

## A close call before Paris

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Just over a month before the opening of the UN conference on climate change in Paris – formally called the 21st Conference of the Parties to the United National Convention on Climate Change (or COP21) – the preparatory process for a new post-2020 global agreement avoided what some would refer to as a “close call”.

The negotiating text that has been forwarded to COP21 from this last negotiating session, which took place in Bonn, October 19-23, is longer and more complex than the previous text provided by the co-Chairs of the ADP (Ad Hoc Working Group of the Durban Platform, the UNFCCC body that negotiates the Paris Agreement) to delegates for discussion at this October negotiating session.

The new text has many options (259) and brackets (1,510 pairs), and at first glance would strike many non-negotiators as unreadable and unyielding. Needless to say, this is not the reaction that is hoped for from the more than 80 heads of state and other leaders who will meet in Paris on day 1 of COP21.

But there is nothing in this text that cannot be solved. It is the result of a complicated process in Bonn, but one that has led all countries to feel ownership of the final document. It has, in most cases, recognisable options that can be used as the basis for further negotiations, or at least options that negotiators feel represent their positions.

### The value of process

And indeed, these are not trivial qualities to have emerged after such a lengthy and intricate process of negotiating a major environmental treaty with significant trade and development components. This is especially true in light of the suspicions and recriminations felt on the part of developing countries (over broken promises dating back to the 1992 Rio Conference on Trade and Development). With this latest text as the basis, there is a way forward, if sufficient political will can be summoned.

The fact that the leaders will meet at the start of the session in Paris is in itself a novelty, and to some degree a risky strategy, as they normally come together at the end of such conferences to break political deadlocks and to be present for the hoped-for celebrations. This time round, however, the timing of their appearance is designed to provide the political impulse to take the agreement, after 10 years of negotiations, over the finish line.

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Any discussion that seriously aims to take stock of the situation post-Bonn and pre-Paris must address two components: process and substance. The Bonn process saw the proposed incoming negotiating text rejected by the developing countries, led by the African Group, as unbalanced. The co-chairs had left out significant elements that were deemed “must haves” by the G77 and China Group. This led to the introduction of provisions that were felt were missing, resulting in a truly unworkable text, which left many of those facilitating the negotiations unsure how to proceed, and everyone frustrated.

The day was saved by the emergence of an ad-hoc process that was run bottom-up and to which those facilitating had to give their blessing. In this process a large number of countries, from different sides, banded together and selected their own facilitators in an informal process that finally allowed the emergence of an “options text”. This text was then brought back into the formal process with the participation of all countries, where it was adopted as the basis of discussions in Paris.

It looked for a moment, however, as if the negotiating process had irrevocably lost its way. It also showed just how vulnerable and fragile the UNFCCC negotiating process is, and how easily it can be side-tracked.

But it was also one of those rare moments in international negotiations, when, in the face of adversity, at a time when many felt they were looking into the abyss, countries and their negotiators mobilised and got together to produce something that, while not perfect, is nevertheless workable.

Bonn showed the sincere desire that countries have to reach an agreement in Paris, with no one wanting to be blamed for standing in the way of a post-2020 agreement.

This semi-spontaneous, bottom-up process worked well to produce an “options text” in Bonn, but can it do the trick to carry us over the finish line? This will very much depend on what happens between now and the start of COP21 in Paris on November 30th, including in the “pre-COP” meeting in early November (8-10 November), which will be attended by many Ministers and Heads of Delegation, as well as any possible initiatives by the incoming COP President, French Foreign Minister Laurent Fabius.

The UNFCCC Secretariat has received the mandate to lightly edit the text and to prepare a paper that would help Parties navigate the options. If the mandate is executed in a restrained and judicious manner, reflecting a good understanding of the positions expressed by Parties, a much better product can be produced for Paris. Time will tell.

A last-minute request by the Russian Federation for more negotiating time, i.e. an extra negotiating session before Paris, was not supported. Most participants felt that time was not the constraining factor.

What is more important is the political will, and the mandate to negotiate, with some senior negotiators muttering that “it is too early” to start making concessions. Let’s hope it does not turn into another “Copenhagen Poker World Championship”, where everyone loses.

### **Will there be enough substance?**

While process is important for reaching an agreement and for securing acceptance and legitimacy of the outcome, it cannot substitute for substance. There are many items in the current package that are important to one or another of the negotiating groups. As this Commentary is not intended as a comprehensive summary, but rather aims to provide a sense of the principal issues and how they are viewed, we will focus on the following areas in the negotiating text: Purpose, Mitigation, Finance, Transparency, and Compliance.

The chapter on the “Purpose” of the Agreement seeks to find a way to link the Agreement to the general objective of enhancing the implementation of the UNFCCC, and to express that purpose in terms of acceptable maximum temperature increases, 1.5°C or 2°C. Other wording currently present options, such as the relationship of the Agreement with the development of scientific evidence, or giving recognition to different issues of particular interest to negotiating groups (which will likely face difficult hurdles to remain as part of the Agreement).

The draft Agreement, as it currently stands, needs to be balanced, with equal weight provided to Mitigation (reductions), Adaptation, Finance, Capacity-Building and Technology Transfer. While all these elements are currently present in the text, developing countries have the distinct impression that there is more focus on mitigation than the other components.

The Mitigation part of the Agreement contains a number of key issues where important divergences have emerged. One important issue is the nature of the individual efforts by countries (Nationally Determined Contributions – NDCs). One option is a gradation in terms of what Parties to the Agreement commit to, which includes: prepare, communicate, submit, implement, fulfil. Some Parties don’t feel the need to include the “fulfil” part in the obligation.

This divergence of views indicates that the Agreement is, in the eyes of some Parties, about individual effort, with less attention on the collective action. The commonality comes more into play in the Transparency part of the Treaty.

The concept of “differentiation” between developed and developing countries permeates this whole agreement, and an entire section in the current text is devoted to highlighting the different nature of what is expected from each group: economy-wide caps for the former, action/efforts for developing countries.

For developing countries there is no action without support, and the nature of the commitment and the way in which any promises are monitored, reported and verified (MRV) needs to be different, at least at the start.

This continued perceived lack of balance remains a source of friction between developed and developing countries. Developing countries are adamant that the issue of conditionality, i.e. no action by developing countries without financial and other types of support, needs to be clearly and visibly part of any agreement.

The timing, together with other provisions, highlights the difference in views on the need to submit NDCs in order to join the Agreement. Another difference in views lies in the need for some synchronisation of the timing and the way in which Parties submit NDCs, which would impact the ability to compare levels of effort between different countries.

Accounting provisions contain principles that are steeped in the Kyoto Protocol language, such as the need to observe complementarity in the use of international transfers for compliance. Maintaining such concepts in the Paris Agreement, where all Parties have to contribute, could be questionable. On the positive side, however, there is reference to markets through the inclusion of a provision that mentions “internationally transferred mitigation outcomes”.

Significant market-related language has been added to the draft Agreement. While this is welcome, the hierarchy of the different articles in the text needs further work and, in its current format, adds to the lack of clarity.

The section entitled “Cooperative Approaches” seems to be a chapeau for all mechanisms. It is attractive to the degree that it maintains its neutrality and high-level granularity, and allows all Parties to believe that they can “find” themselves and their needs. There is the option under this chapeau to refer to international transfers that would help markets to emerge.

If the Cooperative Approaches article remains general in nature and provides space for all conceivable types of cooperation, then there needs to be a direct and separate reference to the ability to transfer mitigation outcomes internationally.

In this vein there is currently specific text that refers to the establishment of a new “mechanism to support sustainable development”, which is attractive in its present form due to its neutrality – it makes no reference to whether it is a market or non-market approach. Nor does it refer to any existing mechanism as a model to follow. Everyone can find itself in this general mechanism.

The one feature that may create difficulties is that the current text makes reference to “a mechanism”, while some may prefer to have clarity that it allows for a multi-window mechanism. This would make the Agreement more resilient by allowing the emergence and inclusion, in time, of different models. There are other, more detailed versions of the reference on the SD (sustainable development) mechanism, but their weakness, for once, rests on their specificity.

Also, as Cooperative Approaches, there are currently provisions for the establishment of mechanisms for REDD+ and Response Measures (to provide a safety net to address the international socio-economic impacts of climate change mitigation policies), which is a must for their proponents. These provisions seem to have a significant chance of survival in the final Agreement, even if in a modified form.

The section on Finance will be disappointing to many in the developing world, as it is declaratory in nature, without any firm number as a target post-2020 to follow on the \$100 billion that was agreed in Copenhagen. There are many statements regarding the nature, source and progression of the financial resources to be provided for support, but there is not enough to ensure the symmetry/ complementary that would satisfy those Parties, especially in the developing world, that feel that any mitigation efforts on their part will be fully dependent on new and predictable support received.

This chapter also contains provisions that in principle are welcome, but they may need to be placed in other parts of the text or reformulated, such as those on carbon pricing or on the international transfer of mitigation outcomes.

In the context of the Agreement, the provision on carbon pricing may have a declaratory value in a preamble, but it creates confusion when placed in finance. The UN Agreement on climate change is not meant to create a carbon price – that is what each country is expected to do. The contribution of a UN Agreement is to create the conditions for convergence of carbon pricing for those Parties that wish to participate in international transfers, and that is already provided for in the Mitigation chapter.

Transparency is seen as one of the strong contributions of this Agreement. The debate in this area focuses on the fact that there should not be differentiation between developed and developing countries, with some options proposing a period of transition for developing countries. The reporting is foreseen as taking place at regular intervals (biennially is mentioned as a possibility) and will include information on actions to implement NDCs as well as the support to developing countries

The possibility of having expert reviews of the information provided is currently part of the proposal, but not in an intrusive or punitive way. Among the factors that would need to be taken into account in developing future modalities and procedures for the transparency framework, avoiding double counting (of international transfers?) is mentioned.

Finally, a key component is treated in the chapter on Facilitating Implementation and Compliance. Options in this area refer to a compliance mechanism or scope, with the objective

of promoting compliance for developed countries and facilitating compliance for developing countries.

The options included to address cases of non-compliance are mild, with provisions ranging from the issuance of a declaration of non-compliance and offering advice and assistance, to requesting the development of a compliance action plan. Not particularly strong stuff, but realistic in that this is what most Parties want.

### **A race to the top from the bottom up?**

Overall the text could end by offering a broad range of outcomes. The options that currently exist could result in a stronger Agreement with a significant role for the UNFCCC. Alternatively, another set of options could lead to a seriously watered-down agreement. What we will not end up with is anything closely resembling the current Kyoto Protocol and its Cartesian provisions linking caps, timetables and market mechanisms – a giant cap-and-trade scheme.

This new Agreement is based on the belief (and hope) that it will create trust and transparency and will lead to a race to the top. While the Kyoto Protocol was seen as a final document, with increased stringency in caps, the Paris Agreement must be seen as the first step in a bottom-up world, with each Party prepared to act individually, in the hope that the sum, in time, will be bigger than the parts.