

**Summary report on the workshop on scope, structure and  
design of the 2015 agreement  
ADP 2, part 1  
Bonn, Germany, 29 April 2013**

**Note by the facilitator**

*21 May 2013*

**I. Introduction**

**A. Mandate**

1. By decision 1/CP.17, the Conference of the Parties (COP) decided to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties (hereinafter referred to as the 2015 agreement) and established the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) to undertake this task.<sup>1</sup> In its conclusions agreed at the second part of its first session held in Doha, Qatar, from 27 November to 7 December 2012, the ADP decided to hold, under the two workstreams initiated in 2012,<sup>2</sup> in-session roundtable discussions and workshops in 2013 and invited the Co-Chairs of the ADP to set out focused questions for those round tables and workshops, taking into account the submissions from Parties and accredited observer organizations.<sup>3</sup>

2. In response to this decision, the Co-Chairs of the ADP made arrangements for a workshop on the scope, structure and design of the 2015 agreement, and set out focused questions for the workshop in an informal note on the second session of the ADP.<sup>4</sup> The workshop was held on 29 April 2013 at the World Conference Center Bonn, in Bonn, Germany, during the first part of the second session of the ADP.

**B. General objective and approach**

3. The objective of the workshop was to provide an opportunity for Parties to engage with experts and stakeholders and to discuss the scope, structure and design of the 2015 agreement, including aspects related to the application of the principles of the Convention, ways of defining and reflecting enhanced action, and experiences and lessons learned from other processes.

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<sup>1</sup> Decision 1/CP.17, paragraph 2. The COP also decided that the ADP shall complete its work as early as possible, but no later than 2015, in order to adopt the protocol, another legal instrument or an agreed outcome with legal force at the twenty-first session of the COP and for it to come into effect and be implemented from 2020 (decision 1/CP.17, para. 4).

<sup>2</sup> FCCC/ADP/2012/3, paragraphs 28 and 30. Workstream 1 relates to a protocol, another legal instrument or an agreed outcome with legal force under the Convention (the 2015 agreement) and workstream 2 relates to pre-2020 ambition.

<sup>3</sup> FCCC/ADP/2012/3, paragraphs 28 and 29.

<sup>4</sup> <<http://unfccc.int/resource/docs/2013/adp2/eng/1infnot.pdf>>.

## II. Summary of the proceedings

4. The workshop was facilitated by Mr. Kishan Kumarsingh (Trinidad and Tobago).
5. The workshop was opened by the Co-Chairs of the ADP, who outlined the objective of and approach to the workshop and encouraged Parties to have an interactive and fruitful discussion. They emphasized that the workshop was not a setting for negotiations, but an opportunity to focus on the challenges related to the 2015 agreement and its design, explore creative solutions and share ideas in a positive spirit.
6. The facilitator further outlined the general approach to the workshop and highlighted three questions to guide the discussions:<sup>5</sup>
  - (a) How would the agreement be designed to incentivize ambitious national and international action?
  - (b) How would the agreement be designed to ensure durability and flexibility to respond to changes in national circumstances and evolving scientific knowledge over time?
  - (c) How will the principles of the Convention be applied in the new agreement?
7. Part 1 of the workshop focused on the design aspects for an ambitious, durable and effective 2015 agreement that mobilizes national action. It began with presentations by Professor Ross Garnaut from the Australian National University/University of Melbourne, Australia (remote presentation) and by Mr. Adam Matthews, Secretary-General of GLOBE International.<sup>6</sup> The presentations were followed by a panel discussion to reflect on the points raised in the presentations and by the focus questions. The panel comprised six panellists: Ms. Veronika Elgart (Switzerland), Mr. Caleb Christopher (Marshall Islands), Mr. Xolisa Ngwadla (South Africa), Mr. Trigg Talley (United States of America), Mr. Nick Campbell from the International Chamber of Commerce, speaking on behalf of business and industry non-governmental organizations (NGOs), and Mr. Tom Athanasiou from Climate Action Network International, speaking on behalf a constituency of environmental NGOs. The panellists' reflections were followed by an open discussion.
8. Part 2 of the workshop focused on the application of the principles of the Convention in the 2015 agreement. It began with presentations by Professor Lavanya Rajamani from the Centre for Policy Research (remote presentation) and by Dr. Tara Shine from the Mary Robinson Foundation – Climate Justice.<sup>7</sup> The presentations were followed by a panel discussion to reflect on the points raised in the presentations and by the focus questions. The panel comprised six panellists: Mr. Oleg Shamanov (Russian Federation), Mr. Eduardo Durand López-Hurtado (Peru), Mr. Artur Runge-Metzger (European Union), Ms. Mira Mehrishi (India), Ms. Meena Raman from Third World Network, speaking on behalf of a constituency of environmental NGOs, and Ms. Anabella Rosemberg from the International Trade Union Confederacy, speaking on behalf of trade union NGOs. The panellists' reflections were followed by an open discussion.

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<sup>5</sup> See the annex to the Co-Chairs' informal note on the second session of the ADP (footnote 4 above).

<sup>6</sup> The presentations are available at <<http://unfccc.int/7488>>.

<sup>7</sup> See footnote 6 above.

9. The facilitator concluded the workshop with brief closing remarks. He also informed Parties that a report of the discussions would be prepared and made available on the UNFCCC website.<sup>8</sup>

### **III. Summary of the workshop discussion**

#### **A. Part 1: design aspects for an ambitious, durable and effective 2015 agreement that mobilizes national action**

##### **1. Presentations and panellists' reflections**

10. The first presentation by Professor Garnaut outlined some of the main challenges related to the 2015 agreement. He stated that if the international community does not bring efforts together by way of a more effective response to climate change, the chances of holding temperature increase below 2 °C will soon have passed. He described the current approach to climate change as “concerted domestic action”, where countries are cognisant of the actions of others, but take decisions domestically. While this can enable progress, as demonstrated by the ambitious national targets and actions in many countries, he also suggested the establishment of an expert process to guide the preparation of national targets in order to ensure consistency with the 2 °C goal.

11. The second presentation by Mr. Adam Matthews provided an overview of the status of climate change legislation worldwide. He explained that 31 countries have “flagship” policies on climate change, driven partly by the international process but mainly by domestic benefits, resource efficiency and interest in new markets. Mr. Matthews acknowledged the strong progress made in developing countries. He also challenged the belief held by many that “only our country is taking action”. He was optimistic that domestic policies and international commitments can reinforce each other and that an ambitious 2015 agreement will help spur more and stronger national action.

12. Ms. Elgart described Switzerland’s vision for the 2015 agreement, which should be clear, both predictable and flexible, and based on a common rules-based system. It should also enable full participation and encompass fair differentiation, a spectrum of commitments, common accounting and measurement, reporting and verification, and the provision of resources from those capable of doing so. Her country would also welcome the implementation of a dynamic mechanism to increase ambition and maintain fairness in the light of evolving responsibilities and capabilities.

13. In response to the first presentation, Mr. Christopher pointed out that international action is not effective without political momentum, and that priority should be given to building that momentum. He suggested identifying the types of commitments that best survive short-term political changes. In response to the second presentation, Mr. Christopher acknowledged the importance of intersections between national and international actions. He criticized an excessive public focus on major emitters and an associated lack of attention to legislation on adaptation in vulnerable countries.

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<sup>8</sup> In addition, the facilitator has summarized his take home points from the workshop, which have been made available at the UNFCCC website at <<http://unfccc.int/7488>>.

14. Mr. Talley said that the United States of America would like the 2015 agreement to include a structure that maximizes participation, ambition and implementation over time. Such a structure would comprise nationally defined commitments, including ex ante clarification of those commitments, and a consultative period to allow Parties to analyse each other's measures.

15. In response to the first presentation, Mr. Ngwadla acknowledged that "concerted domestic action" has allowed wide participation, but has not triggered leadership, stronger rules, or sufficient ambition. The 2015 agreement should comprise "top-down" commitments and "bottom-up" actions, a fixed menu of actions, strong adaptation provisions and a compliance system, as well as a reference platform for reflecting national circumstances.

16. Mr. Campbell noted the absence of references to stakeholders and business in the discussion, and reminded participants about the benefits of working with business. The 2015 agreement should create a reliable long-term investment framework and support the global diffusion of technology, while preventing unequal competitive advantages. Key characteristics of the agreement should include: cost-effective pathways, relevant policies, flexibility, clarity and simplicity.

17. Mr. Athanasiou recognized the need for domestic action. Work on the design of the 2015 agreement should include an independent expert allocation of pre-2020 emission budgets, as well as an equity reference framework to maximize ambition and participation. Within this framework, Parties' pledges would be subject both to scientific and to equity reviews.

## **2. Discussion**

18. The facilitator thanked the presenters and panellists for their contributions, and asked Parties to go deeper in their exchange reflecting on the focus questions outlined at the beginning. In particular, he asked delegates to identify the design elements of the agreement that would enable durability and flexibility to respond to national circumstances.

19. In response, a number of Parties made proposals for elements to enable durability and flexibility. These included a regular review of the adequacy of commitments against the latest scientific knowledge, regular reviews to ratchet up ambition, as well as, more generally, a mechanism to ensure ambition, fairness and equity. One Party emphasized the importance to look back and to consider the lessons, both positive and negative, to be learned from the Kyoto Protocol, including from its compliance system.

20. Many Parties called for strong links with science and the need for an evaluation of collective action. One Party expressed the need for a global Marshall Plan to massively scale up climate change action on a global level. Parties expressed interest in discussing how an overall objective or vision could guide the work on the design of the 2015 agreement and how sources of inspiration and information, such as the Intergovernmental Panel on Climate Change, could be considered.

21. In response to the second presentation, it was highlighted that the number of climate laws does not necessarily lead to equal atmospheric benefits. Rather, it was crucial, in designing the 2015 agreement, to examine the impact of the policies and measures and whether their aggregate effect is on a trajectory of maintaining global temperature increase below 2 °C. In this context, the biennial reports to be submitted by developed country Parties in 2014 and the biennial update reports were welcomed as an opportunity to analyze the effect of the policies and measures implemented thus far, and the need to learn from that process was emphasized.

22. Some Parties saw fundamental tensions between some of the aspects, including between ambition and participation. One Party stated that the discussion should focus primarily on ensuring participation, emphasizing that due to the global nature of climate change, participation was key to action, and that other aspects should be viewed as subsidiary issues at this stage. In response, another Party stated that a good design can enhance both participation and ambition.

23. It was also stated that the 2015 agreement must be designed to ensure participation, in particular of major economies, and that it must address equity, include a mechanism for support, lower barriers for facilitating action, and address fossil fuel subsidies and intellectual property rights and their impacts.

24. Parties proposed several ways to incentivize national action and better recognize national circumstances. It was proposed that actions should be nationally determined, as fairness could not be imposed upon Parties. The importance of means of implementation was also highlighted as an incentive. In response to the comments made by Mr. Ngwadla, a Party suggested the development of another hybrid structure that would comprise a rules-based legal framework with diverse, self-determined, quantifiable and transparent commitments from all, supported by a “safety valve” to incorporate national circumstances.

25. Several Parties were of the view that commitments should be differentiated on the basis of a fair categorization of countries to accommodate changing circumstances. Some Parties reiterated the importance of ensuring equitable access to sustainable development, while others stated that fairness was a more helpful concept than equity.<sup>9</sup>

26. Parties emphasized that the agreement must also focus on adaptation, pointing to the importance of an adaptation goal and of matching adaptation action to finance, as well as of insurance, and loss and damage.

27. Lastly, in response to the comments made by Mr. Campbell, one Party pointed out that the business community was not just a passive receiver of regulation, but rather can be a powerful catalyst and at times a powerful lobby. The Party called on the business community to clarify what they would like to see included in the 2015 agreement.

## **B. Part 2: applying the principles of the Convention in the 2015 agreement**

### **1. Presentations and panellists’ reflections**

28. In the third presentation of the workshop, Professor Rajamani discussed various forms of differentiation (in terms of legal form, obligations, implementation and assistance) with examples from other environmental agreements. Differentiation essentially involves matching commitments with Parties to ensure fairness and participation. She outlined four broad design options for differentiation: (i) predetermined categories of Parties with a predetermined set of commitments; (ii) predetermined categories of Parties with nationally defined commitments; (iii) no categories of Parties with a predetermined set of commitments; (iv) no categories (Parties choose their own commitments). However, she pointed out that the defining of criteria or categories is always a subjective matter.

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<sup>9</sup> Several other Parties addressed aspects of equity and differentiation in the second part of the workshop (see section III.B below).

29. The fourth presentation by Dr. Shine focused on perspectives on equity. Dr. Shine emphasized the fact that equity is a requirement for justice and universal participation and needs to be applied across all areas of action (including finance and adaptation). She stated that equity is fundamentally a fair division of responsibilities and benefits. Using three hypothetical countries, she illustrated how to develop equitable and dynamic commitments and how a country's climate change related efforts could be viewed as a whole.

30. Mr. Shamanov welcomed the presentations and cautioned that differentiation can hamper universal participation. He called for the establishment of objective criteria for differentiation in a manner that does not result in insufficient participation. Further, he emphasized that the primary purpose of the 2015 agreement is to protect the planet.

31. Mr. López-Hurtado stated that differentiation is a natural phenomenon, and that Parties should learn about it from other international agreements, possibly through a matrix of approaches, as discussed in the third presentation by Professor Rajamani. Differentiation must be tailored and applied both to mitigation and to adaptation. An important objective would be to reduce emissions (in tonnes of carbon dioxide equivalent (t CO<sub>2</sub>)) to 2 t CO<sub>2</sub> eq per capita globally.

32. Ms. Raman stated that historical responsibility is the key to defining commitments, and that developed countries are still benefitting from their economic activities that have resulted in the accumulation of carbon in the atmosphere. Therefore, setting a goal of 2 t CO<sub>2</sub> eq per capita would lock in inequity. Developed countries should pay their debt from historical responsibility. She held that self-determination of commitments is not a sufficient basis for action.

33. Mr. Runge-Metzger agreed that differentiation can be disenchanting and that the Kyoto Protocol has not attracted additional participation. He identified differentiation as the answer to the equity question and asked how commitments could be differentiated in a dynamic way. Differentiation should evolve over time, and perhaps be subject to review or consultation. He also highlighted the fact that common accounting is a requirement of fairness.

34. Ms. Mehrishi stated that the principles of the Convention are timeless and an integral part of the 2015 agreement. Any approach to define commitments for post-2020 must be anchored in equity and the principle of common but differentiated responsibilities and respective capabilities, which are not opposed to, but rather can generate ambition and enhance action. The right to development, while not constituting a right to pollute, is a key element of equity that ensures sustainable development and survival of the most vulnerable.

35. Ms. Rosemberg explained the need for fair transition and emphasized that the past and the present have not been very fair.

## **2. Discussion**

36. Several Parties viewed the principles as being embodied and operationalized in the provisions of the Convention, its structure and commitments and that they should guide the scope, structure and design of the 2015 agreement. They considered that the focus should be on the implementation of existing commitments instead of renegotiation, and that there was no need for a new regime, rather for enhanced implementation.

37. It was stated that the Convention represents the most innovative environmental law in the world and a model to which other regimes are looking; rather than building "dreams of designing differentiation", Parties should focus on the "beef" of catalysing actions. Some

Parties held that developed countries have not implemented their commitments, and that a lack of clarity in relation to support hinders action by developing countries.

38. Parties called for a spectrum of commitments to be based on equity and historical responsibilities, and for predictable and adequate support, and identified several dimensions of equity, including historical responsibility, social dimensions, capacity to adapt, capacity to mitigate, and the structure of economies. In this context, one Party asked the ADP to consider how the fact that 1.3 billion people are living in poverty could be taken into account, and how the responsibility to mitigate the emerging 10 gigatonne mitigation gap by 2020 will be distributed over the next seven years.

39. A group of Parties suggested absolute commitments for Parties included in Annex I to the Convention (Annex I Parties) and relative contributions for Parties not included in Annex I to the Convention. Equity should be reflected in emission reduction commitments as well as in goals for adaptation and finance, with several Parties noting that historical responsibilities, while also evolving, needed to be the starting point.

40. Another Party emphasized the fact that not all Annex I Parties can be associated with historical responsibility due to limited historical emissions, and proposed core commitments with flexibility, e.g. through opt-out approaches for some elements.

41. Other Parties pointed out that the Convention principles should not curb ambition or be invoked as an excuse to avoid responsibility. While the principles and provisions of the Convention should guide action, survival is essential, and equity for current generations and intergenerational equity need to be balanced.

42. Some Parties stated that while the principles of the Convention are enduring, they must be dynamic, allowing for a broad spectrum of differentiated commitments for all, noting that progress is only possible if Parties engage in differentiated and concrete ways. Parties emphasized that, while countries with the greatest capacity must lead, all countries should contribute. A spectrum of commitments based on nationally determined actions would be a practical way forward. One Party proposed national schedules as a way to capture such a diversity of efforts.

43. Another Party emphasized the need for responsibilities to be differentiated, but pointed out that recognizing history does not imply ignoring the present or the future, and suggested that the work on the 2015 agreement should be informed by emerging differences in the developing world, and invited developing countries to discuss among themselves ways of changing the terms of differentiation.

44. Parties also expressed interest in discussing how differentiation is reflected in other agreements, in particular whether these agreements have static or dynamic differentiation arrangements.

45. In his concluding remarks, the facilitator thanked the presenters, panellists and all delegates for their thought-provoking presentations, contributions and the active engagement in the discussions. He acknowledged that, while there are many pathways, all Parties are moving in the same direction and that it is now time to define the details.<sup>10</sup>

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<sup>10</sup> For the take home points prepared by the facilitator see footnote 8 above.