



# WORKING PAPER

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## Building consensus in the UNFCCC

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### Lessons from a seasoned negotiator

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By Antonio G. M. La Viña and Cecilia Therese T. Guiao

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### Observations of a new negotiator

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September 2013

## About this Working Paper

This Working Paper is part of the Climate and Development Knowledge Network (CDKN)'s on-going work on consensus building, in which negotiators under the United Nations Framework Convention on Climate Change (UNFCCC) share their experience of working toward consensus among the Parties. It is intended to prompt further discussion around the negotiation and consensus-building process, and is part of CDKN's work to amplify the voices of poor and most climate-vulnerable countries within the international negotiations.

## About the authors

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# Lessons from a seasoned negotiator

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## Introduction

This paper provides an introduction to the UNFCCC negotiation process and suggests how consensus may be achieved. It is aimed particularly at negotiators who have just joined the process, but should also be of interest to facilitators and more experienced negotiators, by provoking reflection or presenting new perspectives to be explored.

The lessons discussed in this paper are based on almost twenty years' experience in climate change work and the UNFCCC process. It must be borne in mind, however, that this perspective – as with that of every negotiator or facilitator – is filtered through a lens of personal circumstances and beliefs.

### Key observations

- Negotiators must know their country's limits or 'red lines', but also where they can afford to compromise.
- In-depth knowledge of the issues and of previous discussions is crucial. Knowledge of the process itself is best acquired through experience.
- Building trust and ensuring transparency is vital for consensus.
- Negotiators should aim for the maximum outcome, but be patient and, in some circumstances, accept incremental steps forward.
- The broader context – and influence – of states' interactions outside the UNFCCC process must also be considered.

## Background

In December 2011, in Durban, South Africa, the Conference of the Parties (COP) to the UNFCCC noted “with grave concern the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020, and aggregate emission pathways consistent with having a likely chance of holding the increase in average global temperature below 2°C or 1.5°C above pre-industrial levels”. The COP also recognised the need to strengthen the “multilateral, rules-based regime under the Convention”.<sup>1</sup> This led to the establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), which opened discussions on the development of “a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties”, and a “workplan on enhancing mitigation” that would result in the closing of what has been referred to as the “ambition gap”.<sup>2</sup>

Deemed “a matter of urgency”, this decision mandates the completion of the work of the Ad Hoc Working Group as soon as possible, but no later than the year 2015, at the 21<sup>st</sup> session of the UNFCCC COP.<sup>3</sup> This mandate, however – as any multilateral environmental agreement (MEA) negotiator would attest – is much easier said than done. The process within which the decisions are made is often an arduous one, and, crucially, must end in consensus among the Parties before they can be adopted.

## Consensus

Interestingly, there has been no definition of consensus in any of the provisions found in multilateral environmental agreements. One United Nations legal instrument that does define consensus is the 1982 Convention on the Law of the Sea, describing it as “the absence of any formal objection”.<sup>4</sup> The Merriam-Webster online dictionary definition of consensus, on the other hand, is of “general agreement”, or a “judgment arrived at by most of those concerned”.<sup>5</sup>

In MEA processes, the UNFCCC included, consensus alludes to the definition indicated in the UN Convention on the Law of the Sea, referring merely to the absence of objections from any of the parties. There is no formal voting requirement, as long as no objection is raised by any of the parties concerned; only in the event of a formal objection is consensus blocked. In practice, however, parties usually try to resolve known objections before such matters are brought before plenary. Often meetings are suspended for a few minutes to allow certain parties to ‘huddle’ and attempt to resolve difficulties on their own.

Decision-making in the UNFCCC can therefore seem quite simplistic, if one merely takes into account the mechanics behind consensus and how it is manifested. However, consensus as a concept, although seemingly ephemeral, is also quite complex. There is, after all, a profound difference between having the agreement of all Parties, and hearing no objections from any of them.

## Journey to consensus: lessons learned

The climate change regime is a formal one, with legally binding commitments, procedures and processes that are in some ways similar to, and in others distinct from, other MEAs. It has taken on a life of its own since the UNFCCC was first adopted, and its annual COP has perhaps the highest attendance among those of all multilateral agreements. In 2009, for instance, registration for the 15<sup>th</sup> COP held in Copenhagen reached approximately 45,000 people, the highest for any COP ever held.

What must not be forgotten in the maze of treaty provisions and procedures, however, is that the entire regime is built upon human beings trying to represent the interests of their own constituencies. The bottom line is that as one negotiates for what would best serve his or her country, the negotiation process builds on relationships between the different country delegations, and the relationship of these delegations with their constituencies. It is therefore vastly important that, as a negotiator working towards what is believed to be the best outcome, one bears in mind that the journey to consensus is one based on human interaction.

Being forthright builds trust and inspires respect, whether one is a facilitator or a negotiator. Facilitators in particular should remember that as such they are, for a time, putting aside their biases and assuming a role similar to that of a mediator or arbitrator, with negotiators taking on the role of advocates. While many joke that dissatisfaction with the decision on all sides means that a compromise has been reached, it should be the goal of the facilitator to reach a compromise that will make all sides return home feeling as though something has been accomplished that can be built upon in future. The UNFCCC negotiations should not be treated as a game of one-upmanship. Despite the different circumstances between the representations, one overarching goal remains – one that will benefit all the Parties involved.

The following section highlights six key lessons drawn from experience of consensus-building.

### Know your country

First and foremost, a negotiator must remember that he or she represents the interests of his or her own country and its citizens. Needless to say, it is important to be fully aware of the circumstances within the country, and the implications of this during negotiations. The negotiator must be aware of his or her 'red lines' – the lines that must not be crossed when trying to find a solution to conflicting positions.

At the same time, however, a negotiator must also know in what areas his or her country can give way to what could be the greater needs of others. Acknowledging and making room for needs that are equal to or greater than one's own creates good will and opens up space for the kind of healthy discussion that can lead to a satisfactory compromise for all.

### Know the substance

The negotiator must thoroughly understand the substance of the issues at stake. This allows him or her to be imaginative and innovative, and to come up with (perhaps unconventional) problem-solving approaches.

Some delegations have the capacity to assign negotiators to certain issues, which allows them to explore that subject further and to avail of their specific area of expertise. Those without such capacity could perhaps hold consultations or feedback sessions with experts and various stakeholders before and after negotiation sessions to get a firmer grasp on the subject.

Depending on country policy, negotiators may come solely from their foreign service department, or from a number of different departments and/or sectors. Either way, it is extremely important for negotiators to prepare for and be up to date on the current state of negotiations. It would do them well to go through the decisions and discussions of previous COPs, and ensure their knowledge of the subject matter and their country situation remains current and practical. It would also be to their advantage to note and try to understand the positions most opposed to theirs, and the reasons for such.

New negotiators may find the volume of data and information rather overwhelming, and understandably so. There is a vast amount of information on climate change available, especially online. It is therefore essential to be able to determine what data and information are accurate and useful. Often, new negotiators find that despite all their preparation, the actual negotiation takes on a life of its own. The particular knowledge and mastery over not just the subject matter, but the process itself, is something that is best learned through experience in the UNFCCC itself. Talking to senior negotiators about their experiences and insights is one way to fast track this kind of learning.

### Aim for the maximum

Apart from the interests of your constituency, what you are negotiating for is a matter of global significance. While it may be the case that your country is particularly vulnerable to climate change, all will be affected in the long run, and the best possible climate policy is one that addresses everyone's needs, especially the most vulnerable. It may be necessary to remind negotiators of this and appeal to their common humanity, especially when the time for compromise comes.

Facilitators may find it useful to make negotiators aware of the least common denominator, to illustrate how inadequate such a result would be. This can open the floor to more ambition from everyone involved.

Experience dictates that both negotiators and facilitators must find a balance between pushing for more and knowing when to compromise. This involves being sensitive to where the process is and the direction in which it is moving, and recognising when the timing is right to either push further or give in. Patience is a must, especially when particularly sensitive issues, or matters that require much detail, are being negotiated. Rather than allowing a difficult issue to cause a standstill in negotiations, incremental but systematic steps forward may be sought.

To avoid future gridlocks, it is also advisable to isolate particularly controversial issues, if they can be separated, and deal with them early on in the process. It is also useful to remember that procedural rules, especially to a facilitator, are meant to simplify and speed up the resolution of issues under negotiation. Such technicalities should not be allowed to needlessly hinder agreement – the facilitator must bear in mind that the original purpose behind such rules is to ensure that negotiations run smoothly and an agreement is reached. The rule, for instance, that no negotiations should go beyond 10 o'clock in the evening, is there primarily to increase

the pressure on Parties to reach agreement. While this may be considered a valid basis for such a rule, many might not consider the rule itself workable. Considering that decisions on a number of matters that are vital, sensitive and globally relevant must be made between and among more than one hundred sovereign states in approximately twelve working days, a curfew – so to speak – might not be feasible. As a facilitator, the responsibility for bringing negotiations forward, towards an equitable decision, rests on many judgment calls that you must make.

Negotiations, especially in the climate regime, are never easy. It is very rare for negotiators to immediately come to agreement, especially on fundamental concepts under the Convention, such as the principle of common but differentiated responsibilities and historical responsibility. Whether facilitator or negotiator, therefore, one should not give up easily; proposals and counterproposals must – and will – be made. As stated above, however, it is important to know when to push and when to compromise.

Contrary to conventional wisdom, a successful climate change negotiation is not one where everyone leaves supposedly unhappy. In fact, the opposite is true: the ultimate measure of a good climate change agreement is where all parties believe they have made progress and that what they have achieved will make a difference for our planet and our citizens.

### Build trust

Just as a negotiator ought to know the subject matter and the interests of his or her constituency well, the interests of other parties must also be borne in mind. Understanding the circumstances in which other parties negotiate will not only help in coming to a satisfactory agreement for all. It also helps to build trust, since it allows one to take the considerations of other parties into account.

As in any situation, everyone must be treated with respect. There should be a presumption of good faith, which will allow parties to make efforts towards compromise more willingly.

Facilitators, in particular, should make an effort to build trust among negotiating parties. They should not force or pressure any of them to do or agree to things they do not want, even when others do so. Returning to any previous antagonism must be avoided, and those involved in any earlier tension must be encouraged to find ways to resolve this.

Trust-building is absolutely essential in paving the way for a satisfactory outcome for all. As negotiations draw to a close and tensions run high, the trust that has been fostered will help parties to disregard rumours and actively work towards the best possible result.

As a facilitator, building trust between oneself and the negotiators, and the negotiators amongst themselves, includes creating a space where they can be comfortable. Facilitators must not embarrass anyone involved in the proceedings, and should engage them as parties and individuals. An example of this would be to call on Parties to lead discussions on certain sticking points in smaller, more informal groups, and to return to the more formal negotiations with proposed solutions. This will help emphasise the stake that all Parties have in the issues under negotiation, and that the engagement of Parties to whom the issues being discussed are particularly relevant are not brushed off. Equal engagement with all stakeholders is therefore a must. However, the facilitator must also bear in mind that sufficient distance must be maintained, to prevent lobbying.

### Ensure transparency

Inherent in trust-building is transparency. A facilitator must not play games, must be fair, and must be straightforward about what his or her next steps are.

The different means through which agreement can be reached should be explored. If a facilitator is able to make negotiators talk to each other and not past each other, then he or she is headed in the right direction. From experience, the best way to do this is to encourage bilateral talks as well as small group discussions between delegates. Those talks or discussions should however be focused on specific, concrete topics and should be done transparently so others do not feel left out.

### Complementary activities

Although the negotiations can seem to take on a life of their own, the UNFCCC process did not come about in a vacuum, nor is it taking place without a broader context. There is much history behind the climate issue, one that dates back to the industrial revolution and perhaps even earlier. Relationships between states outside the regime continue to exist and progress – sometimes within the climate regime, sometimes apart from it. Allies

on climate issues may be on opposing sides in other global discussions, while opponents (so to speak) during climate negotiations may have strong ties in other areas.

Activities outside the negotiations process create ties and relationships between these states, which can open lines of communication and pave the way for more open discussions. Of course, it may also be that due to strong ties between certain states, one party will give way to the other despite fundamental differences in their country needs and/or positions during negotiations, to preserve or enhance this relationship. This can then go either way: it may lead more quickly to a successful decision that is advantageous for all, or it can result in an ineffective decision that would have repercussions on all states.

## Conclusion

While 2015 may seem like some time away, those involved in the climate regime know that the UNFCCC decision-making process is long and arduous. The ADP discussions are moving forward, albeit slowly, and many who experienced the disappointment of the 15<sup>th</sup> COP held in Copenhagen in 2009 – where there was much expectation of a decision on commitments after the expiry of the Kyoto Protocol – are apprehensive about a similar lack of progress in 2015. The journey to consensus promises to be filled with challenges, not least given recent developments in the global economy. In the meantime, building trust between parties is crucial, and must not be delayed.

# Observations of a new negotiator

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## Introduction

This paper provides an introduction to the UNFCCC negotiation process and suggests how consensus may be achieved. It is aimed particularly at negotiators who have just joined the process, but should also be of interest to facilitators and more experienced negotiators, not least by reminding them of the typical challenges faced by newcomers.

The views in this paper are based on the author's direct experience in the UNFCCC process. It must be borne in mind, however, that this perspective – as with that of every negotiator or facilitator – is filtered through a lens of personal circumstances and beliefs.

### Key observations

- Newcomers to the UNFCCC process may well struggle with the complexity of the schedule, the technical language and a lack of access to previous discussions or decisions.
- Capacity-building, which should be developed further, can help new negotiators overcome these challenges.
- Within the process, ensuring trust and transparency, improving access to data and information, and ensuring free flow of communication are key principles for success.
- Outside the official negotiation process, dialogue and other complementary activities, and provision of relevant information can ease the learning phase for newer negotiators.

## Background

Climate change is one of the most serious threats to sustainable development, with adverse impacts on the environment, human health, food security, economic activity, natural resources and physical infrastructure.

The international political response to climate change began with the adoption of the UNFCCC at the United Nations Environment and Development Conference (also known as the Rio Summit), in 1992. The Convention sets out a framework for action aimed at sufficiently stabilising atmospheric concentrations of greenhouse gases to avoid anthropogenic interference with the climate system. It entered into force in 1994; currently, there are 165 signatories and 195 Parties (194 states and one regional economic integration organisation) to the UNFCCC.

The objective of the UNFCCC is to slow the rate of climate change. Each year, Parties to the Convention discuss progress at COPs. Between COPs, there are various talks, often convened under the auspices of the UNFCCC Secretariat or within sub-groupings. Since negotiations are structured to address the multifarious issues arising from climate change, there are several negotiating tracks – with subsidiary bodies, contact groups, and informal consultation slots under each track. In addition, Parties form blocs based on common positions, such as their geographic proximity or mutual interests.

However, this framework alone proved inadequate, at least initially: with no obligations, countries continued emitting. This led to the first Conference of Parties (COP1) in Berlin, Germany in 1995. The major milestone – the binding agreement that became known as the Kyoto Protocol – was reached in Kyoto, Japan, at the 3<sup>rd</sup> COP, in 1997.

Climate change negotiations have evolved a great deal since the ratification of the Kyoto Protocol. Over the last five years alone (2007–2012), negotiations have resulted in three major agreements: (i) the Bali Road Map, (ii) the Copenhagen Accord, and (iii) the Durban Platform.

Overall, these agreements resulted in the extension of the Kyoto Protocol into a second commitment period, which will run until 2020, although it excludes certain states such as Canada, Russia, Japan and New Zealand. The three agreements also led to a voluntary commitment by developing country Parties to participate in reducing greenhouse gases and, more recently, a commitment from developed country Parties to contribute US\$100 billion annually to climate financing from the year 2020.

## Perspectives of a newcomer

Before joining the UNFCCC negotiation process, I worked for a little more than a year for the focal institution mandated to follow climate change related issues in Ethiopia. Among my responsibilities I compiled and researched negotiation texts and documents for my office. But this did not prepare me at all for the first-ever inter-session meeting I attended in Bonn, Germany in 2011, where I was to follow two negotiation tracks of particular interest to my country. The immediate challenges included understanding the complex schedule; a lack of context and information about previous negotiations; and the use of jargon and acronyms.

Simply understanding the schedule of negotiations, packed with different parallel sessions, was a struggle. They include items such as plenaries, UNFCCC bodies' negotiations, contact group meetings, and informals.

I was able to organise myself and get to my first session with the help of a senior negotiator. The setup of negotiating rooms was friendly and most of the negotiators seemed to know each other, which seemed a good start – except that I was the new face. It took some time, and participation in many sessions both within and outside the UNFCCC, before I became 'part of the family'.

Negotiations began with a discussion of the last session's texts, which I did not have, since texts are circulated only to Parties present during that session, or to those who have given their contact details to the UNFCCC Secretariat.

Then came the jargon and the many acronyms I could not understand. I remember writing down everything I heard, hoping to research it later. Moreover, negotiators took me by surprise by mentioning decisions from as far back as 10 years ago. This meant I had to read and catch up with all those decisions; that entailed longer working hours in addition to the normal preparation for the sessions.

After almost three years in the negotiations process, six inter-sessionals and two COPs, and many outside negotiation meetings, I am among the negotiators keen on getting an outcome from the process.

## **Journey to consensus: lessons learned**

### **Why is international cooperation needed?**

The 21<sup>st</sup> century has brought a growing, more widespread concern for our environment. The availability of information on the loss of our natural resources, and the impact of this, has pushed governments to act.

Natural resources – physical or biological, renewable or non-renewable – are part of a complex ecosystem and may extend into the jurisdictions of two or more states. Their protection therefore depends on the cooperation of the different states involved: there are no property rights to these resources and the impacts of their mismanagement are felt far across borders. National efforts alone will not suffice. Rather, more coordinated and multilateral action has become imperative.

Since 1972, Parties therefore have been developing various environmental agreements. MEAs are international legal commitments that stem from state responsibility for the protection of environment. The nature of the obligation emanates from the existence of supranational legal obligations, whether by loss or damage, as an outcome of unlawful act, or by omission.<sup>6</sup> Signing up to a multilateral agreement can therefore have far-reaching implications on a domestic level, and negotiation of supranational agreements is an immensely political process. These agreements, though not a complete surrender of sovereignty, can be perceived to result in the erosion of the state's power of regulation within its own borders. This in essence happens within the state, through a rigorous political process which may not be available in the negotiations of the international agreements.

Just as for all MEAs, all Parties to the UNFCCC have economic, political, and social interests in the process. And of course, the outcome of the process affects their very existence. The Parties are well aware that climate change poses a threat to the human race – and that only by reaching an agreement can this be addressed.

The following recommendations focus on three factors in making negotiations more effective: capacity of negotiators, support outside the process, and principles and actions within the process.

### **The capacity of negotiators**

To a first-time negotiator, the UNFCCC process, and the time it takes to understand the issues, is always overwhelming. Therefore, the importance of capacity-building cannot be underestimated. In fact, I believe it is the first step in reaching an agreement, as it speeds up the process and allows it to run more smoothly by enabling all negotiators and their respective countries to fully engage and contribute.

The question, however, is: how can the capacity of new and young negotiators best be built? Capacity-building of newcomers starts in the negotiating rooms, and one of the most effective means is through mentoring by a more experienced member of a delegation. A year or more before the senior negotiator retires a new negotiator attends the different sessions, shadowing their senior colleague. During this time, all official communications and comments come from the senior, outgoing negotiator, while the task of the new negotiator is only to learn and understand the process. After a few sessions, the new negotiator can more readily serve as one of the lead negotiators in the track.

### **Support outside the process**

External institutions can support capacity-building programmes to help new UNFCCC negotiators get up to speed and engage in the process. This, in turn, will support a smooth flow of information and transition even when negotiators change.

The importance of complementary activities outside the UNFCCC process must also be highlighted. Dialogue, either within or outside UNFCCC sessions, will help Parties build trust in a more relaxed manner and enable communication in a less demanding, stressful or time-bound setting, without pressure to reach an outcome. Complementary activities provide important occasions for negotiators to understand the main thematic areas of the discussions and to some extent the positions of other parties, which can inform future formal negotiations.

Policy briefs and negotiation summaries are also important in improving understanding of key issues and context. The UNFCCC Secretariat produces summaries and decisions at the end of negotiations, which are particularly helpful to the newer generation of negotiators for understanding the process and how decisions have evolved. As well as shedding light on past negotiations, briefs and summaries can also be helpful in outlining possible future scenarios.

Negotiators protect their countries' interests; nonetheless, they also care about reaching an agreement. Policy briefs – especially those with a strong scientific evidence base and providing concrete figures, data and costs – broaden the perspective of the negotiator beyond his or her country's interests, which may ultimately influence that country's position. This, in turn, can make Parties more open to reaching an agreement.

## Inside the negotiation process

### Trust and transparency

The UNFCCC negotiation process is tough. Parties each have their own political, social, and economic interests. Trust helps in understanding the other Party's agenda and what it seeks to gain from the process, in turn helping negotiators to find compromise and reach an agreement. Trust between Parties will therefore advance the process. But building trust is not an easy task – particularly if Parties are not transparent in their positions and interest.

It must be noted that agreements are reached when Parties feel their positions are well understood and the other Party has no hidden agenda. Transparency on all sides helps build the trust that is vital in reaching agreements.

Chairs and facilitators in the UNFCCC process should work to gain trust from the Parties. When there are two extreme sides in the room, the Chair should strive to accommodate all positions and be capable of developing balanced draft decision documents. Working in this way can lead to a draft text that is acceptable to opposing sides.

Furthermore, the UNFCCC Secretariat can play a major role in making the process more transparent. In addition to session reports, making available the texts from different stages of their development could help new and younger generation negotiators to understand the process.

### Data and information

We are in an era where information is as important as capital. Parties need information and data, not only on the impacts of climate change, but also on the cost of mitigating the effects. Information and data are also needed to reduce the emission of greenhouse gases. It is no surprise, therefore, that Parties develop their negotiating positions based on such evidence.

The availability of data and information initially helps Parties understand one another's position, and this helps negotiators know when it is time to compromise for a greater cause and reach consensus. Readily available information and data helps Parties build trust, since they can be confident that there is no hidden agenda; this will facilitate the process of reaching an agreement.

Furthermore, parties may avoid committing to an agreement in fear of unintended consequences. Having the relevant information and data at hand – underlining the likely consequences without such an agreement, for example – can be a powerful negotiating tool, and can help put pressure on such Parties to focus on the greater purpose.

### Communication and dialogue

Equally important for reaching an agreement is the free flow of ideas and opinion. The UNFCCC process is not only a long and laborious process; it is also a venue where experts from all over the world meet to work for a better future. Negotiators have made considerable efforts to put in place a system that protects our environment and the world.

In contrast, negotiations are stressful. Negotiators are not only expected to reach an outcome, but are also pressured by different bodies in the process. Research institutions, non-governmental organisations and intergovernmental agencies have of course contributed to the process, but they may also lobby at times. Outside entities might put forth their (often rigid) viewpoint. In such scenarios, negotiators should be able to use their own personal judgment and focus more on the outcome. Ensuring negotiators do not feel overly pressured and are able to freely communicate their views is key to reaching an agreement.

The free flow of different views and expertise not only helps in achieving an outcome, but also in achieving a good outcome – in other words, one that works for all Parties.

## Conclusion

Negotiations for reaching a multilateral agreement are never easy. The experiences from other multilateral negotiation processes, like those within the World Trade Organization (WTO), underline the significant challenges and complexities in multilateral negotiations and in achieving consensus-based outcomes. However, there are many ways to support UNFCCC negotiations, by helping new negotiators, chairs, and facilitators and thus the process itself, to make progress.

While addressing climate change will require hard work and sacrifice, it should also be considered an opportunity for countries to transform towards a more sustainable development path and leave a better world for the coming generation. The UNFCCC process is a platform where such a development path can be agreed upon and endorsed by all countries.

The future of the UNFCCC also holds a new chapter, in the form of the Durban Platform, under which Parties are negotiating a new international mechanism to replace the Kyoto Protocol. Negotiating a new international agreement with time-bound commitments is not an easy task. Yet the Durban Platform is off to a great start and discussions are moving forward. Trust and good relationships are needed to see through this agreement. UNFCCC negotiators are not easy quitters. On the contrary, they come back to the table each time with better strategies and new solutions, and an ever-growing hope of reaching an agreement.

## Appendix A

### Overview of the process: the Convention

Having entered into force in March 1994, the UNFCCC has been ratified by 189 of the 194 United Nations member states as of December 2006. The main objective of the UNFCCC is the stabilisation of climate “at a level that would prevent dangerous anthropogenic interference with the climate system”, within a time frame “sufficient to allow ecosystems to adapt naturally to climate change”.<sup>7</sup>

Under the treaty, industrialised or developed countries – known as Annex I countries – agreed to reduce their greenhouse gas (GHG) emissions to 1990 levels by the year 2000. No such mitigation reduction obligations were placed upon developing countries (non-Annex I countries) on the bases of *common but differentiated responsibilities, historical responsibility and respective capabilities*.

The Kyoto Protocol, meanwhile, was adopted as an addition to the UNFCCC in 1997. It entered into force in February 2005, and in only two years had already been ratified by 168 states and the European Economic Community. Under the Kyoto Protocol, Annex I Parties agreed to reduce their GHG emission levels to an average of 5.2% below 1990 levels within a specific timeframe, namely 2008–2012. For the same reason as that of the UNFCCC, no mitigation reduction obligations were placed upon non-Annex I Parties.

Needless to say, implementation of the Convention and the Protocol has fallen far short, not only of what was expected, but also of what was mandated. This led to the decision on the Ad Hoc Durban Platform for Enhanced Action, and on the Doha Climate Gateway, which contains the provisions on the second commitment period of the Kyoto Protocol.

## Appendix B

### Overview of the process: bodies under the Convention

As with other MEAs, the UNFCCC established a *Conference of the Parties* to act as the ‘supreme body’ of the Convention.<sup>8</sup> The COP is composed of delegations from states that are party to the Convention, and meets every year to review its implementation and discuss ways to move forward and improve its application. It is supported by the *Secretariat*, which oversees all logistical arrangements of the COP, and sees to the daily operations necessary for the implementation of the Convention and all its functions.

The *Subsidiary Body for Scientific and Technological Advice* (SBSTA), meanwhile, was established under the Convention to “provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on *scientific and technological matters*”<sup>9</sup> (emphasis added). It generally meets twice a year, and is tasked to report regularly to the COP in order to aid the latter in its decision-making.

The *Subsidiary Body for Implementation* (SBI), on the other hand, was created with the mandate to “assist the Conference of the Parties in the *assessment and review of the effective implementation*”<sup>10</sup> of the Convention” (emphasis added), with a similar mandate to regularly report to the COP on its work.

Under the Kyoto Protocol, Parties to the UNFCCC that are signatories to the Protocol convene during the yearly COP meetings as well. These sessions are referred to as the *Meeting of the Parties* (MOP), and only Parties to the Protocol are allowed to take part in its decision-making processes. Parties to the UNFCCC that are not signatories to the Protocol may take part in the meetings, but only as observers.

Other formal bodies are sometimes established through COP decisions, such as *ad hoc working groups*, which are given specific mandates. While the SBSTA and SBI are permanent subsidiary bodies, ad hoc groups are usually temporary in nature, ceasing to exist as soon as their mandates are fulfilled. Subsidiary groups, whether permanent or otherwise, are not prohibited from establishing further subgroups in order to aid in the accomplishment of their mandates. Such subgroups may also be created through a COP decision, for the same reasons. As subsidiary bodies – and, in effect, further subgroups – receive their mandates from the COP and report back to it regularly, it is therefore apparent that the COP has the power of control and supervision over these bodies.

While it is only during the *formal plenary sessions* that decisions are adopted and reports or submissions by subsidiary bodies are assessed, most negotiations take place in informal groups, which may vary in terminology and attendance.

The president of the COP or the chairperson(s) of subsidiary bodies may convene smaller negotiating bodies and appoint respective facilitators with the purpose of paving a smoother way to consensus. These smaller, less formal negotiating settings allow parties to speak more frankly with each other and ideally provide a venue for the resolution of differences. Apart from working groups, described above, there are also contact groups, informal groups, friends of the Chair, and drafting groups.

*Contact groups* are formed in order to speed up the resolution of certain issues that are proving difficult to resolve. These meetings are open to all parties, but are often attended by parties that have particular interests in the issue under consideration. Another means through which difficult issues are resolved is the convening of an *informal group*, wherein parties meet in private. Discussions in these groups are presided over by a chairperson, and are often kept confidential.

Although they tend to foster more direct speaking, these private meetings sometimes backfire in that discussions that take place have no transparency with regard to civil society and similar stakeholders. *Friends of the Chair* meetings, in particular, have limited attendance – only a small number of representatives from delegations are allowed to take part, usually representing regional groupings, negotiating blocs or parties that are particularly sensitive to the issue at hand.

*Drafting groups*, finally, are those tasked to develop text on certain issues. They meet privately, and texts that are developed, once agreeable to the group, are submitted to the COP for adoption.

As previously mentioned, decisions are taken or adopted only by the COP during formal negotiations in plenary, during the last day of the annual COP.

## Appendix C

### Overview of the process: negotiating blocs

Parties to MEAs often negotiate both as independent states, and as members of negotiating blocs. Negotiating as a member of a group adds extra weight to country positions, ensuring that points of convergence are given proper emphasis. States with shared interests often find that this gives them more leverage in negotiations. This likewise allows Parties with smaller delegations to make their views known without having to spread themselves too thin.

The *Group of 77 & China* (G77&China), for instance, is a group of developing countries composed of 131 states from the various regions of the world. Subgroups within this particularly large bloc also exist, with states having joined together to form the *African Group*, the *AOSIS* (Association of Small Island States), the *Arab Group*, the *LDCs* (Least Developed Countries), the *Coalition of Rainforest Nations*, and *ALBA* (Bolivarian Alliance for Latin America and the Caribbean). More recently, these have been joined by the *LMDC* (Like-Minded Group of Developing Countries) and *ILAC* (Latin American and Caribbean Initiative for Sustainable Development). The *G77&China* often comes out with a group position on matters wherein consensus among the members is present, and members deliver their own national views on issues where there is none.

The *European Union* (EU) has a negotiating bloc of its own, and is composed of the 28 states that are members of the Union. They negotiate as one entity more often than not, coming together to form a common position on matters to be discussed or resolved.

A number of non-EU developed countries have established what they call the *Umbrella Group*. There is no formal list of members for this group, but Australia, Canada, Japan, New Zealand, Norway, the Russian Federation, Ukraine and the United States of America (USA) are acknowledged to be part of this bloc.<sup>11</sup>

The Republic of Korea, Liechtenstein, Mexico and Switzerland, meanwhile, came together to form the *Environmental Integrity Group* (EIG), through which they likewise negotiate as a bloc.<sup>12</sup>

Other groups that work together in the climate change regime are the *Organization of Petroleum Exporting Countries* (OPEC), *Central Asia, Caucasus, Albania and Moldova* (CACAM) and the *Agence intergouvernementale de la Francophonie*.

## Endnotes

- 1 Decision 1/CP.17
- 2 *Id.*, pars. 2, 7
- 3 *Id.*, par. 4
- 4 Art. 161(8)(e), Convention on Law of the Sea
- 5 See: <[www.merriam-webster.com/dictionary/consensus](http://www.merriam-webster.com/dictionary/consensus)> [accessed 13 August 2013]
- 6 Malcolm N. Shaw (2003) International Law, Cambridge University Press; Cambridge, UK.
- 7 United Nations Framework Convention on Climate Change (UNFCCC) (July 2011), online: <<http://unfccc.int/2860.php>> [accessed 13 August 2013]
- 8 Art. 7, UNFCCC
- 9 Art. 9, UNFCCC
- 10 Art. 10, UNFCCC
- 11 See: <[http://unfccc.int/parties\\_and\\_observers/parties/negotiating\\_groups/items/2714.php](http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php)> [accessed 13 August 2013]
- 12 *Id.*

## About CDKN

The Climate and Development Knowledge Network (CDKN) aims to help decision-makers in developing countries design and deliver climate-compatible development. We do this by providing demand-led research and technical assistance, and channelling the best available knowledge on climate change and development to support policy processes at the country level. CDKN is managed by an alliance of six organisations that brings together a wide range of expertise and experience.



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This document is an output from a project funded by the UK Department for International Development (DFID) and the Netherlands Directorate-General for International Cooperation (DGIS) for the benefit of developing countries. However, the views expressed and information contained in it are not necessarily those of or endorsed by DFID, DGIS or the entities managing the delivery of the Climate and Development Knowledge Network\*, which can accept no responsibility or liability for such views, completeness or accuracy of the information or for any reliance placed on them.

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