

Bali 2007: On the road again!

Impressions from the Thirteenth UN Climate Change Conference

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The aim of the recent UN climate change conference in Nusa Dua (Bali, Indonesia) was widely held to be two-fold. To finalise the operational details of the Kyoto Protocol Adaptation Fund (AF), and to put together a ‘Road Map’ for negotiations on strengthening the UN climate change regime beyond the initial commitments of the Kyoto Protocol which expire in 2012. Both aims were achieved, albeit not with the same degree of ease. Keeping in mind the aphorism that UN conferences are only either ‘successful’ or ‘very successful,’ there can be little doubt that the Bali climate change conference has been a very successful one.

The Adaptation Fund

To the surprise of many who – like the Secretariat – had thought the Adaptation Fund negotiations would carry on until the bitter end, an agreement on how the Fund should be managed was reached during the first week of the Conference and finalised on Monday 10 December. The outcome was seen by many as “a major victory for the developing world in setting a new governance system for funding of adaptation activities,”ⁱⁱ to quote the South African Minister who led the final stages of the negotiations on behalf of the G77 and China.

The battle, however, was not a simple North-South affair. The ultimate fault line concerning the role of the Global Environment Facility (GEF) in the running of the Fund ran both through the developing and the industrialised world. Indeed one of the key factors for the early success of the negotiations was the pre-Bali declaration by the European Union that they would accept whatever model the G77 endorsed.

In time, the Bali meeting established an independent Adaptation Fund Board – with members selected by and under the direct authority of the COP/MOP – as an operating entity for its financial mechanisms, independent of the previously only operating entity: the GEF. The role of the GEF in managing the AF had been, and remained to the very end, the most contentious issue in the attempt to operationalise the Fund. In fact, the involvement of the GEF even for merely secretarial purposes was by no means uncontroversial. However, in the end, it was decided that the Board should usually meet at the seat of the UNFCCC (Bonn, Germany) with the GEF Secretariat providing dedicated secretariat services. The organisational set-up of the AF differs in another important respect from that of the other UN funds with funding for climate changeⁱⁱⁱ. Following the wish of many developing country Parties, particularly the

most vulnerable ones, countries are given direct access to the Fund, without having to go through ‘implementing agencies’ such as the World Bank, UNDP, or UNEP.

The key to the astonishingly smooth progress and the early break through in the negotiations on the AF was no doubt the absence of surprises and a raised level of trust between the G77 and China, on the one hand, and the EU, on the other. This was, in part, due to informal private discussions that led, among other things, to a couple of influential opinion pieces on the issue of operationalising the AF by lead G77 and China negotiators.^{iv}

This was in stark contrast to the other key negotiations strand on the Bali Road Map which, particularly in the final phase, turned out to have a number of very unfortunate surprises with a concomitant loss of trust.

The Bali Road Map: The many plots of the Ides of December Of Contact and Small Groups

At the beginning of the conference, a contact group of officials was tasked “to determine the next steps on enhancing long-term cooperative action to address climate change. The group was asked to agree on or narrow down options for consideration by ministers on the future process under the Convention.”^v They presented their conclusions to a small group of ministerial-level representatives from all the relevant UN groups convened by the COP President, which finished its informal consultations at 2 am on the 15th day (the Ides^{vi}) of December. The outcome of these deliberations was a draft text proposing the launch of comprehensive two-year negotiations under the Convention with a key aim to enhance national and international greenhouse gas mitigation in developed and developing countries.

Given that post-2012 commitments for industrialised Kyoto Parties are to be dealt with in separate negotiations under the Kyoto Protocol, the paragraph delineating the scope of these Convention-track negotiations for developed countries – namely

- (1.b.i) Measurable, reportable and verifiable nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives, by all developed country Parties, while ensuring the comparability of efforts among them, taking into account differences in their national circumstances

– was essentially aimed at the only remaining developed country non-Kyoto Party: the United States.

The one issue that eluded consensus in the small ministerial group was the relevant paragraph (1.b.ii) on the scope of developing country mitigation activities to be considered in the proposed Convention-track negotiations. The draft text of the small group submitted to the COP President in the early hours of Saturday morning consequently still included two bracketed options for this paragraph, namely:^{vii}

- (α) Measurable, reportable and verifiable nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported by technology and enabled by financing and capacity-building;

- (β) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.

At first glance, one may be puzzled about the difference between the two. But a closer look will reveal that it is substantive: in (α), measurability, reportability and verifiability refer only to developing country mitigation actions, while in (β) they cover developed country technology, finance and capacity building support. Given this, it will not be surprising that the latter was the version supported by the G77 and China.

The multi-plot plenary

At around 8 am the same day, a draft Decision was disseminated among the conference participants and, soon after tabled by the President for adoption by the COP. Having acknowledged the failure of the small ministerial group “to eliminate fully options in one of the paragraphs”, the President continued by reminding the delegates that “reaching agreement requires a delicate balance to be struck. I believe that the proposal for a draft decision that I have placed in front of you, ..., strikes this delicate balance. I do not place it in front of you on a take it or leave it basis, but I believe that even minor changes to the text will compromise our ability to reach an agreement here in Bali that the world is waiting for.”

After officially requesting the COP plenary to adopt the draft decision, the President opened the floor for interventions. Portugal, on behalf of the EU took the floor to express their support for the text, since “it results from a relevant compromise because it was elaborated with the engagement of all Parties. It was built on a good cooperative atmosphere aiming at launching a Bali Roadmap for post-2012. So under the good spirit and with the notion that there are no perfect texts for all, the EU supports this text and we call for all Parties to support it.”

At this point the drama started to unfold. Seven seconds after the EU intervention, the President declared “I see no other wish to ask for the floor, so it is decided ... oh, India, ... please take the floor!” India’s literally last second intervention together with the subsequent G77 and China interventions made it clear that the text presented to the plenary was not – as assumed by many (including, judging from their intervention, the EU) – a consensus document. It only contained version (α) and left out version (β) of the contentious paragraph (1.b.ii) without G77 consent to do so.^{viii} And it did so in clear text, i.e. without any square brackets indicating a divergence of views.

After the Indian Minister finished his intervention, another disconcerting plot line appeared when China called for a point of order and demanded that the adoption of the proposed draft decision be suspended because the heads of key G77 delegations, including China, were at that very moment engaged in discussions with the Indonesian Foreign Minister outside the plenary, and thus unable to make their views heard.

The plenary was duly suspended for 20 minutes, but that was unfortunately not the end of it. When it was resumed, the President apologised for the numerous extensions of the meeting “because many of your delegates have been conferring with each other outside of this room. Now I see we are back, complete in this room.” With this he returned to where the plenary had left off and invited the head of the Indian delegation to repeat his reservation, only to be told that unfortunately, he was again in consultation with the Indonesian Foreign Minister outside the plenary – as was, it turned out, the head of the Chinese delegation! Clearly, whoever was responsible for convening the plenary this second time was not doing as good a

job as could possibly have been expected. To paraphrase Oscar Wilde's Lady Bracknell "to miss the absence of one minister may be regarded as a misfortune ... to miss two seems like carelessness."

By now, one of the Chinese lead negotiators had rushed back into the plenary from these parallel consultations and requested the floor. He demanded to know why the plenary was again convened while G77 was meeting the Indonesian Foreign Minister, and asked for an apology by the Secretariat, since he could not imagine that this repetition could have happened unintentionally. After this, the plenary was duly suspended for a second time.

To be fair to the Chinese delegate, it is indeed difficult to see how – after the uproar that followed the first convening of the plenary in parallel to the other meeting – this repeat performance could have been a coincidence. But then he was not present when the President invited the absent Indian Minister to repeat his reservation, which proves, in fairness to the podium, that they were clearly ignorant of the fact that the parallel consultations were still ongoing when they reconvened the plenary.

The only consolation to be drawn from this sorry story is that it should put to rest the inevitable conspiracy theories, at least with regard to the parallel-meeting plot line. What happened in the plenary that morning was clearly not intentional. After all, bungling hardly ever is!

But there remains the initial conundrum: how the COP President came to table a "draft decision" for adoption that was not consensus-based. What is clear is that, unlike the plenary events, this cannot be put down "to genuine misunderstandings about the multiplicity of the settings of the meetings."^x Even if the person or persons who decided to drop the G77 proposal (β) of the contentious paragraph mistakenly thought it to be synonymous with the other one, it would still have been completely unacceptable to remove it without consulting all the major groups, in particular its sponsor, the G77 and China. Egypt summed up the events of that morning by comparing it to "a movie with a lot of plots." This was one plot that the process could have done without.

Given that the G77 language ultimately did make it back into the Bali Road Map, some might be inclined to forgive and forget in the spirit of "all is well that ends well." The problem – as UN Secretary General Ban Ki-moon put it – is that, "this is just a beginning and not an ending. ... We'll have to engage in many complex, difficult and long negotiations." And they will require a lot of trust. The unfortunate events of the final morning have turned this into a rather inauspicious beginning, as far as trust building is concerned. Conspiracy theories are already flourishing and have to be dealt with for the good of the process. This is why there is still a need to get to the bottom of how the G77 language got to be dropped without G77 consent: reconciliation requires truth!

An American "U-turn"?

When the plenary convened for the third time – finally with all key delegates present – Portugal, on behalf of the EU, took the floor to support the proposal of India on behalf of G77, "as a sign of the spirit of cooperation, compromise, and trust, among us." However, the hopes of those who cheered at this point believing that this endorsement marked the elusive breakthrough were soon dashed, it turned out to be merely the end of act one.

The second act of the drama began soon after with the United States taking the floor and rejecting the G77 proposal. Returning to the sort of language used earlier by the COP President to recommend the controversial draft text to the plenary in terms of “balance”, the American head of delegation argued that the US had to reject “the formulation that has been put forward ... because it does represent a significant change in the balance that I think many of us have truly worked towards over the last week.”

The US intervention was about developing country mitigation, and claimed that in this respect, there is a substantive difference between the original proposal of the President’s draft (α) and the G77 alternative (β). The problem is that (β) does lend itself to different interpretations in this regard, namely

- (β .1) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by technology, financing and capacity-building, *all* in a measurable, reportable and verifiable manner.
- (β .2) Nationally appropriate mitigation actions by developing country Parties in the context of sustainable development, supported and enabled by *measurable, reportable and verifiable technology, financing and capacity-building*.

With respect to developing country mitigation, there clearly is no difference between the proposal contained in the Presidents text (α) and this first reading (β .1) of the G77 language: both are about mitigation actions that are “measurable, reportable and verifiable.” The US intervention thus only makes sense in the context of second reading (β .2). Fortunately, South Africa clarified the situation: “Developing countries are saying voluntarily that we are willing to commit ourselves to measurable, reportable and verifiable mitigation actions. It has never happened before. A year ago, it was totally unthinkable.” In other words, the first reading was meant to be the intended one.

When the head of the US delegation said that they had “specially listened to what has been said in this hall today, and we are very heartened by the comments and the expression of firm commitments that have in fact been expressed by the developing countries,” she was referring to the interventions by South Africa and others that clarified the G77 proposal. Contrary to some press reports,^x it thus stands to reason that there never was a US “U turn” – all there was is a clarification of the G77 proposal that satisfied the concerns of the US delegation. Of course, it makes for better headlines to report on Papua New Guinea’s demand for the US to “get out of the way!” But to think that the US was swayed by this, or indeed by the jeering after their initial intervention, is simply naïve.

However, a sub-plot – the attempt by Bangladesh to mirror the developed country paragraph (1.b.i) by including a reference to “differences in national circumstances” in (1.b.ii) that failed due to vehement opposition by China and India^{xi} – should caution one not to misread the South African clarification: The G77 and China committed itself to “measurable, reportable and verifiable mitigation *actions*,” but *not* to “measurable, reportable and verifiable mitigation *commitments*,” as developed countries did in (1.b.i).

The White House, apparently, was all too aware of this when its Press Secretary raised “serious concerns about ... aspects of the [Bali Road Map] Decision” on the same day. According to the White House, the Bali Road Map does not fully reflect the principle of common but differentiated responsibilities. The climate change problem “cannot be adequately addressed through commitments for emissions cuts by developed countries alone. Major developing economies must likewise act.” In line with the Bangladeshi demand, the White House also insisted (i) that the responsibility to mitigate must be differentiated “among developing countries in terms of the size of their economies, their level of emissions and level of energy utilization, [and ii] that the responsibilities of the smaller or least developed countries are different from the larger, more advanced developing countries.”

It is doubtful whether this differentiation scheme will cut much ice with these larger developing countries, particularly in the absence of any reference to population size.^{xiii} But it gives a good indication as to where the ‘battle lines’ in the forthcoming negotiations will be drawn.

The Way Forward: To Ensure a Safe Journey

For the Bali Road Map to succeed, the way forward requires both immediate and medium term actions. For one, the operationalisation of the Adaptation Fund must be completed swiftly through the adoption of governance procedures which ensure that the Fund is the success which all Parties would like it to be. The one thing which has to be avoided at all cost is to have this new instrument tainted with some mismanagement scandal. The Adaptation Fund Board has to be above all suspicion, and the rules of procedure have to ensure that it is!

Immediate action is needed to establish clarity on how the President’s text came to be presented as a draft decision, not only to counter existing and avoid further conspiracy theories, but to mend the loss of trust resulting from the unfortunate incident, and if necessary to establish procedural safeguards to prevent anything like it in the future.

As to the medium term, the difficulty will be to find tools to ‘square the global mitigation circle,’ that is to break out of the “we-will-only-take-on-commitments-if-they-do” stalemate which has bedevilled the climate change process ever since the passing of the notorious Byrd-Hagel resolution in the US Senate in 1997, and which was implicitly reiterated in the above-mentioned White House Press Statement. No one ‘in the know’ will underestimate the difficulty of this task. But it is not impossible.

For one, one might want to draw a lesson from the Adaptation Fund negotiations and try to continue the sort of informal dialogue that was crucial in creating the conditions that led to the early break through, even though that may be more difficult given the demand on time form the formal additional negotiation sessions.

Second, the whole debate about the developing country mitigation paragraph in the Bali Road Map may well hold some clues as to how to proceed. The key lies in the difference between

asking developing countries to act on their own or asking them to act with the support of developed countries. This, of course, is nothing new at all. It is what everyone (including those that have not ratified the Kyoto Protocol) signed up to in Article 4.7 of the Framework Convention:

The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology ...

The Bali Road Map negotiations have shown (yet again) that progress can be made with regard to this delicate issue, but only if due respect is given to the joint responsibility/duty enshrined in this Article. Measurable, reportable and verifiable developing country mitigation commitments will, if at all, only be possible as a package deal with measurable, reportable and verifiable commitments to provide technology, financing and capacity-building by developed countries. Indeed India's closing statement can and should be read in this spirit:

“The road to Bali was in principle strong, the road from Bali must be much stronger. We need to move forward to Poland to Denmark, and beyond, for what is at stake is saving our future generations. And therefore it is not a question of what you will commit or what I will commit. It is a question of what we will commit together to meet that challenge!”

Endnotes

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ⁱⁱ Marthinus van Schalkwyk, Press Statement, 11 December 2007

ⁱⁱⁱ The LDC and Special Climate change Funds (both under the UNFCCC), and the GEF Trust Fund.

^{iv} *Operationalising the Kyoto Protocol's adaptation fund: A new proposal* (2006), by Amjad Abdullah (Maldives), Bubu Pateh Jallow (The Gambia), and Mohammad Reazuddin (Bangladesh); and

On the road to Bali: operationalising the Kyoto Protocol Adaptation Fund (2007), Enele Sopoaga (Tuvalu), Lydia Greyling (South Africa), David Lesolle (Botswana), Emily Massawa (Kenya), José Miguez (Brazil).

Both available at www.EuroCapacity.org

^v COP President Witoelar, COP plenary 15 December, UNFCCC Webcast

^{vi} The term ‘ides’ is here used in its original sense of the ‘half-division’ (of the month). In Roman times, the Ides of December was actually on the 13th day.

^{vii} The exact wording of the two options that came out of the small group is not publicly available. The versions quoted here are taken from the President's initial draft decision (α), and from the Indian intervention (β).

^{viii} Indeed, Pakistan (on behalf of G77) later in the debate actually appears to have asserted that there had been agreement earlier that night on version (β): “Mr President, all we are asking for in (1.b) is to restore the agreement that we had last night. So it is not an amendment that we are seeking from the floor but it is only to re-instate the agreement and understanding that we had.”

^{ix} President Witoelar, COP plenary 15 December, UNFCCC Webcast.

^x CNN, “In U-turn, U.S. agrees to global warming deal”, 15 December 2007, <http://edition.cnn.com/2007/WORLD/asiapcf/12/15/bali.agreement/index.html>,

^{xi} The reference really only makes sense in a comparative context, i.e. in the context of some form of ‘burden sharing’, in the present case a mitigation commitment scheme, as alluded to in paragraph (1.b.i). This was and has been anathema to the large developing countries.

^{xii} The equivocation of ‘large’ and ‘more advanced,’ for one, is rather simplistic: India, for example, has more people below the \$2/day threshold than all the least developed and small island countries combined.