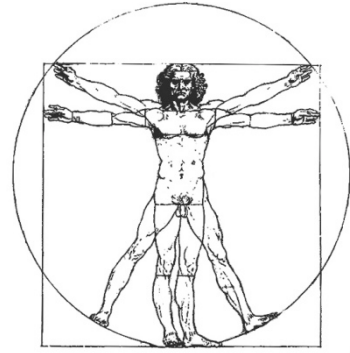


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ecbi report

# Report of the 2011 Oxford Seminar



Oxford University  
15 & 16 September 2011

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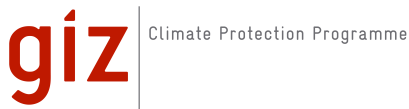
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This report has been compiled by Anju Sharma

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## Table of Contents

Introduction.....	3
Legal Form.....	3
<i>“Sequencing” action</i> .....	5
<i>“Annex C”</i> .....	7
Climate Finance Architecture.....	9
<i>National Trust Funds</i> .....	10
<i>Adaptation Committee</i> .....	10
Long-Term Sources of Climate Finance.....	11
Measuring, Reporting and Verification of action and support.....	13
International Consultation and Analysis (ICA) and International Assessment and Review (IAR).....	16
<b>Appendix 1</b> : "Plan C" - The role of the Kyoto Protocol in a legally binding outcome .....	19
<b>Appendix 2</b> : National Institutional Arrangements for Climate Change Action (Mitigation and Adaptation) .....	22

## Introduction

The European Capacity Building Initiative (ecbi) organises an annual Oxford Fellowship and Seminar for senior developing country and European climate negotiators. The primary purpose of the Fellowships and Seminar is to build trust and exchange knowledge and information both among the developing country participants (Fellows), and between the Fellows and their European colleagues.

A three-day Fellowship Colloquium, where the Fellows have the chance to exchange views and experiences among themselves in 'closed session', is followed by a two-day Oxford Seminar to exchange views with their European counterparts. This Report summarises the discussions that took place at the 2011 Seminar, on 15 and 16 September 2011 at Mansfield College and the Examination Schools, Oxford University.

At the 2011 Seminar, participants discussed the possibility of a mutually agreeable 'sequence' of action, in order to overcome lack of trust on both sides. An 'Annex C' to the Kyoto Protocol was proposed as a way of rescuing the multilateral system from disintegrating into a 'pledge and review' system. Discussions were also held on the legal form of a climate agreement; the sources and institutional architecture for climate finance; and monitoring of climate commitments by both developed and developing countries.

In this report, the discussions are arranged in the following sequence (issue-wise, rather than the order in which the discussions took place): **Legal Form** (including sequencing action and Annex C); **Climate Finance Architecture** (including National Funding Entities and the Adaptation Committee); **Long Term Sources of Finance; Measuring Reporting and Verification (MRV)** of action and support; and **International Consultation and Analysis (ICA)** and **International Assessment and Review (IAR)**. In addition, Appendix 1 elaborates on the discussions on 'Plan C' at the Seminar.

## Legal Form

A developing country participant kicked off the discussion on the legal form of a future agreement, presenting the outcome of the discussions among developing countries during the preceding Fellowship. He emphasised the importance of legally binding targets for Annex I (developed) countries under the Kyoto Protocol as part of a second commitment period, with a two-track approach under the Kyoto Protocol and Long-term Cooperative Action (LCA).

He said the current level of ambition was insufficient to keep global temperature rise to below 2°C, and called on the EU to act on its moral responsibility by increasing its emissions reduction target, without laying down any conditionalities. He laid out the following set of questions for the European

participants:

- Why is a two-track outcome problematic in your view?
- When you say single legally-binding agreement:
  - How is this different from what you already have on the table?
  - How do you propose to get there?
- The EU has mentioned “extending” the Kyoto Protocol – what does this mean? Is this different from a second commitment period?

He asked how the EU proposed to raise its own level of ambition, and how overall global mitigation ambition could be increased.

In the discussion that followed, a participant from Europe said the Kyoto Protocol is at the heart of EU legislation – but amendments are needed to allow the EU to deliver higher ambition, rather than undermine the existing level of ambition. The EU has legislation in place to reduce emissions by 20 per cent compared to 1990 levels by 2020, he said, and this target will be reached regardless of the outcome of the international negotiations. He stated that the EU is also working hard to put in place the building blocks for higher cuts, and the discussion on whether the 2020 target should be increased to 30 per cent is still on the table. However, there is pressure within the EU to do less rather than more under the current economic situation, and he felt the debate on increasing the target would not be resolved before the end of 2011. He felt the outcome of the LCA would be an important factor in determining the level of the EU’s ambition: a second commitment period would need 28 ratifications within the EU, which will be challenging until the amendments and broader package, including in particular a legally binding framework under the LCA, are resolved.

A developing country participant asked whether the EU was adopting the same line as the US: that they cannot be ambitious because they will not get ratification back home. A EU participant said this was not the case as the rules were already in place for the EU to deliver cuts - all they were asking for were amendments to the Kyoto Protocol to accommodate the EU's higher level of ambition.

Another participant from Europe said expressed his support for Kyoto Protocol, but said the EU prefers to at least set off down a path that ends in a single system for all countries, with differing commitments. This, he said, was not a decision that needs to take place in Durban - rather, Durban should initiate a process of transition towards greater ambition in the longer term. He warned that some countries would like to wear down the ‘bindingness’ of the multilateral system, and it was important not to give in and head the wrong way.

A developing country delegate said the pledges made by developing countries under the Nationally Appropriate Mitigation Actions (NAMAs), already agreed by developing countries and subject to Monitoring, Reporting and Verification (MRV) could be included as part of the second commitment period.

A participant asked whether it might be possible to have an ‘organised transitory regime’ for a

fixed period through a simple COP decision, where Annex I state their intentions over the period and Non-Annex I confirm the NAMAs pledged after Copenhagen. The decision would include a date by which a 2018 or 2020 regime would be agreed, along with a firm commitment or mandate to negotiate the regime.

A developing country participant asked for clarification on the EU 'conditionalities' for a second commitment period. A participant from Europe responded by listing areas where he felt the Kyoto Protocol text needed amendment: rules for Land Use, Land Use Change and Forestry (LULUCF); coverage of all sectors and gases; carry over of Assigned Amount Units (AAU); and new mechanisms. In addition, he said, the outcome of the LCA and the overall package is important.

A participant asked what the EU had in mind with regard to reforming the mechanisms to make them generate reductions rather than just offsets, and why multilateral recognition was considered important. A EU participant responded that a multilateral process would ensure multilateral oversight, transparency and integrity. In terms of improving the contribution to actual reductions, a benchmark and baseline could be set to ensure that only actions over and above what a country would do under, for instance a NAMA, are recognised.

### **“SEQUENCING” ACTION**

A participant from Europe said his own country was very attached to the Kyoto Protocol and wants it to move forward, but he understands that the EU has put forward conditions. As the mandate or roadmap under the LCA would be a key element of moving ahead under the circumstances, he asked whether there was a discussion or any perspectives on this issue within the G77.

A developing country participant responded that the G77 and China was not opposed to commitments – they are willing to take on commitments once developed countries have demonstrated leadership with commitments under a second commitment period.

A participant from Europe asked if developing countries would be willing to start discussions under the LCA track once the process of ratification has been initiated in the EU, or wait until entry into force. He said ratification within the EU would be difficult unless the process of bringing developing countries on board was on the road.

A developing country participant responded that the ratification process, which the EU said could take as long as five years or longer, could be seen as a delaying tactic to wait until the two processes converge. It was worrying, she said, that the EU was unwilling to show leadership and take on commitments until the developing countries did.

A participant said it was clearly a matter of sequencing – developing countries did not want to take on commitments concurrently with the second commitment period. He said developing countries felt the goals posts were constantly being moved: developing countries had agreed to a lot of concessions in Bali, but now they are being told that they have to agree to further concessions before developed countries agree to a second commitment period. He asked what exactly the EU wants developing countries to agree to under the LCA.

A participant from Europe said the EU would like a new deal to apply after the second commitment period, which will include legally binding commitments for all countries. Under this deal, there would be different commitments for different countries based on the principle of common but differentiated responsibilities and capabilities. While developed countries would have quantified targets, developing countries would have a commitment to effort, not result.

A participant asked whether the commitments for developing countries would be financially supported under this deal and whether the action, like the support, will be legally binding. The EU participant agreed that a more robust system is needed to guarantee financial commitments. One EU participant said that it is his personal point of view that if developing countries take on mitigation action, there should be balance in the support.

A participant said the problem of sequencing could be addressed through a 'sequencing roadmap', but pointed out that this discussion would have to take into account the positions of other key countries – including the US, Australia, Japan and Russia.

A participant from Europe said the US is not likely to join a multilateral agreement for a while at least. He felt the US should not be given the veto on the rest of the world. Instead, the rest of the world should come to a decision in Durban and move on. Hopefully, he said, the US will be there by then, or will be left behind.

A developing country participant said the sequencing will have to be in terms of real action taking place in developed countries on the basis of the principles of common but differentiated responsibility, and equitable access to sustainable development – not just commitments or an expression of intent. The 'sequencing', she said, should not be merely theoretical, but an actual show of leadership. Agreeing that the US should not be allowed to draw the others down into a pledge and review system, she asked whether the US should be allowed to use the Kyoto Protocol mechanisms if they use the Protocol's rules to deal with their pledges. Would that not give other countries to jump ship, she asked her European colleagues.

A participant from Europe reiterated that ratification of future commitments within the EU would depend on the broader perspective – including the promise of legal status for all under a comprehensive agreement. In terms of sequencing, the EU will meet the 2012 targets, and will guarantee meeting the 2020 targets. The only step that may be missing will be the ratification, which will depend on what happens elsewhere.

A developing country participant said that in the absence of ratification, the EU is offering a pledge and review target like the US. Another developing country participant asked whether a mandate to start negotiating under the LCA would be enough to trigger EU ratification. The European participant responded that for a robust package under the Kyoto Protocol, there would have to be a robust package under the LCA. Anything else would be hard to sell to EU leaders. A mandate would not be sufficient to get ratification, he felt, but the closer negotiations get to the result of the mandate, the higher the chances of ratification.

A participant said it sounded like the EU was laying down conditionalities to even sign on to a range. She said the elements that the EU wanted in the amendments – such as changes to the mechanisms, surplus, forestry etc. – are being held up by Annex I, rather than developing countries.

The European participant responded that the discussion on these elements were blocked by the discussion on the mandate – once that is resolved, the other blockages can be discussed. Another European participant said that the EU position is not conditionality – no country can guarantee ratification, but they can work to maximise the chances of ratification.

A participant suggested that developing countries could agree to negotiate under the condition that if the Kyoto Protocol is not ratified by 2020, they cease to be bound to the LCA mandate.

### “ANNEX C”

A developing country participant introduced an idea that had been suggested between sessions: an ‘Annex C’ to the Kyoto Protocol, which lists the NAMA pledges made already by developing countries, accompanied by amendments to the text of the Protocol that distinguish the rules that would apply to these pledges, based on the principle of common but differentiated responsibility. The EU would then have its single agreement, he said – an amended Kyoto Protocol, including all developed countries (except the US) and all developing countries with NAMAs.

A developing country participant expressed support for the idea, saying Annex C could then become part of the negotiations for the third commitment period. The ‘sequencing’ could be negotiated as well.

A participant from Europe said his initial response to the idea was positive, although he would like to hear from the developing countries if they would be willing to come on board. A participant asked whether the EU would be happy to leave the US out. The European participant responded that the US would not be able to engage in any case.

A developing country participant said it was an innovative idea, but raised some practical questions: the Kyoto Protocol was designed for developed countries. What sort of amendments would it need to accommodate developing countries? The second question, she said, was the nature of the NAMA listings – they lack a standard format and may not be in a form to be included into a legal instrument. Finally, would such an agreement preclude any process under the convention to negotiate another legal instrument?

A participant answered that another protocol would not be needed – the Kyoto Protocol would provide the post-2020 architecture. A developing country participant said that the elements of the LCA that were relevant could move to the Kyoto Protocol, and the LCA could be discontinued or some elements of it could continue.

Another developing country participant felt this was an interesting idea, but it should have come before Cancun. She said several countries – not just the US – were opposed to the Kyoto Protocol, including Japan, Canada and Australia.

A participant said the idea was not completely new – there has been talk of Kyoto+. However, the new element was that the EU was willing to contemplate a deal without the US unlike about a year ago, when they still wanted to get them aboard.

A participant from Europe said this was an interesting idea, but he hoped that in the long term there would not be two negotiating streams for commitments. He agreed that the rest of the world should move ahead without the US, but asked whether they should move forward in a way that will preclude the US in future even if they want to join.

A developing country participant said the agreement could be renamed – to the Durban Protocol or anything else. The US could then join in when it was ready, through Annex B or even C.

A European participant said he was not sure all developing countries would be willing to sign on to such an agreement. He said that other than the EU, the other countries had not expressed an interest in joining or perpetuating the Kyoto Protocol. He said at a recent meeting, a developing country negotiator had referred to the Kyoto Protocol as a ‘firewall’ between developed and developing countries, and at least three large developing countries had made it clear that they see the Kyoto Protocol as a division between developed and developing countries.

A developing country participant responded that developing countries have shown their willingness often – by agreeing to CDM, and agreeing to take action under the Bali Mandate. The G77, she said, would not be the block – the 130 countries of the G77 could come to agreement quicker than the 27 countries of Europe once they have discussed the implications of the idea. The blockage, she felt, would come from the conditionalities and inability of developed countries to come up with a position. Leaders, she said, don’t wait to see what others are doing before acting.

Another participant felt that the proposal would result in too many uncertainties regarding the future regime, and it would be disruptive to introduce a new concept such as an Annex C at this stage of the negotiations. He also felt that such an agreement would preclude the US and several other developed countries.

A developing country participant said that the negotiations were headed nowhere currently, and the Annex C idea could help avert disaster. The proposal could first be discussed in informal settings to gauge reactions. Another participant said the earlier they explored the viability of Annex C, the better. She agreed that without a new solution, the negotiations might fail to reach a multilateral agreement.

A participant said the LCA could agree on a mandate to negotiate the Annex and additional amendments to the Kyoto Protocol at Durban. A participant from Europe said it would be seen as a strong political signal if countries – particularly developing countries – agree to the idea. He said his main concern would then be how to get the US on board, and reduce the risk of losing others.

A participant said that even negotiating a new instrument or treaty would not necessarily bring the US on board. The advantage of the Kyoto Protocol, he said, is that countries are already familiar with its basic architecture.

A participant from Europe said that they would prefer to leave the door open for countries that are unwilling to join a second commitment period under Kyoto, by allowing them to use the Kyoto rules and mechanisms even if they don't sign on. For instance, he said, Japan does not want to take on targets, but wants access to the Kyoto Protocol's mechanisms. He felt it would be better for Japan to have access to these mechanisms and follow the accounting rules under the Protocol, rather than push them out of any multilateral engagement and into bilateral deals. Denying Japan access to the Kyoto mechanisms would not work as a lever to get them to agree to a second commitment period. The more bilateral trading proliferates, he said, the more it poses a threat to the multilateral process. Moreover, until Japan actively resigns, it will continue to be party to the Kyoto Protocol. If Japan can have its own registry account and sign off on its own to buy Certified Emissions Reductions (CERs), it would keep them committed to the Protocol's rules.

Two developing country participants responded that their countries would not agree to allow Japan to take the best part of Kyoto, and opt out of the rest. One participant said that Japan was not being excluded – it was excluding itself. Another participant said that it would be better to allow Japan to use CERs, rather than a bilateral process that could result in double counting. However, he expressed concern if Japan was allowed to participate and influence the discussions under the CMP, without taking on a target. He said the 'stick' of not allowing Japan access to the mechanisms until they take on reduction targets would not work – but then neither would the 'carrot' of allowing them access to the mechanisms. However, allowing them access would make sense from the point of view of environmental integrity, as it would minimise double counting.

(A note on 'Plan C', prepared on the basis of the discussions above, is included in this report as Appendix 1)

## Climate Finance Architecture

A discussion on the architecture of climate finance institutions was kicked off ecbi Director Benito Müller. He focused on the role of the Standing Committee set up in Cancun. He said the concept of the Committee was born during the 2010 ecbi Seminar, where it was clearly envisaged as having role in supporting the COP in the provision of guidance and holding accountable of the operating entities.

He felt the need for such a body was clear, given the difficulties that the UNFCCC Conference of Parties (COP) has in overseeing the operating entities currently. The Contact Group on Finance under the UNFCCC's Subsidiary Body for Implementation (SBI), currently tasked with oversight and guidance of the operating entities, met for only nine hours over the last year. The same advice was repeated year after year, he said, indicating that it had not been acted upon over the years. GEF Council Members felt this was because the guidance is not clear and comprehensible. The Standing Committee could meet more often than the SBI Contact Group and support the COP in providing clearer, more specific guidance.

Müller felt the paragraph in the Cancun agreement that lays out the functions of the Standing

Committee misses out on the function of providing guidance and holding operating entities accountable. However, both the EU and the US submissions include a guiding role. He said the Committee could play a valuable role in evaluating the operating entities. It could commission such evaluations, to make recommendations for guidance and improvement. Currently, the operating entities carried out self-evaluations.

### **NATIONAL TRUST FUNDS**

Müller also said that LDCs have been pushing for National Trust Funds to be the vehicle for grant-based disbursement. The Adaptation Fund has repatriated some of the decisions by allowing direct access – national implementing entities now have decision-making power and can screen funded activities. But the real funding decisions are still taken at the multilateral level. The idea of using National Trust Funds to take funding decisions has found some traction in the discussions on the design of the Green Climate Fund, not least in the context of leveraging the domestic private sector. Müller said the Green Climate Fund would have to take into account the overall balance of the amount of money spent on adaptation and mitigation. Currently, only 15 per cent of climate finance was going towards adaptation. The adaptation committee could play a role in providing information on these issues.

A EU participant said he agreed that the existing financial architecture has not worked, and time spent on SBI in providing guidance does not deliver results. He agreed that that the Standing Committee could play a role in MRV of finance; and that strong national structures to implement the NAMAs make sense, depending on the strength of the bodies. His country was already committed to budget support, at the national and sub-national level. He said capacity and institution building would be needed where it does not exist, or an international interlocutor might be needed where it cannot be built. However, the international negotiations should not get into micro-management and tell countries exactly what sort of institutions they should build.

On the issue of ensuring balanced distribution between adaptation and mitigation finance, he said he supports the idea but evaluations would prove difficult, as it is difficult to isolate the adaptation effort in development work.

A EU participant said some parties, mainly the Umbrella Group, felt the Steering Committee should be part of the SBI rather than the COP, as it is an advisory rather than a decision making body. A participant felt that the SBI Contact Group on Finance could be discontinued if the Steering Committee was given an oversight function.

*(Appendix 2 of this report provides a summary of the arguments in favour of National Funding Entities, discussed during the Fellowship sessions preceding the Seminar).*

### **ADAPTATION COMMITTEE**

A developing country participant spoke briefly on the adaptation committee. He said the need for such a committee was raised at COP-10 in Montreal, to help further adaptation at the national level. Some parties were not convinced the committee would work, given the wide range of expertise that

would be needed. Then a discussion on the issue started at the Poznan COP, and there was a big difference in the views of Annex I and G-77. Following considerable effort, the following five functions were agreed for the Committee in Cancun:

- Technical support and guidance
- Sharing relevant information, knowledge, experiences and good practice
- Promoting synergies with national and international processes
- Monitoring and review of adaptation actions, support provided and received
- Providing guidance on means to incentivize the implementation of adaptation actions, including finance, technology and capacity-building and other ways

After these functions were adopted in Cancun, he said, the discussion was reopened again and this continues to remain a controversial issue – particularly issues such as how the different bodies will coordinate and relate with many new institutional arrangements such as those for technology, the Green Climate Fund, the Nairobi Work Programme etc. Other issues, such as the modalities and composition of the Committee, he felt, are easier to resolve.

A participant from Europe said the Adaptation Committee functions were a starting point, and the EU was reassured that its role would not be to decide who gets how much money. He did not foresee a problem in dialogue and linkages between the various bodies, and felt that formalising the relationships would be problematic.

A developing country delegate agreed that the Adaptation Committee could play a role in providing relevant information to the Green Climate Fund, to influence their resource allocation.

A participant said a significant amount of adaptation finance is starting to flow – at least through bilateral sources to ‘favourite countries’ – and in the coming years, expertise from the ground should be brought to bear on the institutional structure. He felt the Adaptation Committee should play a role in learning from practices on the ground, and use this to formulate good practice guidelines. A developing country participant said he did not think there was a significant amount of resources for adaptation. His country was looking for funding without much success. The new GEF RAF was only for mitigation, and the SCF depends on voluntary contributions. He asked whether the Adaptation Fund could become a window of the Green Climate Fund, as it was a good model.

A developing country delegate said it was important to decide on the functions of the new bodies, before deciding on their composition. Another developing country participant felt there is too much fragmentation, and little understanding of how the bodies relate to each other and to the SBI and the Subsidiary Body for Scientific and Technological Advice (SBSTA).

## Long-Term Sources of Climate Finance

Müller initiated the discussion on long-term sources of climate finance. He said an analysis of previous National Communications from Annex II Parties showed that a trend towards an increase in multilateral funding. This is probably due to the reduction in staff working in bilateral agencies due to the financial crisis, and highlights the importance of getting the GCF right. US\$ 12 billion had

been contributed over 1998-2000; US\$ 7 billion over 2001-2004; and 10 billion over 2004-2010. He posed three questions to the group:

- How will the 100 billion promised by 2020 be mobilised?
- How much of the 100 billion will come from public sector sources (including airline passenger levies; Tobin tax; the Norwegian proposal etc); and
- What role can innovative sources play in raising predictable, new and additional finance?

He said if the GCF only leverages the private sector at the international level, domestic private sector sources in developing countries would not be leveraged.

A European Union participant said countries are facing budgetary problems, so public sector finance from national budgets are unlikely to increase in the short term, until 2015. He felt it is important to discuss how Fast Start Finance (FSF) from public sources can be used wisely to leverage private sector funding to scale up funding. The report of the UN Secretary-General's High-Level Advisory Group on Climate Change Financing (AGF) had useful recommendations on this, and the G20 has requested a report on this that should be released soon. On innovative sources from the aviation and maritime sectors, he hoped the G20 would get the International Civil Aviation Organization (ICAO), International Maritime Organization (IMO) and the UNFCCC to work together on these issues. Most innovative sources involve other bodies, he said, which will also need to be involved.

A participant said the progress of discussions under the ICAO and IMO were glacial and asked how they could be speeded up.

A developing country participant said there be a distinction between private sector sources for mitigation and adaptation. A significant share of the resources for adaptation should be from public sources. Collaboration was needed to discuss sources from the aviation and maritime sectors, but unilateral measures should not be used to tap innovative sources.

A participant said the 'innovation' implied that the funds were not collected from national treasuries, or at least that the funds are earmarked, like in the case of the CDM levy. There should be no question that it is additional sources, and there is no competition with national budgets.

A EU participant said the EU has been proposing the use of the international bunker fuels for new sources for financing for well over a decade, and find the slow progress in the ICAO and IMO frustrating. He said a handful of countries were blocking progress. The US had recently succeeded building a coalition against the EU levy on aviation. The EU did not want to take unilateral measures, but after more than a decade of running into a brick wall, had to. He said the EU would like to create an opening in Durban to talk about the bunkers issue.

A participant asked how much money would be raised from the EU Emissions Trading System (ETS). A EU participant €10-15 billion could be raised by 2020 to be spent on climate change, although countries would decide whether to spend this domestically or in developing countries.

A participant said there were fears that the recent EU Aviation Emissions Levy was creating a flow

of funds from the south to the north rather than the other way round. Developing countries had raised the issue of 'no-net incidence'. A EU participant said the funds would be from wealthy companies, not countries. A developing country participant said the EU levy was transferring the obligation to raise climate sources on to developing countries – and the funds were not being transferred to developing countries.

A EU participant said his country was willing to consider some sort of compensation, particularly for some island countries that import all their food and energy. However, he felt the 'no net incidence' as a causal principle was difficult to implement. His country would like to discuss the issue in the G20. He said some parties felt unilateral measures were justified.

A participant said the advantage of a multilateral approach is that the money would then be used multilaterally. If it is applied unilaterally, the temptation is to keep the money for national budgets. He suggested that the discussion address the issue of how to scale up funding, pointing out that once the GCF is set up, it will need funds to function. He asked whether the EU had discussed how to achieve this.

A participant said the economic crisis could have created a better opportunity for setting up innovative sources of funding.

A participant from Europe said her country would want to know what the Green Fund looks like before investing in it, and that at this stage, a 'pledge to pledge' was more realistic. A developing country participant said that unless pledges are made, the GCF could fall off the edge. Another participant said the Transitional Committee would need some idea of how much money would flow through, to take into account in the design.

A participant said that even a 'pledge to pledge' would help to focus minds in the Transitional Committee, working on setting up the GCF.

A developing country asked how much of the FSF promised, which should have amounted to US\$ 20 billion so far, has been delivered already. A European Union participant said the EU had made several presentations at UNFCCC meetings to report their progress on FSF, although it would be difficult to say how much is disbursed and on the ground. His country had delivered 25-30 per cent of its entire FSF target. However, they planned to use a range of mechanisms, one of which would be the GCF. If the Fund looks right and makes sense, he said, there could be a pledging exercise in 2012.

Another EU participant said that given the limited staff they have, they would prefer to use a strong fund to move the money. The EU did its best to get the best financial experts into the Transitional Committee to design the GCF, but was disappointed to see many negotiators there.

## Measuring, Reporting and Verification of action and support

The discussion on Measuring, Reporting and Verification (MRV) was initiated by a developing country participant who said the key controversial issues were the contents of biennial reports and

guidelines; and targets for what Durban is expected to achieve in this regard.

A EU participant said it would be good to have the biennial reports ready in time for the 2014 review, to see where countries are with regard to the target of keeping global temperature rise below 2°C. The guidelines have to be put in place in order for that to happen, so they are a priority for the EU. He said so far, the discussion on the reports and guidelines has remained at the high level, where it tends to be more controversial. He felt there would be fewer controversies once the details were discussed. He said there is a fear among developing countries that these biennial reports are going to be used against them. However, he said, the purpose was not to punish countries for not taking action, but to help them set up robust national systems to collect the information – something that is of enormous value, and took the EU years to do.

A developing country negotiator said it was important to keep into account the experience with regard to National Communications while discussing the biennial reports, where developing countries have struggled to get funds from the GEF. He felt it was unrealistic to have biennial reports because developing countries lack the capacity, which would take a long time to build. In the case of the National Communications, teams were formed and then dissolved. In the case of biennial reports, dedicated institutions will need to be set up. He felt it would be difficult to justify an office only dedicated to gathering the information without capacity building support.

A EU participant said it was not a question of having an office or a big team, but about getting the structures for the flow of information right. Another EU participant said that the guidelines should be very basic, setting out the main points clearly. The funding to support the reports needs to be addressed. He said the capacity problems will be taken into account, and the reports do not need to be perfect but rather a lighter process of update. The level of detail and accuracy would depend on each country's capacity. The reports would serve as a management tool in countries, and as a tool for decision-making and information sharing at the international level, to see if all countries collectively are on track.

A developing country participant said it was important to have a system of harmonised reporting across international processes, as developing countries do not have the capacity to produce several reports, and because different reports produced under different guidelines contain inconsistencies. He said a simplified, common reporting process was particularly important for countries that lack capacity.

Another developing country participant said inventories were expensive to produce. For instance, she said, the money provided to carry out National Communications is not enough for her country to cover all sectors, and they were left with making a choice. Given the expenses involved, she questioned the need for biennial reports from countries representing less than one per cent of the global emissions, suggesting that they should be excluded.

She said that since the reports are to be submitted for International Consultation and Analysis (ICA), developing countries will not be willing to set a deadline until the information they are meant to

contain, and the eventual content of the ICA itself, is agreed. She questioned the need to hire international experts to carry out the analysis.

A European participant said that as far as the biennial reports were concerned, they did not want to preclude any small countries that want to provide the information, and want to have support to provide the information in order to build their own capacity.

The developing country participant said that while preparing the guidelines, it would be good to address the issue of which countries need to provide the information first, giving leeway to countries with small emissions.

Another developing country participant said her group was keen to have the biennial reporting in place as soon as possible, and had suggested 2012 for Annex I and 2013 for developing countries. They would like flexibility in content and detail, but felt the opportunity to prepare the reports should be provided to all countries as part of a learning process.

A participant brought up the issue of MRV of support, and asked whether the biennial reports would contain information both on support given and support received. He pointed to the need for consistency in reporting contributions – but also for the need to verify that the recipient country has received the money. Another developing country participant agreed with the need to agree on guidelines for MRV of support, to ensure comparability.

A participant suggested that reports from Annex I countries on their contributions should include a note of receipt from the recipient country, verifying also that it should be counted as climate change finance. In this way, the ‘self-certification’ of the contributing country will be verified by a certification from the recipient country.

A participant from Europe said he agreed that financial contributions should be reported by both the donor and recipient, but in the case of FSF, while there seems to be a big effort from the donor side to report contributions there are difficulties getting feedback from the recipient side.

Another European participant said the EU is working hard to step up information on financial contributions, with half-yearly reports; presentations at side events; and strengthening common reporting formats.

A European participant said the discussion on MRV of support had not yet taken place either under the finance discussion, nor the MRV group. He felt it should be done, based on lessons drawn from FSF. He said there were other systems already in place to report financial contributions, such as the system set up by Organisation for Economic Co-operation and Development’s Development Assistance Committee (OECD DAC). Synergies should be sought instead of setting up parallel systems. He said even developed countries would find it a problem to compile several reports. He said it would be fascinating to take up the suggestion for verification by recipients, to see where the differences in perception lie. He felt it would be difficult to isolate the adaptation component of development finance.

A participant said the OECD makes the DAC rules. The point of having a new set of guidelines for

climate finance would be to ensure that they are agreed by contributors and recipients, and address the issue of trust.

A developing country participant said there would be some technical problems on the side of developing countries as well in reporting how much money is received, because the amount depends on the channel the funds come through. While some are more efficient, others have high administrative charges with less than half going to the country. She said this needed review.

A developing country participant said the OECD DAC guidelines are for ODA, which is not the same as adaptation. She asked how money that went back to international institutions to pay for developed country personnel would be counted.

Another participant agreed that the DAC guidelines could provide a good place to start for measuring and reporting, but not for verification. He said a bigger problem was reporting and verifying on whether contributions are “new and additional”, as currently countries self-report and double-count contributions towards climate finance as well as ODA.

A participant from Europe said climate finance is ODA, and countries will continue to report it as such. He said it is not possible to make a distinction between the two. For instance, support provided for clean energy is also relevant to energy access and it does not make sense to make a distinction, or create a different structure. He said it may be difficult to get verification from developing countries, as the funds will be channelled through different national focal points, not just climate change focal points and the countries may not have a good overview.

A participant responded that if they were required to verify, then they would have to collect the information nationally for a better overview. On the issue of additionally, he sought clarification whether the 100 billion promised by 2020 as climate finance will also be counted as ODA, and whether there would be an increase at all in the overall flow of ODA.

A participant from Europe responded that not the entire 100 billion would be coming from the public sector. Another said that his country was working on increasing both, their share of climate finance and of ODA, meaning there would be a little overall increase in funds going to developing countries.

A developing country participant asked about the criteria for selecting recipients for funds, and avoiding a situation where some countries received more than others.

A developing country participant said the Rio+20 discussions were discussing a list of Sustainable Development Goals, to be merged with the Millennium Development Goals, funded with increased ODA contributions. She asked whether those contributions would also be counted towards meeting their climate commitments.

## International Consultation and Analysis (ICA) and International Assessment and Review (IAR)

A developing country participant listed the following key questions around ICA and IAR:

- How will the ICA and IAR processes be carried out?

- Will the IAR look like the current system under the Kyoto Protocol?
- The formats, and the venue where the assessments and analysis would be carried out – would the SBI, for instance, carry them out and would they take the form of presentations, or question and answer sessions.

Another developing country participant asked how the ICA would be managed, and whether each individual country report would be considered by the SBI. She asked whether there would be different guidelines for developing countries for IAR and ICA; and whether there should be comparability of data.

A participant from Europe said the processes have to be useful to check whether Annex I countries are performing on their pledges; and also providing an overview of what all the countries together were in terms of addressing climate change. He said the ICAs would be more facilitative than the IAR, which will be looking more closely at the performance of countries. The actual form of the ICAs and IAR will have to be looked at, including whether the reports will be looked at individually or together; and whether they should be carried out through country visits or desk studies. He said the EU was working on a submission around these very questions. In terms of the IAR, he said, the focus will be on assessment of performance and the EU is happy to have the same provisions as the Kyoto Protocol, although this will not be acceptable to the US. For instance, the Kyoto compliance mechanism provides a good way of dealing with countries that do not perform – the country is expected to do a compliance report.

A developing country participant said the difference between the two processes is clear in the Cancun Agreement. While the developing country ICAs are meant to be biennial reports based on analysis (not an assessment) by technical experts, the objective of the developed country IARs will be comparability of efforts and compliance with commitments. The guidelines for the two should be different, she said.

A participant said the processes should be simple, with handbooks if necessary for the general public to understand, and felt that there should be some level of consolidation, with an effort to streamline the processes at a later stage.

A participant from Europe said that the ICA and IAR processes were similar in terms of processes, as an assessment needs analysis, but the way the information is used will be different.

A participant said ICA was meant to be non-intrusive. He felt the real issue was whether there would be country visits and expert teams involved. A developing country party agreed that the ICA, which covered action not supported by developed countries, should be non-intrusive, non-punitive and respect the sovereignty of countries. She said the language to differentiate the developing country ICA from the developed country IAR took a long time to agree.

A participant from Europe said the discussion confirmed how important it is to start looking at the details, and address fears that the process will be intrusive. He said the purpose of the analysis in ICA would be mainly to check whether the information sought in the guidelines has been provided,

and to strengthen and improve the reports over time. It would not be a process aimed at pointing out failures, but rather to enable the provision of more specific support for the next time. He felt the distinction between supported and non-supported action is not important.

## Appendix 1 : “Plan C” - The role of the Kyoto Protocol in a legally binding outcome<sup>1</sup>

Benito Müller<sup>2</sup>

### The Conundrum of the Willing

There is a realization among many UNFCCC Parties who appreciate the value of a legally binding multilateral climate change regime (call them ‘appreciative Parties’) that the architecture of the Kyoto Protocol (KP) has to remain a cornerstone of any legally binding outcome of the current UN climate change negotiations. The problem is that there is no agreement among them on how this should be implemented. As witnessed in the recent submission by Australia and Norway,<sup>3</sup> there are currently two alternatives being discussed: Should one keep the Kyoto Protocol in more or less its current form, and complement it with a separate LCA-Protocol, covering the relevant key elements of the current negotiations under the AWG-LCA (‘Plan A’)? Or should one start afresh with negotiating a comprehensive new instrument incorporating the key elements of the KP with the AWG-LCA outcome (‘Plan B’)? And what exactly should be the content and timetable of non-Kyoto commitments?

This is aggravated by the fact that there is precious little trust between the different camps as to whether concessions once made will be honoured by the negotiating partners. The reasons for this are manifold. For example, the developing country concessions at COP.13 in Bali– including in paragraph 1.b.ii – that led to the present two-track compromise of the Bali Action Plan were made in return for agreeing to negotiate a second legally binding KP commitment period (2CP) without introducing internationally binding developing country obligations. Most developing countries therefore see the rejection of a legally binding 2CP, or a demand for simultaneous legally binding developing country obligations as unacceptably changing the goal posts of the Bali deal. The point is that even among those who wish to strengthen the legally binding international regime (the ‘willing Parties’) and avoid the default alternative of a global pledge and review world, no one on either side is prepared to risk a leap (of faith) forward without having the negotiating partners safely handcuffed to them. This poses serious ‘sequencing problems.’ What is needed is a balanced sequencing of the process with discrete steps that provide comfort zones for both sides that they are not being ‘led up the garden path,’ i.e. deceived into taking a step without the other side actually following. This means that neither Plan A (supported predominantly by developing countries), nor Plan B (supported mainly by developed countries) are acceptable to developing countries as part of the Bali Action Plan period (given in terms of a 2CP).

Another thing that has to be kept in mind is that the envisaged LCA Protocol (Plan A), and the New-Unifying-Treaty (Plan B) would be instruments under the UNFCCC. While it is highly unlikely that, say, Least Developed Countries would be asked to take on any binding commitments<sup>4</sup> even in a post-2CP regime, there are other, less than completely appreciative Parties that would not be able/willing to sign, let alone ratify any treaty that would bind them legally. In short, neither of the two Plans would likely lead to a universal outcome, and consequently there would be a need to engage with these unappreciative Parties in other ways if either approach were successful.<sup>5</sup> More worryingly however is the scenario that because of the failure to appreciate legally binding

<sup>1</sup> The ideas put forward here are based on discussions at the recent ecbi Oxford Seminar.

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<sup>3</sup> Australia and Norway, *Enhanced action on Mitigation/AWG-LCA/AWG-KP*, Submission under the Cancun Agreements, September 2011, [http://unfccc.int/files/meetings/ad\\_hoc\\_working\\_groups/lca/application/pdf/australia\\_norway\\_mitigation\\_submission\\_.pdf](http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/australia_norway_mitigation_submission_.pdf)

<sup>4</sup> As witnessed in the Australian and Norwegian submission.

<sup>5</sup> Those Parties who would not be expected to take on binding commitments, such as LDCs, would presumably be willing to sign on and ratify.

outcomes by some, a successful legally binding outcome under the Convention might actually not be possible in the first place.

There are other reasons that might jeopardize a successful outcome under either approach to do with the mentioned trust deficit, even if all Parties to the Convention were appreciative. Take the Plan A two-protocols approach. Even if it were possible to have simultaneous decisions of the COP adopting the envisaged LCA Protocol, and the CMP with regards to a third commitment period of the Kyoto Protocol, there is no way of guaranteeing that countries would always choose to ratify either both or none, which would leave open the possibility of one of them entering into force without the other.<sup>6</sup>

The beauty of Plan B (new-single-treaty) is that it does not permit such ‘ratification cherry picking’. Yet it has other trust deficit problems. Thus many willing and appreciative developing countries are asking themselves, on the one hand, how they could be sure that a completely new deal would actually contain the desired key elements of the Kyoto Protocol and, on the other, whether the binding obligations they would be taking on would still sufficiently reflect the CBDR? These are probably the key reasons why so many of them are opting for Plan A. They are genuine fears that need to be taken seriously, particularly in light of the perceived attempts at shifting the goal posts of the Bali Action Plan.

Fortunately, there is third way (‘Plan C’) for appreciative and willing Parties from both the developed and developing world to reach the desired enhanced legally binding regime, namely the unification through enhancements of an existing legally binding framework: the Kyoto Protocol. After all, if one is genuinely keen to keep the key elements of the KP, why go through the trouble of starting from scratch? Why not keep the KP in an enhanced and improved form (if need be under a different name)? The idea here is simply to amend the KP sufficiently for willing Annex B Parties to agree to both a second and third commitment period, and to introduce an Annex C – with suitable additional structural amendments based on the work that has been carried out under the AWC-LCA – to contain binding obligations for willing developing countries of a type that sufficiently reflects the CBDR for them to sign on, e.g. in the format of (supported) NAMAs.<sup>7</sup> In short, the idea of Plan C is to shift the focus of negotiations for all appreciative and willing Parties away from the AWG-LCA of the COP to the AWG-KP of the CMP!

### Plan C’s Balanced Sequencing

**December 2011 CMP.7** In addition to an agreement on negotiating a 3CP with legally binding obligations for willing developed (Annex B) and developing (Annex C) countries, Plan C requires –for reasons mentioned above– an agreement on a 2CP with an amended Annex B. There is no need for a new mandate to negotiate the latter, as this is already meant to be the task of the AWG-KP, but it does require a new mandate to negotiate the envisaged 3CP. As a first step in the required balanced sequencing, the willing Parties therefore decide at CMP.7 to:

- (i) step up the hitherto lacklustre negotiations under the AWG-KP in order to produce by CMP.8 the necessary KP amendments for a 2CP; and

<sup>6</sup> As was pointed out to me in some initial feedback by Lavanya Rajamani, this issue could be resolved through linked entry-into-force conditions. Substantively, Plan A with such a linkage could be very similar to Plan C, but procedurally the two are very different. One involves parallel negotiations under two treaties, while the other takes place under the aegis of a single body, the CMP.

<sup>7</sup> The problem with the current structure of the KP for willing developing countries is that it does not allow for differentiated obligations short of different QELROs. The only options countenanced during the original KP negotiations, by contrast, were ‘all-or-nothing’: the Berlin mandate (1995, 1/CP.1, <http://unfccc.int/resource/docs/cop1/07a01.pdf>) exempted developing countries from any obligations, while the 1996 “Byrd-Hagel Resolution” of the US Senate ([www.nationalcenter.org/KyotoSenate.html](http://www.nationalcenter.org/KyotoSenate.html)) resolved that *the United States should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would [...] mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period.*

- (ii) start negotiations on a mandate for a 3CP as envisaged under Plan C to be completed by CMP.8.

COP.17 AWG-LCA is instructed by the COP to continue its work, focussing on issues that will not be covered under Plan C and on Parties that are unable/unwilling to take on legally binding obligations under it, with a view of concluding a set of draft decisions for adoption at COP.18.

**December 2012** CMP 8 (taking into account the outcome of the AWG-LAC) adopts the mandate for the Plan C negotiations, to be concluded by CMP.10 (2014), as well as the amendment for a 2CP. Annex B Parties that have signed up to the 2CP issue a declaration that they will fully implement their obligations with a view of ratifying the 2CP amendments as a package together with the Plan C 3CP amendments to be adopted at CMP.10.

COP.18 adopts the set of decisions drafted by the AWG-LCA, and a decision to disband the AWG-LCA, distributing any remaining issues to be handled by the relevant subsidiary bodies.

**December 2014** CMP.10 adopts a single amendment to the KP, encompassing both the 3CP and the 2CP amendment adopted at CMP.8 (so as to avoid 'ratification fatigue'), with a view to entry into force of the enhanced KP before the end of the negotiated 2CP (2020?).

### **Concluding Remarks**

There are many developing and developed countries that are willing, in principle, to take on legally binding obligations, provided that they are fair and that the others who say they are willing can be trusted to follow suit. The plan put forward here should be able to meet both conditions for all willing sides. As to those who at present are unwilling/unable, it should be clear by now that no Party can be forced to take on a binding obligation. The best one can do is to try and come up with a framework which those among them who do appreciate an enhanced legally binding regime might eventually be willing to join, and ensure that the process of establishing it is not taken hostage by those who do not.

## Appendix 2: National Institutional Arrangements for Climate Change Action (Mitigation and Adaptation)

Luis Gomez-Echeverri<sup>8</sup>

### The urgent need to shift attention to national governance on climate change

In order to be most effective, climate change actions, whether on mitigation or adaptation, should not take place in isolation. Most often, their degree of effectiveness is directly related to how much they are mainstreamed into development strategies, priorities and plans of the countries in which they take place. Being mainstreamed increases the chances that these actions are assessed against local needs and circumstances and hopefully after a comparison of optimal strategies to address specific climate change challenges.

But for effective mainstreaming of climate change actions into development strategies, priorities and plans, strong local institutions and capacities are essential. While most of the attention of the climate change negotiations to date has focused on global governance, mostly on finance, there is now an urgent need to shift attention to strengthening national governance by attending to the needs of countries and their national capacities. These needs include capacities to assess, formulate strategies, and manage climate change programs at the national, regional and local level.

The promise of a new wave of new and additional funding, makes this shift more urgent than ever. In preparation, several countries are already taking initiative to establish national funding entities to tap into new resources. The main role of many of these institutions is to ensure that climate change action is fully mainstreamed into national development strategies and plan.

### Current Institutional Landscape

The current institutional landscape for climate change action in developing countries is diverse but there are some common features. A survey undertaken with the help of the United Nations Development Programme in 2010 in over 50 developing countries revealed some common features that can be summarized as follows:

- Very few countries have established national institutions fully dedicated to addressing climate change (either for mitigation or adaptation)
- In most countries, it is the Ministry of Environment that is designated to help in the coordination of the implementation of climate change related activities
- There is a general absence of specialized and focused institutional framework for climate change to promote concerted action at national level
- In many countries, climate change is perceived as an environmental problem and thus difficult to establish coordination across sectoral ministries
- In some countries, narrow institutional mandates shaped by UNFCCC and CDM rather than a broader climate change agenda that needs to be mainstreamed into development seems to apply
- Coordination mechanisms are weak or non-existent in most countries – power or legal mandate is absent in most countries
- Weak institutional frameworks lead to major gaps between climate change actions taken and published national climate change policies and strategy (where they exist)

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## Current Major Governance Challenges

The survey mentioned immediately above also revealed some common trends found in many countries:

- Weak institutional structures to manage climate change
- A lack of clarity of functions of climate change governance
- A perceived lack of real priority for climate change because of the way climate change action is seen or defined (the notion that “climate change action is what the Ministry of Environment does” leads to this mistaken perception in many countries)
- In many countries, the interest to pursue climate change action is driven by the interest to tap available international funding which in some cases leads to distortion of national priorities
- The absence of strong national coordination institutions lead to weak capacities to mainstream climate change into development priorities, strategies and plans
- The absence of strong national coordination institutions lead to weak structures to mobilize, capture and manage funding for climate change
- Weak coordination of climate change action at national level
- The current proliferation of funds with diverse administrative and other procedures is creating major burden and diverting resources from other key priorities in several countries
- Weak monitoring and evaluation capacities

## The Case for National Funding Entities and Institutions

- A focus on strengthening national institutions could help developing countries deal with climate change within context of their development
- Stronger governance at the national level could help transition to a new model of global climate change cooperation with greater devolution of responsibility and a greater sense of ownership – good both for climate change as well as development
- This timely transition is good news both for climate change and for development:
  - For development: mainstreaming climate change into development priorities of countries would be enhanced
  - For climate change: would strengthen the case for countries to feel as legitimate partners of global effort
- Potential role of national institutions and funding entities as intermediaries with the global financial mechanism and other international funding sources
- Magnitude of climate change needs can not be fully addressed by UNFCCC - thus the need for leveraging other funds (domestic and global) where local institutions are the only ones that can play a key role effectively
- National funding entities/institutions are best placed to sort differences of needs and best instruments to meet
- National funding entities/institutions also ones best placed to ensure that investments are mainstreamed/ integrated into development
- National institutions/funding entities are best placed to sort out different needs and match them to the best existing instruments

## Conclusions

- Greater focus needed at climate change negotiations on finding ways to address the needs of developing countries for strengthening local governance and institutions
- Success of global cooperation and finance on climate change is inextricably linked to having strong local arrangements

- Countries with strong local institutions and clear climate change strategies are poised to contribute and benefit the most in fight on climate change
- New and additional funding prospects are good news but will pose huge capacity development challenges in developing countries that needs to be addressed and properly funded (dedicated fast-start-financing for capacity building would be well justified and a good investment)
- International institutions need to continue to play an important role but with a greater emphasis on creating bridges where local institutions have not yet been established or where weak national institutions would benefit from capacity building and technical assistance