save banks and on war.

Saudi Arabia, speaking for the **Arab Group,** expressed concern that developed countries were impeding negotiations on long-term finance. In relation to the informal group on economic and social consequences of response measures, there was a total rejection of all texts by developing countries, which did not lead to the required balance for a comprehensive outcome.

Grenada, speaking for the **Alliance of Small Island States,** did not support the efforts by some Parties to rewrite the Convention and abandon the Kyoto Protocol. It wanted a clear and unambiguous mandate for a new agreement under the AWG-LCA, while expecting developed countries to fulfil their commitments under the Kyoto Protocol. In relation to the issue of the review, it said that it will resist attempts to broaden the scope of the review beyond the adequacy of the long-term global goal related to limiting the temperature rise. It also called for the rapid capitalisation of the GCF.

Gambia, speaking for the **LDCs**, said that many Parties were willing to move towards a legally binding instrument under the Bali Action Plan but such an instrument must be binding and capable of enforcement on all the Bali pillars.

The **European Union** welcomed progress on many issues, including on mitigation ambition, clarifying of the pledges (for emission reductions), a common accounting framework and enhanced MRV. The EU emphasised the need for a single legally binding instrument that includes all the essential elements of the KP and said that it was willing to consider a second commitment period as part of a wider outcome including a comprehensive framework for all major economies. It said that Durban should agree on a mandate with a clear timeline to negotiate a new protocol. It said that further progress was needed on identifying the sources of long-term finance from public finance, including innovative sources, and private finance. Market mechanisms were part of the solution and an agreement on new market mechanisms must be a part of the Durban package.

TWN
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Developing Countries Forge New Alliance to Save Climate Regime

Geneva, 10 October (Meena Raman) – The African Group, the Least Developed Countries and the ALBA group of countries launched an alliance in Panama City on the side-lines of the climate talks to "save the climate regime and ensure success in Durban" at the forthcoming meeting of the Conference of Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC).

At a joint press conference held on 7 October, news of the alliance was announced. The African Group, a grouping of 53 African countries, was represented by Mr. Tosi Mpanu Mpanu of the Democratic Republic of Congo, the LDC Group comprised of 48 countries was represented by Mr. Pa Ousman Jarju of Gambia and the Bolivarian Alliance for the Peoples of Americas (the ALBA Group) comprised of 8 countries was represented by Venezuela's climate envoy, Ms. Claudia Salerno Caldera.

Mr. Mpanu Mpanu said that the groups had come together to enshrine their unity in making Durban a successful COP and to address the core issues that united the groups.

Ms. Caldera said that their unity was for achieving a common goal to achieve the ultimate objective of the Convention in saving humankind, the planet and mother earth. She said that the groups came together in response to the Panama climate change meetings and to ensure progress in the negotiations in good faith.

Mr. Ousman Jarju of Gambia referred to the "Statement of Common Position" adopted by the 3 groups and highlighted some specific aspects. He said that cooperation was necessary for Durban to strengthen a science-based and fair outcome for the climate regime and reiterated that the UNFCCC and its Kyoto Protocol constituted the fundamental global legal framework on climate change.

He said that the negotiations must produce two outcomes in Durban in line with the Bali Roadmap, for an agreed outcome to implement the Convention and a second and subsequent period of the Kyoto Protocol. These outcomes must be ambitious, balanced and based on science, equity and the rule of law. All actions or measures related to climate change must be in full conformity with the principles and provisions of the Convention, in particular those of equity and common but differentiated responsibilities and respective capabilities. He said that it is imperative that developing countries work in unison to advance a strong common position to ensure the realisation of the shared objectives and for the full, effective and sustained implementation of the Convention and its Kyoto Protocol.

On the state of play of the negotiations, Mpanu said that two major gaps had to be addressed in relation to mitigation and finance. On the mitigation gap, he said that there was a need to decrease emissions by 12 gigatonnes CO_2 equivalent by 2020, if the temperature rise is to stabilise at 2 degrees C. Developing countries are contributing to a reduction of about 5 gigatonnes while developed countries to only a 4 gigatonne reduction, showing that developing countries were doing quite a lot.

On the finance gap, he said that developed countries had promised fast-start financing (of USD30 billion between 2010 to 2012) but this has not been fast nor has it started. On long-term finance, the USD100 billion per year by 2020 as agreed to in Cancun was just the floor as a lot more was needed, including for adaptation. There is a need to know what will happen between 2013 and 2020, he added. He also stressed the need for a decision under the Kyoto Protocol for a second commitment period and that Durban must not become the graveyard for the Kyoto Protocol.

Mpanu also expressed concerns that the negotiations in Panama advanced on the issue of mitigation but there has been no progress on finance. It was important to adopt an agreement in Durban and there was no need for standing ovations but for developed countries to show good faith and leadership in the negotiations, he said further.

On the negotiations in Panama, Ousman Jarju said that at the beginning of the week, there was foot-dragging on the part of developed countries in relation to the finance issue, but the G77 and China was able to send the right signals to ensure that there were negotiating texts on the table. He reiterated that without a commitment by Annex I Parties to a second commitment period under the Kyoto Protocol in Durban, it will be hard for progress under the Convention and he hoped developed countries realised the implications of their position in this regard.

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Strong Call for Decision on Funding for Forest-related Activities

Panama City, 10 October (Marjorie Williams) – A vast majority of Parties at the informal group on reducing emissions from deforestation and forest degradation in developing countries (REDD-plus) supported a decision in Durban to finance its full implementation.

Parties explored financing options for results-based actions in implementing forest-related activities and considered what results-based actions were. Following the informal group meeting, the facilitator, Mr. Antonio La Vina of the Philippines, was able to produce a non-paper which was a "placeholder text" which was an outline rather than a negotiating document. The facilitator asked Parties to submit views and proposals, which the secretariat will compile so that Parties can begin work on having a full text for negotiations in Durban.

The informal group on policy approaches and positive incentives on issues related to reducing emissions from deforestation and forest degradation in developing countries (REDD-plus) had its third meeting on 6 October. The key points under discussion were: (1) diversity of sources for REDD-plus finance, (2) the definition and scope of result-based activities and actions and (3) the linkage with the Green Climate Fund (GCF).

All Parties agreed that there should be a diversity of sources of funding for REDD-plus activities, including public and private finance, with most developing countries stressing for public sector funding to be the major source of funding and the private sector funding being complementary. Many developing countries (including Ecuador, Guyana, India, Indonesia, and the Philippines) agreed that there should be a REDD-plus window built into the institutional framework of the GCF.

Brazil on the other hand did not support a separate window for REDD-plus in the GCF but said that funding for forest-related activities could come under the general mitigation window. Japan however saw the private sector and the market as being the main source of funding for the full implementation of REDD-plus activities.

Many countries also said that results-based activities should not only be confined to looking at forest carbon stocks but also encompass the role forests played including in adaptation, biodiversity conservation and the provision of ecological services.

Papua New Guinea said that on the diversity of sources for funding, the public source could not do it alone. PNG noted that the financial crisis in the European Union and the United States and their resort to stimulus for their economies made it difficult for them to provide adequate and sustainable resources. Hence, there was a need for private sources including market sources. It also said that these were options and could not be imposed on all countries. It further noted that there was also a need for a robust measurement, reporting and verification (MRV) process that complied with international standards and safeguards. On the issue of the scope of results-based action, PNG said that it should include conservation management and forest stock as well as wider ecological services of the forest. On links with other institutional bodies such as the GCF, it noted that the Transitional Committee was dealing with that and therefore, this group should focus on REDD-plus but called for an independent window under the GCF for REDD-plus, which addresses both adaptation and mitigation.

Guyana also said that given the macroeconomic problems of Western governments, the sources of financing for the full implementation of REDD plus are twofold, public and private. It said both are necessary and complementary. It believed that public sources of finance would be the vehicle for incentivising the majority of forest efforts while private or market sources would contribute to financing other REDD-plus activities, such as services. It wanted a voluntary and flexible financing arrangement.

The **European Union** in its intervention agreed to the chair having the mandate to prepare text. It supported a diversity of sources of funds for REDD-plus. It said the majority of public funds should be sourced through bilateral and multilateral arrangements. It noted that the G20 has undertaken interesting work on possible sources of funds from innovative sources. It said that different sources of funds will focus on different aspects of REDD-plus and called for strict accounting rules in forests, saying that having solid national REDD-plus policy was important. It said that the results should be assessed against social and environmental concerns and safeguards and that effectiveness required broad local participation. For the EU, what was unique in REDD-plus finance was that it goes beyond mitigation to include adaptation, biodiversity conservation, diverse benefits to the ecosystem etc. It said that REDD-plus activities attracted the active interest of the private sector. It noted that the issue of results-based payments was more of a general finance discussion and that the GCF should provide recommendations about how to fund REDD-plus activities.

India remarked that funding for REDD-plus should be from all kinds of sources, both public and private, with public sources being both through bilateral and multilateral, whereas the private sources should be market-based. India further noted that both public and private should come under the UNFCCC channels and framework. India also disagreed with the EU about the scope of results-based action belonging to the general finance and that it was a matter that should be discussed within the context of the AWG-LCA.

It noted that results-based activities is different from the different phases of REDD and that a larger quantum of resources would be needed. India supported the call for a REDD-plus window in the GCF.

Norway supported the call for funds from a diversity of sources. It however cautioned against running to the market and to offsets as there are many other options to be explored including innovative financing. It cautioned that there are certain conditions to be met in relation to relying on the market with regard to environmental integrity. It said that broad access to REDD-plus has to be worked on in order to build up a robust system for safeguards. It noted the safeguards and the MRV discussion under the subsidiary body and looked forward to the discussions of the expert meeting. The scope of results-based actions must cover all five activities of REDD-plus. With regard to institutional linkages, Norway wanted to see the overall picture including the GCF. It also stressed the importance of ensuring environmental integrity and multiple benefits of REDD-plus.

Indonesia said that the finance should be from multiple sources – public and private and market sources being complementary. It said that all activities should be covered. It cited the unique nature of REDD-plus which included a number of dimensions; it was not only about forest products but also services. It supported a window for REDD-plus in the GCF and implored the group to continue to consider all possible resources.

Ghana supported a variety of financial sources, both public and private. It said that results-based action should cover all five activities and be consistent with real and variable computed reference level, MRV compliance, respect for safeguards in terms of community participation and environmental integrity. It noted the uniqueness of REDD-plus finance and supported the call for a window in the GCF. Ultimately, it said that REDD-plus action is dependent on adequate financing.

China supported a decision regarding financial sources and activities. It said that the scope of finance for REDD-plus should follow from the Cancun decision on scope. It also supported a REDD-plus window in the GCF.

Sudan in its intervention said that provision of financial resources must be transparent, measurable and mainly from public sources, complemented by private sources.

Australia acknowledged the unique status of REDD-plus and recognised the need for different sources of finance, both public and private. It also noted the need for swift and transparent disbursement of funds and that the private sector will be critical.

El Salvador said that more discussions and clarification on the linkage of REDD-plus to adaptation are needed. It noted that this was a critical linkage that fitted directly into the issue of restoration and enhancement of carbon stocks. It noted that in other forums (such as the Convention on Biological Diversity) the topic of restoration was included as an important issue. It urged that the chair's non-paper include this issue. It ended by highlighting that forestry was important to the security of livelihoods.

The **Philippines** supported a diversity of sources public and private, but it noted that for some aspects of REDD-plus, the bigger part is to come from public sources. The Philippines said that there was a need to explore more creatively the different sources of private funds as it could not simply be carbon offsets. There was a need to further elaborate what are private sources. On the matter of results-based activities, the Philippines remarked that a full range of option needs to be supported. It noted that results need to address the drivers of deforestation, the issue of opportunity costs in addressing the drivers of deforestation, land tenure, and gender consideration (in terms of equitable sharing of resources). On the matter of safeguards, the Philippines noted that the readiness phase shows that a lot of resources are needed. It pointed out that it was important to go back to the baseline issues. Hence, results-based actions are not totally separated from the earlier phases. There are lessons to be learned that will impact the third phase. As with the many other developing countries, the Philippines supported a window in the GCF. It also gave the mandate to the chair to prepare a placeholder text.

Ecuador emphasised the urgency of the decision in Durban on financing short, medium and long term (that is predicable). It said that it has almost exhausted its funding and without further support, it could not achieve activities in a timely manner. Ecuador supported various sources of funds as well as a window in the GCF.

The **United States** said there was a need for a variety of sources to meet the diversity of needs and action for REDD-plus. With regard to results-based approaches, it said that it did not want to duplicate what is happening in other fora. It remarked that there were many options to be explored including the GCF. It said a window is a narrow element of the wider architecture. It said that there was a need to attract the private sector to the table to incentivise it. It called for using public funds to leverage the private sector.

Thailand supported public and private sources of funding and also supported a window for REDD-plus in the GCF.

Vietnam also supported a diversity of funding for REDD-plus including public and private. On the scope of results-based approaches, it said that it was important to ensure that local communities have adequate encouragement to participate in activities. It said there is a consensus for the full implementation of REDD-plus and proposed that Durban decide on the financial mechanism.

Japan also acknowledged the uniqueness of REDD-plus and said that the private sector and the market are the major sources of finance with the public (in the form of bilateral and multilateral support) being complementary. Japan also supported the GCF to support the first two phases of REDD-plus (being readiness and demonstration projects). This would be dependent on the design and business model developed by the Transitional Committee. It raised concern about the burden of innovative finance (in terms of revenue sourcing) on industry.

Costa Rica highlighted some of the main elements on the particularity of the REDD-plus financing mechanism as including the potential to promote rural development, involving local and indigenous peoples, biodiversity co-benefit, synergy with other international objectives such as biodiversity, forest recovery and contribute to adaptation. It noted that REDD-plus is a mechanism with the full potential to contribute to the sustainable development objective of the Convention.

Brazil said that funds to developing countries may come from a variety of sources. It did not support a separate window for REDD-plus in the GCF but wanted it to be part of the mitigation window. It said that public finance should be the main source of funding for REDD-plus activities. It said that resources should be enough to guarantee that results-based actions would be feasible in all countries.

The following countries explicitly gave the chair the mandate to prepare a placeholder text for Durban: Brazil, Ecuador, Guyana, Norway, the Philippines, and Thailand.

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Developed Countries Table Proposals on Finance After Initially Blocking Progress

Geneva, 11 October (Marjorie Williams) – The last meeting of the informal group on finance under the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) held on 7 October 2011 saw proposals by developed countries to the draft negotiating text on long-term finance, after initially blocking such a text in the previous days.

The informal group, chaired by co-facilitator Mr. George Børsting (Norway), focused discussion on long-term finance. During the meeting developing country Parties welcomed the joint-submission by Australia, Japan and Canada to the negotiating draft text.

Agreement was previously reached on a consolidated draft negotiating text on the issue of the Standing Committee. Both the Standing Committee and long-term finance for the Convention are strong positions of the developing countries in the finance negotiations under the AWG-LCA.

The developing countries aimed, at this last meeting, to have draft negotiating texts on these two issues by the end of the Panama session, in order to come out with decisions in Durban.

In presenting their submission, **Japan** noted that of the seven paragraphs, 5 replicated parts of the Cancun Decision 1 CP 16, with slight modifications (substitution of the word "decision" for "re-affirm"). Japan said that the submission had two additional paragraphs on "sources" and on "gaps", which it hoped would contribute to the work and give Parties a better picture on long-term finance. (Paragraphs 4 and 6 of the joint-submission drew much flak from developing countries.)

Paragraph 4 states as follows – "Recognises that each Party determines the mode and source of its contributions in support of the goal of mobilising $100 billion …."

Paragraph 6 states as follows – "Emphasises the importance of continuing to provide ongoing support beyond 2012 to address the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, such as LDCs, SIDS and Africa."

Japan said that their contribution aimed at giving the Parties a better picture of long-term finance and that the intervention was meant to allay developing countries' concerns that there would be a gap in financing after the fast-start period ended in 2012 and up to 2020, as well as to address the concerns of the most vulnerable countries, particularly small island countries, LDCs and Africa.

All Parties expressed appreciation for the joint-submission and said it built upon the growing goodwill emerging in the group. However, the content of the submission generated a great deal of disappointment and frustration among developing countries.

Developing countries' interventions pointed out that both paragraphs 4 and 6 did not seem to present much that was new and were mainly preambular in nature, with paragraphs containing vague language about continuity beyond 2012.

Developing countries also took issue with Japan's proposal that the entire submission be included, as submitted, in the consolidated text. Developing countries, as a whole, were adamant that this would be a non-starter and strongly pushed back on this intention. Brazil said that Japan was trying to block the progress of the group by setting back the discussion. Ultimately, Australia, Canada and Japan backed down on their demand and respected the consolidated draft text.

Australia in commenting on the presentation of their joint-submission by Japan said that it was a tangible sign of commitment to continue the conversation. It pointed out that Australia was committed to the goal of USD$100billion by 2020.

The **Philippines on behalf of the G77 and China** said that the Group had not had enough time to study the joint-submission and consult on the matter. It said that some of the text referenced in the submission, which was taken from the Copenhagen Accord and the Cancun decision, was distorted and was not in accordance with the relevant provisions of the Convention.

Colombia, referring to paragraph 6 of the joint-submission, said that Parties should not reopen the Cancun decision, but build upon it. (Paragraph 97 of the Cancun decision does not confine funding to LDCs, SIDS and Africa.)

Egypt also raised questions about paragraph 6 of the joint-submission. It said that the text looked like a mix between paragraphs 95 and 97 of the Cancun decision. It said there was no recognition of the balance between adaptation and mitigation and that the text read as if continuous support would only be provided for urgent and immediate needs. Egypt posed the question as to whether the text meant that only urgent and immediate needs will be covered. It said that the paragraph acknowledged the needs of developing countries, but this needed to be discussed hand-in-hand with sources and scale of finance.

Barbados said the joint-submission, which followed the lead of the EU in submitting text to the group, sent a strong political signal on the willingness to engage on the issue of long-term finance, an important issue for the group. It said that there is no sacred cow in terms of what should be discussed. (This was in reference to the unwillingness of developed countries to discuss long-term finance at the start of the Panama meeting.) It said that it supported the reference to the GCF in the submission but pointed out that the group needed to go beyond general references to the key plank of the architecture. Barbados said that negative messaging (that had been circulating in the corridors of the Panama) was troubling and that there was a need to ensure the GCF was operationalised by and become fully operational after Durban. It said that it was key that the developed countries support the design process and the capitalisation of the fund.

New Zealand supported the joint-submission and did not see it as re-opening Cancun but rather re-affirming it.

Saudi Arabia said the joint-submission was simply a listing of elements and was primarily of a preambular text in nature, which communicated no decision. It said that paragraph 1 simply referenced the provisions of the Convention but did not cite the specific relevant articles. It also queried whether paragraph 5 of the submission (that mentioned "significant share" of new multilateral funding for adaptation) meant that there would be bilateral and unilateral flow outside of the GCF.

The **United States** said it appreciated and supported the joint-submission and the concepts within it. It said that it was important for everyone to understand where Parties were on this topic and that it may have a proposal on this issue before the Durban COP begins.

Malawi, on behalf of the LDCs, said it supported the views expressed on the joint-submission by all the developing countries. It said that the submission told the group what it already knew. What it expected was for Parties to go further and interpret paragraph 97 of the Cancun decision. The joint-submission did not tell anything and it did not make any difference.

In responses to the comments from the group, Japan said that it was convinced that the submission had value and requested that the submission be included, as a whole, in the revised consolidated chair's text as one block of option (it did not want the paragraphs divided and scattered through the text) so that later in Durban there can more focused discussion. It said that it wanted to assure the group that the proponents of the submission were ready to continue to deepen this discussion. It said that the submission reflected and tried to honor everything in the Cancun decision. It said paragraphs in the submission which received many comments by the group were meant to observe the delicate balance of the Cancun agreement. It said the group was re-emphasising its commitment to continue support beyond 2012 and this was the political message.

Australia said that the submission could be understood by reference to the paragraphs of the Cancun Decision.

Nicaragua said that the submission sought to draw attention away from the source of long-term finance, as there was nothing new in it.

The remaining time of the meeting was devoted to a general feedback discussion on the AWG-LCA finance co-facilitators' consolidated draft text. In this context, developing countries raised a number of critical points about the structure, prioritisation and emphasis of certain points of the draft texts.

The **Philippines** noted that there had not been time for the **G77 and China** to reflect on the text but it would give some preliminary reflections. The Philippines raised questions about the options listed in the document, noting that some items listed as options were not really options, while some items presented as options were not much differentiated from other options so they presented no real choice. For example, it said that one option presented simply affirmed the text in the Copenhagen Accord and another was the same but differently presented in the Cancun decision. The Philippines also said that there needs to be attention to physical and economic vulnerabilities and that the specific needs of countries in each situation had to be taken account of.

The Philippines also said that there was a need to clarify the distinction between how funds are provided and where they are coming from. It further noted that the options were focused on adaptation but there was no discussion on financing for nationally appropriate mitigation actions (NAMAs) of developing countries. It wanted clarity on the source of funding and said that a wide variety of public and private sources was not identical to innovative sources. The first option listed in the co-facilitators' consolidated draft, the Philippines said, should be public sources (as this is the main source of funding). It said that commitments are made by governments and not by innovative sources. The prioritisation of sources is important and it should be primarily public sources.

In commenting on the co-facilitators' consolidated draft text, **India** said that the document should start with re-affirming the commitment to long-term finance and then move to principles followed by sources and modalities of long-term finance. It said that the discussion on innovative sources of finance and the private sector involvement should be later in the document. India said that there should be a section on the uses of the money as this was also important and that usage had to do with direct access and equity. It further said that the group had done good cooperative work and it emphasised that the work on finance should be seen in the context of a global public good.

On the co-facilitators' consolidated draft text, the **European Union** said that it was not sure that the structure of the document was perfect for moving forward but would be worked on in Durban, by re-grouping key themes and maybe with different options. It further said that not all paragraphs without options are agreed to by the Parties.

Australia said it was not sure about the content and clarity of the text and that it wanted its joint-submission with Canada and Japan reflected in the text.

Barbados speaking for **AOSIS** supported India's proposal on structure. It said there was a need to address gaps and initial capitalisation. These items should be grouped together. As with the Philippines, it raised the issue of the placement of preambular paragraphs and operational paragraphs. It said that the text on pledges should have been in operative paragraphs and that this encourages other developed countries to make pledges toward the GCF.

Japan said that there was a serious problem of structure with regard to the inclusion of the seven paragraphs of the joint-submission (with Australia and Canada). The group did not wish to have their 7 paragraphs scattered around in the preambular parts and said that in the existing text there were paragraphs with ideas that the group did not want to support. It said that it wanted a more accurate reflection of the different proposals in order to make it clear that there are important proposals.

Egypt supported the interventions of the other developing countries. It noted that the consolidated text provided a good basis for the road to Durban. It said that there was a difference between compilation and consolidation and that clustering is important to see different options.

Brazil, China, Ecuador, Guatemala and Peru supported Egypt's call for a consolidated text and not a compilation text. Brazil said that it did not approve the proposal by Japan as that would be a step back. It said that this was an attempt to block the work of the group. Peru said that Japan's proposal is not the way forward.

Australia said that it was happy to proceed with the consolidated text.

The meeting ended with the Chair saying that he would continue to work on the draft text and will work on how to take on comments from now and into the future. He noted that the group would be presenting two co-facilitators' consolidated draft texts (one on the Standing committee and one on long-term financing) that would be open for comment and additional submissions for Durban. The Philippines said that all the conference room papers (submissions of Parties) should remain on the table and will be annexed to the report, and the co-facilitators agreed to mention this in their oral reports.

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Developing Countries Remain Firm on the Kyoto Protocol

Geneva, 13 Oct (Lim Li Lin) —The final plenary of the Ad hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) in Panama City on 7 October heard strong statements by developing countries on the importance of adopting the second commitment period of the Kyoto Protocol in Durban.

Developed countries, meanwhile, stressed on a new climate change framework and on the continuity of the market mechanisms. The session in Panama City was the final negotiations before the Meeting of the Parties (CMP) in December in Durban, South Africa.

At the start of the plenary, the AWG-KP Chair, Adrian Macey from New Zealand, summarised that over the week, the contact group had discussed policy issues including the nature of the second commitment period, that a number of Annex I (developed country) Kyoto Parties have indicated that they will not undertake quantified emission limitation and reduction objectives (QELROs) in a second commitment period under the Kyoto Protocol, and the continuity of the market mechanisms after 2012.

[In fact, developing counties have insisted that the Kyoto Protocol's second commitment period must be adopted in Durban, through an amendment to its Annex B as mandated. Developing countries have also questioned why the Protocol's market mechanisms should continue post-2012, in the absence of a second commitment period starting in 2013.]

A revised proposal by the Chair to facilitate negotiations was issued at the end of the meeting, "streamlining, clarifying and updating" the text based on the work of the spin-off groups during the week. The Secretariat produced a table of possible QELROs, through a technical exercise of converting the emission reduction pledges of Annex I Parties into QELROs as required under the Kyoto Protocol. Japan, Canada and Russia asked for their QELROs to be removed from that table, as they do not intend to undertake a second period of emission reductions under the Kyoto Protocol.

The Chair concluded that it was the strong wish of Parties to complete the AWG-KP work in Durban, and that many parts of the text are complete technically and await a political decision, although there is still some technical work to be done, including on land use, land use change and forestry (LULUCF). He stressed on the need for effective time management in Durban, and on the usefulness of the time allocated to the AWG-KP in Durban.

Ambassador Diseko from South Africa, which will be the President of the Conference of the Parties (COP) of the UN Framework Convention on Climate Change and the CMP when it is held in Durban at the end of the year, said that their primary goal was to ensure that Panama produce a negotiating text for Durban. She said that global problems require global solutions, and re-affirmed South Africa's belief in multilateralism. Central to the Durban package is the balance across the two negotiating tracks, the AWG-KP and AWG-LCA (Ad hoc Working Group on Long-term Cooperative Action under the Convention), and the balance within the negotiating tracks, she said. The Cancun decisions must be operationalised, and there should be a focus on key political issues, of which the Kyoto Protocol's second commitment period is central, she said.

Argentina, speaking for **the Group of 77 and China**, said that two weeks ago, G77 and China Ministers re-affirmed their political commitment to the Kyoto Protocol's second commitment period. It said that the second commitment period is the central priority and cornerstone for Durban, and any other result will undermine the rules-based system, and cast a shadow on multilateralism. In accordance with the Bali Roadmap (adopted by the UNFCCC COP in 2007), the AWG-LCA has to advance in parallel to the AWG-KP. This is the only way for a successful, comprehensive and balanced outcome in Durban based on the principles of the UNFCCC, in particular equity and common but differentiated responsibilities and respective capabilities, it said. There should be no gap between the commitment periods, and the level of mitigation ambition by developed countries must be raised, it added.

Grenada, speaking on behalf of **the Alliance of Small Island States (AOSIS),** said that the Kyoto Protocol is the only legally binding agreement that we now have that puts in place quantified emission reduction commitments by Annex I Parties, and it is essential to build upon it. Failure to secure ambitious emission reductions in a second commitment period will compromise the survival of small island states and other vulnerable countries, it said. It asked the three Kyoto Parties that have announced that they will not take on QELROs in a second commitment period to reconsider "what might be viewed as extreme positions", as there should be no technical impediments, only political ones.

[The 3 Parties are Canada, Japan and Russia.]

It said that its expectations for Durban are: 1) a substantial increase in mitigation ambition from Annex I Parties, 2) establishing a second commitment period from 2013-2017 with a single legally binding base year of 1990, as part of a two-track outcome that complements a legally binding outcome under the AWG-LCA, 3) closing loopholes – LULUCF, surplus assigned amount units (AAUs), new gases, and improving mechanisms, and 4) ensuring the continuity of the Kyoto Protocol commitments through 2012, with new and more ambitious Annex B commitments pending ratification and entry into the force of the second commitment period.

The Democratic Republic of Congo, for **the African Group**, said that agreement to a second commitment period under the Kyoto Protocol is absolutely essential, and ensuring the full implementation of the Kyoto Protocol through a second commitment period in Durban has also been emphasised by all African Ministers as an utmost priority. For Durban, deep and binding emission reductions in accordance with science and equity are required, it said.

The African Group's expectations for Durban are the adoption of an amendment to Annex B of the Kyoto Protocol (for the second commitment period) and the strengthening of Annex I Party commitments in a manner consistent with their fair contribution towards limiting warming to below 1.5 degrees Celsius above pre-industrial levels. It said, "Africa cannot conceive of a future climate regime in which we dismantle a central pillar we have built together. We must build the rest of the climate regime up around it, and continue the Kyoto Protocol through a second and subsequent commitment periods."

Gambia, on behalf of **the least developed countries (LDCs),** stressed on the importance of a legally binding framework. The Kyoto Protocol must continue, and the second commitment period urgently agreed on in Durban in order to avoid a gap as agreed in Cancun, and according to the decision that established the AWG-KP six years ago, it said. It urged those Parties that championed the Kyoto Protocol in 1997 and after to take up the mantle once again. Environmental integrity should be ensured through limiting the carbon markets and closing loopholes. It said that in order to break the log-jam, the Kyoto Protocol's second commitment period is key towards ensuring a legally binding agreement under the AWG-LCA that is in accordance with equity and common but differentiated responsibilities. It could not accept political decisions in either negotiating track.

Bolivia, on behalf of **the Bolivarian Alliance for the Peoples of Our America (ALBA)**, said that it was shameless the way that more conditions and flexibilities are being required by Annex I Parties to comply with what they should be doing by law. It said that it was building alliances with all countries, particularly the LDCs, and that it could not accept making the African continent the tomb of the Kyoto Protocol.

China said that developed countries have an unshakeable legal, historical and moral obligation to renew the Kyoto Protocol through a second commitment period, and that the outcome of Durban must be based on the Bali Roadmap.

South Africa said that the Kyoto Protocol is central to the multilateral rules-based system. Failure to reach agreement on the second commitment period would send a negative signal to the process; instead we should send a strong signal to the world that the UNFCCC is still relevant. The Kyoto Protocol may not be sufficient, but it is necessary, it said.

Papua New Guinea for **the Coalition for Rainforest Nations** said that it had made a proposal for a REDD (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries)-plus mechanism for results-based action with units creditable under the Kyoto Protocol, as there is not much progress in the AWG-LCA on new market mechanisms.

Australia, speaking for **the Umbrella Group**, said that the Kyoto Protocol is an important part of efforts to reduce emissions. Its rules and infrastructure have much to offer as we transition to a new climate change framework, it said. It is only one part of the story, as without major emitters, we cannot deliver. Without a balancing agreement that covers all major emitters, it makes no sense for the climate, it said. It stressed on the importance of the continuity of the market-based approach, which is the keystone of a new regime, and urged for political next steps, courage, and pragmatism.

The **European Union** said that balance across and between both negotiating tracks is important. It said that it was encouraged with the discussions on a future legally binding framework and legal form (in the AWG-LCA), and this will require deeper political attention. It stressed on the need for market mechanisms post-2012 and that new mechanisms should be part of the Durban package. It advocated the establishment of a post-2012 rules-based and comprehensive legally binding framework engaging all major economies, and said that it was willing to consider a second commitment period as part of a wider global and comprehensive outcome.

Two recent reports show that substantial progress has been made by member states in breaking the link between economic growth and emissions, it said. Since 1990, it has reduced its emissions by 15.5%, while its economy grew by 41%. However, the EU alone cannot solve the climate problem, and the Durban outcome must address this fact, it said.

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