

## Climate legal regime at the crossroads

Doha, 26 November (Meena Raman)— The climate change talks in Doha, Qatar, will be an important milestone in the history of the United Nations climate negotiations

The last round of the negotiations in Bangkok in September this year has revealed a major problem. The Bali Roadmap launched in December 2007 had two tracks. The Kyoto Protocol track that began in 2005 is ending in a much weakened outcome, while the Bali Action Plan track under the UN Framework Convention on Climate Change (UNFCCC) is in danger of being killed without a proper closure or transfer of its unsettled issues.

The 18<sup>th</sup> meeting of the Conference of Parties (COP 18) to the UNFCCC and the 8<sup>th</sup> Meeting of the Parties of the Kyoto Protocol (CMP 8) will take place in Doha from 26 November to 7 December.

The Ad Hoc Working Group under the Kyoto Protocol (AWG-KP) is mandated to reach agreement on the second commitment period for greenhouse gases emission reductions (CP2) for Annex 1 Parties. The Ad Hoc Working Group for Long-term Cooperative Action (AWG-LCA) under the Bali Action Plan (BAP) was launched in 2007 to enhance the full effective and sustained implementation of the Convention. These two negotiating tracks comprised what is called the Bali Roadmap.

These two working groups are supposed to complete their work successfully, and pave the way for a new agreement under the Convention which is to come into effect in 2020 under what is called the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), launched at COP 17 in Durban, South Africa last December.

Whether the two earlier working groups are able to fulfil their respective mandates successfully remains to be seen in Doha.

### A real KP second commitment period?

The most important outcome of the AWG-KP is supposed to be a firm commitment by Annex 1 Parties (developed countries and economies in transition) for emission reductions targets under CP2, with the first commitment period expiring at the end of December 2012. The “numbers” as regards the targets for emission reductions have remained unambitious with some countries still wavering to make the commitments. The moment of truth has arrived in Doha as to whether there will be an ambitious and a legally binding CP2 outcome.

Parties agreed in Durban last year that there will be a CP2, but what was not decided was its length (whether a 5 or 8 year period) and what the actual numbers for the emission reduction targets by the Annex 1 Parties will be, both individually and in aggregate.

Many developing countries have called for a 40-50% reduction by 2020 compared to 1990 levels, with the Alliance of Small Island States demanding a cut by at least 33 per cent below 1990 levels by 2017.

The European Union has made it clear that it is for an 8-year commitment period and that its own target would be a reduction of only 20% by 2020 below 1990 levels, although it had previously indicated that it was willing to consider a 30% reduction target, if Parties agree to a new agreement post-2020 (which was agreed to in Durban).

In fact, it has been reported that the EU has already met its 20% target and would in effect need to do nothing for the rest of the decade under its declared KP commitments!

In the wake of criticisms by developing countries that the EU is allowing a lock-in of pledges which are low instead of more ambitious reduction targets, the EU has proposed that there be a review of the commitments, at the latest by 2015, with a view to strengthening these commitments in line with an

overall reduction of emissions of such gases by Annex I Parties of at least 25 to 40 per cent below 1990 levels in 2020.

Many observers view this as doing too little too late which does not reflect the urgency and ambition needed from a scientific perspective as well as the escalating suffering, loss and damage caused by climate change especially in developing countries.

Further, developing countries have been calling for an effective and legally binding CP2 through a ratifiable amendment of Annex B to the Kyoto Protocol (which will contain the targets for emissions reductions by developed country Parties for CP2) to be implemented from 1 January 2013.

Since ratification of the amendments reflecting the CP2 commitments will not be possible before the first commitment period expires on 31 December 2012, developing countries have been calling for the provisional application of CP2, pending ratification and entry into force of the amendment to ensure that there is no gap between the first and second commitment periods.

Signs are that the EU is not keen to agree on a provisional application approach and would prefer just a decision under the Conference of Parties meeting as Parties to the Kyoto Protocol (CMP).

As a result, grave concerns have arisen among developing countries in this regard as to how legally-binding this would be in terms of the CP2 commitments on the EU and its member states.

Hence, whether Doha will result in an ambitious and legally binding CP 2 outcome remains to be seen and expectations are not very optimistic. An unambitious and weak outcome under the Kyoto Protocol will indeed have ramifications for the work of the AWG-LCA and the ADP, as well as for the climate.

### **Unfinished work of Bali Action Plan**

In relation to the AWG-LCA, Doha will be critical in determining whether the full mandate of the Bali Action Plan is successfully achieved.

There are many issues that remain unfinished from Durban.

Among the most important desired outcomes pressed by developing countries include: comparable efforts in emission reduction targets by Annex 1 Parties not in the Kyoto Protocol (such as the United States and Canada) with that of those in the Kyoto Protocol; a clear roadmap for the delivery of finance for the period 2013-2020 for adaptation and mitigation; the addressing of intellectual property

rights (IPRs) that will not impede technology transfer; and the avoidance of unilateral measures by developed countries in the name of climate action which have impacts on developing countries.

These issues have been troublesome with developed countries, especially the US, not wanting a review of its emission reduction pledge for it to be comparable with other developed countries. The US Cancun pledge was a 17% reduction based on 2005 levels, and it has been resistant to calls for comparable efforts as the Kyoto Parties or even to review and increase its pledge.

The developed countries have also been dodging the issue of how the goal of mobilising the US\$100 billion per year by 2020 as promised in Cancun is going to be realised and delivered from 2013 onwards.

Given the current economic and financial turmoil in the developed countries, continued resistance from developed countries is expected on the issue of a roadmap on the amount of new and additional resources to be mobilised for climate change and on delivering on the Cancun agreement.

Developed countries have also refused to address the IPR issue as well as that of unilateral measures, which many developing countries wanting to find solutions to these issues.

On the issue of adaptation, discussions in Bangkok in September showed a substantial divide between developed and developing countries, with developed countries arguing that nothing further was left to be discussed on this issue under the AWG-LCA. A Group of 72 developing countries, presented a draft decision launching work focused on adaptation finance, a space to discuss annually coherence on adaptation, and to initiate work on other elements, such as regionals centres, etc. Developed countries are expected to resist the proposals advanced by developing countries.

The Chair of the AWG-LCA, in preparation for the negotiations in Doha, has issued an “informal overview text” to facilitate the negotiations which clearly reflects, according to the Chair, “the exchanges and ...options presented by Parties”. This text attempts to address many of the difficult and unresolved issues from the past negotiations which developed countries have resisted, including the need to consider the comparability of mitigation efforts among developed countries, which is an issue mandated for consideration by the BAP.

(Comparability of effort requires that the mitigation actions of developed countries not Parties to the KP be comparable to those that are Parties.)

On issues like long-term finance, intellectual property rights and unilateral measures, developed countries have insisted that there be no text at all, signalling a refusal to address these issues, which have been raised by developing countries.

The overview text also reflects the proposals raised by developing countries on the issue of adaptation. (Another related and important matter linked to adaptation is the issue of 'loss and damage'. This issue is being addressed under the Subsidiary Body on Implementation. Parties had agreed in Cancun to establish a work programme to consider approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change. A major expectation of developing countries in Doha is for a good outcome on this issue based also on the work done in a series of regional expert workshops over the year.)

Hence, under the AWG-LCA, whether developed countries will even accept the LCA Chair's text as a basis to begin negotiations will be a critical issue.

Another issue of grave concern among many developing countries and observers is the push by

developed countries to launch new market mechanisms which are supposed to assist developed countries meet part of their mitigation targets or commitments in a cost-effective manner. When the mitigation pledges of the developed countries are already so low, unambitious and non-legally binding, a key concern is why developed countries should be given further flexibilities in meeting their targets through new market mechanisms.

If the Doha AWG-LCA outcome does not address these issues satisfactorily, there cannot be a successful outcome and this will put the talks at risk.

### **Durban Platform**

Under the ADP, discussions are expected to continue on the issue of the 'vision' of the future agreement post 2020 and on raising the 'ambition' in the pre-2020 period. If the outcomes under the two earlier AWGs are not successfully concluded to address the concerns of developing countries, the work of the ADP can be expected to suffer, with developing countries viewing the process as one that leads to more and more obligations for developing countries with the shifting of responsibilities on their shoulders for mitigation and adaptation without actual financial resources and technology transfer.

The Doha talks will indeed be critical for the future of the climate regime.