Negotiations towards the post-2020 climate agreement have been running for three years but we are yet to see real text-based negotiations. This is not an accident, but a part of a broader strategy by those who don’t want a comprehensive and effective climate deal agreed in Paris.

The deregulation of climate controls?

Developed countries want to curb climate change without bearing the burdens and costs. To do this they need to change the climate regime and shift the burdens and costs to developing countries.

Their goal in Paris is a new mitigation-focused 2020 agreement that is weaker for developed countries than the Kyoto Protocol, and stronger for developing countries.

It would exclude meaningful commitments on adaptation, finance, technology and capacity and shift the burden of combating climate change further onto the world’s poor.

Avoiding historical, legal and moral obligations

To achieve this they will end the Kyoto Protocol by inserting 2020 targets that require no reductions (EU), inserting no targets (New Zealand, Japan, Russia), or pulling out altogether (Canada) — effectively rendering the Protocol a dead letter.

They have not fulfilled their Doha commitment to revisit their inadequate 2020 Kyoto targets.

They must also avoid their main obligations under the Convention — on mitigation for developed countries (Art. 4.2), finance (4.3), adaptation (4.4) and technology (4.5).

As these “differentiated” legal obligations will not go away, so they are to be ignored in the pre-2020 period, before being supplanted by a 2020 agreement.

They also need to replace the principle of “equity” and “common but differentiated responsibilities and respective capabilities”, because this is the basis of the differentiated legal commitments, and because a common-sense interpretation requires much greater effort from the developed countries.

Ultimately, developed countries want to avoid a legal obligation requiring them to show leadership, so they wish to erase the legal structure of the Annexes that requires more from them.

Instead they propose that under the new agreement countries would “self-differentiate” through their own “nationally determined” contributions – every country can do as much, or as little, as it likes.

Rather than implementing their current commitments, they seek to evade them, and shift them to poorer countries.

How the process is being controlled

This deregulation of the climate regime as it applies to the developed countries would not be voluntarily agreed to by most developing countries, so the negotiating process and documents are being used to achieve this.

To get developing countries to agree to new negotiations the impression was given that the 2020 agreement would cover all elements – mitigation, adaptation, finance, technology, capacity and transparency – without actually committing to do so.

Consequently, the Durban Platform said Parties would “work” on the elements (but without clearly saying they would be part of the 2020 agreement).

This impression will be maintained until the last minute; so a discussion about “elements” continues with the Co-Chairs collecting everyone’s ideas into a “non-paper”. The non-paper has no legal status and so can eventually disappear.

The Co-Chairs have tightly managed the process to prevent real party-to-party negotiations. Instead they “hear” the Parties and include what they like of what they hear in the non-paper. The intention is to play out the clock and then table a mitigation-focused text at the last minute.

The developed, however, countries must still elaborate the mitigation element of the 2020 agreement. To avoid discussing the other elements, this is done by proxy through another parallel process, but without it being clear this is the real intention.

This parallel process was established with the Warsaw decision which divided the 2020 negotiations into two parts – one about “elements” and one about “national contributions”.

While “elements” are put into a non-binding non-paper, “contributions” have been focused on mitigation, and placed into a legal “decision” text.

Under the draft text contributions on mitigation are to be compulsory. These must be provided well in advance of the Paris meeting in December 2015.

To enable developed countries to avoid contributions towards their other obligations, the “scope” of their contributions is otherwise to be “nationally determined”.

They can, in other words, determine to offer no contributions on adaptation, finance, technology or capacity — essentially prejudicing negotiations on the scope of the 2020 agreement.
A non-binding mitigation only agreement?

The likely result of such a process is:

- Mitigation-focused contributions from developed countries, without contributions on finance, technology or capacity; and
- Mitigation-focused contributions from developing countries, without contributions on adaptation.

In the absence of comprehensive contributions on adaptation, finance, technology or capacity, developed countries can declare that further work is required on these elements, and so these would not be included in the core 2020 agreement.

Mitigation-focused contributions from all Parties can then serve as the basis for a mitigation-focused 2020 agreement.

To appease the United States, the 2020 agreement would merely commit countries to submit their contributions to be listed under the agreement, without having a legal requirement to fulfil those contributions.

As by Paris developing countries may have already submitted contributions, it would be harder for their Ministers to find a basis to refuse to sign the new agreement.

The result would be a new mitigation-focused 2020 agreement that is weaker for developed countries than the Kyoto Protocol, and stronger for developing countries, and that excludes meaningful commitments on adaptation, finance, technology and capacity.

These issues, it will be said, can be addressed outside the 2020 agreement as part of a “Paris Package”.

Existing Convention commitments on these issues would remain, but their implementation would be sidelined in favour of work under the new 2020 Paris Agreement. Like the Kyoto Protocol, they would be rendered ineffective, and potentially a dead letter.

While the new agreement would cover the United States, the result for developed countries would be weaker than the Kyoto Protocol which itself was inadequate to spur action.

It is also likely fail to include the means of implementation required to mobilize sufficient action in developing countries. Faced with growing climate impacts, many developing countries are likely to focus their limited resources on adaptation.

Weak mitigation pledges would be locked in for another five years, and possibly ten, effectively missing the window for changing the global emissions trajectory before we cross tipping points that set us on track for catastrophic warming.

How can this result be avoided?

The first step is to ensure the “elements” of the 2015 agreement – mitigation, adaptation, finance, technology, capacity and transparency – are agreed before the “contributions”.

This is needed to ensure a comprehensive and balanced 2020 agreement. Then:

- Developed countries must put forward contributions on mitigation in the form of QELROs, as well as on providing finance, technology, capacity and transparency.
- Developing countries can put forward adaptation contributions, conditional on receiving finance and technology, before putting forward mitigation contributions, to ensure adaptation is clearly part of the 2020 agreement.
- Developing countries can put forward mitigation contributions once developed countries have committed to put forward substantial finance, technology and capacity contributions.
- The process should enable party-to-party negotiations to ensure Parties are able to negotiate with each other rather than with Co-Chairs and the Secretariat.

These steps are necessary because, if developing countries commit to mitigation-focused contributions before securing the other elements, the prospects for negotiating a comprehensive and balanced 2020 agreement that addresses the needs and rights of climate-impacted people are substantially diminished.