

Cancun texts adopted, overriding Bolivia's objections

Cancun, Dec 13 (Meena Raman) – Two decisions under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, which the Mexican host government dubbed as “the Cancun Agreements”, were adopted in the early hours of the morning of Saturday, December 11, despite a lack of consensus following objections by Bolivia to their adoption.

The outcome was heralded by Mexican Foreign Affairs Minister, Patricia Espinosa, who presided over the Cancun climate conference, as “a new era of international cooperation on climate change.” The conference comprised two main meetings, the 16th meeting of the Conference of Parties (COP 16) and the 6th Conference of the Parties serving as the meeting of Parties to the Kyoto Protocol (CMP 6).

The two draft documents had been put together by the Mexican presidency of the Conference, and were “clean texts” (without square brackets or options). They were issued on a “take it or leave it” basis as a final package, and not as drafts for possible amendments.

The documents were initially presented by Espinosa at an informal plenary meeting of the COP and CMP convened at 6 pm on Friday, 10 December. Delegates were given 3 hours to review the texts before the next informal plenary at 9.15 p.m. The first plenary had been scheduled at 8.30 am but the draft texts were not ready.

The draft text for the Ad-hoc Working Group under the Kyoto Protocol (AWGKP) outcome was issued around noon, while that for the Ad-hoc Working Group on Long-term Cooperative Action (AWGLCA) was distributed around 5pm. The notes at the front of each of the draft texts state that the documents “had been prepared in direct response to requests from Parties urging the President to present

a text that covers all the issues and paints the whole picture of the outcome.”

At a later informal plenary of the COP/CMP which started at 9.15 pm on Friday, Espinosa said that these texts were the product of a collective exercise of drafting and that any change needs the support of others. At the start of this informal plenary, and at various times of the night, Espinosa received a standing ovation from large sections of the participants, and there was an atmosphere of near euphoria. This was understood to be a sign by advocates of the documents to urge all delegations to adopt them.

However there was not unanimity, as Bolivia raised strong objections to the adoption of both the documents, first at the informal plenary of the COP/CMP, then at the formal sessions of the AWGKP and AWGLCA and then at the final plenary meetings of the COP and the CMP. Bolivia's Ambassador to the United Nations in New York, Pablo Solon, presented detailed reasons why he found both texts unacceptable.

While many delegations urged for the documents to be adopted without changes, some requested that Bolivia should be allowed to voice its concerns in the spirit of inclusiveness. Bolivia insisted that there was no consensus as it objected to the documents. However, Espinosa gavelled both decisions, signifying adoption, after indicating that the objection from one delegation did not constitute a lack of consensus.

After the adoption of the documents, Norway said that many in the audience shared Bolivia's concerns but these concerns could be addressed in years to come and that this was not the final agreement but a major step in the right direction.

Many countries, both developed and developing, expressed support for the two texts, saying they reflected balance, pragmatism and compromises,

while many also used qualifications such as that they were “imperfect” or that they felt “guarded optimism”. A few countries, notably Cuba and Ecuador, raised concerns over several issues in the texts. Several countries also said that following the failure to reach agreement in Copenhagen, the Cancun outcome restored confidence in the multilateral process. Other countries were even more upbeat. Australia called the agreements “a game changing moment for the climate change.”

The mood among many delegations appeared to be that the texts should be adopted in order to avoid the collapse of another climate conference, following the failure of the Copenhagen conference last year. Several delegates privately said that another failure would further dent the image of the UNFCCC and multilateralism, and that it would be difficult for the talks to regain momentum. In this atmosphere of having “all or nothing”, many developing countries decided to go along with the drafts even though they had concerns on various parts.

The highlight of the long night's proceedings was an intense exchange between the COP President and the Bolivian delegation over the President's gaveling of the decisions as being adopted despite the objection, giving rise to argument as to what the meaning of consensus was. In the practice of the UNFCCC, decisions have been taken on the basis of consensus.

Bolivia's Ambassador Solon said that consensus required the absence of explicit rejection or objection to a decision proposed for adoption and that consensus did not mean a majority being in favour to adopt a decision. In contrast, Mexico's Foreign Minister Espinosa was of the view that consensus did not mean unanimity or a right of a Party to veto a decision.

Joining the exchange on this issue was US climate envoy, Todd Stern who supported the adoption of the agreements and suggested that the “practice in this body has been general agreement rather than consensus.”

At the conclusion of Cancun meetings, Mexican President Felipe Calderon said that “a good agreement is one in which all Parties are left equally dissatisfied.”

The following are highlights of the various meetings in the final plenary meetings.

The CMP meeting

When the draft decision on the Kyoto Protocol process under the AWGKP was presented by Espinosa for adoption under the CMP, **Bolivia** gave its reasons why it was opposed to the decision. Solon said that this decision did not represent a step forward but was a step backwards as what was being done was to postpone indefinitely a decision under the Kyoto Protocol and it opened the doors to a regime which will be flexible and voluntary for a pledge and review approach and not a system where all Annex 1 Parties will fulfill a set target.

Referring to paragraph 3 of the text where Parties took note of “quantified economy wide emission reduction targets to be implemented by Annex 1 Parties as communicated by them and contained in document FCCC/SB/2010/INF X”, Solon said that this document did not exist and that Parties “do not know what these commitments will be and if these commitments will lead to a stabilization of greenhouse gas emissions which will be sustainable for human life and plants.”

He added that if what was being referred to in the document were the Copenhagen Accord pledges, this would only amount to a 13 to 17% reductions in emissions compared to 1990 levels, which will lead to a temperature rise of 4 degree C.

[Earlier, at the 9.15pm informal plenary COP/CMP meeting held by Espinosa, Solon said that such a temperature level could lead to a situation of “genocide and ecocide.” Bolivia could not agree to an agreement “which will put more human lives in a situation close to death.” Bolivia had come to Cancun to ensure that there would be a decision to guarantee a second commitment period under the Kyoto Protocol and this document did not guarantee that.]

Solon at the CMP plenary said that his government wanted modifications to the text, which was, received just hours ago and which it was asked to be adopted without any modification or amendment. “If the document represented a step forward, we would have supported it. What is going to emerge is not a stronger regime for reducing emissions in mitigation but a voluntary regime which is less demanding on developed countries that are responsible for global warming,” he added. “We represent a small country which has principles and will not sell our country and we speak with the peoples of the world. There is no consensus for approval of this document.”

Espinosa in response said that the text was the result of collective work and the concerns of Bolivia would be reflected on the record. She then said that if there was no other opinion on this, the text would be approved. She gavelled and announced the adoption of the decision.

Solon took the floor again and said that consensus meant that no state was explicitly stating objection or rejection to the decision. He added: "You cannot say there is consensus. You can only take note. This is an attempt to violate rules of the Convention and the United Nations. Consensus is not by a majority. There must be an absence of explicit rejection of a decision. Despite our objection, the decision was adopted. We are going to apply to all international bodies to preserve the rules of consensus. We came here to negotiate and not to gavel an injustice. Not even in Copenhagen was this done and there was respect for the rule of consensus. The (Copenhagen) Presidency did not have the gall to hammer through a decision. Now there is a violation of rule. This is an unhappy conclusion. I ask you to review your decision and return to the path of law."

In response, Espinosa said that that on the matter of procedure, consensus did not mean unanimity, and far less does it mean the right of veto. At this point, she said that she could not disregard the request of 193 Parties to adopt the decision, which had been duly adopted.

The COP meeting

At the final session of the COP, Parties were asked to adopt the decision of the AWGLCA.

Bolivia, represented by Rene Orellana, said that his delegation had already given their arguments for why they could not agree to the forwarding of the proposed draft text for adoption of the COP at the meeting of the AWGLCA.

He said Bolivia had opposed the approval, as the text did not represent the discussions in which they had been engaged in. He stressed that Bolivia was in no way expressing the right of veto. Bolivia had asked for an opportunity to discuss issues with technical arguments, scientific data and legal arguments and not political positions. It said that it respected those who opposed its views but felt that its positions had not been properly considered. He asked the President to respect the formal mechanism for approval.

He said that in relation to the issue of technology transfer, Bolivia had wanted Parties to address the issue of intellectual property rights. As a compromise to the various proposals on IPRs on the table, Bolivia said that it had requested for at least a workshop be held and a process for discussions to begin in 2011 on the IPR issue. Even this basic proposal was disregarded and he questioned how democratic this process was. Bolivia wanted a formal process where doors were not closed to the proposals it had presented.

Espinosa said that the concerns of Bolivia would be reflected in the record of the COP and proceeded to gavel the adoption of the agreement.

[Earlier, at the session of the AWGLCA (chaired by Margaret Mukahanana Sangarwe of Zimbabwe) to consider the draft text, Solon had elaborated on Bolivia's opposition. He said that Parties did not mandate anyone to produce the document, and that the August 13 text was the negotiating text which contained Parties' positions. On substance, Bolivia could not support the 2 degree C temperature goal as according to various studies, this would mean a 3 degree C situation for Africa. Referring to the IPCC fourth assessment report, a 2 degree C target would mean a 50% chance of stabilizing the climate and said that no one would send his or her child on a plane if it had a 50% chance of crashing.

[He referred to the text on the mitigation commitments of developed countries where paragraph 36 refers to taking note of "quantified economy wide emission reduction targets to be implemented by Annex 1 Parties as communicated by them and contained in a document FCCC/SB/2010/INF X." He said that this document was yet to exist and that it was not possible to have a decision that states that the list is to be drawn up later. He asked how much is the commitment of reductions and over what period of time and upon what baseline. "This is the crux and must be circulated so we know what is being listed. We cannot come here and have a blank cheque where the Annex 1 Parties fill up whatever they want which is not related to the shared vision."

[Solon said that on the financial mechanism, the text states that \$100 billion per year would be mobilized by 2020 but does not state whether this will come from developed countries or from the carbon markets. Referring to the Green Climate Fund to be

established, Solon said that however well designed a Fund is, it cannot be effective without funds. Further, the text invites the World Bank to serve as the interim trustee and Bolivia could not accept this as the Bank was an institution dominated by donors.

[On technology transfer, Solon said that the new Technology Executive Committee to be established is not even able to address IPR issues. He said that in most clean technologies, 70-80% of that is in the hands of developed countries and it is they who held the patents.]

Australia said that the package of decisions adopted in Cancun was a game changing moment for the climate regime. **Pakistan** said that the agreement reflected pragmatism and hope. It cannot satisfy all Parties but it was no doubt a decisive step to the future. It also stressed the need for a more solid outcome by adopting a second commitment period for Annex 1 Parties under the Kyoto Protocol.

Informal plenary of the COP/CMP (held before the formal meetings of the 2 working groups and of COP and CMP)

Bolivia said the documents did not include its proposals. The Kyoto Protocol paper did not guarantee a second commitment period. It implied a list of pledges that would lead to a 4 degree global temperature rise. It could not go along with a text with these two features, as it would make us responsible for genocide ecocide. The text allows the KP's market mechanisms to continue, whereas countries that do not accept a second commitment period of the KP should not be allowed to use flexibility mechanisms like emissions trade and Clean Development Mechanism. Bolivia would not accept a document, which means a temperature increase that puts human lives close to death. It had come here to guarantee a second KP period instead.

Grenada welcomed the texts for adoption saying that though the imperfect, the "perfect should not be enemy of the good." The Minister from Grenada said it was "not a done deal but we can say we leave Cancun with something we can live with."

Switzerland, speaking for the Environmental Integrity Group said that the solution was a compromise. **Australia**, indicating support for the AWGLCA outcome called it well-balanced

Nicaragua, (referring to Bolivia's concerns) said that it was important to make last efforts to hear positions

of all Parties with flexibility and mutual understanding. **Saudi Arabia** agreed on the need for all Parties to be included to agree, and that the two working groups could discuss minor details and thus guarantee that all Parties can agree.

Lesotho for the LDCs said the package laid a good foundation for further work at the next COP in Durban. It supported the recognition for the adequate treatment of the issue of vulnerability, the adaptation framework and committee and the establishment of the Green Climate Fund and applauded the inclusion of LDCs in the Transitional Committee of the Fund.

Cuba, referring to the Bolivian leadership of President Evo Morales, said that it represents the demands of the indigenous peoples of the Americas. It said that Bolivia speaks on behalf of movements in Latin America and therefore deserves attention.

Cuba expressed dissatisfaction with the text of the AWGLCA. It said that the text did not have clear GHG emission reduction goals. Referring to the pledges under the Copenhagen Accord, it said that the emissions could rise by 6% compared to 1990 levels (taking into account the loopholes) and could lead to temperature rise of 2.5 to 5 degree C. It expressed profound concerns over the document. It said that it is key to have the second commitment period under the Kyoto Protocol. On the issue of finance, it said the language in the document was ambiguous on the source of the \$100 billion for the Green Climate Fund.

India's Minister of Environment, Jairam Ramesh quoted a Mexican hero for saying that Mexico is "far from God", but that coming from a country that had many Goddesses, he would say that tonight a Goddess has been present. He said Espinosa had restored confidence in the multilateral process at a time when confidence was at an historical low. He said that Parties could confidently look ahead and approach the challenge of climate change in a spirit of constructive compromise. He said that not all Parties had gained and that all had compromised. Espinosa in response said that Ramesh's proposals were key to unlocking difficult gridlocks in the negotiations.

Singapore said the text was not perfect but in any negotiations, not everyone will get what they want. It said that there were some missing elements that would need to be clarified. It said the document was

not end but a step forward for a legally binding outcome in Durban.

EU Climate Commissioner, Connie Hedegaard said that multilateralism had shown results. The EU came to Cancun hoping for a balanced package that has been achieved.

Bangladesh said that the text did not fully reflect the concerns of LDCs. Nevertheless, it was a good outcome as there was agreement on the Adaptation Framework and committee and the Green Climate Fund.

The **US** said that the text was not perfect but it provided a good basis to move forward. Parties had agreed to launch the Green Climate Fund; there was a technology mechanism and progress in adaptation and on the issue of reducing emissions from deforestation and degradation (REDD); and the anchoring of mitigation pledges and a system of MRV (measuring, reporting and verification) and an ICA (international consultations and analysis).

The **Philippines** commented on the process and said that there was confusion that enveloped the venues and postponement of meetings. It received the text with guarded optimism. It said that the Green Climate Fund was a progress. **Kenya** said that text was not perfect text but was a delicate balance.

China represented by Minister Xie Zhenhua said that Parties had demonstrated good political will for a

balanced result. The texts provided a sound basis for future negotiations. There were short-comings but it was satisfied that the negotiations had adhered to the Bali Roadmap.

Afghanistan said that though it had concerns in relation to the issue of finance and the vulnerability of mountainous systems, it was flexible in making progress. **Japan** expressed support for the text.

Algeria on behalf of the African Group said that confidence in the multilateral system was shown. The text did not meet all its expectations but it could support it.

Ecuador said that it did not like all the results and said that Parties must redouble their efforts to ensure the health of the planet. It stressed the need for the second commitment period of the Kyoto Protocol to be confirmed and to come into effect after 2012. It said that the Green Fund should be established and for effective technology transfer, it was important to have flexibilities as regards IPRs. It supported the observations of Bolivia on the various deficiencies in the text and said that it must be improved.

Zambia thanked Mexico for lifting the spirits from the depression of Copenhagen and for restoring confidence in the multilateral process.

Brazil said that the document was balanced in essence although not perfect and there was a sense of realism and pragmatism.