

Environmental Integrity Group (EIG), comprising Liechtenstein, Mexico, Monaco, the Republic of Korea, and Switzerland

Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP): scope, design and structure of the future legally binding instrument; application of principles and ways of reflecting enhanced action of the Parties; and lessons learnt

ADP 2

The EIG is pleased to submit its views on the work of the ADP, in particular on issues correspondent to paragraph 13 a – d in the conclusions of ADP 1, part 2.

Our work under the Durban Platform should be guided by the goal of tailoring a universal, effective and legally binding climate agreement by 2015. This agreement needs to ensure strong global action, broad participation, and effective compliance, in order to deliver a global response that parallels the level of the climate challenge.

The EIG stresses the importance of carefully handling the ADP process in order to deliver the 2015 Agreement in a timely manner, having in mind the need to present negotiating text before COP20, in order to develop draft text by May 2015 as agreed in Doha. We also need to be mindful about articulating the elements of the 2015 Agreement with the institutions and processes already established by the international community, to ensure overall functionality of the climate architecture. To advance the development of the 2015 Agreement, the EIG suggests to focus at the upcoming sessions of the ADP (April/June) on the scope, structure and design of the 2015 Agreement and, thereby, elaborate jointly on how to apply the principles of the Convention and ways of defining and reflecting enhanced action. We see the following questions particularly relevant to advance the conceptual understanding on the 2015 Agreement at the April/June sessions and to be able to engage later in the year more specifically on the various elements of the 2015 Agreement:

- What do Parties envisage by “flexibility for national circumstances” in balance with achieving the ultimate objective of the Convention (Art 2)?
- What do Parties envisage by a “dynamic framework” that is viable in the future reflecting changing economic realities, national circumstances, common but differentiated responsibilities and respective capabilities, regarding mitigation, adaptation, support, and transparency of actions?
- What incentives do Parties envisage for ambitious participation regarding mitigation, adaptation, support, and transparency of actions?
- How do Parties envisage themselves participating in the 2015 Agreement regarding mitigation, adaptation, support, and transparency of actions and support?
- How do Parties envisage the 2015 Agreement to relate to the institutions and processes already agreed under the Convention?
- Would Parties envision a core agreement containing mutually agreed essential elements and annexes accommodating the diversity between Parties?

Work towards the 2015 Agreement offers the opportunity to build on the 20 years of experience within the UNFCCC, and to draw on other experiences outside the Convention. It also offers the opportunity of creative tailoring of a climate regime that is both responsive to science and to the Parties conditions and needs.

The EIG's views on the raised aspects are outlined below

- An effective international regime must be stringent to ensure compliance, have sufficient participation, and be sufficiently ambitious.
- The EIG therefore advocates a *legally binding instrument (LBI)* as only such legal form will provide the necessary certainty to all Parties to take today ambitious action and invest in a low carbon future ;
- The EIG further advocates common rules for MRV and accounting that underlay the regime to allow for verification of achievement of committed action. A solid verification process on the basis of common rules will again provide the ex ante certainty to the Parties to act collectively;
- The EIG envisages participation of all Parties in the *future LBI* including mitigation commitments for all Parties with differentiation in the efforts, which could include quantified economy wide emission reduction targets or actions according to CBDR/RC and equity. Particularly, such commitments are necessary for all developed Parties and other Parties in the position to do so. Differentiation between all Parties in terms of incentives to foster greater action where there is major potential, responsibility and capacity is necessary to ensure fairness and equity ;
- The EIG supports an ambitious *future LBI* where all Parties take ambitious action according to CBDR/RC and equity. Ex ante comparability of efforts is crucial to trigger a race to the top.

Scope of the *future LBI*:

- Objective: Art 2 of the Convention ;
- Global participation ;
- Mitigation is at core of the *future LBI*, in accordance with the ultimate objective of the Convention; Adaptation as an integral part of the package, aiming at reducing vulnerability and improving resilience capabilities; Support must be adequately addressed, including finance, technology development and transfer and capacity building; Transparency of Action and support must also be ensured.

Design of the *future LBI*:

- A dynamic framework is necessary for allowing increase of ambition and development in differentiation reflecting the changing economic realities, national circumstances, common but differentiated responsibilities and respective capabilities;

- The *future LBI* must incentivize for ambitious participation, focusing on potential and not on restrictions ;
- The *future LBI* must provide adequate flexibility for national circumstances to ensure the highest possible mitigation effort by all Parties ;
- The *future LBI* must be rules-based and include ex ante clarity and comparability on the commitments adopted;
- The *future LBI* must ensure cost-effectiveness, environmental integrity, transparency, and be science-based.

Structure of the *future LBI*:

- One instrument with thematic components or various thematic approaches, or one core legally binding agreement with annexes that accommodate Parties diversity according to CBDR/RC and equity.
- Possibilities for a dynamic framework should be developed
Example A: annexes with quantified mitigation commitments or actions, according to CBDR/RC and equity which will undergo periodic review ;
Example B: processes that incentivize ambitious participation.

Application of the principles of the Convention and ways of defining and reflecting enhanced action

An ambitious response to climate change will only be possible if everyone does its fair share. As such, equity, CBRD/RC and the other principles of the Convention shall be seen as an enabler of action that will need to be operationalized across different elements of the 2015 Agreement, such as mitigation, adaptation and finance, as described below:

Mitigation:

- All Parties take appropriate commitments of same legal form and under the same rules and at different depths in terms of type, stringency and timing according to CBDR/RC and equity. Differentiation between all Parties could be reflected by some accepting quantified economy wide emission reduction targets, others accepting intensity or BAU targets, and others accepting appropriate actions.

Adaptation:

- All Parties, as appropriate, develop and implement plans and strategies to build resilience, minimize and cope with the adverse effects of climate change;
- All Parties cooperate in adaptation efforts and share knowledge, best practices and experience;
- Support is provided to developing country Parties vulnerable to the adverse effect of climate change;

- Ad-hoc multilateral arrangements such as the Adaptation framework is effectively articulated with the 2015 Agreement.

Finance

- Countries in a condition to do so shall support action and capacity building in developing countries through a variety of instruments according to the recipient countries national circumstances and respective capabilities.

Experiences and lessons learnt from the current legal framework and other processes :

- Experiences from the current legal framework:
 - The UNFCCC is well set to allow for the necessary global climate action due to its global participation. Further it is well set to be viable over time as it allows dynamic development in the international regime: in the context of its operationalisation, the Kyoto Protocol and the Cancun agreements have been adopted, and by 2015 *a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties* is to be adopted. However, the Convention itself does currently not ensure ex ante clarity and comparability on pledged actions and, thus, does not provide sufficient certainty to Parties to act in a collective way. Overall, the Convention currently does not trigger sufficient global ambition and predictability in the commitment.
 - The Kyoto Protocol contains rather elaborated stringency (legal form, rules-based) and compliance schemes (compliance mechanisms). Many Parties have successfully undertaken quantified emission reductions and the internationally legally binding commitments have strengthened national legislations. However, the coverage of the Kyoto Protocol is rather small regarding the percentage of global greenhouse gas emissions addressed , particularly under the second commitment period, and, thus, the Kyoto Protocol is insufficient in view of holding increase of global temperature below 2 degrees Celsius.
 - As indicated above, we have experience with both negotiated approaches like the Kyoto Protocol, and with bottom up voluntary schemes such as the mitigation pledges formalized in Cancun. We consider it might be worthwhile to explore different combinations of both approaches to devise arrangements that suit and accommodate the vast majority of countries while ensuring an effective climate regime.
- Some experiences from other processes that are worth considering as part of our work towards the 2015 Agreement:
 - CITES, the Montreal Protocol, the Rotterdam Convention as well as the Stockholm Convention all provide for a dynamic operationalisation ;

- The Montreal Protocol that provides differentiation in terms of timing for phasing out ozone depleting substances.
- The International Convention on the Prevention of Pollution from Ships (MARPOL) which includes same legal obligations for all Parties and combines different types of annexes.
- Negotiations that established the World Trade Organization, which resulted in one core undertaking composed by different agreements.
- Some lessons learnt:
 - A legally binding nature is key ;
 - Broad coverage is key ;
 - A dynamic framework is key ;
 - Models with annexes or core agreements with various components have proven well.