2013 Warsaw Climate Change Conference:
mobilizing climate finance mechanisms

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International climate change negotiations concluded last month in Warsaw at the 19th Conference of the Parties (COP 19) to the United Nations Framework Convention on Climate Change (UNFCCC). DLA Piper lawyers from Europe and the United States participated in the negotiations, representing the country of Georgia at the climate conference. This is their on-the-ground report about the negotiations.

At Warsaw, the Parties agreed to a pathway for countries to submit national plans to reduce greenhouse gas (GHG) emissions by the first quarter of 2015, so as to facilitate the creation of a new universal climate change agreement scheduled for adoption in December 2015. Measures were taken to mobilize the distribution of climate finance to the developing world, and developed countries agreed to set increasing levels of aid up to a previously established US$100 billion annual target by 2020.

The Conference was most notable for creating the Warsaw Framework for REDD+ Finance, a series of decisions guiding measures to compensate and track developing countries’ efforts to “Reduce Emissions from Deforestation and Forest Degradation” (REDD+). The Parties also created a mechanism to provide technical assistance (and possibly financial aid) to help vulnerable populations cope with loss and damage caused by extreme weather events and slow onset events such as rising sea levels.

The Warsaw Conference marks an important step in mobilizing climate finance to the developing world and creating institutions capable of supporting the secure distribution of such funds to achieve measurable and verifiable GHG reductions. Principally, the Green Climate Fund (GCF) – the primary financing mechanism under the UNFCCC – will soon be operational and will be the largest global distributor of climate finance from public, private, bilateral, multilateral and other sources. These actors will soon be able to use the GCF to meet their climate obligations under international, domestic and regional climate regulatory schemes by investing in climate mitigation and adaptation measures in the developing world. Likewise, the development of a REDD+ framework will now allow countries and companies another means to meet their climate obligations by investing in prevention-of-deforestation projects, while also supporting local communities and biological diversity.

BEHIND THE CONFERENCE: HOPE FOR A UNIVERSAL AGREEMENT

In 1992, 192 nations signed the United Nations Framework Convention on Climate Change (UNFCCC), pledging to consider cooperative measures to limit average global temperature increases and the resulting climate change and to cope with its inevitable impacts. Five years later, the Parties to the UNFCCC adopted the Kyoto Protocol to the UNFCCC, which legally bound developed nations to reduce their greenhouse gas emissions by at least 5 percent from 1990 levels by 2008-2012. Today, there are 195 Parties to the UNFCCC and 192 signatories to the Kyoto
The United States has not ratified the Protocol. In 2012, the Parties to the Kyoto Protocol extended the Protocol until December 31, 2020.

Warsaw – viewed as a transitional conference by most – was expected to lay the groundwork for completing a universal climate change agreement by 2015 in Paris and implemented by 2020. The Parties also hoped to scale up countries’ commitments before 2020. In addition to these primary goals, the Parties sought to build and operationalize the institutional support mechanisms to facilitate the free flow of climate finance from developed nations to the developing world, integrate global carbon markets, compensate developing nations for measures to Reduce Emissions from Deforestation and Forest Degradation (REDD+) and help countries cope with loss and damage associated with climate change.

The 2013 Climate Change Conference began on November 11 and concluded on November 23.

PATHWAY TO A POST-2020 GLOBAL AGREEMENT

The negotiations were not without drama. The Parties negotiated for over 30 hours straight on the final day to achieve a compromise on several important issues, the most critical being the future of a 2020 agreement applicable to all Parties. The most contentious issue concerned the nature of each Party’s agreed upon actions to mitigate the impacts of climate change.

The final decision invited each country to develop “intended nationally determined contributions” for inclusion in a universal agreement applicable to all Parties to be adopted in 2015 and implemented by 2020. Developed countries sought stronger language, but ultimately the Parties agreed to use the term “contributions” instead of “commitments.” It is unclear whether this distinction will affect the Parties’ actual contributions to climate mitigation efforts under a future agreement. The Parties further agreed to communicate these contributions “well in advance” of COP-21 in Paris (“by the first quarter of 2015 by those Parties ready to do so”) to presumably give the Parties time to evaluate and revise their collective contributions.

The decision also requested that all Parties increase their ambition to combat climate change and increase technology, finance, and capacity-building support to developing countries before 2020. The lack of substantive pre-2020 commitments in the text (and directly from Parties), however, suggested that ambition was lacking.

A few new measures and initiatives were adopted, nonetheless, such as accelerating discussions on measures with high mitigation potential, and sharing experiences and best practices of cities and subnational authorities on mitigation and adaptation. Perhaps most significantly, the Parties agreed to promote the voluntary cancellation of Certified Emissions Reductions (CERs) from Clean Development Mechanism (CDM) projects in the developing world, without double counting. This provision permits developing countries to cancel their CERs – rather than sell them on the international market for countries/companies’ to offset their domestic GHGs – as a means of taking concrete steps to reduce overall net GHG emissions.

Going into Warsaw, many Parties thought COP 19 would be market-friendly and would make some progress on the modalities and procedures of a new market mechanism, a framework for various approaches and non-market approaches. These measures, if approved, would likely constitute significant new components of a 2015 deal, by linking local, national, regional and international carbon markets (such as California’s or the Regional Greenhouse Gas Initiative), while offering new climate mitigation opportunities for developed countries. Unfortunately, the Parties made no progress on this topic and tabled discussions until June 2014.

MOBILIZATION OF INTERNATIONAL CLIMATE FINANCE: SIGNIFICANT STEPS

The Parties at Warsaw took significant strides to operationalize the flow of climate finance from developed nations to the developing world through the Green Climate Fund (GCF). The GCF serves as the primary financing mechanism under the UNFCCC, designed to manage and direct funds from public, private and multilateral sources to developing nations. This includes US$30 billion raised annually during a “fast-start finance” period from 2010-2012 and US$100 billion in annual long-term finance (LTF) that developed states have collectively committed to contribute by 2020. The GCF has also undertaken to engage and attract private investors, including through its Private Sector Facility.
COP 19 continued the push to operationalize the GCF and to better define the Fund’s role in the framework of the Convention. Approving the draft arrangements between itself and the GCF, the COP thereby ensured that the GCF is directed by and accountable to the COP. The COP also approved and forwarded to the GCF initial guidance on policies, priorities and eligibility criteria. The guidance mandates the GCF to balance funding allocation between mitigation and adaptation efforts and to employ a country-driven approach, making adaptation funding for particularly vulnerable developing countries the priority. Along with the recent opening of the GCF’s headquarters in Songdo, Republic of Korea, these developments mark critical steps toward the Fund’s projected operationalization before COP 20 convenes in December 2014.

The Parties made little headway on long-term financing for addressing climate change. Developing countries sought a clear commitment from developed countries on mid-term financing targets before the US$100 billion annual target in 2020, including a push by some for a commitment of US$70 billion annually by 2016. Ultimately, the COP declined to set binding interim targets. Instead, developed countries were urged to maintain financing “at increasing levels” – without prescribing a specific rate of increase – beyond fast-start levels from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources.

THE MOST SURPRISING OUTCOME: A FRAMEWORK TO COMBAT DEFORESTATION

The most significant and surprising outcome of COP 19 was the adoption of the Warsaw Framework for REDD+, a series of seven decisions that outline the elements for results-based payments to developing countries implementing REDD+ projects. The Framework establishes a formal REDD+ mechanism with agreed-upon rules for creating performance-based financing mechanisms, developing criteria for national forest monitoring systems, establishing forest reference levels, recognizing mitigation activities, ensuring safeguards and creating institutions.

By providing financial assistance for REDD+ activities only after countries implement requisite safeguards, the Framework seeks to address many of the legitimacy concerns regarding REDD+ projects.

The results-based financing may come from a variety of sources, including public and private, bilateral and multilateral, and the Green Climate Fund. This will open the door for international climate finance to flow into countries with significant forestry resources and create the possibility of future integration with new market-based systems. The Framework also lays out clear rules for transparency and establishes a UNFCCC website to publish the results of REDD+ activities as well as the corresponding results-based payments.

LOSS AND DAMAGE: A NEW MECHANISM

COP 19 also tackled the difficult issue of loss and damage attributable to climate change by establishing the Warsaw international mechanism for loss and damage. The US and other developed countries worked to exclude language that might be seen as imposing liability for loss and damage, while attempting to frame the mechanism as an extension of adaptation support. Developing countries sought to secure more tangible commitments and strongly opposed the agreed-upon adaptation-framed approach, pointing to the damage wrought in the Philippines from Typhoon Haiyan as an example of an injury eligible for support under the mechanism.

The resultant language was thus predictably ambiguous, mandating that the mechanism “promot[e] the implementation of approaches to address loss and damage associated with the adverse effects of climate change.” Such work would be accomplished mostly through facilitation, coordination and recommendation of approaches and risk management practices, while also enhancing action and support (including finance, technology and capacity building) to address loss and damage. The mechanism’s mandate is subject to review in 2016.

FUTURE DEVELOPMENTS

The next climate conference (COP 20) will take place in Lima, Peru from December 1-12, 2014, where the Parties will seek to present a draft text of a new global agreement and develop measures to better integrate global carbon markets and non-market based approaches under the UNFCCC.

Prior to COP 20, UN Secretary-General Ban Ki-moon will convene all governments and leaders from finance, business, local government and civil society at a climate summit on September 23, 2014, in New York, to present bold new announcements and action on climate change, which will hopefully mobilize political will to develop a strong new agreement by 2015.
DLA Piper lawyers from Europe and the United States advised the country of Georgia, as in previous years, on international climate change negotiations before the UNFCCC. DLA Piper lawyers briefed the country on UNFCCC developments prior to COP 19, continuously monitored developments throughout the two-week conference, drafted submissions to the UNFCCC and negotiated with other countries alongside the client. The support provided focused on issues surrounding the Green Climate Fund, climate finance, nationally appropriate mitigation actions by developing countries, low emission development strategies, national communications regarding GHG measurement, reporting, and verification, and possible developing country commitments.

The Georgian delegation was joined on the ground by a cross-border team of lawyers from DLA Piper. The team was led by Alexander Sarac (London/East Africa), who has been advising the Georgian government on energy and climate change since 2008, and Andrew Schatz (Baltimore), who assisted Mr. Sarac and counseled the Georgian delegation on the ground in Warsaw. Lawyers in our United Kingdom offices (Andrew Smith, Richard Buxton, Alice Puritz) and United States offices (Michelle Anderson, Justin Brown, Catherine Campbell, Katrina Hochstetler, Jesse Medlong, Tom Prevas) also provided vital support to the team in Warsaw.

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1 Conference of the Parties to the UNFCCC, Nov. 11–22, 2013 [Warsaw Conference], Decision -/CP.19 [Further advancing the Durban Platform], at ¶2(b), available here.
2 Id. at ¶ 5.
3 Warsaw Conference, decision -/CP.19 [Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund], available here.
4 Warsaw Conference, Decision -/CP.19 [Arrangements between the Conference of the Parties and the Green Climate Fund], available here.
5 Warsaw Conference, decision -/CP.19 [Report of the Green Climate Fund to the Conference of the Parties and guidance to the Green Climate Fund].
6 Warsaw Conference, decision -/CP.19 [Work programme on long-term finance], at ¶7, available here.
7 For a full list of the REDD+ decisions at Warsaw, see this page.
8 See Warsaw Conference, decision -/CP.19 [Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70] ¶¶ 3-4, available here.
9 Warsaw Conference, decision -/CP.19 [Warsaw international mechanism for loss and damage associated with climate change impacts], available here.

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