

Paris Agreement adopted after last minute 'technical corrections'

Geneva, 14 Dec (Meena Raman and Hilary Chiew) – The Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC) was finally adopted evening of Saturday, 12 December, after four years since the launch of the process to develop the legal instrument under the Ad hoc Working Group on the Durban Platform for Enhanced Action (ADP).

The adoption of the Agreement was heralded as “historic” by President of the 21st meeting of the Conference of Parties (COP21) to the UNFCCC, French Foreign Minister Laurent Fabius, as well as several countries that spoke at the final plenary.

However, there was some disquiet over how the Agreement was adopted in the final two hours, which marred the process, which until then, was viewed as exemplary since the Copenhagen fiasco (where the Danish COP Presidency tried to impose a deal struck behind closed doors between a few countries upon all Parties, leading to the collapse of the talks).

The French Presidency sought compromises among Parties over polarised positions between developed and developing countries, especially in the areas of how differentiation was to be reflected in the agreement, as well as finance and ambition (in relation to the temperature goal).

The concern was over some “technical corrections” which were presented orally by the Secretariat to the draft agreement at the meeting of the *Comité de Paris* (or Paris Committee which was responsible for finalising the agreement) prior to its transmission to the COP for adoption, which convened immediately after and was gavelled through by Fabius, in what seemed to many observers as a very rushed adoption.

When the Paris Committee convened on Saturday, 12 December at 5.30 pm to transmit the draft

agreement for adoption to the COP, it was not until 7.15 pm that the meeting actually began and the Agreement was finally adopted.

The draft agreement was distributed to Parties earlier in the day at around 1.30 pm, following the convening of the Paris Committee by the COP President at around noon, where he informed Parties that the draft agreement was the best possible balance that could be struck and that it was a “delicate balance”.

The French President, Francois Hollande and UN Secretary-General Ban Ki Moon were also present and made speeches at the noon meeting of the Paris Committee, in what appeared as an effort to cajole all Parties to adopt the agreement without further changes.

There was thunderous clapping in the conference hall even before Parties had seen the text, let alone adopt it.

Fabius then informed Parties that the Paris Committee would convene again at 3.45 pm, after Parties had a chance to see the text. The Committee finally convened around 5.30 pm.

When Parties gathered for the final Paris Committee meeting at 5.30 pm, many were wondering why the meeting did not begin.

News was abuzz that the United States (US) had issues with the draft agreement.

This related to Article 4.4 of the draft agreement as regards ‘mitigation’ and which reads as follows: *“Developed country Parties shall continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.”*

According to sources, the US wanted the word “shall” in the first sentence to be replaced with the word “should”, so that developed and developing countries will be treated in a like manner legally. Instead of raising the issue from the floor of the plenary, the US request was accommodated by the COP Presidency by what was termed a “technical correction” and the word “shall” was then replaced with “should” in the Article which was read out by the Secretariat.

This approach was not viewed favourably by some developing country Parties, although this was not expressed during the COP plenary, given the rousing and jubilant mood in the hall with thunderous clapping and standing ovation over the adoption of the Agreement.

Spokesperson for the **Like-minded Developing Countries (LMDC)**, Professor Gurdial Singh Nijar spoke to TWN later over this marring of the process. He explained that on the morning of 12 December, when the LMDC met with the Presidency, the latter pointed out some key elements of the text which seemed to have accommodated somewhat the LMDC redlines especially in relation to differentiation between developed and developing countries. The COP Presidency read out orally to the LMDC representatives the contents of Article 4.4 as was presented to the Paris Committee prior to the ‘technical correction’.

“We found the text (in this regard) a little convoluted, but we felt we could consider it. We agreed with it and so did the Group of 77 and China,” said Nijar, adding that “we felt there was balance and our red lines were somewhat preserved. Then when we went to the hall, we were shocked to find that the US was objecting to Article 4.4. They came up with this incredulous thing that it was a mistake. The European Union approached us and said that there is a problem and asked us if we could change the ‘shall’ to ‘should’. When we asked them why, they responded that the Americans had told them that if the word ‘shall’ was introduced, the Congress would not pass it. We said that we have done so many things to get the US on board and they were diluting everything. In this case they were diluting something which was our super-red line.”

Nijar said further, “We said if the US has a problem with Congress they have to sort it out. Then we said fine; we can consider this and let the US raise this problem from the floor and resolve this. It was holding up the meeting. They were

trying to suggest that we were the ones holding up the process. We said no and that we were ready to approve the draft. If anyone had an objection with the text, they must raise the issue and get the Presidency to resolve it and we were happy to participate in any resolution. Before that, there was no indication from the US delegation of this problem. Suddenly the meeting was called and the decision was gavelled. The French Presidency then asked for the editorial mistakes to be read out and then the applause started. Nicaragua was raising its flag and shouting to be heard but they were ignored and the gavel came down and their voice was lost in the applause.”

[Article 4.2 of the UNFCCC states: “The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties *shall* adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, ...” (Emphasis added).

This includes policies and measures adopted by regional economic integration organizations, i.e. the European Union.]

Following the adoption of the Agreement, several countries spoke, including Nicaragua.

Nicaraguan Minister Paul Oquist expressed surprise that the COP21 Presidency did not acknowledge his country, despite him raising his flag before the closing of the Paris Committee. He said he wanted to take the floor before adoption of the Agreement.

“The agreement weakens multilateralism in particular for small countries. (Therefore) it dilutes the value of the agreement. I did not intend to block the agreement but rather to work to fine tune. I wanted to make suggestions on some cross-cutting matters which have to be corrected to move forward for humanity. I wanted to explain why we are not able to support the consensus,” said Oquist.

Nicaragua supported the goal of limiting future temperature rise to 1.5 degree C. He said that the

results of the intended nationally determined contributions (INDCs) lead the world to 55 gigatonnes (Gt) of emissions in 2030 rather than 40 Gt that is necessary to achieve the 2 degree C target. “We need to go further because the level of ambition is leading to a 3 degree C world,” said Oquist further.

He also recommended the deletion of paragraph 52 in the decision text in relation to Article 8 of the Agreement (on loss and damage) which reads: *“Agrees that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.”* (This clause was introduced by the US as a quid pro quo to have ‘loss and damage’ anchored in the Paris Agreement).

“This would mean giving 3 degree C temperature increase to our grandchildren and they are not able to ask for compensation and we strip them of any legal rights for legal action for the liability of other countries that caused the damage,” said Oquist.

To this, COP21 President French Foreign Minister Fabius simply said Nicaragua’s statement will be included in the report of the meeting.

South African Minister of Environment, Edna Molewa said that the text is not perfect, but believed that it represents a solid foundation from which we can launch our enhanced action with renewed determination. She added that the Agreement is balanced and the best that we can do at this historic moment and was a turning point to a better and safer world. It should be recognised that the Paris Agreement represents a major leap forward for developing countries, creating new legal obligations that they did not have before, she said.

“Again, developing countries have been asked to take this leap without the firm commitments to provide the support that will enable us to contribute our fair share. For our efforts to combat climate change to be successful, it is critical that developed countries significantly enhance the ambition of their actions and ensure that the enhanced actions of developing countries are adequately supported. In the build-up to this conference we have noticed and welcomed the pledges of support made by a number of developed country Parties. This support has to be sustained if we wish to have any meaningful action,” said the South African Minister further.

Molewa also said that “the closing of the pre-2020 ambition gap is essential and the work of the COP in this regard must remain our focus. We have

been focusing strongly on the creation of a post-2020 climate agreement and therefore spent less time on major tasks that would enhance our implementation pre-2020. We must now refocus our attention to the urgent tasks at hand. A number of key issues related to the COP finance agenda unfortunately could not receive the appropriate consideration, particularly issues related to long-term finance and the guidance to the Standing Committee on Finance. We expect to come back in Morocco (the venue of the next COP) with substantive discussions on increasing finance ambition pre-2020,” she added.

Indian Minister of Environment, Forests and Climate Change Prakash Javadekar said that the Paris Agreement acknowledges and recognizes the development imperatives of India and other developing countries. The agreement supports their right to development and their efforts to harmonize development with environment, while also protecting the interests of the most vulnerable, he said.

He also said that the agreement had unequivocally acknowledged the imperative of climate justice, and has based itself on the principles of equity and common but differentiated responsibilities (CBDR). The agreement also acknowledges the importance of sustainable lifestyles and sustainable consumption patterns, he added.

The Minister said India was happy that the agreement differentiates between the actions of developed and developing countries across its elements. “India has consistently said that the path to climate ambition must be paved with equity. I am happy that the Agreement has recognized this,” said Javadekar.

He added that while give and take was normal in negotiations, India was of the opinion that the agreement could have been more ambitious. “We share the concern of several friends that this Agreement does not put us on the path to prevent temperature rise below 2 degrees C and that the actions of developed countries are far below their historical responsibilities and fair shares. We have in the spirit of compromise agreed on a number of phrases in the Agreement,” said Javadekar.

China’s Vice-Minister of the State Development and Reform Commission, Xie Zhenhua welcomed the adoption of the Paris Agreement. Acknowledging that the agreement is not perfect and there are some areas in need of improvement, he nevertheless said it does not

prevent us from taking the historical step forward. “The Paris conference is a critical point in the global effort against climate change. Its success is critical to the global future in response to climate change and achievement of a sustainable future. After relentless efforts, the Paris Agreement that we achieved today is an agreement that is fair and just, comprehensive and balanced, highly ambitious, enduring and effective with legally binding force. It reflects a strong and positive signal that the world is going to achieve low carbon, green development and sustainable development,” he added.

Xie further said the Agreement is based on the UNFCCC and is built on a series of achievements such as the Kyoto Protocol and the Bali Roadmap following the principle of CBDR and respective capabilities, fairness and justice. It intends to further enhance the comprehensive, effective and sustainable implementation of the UNFCCC, he said stressing that enhancing ambition in the pre-2020 is compatible with actions post-2020.

“It is our hope that all Parties implement the outcome of the Agreement and to be better prepared for the entry into force of the Agreement. I hope all will take active action in enhancing efforts before 2020 and I would like to emphasise the need for developed countries to honour their commitments in providing finance, technology transfer and capacity-building to lay down a solid effort for enhanced actions after 2020,” said Xie.

US Secretary of State, John Kerry said the Paris Agreement “is a tremendous victory that will empower us to chart a new path”. He said that it “will help the world prepare for the impacts of climate change that are already here and also for those we know are headed our way inevitably. We reached an agreement that if globally implemented will help us transition to a global clean energy economy and prevent the worst devastating consequential climate change from ever happening.”

Kerry said that, “we are sending a critical message to the global market place. Many of us here know that it would not be governments that actually make the decision or find the products, or the new technologies... it will be the genius of the American spirit; it will be the businesses unleashed because 196 nations are saying to the global business that we need to move in this direction that will create the research and development and the next great products that will come and change our lives,” he added.

Kerry also said, “we took a critical step forward but what we do next, how we implement our targets and build this agreement and how we strengthen it in times ahead ... that will determine how we actually address one of the most complex challenges humankind has ever faced.”

Australia speaking for the Umbrella Group said congratulated the COP21 Presidency for producing the global agreement that created the global framework for all nations to play its part to ensure safe and prosperous world for future generations.

“Our work here is done and now we can return home to implement this historical agreement. This is a pivotal moment of new global agreement which will see all countries committed to taking ambitious steps in accordance to national circumstances and capabilities.

“It certainly does not include everything that we envisage but it does give us the strategy to work together over coming years and decades to build strong and effective actions that the world needs. The Agreement is clear that we will do this on the basis of actions by all in line with national circumstances. Each country will progress our efforts to the best of our capabilities and no countries will step back,” it added.

It said the Agreement critically provided for all Parties to come back every five years to update on their emissions reduction efforts and ensure Parties build ambition over time and 2020 will be a key moment for this, adding that the Agreement delivers a strong transparency and accounting system which will establish a common basis for all countries to track their efforts, building in flexibility for countries with different capacity, recognising that countries may cooperate through international mechanism to achieve high mitigation ambition through market and other means.

It further said that the Agreement confirmed that developed countries will continue to lead in providing support for climate actions and recognise the important role that others can play in mobilising support and financial flows for low emission and climate resilient development initiatives.

The European Union noted that the Agreement is a real feat of the COP21 Presidency in holding a fragile balance. It said that this is a landmark agreement, adding that Europe is strongly committed to its financial commitments and to translate the Agreement into concrete actions to transform societies.

(With inputs from Indrajit Bose.)

(Further articles on the Paris Agreement will follow.)