Bonn Seminar 2012

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INTRODUCTION

The 2012 ecbi Bonn Seminar, held on 20 May 2012 at the Altes Rathaus in Bonn, Germany, was attended by 31 participants from developed and developing countries. This was the seventh ecbi Seminar organized in Bonn, to provide an informal forum for discussing issues that prove difficult to resolve under the formal auspices of the UN Framework Convention on Climate Change (UNFCCC). ecbi Advisory Committee members Bo Kjellén and Farrukh Iqbal Khan chaired the Seminar jointly.

SESSION I: EQUITY AND CBDR

The first session was on the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR) enshrined in Article 3.1 of the UNFCCC. ecbi Director Benito Müller introduced Article 3.1, saying it would be of key importance in the coming year in the negotiations – both, in terms of procedural justice (relating to how the negotiating process is conducted) and distributive justice.

Distributive justice, he said, has two paradigms in the climate change context. The first relates to resource allocation, or the sharing of limited atmospheric space or permits among countries. The second relates to burden sharing, or sharing the costs and benefits of dealing with climate change (including, for instance, issues related to adaptation and finance). He noted that the two were quite different, and it is essential to make a distinction during discussions.

On the CBDR principle, he said all Parties acknowledged the need for some form of 'differentiation' among countries, and the need for some form of graduation. As an example, he quoted from a May 2009 submission from the US, which called for such graduation in accordance with objective criteria of economic development, and consistent with capacity.

The term 'responsibilities' in the Article, he said, refers to two different but interlinked concepts in the climate context – of being responsible for emissions and therefore having liability; and also of having a duty to do something.

The term 'equity', Müller said, has been reduced to a mantra in the climate negotiations. In jurisprudence, it refers to the quality of being equal or fair. Aristotle defined it as 'treating like cases as like'. In the climate change negotiations, this meant that countries whose situation is similar should be treated alike. If they are not like or 'equal', they should be treated unequally but according to their degree of inequality. If countries feel that others are in a similar situation but are being treated differently, they will legitimately protest.

Müller then summarized the points made at the recent UNFCCC Workshop on Equity and Sustainable Development, and the questions listed for further discussion, including:

- How is 'capability' to be defined? Are intermediate gradations, between 'high' and 'low' capability necessary?
- How should emissions of a country be calculated? Should they include all emissions that physically occur within the borders of a country, or do they relate only to emissions related to goods and services consumed and investments made, within a country?
- From what date does historical responsibility start?
- Against what notions of equity should a country's action be assessed?
- What indicators of comparability would demonstrate a country is doing its fair share to ensure equitable access?

Chair Kjellén noted that these practical questions were not taken into account when the convention was being negotiated. In the discussion that followed, a participant pointed to the manifest case of injustice in the past 20 years, when countries have polluted knowing full well the consequences of their actions. He said this was clearly a case that involved perpetrators and victims, whether countries or individuals, and it is not just about future action, but also the past. Müller noted that the participant referred to compensatory or even punitive justice, rather than distributive justice.

A participant said countries have very varied views of what equity and justice in the climate context, and it was difficult to amplify the voices of the most vulnerable. Another developing country participant agreed, saying it was unlikely that all 194 UNFCCC Parties will agree on specific criteria, indicators or formulae to measure the multidimensional aspects of equity. Instead of aiming for an ideal that is acceptable to all, he felt the goal should be to avoid a level of unfairness that would make any deal impossible. He also asked whether emissions should be addressed at the country level or at the individual level, given that all countries have a proportion of wealthy and affluent people.

A developed country participant said her country had an ongoing discussion on how to take on board the big differences between the rich and poor within countries in the context of development cooperation. She asked whether countries should be held responsible for emissions when they were not aware of the damage they were causing. She noted the importance of trust, which was at an all time low in the ongoing negotiations in Bonn.

Chair Kjellén called for a 'safe operating space' for discussions on equity, in order to achieve a result. Müller suggested that the way ahead for the mitigation discussions under the Ad Hoc Durban Platform (ADP) could be to first lay out the various options that countries can opt for, from full Kyoto-type commitments to no action, and then decide which countries should do what. Another participants said the black and white categorization of countries into developed and developing should be reviewed.

Chair Khan said the principle of treating like cases alike is something that has been used in the World Trade Organization before, and is worth exploring. He asked if there were any parameters and elements already defined that could serve as a starting point.

A participant responded that it would not be difficult to define a set of parameters, to which all countries should be subject in order to see where they fit in. He also responded to an earlier comment on whether the unit for measuring emissions should be on the basis of individuals or countries, saying that the Vienna Convention on the Law of Treaties does not allow individuals, subject to domestic laws and internal political philosophies of countries, to be the basis of international treaties. On the issue of whether countries should be held responsible for emissions from a time when they were not aware that their actions were causing harm, he said that was relevant only in the case of punitive justice. In the case of distributional justice, prior knowledge of the consequences of ones actions is irrelevant.

A developing country participant said the ultimate goal, of keeping global temperature rise within 2°C, should be kept in mind while deciding mitigation targets. Another participant pointed to the need to keep intergenerational equity in mind.

A participant felt that in the real world, justice is often a matter of what you can negotiate rather than what you deserve. He said it was important instead to make sure that the most vulnerable get the justice they deserve.

A developed country participant said inventive solutions were essential to create the space to discuss equity and understand of where other countries are coming from, for a clear understanding of the common responsibility through a transparent, fair and just process.

Chair Khan listed four main threads of the discussion: whether countries should be held responsible for emissions at a time when they did not know they were causing harm; equity as compensation for damages; the willingness, of some participants, to accept a certain level of inequity to take the discussion forward; and the unwillingness of others to perpetuate inequity. He said the four elements of distributive justice, compensatory justice, the notion of treating like alike and the specific situation of countries would be helpful in taking the discussion on equity in the climate negotiations forward.

SESSION II: THE FUTURE OF THE KYOTO PROTOCOL (ARCHITECTURE)

Müller introduced the topic of the second session, on the future of the Kyoto Protocol architecture. He pointed out that the Kyoto Protocol had taken a long time to negotiate and operationalize – the first Meeting of Parties (MOP) took place nine years and six months after the conference in Berlin, where it was first decided to negotiate a protocol. A lot of good ideas and experience has been collected during this period and it would be worrying if the ADP chose to discard this, and start from scratch. He asked how the ADP was going to achieve the same result in less than the time it took for the Kyoto Protocol, especially with its very wide and open mandate.

Chair Khan listed two points for discussion: the model for the future architecture of the ADP; and whether there are elements of the Kyoto Protocol that can be carried over to the new regime.

A developing country participant said the approach of giving each country an entitlement allows the country the freedom to work within the space and find their own solutions, whether it us energy efficiency, or shifting from coal to gas. He said direction from the international community would distract countries from identifying what is most efficient for them. Chair Khan asked if that meant countries should have a limit to emissions, instead of a binding target. The participant responded that he was arguing for assigned amounts – how hard or soft they should be will be the next question.

Müller asked if this meant all countries should have Annex B kind of targets. The participant responded that the Annex B targets were legally binding. Not many developing countries have the institutional capacity to administer policies and measures and ensure they are within the assigned amount. As an example, he mentioned small-scale industrial units – reaching them to implement any kind of policy would involve enormous costs and would be impractical. He said developing countries do not have the capacity to apply and monitor measures.

Another participant said the main criterion for the EU was to get everyone under a legally binding instrument, and lists what they are doing. The EU would also like to carry forward the rules that are at the heart of the Kyoto Protocol, although it remains to be seen whether they can be applied to all countries, and where they need to be adapted, optional or differentiated. Taking the point about developing country capacity, he said the EU does not expect any country to take on any targets and rules they cannot implement, but there are intermediate stages to building capacity. Similarly, he said the Kyoto Protocol is about economy-wide absolute targets, but there can be other options, as intermediary steps.

Chair Khan flagged the need for capacity building and asked institution should take on this role. A developing country participant responded that the capacity building requirements go beyond simply measuring emissions – it includes policymaking, monitoring and enforcement, reporting and verification. Rather than a one-off capacity building exercise that can be assigned to a specific institution, it is the levels of development that are material.

Chair Khan asked if the notion of differentiation can be captured by economy-wide targets, and allow for some countries to have targets and others to have goals.

A developed country participant felt economy-wide targets offer the most flexibility, and there were ways to build capacity to achieve them in the longer term, even if they were not possible by 2020. He said he was uncomfortable with the concept of emission entitlements, as no one should have a right to emit, but rather a right to development.

A developing country participant responded that in the current paradigm and given the current level of technology, energy was a necessary means for development. Ghosh: right to emit GHG. Right to develop. The question would be moot if, sometime in the future, renewables become affordable.

A developing country participant said moving away from the Kyoto Protocol without learning would be missing an opportunity. He felt a transition period would be needed, where countries without capacity do not face punitive measures.

Chair Khan concluded that a key question appears to be whether some countries should continue to have the right to emit while others have economy-wide targets. He said the ADP mandate was unclear, and further work is needed to develop the principles.

SESSION III: LONG TERM FINANCE

Introducing the session on long-term climate finance, Chair Khan listed three issues:

- Fast Start Finance (FSF) will come to an end soon, and an immediate concern is how to bridge the 2012-2020 period;
- Sources of the finance, and whether they can be identified; and
- Specific actions for the next conference in Doha later in the year that can translate into a decision.

A developing country participant highlighted the differences between traditional aid and climate finance. He said traditional aid suffers from "historical amnesia" where the consequences of colonialism are not taken into account. It is therefore discretionary, and the donors decide the amount, who receives it, and how it is governed. In the case of climate change, however, there was no amnesia about who caused climate change. Climate finance would therefore be based on responsibility, and not at the discretion of the resource provider. This was reflected in the structure of the Green Climate Fund (GCF). The next critical element would be to move from voluntary pledges to assessed amounts. The basis for the assessment needs to be discussed, based on responsibility for climate change.

Müller said previous attempts to introduce payments in proportion to responsibility and liability, for instance under the Insurance Initiative of the Alliance of Small Island States, did not fly. Instead, he proposed "mandatory assessed solidarity", where capacity instead of liability is assessed.

A developing country participant said there was no common yardstick to assess how FSF is being delivered and it is impossible to determine if it is new and additional, despite a number of workshops, websites and information notes on the subject. He said a first step would be to make a assessment of FSF. The second step will then be to assess needs and gaps, and then identify sources. He pointed to a gap between developing and developed country perspectives, where developed countries believe the private sector will deliver climate finance, but developing countries have found that the private sector has no heart. He quoted the example of the Clean Development Mechanism, of which only 2 percent went to Africa.

A developed country participant said the EU had made a maximum effort for transparency with regard to FSF. He said long-term finance will have to come from various sources, and urged the discussion to move from principles to operationalization, from theoretical debate to real action. He asked that successful examples, such as an impressive solar energy plant installed by India, be considered to identify solutions. He said innovative sources are important for the EU.

A participant from India said the solar energy programme in India, called the National Solar Mission, does not invite funding through the GCF or bilateral aid agencies – the costs are eventually paid by Indian consumers. There is, however, private investment in the form of private equity and loans. If a foreign agency holds some of the private investment, he asked, to what extent would it be considered a purely commercial investment, and to what extent will it be considered as a contribution to climate finance? He said it should not count towards climate finance if it does not go through an accountability mechanism and institutional structure set up at the global and national levels.

Another developed country participant agreed that predictable financing was essential, and the current system did not work very well.

A developing country participant agreed there have been great efforts to deliver FSF, but challenged the notion of efficiency and effectiveness of delivering the finance. He said up to 25 percent of the finance stays in international agencies that deliver it. He pointed further to the gap for adaptation finance, the challenge of channeling innovative finance directly to countries, and setting up a system to monitor, report and verify climate finance.

Another developing country participant highlighted the role of national funding entities in deciding where the finance goes and addressing national priorities. She also called for no net incidence on developing countries if innovative sources are used.

A developing country participant noted that several mistakes had been made with the FSF, which should have given priority to existing National Adaptation Programmes of Action to ensure country-driveness. There was also no agreement on what would constitute new and additional finance under FSF.

Another participant said the amount of money for adaptation under FSF was comparatively low, resulting in a missed opportunity, since the private sector would not finance adaptation action. He said FSF generated distrust because developing countries did not have a say, and could not track it.

A developed country participant said FSF was an experiment, to learn lessons to go forward. He agreed that current systems do not give us idea of private sector flows, and a better definition is needed on what is accounted for in the international system. He said some developed countries were willing to look at scenarios to ensure of fairness from contributors.

Another developed country participant said climate finance is linked to development finance, just as national climate strategies are linked to national sustainable development strategies, and it would be a pity only to look only at small portion.

A developed country participant felt the discussion was missing a perspective on cost effectiveness, and how to make sure the money is well spent.

Chair Khan said the question of whether climate finance should be dealt with as development finance has arisen before. He highlighted the need to draw lessons from FSF. He closed the seminar saying long-term finance should have an objective, and clarity on what it is meant to achieve.