

The Cancún Climate Conference

By Cesare Romano and Elizabeth Burleson

I. Introduction



The United Nations Climate Change Conference, held from November 29 to December 11, 2010, in Cancún, Mexico, relaunched the United Nation's multilateral facilitation role. Delegates agreed to aspects of a global framework to help developing countries curb their carbon output and cope with the effects of climate change, but they postponed the harder question of precisely how

industrialized and major emerging economies will share the task of making deeper greenhouse-gas emission cuts.

This year's UN climate negotiations included the sixteenth session of the Conference of the Parties (COP 16) to the United Nations Framework Convention on Climate Change^[1] (UNFCCC, the Convention) and the sixth meeting of the Parties (CMP 6) to the Kyoto Protocol.^[2] Because the United States is party to the UNFCCC but not party to the Kyoto Protocol, two sets of negotiations have been running in parallel since 2005.^[3] The Conference's final outcome instruments, dubbed the "Cancún Agreements"^[4] include decisions under both the Convention and Protocol negotiating tracks. Decisions under the UNFCCC bind the United States, while those under the Kyoto Protocol do not.

Agreements were reached in several important areas, including:

- a shared vision for long-term cooperative action;
- adaptation to climate change;
- reducing emissions from deforestation and forest degradation in developing countries, and conservation and sustainable management of forests (REDD+);
- technology transfer cooperation and capacity building;
- climate change mitigation; and
- finance to support climate action in developing countries.

The Cancún Agreements received near universal acceptance, with the exception of Bolivia. That is a remarkable diplomatic feat. Yet, they fall short

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of what is needed to effectively tackle climate change.

Decisions under the UNFCCC Track

Shared Vision

The Cancún Agreements affirmed that Parties share a vision to achieve the UNFCCC's objective "on the basis of equity and in accordance with common but differentiated responsibilities and respective capabilities." They recognized that warming of the climate system is unequivocal, that deep cuts in greenhouse gases emissions will be required to hold the temperature increase below 2°C, and that Parties should take urgent action to meet the agreed upon long-term goal. The COP agreed to periodically review this goal and to consider a future commitment to limit the global temperature increase to 1.5 C.^[5] It also agreed to work towards identifying a goal for substantially reducing global emissions by 2050 and to cooperate in achieving the peaking of greenhouse gases emissions as soon as possible, identifying a time frame for peaking based on best available science and equitable access to sustainable development. The Cancún Agreements recognized the need to engage global, regional, national, and local public and civil society participation – particularly youth, women, and indigenous peoples.^[6]

Adaptation

At Cancún, Parties agreed that enhanced action is required to support implementation of actions aimed at reducing vulnerability and building resilience of developing countries, taking into account the needs of those that are particularly vulnerable. The Ad Hoc Working Group on long-term Cooperative Action under the UNFCCC specifically took note of resolution 10/4 of the United Nations Human Rights Council on "human rights and climate change," which addresses vulnerability based on geography, gender, age, indigenous or minority status, and disability. The Cancún Agreements affirmed that adaptation should be undertaken in accordance with the UNFCCC. The Parties also established the Cancún Adaptation Framework, an Adaptation Committee, and a work program on loss and damage in particularly vulnerable developing countries.^[7] Unresolved issues include allocation of adaptation funding obligations among developing countries and synergies among existing and new finance.^[8]

Mitigation

The fundamental principle underpinning the climate change regime is that countries share a common but differentiated responsibility to reduce greenhouse gas emissions. This recognizes the fact that developed countries are responsible for the preponderance of current greenhouse gas concentrations in the atmosphere. However, over the years it has become clear that without action by major emitting developing countries such as China, there is little hope to avert catastrophic climate change.

For developed countries, the Parties decided to enhance reporting on progress made in emission reductions and provision of finance, technology,

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and capacity-building support to developing countries; to enhance the guidelines for reporting and review of national communications; to establish national arrangements for estimating emissions by sources and removal by sinks; to establish a process for international assessment of emissions and removals related to quantified economy-wide emission reductions targets; to request developed countries to develop low-carbon development strategies; and to establish a work program for further development of existing reporting and review guidelines.

Developing country Parties are to take measures aimed at achieving a “deviation in emissions” relative to business-as-usual emissions in 2020, with developed country support. A registry will be set up by the UNFCCC Secretariat to record and match finance, technology, and capacity building needs with international support. The Secretariat will also record measures already communicated by developing countries; additional measures submitted voluntarily; and internationally supported mitigation actions and associated support. Internationally supported mitigation actions will be subject to domestic and international measuring, reporting, and verification measures (MRV) similar to those already applicable to developed countries, in accordance with guidelines to be developed. Domestically supported mitigation actions will be subject to domestic MRV in accordance with guidelines yet to be developed.

Reducing Emissions from Deforestation and Forest Degradation, and Conservation, Sustainable Management of Forests and Enhancement of Forest Carbon Stocks in Developing Countries (REDD+)

The Cancún Agreements affirmed that, provided adequate and predictable financial and technological support is forthcoming for developing countries, all Parties should “aim to slow, halt and reverse forest cover and carbon loss.” They encouraged developing country Parties to reduce emissions from deforestation and degradation; to conserve and enhance forest carbon stocks; and to practice sustainable forest management. As part of this objective, developing countries are requested to develop a national strategy or action plan, national forest reference emission levels, a robust and transparent national forest monitoring system, and a system for providing information on how the safeguards are being addressed throughout implementation.^[9]

Technology Transfer and Capacity-building

The COP decided that the object of technology transfer and development is to support both mitigation and adaptation actions and that technology needs must be nationally determined. It established a Technology Mechanism, which comprises a Technology Executive Committee (TEC) and a Climate Technology Centre and Network (CTCN). The TEC will consider and recommend actions to promote environmentally sound technology transfer; provide guidance on policy and program priorities; facilitate collaboration between governments, the private sector, NGOs, and academic and research communities; recommend actions to address barriers to technology transfer; and catalyze development and use of technology road maps or action plans.

The CTCN will facilitate existing networks, organizations, and initiatives in order to provide assistance to developing countries on technology need identification, technology implementation, and deployment of existing technologies.

The COP decided to strengthen capacity building support via networks for sharing communication, education, information, public awareness, training, and stakeholder participation.

Finance Governance: Measurement, Reporting, and Verification (MRV)

In 2007, the Bali Action Plan set forth means to balance genuine measurable, reportable, and verifiable support and action.^[10] This year in Mexico, India's diplomacy helped the United States and China find middle ground on MRV. Yet, it remains to be seen where the \$100 billion in annual climate-related funding will come from.^[11] The Conference invited developed country Parties to submit to the Secretariat information on resources for fast-start financing and long-term finance. It also decided that scaled-up, new and additional, predictable, and adequate funding shall be provided to developing countries, taking into account the particularly vulnerable, through a variety of sources, including public and private sources. The Green Climate Fund (GCF) is accountable to and functions under the guidance of the COP to support projects, programs, and other activities in developing countries. It is governed by twenty-four board members, equally representing developed and developing country Parties and administered by a trustee. The World Bank serves as the interim GCF trustee, subject to review three years after the fund becomes operational. Operation of the fund is supported by an independent secretariat.

Decisions under the Kyoto Protocol Track

With the first commitment period of the Kyoto Protocol on course to end in 2012, it was hoped that a second commitment period could be agreed to in Cancún. Although that did not happen in Cancún, a number of steps were taken that indicate progress under the Kyoto track and signal a way forward. The most noticeable are:

First, the preamble of the Cancún decision under the Kyoto track recognizes that in order to avoid the worst impacts of climate change, Annex I Parties (i.e., developed countries) as a group would have to reduce emissions in a range of 25-40 percent below 1990 levels by 2020. Developed countries are urged to increase their level of ambition in reducing their greenhouse gas emissions.

Second, it was decided to take note of the targets that Annex I countries that are Parties to the Kyoto Protocol gave themselves in the lead-up to Copenhagen. Countries then agreed that further work is needed to convert those targets into actual binding commitments under the Kyoto Protocol.

Third, it was decided that emissions trading, the Clean Development Mechanism and Joint Implementation, shall continue to be available for

meeting targets. This sends a signal that carbon markets will continue to play a role in the future in Annex I countries meeting targets regardless of what happens to the Kyoto Protocol after 2012.

Fourth, it was agreed that there should be an agreement on the rules and the targets as soon as possible so there is no gap between the first and second commitment periods of the Protocol. This was an attempt to keep up the pressure to conclude the second commitment period of the Kyoto Protocol in South Africa next year.

Conclusion

Despite interminable shuttles between surreal resorts along the “Riviera Maya,” it seems the multilateral climate process has regained momentum.

COP 16 in Mexico had “modest aims” and resulted in “modest achievements.”^[12] Most importantly the climate conference gave the multilateral climate process a substantial vote of confidence.^[13] However, much remains to be agreed upon for this process to move beyond rearranging the deck chairs on the Titanic. Current public climate efforts are projected to allow global temperatures to rise roughly 3.6°C (6.5°F) above pre-industrial levels.^[14] Yet, the Cancún Agreements do reaffirm the 2°C target and recognize the need to reduce it to 1.5°C. While neither sufficient nor binding, the Cancún Agreements have put the negotiations back on track.

UNFCCC Executive Secretary Christiana Figueres called upon the international community to build upon our collective humanity and responsibility to future generations to reach conciliation, in a balanced manner, on all outstanding elements of the Bali Road Map, including: a post-2012 framework; anchoring mitigation proposals; and funding for mitigation, adaptation, and technology transfer.^[15] As Figueres noted, “this is not the end, but it is a new beginning. It is not what is ultimately required but it is the essential foundation on which to build greater, collective ambition.” Global consensus transcended veto power by a single state for the first time in UNFCCC processes.^[16] This has the potential to lead to a revision of voting rules under the UNFCCC. Mexico diplomatically sustained a process that made nation states feel part of the decision-making process.^[17] It was a party-driven, transparent, and inclusive process, restoring trust after last year’s conference in Copenhagen.^[18] Many voices from across civil society have yet to have their say, and the silence surrounding the future of the Kyoto Protocol is deafening,^[19] but the international community agreed to establish mitigation targets involving MRV as well as collectively adapt to climate change. Establishing a technology transfer mechanism can go a long way in accomplishing both, as can sensible forestry and land use provisions. A climate fund can help realize these aspirations. Overall the Cancún climate talks lay a robust framework for a legally binding agreement to be agreed upon in South Africa next year.^[20]

About the Authors:

Professor Cesare Romano, an ASIL member, is Professor of Law and W.

Joseph Ford Fellow at Loyola Law School Los Angeles. Professor Romano attended the Cancún Climate Conference with the ASIL Delegation.

Professor Elizabeth Burleson, an ASIL member, has an LL.M. from the London School of Economics and Political Science and a J.D. from the University of Connecticut School of Law. She has written reports for the United Nations and is a professor at University of South Dakota School of Law. Professor Burleson attended the Cancún Climate Conference with the ASIL Delegation.

Endnotes:

[1] United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (1992) [hereinafter UNFCCC].

[2] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22 (1998).

[3] See, e.g., Cymie R. Payne, *State of Play: Changing Climate at Copenhagen*, ASIL INSIGHTS, Dec. 8, 2009, available at <http://www.asil.org/insights091208.cfm> (discussing the two-track process and its origins).

[4] United Nations Climate Change Conference in Cancún, Nov. 29-Dec. 10, 2010, *Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, Draft Decision -/CP.16 (2010), available at http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf [hereinafter Draft Decision -/CP.16]; United Nations Climate Change Conference in Cancún, Nov. 29-Dec. 10, 2010, *Outcome of the Work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its Fifteenth Session*, Draft Decision -/CMP.6 (2010), available at http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_kp.pdf.

[5] Draft Decision -/CP.16, *supra* note 4, ¶¶ 3, 4, 138; Jennifer Morgan, *Reflections on the Cancún Agreements*, WORLD RES. INST., Dec. 14, 2010, available at http://pdf.wri.org/reflections_on_Cancun_agreements.pdf.

[6] See, e.g., Draft Decision -/CP.16, *supra* note 4, ¶ 87; see also Anna Spain, *Who's Going to Copenhagen?: The Rise of Civil Society in International Treaty-Making*, ASIL INSIGHTS, Dec. 11, 2009, available at <http://www.asil.org/insights091211.cfm>.

[7] The Cancún Adaptation Framework includes adaptation technology, migration, and disaster risk reduction.

[8] Morgan, *supra* note 5.

[9] Other Carbon Sink topics have not had the success of forestry discussions to date. Agriculture became linked to contentious negotiations on bunker fuels and both were cut from the Cancún Agreements text.

[10] United Nations Climate Change Conference in Cancún, Nov. 29-Dec. 10, 2010, *Bali Action Plan*, Decision -/CP.13 (2007), available at http://unfccc.int/files/meetings/cop_13/application/pdf/cp_bali_action.pdf; see also Elizabeth Burleson, *Climate Change and the Bali Roadmap*, ASIL INSIGHTS, Mar. 18, 2008, available at <http://www.asil.org/insights080318.cfm>.

[11] John M. Broder, *Climate Talks End With Modest Deal on Emissions*, N.Y. TIMES, Dec. 11, 2010, available at <http://www.nytimes.com/2010/12/12/science/earth/12climate.html> ("The agreement fell well short of the broad changes scientists say are needed to avoid dangerous climate change in coming decades. But it lays the groundwork for stronger measures in the future.").

[12] *Id.*

[13] *Id.*

[14] Alister Doyle, *Analysis: Climate Talks: 18 Years, Too Little Action?*, REUTERS, Dec. 12, 2010, available at <http://www.reuters.com/article/idUSTRE6BB0DS20101212>; see also *UN Climate Change Talks in Cancún Agree a Deal*, BBC NEWS, Dec. 11, 2010, available at <http://www.bbc.co.uk>

/news/science-environment-11975470 (Bolivian Delegation chief Pablo Solon voiced concern that “[w]e’re talking about a [combined] reduction in emissions of 13-16%, and what this means is an increase of more than 4°C”).

[15] Efforts to anchor text in an outcome document will continue as the international community works towards draft treaty language that can become a broadly agreed upon ratified instrument. Statement at the High-level segment by Christiana Figueres, Executive Secretary, United Nations Framework Convention on Climate Change [UNFCCC], Sixteenth Session of the Conference of the Parties and the Sixth Session of the Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol, Cancún, Dec. 7, 2010, *available at* http://unfccc.int/files/press/statements/application/pdf/101207_cop16_hls_cfig.pdf.

[16] “Espinosa explained that the consensus rule does not mean unanimity. She further responded that she could not permit one country to exercise an effective veto over 193 other countries.” *Cancún Climate Summit Exceeds Low Expectations, but Sidesteps Trade Issues*, INT’L CTR FOR TRADE & SUSTAINABLE DEV., Dec. 22, 2010, *available at* <http://ictsd.org/i/news/bridgesweekly/99004/>.

[17] Juliet Eilperin & William Booth, *Cancún Agreements Put 193 Nations on Track to Deal with Climate Change*, WASH. POST, Dec. 11, 2010, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/11/AR2010121102308.html> (noting that Mexico asked delegates what they deemed most important and what they would be able to compromise on).

[18] Earth Negotiations Bulletin COP 16, Vol. 12 No. 498, *available at* <http://www.iisd.ca/climate/cop16/>.

[19] Lisa Friedman, *Cancún Agreement Preserves an Escape Hatch for Japan and Other Industrial Nations*, N.Y. TIMES, Dec. 17, 2010, *available at* <http://www.nytimes.com/cwire/2010/12/17/17climatewire-Cancún-agreement-preserves-an-escape-hatch-f-38242.html>.

[20] Press Release, Greenpeace Int’l, *Cancún Builds Momentum; Much More Work to be Done to Save the Climate – Greenpeace*, *available at* <http://www.greenpeace.org/international/en/press/Cancún-builds-momentum-much-more-work-to-be-done-to-save-the-climate--Greenpeace--/> (quoting Greenpeace Int’l Climate Policy Dir. Wendel Trio: “Cancún may have saved the process but it has not yet saved the climate.”); see also INDEPENDENT, *At Last, The Climate Changes*, Dec. 12, 2010, *available at* <http://www.co.uk/environment/climate-change/at-last-the-climate-changes-2158127.html> (quoting Claire Parker, Senior Climate Change Policy Advisor with the International Union for the Conservation of Nature: “Developing countries can now see new money on the table which they can draw on to adapt to the impacts they’re already facing and reduce emissions.”).