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Gaps in the current climate regime: the 'legal gap'

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Looking to the future: From Cancún to Durban



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UNITED NATIONS

CLIMATE CHANGE CONFERENCE 2011

DURBAN, SOUTH AFRICA



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3 Cancún to Durban: challenges

- Operationalising / implementing Cancún Agreements
- Making progress on outstanding 'political' issues:
 - 1) Ambition/emission gap + MRV
 - 2) Legal form gap
 - 3) Finance gap



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THE LEGAL GAP: Definition and effects

- **Situation where the KP Parties to Annex B would not be legally bound by further commitments from 2013 onwards**

- > Adoption
- > Entry into force
- > Technical solutions

- **Effects:**

- controversies amongst the lawyers
- Need for CMP decisions (adopted by consensus) to ensure continuity of the « essential elements »
- Multilateralism and the rule of law ?



5 THE LEGAL GAP: Legal analysis

- Commitments are designed for specific periods of time but continuity is presumed
 - The Parties must aim at avoiding a gap after CP1
 - Further commitments are adopted under the form of amendments to Annex B
- « Legal » vs. « political » CP2



THE LEGAL GAP: a technical problem, but also a political one

Council conclusions 10 October 2011, para 6

- **Internal conditions**

- Environmental integrity
- Enhanced architecture (Lulucf, surplus AAUs, market mechanisms)

- **External conditions:**

- « a roadmap for a multilateral rules-based legal framework engaging all Parties »
- An example: The EU's request in Panama

- **No locking of political choice**



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COUNCIL CONCLUSIONS: TEXT ANALYSIS

- « Rules-based » / « legal » is not « legally binding »
- « Openness » encompasses various possibilities



Conclusion: the need for international legally binding commitments

- Level of ambition
- Incorporation in domestic systems
- Financial support
- Confidence of the carbon market
- Reciprocity



Thank you !!

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