



Overview of outcomes of the November 2017 UNFCCC climate talks

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The annual climate change talks under the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol (KP) and the Paris Agreement (PA) took place in Bonn, Germany, on 6-18 November 2017, ending a day later than scheduled due to last-minute wrangling among Parties, mainly over issues related to finance.

The annual meetings were presided over by the Government of Fiji, with its Prime Minister Frank Bainimarama at the helm, a first for any island state. During the high-level segment of the talks which began on 15 November, about 25 heads of state and government and over 100 ministers were present.

UN Secretary-General Antonio Guterres, at the opening of the high-level segment, called on world leaders to show “more ambition” and said that Parties “must go further and faster together,” stressing that at least a further 25% cut in emissions (based on 1990 levels) of the greenhouse gases that cause global warming is needed by 2020.

Referring to the latest UN Environment Programme (UNEP) Emissions Gap Report, the UN SG said that “current pledges [under the PA] will only deliver a third of what is needed to stay in the safety zones” of the PA. He added that “the window of opportunity to meet the 2°C target [i.e., to limit global warming to well below 2°C above pre-industrial levels] may close in 20 years or less and there may be only 5 years to bend the emissions curve towards 1.5°C.”

There were many decisions taken at the end of the talks but the main outcome of the 23rd meeting of the UNFCCC’s Conference of the Parties (COP 23) was the adoption of what was called by the Presidency the “Fiji Momentum for Implementation” (also referred to as decision 1/CP.23).

Fiji Momentum for Implementation

The decision adopted was divided into three parts and dealt with: (i) the completion of the Work Programme under the PA; (ii) the design and process for the 2018 facilitative dialogue; and (iii) pre-2020 implementation and ambition. Details are provided below.

Completion of the Work Programme under the PA

The COP 23 closing plenary was supposed to convene in the morning of 17 November to adopt the final outcome decision, but it only began past 4.30 am on 18 November.

The main cause of the delay was the stance of the United States, especially over some finance-related issues pertaining to the implementation of the PA. It took long huddles among Parties on the conference floor to iron out a solution allowing for a final decision.

Even though the US notified Parties that it does not intend to remain in the PA, it remains a Party until it legally withdraws from the Agreement in November 2020.

Despite its intention to leave, the US’ role in the Bonn climate talks was viewed by senior negotiators from developing countries and some observers as being very problematic, especially as regards developed-country commitments related to finance.

Also viewed as outrageous by several delegates in the final hours of the conference was what was seen as an attempt by the UNFCCC Secretariat to “cover up” the US opposition to an initial draft of the COP 23 decision.

The Secretariat informally told several delegations that there was a “typo” in the initial draft document when it was asked to explain why the later version of the decision had some issues removed and was different from the earlier iteration. This drew protests from developing countries and led to further huddles among Parties.

The US was opposed to the reflection of some issues as part of the Paris Agreement Work Programme (PAWP), including ‘modalities for biennially communicating information on the provision of public financial resources to developing countries’ under the PA and the setting of a new collective quantified goal on finance from a floor of \$100 billion per year, which is to be agreed to by 2025.

According to sources, the US was of the view that there was no need to include these matters in the PAWP. Developing countries, on the other hand, wanted these issues to be included, as they were integral to the implementation of the PA and there could be no justification for excluding them from being considered.

Sources said that the US disagreed and maintained that there was no clarity that the additional matters were part of the PAWP or that they needed to be addressed by the first session of the meeting of the Parties to the Paris Agreement (CMA 1). The US was resolute in its stand and refused to accept the inclusion of these matters, despite pleas by developing countries. (The CMA 1 in this regard will take place in December 2018 in Poland.)

After lengthy deliberations in the huddle, a compromise was reached in the form of a footnote in the final decision on the issue of “possible additional matters relating to the implementation of the PA”. Parties wanted to reflect that there was no consensus on the matters to be addressed under the PAWP and therefore, the footnote reads as follows: “Different views are expressed by Parties on whether possible additional matters should be added to the work programme under the PA for the first session of the CMA...”

In the intersessional meeting to be held in early 2018, the issue of possible additional matters is bound to resurface and can be expected to be contentious.

Further, in the decision adopted, the Secretariat is requested to develop an online platform to provide an overview of the PAWP being carried out in the various subsidiary and constituted bodies, including the Ad Hoc Working Group on the Paris Agreement (APA).

[When the PA was adopted in Paris in 2015, the task of drawing up the modalities, procedures and guidelines for its implementation (which is the PAWP) was distributed among the APA and the subsidiary bodies of the Convention.]

The convening of the COP closing plenary was also held up by the delay in the closing of the APA and divergences among Parties over finance issues regarding the Adaptation Fund, as well as a process to identify indicative quantitative and qualitative information that developed countries are required to communicate biennially under Article 9.5 of the PA.

The COP 23 Presidency carried out several rounds of informal consultations with Parties to address these differences, which were eventually resolved. (Details are provided below.)

2018 facilitative dialogue

The COP 23 decision also welcomed “with appreciation” *“the design of the 2018 facilitative dialogue, to be known as the Talanoa dialogue ... as contained in the informal note” prepared by the COP 22 and COP 23 Presidencies.*

[In Paris, Parties had agreed to “convene a facilitative dialogue ... in 2018 to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to ... in the Agreement and to inform the preparation of nationally determined contributions (NDCs)...”]

In the two informal meetings held ahead of the offi-

cial UNFCCC talks [convened by the COP 22 President (Morocco) and the COP 23 President], according to sources, the design of the 2018 facilitative dialogue was pitched by the Fijian Presidency as a very important outcome and “legacy” issue for COP 23. It was referred to as the “Talanoa dialogue” to reflect what the Fijian Presidency called the “Pacific spirit” of sharing stories.

The dialogue was touted by the Presidency and some countries, particularly the island states, as a very important event to “ratchet up” the NDCs of Parties under the PA.

Several developing-country delegations who spoke to the Third World Network said they had raised concerns about the mandate for the dialogue. Their view was that when the decision was taken in Paris in 2015 to convene a 2018 dialogue to inform the preparation of the NDCs, no one had expected the PA to take effect so soon in November 2016.

According to these sources, the Paris mandate obviously was to inform the preparation of the first NDCs to be communicated, prior to the ratification by countries of the PA, which was expected to happen after 2018.

Since Parties which ratified the PA had already communicated their NDCs well before 2018, some developing countries felt that the mandate for the dialogue was rendered futile and there was no further mandate to review or ratchet up the first NDCs that Parties had already forwarded to the UNFCCC.

In addition, some were of the view that “any pressure” on them to ramp up their NDCs with no indication of any financial support would not be fair to them. Moreover, they were concerned that developed countries were not showing real leadership by enhancing their mitigation ambition in the pre-2020 time frame, and had failed to close the mitigation gap, thus shifting the responsibility onto developing countries.

Hence, there was much discomfort among some Parties over the strong focus of the Presidency on the design of the 2018 dialogue and the intention behind this effort.

Since the informal note by the COP Presidency on the design of the dialogue was not a negotiated document, how it was to be reflected in the COP 23 decision became a bone of contention. Some Parties, especially the small island states, wanted to “endorse” the informal note, while other countries did not want to do so since it was not a negotiated document.

The informal note provided details about the features and design of the dialogue. The dialogue, said the note, will be “structured around three general topics: where are we; where do we want to go and how do we get there.” It will consist of a preparatory and a political phase, with the COP 23 President and the COP 24 President (Poland) providing a summary of key messages from roundtables to be held in 2018. The note further stated that “it will be important to send clear forward looking signals to ensure that the outcome of the dialogue is greater confidence,

courage and enhanced ambition”.

During COP 23, the Fijian Presidency had further consultations with Parties on the dialogue. Sources said that apart from the disagreements on how to reflect the informal note in the decision to be adopted, there were also differences of view on the design elements of the dialogue around the involvement of expert institutions, the involvement of the Presidencies, and the outcome of the dialogue itself.

The US and New Zealand could not endorse the informal note as it “was not negotiated by Parties” and was only a proposal of the Presidencies. The European Union (EU) said it could accept the design “in the spirit of compromise”. The Like-Minded Developing Countries (LMDC) were of the view that the dialogue should be a Party-driven process and that the reports of the dialogue should not be left to the Presidencies. They also had concerns about the involvement of “expert institutions”.

After further consultations, Parties agreed to only “welcome with appreciation” the design of the dialogue and not to endorse the informal note. The decision also states that the dialogue will start in January 2018.

Pre-2020 implementation and ambition

Developing countries, led by the LMDC and later supported by the Group of 77 and China, had insisted that the COP 23 agenda include an item on pre-2020 action. This was to enable Parties to consider if the existing mitigation obligations under the Convention and the KP were being met. This proposal was initially strongly resisted by developed countries.

The statements by the G77 and many other developing-country sub-groups expressed a growing concern that the existing obligations of developed countries under the Convention and the KP were not being met to close the mitigation ambition gap in the pre-2020 time frame, with developed countries shifting their focus and responsibilities to developing countries post-2020 under the PA.

At issue was why the Doha Amendment to the KP had yet to be ratified by many developed countries, including those from the EU. The Doha Amendment is supposed to give effect to the second commitment period of the KP (2CP) for emissions reductions by developed countries for the period 2013-20.

(Parties had agreed in 2012 in Doha to amend the KP to ensure that under the 2CP, developed countries which are Parties to the KP would undertake aggregate emission cuts that would be at least 18% below 1990 levels. They also agreed that developed countries would revisit their emission reduction commitments by the end of 2014, with a view to increasing their ambition level. It was on this understanding that developing countries had agreed to negotiate the PA, where all Parties will undertake emission reduction obligations

after 2020.)

Regrettably, the 2CP has not come into effect, nor has there been a revision and raising of the ambition level for the emission cuts of developed countries. To give effect to the Doha Amendment, and for the 2CP to come into effect, a total of 144 countries have to ratify it, including developing countries. Thus far, only 96 countries have done so. The PA, on the other hand, was ratified at super speed and came into effect in November 2016, within a year of its adoption in December 2015.

At COP 23, following informal consultations by the COP Presidency, consensus was eventually found on having a decision on ‘pre-2020 implementation and ambition’ in the final decision adopted, which was seen as a matter of significance for developing countries.

Among other things, the decision requests the President of the COP and the UNFCCC Executive Secretary to send joint letters to Parties to the KP that are yet to ratify the Doha Amendment urging them to do so as soon as possible. It also requests the Secretariat to consult the UN SG on ways to promote the ratification of the Doha Amendment.

The decision further notes that the 2018 facilitative dialogue will also consider pre-2020 action by Parties as well as the support provided to developing countries. In addition, it provides for a stocktake on pre-2020 implementation and ambition to be convened at COP 25 (in 2019); the stocktake will also consider the outcomes of the high-level ministerial dialogue on climate finance to be held at COP 24 in Poland.

The Paris Agreement Work Programme

A major task at COP 23 was to lay the groundwork for a draft negotiating text to be prepared for the various issues under the PAWP.

In the conclusions adopted under the APA, progress was noted at the session with the production of informal notes prepared by co-facilitators under their own responsibility, which were annexed to the conclusions. The informal notes, which are about 266 pages in length, cover the six agenda items of the APA: NDCs, adaptation communications, transparency of action and support, global stocktake, committee to facilitate compliance, and matters related to the implementation of the PA.

These informal notes contain the positions of all Parties on the various issues and will form the basis of further work and negotiations in 2018 towards a draft negotiating text, with a final outcome expected at COP 24 in December.

As pointed out earlier, the PAWP includes the work of Parties from not only the APA but also the subsidiary bodies of the Convention. In this regard, the APA also “reiterated its recognition of the need to progress on all items in a coherent and balanced manner, and to ensure a coordinated approach to the consideration of matters relating to the PAWP by the Subsidiary Body for Implemen-

tation (SBI), the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the COP.”

To that end, the APA “recommended that the President of the COP consider options for bringing together, under his own responsibility and without prejudice to the future work of the subsidiary bodies, the outcomes of the work of the APA, the SBI, the SBSTA and the COP on PAWP-related matters at this session.”

This recommendation resulted in the abovementioned request to the Secretariat (via decision 1/CP.23) to develop the online platform to provide an overview of the PAWP being carried out in the various bodies.

The APA Co-Chairs are also expected to issue a reflections note by early April 2018 that will suggest options for the way forward on the basis of the views of Parties reflected in the informal notes of the co-facilitators and in Parties’ further submissions on textual proposals.

The APA plenary closed after 1 am on 18 November, overshooting its scheduled closing by three days, mainly due to the need to find a resolution on the Article 9.5 issue.

The Article 9.5 issue

The issue of modalities for the provision of ex ante information by developed countries on public financial resources to be provided to developing countries under Article 9.5 of the PA was a major source of contention at COP 23.

Article 9.5 essentially provides that developed countries “shall biennially communicate indicative quantitative and qualitative information” related to the provision and mobilisation of financial resources, “including, as available, projected levels of public financial resources” to be provided to developing countries.

South Africa, on behalf of the African Group of countries, was the first to raise the point that Parties need to begin to discuss the modalities for communicating the information that is required under Article 9.5. In a formal submission at the COP on how to operationalise Article 9.5, the African Group called for the establishment of a process under the APA to define the modalities for biennially communicating information on the provision of public financial resources.

The African Group proposal was supported by the G77 and China but there was strong resistance from developed countries including from the EU and the Umbrella Group (which includes the US). The G77 and China fought very hard for the issue to be addressed and stated repeatedly that ex ante information on public financial resources from developed countries to be provided to developing countries would help the latter plan and implement their NDCs.

Developed countries were opposed to discussing the “modalities” for the provision of the information, arguing that there was already an existing agenda item un-

der the COP that deals with the “process to identify the information to be provided by Parties in accordance with Article 9.5 of the PA”. Developing countries, on the other hand, argued that the nature of the discussions under the COP is fundamentally different as it deals only with the “process” to identify the information and does not address the “modalities” for that information, which need to be addressed by the APA. According to sources, the word “modalities” was a red line for the EU.

Given the divergence of views, it took several rounds of informal consultations by the COP 23 Presidency to resolve the deadlock in the final hours of the COP, with an eventual compromise reached on the issue.

The compromise was that the issue of the “process” to identify the information (which was previously handled by the COP, which only meets once a year) would now be considered by the SBI at the May 2018 session, while the APA would continue deliberation of the issue of the “modalities” for that information under its agenda. (The APA and the subsidiary bodies meet twice a year.)

A senior negotiator described the fight as a “battle won” in terms of securing the space for discussions on Article 9.5 at the intersessional meetings in May and for deliberations to continue on the issue of the modalities under the APA, which developed countries did not want.

Fight over the Adaptation Fund

Developed and developing countries were also divided over the future and nature of the Adaptation Fund (AF) under the PA. The AF is currently under the KP. This divide was apparent in the discussions that took place under the APA.

The G77 and China want the AF to remain in its current form in terms of its operational policies and guidelines, for developing countries to access the Fund when it serves the PA. Developed countries, on their part, want to change the nature of the AF if it is to serve the PA.

In the input provided by the G77 and China at the APA, among the proposals was for the “operational policies and guidelines for Parties to access funding from the AF” to “be applied *mutatis mutandis* when the AF serves the PA.” [*Mutatis mutandis*” means that in comparing two situations (viz., the AF under the KP and the AF under the PA), although there will be changes necessary to take into account the different situations, the basic points remain the same.]

The EU in its inputs said that “the current composition of the [AF] Board has worked well” but “potential revision of the composition depends on outcome of preparatory work, for instance sources and levels of funding.” It also proposed that Parties have to “decide to what extent the previous guidance to AF ..., including those agreed before adoption of the PA, shall apply *mutatis mutandis* to the AF when it serves the PA.”

In the input provided by Australia, Canada, Japan, New Zealand and the US on “governance and institutional arrangements”, among the proposals made was that

“the AF enjoys appropriate legal personality to enable a new or revised relationship with the interim trustee, the Fund’s secretariat, and any other contractual arrangements”. On the operating modalities, these countries proposed that “eligibility [be] restricted to Parties to the PA from the date the Fund begins to serve the PA,” with “prioritisation given to Parties that are particularly vulnerable - especially small island developing states and least developed countries.”

Given the proposals made by developed countries, developing countries were concerned that the nature of the AF as they know it could change when it serves the PA.

In the final decision adopted by the Conference of the Parties meeting as the Parties to the KP (CMP), one part notes “the progress of the APA in undertaking the necessary preparatory work to address governance and institutional arrangements, safeguards and operating modalities for the AF to serve the PA, including sources of funding, to be defined by Parties, and looks forward to the recommendations thereon from the APA in 2018.”

Hence, the work of the APA in relation to the AF in 2018 is bound to be difficult and contentious, as Parties attempt to bridge the current divergence of positions as regards the AF serving the PA.

Other key issues

Apart from the above matters, several other key decisions and important outcomes were adopted by the COP, including outcomes on the Warsaw International Mechanism for Loss and Damage associated with climate change impacts (WIM), on a platform for local communities and indigenous peoples on climate change, and on a gender action plan. Details are provided below.

Loss and damage

During the first week of the climate talks, developing countries led by Cuba, representing the G77 and China, together with the Alliance for Small Island States pushed hard for a permanent agenda item under the subsidiary bodies to ensure discussions on the WIM take place intersessionally, so that the WIM can be effective in helping developing countries impacted by climate change. Presently, the only discussions in relation to the WIM are confined to a report of the work of the WIM Executive Committee to the COP.

Developed countries, however, strongly resisted the call by developing countries for a permanent agenda item on the WIM at the intersessional meetings of the subsidiary bodies.

Intense negotiations resulted in a compromise agreement to have an expert dialogue on loss and damage. According to the decision reached, the UNFCCC Secretariat, under the guidance of the WIM Executive Committee and the Chair of the SBI, is requested to organize, in conjunction with the SBI session in April-May

2018, “an expert dialogue to explore a wide range of information, inputs and views on ways for facilitating the mobilization and securing of expertise, and enhancement of support, including finance, technology and capacity-building, for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events”. The Secretariat is also requested to prepare a report on the expert dialogue.

Although a small step, this decision is seen as significant to advance the WIM to become effective and serve the interest of developing countries.

Local communities and indigenous peoples’ platform

At COP 21 (2015), Parties recognized the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and established a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner. COP 22 (2016) agreed to adopt an incremental approach to developing the platform with a view to ensuring its effective operationalisation.

Developing countries, led by the G77 and China, insisted on the further operationalisation of the platform at COP 23 by having a working group under the UNFCCC to advance the platform, but developed countries such as the US and New Zealand could not agree to this. The compromise reached was the establishment of a “facilitative working group” which would not be a negotiating body.

COP 23 decided that the SBSTA would consider at its next session “the further operationalisation of the platform, including the establishment of a facilitative working group, which would not be a negotiating body under the Convention, and the modalities for the development of a workplan for the full implementation of the functions with balanced representation of local communities and indigenous peoples and Parties, and ... conclude its considerations by making recommendations to COP 24 (December 2018).”

Gender and climate change

The SBI had been requested by COP 22 to develop a gender action plan (GAP) in order to support the implementation of gender-related decisions and mandates in the UNFCCC process.

At COP 23, the GAP was adopted. Among other things, it “seeks to advance women’s full, equal and meaningful participation and promote gender-responsive climate policy and the mainstreaming of a gender perspective in the implementation of the Convention and the work of Parties, the secretariat, United Nations entities and all stakeholders at all levels.”

The GAP states, among other things, that “Gender-responsive climate policy requires further strengthening in all activities concerning adaptation, mitigation and re-

lated means of implementation (finance, technology development and transfer, and capacity-building) as well as decision-making on the implementation of climate policies. The GAP recognizes the need for women to be represented in all aspects of the UNFCCC process and the need for gender mainstreaming through all relevant targets and goals in activities under the Convention as an important contribution to increasing their effectiveness.”

Conclusion

On the whole, COP 23 can be viewed as laying the groundwork for the intense and difficult negotiations that will take place in 2018, especially on the modalities, procedures and guidelines for the implementation of the PA.

In relation to the PA, while the 2017 talks succeeded in producing a lengthy document that captures the positions of all Parties on the various issues under the PAWP, the pressure is now on to produce a draft negotiating text that leads to a decision or decisions to be adopted at COP 24 on the PAWP. It is important that the text is produced through a Party-driven process that clearly sets out the various differing positions as options to be considered in proper text-based negotiations to take place, so that the decision/decisions are able to be adopted smoothly at the end of the year in Poland. Hence, the intersessional meeting that begins at the end of April this year will be an important moment in this regard. Another meeting on the PAWP is expected to take place in the later part of the year, before COP 24, to facilitate this.

At the heart of the matter is how developed and de-

veloping countries view the PA. While Parties from both sides of the divide say that the PA must not be reinterpreted when developing the rules for its implementation, there is no common understanding on how the PA must be viewed and operationalised.

What has clearly emerged in the last two years since the adoption of the PA are differences in interpreting what NDCs are (whether they are only about mitigation or if they also cover adaptation and the means of implementation) and therefore the information that is required to be communicated flowing from the components of the NDCs.

Another big difference is over how the principle of “common but differentiated responsibilities and respective capabilities” is put into effect in the operational details for the PA implementation. While some developing countries take a firm view that the operational details must differentiate between developed and developing countries, developed countries are generally of the view that the rules for implementation should be common to all, with flexibilities for developing countries provided.

Hence, finding the “landing zone” on some of these issues will be a great challenge.

Also of importance will be how developing countries continue to ensure that the pre-2020 implementation agenda and ambition is not sidelined. High on the radar of developing countries will be whether developed countries meet their pre-2020 commitments on climate finance, with the high-level dialogue on finance taking place at the end of the year.

Given all this, the road to and at COP 24 in Poland does not promise a smooth ride.



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