

Comments on the Lima COP20 decision on the Durban Platform

Penang, 18 Dec (Meena Raman) –The most important and most fought over outcome of the UN Climate Conference in Lima was a decision adopted by the Conference of the Parties (COP) which the Peruvian Minister in charge of the conference termed ‘*The Lima call for climate action*’.

This COP decision relates to the work of the Durban Platform, which is the track in the UN climate negotiations that leads to an expected new climate change agreement in Paris at the end of 2015.

This COP decision would normally have been prepared and agreed to by the group that had been negotiating the Durban Platform issues since January 2012, and then the COP itself would simply endorse the draft thus prepared.

But what was significant at Lima is that Ad Hoc Working Group on Durban Platform for Enhanced Action (ADP) could not reach any agreement on the draft decision. Indeed, a supposedly final draft produced by the Co-Chairs of the group met with widespread criticisms and outright rejection by a majority of developing countries, and had to be abandoned on the last night of the Conference.

In an emergency move, the President of the COP himself, Peruvian Environment Minister Manuel Pulgar Vidal, had to take over the process on the Durban Platform decision, and after a full day of consultations that he personally conducted, a final draft was put before the Parties and finally adopted.

The approved draft was different in some significant points from the one that was rejected a day earlier and even more so from earlier drafts that had been prepared by the Co-Chairs.

The Co-Chairs’ drafts, and the process they had overseen since March 2014, had been unpopular with a large number of developing countries which perceived them as biased in favour of positions of most developed countries. The developing countries felt that if the Co-Chairs’ drafts were adopted, they would give an early and undue advantage to the developed countries in the design of the elements and framework of the 2015 Paris agreement itself.

The wrangling over the Lima decision between developed and developing countries was clearly a proxy fight for what would be the core elements of the Paris agreement. An underlying issue is whether Parties would be treated in a differentiated manner in their obligations, as clearly set out in the Climate Change Convention, or whether (as desired by developed countries), the Parties would all be treated in a similar manner in the agreement for post-2020 actions.

This proxy fight took place through the issue of ‘intended nationally determined contributions’ (INDCs), a term that was adopted a year earlier at the 19th Conference of Parties in Warsaw.

This proxy fight over substance was accompanied by a fight over the process that was used during the ADP negotiations. Developing countries wanted text based negotiations with Parties able to make changes to draft texts placed on a screen (a normal UN method that is transparent and party-driven) while the developed countries preferred a process that was left in the control of the ADP Co-chairs, to produce draft texts, without clarity or transparency on how they were arrived at. The Co-Chairs themselves insisted on the latter method, to the frustration of the developing countries.

The 19th COP in Warsaw in 2013 adopted a decision which invited “all Parties to initiate or intensify domestic preparations for their INDCs without prejudice to the legal nature of the contributions, in the context of adopting...” the legal outcome in Paris, and to communicate them well in advance of COP 21 (by the first quarter of 2015 by those Parties ready to do so) “in a manner that facilitates the clarity, transparency and understanding of the INDCs, without prejudice to the legal nature of the contributions”.

The Warsaw decision did not prescribe the scope or nature of the ‘contributions’, whether these contributions relate to mitigation, adaptation, finance, technology transfer and capacity building, which are the items for the Paris agreement, or only to one or some of them.

Developed countries, in the course of discussions this year, wanted to confine the scope of the INDCs to only mitigation, while developing countries wanted all the elements to be covered, including on what developed countries will provide post 2020, as regards their contributions for finance and technology transfer to support the developing countries’ mitigation and adaptation actions in the post 2020 period.

The Warsaw COP also gave the ADP the mandate “to identify, by COP 20, the information that Parties will provide when putting forward their contributions, without prejudice to the legal nature of the contributions.” Thus, as pointed out by the Like-minded developing countries (LMDC), the ADP, in relation to the INDCs, had only the mandate to produce a decision in Lima that was focused on the identification of information that Parties will provide, when forwarding their INDCs.

Throughout year, there were concerted attempts by developed countries to make use of the issue of INDCs to shape the larger issue of the nature of the mitigation component of the 2015 agreement, even before the mature negotiation or conclusion of negotiations on this mitigation issue per se.

The developed countries insisted that INDCs are only about mitigation contributions and that all countries will have to forward their INDCs together with the up-front information accompanying them, by early 2015. They also proposed a system by which these intended contributions would be assessed and

reviewed (referred to as a process for an ‘ex-ante assessment’) in mid-2015 June, to see if they would be adequate in the aggregate to limit temperature rise to below 2 degree C.

Though some developing countries supported an ex-ante review, many others (especially the LMDC) were against it. The latter viewed the push by developed countries for an ‘ex-ante assessment’ ahead of Paris as being outside the Warsaw mandate. They also considered this to be prejudicial to the negotiations to be conducted for the 2015 agreement, in Paris, especially as regards how the mitigation element of the Paris agreement is to be approached; how the principle of equity and common but differentiated responsibilities (CBDR) would be applied across all the elements of the Paris agreement, including that relating to the contributions that Parties will make, as well as the up-front information relating to the contribution for the purposes of transparency.

They pointed out the imbalance of having developing countries’ mitigation “contributions” assessed (and subjected to pressure for upgrading) whereas there was to be no assessment (or even information) on how much financial and technological support the developed countries are to provide. How could developing countries be expected to submit what they can do on mitigation when they do not know whether financial support is forthcoming and if so, how much?

China, had in the October session of the ADP this year, said clearly that there can be no ‘early harvest’ by focusing only on mitigation when all elements of the 2015 outcome are “a package”. It said that INDCs cannot be focused only on ‘mitigation’, isolated from the consideration of the provision of finance, technology transfer and capacity building support. Otherwise, this would lead to a rewriting of the Convention, it stressed. This view was shared by other members of the **Like-minded developing countries (LMDC)**.

Besides the ex-ante assessment issue, a major issue of basic importance was that of “differentiation”. Developing countries across the board wanted assurances in the decision that the CBDR principle would be applied in the Paris agreement and in the INDCs. They insisted on this as a “red line.”

The final draft produced by the Co-Chairs, Kishan Kumarsingh (Trinidad and Tobago) and Artur Runge-Metzger (Germany) were viewed by most developing-country groupings as not acceptable. On Saturday, 13 December, when the ADP convened, many developing countries and their groupings criticised and rejected the draft on grounds it was imbalanced and did not reflect key issues such as differentiation between developed and developing countries, the principles of equity and CBDR; that there was lack of any financial contribution for the post 2020 period; the draft on INDCs was mitigation centric with adaptation been downgraded, a failure to include the issue of 'loss and damage' and a very weak reference to pre-2020 climate action.

With the clock ticking beyond the closing time of the conference, many developing countries appealed to Vidal to help resolve the deadlock, as the talks were clearly on the brink of collapse. The ADP closed without adopting a text, and the COP Presidency then took over the process, with the Peruvian Minister meeting with various negotiating groups and countries to assess their red-lines and attempting to produce a text acceptable to all.

The President's draft decision, which was finally adopted on Sunday at 1 a.m., was viewed by developing countries as being more balanced as it dealt better with the issues of concern to them. The principle of CBDR was mentioned (it had been absent at the original decision launching the Durban Platform at COP17 in 2011), the scope of the INDCs is now open-ended; there is no provision for an ex-ante review of the INDCs and there is reference in the preamble to the Warsaw Mechanism on Loss and Damage.

HIGHLIGHTS OF THE LIMA DECISION ON DURBAN PLATFORM

Some of the key points in the '*Lima call for climate action*' (the decision of 14 December relating to the Durban Platform) are set out below, together with comparisons to what was in earlier drafts of the issues in the Co-Chairs' texts of 12 Dec (and in some cases the drafts of 8 and 11 Dec.). Comments are also provided to provide an understanding of the changes that came about and their significance. (The full final decision can be found at <http://unfccc.int/2860.php>).

Preamble 1 states: "*Reiterating* that the work of the ADP shall be under the Convention and guided by its principles...". The earlier 12 Dec. draft merely states '*Guided by the Convention*'. The final draft draws reference to the principles of the Convention explicitly; this is important for developing countries which point out that among the principles are equity and CBDR.

Preamble 4 states: "*Affirming* its determination to strengthen adaptation action through the protocol, another legal instrument or agreed outcome with legal force under the Convention to be adopted at the twenty-first session of the Conference of the Parties (November-December 2015)."

There was no provision in the earlier draft that referred to strengthening of adaptation action in the new agreement. This was a major concern of developing countries which saw the developed countries pushing for a mitigation-centric agreement, with the issues of adaptation and the means of implementation being marginalised or omitted.

Preamble 5 states: "*Recalling* decisions 2/CP.19 and X/CP.20 (Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts) and welcoming the progress made in Lima, Peru, towards the implementation of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts,"

There was no reference in the 12 Dec draft to loss and damage. Developing countries had been calling for 'loss and damage' to be part of the 2015 agreement, while developed countries have resisted this. The LDC Group made an appeal to include this issue in the final text. At the final plenary session, **Tuvalu**, speaking for the **Least Developed Countries (LDC)**, made an interpretative statement that the reference to the Mechanism for Loss and Damage in the preamble and the term "inter alia" in paragraph 2 of the decision made clear the intention that the legal outcome to be adopted in Paris will properly, effectively and progressively address loss and damage.

Paragraph 1 reads: "*Confirms* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall complete the work referred to in decision 1/CP.17, paragraph 2, as early as possible in order for the Conference of the Parties at

its twenty-first session to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties;”

Paragraph 2 states: “*Decides* that the protocol, another legal instrument or agreed outcome with legal force under the Convention applicable to all Parties shall address in a balanced manner, inter alia, mitigation, adaptation, finance, technology development and transfer, and capacity-building, and transparency of action and support;”

Paragraph 3 reads: “*Underscores* its commitment to reaching an ambitious agreement in 2015 that reflects the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances;”

This is an important paragraph. There was no provision for the reflection of the CBDR-RC principle in the 12 December draft. The mention of CBDR and especially the reference that it be reflected in the 2015 agreement was seen by most developing countries as a major victory, although some countries were not pleased with the accompanying phrase “in light of different national circumstances.”

At the final plenary, the LMDC (represented by Malaysia) stated that this “clear provision in the operational part of the text and this read together with the preambular paragraph which requires the work of the Durban Platform to be guided by the principles of the Convention, together suggests to us cumulatively that the CBDR principle has been restored and it has been given its rightful place in the context of the Convention and the work that we are going to continue” in relation to the new agreement.

Paragraph 4 “*Urges* developed country Parties to provide and mobilize enhanced financial support to developing country Parties for ambitious mitigation and adaptation actions, especially to Parties that are particularly vulnerable to the adverse effects of climate change; and recognizes complementary support by other Parties;”

The 12 Dec draft, instead of “...and recognises complementary support by other Parties” had the following language: “and invites other Parties willing to do so to complement such support”; while an earlier 11 Dec. draft had the following words:

“developed country Parties and other Parties in a position to do so...” These words in the earlier drafts were seen by many developing countries as diluting the CBDR principle, with developing countries also having to contribute to financing mitigation and adaptation actions, contrary to the provisions of the Convention.

Paragraph 5 “*Acknowledges* the progress made in Lima in elaborating the elements for a draft negotiating text as contained in the annex;”

This paragraph relates to the elaboration of the elements for the Paris agreement, contained in another document, prepared by the Co-Chairs. An earlier version of the draft text of Dec 11 provided that the ADP “will intensify consideration of the elements for a draft negotiating text reflected in annex 1...” which many developing countries found problematic, as it implied that the Co-Chairs’ document, placed in an annex, would be the basis for the negotiations for the Paris agreement.

Although the annexed document referred to as ‘Elements for a draft negotiating text’ has a footnote that states that “these elements for a draft negotiating text reflect work in progress” and that “they neither indicate convergence on the proposals presented nor do they preclude new proposals from emerging in the course of the negotiations in 2015”, many developing countries did not want the annex to be given a higher status than the proposals or submissions of Parties. The final decision only acknowledges the progress of the work done under the ADP as reflected in the annexed document.

Paragraph 6 states: “*Decides* that the Ad Hoc Working Group on the Durban Platform for Enhanced Action will intensify its work, with a view to making available a negotiating text for a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties before May 2015;”

Paragraph 9 “*Reiterates* its invitation to each Party to communicate to the secretariat its INDC towards achieving the objective of the Convention as set out in its Article 2.”

The Dec. 11 version of the draft text in Option 3, provided that “Parties INDCs ...will include a mitigation contribution, and may also include contributions on adaptation, finance, technology

development and transfer and capacity-building and that the INDC of each Party will represent a progression beyond the current undertaking of that Party.”

The concern expressed by many developing countries over this option was that all Parties had to provide a mitigation contribution which was mandatory, while contributions to the other elements are not so. This signalled a mitigation-centric approach which also did not differentiate between developed and developing countries and did not make it obligatory for developed countries to forward a finance and technology transfer contribution. The formulation that was finally agreed to leaves the scope of the INDC open, without a particular stress on mitigation.

In fact, the 8 Dec. draft states that “Parties that are not ready to communicate their INDCs by the first quarter of 2015” were invited to do so “by 31 May 2015 or as soon as possible thereafter.”

The 8 Dec. draft also provided that “each party shall communicate a quantifiable mitigation component in its INDC which represents the highest level of mitigation ambition, beyond its 2020 commitment and actions....guided by the principles of equity and CBDR-RC, in the light of evolving national circumstances.”

Many developing countries, especially the LMDC and the African Group, took issue with the term “evolving national circumstances” which they said was not a term recognised by the Convention and its use amounted to a redefining of the CBDR principle, which prejudices the negotiations in Paris.

Paragraph 10 states: “*Agrees* that each Party’s INDC towards achieving the objective of the Convention as set out in its Article 2 will represent a progression beyond the current undertaking of that Party”;

This paragraph is to reflect the call by many developing countries to ensure that developed countries do not backslide on their commitments in the post 2020 time-frame.

Paragraph 12 states: “*Invites* all Parties to consider communicating their undertakings in adaptation planning or consider including an adaptation component in their INDCs”.

This paragraph reflects the call by many developing countries that their INDCs could also be or include a contribution to adaptation actions, and that INDCs should not solely be about mitigation.

Paragraph13 “*Reiterates* its invitation to all Parties to communicate their INDCs well in advance of COP 20 (by the first quarter of 2015 by those Parties ready to do so) in a manner that facilitates the clarity, transparency and understanding of the INDCs”.

Paragraph 14 states: “*Agrees* that the information to be provided by Parties communicating their INDCs, in order to facilitate clarity, transparency and understanding, may include, as appropriate, inter alia, quantifiable information on the reference point (including, as appropriate, a base year), time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas emissions and, as appropriate, removals, and how the Party considers that its INDC is fair and ambitious, in light of its national circumstances, and how it contributes towards achieving the objective of the Convention as set out in its Article 2.”

This paragraph relates to the information that is to accompany the INDCs. Given the use of the terms “as appropriate,” Parties can decide what information will accompany their INDCs. Concerns were raised by developing countries that the earlier draft texts did not reflect the CBDR principle as to how the information to be supplied by developed and developing countries should be differentiated. Although CBDR is not mentioned in this paragraph, its mention in paragraph 3 is taken by these countries to thus cover paragraph 6 as well.

Paragraph16 “*Requests* the secretariat to: (a) Publish on the UNFCCC website the INDCs as communicated; (b) Prepare by 1 November 2015 a synthesis report on the aggregate effect of the INDCs communicated by Parties by 1 October 2015.”

Other than the preparation of a synthesis report by the secretariat on the aggregate effect of the INDCs, there is no mention in the final text that relates to ex-ante assessment or review of the INDCs prior to the Paris agreement.

The earlier draft of 8 Dec. made provision for the following “ex-ante” processes (in an apparent accelerated rate) to take place in 2015 after the communication of the INDCs as follows:

- To provide opportunities for seeking clarification on the INDCs;
- For Parties to submit questions to each other and for responses to be supplied within 4 weeks;
- For a workshop in June next year and at COP 21 for clarity, transparency and understanding the INDCs communicated;
- For a technical paper by the secretariat on the existing methodologies relating to land-use and use of market mechanisms;

- Organise a workshop on methodologies in June 2015;
- Technical paper by the secretariat on the aggregate effect of the INDCs;
- For observers to publicise their analyses of the INDCs on the UNFCCC website.

Developing countries, led by the LMDC, were of the view that these matters were outside the scope of the Warsaw mandate and could prejudice the negotiations for the Paris agreement and were also imbalanced since there was no similar ex-ante process (or even information) on the financial contributions that developed countries would make to support developing countries.

The decision also has **other paragraphs** on the issue of pre-2020 climate actions.