



CP17/CMP7 Durban Debrief

The 17th session of the Conference of the Parties to the UNFCCC (CP17) and 7th session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP7) held in Durban, South Africa, from 28th November to 11th December 2011 each produced landmark decisions.

The CP7 created the **Ad Hoc Working Group on the Durban Platform for Enhanced Action** with the mandate to negotiate a “protocol, another legal instrument or an agreed outcome with legal force” that closes the gap in ambition left by the pledges made under the Cancun Agreements to reach the goal to limit global warming to 2°C degrees compared to preindustrial levels and encompasses all Parties.

CMP7 concluded with an agreement to create a **second commitment period of the Kyoto Protocol** that will run to either 2017 or 2020.

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Highlights from Durban

The **Durban Platform for Enhanced Action** provides a clear mandate to negotiate a new climate change agreement that will cover all parties. Negotiations on the new agreement are to start in the first half of 2012, be finalized in 2015, and the agreement is to come into effect from 2020.

The governance structure of the **Green Climate Fund** was approved and a decision passed to rapidly operationalize it.

Progress was made on an incentive framework for **reduced emissions of deforestation and forest degradation (REDD+)** with formal recognition that multiple sources and channels, including market-based approaches, may support REDD+. Further guidance was provided on safeguards and reference emission levels/reference levels.

A pilot **registry for Nationally Appropriate Mitigation Actions** is to be developed and finalized by CP18 next year.

A number of important decisions on **adaptation** were taken, including on National Adaptation Plans and the operation of the Adaptation Committee.

Agriculture was formally included as separate agenda item on the agenda of the Subsidiary Body for Technical Advice for next year.

Parties agreed on a **second commitment period for the Kyoto Protocol** that will run from 2012 until 2017 or 2020. Important details including quantified emission reduction objectives and amendments to the Kyoto Protocol were left for CMP8 to decide.

Negotiations on **land use, land-use change and forestry** in developed countries concluded with accounting for forest management and harvested wood products becoming mandatory, while a new optional accounting category was created for wetlands.

Decisions concerning the **Clean Development Mechanism** covered equitable distribution of projects, simplification and governance, though agreement could not be reached on an appeals mechanism for decisions of the CDM Executive Board.

In their decision on **Joint Implementation**, Parties failed to agree on the continuation of the mechanism after 2012 as well as on the proposals for a new design of the JI Guidelines, postponing both decisions to CMP8.



Introduction: The road to Durban

The Bali Action Plan adopted at the occasion of the 2007 CP (CP13) established a two-track process in climate negotiations: The Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) was meant to deal with agenda items under the UNFCCC whereas the Ad-Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) was tasked with continuing negotiations under the Kyoto Protocol. These two tracks were meant to conclude their work in 2009 in Copenhagen. The collapse of the Copenhagen climate conference resulted in the mandates of both AWGs being extended to the 2010 CP (CP15) in Cancun, where the negotiations were put back on track under the Mexican presidency and again extended. A number of important issues were still undecided at Cancun, such as a new agreement under the UNFCCC and the future of the Kyoto Protocol. These, and a host of other decisions were passed to the CP17, CMP7, AWG-LCA, AWG-KP, SBSTA and SBI negotiations held in Durban, South Africa.

UNFCCC decisions

Durban Platform

The establishment of the Durban Platform, or the DPEA, is probably the most significant decision emerging from the UNFCCC negotiations since the adoption of the Bali Action Plan. The Durban Platform stems from recognition of the inadequacy of preceding efforts: It starts with a preamble that includes recognition that climate change is a “potentially irreversible threat to human societies and the planet” and “noting with grave concern” that there is significant gap between current mitigation pledges and what is needed to reduce the likelihood of a 1.5°C or 2°C increase in global average temperatures – the target increase agreed at CP16 in Cancun. To respond to this, the Durban Platform launches a new round of negotiations under a new “Ad-hoc Working Group on the Durban Platform for Enhanced Action” with the aim to develop “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties” by 2015. This new agreement is to come into effect and be implemented from 2020, which matches one of the possible end dates for a second commitment period under the Kyoto Protocol.

Importantly, the decision does not refer to or distinguish between developed/Annex I or developing/ non-Annex I countries. Rather, it simply refers to “all Parties” needing to address climate change. This represents a significant departure from the developed/ developing country divide

under the UNFCCC and Kyoto Protocol, under which only Parties listed in Annex I to the UNFCCC are expected to take on binding emissions targets. The DPEA decision lacks also references to the “common but differentiated responsibilities” between Parties or the historic emissions of developed countries. Rather, the DPEA initiated a process that will aim to “raise the level of ambition” and ensure the “highest possible mitigation efforts by all Parties”. While it is unlikely that large developing countries will agree to taking on commitments commensurate with those adopted by developed countries, this departure bridges long held complaints by the US and other developed countries and opens the door to more nuanced differentiation between developed, advanced developing and less developed countries. How such distinctions are fleshed out and applied to the form of commitments or other efforts undertaken in a new agreement will be a crucial negotiating issue in the coming months and years.

The new working group will negotiate “a protocol, another legal instrument or an agreed outcome with legal force under the Convention...”

A related and equally significant point is the legal form of the new agreement – a long-standing topic of previous rounds of negotiations. The EU, together with Least Developed Countries (LDCs) and Small Island Developing States, sought to secure commitment on a legally binding agreement in Durban, while other Parties, most notably India, preferred softer language more akin to the “agreed outcome” referred to in the Bali Action Plan. Well after the CP was officially meant to have closed, Parties agreed to compromise on language proposed by Brazil that includes the three options of “protocol, another legal instrument or an agreed outcome with legal force...” While the wording of the decision excludes purely political agreements such as the Copenhagen Accord, it leaves room for other options arguably including a simple CP decision. This language should also be read with the context of the preambular text in mind, which recognizes the need to strengthen the “multilateral, rules-based regime” of the Convention.

The DPEA decision leaves many key issues open. The new ad-hoc working group is mandated to negotiate on, *inter alia*, mitigation, adaptation, finance, technology transfer and capacity building, but the decision is silent on how these crucial issues will be addressed. Other issues that remain to be decided include compliance mechanisms and institutional arrangements.

Green Climate Fund

As widely expected, Parties completed the yearlong design of the Green Climate Fund (GCF). The CP approved the new fund's governing instrument as drafted by the Transitional Committee that met four times in 2011. Accompanying this document is a CP decision that calls for the rapid operationalization of the fund and requests the Global Environment Facility (GEF) and UNFCCC to jointly establish an interim secretariat for the GCF.

The GCF is expected to become the central multilateral fund for climate change

The Durban outcome did not provide the GCF with actual funds, yet it is expected to become the central multilateral fund for climate change and to channel a significant portion of the annual \$100 billion that developed countries have committed to mobilize from both public and private sources by 2020 to support climate activities in developing countries. It has a number of innovative features, including a strong emphasis on direct access and an arm that will be able to directly invest in private sector projects. Initially, the fund will have windows for mitigation and adaptation, though further windows can be created by the Board. The GCF will be governed by a Board of twelve developed and twelve developing country representatives and will eventually have its own dedicated secretariat. As a designated "operating entity" of the UNFCCC financial mechanism, the GCF will operate under the guidance of the CP. In Durban, several donors – including Germany, South Korea, and Australia – pledged money to assist the start-up of the fund but the replenishment called for in the CP decision is not expected to take place for at least another year.

REDD+

The CP adopted decisions on REDD+ related to finance, safeguards, and reference levels. Most notably, the decision mentions the possibility of using market-based approaches to support "results-based actions". It leaves unresolved, however, the issue of what is meant by market-based approaches, whether subnational activities could be supported by markets, and also skirts the issue of whether or not bilateral, or non-CP developed mechanisms, would be recognized under the UNFCCC. It is also unclear how a market-based approach for REDD+ may relate to a suggested amendment to the Kyoto Protocol that would create a link between units generated under market-based mechanisms under the UNFCCC and future commitments under the Kyoto Protocol. Submissions by Parties, a technical paper by the

Convention Secretariat, and a possible workshop on REDD+ finance are expected in 2012 with an eye to furthering the discussions at CP18.

REDD+ recognizes the use of markets and makes progress on reference levels and safeguards

In a separate decision, Parties agreed that developing countries taking part in REDD+ activities should provide information periodically in their National Communications on how social and environmental safeguards, as elaborated in the Cancun Agreements (adopted at CP16), are being addressed and respected. It does not suggest how often, the level of detail, nor provide any additional guidance for reporting, though SBSTA is to report further on safeguards in CP18. The same decision also included guidance on reference levels and/or reference emissions levels against which performance is measured. The guidance suggests an approach that is flexible (allowing for some choice in pools, gases and activities), step-wise (allowing for improvements over time in data and methodologies), and transparent (countries submit information and a rationale). Parties also agreed to establish a technical assessment process at the next SBSTA session. However, it remains unclear if and how these reference levels might be tied to financial "results-based" incentives in the future.

Agriculture is officially on the SBSTA agenda

Agriculture

After many failed attempts at getting agriculture recognized, as an issue in its own right under the UNFCCC (largely due to trade concerns and it being packaged with the controversial discussions on bunker fuels) countries agreed at CP17 to put agriculture officially on the SBSTA agenda. Parties are invited to submit views on issues related to agriculture, to begin discussions at SBSTA 36.

Nationally Appropriate Mitigation Actions

The definition of what constitutes a Nationally Appropriate Mitigation Action (NAMA) remains open following CP17. The parties have agreed to hold workshops during 2012 to "further the understanding of the diversity of mitigation actions", which will help to refine a definition that incorporates the diversity of actions and meet the needs of developing country Parties.

NAMA registry to be completed by CP18



There was progress on process, however. Parties agreed to establish a web-based NAMA registry to facilitate matching actions with support. A prototype registry is to be developed by the 36th session of the Subsidiary Body for Implementation (SBI), to take place in the first half of 2012 and following review, the prototype should be available for voluntary use by Parties by August 2012. The final registry is to be completed by CP18. The registry will allow developing party countries to list NAMAs seeking international support and should include a description of the action, timeframe for implementation, estimated costs, the amount and type of support sought, projected emissions reductions and any other relevant information (such as associated co-benefits) for each NAMA proposed. Developing country Parties will also be able to list "other NAMAs" (i.e. ones not seeking international support) in less detail in a separate section of the registry for recognition. General guidelines for the measurement, reporting and verification of domestically supported NAMAs will be developed during 2012.

The registry will also allow developed country Parties, the GEF and the GCF, multilateral, bilateral and other public donors, and private and nongovernmental organizations "that are in position to do so" to submit information on the "financial, technological and capacity-building support available" for the preparation or implementation of NAMAs. This is to include detail on the type of support available, its source and the types of action that may be supported.

Adaptation

Adaptation acquired a prominent role in Durban as an area of importance for Africa. There were a number of decisions on adaptation, the most relevant being the agreement on the GCF as a future source of finance. Aside from this, there were decisions on National Adaptation Plans (NAPs), the Adaptation Committee, and progress on the SBI agenda on "loss and damage".

The decision on NAPs contains guidelines for developing NAPs that include initial preparation (assessing needs including via participatory consultation), implementation strategies (prioritization, institutional and regulatory framing), and reporting, monitoring and review (including reporting on effectiveness) of NAPs. They should be country-owned and country-driven and not prescriptive, and at the request of non-LDC countries all developing countries may be eligible to develop NAPs, though NAP funding for LDC and non-LDC countries will differ. NAP development and implementation may be financed – as appropriate – via the Least Developed Countries Fund

along with other bilateral and multilateral channels, with further guidance on supporting NAPs expected in CP18.

The Adaptation Committee (created at CP16) was operationalized at Durban with an agreement on financial and technical resources of the Committee, its composition and decision-making process. The Adaptation Committee will coordinate with other bodies working on adaptation under the Convention, though explicit reference to coordinating with the Kyoto Protocol's Adaptation Fund is notably absent. Developing countries will have the greatest representation on the Adaptation Committee, though decision making by consensus will ensure all members have equal weight in formal proceedings.

In the context of the work program on approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to climate change, Parties agreed on another work program that explores a range of possible approaches and potential mechanisms, including a currently undefined "international mechanism", calling for recommendations to be considered at CP18. The continuation of the Nairobi Work Program on the scientific, technical and socio-economic aspects of impacts, vulnerability and adaptation to climate change was also agreed. Under this Program, technical workshops on water and climate change impacts and ecosystem-based approaches to adaptation will be held.

Despite progress, finance for adaptation remains a major issue

Despite progress achieved in Durban, finance for adaptation remains a major issue. Most adaptation financial resources are expected to come from developed country governments that currently face serious budgetary constraints. The decision adopting the initial guidelines for NAPs provides for tracking financial support from developed countries. This may contribute to greater transparency in adaptation finance, but transparency on its own is likely insufficient to ensure that adaptation receives similar financial pledges as mitigation.

Kyoto Protocol decisions

Future of the Kyoto Protocol

Parties agreed on a second commitment period under the Kyoto Protocol (KP), beginning on 1 January 2013 and ending in either 2017 or 2020.

Parties agreed to adopt a second commitment period with details to be adopted in CP18

However, precise targets or quantified emission limitation or reduction objectives (QELROs) remain to be established through 2012 with a view to adoption at CMP 8 in Doha. Instead, the AWG-KP decision includes a table containing earlier 2020 pledges by Annex I Parties of which the CMP “takes note”. It should be noted that these pledges had fallen well short of the aspired 25-40% reductions below 1990. The Parties concerned are invited to submit further information on their QELROs by 1 May 2012 and the AWG-KP is mandated to continue its work and to “deliver the results of its work on QELROs” to CMP8. The decision includes a list of proposed amendments to the KP and its annexes that will be submitted, along with the QELROs prepared by the AWG-KP, to CMP 8 in Doha for adoption. Of note, one of these proposed amendments allows Annex I Parties taking part in the second commitment period to use units generated by new market-based mechanisms to be established under the Convention – which may in theory extend to REDD+ and any crediting under NAMAs. Any such units shall be “subtracted from the quantity of units held by the transferring Party” – which could apply to units held by developing countries under future commitments or developed countries that participate under the UNFCCC but not the KP (e.g. the US, Canada, and potentially others).

Proposed amendments link market mechanisms of the UNFCCC with the Kyoto Protocol

Parties expected to take part in the second commitment period include the EU, Australia, New Zealand and several non-EU European countries, including newcomers such as Ukraine. Australia has indicated, however, that it will not ratify until a new agreement under the Durban Platform AWG has been reached in 2015.¹ Japan and Russia will remain Parties to the KP but will not take on new commitments, while Canada has announced its intention to leave the Protocol.

If adopted by the CMP, the amendments to the KP will enter into force 90 days after ratification by at least three fourths of the Parties to the Protocol.² As this is a simple numerical requirement, rather than the double trigger

required for entry into force of the KP itself,³ one might expect that the strong support for the second commitment period among developing countries will ensure an expedited ratification process. At the same time, ratification can be a slow and cumbersome process, and entry into force may yet take several years. Thus, while a gap between commitment periods is theoretically avoided, a gap in entering into force between the first and second commitment period is likely. This will create challenges on several levels including the creation and allocation of units, the operations of the flexible mechanisms, and the compliance regime. Whether or not any of these acts and functions can be performed in the absence of a ratified treaty, i.e. on a provisional or voluntary basis, remains to be seen.

LULUCF

The CMP adopted a decision on LULUCF that expands the coverage of accounting for mandatory land use activities to include forest management. Unlike net emissions from other sectors that are determined using a base year (1990), Parties can set reference levels for forest management using an approach that calculates net emissions and removals relative to a projected level, but not exceeding a cap of 3.5% of base year emissions (excluding LULUCF). Parties also agreed on provisions that will allow the exclusion of emissions from forest management that are caused by natural disturbances. Accounting for harvested wood products is also now mandatory and can be calculated using an instantaneous oxidation or production approach.

Accounting for forest management and harvested wood products is now mandatory; a new category of wetland drainage and rewetting is optional

Wetland drainage and rewetting are new electable activities, adding to the voluntary land use categories of cropland management, grazing land management, and revegetation. The CMP requested SBSTA to initiate a work program to explore more comprehensive accounting from LULUCF and report on the outcomes to CMP9. Overall, the decision should provide new incentives (albeit within a cap) for mitigation actions related to forests as Parties will either gain credits *or be debited*, based on reported emissions and removals against a baseline level.

¹ Julian Drape, “Australia defends Canada's Kyoto exit”, smh.com.au, 13 December 2011.

² Kyoto Protocol, Articles 20 and 22.

³ The entry into force of the KP required ratification by 55 Parties representing at least 55% of global 1990 GHG emissions. KP, Article 25.

Clean Development Mechanism

The CMP adopted a number of decisions pushing for a more equitable distribution of CDM project activities, encouraging further simplification of CDM modalities, and urging improvement in the governance structure of the Executive Board (EB).

There were a number of decisions on equitable distribution of CDM projects, simplification of CDM modalities and governance

To further promote the equitable distribution of CDM project activities, the CMP requested the secretariat to enhance its support for these countries by granting assistance in the form of; (i) technical skills training to Designated National Authorities, Designated Operational Entities and local project proponents; (ii) institutional strengthening; and (iii) training on the implementation of standardised baselines and other guidelines. The EB is to allocate funding to support these activities. Furthermore, the EB was encouraged to extend the simplified modalities for the demonstration of additionality to a wider scope of project activities, including energy efficiency project activities and renewable energy based electrification in areas without grid connection, and develop simplified baseline methodologies for these projects.

In a separate decision, the CMP recognised the importance of distinguishing between “material” and “non-material” information in simplifying project implementation under the CDM. Materiality is defined as “a piece of information, the omission, misstatement or erroneous reporting of which could change a decision by the EB”, or information that at an aggregated level might lead to “an overestimation of the total emission reductions” equal or higher to amounts outlined in the Decision.

SBI was unable to agree on text to establish an appeals mechanism for EB decisions

On governance, the CMP requested the EB to improve the efficiency and transparency of its decision making and digitize its validation and verification processes in order to work towards improving the efficiency of the project cycle. It also urged the EB to decrease the average waiting time between the receipt of submissions for registration and the commencement of the completeness check to less than 15 days. The EB has also been asked to further address the liability of Designated Operational Entities and investigate potential approaches to address significant deficiencies in validation,

verification and certification. The SBI was unable to agree on a recommended decision for establishing an appeals mechanism against decisions of the EB. A draft text to establish a mechanism was noted, and the SBI is to continue working on the text with the aim of forwarding a decision for adoption at CMP8.

CCS methodology and procedures approved; non-permanence is addressed using a reserve account

Progress was also made on carbon dioxide capture and storage in geological formations (CCS). The decision included detailed methodologies and procedures that set out rules for, amongst other things, participation requirements, validation and registration, monitoring, CER issuance and non-permanence. Of note, monitoring is to continue for at least 20 years after the project’s crediting period ended, and non-permanence is dealt with via cascading cancellations from a reserve account (populated with 5% of issued CERs from the CCS project), pending account, and finally holding account of the project participants. Any CERs left in the reserve account may be reclaimed by project proponents after all monitoring is complete.

Joint Implementation

The CMP7 issued guidance on JI, while deferring substantial decisions until CMP8. Recalling its earlier decision in 2011 to initiate a review of the JI guidelines, the CMP invited Parties to submit their views on this matter, and requested the Secretariat to compile these views into a synthesis document for consideration by CMP8. The CMP further adopted the review of the fee structure proposed by the JISC.

AAUs from the first commitment period may be convertible to ERUs generated after 2012 under Track I

Parties could not decide on the continuation of the mechanism after the expiration of the first KP commitment period, in particular on whether to allow the issuance of emission reduction units (ERUs) for emission reductions taking place after 2012 from assigned amount units (AAUs) from the first commitment period. Following on from the JISC’s request for clarification in 2010, the Secretariat had recommended to the CMP that such



issuance be formally allowed.⁴ While Russia argued in favour of the proposal several Parties including Japan, China and the EU were opposed. Russia defended the view that in the absence of such express authorization by the CMP, Annex I Parties are nonetheless entitled to issue ERUs from first commitment period AAs for post-2012 emissions under the Track I procedure. When China and Japan requested the Secretariat to give its view on this interpretation the Secretariat supported Russia's position.

Looking forward

Following the climate change negotiations tends to produce psychological swings between cautious optimism and cynical pessimism. The decisions coming out of Durban maintain this emotional dichotomy. On the one hand the Durban Platform and continuation of the Kyoto Protocol are landmark decisions and significant achievements that should be celebrated. Important progress was also made in other areas such as the GCF, adaptation and REDD+.

The decision to adopt a second commitment period remains one of the key outcomes from Durban. Developing countries were determined that the Protocol would not "be buried on African soil", and many will see the survival of the KP as essential for the future of the international climate regime. While several Parties expressed dissatisfaction with the low level of ambition, the commitment to continue with binding emission reduction commitments is likely to be seen as an important show of good faith by (at least some) developed countries. As the climate negotiations enter what may be their most challenging stage yet, the importance of such concessions can scarcely be overstated.

However, neither the second commitment period of the KP nor the Durban Platform will save the climate. It comes too late and establishes too little. Parties will spend another three years negotiating a new agreement that will not come into effect until 2020. After the collapse of the negotiations in Copenhagen and subsequent re-building, the Durban Platform seems to have simply (re)started negotiations in earnest, with a delay of three years to conclude the negotiations and nine more years before any future agreement enters into force in 2020. The Cancun Agreements, on the other hand, recognized that in order to avoid the worst impacts of climate change Annex I Parties as a group needed to

reduce emissions in a range of 25 to 40 percent below 1990 levels *by* 2020.

The Durban Platform means that an eventual treaty may create a collaborative framework, but it will not provide the recipes formulating the remedies against climate change. This is predictable and not surprising as an international treaty cannot go beyond the collective ambition of its Parties. It is not fair to blame negotiators for the modest success in Durban where national governments lack the political mandate or will to make climate change a priority. All things considered, Durban, within these constraints, can be hailed as success. But it leaves no national government, no private or public actor off the hook to formulate policies and measures to actually tackle global warming.

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⁴ "Recommendations on options for building on the approach embodied in joint implementation: Note by the Secretariat", FCCC/KP/CMP/2011/9, paragraph 26(a),