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FROM CANCUN TO DURBAN: IS THERE ANY LIKELIHOOD OF A NEW CLIMATE REGIME?

Abstract

COP16 of the UNFCCC at Cancun is regarded as a success, compared to the frustrating outcome at Copenhagen. However, the success part relates only to several issues of adaptation. The frustrating aspect is the mitigation part of the regime, which is the ultimate solution, but it remains as intractable as ever. This paper raises few queries including why there were some successes in adaptation, and not any in mitigation. The author argues that nothing positive in this regard at Cancun or any likelihood of its progress in the foreseeable future prodded the industrial countries to agree to some positive steps in adaptation. Still important issues regarding climate finance remain unresolved. Further, a *realpolitik* approach to upholding national interests and adherence to conventional sense of sovereignty by the major emitters, particularly by the US, stand in the way. The paper ends with a few suggestions on how to put pressure on the emission powers to listen to the call of the day.

Introduction

The two week-long 16th Conference of the Parties (COP16) of the UN Framework Convention on Climate Change (UNFCCC) was held at Cancun during 28 November to 10 December 2010. COP16 adopted two main documents: i) a 32-page Text of the Ad-hoc Working Group on Long-term Cooperative Action (AWG-LCA) and ii) a 2-page Text of the Ad-hoc Working Group on Kyoto Protocol (AWG-KP). Participants and observers now continue assessing the Cancun Agreement in different ways, depending on the perspectives taken. However, no analysis this time seems to express total frustration, as was the case with Copenhagen. The reason, perhaps, is that this time expectations were quite low, compared to the highly-charged expectation of a legally-binding agreement at Copenhagen. This time there was less pressure on mitigation issues, so there was some success in other areas including adaptation. Another positive outcome was the fact that the UNFCCC process could be

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reestablished, at least for the time being, as the universal forum for climate diplomacy.

The decision texts appear to reflect the language of the Copenhagen Accord and to build on it in few areas. The main decisions contained in the AWG-LCA text include the adoption of the Cancun Adaptation Framework, with its nine elements, establishing an Adaptation Committee, a Technology Mechanism, with a 20-member Executive Committee, again non-binding promises of US\$ 30 billion as fast-start finance and US\$ 100 billion as long-term finance for adaptation and mitigation, a new Green Climate Fund, with a 40-member Transition Committee, and few work programs including one for adaptation. Some concrete decisions have also been taken on arresting deforestation (REDD+) in developing countries. Parties have been requested to submit their views by 21 February 2011 on the composition and modalities of the Adaptation Committee and also on the elements of the Adaptation Work Program. World Bank has been chosen to work as the 'Interim Trustee' of the newly-established Fund, while the Transition Committee works out detailed procedures and modalities of functioning of the Fund as the financial mechanism of the UNFCCC.

Though there was some progress in monitoring and verification of non-binding national emission cuts through standardized self-reporting and international verification mechanisms, the most frustrating aspect of the Cancun outcome is the mitigation part of the regime, which is the ultimate solution to the problem. The AWG-LCA Text mentions the lead role in mitigation to be played by the industrial countries including the US, and agrees to keep temperature below 2°C, with a long-term goal of setting a target of reducing emissions by 2050 at COP17 in Durban. The 6-para, 2-page AWG-KP text agreed to extend KP track into the 2011 Durban meeting. Even some KP Parties this time have openly refused to assume responsibility under the 2nd commitment period of the Kyoto Protocol that begins in 2013, unless the major emitters from NA1Cs assume binding commitment for emissions reduction.

In view of the above, some questions can be raised: Why was there some success in adaptation in Cancun? Why was there no such progress in the mitigation regime? Is there any prospect at COP17 in Durban? Further, what is the prospect of delivery of pledged funding, particularly for adaptation, the utmost concern of the 'most vulnerable countries'(MVCs)? In what proportion funds are likely to be allocated between adaptation and mitigation? These are the queries the paper proposes to deal with, putting a focus on the politics over mitigation. The paper argues that a *realpolitik* approach to promoting national interests and adherence to conventional sense of sovereignty by the major polluters stand in the way of a climate regime.

Politics Over Adaptation and Its Funding

It may be recalled that the ultimate objective of the 1992 Climate Convention (Article 2) ‘to achieve stabilisation of greenhouse gas concentrations in the atmosphere’ indicates a consensus among Parties to take action for mitigation (reduction of greenhouse gas emissions). Adaptation to the impacts of climate change was then regarded as an afterthought, though by the late 1990s many of the G77 group (called the non-Annex1 countries, NA1Cs), particularly the Association of Small Island States (AOSIS) and LDC delegates pressed for more focus on adaptation. However, the Annex1 countries (A1Cs, industrial) initially resisted this attempt, perhaps understanding that a focus on adaptation would be an acknowledgment of responsibility and liability, since they were mainly responsible for global warming (Gupta, 1997; Okereke, 2008). So, there was the moral risk for them, as taking this responsibility for adaptation costs might fuel demand for solutions to other global problems, such as poverty, health, and human rights violations (Shue, 1999). Further, since global warming is a global public bad, mitigation projects in NA1Cs bring in benefits to A1Cs, but adaptation projects do not do so.

On the other hand, there was also reluctance among many actors in the NA1Cs and civil society to engage in adaptation, because of fears that it would distract from efforts to achieve an adequate mitigation framework. Adaptation as a strategy also continued to be held back by intra-G77 disunity. Based on Article 4(8) of the Convention, OPEC, led by Saudi Arabia, continued to demand compensation for the economic and social consequences of a likely reduction in oil sales. It was argued that compensation from the A1Cs for investment in diversifying their oil-dependent economies should be regarded as an adaptation strategy. This standoff was in effect holding the millions of people who are suffering from climate change impacts and in dire need of adequate support to cope with its adverse effects hostage (ECO, 05 June 2010). However, the Bali Action Plan adopted at Cop13 in 2007 broke this impasse, moving the impact of “response measures” (likely reduced demand for oil) under the pillar of mitigation (para 1bvi).

Anderson argues that “adaptation to a changing climate will be unavoidable. But it is a subject that carries a heavy ideological freight, for many people in the environmental movement suspect that any discussion of adaptation can only distract attention from the efforts to cut emissions” (Anderson, 1997). Burton (1996) suggests that any demonstration of likely success of adaptation might weaken mitigation policies. Initially, even research on adaptation was seen as substitute to mitigation (Burton, 1996). As a result of apprehension among many actors in both the North and the South, the cardinal principle in the Convention of “common but differentiated responsibility and respective capabilities” (CBDR + RC) was employed as a rationale for A1Cs to take lead on action in mitigation, but this principle was generally not discussed in terms of adaptation. This low

profile of adaptation is evident from the fact that only six of the 44 proposals for a post-Kyoto regime deal with adaptation as a policy issue (Kuik, 2008).

Thus, while there was a tendency among many actors in both the A1Cs and NA1Cs to downplay adaptation issues in the first decade of the Convention, COP7 of the UNFCCC held in Marrakech in 2001 for the first time highlighted adaptation as a major strategy to address climate change impacts. Three funds were established – the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF) under the Convention, and the Adaptation Fund (AF) under the Kyoto Protocol. This was followed by COP8 with the Delhi Declaration (which focused on development needs of the NA1Cs, and in which adaptation issues were given added impetus. One reason that this shift took place is that A1Cs were not fulfilling their promised mitigation commitments under the regime. So, some analysts argue that three factors drove the NA1Cs, particularly the AOSIS and LDCs, to shift their focus to adaptation: **first**, there was a noticeable increase of climate-related disasters in the 1990s, and a cognitive framework in which to understand them (and to assign blame for them); **second**, the culpable nations were not taking adequate action to prevent “dangerous climate change” as agreed under the Convention; and **third**, it was a more ‘winnable’ fight, as few major A1Cs were not taking actions for mitigation, or even not complying with the Kyoto commitments; so they appeared ready to give some concessions in the area of adaptation (Roberts, et al., 2011). This was evident from the agreed outcomes related to adaptation in Cancun.

However, these initiatives provided few concrete measures that lead to adequate funding or concrete action. Overall, in the Convention and the Protocol, the texts on adaptation focus on planning rather than action. The Convention uses the language, such as ‘prepare for’ (4.1.e) rather than implement, and ‘take climate change considerations ... to the extent feasible’ (4.1.f), rather than giving them priority. The Protocol says ‘strive to’ (2.3), rather than implementation policies and measures (PAMs). So, it can be argued that compared to mitigation, the legal basis of adaptation under the Convention is very weak. Also, the provisions on adaptation were dispersed across the texts. The decision of developing an Adaptation Framework this time in Cancun is expected to plug some holes in the adaptation regime. This brings us to discussing the issue of finance.

Climate Finance and Politics

For the first time in Copenhagen, a number was put in writing of what A1Cs, virtually the OECD countries, would provide NA1Cs to meet mitigation and adaptation needs: \$30 billion in “Fast Start Finance” over 2010-2012 and “scaling up” to \$100 billion a year by 2020. The language was still loose with plenty of wiggle room (Roberts et al. 2010), but for the first time there was a promise to respond to adaptation needs, particularly for the most vulnerable

countries (MVCs), in a way that seemed “balanced” with mitigation efforts. A year later in Cancun, there was unprecedented pessimism for achieving an adequate mitigation framework; so Cancun saw adaptation emerge, at least temporarily, as an issue with equal attention committed to that of mitigation. By anchoring the Copenhagen Accord into the UNFCCC and establishing a long sought-after Adaptation Framework and the Green Climate Fund, the Cancun Agreements have positioned adaptation finance as an issue that is likely to remain at center stage in the negotiations in Durban and beyond. Though few countries objected to adopting some of the text related to adaptation issues in Cancun, the Chair of COP16 the Mexican Foreign Minister ruled it out, saying that consensus does not mean unanimity. In terms of adaptation finance, behind the ambiguous wording of the Convention and Protocol, and the new language coming from the Copenhagen Accord and the text of the “Ad Hoc Working Group on Long-Term Cooperation” which was approved in the Cancun Agreements, profound conflicts lie unresolved.

Financing of the adaptation and mitigation measures is another most debated issue, with both supply and demand side connotations. Actually the financing agenda includes quite a number of sub-issues: i) whether the non-binding pledged pots are big enough to meet the challenge, ii) where the money will come from, iii) how to allocate money between adaptation and mitigation, iv) whether the money is ‘new’ and ‘additional,’ v) what should be the modalities of fund management, and vi) finally, how to allocate the available money among a huge number of G77 countries for their adaptation and mitigation efforts. This is a long list and this paper focuses on the first four queries.

Stern Review argues that inaction will cost 5 per cent to 20 per cent of global GDP, but action now will cost only 1 per cent of it (Stern, 2007). Put in different terms, for example, this equals a global average cost of about US\$ 0.02 per kilowatt hour of electricity or US\$ 0.25 per gallon of gasoline, which does not sound very big. UNFCCC estimates about US\$ 200 billion as the need to return GHG emissions to current levels in 2030. This is just less than half of 1 per cent global GDP or less than 2 per cent of the global investment (UNFCCC, 2008). For GHG mitigation, International Energy Agency’s *World Energy Outlook 2009* puts an estimate that in order to stabilize GHG concentrations at 450 ppm, energy sector in non-OECD countries needs US\$ 200 billion additional investment in clean energy and energy efficiency in 2020 including US\$ 70 billion for nationally appropriate mitigation actions (NAMAs) in NA1Cs. The World Bank in its recent World Development Report on climate change and development puts the combined needs for mitigation and adaptation per year by 2030 closer to US\$ 275 billion (World Bank, 2010). Both the Copenhagen Accord and Cancun Agreements stipulate non-binding target of mobilizing US\$ 30 billion for 2010-2012 as fast-track funding for adaptation and mitigation and US\$ 100 billion a year by 2020 as long-term finance. So, there is a huge gap even between the

non-binding pledges and the estimate costs. How does the gap in actual delivery of funding?

The track record of fund transfer to the NA1Cs is really dismal so far, either for mitigation or adaptation. During the last decade, only about US\$500 million was collected by the UN system as adaptation funding for developing countries, out of which only US\$ 65 million has been disbursed so far. The LDC Fund has disbursed only \$18 million by the end of 2009 (USCAN, March 2010). Another estimate shows that about US\$ 150 million has been disbursed under the three climate funds (Table-1). The amount of climate finance pledged during the last decade – about US\$ 20 billion is just 0.07 per cent of the \$2.8 trillion committed to turn the financial crisis, which is a ‘temporary’ crisis against climate change being a ‘permanent’ crisis. But donors have deposited only US\$ 2 billion, with disbursement reaching less than half of it (WRI, 2010). Klein (2008) estimates that current level of climate finance is two orders of magnitude smaller than the estimated needs.

For most of this decade, the road to having international agencies fund adaptation action has been painfully slow, and this created frustration among developing countries and mistrust of Northern actors. One analysis of 115,000 foreign assistance projects catalogued by the OECD through 2007 showed that almost none were for real action on climate adaptation (Roberts et al. 2008). Despite the many measures introduced in the Convention, adaptation finance remained a peripheral issue in the negotiations until quite recently. Contributions to the Marrakesh Funds remained voluntary and relatively small, as shown in Table-1.

Table 1: Status of UNFCCC Funding (in million US\$)

Funding source	Commitment	Paid	Disbursed
Least Developed Countries Fund (LDCF)	\$221.45	169.19	141.91
Special Climate Change Fund (SCCF)	147.77	110.48	97.14
AF	372.0 (estimated availability until 2012)		14.0

Source: Krishna Krishnamurthy, Climatico Group, www.climatico.org, posted on 06 December 2010.

One question appears pertinent here: where did these numbers of \$30 billion and \$100 billion come from? Back in September 2009, just about 3 months before Copenhagen, the EU actually proposed that developing countries would need around 100 billion Euro a year by 2020 for addressing climate change mitigation and adaptation. While much of this money should come from the private sector including from an expanded international carbon market, rich nations should provide public financing worth between 22 and 50 billion Euros

per year. With this move, the EU expected to put pressure on other major emitters including ones from the developing countries. But several European countries were against making such figures public so soon, lest it could play in the hands of China and India (www.neurope.eu/articles/96111.php). Perhaps this number of 100 billion Euro (US\$149 billion) has been kept the same as just the number, but about 33 per cent less in dollar terms. On the other hand, the then British Prime Minister Gordon Brown in a meeting of Commonwealth leaders in Port of Spain on November 2009 called for the creation of a US\$ 10 billion year fast start' finance, beginning from 2010. Brown said half of the proposed money should go toward adaptation and the remaining half should go for dealing with deforestation and building cleaner energy sources (Reuters, 27 November 2009). The purpose of such proposals by the EU leaders was to build momentum for an agreement in climate talks in the upcoming Copenhagen. The Head of the states and governments, who have drafted the Copenhagen Accord, perhaps built the figures of \$30 billion and \$100 billion based on the European proposals.

Further, there is the debate about public versus private funding. In mitigation, private sector has a specific role and it needs to lead in developing clean technology. But the issue is – the A1C obligations cannot be taken over by the private sector. As climate change is a major market failure, tackling it should not be entrusted to the speculative behavior of a global carbon market (Stern, 2006). Still, mobilization of alternative sources of finance can give the impression that funds are 'new' and 'additional' at least in terms of how the revenue is raised.

There is disagreement among some donors and G77 countries on whether adaptation finance should be grants or low-interest loans. The LDCs and AOSIS strongly argue that adaptation finance must be given as grants, not loans, on the understanding that it is not owed to their countries as 'aid,' but as payment from polluters of high emitting countries to those that are most vulnerable to the impacts (Oxfam International, undated). For obvious reasons, Article 4.3 of the Convention clearly stipulates that developed countries will mobilize 'new' and 'additional' funding for addressing climate change issues in the developing countries. This means that funds must be in addition to the 1970 UN commitment in which donors agreed to spend 0.7 per cent of their Gross National Income on Overseas Development Aid (ODA) (UNGA, 1970). Globally, the industrial countries have reached just less than half the commitment level till to date, with few exceptions, who have already met more than the target. Moreover, there is serious apprehension that the industrial countries will recycle the ODA towards climate finance, or past pledges are renamed or restated as commitments to FSF. For example, in January 2010 it was revealed that the UK's contribution of US\$ 2.5 billion pledged in Copenhagen as part of the EU's 7.2 billion Euro package for short-term financing is entirely from its already announced development aid budget with half of it previously allocated and at least a third of the money provided in the form of repayable loans via the World Bank (Adam, 2010). Similar is the case with German climate finance. For example, the 420

million Euro pledged by Germany mainly consists of funds already earmarked for climate protection and development cooperation (WRI, 2010), with only 70 million Euro in new funding allocated in the 2010 federal budget to fulfill the pledges made in Copenhagen. In like manner, Japan's Hatoyama Initiative resembles the previously announced Cool Earth Partnership with some new resources included in the initiative. The US is also counting previously committed funds to CIF of the World Bank as FSF (WRI, 2010). This approach undermines the credibility of financial pledges made at international level and damages the trust in the climate process (WBGU, 2010). So, the *power of the purse* is clearly lacking. But Stern (2009) argues that "to say we cannot afford it is nonsense" and he emphasizes that the returns in terms of climate security from a global danger compare very favorably with security benefits from external threats provided by defense budgets, which typically run at ten times the amount needed for reaching a climate deal (only 1 per cent of the budget). And he concludes that "the claim 'we cannot afford it' is not very different from 'we are not sufficiently bothered to deal seriously with climate change... that is simply reckless'" (p.179).

Copenhagen Accord stipulates that there would be 'balanced allocation' of funds between adaptation and mitigation. But looking at the allocation pattern, it can be said that adaptation still is regarded as the step daughter of the regime. Huq of the IIED informs that the lowest estimate for funding of adaptation stands at a mere US\$ 3 billion only out of the committed US\$ 30 billion (Huq, Guardian, 15 November 2010). This amount appears really paltry when it is required to be distributed among more than 130 G77 countries. Actually, global average funding for adaptation stands at around 11 per cent only, but EU funding for it appears somewhat more, at 37 per cent (WRI, 2010). Moreover, a significant portion of adaptation funding is likely to come from bilateral sources, which are likely to dominate in climate finance, as in ODA.

Politics in Mitigation Regime

As mentioned before, the ultimate objective of the Climate Convention is 'to achieve stabilization of greenhouse gas concentrations in the atmosphere.' But the responsibility was left to voluntary will of the Annex1 Parties. Later came the Kyoto Protocol in 1997 under the Convention, with differential targets of GHG emissions reduction. Though the US was a signatory to the Protocol under leadership of the then Vice-President Al Gore, the US Congress did not ratify it mainly because of two reasons: a) compliance with the Protocol commitment (7 per cent reduction of its GHG emissions by 2008-12 compared to 1990 level) was viewed to be too costly for America, and b) the major developing countries, such as China and India do not have binding obligations for reduction. Now the US remains the lone holdout to the Protocol among the A1Cs. So, once the Protocol came into force in early February 2005, after Russia's ratification, the annual meetings of the UNFCCC started to have two segments – the COP and the

COP/MOP. The debate now in the form of one track vs two-track process continues to stymie the negotiation process: one track under the Kyoto Protocol, with its Parties (Ad-hoc-Working Group-KP), and the other track - Ad-hoc Working Group-Long-term Cooperative Action (AWG-LCA), which emerged under the Bali Action Plan (BAP), adopted at COP-13 in 2007. The latter includes all the Convention Parties including the US. Future progress on the mitigation regime will depend on whether to merge the two tracks – AWG-LCA and the AWG-KP into one framework, or to continue the two-track approach. The latter option looks really bleak for reasons explained below.

The stalemate in the negotiations continues, not because parties deny the need for mitigation efforts, but who mitigates and how much, e.g., about burden-sharing of emissions reduction. Even the overwhelming majority of the AIC KP Parties is not likely to comply with their mitigation commitments by 2008-12. In fact, emissions of AIC countries have increased by more than 15% compared to 1990, the base year for Kyoto commitments. In 2009 with the Copenhagen Accord, a major shift took place, away from the legally binding greenhouse gas limits for most developed countries established in the Protocol, to a system of “bottom-up” emissions reduction pledges. In this bottom-up approach designed by the major emitters from NAICs, called the BASIC, and the U.S., there was no agreed upon aggregate figure for emissions reduction, nor any system to ensure that the pledges made are deep enough to meet scientifically required emissions reduction. The outcome at Cancun in the area of mitigation did not see any progress. The Centre for Science and Environment in Delhi commented: “The agreement is bad for climate change action (because) there is no global emission reduction target for 2050; nor is there a target for peaking year” (posted on 23 December 2010: www.climatico.org).

Despite the text in the Copenhagen Accord that commits to recognise “the scientific view that the increase in global temperature should be below 2 degrees celsius ($^{\circ}\text{C}$),” calculations are that the pledges condemn us to 3.9-4.0 degrees of warming (Climateinteractive.org). A UN Environmental Programme Report found that even if the Copenhagen pledges are met, the amount of greenhouse gases remaining in the atmosphere would “imply a temperature increase of between 2.5 to 5°C before the end of the century”(UNEP, 2010). Other calculations also show that voluntary pledges under the Accord, even if implemented, will raise temperature more than 3°C (Rogelj, *et al.*, 2010).

It may be recalled that as a patchwork of compromises, the Protocol had many positive aspects: a) market mechanisms, b) flexibility in GHG emission reduction regimes, c) appearance of fairness in terms of differential responsibilities between AICs and NAICs, and d) political viability in terms of participation, if not compliance. But many analysts argue that the Protocol had some negative aspects, such as: a) leading emitters from NAICs are out, b) emissions leakage to countries with non-binding commitments, c) time horizon

(5 years) for commitment is too short, and d) does not provide sufficient compliance incentives (Olmstead and Stavins, 23 October 2010).

But the Copenhagen Accord gives up the “global governance” approach of the Protocol, which sets a collective reduction goal through individual targets, but the Accord has individual targets and their simple verification. Compared to the Protocol approach, four essential elements are regarded lost: a) the Accord is not legally binding and there is no provision against non-compliance, b) there is no guarantee that individual efforts are of comparable magnitude, in fact individual efforts proposed differ widely, c) No guarantee that the sum of individual commitments is sufficient to achieve the collective goal, and d) the Accord is still a partial agreement, as not all countries signed it.

The US likened the Kyoto Protocol to the ‘Berlin Wall’ which needs to be broken for having an effective deal in mitigation (Stern, 2010). A unified framework, proposed initially by Australia at the Bangkok meeting of the UNFCCC in August 2009, is supported by the US, Japan and also by many EU countries, while the G77 opposes such an approach, as it blurs the differentiation between two groups of countries – A1Cs and NA1Cs - of the responsibilities of addressing climate change, so clearly spelt out in the Convention and the Protocol.

Article 3.1 of the Convention clearly states the cardinal principle of burden-sharing: common but differential responsibilities based on respective capability (CBDR+RC). There is already a good deal of literature that deals with historical responsibility for climate change, but the problem is that the industrial countries at large, particularly the US is not ready to share this burden. Vast majority of the literature and their methods of calculation puts major responsibility on the industrial countries (Brazil’s Proposal, 1997; Bayer, *et al*, 2007; Muller, *et al*, 2007; Garvey, 2008; Vanderheiden, 2008; Harris, 2010), while few others with different methods of calculation do not absolve many developing countries of their responsibilities to historical emissions (Weisbach, 2010). As a corollary to the CBDR, the Polluter-Pays-Principle holds that the actor who creates a mess must clean it up, or pay to do so. This principle exists in the U.S. environmental law, since Superfund puts the onus on polluting chemical industry for cleanup of toxic spills, even if the polluter did not know about the dangers of the contaminants when they were released. Responsibility even when scientific understanding is lacking, is crucial, since developed nations have a heavy “historical responsibility” for climate change, but often claim they did not understand the risks (Roberts and Parks, 2007). There is no denying that emissions in developing countries are increasing more rapidly for obvious reasons. And the commitment of the NA1Cs is conditional in the sense that it depends on transfer of finance and technology from the A1Cs (Article 4.7 of the

Convention). Until there is realistic appreciation of these facts, there is little likelihood of any progress in climate talks.

While it is true that emission reductions committed by the KP Parties now cover less than 30 per cent of global emissions, there is a need to widen binding commitments with the major NAICs. The latter in varying degrees have committed to reduce the growth of emissions, instead of assuming binding reductions. One interesting point is that carbon intensity of GDP has declined more sharply in the developing countries (28.5 per cent) than in the industrial countries (12.6 per cent) during the period 1990-2003 (Agarwala, 2008). Moreover, the share of renewable energy and investments in this sector is much higher in these countries than in their industrial counterparts. In exceptionally short time, China has become the world's largest manufacturer and user of solar and wind technology, with 25 per cent of the world's renewable power capacity (Purvis and Stevenson, 2010). However, the demand of the AICs have had moral and practical teeth, had they lived up to their commitments, e.g., the *power of example* could cajole the major NAIC emitters into an internationally-binding framework. There are many suggestions for such a scheme including provision of 'grace period' for the major emitters based on different criteria, such as responsibility, capability and potential, etc. for differentiation among NAICs (GTZ, 2004).

From an equity perspective, each and every citizen and nation-state on this planet earth should have an equal right to use the atmospheric sink. However, since the industrial revolution, AICs with about 20 per cent of global population, have already overused this global eco-sink, contributing to over two-third of historical emissions of GHG. On the other hand, emissions from developing countries are increasing right now, tending to equate with that of the industrial countries. Again, there is wide difference in per capita emissions not only between citizens of industrial and developing countries, but within these two groups of countries. Obviously, equity has been the guiding principle under the Climate Convention. However, this principle has been relegated to a backseat against efficiency and cost-effectiveness under the Kyoto Protocol, which introduced the three market-based flexible mechanisms, including the clean development mechanism (CDM) that allows emissions trading between NAICs and AICs.

An analogy of this efficiency-based GHG emission reduction can be drawn with national development strategies, devised after the emergence of the new nation-states in the formerly colonized world (Khan, 2004). Initially, global community accepted the trickle-down strategy and it was hoped that benefits from rapid economic growth at national level would trickle down to the poor in the society. Despite rapid economic growth in some countries, this did not happen. So, by the mid-1960s, the global community became convinced that unless a conscious policy of equitable distribution of development benefits is

adopted, equity cannot be ensured. Obviously, beginning with the late 1960s, the result was the adoption of such strategies, as growth with equity, basic needs approach, participatory development, and finally sustainable development. The latter embodies all its predecessor strategies, with additional inclusion of the concern of environmental sustainability.

The Bali Action Plan adopted at COP13 stipulates that nationally appropriate mitigation actions (NAMAs) in the NA1Cs should have provision of support and discussions later agreed that only supported NAMAs are to be put under international verification. There is proposal in the Copenhagen Accord that mitigation efforts by the NA1Cs initiated on their own be put to some kind of scrutiny through 'international consultation and analysis.' However, this is an issue that touches the core value of nation-states, namely, sovereignty and independence of action. Historically, becoming a party to any international agreement under the global institutions has been viewed by the US as erosive of their sovereignty. The major emitters from NA1Cs are also showing their sensitivity to national sovereignty issue and this stands as the Gordian Knot in the way.

Leadership Crisis in Climate Diplomacy

At the moment climate negotiations suffer from a leadership crisis, with the EU unable to lead any more. This was manifest in Copenhagen, and also in Cancun. EU now emits about 13 per cent of global GHGs. Despite having its good intentions, EU is not having its impact. Japan and Russia, members of the Umbrella Group (non-EU A1Cs), have indicated that they would not commit for reduction of their GHGs for the second commitment period unless major emitters from NA1Cs commit. A US participant in COP16 welcomed Japan's position, saying, "Japan is too naive. It only just figured things out 13 years after the Kyoto Conference" (Westland, 2010). But a representative of Uganda proclaimed that "Japan is the mother of the Kyoto Protocol. Do you intend to dump your own child?" (Westland, 2010).

In fact, this leadership crisis started particularly after COP13 at Bali. A new but important trend in climate diplomacy is evident since then. True to Morgenthau's 'power politics' (Morgenthau, 1978), *emission power* (few big emitters) tends to rule the game - the impacting countries from both sides of the aisle are calling the shots, and the impacted ones are relegated to sidelines. It's a big question whether the major decisions from now on are likely to take place under the UNFCCC process, or beyond, in clubs, such as the G20 or G17/Major Economies Forum, members of which emit almost 90 per cent of global emissions. For example, discussions over the political issue of climate finance are being led by the UN Secretary General's AGF, or even discussion of the technical issues, such as the REDD+ are being led by the Paris-Oslo-REDD+ Partnership. As the COP is failing to take decisions, there is a trend of 'coalition

building,' among like-minded Parties, and the outcomes are being fed into the UNFCCC process for consensus building. The UNFCCC as the truly universal forum was feared to be left in tatters. But Cancun agreements that focused on adaptation at least saved the UNFCCC process, at least for the moment.

Dynamics of Shifting Alliances

Looking at hindsight, there have been shifts in strategic alignments of major groups in climate negotiations. Since the early 1990s, the EU began to provide leadership in the process. This role could be attributed to several factors: a) rapid increase in global emissions, b) publication of the First Assessment Report of the IPCC, c) an expanding economy within the EU, d) declining emissions facilitated by radical reforms in the energy sector in the UK and Germany and switch to natural gas from coal, e) a slow population growth, and f) green NGO activism and domestic pressure. Some of these factors have been discussed in detail in a Project Report (Bang *et al*, 2005). Initially, the EU was skeptical about the Protocol's market-based mechanisms, favoring instead a climate strategy based on coordinated policies and measures. Later, it changed its position and adopted a Directive for a Pan-Europe emissions trading, which was commenced since 2005 (EC, 2003). Some analysts argue that the EU has enhanced its structural and directional leaderships, in terms of resource allocation and leading by doing, such as providing climate finance and initiating emissions trading (Muller, *et al*, 2003). Bang argues that "withdrawal of the US from the Kyoto Protocol has led to a shift of strategy in the climate regime, with a pronounced split between the EU and like-minded countries on one side and G-77/China and the USA on the other, with Russia playing an even more pivotal role than it did earlier," (Bang, *et al*., 2005). Now the EU, with an expanded membership that covers the former east European communist countries, and slow growth in many of their economies, find it difficult to maintain its leadership position, because the new and less developed members are pushing the core countries like the UK, Germany and France to back track of their leadership position. This pulls the EU back in exerting its instrumental leadership. One UN representative explained that power of the EU was falling, China replaced Japan as the leader in Asia and that G77, US and China had no intention for mitigation commitments (Westland, 2010).

During the early part of the decade, when the EU was urging the major NA1Cs to initiate measures for emissions reduction, the US aligned with the latter with some unity in views that economic growth and poverty reduction are their overriding priorities. Later, the EU position that A1Cs must take on further substantial cuts was supported by the NA1Cs, but alienated the US further (Baumert, *et al*, 2003).

USA, on the other hand, led by the then Vice President Al Gore played the key role in introducing market-based mechanisms in the Protocol, as the USA by then had enough experience in emissions trading under their Clean Air Act of

1990. But the US Senate refused to ratify. The Bush Junior Administration took a vehement anti-Kyoto position, dubbing it as a 'flawed treaty' on the grounds mentioned before. Grubb argues that "the first paradox is that the United States was, in effect, rejecting its own treaty" (Grubb, 2004). M. Z. Cutajar, the former Executive Secretary of the UNFCCC, argues that "the reluctance of the United States to be bound by multilateral disciplines, by laws other than its own, is a deep-rooted trait of their national character, which dates back to its pre-great power status. The current multilateral landscape is dotted with examples of treaties that the US either opposes, or accepts with reservations protecting its sovereignty, or supports without being formally bound." (Cutajar, 2004). Internally, the national climate strategy of early 2002 had a strong focus on bilateral support for mitigation in developing countries (US, 2004). At COP8 and COP9, the US was reported to have formed an unusual coalition with some G77 members, notably Saudi Arabia, in an attempt to undermine the G77 and EU efforts to move towards a per capita emissions approach in the post-Kyoto period (Roberts and Parks, 2007). Latest opinion polls in the US indicate climate change as the lowest priority (Stavins, 2010). This was reflected in the Senate's refusal to consider the Climate Bill in July 2010. Though Obama was a great advocate of economy-wide cap-and-trade system, America now is increasingly unreceptive to the idea, preferring instead the traditional regulatory mechanisms (Carraro, 2010).

The US tends to move back to its favored position of a long-term goal of emissions reduction putting focus on development of clean technology through bilateral and regional cooperation. Another focus of the current US policy is to push for the need to elaborate international verification and other transparency provisions of the Accord. Again, at the meeting of the Major Economies' Forum that includes the major emitters from both the worlds held in September 2010 in Washington, DC, the US top negotiator Todd Stern argued that US was not pushing for a legally-binding treaty in Cancun, but if that be the case, then China, India and other major developing countries have to be a part of such commitments (Reuters, 22 September 2010). Citing the experience of Montreal Protocol, Nigel Purvis, a US analyst, argues that the US acts first on an issue at home and then builds on that internationally. So, he justifies: "mandatory domestic action must precede in the US before any international action" (Purvis, 2004). But no mandatory domestic action for mitigation is currently in sight in the USA.

The G-77 and China

As a matter of fact, G-77 and China are a disparate group in so many ways, which subsumes several sub-groups. There are great differences in negotiating positions within, because of different problems and priorities. This diversity in approaches arises from different levels of development, access to energy and other resources and vulnerabilities from climate change: a) there are great differences within in GHG emissions - only seven NA1Cs – Brazil, China, India,

Mexico, South Korea, Saudi Arabia, and South Africa – are responsible for about three-fourths of all emissions from the NA1Cs, b) Mexico, the host of COP16, and South Korea are members of the OECD since mid-1990s, and also belong to the Environmental Integrity Group, together with Switzerland; Cyprus and Malta are also members of the EU as well, c) OPEC, particularly its Arab members, are against any carbon tax, insisting that they should be included in the list of most vulnerable countries on the pretext that climate change response measures would severely affect their economies, with declining demand for oil; obviously, Saudi role is viewed not very positive by some analysts as far as interests of a large number of G77 members (Depledge, 2008; Barnett); d) there is the radical block of Venezuela, Bolivia, Cuba, Nicaragua and Sudan, and e) there are the island nations and least developed countries which are most vulnerable. The AOSIS and LDC groups contribute least to CO₂ emissions, but global warming is a threat to their very ‘physical survival,’ so they press for decoupling the issue of vulnerability to the impacts of climate change from the impacts of response measures, and Bali Action Plan somewhat succeeded in this regard.

Despite all these differences, there was a loose semblance of some commonality within the G-77 and China, such as demand for transfer of technology and the “additional” financing for mitigation and adaptation, and capacity building needs. But this broad unity was never strong enough to bear on the A1Cs for implementing the principles of equity and fairness, because the G77 is being undercut from within, by its so-called leaders. So the AOSIS and LDCs now implicitly argue for the need of emissions reduction by the major NA1Cs. It seems the shift of diplomacy away from the UNFCCC process was engendered by a mutual understanding of major polluters of both industrial and developing countries. These groups can also buy time through procrastination. The cracks in G77 were loudly manifested in Copenhagen and also in Cancun, particularly in discussions over mitigation.

Reasons that Hold the Regime Back

The whole process appeared fundamentally driven by a tunnel vision, for achieving short-term national gains, rather than what the planet demands. The problem presents a typical case of Hardin’s “Tragedy of the Commons,” (Hardin, 1968), with the perception that the others will free-ride in a zero-sum game, where countries are predominantly wedded to promoting national interests, though they belong to many different groupings and coalitions. The problem is that these so called ‘national interests’ are defined often by vested groups, with ‘concentrated interests,’ led by fossil fuel lobby and business groups, where the ‘diffuse interests’ of the communities and citizens fail to counter. Climate change is regarded as a global public bad and therefore, carbon reduction aimed at halting climate change as a public good continues to suffer from undersupply and non participation because of several reasons:

- a) Many countries are guided by short term cost-benefit analysis and in case of carbon reduction, some countries view costs to be higher than the benefits; the US is the typical example.
- b) The mainstream economic paradigm does not promote the commitment of resources for some global public good, the benefits of which are to be derived in some distant future, because the economic model is based on the net present value which does not encourage investment for longer time-horizon. But arresting climate change is a long-time project, where costs are up-front, but benefits are both intra-and-inter-generational.
- c) The powerful conventional energy market lobby is not a supporter of clean technology for carbon reduction, because demand for fossil fuels is expected to go down. The OPEC, particularly its Arab members (led by Saudi Arabia) play a role in the negotiations neither conducive to unity within the G77 and nor for regime formation.

The great emission powers, the US and China (Duopoly or G2), the producers of almost half of global GHG emissions are applying negative powers in climate diplomacy, as they know that no climate treaty is possible without their cooperation. But there are basic differences between this two. The US is neither doing anything substantive at home, nor committing internationally, but China is doing lots of positive things at home, but not committing for binding obligations. The US' intention of putting a long-term target of 2050 in the Copenhagen Accord was not agreed by China, reportedly on the apprehension that such commitment would force China in near future to assume binding obligations. But China is coming up at supersonic speed as the leader in renewable energy. Similar is the case with India and Brazil. So, the position of major emitters from NA1Cs cannot be equated with that of the USA, which had always been negative and continues to remain so toward multilateralism, unless it is on its own terms. So the good intentions of President Obama are not likely to materialize in near future.

With so many differing 'national interests' at play, the UN process founders, with many arguing that consensus agreement as enshrined in the Convention is actually flawed and close to impossible. So many analysts argue for minilateral arrangements within small groups (Heller, 2008). But in mini-forums like G20 or G17, it is not that consensus is reached easily, as evidenced by their discussions so far, because there too issues of sovereignty or national interests do not show any sign of moderation or enlightened self-interest (Purvis and Stevenson, 2010). The irony of the fact that global environmental problems like climate change make national boundaries irrelevant, but the recent trends indicate a movement towards 'authoritarian nationalism' (Kagan, 2008). At least the major G77 countries are learning this behavior from the US. So the real problem is – unless nations give up their *realpolitik* approach to negotiating and learn to enjoy more freedom of choice in actions with surrendering some of their

‘operational’ sovereignty to multilateralism for a vital global public good (Levy et al. 1993), no substantive progress is likely to be achieved. Besides, there are examples of regime building without a hegemon, such as Landmine Treaty or the International Criminal Court, but there is as yet no example in international environmental policy for successful regime building against a hegemon, as in the case of climate change (GTZ, 2004).

Is There Any Way Out?

Looking at the constellation of forces at work, it can be argued that a legally-binding global regime in mitigation is not in sight at least in the immediate future. But climate diplomacy stands at a cross-road, from where it needs to take a direction. Using negative power of big emissions and dictating terms to negotiate are likely to deepen the stalemate, exacerbating the negative environmental and political outcomes. So, polycentric approaches are increasingly being mooted, both in research (Ostrom, 2010; Keohane and Victor, 2010) and in policy advice (E3G, 2010). Haas (2008) argues that the solution lies in a shift from an interest-based policy discourse to a norm-based discourse. Thus, only an enlightened approach to sovereignty and national interests by the major emitters, particularly by the USA, can put the rail back on track, with some power of example. Another important aspect is that funding mechanisms in the climate regime are based on the notion of responsibility and capability, unlike the charity-based ODA. So, the need of the day is to agree at a minimum level on how to apply this capability-responsibility paradigm. The like-minded coalitions of countries may work together to strengthen this new paradigm.

The following options can be considered for achieving positive outcomes:

1. Argument for replacing the consensus principle – which impedes the decision-making process, with a majority-voting of decision-making in the context of the UNFCCC. Examples of past successes in international climate policy are a pointer – the Ozone Regime – the dynamic character of decision-making process established for revision of the Montreal Protocol, which can be amended with a two-thirds majority, rather than on the basis of the consensus principle, to speed up the negotiation process. To that end, the EU should support the application of the majority principle provided for in Article 7(3) of the UNFCCC (WBGU, 2010). There is the provision of amending the Kyoto Protocol based on a three-fourth majority vote of the Parties (Article 20.3), of course as the last resort. Majority voting may sideline some, but might encourage more unity in negotiations and resolution of substantive issues. So, many including the then UK Climate Minister hinted at the need of new approaches for future negotiations. This time also in Cancun, few countries attempted to block the adoption of agreements, but the COP16

President, Mexican Foreign Minister ruled it out, arguing that consensus does not mean unanimity.

2. Building ‘green coalitions’ or regional alliances with like-minded states by the EU, which seems ready to continue its leadership position. For the purpose, the EU may come forward unilaterally with stringent targets (Purvis and Stevenson, 2010). Also alliances can be forged along thematic areas, such as forest conservation/REDD+, climate-friendly energy and infrastructure development, and establishing linkage of EU ETS with emissions trading around the world (WBGU, 2010). At a Lunch Talk at Harvard Kennedy School on 20 September 2010, Connie Hedegaard, the President of COP15 and newly-appointed EU Commissioner for Climate Action, hinted at exerting a stronger position by the EU and emphasised on achieving meaningful progress not just on fast-track funding, but on other substantive issues as well.
3. Countries that are particularly vulnerable, such as the LDCs, AOSIS and Africa Group, that number around 100 among the G77, must forge a stronger united strategy to bear upon the major emitters, particularly on the US. This large number itself is a strength and their dependence on the major emitters needs to be shown in no uncertain terms as not one-sided, but mutual. So, their strategy must be more forthright. The EU must be taken along in this great alliance to fight for their legitimate and just cause.
4. Establishing a centralised global climate finance registry or reporting mechanism to be overseen by the UNFCCC. This will facilitate a transparent, comparable, verifiable and measurable accounting of whatever pledges do come in. The provision of ‘balanced allocation’ between adaptation and mitigation, stipulated both in the Copenhagen Accord and the Cancun Agreement, needs to be defined, with at least 50 per cent of the fund going for adaptation. Also a broader international agreement on how to categorise and catalogue a project as being primarily climate or development focused needs to be worked out, so that double counting or repackaging of financial contribution by the donors can be avoided.
5. Living up to the financial pledges by the A1Cs. That will at least show the power of the purse. For the purpose, the innovative financing mechanisms which are on the table for consideration by the high level Advisory Group on Finance (AGF) should be positively explored, though its report released in November 2010 was not received warmly at COP16 (report of the AGF, 2010). Among the sources suggested, some levy on aviation and maritime transport are likely to enjoy global support. Assured financial transfer to NA1Cs will help reduce the trust deficit.

Also stronger financial support to NAMAs may induce emission reductions, particularly in India, Brazil, Mexico and South Africa.

6. For getting carbon prices right either as through a tax or trading, it is imperative that subsidy to emitters, particularly to fossil fuels, is eliminated. So, building a strong coalition is needed to bear upon the Parties to eliminate fossil fuel subsidies, as decided at the meeting of the MEF/G17 in Pittsburg in September 2009. For petroleum products alone, the subsidies amount close to 1 per cent of global GDP or some US\$ 740 billion, both in direct and indirect subsidies and foreign taxation (Coady, *et. al.*, 2010). This money may be diverted to the Adaptation Fund and a newly-created Global Climate Fund. It should be emphasized that without a firm commitment for binding reduction of GHG emissions, carbon trading is not going to pick up.
7. Removal of trade barriers to low carbon technology, and their transfer to developing countries at affordable terms. The Technology Mechanisms adopted at the Cancun Agreement can be instrumental in accelerating technology development and transfer in support of action on adaptation and mitigation.
8. There is consensus that the corollary of the CBDR is the Polluter Pays Principle (PPP) for internalisation of negative externality like carbon emission. This PPP needs to be applied for extra-territorial damage beyond the OECD, which is currently the case. The Stockholm Declaration or the Rio Declaration has provisions of compensation for such damage caused by a country beyond its border, but they are not yet applied globally. As mentioned before, under the US Superfund Act, companies are held liable for clean up the mess and compensation to victims, even if they did know the impacts apriori. So, the contradiction is that the AICs espouse the principles of market economy and even puts forward conditionality of liberalising the economies of NAICs for providing financial assistance, but they continue opting out of its global application. So, the point is - if the industrial market economies accept the basic market instruments for global application, the problem of financing for a low-carbon society is greatly solved. This option may not be supported by the major emitters from the NAICs, but solving the issue of historical responsibility with transfer of sizable resources to the NAICs may induce them to accept the PPP.
9. Finally, raising a massive civil society campaign by the 'green publics' to generate bottom-up demand for action across the world, and particularly in the US. As the politicians always look back to their constituencies for initiating action, without a sensitized public, US law-makers are not likely to move ahead with climate legislation. Also public recognition of politicians for climate leadership through some

‘economics of esteem’ may motivate them to act (Keohane and Raustiala, 2008). Besides, the nation-states are not unitary actors with a monolithic voice, and in many cases, there are precautionary publics and influential NGOs (Moravesik, 1997; Sunstein, 2003; Betsill and Corell, 2007). For example, there are a good number of initiatives at State level, particularly in California (the largest of US States), and also there are a good number of NGOs who want a global regime. For the purpose, pro-environment business needs to be cultivated very earnestly. For raising a massive movement, a good amount of resources will be necessary, because the anti-climate change lobby, led by the likes of Exxon or American Petroleum Institute, has more money. How to build a strong civil society movement in the AICs, particularly in the USA, should be a global strategy if some meaningful outcome is expected in the foreseeable future.

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