NEGOTIATION UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

PARIS 2015 AGREEMENT AND BEYOND SESSION

13 NOVEMBER 2014
International law and MEA’s

- Multilateral = involving participation of many/most countries
- Environmental Agreements = mis-nomer (all include social & economic aspects)
- Agreements Applicable to
  - Areas within national jurisdiction (eg. UNFCCC, CBD, CITES, RAMSAR)
  - Areas beyond national jurisdiction (IMO, ICAO, UNCLOS, Antarctic Treaty)
  - Both within and beyond national jurisdiction (IWC, Fisheries Organisations, CMS)
Treaty approaches

• Vienna Convention on International Treaty Law

• All rule based (hard – cede sovereignty vs soft – discretion on national legal form)

• 1st & 2nd generation MEA’s (voting)

• Framework (eg. UNFCCC, CBD)

• Specific (e.g. Kyoto)

• Governance (eg. UNEP)

• Foundational (eg. GCF instrument)

• Relational (eg. GEF MoA with UNFCCC)
Types of instrument

• Action oriented – promoting & advisory (UNESCO, WHC), limiting (UNFCCC), banning (Basel), substituting & phase out (Montreal, Stockholm), conserving (CBD, CMS), informing (Rotterdam), regulating (Cartegena, Nagoya)
  – Commitment to national action (eg. Kyoto)
  – Cooperative action (eg. CDM)

• Delivery instrument (eg. GCF)

• Transactional or reciprocal (eg. WTO)
Character of instrument

Bottom-up

Facilitative Model:
• International law catalyzes, encourages, reinforces national action

Contractual model:
• International law memorializes what states agree to do
• Promotes reciprocity through mutual exchange of promises

Top-down

Prescriptive Model:
• International community sets standards
Current Context – Bali, Copenhagen, Cancun, Durban, Doha and Warsaw

• The CC negotiations originated in 2001 - driven by a changing world order - rise of emerging economies
• Some countries asserted that the current system was both unfair and not environmentally effective
• Developed countries legally bound under Kyoto contend;
  – They contribute less than 30% of global emissions;
  – AND because the USA & major developing countries (BASIC) only have “non-binding” commitments,
  – they are also at a relative economic disadvantage
• Resulted in the 2 track Bali Road Map negotiation in 2007, to be concluded by 2009 in Copenhagen - not met
• Continued negotiation in 2010, 2011 & 2012 – to finalise the post 2012 system
Post 2012 system

- A global goal of 2°C with a review of adequacy in 2013/15;
- Mitigation – differentiation & accountability
  - Quantified targets for developed countries (QEERT’s); (INF doc)
  - Relative NAMA’s for developing countries; (INF doc)
  - NAMA registry to match action with support & recognition of action
  - Transparency & accountability; (A1 - enhanced reporting/review/BR; NA1 - nat comm/MRV/BUR; & MRV of support; IAR/ICA)
- Adaptation – a priority for the poor; (Adapt Framework; Adapt Committee; NAP; Loss & Damage; M&E of support)
- Finance – now, up to & beyond 2012
  - $30 billion Fast-Start Finance between 2010 and 2012;
  - Commitment to mobilise $100 billion per year by 2020;
  - A substantial portion through the Green Climate Fund; and
- A Technology Mechanism – ; (TEC & CTCN)
What was not agreed

Did not address key equity related political questions

• The legal form of the Convention outcome & therefore the continuation of Kyoto,
  – A 2 Treaty type legally binding outcome (2\textsuperscript{nd} CP under Kyoto)
  – A single treaty type legally binding outcome (replace Kyoto)
  – No legally binding outcome (kill Kyoto)

• Sufficient ambition to prevent dangerous climate change
  – A long term global emission reduction goal (2050)
  – A global peaking year
  – Upfront common carbon accounting rules
  – Supplementarity or limiting the use of offsets by A1 for compliance

• The fair allocation of burden and cost
  – Need for an Adaptation Centre & Network & a Loss & Damage Mechanism
  – Comparability of effort among A1;
  – Comparable compliance among A1;
  – Fair share of carbon space or time for developing countries to transition
  – Fair treatment of Intellectual Property Rights for the global climate commons
Emergence of 2 competing paradigms

- Copenhagen – a “big-bang” approach not politically feasible
- Enabled two competing paradigms
- Top down – Kyoto style – consistent with Bali 2 track option
  - Multilateral commitments – inclusive & equitable participation
  - Common rules and criteria based
  - Internationally legally binding on all Parties
  - Ambition informed by science (accounting for national priorities)
- Bottom up – pledge and review – no Kyoto
  - Unilateral – pledged domestic targets, policies and measures
  - Domestically legal (or not) commitments, rules and criteria
  - Ambition informed by national priorities and circumstances
  - “Internationalised” through reporting and review procedures
Central issues for the future

• Choosing a “top down” or “bottom up” model
  – A Kyoto 2\textsuperscript{nd} commitment period (or not)
  – Balanced by the legal form under the Convention

• Therefore, deal with “Unfinished business” from Bali,
  – Equity, comparability and symmetry
  – Transparency & accountability vs compliance as well as
  – Issues with external mandates (IPR, trade, bunkers, agric)

• Ambition – to reach 2\textdegree{}C or 1.5\textdegree{}C

• Urgency – making it operational now
  – Adaptation Committee, Framework, NAP, loss & damage
  – The Green Climate Fund, sources, Standing Committee
  – Technology Mechanism – operational CTCN
  – Response measure forum

• Process - what are the next steps?
Durban Deal for the future

• Potentially historical turning point choice of a multi-year pathway to a legal future – applicable to all – under a new AWG – the ADP
  – Negotiation of a new legal regime applicable to all parties by 2015, to come into effect/force by 2020;

• Significantly advanced the global effort needed now as a transitional arrangement

• But acknowledge that pledges on the table now are insufficient so process to increase ambition in the short term
Outstanding issues

• Precise definition of the legal character
• Top down vs Bottom up or combined
• Extent of multi-lateral common rules vs domestic rules, internationalised thru “transparency & accountability” procedures (i.e. MRV +)
• Equity & differentiation (how to share effort, costs and benefits)
• Issues mandated to other bodies (trade, IP, aviation, shipping, agriculture)
Context going forward

2 main contextual issues

• Maintaining balanced progress in work to finalise outstanding issues

• Global and national political and economic circumstances have not really changed since 2011 with a risk of a regression to “more of the same old divisions”

• Operationalise post 2012 system
  – AWG-KP – final adoption of amendment to Annex B & rules
  – Balanced with AWG-LCA finalised clarity on pledges, transparency & accountability framework
  – Ensuring the GCF is not an empty shell

• Alternatively the AWG-DP negotiation of the future becomes a continuation of the AWG-LCA with another name
Challenges going forward

Key challenge – develop ADP agenda & work that

• draws together the components of the architecture already agreed to
• within a legal rules based framework based on the provisions of the Convention
• that is ambitious, enabling, supportive, transparent and accountable
• but balances concerns relating to
  – comparability of effort,
  – differentiation,
  – symmetry,
  – compliance,
  – national sovereignty and equity
Criteria or conditions for success

The framework should therefore

• enable the participation of all
• through both domestic and international measures,
• incentivise increased ambition & support for adaptation
• be informed by science taking account of national circumstances
• with effort & cost equitably shared - dynamically evolving responsibilities, developmental stage and capabilities
• through flexible tools, mechanisms, accounting, reporting & support systems, based on common multilateral rules
• where performance is transparently measured, reported and verified domestically and
• tracked, assessed, facilitated & recognised internationally
Scan of demands - What’s in vs What’s out

• Commitments – flexible, multiple types, all levels
  – Global contribution
  – Domestic contribution
  – Cooperative contribution
  – Financial contribution
  – Technology contribution
  – Capacity building contribution

• Mechs & tools (including rules & criteria – building on)
  – Adaptation – Adaptation Framework, NAP’s, Loss & Damage
  – Mitigation – Kyoto plus; Registry & new mechanisms
    • Market
    • Non-market
    • Sectoral
    • REDD+ & land based mitigation
  – Means of Implementation – finance, technology, capacity
  – Cross – sectoral – (science, capacity, education, awareness)
Scan of demands - What’s in vs What’s out

• Tracking, Monitoring and Evaluation – build on rules
  – Performance (action vs commitment; support; joint/coop)
  – Reporting
  – Transparency – analysis, facilitation, consultation, review

• Safe guards – build on
  – Early warning & emergency response
  – Risk management & response measures

• Information systems – creating mechanisms for
  – Adding up – Effectiveness/integrity
  – New science/Trends/Changing circumstances
  – Emerging risks

• Governance - ??any new??
  – Governance institutions (eg. accountability & compliance)
  – Flexible updating procedures

Entry into force
Durban Platform instrument: Key variables

- Form
- Structure
- Content
- Process

- Legal agreement > binding under Int Law
- COP decisions > in general, not legally-binding
- Political agreement
- Legally-binding under domestic law
Variables

- Form
- Structure
- Content
- Process

- Single package vs. à la carte
  - Single package – all or nothing
  - À la carte – states can pick and choose
- Legally-binding vs. non-legally-binding elements
- Which parts of agreement are in legally-binding part?
Variables

- Form
- Structure
- Content
- Process

- Voluntary or mandatory ("should," "shall")
- Commitments
  - Obligations of result – e.g., targets
  - Obligations of conduct
- Differentiation & symmetry
Variables

- Form
- Structure
- Content
- Process

- Top-down: international prescription
- Bottom-up: national decision-making
- Contractual, negotiated
THANK YOU