



### **The global climate regime: Adoption of the UNFCCC**

The international response to climate change has been in the form of a global climate regime under the umbrella of the UN, the United Nations Framework Convention on Climate Change (UNFCCC). This environmental treaty came into force on 21 March 1994, with 194 countries signing the Convention.

### **Major elements of the UNFCCC**

#### **Objective**

The ultimate objective of the Convention is to 'stabilize greenhouse gas (GHG) concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system.' The UNFCCC thus recognizes the role of human activities in altering our ecosystems beyond safe limits.

#### **Principles of the UNFCCC**

The principles of equity and CBDRRRC (Common but Differentiated Responsibilities and Respective Capabilities) are stated in the terms that 'Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.' It also recognizes the historical responsibility of the rich and developed countries in climate change and mandates that 'the developed-country Parties should take the lead in combating climate change and the adverse effects thereof'. The special development needs of the developing countries are taken well into consideration in the Convention which mandates the developed countries help the developing world in their efforts to switch to a low-carbon pathway. Countries are accordingly divided into Annex I (developed) and Non-Annex I (developing). Equity and CBDRRRC are thus the basic premises of the global climate regime. However, over the years of climate negotiations as explained below, the principles of equity and binary differentiation into Annexes have been heavily diluted.

#### **The Conference of Parties**

The Conference of the Parties (COP) is the 'supreme body' of the Convention, i.e. its highest decision-making

authority. It is an association of all the countries that are Parties to the Convention. The COP meets annually, unless otherwise decided by the Parties.

#### **Legal nature of the UNFCCC**

The treaty by itself is not legally binding as it does not set mandatory limits on GHGs for individual countries. It also does not contain any enforcement mechanisms for countries to comply with the targets. Negotiations after the adoption of the Convention therefore initiated the formulation of a Protocol, or a legal instrument, that could set emission-reduction targets for countries.

#### **Major climate summits**

The major climate summits are described and explained with regard to their development outcomes in the following section.

#### **Kyoto Protocol: US pull-out weakens equity**

The Kyoto Protocol was signed in Kyoto, Japan, in 1997. Under this treaty, 37 industrialized countries and the European Community (the Annex I) committed to reducing their emissions by an average of 5 per cent by 2012 against 1990 levels. However, equity received a big setback as the world's historically biggest polluter, the US, under President George W. Bush, pulled out of the Kyoto Protocol in 2001, citing that developing countries such as China and India should also have ambitious targets and also since it believed that ratifying the Kyoto Protocol might prove to be anti-development. Additionally, the target set for industrialized countries under the Kyoto Protocol was too unambitious—just 5 per cent below 1990 levels by 2012.

The Kyoto Protocol, which was weak in design and content, was finally ratified, without the US, in 2005. Countries ratifying the treaty agreed to take climate change into account in such matters as agriculture, industry, energy, natural resources etc.

#### **The Bali Action Plan (2007)**

- The Bali Action Plan set guidelines and a timeline for sustained implementation of the Convention 'up to and beyond 2012' with regard to climate change mitigation and GHG emissions reduction. This plan called for an agreement to be adopted at the 15<sup>th</sup> COP in Copenhagen, Denmark. The Bali Action Plan

was based on enhanced action on four pillars: mitigation, adaptation, technology and financing. All these measures, the plan outlined, would be based on the principle of the UN Convention—common but differentiated responsibilities (CBDR).

- Negotiating tracks emerged: The Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) was to discuss mitigation, adaptation, financing and technology transfer and further commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) for the post-2012 plan of action, i.e. after the Kyoto Protocol expired.

According to the Bali roadmap, rich countries would enhance their emission cuts and put new money on the table. In exchange, emerging economies would join the effort, reducing domestic growth of emissions, enabled by finance and technology from industrialized countries.

### ***The Copenhagen Summit (2009): Voluntary actions for all***

- The outcome of the Copenhagen Summit was an accord, while the agenda was actually to adopt a new climate agreement.
- The accord calls for a new Copenhagen Green Climate Fund (GCF) as one channel for delivering finance.
- A goal of mobilizing US \$100 billion a year by 2020 ‘in the context of meaningful mitigation actions and transparency on implementation’ was agreed upon. The long-term finance is to be a mix of public (bilateral and multilateral) and private resources.
- A technology mechanism was called for to accelerate technology development and transfer for both adaptation and mitigation.

The Copenhagen Accord proposed only voluntary actions to reduce emissions by all countries, developed and developing. Under the Accord, Annex I (developed) countries ‘commit to implement’ economy-wide emissions targets for 2020, and non-Annex I (developing) countries ‘will implement mitigation actions’ which was a deviation from the Convention language of developing countries only requiring to make voluntary reduction actions. It did not contain commitments to emissions reductions to achieve that goal and further weakened differentiation between the developed and developing countries. However, according to the Accord, the least developed countries and small island countries ‘may undertake actions voluntarily and on the basis of support’. The US and the EU all throughout the Summit pressed for a legally binding climate regime as soon as possible.

Also, the earlier 2050 goal of reducing global CO<sub>2</sub> emissions by 80 per cent in an earlier version of the

text document was dropped in the final Accord. The deal at Copenhagen undoubtedly was the lowest on ambition. Developing countries, especially China and India, were blamed for the weak outcome. It was widely condemned by civil society, NGOs and even heads of delegations like the G-77 representing the developing world and the African Group.

### ***The Cancun Agreements (2010): Voluntary actions formalized***

The set of agreements agreed upon at the Cancun Summit, in Mexico, are hailed as the largest ever collective effort to reduce emissions.

- The agreement encompasses finance, technology and capacity-building support to help meet urgent needs to adapt to climate change and speed up plans to adopt sustainable paths to low-emission economies which can also resist the negative impacts of climate change.
- In further dilution of the principle of differentiation, one major outcome of the Cancun Agreement was the operationalization of the voluntary reduction efforts by the countries in the form of ‘pledge and review’.
- Parties for the first time agreed on a temperature goal, of limiting global warming to below 2 degrees Celsius. It ‘encouraged the participation of all countries in reducing their emissions’.
- A GCF was established with the long-term goal of mobilizing US \$30 billion by 2012 and US \$100 billion by 2020. To this date, however, the GCF is struggling with funds, with only US \$4 billion of the required mandate.
- A mechanism was reached on reducing emissions from deforestation and capacity-building in developing countries.
- Measuring Reporting and Verification (MRV) was agreed on for Annex I countries and for their financial contributions towards developing countries. Though developing countries wanted MRV to be applied to climate actions of developing countries, the proposal had finally to be dropped amidst sharp protest by India and China in this regard. These countries were against any review of their climate actions as they felt it hinged on sovereignty issues.

### ***The Durban Summit (2011): No CBDR***

The Durban Summit resulted in three major outcomes. These were:

- The ‘operationalization’ of key elements of the Cancun Agreements that were reached at COP-16. As a result, the technology mechanism and the GCF

agreed upon at Cancun were officially launched.

- An agreement on a second commitment period for the Kyoto Protocol. As the first commitment period of the Kyoto Protocol was to end in 2012, a second commitment period was agreed upon. Only 50 countries have ratified the second commitment period. For its coming into force, at least 144 countries are required to ratify it.
- The establishment of the Durban Platform for Enhanced Action, tasked with getting countries to reach a new universal agreement. This contains no reference to CBDR, a central organizing principle in the climate regime. It thus eliminates the distinction between Annex I and Non-Annex I countries in determining who should reduce carbon emissions.

The Durban Summit, however, did not do anything to limit the temperature rise beyond safe limits. It did not define the reductions necessary to curb climate change. Moreover, the principle of differentiation was practically wiped out from the climate agenda.

#### ***The Doha Summit (2012): Equity back in the climate agenda***

The Doha Amendment to the Kyoto Protocol was adopted at the Summit. Several decisions were taken, highlighting greater ambition and action by all Parties on various levels.

- It set out a timetable to adopt a universal climate agreement by 2015, which will come into effect in 2020.
- Further negotiations were to be conducted under a single negotiating stream, the Ad hoc Working Group on the Durban Platform for Enhanced Action (ADP), thus streamlining negotiations.
- The need to increase the ambition of developed countries to cut GHGs and help underdeveloped and developing countries adapt were emphasized. Equity was back in the climate agenda albeit only in principle, due to insistence of developing countries, mainly India. There was no agreement on how to operationalize equity.
- A new commitment period was launched under the Kyoto Protocol, when the Protocol expires and until a new climate agreement comes into force.

#### ***The Warsaw Summit (2013): The game of INDCs begins***

- The Warsaw decisions contained a general reference to ‘principles’ of the UNFCCC, but no specific reference to the principles of equity and CBDR.
- INDCs—The voluntary nature of the actions by the

Parties as outcomes of the previous summit was captured and came out explicitly in this Summit in the form of the INDCs, which are the country-specific climate action plans. In the language of the text, ‘Parties were invited to prepare and submit ‘intended nationally determined contributions in 2015.’ The ADP was also mandated to ‘identify . . . the information that Parties will provide when putting forward their contributions’.

- A set of guidelines or the rulebook for reducing emissions was agreed on, together with measures to bolster forest preservation and a result-based payment system to promote forest protection.
- It was decided that the GCF, planned as a major channel of financing for developing-world action, will be ready for capitalization in the second half of 2014.
- Additionally, governments agreed on a mechanism to address loss and damage caused by long-term climate change impacts.

However, the Warsaw decision did not clearly mention whether INDCs would only cover mitigation or other elements as well, namely adaptation, finance, technology and capacity-building. It also did not specify whether contributions were to be conditional on support of finance of technology or unconditional. There was no explicit mention of an ex-ante (prior) review of contributions by the parties, a proposal floated by the African Group and was endorsed by many other parties and civil society networks. However, it did signal that since the contributions were ‘intended’ and not the final contributions, there could be a scope of a review and subsequent scaling of the contributions before they could be inscribed as the final contributions as part of the Paris Agreement.

#### ***The Lima Summit (2014): Convention rewritten***

- Under the final decision of the document titled ‘Lima Call to Climate Action’, Parties were tasked with arriving at the ‘elements of a draft negotiating text’ for the 2015 agreement and the ADP was tasked with identifying the information that must accompany the INDCs the Parties would submit in 2015. This upfront information to accompany the INDCs included time frames, scope of contribution, fairness and ambition to enable better understanding and clarity with respect to the INDCs.
- Synthesis report—Discussions around the ex-ante review of the contributions did not materialize in the wake of fierce resistance by India and China. The final text in Lima, however, mentioned a

'synthesis report' that would review only the aggregate effect of the INDCs, and not individual INDCs.

- CBDR, in light of national circumstances—As a critical outcome of the Lima Summit, the principle of the Convention, the CBDR, was reinterpreted and a new clause was added to it, in light of different national circumstances.
- The Lima Summit failed to address many issues, including the content of the INDCs, the legal nature of the INDCs, the legal nature of the new climate deal to be adopted at Paris, issues of adaptation, loss and damage, the issue of differentiation and responsibility and mobilization of finance.

### **Post-Lima Developments**

The Geneva round of talks held in Geneva, Switzerland, in February 2015 saw parties exchange views on the structure of the 2015 climate agreement. A number of issues, including the guidance for the preparation of the INDCs, the raising of pre-2020 ambition and the process to move forward, were discussed at length without any actual consensus being reached. In this regard, all the proposals and inputs submitted by the Parties were included in the negotiating text which more than doubled from the Lima Summit and comprised 86 pages.

However, there was much confusion and disagreement over the process of adopting the 86-page text as the basis for negotiating a climate agreement in Paris in December 2015. The challenge for the ADP was then to streamline the text as an intermediate step towards arriving at a final 'negotiating text' before Paris.

The process of streamlining the text began at the subsequent session held at Bonn in 1–11 June 2015. Another significant development of the Bonn climate session was the push from G-77 and China, the largest negotiating group in the climate negotiations, with 134 developing countries as its members, to introduce a formal pre-2020 draft agreement text for upscaling the pre-2020 ambition of the developed countries. The proposal was heavily opposed by the EU who voiced that its pre-2020 targets not be revised or upscaled in any way.

In a move to present streamlined, concise and clear options and positions of all Parties concerned, a tool was prepared to divide the contents of the Geneva Negotiating Text (GNT) in the subsequent session of the Ad Hoc Working Group on the Durban Platform for

Enhanced Action (ADP) held in Bonn, Germany, on 31 August–5 September 2015. The tool split various paragraphs of the GNT, the 86-page text, for negotiating the 2015 Paris climate agreement. The text was divided into three parts: provisions appropriate for inclusion in an agreement, provisions appropriate for inclusion in a decision and provisions whose placement requires further clarity from Parties.

The developed and the developing countries were divided on the issues of adaptation, loss and damage and basic principles of equity and differentiation came to fore again. On the issue of adaptation, the developing countries were unanimous in pressing for adaptation to be a part of the final agreement. They also urged for reflecting the principles of CBDR in the new agreement, thus advocating for differential contributions on the part of countries to address climate change.

To increase the pace of negotiations, spin-off groups were created to deal with separate elements of the negotiating text, including elements such as adaptation and loss and damage.

### **Bonn Climate Talks: 19–23 October 2015**

The Co-Chairs of the ADP facilitating the negotiations had the mandate to produce a clear and streamlined text (which came out on 5 October 2015 and was 20 pages long), in the form of a Non-Paper, for the Parties as the basis of negotiations for the Bonn climate talks. Parties, however, found the text lopsided, unfair and unbalanced and not reflecting the aspirations and demands of the developing nations, a statement put forward by South Africa on behalf of the G-77 and China (comprising 134 member developing countries). What happened thereafter over five days of negotiations in Bonn was textual insertions of proposals and inputs of Parties to the Non-Paper under different sections, comprising preamble, mitigation, finance, adaptation, technology development and transfer, each conducted under different spin-off groups.

The outcome of the Bonn talks was a revised Non-Paper, a 55-page document which would serve as the basis of the negotiations. The text reflects the proposals and inputs of all Parties and thus it is not a clear and streamlined text.

CSE is of the opinion that though a sense of balance and inclusiveness is restored to the text, there is little real progress. There is very little time left for the actual negotiations for the final text to be adopted in Paris climate summit.

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