



Pre-COP Training Workshop for LDC Negotiators



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TABLE OF CONTENTS

Introduction	2
Introduction to COP21	2
Priorities of the LDC Group at COP21	3
Terminology used in the UNFCCC Negotiations	5
Adaptation, capacity building and loss & damage	5
Finance	6
Mitigation	8
Transparency	10
Legal issues in the Paris Agreement	11
Feedback and suggestions	13
Closing remarks	14

INTRODUCTION

A Pre-COP Training Workshop for LDC negotiators was organised by the European Capacity Building Initiative (ecbi) and the International Institute for Environment and Development (IIED) in Paris, France, on 28 November 2015 in advance of the 21st Conference of Parties (COP21) to the UN Framework Convention on Climate Change (UNFCCC).

Attended by 20 LDC negotiators new to the climate negotiations, the full-day workshop sought to provide participants with an overview of the upcoming COP as well as background on issues of importance to the LDC Group. It included presentations on the Paris agendas and the key thematic issues of the negotiations including: adaptation, loss and damage (L&D), capacity building, mitigation, transparency, finance and legal issues.

Achala Abeysinghe, Head of the ecbi Training and Support Programme, welcomed participants to the workshop, and to COP21, which she described as a defining moment in history.

Benito Müller, ecbi Director, introduced the ecbi, describing it as an Initiative to foster a closer working relationship between developing countries and Europe, and to build trust between the two groups.

Saleemul Huq, senior fellow at IIED and Director of International Centre for Climate Change and Development, presented a brief history of the LDC Group. He said although UNFCCC Articles 4.1 and 4.8 referred to such a Group, it did not exist until COP6 in The Hague in 2000, where it was formed with Mama Konate from Mali as the first Chair. Soon after, the Group succeeded in getting the LDC Work Programme and LDC Expert Group (LEG) agreed at COP7 in Marrakech, followed by the establishment of the LDC Fund (LDCF) and the process calling for the formulation of National Adaptation Plans of Action (NAPAs) by LDCs. Since then, he said, the Group has grown from strength to strength, uniting to become a force to be reckoned with and take on powerful interests, along with the Africa Group and the Alliance of Small Island States (AOSIS). He noted the important role of the ecbi capacity building events in helping individual members, and the Group as a whole, to grow.

The LDC Group Chair, Giza Gaspar-Martins of Angola, welcomed negotiators who were new to the Group, advising them not to be discouraged by how complex the negotiations may look at first.

INTRODUCTION TO COP21

Brianna Craft, IIED, introduced participants to the structure of the negotiations, and the COP 21 agenda.

She listed the different sections of the “UNFCCC train”, with the COP President as the engine; followed by the Convention itself; the Kyoto Protocol; Subsidiary Body for Implementation (SBI) and Subsidiary body for Scientific and Technological Advice (SBSTA); the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP); and the UNFCCC Secretariat. She listed and described the different “carriages” of this train as mitigation, adaptation, finance, technology development and transfer, capacity building, and L&D.

In response to a question on where the LEG stood in this architecture, Huq responded that the LEG sat under the Marrakech Accord, and it played a key role in providing guidance for adaptation under the NAPAs and the National Adaptation Plans, which was proving useful to non-LDC countries as well.

Craft then presented an overview of the [COP21 Agendas](#).

She said 140 leaders were expected to speak at plenary on the first two days of the COP; the SBI and SBSTA would open on Tuesday 1 December and conclude on the 4th; the ADP would resume its 12th session on Monday, 30 November and was expected to conclude on the 5th; and the COP and Conference of Parties serving as the Meeting of Parties to the Kyoto Protocol (CMP) would close on 11 December, hopefully after a new agreement was adopted.

She highlighted the importance of attending the LDC Group coordination meetings between 1-2 pm everyday, saying the venues will be announced on the screens daily.

In the COP agenda, Craft highlighted the following items as important for the LDCs: the adaptation committee; the Warsaw International Mechanism for L&D (WIM); development and transfer of technologies and implementation of the Technology Mechanism; 2013-2015 review of the long term temperature goal, to keep average global temperatures under 2°C; matters relating to finance; capacity building; matters relating to LDCs; gender and climate change; and the high-level segment.

In the CMP agenda, Craft highlighted the report of the Adaptation Fund Board; and the report of the high-level ministerial round table on increased ambition of the Kyoto Protocol commitments.

On the SBI agenda, Craft listed the following as important for the LDCs: matters relating to the LDCs; National Adaptation Plans; Report of the Adaptation Committee; WIM; development and transfer of technologies and implementation of the Technology Mechanism; capacity building; the 2013-2015 review; and gender and climate change. She said the overlap between the COP and SBI agendas was because the COP often assigned the SBI to consider matters on their agenda and report back to the COP for a final decision.

On the SBSTA agenda, Craft highlighted the Nairobi Work Programme, which addresses vulnerability and resilience; development and transfer of technologies; issues relating to agriculture; WIM; land use, land-use change and forestry (LULUCF); and market and non-market mechanisms.

On the ADP agenda, she highlighted item 3a, also referred to as Workstream 1, which is working on the 2015 agreement; and 3b, or Workstream 2, working on pre-2020 action.

Finally, she invited workshop participants to sign up to the LDC Chair's mailing list to get notifications relating to the Group's work.

PRIORITIES OF THE LDC GROUP AT COP21

Chair Gaspar-Martins then presented more details on the priorities for the LDC Group at COP21.

He highlighted UNFCCC Article 4.9, which states: *“The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.”*

Gaspar-Martins noted that the LDC grouping was not political, but based on social and economic characteristics, determined on the basis of three criterion: income, based on a 3-year average estimate of GNI per capita; a Human Assets Index; and an Economic Vulnerability Index.

He said the Group's priorities at COP21 would be to ensure that the new agreement enhances the implementation of the UNFCCC; it is responsive to science; and it recognizes the special circumstances of LDCs.

On mitigation, Gaspar-Martins highlighted the importance of the 1.5°C goal as a matter of survival for the LDCs, with collective mitigation efforts consistent with this goal and corresponding emission reduction targets; and a commitment by Parties to communicate and implement their efforts in a verifiable manner. He called on negotiators to stay strong on the 1.5°C goal despite the pressure to accept the 2°C target instead, reminding them that this was an average goal, and actual temperatures could go well above 2°C in some parts of the developing world. He said the Intergovernmental Panel on Climate Change (IPCC) still considered the 1.5°C target achievable.

On adaptation, the Chair said the focus should be on implementation, to move towards resilient societies in the developing world and especially in the LDCs. In order to achieve this, the capacity constraints of LDCs need to be acknowledged in the new agreement, as do the links between mitigation and adaptation. He noted that in some cases adaptation would not be possible, leading to L&D that must also be provided for in the new agreement. In that context, he said the LDC priority is to ensure that the WIM is anchored in the new agreement, to ensure its permanence.

On finance, he said there should be clear commitments from developed countries to take the lead. Noting that his country's largest development cooperation partner is now a developing country, he said developing countries in a position to do should also join the commitment to provide finance. He highlighted the need for scaled up and predictable financing, with priority access for the LDCs; and the future sustainability of the LDCF.

On technology development and transfer, the Chair said the text should include a clear reference to the provision of support to LDCs. On capacity building, he said the agreement must recognize the need to enhance capacity building in LDCs, and establish a coordination mechanism to serve the agreement.

The Chair noted that transparency of action and support was important for the LDCs. He also noted a call to include transparency of support *received*, saying the LDC Group did not have a position on this, but it was not necessarily a bad thing. However, he said, the same transparency procedures should not apply to adaptation, as an international process to evaluate adaptation would not be possible in the same way as for mitigation and support.

On the global stocktaking, Gaspar-Martins said the LDC position is to call for a stocktaking every five years, with an *ex post* review, as the other option of ten years would prove too long for corrective action. In addition, he said future action should be more and more ambitious, with no backsliding. He also said the LDC Group was in favour of a strong compliance mechanism with a facilitative and enforcement branch.

In response to a question, Huq noted that there had been some push-back on the LDCF from other countries who are not LDCs, but are also vulnerable. However, he said there are other funds to deal with their needs, including the Adaptation Fund and Special Climate Change Fund. He noted that contributors were now favouring the GCF, and should be encouraged to contribute to the LDCF.

In response to the question on the link between the LDCF and Intended Nationally Determined Contributions (INDCs), Gaspar-Martins noted that although the LDCF is currently focused on adaptation, it does not

necessarily exclude other areas of work as long as funds are available. He noted that of the US\$ 5 billion needed to implement the NAPAs, US\$ 4 billion is still missing.

A participant noted that multilateral implementing bodies were expensive intermediaries, with a significant percentage of the funds going to them instead of countries.

In response to questions, the Chair explained that CMA referred to the “Conference of Members of the Agreement” – the new body that will be entrusted with the implementation of the new agreement.

He said in the context of L&D, the LDC Group was not calling for finance at this point, but rather a permanent place for the discussions to continue in future, as the mandate of the WIM currently ends in 2016. He noted that a common G77/ China position existed on the L&D issue, finance, and possibly also on adaptation.

TERMINOLOGY USED IN THE UNFCCC NEGOTIATIONS

In this session, Abeysinghe introduced the participants to the legal terminology used in the negotiations through a multiple-choice game.

Participants learnt that:

- In an international agreement, preambular paragraphs provide the background and the context of the agreement.
- An action is mandatory and binding when it is used with *shall*.
- The most robust action COP can take is to *decide*.
- *Recognize* and *recommend* are not synonyms.
- The strongest words that the agreement can use is to require, followed by request, and finally urge.
- *Inter alia* refers to “including”.
- *Mutatis mutandis* refers to “having changed what must be changed”.
- An agreement is first negotiated, then adopted, signed, ratified and finally it enters into force.

Abeysinghe concluded by pointing participants to a [guide on climate terminology](#) published by IIED.

ADAPTATION, CAPACITY BUILDING AND LOSS & DAMAGE

Huq presented on these topics, noting that adaptation has been a key concern for the LDC Group since its formation at COP7 in Marakkech, and is generally supported by all parties, who also agree that LDCs need resources for adaptation. The disagreement, however, is with the delivery modality of the resources. Funding is provided through many channels – bilateral, multilateral and through the UNFCCC funds. More recently, the focus is on the GCF, which is taking time to get organized, and which will provide funding in grants as well as loans. However, he said, LDCs should not have to take loans to address adaptation.

The second issue is that while adaptation should be treated at par with mitigation, said Huq, it is difficult to define an adaptation goal along the same lines as a mitigation goal. The African Group has been trying to get the concept of an adaptation goal accepted, and although the LDC Group is generally supportive, he noted an explanation of how such a goal can be operationalized is still not available. One way to define the goal could be through a target for the funds required – perhaps stating that US\$ 50 billion of the US\$ 100 billion target for 2020 should be for adaptation, instead of the current break up of 14% for adaptation, and 86% for mitigation.

Huq noted that the issue of L&D was much more controversial, as developed countries do not want to even address it in the new agreement. He noted that the issue was first raised by the AOSIS group many years ago, but a mechanism to address it was only established in Warsaw. Of the 20 members of the WIM executive committee, he said 10 were from developing countries, and of these 5 were from LDCs. The mechanism has 9 areas under its work programme. However, the mandate for WIM will end in 2016.

Huq noted the following key goals with regard to L&D at the Paris meeting: to separate L&D from adaptation; to include language in the new agreement to make WIM a permanent body, which reports back every year to the CMA; and to emphasize that migration due to climate change, which is now number 6 on the list of 9 focus areas for the WIM, should be dealt with under the UNFCCC and not just under the UN High Commissioner on Refugees. He said some progress had already been made towards these goals, as a common G77/China position had been agreed.

Huq said while talking about compensation and liability in the context of L&D was still taboo, “innovative” ways of raising L&D finance could be discussed. The UNFCCC’s Standing Committee on Finance (SCF) already had a forum planned next year on the topic of innovative mechanisms for financing L&D. He described the [International Air Passenger Adaptation Levy \(IAPAL\)](#), proposed by the LDC Group a few years ago, as one possible source for innovative funding.

On capacity building, Huq noted that this was not usually an controversial topic, but there was a controversial element in Paris: the G77/China, supported by the LDC Group, had called for the dispersed capacity building elements in the negotiations to be drawn together into a single capacity building mechanism or committee. Developed countries, however, felt there was no need for a new entity.

In the discussion that followed, Huq said an attempt to define L&D had resulted in 12 different definitions. He also described a negotiation on the L&D issue in Durban, where 14 paragraphs on the topic has been “distributed” between the Nairobi Work Programme and Adaptation Committee, leaving only one – calling for the international mechanism. The negotiations on this one paragraph held up the entire conference, until eventually it was agreed that WIM would be established in Warsaw the following year.

In response to a question on how L&D from climate change can be distinguished from non-climate change related losses, Huq said the increased frequency and magnitude of climate-related disasters was attributable to climate change, as was sea level rise. Müller noted that the initial AOSIS proposal had called for an international insurance mechanism to address L&D, which was a good idea, but had not gone far because it said that countries should pay the premiums according to their emissions.

FINANCE

Müller presented the history of the finance negotiations under the UNFCCC, starting with the 1992 negotiations at the UN Conference on Environment and Development, where a mechanism for the provision of financial mechanism was established.

He said five years later, in Kyoto, a Clean Development Mechanism (CDM) was agreed, with a share of the proceeds from CDM allocated to form the Adaptation Fund. In Buenos Aires in 1998, the financial mechanism was reviewed and it was decided that the Global Environment Facility (GEF) would continue to be *an* entity entrusted with operating the financial mechanism (not *the* entity).

Four years later, in 2001, the Marrakech Accords finally established the LDCF to, *inter alia*, support the NAPAs; and the Special Climate Change Fund (SCCF) for non-LDCs.

In 2005, in Montreal, the first CMP of the Kyoto Protocol was held, and discussions could begin on the governance of the Kyoto Protocol's Adaptation Fund. At this meeting, the ecbi and IIED, with LDC negotiators from the Maldives, The Gambia and Bangladesh, produced a proposal on [operationalizing on the Adaptation Fund](#). This became the LDC position, and eventually the position of the G77/China. The ecbi and IIED produced another [paper](#) with negotiators from Tuvalu, South Africa, Botswana, Kenya and Brazil. Both these papers heavily influenced the design of the Fund, Müller said, resulting in an Adaptation Fund governed by a Board with a majority of developing country, and a focus on “direct access”, where countries could access the funds without multilateral implementing agencies taking a cut. Instead, National Implementing Entities could be directly accredited to the Fund.

Meanwhile, discussions were underway on reforming the financial mechanism as a whole. The ecbi continued to push for direct access. India submitted a proposal describing direct access as the devolution of decisions to the national level.

In 2009, the Copenhagen Accord agreed on the US\$100 billion figure and establishing a Green Climate Fund, but the Accord was not adopted, it was only taken note of. During this time, Müller said, participants at the annual ecbi Fellowship in Oxford came up with the idea of a Standing Committee on Finance (SCF). One of the participants took this idea to a finance ministerial that took place soon after, and the SCF was formed at the next COP, in Cancun in 2010.

In 2010, following the failure of the Copenhagen meeting, people were in a more reconciliatory mood, Müller said, and a Transitional Committee was established to design the GCF. The LDC member on this Committee (from Zambia) played an important role in ensuring that the concept of “enhanced direct access” was included in the Governing Instrument of the GCF, calling on the GCF Board to *consider additional modalities that further enhance direct access, including through funding entities with a view to enhancing country ownership of projects and programmes*.

The LDCs also played a key role in the GCF Board's eventual decision to launch a pilot phase for enhanced direct access in 2014, Müller said. He described the pilot, saying its key goal was to devolve decision-making to the national and sub-national levels.

Müller noted the difficulties in the “measurement, reporting and verification” (MRV) of climate finance, saying that ill-defined targets and different calculations by the two sides only result in bad faith. He described a proposal developed at the 2015 ecbi Fellowship, where only funds routed through the UNFCCC financial mechanism, or announced as part of the replenishment process of the mechanism, are counted directly as climate finance. Although this would not amount to US\$ 100 billion, he said it was “better to have 10 billion in hand, than 100 billion in the MRV jungle”. Countries could continue to use their national communications to list their other contributions.

He also described a new initiative launched by ecbi, to encourage sub-national governments that have carbon trading mechanisms in place to contribute a share of the proceeds to the LDCF. He said at least one sub-national government was likely to announce a contribution to the LDCF as a result of this initiative.

Finally, Müller described draft guidance drafted to the GEF on the future role of the LDCF, whereby the main role of the LDCF becomes “capacitating” LDCs to access other funds, such as those earmarked for them under

the GCF. He highlighted the need for good proposals to the GCF in order to use up the funds that were already committed, so contributors could not claim that there was a lack of absorptive capacity.

In the discussion that followed, participants described difficulties in accessing GCF funds, and the importance of South-South learning in this context. Huq described how policymakers in Bangladesh had benefitted from a visit to Senegal, which already had a National Implementing Entity accredited under the Adaptation Fund.

MITIGATION

This session started with a presentation by Raj Bavishi, co-founder of Legal Response Initiative. Bavishi presented a brief background; key issues in the negotiating text; and linkages with other parts of the agreement.

Bavishi said Article 4 of the UNFCCC includes common obligations in the context of common but differentiated responsibilities and respective capabilities (CBDRRC), including national inventories, mitigation programmes and adaptation measures. In addition, developed countries are obliged to adopt national policies and measures to mitigate.

Under the Kyoto Protocol, a 5% reduction on 1990 levels between 2008-2012 was agreed as the mitigation commitment for developed countries. Then in 2010-2012, the Bali Action Plan agreed quantified economy-wide emission reduction targets for developed countries, and nationally appropriate mitigation actions (NAMAs) for developing countries in the pre-2020 period.

The Ad hoc working group on the Durban Platform for Enhanced Action (ADP) was now negotiating nationally determined contributions/commitments based on a “bottom up approach”, where countries determine their own contributions.

The key issues that still remain to be resolved include differentiation; a collective long-term mitigation goal; individual efforts; provision of information; the timing of nationally determined contributions/commitments (NDCs); the ambition mechanism; housing of NDCs; support for developing countries; the REDD+ mechanism; and the sustainable development mechanism.

On differentiation, the key issue running through the ADP, Bavishi said there was a difference of opinion on whether there should be a fixed bifurcation between developed and developing countries or “evolving differentiation”.

He listed the following existing options on the long-term mitigation goal: peaking by 2030 or as soon as possible; reduction with reference to 2010 levels, by 40-50% by 2050; zero net emission by 2050/2100; and the carbon budget approach.

With regard to individual efforts, he said these would be captured by NDCs. However, it was not yet agreed whether the obligation would be to simply communicate these NDCs, but also to maintain and implement them.

With respect to differentiation, it was still an open issue whether there would be economy-wide targets for developed countries; whether developing country NDCs would be linked to the provision of support; and whether the NDCs would be progressive in nature.

With regard to the provision of information intended to support the NDCs, he said it was not yet clear whether there would be common or differentiated reporting requirements.

With regard to the timing of NDCs, it was not clear as to when and how often such NDCs would need to be communicated.

The ambition of the agreement would depend on a possible option for a mechanism to facilitate understanding of INDCs and their aggregate effect; and whether Parties can unilaterally adjust their NDCs to increase ambition.

It was not yet decided whether the NDCs should be housed as an annex to the agreement; or in an online registry. Bavishi said this might not matter if the agreement provides for the NDC to be implemented, although optically it may be better for it to be part of the agreement. In response to a question, he said provisions could be made for the annex to be changed and updated without requiring the whole agreement to be ratified by countries again.

On the question of providing support for the preparation, communication and implementation of NDCs, he said it was not yet clear who should provide the support, and who should receive it.

He said the draft also includes text on the establishment of a REDD+ mechanism or forests mitigation and adaptation mechanism, building on COP decision under the UNFCCC. This aims to incentivize the reduction of emissions from deforestation and forest degradation, and promote the conservation and sustainable management of forests.

The draft also includes text on an entirely new “Sustainable Development Mechanism” to mobilize finance for climate action in developing countries. This could be used to meet a NDC, but raises issues regarding environmental integrity, Bavishi said.

Finally, he pointed to linkages between Article 2 (Objective / Purpose); Article 9 (Transparency); Article 10 (Global Stocktake); and Article 11 (Compliance) in the draft.

In the discussion that followed, Müller pointed to the need for five-year mitigation cycles, where countries inscribe their contributions for the next five-year period, but also their indicate their intended contributions for the second five-year period. In this way, he said, the global community would have an opportunity to assess the overall contributions against the global goal, and countries would have the opportunity to increase their ambition over the second five-year period if they choose to. He said a proposal along these lines, developed at the 2014 ecbi Fellowship in Oxford, has been submitted by Brazil.

In response to a question on whether REDD+ needs to be anchored in the Paris agreement as it was established under the COP, Bavishi this was not legally necessary, but could be politically or practically necessary. Müller said rehousing everything outside the Convention would leave an empty shell with only principles, and so it may be preferable to leave some elements there.

TRANSPARENCY

This session was also kicked off by a presentation by Bavishi, discussing the establishment of a transparency system; its purpose; reporting; review; development of modalities by the CMA; the nature of the transparency system; and linkages.

Bavishi said the issue of differentiation runs through all aspects of the transparency system; and the scope of the transparency system will depend on the substantive provisions of the agreement.

Although parties agree a transparency system is needed, he said they disagree on whether it should be a tiered system, with different requirements for developed and developing countries; or it should be a common system with flexibility built in.

With regard to the purpose of the system, he said the system could facilitate: a clear understanding of emissions and removals; an understanding of global aggregate net emissions; clarity and tracking of progress made in implementing mitigation actions; knowledge-sharing and tracking progress made in implementing adaptation actions; and comparability between developed countries.

With regard to support, it could also promote a clear understanding of support provided and received; the needs of developing countries; and gaps in support; while ensuring there is no undue burden on LDCs and Small Island Developing States (SIDS). It could provide an overview and clarity of aggregate support provided, and ensure there is no double-counting.

On reporting, he said it is generally accepted that reporting requirements will build on arrangements already established under the UNFCCC. However, there are differences on whether there should be common or differentiated reporting requirements; and what sort of information needs to be reported.

On review of the information reported, he said the differences revolved around whether there should be an international review or national self-reviews; whether the reviews should be applicable to both developed and developing countries; whether the structure of the review should be carried out in consultation with the relevant party; what the outcome of the review should be; and if there should be any consequences.

On the development of modalities for the transparency system, he said these are likely to be developed by the CMA, which is likely to take into account flexibility in light of capability; facilitation of improved reporting and transparency over time; the need to avoid undue burden and duplication; facilitative and non-intrusive nature of the review; ensuring no back-sliding; ensuring environmental integrity and no double-counting. He noted that there was currently no express reference to LDCs or SIDS in this regard.

On the nature of the transparency system, he said that it is currently proposed that it be guided by the principles and provisions of the UNFCCC; be facilitative, non-intrusive and non-punitive; respectful to national sovereignty; provide flexibility and avoid undue burden on developing countries.

Although developing countries are likely to receive support to implement Article 9, it is not clear who should provide the support – whether it should be provided by developed countries; the operating entities of the financial mechanism; or organisations in a position to do so.

Finally, he pointed to linkages between the transparency issue and Article 3 (mitigation); Article 4 (adaptation); Article 6 (finance); Article 7 (technology development and transfer); Article 8 (capacity building); Article 10 (global stocktake); and Article 11 (compliance).

In the discussion that followed, participants asked how compliance could be made more effective. Bavishi pointed to the compliance system of the Kyoto Protocol, which he said was the strictest in international environmental law.

LEGAL ISSUES IN THE PARIS AGREEMENT

This session was initiated by a presentation by Abeysinghe. She informed participants that a legally-binding agreement was necessary because:

- It will set forth mutual principles, objectives, rules and commitments that are binding between the concerned parties.
- The binding force of agreements is represented by the principle of *pacta sunt servanda*, (“agreements must be kept”).
- Relationship between the Rule of Law and State behaviour.
- Ratified agreements are effective on States irrespective of changes in the governments.

Abeysinghe said the legal rigour of the agreement would be determined by: the legal form; obligations; provisions for compliance and enforcement; and the final clause.

She said what the agreement is eventually called may not matter, as long as it falls within the parameters of international law, and it has legally-binding obligations and provisions for compliance and enforcement within an international agreement that is ratified by countries. She noted strong opposition from the US to calling the agreement a treaty, which would have to go through the US Senate for ratification.

She noted that the Durban Platform included three options for the legal form of the agreement: a protocol; another legal instrument; and an outcome with legal force. Describing the legal interpretation of these three options, Abeysinghe said a Protocol is a treaty between parties according to the Vienna Convention of Law of Treaties. Article 17 of the UNFCCC states that the COP may, at any ordinary session, adopt protocols to the Convention. This option would have the highest legal rigour of the three options listed in the Durban Platform, and is the favoured option of more than 100 countries, including the LDCs, AOSIS, and the EU.

“Another legally binding instrument other than a Protocol” is also provided for under the amendments (Article 15 of the UNFCCC); and the annex to the UNFCCC (Article 16 of the UNFCCC).

An “outcome with legal force,” meanwhile, was compromised language from Durban, which could be a set of COP decisions or an implementing Agreement under Article 7 of the UNFCCC. It was not necessarily a legally binding outcome, although it could be legally binding at the domestic level. Abeysinghe said the Indian interpretation of this concept, as being domestically binding, has driven the concept of nationally driven contributions, without international commitments.

Other options such as a political declaration (like the Copenhagen Accord, for instance) lack legal enforceability, and include voluntary action that may or may not be ambitious, said Abeysinghe.

She said the LDC Group supports a legally binding agreement (a Protocol) under the Article 17 of the Convention. She noted that the current draft in drafted in this form, with a preamble, definitions, objectives, core commitments, institutional arrangements, decision-making bodies and process, compliance and procedural provisions such as entry into force, withdrawal and reservations.

She noted that the final agreement could include a combination of legally binding and non-legally binding instruments, with a mix of a legally-binding core, annexes, COP decisions, and political declarations.

The obligations in the current text are embedded in each section, and the mitigation actions are expressed in terms of commitments or contributions, or even a placeholder “other” term, said Abeyasinghe. She said the US was unwilling to accept an obligation to implement commitments or contributions, and was only willing to accept an obligation to communicate, which was not sufficient. Moreover, obligations on adaptation, finance, technology and capacity building are not expressed as commitments or contributions. Many provisions have weak non-obligatory language, while others indicate a clear commitment, but lack quantification and details.

With regard to the compliance mechanism, she said the LDCs are calling for a robust mechanism with an enforcement and facilitative branch; provisions on the consequences of non-compliance; and with the scope, structure and nature of the mechanism defined in the agreement. The current draft sets forth the establishment of either a process or a mechanism to facilitate implementation, and possibly also to promote compliance with the provisions of the Agreement. She said the option of establishing an international climate justice tribunal was also currently in the draft, introduced by Bolivia. She noted this was a very controversial element of the negotiations, with many countries opposed to a strong compliance mechanism.

Müller noted the need to discuss measures that would encourage compliance, and not only punitive measures.

On the final clauses, Abeyasinghe said the text included two requirements in addition to Article 17, stating that States would have to communicate a mitigation commitment or contribution with its instrument of ratification in order to become a party; and should have a mitigation contribution or commitment to participate in decision-making under the agreement. She highlighted the need for LDCs to discuss whether these clauses were acceptable to them.

Article 18 of the draft agreement provides that it shall enter into force 30 days after a condition on ratification applies. The condition includes ratification by a fixed number of parties, and a percentage of total emissions. She said the LDCs would like only the number of Parties to be considered.

In the discussion that followed, a participant noted that some LDCs had submitted ambitious INDCs, with emission reduction targets as high as 70%. She asked what possible legal implications this could have in the future. Abeyasinghe said the agreement would have to account for the special circumstances of the LDCs.

A participant asked whether the final agreement would be translated into different languages. Abeyasinghe said it will be translated into the six UN languages, and reviewed by a “comma committee” before being sent to the COP for formal adoption. After the adoption by COP, only minor editorial changes will be allowed.

FEEDBACK AND SUGGESTIONS

At the end of the Workshop, participants provided verbal feedback which is summarized below.

- This is my second COP. I attended the Pre-Cop Workshop in Lima as well and learnt a lot, and now I have the capability to look at different issues for the Group.
- This is my first time at a COP, and this helped me understand it. It will help me in future as well.
- I follow mitigation and work with the African Group. This is not my first COP but I benefitted a lot from the training. It was an opportunity to learn where things originate from, where we stand, and where we need to go. Thanks, I will definitely recommend it to others.
- This is a very important workshop that helped me increase my knowledge of terminology in particular. It is my second COP. This improved my skill and knowledge and thematic areas. I will follow the L&D discussions, and will communicate with other negotiators.
- This was a very insightful session that opened my eyes. Climate change is a very serious issue for my country, and we have to have a voice in the negotiations, be part of the process as key players. We have limited human resources and try to be everywhere, also with AOSIS and LDC membership. I was a one-member delegation in Bonn. I will circulate the presentations to my colleagues.
- This is my first time in the Pre-COP Workshop. I follow adaptation and L&D, and sometimes Workstream 2 and finance. This was an excellent workshop, and it's important to continue. I learned a lot – thank you.
- This was a very good and useful workshop for me, explaining what will be in the Paris agreement and the LDC position. This is my first COP and I felt lost before I came here. I hope you will continue.
- I follow adaptation. This is a good opportunity to share experience, thanks for organizing it. Specifically for me and those who do not speak English well, it is important to understand what is behind some words. It has improved my ability to understand thematic things, and I'm in a better position to negotiate.
- This is my first time in a COP, and this workshop was important for me to clarify a lot of the principles behind the agreement.
- This is my first COP as a Party delegate. The workshop gave me a better idea of LDC positions. Warsaw was my first COP and I didn't know where to go. It has been a dense day with lots of information to digest. I hope the report and presentations will be shared, so I can share it with the rest of my delegation.
- The workshop was useful, particularly on terminology and legal issues. It increased my knowledge and enhanced my capacity.
- Thanks you for inviting me – it was very, very important for me. I follow capacity building and finance, and I hope I can continue to discuss over email etc. to improve my knowledge.
- I had no idea what I was going to do. I am new to the process so my chief delegate asked me to sit in at this workshop. Some of the things I had heard over the past few days started to make sense after your presentations. Can the glossary also be made in French? Next time it will be useful also to hear the positions of other groups.
- The workshop was useful and fruitful. The background information on all aspects is useful for our understanding.
- The workshop was very useful insightful. Thank you for conducting it. I follow mitigation, and look forward to sharing knowledge and information.

CLOSING REMARKS

In the closing session, the panellists advised participants to choose one topic, follow it, and report back to the lead negotiators on the topic. Huq said their work would be more valuable if they become part of a team.

Bavishi informed participants that LRI lawyers were available during the two weeks of the COP to advise them on legal matters if necessary.

Abeysinghe informed participants that ecbi would be organizing more regional training workshops in 2016, and they would be kept informed. She once again highlighted the importance of attending the daily LDC Group coordination meetings to stay informed, and of signing up to the LDC mailing list. Encouraging participants to approach the team with any further questions, she thanked everyone and closed the meeting.