



Bonn Seminar

2014



Altes Rathaus, 9 June 2014

ecbi

European Capacity Building Initiative
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BONN SEMINAR 2014

The 2014 ecbi Bonn Seminar took place at the Altes Rathaus in Bonn, Germany, on the afternoon of 9 June. The Seminar was attended by over 45 negotiators and representatives from developing countries and Europe, including the two Chairs of the Ad-Hoc Group on the Durban Platform (ADP), the key negotiating body for the future climate agreement.

Discussions were held on: financial support for climate change; whether or not the post-2015 climate agreement should differentiate expected engagement of countries by using ex-ante country lists (Annexes); and how to ensure a just outcome, both with respect to equity (intragenerational justice) and ambition (intergenerational justice).

Bo Kjellén, Co-Chair of the ecbi Advisory Committee, opened the meeting and chaired the sessions. The proceedings began with the reading of a message from the Lord Mayor of Bonn, Jürgen Nimptsch, who praised the ecbi for “opening doors for trust and understanding in the global climate debate by advancing an exchange between ... North and South”.

I. WHO SHOULD CONTRIBUTE TO FINANCIAL SUPPORT?

The first session on who should contribute to financial support was kicked-off by a presentation by Benito Müller, ecbi director, who introduced the idea of a Southern Solidarity Fund (SSF). Müller said some developing countries may be opposed to contributing to the Green Climate Fund (GCF) because such contributions could be viewed as an admission of responsibility for climate change. However, he said, a lot of South-South cooperation does take place – up to the tune of US\$ 10 billion in 2011. He proposed “depoliticising” the option of developing countries contributing to climate finance under the UNFCCC, by creating a GCF operated SSF for voluntary contributions by developing countries. This would allow the developing country contributions to take advantage of the GCF infrastructure, Müller said, and provide an option for countries to do as much as they would wish to, but without unacceptable political implications.

In the discussion that followed, participants asked whether such an SSF would be governed in the same way as the GCF, by both developed and developing country Board members, or have a separate decision-making process. Müller said the operational modalities would remain that of the GCF, but a South-South body could decide on certain strategic issues, such as the thematic allocation of SSF resources.

A participant said some developing countries were already considering making contributions to the GCF. He also asked whether loans from other developing countries should also be part of a “solidarity” fund. Müller replied that if all developing countries were willing to contribute to the GCF, then the SSF would not be needed. However it was his impression that there were some developing countries who were not happy contributing to the GCF. He further noted that the SSF could be stipulated as a grant-only fund.

Another participant asked whether an SSF would also be responsible for delivery and implementation. Müller said the SSF would use the infrastructure of the GCF for operational purposes, in the same way in which the LDC Fund uses the modalities of the Global Environment Facility (GEF). He said the SSF would provide a way to avoid “firewall fundamentalism” by allowing certain capable developing countries to be as ambitious as possible in their actions and support without being forced to abandon their political alliances.

A European participant said the GCF is open for funds from all, including philanthropic organisations, and it would be worthwhile to wait for another six months before entrenching its architecture into a division that might fuel firewall fundamentalism rather than avoid it. He also noted the need to ensure that contributing countries have a say in how the funds are used.

Another European participant agreed that it would be better to wait until the Paris conference in 2015, and see if some contributions by developing countries lead to a snowball effect. Other participants also voiced concerns that such a division could reinforce rather than avoid a division.

A developing country participant noted that her country was planning to contribute to the GCF, as they do to the GEF. Another developing country participant welcomed a discussion on the issue, and said although there is South-South cooperation, there are legal, political and economic questions to be considered under the UN Framework Convention on Climate Change (UNFCCC). On the legal element, he said international contributions must be based on responsibility, and there is a contention that the legal commitment for financing is only for Annex II Parties. Politically, he said the lack of finance from Annex II countries made it difficult to have a discussion on developing country contributions. If Annex II countries meet their commitment of US\$ 100 billion annually from 2020, the political situation could change. On the economic front, the contributions from developing countries are likely to be only marginal as they are limited in their capacity. He proposed the issuance of carbon bonds and securities by countries, saying this would put the negotiations in the right perspective and encourage countries to do more, and that the bonds could generate wealth to fund sustainable development.

A developing country participant noted that they already receive funds from both industrialised countries and developing countries, sometimes in exchange for support in other multilateral fora, and that some countries prefer bilateral channels. He queried the need for a mechanism to acknowledge the funding.

Another developing country participant said there appears to be an assumption that the discussion on historical responsibility is hampering South-South cooperation. However, South-South cooperation is taking place, and in some regions it is already dwarfing North-South cooperation.

Another developing country participant cautioned against the use of the term “donors”, saying “contributors” should be used in the climate context, which is not the same as the aid context. He queried the logic of developing countries contributing *and* receiving funds from the GCF. Other participants noted the need to recognise existing developing country contributions and encourage them.

In conclusion, Müller agreed that the SSF is not needed if developing countries are willing to contribute to the GCF, and the SSF proposal only needs to be brought out at Paris if developing countries feel that while they would wish to use the amenities of the GCF for South-South climate support, they feel it would be inappropriate to contribute to the GCF itself. He highlighted the advantages of using the multilateral infrastructure of the GCF to consolidate funding streams, instead of using bilateral channels, be they North-South or South-South.

2. TO ANNEX OR NOT TO ANNEX? AND IF YES, HOW?

This session was started with a presentation by Benito Müller on how different expectations can be reflected in the future climate agreement, and whether Annexes for differentiating between countries should be used.

Müller noted that all countries, including the US and China, agree that some form of differentiation between countries will be needed in the new agreement. However, the question of how to introduce such a differentiation is more controversial. He listed two possible options to resolve this issue.

Under an **Option A**, a new annex (Annex “P” for Paris) could be introduced, containing an ex-ante list of “developed” countries. As the vast majority of non-Annex P (i.e. “developing”) countries would inevitably be members of G77 and China, this group would legitimately see itself as the political representative of non-Annex P. This however would mean that any member of this political grouping which finds itself in Annex P (possibly some of the large emerging economies) would have to leave G77 and China for UNFCCC purposes, which is highly unlikely to happen. Differentiating between “developed” and “developing” countries by way of new country listings is hence inevitably going to lead to unacceptable political consequences, Müller said.

Instead, Müller proposed an **Option B** where “developed” and “developing countries” are used with their common meaning, in conjunction with terms such as “appropriate to national circumstances” to express differentiated expectations on what countries are meant to do, without associating an ex-ante operational listing of these categories. Provided there is the appropriate architectural room for countries to follow the expectations, Müller said, countries could sign up with their most ambitious contributions without being constrained by worries about unacceptable political consequences.

Christoph Schwarte, Legal Response Initiative, then presented on how legally binding contributions could be part of the new agreement, how pledges could be translated into more binding formats, and ways to ensure compliance. He said the UNFCCC (in Article 16, paras 3 & 4) provides for a process whereby national pledges that have been captured in an Annex (as suggested by Müller) could subsequently be easily amended through a simplified amendment process, without the need for complicated ratification processes.

He also described Unilateral Declarations, which can be used to indicate that a country is legally bound without ratification, as was the case with the US in the 1978 Non-Proliferation Treaty.

Schwarte described regional fisheries agreements as a possible model for climate change. Under these agreements, independent commissions indicate how much fishing can take place based on a scientific basis, and then parties go decide on who gets to fish how much. Similarly, Parties to the UNFCCC could delegate authority to a UNFCCC organ/s to decide the envelope within which countries must decide, based on best available scientific information. The allocations of Quantified Emission Limitation or Reduction Objectives (QELROs) could then take place in accordance with common but differentiated responsibilities and respective capabilities / Annexes / burden sharing agreements / per capita basis etc.

On compliance, he noted that the system of retributions, reprisal or sanctions works only for powerful and strong states, so multilateral environmental agreements (MEAs) need regulatory regimes. The Kyoto compliance regime is the most complex and sophisticated so far, and it may be best if countries agree that the provisions of the Kyoto Protocol and subsequent decisions by the Meeting of the Parties on, inter alia, international expert review processes, the compliance system, etc shall continue to apply *mutatis mutandis* with regard to mitigation efforts by all Parties. The Parties could also agree that they would review the adequacy of those arrangements later and amend previous decisions as necessary.

Schwarte said other means of ensuring compliance could include naming and shaming (for instance, through an annual list of financial contributions due to the GCF, issued by the Secretariat), or the loss of the right to vote, or to trade under the mechanisms.

Müller said some countries felt legally binding QELROs are preferable, because they make it easier to convince industry of the need for domestic legislation. He said it would be unacceptable for countries that cannot participate in a legally binding regime to rule out the option for other countries as well. It would be preferable to have another Annex, say Annex Q, where countries could list themselves if they prefer to opt for a unilateral declaration without a ratification process.

In the discussion that followed, a European participant noted the need to consider process outside the UNFCCC, such as the post-2015 process under the United Nations, when discussing differentiation.

Another European participant said it would be ideal if the global agreement did not need ratification at the national level, but this may not be politically palatable. While terminology could be used to reflect realities, she said rigid lists without the option of dynamism and evolution would present a problem. Another European participant supported the need for objective indicators to determine contributions.

A developing country participant said the discussion on Annexes is not relevant, and the focus must shift to ambition to fill the emissions gap is necessary instead. He called on participants to move beyond established parameters to solve the problem, and find the additional ambition that is lacking without creating anxiety over Annexes. He felt discussions on differentiation created anxiety and do not contribute to a conducive environment.

A developing country participant said developing countries were doing a lot on the ground, but this was not recognised when people spoke about immutable Annexes. He found the idea of an Annex Q interesting, saying it should apply to Annex I “plus”, and should not allow backtracking. He pointed out that differentiation among countries is real in economic terms, in terms of contributions to the problem, and in terms of problems countries are currently facing. He invited developed country Parties to lead by example.

A European participant said all major Parties have agreed that they don’t want to reopen the issue of Annexes, and the option of a new Annex would not be realistic in the remaining time. He agreed that the real question was related to ambition, and proposed listing countries alphabetically rather than putting forward categories.

A developing country participant agreed that “the horse has bolted” on the issue of Annexes, which have been replaced by nationally determined contributions. But he said once countries have put forward their contributions, there must be pressure to make sure countries with higher responsibility put forward higher contributions.

A European participant said it was easier to build consensus on something that has already been agreed. He proposed keeping the Annexes but adding something to reflect the changes since the Annexes were developed.

Müller said the Annexes are part of the UNFCCC and have to stay – otherwise Article 4 of the Convention would be rendered meaningless. However, the main political groupings are so diverse that any attempt to define the distinction between “developed” and “developing” countries through a new ex-ante country listing is doomed to failure due to inevitable unacceptable political implications. Instead, he said, he was proposing that the definition of these terms is left vague and countries can choose where they see themselves, for instance

by signing up to particular types of contributions (such as internationally binding QELROs in Annex Q, and voluntary South-south contributions to the SSF).

3. TO MANDATE OR NOT MANDATE?

This session was initiated by a presentation by Bo Kjellén, who shared lessons from the Berlin Mandate process. Kjellén noted the success of the 1995 Berlin Mandate in bringing about a climate agreement. Among the factors for success, he listed, *inter alia*:

- Clarity on process and substance, with clear indications what the process should aim to achieve – namely, a Protocol with targets and timetables only for Annex I Parties.
- Agreement on all but the central issue at the level of high officials, leaving only two outstanding political points for negotiation between Ministers – namely, targets and timetables, and no new commitments beyond those in the Convention for non-Annex I Parties.
- The appointment of Raúl Estrada as Chair of the Ad Hoc Group on the Berlin Mandate. Estrada was also Chair of the Committee of the Whole (COW, the central negotiating body) in Kyoto, to ensure continuity. The precedent for setting up a COW was established during the 1992 UN Conference on Environment and Development in Rio de Janeiro.

Emphasising that the situation had changed considerably since the Berlin Mandate process and comparisons are difficult, Kjellén said some lessons may nevertheless be useful. For instance, the issues for ministers and the high-level to deal with should be few and well defined; and there should be agreement not to reopen issues that have already been agreed before Paris, or at the official level at Paris. He noted that the Berlin Mandate process was initiated by a discussion on the adequacy of commitments to achieve the objectives of the UNFCCC, and this was still a valid basis for discussions, as the question of adequacy is becoming more and more urgent.

Schwarte added that several other MEAs had followed the practice of setting up an expert group to negotiate key areas of an agreement while suspending negotiations on other areas, and this is considered good practice.

4. HOW TO ENSURE A JUST OUTCOME, BOTH WITH RESPECT TO EQUITY (INTRA-GENERATIONAL JUSTICE) AND AMBITION (INTER-GENERATIONAL JUSTICE)?

This session started with a presentation by Arild Underdal, Professor of Political Science at the University of Oslo, on how to ensure a just outcome, both with respect to equity and ambition, and how to generate a process of positive reciprocity.

Underdal noted that adherence to principles of fairness and equity could enhance the willingness of countries to contribute, and hence enhance the overall effectiveness of the regime. On the other hand, as ambitions rise, marginal mitigation costs tend to increase and at a certain point they increase rather steeply. Approaching the point that comes close to the ambition that is necessary, the burden of some countries becomes greater than what they can shoulder, and becomes politically unfeasible. This leads to an effectiveness/ fairness dilemma.

Describing indicators that could help the interpretation of principles of equity and fairness, Underdal said the UNFCCC negotiations take place in a demanding setting, in which search for one single “fairness-optimising”

formula will likely increase the risk of deadlock. Therefore, he proposed a more ecumenical approach that can help Parties build agreement on diversity, and foster accommodation – in particular, processes of positive reciprocity – through integrative behaviour.

He proposed the Parties accept a certain set of norms and a certain range of interpretations as legitimate, i.e., as broadly consistent with the UNFCCC combination of “common but differentiated responsibilities and respective capabilities”; and the specification of generally accepted norms of distributive fairness found in the research literature.

He also proposed Parties respect a principle of reciprocity, implying recognition that any principle/criterion of fairness – and any interpretation of such a principle/criterion – invoked by oneself can legitimately be invoked also by others; and a “Kantian” recognition of principles/criteria that countries would likely have invoked or supported themselves, had they been in the “invoker’s” situation.

In the discussion that followed, a participant asked what would happen if even minimum requirements are not the same across the table, and what is equitable to one side is not to others. Underdal responded that when common ground cannot be found, a compromise group is sometimes established to work with Parties to identify central concerns, and those that would be less painful for Parties to give up. Interventions by third Parties may prove useful, he said, agreeing that while this is what decision theory states, practice is likely to be much more difficult.

Müller noted that the wide divergence of opinions is not only a problem within the larger group, but is also likely to arise among smaller groups. For instance, the GCF Board has decided to allocate 25 per cent of funds for the most vulnerable countries, which include countries as diverse as Tuvalu and Bangladesh. He said it is preferable when “everyone if treated equally unfairly”, rather than if one Party gets everything they want and the others get nothing of what they want. He also noted that while intragenerational justice is about straightforward distributive justice, intergenerational justice has to do with the degree of our ambition, and the degree of damage we impose on future generations.

A developing country participant said there are many models of fairness, and her country’s starting point was the agreed 2°C goal. She proposed a peer review system where countries explain why their proposal is a fair contribution given the global goal and the ambition gap.

A European participant said it would be preferable if everyone feels the final agreement is useful for them, rather than that it is equally unfair. He said consideration should also be given to collaborations outside of the UNFCCC, in global discussions related to equal access to sustainable development, to find a balance between fairness and responsibility.

Another European participant narrated his experience from the recent replenishment discussions for the GEF, on how to make the allocation system more equitable and ensure poor countries received a larger share of the funds. Middle-income countries were not happy about this, he said, because this meant they would get a bit less.

The Bonn Seminar was wrapped up by Kjellén, who said climate change relates directly to wider questions on the organisation of society, energy and the basis of industrialisation. It may be easier if everyone realised this, he said, and the entire onus was not only on climate negotiators.

ANNEX I: ANNOTATED AGENDA OF THE 2014 ECBI BONN SEMINAR

Date and Venue: Monday 9 June 2014 – Altes Rathaus (Old Town Hall), Am Markt, Bonn

14:00 – 14:10	Welcome
14:10 – 15:00	Session I. Who should contribute (to financial support)?
15:00 – 15:50	Session II. To Annex or not to Annex? And if yes: how?
15:50 – 16:10	Coffee & Tea
16:10 – 17:00	Session III. To Mandate or not to Mandate?
17:00 – 17:50	Session IV. How to ensure a just outcome, both with respect to equity (intra-generational justice) and ambition (inter-generational justice)?
17:50 – 18:00	Concluding Remarks
18:00 – 19:00	Drinks Reception

Session I. Who should contribute (to financial support)?

Presenter: Benito Müller

Issues:

- The idea of a Southern Solidarity Fund (SSF)
- Why an SSF?

Documentation:

- Benito Müller, [South-South Solidarity in Climate Finance: A GCF operated Southern Solidarity Fund](#), OCP/ecbi/OIES Concept Note, March 2014
- Charlotte Streck and David Rossati, Establishing a GCF operated Southern Solidarity Fund – Legal options and challenges, ecbi Legal Note, May 2014
- Xiaohua Zhang and Yue Qi, [Reflection of the CBDR in the 2015 Agreement](#), National Center for Climate Change and International Cooperation, Beijing, presented at [The Global Climate Policy Conference: How research can help unblock a climate deal](#), 7-8 May 2014

Session II. To Annex or not to Annex? And if yes: how?

Presenter 1: Benito Müller

Issues:

- How could different expectations be reflected in the Agreement?
- Should Annexes be used, and if yes, what type?

Documentation:

- Xiaohua Zhang and Yue Qi, [Reflection of the CBDR in the 2015 Agreement](#), National Center for Climate Change and International Cooperation, Beijing, presented at [The Global Climate Policy Conference: How](#)

[research can help unblock a climate deal](#), 7-8 May 2014

- Benito Müller, [Avoiding Firewall Fundamentalism](#), OCP blog, May 2014

Presenter 2: Christoph Schwarte

Issues:

- How could legally binding contributions be part of the agreement, in light of the conclusions drawn in the preceding sub-section?

Documentation:

- Wouter Geldhof, Tom Ruys, and Benito Müller, [QELROs in Paris: How to create room for legally binding \(mitigation\) obligations in the 2015 climate agreement](#), OCP/ecbi Legal Note, May 2014
- Benito Müller, Wouter Geldhof and Tom Ruys, [Unilateral Declarations: The Missing Legal Link in the Bali Action Plan](#). ecbi Policy Report May 2010

Session III. To Mandate or not to Mandate?

Presenter: Bo Kjellen

Issues:

- Are there lessons to be drawn from the BM process that can be applied to the current situation?
- Is there a need for sequencing the negotiations, with or without a Mandate? If yes, how?

Documentation:

- Bo Kjellen, [Reflections on the Berlin Mandate: Process and substance](#), SEI/ecbi Discussion Note
- Benito Müller and Niklas Höhne, [A Staged Approach: The sequencing of mitigation commitments in the post-2020 ADP negotiations](#), It must be said! Re-published in Outreach, both October 2013

Session IV. How to ensure a just outcome, both with respect to equity (intra-generational justice) and ambition (inter-generational justice)?

Presenter: Arild Underdal

Issues:

- How can we deal with the contribution information to achieve a just outcome?

Documentation:

- Steffen Kallbekken, Håkon Sælen and Arild Underdal, [Equity and spectrum of mitigation commitments in the 2015 agreement](#), Nordic Council of Ministers, 2014