

AN INSUFFICIENT BREAKTHROUGH

SUMMARY OF THE CLIMATE SUMMIT IN DURBAN
(COP17)



Summary

The expectations towards the UN climate summit in Durban were low. The climate policy process saw itself at a crossroad. Finally it was avoided that the world – like desired by the USA – would be satisfied with an agreement based on voluntary commitments. Instead, a roadmap towards a new legally binding regime was agreed. The locomotive for this process is the 2nd commitment period of the Kyoto Protocol. Furthermore, a number of decisions operationalizing the Cancún Agreements were concluded. The big and in Durban unfinished task remains to be the increase in mitigation ambition as soon as possible, to ensure keeping global warming to below 2°C.

This briefing paper analyses and assesses key discussions and results of the climate summit in Durban and considers next steps.

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1 After the breakthrough on legal bindingness in Durban: Close the ambition and finance gap

The result of Durban has two faces. The one is the new geo-political situation: In the past six years the international climate negotiations worked on two parallel tracks. The first track dealt with the future emission reduction targets for the industrialized countries under the Kyoto Protocol. The second consisted of negotiations on mitigation commitments of the developing countries and emerging economies and the USA – i.e. those who have not been willing to commit to legally-binding commitments. Moreover, aspects of financial and technological cooperation on mitigation and adaptation have been under consideration. This separation is now history with the agreement of Durban. Thereby, also international climate diplomacy takes into account that the world has changed substantially over the last 20 years. This may also mean the „end of voluntariness“ as well as the end of the time where emerging economies did not even have to think about absolute limitation commitments. The movement of the emerging economies into this direction – in particular from India and China – changes the climate change geo-politics and also has the potential to force the USA onto the defensive.

The other face is that of the climate protection policy. The decisions from Durban mostly lack substance therein. The necessary turn-around towards limiting global warming to below 2°C has not been initiated, now we need to face 3.5 to 4°C as the more likely pathway. This means: time is pressing even more. Since with the Durban roadmap the next legally binding results on mitigation should be agreed by 2015, but only come into effect in 2020. But this would be too late for an emission peak by 2015 (or 2020 at the latest) which is indispensable for a 2°C pathway.

The next three years will be affected by the debate, whether the necessary ambition can be achieved, inside and outside the process. The decision on the first periodical Review (2013 to 2015) to some extent supports this effort. The Review shall in the first two years (2013/2014) be conducted in a technical phase to incorporate the latest findings from science (in particular the 5th Assessment Report of the IPCC) and to lead to adequate action of the Parties for more mitigation to stay below 2°C.

On the other hand, all countries agreed to initiate a work programme on ambition increase in mitigation which needs to be concretized as soon as possible. But this can only be successful when the cooperation of the small island states and the Least Developed Countries with the EU, which pushed other Parties in Durban to more ambition, jointly pushes this work programme. A necessary condition is undoubtedly that the EU raises its 20 % reduction target to 30 %.

1.1 Looking back: the climate summits from Copenhagen and Cancún

In Copenhagen (2009) the global community failed in delivering the „big bang“ which should result in a fair, ambitious and binding and science-driven international agreement on climate change. Afterwards, the international climate diplomacy had to face the question how to pick up the pieces of Copenhagen and – despite the immense loss of trust through the procedures and results of the summit – to initiate an upward spiral.

In Cancún (2010) Parties managed to fix as a decision much of what would have been possible already in Copenhagen. For the first time the goal of limiting global warming to below 2°C or even 1.5°C was agreed by the international community. At the same time, voluntary mitigation commitments were transformed into COP decisions. But it is obvious that these voluntary objectives would lead the world to 3 to 4°C temperature increase.

In Durban it was avoided that the world – like desired by the USA – would be satisfied with just voluntary mitigation commitments. A roadmap was agreed towards a legally binding regime. The locomotive for this is the second commitment period of the Kyoto Protocol. As it looks, only European countries will remain therein. But through this vanguard role the EU was in a much better negotiating position than in Copenhagen. The large group of countries particularly vulnerable towards climate change saw the EU as an ally for pushing through the legally binding nature as much as possible. Without this, the summit would likely have collapsed or ended with very disappointing results. The big emerging economies saw the EU as an important negotiating partner.

What has been achieved in Durban?

At the end of the longest COP ever, Parties agreed a comprehensive package of decisions, which can be categorized into three groups:

- Contours of the future regime: with the establishment of the new „Ad Hoc Working Group on the Durban Platform for Enhanced Action“, a process has been launched which aims to result in an overall comprehensive legally-binding agreement for all Parties („develop a protocol, another legal instrument or an agreed outcome with legal force under the UNFCCC applicable to all Parties“); this agreement shall be negotiated until 2015 and shall come into effect and be implemented from 2020;
- Extension of the Kyoto Protocol: it was decided to have a second commitment period of the Kyoto Protocol, with a so far undetermined end-date (2017 or 2020); however, some rules still need to be worked out in the course of 2012, including the specific mitigation targets that Parties will apply; it is also not yet clear which Parties will finally be part of the 2nd commitment period;
- Operationalization of the Cancún Agreements, through several operational decisions, including on institutions such as the Green Climate Fund, the Adaptation Committee, the Standing Committee on Finance, concretization of new processes such as the work programme on loss and damage, the National Adaptation Plans etc.

1.2 The way forward: strategy for the future

After the ground has been laid to close the *bindingness gap*, it is crucial to close the remaining *gigatonne gap* as well as the closely associated *climate finance gap*. This is the basis in order to agree in 2015 on the one hand the new post-2020 agreement (which should include legally binding emission reduction and limitation targets for all big emitters) and to bundle the activities and decisions for an increase in mitigation ambition for the time before 2020. This ambition increase should not only start in 2015. The required increase of the EU 20 % reduction target could start the race to more ambition.

It is foreseeable, that closing the ambition and finance gaps can not be reached just by the UNFCCC negotiations. A strategy is required, which combines action, negotiations and the building-up of alliances.

Action

- Independent from the international negotiations, all states, regions, cities, companies and civil society stakeholders are asked to show that more ambition is possible than what has been promised in Copenhagen and Cancún. For the international debate it is of particular importance whether the energy change in Germany will be successful and thereby an industrialized country will be able to show that climate-friendly development is possible. At the same time the world looks at China: will the new „low-carbon development zones“ established in the five-year-plan (from March 2011) which cover 300 million people become a success story? A path which also would show to the rest of China and other emerging economies: prosperity and energy security are only possible on a low-carbon path. The success of these two „mega experiments“ will decide to a large extent on the future speed of international climate policy.
- The EU has to implement the increase of its 20 % target to 30 % through an investment strategy (energy efficiency, renewable energies, electricity grids and storage systems), which combines the fight against the economic crisis with the climate crisis. This could become a strong pillar in any Green Growth (OECD), Green Economy (Rio20+) or Low Carbon Development Strategies (Cancún Agreement), to which Germany and the EU have already committed.

Negotiations

With regard to the ambition gap, it is of particular importance in the UNFCCC negotiations to:

1. promote a strategy for an ambition increase before 2015;
2. decide on a strategy until 2015, how to close the remaining gap until 2020;
3. agree in 2015 a legally binding agreement for the time after 2020 with the necessary ambition. If this can not happen with the USA on board – which seems likely –, this should become a plurilateral agreement;
4. the G20 has to take the necessary decisions with regard to the developed countries fulfilling their commitment to mobilize USD 100 bn climate finance by 2020 for

climate protection and adaptation in developing countries. UNFCCC could be the „landing hub“ for these decisions;

5. the square of EU, G20, UNFCCC and ICAO/IMO¹ needs to ensure that binding climate protection for international aviation and maritime transportation is implemented, in a manner that not only emissions will be limited but that also substantial revenues for international climate finance will be generated. Furthermore, a financial transaction tax needs to be pursued. A share of the revenues should be used for climate purposes.

Alliances

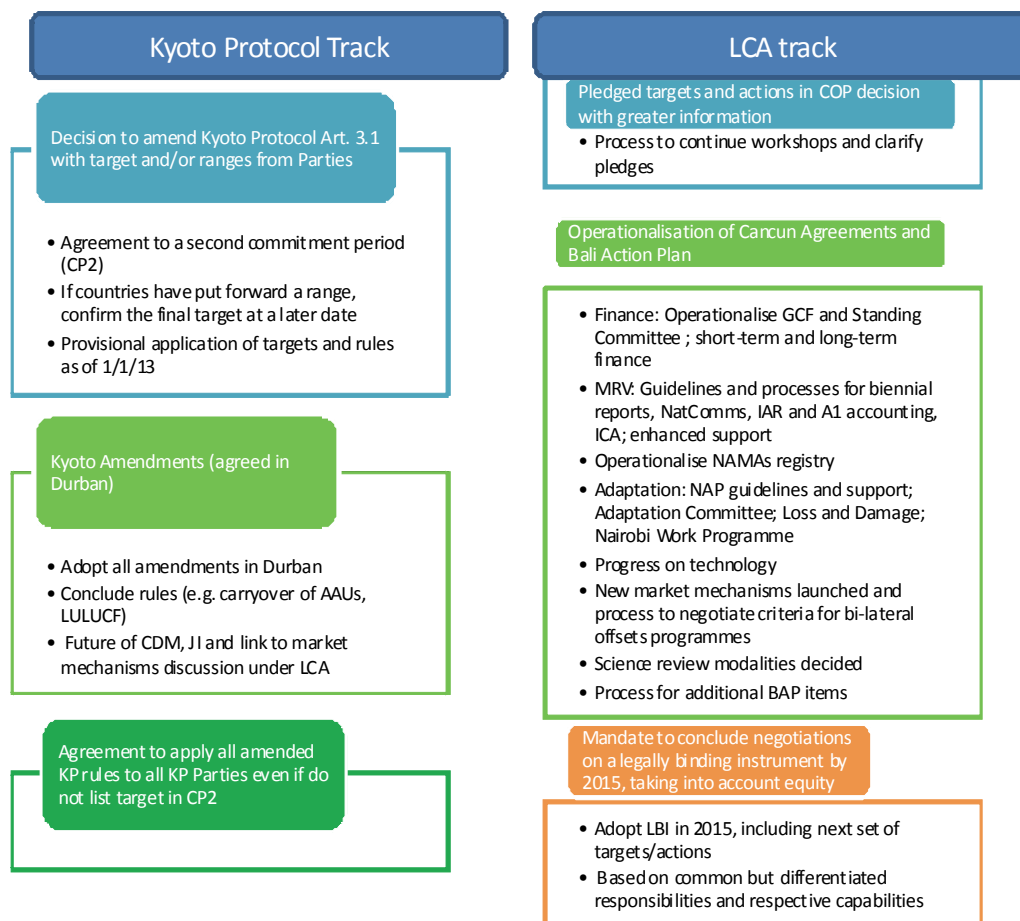
On the basis of the Durban dynamics it is important to consolidate the cooperation with progressive developing countries. The South African Renewables Initiative (SARI) – a partnership of four South African ministries with Germany, UK, Norway, Switzerland and the European Investment Bank – could become a model for an alliance with an emerging economy. Whether it will be successful to put on track an intelligent interconnection of different alliances, which would pave the way to more ambition, will to a large extent be decided over achieving the necessary ambition increase or not. Germany is well positioned to build up such a coalition of progressive countries to close the ambition gap. It is clear that without the emerging economies and the EU such an alliance will not succeed. Such a pathway also needs to be examined on a bilateral basis.

¹ ICAO: International Civil Aviation Organization; IMO: International Maritime Organization

2 Important negotiation issues in detail

The following graph provided before Durban illustrates the multiplicity of negotiation issues under the Kyoto Protocol (left) and the Convention (right). The overarching set-up of decisions on both levels delivered certain steps for most of the issues, although not sufficient progress in all issues. The following sections will discuss more in detail the negotiation results from Durban.

Figure 1: Potential milestones in the negotiations on the Kyoto Protocol and the LCA



Source: World Resources Institute 2011

2.1 The Kyoto Protocol and the perspective for a legally binding agreement

In the run up to the Durban climate summit, public attention focused on the question of the future of the Kyoto Protocol (KP). This was connected, under pressure from the EU

and the large group of most vulnerable countries, with the perspective of a legally binding agreement for all countries.

Canada's exit from the Kyoto Protocol.

A few days after Durban, Canada announced that it would formally withdraw from the Kyoto Protocol. The only industrialized country that will likely not fulfill its Kyoto target, made use of the relevant withdrawal clause under the Kyoto Protocol. The Canadian government behaved – driven by the tar sand industry – like a school kid who, afraid of failure, leaves the class. Legally, the world can do nothing against this. But it is up to the global community to drive the political price so high that Canada regrets the move and any imitators are warned away from a similar course of action. The refusal by the EU of oil from tar sands – with their terrible emissions balance – would be a first step. This is also a litmus test for European business, which has always demanded a legally binding agreement with the broadest possible participation. If a country now spurns this principle they should be barred from the EU market.

Under the Kyoto Protocol there was a basic decision that there would be a second commitment period. This was an important condition for developing and emerging countries, in order for them to agree to a negotiating mandate for a legally binding agreement under the Convention. In addition, there were other individual decisions (*inter alia* on land-use, land-use change and forestry). At the same time, the central questions remain open, which according to the decision should be finalized in 2012 before a second commitment period can really enter into force.²

- Final decision on amendments to the Kyoto Protocol, which were „taken note of“ in Durban; this includes the mitigation targets, which should be communicated to the climate secretariat by 1 May 2012, and the length of the commitment period (currently the text includes the options of 2017 and 2020 for the end of the second commitment period).
- Here there is also the question of which countries will finally submit targets for the second commitment period, including the EU, Switzerland and Norway; we will have to wait to see how the hitherto more reticent parties, like Australia, decide.
- The consequences of the carry-over of unused emissions allowances from the first commitment period, as well as the further decisions on land-use should be assessed, as these can have massive impacts on mitigation targets, i.e. their environmental integrity.
- Actual mitigation targets in the second commitment period will be decided next year. Kyoto countries should submit their targets by May, which will then be adopted in December.

² http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/awgkp_outcome.pdf

The second central negotiation track, the AWG-LCA, should be closed at the end of next year, according to the decision in Durban. There were agreements on most issues, which largely substantiated and operationalized the processes initiated in Cancún, but also, at the same time, shifted further work from the AWG-LCA to other negotiation processes within the framework of the international climate process (see table 1).

Table 1: AWG-LCA negotiation issues and mandates for other bodies

Chapter in LCA decision	Remaining tasks	Mandated body
I. shared vision	continue work on peak year and long-term goal, consider the issue of equitable access to sustainable development	AWG-LCA
II.A. mitigation developed countries	Clarify targets, incl. through workshops	AWG-LCA
	development of a common tabular format for electronic reporting of information according to the biennial reporting guidelines; methodologies for reporting financial information in biennial reporting; revision of the guidelines for the review of biennial report, national communication, including national inventory review	SBSTA
	revision of UNFCCC national communication reporting guidelines activities in IAR	SBI
II.B. mitigation developing countries	further the understanding of the diversity of mitigation actions, incl. through workshops	AWG-LCA
	prepare guidelines for domestic MRV	SBSTA
	develop and advance prototype of registry	UNFCCC Secretariat
	consideration of aspects related to ICA	SBI
II.C REDD+	consider modalities and procedures for financing results-based actions; prepare decision for COP18	AWG-LCA
II.D sectoral approaches	continue its consideration of a general framework for cooperative sectoral approaches and sector-specific actions with a view to adopting a decision on this matter at its eighteenth session	AWG-LCA
	consider issues related to agriculture, with a view to preparing decision for COP18	SBSTA
II.E various approaches	conduct a work programme to consider a framework, workshops	AWG-LCA
II.F Response measures	Forum on response measures established through COP decision	SBI/SBSTA
III. Adaptation	Modalities and procedures for the Adaptation Committee	Adaptation Committee
IV. finance	Standing Committee established, will start its work in 2012	Standing Committee

	2012 Work programme on long-term finance	AWG-LCA
V. Technology	Matters related to the Climate Technology Centre and Network, incl. recommendation of the host	SBI
	issue the call for proposals for the CTCN	UNFCCC Secretariat
VI. capacity-building	further enhance the monitoring and review of the effectiveness of capacity-building by organizing an annual in-session Durban Forum	SBI
	summary report on the Durban Forum for consideration by the Subsidiary Body for Implementation	UNFCCC Secretariat
VII. Review	Parties will continue working on the scope of the review	Unclear, likely the AWG-LCA
	Conduction of the Review	with support of the SBI and SBSTA

Source: own summary from:

http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf

The transfer of lots of further activities can make it possible to end at COP18 the AWG-LCA process, begun in Bali. The remaining questions (such as long-term mitigation targets) are mainly those of highest relevance for a new agreement (entering into force in 2020). They can be, if not finished in 2012, further developed under the Durban Platform for Enhanced Action (see below).

The finalizing of the AWG-LCA was (and is) a huge point of contention and is closely related to the negotiations on a legally binding agreement. Originally the position of most of the developing and emerging countries was that any mandate for a legally binding agreement should be, fundamentally, a continuation of the Bali Action Plan (AWG-LCA mandate). This was reflected in the legal options discussed in Durban, which crystallized during the course of the negotiations, based on the November informal workshops in Madrid.

Table 1: Legal options discussed in Durban

FULL EFFECTIVE AND SUSTAINED IMPLEMENTATION OF THE CONVENTION 1/CMP.7 and 1/CP.17					
	OPTION 1	OPTION 2a	OPTION 2b	OPTION 2c	OPTION 3
Task	Article 17 Protocol or another legally binding instrument under the Convention	Complete the Bali agreed outcome through: <ul style="list-style-type: none"> o Article 17 protocol or another legally binding instrument under the Convention 	Complete the Bali agreed outcome through: <ul style="list-style-type: none"> o a legal outcome 	Complete the Bali agreed outcome through: <ul style="list-style-type: none"> o a series of decisions 	Complete the Bali agreed outcome through a series of COP decisions, and begin a process on post-2020
Forum	New Ad-Hoc Working Group and AWG – LCA concluding at COP 17 or COP X	AWG-LCA <i>{through a refreshed mandate}</i>	AWG-LCA	AWG-LCA	AWG-LCA to Complete the Bali agreed outcome, and New Ad-Hoc Working Group for post-2020
Timeline	Adopt a protocol at: <ul style="list-style-type: none"> o COP 18 o COP 21 	Adopt a protocol at: <ul style="list-style-type: none"> o COP 18 o COP 21 	Adopt a legal outcome at: <ul style="list-style-type: none"> o COP 18 o COP 19 o COP 21 	Adopt decisions at: <ul style="list-style-type: none"> o COP 18 o COP 19 o COP 21 	[X]
CONTENT/COVERAGE					
[To be determined based on inputs including IPCC AR5, 2013-2015 Review, etc)					

[^]Source: http://unfccc.int/files/meetings/durban_nov_2011/application/pdf/9pm_table_-_indaba_options_table-8122011.pdf

The final decisions on legal form are contained in the decision on the establishment of an „Ad Hoc Working Group: Durban Platform for Enhanced Action“.³

„4. Decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall complete its work as early as possible but no later than 2015 in order to adopt this protocol, legal instrument or agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020;”

This negotiation process should be finished in 2015 with an agreement, which should enter into force in 2020 and contain legally binding targets for the period after 2020. The legal result of this passage is ultimately a combination of options 1, 2a and 2b from the table above.

The three options – Protocol, another legal instrument and an agreed outcome with legal force – and particularly the final option, were the main subject and main result of the last night negotiations in Durban.⁴

The first iteration of this legal text, which was published on Friday afternoon (9 December), still contained the formulation „legal framework applicable to all Parties“, which

³ http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_durbanplatform.pdf

⁴ See also Friedman, L.: NEGOTIATIONS: How a belligerent, sleep-deprived crowd in Durban arrived at consensus. <http://www.eenews.net/climatewire/2011/12/13/archive/?terms=How+a+belligerent%2C+sleep-deprived+crowd+in+Durban+arrived+at+consensus>

due to its weakness was utterly unacceptable for many parties. The second iteration of the text contained the options „protocol and other legal instrument applicable to all parties“, which was based on the proposal from Switzerland to mirror language of the so-called 1995 Berlin Mandate, which ultimately led to the Kyoto Protocol.⁵

The key question is therefore which legal meaning the agreed formulations have, i.e. how securely they define the goal of a legally binding agreement.

1. „legally binding agreement“ (strongest bindingness)
2. „agreed outcome with legal force“
3. „legal agreement“
4. „legal outcome applicable to all parties“.

Furthermore, LRI concludes:

„The terms „legal agreement“, or „agreed outcome with legal force“ have similar meanings that connote an agreement between two or more parties and the intention of the parties to be accountable for that agreement. Both of these phrases therefore have some „bindingness“. But the term „a legally binding agreement“ even more clearly indicates that the parties intend to be bound. If your objective is to have „bindingness“ there is probably no better to unambiguously capture such concept than with „legally binding agreement“. In order to improve on „legally binding agreement“ one would stipulate how and where disputes will be resolved and the consequences for breach of agreement.

„Legal outcome applicable to all parties“ connotes the least amount of „bindingness“ as there is no clear indication of an agreement, binding or non-binding. None of these terms alone can make an agreement binding. The substance of the agreement itself is more important than labels ascribed to them.”⁶

In the parlance of international law, a protocol is an international agreement as in 1 (above), within which international legal bindingness is determined.⁷

Therefore we can conclude, firstly, that the legally character was not unambiguously defined. However, the specific conditions, in which the agreement was reached, clearly substantiate that international legal bindingness was the context of the agreement. This is also shown by the overwhelming interpretation of the public. Therefore efforts to use the legal ambiguity as an argument should be rejected. But it is to be expected that differentiated targets according to responsibility and capacity (CBDR) will be considered the „price“ for clarity on the legal bindingness. Otherwise, it will be impossible for India and China to fully agree to legal bindingness. This is also an imperative of equity. However, in a world greatly changed, „common but differentiated responsibilities and respective capabilities“ must be interpreted differently than in the 1990s.

Secondly, the text on the Durban Platform arose in the context of a negotiated package. Given that several aspects of the second commitment period of Kyoto remain unclear,

⁵ Decision 1/CP.1

⁶ Legal Response Initiative, 2011

⁷ S. <http://en.wikipedia.org/wiki/Treaty>

including the question of which countries will participate and with which mitigation targets, it is vital that remaining questions are answered in the course of further negotiations in 2012. In particular, the EU has a special responsibility. The step towards a 30 % target would be an important signal. If this issue fails, a retreat from the negotiating goal under the Durban Platform is to be expected.

Thirdly, the agreement of legal options as a negotiation target is not a guarantee that all countries really sign and ratify the agreement, so that it is really legally binding. However, a strong political and moral pressure has naturally arisen to participate in good faith in these negotiations and to strive for a result that makes possible the achievement of the main goal of the Convention – avoiding dangerous climate change – and is supported by (almost) all countries. At the same time, it is necessary to develop a plausible scenario how the rest of the global community can bring such an agreement into force as a plurilateral treaty without the USA. It's clear that only the readiness for a credible strategy without the USA can increase the pressure in the USA – if at all.

2.2 Climate Finance

In the area of international climate financing there were many negotiation issues in Durban, in particular

- Green Climate Fund
- Long-term finance including innovative financing sources.
- Standing Committee on finance.
- Monitoring, reporting and verification of financial support and the registry.

Green Climate Fund

After the decision last year in Cancún to establish a Green Climate Fund (GCF) the so-called Transitional Committee (TC) was tasked to develop the fund this year. The result of this work was a proposal from the TC („draft governing instrument“), which defined the central elements of the GCF and transferred further tasks to the future board of the GCF. The „draft governing instrument“ was not agreed on the basis of consensus at the final meeting of the TC, because the USA and Saudi Arabia did not agree to it in this form.

In Durban, the report was presented unchanged for the agreement of the COP. The GCF was one of the four big parts of the „deal“, i.e. it was one of the central negotiation points. While all countries considered the operationalization of the GCF important, there were several aspects, which were heavily discussed during the negotiations. These were the relation of the GCF to the COP, the role of so-called „national designated authorities“, the legal status and the place/institution where the transitional secretariat should be based. Many countries expressed the wish to deal with these open questions in the framing decision, which would operationalize the fund, and not to open the „draft governing decision“ for further discussion.

Due to these open questions and the role of the GCF in the deal, it remained unclear until the last moment whether all countries would agree to the GCF in this form. After long discussions, agreement was found on the open questions, which were addressed in the framing decision. Thus the GCF could be adopted in the final night. Alongside the first finance pledges (on different aspects of the GCF) there were already countries announcing their interest to host the GCF (including Germany, Switzerland, Singapore, and South Korea). A decision on this should be decided at COP18. The first meeting of the board should take place before the end of April 2012. The transitional secretariat is now based in Bonn with the UNFCCC secretariat, with support from the Global Environment Facility.

At this meeting in Bonn, the board will have to address the tasks entrusted to it under the „draft governing instrument“, so that the GCF can become operational as quickly as possible. For this it is also necessary to fill the fund – on the one hand, with financing to cover administrative costs, and on the other, with timely funding for the first projects.

Long-term finance including innovative sources

There were many informal meetings in Durban on long-term financing, as well as on the Standing Committee (SC). Because the period of the fast start financing, whereby industrialized countries committed to raise 30 billion USD from 2010-2012 for international climate financing, is approaching its end (end of 2012), it was important for the negotiations in Durban to address the question of fulfilling the promise to mobilize 100 billion USD annually by 2020.

In this regard, a work programme for 2012 was agreed in Durban, including different workshops, through which progress with regard to the 2020 goal should be achieved. While a levy or emissions trading scheme in the maritime and air transport sectors is not explicitly contained in the work program, different reports estimating the potential of these sources should be the basis for the analysis of innovative finance sources. This could serve as a gateway for further discussions in this regard.

It is positive and important that an agreement on the work programme was achieved, after the USA in particular had long expressed reservations. However, a more concrete and ambitious work programme would have been desirable. For example, specific references to innovative finance sources would have been important. It could have also been explicitly mentioned that the work programme would lead to a decision at the next COP regarding long-term finance – including different finance options and a stepwise ramp up plan for the mobilization of resources to 2020. Therefore it is up to the concrete organization of the work programme to agree to the largest possible progress so that a decision can be taken at the next COP. The work programme will be led by two chairs, one each from industrialized and developing countries.

Standing Committee on Finance (SC)

The SC, whose establishment had been agreed in Cancún, had already been thoroughly discussed at the intermediate negotiation sessions. It should serve to better coordinate the financial mechanism of the UNFCCC.

The open question was whether the SC should report directly to the COP or to the Subsidiary Bodies. The first option would grant the SC a higher position within the different institutions. Likewise, the tasks and functions of the SC, generally described in Cancún, had to be made concrete. Concerning the operationalization of the SC, parties decided that the SC should report directly to the COP. The tasks of the SC are more advisory in nature; thus the SC should, for example, deliver recommendations or proposals for guidelines regarding different areas of the finance mechanism of the UNFCCC. The SC should now develop a work program regarding the tasks allocated to it, and present this to the COP next year.

Monitoring, Reporting and Verification of Financial Support and the Registry

MRV of financial support can be addressed both through guidelines for the biennial reports or through the registry, whose task it is to match finance offers and needs. Regarding biannual reports, relatively detailed guidelines were agreed for the information that industrialized countries will have to submit on their financial support. Interesting aspects, whose reporting would go beyond the currently required information, would be the naming of the recipient country as well as the specific project. Also with regard to the registry, specific aspects were designated on which industrialized countries should submit information. These only partially reflect those required under the biennial reports. Furthermore, industrialized countries are not obliged to make this information available, they are only invited to do so. Thus the biennial reports seem to represent more transparency than the information that can be submitted under the registry.

2.3 The international maritime and aviation sectors

The international maritime and aviation sectors are among the largest free-riders in international climate mitigation – therefore, measures must finally be taken to make them live up to their responsibilities.

This concerns:

- a) firstly, the reduction and avoidance of their emissions
- b) secondly, the possibility to address their responsibility through a significant contribution to the goal of raising 100 billion USD by 2020: they are among the most promising sources for significant new money for pressing climate financing needs.

a) Reduction and avoidance of their emissions

The reduction and avoidance of emissions from the international aviation and maritime sectors is treated under article 2.2 in the Kyoto Protocol. This article determines that the relevant UN body for aviation and maritime transport (ICAO and IMO) should address these topics.

For many years, the UN climate negotiations have dealt with the implementation of this decision under the subsidiary body SBSTA; however, they usually end without result, as the overwhelming majority of countries resist progress on this topic.

Thus it is not surprising that in 14 years no measures to reduce absolute emissions have been implemented by decisions of ICAO and IMO. No longer willing to accept this inaction, the EU has agreed and implemented legislation to include emissions from all flights taking off and landing in the EU (including international flights) in the emissions trading scheme, and therefore to limit their absolute level. Currently, this instrument is being heavily attacked, both politically and legally, by non EU Member States (e.g. the USA, China and India).

At the UN climate negotiations, international aviation and maritime transport were also dealt with under point 1biv of the Bali Action Plan (Cooperative Sectoral Approaches) – however, with little clear progress.

b) Generation of climate financing

Because of the long gridlock on emissions reductions from the international aviation and maritime sectors, since the summit in Copenhagen attention on this topic fell behind the increasingly important topic of international climate financing through these sectors.

Significant progress was achieved through the Ad Hoc Group on Climate Finance (AGF) initiated by the UN General Secretary Ban Ki-moon, which investigated possible sources of the 100 billion USD to be mobilized by 2020, and which thereby placed the international maritime and aviation sectors in a prominent position.

The G20 also took on this topic, although regrettably this was not specifically addressed in the G20 Communique from the Heads of State and Government in October 2011, although it had been pushed by the French G20 Presidency and South Africa, the host of the approaching climate summit in December.

Observers have had the impression that the chances for an agreement on climate financing from the international aviation and maritime sectors would increase, if the „no net incidence“ principle were applied (i.e. developing and emerging countries would make no net financial contribution through a reimbursement of their levy).

The negotiations in Durban

The expectations for COP17 were low with regard to this specific topic. In the subsidiary body SBSTA, there were only „conclusions by the Chair“ which welcomed the reports from ICAO and IMO.

The first draft of the concluding text under the AWG-LCA (Amalgamated Text from 3 December 2011, CRP.35, pages 33-35) addressed international the aviation and maritime sectors under three options. Option 2 included decisive language (emissions reduction and financing), which according to all expectations would not achieve consensus.

In the updated and further developed version of the LCA-text from 7.12, options 7 and 2, and in a weakened form option 3, were worthy of support. Options 5 and 6 did not address CBDR at all, and therefore could not support progress under the IMO. Options 1 and 4 were even weaker. Option 7 included a preambulatory clause (in brackets), which made clear that the aviation and maritime sectors have both significant mitigation potential as well as being potential revenue sources for climate change measures.

Regarding the principles, IMO and ICAO were specifically tasked with applying their own principle (non-discrimination) and CBDR was mentioned, albeit in direct connection with the solution of the conflict of principles through revenue redistribution in conformity with the CBDR principle.

Further, the 2°C limit were mentioned with regard to ambition and proposed as a potential goal for the revenues of the Green Climate Fund (of course in brackets).

Option 2 was somewhat more minimalist, however, regarding the connection of principles it's equally strong, because here as well CBDR is directly connected with the return flow of financial revenues back to developing countries.

However, Germanwatch suspected that something will shift in this field only when new impulses come from outside (e.g. through the G20). Unexpectedly and against the plans of AWG-LCA chair Reifsnyder, sectoral approaches, including the maritime and aviation sectors not just land use, were transferred to ministers, mainly at the initiative of Germany; the French minister took on this round. However, no further action resulted (an earlier version of the text foresaw the implementation of workshops on this topic); the result was therefore thin:

„The COP [...] agrees to continue its consideration of issues related to addressing emissions from international aviation and maritime transport.“⁸

2.4 Review

The climate summit in Durban confirmed the periodical review, agreed in Cancún (2010), of the appropriateness of the global long-term goal and progress to reach it. After conclusion of the first phase in 2013-2015, results should be reported to the COP, which – a new result in Durban: already in 2015 – should take decisions on correspondingly ambitious action. The main information source for the review will be the IPCC, with its Special Reports on Extreme Events and Renewable Energies, and the Fifth Assessment Report to be adopted in 2013/2014.

⁸ http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf, p. 14

The review process should thus bring climate science through the inclusion of new understanding back into the political negotiations. It could contribute to raising the ambition for the new legally binding agreement, entering into force in 2020, which was agreed in Durban. Thus it should contribute to an upwards spiral of global ambition, which needs to lead to ambitious climate mitigation to keep warming to below the agreed 2°C limit. The new legally binding agreement, which should be adopted by 2015 and applied to all countries, will only be a true step in this direction when if we succeed in raising ambition in the coming years.

It was expected that Durban would agree to the guidelines for an effective periodic review process. Unfortunately, this was not achieved. The decision on the scope of the review and which body should complete the review were transferred to the next climate summit in Qatar. The separate fronts on these two points hardened dramatically during the two weeks' negotiations in Durban. Primarily the EU followed the argument to limit the scope of the review in order to ensure its effectiveness. At the same time, most developing countries, especially India, demanded the expansion of the review to include the measures for the implementation of the Convention such as technology transfer, financing and capacity building. The inclusion of these measures through the consideration of different reports (National Communications and biennial reports) was insufficient for these countries. Due to their high degree of vulnerability to climate change, the Alliance of Small Island States (AOSIS) demanded that the review be limited to the 2 degrees temperature limit and its strengthening to 1.5 degrees. For AOSIS, this is the only measure of the effectiveness of the review.

Neither was a decision reached concerning the implementing body for the Review. Parties will discuss until the next climate summit whether a new body – the so called Review Expert Group – should be established, or whether existing subsidiary groups (subsidiary bodies; SBSTA and SBI) should take on the review. During the preparatory meetings in Panama in October 2011, Australia proposed the Review Expert Body. Alternatively, the SBSTA and the SBI could perform the review, which Germany and the EU prefer, as they reject the establishment of an additional subsidiary body.

These two key questions must be solved before December 2012, before the Review begins in 2013.

An agreement was reached on less contentious modalities of the review

- the principles on which the review is based;
- the contributions from science and other relevant sources;
- the organization by the UNFCCC of workshops on the individual reports of the different IPCC working groups and the synthesis report of the fifth assessment report of the IPCC;
- the periodical nature of the review with regular implementation linked to the IPCC;
- The actions of the COP on the basis of the review results in 2015.

The agreement on the action of the COP in 2015 may have been the most important progress of Durban compared with the results of Cancún. The result of the first periodic review must be a comprehensive report, much more than a technical paper, with proposals for actions for the COP, which must then be correspondingly implemented at the political level.

2.5 Shared Vision

Under „Shared Vision“ countries negotiated in Durban on the peaking year for global emissions and the global reduction target for 2050. Moreover, shared vision should deal with other agenda items, such as historical responsibility, equity, trade, human rights and low emissions societies. During the preparatory meetings for Durban, a gridlock developed, which could not be solved in Durban.

This gridlock arose primarily because it was essential for emerging countries like India to agree on an equitable division of responsibility, before global targets are agreed. Industrialized countries such as the EU (including Germany), but also highly vulnerable countries like the small island group AOSIS, demanded that the shared vision focus on the agreement of emissions goals and the „peak year“ in order to limit the danger of climate change.

Negotiations on the „peak year“ and the 2050 target should be taken up again at COP 18 in Qatar. During the preparatory negotiations in May 2012, the AWG-LCA should conduct a workshop on equity based on the proposal of the African Group. This step is to be welcomed, however, it remains doubtful whether individual workshops can lead to understanding between countries. Potentially, other bodies may have to be tasked with this question of which emissions reduction commitments the emerging and developing countries should adopt, and which parameters are appropriate as guidelines for an equitable distribution of these commitments. It should not be forgotten that most industrialized countries are far from paying back their „climate debt“.

2.6 Adaptation to Climate Change

With regards to adaptation, the expectation for Durban was to further anchor the progress embodied in the Cancún decisions. After the Adaptation Framework agreed in Cancún determined the major guidelines for adaptation to climate change in the coming years, concrete implementation decisions had to be achieved in Durban.

Operationalization of the Adaptation committee

In Cancún, the establishment of an Adaptation Committee was agreed, which should support adaptation policy within and outside the UNFCCC. In Durban, this committee was operationalized. In this regard, developing countries were granted the decision-making majority (according to the model of the Adaptation Fund of the Kyoto Protocol). The demands of developing countries to give the Adaptation Committee the mandate to more strongly direct financial mechanisms, e.g. to make more money available for adaptation, was only weakly (in the form of recommendations) reflected in the text. Part of the

decision was a work program. Inter alia, it is now necessary to develop reform proposals for the various adaptation relevant institutions under the Convention and to support newly established processes such as the long-term adaptation strategies (see below) for the Least Developed Countries.

Long-term adaptation strategies for vulnerable countries

Cancún agreed to the establishment of a process for the support of middle- and long-term adaptation planning in the least developed countries. In Durban, the development of concrete guidelines, recommendations and modalities was on the agenda. The negotiations were surprisingly difficult, in part because self-declared vulnerable countries (e.g. South American countries) wanted to receive more attention vis-à-vis the least developed countries (LDCs). Financing was a further point of contention. Although long-term financing through the Green Climate Fund is conceivable, until the fund is really operational, in particular the LDC would have wished that the GEF (Global Environment Facility) as well as the UNDP and UNEP would be more concretely directed to provide support. Furthermore, the GEF was tasked in the decision with the development of guidelines for its support for countries with the formulation of long-term adaptation plans.

Work programme for loss and damage from climate change

The problem of climate change damages (in the UNFCCC jargon, „loss and damage“) is being granted increasing weight in the negotiations, in part because climate change mitigation is advancing only slowly. With a temperature increase of 2°C, and even more so in a 4 degree world, we will not be able to adapt to all the consequences of climate change, there will necessarily be damages. Therefore, in Cancún a work programme was agreed to prepare further decisions of the parties at COP18. Durban had to initiate activities for the work programme.⁹

In general, the necessary activities were agreed in Durban, and also a concrete thematic structure for the work program was agreed (1. Analysis of damages; 2. Implementation options against climate change damages including insurance options; 3. Role of the Convention or the international community). Regarding concrete activities for next year, four workshops were agreed on point 2 (three regional and one for small island countries). The UNFCCC secretariat was tasked with writing a technical paper on slow-onset climate risks (like sea level rise) as well as a literature review of the existing studies, including case studies.

Alongside these activities, Durban succeeded in strengthening the goal of the work programme with regard to COP18 in so far as the establishment of an international mechanism on climate change damages will be considered. This has been a demand of small island states for a long time.

Further decisions and analysis

Durban took further decisions on adaptation, for example an extension of the Nairobi Work Program, which should build capacity for adaptation in developing countries. In

⁹ COP decision s.

http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_loss_damage.pdf

sum, one can say that these mainly technical adaptation issues were well addressed in Durban. However, there were no negotiations in Durban over the necessary financial support for adaptation. Therefore, the development of the green climate fund will be particularly important in coming years.

2.7 LULUCF

No exception for the forestry sector: the economic sector land-use and forestry contributes to a significant share of emissions in industrialized countries; yet the sector is neglected in climate mitigation efforts, and in part even used to offset emissions in industrialized countries. This needs to be ended, with binding and common rules for emissions reductions from the forestry and land-use sector as well as comprehensive reporting of emissions developments in this sector.

The Durban agreement on LULUCF under the Kyoto Protocol is highly problematic. Again, not all measures were taken to include emissions from this sector in emissions reduction commitments. Countries can decide themselves what will be the reference level for emissions growth and which activities of the sector they will include alongside (re-)forestation and forest use.

Each ton of CO₂ must count: such cherry-picking of which activities can be accounted for internationally must be overcome in a new agreement, otherwise, as before, only those activities in the land-use and forestry sector will be counted, which generate reduction emissions credits in the reporting period. The respective emissions developments are left out.

The new decision envisages that carbon stock changes and emissions from forestry activities must be accounted for by all Kyoto countries. This is an important improvement compared to the first commitment period. At the same time, accounting modalities – projected reference levels – were agreed which allow countries to increase emissions from the forestry sector without being punished for it. The effort to contain this trickery through emissions caps made the loophole somewhat small, but doesn't solve the problem. Moreover, wetland draining and rewetting was also included, although parties only agreed on voluntary reporting of carbon stock changes, which gives no incentive for wetland protection.

Industrialized countries should set the example: Industrialized countries should actually reduce emissions from this sector and – as for other economic sectors – report on emissions developments. Only then can they be examples for developing countries, from which one expects reductions in deforestation and transparent reporting over emissions developments under REDD+.

Negotiations in Durban showed again that industrialized countries are quite limited in their willingness to live up to this responsibility and accept appropriate reduction targets for the land-use and forestry sector. In particular, it was vulnerable countries, Tuvalu and the African Group, which raised the pressure on industrialized countries and pushed for stronger accounting rules for LULUCF.

2.8 REDDplus

A global, binding regulation of forest protection represents an essential contribution to climate and biodiversity protection, if average warming is to be held as far as possible below the critical level of 2°C. Therefore, a mechanism for the reduction of emissions from deforestation and forest degradation (REDDplus, or in UNFCCC jargon: Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of carbon stocks in developing countries), in order to offer an economic incentive for rainforest countries to voluntarily reduce their emissions from deforestation and forest degradation. The 2010 climate summit in Cancún agreed to a first framework package on rainforest protection, which contained a general understanding of the principles and implementation of REDD+, its incentives and commitments for developing and industrialized countries. However, the text left open the concrete organization of 1) financing; 2) the inclusion of criteria on the protection of biodiversity and human rights; 3) methodological and technical rules for the accounting of CO₂ reductions; 4) measurement, reporting, and verification processes, as well as 5) formation of a step-wise plan for the reduction of international drivers of deforestation. Negotiations in Durban were supposed to achieve agreement on these questions.

Binding rules for all: Building on the REDD+ framework agreed in Cancún, the task for Durban was to agree on binding rules, so that REDD+ activities can deliver their greatest possible potential for climate mitigation, poverty reduction and biodiversity protection. The goal was therefore to agree on high-level, common rules to ensure the environmental integrity and long-term effective contribution to climate mitigation.

Negotiations were conducted in two working groups: 1) in the technical working group (SBSTA) on modalities and guidelines for safeguards; measuring and reporting of results, as well as on reference levels, against which changes should be demonstrated; and 2) in the group on long-term financing and financial support. Both groups developed negotiating text, which were adopted in the final formal negotiations.¹⁰

The agreements under SBSTA represent, against expectations, no further guidance and rules to ensure environmental integrity or the protection of human rights, which would go beyond the decisions reached in Cancún. Thereby, the text remained below the expectations of many countries and the critical civil society, and doesn't offer implementing countries and organizations any further assistance. The decision remains vague and un-concrete, and leaves therefore room for interpretation. In particular, the decision on safeguards is very weak: countries can decide from when they will report on safeguards, and which information they will provide. The decision that countries should provide only a summary of the information compiled on safeguards – instead of a standardized and formal report to the UNFCCC – is a step back from Cancún. The decision also contains modalities on the development of reference levels, which should be transparently expressed in tons of CO₂eq. However, the decision lacks a directive to the IPCC to develop compa-

¹⁰ S. COP decisions at

http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_safeguards.pdf and
http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf, section IIC,

rable and science-based methods for the definition of reference levels. In addition, parties were not able to agree that reference levels should be based on historical data, so that REDDplus delivers a real contribution to the reduction of greenhouse gases.

Securing financing: In order to comprehensively and globally implement rain forest protection measures as a long-term contribution to climate protection, it was a further goal in Durban to agree on how to secure financing and on a work plan for 2012 on how and when the global community can mobilize the necessary sums.

The discussions on long-term financing for REDDplus were one of the most contentious points of the REDDplus negotiations. Because of the multiple responsibilities of many negotiators, a text was only begun on Tuesday of the second week. The decision text linked the financial support for REDDplus plans for results-based payments with the agreed safeguards and reporting modalities, thus erecting conditionalities to ensure the environmental integrity and human rights protections. However, the task set forth in Cancún to assess different financing options was only fulfilled in a limited way. The decision lists different options for REDDplus financing (public, private, bilateral, multilateral, market-based and non-market based), without giving any preference or assessment. To make this more specific and adopt concrete recommendations, a new task on the assessment of different financing options as well as country submissions and a workshop were agreed.

Reducing the causes of deforestation: The welfare of the current (industrialized) society is significantly based on developments through deforestation and the (over) use of natural resources. If international agreements on the reduction of deforestation are really to be effective, it is necessary to initiate a great transformation in the current welfare model to be based not on deforestation and over exploitation, but rather on forest protection and the sustainable use of natural resources.

Drivers of deforestation were not addressed in the Durban negotiations and are therefore not to be found in the agreements. In the next 12 months, negotiators under the climate talks should agree to a list of the most important international drivers of deforestation in tropical countries. In consequence, strategies should be developed on when and how these points could be addressed in the context of the UNFCCC or other bodies.

2.9 Monitoring, reporting and verification (MRV)

Monitoring, reporting and verification (MRV) is a central aspect of the international climate regime. Without detailed knowledge on actual emissions and their development, as well as target setting and mitigation measures in all countries, global climate mitigation can hardly be managed. A robust and coherent system for monitoring, reporting and verification, with clear guidelines for recording and assessing progress, is a fundamental condition for the comparability and assessment of emissions developments. Only then can we assess whether target agreed in Cancún to keep warming below 2°C can be reached. The MRV system should help countries to assess the success of their climate mitigation instruments and to identify meaningful measures for climate mitigation. The process should also aim to improve the information exchange on effective climate mitigation measures

and thus support the mutual learning process. The reporting and monitoring of financial support of mitigation measures is likewise part of MRV (see chapter 2.2). A common format for the reporting can thereby make an important contribution to the improvement of the transparency, comparability and comprehensiveness. The consideration and integration of safeguards and the associated monitoring and information processes in REDD+ (see chapter 2.8) is an important part of the development and implementation of MRV.

A robust and coherent system for MRV can be decisive to build trust between states, ensure the environmental integrity and thereby contribute to a long-term and effective global mitigation of climate change.

Within the UN framework convention (article 4.1 and 12), Parties are already obliged – Annex 1 and non Annex 1 have hereby different obligations – to submit greenhouse gas inventories and national reports. In the Bali Action Plan (COP13) all states agreed to improve the reporting, which was made more specific in Cancún at COP16.

In Cancún parties agreed the establishment of biennial reports on national progress in climate mitigation for Annex 1 Parties. These reports should contain data on the emissions reductions achieved; information on mitigation measures for the achievement of mitigation goals; information on emissions developments, as well as information support in the areas of financing, technology, and capacity-building for non-Annex 1 countries. Furthermore, it was decided to further develop the yearly greenhouse gas emissions inventories as well as quadrennial national communications and guidelines for the assessment of these national communications. Moreover, a process for the international assessment and review of Annex 1 emissions will be established. Industrialized countries should develop low-carbon development strategies, which should set out the transition to a low-carbon economy.

Since Cancún, non-Annex 1 countries are likely required to submit quadrennial national communications and biennial reports. Annex 1 countries have to provide financing for these reports. The biennial reports should include *inter alia* the more recent emissions inventory and information on mitigation measures, financial needs and financial support received. Biennial reports of non-Annex 1 countries should be subject to international consultation and analysis (ICA) with experts and countries representatives under the leadership of the SBI.

These agreements on MRV are important steps in the right direction towards greater accountability and assessment of emissions developments. Their effectiveness and successful implementation of depend on the further development and operationalization of individual elements of the MRV system.

Among the central milestones of the negotiations on MRV are the following aspects:

1. Common and detailed guidelines on the contents, accountability and timeframe for reporting requirements for all countries.
2. Modalities and guidelines for processes on international assessment and review and international consultation and analysis
3. Procedural transparency and sufficient stakeholder transparency in the MRV system.

On 1), Parties did not agree to all the desirable common, detailed and binding guidelines on the contents, accountability and timeframe for the reporting requirements. The guidelines on biennial reports both for Annex 1 and non-Annex 1 are not sufficiently detailed to capture all the emissions, and in particular the ambitions gap. The timing and coordination of the reporting formats was also not sufficiently clarified. In Durban it was determined that industrialized countries will submit their first biennial report to the UNFCCC secretariat by January 1 2014. Developing and emerging countries should do this by December 2014.

In order to ensure that the results of these reports and their discussion under IAR and ICA can be appropriately included in the Review process from 2013-2015, a more ambitious timeframe would have been desirable. In particular, the late timing of developing country reports is problematic, as the ICA process will only begin half a year later, leaving little time in 2015 to include results, which will be highly relevant for the negotiations on a new legally binding agreement.

On 2), the IAR purpose should serve the purpose of improving the assessment of policies and emissions reductions under the Convention. The formulation of the specific objectives of the IAR process, such as ensuring the consistency, comparability and transparency, was not anchored in the text. And the goal of linking the IAR process to raising warnings of undesirable developments and signs of non-compliance with emissions reduction commitments was only fulfilled in a limited way in the text.

In the development of modalities and guidelines for the ICA process, transparency and participation came second to national sovereignty. The contents and guidelines are very vague and weakly formulated, and safeguards for REDD+ are not included. ICA reports should only be made public after consultation with countries. Comments are not foreseen in the technical review process. In the next years, improvements must be achieved in this regard.

On 3), a participatory process including civil society would not only improve transparency but also continually contribute to an improvement of the MRV process. In this regard, written submissions must be possible in the whole process and the individual bodies and subsidiary bodies, and free access to all information and reports for assessment by the civil society must be provided. In the Durban package, participation in the MRV process fell by the wayside. This needs to be improved in coming years.

2.10 CCS in the CDM

For Germanwatch, the CDM (Clean Development Mechanism) is the wrong mechanism to develop carbon capture and storage. After the agreement reached in Durban, the biggest danger could be that enhanced oil recovery (EOR) would not be excluded as a technology under the CDM. Thus it remains the task of the CDM executive board to ensure the environmental integrity in the case that an EOR project is submitted and accepted by the board.

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