

The Road to Durban: Hopes and Challenges

Antonio G.M. La Vina & Lawrence G. Ang¹

In the run-up to the Cancun Climate Conference in 2010, “cautious optimism” seemed to capture the universal yearning of nations towards a solid outcome from Cancun which paves a clear path for the realization of the Bali Action Plan. And its product, the Cancun Agreements, was subsequently hailed as the much-needed “shot in the arm” and “lifesaver” to what was then largely seen as a UN process losing its credibility owing to the “discord” of the Copenhagen Climate Conference in 2009.

A year passes, and as the world looks to Durban for the next round of high-level climate negotiations, yet again words in the press afford us a sense of Parties’ and stakeholders’ sentiments, and what to expect: “small steps towards an international treaty”, “the death of the Kyoto Protocol”, “global crisis”, and “a reality check”. But words are only words until the press picks up on them. And so, the President of the Maldives was quoted early this October saying, “the current negotiation process is stupid, useless and endless²,” registering his frustration over how the current UN process is crippled by finger pointing and the need for consensus—all while his country continues to be seriously threatened by sea-level rise. He further added that, “in essence, even if we reach an agreement, it will be an agreement about nothing. It will be so diluted that it will be of no use.”

Furthermore, the incoming chair of AOSIS wrote in reaction to the outcome of the Panama intersessional, “I am concerned by what seems like a trend to celebrate any forward motion, no matter how small, as though it was capable of addressing the full extent of the problem we face³.”

So then it seems the luxury and convenience of being “cautiously optimistic” is not as appropriate this time around. And the complexities behind “the single largest multilateral effort within the global system since the Treaty of Westphalia in 1648⁴” just got stickier with the current debt crisis and uncertainty plaguing Western markets—not so coincidentally affecting developed nations with pending commitments on climate finance and to the first commitment period under the Kyoto Protocol which expires on 2012.

Indeed, Durban represents an urgent call for a “reality check” of how, in the midst of the same objectives and mandate under the Bali Action Plan and the Convention, countries are now compelled to consider the changed political and economic landscape vis-à-vis national interests and come to an agreement to avoid runaway climate change in the least time possible.

So what then can we realistically expect out of Durban? And what would the mode of discussions be moving forward to the critical year of 2012? What is there ultimately to be optimistic about?

We briefly revisit the progress made from Cancun to the last intersessional held in Panama in October 2011, and then tackle the emerging political issues that we believe will shape discussions in Durban and beyond, among them the fate of the Kyoto Protocol and the role of the EU, and the

¹ The authors are affiliated with the Ateneo School of Government. Although they are members of the Philippine Delegation to the UNFCCC Negotiations, including in COP 17 in Durban, South Africa, this paper does not reflect official positions of the Philippine Government. The support of the Climate and Land Use Alliance (CLUA) is acknowledged but likewise this paper does not reflect CLUA's opinion on any issue.

² AFP 2010, <http://news.yahoo.com/un-climate-talks-stupid-endless-maldives-151044527.html>

³ Moses, Marlene 2010. <http://www.trust.org/alertnet/blogs/climate-conversations/the-need-for-small-steps-toward-realism>

⁴ <http://www.livemint.com/2011/10/09230141/Ourview--Cold-start-to-climat.html?h=B>

increasing centrality of climate finance and the emerging role of business in influencing future negotiations.

From Cancun to Panama

Cancun continues to be remembered as the Conference that could have well carried the UNFCCC and the highly politicized climate change negotiations out of the brink. The Cancun Agreements represented a significant move forward from the “Copenhagen Accord” in that it outlined clear progress on the major pillars of the Bali Action Plan under the AWG-LCA: on mitigation, adaptation, technology transfer and capacity building and finance. And while the AWG-KP had not completely resolved issues arising from a potential gap between the first and the second commitment periods due to the lack of agreement on the latter, the working group was able to conclude in Cancun with a set of placeholder text particularly on raising the ambition of Parties and a streamlined LULUCF text⁵.

The mandate of the AWGs were then extended until the next Climate Change Conference to be held in Durban this 28 November to 9 December 2011.

The first intersessional this year held in Bangkok disconcertingly preoccupied itself primarily with procedures, the agenda and the work programme for the rest of the year rather than on substance—foreshadowing a highly charged political debate on the expected outcomes and approach of Durban.

The second intersessional in Bonn was devoted to the 34th sessions of the SBSTA and the SBI. For SBSTA, Parties suggested new items for consideration such as integrated water resources management for adaptation, blue carbon, rights of nature, and a work programme on agriculture. For SBI, national adaptation plans, loss and damage, and response measures to the impacts of mitigation activities were discussed.

The third and last intersessional held in Panama, while featuring some victories in moving the finance discussions forward as well as hearing the assurances of the South African presidency as it conducted its informal consultations, exposed remaining sharp divisions on Mitigation and MRV, as well as the Review process and Legal Options, in the context of the ticking clock of the Kyoto Protocol. The urgency to resolve such divisions is expressed in terms of how the Kyoto Protocol alone is not enough to solve climate change without a global agreement that includes the US and emerging developing countries. A different perspective has been expressed that notwithstanding this dilemma, the Kyoto Protocol remains the only legally binding instrument with enough technical details to hold down emissions from signatory developed countries into the future, and as such should be carried over into its second commitment period, else risk a global pledge and review system without teeth. We return to these points shortly.

Mitigation and MRV

Specifically under the AWG-LCA, on Mitigation and MRV, the “ambition gap” featured strongly in Panama as it increasingly dawned to Parties that the emissions reduction targets demanded by the science as per the IPCC 4th Assessment Review in 2007 are far from being met almost 5 years since its publication.

⁵ 1/CP.16 & 1/CMP.6. For more details on the Cancun Agreements, see La Vina, Ang and Dulce 2011, “The Cancun Agreements: Do they advance global cooperation on climate change?”
http://www.field.org.uk/files/the_cancun_agreements_lavina_ang_dulce_0.pdf

Although, on mitigation for developed countries, discussion did focus on establishing MRV mechanisms to ensure developed nations achieve their quantified economy wide emission reduction targets through the International Assessment and Review process or IAR. Modalities and guidelines to ensure comparability, transparency, and consistency in accounting of efforts potentially through biennial reporting under the IAR were debated and discussed with the objective of coming up with common agreed rules. However, some difficulties emerged among both developed and developing countries over the compliance component of IAR as it was reminded by some that a compliance process under the AWG-LCA is still being negotiated.

On mitigation for developing countries, Parties similarly discussed the principles and objectives of the MRV of nationally appropriate mitigation actions or NAMAs of developing countries under the process of International Consultation and Analysis or ICA. Developing country Parties were very careful in emphasizing the fundamental difference between the ICA and IAR process: the former is intended to increase transparency of *voluntary* mitigation actions of developing countries on the basis of common but differentiated responsibility, *especially* those that are internationally supported; while the latter is meant to assess and review the commitments made by developed countries and their comparability⁶. There continues to be disagreement over the frequency of the ICA process as capacity and support for generating biennial reports as part of national communications remain challenges.

On NAMAs, there are increasing calls by developed countries for developing nations especially emerging ones to explain the assumptions and details behind country pledges in view of potentially standardizing templates for registering and communicating NAMAs. However, developing countries emphasized the need for flexibility as the Cancun Agreements outlined how NAMAs should be supported and enabled by technology transfer, capacity building and finance. Any NAMA registry should not generate preconditions or burdens to access the three.

On potentially raising the level of ambition for both developed and developing country mitigation actions, a proposed “common space” to discuss efforts were opposed by developing nations emphasizing the different nature and content of provisions for developed countries and NAMAs for developing countries as per the Cancun Agreements⁷ and the principle of common but differentiated responsibility.

Non-papers were produced to capture progress on the above issues with hopes of translating the papers in to negotiating text by Durban. It would appear however, that while movement on MRV is possible, raising mitigation targets by Durban is at a stalemate provided the uncertainty of parallel (non-)developments under the Kyoto Protocol and while Parties await further deliberations on the legal pathways for Durban and beyond (post-2012). Political will and clarity, at the final stages of Durban, it seems would be needed to unlock such pathways.

REDD+ and Agriculture

One of the major outcomes of the Cancun Agreements is a basic agreement on the approach to implement the REDD-Plus approach as a response to climate change. Hailed by many as the fastest-moving portion of the whole climate negotiations, several REDD+ initiatives and projects have since been ongoing spanning across the different phases. Parties as well as stakeholders have identified the challenge of maintaining momentum, developing methodologies for the technical aspects as well as

⁶ ENB 2011. Summary of the Panama City Climate Change Talks: 1-7 October 2011.

⁷ Ibid.

safeguards of REDD+, and building further in-country experience to develop appropriate national REDD+ strategies.

In Panama, an informal group on **REDD+ financing** further discussed proposals and ways forward for financing Phase 3 or the full implementation of REDD+ activities. A non-paper or placeholder text was provided by the facilitator on the elements of a draft decision including general sources for REDD+ finance, activities to be funded, linkages with the SBSTA work programme, and linkages with other financial instruments under the Convention such as the Green Climate Fund (GCF).

The discussion on sources largely revolved around proposals to acknowledge the variety of sources that included private sector resources for REDD+, potentially to be leveraged and complemented by public finance and/or vice-versa. Interestingly, explicit referencing to the carbon market was avoided, although it was implicit since involvement of the private sector would include consideration of the market as well.

There seems to be general agreement that the scope of activities to be funded by REDD+ financing should cover reduced emissions from deforestation, degradation and the sustainable management, conservation and enhancement of existing forest carbon stocks. There also seems to be some agreement that a specialized REDD+ window should be accommodated under the GCF, however, some Parties expressed concerns that the current pace of the finance discussions might impede delivery of REDD+ fund flows or impose obstacles to access these funds. To a degree, the institutional architecture for REDD+ finance will depend on progress of the finance negotiations and the establishment of the rules for the GCF which could either determine or at the least influence financing modalities for REDD+ activities and strategies at the international level.

Finally on the relationship between REDD+ finance and the ongoing SBSTA work programme, Parties recognized that significant funding should be provided for safeguards implementation, as with implementing the technical aspects of REDD+ methodologies, for instance the establishment of reference levels.

The facilitator solicited submissions from Parties on the way to Durban in view of developing the existing placeholder text into a draft decision text which summarized Parties' views and submissions on the abovementioned elements. We return to the implications of the increasing recognition of the private sector as well as the ongoing GCF discussions to REDD+ towards the latter part of this working paper.

The **SBSTA** also held an expert meeting in Panama towards establishing modalities for providing information on how REDD+ safeguards are being addressed and implemented, particularly towards providing guidance on the development of a Safeguards Information System (SIS)⁸. Several presentations were provided on experiences and options for SIS development coming from countries such as Indonesia, Brazil, Vietnam, and the Democratic Republic of Congo. Presentations were also provided on existing modalities towards an SIS by the UN-REDD, FCPF, GEF, and the CBD.

The scope and purpose of such a guidance dominated discussions during the workshop: differentiating between an international versus a national SIS; issues of balancing national sovereignty, flexibility, and minimum expectations; the objective of the SIS being more facilitative rather than a strict reporting regime; periodicity of information provision, as well as financing to build capacity to implement the SIS.

⁸ http://unfccc.int/methods_science/redd/items/6149.php

The Chair's Summary⁹ provides a useful marker of potential elements of a COP decision on this topic. Based on the lessons raised and the exchange of views during the expert workshop, the summary identifies possible points for a preambular text, guidance on the characteristics as well as design of the SIS.

The preambular text recognizes precedence of existing systems, the need to harmonize at the international level and respect national sovereignty. The characteristics of the SIS to be promoted among others are simplicity, consistency, transparency, "regularity", comprehensiveness and potentially, the "comparability and accuracy" of data. Its design should build on existing systems, be "flexible" enough to allow improvement over time, and "general" enough to accommodate national circumstances and legislation. Interestingly there is also the suggestion to develop a matrix to compare existing safeguards being implemented by countries against the 7 official REDD+ safeguards of the REDD+ text. Also national communications shall be used as the avenue to provide information internationally from the SIS, potentially using biennial reporting.

Nonetheless, it is apparent, further work needs to be done to increase the level of confidence on the credibility of information to be provided, for as of the workshop, some Parties expressed some reservations on including "accurate" and "comparable" data as qualities of the information to be provided. Also, a need was identified to differentiate quantitative as well as the qualitative dimensions of the safeguards information to do with leakage, permanence, and biodiversity, and those to do with social and governance safeguards.

Notwithstanding, a decision on the SIS would prove a huge boost to ensuring REDD+ is able to already work properly and equitably on the ground as it is one of the remaining methodological puzzles that SBSTA is to resolve in the coming years.

Critical as well is the decision SBSTA could recommend on modalities relating to forest reference levels and forest reference emission levels, forest monitoring systems, and modalities for measuring, reporting and verifying emissions. These are essential building blocks for implementing REDD-plus that involve very complex technical issues. Thus, in November, an expert workshop was held in Bonn to similarly flesh out the mandate of SBSTA to establish modalities for constructing reference levels and reference emission levels for REDD+ implementation. It was clear to Parties such discussions would be very challenging given the complexity behind diverse methodological approaches and interpretations towards reference levels, not to mention the question of capacity towards developing and implementing these for REDD+.

Presentations were given on emerging approaches and experiences on the topic by, among others, Vietnam, Papua New Guinea, Indonesia, Norway, and the United States together with the UN-REDD, World Bank and CIFOR.

The Co-chair's summary¹⁰ would indicate modest progress was made in further clarifying the scope and purpose of reference levels, its characteristics, construction and communication. While "flexibility" towards the construction of reference levels appears as one of the most important safety for developing countries, IPCC principles and modalities are clearly supported to be used as basis.

⁹http://unfccc.int/files/methods_science/redd/application/pdf/redd_expert_meeting_safeguards_cochairs_summary_131011.pdf

¹⁰http://unfccc.int/files/methods_science/redd/application/pdf/summary_rel_rl_meeting_bas_15_november_2_pm_format.pdf

But perhaps the most important breakthrough in this workshop was the outlining of initial types of information to be provided in transparently constructing reference levels, that is: scope of activities, definitions, time period of historical analysis, scale (subnational/national), general description of agents and drivers, identification of pools and gasses included in calculations, description of approaches, stratification, and treatment of disturbances.

Given the implications for REDD+ countries to establish such information for the construction of reference levels, further guidance will be provided. Participants seemed to agree a “tiered” approach to reference level construction would be advisable, further subject to country strategies, support, and capacity.

One resource available to negotiators is a report by a group of independent, international expert authors *Modalities for REDD-Plus Reference Levels: Technical and Procedural Issues* provide an objective analysis of technical and procedural issues associated with setting modalities for REDD-Plus Reference Levels (RLs). The final version of this report, facilitated by the Meridian Institute and supported by the Government of Norway, will be available in Durban.

On **Agriculture**, it was deemed unfortunate by several developing country Parties how very little attention and space was provided to discuss the topic, considering the Cancun Agreements had not provided a solid outcome on the issue. At the least, views were shared on food security, the need to avoid barriers and distortions in international trade and the role of agriculture in facilitating economic development and poverty reduction—reiterating the status of discussions from the Cancun Conference. It is doubtful at this stage for agriculture negotiations to be unlocked by Durban beyond current discussions. A clearer outcome for mitigation and response measures as a whole might create some much needed momentum for agriculture negotiations beyond Durban.

Adaptation

If we recall, Cancun officially launched the **Adaptation** Framework. The framework prescribes a wide range of adaptation activities parties may undertake, which include: adaptation planning, prioritizing and implementation activities; impact and vulnerability assessments; institutional capacity strengthening; building of socio-economic and ecological systems; disaster risk reduction strategies; measures to enhance understanding, cooperation, and coordination on displacement, migration, and planned relocation issues; research and development (R&D) and technology transfer; and sharing and strengthening of data and knowledge systems, including education, and public awareness.

The Cancun Agreements also established the Adaptation Committee. The Committee shall provide technical support and guidance to the parties; strengthen, consolidate, and enhance the sharing of information, knowledge, experience and good practices at all levels – international, national, regional and local; promote synergy and strengthen engagement with relevant organizations, networks and centers; provide information and recommendations to enable a climate-resilient development; and consider monitoring and review reports of parties as bases for recommending further actions needed in the future¹¹.

In Panama, discussions focused on establishing the terms of reference for the Adaptation Committee: the operational modalities for performing its functions, the composition of the Committee, and the linkages with new and existing institutions under the convention including the GCF.

¹¹ La Vina, Ang and Dulce 2011, “The Cancun Agreements: Do they advance global cooperation on climate change?”

Developing nations demanded more representation in the Committee for vulnerable nations. Parties also discussed the role of the Committee in the COP such as providing guidance and technical support to Parties on adaptation issues upon request, compiling, reviewing and synthesizing knowledge and good practice through regional networks¹². There seemed to be agreement that the draft decision text forwarded by the facilitator can be a good basis to finalize discussions in Durban on the composition and procedures of the Committee.

Technology Transfer and Capacity Building

On **Technology**, Parties discussed how to operationalize the Climate Technology Centre and Network (CTCN) including the relationship of the Technology Executive Committee (TEC) to the COP, its relationship with the CTCN, the role of the CTCN, and the functions and composition of a selection panel for reviewing host proposals. A revised text was produced on the proposed function, architecture, responsibilities network, budget and financial estimates, as well as governance structures for the CTCN, which will become the basis for discussion towards a draft decision text at Durban. It is highly likely a decision putting the CTCN officially to work will be reached at Durban.

On **Capacity Building**, Parties registered their view that capacity building needs to be urgently integrated as a cross-cutting issue under the different UNFCCC processes, in consideration of the perceived gaps and absence of delivery in capacity building programs in projects and activities. The facilitator compiled draft texts for a draft decision by Durban that has provisions for enhancing the monitoring and review of the effectiveness of capacity building programs, modalities for institutional arrangements, and reporting of Parties on capacity building efforts¹³.

Finance

Finance noticeably took centerstage in Panama, and for good reason. Many believe it to hold the key towards “giving life to the Cancun Agreements” and will in all likelihood serve for Parties as the political basis—or precondition, for some—to decide on the critical issues hindering agreement on a post-2012 climate regime. High hopes are pinned on the GCF particularly by developing nations towards its function as a “legitimate” institution providing scaled-up international financing to address climate change. An opportunity therefore presents itself to (re)define the climate finance landscape and influence both politically and institutionally how the international community addresses the resource challenges to climate change.

First among the issues on Finance to be tackled by Durban is the work of the Transitional Committee (TC). The TC had initially met to discuss its composition and mandate. As of Panama, the TC was represented by 25 developing countries and 15 from developed countries and understood its mandate, as per the Cancun Agreements, to provide the operational documents for the GCF and report back to the COP by Durban with recommendations. Among the issues the TC is meant to address for the GCF are to do with:

- Legal and institutional arrangements
- Fund Board Rules of Procedure
- Financial instruments, funding windows and access modalities
- Complementarity with other funds and institutions
- Role of secretariat
- Independent performance evaluation

¹² ENB 2011. Summary of the Panama City Climate Change Talks: 1-7 October 2011.

¹³ Ibid.

- Standards, safeguards and accountability
- Expert and technical advice mechanisms
- Stakeholder input and participation¹⁴

By no means will all these issues be addressed by Durban, but it is anticipated that at a minimum clarity will be provided towards the objectives, scale and scope of the GCF; indication on how institutions shall be set up to manage the GCF, including a GCF Board and secretariat; and further understanding on the relationship between the COP and the GCF. These elements would foreseeably be enough to send positive signals to Parties and potential finance sources towards further building and organizing the base of international finance flows for climate change.

In Panama, the Standing Committee for the GCF was also discussed alongside issues on long-term finance. While discussions here remain incipient, proposals range from issues such as the manner in which the GCF can be initially capitalized for both short and long-term financing. Questions as to whether or not assessed contributions or alternative modalities as an approach for capitalizing the GCF were also raised, alongside more obvious issues such as the role of the private sector and how the USD 100 B pledged for the years 2012-2020 under the Copenhagen Accord for long-term finance be operationalized under the GCF, and what happens after 2020. In response, the AOSIS supported by several Parties proposed for a work programme to discuss these issues at Durban—indicating both anxiety, enthusiasm, and preoccupation with the GCF in anticipation of the recommendations of the TC at the Conference.

In November, the TC met one last time in Cape Town and concluded its work with a set of recommendations for the COP¹⁵. The TC recommendations, among others, requests Parties to nominate the GCF's board members as well as invite voluntary contributions. The TC annexed its recommendations that ranged from the objectives of the GCF, its governance and institutional arrangements, legal status, rules of procedure and role of the Board, its secretariat and trustee. The Annex also outlines operational modalities which among others referred to how funding can be accessed by Parties and other entities; environmental safeguards; fiduciary standards; monitoring and evaluation; and accountability mechanisms.

To reiterate therefore, a decision or non-decision on the GCF will be a major milestone or upset at Durban, towards reaching a finance package to facilitate expedited discussion on sourcing and delivering urgent finance for all aspects of the Bali Action Plan. Not to mention the much-needed momentum and goodwill it stands to introduce to the process. We return to the implications of certain important details being discussed under the GCF in the latter section of this paper. Suffice it to say that the news from the last meeting of the Transitional Committee, where it has been reported that the United States and Saudi Arabia has blocked consensus in adopting the TC report is troubling. This is not to say that failure in this area is certain in Durban; what is more likely is that there remains to be hard negotiations to be done before a package is achieved.

Review and Legal Options

In view of the ultimate goal of the Convention, the Cancun Agreements set out provisions to launch a **Review**, by 2013 to be concluded by 2015, to reassess the adequacy of the long-term global goal of maintaining global temperature increase to 2°C by 2050. The review process would primarily take into account the latest science and observed climate impacts and then, based on this information, consider strengthening the global goal to 1.5°C, for appropriate action of Parties.

¹⁴ WRI 2011. "Road to the Green Climate Fund". <http://www.wri.org/stories/2011/02/road-green-climate-fund>

¹⁵ <http://unfccc.int/resource/docs/2011/cop17/eng/06.pdf>

In Panama, Parties focused discussion on submissions towards the modalities and scope of the review. The definition of what constitutes a “review” vis-à-vis the broader mitigation and MRV discussions was raised hinting Parties were aware of the possible implications of such a review process on the current “ambition gap”. Nonetheless, this is an increasing area of interest within the negotiations as the review process and its range of results could very well become the vehicle and basis to demand higher reduction ambitions if and come a post-Kyoto/pledge-and-review scenario materializes.

Which then brings us to the ongoing discussion on **Legal Options** which is intensely becoming a debate over form following substance or vice-versa. In Panama, Parties continued to exchange views as to what form of legally binding agreement or instrument should be established. Some Parties argued the discussion to be premature, considering the uncertainty behind the Kyoto Protocol, and the ambition gap. Alternatively, some Parties proposed that a comprehensive legally binding framework be established by Durban that is, regardless, able to adapt to evolving discussions under the AWG-KP and LCA. Others, in particular the US, were concerned over tabling “aspirations” as an outcome in Durban which Parties would negotiate but be unable to sign on to—a direct reference to a past US dilemma when it signed but was ultimately unable to ratify the Kyoto Protocol domestically.

Upon consideration of the views of Parties, the facilitator prepared a non-paper outlining a “menu of legal options” which set out a range of possible options for a Durban outcome, including a legally binding instrument and COP decisions with various sub-options. These include the following.

- A mandate to conclude a legally binding instrument with a clear roadmap;
- A declaration regarding the future instrument leaving legal form open;
- Continuing discussions to identify the appropriate form of the different elements of the agreed outcome;
- Affirming the importance of the legally binding instrument;
- Continuing to address all the Bali Action Plan pillars;
- Acknowledgement that political conditions are currently not right to agree to a mandate to conclude a legally binding agreement by Durban¹⁶.

Understanding the ramifications of these options in significantly influencing a Durban outcome to further influence the direction of future negotiations, the EU proposed that the 6 elements mentioned above be included as a mandate for Parties to explore beginning Durban with a clear end-date for negotiations. Other Parties had expressed how leaving legal form open and having only a political statement as unacceptable. The US on the other hand accepted the list of options as a good basis for further discussions in Durban.

By the end of Panama, Parties had further provided their positions and submissions into the possible details of the 6 elements, with the facilitator reiterating in essence that some Parties believed Durban should achieve a time-bound mandate for a legally binding instrument while others insist clarity over substance should be established first before agreeing to legal form. Discussions would hence continue on this basis in Durban.

There is no doubt the “menu of options” developed and put unto text under this working group represent a strategic advance for the negotiations as a whole as it actually shines a light on a set of pathways Parties can consider and further deliberate on as critical issues under other working groups such as mitigation, finance and the KP are resolved. Conversely, awareness of such legal options

¹⁶ ENB 2011. Summary of the Panama City Climate Change Talks: 1-7 October 2011.

also helps to inform the implications certain outcomes under mitigation, finance and KP will have on ultimately meeting the objective of the Convention.

A decision therefore by the conclusion of Durban that outlines and packages possible legal approaches for immediate negotiations by 2012 would be in itself a very significant milestone to the process, especially as Parties increasingly face pressure to deliver an agreement.

Summary of Emerging Political Issues

Looking back at the year's negotiations, two major themes received unparalleled attention and speculation owing to their influence on a Durban outcome—the fate of the Kyoto Protocol, and the multiple facets of climate finance including the emerging role of the private sector. We briefly dissect these two issues as they relate to possible outcomes in Durban.

The fate of the Kyoto Protocol and the role of the European Union

The Kyoto Protocol, the only legally binding instrument under the Convention adopted in 1997 and entered into force in 2005 to reduce developed country emissions to 5%, expires in 2012 if its second commitment period is not agreed to by Parties. In the last year, drawn-out technical negotiations were conducted on transforming emission reduction pledges into quantified emission limitation and reduction objectives (QELROs), the carry-over of surplus assigned amount units (AAUs), LULUCF rules, and the future of flexible mechanisms such as the Clean Development Mechanism (CDM) and Joint Implementation (JI).

And while some progress were made on these issues particularly on LULUCF, no one can deny the combination of gloom and political uncertainty encumbering these discussions sparked among others by Japan, Canada and Russia's position that they shall not join any new commitment period under the Protocol. This is largely due to the fact that the Protocol does not bind the US and emerging economies to reduce their emissions.

Similarly, the US is looking to the LCA and a new instrument as a base for its emissions reduction targets rather than ratifying the Protocol. And in no small way, this is owing to its own and much publicized domestic economic, political, and legislative woes over and above its pending climate bill. Australia, though not completely closed to the idea of a second commitment period, is swaying to the same direction as well if progress is not made on the Kyoto Protocol soon.

Hence there is a drought of political will towards seeing the Kyoto Protocol survive, despite the adamancy of the developing world as represented by the G77/China to see through a second commitment period. This commitment period should be launched by Durban to secure a legally binding post-2012 regime, with its flexible mechanisms intact but with ambition enhanced over time, for developed country emitters. And the clock is ticking.

All eyes are on the European Union as the Protocol's possible champion in Durban, as it has made clear it is willing to engage and enter into a second commitment period contingent on a process for establishing a legally binding comprehensive framework as per the Legal Options discussion under the LCA which would have to include the US, developed countries, as well as emerging developing nations like China and India.

The EU, which is undertaking a legislated region-wide Emission Trading Scheme (ETS), would ideally require the Protocol to continue as the Scheme, which is itself a facilitator of flexible mechanism projects, allows the EU to register its aggregate emission reductions out of the Scheme as part of its global commitment and regionally-binding goal to reduce by at least 20% by 2020.

The EU ETS, however, is experiencing an unprecedented 30-month low in its carbon markets despite government mandates to ensure a floor price to guarantee flows of low-carbon investments, and the recent inclusion of international aviation and fuels as an eligible activity under the scheme¹⁷. This low point in the market can be attributed to a very deep uncertainty on the future of the flexible mechanisms under the Protocol if it is allowed to expire by 2012, a risk perceived to be too great for some carbon market investors.

Australia, which is on the cusp of passing its own carbon price policy, might find itself in the same ship as well pending developments on this issue in Durban.

Here are the options:

If the EU does decide by Durban to support a second commitment period, there is the actual legal opportunity to do so even without Japan, Canada and Russia—a “Kyoto-minus” situation¹⁸. There is some talk that perhaps developing countries can also voluntarily inscribe declared targets under an Annex in the Kyoto Protocol adding to the list of nations which shall reduce emissions under the legally binding instrument—a “Kyoto-plus” situation. The EU is now urging for further clarity on Parties’ pledges and the starting period and length of the commitment period, as well as requiring progress on LCA mitigation discussions, so it further firms up its position by Durban.

But by no means is this a sure-shot. Citing the “11 percent” total emission responsibility of the EU, EU Environment Commissioner Connie Hedegaard was quoted saying, “What’s the point of keeping something alive if you’re alone there? There must be more from the 89 percent¹⁹,”—referencing to the EU per-condition that before it signs up to the second commitment period, other major emitters must be also held legally accountable. Durban will have to resolve this with a finesse unseen before in the UNFCCC.

Money talks: the global crisis, climate finance, and the emerging role of business

As protesters continue to “occupy” Wall Street and other country markets, Western governments continue to reel from the prevailing global financial crisis, with some already on full alert for the impending debt crisis. The economic outlook for much of the developed world is therefore, in a word, bad. And although direct reference has been avoided on the impact of this situation on the UNFCCC negotiations, Parties are well aware of its implications.

Among them, difficulties to agree on both short-term and long-term finance, particularly on the question of where such enormous amounts of annual funding will be sourced, and if the public sector can be relied on for such resources given current constraints. Decisions therefore to do with capitalizing the GCF cannot be expected to go beyond details Parties are neither ready to discuss internationally and domestically. The best the process can hope for are signals of commitment to further discuss long-term finance.

On another level, compelled by the times to prioritize other domestic economic, budgetary and legislative issues, yet again climate change issues are at the risk of being side-tracked as we see in some governments in particular the US as it straddles for the next US election which have issues

¹⁷ Bloomberg New Energy Finance 2011. “EU CO2 Catches Cold as Durban Talks Approach”.

<http://www.climatespectator.com.au/commentary/eu-co2-catches-cold-durban-talks-approach>

¹⁸ Bloomberg Businessweek 2011. “UN May Extend Kyoto Pact Without Canada, Japan, Russia”.

<http://www.businessweek.com/news/2011-10-13/un-may-extend-kyoto-pact-without-canada-japan-russia.html>

¹⁹ Lewis, Barbara 2011. “EU Sets Conditions for Signing-up to Kyoto II”. <http://planetark.org/enviro-news/item/63519>

other than the climate as the main campaign battlefield. This leaves such countries without the clear mandate to provide decisive positions and conclude negotiations where they are able—among them the Kyoto Protocol, mitigation, finance and legal options.

Ironically, tight pockets have not changed the flavor for what Parties expect out of the Transitional Committee recommendations towards operationalizing the GCF, which remain very ambitious. The WRI outlines that an effective, equitable, and ambitious GCF needs to encompass:

- support for national ownership and country-driven strategies and priorities;
- the opportunity for countries to access funds directly, without the need for intermediation by international institutions;
- the flexibility to accommodate multiple funding sources that can be scaled up over time, and that can leverage private sector funds;
- a balanced allocation of funds for adaptation and mitigation and for the most vulnerable countries; and
- mechanisms to ensure accountability for results, financial management and environmental and social safeguards, as well as robust mechanisms for effective civil society participation²⁰.

And these points could very well become the bargaining points Parties negotiate over towards the last days of Durban as basis for a minimum set of principles for the GCF. The interplay between the current appetite, or lack of it, of developed countries to discuss climate finance details vis-à-vis how finance permeates through all key G77/China positions determines the balance Parties will have to strike for Durban to achieve decisive movement on this issue.

Finally, there has been absolutely no lack of mention and side-discussions on the emerging role of the private sector in the context of helping address public funding constraints. There seems to be increasing recognition public sector funds are not going to be sufficient to cover the broad range of activities set out under the Convention, internationally and nationally, so much so sustain them into the future. The private sector has therefore “organically” emerged as a logical partner in resourcing the common endeavor.

Since the findings of the Secretary General’s High Level Advisory Group on Climate Change Financing, leveraging private sector resources alongside innovative policies and mechanisms for capital formation have gained ascendance in the current finance discourse.

This is evidenced not only in the aforementioned GCF discussions where private sector funds feature strongly as part of its design proposal, but also in REDD-PLUS, where surprisingly rich and detailed discussions have resulted in several initiatives being launched.

Among them the Philippine-Swiss initiative “Towards Building a Governance Framework for REDD-PLUS Finance²¹” and the 11th Rights and Resources Institute Dialogue which focused on financing for forests and climate in the context of global crises²².

Both highlighted the current scope, resources available, and appetite of the private sector for financing REDD-PLUS projects as well as opportunities for the private sector to help ensure

²⁰ WRI 2010. “Cape Town Meeting Must Get Design of Green Climate Fund Right Before Durban”. <http://insights.wri.org/news/2011/10/cape-town-meeting-must-get-details-green-climate-fund-right-durban>

²¹ For details, see ASOG 2011. “REDD+ Financing Workshop in Panama.” <http://asg.ateneo.edu/news2.php?newsid=259>

²² For details, see IISD 2011. “Eleventh Rights and Resources Initiative (RRI) Dialogue on Forests, Governance and Climate Change.” <http://www.iisd.ca/ymb/rri/dfgcc11/>

environmental integrity and good governance. What is increasingly made clear is that there is mutual interest among governments and private sector investors to implement safeguards as both risk management and cost-containment approaches.

There were however several challenges identified, among them the chronic problem of corruption, the role of the private sector as a driver of emissions, and running issues such as ensuring equitable benefit sharing and participation of stakeholders such as indigenous peoples, non-performance, and the lack of signals from the international community to officially engage the private sector.

The contribution of the private sector to the finance discussions alone have been, undeniably, informative and useful as its perspective more often than not provides practical, resource and management-oriented approaches to the same challenges raised by the ongoing negotiations. Unlocking its potential to complement public financing will take not only signals—in as much as the private sector believes this to be the only element missing—but a further global understanding of their intentions, potential role, and the business opportunities and models they can provide across the many facets of climate change mitigation and adaptation.

The UNFCCC Executive Secretary herself has not been remiss in the last few months towards sending her own set of powerful signals to the global community towards both holding the private sector accountable to their emissions, but also in leveraging their unique perspective and potential contribution to addressing the huge global challenge that we face, in a time where pressure is ever-being mounted by the science and the most vulnerable^{23, 24, 25}.

A Durban outcome?

South Africa, in its report on the informal consultations it facilitated on the road to Durban, emphasized the major challenge for the Conference to be the second commitment of the Kyoto Protocol and links to the legal status and form of a future climate change regime. There were views that Durban can deliver a possible mandate for a time-bound process to be launched towards a comprehensive legally-binding agreement with agreed timeframes and milestones; a Review process that could help facilitate a legally binding agreement; and confidence building towards clear MRV rules²⁶.

In as far as the consultations went, Parties will be awaiting further clarity on the GCF discussions from the TC and other parallel developments to help decide if a decision on climate finance by Durban would be ready. But as mentioned a decision on finance would be the only logical way for a Durban package to materialize.

To end, former UN Executive Secretary Yvo de Boer has predicted Durban to be a “very difficult meeting”. He posits that a good outcome for Durban would firstly be an acceptance of how times have changed: “I do think we need a political statement that the world has changed and we need to move to a comprehensive treaty that embraces all nations. If we could, as a result of Durban, get a mandate to start working towards that, it would be a very good outcome²⁷.”

²³ <http://www.guardian.co.uk/environment/2011/oct/10/climate-change-cost-companies-worth?newsfeed=true>

²⁴ <http://www.businessgreen.com/bg/news/2116172/figueres-predicts-carbon-market-overcome-current-uncertainty>

²⁵ <http://www.businessgreen.com/bg/news/2116221/issues-green-public-private-partnerships>

²⁶ ENB 2011. Summary of the Panama City Climate Change Talks: 1-7 October 2011.

²⁷ Environmental Finance 2011. “Durban needs to acknowledge global shifts—Yvo de Boer.” <http://www.environmental-finance.com/news/view/2045>

Another good outcome is if the world realizes that perhaps it needs to open up other ways and approaches to address climate change. What does it say of the UNFCCC process if the main outcomes of Durban (and therefore of a five year process which was launched in 1987 in Bali) are merely a modest climate fund and a mandate to negotiate a legally binding agreement? It says that the process is useful but it has its limits and that perhaps we need to establish, ripen or support other venues and processes for advancing progress more quickly and decisively while returning always to the UNFCCC for overall framework and guidance. In the paper we will write on the outcomes of Durban, intended for release in February, we will explore such options.

Times have indeed changed. While clarity and positive movement have graced some issues, age-old yet critical ones find themselves at a make-or-break situation with do-or-die implications for the world's most vulnerable countries.

Considering the challenging landscape and the golden opportunities facing Parties this December, Durban, if it is to be remembered, should be the meeting that seriously redefines the word "political will".