

Post Durban Climate Negotiations: Equity Without Justice?

Ahsan Uddin Ahmed*

Climate change which is accelerated and caused predominantly by anthropogenic reasons has been tagged as the worst threat that the mankind has ever faced. By 2007, the Intergovernmental Panel on Climate Change (IPCC) has published four Assessment Reports, the latest of which bears ample evidence that the climate system has shown discernable changes to cause extreme weather related disasters, crop loss and subsequent food insecurity, increase in costs for the rehabilitation of the direct sufferers, and severe implications for the poor and the disadvantaged, including women in areas affected by the phenomena. For its scientific clarity, depth and resolve and its ability to draw decision making focus to respond to the challenge with urgency, the scientific body has been conferred with Nobel Peace Prize in 2007.

The global community, represented by responsible statesmen from over 190 countries, met in Bali and decided to agree on a Bali Action Plan (BAP), which delivered a Bali Road Map. Under the Bali process the leaders agreed to reach a binding agreement by the year 2009, following a thorough negotiation, taking BAP as the initial step to a concerted global effort under the UN Framework Convention on Climate Change (UNFCCC).

The Bali process however could not deliver any agreed outcome, despite the scientifically validated urgency to respond against processes that might aggravate accumulation of heat trapping gases in the atmosphere and for firm steps towards reducing vulnerability to climate driven phenomena. Instead, the process of negotiation continued beyond Copenhagen in 2009, when the largest gathering of heads of states of about 119 countries and other leaders had failed to sign a fair and just deal on climate jinx.

An anticipated fair and just deal envisaged the following:

- A shared vision which would enable the countries to arrest the rise in temperature within 2°C by the year 2100, and as science dictates, further efforts would be made to limit the increase below 1.5°C so that the planet gets a second chance to help survive the humanity. The envisaged limit of emission of green house gases (GHG) was set to be 80 to 90 per cent with respect to 1990 levels of emissions by 2050 in annex-1 countries to UNFCCC. For this to be realized, the science also urged for an early peaking of the emission of GHGs no later than 2015.
- A short term emission reduction goal of at least 40 per cent with respect to 1990 levels by 2020 was discussed under the ‘mitigation’ commitment of BAP.
- The requirements for adaptation to ‘already committed climate change’ have been discussed under the ‘adaptation’ commitment of the BAP.
- Technology development, transfer (for both mitigation and adaptation) and capacity building (in developing countries) modalities have been discussed. And, finally,
- Financial requirements to commit to the above and implementation of the needful has been discussed under ‘finance’ stream of the negotiation.

The negotiation could not live upto its potential and could not deliver the global goods in Copenhagen, the Summit vaguely agreed[†] to (a) respect the first and overriding priorities of the

* Former Convener, Steering Group, Campaign for Sustainable Rural Livelihoods (CSRL) Bangladesh

developing countries towards achieving social and economic development and poverty eradication so that a later timeline for peaking may be applicable for such countries, (b) commit to a economy-wide emission reduction in Annex-1 country parties (A1CP), (c) provide ‘a fast track financing’ through a fund of about 30B\$ per annum upto 2012 (i.e., 3 years starting from 2009) and a “Green Climate Fund’ of about 100B\$ per annum starting from 2020, and (d) a commitment that would evaluate early actions till 2015 and then recommend firm steps to achieve the 1.5°C target towards saving the planet.

The post Bali negotiation rounds simultaneous provided occasional glimmers of hope and deep dissatisfactions regarding tendency of the major players, those of whom ‘kept the humanity hostage’ and traded the well being of the mother earth for the current interests of their own countries. The agreed positions have been largely disregarded, principles have been misrepresented and mis-interpreted, definitions have been twisted at will, and the scientific vigour has been water downed by applying political shrewdness.

The USA did not ratify the KP, thereby avoided its responsibility to reduce its emissions early. The AICPs tried their best to avoid historical responsibility to curb respective emissions and looked for opportunities to commit to much lower emission reduction targets by deliberately mis-interpreting baseline emissions. Although 1990 has been considered as the baseline year with respect to which emissions would be reduced, Japan and USA repeatedly attempted to redefine the baseline year throughout the course of the negotiations since Bali (i.e., COP13).

While the AICPs reiterated their willingness to assist the developing country parties (non-Annex-1 Country Parties, NA1CPs), there was hardly any money available to implement NAPA[‡] of the Least Developed Countries (LDC). The A1CPs did not provide the pledged 30B\$/yr fast track finance as they had promised in 2009. Instead, many Developed Country Parties summed up all the ODAs in the previous years under the accounts of fast track financing, from an era much earlier than the agreement of the BAP. ‘Early’ as well as ‘new and additional’ financing, as it has been enshrined in the UNFCCC, therefore never came along, till now.

Advancement in resolving financing issues has slowed down due to differences in opinion regarding public financing and bringing private financing under the ‘polluters pay principle’ (PPP). Meanwhile, taking advantage of no real financing for early adaptation in most vulnerable countries (MVC), a new adaptation financing business has been launched – under the able leadership of the World Bank – in the name of Climate Investment Financing (CIF), which paved the way to finance adaptation through credits from multilateral banks under the PPCR programme (since 2008). A good number of countries found no choice but to accept loan to finance adaptation in a desperate bid to reduce people’s vulnerability to climate induced adverse effects. Alternately, countries such as Bangladesh, with a tag of the top MVC on earth, has been depriving its development budget just to create increased provisions for social safety net (SSN) programme, which enabled the poor to sustain livelihoods following successive climate induced extreme events.

The Kyoto Protocol (KP), signed as a legally binding agreement in 1997 to arrest GHG emissions, has been facing termination of the ‘first commitment period’ in 2012. It asked for mitigation of 5.2 per cent emissions with respect to 1990 levels between 2008 and 2012 by the A1CPs. Since the erstwhile largest emitter USA did not ratify the KP, the other committed

[†] It was a paper which was circulated, which by no means was endorsed by the COP15. The Copenhagen Accord therefore does not have the status of a formal decision which is generally passed by the COP.

[‡] The National Adaptation Programme for Action (NAPA) was agreed to be an instrument to reduce vulnerability of LDCs where ‘immediate and urgent actions’ were needed.

N1CPs argued not to continue with KP in order to avoid their responsibility to reduce GHG emissions. When the negotiated regime could not fully cease the continuation of KP, major emitters which are still 'Party to KP' such as Canada, Japan and Russia have decided to pull out of KP unilaterally. Following Durban Conference, the KP has become a crippled legal instrument without teeth to make a dent on global level emission, let alone facilitating achievement of the 1.5°C target.

Moreover, unilateral withdrawal from the KP and the inability of the UN to negate such unlawful withdrawal from a major multi-lateral treaty under the UN just has given the right precedence for any state to ignore any future global agreement – be it a binding treaty. Under such a fragile multi-lateral regime, even though the KP survived towards continuation to its second commitment period, there is no guarantee that the future negotiated regime will be able to deliver before being withdrawn by a host of Parties who would like to avoid responsibility. By sacrificing global democratic norms, the climate negotiations under the UNFCCC has set up a precedence of accepting right of the mighty Parties. The current fragile state of multi-lateral agreements is good enough to conclude that the multi-lateralism is in crisis. The world that we know is no way near to practice equity – even under the UN-led multi-lateral system!

It was agreed in Bali that all countries subscribing the UNFCCC must come to a legally binding agreement by 2009. To delay the process and to avoid quick actions taken at home, some countries conspired to push the reset button on the BAP. In Durban (COP 17), a forced consensus has been achieved on the weekend following the stipulated timeframe of the conference, which assures global community to (freshly) begin negotiation to come to an agreement by 2015, only to ensure actions from 2020. Ensuring that there would be 9 more years of non-action in both historical culprits (the A1CPs) and new culprits who are destined to etch new emission history (i.e., the BASIC), the planet is on course to a disastrous 3.5°C warmer future by 2100.

Many a times throughout the course of negotiations, the A1CPs and BASIC Parties argued for urgent collective actions so that the LDCs, the Small Island Developing States (SIDS), and African vulnerable countries can still adapt to the changes forced by GHG emissions. At the end of COP17 in Durban, they advocated for a new timetable to discuss and ensured that real action to curb emissions and facilitate adaptation would not begin in 9 subsequent years. The planet and the human race found a new meaning of urgency, through a collectively forged decision, instead of urgent collective actions.

The KP in its death bed has as little a coverage as 12 per cent of global GHG load, the current level of commitment under it is much less than the annual growth of both the A1CPs and also the newly industrialized developing countries (China, Brazil, South Africa, and India, the BASIC). How then the interests of the planet earth be protected? The coveted goal to ensure a 1.5°C goal appears a farce when the science warns about at least 3.5°C warming by the end of this century. The future of the species *homo sapience* is rather bleak.

As a tactic to delay urgent and immediate actions to address mitigation – the root cause of global warming, the A1CPs started a blame game. USA initiated the unholy game and had been keeping the negotiation hostage by urging upon full binding participation of, at least, large emitting developing countries (i.e., the BASIC) in global mitigation efforts. The claim was unjust, as the developing country parties had not been contributing much to the historical global GHG load into the atmosphere. Of course, the USA-led claim had been duly nullified by the BASIC countries. However, when China's total emission per annum surpassed that of the USA and its per capita GHG emission hovered around the average per capita emission of Sweden or

Switzerland (5.3 tonnes/capita/year), the role of China and the likes has raised a few eyebrows amongst a large number of MVCs.

It became evident from the Bali Climate Conference in 2007 that the newly emerging economies, despite their huge growth in net GHG emissions in recent years, did not want to take urgent actions in the name of ensuring growth first, even if that causes unfair consequences on other developing countries belonging to their own group – the group of ‘G77+China’. Despite the commitment to one of the principles of UNFCCC “... common but differentiated responsibility and respective capabilities” (CBDRRC), these newly industrialized developing nations tend to hid behind G77+China, mis-interpreted the first part of the coveted principle as “... common but differentiated responsibility ...” (i.e., CBDR) and having insignificant historical responsibility to the build up of GHGs in the atmosphere, denied any shared commitment on mitigation on the basis of “... respective capabilities”.

The science driven urgency, the relentless pressure from the USA-led ‘progress-blocking A1CP lobby’, and the MVCs all have pinpointed the not-so-uttered part of the CBDRRC, the issues concerning “... respective capabilities” of the BASIC CPs. With much higher growth than most of the NA1CPs, the BASIC should have much improved capabilities to take part in the full realization of the CBDRRC principle, rather than hiding behind the G77+China to avoid any early action on mitigation.

The UNFCCC was chartered during 1990-92 timeline, negotiated through the Inter-governmental Negotiation Committees (INCs). The BASIC CPs have not acknowledged that the history of emissions never had stopped following the drafting of the UNFCCC in 1990. To the atmosphere, historical emission means emissions in the past and that of the current time. In the new history of emissions, all the countries including the BASIC are Parties. A later emission in history does not provide justification for a country not to act now and keep emitting unabatedly – that too at the expense of deaths and destructions in a number of LDCs, SIDS and African MVCs. At least the responsibility of post-1990 share of emissions could have been accepted under CBDRRC. The equity aspect of the principle in UNFCCC was given emphasis, however at the cost of ‘justice’ to the most vulnerable living in LDCs, SIDS and Africa.

The BASIC CPs kept on pushing the ‘growth first’ agenda in the negotiations and kept aloof from committing to any quick actions. Meanwhile, they took full advantage of the financial mechanisms under the KP and benefited from “Clean development Mechanism (CDM)”. Recognizing the technical death of the KP, when they realized that the CDM financing potentials are no longer lucrative, they conspired with the large emitters such as the USA and Japan to delay the negotiation process by purchasing time till 2020, ensured gains through bilateral energy development programmes and thereby to delay actions.

The CBDR shield has been utilized many a times in the negotiations by the BASIC, often in the formal submissions of G77&China to justify ‘no action’ on to the parts of the developing countries (i.e., NA1CPs) until they become ‘developed’, as the climate culprit Annex-1 parties. The CBDRRC is just one part of the UNFCCC, which sets to save the mother earth from catastrophic consequences as the objective. CBDRRC has been mentioned as one of the principles to achieve the objective. Unfortunately, the principle has been deliberately divided and mis-interpreted with a notion to justify delayed action.

Saving planet earth, as the science dictates, requires immediate and urgent actions, not a further delay by pushing a reset button. The A1CPs must take the major responsibility, as enshrined in the UNFCCC. However, all other CPs have their fair share in the joint mission to overcome the challenge.

The tactics to waste time and maintain the brutally passive business-as-usual practices, both in the A1CPs and BASIC have initially fooled the rest of the developing countries, most of which are LDCs and SIDS - the countries which have the least historical (emission) responsibility and perhaps amongst the highest vulnerability to climate change. They have been bullied by the larger BASIC countries in the G77&China group in the negotiations, used a shield not to commit to 'all party action' based on CBDRRC, and faced with much increased vulnerability under post-Durban climate regime. These countries, many of which top the list of Most Vulnerable Countries (MVCs), have rudely awakened by the BASIC proposition in the Copenhagen round of negotiation (COP15). They suddenly realized that they have been betrayed by the bullying big brothers.

Acknowledging the major reasons for the prevailing 'helplessness' and the ineffectiveness of the G77&China group, a number of MVCs including LDCs, SIDS and African countries have been trying to form an alternative platform called "Climate Vulnerable Forum" (CVF) since 2009. In three successive meetings, the CVF analyzed the situation and called for an alternate negotiating platform – devoid of the BASIC. Negligence to serve the interests of the humanity and that of the affected people mostly in the MVCs has provided ample reasons to protest the current impasse and call for an 'all inclusive action' immediately.

By not taking part in KP and by unilaterally withdrawing from KP, large emitters such as USA, Japan and Canada have also ignored international equity concerns and violated CBDRRC. The concerns of BASIC to uphold 'equity' in the negotiations have now been questioned. By hiding behind CBDR and not respecting 'respective capabilities' part of the CBDRRC principle, the BASIC tried to freeze equity on the basis of 1990 levels of emissions. Life did not stop following 1990. By freezing equity concerns international equity (or intra-generational equity) has been nullified. While the adverse effects of early climate change has already been devastating lives and livelihoods of many in a number of MVCs, the BASIC is promoting 'growth first' development model and thereby denying any legally binding action.

By continuing to emit now just to maintain carbon-intensive lifestyles, the large emitters in the north and the rich in the BASIC have ensured that the future implications will be too harsh for the coming generations. All these countries have endorsed the IPCC Assessment Reports, and yet they have denied early actions to curb emissions deep enough to force early peaking. Inter-generation equity concerns have been neglected as they have been suggesting to continue to emit by themselves and asking the future generations to clean up the mess created by the current generation.

The perverted interpretation of equity has also largely ignored the well being of plant and animal diversity – as living beings. The well being of the planet earth, the only abode for the *homo sapiens* and other living species and their support system altogether, has also been facing non-equitable treatment due to continued denial of any early action against the root cause of climate change.

The Durban process allowed yet another breather to the major emitters from both north and south, an opportunity to holidaying nine long years without taking any action! There is no guaranty that the process in future will culminate into a legally binding regime without being abandoned by muscle-flexing Parties such as the cases of Canada and Japan for the KP. The future of the planet earth and that of the humanity is rather bleak. The ever increasing mitigation gap will only be widened, while the adaptation financing gap will be escalated so much that many nations will perhaps be abandoned. The conspiracy has turned a science-driven urgency into a lukewarm time wasting ploy.

The MVCs must not accept this result coming through a grueling negotiation. The COP process has ensured an unacceptable delay having risks of counteracting the objectives of the UNFCCC. The equity discourse has resulted in a fragmented equity, without the element of justice in its potential outcomes. This must not be left unchallenged.

In a post-Durban negotiated climate regime one may envisage the following in any conscientious bid to save the planet earth.

- The ambition for emission reduction in the KP must be increased during its second commitment period, based on scientific urgency.
- Similarly, the overall ambition to curb emissions must be reset based on the new science through the Fifth IPCC Assessment Report (AR5). That should be the yardstick to finalize binding commitments, so that the coveted goal of achieving 1.5°C by 2100 becomes a reality.
- There should be binding commitment for the gap periods, between 2017 and 2020, which should be brought under MRV principles, nullifying all double-counting possibilities.
- Financing should also be ambitious. The cost of non-action should be added to the amounts committed under Green Climate Fund, and apportioned on the basis of relative responsibilities to the atmospheric GHG load during 1990 and 2020.
- Financing sources should be explored involving public as well as private sectors. Global governance on financing must be enhanced at both source and recipient ends so that MRV principle may be applied and double counting may be avoided.
- All country parties must act simultaneously, under a legally binding treaty, where full realization of the CBDRRC principle is ensured in totality.

.....
This paper is the zero order draft. The author invites comments and suggestions from the readers so that this becomes an advocacy tool. Please contact: <absan.ua@gmail.com>