

## EU Consultation on the 2015 International Climate Change Agreement: Shaping international climate policy beyond 2020

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**Question 1: How can the 2015 Agreement be designed to ensure that countries can pursue sustainable economic development while encouraging them to do their equitable and fair share in reducing global GHG emissions so that global emissions are put on a pathway that allows us to meet the below 2°C objective? How can we avoid a repeat of the current situation where there is a gap between voluntary pledges and the reductions that are required to keep global temperature increase below 2° C?**

Based on current emissions trajectories and climate model estimates, the likelihood of keeping increases in global temperatures below 2°C appears slim (Anderson and Bows 2008, 2011; Betts et al. 2011; Solomon et al. 2009). Geo-engineered or macro-engineered interventions, such as carbon capture and storage, and cloud seeding could become important options for significantly reducing greenhouse gas (GHG) concentrations in the atmosphere, and potentially keeping warming below 2°C, however the consequences of such action is largely unknown (The Royal Society 2009). Without major shifts in our current emissions trajectories, based on our current understanding of the science of climate change, the objective of keeping global temperature increases below 2°C seems unrealistic.

Evidence from other areas of science suggests that achieving global agreement on a socio-political challenge requires long time frames and buy-in from large parts of society. The EEA report on late lessons from early warnings highlights this point in relation to 12 case studies (Harremoës et al. 2001). The EEA study highlights that in cases of complex socio-technical hazards (such as climate change) until a coalition of willing partners emerges (for example including: the producers of GHG emissions, consumers of products produced by GHG emissions, governments benefitting from revenues from sales of GHG emissions, businesses making profits from use of GHGs, employees working for companies that use / rely on GHGs), who have clear public support for action, there is little likelihood of action. Case studies of the history of action on asbestos, radiation, benzene among others reveal that agreement to act can still produce decades of slow action, and damaging impacts on health and well-being (Gee and Greenberg 2001). Based on existing analysis of levels of disagreement among parties to the UNFCCC (see for example (Bodansky 2010), it seems unlikely that international agreement will be reached, let alone collective international action taken in the short term.

We can conclude from this that agreement on legally binding targets may take a long time to deliver through international negotiation at the UNFCCC. This does not negate the need for the UNFCCC, or Article 2. There are clearly long term benefits from continuing to provide

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the forum in which national policy makers can come together to discuss the challenges of climate change and how to achieve Art. 2, notably to articulate and rehearse arguments for the domestic audience, to develop working relationships with other countries, and to work towards binding agreements (see for example (Seyfang 2003). However, in the interim, it is worth considering alternatives. For example one option may be the 'building blocks' approach, whereby agreement is sought on partial agreements, for example on finance, forestry, technology transfer, adaptation (Falkner, Stephan, and Vogler 2010). The scope for supplementary bilateral, or multi-lateral collaborations on trade or aid relating to climate change may provide another way forward.

**Question 2: How can the 2015 Agreement best ensure the contribution of all major economies and sectors and minimise the potential risk of carbon leakage between highly competitive economies?**

One of the major challenges in creating a post-2012 climate change framework is the distribution of mitigation targets between established developed economies and advanced developing economies (see Rajamani, 2010, 2011, 2012). From the perspective of developed economies, if advanced developing economies do not accept ambitious mitigation targets they will have a competitive advantage in the global economy and compromise the international community's prospects of avoiding catastrophic climate change. Conversely, from the perspective of advanced developing economies, accepting ambitious mitigation targets at a point when their economic development has not reached its peak can be seen as the intervention of external governance processes in their sovereign economic affairs. Moreover, the fact that developed economies were not subjected to any similar global governance framework at a comparable point in their economic development means that economies which have developed in the second-half of the twentieth century, as opposed to the nineteenth century, have been placed at a competitive disadvantage. The result is impasse. Developed economies prefer to focus on the here and now, emphasising the distribution of economic opportunities and environmental impacts on current and future generations whilst advanced developing economies focus on the history of global economic development and emissions profiles. (On the tension between developing and developed countries and its impact on the international legal response to climate change see: Nanda, 1999; Schenck, 2008 (particularly at 336, 359); Drogula, 1992; French, 2000; Rajamani, 2008).

The problem is so well understood that its re-statement here seems almost trite. Yet the intractability of the problem underpins the history of climate negotiations. The United States of America withdrew from the Kyoto Protocol because advanced developing economies such as China and India had not been required to accept mitigation targets (see Kahn, 2003). Negotiations at Copenhagen in 2009 effectively collapsed, at least in part, because of controversies surrounding the distribution of mitigation commitments (on Copenhagen in general see Rajamani, 2010). The unavoidable question, therefore, in the context of the history of climate change negotiations is why should we expect the emergence of international consensus on these questions in 2015? If it is not possible to point to any fundamental change in the make-up of the global socio-political environment which makes consensus more likely – and no such factors are readily apparent – then we must accept that there is a very substantial prospect that negotiations on a 2015 Agreement have limited prospects of success. This does not mean that the UNFCCC process either as

presently constituted or in general should be abandoned. It does, however, mean that serious efforts to construct alternatives to existing approaches based on 'targets and timetable' and 'legally binding' agreements are required, and required now.

**Question 3: How can the 2015 Agreement most effectively encourage the mainstreaming of climate change in all relevant policy areas? How can it encourage complementary processes and initiatives, including those carried out by non-state actors?**

To encourage 'mainstreaming' of climate change it is necessary to be clear as to what this means. In the requirement that 'climate change policy ... must support economic growth and the broader sustainable development agenda', [COM (2013) 167 final] there is a suggestion of subordination of climate policy to economic growth. Yet, to have more than an 'awareness-raising' effect, mainstreaming climate change requires a degree of (relative, not absolute) prioritisation of climate change across all policy areas.

A 'weak' conceptualisation of mainstreaming (requiring merely 'consideration' of climate change implications of policy development) is likely to be ineffectual as regards delivering results combatting climate change.

However, pursuing the *prioritisation* of climate policy as an objective immediately engages the observed tension, particularly affecting developing states, between immediate and tangible development needs and more intangible climate change imperatives (see response to question 2 above).

Resolution of this tension cannot be achieved through top-down obligations, but is more amenable to pursuit through bottom-up approaches. While the 2015 agreement offers a policy space in which to articulate a commitment to 'mainstream' climate policy, it should focus upon means to support states in their identification of locally and regionally appropriate policies and programmes; the choice and implementation of mechanisms by which states achieve 'mainstreaming' is appropriately pursued through local, regional or sectoral action. This is supported by the observation that commitments are more likely to be met if they originate locally, where there is local ownership over their identification and development (Shrivastava and Goel, 2010).

In addition this is consistent with means by which to engage non-state actors and complementary processes. To bring non-state actors on board is challenging at global level, moreover those big enough to participate at that level may not be representative of local interests, or aware of particular local values or needs. Combined with the 'ownership' factors noted above, it is likely to be more effective to engage representative stakeholders at regional and local level.

The development of local participatory deliberative processes would offer significant benefits. Notably, participation in public debate arguably builds receptiveness to questions of public interest (Elster, 1997). Regarding mainstreaming of climate change policy, participatory deliberation could therefore carry the capacity to promote a shift in perspective beyond immediate development needs, to engagement with the more intangible implications of climate change, facilitating appropriate policy responses.

Examination of the EU experience relating to energy policy shows tangible progress following the engagement of stakeholders (Oettinger, 2013.) Similarly, the experience of the Kosterhavet National Park in Sweden demonstrates both the positive impact of education and the significance of engagement of all local stakeholders with regard to meeting environmental challenge and ensuring sustainable resource management, including where this directly impacts upon individual stakeholders' immediate economic interests. (European Environment Agency, 2013). More generally, participatory deliberation carries the capacity to improve decision making and build consensus. (see Fisher, 2007, Reid and Steele, 2009.) Further, the lack of strong international institutions or global government to act in the common good may be countered through the engagement of social processes and movements supporting decision-making at local level (see Ruggie, 2003).

Alongside the development of local participatory deliberation it would be valuable to pursue the development of dialogue and links between the 2015 Agreement and other global institutions, such as the World Trade Organisation in order to foster complementary processes and developments and facilitate the mainstreaming of climate policy at global level.

**Question 5: What should be the role of the 2015 Agreement in addressing the adaptation challenge and how should this build on on-going work under the Convention? How can the 2015 Agreement further incentivise the mainstreaming of adaptation into all relevant policy areas?**

Despite more than 20 years of climate change adaptation research, there remain few scientifically robust empirical studies of adaptation in action, of the drivers of adaptation, or, of baseline assessments of adaptation in regions, countries or sectors. There have been a few assessments of adaptation by small groups within a sector, such as subsistence farming in Nepal (Biggs et al. 2013), or home construction in the UK (Berkhout, Hertin, and Gann 2006). These studies are often small scale with very small samples from within one sector. There are a few examples of national level assessments, such as adaptation in the government and private sector in seven sectors in the UK (Tompkins et al. 2010), and adaptation in the Netherlands water sector (de Bruin et al. 2009). In both cases the observed adaptations were judged post hoc by the researchers to be adaptations, i.e. most were not designed and undertaken as 'adaptations'. As such there is no sense of the extent of adaptation to climate change within countries, and no real assessment of how adaptation might take place.

There is a proliferation of theories on how adaptation occurs, see for example (McGray, Hammill, and Bradley 2007; Eakin et al. 2009; Ensor and Berger 2009), but there is limited empirical evidence to support these theories. Adaptation remains a catch-all concept for which there is little empirical data. This is in part due the challenge of attributing specific weather events to climate change, and in part due to the challenge of researching such a difficult concept. What makes adaptation different to previous types of adaptation is: i) the aspect of surprise (e.g. the high risk of socio-ecological systems moving from one state to another); and ii) the uncertainty associated with the future for which adaptation is occurring (Eakin et al. 2009).

Studies consistently point out that the costs of adaptation - in the face of risk, uncertainty and surprise - are expected to be high, with the highest burden on those least able to reduce their exposure (Stern 2006). Disaster risk management studies consistently point to the importance of preparedness to reduce the costs of post-disaster recovery (Foresight 2012). The 2015 agreement could help by i) getting agreement from all countries to undertake cyclical climate risk assessments e.g. every 5 or 10 years, to identify levels of exposure and vulnerability to climate risk; ii) articulating the need for baseline adaptation studies to identify where action is being taken and where there is a need for support or some form of intervention to avoid the worst impacts of climate change; and iii) to allocate some resources (possibly through the Adaptation Fund) to make this possible in developing countries.

There is little dispute about the high cost of adapting to climate change (Parry et al. 2009), although there has been little research to evaluate the implications of this. For example, what is the role of the private sector in taking proactive measures to reduce their own or societal risk. Initial research suggests that novel institutions may be needed to deliver adaptation support, or transfer technologies to enable adaptation (Tompkins and Eakin 2012). The 2015 Agreement could start to encourage this action, by initially recognising the fact that all actors in society have a role to play in adaptation.

**Question 7: How could the 2015 Agreement further improve transparency and accountability of countries internationally? To what extent will an accounting system have to be standardised globally? How should countries be held accountable when they fail to meet their commitments?**

The language of accountability is difficult to reconcile with the UNFCCC in particular, and with the nature of international legal obligations more generally. Canada's recent withdrawal from the Kyoto Protocol (see Reuters, 'Canada to pull out of Kyoto Protocol' <http://www.reuters.com/article/2011/12/12/us-kyoto-withdrawal-idUSTRE7BB1X420111212>, 12 December 2011 and UNFCCC website ('Status of Ratification of the Kyoto Protocol') at [http://unfccc.int/kyoto\\_protocol/background/items/6603.php](http://unfccc.int/kyoto_protocol/background/items/6603.php)) illustrates the way that states are essentially at liberty to opt out of international legal commitments which, for domestic economic reasons, are no longer regarded as consistent with national interests (on this point see also the answer to question 8 below).

As international legal obligations are therefore weak, at least when compared with national legal frameworks, standards of accountability and enforceability are correspondingly weak. The only example, in international law, of an institution with the power to disregard states' sovereignty in the pursuit of the global interest is the UN Security Council (on the unique powers and place of the UN Security Council in international law, see Wood, 2006). There is virtually no prospect of establishing an actor with comparable powers to the Security Council in the climate change arena, and climate change governance therefore needs to reconcile its ambition with the distinction between strong domestic legal obligations and comparatively weak international legal obligations. This echoes the answer to question 2 and elements of question 3 above and the need to re-think the conventional approach based on 'targets and timetables' and 'legally binding' agreements.

**Question 8: How could the UN climate negotiating process be improved to better support reaching an inclusive, ambitious, effective and fair 2015 Agreement and ensuring its implementation?**

As discussed above, the conventional approach to climate change through the UNFCCC-era has been to focus on a ‘targets and timetables’ approach. Such thinking informs the structure of the UNFCCC and the Kyoto Protocol and no serious attempt to challenge this orthodoxy has been made in the lifetime of the convention. Whilst the increasingly pressing need to avert catastrophic climate change may make it seem that there is no alternative than to press ahead with a ‘targets and timetables’-based approach, there may be room for an alternative view.

The focus on a ‘legally binding’ 2015 Agreement obscures the fact that international law in general, and treaties such as the UNFCCC, the Kyoto Protocol, and any future 2015 agreement in particular, depends on state consent (see Article 34 of the Vienna Convention of the Law of Treaties – ‘A treaty does not create either obligations or rights for a third State without its consent.’) If a state does not wish to accept the commitments contained in any treaty it can, in most cases, not sign in the first place or, if it has signed and even ratified, withdraw (witness the USA pre-ratification withdrawal from the Kyoto Protocol and Canada’s more recent post-ratification withdrawal). The basic fabric of international law is therefore incompatible with the objective of achieving an agreement in 2015 which will be wholly ‘effective’ and whose ‘implementation’ can be guaranteed. Continuing the theme established throughout this response, there is therefore a pressing need to consider alternatives to existing approaches to climate governance based, in large part, on the idea that a ‘legally binding’ agreement is the objective to be pursued and that the achievement of this objective will guarantee an effective response to climate change.

**Question 9: How can the EU best invest in and support processes and initiatives outside the Convention to pave the way for an ambitious and effective 2015 agreement?**

There is a pressing need, as discussed above, for approaches to global climate governance which investigate the possibility of alternatives to ‘targets and timetables’-based thinking. Possible alternatives, which could be explored in this research, include:

- (1) An understanding of the UNFCCC framework and its institutions as a space for inter-state co-ordination across all areas of economic, academic, industrial, and political activity relevant to climate governance, similar to UNEP’s role.
- (2) Exploration of the potential for development of links and cooperation between currently distinct international regimes, to facilitate coherent policy development across different areas of global activity.

To develop such thinking the EU may wish to consider commissioning interdisciplinary research designed to develop alternative models of global climate governance.

One potential means by which to pursue this would be through the creation of an EU-wide network of stakeholders, academics, policy professionals, industrial and economic analysts,

trade unionists, NGO representatives, and community and environmental action groups, fulfilling a similar role to the IPCC but in the social science and humanities disciplines. The purpose of this network would be to explore, develop and report upon policy proposals and potential models of climate governance. The performance of this network at EU level could be used to support efforts to establish a global network with a similar function. Just as the membership of this network should be as inclusive and diverse as possible, its reports should be disseminated to the widest possible audience.

The scale of the climate change challenge, and the fact that it calls for a fundamental reappraisal of the relationship between human industrial-productive processes and the earth, means that the widest possible diversity of individuals, from technical experts to non-expert citizens, should be engaged in the effort to construct a governance response. This network could provide a framework for bringing together alternative thinking about climate change governance (on so-called 'bottom-up' approaches to global governance see Rajagopal, 2003).

### **Concluding statement**

The terms of an international legal response to anthropogenic climate change have been contested throughout the life of the UNFCCC with particular tension between developed and developing states. Whether international law can provide a means of tackling climate change remains to be seen.

This response has considered the need for and potential of alternative models of international climate governance highlighting the potential of 'bottom-up' approaches. We suggest that consideration be given to creating UNFCCC spaces or forums in which ideas are exchanged and diverse approaches to climate governance are considered. This co-operation and exchange model is proposed as a significant development from the current architecture based on 'legally binding' commitments. The reframed architecture would require substantial amendment to the existing legal texts. States would commit to take action to address the threat of climate change, encouraging the highest possible level of ambition for action at a local or sectoral level. It would leave the terms of national action to be determined by the communities and stakeholders concerned.

The Commission is thus invited to consider a model which recognises and maintains the inherent value of the UNFCCC as a focus of international attention, discussion and commitment, whilst permitting, facilitating and requiring the development of a sophisticated and flexible regulatory architecture. This envisages consideration by the Commission of alternative approaches to the conceptualisation of climate governance in general and the UNFCCC in particular. Rather than focussing upon a deadline in 2015 by which to reach a legally binding agreement committing all states to mitigation actions, the suggested approach would place responsibility for action, and the determination of modes of action, within specific sectors and at the national and regional level.

The negotiating history to date demonstrates the difficulties of reconciling the diverse perspectives of developed and developing economies. It is acknowledged that there have been very recent indications of a shift in position of both China and the United States,

towards the prioritisation of tackling climate change: at their Joint Summit (California, 7-8 June 2013) the US and China together indicated that they are prepared to cooperate on climate change. In addition, China has launched its first emissions trading scheme (June 18 2013) while President Obama has given his first major speech on climate change, 25 June 2013). However, despite these developments it is not clear that anything has changed fundamentally to give cause for optimism about negotiations on a 2015 agreement. Canada's withdrawal from the Kyoto Protocol illustrates the potential for states to opt out of the international legal architecture for self-interested reasons. This suggests that the 2015 agreement, as a single overarching agreement, cannot itself ensure the contribution of all major economies and sectors.

On the basis of this history and experience, alternative ways of thinking about the structure and character of international climate governance seem to be required. The 'fragmented' structure of international law necessitates consideration of measures to establish links between climate governance and other international legal regimes and institutions, in order to facilitate the development of coherent policy. Thus the adapted architecture of climate governance which we propose would look outwards, linking the international response to climate change with other areas of international policy-making and action, on the basis of a 'bottom-up', nationally focused model designed to stimulate the widest possible engagement in policy making and implementation.

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