



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

NEGOTIATION UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

**PARIS 2015 AGREEMENT AND
BEYOND SESSION**

13 NOVEMBER 2014

International law and MEA's

- Multilateral = involving participation of many/most countries
- Environmental Agreements = mis-nomer (all include social & economic aspects)
- Agreements Applicable to
 - Areas within national jurisdiction (eg. UNFCCC, CBD, CITES, RAMSAR)
 - Areas beyond national jurisdiction (IMO, ICAO, UNCLOS, Antarctic Treaty)
 - Both within and beyond national jurisdiction (IWC, Fisheries Organisations, CMS)



Treaty approaches

- Vienna Convention on International Treaty Law
- All rule based (hard – cede sovereignty vs soft – discretion on national legal form)
- 1st & 2nd generation MEA' s (voting)
- Framework (eg. UNFCCC, CBD)
- Specific (e.g. Kyoto)
- Governance (eg. UNEP)
- Foundational (eg. GCF instrument)
- Relational (eg. GEF MoA with UNFCCC)

Types of instrument

- Action oriented – promoting & advisory (UNESCO, WHC), limiting (UNFCCC), banning (Basel), substituting & phase out (Montreal, Stockholm), conserving (CBD, CMS), informing (Rotterdam), regulating (Cartegena, Nagoya)
 - Commitment to national action (eg. Kyoto)
 - Cooperative action (eg. CDM)
- Delivery instrument (eg. GCF)
- Transactional or reciprocal (eg. WTO)



Character of instrument

Bottom-up

Top-down



Facilitative Model:

- International law catalyzes, encourages, reinforces national action

Contractual model:

- International law memorializes what states agree to do
- Promotes reciprocity through mutual exchange of promises

Prescriptive Model:

- International community sets standards



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Current Context – Bali, Copenhagen, Cancun, Durban, Doha and Warsaw

- The CC negotiations originated in 2001 - driven by a changing world order - rise of emerging economies
- Some countries asserted that the current system was both unfair and not environmentally effective
- Developed countries legally bound under Kyoto contend;
 - They contribute less than 30% of global emissions;
 - AND because the USA & major developing countries (BASIC) only have “non-binding” commitments,
 - they are also at a relative economic disadvantage
- Resulted in the 2 track Bali Road Map negotiation in 2007, to be concluded by 2009 in Copenhagen - not met
- Continued negotiation in 2010, 2011 & 2012 – to finalise the post 2012 system



Post 2012 system

- A global goal of 2° C with a review of adequacy in 2013/15;
- Mitigation – differentiation & accountability
 - Quantified targets for developed countries (QEERT' s); (INF doc)
 - Relative NAMA' s for developing countries; (INF doc)
 - NAMA registry to match action with support & recognition of action
 - Transparency & accountability; (A1 - enhanced reporting/review/BR; NA1 - nat comm/MRV/BUR; & MRV of support; IAR/ICA)
- Adaptation – a priority for the poor; (Adapt Framework; Adapt Committee; NAP; Loss & Damage; M&E of support)
- Finance – now, up to & beyond 2012
 - \$30 billion Fast-Start Finance between 2010 and 2012;
 - Commitment to mobilise \$100 billion per year by 2020;
 - A substantial portion through the Green Climate Fund; and
- A Technology Mechanism – ; (TEC & CTCN)



What was not agreed

Did not address key equity related political questions

- The legal form of the Convention outcome & therefore the continuation of Kyoto,
 - A 2 Treaty type legally binding outcome (2nd CP under Kyoto)
 - A single treaty type legally binding outcome (replace Kyoto)
 - No legally binding outcome (kill Kyoto)
- Sufficient ambition to prevent dangerous climate change
 - A long term global emission reduction goal (2050)
 - A global peaking year
 - Upfront common carbon accounting rules
 - Complementarity or limiting the use of offsets by A1 for compliance
- The fair allocation of burden and cost
 - Need for an Adaptation Centre & Network & a Loss & Damage Mechanism
 - Comparability of effort among A1;
 - Comparable compliance among A1;
 - Fair share of carbon space or time for developing countries to transition
 - Fair treatment of Intellectual Property Rights for the global climate commons



Emergence of 2 competing paradigms

- Copenhagen – a “big-bang” approach not politically feasible
- Enabled two competing paradigms
- Top down – Kyoto style – consistent with Bali 2 track option
 - Multilateral commitments – inclusive & equitable participation
 - Common rules and criteria based
 - Internationally legally binding on all Parties
 - Ambition informed by science (accounting for national priorities)
- Bottom up – pledge and review – no Kyoto
 - Unilateral – pledged domestic targets, policies and measures
 - Domestically legal (or not) commitments, rules and criteria
 - Ambition informed by national priorities and circumstances
 - “Internationalised” through reporting and review procedures



Central issues for the future

- Choosing a “top down” or “bottom up” model
 - A Kyoto 2nd commitment period (or not)
 - Balanced by the legal form under the Convention
- Therefore, deal with “Unfinished business” from Bali,
 - Equity, comparability and symmetry
 - Transparency & accountability vs compliance as well as
 - Issues with external mandates (IPR, trade, bunkers, agric)
- Ambition – to reach 2°C or 1.5°C
- Urgency – making it operational now
 - Adaptation Committee, Framework, NAP, loss & damage
 - The Green Climate Fund, sources, Standing Committee
 - Technology Mechanism – operational CTCN
 - Response measure forum

Durban Deal for the future

- Potentially historical turning point choice of a multi-year pathway to a legal **future** – applicable to all – *under a new AWG – the ADP*
 - Negotiation of a new legal regime applicable to all parties by 2015, to come into effect/force by 2020;
- Significantly advanced the global effort needed **now as a transitional arrangement**
- **But** acknowledge that pledges on the table now are insufficient so process to increase ambition in the short term



Outstanding issues

- Precise definition of the legal character
- Top down vs Bottom up or combined
- Extent of multi-lateral common rules vs domestic rules, internationalised thru “transparency & accountability” procedures (i.e. MRV +)
- Equity & differentiation (how to share effort, costs and benefits)
- Issues mandated to other bodies (trade, IP, aviation, shipping, agriculture)



Context going forward

2 main contextual issues

- Maintaining balanced progress in work to finalise outstanding issues
- Global and national political and economic circumstances have not really changed since 2011 with a risk of a regression to “more of the same old divisions”
- Operationalise post 2012 system
 - AWG-KP – final adoption of amendment to Annex B & rules
 - Balanced with AWG-LCA finalised clarity on pledges, transparency & accountability framework
 - Ensuring the GCF is not an empty shell
- Alternatively the AWG-DP negotiation of the future becomes a continuation of the AWG-LCA with another name



Challenges going forward

Key challenge – develop ADP agenda & work that

- draws together the components of the architecture already agreed to
- within a legal rules based framework based on the provisions of the Convention
- that is ambitious, enabling, supportive, transparent and accountable
- but balances concerns relating to
 - comparability of effort,
 - differentiation,
 - symmetry,
 - compliance,
 - national sovereignty and equity



Criteria or conditions for success

The framework should therefore

- enable the participation of all
- through both domestic and international measures,
- incentivise increased ambition & support for adaptation
- be informed by science taking account of national circumstances
- with effort & cost equitably shared - dynamically evolving responsibilities, developmental stage and capabilities
- through flexible tools, mechanisms, accounting, reporting & support systems, based on common multilateral rules
- where performance is transparently measured, reported and verified domestically and
- tracked, assessed, facilitated & recognised internationally



Scan of demands - What's in vs What's out

- Commitments – flexible, multiple types, all levels
 - Global contribution
 - Domestic contribution
 - Cooperative contribution
 - Financial contribution
 - Technology contribution
 - Capacity building contribution
- Mechs & tools (including rules & criteria – **building on**)
 - Adaptation – Adaptation Framework, NAP's, Loss & Damage
 - Mitigation – Kyoto plus; Registry & new mechanisms
 - Market
 - Non-market
 - Sectoral
 - REDD+ & land based mitigation
 - Means of Implementation – finance, technology, capacity
 - Cross – sectoral – (science, capacity, education, awareness)



Scan of demands - What's in vs What's out

- Tracking, Monitoring and Evaluation – build on rules
 - Performance (action vs commitment; support; joint/coop)
 - Reporting
 - Transparency – analysis, facilitation, consultation, review
- Safe guards – build on
 - Early warning & emergency response
 - Risk management & response measures
- Information systems – creating mechanisms for
 - Adding up – Effectiveness/integrity
 - New science/Trends/Changing circumstances
 - Emerging risks
- Governance - ??any new??
 - Governance institutions (eg. accountability & compliance)
 - Flexible updating procedures



Durban Platform instrument: Key variables

- Form
- Structure
- Content
- Process

- Legal agreement > binding under Int Law
- COP decisions > in general, not legally-binding
- Political agreement
- Legally-binding under domestic law



Variables

- Form
 - Structure
 - Content
 - Process
- Single package vs. à la carte
 - Single package – all or nothing
 - À la carte – states can pick and choose
 - Legally-binding vs. non-legally-binding elements
 - Which parts of agreement are in legally-binding part?



Variables

- Form
- Structure
- Content
- Process

- Voluntary or mandatory (“should,” “shall”)
- Commitments
 - Obligations of result – e.g., targets
 - Obligations of conduct
- Differentiation & symmetry





Variables

- Form
- Structure
- Content
- Process

- Top-down: international prescription
- Bottom-up: national decision-making
- Contractual, negotiated



THANK YOU



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