

The rocky road from Durban to Paris

30 November, Paris (TWNN) — Around 7 am on a Sunday, 11 December 2011, the seventeenth session of the Conference of the Parties (COP 17) concluded in Durban, South Africa, with the establishment of a new subsidiary body to the United Nations Framework Convention on Climate Change (UNFCCC). The body was called the Ad hoc Working Group on the Durban Platform for Enhanced Action (ADP).

The ADP was established “to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention”, which would be “applicable to all Parties”. It was also decided that the ADP “shall complete its work as early as possible but no later than 2015 in order to adopt this protocol, another legal instrument or an agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020.”

The four years have passed and COP21 is now scheduled to begin. Through the past four years, talks among over 195 countries, Parties to the UNFCCC, have been tough and lengthy and the road from Durban to Paris, rocky. The core issues continue to remain unresolved (*see TWNN Update 1*).

However, the process to deliver a smooth outcome has been far from satisfactory, especially for developing countries. The consequences of right processes not being followed in the past along with what kind of process is followed here in Paris will have a bearing on how negotiations progress here and on the outcome as well.

Tracing the history of just the processes followed since Durban, it emerges that developing countries have had to struggle to even make their voices heard and their proposals included in negotiations texts. Their call that the process all the way up to Paris must be open, transparent,

inclusive, and Party-driven, marked by direct negotiations among the Parties on the basis of texts that they have produced themselves has not been easy.

For a successful and legitimate outcome in Paris, lessons from the past are valuable.

The incoming French Presidency of COP21 has assured through this year that they do not have a ‘Plan B’ and that there would be no surprises in Paris. They have stressed before that the French Presidency is not working on a text and neither does it want to produce one. All they want is an “orderly and timely” delivery of an agreement that lasts.

What follows are the highlights of processes followed since Durban, which also forewarns that for COP21 to be a success, the process needs to be driven by Parties and there should be no surprises with respect to negotiations or the texts. A review of the history will provide useful lessons.

Durban, 2011

The Durban climate talks were scheduled to close on 9 December, but it continued until the morning of 11 December. By then, several ministers and senior officials had already left. The draft decision pertaining to the ADP was provided at an informal plenary late on the night of Saturday 10 December. It was given to the remaining participants as part of a package of four decisions on a ‘take-it-or-leave it’ basis, with little time for the members to consider or discuss among themselves, in an unusual and unprecedented set of procedures. It was also unusual how a decision to launch such an important negotiation process was made with very little terms of reference to frame the talks or the outcome that would come from it. (It was

decided that the ADP would plan its work in the first half of 2012.)

At Durban, negotiations were also happening under two other negotiating tracks—the ad hoc working groups on long-term cooperative action (AWG-LCA) and Kyoto Protocol (AWG-KP). Many of the differences were papered over in the ‘take-it-or-leave it’ decision-making mode of the final plenary meetings, and the objections of developing countries, especially to many parts of the report and decision from AWG-LCA and AWG-KP were simply brushed aside by their Chairs (who were from the United States and New Zealand respectively). The Chair then of the AWG-LCA was Daniel Reifsnyder of the US, who is now the current Co-chair of the ADP, along with his Algerian counterpart, Ahmad Djoghlaif.

Despite strong concerns raised by many developing countries over the lack of balance in the report of the outcome of the work of the AWG-LCA, the Chair in an unprecedented move, transmitted the report to the COP under his own authority. Many concerns raised especially by developing countries during the final session of the AWG-LCA were brushed aside with the unusual procedure of transmitting the outcome document to the COP under the authority of the Chair despite it not enjoying any consensus from the UNFCCC Parties.

Several developing countries raised concerns over many specific issues and the lack of balance in the text, especially in relation to mitigation actions of developed and developing countries, with the breaking down of the firewall between them, and the absence of the recognition of historical responsibility and the principle of common but differentiated responsibilities (CBDR).

Doha, 2012

Work under the ADP continued in roundtables and workshops around two workstreams: workstream 1 on post-2020 arrangements and workstream 2 on pre-2020 climate action.

Developing countries were concerned that the roundtables and workshops were being used to introduce new concepts and models for climate actions that moved Parties away from the Convention’s principles and provisions. They also called for a stop to the informal roundtables and workshops and proposed Party-driven negotiations to begin. Developing countries made it clear that any conclusions could only be drawn

from a formal, structured, open, participatory and Party-driven negotiating process.

Warsaw 2013, to Lima 2014

The ADP negotiations under the Co-Chairs Kishan Kumarsingh (Trinidad and Tobago) and Atur Runge-Metzger (EU) saw developing countries expressing their frustration over the process. In Lima, the talks under the ADP were even on the brink of collapse, only to be saved by the COP 20 President from Peru.

During the inter-sessionals in 2013, the G77 and China had called for negotiations to resume in a focused and Party-driven mode in Warsaw (COP19). However, when the Warsaw COP began, developing countries found themselves in a situation where their proposals were not included in the negotiating text. China articulated this and expressed surprise that at the end of long consultations on the text, the draft decision remained the same and was not a Party-driven outcome. Referring to textual changes proposed by the Like-Minded Developing Countries (LMDC), China felt that nothing had been captured. It expressed serious problems in relation to the balance with more emphasis on mitigation and less on the means of implementation. It also referred to the proposal by the BASIC (Brazil, South Africa, India, China) ministers, which was supported by many Parties, but which was not reflected in the text.

The final plenary at Warsaw saw deep divide and exchanges between developed and developing countries in relation to preparations for the 2015 ‘agreement’ over attempts by developed countries to break down the ‘firewall’ and ‘differentiation’ between developed and developing countries, as currently exists in the Convention and its annexes. A last minute huddle to resolve differences during the plenary led to a text that allowed the decision to be adopted.

Over the course of 2014, developing countries reiterated and intensified their call for real negotiations to begin. They stressed that the process should be Party-driven and be fully inclusive and transparent. They also said that the process must build on inputs from Parties and any outputs of the process should reflect inputs from Parties. They repeated this statement several times over that year.

In the run up to Lima, the LMDC asked when actual negotiations would begin with text on the screen for Parties to negotiate. In response, Co-

Chair Runge-Metzger replied that, “as soon as all Parties agreed on how to proceed, if people say yes, then we are ready to go but we have not heard that yet”. To this, Ecuador asked: “Can I, through you, ask all the Parties who are against proceeding with text to state their reasons and indicate when we can begin with this procedure?” There was, however, no response from any developed country in this regard.

Meanwhile, developed countries were generally satisfied with the process and they felt that the discussions helped deepen understanding of Parties’ positions and registered their trust in the Co-Chairs’ guidance, while acknowledging that the pace of progress was not as fast as they would have liked it to be.

Developing countries were abundantly clear and gave ample warnings that they did not want to be faced with a situation of ‘take it or leave it’ approach with regard to the text to be adopted.

During the intersession in June 2014, Minister Xie Zhenhua, Vice Chairman of the National Development and Reform Commission of China, said that the Co-Chairs should not parachute a negotiating text and “we don’t want to see the repeat of a Copenhagen scenario”. (Minister Xie was referring to the Copenhagen Climate Conference in 2009 that ended in disarray because a secretive meeting of leaders of 26 countries convened by the Danish Presidency of the conference was seen as undemocratic by many developing countries, and the Copenhagen Accord arising from that meeting was thus only “noted” and not adopted.)

India also made a strong pitch for formal negotiations to begin, with text from Parties. But the developed countries appeared comfortable with the “workshop” mode of work with discussions based on issues posed by the Co-Chairs. Clear divergences remained as the Africa Group, the LMDC and the Arab Group preferred to progress work and negotiate on the basis of written proposals from Parties.

Developing countries were also opposed to having last minute “huddles” to resolve issues on the negotiating texts. Stressing the need for clarity on the way ahead, the G77 and China, said the format of the future sessions of the ADP had to be modified. The LMDC said that it “will not accept being made, due to a mismanaged process, to press around each other in an undemocratic, non-inclusive, and non-transparent ‘huddle’ at the

last hours and minutes of the COP just to finalize a decision”. “We want to see draft texts from Parties on screen, on paper, being directly negotiated by the Parties with each other, in order to narrow differences, find convergence and achieve consensus,” said Ecuador for the LMDC in the inter-sessional in October 2014.

Despite warnings through the year, the Lima COP proved disastrous on process for the developing countries. Their demands that the traditional method of work of putting texts on a screen, and making changes to the text as countries made their proposals, reached new heights as the countries perceived that the Co-chairs were less than interested in accepting their proposals.

The ADP Co-chairs instead seemed to continue what they had done in the previous year, which was to merely listen to comments and proposals made by the Parties and then for them to come out with new versions of the draft decision text. This was considered to be not a Party-driven but a chair-driven process by many of the developing countries, which was not acceptable to them.

With talks on the brink of failure as key red lines were missing from the text prepared by the ADP Co-Chairs, it took COP20 President Manuel Pulgar Vidal, the Minister of Environment of Peru, to step in and assume charge and ‘save the show’.

The road to Paris

The ADP talks this year have been held for about 25 days spread over February, June, September and October.

In February, countries took up an ‘elements text’ that came from the Lima climate talks in 2014, which was a mixed bag of proposals by the countries as well as the former ADP Co-Chairs.

Since this text did not reflect the proposals of all the countries, the current Co-Chairs used the February session to get countries to input their proposals into the elements text to give a sense of ownership to them. By the end of the February session, the countries had a 90-page text, which came to be known as the Geneva Negotiations Text (GNT). It was agreed that the GNT would be the basis of negotiations in Paris and the only legal text on the table. Finally, some semblance of trust in the process began to emerge, with a Party-owned text.

In the June session however, the countries found the negotiations text unwieldy and the session was spent streamlining the 90-page document. It was unclear though how the streamlining would be done and streamlining rules evolved as the days progressed but there were no real negotiations at this session. Since some trust was restored in the process, the Parties decided to seek the help of the ADP Co-Chairs to come up with some kind of a tool to help facilitate negotiations. The LMDC provided detailed guidelines to the Co-Chairs to take into consideration.

The Co-Chairs came up with a “tool” for the September session to help facilitate negotiations and divided this tool in three parts. The first part contained issues which they thought fit the core agreement, the second part contained issues which they thought merit inclusion in decisions and the third part included areas that they were not clear where to put.

Developing countries were unhappy with this “tool” as it did not contain the proposals of key importance to the developing countries in the draft core agreement.

Many issues such as the principle of CBDR, linkage between action by developing country Parties and support by developed country Parties, institutions on adaptation, finance, technology transfer and capacity-building, loss and damage, response measures and scope of climate contributions were in Part three of the tool. This created the impression that there is a doubt over whether these issues should be included in the agreement or not, even though these issues had the overwhelming support of the G77 and China to be included, for a balanced outcome in Paris.

Another disturbing development at the September session was that the developed countries were in no mood to negotiate. With Paris three months away and with no clear negotiations text, the developed countries wanted to “talk” about concepts such as differentiation between developed and developing countries, or why the issue of loss and damage should be included, if at all.

Developing countries set out the terms clearly that the text should be balanced and cover all the different elements and that none of their

proposals should fall off the table. Developing countries had also clearly indicated that the Co-Chairs should not operate on the basis of consensus, a key demand of the US and the EU, but to be inclusive and not leave any proposals out. The session ended with yet another mandate given to the Co-Chairs with the hope that they would produce a balanced text for the October session. But that did not happen.

The beginning of the October session was marked with developing countries, led by the G77 and China calling the Co-Chairs’ non-paper containing the text for negotiations as being “unacceptable”, “unbalanced” and “lop-sided”. For starters, none of their key proposals reflected in the document. The little trust that had emerged in the process in the Co-chairs fast disappeared.

Thus, negotiations could not begin as planned. Developing countries had once again called for their proposals to be back in the text, and proceeded to provide their inputs.

That is how Parties arrived at the present negotiations text and they agreed that this would be the basis of negotiations in Paris.

There have also been occasions where negotiating sessions have started without the G77 and China’s heads of delegations being present in the room. On one such occasion was during the last October session, where the G77 and China chair, Ambassador Nozipho Mxakato-Diseko of South Africa said to the Co-Chairs, “The Group is deeply affronted by the lack of consideration and respect for 134 developing countries that comprise the Group. You cannot wish the Group away. We are not an inconvenience to be ignored in order for you to keep to your schedule. Just as climate change might be an inconvenient truth, the G77 and China will not be side-lined to a footnote in a text.”

Developing countries have often come under attack from several quarters for raising process issues, perceived at delaying negotiations. However, the fact that process determines substance cannot be overemphasized enough.

A very valuable lesson in all this is to ensure a truly Party-driven, transparent and inclusive process, that embraces the trust of all Parties in delivering an outcome belonging to all Parties.