

Differentiation under the Paris Agreement – a tough fight

28 December, Penang (T Aji) — The issue of differentiation between developed and developing countries remained a key sticking point until the final hours of the climate talks on the UNFCCC's Paris Agreement.

Parties remained firm in their respective positions and were deadlocked over how to reflect differentiation and to operationalize it in the different elements of the Paris Agreement, covering mitigation, adaptation, finance, technology development and transfer, capacity building and transparency. The compromise was crafted by the French Presidency of the 21st meeting of the Conference of Parties (COP21), and was accepted on 12 December.

With positions of Parties on differentiation completely polarized, commentators and experts were of the view that the Paris talks could make or break over this issue.

Central to the disagreement was whether the Agreement would retain differentiation by reflecting the principle of common but differentiated responsibilities (CBDR) as provisioned for in the Convention, a key demand of the Like Minded Developing Countries (LMDC), or reflect 'dynamic differentiation' which the European Union (EU) called for, and 'self-differentiation' of which the United States (US) and its allies were proponents.

The justification of the developed world to move away from the Convention-based differentiation was that the world had changed since 1992 (when the Convention was agreed upon).

However, developing countries provided strong arguments to the contrary and spoke of the historical responsibility of the developed countries in causing climate change, the unfulfilled legally binding commitments of the developed countries since 1992, the right of the developing countries to not

compromise their development space and the reality that the world has not really changed between developed and developing countries. (See [TWN Paris Update 10: Differentiation between developed and developing countries still relevant, say developing countries](#)).

Given the critical nature of the issue, several sessions in Paris were dedicated to this crosscutting issue in the Agreement. Since most of these discussions were behind closed doors, Third World Network (TWN) spoke to several negotiators to find out what transpired during the discussions.

In one of the closed door consultation sessions chaired by COP21 President Laurent Fabius (French Foreign Minister), **Malaysia for the LMDC** said the Convention had been in place since 1992 and that developed countries had not fulfilled their obligations. It said that the LMDC, which houses two-thirds of the poor population of the world continue to suffer climate extremes. Then in Durban (which established the mandate for the Paris Agreement in 2011), Parties decided that they would enhance the Convention implementation and Parties should stick to the mandate (and not rewrite the Convention), said Malaysia.

Both **China and India** (members of the LMDC) also reportedly said that the purpose of the Agreement must clearly reflect that it is to enhance the implementation of the Convention and follow its principles, including equity and CBDR.

India also said that mentioning sustainable lifestyle and sustainable consumption would help ambition. It cautioned against some Parties insisting on options, which completely obliterated and diluted the differentiation issue, which would not be acceptable to most developing countries.

Sources said that the **EU** was of the view that the principles of the Convention must be applied in a fair and contemporary manner, reflecting evolving

realities. It said that progress made in Lima on the issue must be translated into mitigation, adaptation and means of implementation, taking into account the different national circumstances. (At COP20 in Lima, Parties had agreed that the Paris outcome must reflect the principle of CBDR and respective capabilities, in light of different national circumstances).

According to sources, even though the **US** said it was supportive of CBDR, its interpretation of CBDR was different in that it could not accept the mention of annexes in the agreement. “We have always supported CBDR. We are for differentiation but we must remember the failure of Kyoto Protocol, which had a mandatory one-sided effort (referring to only developed countries having to take on emissions cuts). We tried, but failed. You can take the US out of this. Take the developed world out of this. The Earth has a problem. What will you do with the problem on your own?” US Secretary of State John Kerry is supposed to have asked this to countries in the closed-door session on 10 December, which was also chaired by Fabius.

(The UNFCCC Annex I lists the developed countries that have committed to emissions reductions, while Annex II are those that have financial commitments. These are the annexes that developed countries object to.)

Referring to the draft agreement proposed by the COP21 President on 10 December, Kerry is also supposed to have said that this Agreement was a “monument to differentiation” but that the US was not in favour of loading the agreement with differentiation.

It seems that **Singapore** asked Parties to stop scaring each other by invoking the spectre of bifurcation and firewalls. “Those are the standard negotiating tactics. There is no point paralysing ourselves. We already decided that we would work on INDCs (Intended Nationally Determined Contributions). The genius is it expresses differentiation in the fullest sense of the word. Let’s not scare each other about greater differentiation and then say mitigation pledges have to be unconditional. Are you trying to scare people or encourage people to voluntarily come to a system? When the concept of INDCs came about, none of us believed there would be 186 (contributions) on the table. Even if you don’t want to face the frontal nudity of the annexes, the fact is we have developed countries and

developing countries. There are different roles played by these,” Singapore’s foreign minister Vivian Balakrishnan is supposed to have said.

Below are further highlights of the closed-door discussions on differentiation in mitigation, finance and transparency, according to several negotiators who spoke to TWN.

Mitigation

During discussions on mitigation, the **LMDC** made it clear that differentiation must be clearly reflected for developed and developing countries and that it forms the bedrock upon which Parties could achieve ambition. “Attempts to break this firewall would not help. The LMDC, which represents 50 per cent of the world, will not agree to this,” asserted Malaysia.

For **China**, differentiation in mitigation could be stated by provisions such as developed countries should take the lead in mitigation and must take economy-wide absolute quantified targets. These countries must also enhance the ambition in the forthcoming years. For developing countries, it should be in a sustainable development framework, supported by finance, technology, capacity building, as well as facilitative instruments and policies to undertake modified enhanced mitigation action and such diversified mitigation action could undertake multiple and different targets.

The **Africa Group** also spoke along the same lines that differentiation should be reflected in the nature of commitments countries would undertake. Developed countries should take the lead by committing to quantified, economy-wide emissions reductions, whereas developing countries could take on other types of commitments, said Ethiopia for the Africa Group.

The **Least Developed Countries (LDC)**, were of the view that developed countries must take the leadership in taking action and in supporting developing countries. It said the special needs of the LDCs must be recognized throughout the agreement.

The **EU** said that it was not in a position to accept a bifurcated approach that freezes the divide for decades to come. For the EU, actions should be based on what each Party can do and it should strive to reach economy-wide targets (in emission reductions). It was for each Party to demonstrate its highest possible ambition and regularly prepare,

communicate and implement its INDCs and each Party's successive commitment must reflect its highest possible ambition

For the **US**, a wrong kind of differentiation would do a disservice to ambition. "We will not support a category-based approach, whether annexes or developed or developing countries. Some developing countries' per capita income are higher than the US's. To make sure we do not get into such kind of problems, we should have a nationally determined approach," the US is supposed to have said behind closed doors and advocated self-differentiation.

In the agreement finally adopted on 12 December, differentiation between developed and developing countries is reflected explicitly in Article 4.4.

Article 4.4 reads:

"Developed country Parties should 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."

Finance

Malaysia for the **LMDC** cautioned that Parties should not go down the pathway of using phrases such as 'countries in a position to do so' since it was a legal minefield and who would determine who is in a position to do so.

For **China** concepts such as 'countries with capacity and in a position to do so' would not help reach an agreement as these terms had not been defined earlier. China was for developed countries to fulfill their legal obligations and continue to provide financial support after 2020 to developing countries. "We could encourage other countries to voluntarily come forward and provide supplementary support to developing countries, rather than saying those in a position to do so or capacity to do so," said China during the discussion on finance.

For **India** it was imperative that differentiation in means of implementation recognized that Annex II Parties (who are developed countries in the Convention) must provide support to developing countries, which until now had not been satisfactorily done, as there was neither predictability nor any additional money coming in. It also said that terms such as 'Parties willing to do so' only served to create confusion. India said public finance, being

over and above ODA (Official Development Assistance), must be anchored. It also called for a funding mechanism to support technology transfer.

The **LDCs** stressed that the "landing zone" in finance was where developed countries reaffirmed their commitments for scaled up finance, with particular emphasis on SIDs (Small Island Developing States), LDCs and Africa. The LDCs, though, were of the view that while the Convention must play a role in informing the agreement, Parties must also recognize finance opportunities within the context of South-South cooperation and emerging realities must be captured in the agreement by reflecting the desire of those countries willing to do so.

The **EU** too was in favour of all Parties to take on enhanced action and mobilise finance. Without this, it will not be possible to meet climate resilient economies, and Parties should communicate *ex ante* information in this regard, according to the EU. It was also in favour of other countries in a position to do so to provide climate finance.

The **US** was looking at broadening the donor base. It did not see a short-term goal for finance in a durable agreement. It also was not in a position to accept a quantified goal that would be scaled up over time. According to a source, Kerry at a closed-door meeting said, "Our situation is such, if I had my way, we would have a legally binding agreement. We tried to pass cap and trade but failed. I would love to have a legally binding agreement but the situation in the US is such that a legally binding agreement with respect to finance will be a killer for the agreement. We are for voluntary, non-punitive action."

Referring to the US\$100 billion commitment a year by 2020 of the developed countries, **Singapore** said that the LMDC had told Parties that the US\$100 billion was not a donation. "As far as the LMDC is concerned, it is the fulfillment of an obligation. Even if we hope other developing countries support developing countries, these countries will not accept that these contributions and support are on the same terms as fulfillment of prior obligations. That is why in a position to do so is being opposed. What China is doing is South-South (cooperation). If you leave it voluntarily, it will flow," said Singapore.

In the agreed finance chapter of the Agreement, Article 9.1 reads:

"Developed country Parties shall provide financial resources to

assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.”

The notion of ‘countries in a position to do so’ is not reflected in the final outcome, although subparagraph 2 states that “*Other Parties are encouraged to provide or continue to provide such support voluntarily.*”

(For further details on this, see TWN [Paris Update 21](#): *What countries agreed to under the Paris Agreement – Part 3.*)

Transparency

On transparency, the **LMDC** was of the view that “it is important to recognize the different starting points between developed and developing countries and not lose sight of the different economic realities. Developing countries started at a different point. If you put a burden that is so high then it will be a dead letter as far as developing countries are concerned,” said Malaysia. A common system would be very onerous. It is difficult to even collect data for developing countries. “We can have differentiation, but which can be embodied without a total bifurcated system that provides flexibility to developing countries only,” said Malaysia.

China also stressed that the agreement should establish an enhanced transparency system, based on existing arrangements under the Convention. It should not be unified, but reflect differentiation between developed and developing countries on matters such as institutions, frequency of reporting, methodologies and a lot of other ways. The international community should provide support to developing countries on how to build their capacity, according to China.

India too called for a robust transparency framework but not to change goalposts. “Only 16 countries have submitted their biennial update reports. The system is not in place and yet we want to change the goalpost, said India, stressing that while it was willing to work on language, the issue of differentiation could not be compromised.

[The existing system of transparency is differentiated through International Assessment and Review (IAR) for developed countries and International Consultation and Analysis (ICA) for developing countries, with biennial reports for developed countries and biennial update reports for developing countries agreed to in Cancun in 2010. All those

decisions and reporting rules were the result of multiple negotiations.]

The **Africa Group** said it was important to take into account the different levels of capacities of countries to build the framework, which should translate into providing for flexibilities for developing countries on a voluntary basis. The Africa Group wanted flexibility for reporting, timing of submission of reports and treatment of information, and called for effective participation on transparency in finance arrangements. It also said that any new transparency framework must build on the existing framework.

The **EU** said differentiation in relation to transparency is not related to history (referring to historical responsibilities). All Parties have the same responsibility to report in a transparent way. Differentiation can be nuanced through flexibility for developing countries, the EU said. “We are advocating for a new system to inform, review and create a facilitative link to compliance. The existing transparency system is not fit for purpose and the EU cannot accept current arrangements,” it said. The new system should allow for flexibility that takes into account the capabilities of developing countries and provide further flexibility for developing countries and SIDs and recognise their national circumstances.

The **US** called for a new, credible, robust transparency system, which should cover both action and support. There would be a new funding mechanism for capacity building to developing countries with low capacity. It added that there was a need to build a strong system for inventories and that many large developing countries do inventories once in 10 years. (The US proposed a ‘Capacity-building Initiative for Transparency’, which is reflected in paragraph 85 of the COP21 decision that accompanied the Paris Agreement.)

According to **Singapore**, if Parties started with ICA and IAR, they would end up with a global inventory with time. “Do you want to start with a starting point or a final common destination? This is not the time to be scaring each other,” it cautioned.

In the Paris agreement, the transparency section included the following provisions with respect to differentiation.

Article 13.1 reads:

“In order to build mutual trust and confidence and to promote

effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established'.

Article 13.2 reads:

"The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility."

Article 13.3 reads:

"The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall, at its first session,

building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support."

Sub-paragraph 13.3 is expected to generate further debate on what is meant by "common modalities, procedures and guidelines" when it is to be built on the experience from current arrangements under the Convention, which differentiate between developed and developing countries. (See TWN [Paris Update 22](#): *What countries agreed to under the Paris Agreement – Part 4.*)