



The 2015 Climate Agreement: Lessons from the Bali Road Map

Xolisa Ngwadla, Achala C. Abeysinghe & Adéyêmi Freitas

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Authors: Xolisa Ngwadla, xolisa.ngwadla@gmail.com; Achala Chandani, achala.chandani@iied.org; Adéyêmi Freitas, adeyemi.freitas@yahoo.fr

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I. INTRODUCTION

The global climate change negotiations have always faced the challenge of coming up with a solution that is effective, but at the same time fair and acceptable to all nations. The existing framework, which includes the 1992 UN Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol and several other decisions taken by Parties, has been the result of a long journey with a number of important milestones. The notion and acceptance of what is effective, fair and acceptable has evolved during this journey.

At the 2012 UNFCCC Conference of Parties (COP) in Doha, Qatar, five years of the ‘Bali Road Map’ negotiations under the Ad-Hoc Working Group on Long-term Cooperative Action (AWG-LCA) and the Ad-Hoc Working Group on the Kyoto Protocol (AWG-KP) came to an end. The AWG-LCA was terminated after an agreed outcome was reached, as directed in the Bali Action Plan, through decisions adopted in Doha, Durban and Cancun. Under the AWG-KP, amendments to the Kyoto Protocol were adopted to pave the way for a second commitment period.

At the 2011 COP in Durban, Parties had agreed to launch the Ad-Hoc Working Group on the Durban Platform for Enhanced Action (ADP), or simply the Durban Platform, which is set to conclude as early as possible, but not later than 2015.¹ The negotiation has a two-fold objective: enhancing the level of ambition before 2020; and negotiating a legal agreement to be implemented by 2020. In Doha, a plan of work for the ADP under its two workstreams was agreed, thereby launching the next phase of negotiations after the Bali Road Map.

The Durban Platform is expected to craft an agreement regulating the next phase of climate action under the UNFCCC, which will be applicable to all Parties. The Platform provides a unique opportunity to plan holistically on a range of important issues including mitigation, adaptation, finance, technology development and transfer, transparency of action and support and capacity-building. The longer time frame for the negotiation is likely to favour a more comprehensive outcome, an improvement from the annual COP cycle of the Bali Road Map negotiations.²

As the negotiations under the Durban Platform unfolded since the beginning of 2012, many Parties, developing countries in particular, have made it clear that the new agreement must be based on, and enhance, the existing regime – i.e. the UNFCCC and the Kyoto Protocol – through decisions adopted by the COP and the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP). On the other hand, some developed country Parties envisage the new agreement as a new regime for global climate change policy.

The aim of this paper is to reflect on possible approaches to commitments in the 2015 agreement and its legal form, and how these two elements could impact the overall effectiveness of the future climate regime. Effectiveness is assessed against ambition and legal form of commitments, based on lessons learnt in the negotiations under the Bali Road Map. The paper also analyses the shift in the negotiations from a ‘top-down’ approach to commitments to a ‘pledge and review’ approach, and the seemingly paradoxical relationship between the nature of commitments and the effectiveness of the regime. The implications of decisions constituting the ‘agreed outcome’ on the effectiveness of the 2015 agreement are reflected on.

2. IS THERE A TRADE-OFF BETWEEN EFFECTIVENESS AND THE NATURE OF COMMITMENTS?

This section considers the ‘top-down’ and ‘pledge and review’ approaches to mitigation and financial commitments that are at play in the climate negotiations, and their impact on the overall effectiveness of the multilateral regime. It also considers the relationship between the legal form of a future outcome, and overall ambition – testing the hypothesis that a weaker legal form will result in higher ambition through increased participation and pledges of bigger emission cuts.

Effectiveness is commonly measured in terms of the ability to produce desired results within an agreed time frame. In the case of the climate change regime, effectiveness is a measure of the extent to which the ultimate objective of the UNFCCC is achieved, both with respect to reducing greenhouse gas concentrations and allowing ecosystems to adapt naturally to climate change. Article 4 of the UNFCCC lists the specific commitments of Parties required to realise this ultimate objective. The approach to commitments, therefore, is a major determinant of the effectiveness of the climate change regime.

Effectiveness and the top-down approach

The UNFCCC provides a framework to achieve its ultimate objective through what can be called a ‘constraint-based’ approach. Article 2 of the UNFCCC calls for Parties to stabilise ‘...greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system,’ with a time constraint ‘...sufficient to allow ecosystems to adapt naturally to climate change ...’. This clearly implies that the total greenhouse gas emissions reduction commitments by all Parties should add up, at a given point of time, to prevent dangerous climate change. This is a constraint based, top-down approach to address climate change.

The commitment to action is extended to all Parties.³ Hence climate action under the UNFCCC should reflect the totality of actions towards mitigation and adaptation by all Parties based on an agreed temperature goal. Progress in quantifying the ultimate objective of the UNFCCC has been achieved over the years, with agreement to limit average temperature increase to within 2°C, with a view to eventually strengthen that goal to 1.5°C.⁴ UNFCCC Article 4.2 requires developed countries to implement policies and present quantified projections of emission reductions, within the context of assessing the adequacy of such commitments based on available science as well as relevant technical, social and economic information.

The Berlin Mandate, which launched the Kyoto Protocol negotiations, was a further elaboration of UNFCCC Article 4.2. The process by which reductions for the first commitment period of the Kyoto Protocol were agreed made provision for Party-driven assessments of those commitments by the UNFCCC’s Subsidiary Body for Scientific and Technological Advice, against the Second Assessment Report of the Intergovernmental Panel for Climate Change (IPCC). This created a science-based, internationally binding, top-down process, which is consistent with the ‘constraint based’ perspective of the UNFCCC.

During the first commitment period of the Kyoto Protocol (2008-2012), developed countries, including the US, agreed to reduce their emissions by 5.2% compared to 1990 levels, with the understanding that a stepwise reduction of emissions would take place in subsequent commitment periods. (It is worthwhile to note here that the 5.2% reduction commitment was agreed despite the stronger legal obligation of the Kyoto Protocol.) This commitment came down to 4.25% when the US announced in 2001 that it would not ratify the Kyoto Protocol, and was reduced further by the withdrawal of Canada from the Kyoto Protocol in 2012.

Effectiveness and the pledge and review approach

The top-down approach of the UNFCCC and the Kyoto Protocol appears to have shifted recently to a 'pledge and review' approach, which is characterised by domestic commitments rather than international obligations. The pledge and review approach relies on an *ex post* assessment of actions by countries, rather than an *ex ante* assessment of the adequacy of commitments to achieve UNFCCC objectives. Recent decisions under the Bali Road Map demonstrate the shift – the comparable effort by developed countries makes no reference to UNFCCC Article 4.2, thereby weakening the provisions for an *ex ante* assessment.

For instance, the 2009 Copenhagen Accord provided for the recognition of emissions reduction pledges by developed countries, but made no provision for a further assessment of the adequacy of such pledges in the context of UNFCCC Articles 2, 4.2 and 7.2.⁵ (UNFCCC Article 7.2 makes provisions for the regular review of the implementation of the Convention and its related instruments). The only multilateral provisions relate to 'monitoring, reporting and verification' (MRV) of emissions reductions and financing by developed countries based on agreed rules, and assessment of the overall implementation and the consideration of strengthening long-term goal. Similarly, the process towards the Kyoto Protocol's second commitment period did not provide for an *ex ante* assessment of adequacy of the commitments on a scientific basis.

Under the pledge and review approach taken under the Copenhagen Accord, it is estimated that global emissions will continue to grow to 56 gigatonnes (Gt) by 2020.⁶ This is far below the 44Gt by 2020 necessary for a 50% chance of keeping global average temperatures below 2°C. It is also questionable whether these pledges will be realised – Annex I submissions to the UNFCCC show that the decrease in the overall emissions of the group during the Kyoto Protocol's first commitment period, from 1990 to 2010, are due to lower emissions from economies in transition (EIT). During this period, emissions from non-EIT Annex I Parties increased by 4.9% excluding Land Use, Land-Use Change and Forestry (LULUCF) – or 4.1% including LULUCF – while they relied mainly on offset mechanisms to meet their targets.

The Nationally Appropriate Mitigation Actions pledged by developing countries under the Copenhagen Accord are also critical in reducing the predicted linear global emissions growth rate of 1.63 per cent between 2005 and 2020. According to a 2010 UNEP analysis, *The Emissions Gap Report*, the aggregate conditional pledge by developing countries will result in a 9 per cent deviation from business as usual, whilst the unconditional pledges amount to a 7 per cent deviation.⁷ (This analysis is surprising, given that countries have pledged much higher reductions against their own baselines, or carbon intensities of GDP – and could be because the authors of the UNEP report have used their own baselines or other assumptions, rather than those provided by the countries.)

The UNEP report suggests that there will be no net reductions by 2020. Instead, global emissions will increase by 0.8 per cent if the US is on board, and 1.8 per cent if it is not. It is notable that although the weaker legal obligation under the Copenhagen Accord has attracted a wider range of participants (including the US and a number of developing countries), the level of ambition, an important element of effectiveness, did not improve under this pledge and review approach.

Effectiveness and legal rigour

International law provides for various 'legal forms' for international agreements to choose from, each with differing levels of obligations and bindingness. For example, internationally agreed treaties are legally binding on Parties based on the international law principle of *'pacta sunt servanda'* – literally, 'agreements must be kept'. Protocols, as further agreements to existing treaties, are equally legally binding. Both require a formal ratification process at national level. The bindingness also depends on whether or not the instrument has provisions for compliance.

In the case of the climate change regime, the UNFCCC required ratification but contained no compliance provisions for specific national commitments. The Kyoto Protocol, on the other hand, contained specific national commitments that were a further elaboration of Articles 4.2 (a) and (b) of the UNFCCC, and provided for ratification as well as compliance – the highest level of obligation in international law. The legal premise of the Bali Action Plan was, however, different from the latter two, as it called for negotiations to ‘...reach an agreed outcome and adopt a decision at its fifteenth session’. The ‘agreed outcome’ does not warrant this level of obligation as it neither provides for ratification nor compliance.⁸

The bindingness of an agreement appears to share a somewhat paradoxical relationship with effectiveness in the climate change regime. A strong legal obligation is purported by some to provide a ‘pull’ by some, as it provides reassurance that peers will have to meet comparable obligations, but also a ‘push’ by others as it contains punitive measures if commitments are not fulfilled. For instance, Canada withdrew from the Kyoto Protocol in light of imminent non-compliance, whereas a weaker level of obligation under the Copenhagen Accord pulled the US into an international pledge.

If effectiveness of the climate change regime is to be measured in terms of delivering specific results within a set time frame, then the weaker legal obligation of the Copenhagen Accord is ineffective, as demonstrated by the UNEP prognosis of 0.8% and 1.8% growth in global emissions by 2020 depending on US participation. It is therefore questionable whether the weakening of international obligations is a judicious approach to effectiveness. The hypothesis of a strong legally binding regime, which in turn provides confidence and political momentum, remains valid.

Despite this, the risk of a false dichotomy between ambition and legal bindingness persists in the current debate under the ADP, as some Parties feel that ambition is a more important than legal rigour, whilst others would prefer an airtight legally binding agreement that raises confidence for cooperative action, and subsequently seek to raise ambition. The negotiations so far have shown us that neither condition is sufficient to achieve the ultimate objective of the UNFCCC. Both are necessary, and can be seen as complementary, with considerations of fairness and equity central at arriving at a balance of legal rigour and effectiveness.

3. OPPORTUNITY TO STRENGTHEN THE CLIMATE REGIME

The ADP processes provides an opportunity to reconcile the competing top-down and pledge-review paradigms and enhance the low level of ambition and effectiveness of the regime, both in terms of mitigation targets and means of implementation to support developing country action.

Preserving the progress made during the Bali Road Map

The political dynamics between countries were extremely complicated during the Bali Road Map negotiations. Parties to the Kyoto Protocol sought comparability of effort with the developed countries that were not party to the Protocol, while the latter sought comparability with some developing countries even though this was not part of the Bali bargain. The complexity increased before Durban, as Parties to the Kyoto Protocol split into those willing to take commitments under a second commitment period, and those who wanted to remain in the Kyoto Protocol without taking on commitments.

The Durban outcomes sought to conclude these complex negotiations by launching the ADP process to negotiate a legal agreement for implementation beyond 2020, whilst implementing an ‘agreed outcome’ prior to 2020. Although the transition from the Bali Road Map negotiations to the ADP managed to deal with the legal gap between the first and the second commitment of the Kyoto Protocol and ensure the operational continuity of its mechanisms, some uncompleted business and uncertainties still persist. The uncertainties relate mainly to lack of clarity on the delivery of mitigation commitments and means of

implementation in the pre-2020 period, and the ability of institutions and mechanisms such as the Green Climate Fund, the Climate Technology Centre and Networks, and the Adaptation Framework to deliver concrete support going to 2020.

The Doha outcomes merely make provisions for “further understanding” the mitigation commitments of developed countries not covered by the second commitment period of the Kyoto Protocol.⁹ To that end, a work programme was established for quantified economy-wide emissions reduction targets provided for ensuring comparability in the implementation of actions by developed countries, thus providing space for strengthening commitments. In the interests of effectiveness and fairness, it is important that deeper cuts are achieved from developed countries through the 2013-2015 Review as agreed in Cancun, the review mechanism under the Kyoto Protocol, and the ambition workstream under the ADP.

The strengthening of commitments should not, however, be limited to mitigation but relate also to post-2013 finance, in the context of Article 4.3, under the work programme on long-term finance. The ‘agreed outcome’ only goes as far as urging developed countries to announce financial pledges and strategies to mobilise the US\$100 billion promised in Copenhagen by 2020. It is essential that the commitment to provide developing countries with the ‘means of implementation’ is strengthened and made more transparent, drawing on lessons from fast-start finance. It should also address the contribution of public and private sources, with an agreement on accounting for ‘projected leveraged resources’ from the private sector.

On institutions, several useful structures and operational mechanisms were agreed to in the Bali Road Map negotiations. Given the relevance and importance of these mechanisms in the 2015 agreement, their operationalization is urgent. Instead of a renegotiation, a discussion of how such institutions form part of the agreement is needed. These include mechanisms to address transparency, reporting formats for finance, technology transfer, adaptation and loss and damage, new market mechanisms, response measures, and the review mechanism that is meant to start its first review in 2013 and conclude by 2015.

The important political issues that marred the Bali Road Map negotiations should be addressed within a context of how they contribute to the future legal agreement, premised on deliberations of how they will be reflected in the new agreement. The consideration of the global temperature goal, aggregate emission reduction targets, adaptation, and the means of implementation is central to fairness in a future agreement and should be addressed in a more practical manner. Some ideas emanating from the equity discussion may warrant further investigation, such as the need for a reference framework against which fair efforts and contributions by each Party are assessed.

Implications for the ADP

The approach to commitments and processes applied during the implementation of the Bali Road Map has a strong influence on the future implementation of the regime. As noted before, the agreement and implementation of the first commitment period of the Kyoto Protocol was characterised by a multilateral negotiation of emissions commitments, within a set of multilaterally agreed rules, compliance, and a pre-determined legal outcome (a protocol or instrument of the UNFCCC).

The same cannot be said of the Bali Road Map outcomes. The emission reductions communicated by countries are pledges, as are the financial promises (both fast start finance as well as the Copenhagen goal of mobilizing US\$100 billion jointly per year by 2020). There is neither a scientific base, nor a multilateral negotiation process for their agreement. This can be viewed as a dilution of the multilateral nature of cooperative actions under the UNFCCC, potentially undermining a top-down approach or a combination of the two under the ADP.

There are three processes currently underway that seek to improve the level of ambition: the workplan on ambition under the ADP, which seeks to address the low level of ambition within the Bali Road Map outcomes; a review mechanism under the Kyoto Protocol within the second commitment period; and the agreed 2013-2015 Review to consider the adequacy of the long-term global goal in light of the ultimate UNFCCC objective, and overall progress made towards achieving the long-term global goal, including a consideration of the implementation of UNFCCC commitments. It is less clear, however, what action that will be taken by the COP on the basis of outcomes of the 2013-2015 Review.

Party submissions on the ambition workplan can be broadly categorized into those that call for increasing pledges and actions by individual Parties under the UNFCCC; those that present an opportunity for co-operative action; and those that focus on processes such as strengthening of UNFCCC rules. In light of the importance of maintaining a commitment framework and constraint-based approach under the UNFCCC, proposals need to include pledges from countries that have not yet made them, moving to the upper range of commitments and ensuring they are at least consistent with the range proposed by the IPCC. Furthermore, it is important to continue to ensure that scaling up of finance by developed countries is dealt within the Article 4.3 context under the UNFCCC, so as to provide a sound basis for assessing the adequacy of financial commitments.

Some of the cooperative actions and initiatives proposed in Party submissions are covered by other multilateral bodies, and have been dubbed international cooperative initiatives, or supplementary or complementary actions. These include proposals on short-lived climate forcers, fluorinated gases, maritime and aviation emissions, removal of fossil fuel subsidies, renewable energy initiative. Some of these initiatives can potentially play a role in addressing the shortfall of inscribed commitments for the period to 2020. However recognizing that the UNFCCC is the key platform for global action on climate change, it is important that such actions are additional to commitments, and are ‘internationalised’ through an articulation of their potential contribution to the UNFCCC objective.

The relationship between climate-related elements dealt with by other bodies and the UNFCCC can take several different forms, but should be clearly defined. For instance, it will be essential to have consistent accounting rules for conversion to CO₂ equivalents and for financial contributions, to ensure environmental integrity and transparency, and avoiding double counting. This presents an opportunity for contributing to the effectiveness of regime, whilst guarding the multilateral approach, as well as providing a fair chance for ambition and substance in the negotiations under the Durban Platform.

4. PERSPECTIVES FOR THE FUTURE AGREEMENT

The effectiveness of a future agreement can be assessed against its ability to be effective and fair within a multilateral rules-based system, consistent with UNFCCC principles, whilst allowing a reconciliation of top-down and bottom-up approaches. The Durban decision launched *a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties...*¹⁰ The choices of options laid out in the decision reflect a compromise that made it possible for Parties with differing views to come to consensus in Durban.

Legal form

Under international law, a protocol is defined as an international agreement that supplements or amends a treaty. According to UNFCCC Article 17, the COP may, at any ordinary session, adopt protocols to the Convention. Generally, a protocol must be ratified by its Parties in order to enter into force. For example, the Kyoto Protocol entered into force when 55 UNFCCC Parties, accounting for more than 55 per cent of

the total carbon dioxide emissions for 1990, deposited their instruments of ratification.¹¹

As to the other options laid out in the Durban decision (*another legal instrument or an agreed outcome with legal force*), differing views and interpretations can be found. As some argue, the placing of “legal instrument” alongside the words “protocol” and “another” in Decision 1/CP.17 gives them equal weight.¹² The Berlin Mandate, which gave rise to the Kyoto Protocol, also called for “*the adoption of a protocol or another legal instrument*”.¹³ Parties found “a Protocol” to be the most appropriate and acceptable as it was the most legally binding. Parties argued that “another legal instrument” could have meant a mere amendment or an annex pursuant to UNFCCC Article 15 and 16, and both would have been binding to a lesser degree.

However, a “legal instrument” could also potentially be an “implementing agreement”, which would be similar to a protocol. As precedent, two legally binding implementing agreements have been adopted under the UN Convention on the Law of the Sea (UNCLOS): the 1994 Part XI Agreement and the 1995 UN Fish Stocks Agreement. In 2009, the US submitted a formal proposal for an “implementing agreement” under the UNFCCC, to allow for legally binding approaches and to reflect Bali Action Plan’s mandate to further the implementation of the UNFCCC.¹⁴

The formulation of ‘agreed outcome with legal force’ has drawn attention since its introduction in Durban, and many legal experts have analysed how the formulation can be interpreted in an international legal regime. Some legal experts have rejected this option as a formulation that is unclear and “does not have any precedent in international law”.¹⁵ Some suggest that the formulation was born out of an inability to reach agreement on the use of the term legally binding, and at least some Parties thought “legal force” might mean something less than legally binding. Others suggest that it could be similar to, but stronger than, the language of the Bali Action Plan.

As to the legal form of such an agreed outcome with legal force, it has been suggested that the outcome could comprise of unilateral declarations by Parties, or COP decisions. India has stated that “... ‘*an agreed outcome with legal force*’ need not have the legal form of a protocol or a legal instrument. It could be an outcome that derives legal force from municipal or international law ...”. In a recent submission, India also suggests that “*an agreed outcome of ADP may include aspirational COP decisions, binding COP decisions, setting up of institutions and bodies covering various aspects of the Bali Action Plan and Cancun Agreements with differing degrees of binding-ness under the provisions of domestic and international law under the UNFCCC*”.¹⁶

However, it could be argued that under the UNFCCC, a protocol (Article 17) or other legal instruments (including those under Article 15 and 16) would have legal force, and therefore any of the three options in Decision 1/CP.17 have “legal force under the Convention”. It is further plausible that a protocol or another legal instrument could have varying degrees of bindingness, and “an agreed outcome with legal force” and the other two options (protocol or another legal instrument) are not mutually exclusive. In this respect, it can also be argued that Durban is clearer than the Bali mandate.

Various analyses suggest that the appropriate legal form for the ADP outcome is a Protocol, which would be legally binding under international law irrespective of political changes, provide certainty and mutual confidence, a strong signal of commitment, and a better possibility of putting in place compliance systems. The option of a Protocol could therefore facilitate an extension of the current legally binding framework and build upon the accrued experience in implementing the UNFCCC.

The latest round of negotiations in Doha did not reflect much on the legal form of the ADP outcome. The 2012 negotiations focused mainly on the importance of identifying a vision for the post-2020 regime, application of principles, and work plans for pre- and post-2020. However, many Parties expect the future legal agreement to include an effort-sharing framework that is: effective in meeting the ultimate UNFCCC

objective; based on UNFCCC principles; applicable to all Parties with differentiated commitments for developed and developing countries; and includes operational mechanisms and reporting and compliance provisions.

Architecture of the 2015 Agreement

The UNFCCC calls for multilateral, collective action to address climate change. Its principles, some of which are echoed in the 1992 Rio Declaration on Environment and Development, call for such action to be based on historical responsibility, equity, and common but differentiated responsibilities. These principles imply that developed countries must demonstrate leadership in the global effort in line with their historical contribution to the problem. An important point to underline in this particular instance is the evolving nature of historical responsibility, which is materially different from future responsibility as the main consideration, as has been suggested in some quarters.¹⁷

The UNFCCC also affirms the right to sustainable development, encouraging policies and measures to protect the climate system against human-induced change, based on the specific conditions of each Party and integrated with national development programmes, and taking into account that economic development is essential for adopting measures to address climate change. Hence the UNFCCC encourages Parties to cooperate and promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties. It discourages unilateral measures that constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

Even though the UNFCCC commits all Parties to action, it calls for special consideration of the needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change; and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden due to climate change. The main challenge facing the ADP negotiations, therefore, is to negotiate a future agreement based on these UNFCCC principles, rather than renegotiate the principles themselves.

The future instrument should address specific commitments for Annex I Parties in the form of economy-wide emissions reduction targets, with a trajectory assessing both 2020 and 2050 pathways. It should include clear and specific commitments for developed countries to support adaptation and mitigation, while recognizing that adaptation needs are strongly correlated to mitigation action. Developing country commitments based on deviations from business as usual, and the trajectories for such a deviation, need to be reflected including a mechanism for recognition of adaptation, finance and technology actions by developing countries as part of their contribution to obligations in UNFCCC Article 4.1.

The mechanisms agreed under the Bali Road Map on transparency, adaptation, finance, technology, capacity building, markets response measures, and the review need further mandates from the legal instrument in terms of how they support the delivery of commitments. Reporting and compliance provisions will have to be responsive to the nature of commitments of various Parties.

5. CONCLUSIONS

While the pledge and review approach to mitigation and finance in the climate negotiations could result in wider participation of countries (including the US and developing countries), it has reduced the overall level of obligation and bindingness and resulted in a lower level of ambition, particularly for developed countries. The conditional pledges and weak rules agreed in the Bali Road Map negotiations actually equate

to business as usual from 1990 levels, with real growth in emissions in non-EIT developed countries. The case for a strong, legally-binding regime and for pursuing ambition and legal rigour in a complementary manner rather than from a dichotomous perspective therefore remains valid.

The Bali Road Map negotiations provide important lessons and substantive outcomes for the negotiation and architecture of the 2015 agreement. A lesson from the Bali Road Map negotiations is that unilateral actions on mitigation and means of implementation are not effective, adequate or fair, as they will not keep the world safe or enable developing countries to respond to climate change. The definition of specific commitments for Parties within the same agreement whilst still reflecting differentiation as provided for by the UNFCCC will be a centrepiece of the work of the ADP. A reference framework against which fair efforts and contributions by Parties can be assessed could address fairness and adequacy in the future agreement under the ADP.

The climate change regime has delivered a number of institutions, mechanisms and modalities that provide a sound basis for strengthening the UNFCCC as the key platform for future action. These include the ambition mechanisms under the Kyoto Protocol; the 2013-2015 Review; the ambition workplan under the ADP; and the mechanisms on finance, adaptation, technology support and transparency. The mechanisms for supporting developing country action need to deliver concrete support going to 2015, to strengthen the justification of their role in the 2015 agreement.

The ADP is an opportunity to build upon the lessons learnt so far under the regime, and negotiate a more comprehensive international agreement that covers all aspects of the UNFCCC and allows for a holistic approach. The major challenges will include how to achieve fairness in the targets set for Parties while taking into account the constraint-based perspective of the UNFCCC; determination of an approach or approaches to commitments, consistent with UNFCCC principles; integration of operational mechanisms already established under the UNFCCC; and an appropriate legal form that balances wider participation with a higher level of obligation and bindingness.

Endnotes

1 UNFCCC (2011). Decision 1/CP.17. <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf>

2 The Bali Road Map contains Decision 1/CP.13 and 1/CMP.3, the mandates for formal negotiations under the UNFCCC and Kyoto Protocol, together with the earlier mandate in 1/CMP.1, establishing the AWG-KP. From 2006 to 2007, discussions under the UNFCCC were not formal negotiations.

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