

The Doha Outcomes Part II – The Agreed Outcome of the Bali Action Plan

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Introduction

1. The Doha Climate Change Conference (COP18) culminated on Saturday 8 December 2012 with the adoption of the 'Doha Climate Gateway', a set of decisions adopted by near universal acclamation related to amendments to the Kyoto Protocol (the KP Decision),¹ the closure of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) (the Doha LCA Decision),² the Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) (the ADP Decision),³ loss and damage and finance.
2. This is the second of a series of three briefing papers analysing legal aspects of the KP Decision, the Doha LCA Decision and the ADP Decision. This briefing paper focuses on the Doha LCA Decision.⁴
3. In 2007 the findings of the Intergovernmental Panel on Climate Change (IPCC) in its Fourth Assessment Report reaffirmed the prevailing sense of urgency in addressing climate change.⁵ Responding to the report and recognising the need for urgent action, Parties established the AWG-LCA under the Bali Action Plan later that year.⁶ The AWG-LCA provided a platform for Parties to negotiate an agreed outcome for the long-term implementation of the United Nations Framework Convention on Climate Change (Convention)⁷ and was intended to address five issues: shared vision, mitigation, adaptation, technology and finance.
4. In the context of the 2008 economic crisis and the emergence of large developing country economies, developed countries increasingly perceived the Bali Action Plan's expression of the Convention's principles of equity and common but differentiated responsibilities and respective capabilities (CBDRRC)⁸ as no longer reflecting economic and political realities. In

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¹ FCCC/KP/CMP/2012/13/Add.1, Decision 1/CMP.8.

² FCCC/CP/2012/8/Add.1, Decision 1/CP.18.

³ FCCC/CP/2012/8/Add.1, Decision 2/CP.18.

⁴ For the LRI Briefing Paper on the KP Decision see *Bavishi*, 'The Doha Outcomes Part I – The Doha Amendment to the Kyoto Protocol', LRI Briefing Paper No. 44 and the LRI Briefing Paper on the ADP Decision see *Bavishi and Bird*, 'The Doha Outcomes Part III – The ADP and CBDRRC', LRI Briefing Paper No. 46, both available at <http://www.legalresponseinitiative.org/briefing.html> (accessed 25 April 2013).

⁵ Contribution of Working Group III to the Fourth Assessment Report of the IPCC, Technical Summary, pages 39 and 90, and Chapter 13, page 776, available at http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg3_report_mitigation_of_climate_change.htm (accessed 25 April 2013).

⁶ FCCC/CP/2007/6/Add.1, Decision 1/CP.13 (Bali Action Plan).

⁷ United Nations Framework Convention on Climate Change (Convention), opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994).

⁸ Convention, Article 3, paragraph 1.

contrast, developing countries maintained that developed countries nevertheless needed to take the lead in combating climate change, as required by Article 3, paragraph 1 of the Convention. Polarisation of developed and developing countries on the application of CBDRRC and the role of equity contributed significantly to the impasses which plagued discussions under the AWG-LCA negotiating track. As a result, progress on key negotiation streams such as finance, technology transfer, and binding commitments regarding mitigation and adaptation action was slowed or reached a stalemate.

5. In Doha, the Parties declared that they had achieved an agreed outcome pursuant to the Bali Action Plan (the Agreed Outcome)⁹ and the AWG-LCA negotiation track was terminated after five years of work despite its original two-year mandate.¹⁰ It was never envisaged to continue beyond the Copenhagen Climate Change Conference (COP15), and certainly not beyond the Cancun and Durban Climate Change Conferences (COP16 and COP17 respectively). However, the mandate of the AWG-LCA was extended at each of those conferences,¹¹ evidencing the difficulties in reaching an agreed outcome and completing the AWG-LCA's work.

The Agreed Outcome

6. The Doha LCA Decision terminates the AWG-LCA and along with Decisions 1/CP.16¹² and 2/CP.17¹³ (the Cancun LCA Decision and Durban LCA Decision, respectively) 'constitutes' the Agreed Outcome pursuant to the Bali Action Plan.¹⁴
7. However, it is arguable that the mandate of the Bali Action Plan was not entirely fulfilled at the close of the AWG-LCA negotiating track. Reaching an Agreed Outcome implies completion of the AWG-LCA's work by reference to its mandate as set out in the Bali Action Plan, but determining whether, and to what degree, the work of the AWG-LCA has actually been completed requires a closer look at the decisions constituting the agreed outcome.
8. Under the Bali Action Plan, the Parties explicitly agreed to address five main issues¹⁵ and later began negotiation streams on two others (capacity-building and review) in order to reach an Agreed Outcome. The negotiation streams focussed on:
 - (a) a shared vision for long-term cooperative action;
 - (b) enhanced action on mitigation;
 - (c) enhanced action on adaptation;
 - (d) enhanced action on technology development and transfer;
 - (e) enhanced action on the provision of financial resources and investment;
 - (f) enhanced action on capacity-building support; and
 - (g) review of the adequacy of the long-term goal for greenhouse gas (GHG) emission reductions.

⁹ Doha LCA Decision, note 2 above, sixth preambular paragraph.

¹⁰ Bali Action Plan, note 6 above, paragraph 2.

¹¹ FCCC/CP/2009/11/Add.1, Decision 1/CP.15, paragraph 1; FCCC/CP/2010/7/Add.1, Decision 1/CP.16, paragraph 143; FCCC/CP/2011/9/Add.1, Decision 1/CP.17, paragraph 1.

¹² FCCC/CP/2010/7/Add.1, Decision 1/CP.16 (Cancun LCA Decision).

¹³ FCCC/CP/2011/9/Add.1, Decision 2/CP.17 (Durban LCA Decision).

¹⁴ Doha LCA Decision, note 2 above, sixth preambular paragraph.

¹⁵ Bali Action Plan, note 6 above, paragraphs 1(a)-(e).

9. The following sections analyse and discuss whether the Agreed Outcome represents the completion of the AWG-LCA's mandate in accordance with the Bali Action Plan.¹⁶ Specific analysis of the policies adopted and the institutions established is outside the scope of this paper.

Shared vision

10. Between 2007 and 2012, the Parties in the AWG-LCA worked towards agreeing a shared vision for long-term cooperative action with a view to achieving the ultimate objective of the Convention in Article 2 and setting a long-term global goal for emission reductions.¹⁷
11. The shared vision section of the Agreed Outcome addresses mitigation, adaptation, finance, technology development and transfer, and capacity building at a high level even though each of these elements is also the focus of its own negotiation stream. Principally, however, the shared vision section is focused on elaborating on the ultimate objective of the Convention – “*stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*”.¹⁸ In other words, the task of the Parties in respect of shared vision was to reach agreement on what could be considered safe levels of GHG concentrations in the atmosphere. Any such agreement was to be made in accordance with the provisions and principles of the Convention, in particular the principle of CBDRRC.¹⁹

Global goal and global peaking

12. Since the adoption of the Bali Action Plan, the Parties have worked to identify a global goal for substantially reducing global GHG emissions by 2050 in the context of the long-term goal of the Convention,²⁰ and to cooperate in identifying a timeframe for the peaking of global GHG emissions and achieving the global peaking as soon as possible.²¹
13. However, Parties were not able to agree on what constitutes a safe level of GHG concentrations or what the global goal for emission reductions should be. Similarly, they were not able to agree when global emissions should peak. Parties simply decided to work “urgently” towards the deep reduction in global emissions and to attain a global peaking “as soon as possible”.²² It is notable that, unlike other elements of the work of the AWG-LCA which have specifically been passed on to another Convention body, the forum for the ongoing work related to the global goal and peaking has not been specified.
14. While no agreement was reached on the global goal or peak year, the Agreed Outcome does set out a long-term goal of holding the increase in global average temperature below 2 degrees Celsius above pre-industrial levels. This commitment was first articulated at the G8 Summit at its 2009 meeting in Aquila.²³ It was then repeated in the Copenhagen Accord²⁴ at COP15 (which was not adopted by the Conference of the Parties (COP) and merely taken

¹⁶ Bali Action Plan, note 6 above, paragraph 1.

¹⁷ Bali Action Plan, note 6 above, paragraph 1(a); Cancun LCA Decision, note 12 above, paragraphs 1 and 6; Durban LCA Decision, note 13 above, paragraphs 1-2; the Doha LCA Decision, note 2 above, paragraphs 1-2.

¹⁸ Convention, Article 2.

¹⁹ Bali Action Plan, note 6 above, paragraph 1(a).

²⁰ Cancun LCA Decision, note 12 above, paragraph 5.

²¹ Cancun LCA Decision, note 12 above, paragraph 6; Durban LCA Decision, note 13 above, paragraphs 1-2.

²² Doha LCA Decision, note 2 above, paragraph 1.

²³ Chair's Summary of the 2009 G8 Summit. G8 (Group of Eight), L'Aquila, Italy, available at: http://www.g8italia2009.it/static/G8_Allegato/Chair_Summary_1.pdf (accessed 25 April 2013).

²⁴ FCCC/CP/2009/11/Add.1, Decision 2/CP.15 (Copenhagen Accord).

note of)²⁵ and eventually made its way into the formal UNFCCC process in Cancun.²⁶ This long-term goal has since been reaffirmed in Durban²⁷ and Doha.²⁸

15. In theory, the setting of the 2 degrees long-term goal should make it easier to identify the global goal for emission reductions and the appropriate peak year. However, as mentioned above, this has proved to be a step too far. One of the reasons for this is that identifying both the global goal and the peak year (having already recognised that the time frame for peaking in developing countries will be longer)²⁹ requires Parties to agree on the appropriate allocation of responsibilities with regards to mitigation, something which the Parties have been unable to do.
16. Whether these key outstanding issues from the AWG-LCA will be picked up in the ADP (which does not explicitly include a shared vision element as part of its mandate) remains to be seen.

Equity and CDRRC

17. The AWG-LCA's work to-date under the shared vision negotiation stream has not been handed over to another body for further work as is the case, in one form or another, with other work streams. This is significant because it is only under shared vision that equity and CDRRC explicitly appear in the Bali Action Plan.³⁰
18. There is also no explicit mention of equity or CDRRC in the ADP's mandate or its subsequent decisions although Parties nonetheless 'shall be guided' by the principles in Article 3 of the Convention in their actions to achieve the objective of the Convention.³¹
19. It is, therefore, noteworthy that the Doha LCA Decision explicitly refers to equity and CDRRC when discussing the long-term shared vision for the achievement of the ultimate objective of the Convention.³²
20. This raises important questions on how equity and CDRRC will be interpreted, implemented and applied in future negotiations now that the AWG-LCA negotiating track is closed, an Agreed Outcome has been reached, and the long-term climate change regime is set to be negotiated under the ADP.

Equitable access to sustainable development

21. The principles of equity and CDRRC are also inherently tied to equitable access to sustainable development (EASD) as recognised by the Parties in Cancun and reaffirmed in Durban and Doha.³³
22. In Durban, the COP requested the AWG-LCA to consider the issue of EASD through a

²⁵ For more detail on the Copenhagen Accord, including its status within the UNFCCC process, see *Bavishi and others*, 'The Copenhagen Accord – A legal analysis', LRI Briefing Paper, 28 January 2010, available at: <http://www.legalresponseinitiative.org/briefing.html> (accessed 25 April 2013).

²⁶ Cancun LCA Decision, note 12 above, paragraph 4.

²⁷ Durban LCA Decision, note 13 above, third preambular paragraph to paragraph 5.

²⁸ Doha LCA Decision, note 2 above, paragraph 1.

²⁹ Cancun LCA Decision, note 12 above, paragraph 6.

³⁰ However the terms equity and CDRRC do appear under other issues in decisions following the Bali Action Plan. For example, see Cancun LCA Decision, note 12 above; Durban LCA Decision, note 13 above; and Doha LCA Decision, note 2 above.

³¹ ADP Decision, note 3 above, seventh preambular paragraph.

³² Doha LCA Decision, note 2 above, paragraph 2.

³³ Cancun LCA Decision, note 12 above, paragraphs 4 and 6; Durban LCA Decision, note 13 above, paragraph 2; Doha LCA Decision, note 2 above, paragraphs 2-3.

workshop³⁴ which was ultimately held in Bonn in May 2012. The EASD workshop provided useful insight into the Parties' views on how to frame discussions on equity and EASD as well as how to define and apply equity, with the corresponding AWG-LCA report welcomed by the COP in Doha.³⁵

23. Whereas differing views on the substantive issues raised in the workshop create a space for further discussion, a lack of agreement on how to take the discussion itself forward presents a bigger hurdle to achieving agreement on this issue.
24. The lack of meaningful progress on shared vision under the AWG-LCA and the uncertainty of building on its work in future ADP negotiations make it difficult to consider the work on shared vision complete despite the closure of the AWG-LCA and the adoption of the agreed outcome.

Mitigation

25. The Bali Action Plan is more detailed in outlining considerations for enhancing mitigation action than it is on shared vision. In particular, the mitigation mandate³⁶ includes consideration of:
 - (a) measurable, reportable and verifiable (MRV) nationally appropriate mitigation commitments or actions, including quantified emission limitation and reduction objectives (QELROs), by all developed countries;
 - (b) nationally appropriate mitigation actions (NAMAs) by developing countries in the context of sustainable development;
 - (c) approaches and incentives on issues relating to reducing emissions from deforestation and forest degradation (REDD);
 - (d) sectoral approaches to promote, develop and diffuse technologies, practices and processes that control, reduce or prevent GHG emissions;
 - (e) various approaches to enhance the effectiveness of, and to promote, mitigation actions;
 - (f) economic and social consequences of response measures; and
 - (g) ways to strengthen the role of the Convention to support mitigation.
26. In Cancun and Durban, the COP acknowledged that developed countries had to take the lead in combating climate change on the basis of equity and CBDRRC,³⁷ and urged developed countries to increase the ambition of their GHG emission reduction targets.³⁸

Mitigation Ambition

27. The Bali Action Plan creates a clear distinction between the mitigation obligations of developed and developing countries.³⁹ All developed countries are expected to commit to

³⁴ Durban LCA Decision, note 13 above, paragraph 4.

³⁵ Doha LCA Decision, note 2 above, paragraph 2

³⁶ Bali Action Plan, note 6 above, paragraphs 1(b)(i)-(vii).

³⁷ Cancun LCA Decision, note 12 above, first and second preambular paragraphs to paragraph 36; Durban LCA Decision, note 13 above, third preambular paragraph to paragraph 5; and Doha LCA Decision, note 2 above, paragraph 7.

³⁸ Cancun LCA Decision, note 12 above, paragraph 37; and Durban LCA Decision, note 13 above, fourth, fifth and sixth preambular paragraphs to paragraph 5.

³⁹ Bali Action Plan, note 6 above, paragraphs 1(b)(i)-(ii).

mitigation actions, including QELROs, meaning a commitment to absolute emissions reduction, whereas mitigation action by developing countries is considered in the context of sustainable development and is effectively contingent on support by developed countries (on technology development and transfer, financing and capacity-building).

28. This distinction in the Bali Action Plan is a direct application of the Convention principles of equity and CBDRRC and effectively creates a firewall between developed and developing countries' mitigation obligations. The practical effect is that developed countries, which are required to take the lead in combatting climate change, bear the direct and indirect burden of reducing global GHG emissions, directly by committing to absolute emission reductions in fulfilling their QELROs and indirectly by needing to provide technical and financial support to enable developing countries to undertake mitigation actions themselves.
29. Although mitigation actions among developed countries should take into account differences in their national circumstances (yet another expression of equity and CBDRRC), the binary system for mitigation action as between developed and developing states has resulted in contentious discussions about this hard divide, its implications and its fairness.
30. Taking into account that the overriding priorities of developing countries are poverty eradication and economic and social development and a focus on adaptation action over mitigation action, and in the context of an acknowledged gap between global mitigation action to-date and the collective action required to achieve the 2 degrees Celsius long-term goal, calls to raise mitigation ambition have targeted developed countries. In this regard developed countries are urged to increase the ambition of their mitigation actions.

Developed countries

31. In 2009, under the Copenhagen Accord, developed countries committed to quantified economy-wide emissions targets for 2020 and those countries that were Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol)⁴⁰ would strengthen their existing emissions reduction objectives under the Kyoto Protocol.⁴¹
32. One year later, the COP took note of quantified economy-wide emission reduction targets to be implemented by developed countries and urged those countries to increase the ambition of their targets.⁴²
33. However, individual quantified economy-wide emissions targets are subject to assumptions and conditions and work is ongoing to clarify those assumptions and conditions to identify common elements for measuring progress and ensuring comparability of efforts.⁴³
34. Achieved reductions by developed countries and financing provided to developing countries will also be measured, reported and verified in accordance with MRV guidelines, developed and adopted at subsequent COPs (see paragraph 41 below).⁴⁴

Developing countries

35. Developing countries, on the other hand, agreed to implement nationally appropriate mitigation actions (NAMAs) in the context of sustainable development to slow growth in

⁴⁰ Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol), Convention on Climate Change (Kyoto Protocol), opened for signature 11 December 1997, 2303 *UNTS* 148 (entered into force 16 February 2005).

⁴¹ Copenhagen Accord, note 24 above, paragraph 4.

⁴² Cancun LCA Decision, note 12 above, paragraphs 36-37.

⁴³ Durban LCA Decision, note 13 above, paragraphs 5 and 10.

⁴⁴ Copenhagen Accord, note 24 above, paragraph 4.

their carbon emissions,⁴⁵ and were invited to undertake NAMAs voluntarily and on the basis of international support.⁴⁶

36. NAMAs can relate to a variety of sectors, including forestry, energy generation and agriculture, and can require different kinds of technical support, depending on the particular circumstances of the country and its respective capabilities. There are currently eight submitted NAMAs seeking support for preparation and another eight submitted NAMAs seeking support for implementation.⁴⁷
37. NAMAs envisaged by developing countries would be subject to domestic MRV while those seeking international support would be subject to international MRV and would need to be recorded in the NAMA registry (discussed in paragraph 45 below) along with the required support.⁴⁸

Measurement, reporting and verification (MRV)

38. To assess the level of ambition and the effectiveness of mitigation efforts by developed and developing countries, MRV and comparability of efforts become relevant. Work on MRV has been carried on in two parallel strands, the first related to mitigation actions by developed countries and the second related to NAMAs by developing countries.
39. The first strand focussed its work on: developing modalities and guidelines for assessing and reviewing developed country mitigation actions; and identifying common elements for measuring progress and ensuring the comparability of efforts among developed countries.
40. The second strand focussed on: setting up a registry for recording NAMAs and developing modalities for the facilitation of support; and understanding the diversity of NAMAs and support needed with a view to facilitating the preparation and implementation of those actions.

Developed countries

41. Building on existing reporting and review guidelines, processes and experiences, the Parties have, in respect of developed countries' compliance with their targets, adopted modalities and procedures for international assessment of emissions and removals as well as a review process to be conducted through a technical review of information and a multilateral assessment of the implementation of targets (IAR process).⁴⁹ The modalities and procedures themselves would also be revised no later than 2016.⁵⁰
42. In Durban, a work programme under the Subsidiary Body for Scientific and Technological Advice (SBSTA) was established with a view to concluding the revision of the guidelines for the review of biennial reports and national communications by the Warsaw Climate Change Conference (COP19),⁵¹ and that work is still ongoing.
43. Another work programme under the SBSTA was established in Durban in order to enhance the biennial reporting guidelines by developing a common tabular format for the electronic reporting of information. The common tabular format was heavily negotiated throughout

⁴⁵ Copenhagen Accord, note 24 above, paragraph 5.

⁴⁶ Cancun LCA Decision, see note 12 above, paragraph 52.

⁴⁷ Early submission of Information to the NAMA Registry Prototype, United Nations Framework Convention on Climate change, available at http://unfccc.int/cooperation_support/nama/items/6945.php (accessed 25 April 2013).

⁴⁸ Cancun LCA Decision, see note 12 above, paragraphs 52-54.

⁴⁹ Durban LCA Decision, note 13 above, paragraphs 23-24.

⁵⁰ Durban LCA Decision, note 13 above, paragraph 26.

⁵¹ Durban LCA Decision, note 13 above, paragraph 28.

2012 and eventually adopted as a COP decision in Doha.⁵²

44. Progress on clarifying developed countries mitigation targets was less concrete. From COP16 to COP18, the AWG-LCA worked to clarify the targets put forward by developed countries to understand the assumptions and conditions related to the individual targets through in-session workshops;⁵³ and in Doha a two-year work programme under the SBSTA was established to continue this process in order to identify common elements for measuring progress and ensuring comparability of efforts.⁵⁴

Developing countries

45. In Cancun, the COP decided to set up a registry to record NAMAs seeking international support⁵⁵ and agreed to develop modalities for the facilitation of support through that registry.⁵⁶ Two years later, at COP18, the Subsidiary Body for Implementation (SBI) presented a prototype of the registry for consideration, which the COP acknowledged.⁵⁷
46. Similarly, COP17 acknowledged the general guidelines developed under the SBSTA for domestic measurement, reporting and verification of domestically supported NAMAs.⁵⁸ Mitigation actions will be measured, reported and verified domestically with internationally supported mitigation actions also subject to international measurement, reporting and verification.⁵⁹
47. Also in Durban, modalities and guidelines for international consultation and analysis (ICA) of developing country NAMAs were adopted in order to increase the transparency of such NAMAs and their effects,⁶⁰ as were guidelines for the preparation of biennial update reports by non-Annex I Parties⁶¹ which should be reviewed and revised as appropriate going forward.⁶² Reflecting the principle of CDBRRC, the ICA process for developing countries is less extensive and intrusive than the IAR process for developed countries.
48. As with the work on clarifying developed countries' targets, progress on understanding the diversity of NAMAs by developing countries was also limited. From COP16 to COP18, the Parties worked to further the understanding of the diversity of NAMAs, underlying assumptions and any support needed for their implementation.⁶³ In Doha, a two-year work-programme under the SBI was established to continue that work with a view to facilitating the preparation and implementation of those actions.⁶⁴
49. With key aspects of MRV issues still outstanding, the COP has in effect moved the work on these issues to a different forum for (at least) two more years.

Reducing emissions from deforestation and forest degradation (REDD)

50. In Cancun, developing countries were encouraged to contribute to mitigation actions in the forest sector by reducing emissions from deforestation and forest degradation, sustainable

⁵² FCCC/CP/2012/8/Add.3, Decision 19/CP.18.

⁵³ Durban LCA Decision, note 13 above, paragraphs 5 and 10.

⁵⁴ Doha LCA Decision, note 2 above, paragraphs 8-9.

⁵⁵ Cancun LCA Decision, note 12 above, paragraph 53; Durban LCA Decision, note 13 above, paragraph 45.

⁵⁶ Cancun LCA Decision, note 12 above, paragraphs 57 and 66.

⁵⁷ Doha LCA Decision, note 2 above, sixth preambular paragraph to paragraph 14; FCCC/CP/2012/8/Add.2, Decision 16/CP.18.

⁵⁸ Durban LCA Decision, note 13 above, paragraph 37.

⁵⁹ Cancun LCA Decision, note 12 above, paragraphs 61-62.

⁶⁰ Durban LCA Decision, note 13 above, paragraph 56.

⁶¹ Durban LCA Decision, note 13 above, paragraph 39.

⁶² Durban LCA Decision, note 13 above, paragraph 42.

⁶³ Durban LCA Decision, note 13 above, paragraph 33.

⁶⁴ Doha LCA Decision, note 2 above, paragraphs 19-20.

management of forests, and conservation and enhancement of forest carbon stocks (REDD mitigation activities).⁶⁵

51. The SBSTA developed a work programme on policy approaches and positive incentives for these activities⁶⁶ and decided that these activities should be implemented in phases, beginning with the development of national strategies or action plans, policies and measures, and capacity-building, followed by implementation of national policies and measures and national strategies or action plans, and evolving into results-based actions that should be fully measured, reported and verified.⁶⁷
52. The last phase is particularly significant as results-based finance was made notionally contingent on REDD mitigation activities being fully measured, reported and verified.⁶⁸
53. While the operating entities of the financial mechanism of the Convention were encouraged to provide results-based finance, it was agreed that new, additional and predictable results-based finance may come from a wide variety of sources.⁶⁹
54. In this regard the AWG-LCA began exploring financing options for the full implementation of results-based actions in the forest sector,⁷⁰ and in Doha, the COP itself undertook a one-year work programme to progress that work.⁷¹ The aim of the work programme is to contribute to ongoing efforts to scale up and improve the effectiveness of result-based finance while considering a variety of options for doing so, including means to transfer payments for results-based actions as well as ways to improve the coordination of results-based finance and ways to incentivise non-carbon benefits.⁷²
55. Important steps have therefore been taken on REDD issues, including in relation to safeguards⁷³ and on results-based finance, yet key issues for the operationalisation of a REDD mechanism are still being worked on. These include the provision of financial and technical support for developing countries in the forestry sector, consideration of how non-market-based approaches could be developed to support the implementation of REDD mitigation activities, and initiating work on methodological issues related to non-carbon benefits resulting from these activities.⁷⁴

Various approaches

56. In order to enhance the cost-effectiveness of, and to promote, mitigation actions, COP16 decided to consider the establishment of one or more market-based mechanisms, and one or more non-market-based mechanisms, with the AWG-LCA working to elaborate these mechanisms.⁷⁵
57. One year later, in Durban, a new market-based mechanism was defined, operating under the guidance and authority of the COP, with the AWG-LCA conducting a work programme to elaborate modalities and procedures for the mechanism,⁷⁶ and another work programme to

⁶⁵ Cancun LCA Decision, note 12 above, paragraph 70.

⁶⁶ Cancun LCA Decision, note 12 above, paragraph 75.

⁶⁷ Cancun LCA Decision, note 12 above, paragraph 73.

⁶⁸ Durban LCA Decision, note 13 above, paragraph 64.

⁶⁹ Durban LCA Decision, note 13 above, paragraphs 65 and 68.

⁷⁰ Cancun LCA Decision, note 12 above, paragraph 77.

⁷¹ Doha LCA Decision, note 2 above, paragraphs 25 and 33.

⁷² Doha LCA Decision, note 2 above, paragraphs 28-29, 34 and 40.

⁷³ Cancun LCA Decision, note 12 above, paragraph 70 and Appendix I.

⁷⁴ Doha LCA Decision, note 2 above, paragraphs 34 and 39-40.

⁷⁵ Cancun LCA Decision, note 12 above, paragraphs 80-81 and 84-85.

⁷⁶ Durban LCA Decision, note 13 above, paragraphs 83-84.

consider a framework for various approaches generally.⁷⁷

58. However, at the close of the AWG-LCA negotiating track, progress under these work programmes has been minimal. The Parties, therefore, decided to continue the AWG-LCA's work on these issues under the SBSTA during 2013. In this regard, the SBSTA will conduct three one-year work programmes, each focussing on one of the following tasks:
- (a) elaborating a framework on various approaches (to be developed under the authority of the COP);⁷⁸
 - (b) elaborating non-market-based approaches in that context;⁷⁹ and
 - (c) elaborating modalities and procedures for the new market-based mechanism (established in Durban).⁸⁰
59. Each work programme will present a resolution for adoption at COP19 in Warsaw.⁸¹
60. The first work programme will continue to address the basic elements of the framework on various approaches, from its purpose to the scope of approaches to be included to its future institutional arrangements and builds on the work of the AWG-LCA in 2012. Since the second work programme aims to elaborate non-market-based approaches it can be implied that the scope of approaches to be included in the framework (potentially) also includes market-based approaches.
61. The third work programme will continue elaborating modalities and procedures for the new market-based mechanism defined at COP17⁸² with guidance on possible elements of the mechanism for consideration by the work programme, including: standards that deliver real, permanent, additional, and verified mitigation outcomes; means to stimulate mitigation across broad segments of the economy; criteria for the establishment, approval and periodic adjustment of ambitious reference levels; the facilitation of the effective participation of both private and public entities; and the facilitation of the prompt start of the mechanism.⁸³
62. As with the need for further work on the REDD mechanism discussed earlier in this paper, there is ongoing work related to the various approaches stream of negotiations which encompasses key substantive issues. This suggests that work on this topic has not been completed (and is merely continuing).

Response measures

63. Over the past three years, the COP has reaffirmed that Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development for all Parties, in particular developing countries, and that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.⁸⁴
64. It has also recognised that social and economic development and poverty eradication are the

⁷⁷ Durban LCA Decision, note 13 above, paragraph 80.

⁷⁸ Doha LCA Decision, note 2 above, paragraphs 44-45.

⁷⁹ Doha LCA Decision, note 2 above, paragraph 47.

⁸⁰ Doha LCA Decision, note 2 above, paragraph 50.

⁸¹ Doha LCA Decision, note 2 above, paragraphs 44, 47 and 50.

⁸² Durban LCA Decision, note 13 above, paragraph 83.

⁸³ Doha LCA Decision, note 2 above, paragraph 51.

⁸⁴ Cancun LCA Decision, note 12 above, paragraph 90; Doha LCA Decision, note 2 above, third preambular paragraph to paragraph 54.

first and overriding priorities of developing countries⁸⁵ and reaffirmed the importance of avoiding or minimising the negative impacts of response measures on social and economic sectors.⁸⁶ In particular, the COP urged developed countries to strive to implement policies and measures to respond to climate change in such a way as to avoid negative social and economic consequences for developing countries and to assist them with a view to building up the resilience of societies and economies negatively affected by response measures.⁸⁷

65. To improve the understanding of the impact of the implementation of response measures, a work programme under the subsidiary bodies was adopted in Durban,⁸⁸ and a forum was established to implement the work programme and provide a platform allowing Parties to share information, experiences, case studies, best practices and views.⁸⁹ In Doha, Parties were invited to continue to participate in the forum.⁹⁰

Outstanding substantive issues

66. Under the mitigation head of the Bali Action Plan, there is still a significant amount of work that is continuing beyond the closure of the AWG-LCA on a number of substantive issues.
67. The work on clarifying the assumptions and conditions of developed countries' quantified economy-wide mitigation targets and on understanding the diversity of developing countries' NAMAs and support needed to implement them is ongoing in work programmes established under the SBSTA and the SBI respectively.
68. Similarly, the forum on response measures will continue its work to implement the work programme on understanding the impact of the implementation of response measures, and work programmes are continuing the work on scaling up and improving the effectiveness of results-based finance for REDD mitigation activities, and on elaborating a framework on various approaches, elaborating non-market-based approaches, and elaborating modalities and procedures for the new market-based mechanism established in Durban.

Adaptation

69. Although the climate change regime was overwhelmingly focused on mitigation action at the outset of the negotiations, the profile of adaptation issues has increased significantly in recent years. This is primarily due to the recognition of serious challenges faced by the most vulnerable countries.
70. The COP affirmed in Cancun that adaptation must be addressed with the same priority as mitigation,⁹¹ and reaffirmed this in Doha⁹² while also requesting the Board of the Green Climate Fund (GCF) to balance the allocation of the resources of the GCF between adaptation and mitigation activities.⁹³ It is not clear whether balancing implies a 50/50 split or some other weighted balance based on other factors. Although mitigation and adaptation are to be addressed 'with the same priority', that alone does not clarify this point.

⁸⁵ Durban LCA Decision, note 13 above, paragraph 87.

⁸⁶ Cancun LCA Decision, note 12 above, fourth preambular paragraph to paragraph 88; Doha LCA Decision, note 2 above, fourth preambular paragraph to paragraph 54.

⁸⁷ Cancun LCA Decision, note 12 above, paragraphs 88-89.

⁸⁸ FCCC/CP/2011/9/Add.1, Decision 8/CP.17, paragraph 1.

⁸⁹ Decision 8/CP.17, note 88 above, paragraph 3; Cancun LCA Decision, note 12 above, paragraph 93.

⁹⁰ Doha LCA Decision, note 2 above, paragraph 54.

⁹¹ Cancun LCA Decision, note 12 above, paragraph 2(b).

⁹² Doha LCA Decision, note 2 above, fourth preambular paragraph to paragraph 55.

⁹³ Doha LCA Decision, note 2 above, paragraph 64.

71. The adaptation mandate⁹⁴ under the Bali Action Plan included the consideration of:
- (a) support of urgent implementation of adaptation actions;
 - (b) risk management and risk reduction strategies;
 - (c) disaster reduction strategies and means to address loss and damage associated with climate change impacts in developing countries;
 - (d) economic diversification; and
 - (e) ways to strengthen the role of the Convention to support adaptation.
72. The first major steps to raise the profile of the adaptation agenda were taken in Cancun. This culminated in the establishment of:
- (a) the Cancun Adaptation Framework with the objective of enhancing action on adaptation;⁹⁵
 - (b) the Adaptation Committee to promote the implementation of enhanced action on adaptation in a coherent manner under the Convention;⁹⁶
 - (c) a process to enable least developed countries to formulate and implement national adaptation plans;⁹⁷ and
 - (d) the work programme on approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.⁹⁸

Cancun Adaptation Framework and the Adaptation Committee

73. Under the Cancun Adaptation Framework, the COP invited all Parties to undertake planning, prioritising and implementing of adaptation actions; impact, vulnerability and adaptation assessments; strengthening institutional capacities; and enhancing climate change related disaster risk reduction strategies among other actions.⁹⁹
74. The Adaptation Committee is the overall advisory body to the COP on adaptation¹⁰⁰ and operates under the authority of, and is accountable to, the COP which decides on its policies.¹⁰¹
75. At COP17 the Parties affirmed the Adaptation Committee's place at the head of adaptation action,¹⁰² elaborated modalities it would use in exercising its functions,¹⁰³ and set out a number of decisions to operationalise the Adaptation Committee.¹⁰⁴
76. A three-year workplan for the Adaptation Committee was approved at COP18,¹⁰⁵ although, as

⁹⁴ Bali Action Plan, note 6 above, paragraphs 1(c)(i)-(v).

⁹⁵ Cancun LCA Decision, note 12 above, paragraph 13.

⁹⁶ Cancun LCA Decision, note 12 above, paragraph 20.

⁹⁷ Cancun LCA Decision, note 12 above, paragraph 15.

⁹⁸ Cancun LCA Decision, note 12 above, paragraph 26.

⁹⁹ Cancun LCA Decision, note 12 above, paragraph 14.

¹⁰⁰ Durban LCA Decision, note 13 above, paragraph 92.

¹⁰¹ Durban LCA Decision, note 13 above, paragraph 95.

¹⁰² Durban LCA Decision, note 13 above, paragraph 92..

¹⁰³ Durban LCA Decision, note 13 above, paragraph 94.

¹⁰⁴ Durban LCA Decision, note 13 above, paragraphs 99-116.

¹⁰⁵ Doha LCA Decision, note 2 above, sixth preambular paragraph to paragraph 55.

requested by the COP in Durban, it had already begun to initiate in its first year some of the activities indicated in Annex V (Indicative list of activities for the Adaptation Committee) of the Durban LCA Decision.¹⁰⁶

77. The COP also requested the Adaptation Committee to consider the establishment of an annual adaptation forum to maintain a high profile for adaptation and to raise awareness and ambition with regard to adaptation actions.¹⁰⁷ The forum would be held in conjunction with the sessions of the COP.¹⁰⁸

National Adaptation Plans

78. In Cancun, a process was established to enable least developed countries to formulate and implement national adaptation plans (NAPs) as a means of identifying medium- and long-term adaptation needs and developing and implementing strategies and programmes to address those needs in the context of sustainable development planning.¹⁰⁹
79. The objective of the NAP process is to reduce vulnerability to the impacts of climate change, by building adaptive capacity and resilience, and to facilitate the integration of climate change adaptation into relevant new and existing policies, programmes and activities within all relevant sectors and at different levels.¹¹⁰
80. The SBI elaborated guidelines and modalities for this process which were adopted in Durban,¹¹¹ and developed countries were requested to provide long-term, scaled-up, predictable, new and additional finance, technology and capacity-building to implement developing country adaptation plans, and programmes and projects at various levels, in and across different economic and social sectors and ecosystems.¹¹² Parties were also invited to establish and strengthen regional centres and networks in developing countries in particular and to facilitate and enhance national and regional adaptation plans.¹¹³
81. The Global Environment Facility (GEF) was requested to provide funding from the Least Developed Countries Fund to meet the agreed full cost of activities to enable the preparation of, and to provide support for, the NAP process, as well as encourage a flexible approach that enables the least developed countries to access funding in response to national needs and circumstances.¹¹⁴
82. For interested developing countries that are not least developed countries, the Adaptation Committee was encouraged to continue its work in developing the relevant modalities for supporting them to plan, prioritise and implement their national adaptation planning measures.¹¹⁵ Similarly, the GEF was requested to enable activities for the preparation of the NAP process for these interested developing countries.¹¹⁶

Loss and damage

83. The issue of loss and damage has a long history in the UNFCCC process. It was first raised in the negotiations leading up to the adoption of the Convention and has been raised by various

¹⁰⁶ Durban LCA Decision, note 13 above, paragraphs 97-98.

¹⁰⁷ Doha LCA Decision, note 2 above, paragraph 57.

¹⁰⁸ Doha LCA Decision, note 2 above, paragraph 57.

¹⁰⁹ Cancun LCA Decision, note 12 above, paragraphs 15-16; FCCC/CP/2012/8/Add.2, Decision 12/CP.18, fourth preambular paragraph.

¹¹⁰ FCCC/CP/2011/9/Add.1, Decision 5/CP.17.

¹¹¹ Cancun LCA Decision, note 12 above, paragraph 17; Decision 5/CP.17, note 110 above.

¹¹² Cancun LCA Decision, note 12 above, paragraph 18.

¹¹³ Cancun LCA Decision, note 12 above, paragraph 30.

¹¹⁴ Decision 12/CP.18, note 109 above, paragraph 4.

¹¹⁵ Decision 12/CP.18, note 109 above, seventh preambular paragraph.

¹¹⁶ Decision 12/CP.18, note 109 above, paragraph 1.

Parties in submissions over the course of the past 20 years. However, in Cancun, the Parties for the first time established a two-year work programme in order to consider approaches to loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.¹¹⁷

84. At the end of the two years (i.e. at Doha), Parties were unable to agree on the outcome of the work programme, with many Parties believing further work was required. In the end, the COP noted the role of the Convention in addressing loss and damage, the further work that was needed to advance the understanding of, and expertise on, loss and damage, mandated the secretariat to produce a number of technical papers (including on gaps in existing institutional arrangements to address loss and damage and on non-economic losses) and decided to establish, at COP19 in Warsaw, “*institutional arrangements, such as an international mechanism, including functions and modalities...to address loss and damage*”.¹¹⁸
85. Although the establishment of institutional arrangements for loss and damage has been postponed until COP19, if such arrangements are established in a centralised manner (e.g. through a dedicated international mechanism rather than fragmented between the various existing Convention bodies), this will provide a permanent forum for issues related to loss and damage to be discussed, including potentially in relation to compensation for damages and loss of territory caused by climate change as well as the related human rights implications.

Outstanding substantive issues

86. While the Doha LCA Decision contains few substantive decisions on adaptation and merely decides that the work of enhancing action on adaptation should continue under the COP, its subsidiary bodies and other bodies under the Convention,¹¹⁹ the Agreed Outcome as a whole has achieved significant progress in raising the profile of adaptation and enhancing adaptation action overall, with the establishment of the Cancun Adaptation Framework and the operationalisation of the Adaptation Committee.
87. However, the decision to establish, in one year's time, institutional arrangements to address the issue of loss and damage, means that the mandate of the Bali Action Plan with respect to adaptation cannot strictly be said to have been completed. In addition, there has not been much progress on finance for enhanced adaptation action and this will need to be addressed in the ongoing finance negotiations.

Technology development and transfer

88. Negotiations around technology development and transfer have been some of the more politically sensitive because of the direct and indirect linkages to financing under the UNFCCC and the implications regarding intellectual property rights of private stakeholders in developed countries.
89. Recognising the obvious linkages between technology transfer and financing the COP took decisions at COP18 to elaborate on those linkages in anticipation of fully operationalised technology and financial mechanisms that would work in a coherent and effective way.

¹¹⁷ Cancun LCA Decision, note 12 above, paragraph 25.

¹¹⁸ FCCC/CP/2012/8/Add.1, Decision 3/CP.18, paragraph 9.

¹¹⁹ Doha LCA Decision, note 2 above, paragraph 55.

90. The technology mandate¹²⁰ under the Bali Action Plan contemplated consideration of:
- (a) effective mechanisms and enhanced means for the removal of obstacles to, and provision of financial and other incentives for, scaling up of the development and transfer of technology to developing countries;
 - (b) ways to accelerate deployment, diffusion and transfer of affordable environmentally sound technologies;
 - (c) cooperation on research and development of current, new and innovative technology; and
 - (d) the effectiveness of mechanisms and tools for technology cooperation.

Technology Mechanism

91. In order to fulfil the Bali Action Plan's mandate, the COP in Cancun decided to establish a Technology Mechanism under the guidance of, and accountable to, the COP.¹²¹ It consists of:
- (a) a Technology Executive Committee (TEC) which will, amongst other things, provide an overview of technological needs and analysis of policy and technical issues, consider and recommend actions to promote technology transfer and development, recommend guidance on policies and programme priorities;¹²² and
 - (b) a Climate and Technology Centre and Network (CTCN, hosted by UNEP)¹²³, whose mission is to stimulate technology cooperation and to enhance the development and transfer of technologies and to assist developing country Parties at their request, consistent with their respective capabilities and national circumstances and priorities.¹²⁴
92. Modalities and procedures for the TEC were adopted in Durban¹²⁵ and arrangements to make the CTCN fully operational were adopted in Doha.¹²⁶
93. To build on this progress the COP in Doha agreed to initiate elaboration and consideration of the relationship between the TEC and the CTCN at COP19, taking into account the recommendations of the TEC on its linkage modalities and the modalities and procedures of the CTCN.¹²⁷
94. The COP also agreed to further elaborate, at COP20 in 2014, the linkages between the Technology Mechanism and the financial mechanism of the Convention, taking into consideration the recommendations of the Board of the Green Climate Fund and the TEC.¹²⁸
95. In addition to the work continuing under the COP, the bodies comprising the Technology Mechanism are to progress their own work towards becoming fully operational and integrated as soon as possible. In that respect, the TEC is to initiate the exploration of issues

¹²⁰ Bali Action Plan, note 6 above, paragraph 1(d).

¹²¹ Cancun LCA Decision, note 12 above, paragraph 117.

¹²² Cancun LCA Decision, note 12 above, paragraphs 117(a) and 121.

¹²³ FCCC/CP/2012/8/Add.2, Decision 14/CP.18, paragraph 2.

¹²⁴ Cancun LCA Decision, note 12 above, paragraphs 117(b) and 123.

¹²⁵ FCCC/CP/2011/9/Add.1, Decision 4/CP.17.

¹²⁶ Decision 14/CP.18, note 123 above.

¹²⁷ Doha LCA Decision, note 2 above, paragraph 59.

¹²⁸ Doha LCA Decision, note 2 above, paragraph 62.

relating to enabling environments and barriers in elaborating its future workplan.¹²⁹

96. In addition, the Advisory Board of the CTCN is to take into account the activities of providing advice and support to developing countries in relation to conducting assessments of new and emerging technologies and elaborating the role of the CTCN in identifying currently available climate-friendly technologies for mitigation and adaptation.¹³⁰

Outstanding substantive issues

97. Despite significant progress in establishing key institutions for the Technology Mechanism and adopting modalities and procedures for its operationalisation, a number of important linkages between the various Convention bodies still need to be agreed. The effectiveness of these linkages will be critical if the Technology Mechanism is to achieve its objective of “*support[ing] action on mitigation and adaptation in order to achieve full implementation of the Convention*”.¹³¹
98. In addition, the main practical challenge on the technology development and transfer issue remains reconciling the protection of intellectual property rights in developed countries with affordable access to technology by developing countries. This hurdle is inherently tied to the negotiations on financing because of the economic implications of diluting intellectual property rights and the issue is likely to arise again in the context of the ADP negotiations.

Finance

99. Finance is *the* cross-cutting issue in the climate change negotiations. As mentioned above, the economic implications of providing affordable access to technology for developing countries and of financing mitigation and adaptation related activities likely means that progress on most negotiation issues will be tied to reaching some form of agreement on mid-term and long-term finance.
100. The finance mandate¹³² of the Bali Action plan focussed on consideration of:
- (a) improved access to adequate, predictable and sustainable financial resources and financial and technical support, and the provision of new and additional resources;
 - (b) positive incentives for developing countries for the enhanced implementation of national mitigation strategies and adaptation actions;
 - (c) innovative means of funding to assist developing countries;
 - (d) means to incentivise the implementation of adaptation actions on the basis of sustainable development policies;
 - (e) mobilisation of public- and private-sector funding and investment; and
 - (f) financial and technical support for capacity-building in the assessment of the costs of adaptation in developing countries.

Finance ambition

101. The COP in Cancun (and again in Doha) acknowledged the need to scale up climate finance in

¹²⁹ Doha LCA Decision, note 2 above, paragraph 60.

¹³⁰ Doha LCA Decision, note 2 above, paragraph 61.

¹³¹ Cancun LCA Decision, note 12 above, paragraph 113.

¹³² Bali Action Plan, note 6 above, paragraph 1(e).

order to provide new and additional, predictable and adequate funding to developing countries,¹³³ and urged developed countries to do so from a variety of sources, including public, private, bilateral, multilateral, and alternative sources.¹³⁴

102. In Cancun, based on the agreement reached by some of the Parties in the Copenhagen Accord a year earlier, the COP agreed to provide new and additional fast-start finance approaching USD 30 billion in the period from 2010-2012, with balanced allocation between mitigation and adaptation, with adaptation funding prioritised for the most vulnerable developing countries (such as the least developed countries, small island developing states and Africa).¹³⁵
103. In addition, the COP in Cancun reaffirmed the developed countries' goal of mobilising jointly USD 100 billion per year by 2020 to address the needs of developing countries¹³⁶ and in Doha encouraged them to increase their efforts to provide resources at least to the average annual level of the fast-start finance period for 2013-2015 (approximately USD 10 billion per year).¹³⁷
104. However, there are no substantive obligations or enforcement mechanisms to ensure developed countries in fact do any of the above.
105. Furthermore, on a practical level, even if fast-start finance levels are achieved for 2013-2015, Parties have made no progress on agreeing how annual climate finance flows will increase ten-fold to USD 100 billion per year in only five years (from 2015 to 2020).
106. Finally, developed countries that have not announced pledges for post-2012 climate finance are urged to do so 'when their financial circumstances permit'.¹³⁸ This qualification creates uncertainty with respect to future financing in general, arguably lowers the overall ambition of the long-term finance regime and undermines the legal obligations of Annex II Parties under Article 4, paragraph 3 of the Convention.

Green Climate Fund (GCF)

107. The GCF was established by the Cancun LCA Decision as an operating entity of the financial mechanism of the Convention, with the Board of the GCF expected to balance the allocation of GCF resources between adaptation and mitigation activities.¹³⁹ The Parties agreed that the interim trustee for the GCF should be the World Bank, such appointment to be subject to review after the GCF has been operational for 3 years.¹⁴⁰
108. The GCF's governing instrument was approved by the COP in Durban and the Board of the GCF was tasked with operationalising the fund in an expedited manner.¹⁴¹ In Doha, the Parties selected Songdo, Incheon, Republic of Korea as the host of the GCF.¹⁴²
109. The Board of the GCF is now working to implement its 2013 workplan with a view to operationalising the GCF as soon as possible.¹⁴³ However, the effectiveness and impact of a fully operationalised GCF will depend on it being replenished with adequate and predictable

¹³³ Cancun LCA Decision, note 12 above, paragraphs 97 and 99; Doha LCA Decision, note 2 above, fourth preambular paragraph to paragraph 63.

¹³⁴ Doha LCA Decision, note 2 above, paragraph 66.

¹³⁵ Cancun LCA Decision, note 12 above, paragraph 95.

¹³⁶ Cancun LCA Decision, note 12 above, paragraph 98; Doha LCA Decision, note 2 above, fifth preambular paragraph to paragraph 63.

¹³⁷ Doha LCA Decision, note 2 above, paragraph 68.

¹³⁸ Doha LCA Decision, note 2 above, paragraph 63.

¹³⁹ Cancun LCA Decision, note 12 above, paragraphs 100 and 102; Doha LCA Decision, note 2 above, paragraph 64.

¹⁴⁰ Cancun LCA Decision, note 12 above, paragraph 107.

¹⁴¹ FCCC/CP/2011/9/Add.1, Decision 3/CP.17.

¹⁴² FCCC/CP/2012/8/Add.1, Decision 6/CP.18, paragraph 3.

¹⁴³ Doha LCA Decision, note 2 above, paragraph 72.

funds, but there has been minimal progress in negotiations on long-term finance to-date.

Standing Committee

110. In Cancun, the COP established a Standing Committee to assist the COP in exercising its functions with respect to the financial mechanism of the Convention.¹⁴⁴ It reports and makes recommendations to the COP at each ordinary session of the COP on all aspects of its work.¹⁴⁵
111. The Standing Committee developed a work programme based on the activities outlined in the Durban LCA Decision in order to improve coherence and coordination in the delivery of climate change financing, rationalisation of the financial mechanism, mobilisation of financial resources, and measurement, reporting and verification of the support provided to developing countries.¹⁴⁶
112. The Standing Committee is now at the stage of implementing its work programme, including the creation of a climate finance forum to enable all Parties and stakeholders to exchange ideas on scaling up climate finance.¹⁴⁷

Long-term finance

113. In 2012, the COP undertook a work programme on long-term finance to contribute to the ongoing efforts to scale up the mobilisation of climate change finance beyond 2012 from a variety of sources, and in the context of the developed countries' commitment to mobilise USD 100 billion per year by 2020 in scaled-up, new and additional, predictable and adequate funding to developing countries.¹⁴⁸
114. However, no agreement was reached on the sources of finance (including in relation to the use of innovative sources such as bunker fuels) and in Doha the work programme on long-term finance was extended for another year with progress to be considered through an in-session high-level ministerial dialogue at COP19.¹⁴⁹ As with work under other negotiation streams, the Parties in Doha agreed to merely continue work that has not been completed under the AWG-LCA rather than deciding on any substantive finance outcomes.

Outstanding substantive issues

115. A number of issues remain unresolved under the finance head of the Bali Action Plan. There has been little progress on deciding how finance flows will reach USD 100 billion per year by 2020 and little clarity over whether the fast-start finance levels (USD 10 billion per year) will be achieved over the period from 2013 to 2015.
116. Some developed parties have yet to announce pledges for post-2012 climate finance and are only urged to do so 'when their financial circumstances permit'. There has also been no mechanism established or concrete steps taken on scaling up climate finance generally and no elaboration on how or when finance flows will be generated from new and innovative sources of funding.
117. While the Standing Committee continues to work on implementing its 2013 workplan, the

¹⁴⁴ Cancun LCA Decision, note 12 above, paragraph 112; Durban LCA Decision, note 13 above, paragraph 121.

¹⁴⁵ Durban LCA Decision, note 13 above, paragraph 120.

¹⁴⁶ Durban LCA Decision, note 13 above, paragraph 123.

¹⁴⁷ Doha LCA Decision, note 2 above, paragraph 70.

¹⁴⁸ Durban LCA Decision, note 13 above, paragraphs 127 and 130.

¹⁴⁹ Doha LCA Decision, note 2 above, paragraphs 69 and 73; FCCC/CP/2012/8/Add.1, Decision 4/CP.18.

climate finance forum is only just beginning. Work is also continuing for one more year in the work programme on long-term finance and the GCF is yet to become operational.

Capacity-building

118. Capacity-building is essential to enable developing countries to participate fully in addressing the challenges of climate change; it is a cross cutting issue and an integral part of enhanced action on mitigation, adaptation, technology development and transfer, and access to financial resources.¹⁵⁰ Initially, the issue of capacity-building was included in the Bali Action Plan as a subset of considerations to address in the context of finance.¹⁵¹ However, Parties soon recognised the need for capacity-building to be addressed in its own right and a separate stream of negotiations under the AWG-LCA was opened.¹⁵²
119. In the Cancun LCA Decision, the Parties agreed that capacity-building support to developing countries should be enhanced with a view to strengthening endogenous capacities, for example, by: strengthening relevant institutions; strengthening networks for the generation, sharing and management of information and knowledge; strengthening climate change communication, education, training and public awareness at all levels; strengthening integrated approaches; and supporting existing and emerging capacity-building needs.¹⁵³
120. The COP decided that financial resources for enhanced action on capacity-building should be provided by Parties included in Annex II to the Convention and other Parties in a position to do so.¹⁵⁴
121. Building on the work of the AWG-LCA to further enhance the monitoring and review of the effectiveness of capacity-building and further elaborating the modalities regarding institutional arrangements for capacity-building,¹⁵⁵ the COP requested the SBI to progress this issue by organising an annual in-session Durban Forum for in-depth discussion on capacity building.¹⁵⁶ A second meeting of the Durban Forum will take place in June 2013.¹⁵⁷
122. Given that the negotiations on capacity-building grew organically out of the AWG-LCA, it is one of few areas of the AWG-LCA negotiations where it can be said that the policy decisions adopted in the respect of capacity-building in the Agreed Outcome go beyond the mandate of the Bali Action Plan. However, the effectiveness of the capacity-building outcomes will depend significantly on the implementation of the agreed policies and the availability of sufficient financial support.

Review

123. The negotiations on the review of the long-term goal of holding the increase in global average temperature to 2 degrees Celsius above pre-industrial levels (agreed in the context of the shared vision negotiations) grew out of the AWG-LCA negotiations rather than having an explicit hook in the Bali Action Plan.
124. When the long-term goal was first raised in the AWG-LCA negotiations in the run up to COP15 in 2009, many developing countries objected to the 2 degree target on the basis that

¹⁵⁰ Cancun LCA Decision, note 12 above, first and fourth preambular paragraphs to paragraph 130; Durban LCA Decision, note 13 above, third and sixth preambular paragraphs to paragraph 144.

¹⁵¹ Bali Action Plan, note 6 above, paragraph 1(e)(vi).

¹⁵² Cancun LCA Decision, note 12 above, first preambular paragraph to paragraph 130.

¹⁵³ Cancun LCA Decision, note 12 above, paragraph 130.

¹⁵⁴ Cancun LCA Decision, note 12 above, paragraph 131; Durban LCA Decision, note 13 above, paragraph 155.

¹⁵⁵ Cancun LCA Decision, note 12 above, paragraphs 136-137.

¹⁵⁶ Durban LCA Decision, note 13 above, paragraph 154.

¹⁵⁷ Doha LCA Decision, note 2 above, paragraph 74.

even if temperature increases could be kept to this level, huge amounts of damage would still be caused by the impacts of climate change.

125. The compromise reached in the Copenhagen Accord was to agree to the 2 degree long-term goal but to consider strengthening it to 1.5 degrees.¹⁵⁸ This compromise was then formally brought into the UNFCCC process by the Cancun LCA Decision. In it, the COP decided to periodically review the adequacy of the long-term goal and the overall progress made towards achieving it, guided by the principles of equity and CBDRRC.¹⁵⁹ The first review should start in 2013 and be concluded by 2015 with subsequent reviews taking place following the adoption of an assessment report of the IPCC or at least every seven years.¹⁶⁰
126. The Fifth Assessment Report of the IPCC, due to be published over the course of 2013 and 2014, is expected to show an even larger gap between the current collective level of action and the level of action required to achieve the ultimate objective of the Convention. It will be a key input to the review.¹⁶¹
127. In Durban, it was decided that the review will be conducted with the assistance of the subsidiary bodies and that the work would be supported by expert consideration of inputs through workshops and other in-session and inter-session activities.¹⁶²
128. The COP agreed to further define the expert consideration of inputs, including the possible establishment of a review expert group, to provide technical support to the review,¹⁶³ and in Doha invited the subsidiary bodies to establish a joint contact group to assist the COP in conducting the review.¹⁶⁴ A structured expert dialogue to support the work of the joint contact group was also established under the guidance of the subsidiary bodies.¹⁶⁵

Conclusion

129. The AWG-LCA negotiating track has been concluded and an Agreed Outcome pursuant to the Bali Action Plan achieved.
130. On the one hand, the AWG-LCA has made considerable progress in establishing key institutions and mechanisms in mitigation, adaptation, finance, and technology development and transfer, and work is continuing by the relevant bodies with a view to the full operationalisation of these institutions as soon as possible.¹⁶⁶
131. On the other hand, there has been less tangible progress on a number of negotiation issues which remain largely unresolved. Significantly, Parties have so far been unable to agree on a global goal for GHG reductions or a timeframe for achieving it, nor how these will be determined by reference to the principles of equity and CBDRRC.
132. In respect of mitigation, work continues on understanding developed countries' emission reduction targets and developing countries' NAMAs, in order to be able to measure progress and ensure comparability of efforts in the former and in order to enable achievement of the latter. In addition to the work on MRV, work programmes will continue throughout 2013 to

¹⁵⁸ Copenhagen Accord, note 24 above, paragraph 12.

¹⁵⁹ Cancun LCA Decision, note 12 above, paragraphs 138-139; Durban LCA Decision, note 13 above, paragraphs 157 and 160; Doha LCA Decision, note 2 above, paragraph 82.

¹⁶⁰ Cancun LCA Decision, note 12 above, paragraph 139; Durban LCA Decision, note 13 above, paragraph 167.

¹⁶¹ Doha LCA Decision, note 2 above, paragraph 82.

¹⁶² Durban LCA Decision, note 13 above, paragraph 162.

¹⁶³ Durban LCA Decision, note 13 above, paragraph 163.

¹⁶⁴ Doha LCA Decision, note 2 above, paragraph 80.

¹⁶⁵ Doha LCA Decision, note 2 above, paragraphs 85-86.

¹⁶⁶ Doha LCA Decision, note 2 above, paragraphs 55, 57, 59-62, and 72-73.

support the implementation of REDD mitigation activities, develop a framework on various approaches, and better understand the impacts of response measures.

133. Under adaptation, Parties still need to establish institutional arrangements to address loss and damage. Similarly, key linkages remain to be established between Convention bodies and institutions, including between the Technology Mechanism and the financial mechanism under the Convention. Confronting the issue of intellectual property rights also presents a major challenge under technology. Finally, under finance, the issues of scaling up mid-term and long-term finance, operationalising the GCF, and increasing overall finance ambition to enable action under the other heads of work still need to be addressed.
134. With these key substantive issues still to be addressed in many negotiation streams, it is difficult to consider the mandate of the Bali Action Plan as having been fulfilled despite the closure of the AWG-LCA in Doha. In fact, much of the subject-matter discussed under the AWG-LCA negotiating track has merely been transferred to the permanent subsidiary bodies or the COP itself for further work on key substantive elements. In addition, it is not clear where certain key issues, such as identifying a global goal for emission reductions and a peak year, will be taken up again in future negotiations.
135. On outstanding work, the general approach was to establish work programmes under the permanent subsidiary bodies for further work. The majority of these work programmes have been given one year to continue work on the relevant issue but it is not clear what would happen should that work not be completed by COP19 in Warsaw. One option may be to extend the work programmes yet again. Another possibility would be for Parties to try and raise such issues in the ADP negotiations.
136. The latter option would have considerable implications as the ADP can be seen as having broadly subsumed the mandate of the AWG-LCA with one important distinction – there is no explicit mention of the Convention principles of equity and CDRRC.¹⁶⁷
137. While the Convention principles cannot be ignored and must still inform the work of the ADP, the lack of express mention of the principles signals a potential paradigm shift in how obligations under the Convention are framed and how those principles are to be interpreted and applied in future negotiations, particularly with respect to issues that have been negotiated in the AWG-LCA and may move into the ADP negotiations in the future.

¹⁶⁷ Decision 1/CP.17, note 11 above, paragraph 5.