



A NEW “GLOBAL DEAL”

Illari Aragón explains the importance of this December’s Conference of the Parties (COP 20) in Peru and the pursuit of a new climate change agreement

In December this year representatives of the world will convene in Lima, Peru, in an attempt to reach a new climate agreement to curb emissions of greenhouse gases and to deal with the impacts of climate change. The Conference of the Parties (COP 20) under the auspices of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) is set to produce a first outline of the new “global deal”. This agreement is expected to succeed the existing Kyoto Protocol’s second commitment period which expires in 2020.

Against a backdrop of increasingly polarised positions between member-states, it is the role of the COP’s Presidency to lead negotiations and try to steer Parties towards a consensus. Speaking to the Legal response Initiative (LRI) in July 2014, Peru’s Vice-Minister for Environment Mr Gabriel Quijandria says: “As President of the COP 20, Peru has an advantage. As a developing country, Peru is able to fully understand the position of the LDCs (Least Developed Countries). On the other hand, we are also perceived by developed countries as a non-confrontational, rather centrist-minded country, committed and ambitious with respect to climate change action. We believe in this unique position and are determined to mediate, influence, and bring all parties closer in favour of a draft agreement by COP 20.”

This meeting is a crucial step towards France 2015 (COP 21) where the new climate agreement is to be adopted in order for it to come into effect from 2020.

Towards a new global climate change agreement

Steps toward a new climate change agreement were taken at the last Conference of the Parties in Warsaw (COP 19). While the conference was extremely tense, marked by staged walkouts and turbulent last minute negotiations, the Parties managed to deliver on some areas for the negotiations to

move forward. For example, in response to the interests of developing nations, it was decided that a Loss and Damage Mechanism would be established to provide the most vulnerable populations with better protection against damage caused by extreme weather events. While the mechanism does not intend to provide compensation for damages caused by climate change, it places the important issue of adaptation as a focal point of discussions. Also at Warsaw, several financial pledges from developed countries emerged in connection with the Reducing Emissions from Deforestation and Forest Degradation programme (REDD+). Deforestation accounts for some 20 percent of global carbon dioxide emissions, and REDD+ will fund projects related to preservation and sustainable use of forests.

Crucially, at COP 19, Parties agreed “to further elaborate elements for a draft negotiating text” and “to initiate or intensify domestic preparations for their intended nationally determined contributions (NDCs)”. With regards to this outcome, two issues merit a closer look:

1. The elements and legal nature of the draft negotiating text: Talks about a new agreement go back to COP 17 in Durban, South Africa, where Parties agreed to launch a process to develop “a protocol, another legal instrument or an agreed outcome with legal force applicable to all parties” for the period from 2020 onwards. That process was set to be led by the so called *Durban Platform for Enhanced Action*. While subsequent COP meetings have reaffirmed the commitment to develop this new agreement, Parties seem to be less clear about how best to shape it.

The legal implications, and more specifically, the element of *bindingness* of a “Protocol”, “another legal instrument” or “an agreed outcome with legal force” could differ. While it is clear that a “Protocol” is generally accepted as being legally binding under international law, the other two options are more



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ambiguous and thus are open to interpretation.

Talking about approaches that could shape the new agreement, Professor Daniel Bodansky of Arizona State University notes that these could range from a “contractual” model of international law, favouring binding targets and timetables to a “facilitative” approach, favouring voluntary actions defined unilaterally. With legally-binding emission reduction targets at its core, the Kyoto Protocol is an example of the first model, though the latter is not unprecedented either.

It remains to be seen whether a Kyoto like approach, with a formal distinction between Annex I (developed) and Non-Annex I (developing) countries, will be retained. The alternative could be a model that avoids the categorisation of countries, as categorisations run the risk of becoming outdated. Can the new agreement reflect elements of both? Will there be a new treaty on mitigation and additional COP decisions on other issues? On the question of the legal form of the new agreement there seem to be more questions than answers.

2. The use of ‘contributions’ as opposed to ‘commitments’

Unlike the Kyoto Protocol, which includes legally binding quantified emission limitations and reduction targets applicable to developed countries (Annex I) only, the current negotiations focus on “intended nationally determined contributions” (INDCs). These are contributions that each country will make to address climate change according to their own national circumstances. To encourage widest possible participation, the new agreement should endeavour to be as flexible as possible. However, some fear that the term “intended contributions” instead of “commitments” might only lead to weak voluntary actions.

Many (developed and developing) Parties have argued that the goal of limiting a global temperature rise to under two degrees Celsius will not be reached without ‘all Parties’ contributing to mitigation efforts. So, mitigation action needs to become global. At the same time, however, Non-Annex I countries often emphasise that their INDCs would depend on support provided by developed countries, including financial assistance and technology transfer. The EU, therefore, holds that developed countries must continue to take the lead in combating climate change, but the major emerging economies in the developing world must also take urgent steps to reduce their emissions.

At this point, there is also uncertainty about the information that Parties would need to put forward to support their INDCs and what exactly they would need to cover (e.g. type of greenhouse gas, sector/scope, accounting methodology, amongst other aspects). Finally, the questions of whether INDCs will be internationally binding or not, and in respect of which Parties (criteria of differentiation), are unresolved issues that need to be dealt with in Lima.

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WHY INTERNATIONAL SUPPORT MATTERS: THE LEGAL RESPONSE INITIATIVE (LRI)

While COP 20 has the daunting task of delivering an outline for a ‘global deal’ which should reflect the interests of all nations, international negotiations under the UNFCCC are among the most complex multilateral legal policy making processes ever. Sessions are characterised by the use of technical language, reference to legal principles and procedural norms. Whilst many of the industrialized and larger countries at negotiations bring their own legal advisers and experts, developing country negotiators can rarely rely on such backing.

LRI is a London based legal charity that provides free legal assistance to support poor and climate vulnerable countries in the climate change negotiations. LRI works through a network of lawyers from law firms, barrister chambers and universities from different jurisdictions, who give pro-bono assistance during negotiation meetings, draft legal opinions and deliver training for negotiators from developing nations. By providing high-quality legal support free-of-charge, LRI helps to create more equal conditions of participation.

“The work of organisations like LRI is very important as it helps to level the playing field. These negotiations are very complex and there is distance in capacity, compared with well resourced countries. There are countries that can afford well-prepared staff, dedicated sometimes exclusively to climate change issues. This is not the reality for everyone.”

Gabriel Quijandria, Vice-Minister of Environment, Peru, COP 20 team.

“During the last session of the climate change negotiations in Bonn, June 2014, many legal questions have emerged during the course of the negotiations. Being a least developed country, my delegation was relatively small in terms of size and did not include a legal advisor. LRI provided me with some useful advice in different issues under the discussion ...”

Ali Mohamed Ahmed, Diplomat, Republic of Sudan.



Negotiator Donald Kaniaru at LRI training in Kenya, 2014

Joining the LRI

We are constantly seeking experienced lawyers with expertise in one or more areas of law to expand our network of pro-bono advisers.

Please contact us if you are interested in joining LRI to: pascale.bird@legalresponseinitiative.org or visit <http://legalresponseinitiative.org>.