28 February 2012

The Environmental Defense Fund (EDF), an 800,000-member non-profit, non-governmental, non-partisan, UNFCCC- accredited observer organisation that has participated in the climate treaty talks since their inception, respectfully presents its Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action, regarding Views on Options and Ways for Further Increasing the Level of Ambition.

At the Seventeenth Conference of the Parties to the UN Framework Convention on Climate Change in Durban in December 2011, the COP

> *Request[ed]* Parties and observer organizations to submit by 28 February 2012 their views on options and ways for further increasing the level of ambition…

The COP also decided to hold an in-session workshop at the first negotiating session in 2012 to consider options and ways for increasing ambition and possible further actions.

We believe that the COP is correct to focus on "options and ways" for increasing ambition and further action. *The fundamental challenge the COP faces is developing "options and ways" that attract and encourage sovereigns to voluntarily place effective, durable limits on the greenhouse gas emissions of entities in their jurisdiction, to enforce those limits, and to establish the institutional mechanisms that can generate sustained financing to support efforts to mitigate and adapt to the changing climate.* As explained more fully below, we strongly support the use of legally binding instruments, at domestic and international levels, as crucial tools among the "options and ways". At the same time, we recognise that the decision whether to participate in any particular option or way is a decision taken voluntarily, by each sovereign through its domestic processes. We congratulate the Durban COP for opening up this discussion, and are honored to have the opportunity to offer ideas on options and ways that can attract and encourage sovereign participation. This submission focuses on **Mitigation,** and in that context proposes some ways for increasing the financing ambition as well.

Increasing the level of ambition with regard to mitigation necessarily must focus on limiting and reducing the total amount of greenhouse gas emissions (GHGs) going into the atmosphere. That, in turn, requires a laser-like focus on three aspects:

- Incentives to strengthening commitments and actions to limit and reduce total global GHGs;
- Incentives to extend these commitments and actions into the future, including incentives for early action; and
- Incentives to broaden participation, with a view to enrolling jurisdictions and entities constituting 80% or more of global GHG emissions in efforts to reduce total GHG emissions.

A. Level of Mitigation. The "global gap" in ambition is widening rather than narrowing, as pointed out in the United Nations Environment Programme Synthesis Report "Bridging the Emissions Gap" (November 2011). From now through 2020 is critical: global emissions must start to decline during this time period. The sooner nations slow, stop and decrease the growth of global emissions, the greater the chance of avoiding the most dangerous consequences of climate change. Early reductions buy crucial time. The task is enormous. But it can be accomplished. Its basic building blocks include the following (some of which may entail action by the COP, and some not):

1. **Ensure that U.S. greenhouse gas emissions peak and decline as soon as possible,** and continue to decline at a rate that approaches 4 percent per year by 2020. Troublingly, national legislation to cap U.S. greenhouse gas emissions failed in 2009. Nevertheless, U.S. emissions did decline for a few years, and while emissions are now increasing, new legally binding sectoral-level domestic regulations address emissions from sectors constituting some 70% of global emissions, and some sub-national jurisdictions, notably California's emissions cap and trade system and the north-east states' Regional Greenhouse Gas Initiative (RGGI), offer important prospects.

2. **Expand and strengthen the European Union's emissions trading system,** and achieve commensurate reductions in the effort-sharing (non-ETS) sectors, to remain on a declining path and achieve reductions of 4 percent or more per year as quickly as possible. As various independent experts have confirmed, the European Union's emissions trading system (ETS) is succeeding in driving emissions downward - 6% overall reductions since 2005 - and de-linking carbon pollution from economic activity. A number of European nations have continued to generate jobs in the low-carbon sectors even during the current economic downturn. The EU has expanded the ETS to cover aviation from 2012. And discussions are now underway about options for strengthening the system further. In the interim, as a number of EU nations face important choices about their energy future, it will be important to explore ways to incentivize low-, rather than high-carbon development of domestic energy resources.

3. **Provide incentives for emissions from remaining OECD countries, Russia and Eurasia** to peak no later than 2015 and soon decline. Important developments here include the adoption by Australia and New Zealand of domestic carbon pricing/emissions trading systems, and legislation under consideration in the Republic of Korea and Mexico. Japan, following the tragic tsunami, now faces crucial energy choices that will affect its GHG emissions into the future. Russia and Ukraine also face key energy choices.

4. **Build a pathway for large emerging economies** to move swiftly to ensure that their emissions peak by 2020 or shortly thereafter and start on a rapid downward slope, in part by **enabling nations that wish to do so, to create and implement domestic carbon markets and the institutions that sustain them.**

5. Emissions from deforestation decrease at least 20 percent below current levels by 2020. This area has seen some of the most significant progress, with Brazil recording another year of major reductions in emissions from deforestation in 2011.

6. **Ensure accuracy in the accounting for the anthropogenic greenhouse gas emissions implications of biofuel production and consumption,** so as to maximize the low-carbon potential of sustainably produced biofuels while avoiding increases in greenhouse gas emissions.

7. **Ensure common accounting for net greenhouse gas emissions across all nations.** This is critical: While approaches to defining, implementing, and describing

national actions differ widely, it is essential that nations utilise common methodologies for accounting and reporting emissions and sequestration, as without such accounting, it will not be possible to ascertain whether the world is in fact closing the emissions gap.

Together, these seven elements, which need to be in place by 2015 at the latest, can provide the platform for the best remaining prospects for averting the worst of dangerous interference with the climate system.

B. Stock-taking and insights derived therefrom. This year, 2012, marks the twentieth anniversary of the UNFCCC. EDF, working with colleagues and partners around the world, has informally taken stock of the history of efforts to mitigate climate change. Drawing on lessons learned from these efforts, and recognising, as noted above, that the crucial challenge is to create incentives for nations and other jurisdictions to participate in mitigation, EDF offers the following insights as context for the design elements that we will propose in the next section:

- The first insight is that public awareness and public demand for climate action can and must play a fundamental role across jurisdictions. Consequently, the institutions of the UNFCCC should redouble their efforts to assist nations, the private sector, and civil society to increase public awareness of the importance of climate action, at all levels, and the potential dangers from climate inaction, as well as the challenges of adaptation.

- The second insight is that while a wide range of domestic policies (e.g., energy efficiency policies, renewable energy policies, and others) can usefully be applied across a range of sectors, the development of global and regional carbon markets has powerfully demonstrated that well-designed emissions trading systems have great potential to attract and maintain the voluntary participation of sovereigns and the economic actors in their jurisdictions. In particular, independent analyses of the the largest such program addressing GHG emissions, namely the European Union's Emissions Trading System (EU-ETS), have concluded that the system has been effective in driving emissions down at costs far lower than had been anticipated. (See, e.g., Pricing Carbon: The European Union Emissions Trading Scheme, by A. Denny Ellerman, Frank J. Convery, Christian De Perthuis, and Emilie Alberola (Cambridge University Press 2010). Crucial to the success of these markets, however, are the minimum elements of effective market-based mechanisms:

    - Transparent accounting for total emissions and sequestration;
    - Transparent tracking and reporting of total emissions and transactions;
    - Strong standards for defining the traded commodity, to ensure that a ton of allowable emissions in one jurisdiction in a given time period can be fungible with a ton of allowable emissions in another jurisdiction or another time period (through "banking");
    - A consistent focus on the importance to the climate of reducing total emissions as measured from historical known levels (focusing solely on intensity reductions, or on reductions from projected future emissions, is not sufficient and in some cases can lead to unfortunate incentives to increase, rather than reduce, emissions);
    - Accountability - systems supported by strong institutions to hold emitters accountable for meeting clearly established targets, with known-in-advance consequences for failure to do so; and
    - Consistency, the bedrock of settled expectations. Because climate mitigation presents challenges and opportunities to an extremely broad array of economic interests, and entails shifts in investment that must be durable over time, it is

essential that once policy-makers establish the rules of a framework, they should make changes to it only in accordance with previously announced rules for so doing.

- The third insight is that UNFCCC Parties have available to them a range of options for creating and extending carbon market infrastructures, as the Durban decisions amply demonstrated. Consequently, while Kyoto Protocol Parties can create a second commitment period under the Kyoto Protocol by amending it, *the UNFCCC Parties can, if they wish, draw the essential structural elements of the Kyoto Protocol into a new protocol, amendment, or agreed instrument with legal force to be adopted directly by the COP.*

- The fourth insight is that the principle of "common but differentiated responsibilities and respective capabilities" can be respected in ways that address the fundamental concerns of a wide range of nations, *if a strategic and dynamic set of tools drawing upon the essential elements of sound carbon markets is made available.*

- Finally, while the COP will seek to craft new instruments that all Parties can join, not every nation needs to be a Party to a new instrument. Carefully designed market mechanisms which allow linkages with non-Parties who meet stringent eligibility criteria, can provide powerful incentives for sovereigns to participate in mitigation, *even if those sovereigns do not formally become Parties to a new instrument or formally subscribe to international standards*. Such an approach is common in other fields (see, e.g., the Montreal Protocol on the Ozone Layer, the Convention on International Trade in Endangered Species, the Basel Convention on Hazardous Wastes, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, and the WTO Agreement on Technical Barriers to Trade).

In the next section, drawing from these insights, we offer ideas for elements for new Options and Ways that can increase the level of mitigation ambition.

C. Elements that Can Create Incentives for Increased Participate in Mitigation.

1. A new framing. A starting point would be to envision a new framework in which Parties are differentiated based on their sovereign decisions as to whether to participate in market-based mechanisms for climate protection, and the concomitant financing such mechanisms can generate. Under this vision of differentiation, Parties could choose to associate themselves with any of the following groupings:

a. QELRO Parties. QELRO Parties are Parties that choose to inscribe for themselves internationally binding quantitative emissions limitation and reduction commitments (QELROs) that begin in 2013, or at any time thereafter, but not later than 2020; and whose QELRO extends for a minimum of two seven-year periods. These Parties could choose to inscribe nation-wide QELROs and be issued tradable allowances; or they could choose to inscribe absolute sectoral QELROs. Then, as long as they complied with eligibility rules, QELRO Parties could participate in multilateral market mechanisms – the Clean Development Mechanism, joint implementation, emissions trading, and any new market mechanisms the Parties adopt - under a new instrument that builds on the minimum elements of successful market-based measures described above. The new legal instrument could draw on the Kyoto Protocol, the Marrakesh Accords, or other instruments, provided that:

- QELRO Parties would commit to monitor and report their emissions, participate in international verification of their emissions reports, and they or their emitting entities would

face consequences (which could be internationally or domestically binding) if their emissions exceeded their QELROs.

- QELRO Parties could agree with other QELRO Parties to meet their QELROs jointly, provided transparency requirements were met.

- QELRO Parties could agree to recognise as valid the carbon units of each others' *domestic* trading systems, subject to stringent safeguards. In the event that a QELRO Party had not yet subscribed to internationally binding consequences for emissions exceeding its QELRO, other QELRO Parties would need to include in the safeguards provisions to address linkage with such a QELRO Party.

- Low-Emitting Parties. Any Party whose total emissions did not exceed a specified percentage of global emissions (e.g. 0.5%) would be considered a Low-Emitting Party. Any Low-Emitting Party that wished to become QELRO Party could apply for a grace period (e.g. of ten-years, with five years to define its QELRO, and five years before it implements its QELRO). During the grace period, these Low-Emitting Parties would be eligible to continue with project-based trading via the CDM. Low-Emitting Parties could also work jointly during their grace period if they wished. Periodic global emissions assessments would determine whether a Low-Emitting Party's status had changed based on its total emissions.

- Recognising that predictable market rules are important for incentivising long-term investments in low-carbon technologies, QELRO Parties could agree that unused carbon units could be saved for use in future commitment periods, in accordance with rules agreed among these Parties, and they could expand available carbon finance by allowing such units to serve as environmental security for carbon lending. Through such a mechanism, QELRO Parties could provide incentives to increase the ambition on climate finance, helping reduce project risk, and turning the issue of surplus Kyoto Protocol AAUs from a potential environmental liability into a climate finance asset.

b. "NAMA" Parties. These Parties would make *domestically binding commitments* to implement nationally appropriate mitigation activities (NAMAs) in accordance with their common but differentiated responsibilities and respective capabilities, but would face no binding international or bilateral/regional compliance consequences if their emissions exceeded their NAMAs.

- NAMA Parties could establish their own domestic carbon markets, but to ensure the integrity of multilateral market mechanisms, NAMA Parties would not be eligible to trade externally using these mechanisms, and QELRO Parties would not recognise as valid the carbon units of any domestic trading systems of NAMA Parties.

- NAMA Parties would commit to monitor and report their emissions subject to international consultation and analysis. The extent to which their actions to implement their commitments would be independently verified is a topic for further negotiation.

- Any NAMA Party could choose to become a QELRO Party, and readiness support would be provided to aid the transition.

c. "Non-Parties." Jurisdictions that have not yet ratified the new agreement but that *establish domestic legally binding emissions limits and otherwise meet the eligibility requirements of QELRO Parties* could, subject to strict safeguards, link to the new agreement,

including its multilateral market mechanisms, such as trading in emissions allowances and project credits with QELRO Parties. Recognising a new category of non-Parties could enable Parties that are ready to move forward with a new instrument to do so without being hampered by the barriers raised by nations that are not ready to do so.

- Allowing non-Parties to link to the new agreement if they meet strict eligibility requirements, could provide strong incentives for the participation of nations even though those nations have chosen to remain outside the multilateral framework.

- Including a "trade with non-Party" provision in a new legal instrument would bring the climate treaty framework into line with other successful agreements in the fields of environment and trade.

2. Common elements. A new instrument based on this reframing would need to require that all emissions trading, credit trading, reallocation through joint commitments, and trading with non-Parties, be recorded in registries, with provisions to ensure no double-counting. It would also need to require common accounting standards for carbon associated with biofuel production and use. And it would be essential to provide for periodic assessment of the science and extension of QELROs into the future.

3. The importance of credit for early action as an incentive for participation in mitigation. Recognising that the Durban Platform commits Parties to reach agreement on a protocol, or amendment, or another instrument with legal force by 2015, to take effect in 2020, and recognising the importance of bending the global emissions trajectory downward before 2020, it would be quite important for a new instrument to offer early access to carbon markets for nations that move more swiftly than 2020 to become QELRO Parties.

We recognise that the foregoing does not address all of the myriad issues that will need to be addressed on the road to Qatar and beyond. But we thank the Parties and Observers and Secretariat for the opportunity to provide these initial thoughts on options and ways to increase the level of ambition.