



Paper 16

Next Steps for Developing Countries: Issues and Options for a “Montreal Mandate”

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The BASIC Project is a capacity strengthening project – funded by the European Commission – that supports the institutional capacity of Brazil, India, China and South Africa to undertake analytical work to determine what kind of climate change actions best fit within their current and future national circumstances, interests and priorities. Additional funding for BASIC has also been kindly provided by the UK, Department for Environment, Food and Rural Affairs and Australian Greenhouse Office. For further information about BASIC go to <http://www.basic-project.net/>

About BASIC

The BASIC Project supports the institutional capacity of Brazil, India, China and South Africa to undertake analytical work to determine what kind of national and international climate change actions best fit within their current and future circumstances, interests and priorities. BASIC has created a multi-national project team linking over 40 individuals from 25 research and policy institutions, the majority based in BASIC countries. Project activities comprise a mix of policy analysis, briefings, workshops, conferences, mentoring and training clustered around five tasks lead by teams as follows:

- Task 1 – Mitigation and sustainable development (China Team);
- Task 2 – Adaptation, vulnerability and finance (India Team);
- Task 3 – Carbon markets, policy coherence and institutional coordination (South Africa Team);
- Task 4 – Designing international climate change policy and enhancing negotiations skills (Brazil Team); and
- Task 5 – Creation of developing country expert group/mechanism on a long term basis (All Teams).

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About this Paper

This paper has been prepared by the BASIC Task 4 Team to advance future climate policy discussions and contribute to capacity development and does not express the views or opinions of the funders or the BASIC Project Team as a whole. Task 4 is coordinated by the BASIC Brazil Team, which comprises: Gylvan Meira Filho, Institute for Advanced Studies, University of São Paulo, José Goldemberg, Instituto de Eletrotécnica e Energia, University of São Paulo & former Secretary of Environment of São Paulo State, Jacques Marcovitch, Faculty of Economics, University of São Paulo. Additional support for Task 4 has been provided by Erik Haites, Margaree Consultants, Canada, Niklas Hohne and Sara Moltmann, Ecofys, Germany and Farhana Yamin, Institute of Development Studies, Sussex University, UK.

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Other papers produced by BASIC Task Team 4 include:

1. History and Status of the International Climate Change Negotiations on a Future Climate Agreement, Niklas Höhne, Ecofys, Gylvan Meira Filho, Institute of Advanced Studies, University of Sao Paulo, Sara Moltmann, Ecofys, Jacques Marcovitch, University of Sao Paulo, Farhana Yamin, Institute of Development Studies, UK, 2007
2. The Sao Paulo Proposal for an Agreement on Future Climate Policy, Task 4 BASIC Team. Revised September 2007

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1 Next Steps for Developing Countries: Issues and Options for a “Montreal Mandate”

The first meeting of the Parties to the Kyoto Protocol will take place in Montreal, Canada almost eight years after the Protocol's adoption on 11 December 1997. Delegates attending the Protocol's historic first session will, however, find little time to relax or celebrate their achievements. Opposition to the Protocol from the USA Administration since 2001 remains strong, adding a huge number of political, economic and financial challenges to the issues Parties to the Protocol must deal with at the first meeting of the Conference of the Parties serving as the meeting of the Parties (COP/MOP).

The legal and institutional challenges facing the COP/MOP are also immense. These include how the 156 countries that have ratified Kyoto proceed with complex tasks related to implementation and the evolution of Kyoto beyond 2012, including its relationship to its parent treaty – the UN Framework Convention on Climate Change (FCCC) which has been ratified by 194 countries, including the USA.

This article sets out the biggest legal and institutional challenge facing developing countries in Montreal: whether to sanction “next step” negotiations under the legal auspices of the Kyoto Protocol or under the FCCC or some combination of both. It outlines key factors relevant to the determination of this momentous procedural choice – a choice that could either help consolidate Kyoto and build upon the achievements of international cooperation over the last 15 years. Or else result in the climate regime standing

This article was prepared as part of CClaw Assist and the BASIC Project (Building and Supporting Institutional Capacity for Climate Change in Brazil, South Africa, India and China) funded by the EU Commission, Environment Directorate. Further details of the BASIC Project and a full paper version of this article can be found on the BASIC website www.basic-project.net and on IDS's website www.ids.ac.uk. still or reverting back to the kind of inadequate approaches to Annex I Parties mitigation commitments developing countries worked hard to strengthen through the adoption of Kyoto.

1.1 The fast approaching deadlines

The lengthy delay between Kyoto's adoption and its entry into force means that many of the deadlines Parties agreed in the text of the Protocol back in 1997 are now fast drawing near and require prompt action.

The most pressing deadlines concern issues crucial to the evolution of future climate policy. These include the review provisions set out in Articles 3.9 and 9 of the Protocol. Article 3.9 requires Parties to initiate negotiations on Annex I Parties' quantified commitments for the post 2012 period by 2005.

The provision in Article 9 gives a little more leeway time-wise but it is also much broader and complicated. Article 9 requires Parties to undertake a review of the Protocol in 2006 in the light of the best available scientific information and assessment on climate change and to coordinate such a review with pertinent reviews under the FCCC.

1.2 Kyoto or UNFCCC?

For developing countries, launching “next steps” negotiations under the legal authority of the Kyoto Protocol would carry many advantages.

Historically, developing countries have championed legally binding targets for Annex I Parties – as set out in Kyoto - and worked hard to ensure effective noncompliance procedures and mechanisms are in place to check fulfilment of these commitments. A prompt launch of second commitment period (SCP) negotiations for Annex I Parties would signal clearly a continuation of this long standing developing country position on multilateral oversight of Annex I Parties targets and timetables. Crucially, negotiations on the SCP would also help secure continued investment in the Clean Development Mechanism (CDM) – a mechanism that is of direct benefit to developing countries and was invented largely by them.

The Protocol is also a familiar, yet flexible, framework. It can be readily improved to take advantages of lessons learnt since 1997, for example, on how to incorporate flexible approaches for developing countries such as non binding or no-lose “action targets” or to support a better CDM. And critically, the Protocol is currently the only widely agreed up an running institutional structure that currently mandates Annex I Parties continue the kind of deep reductions needed over the next two decades.

The critical disadvantage of launching negotiation solely under Kyoto is that the USA is not a party and there would be no pressure for the world’s biggest GHG emitter to re-engage in “next steps” discussions.

Additionally, as the parent treaty, the FCCC remains the main legal source of many provisions that are significant for developing countries - currently and for the future – covering finance, technology, adaptation, capacity building and national communications/GHG inventories.

Launching negotiations under the FCCC would ensure that the USA engages in devising a future regime it would like to be part of and can provide financial resources in support of technology and adaptation needs.

But the disadvantages of focusing solely on the FCCC as the legal base for negotiations are that even if the USA allows negotiations under the FCCC to proceed at Montreal – and this is a very big if given that it has stated it does not want any future actions

discussions at all under the FCCC – as a Party, it has much more legal leverage to block progress any time it chooses.

It could even insist, for example, that the terms of reference for all future negotiations exclude mandatory approaches – a stance that goes against the very basic position of developing countries and one that would damage prospects for the CDM as well as providing no clear signal to industry to develop new technologies much needed by developing countries.

1.3 A combined approach

It would be legally and procedurally advantageous for developing countries to devise an institutional process that combines the advantages of the FCCC and Kyoto as legal bases for negotiations by establishing an institutional process that provides a “shared institutional space” for Kyoto and FCCC Parties. This shared space could be in the form of two in-session workshops convened jointly under the authority of the Subsidiary Bodies (SBI and SBSTA) – one to be held at the May/June 2006 sessions of the SB and the second as part of the SB sessions before COP12/COP/MOP-2 in November 2006.

The first workshop, lasting say 2 days, would have two segments – a Kyoto segment and a FCCC segment which would run seamlessly back to back. The COP/MOP would instruct Kyoto Parties to treat the Kyoto segment of the two in-session workshops as the “space” that is being devised to commence negotiations on Article 3.9. A COP/MOP decision on Article 3.9 to that effect would be adopted that mandates Kyoto Annex I Parties to bring forth their proposals for second commitment period commitments at the Kyoto segment of the in-session workshop.

The COP/ MOP 1 decision could also request all other Kyoto Parties, as well as observers states in attendance (e.g. the USA/Australia), to make submissions expressing their views on issues relating to timing, duration, scope, linkages with future negotiations on Article 9 as well as their views on institutional coordination of reviews under Kyoto and the FCCC. Such a request would put the ball in the court of the FCCC Parties to respond to timing issues – this is important as unlike Kyoto, the FCCC does not have a concrete date to review the commitments of its Parties, but it is something which Parties to the Kyoto Protocol need to know as part of their Article 9 review.

The FCCC segment of the in-session SB workshop would be convened pursuant to a COP decision agreed in Montreal. This decision would note and build on the terms of reference of the successful June 2005 Seminar of Governmental experts (SOGE).

The COP-11 decision would request FCCC Parties to continue such discussions at the UNFCCC segment of the first in-session workshop in May/June 2006.

The COP decision would encourage FCCC Parties to make submissions on how future climate policy could support their current actions relating to, for example, mitigation, adaptation and technology development. Any additional information bearing on the request made by Kyoto Protocol Parties to provide input to the reviews under Article 9 could also be encouraged as FCCC Parties must provide their input to the COP/MOP on this issue.

Future climate policy discussions under Kyoto/FCCC should involve developing countries in the fullest manner possible. But the complexity of the intergovernmental process is growing (FCCC/SBI/2005/10, paragraph 65). Additionally, trust funds for supporting developing country participation in meetings have not been as high as in the past and these need to be secure to ensure developing countries are able to attend current and future negotiations. These considerations must be addressed in a thoughtful manner as part and parcel of the package of decisions on how and when to launch “next steps” negotiations.

Accordingly, the COP-11 decision could also mandate that for the December 2006 session of the workshop, FCCC Parties should provide submissions on how the plethora of deadlines and intersecting timetables under existing agenda items bear on their ability to participate effectively in future climate policy negotiations, including their views on the organization of the intergovernmental process.

To facilitate these discussions, the COP11 decision should request the secretariat to prepare a document for the December meeting of in-session workshop that outlines how all the deadlines/timetables and various review dates of all current COP work and the COP/MOP’s work intersect for the next five years.

A document setting out all the deadlines and institutional context of meetings to which Kyoto and FCCC Parties are already committed would enable all Parties to work out how they can best structure the content, timing and institutional shape of any subsequent negotiations on “next steps” negotiations. Such a document would also alert all Parties to the need to secure funding for developing countries to participate in Kyoto and FCCC meetings in a timely manner.

The continuation of the in-session workshop format for next steps discussions beyond COP-11 and COP/MOP 1 would be considered at COP-12 and COP/MOP-2. Parties could then decide what kind of institutional structure might best serve the launch of next steps negotiations (e.g. an ad-hoc temporary group like that used to negotiate Kyoto. Or something more informal not unlike the Joint Working Group on Compliance).

Parties frustrated with the pace, content or format of discussions at Montreal could also then respond by submitting proposals, for example, amendments to the Convention or the Protocol, and/or proposals for a package of legal instruments - just as happened in the run up to COP-1 which saw a large coalition of countries drawn from the EU and developing

countries uniting to form a “green group” that played a leadership role in mapping out core tenets of future climate policy.

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