

Guide for Negotiators of Multilateral Environmental Agreements



UNITED NATIONS ENVIRONMENT PROGRAMME

GUIDE FOR NEGOTIATORS OF MULTILATERAL ENVIRONMENTAL AGREEMENTS



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Guide for Negotiators of Multilateral Environmental Agreements

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Acronyms

AOSIS	Alliance of Small Island States
AhWG	Ad Hoc Working Group
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
COP/MOP	Conference of the Parties serving as the Meeting of the Parties
IGO	Inter-Governmental Organisation
INC	International Negotiating Committee
JWG	Joint Working Group
LDC	Least Developed Country
LMMC	Like-Minded Megadiverse Countries
MARPOL	International Convention for the Prevention of Pollution from Ships
MOP	Meeting of the Parties
NGO	Non-Governmental Organisation
PIC	Prior Informed Consent
POPs	Persistent Organic Pollutants
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice (UNFCCC)
SBSTTA	Subsidiary Body for Scientific, Technical and Technological Advice (CBD)
UNCCD	UN Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCLOS	UN Convention on the Law of the Sea
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNGA	United Nations General Assembly
WMO	World Meteorological Organisation

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1. Introduction

Multilateral Environmental Agreements (MEAs) are a subset of the universe of international agreements. What distinguishes them from other agreements is their focus on environmental issues, their creation of binding international law, and their inclusion of multiple countries. Over the years, many MEAs have been negotiated and agreed at the international and regional levels. Some have a few Parties; some have almost global participation.

It has been said that environmental agreements can be divided into two inter-related and overlapping generations: a first generation, of single issue, use-oriented, and mainly sectoral agreements; and a second generation, that take a more holistic approach and focus on sustainable development and sustainable use of natural resources.

First generation agreements primarily address the preservation and use of particular natural resources -- such as wildlife, air and the marine environment. Examples include the 1971 *Convention on Wetlands of International Importance especially as Waterfowl Habitat* (Ramsar Convention), the 1972 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter* (London Dumping Convention), and the 1973 *International Convention for the Prevention of Pollution from Ships* (MARPOL). These MEAs set out principles for dealing with threats to living natural resources, global common resources, and the marine environment.

Many of the second generation of more 'holistic' MEAs evolved following the United Nations Conference on Environment and Development (UNCED). This Conference, known as the 'Earth Summit,' was held in Rio de Janeiro in June 1992 with government representatives from approximately 180 States present. Two new conventions were opened for signature: the *UN Framework Convention on Climate Change* (UNFCCC), which is sectoral in that it deals with climate and the atmosphere, but recognizes the broader impacts of climate change on ecosystems, food production and sustainable development; and the *Convention on Biological Diversity* (CBD) which seeks to bring together agriculture, forestry, fishery, land use and nature conservation in new ways. The *UN Convention to Combat Desertification* (UNCCD) was adopted after the Conference and aims to combat desertification and mitigate the effects of drought. These three conventions are often referred to as 'the Rio Conventions.'

Some of the more familiar MEAs that have been adopted in recent years include the 1998 *Agreement on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (PIC Convention or Rotterdam Convention); the 2001 *Convention on Persistent Organic Pollutants* (POPs Convention or Stockholm Convention); and the 1998 *UN/ECE Convention on Access to Information, Public Participation and Decision Making and Access to Justice in Environmental Matters* (Aarhus Convention).

MEAs come in a variety of forms. They can be:

- **Global or regional:** for example, the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (Basel Convention) applies throughout the world; the *Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa* (Bamako Convention) applies only within the African region.
- **Appendix-driven or Annex-driven conventions:** the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is an appendix-driven agreement. Three appendices list animal and plant species in different categories of endangerment, subject to different degrees of regulation. The *International Convention for the Prevention of Pollution from Ships* (MARPOL) contains Annexes that address different types of pollution (e.g., oil (Annex I), noxious liquid substances (Annex II), harmful substances (Annex III), sewage (Annex IV), garbage (Annex V), air pollution from ships (Annex VII)).
- **Framework conventions:** some conventions are stand-alone all-inclusive agreements. Others, like the *UN Framework Convention on Climate Change* (UNFCCC), anticipate the adoption of further protocols (agreements), to achieve their objectives. For example, the UNFCCC was agreed in 1992. Its *Kyoto Protocol* was later agreed in 1997, and builds upon the Convention. The *Vienna Convention on the Protection of the Ozone Layer* was agreed in 1985. Its *Montreal Protocol* was later agreed in 1987, and sets timetables for the phase-out of ozone-depleting substances.

Bilateral environmental agreements (BEAs) also exist, involving only two Parties (e.g., the *Canada-Chile Agreement on Environmental Cooperation*). However, this Guide only addresses MEAs.

BASIC TERMS

State: A country.

Party: A State (country) that has ratified a treaty.

Contracting Party: A phrase used to refer to a State that has ratified a treaty.

Non-Party: A State that has not ratified a treaty.

Observer: Non-state actors who are invited to participate in a limited manner in the negotiations, or States that are not Parties to a treaty but nevertheless may participate in a limited manner.

Useful sites to access MEA texts

http://www.unep.org/dpdl/Law/Law_instruments/multilateral_instruments.asp

http://ec.europa.eu/environment/international_issues/pdf/agreements_en.pdf

<http://untreaty.un.org/English/treaty.asp> (contains all sorts of treaties, subscription required)

2. Where do MEAs come from and how do they develop?

MEAs differ in scope and substance. Nevertheless, they tend to be formulated through a similar process that moves through recognisable stages. These stages include pre-negotiation, negotiation, adoption and signature, ratification and accession, and entry into force. Once an MEA ‘enters into force’ it has legal effect and implementation begins. As implementation goes forward, there may be a need to adapt the MEA’s institutions, mechanisms and approaches to be able to adapt to changes in science and knowledge, or to build upon the progress that has been achieved through the negotiation of new decisions, amendments, annexes, appendices or protocols.

Each stage of the MEA life cycle has distinct characteristics and distinct outcomes. Before you attend a negotiating session for a particular MEA, you will want to determine where you are in that MEA’s ‘life cycle’. Are you at the pre-negotiation stage or at the negotiation stage? Has your MEA entered into force? If so, are you negotiating decisions that will take forward its work? Are you considering ways to adapt the MEA to address new concerns? Or, will your negotiating session be negotiating a whole new ‘Protocol’ to an existing MEA?

2.1 Pre-negotiation to Entry into Force

Pre-negotiation

In the pre-negotiation phase, national governments or inter-governmental organisations set out to address environmental issues that have implications beyond national boundaries, or that involve issues of global concern. The first step involves a decision as to whether there is a need for action, and whether joint action is feasible. Informal or formal consultations at this stage can take place at the national, regional or international level.

Scientific analysis is usually a key component of pre-negotiation analysis. Intergovernmental organisations may call for the creation of a scientific body to investigate particular issues. For instance, in 1988, the United Nations Environment Programme (UNEP) and the World Meteorological Organisation (WMO) called for the creation of the Inter-governmental Panel on Climate Change (IPCC) to provide independent scientific analysis concerning the rising threat of climate change. The IPCC’s findings, set out in its First Assessment Report in 1990, provided the scientific basis for the negotiation of the UN Framework Convention on Climate Change. In 1995, the UNEP Governing Council passed a decision inviting various organisations, including the Intergovernmental Forum on Chemical Safety, to assess the need for and feasibility of an international legal mechanism addressing persistent organic pollutants. The resulting consultation report ultimately served as the foundation for negotiations of the 1998 Stockholm Convention on Prior Informed Consent.

The pre-negotiation phase also involves the assessment of existing legal regimes. This often includes a review of national laws and regulations, and binding and non-binding international agreements that address similar environmental issues.

Negotiation

The negotiation process begins with the establishment of a negotiating structure. Negotiating structures usually arise when international bodies, such as the UN or UNEP, convene an *Intergovernmental Negotiating Committee* (INC).

Before negotiations begin, *preparatory committees* ('PrepComs') may be established to address issues of procedure and cost. When this process is concluded, the INC may organise an *ad hoc* conference, designed specifically for the purpose of negotiating an agreement. Intergovernmental organisations often provide secretariats to oversee *ad hoc* conferences. This was the case, for example, in the negotiations of the 1998 Convention on Prior Informed Consent, where UNEP and FAO jointly provided a secretariat. The INC may also establish subsidiary bodies, such as a Bureau to help organise the negotiating process and working groups to focus on specific negotiating issues. If rules of procedure were not agreed upon during the preparation process, the *ad hoc* conference's first order of business may be to create procedural rules to help guide the negotiation process itself.

In the *ad hoc* conference, participants may engage in 'formal' and 'informal' negotiations. Formal negotiations take place primarily in the 'plenary' body where all parties are present. Informal negotiations, in contrast, occur largely behind closed doors with smaller groups of key players.

Adoption and Signature

Upon conclusion of the negotiation phase, attention shifts to the next phase -- adoption and signing. The formal adoption and signing of an MEA may take place at either a diplomatic conference or a *conference of plenipotentiaries* (a 'plenipotentiary' is someone entrusted with full authority to act on behalf of his or her government or other organization, for example, an ambassador). An enabling decision is adopted by the convening body (e.g. the UN or a specialised agencies) which details the purpose, dates, and venue of the adoption and signature conference.

As in the negotiation phase, the adoption and signature conference is guided by established procedural rules. However, in practice, parties enter into an agreement to extend the procedural rules which were applied to the negotiating sessions. Parties may agree upon new procedural rules at this stage of the MEA process.

In theory, a conference for adoption and signature could be convened just hours after the completion of negotiations. However, in practice, these conferences take place some time after the conclusion of negotiations. This allows time for both the

INC secretariat to prepare necessary documents, and time for negotiators to report the results of the negotiations to their respective governments.

Ratification and Accession

Often MEAs allow countries to sign agreements ‘subject to ratification’. Governments are then given time to consider internally their formal position on the agreement. The process of ratification ensures that country representatives have not overstepped their authority in negotiating the agreement. In ‘ratifying’ an agreement, by depositing an ‘instrument of ratification’ a country formally declares its consent to be bound by the agreement’s terms.

Typically, there is a formal period of time for which an agreement is open for ‘ratification’ by the governments signing the agreement. However, in certain instances, the signing of an MEA may amount to ratification, and for this reason country representatives attending adoption and signing conferences should have full authority from their governments to adopt and sign the MEA being agreed.

‘**Accession**’ is quite similar to ratification. If a country seeks to make a formal commitment to the agreement *after* the expiration of the time frame allotted by the MEA itself for the ratification process, this is termed ‘accession.’ At the national level, each country determines its own internal ratification process for international agreements. Hence different countries may use different terminology for the process of ratification.

The ‘**depository**’ takes custody of the original text of a treaty and collects the documents relating to it (signatures, ratifications, accessions, reservations, notifications and other communications). The depository examines whether the documents presented are in proper form and whether the conditions required for the entry into force of an instrument have been met.

Entry into force

During the pre-negotiation or negotiation phases, parties will agree to specific rules regarding entry into force of the MEA. Most MEAs employ a system in which entry into force depends on a particular number of ratifications, acceptances, approvals, or accessions received. This ensures the achievement of a ‘critical mass’ of participating States so that the Parties that commit to the agreement are capable of realising its goals and objectives. Normally, MEAs require anywhere from 20 percent to 30 percent participation of potential Parties.

Another trend with environmental agreements has seen entry into force linked with the mandatory participation of certain parties. The 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change represents an example of this strategy. The Kyoto Protocol had two requirements for entry into force. It required: (1) ratification by at least 55 Parties to the UNFCCC; and (2) ratification

by Annex I Parties (developed country Parties) accounting for at least 55 percent of the total 1990 level of carbon dioxide emissions from all developed country Parties listed in Annex I. Both of these requirements had to be met before the Protocol could enter into force. This level of participation was designed to ensure that major developed countries participated. It also was designed to ensure broad participation, in recognition of the economic implications of ratification and compliance with Kyoto's emission reduction targets.

2.2 MEA Implementation: Institutional Arrangements and Mechanisms

Once an MEA has entered into force, the focus of the Parties' work shifts to implementation. While much of the 'on-the-ground' implementation is done by Parties at the national level through domestic legislative and administrative arrangements, MEA institutional bodies and/or agreed MEA mechanisms (such as reporting, verification or compliance mechanisms) often exist to help assist and ensure national level implementation.

Institutions for Implementation

At the institutional level, a Conference of the Parties (COP) represents the primary decision making body for a given MEA. COPs usually meet once a year to take decisions, though they may meet less frequently. Representatives of all Parties are invited to attend. COPs will often establish 'subsidiary bodies' to facilitate an MEA's progress. Scientific and technical committees may also support implementation. For example, the CBD has a *Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA)* to make recommendations to the CBD COP. The SBSTTA is open to all Parties to the CBD. The Climate Change Convention has a *Subsidiary Body for Scientific and Technological Advice (SBSTA)*, as well as a *Subsidiary Body for Implementation (SBI)*. Both bodies develop conclusions to be presented to the UNFCCC COP and are open to participation by all Parties.

Other 'subsidiary bodies' may include convention secretariats, Bureaus, or other established executive bodies. In some cases, administrative and policy support may be provided by an inter-governmental organisation. For example, UNEP works as the Secretariat for the CITES; and the Secretariat of the Ramsar Convention is assisted by the World Conservation Union (IUCN). Secretariats assist Parties by facilitating sessions of the COP and its subsidiary bodies, compiling and transmitting reports, and undertaking other functions specified in the MEA or that may be determined by the COP.

Mechanisms for Implementation

Reporting Mechanisms. To assess progress toward an MEA's goals, and to ensure proper implementation at the national level, MEAs routinely rely on reporting directly from individual Parties. Parties are often required to submit periodic reports

MEA INSTITUTIONS

FORMAL BODIES

Conference of the Parties (COP): the meeting of negotiators from countries that have ratified a Convention. It meets periodically (often once a year) to review Convention implementation and to take decisions on how to improve the implementation process.

Meeting of the Parties (MOP): similar to a Conference of the Parties. The term 'MOP' is used to describe meetings of the Parties to the Kyoto Protocol and Biosafety Protocol, to distinguish these meetings from the Conference of the Parties to the framework conventions themselves (the UNFCCC and CBD respectively). A MOP will often be held in conjunction with a COP.

Plenary: the main meeting of the Conference of the Parties. At plenary meetings, each delegation is represented and all delegations sit in a single large room. State representatives can have an opportunity to address the Convention. All votes take place in the plenary meeting.

Bureau: a Bureau may oversee the running of a COP or MOP. Bureaus are usually made up of members from each of the different regional blocs.

Secretariat: undertakes the day-to-day activities of coordinating the implementation and makes arrangements for the meetings of the COP.

Subsidiary Bodies: may advise the COP about the latest developments in the scientific and technological area and provide policy recommendations. The UNFCCC has a Subsidiary Body for Scientific and Technological Advice (SBSTA), and a Subsidiary Body for Implementation (SBI). The CBD has a Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA).

Ad-Hoc Groups: may be created to address specific issues of concern that require focused attention. For example, an Ad hoc Technical Expert Group on Biological Diversity and Climate Change was established (under CBD decision V/4) to consider ways to promote synergies at the national level between the UNFCCC and its Kyoto Protocol and the CBD, when implementing climate change activities, as well as their relation to the conservation and sustainable use of biodiversity. An Ad Hoc Working Group on Article 3.9 was created (under Kyoto Protocol decision 1/CMP.1) to consider future greenhouse gas reduction and limitation commitments under the Kyoto Protocol.

Informal Bodies: The President of the COP or the Chair of a subsidiary body may establish 'informal consultations' or other groups to help find consensus among the diverse interests of MEA Parties. The Chair may appoint individuals to preside over these informal sessions. Some of these informal groups include:

Mea Institutions

Formal Bodies (cont'd)

Friends of the Chair/President: A few prominent negotiators invited to form a group to assist the Chair or President in informally developing consensus on issues.

Working Group: A group convened by the COP or by one of the subsidiary bodies to work on large scale issues. The Chair or Co-chairs must be designated by the Chair of the body calling the Working Group, and membership is open to all Parties. Example might be a Working Group on Mechanisms, or a Working Group on Compliance.

Joint Working Group: Two working groups, each convened by a different subsidiary body, brought together to work on cross cutting issues. For example, the Climate Convention's Joint Working Group on Compliance.

Contact Group: A group formed to resolve a specific issue on which there is disagreement. Membership is open to all Parties, but is usually limited to those Parties individually invited by the Chair to participate, due to their different viewpoints.

Joint Contact Group: Two contact groups created separately and brought together to resolve differences between them.

Informal Group: A group called into being by one or more of the Parties, for purposes of informal consultation.

Non-group: If there is extreme reluctance to enter into negotiation, non-groups can be called into being by the Chair in order to encourage communication without the pressure of negotiations.

to a designated body. Reporting requirements may be contained within the MEA itself, or Parties may agree to additional reporting requirements through decisions taken by the COP. Each MEA contains separate reporting requirements. However, at the national level, co-ordination among those responsible for MEA implementation may avoid duplication of efforts.

Verification. MEAs may also contain provisions that permit the verification of the information that is reported by Parties. Verification may take the form of one country addressing in writing to the MEA Secretariat its concerns over another country's implementation of the agreement. This verification process, however, has the unfortunate side effect of placing individual countries in the potentially awkward role of policing agent. The Kyoto Protocol addressed this issue by creating an independent monitoring body known as the Expert Review Team. Expert Review Teams are given the power and responsibility to conduct technical assessments of Party implementation and to report their findings to the Secretariat. The results then are submitted to a compliance committee, comprised of additional experts who review these findings. Reporting and verification mechanisms aim to reveal inadequate national level implementation and non-compliance.

Compliance is increasingly recognised as a key issue for international agreements. A number of MEAs include provisions for the creation of a compliance body capable of dealing with non-compliance issues. These bodies or committees may be authorised to assess instances of non-compliance and determine whether the breach of an agreement stems from negligence or insufficient capacity. A compliance body may publicise certain breaches or it may refer flagrant non-compliance to the COP.¹ For those countries lacking capacity, a compliance body may serve to facilitate or support that country in ongoing efforts to meet its obligations. Examples of MEAs with compliance regimes in place include:

- *CITES (1973)*
- *Convention on Long-range Transboundary Air Pollution (1979)*
- *Convention on the Conservation of European Wildlife and Natural Habitats (1979)*
- *Montreal Protocol on Substances that Deplete the Ozone Layer (1987)*
- *Kyoto Protocol to the UNFCCC (1997)*

2.3 MEA Expansion and Evolution

Many MEAs address complex issues that evolve over time. For this reason, MEAs must be able to adapt to changes in science and knowledge, build upon the progress

¹ UNEP Manual on Compliance with and Enforcement of MEAs (June 2006), p. 122.

that has been achieved, and adapt to new challenges in achieving their objectives. Two broad methods exist by which MEAs can adapt to changing circumstances:

- (1) negotiation of decisions or amendments to adjust an MEA's content;
- (2) negotiation of new, independent agreements that can extend the scope or reach of the current agreement (e.g, new protocols, new annexes, or new appendices).²

First, Parties to an MEA may decide to *adjust* the MEA's scope through the adoption of **decisions or amendments**. Certain of these 'adjustments' may only require a majority vote in order to become binding on all parties.³ For example, the Montreal Protocol includes a provision to allow for a two-thirds majority vote on amendments if parties fail to reach consensus. The Kyoto Protocol allows for amendments by consensus, or failing consensus, but a $\frac{3}{4}$ majority. CITES allows for the listing of a species in two of its Appendices upon a $\frac{2}{3}$ majority vote. However, once an amendment is agreed by the Parties, it may nevertheless not enter into force and become effective until it goes through a new process of ratification by each Party (or by a certain number of Parties). The text of the MEA itself usually provides rules for the adoption of decisions and amendments.

Second, if amendments or adjustments are insufficient to respond to changing circumstances, the Parties may decide to create **new agreements** to advance an MEA's objectives -- called **protocols**. Protocols retain a strong link to existing MEAs, but in reality serve as independent and autonomous agreements. MEAs often utilise protocols to regulate a specific aspect of a larger environmental concern. Examples of such MEAs with protocols include the 1985 *Vienna Convention* and its 1987 *Montreal Protocol*, the 1992 *UNFCCC* and its 1997 *Kyoto Protocol*, and the 1992 *CBD* and its 2000 *Cartagena Protocol on Biosafety*. Other protocols may be used to substantially update an earlier convention, e.g., the 1972 *London Dumping Convention* and its 1996 *Protocol*. States that are Parties to the parent convention are not obliged to become Parties to protocols unless the convention requires its Parties to do so. In some cases, non-Parties can voluntarily comply with requirements set out in protocols.

MEAs may also evolve by expanding their *membership* to more Parties, to reach beyond the Parties originally targeted. The 1998 Aarhus Convention, for example, which originally applied to members of the Economic Commission for Europe, includes within it a provision that allows member countries of the United Nations to accede to the Convention upon approval by the Meeting of the Parties.

² Timoshenko, A., *Environmental Negotiator Handbook* (Kluwer Law International, 2003), p.234.

³ FN 2 ABOVE.

EXAMPLE OF AMENDMENTS / ADJUSTMENTS:

THE 1985 VIENNA CONVENTION ON THE PROTECTION OF THE OZONE LAYER

In 1985, scientific concerns about damage to the ozone layer prompted governments to adopt the Vienna Convention on the Protection of the Ozone Layer, which established an international legal framework for action. Two years later, in 1987, international negotiators met again to adopt legally binding commitments in the Montreal Protocol on Substances that Deplete the Ozone Layer. The Montreal Protocol required industrialised countries to reduce their consumption of chemicals harming the ozone layer and set timeframes for phasing out these chemicals. As a result of changing conditions and increased information during the Montreal Protocol's implementation, additional requirements have been added through amendments adopted in London (1990), Copenhagen (1992), Montreal (1997) and Beijing (1999).

Source: <http://www.undp.org/seed/eap/montreal/montreal.htm>

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3. How do I Prepare for Negotiations?

All successful negotiators prepare thoroughly in-country long before the actual negotiations take place. For your delegation to be successful, you will want to have a comprehensive understanding of your country's interests in the issues under negotiation, and a good sense of the interests of other delegations.⁴ You will want to identify your national needs and develop national positions on issues that will address those needs. A negotiating team should be identified and mobilised well in advance, so that negotiators have sufficient time to become familiar with the agenda for the upcoming session, and sufficient time to highlight and brief important issues for government policy-makers.

3.1 Identifying National Needs and Developing a National Position

Prior to leaving for negotiations, your delegation should have prepared a detailed analysis of the issues most relevant to your country's interests, and developed a national position on each critical issue. Your national position will depend on your country's needs, and take into consideration the feasibility of various means to address these needs. Ideally, the identification of needs and development of a national position should involve a wide range of activities, including consultations with a range of government agencies and administrative departments, targeted scientific studies, and input from affected economic stakeholders (business and industry bodies), NGOs and civil society. The final position on each issue that you take to negotiations should have received the necessary political endorsement, so that your delegation can represent that position with confidence during the negotiating process.

3.2 Mobilising a Negotiation Team

Once a national position has been established, decision-makers should assemble a negotiating team or 'delegation'. A 'head of delegation' should act as the team leader⁵. All decisions should pass through the head of delegation. Your negotiating team may wish to designate a deputy head to negotiate when the head of delegation is absent. A clear division of labour should be made well in advance of the negotiations. For example, one team member might work on coalition building (talking to other delegations with similar interests), while another team member might focus on monitoring and coordinating the national position across different issues. Different team members may focus on different issues. It may also be very important for someone to be responsible for obtaining important documents from the Secretariat, drafting text, taking notes during sessions, developing new positions, and communi-

4 Gupta, J., "On Behalf of My Delegation,...": A Survival Guide for Developing Country Climate Negotiators (CSDA/IISD, 2000), p. 49.

5 FN 4 above, p. 50.

cating with government officials back in country or within the negotiating process. Of course, if you have a very small delegation, you may have to wear many hats!

3.3 Briefing Papers and Introductory Statements

Prior to negotiations, briefing notes should be prepared on significant issues in the upcoming negotiation. This process will assist in developing a national position. Once national positions are developed, briefing papers can be used to provide clear information to assist your delegation in the negotiating process itself. Briefing papers should identify:

- The relevant agenda item number and title for the specific issue being briefed;
- The relevant documents for discussion under that agenda item;
- Relevant MEA articles and provisions;
- Relevant previous decisions, conclusions or recommendations on the issue, particularly from the immediately preceding session;
- National goals on this issue;
- The positions of other Parties or interest groups, if known;
- National position or outcome sought.

In addition, your delegation may wish to prepare a brief written statement for your head of delegation to present orally in the opening plenary, if appropriate, or at the opening sessions of subsidiary bodies on particular issues of national interest. These statements should highlight issues of particular concern for you delegation, and be concise.

It is very important to make yourself familiar with the outcomes of the previous negotiating session (e.g., COP decisions, Subsidiary Body recommendations, conclusions) in preparing for negotiations because negotiations often build directly upon previous outcomes. You should also be familiar with the applicable Rules of Procedure.

3.4 Basic Materials to Bring with You

A little bit of organisation ahead of time will improve your ability to negotiate successfully once you arrive. Useful things to bring include:

- Your own copy of the MEA text, with your own notes;
- A notebook, to keep a diary of the discussions that occur throughout the session;
- File folders or a ring binder, with relevant documents separated by issue

or agenda item so that you do not lose track of important papers (and a hole punch so that new documents can be inserted as they are distributed!);

- Post-it notes;
- Extra pens and pencils, and coloured pens;
- Highlighter markers;
- Business cards with contact details to give to other delegates.

Much paper can accumulate in the course of a negotiating session. It is very important to keep your own papers well-organised, so that you can find what you need easily.

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4. What is the Role of Country Coalitions in the Negotiating Process?

Coalitions have emerged in MEA negotiations in response to the large number of States that are Parties to these agreements. Coalitions come in various forms and sizes. They can be power-based, issue-specific, institutionalised, or political.

Coalitions help to increase the manageability of negotiations by decreasing the number of negotiating groups. For smaller developing countries, coalitions can help increase negotiating leverage and reduce transaction costs.⁶ Coalitions may also be successful in advancing agendas or points of views that might otherwise be overshadowed or neglected. Coalitions may also use their position to break or modify a consensus. At the same time, coalition membership can have its disadvantages. It may be difficult to move between coalitions, and consensus even within a coalition can be difficult or impossible to achieve. Finally, once a consensus position is taken within a group, it may be difficult to shift from that position.

In preparing for a specific MEA negotiation, and in following an issue over the course of a negotiating session, you will want to ask yourself a series of key questions:

COALITIONS

QUESTIONS TO ASK YOURSELF:

1. Is my country part of a coalition or regional group? Which one?
2. Who is the spokesperson for each coalitions?
3. When does my coalition meet to discuss common positions? Where?
4. Are my country's concerns reflected in the positions my coalition is taking?
5. If not, have I tried to express my country's national needs and concerns?
6. How can I make sure that my national concerns are being addressed?
7. If my country is part of more than one coalition, are there any inconsistencies between the positions taken by these groups?
8. If an issue I am following has been referred to a contact group or informal working group, who is representing my interests in that group?
9. When and where are those meetings being held?

⁶ FN 4 above, p.33.

4.1 Regional and Interest Group Negotiating Blocs

There are a number of major negotiating groups and regional interest groups in MEA negotiations. It is important to note that membership in one regional or interest-based negotiation coalition does not preclude membership in other coalitions. For example, it is possible for a single country to be a member of the Group of 77 and China (G-77 and China), the Least Developed Country (LDC) Group, and the Alliance of Small Island States (AOSIS) all at the same time. Countries in this position may have to deal with conflicting interests amongst the various coalitions.

It is also useful to know that there are five UN regional groupings that are based on established UN practice. These are: Africa, Asia (which includes the Pacific), Central and Eastern Europe, Latin America and the Caribbean (also known as GRULAC) and Western Europe and Others (WEOG) (where 'others' include Australia, Canada, New Zealand, and the US).⁷ Regional groupings are *inter alia* used as a basis for electing members of boards and Bureaus.

A brief description of some of the major negotiating coalitions follows.

(a) European Union (EU)

The EU is a good example of an institutionalised coalition. The *European Union* was established in 1992 as a result of the Maastricht Treaty. The Maastricht Treaty transformed the European Community into a political and economic union, has a common policy in trade negotiations and requires the "harmonization" of budgetary, environmental and other domestic policies. Presently the EU represents 27 member states. Additionally, three other countries have initiated the process of joining the EU. The EU's governing bodies are located primarily in Brussels, Belgium. The EU includes the EC Commission (which runs day-to-day operations for the EU), the Parliament (which consists of elected delegates from each EU member country and has limited powers) and the Council (which consists of the heads of state from each member country and meets biannually). The EU is recognised as a regional economic integration organisation, which allows the EU to negotiate in multilateral negotiations alongside its member states. The EU frequently speaks on behalf of its members as a whole. During the negotiation process, the EU has the European Commission to represent the interests of its members. Ratification of an international agreement is the responsibility of the Council of the European Union.⁸

(b) G-77 and China

The Group of 77 and China represents the largest coalition in the United Nations.⁹ The G-77 and China began in 1964 when 77 developing States signed the "Joint

7 Yamin, F. and Depledge, J., *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (2004), p. 32.

8 European Union, *EU Institutions and Other Bodies* at http://europa.eu.int/institutions/index_en.htm (06.12.2006).

9 UNFCCC, *Party Groupings*, at http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php. (06.12.2006).

Declaration of the Seventy–Seven Countries.” The G–77 and China group includes 132 members from around the world, representing some 3.5 billion people.¹⁰ Structurally, the G–77 and China group consists of five Chapters, each headed by a chairman. The chairmanship rotates according to geographical region (i.e. Africa, Asia, and Latin American and the Caribbean) and the selected State presides for one year.¹¹ At the beginning of the regular sessions of the United Nations, the G–77 and China group conducts a ministerial meeting, which serves as the group’s ultimate decision-making body.¹² For the most part, the G–77 and China consists of poor, developing countries. However, a few members may be considered more advanced. The G–77 and China frequently lacks the level of resources available to other coalitions, especially coalitions representing developed countries.

(c) Small Island Developing States (SIDS)

The Small Island Developing States (SIDS) coalition consists of small island and low-lying coastal states. SIDS members are united by similar developmental challenges, including small populations, lack of resources, remoteness, susceptibility to natural disasters, excessive dependence on international trade and vulnerability to global developments.¹³ Moreover, SIDS members commonly struggle with a lack of economies of scale, high transportation and communication costs, and costly public administration and infrastructure. Currently, SIDS membership consists of 51 States and territories. SIDS communities represent five percent of the global population and come from all regions of the globe.¹⁴

(d) Alliance of Small Island States (AOSIS)

The Alliance of Small Island States (AOSIS), which operates under the auspices of SIDS, serves as an *ad hoc* lobbying and negotiating group for SIDS members.¹⁵ AOSIS was established in 1990 for the primary purpose of dealing with climate change issues.¹⁶ Although no formal charter exists for AOSIS, the group does have the power to make major policy decisions at ambassadorial-level plenary sessions. While chairmanship and vice-chairmanship positions exist within AOSIS, the group has neither a budget nor a secretariat. In light of these structural and financial limitations, AOSIS operates out of the chairman’s mission to the UN. In practice, either the chairman or the vice-chairman will formally represent AOSIS during negotiating sessions.

10 FN 4 above, p. 41.

11 Group of Seventy-Seven, What is the Group of 77?, at <http://www.g77.org/main/main.htm> (06.12.2006).

12 FN 11 above.

13 Small Island Developing States Network, Who are SIDS?, at <http://www.sidsnet.org/2.html> (06.12.2006).

14 Small Island Developing States Network, Alliance of Small Island States, at <http://www.sidsnet.org/aosis/> (08.04.2005).

15 FN 14 above.

16 W. Jackson Davis, The Alliance of Small Island States (AOSIS): The International Consciousness, 2 Asia Pacific Magazine 17–18 (1996), at <http://coombs.anu.edu.au/SpecialProj/APM/TXT/davis-j-02-96.html> (19.06.2006).

(e) JUSSCANNZ¹⁷

Developed countries that are not members of the European Union have also formed coalitions for negotiating purposes. The JUSSCANNZ Group, for example, is a coalition representing usually Japan, the United States, Switzerland, Canada, Australia, New Zealand, Norway, Iceland, Andorra, Korea, Liechtenstein, Mexico, San Marino, Turkey and sometimes Israel¹⁸.

(f) Least Developed Countries (LDCs)

The Least Developed Countries (LDCs) have also formed a coalition for negotiating purposes in some multilateral convention processes. The United Nations maintains a list of countries classified as LDCs, which is reviewed every three years. LDC status is defined by three criteria: low-income (under \$750 per capita), weak human resources (nutrition, health, education and literacy) and economic vulnerability.¹⁹ In addition, to qualify as an LDC, a country's population cannot exceed 75 million people.²⁰ Countries that cease to meet LDC criteria can 'graduate' from LDC status. The UN has currently identified 50 LDCs of which, more than half percent come from the African continent. Asian and small island States comprise the majority of remaining membership.

(g) The African Group

The African Group has 53 members, and speaks on behalf of the combined concerns of countries located within the African continent. Issues of particular concern may be poverty, lack of resources, or vulnerability to extreme weather events, such as droughts. The African Group is an important forum for African countries to pursue their specific interests on issues that may differ from those of the wider G-77. The Group itself has a diversity of interests. For example, Algeria and Nigeria are members of OPEC, and South Africa is a relatively advanced country. At the same time, most Least Developed Countries are located within Africa. The African Group also has linguistic diversity, with a number of Anglophone and Francophone countries.

(h) GRULAC

GRULAC is the Group of Latin and America and the Caribbean. A list of these countries, and the members of other significant groupings, are set out at Annex III.

4.2 Coalitions within MEAs

MEAs can be divided into several clusters: biodiversity-related conventions, atmosphere conventions, land conventions, marine pollution conventions, and chemi-

¹⁷ UNFCCC, Regional Groups and Negotiation Blocks, at <http://unfccc.int/cop6/87.html> (19.06 2006).

¹⁸ FN 7 above, p. 46.

¹⁹ UN-OHRLS, The Criteria for the Identification of LDCs, at <http://www.un.org/special-rep/ohrls/ldc/ldc%20criteria.htm> (06.12.2006).

²⁰ FN 19 above.

cals and hazardous wastes conventions.²¹ Within many of these clusters, particular coalitions or associations have assumed significant roles within the negotiating process. Although some coalitions exert influence across many MEAs, others exist for the sole purpose of negotiating within one particular environmental convention.

(a) Biodiversity-Related Conventions

Within the Convention on Biological Diversity (CBD), several coalitions have exerted influence. A group of Like Minded Mega-diverse Countries (LMMC), an issue-specific coalition representing 17 States from around the world, played an important role in establishing negotiations on an international regime for Access and Benefit Sharing (ABS).²² The LMMC was created in 2002 and its members account for 60 to 70 percent of the world's biodiversity.²³ The Latin American and Caribbean Group (GRULAC), which represents 33 members, has also been vocal at ABS negotiations.²⁴ Other groups involved in biodiversity-related negotiations include the Asia and Pacific Group and the Africa Group.²⁵

An example of divergent interests within the group has been seen in negotiations on the Biosafety Protocol to the CBD. During the first phase of negotiation, the G77 and China rarely negotiated as a collaborative group. The African Group called for strong procedures for trade in Genetically-Modified Organisms (GMOs) and called for a precautionary approach. In contrast, Argentina, Chile and Uruguay supported the US-led 'Miami Group' as all were major agricultural exporters. In the end, developing countries managed to form one 'Like-Minded Group' which included all countries from G77 and China except Argentina, Chile and Uruguay. This enabled most developing countries to speak with a common voice.

(b) Climate Change Convention

In the climate change negotiations, a number of coalitions exist to express and advance their members' positions. In addition to the EU, G-77 and China, and the Alliance of Small Island States (AOSIS), member States of the Organisation for Petroleum Exporting Countries (OPEC) have played a significant role in protecting the interest of petroleum exporting countries. OPEC was formed in 1960 by five founding States and today represents the interest of 11 developing countries whose economies rely on the exportation of oil.²⁶ OPEC's stated mission is to stabilise the oil market and ensure a reasonable rate of return on investments made by oil producers.²⁷ While OPEC itself does not speak as a bloc in the climate negotiations,

21 UNEP, *Multilateral Environmental Agreements: A Summary*, 4, 30 March 2001, UNEP/IGM/1/INF/1.

22 Third World Network, *Megadiverse Countries Join Efforts for Strong International Law on Access and Benefit Sharing*, 25 January 2005, at <http://www.twinside.org.sg/title2/service157.htm> (06.12.2006).

23 FN 22 above.

24 Earth Negotiations Bulletin, *ABS-3 Highlights*, Vol. 9, No. 307, 15 February 2005, at <http://www.iisd.ca/vol09/enb09307e.html> (06.12.2006).

25 FN 24 above.

26 OPEC at <http://www.opec.org/aboutus/> (06.12.2006).

27 OPEC at <http://www.opec.org/aboutus/functions/functions.htm> (06.12.2006).

OPEC members frequently take the floor to support each other's negotiating positions.

In recent negotiating sessions, the LDC Group has begun to negotiate more cohesively as a unit, to ensure that LDC interests are not overshadowed by the larger goals of the G-77 and China. The EU negotiates on behalf of 27 countries. JUSSCANNZ (described above) and the wider 'Umbrella Group' (Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, Ukraine and USA) have also been active at various times. The 'Environmental Integrity Group' (Mexico, the Republic of Korea and Switzerland) sometimes intervene as a separate negotiating bloc to ensure their inclusion in last-minute, closed-door negotiations.²⁸

In climate change negotiations, the economic interests of OPEC members with fossil-fuel dependent economies are often at odds with the interests of countries that are vulnerable to the impacts of climate change – such as small island states. AOSIS and LDC Group members' interests lie in a strict climate regime with assistance for adaptation to the adverse effects of climate change; OPEC countries argue for a more relaxed regime, as they believe that climate policies and measures may reduce revenues from oil exports.²⁹ The African Group, comprised of both vulnerable countries and OPEC countries, also contains diverse interests. As a result of these dynamics, it is often challenging for the group of developing countries to reach consensus.

(c) Chemicals and Hazardous Wastes Conventions

The African Group and GRULAC have exerted significant influence over the various conventions relating to chemicals and hazardous wastes. For example, during the negotiations of the 1998 Rotterdam Convention on Prior Informed Consent, the Africa Group demanded that export notification be made mandatory for developing countries.³⁰ The Africa Group also led the charge to incorporate human rights into the Basel Convention.³¹ Under the negotiations for a Strategic Approach to International Chemicals Management (SAICM), concluded in 2006, the Africa Group and GRULAC played a central role in discussions at the regional level.³²

28 FN 27 above.

29 Barnett, J. & Dessai, S., Articles 4.8 and 4.9 of the UNFCCC; Adverse Effects and the Impacts of Response Measures, *Climate Policy* 2 (2002) 231-239.

30 Barrios, P., The Rotterdam Convention on Hazardous Chemicals, A Meaningful Step Toward Environmental Protection? (2004) 16 *Geo. Int'l Envtl. L. Rev.* 679, 723.

31 Uchenna Gwam, C., Toxic Wastes and Human Rights, *The Brown Journal of World Affairs*, Vol. VIII, Issue 2 (2002), at <http://www.watsoninstitute.org/bjwa/archive/7.2/Essays/Gwam.pdf>. (06.12.2006).

32 Earth Negotiations Bulletin, *SAICM PrepCom 2 Highlights*, Vol. 15, No. 108, 6 October 2004, at <http://www.iisd.ca/vol15/enb15108e.html>; Earth Negotiations Bulletin, *SAICM PrepCom 2 Highlights*, Vol. 15, No. 107, 5 October 2004, at <http://www.iisd.ca/vol15/enb15107e.html>. (06.12.2006).

(d) Land Conventions

The Africa Group and GRULAC have also played significant roles in the UN Convention to Combat Desertification (UNCCD) negotiations,³³ as have the G-77 and China. During negotiations for the UNCCD, GRULAC lobbied for increased financial and technical support for the preparation of National Action Programmes, as well as increased funding from the Secretariat's budget for support of regional coordination units. During the same negotiations, the G-77 and China called for the creation of an institutional monitoring system for implementation of the agreement.³⁴

4.3 Non-Governmental and Inter-Governmental Organisations

In addition to governmental representatives, MEA negotiations may also include representatives from NGOs, industry groups, and intergovernmental organisations. These groups have at their disposal various ways to attempt to influence or impact governmental decision-making. These can include lobbying, providing transparency through use of the media, re-defining the issues, submitting draft agreements, participating in compliance monitoring and general oversight of the negotiation structure.³⁵ Moreover, these organisations will often aid developing countries by providing knowledge, assistance, and guidance during the negotiation process.³⁶

Environmental Non-Governmental Organisations (ENGOs). ENGOs are non-profit organisations that are either national or international, and have charitable missions. Environmental NGOs, such as Greenpeace and WWF, have become an important factor in MEA negotiations. Because they do not represent individual countries, they are free to take positions that promote the environmental values of their memberships. ENGOs have also created coalitions to advance common goals. For example, the Climate Action Network (CAN) represents about 300 ENGOs and is recognised as the pre-eminent NGO umbrella organisation for climate convention negotiations.³⁷ NGOs can play various roles within MEA negotiations. They may:

- provide developing countries with a broad range of relevant information;
- work to educate negotiators by compiling and distributing information;
- seek to influence the negotiating positions of delegations or coalitions, through advocacy or lobbying;

33 Earth Negotiations Bulletin, Vol. 4, Nos. 141, 148.

34 FN 33 above.

35 Giorgetti, C., From Rio to Kyoto: A Study of the Involvement of Non-Governmental Organisations in the Negotiations on Climate Change, 7 N.Y.U. Envtl. L.J. 201, 238 (1999).

36 Ecologic, Participation of Non-Governmental Organizations International Environmental Governance, Ecologic Briefs 7– 8 (2003).

37 Climate Action Network, About Climate Action Network, at <http://www.climatenetwork.org/about-can> (last visited on December, 2006).

- assist national delegations by providing advice to negotiators, or by participating as members of country delegations;
- provide support to MEA secretariats by providing advice or assistance;
- facilitate agreement by networking with the various governmental and non-governmental participants, including representatives from business and industry;
- prepare reports detailing country-specific implementation;
- provide transparency to the entire negotiating process, to increase public awareness and increase political pressure on governments;³⁸
- work with the media, by providing media advisories, press releases, press conferences, press kits, and media packages.³⁹

Business Non-Governmental Organisations (BINGOs). Industry groups also participate in MEA negotiations. Most industry groups tend to support business interests over environmental concerns, although some “green” industry coalitions do exist for the purpose of harmonising business and environmental concerns.⁴⁰ Industry groups tend to maintain a lower profile during negotiations, but may work with government representatives or coalitions to help formulate draft agreements. They also tend to form their own coalitions to further common goals. For example, the Global Climate Coalition (GCC) played a significant role in the climate change negotiations.⁴¹ The GCC was an industry coalition group representing approximately 60 oil and transportation corporations. It funded scientific and economic research that could be used to bolster its position that action on climate change was not urgently needed. Similarly, during the Biosafety Protocol negotiations, industry groups combined forces to form the Global Industry Coalition (GIC). The GIC represented a broad range of industrial interests, including farming, commercial forestry, pharmaceuticals, seeds, shipping, and food manufacturing. One of the main functions of the GIC consisted of providing information on biotechnology research and development.

Inter-Governmental Organisations (IGOs). IGOs may also play an active role in MEA negotiations. Examples include the World Meteorological Organisation (WMO), the World Health Organisation (WHO), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), the International Labour Organisation (ILO), and the Intergovernmental Panel on Climate Change (IPCC). Unlike industry groups and NGOs, IGOs tend to maintain a much more neutral presence.⁴² In addition to providing technical servicing of

38 Stakeholder Forum, UNEP, *Negotiating and Implementing MEAs, A Training Manual for NGOs Working on Multilateral Environmental Agreements*, 2-12 (2005).

39 FN 21 above, at 8-3 to 8-6.

40 FN 4 above, p. 29.

41 FN 35 above, p. 242-243.

42 Sjostedt, G., et al, *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development*, 12 (1994).

a negotiating process, IGOs may also function as advisors, reporting on relevant activities that are occurring outside the MEA process.⁴³

Regional IGOs may also play an important role in MEA implementation. The Secretariat of the Pacific Regional Environment Programme (SPREP), for example, based in Apia, Samoa, works with 21 Pacific Island States and territories, and 4 other countries with direct interests in the region (US, Australia, New Zealand and France) to enhance cooperation and provide assistance in protecting the environment and ensuring sustainable development through technical advice and assistance in MEA implementation.⁴⁴

4.4 Particular Challenges for Developing Country Coalitions

Coalitions formed by developed countries differ from developing state coalitions in various ways. Developing country coalitions represent a vast number of countries whose interests often diverge. The *G-77 and China* negotiating bloc, for example, represents over 130 member states. This group contains both more ‘advanced’ developing countries, such as Singapore and South Africa, and ‘least developed countries’ at the other end of the development spectrum. It also contains groups with differing economic interests and priorities. In addition to these challenges, large developing country coalitions may lack the resources to coordinate negotiating positions in advance of negotiations through inter-sessional meetings – unlike their developed country counterparts.

Delegation size. Developing countries typically bring far fewer representatives to international negotiating sessions than their developed country counterparts, due to the expense involved. For example, at the Sixth Conference of the Parties to the Climate Change Convention, the EU and Umbrella group each had six times more representatives per Party than the G-77 and China group.⁴⁵ If you are a member of a small delegation, you may wish to team up with other delegations from like-minded countries to share information and increase your negotiating strength.

Complex negotiations. MEA negotiations have become increasingly complex. Often many key issues are discussed at the same time, and it will be impossible for one or two-person delegations to cover the many issues under discussion. It may even be difficult to keep on top of the location and timing of contact groups, ‘informals’ and coalition meetings. For this reason, if you are part of a small delegation, you will want to select one or two key issues for your delegation, and focus your efforts on these issues. You will also wish to team up with other countries in your coalitions that are facing the same challenges to share information. Strategic use of coalitions

43 The Process of International Negotiation Project, International Multilateral Negotiation, Approaches to the Management of Complexity.

44 Pacific Regional Environment Programme, SPREP Structure, at <http://www.sprep.org/sprep/about.htm>. (06.12.2006).

45 Michael Richards, A Review of the Effectiveness of Developing Country Participation in the Climate Change Convention Negotiations, Working Paper, Overseas Development Institute, p. 19 (Table 2) (December 2000), at http://www.odi.org.uk/iedg/participation_in_negotiations/climate_change.pdf. (06.12.2006).

will allow you to pool your resources and expertise, and make a larger impact in negotiations than your country might otherwise be able to make individually.

Team size and negotiator skills. Developed country coalitions have the ability and resources to establish comprehensive negotiating teams comprised of lawyers, economists, scientists, and diplomats. Developing country coalitions, on the other hand, often rely primarily on scientists and politicians in their negotiating teams, due to limited resources.⁴⁶ It is important to look for different kinds of skills and talent within your own negotiating team and within your negotiating coalitions, so that you know where to turn if technical information is required or where certain skills may be called for on the agenda item you are negotiating.

Assistance is available! Many ***NGOs*** and ***media representatives*** attend MEA negotiations. NGOs from both developed and developing countries are often eager and willing to share what they know about a range of scientific, technical, legal, political, and economic developments relating to the negotiating process. Many have been involved in these processes for a long time and can be a very valuable resource. Media representatives can also be helpful in making your environmental concerns and your country positions known to the general public – particularly if you believe that some of your concerns are not being adequately addressed within the negotiating process!

⁴⁶ FN 45 above, p.20.

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5. How Does the Negotiating Process Work?

Many MEA negotiations begin with a *plenary session*. Following opening remarks, the session's President or Chairperson will introduce the session's proposed agenda. Once the agenda has been formally adopted, the plenary will work its way down through the agenda. Issues that can be easily resolved will be addressed and resolved. Issues that are more difficult or complex will typically be referred to *subsidiary bodies, contact groups or working groups*. These bodies or groups may already exist, or they may be established at the session to address a new issue. All interested Parties are usually invited to participate in these bodies and groups. The Chairpersons or coordinators for these groups will be named or acknowledged. These groups will meet, and report back to the plenary.

The subsidiary body, contact group or working group meetings often follow the same format as plenary sessions. They begin with general statements made by countries, during which country blocs and individual countries express general views on the specific issue under consideration. The group Chair or Co-Chairs will assist the group in developing a common understanding of what needs to be done. The Parties then work to develop agreed written text that reflects the sentiment of the various coalitions and interest groups involved on how to move forward on the issue under consideration.

When you participate in MEA negotiating sessions on behalf of your country, you will want to pay close attention to *negotiating etiquette* and to word choice. It is always very helpful to watch senior negotiators to see how they conduct themselves. However, remember that even if you are a new negotiator, or a member of a small delegation, as an individual you can often make a substantial contribution to the negotiating process.

5.1 Expected Outcomes

Negotiations may result in several different outcomes – a statement of the Chairperson, resolutions, conclusions, recommendations, or formal decisions.⁴⁷ It is important to keep in mind what outcomes are expected from the negotiating session, in preparing your negotiating strategy.

A *statement of the Chairperson* usually occurs when certain issues cannot be resolved, and remain on the table for negotiation. The statement attempts to capture the opinions of the majority of participants. Because negotiations are on-going, Parties may freely accept or reject the contents of these statements.

⁴⁷ Lang, W., *International Environmental Negotiations*. (UNITAR). Programme of Training for the Application of Environmental Law, p. 22.

Resolutions can take the form of declarations, conclusions, and recommendations. They are not compulsory, and do not create rights or obligations, but they do reflect a consensus or majority opinion. For this reason, resolutions are instructive, but not mandatory instruments. Classic examples of effective resolutions include the Stockholm Declaration and Rio Declaration.

Recommendations and conclusions often represent the outcomes of subsidiary body negotiations and are adopted by consensus. They often contain agreement on future action for the subsidiary body, or suggestions for the wording of later COP decisions.

Decisions are legally-binding conclusions entered into by the Parties.

5.2 Making Oral ‘Interventions’

There is an accepted etiquette for oral statements (usually called ‘interventions’) that all negotiators are expected to follow. In order to speak, you must be granted permission by the President or Chairman of the negotiating session. To do this, you raise your country’s name placard (often called a ‘country flag’) in the air, or set it on its end in its card holder. You will be placed on a speaking list and will be called to speak when it is your turn. Listen carefully to make sure you do not miss your turn!

Once you have been granted permission to speak, you may take one of three following actions. You may: (i) put forward your country position; (ii) raise a point of order; or (iii) make a motion. Most interventions consist of the presentation of country positions.

(a) Points of order and motions

Most MEAs have rules of procedure that govern the negotiating process. Often these rules have a section on ‘conduct of business.’ If a negotiator believes that the President or Chair has not properly followed the rules of procedure, he or she may make a **point of order**. If you wish to make a point of order, first make a “T” sign with your country placard and hands, or use your hands. Making this sign provides clear notice to the President or Chairman that you wish to make a point of order. When called upon, you should begin by saying, “I would like to make a point of order.”

If instead you wish to offer input into how the President or Chair should deal with a specific issue (whether procedural (e.g. a point of order) or substantive), you can make a **motion**. As with a point of order, you should begin your intervention by stating, “I would like to make a motion.” Be aware that motions can deflect the discussion from the substantive issues under discussion and are sometimes used as delaying tactics by negotiators.

(b) Addressing the plenary

Most interventions present country or coalition positions. Before you speak on behalf of your own delegation, you will want to make sure that your head of delegation has granted you permission to speak on your country's behalf.⁴⁸

Next, you will want to seek permission to speak from the President of the negotiations by raising your country placard (often called a 'flag'). It is important to be strategic in raising your country flag. Normally, representatives of coalitions will take the floor first (EU, G-77 and China, African Group, LDC Group etc.). If you are speaking on behalf of your own delegation, you will want to wait to put your flag up until you have seen flags go up from those countries who will be speaking on behalf of coalitions. This will allow you to begin your intervention by lending support to the expressed position of your coalition representative. The President will take note of country flags that have been put up, and call upon countries in turn.

When you take the floor, it is important not to contradict statements made by the representative of a coalition to which you belong on your behalf. For example, if you are a member of the G-77 and China, you will not want to make a statement that conflicts with the statement presented by the Spokesperson for the G-77 and China on behalf of the entire Group. However, you are free to support that statement, elaborate upon that statement, present other arguments that strengthen that statement or explain why the issue is of particular concern to your delegation.

You may wish to use an oral intervention to provide your support to previous speakers who have expressed a viewpoint with which you agree. To this end, it is always very useful to take notes on comments made by previous speakers. This enables you to consider the points made by others, note the Parties making these points, and then save time in your own intervention by referencing positions taken or arguments made by others.

Once the President or Chairman has granted you permission to speak, you will want to follow certain steps when making an intervention on behalf of your delegation. These are set out in the box below.

5.3 Negotiating Language: Important Terms to Recognise & Understand

Multilateral environmental agreements are often written in technical language. They also often contain phrases that have a long history and mean more than they seem to mean at a first reading. Making matters still more complicated, a slight difference in verb tense (for example, 'should', 'shall', 'may', and 'must') can make an enormous difference in the commitment that a country makes. For these reasons, it is

⁴⁸ FN 4 above, p.22.

extremely important to be sensitive to the specific words used, as well as the context in which these words are used. Understanding the basic language of negotiations will help you understand when you are making progress in a negotiation, and when you are losing ground!

HOW TO MAKE AN INTERVENTION IN PLENARY

After you have raised your country flag and your country name has been called. ('I now give the floor to the honourable delegate from X').

First, make a brief acknowledgement of the President or Chairperson ('Thank you Mr. President/Madame Chair').

Second, associate yourself with the position of a larger group, or in the alternative, announce your intention to speak on behalf of a larger group ("I would like to associate myself with the remarks made by Jamaica on behalf of the G-77 and China, and by Kenya on behalf of the African Group") or ("Mr. President, I present the following remarks on behalf of the LDC Group").

Third, detail the importance of the issue at hand for your country or coalition ("Mr. President, this issue is very important to my delegation / to members of the African Group. We have found in recent years that . . .").

Fourth, remain positive and remark on positive aspects of the negotiation.

Fifth, stay focused and on topic – make a clear and concise statement ("Mr. Chairman, my intervention will be brief. My delegation would simply like to highlight two concerns... " / "to express its support for the statements made by X, Y and Z on this issue").

Sixth, if necessary, offer a different viewpoint to interventions that made on behalf of other States or coalitions, making sure that you do so in a diplomatic manner and do not antagonise opposing States ("Madame Chair, my colleague from Brazil has very eloquently raised a number of very important points, and my delegation is certainly grateful to hear suggestions on how we might move forward. However, one area in which the approach described might prove problematic is . . .").

Seventh, conclude your remarks by commenting on the reasonableness of the position you have just expressed ("For these reasons, Madame Chair, my delegation is of the view that the alternative approach we have just described may offer the most promising way forward for the group.").

Lastly, thank the President/Chairman for the opportunity to speak ("I thank you Mr. Chairman for the opportunity to speak").

Adapted from Fry, I., Pacific Islands Negotiations Manual (2003).

Many key terms and phrases will soon become second-nature to you. Over time, you will also learn to recognise terms that enable Parties to lessen, minimize or even avoid obligations or actions entirely (e.g., 'as appropriate', 'as necessary', 'to the extent practicable'). This can happen through the insertion of 'qualifying language' – language that undermines or lessens the mandatory nature of actions to be taken under an MEA.

KEY TERMINOLOGY

May: under no obligation. 'May' is permissive and discretionary on the part of the Party carrying out the action. A clause that says: 'a country may take into consideration...' creates no obligation for a country to do so.

Must: is required to. 'Must' is almost always binding.

Shall: an action that is required. A clause that uses the verb 'shall' is almost always binding, unless the 'shall' is used with another word that undermines its strength - e.g., 'a contracting Party shall strive to do X, Y or Z' or shall endeavour to. Here, the binding commitment is only to try to do X, Y, or Z, not to actually do it.

Should: an action that is not required, but is advised – e.g., a country ought to try to do X, Y or Z.

See Wallach, L., *Public Citizen's Pocket Trade Lawyer, The Alphabet Soup of Globalization (2005)*, *Global Trade Watch*, www.tradewatch.org.

COMMON TERMINOLOGY

Affirming: Agreeing on this.

Agrees upon: Everyone supports the decision.

Bearing in mind: Giving thought to.

Calling for: Asking for State action.

Calling upon: Asking another entity to do something.

Concurring: Agreeing with another decision.

Considering: To reflect on an issue, without necessarily taking action.

Consensus: Agreement from all, or at least most countries; where there is no explicit objection, a decision can be adopted by consensus.

Decides: A legally binding conclusion.

Declares: Announces a resolution to something.

Developing: Something that will happen in the future.

Endorsing: To provide further support for a previous decision.

Encouraging: To express hope that another entity will take action.

Enhancing: To develop further.

Establishing: To create something.

Expressing concern: Strong diplomatic language to express displeasure.

Maintaining: Supporting a current system or position.

Noting: Acknowledging something, but taking no further action.

Promoting: To publicise.

Reaffirming: Agreeing on a decision already made.

Recalling: Highlighting a previous decision or action.

Recognising: To acknowledge something.

Requests: Asks another entity to do something.

Stressing: To give significance to a particular issue.

Taking into consideration: Acknowledging something with little intention to take further action.

Urges: To strongly request action without the authority to enforce such action.

Welcomes: To provide non-legally binding support for something.

See Fry, I., Pacific Islands Negotiations Manual (2003).

QUALIFYING LANGUAGE

And' versus 'Or': How sentences or phrases are connected often determines their meaning. When 'and' is used, all of the clauses or provisions connected must be satisfied; when 'or' is used, only any one of the clauses or requirements must be satisfied.

Amongst them: A subset of the group being discussed (e.g., 'least developed countries, and in particular, small island States amongst them').

As appropriate, if appropriate, as necessary, if necessary: Conditional words allowing States discretion in determining whether the action is appropriate or not.

Any future elaboration: The issue is not closed and can be reconsidered in the future.

Common but differentiated responsibilities: Usually referring to lesser requirements for developing countries on account of their economic status.

Consider: To hold off on a decision so as to allow for further consideration.

To the extent feasible, to the extent practicable: To take action within limitations established by the Party taking action.

In particular: Emphasising a topic of special interest.

Inter alia: Literally means 'among other things.' Used to highlight, but not limit, certain issues.

Mutatis mutandis: To accept due alteration of details.

Notwithstanding: Used to sidestep a previously agreed upon provision.

Organise a workshop: An often used fallback when agreement on action cannot be reached. Usually used as a delay mechanism.

Promote: To highlight certain activities without committing to required action.

Shall endeavour: A requirement to at least attempt to take certain action.

Subject to: A pre-condition for action.

Towards: Allowing for only the approximation of certain goals.

Urges: Strong encouragement to take action.

Where necessary, where relevant: Requiring action only when necessary or relevant.

With a view to: An intention to take action in the future.

See Fry, I., Pacific Islands Negotiations Manual (2003).

5.4 Roles of Individual Negotiators

Negotiators may play a variety of roles within the negotiating process. They may serve as Chairs of Subsidiary Bodies or contact groups (e.g., Chair of the Subsidiary Body on Scientific and Technological Advice, Co-Chair of the Contact Group on agenda item 4). In this role, they are required to be impartial. Alternatively, they may serve as the spokesperson for a coalition (e.g., Chair of the African Group), or as issue coordinators for negotiating coalitions (e.g., G-77 Coordinator on agenda item 4(b)). In this case, they are tasked to represent the interests of their constituencies effectively. Each of these positions has different responsibilities.

Usually, more senior negotiators will be called upon to fill these positions of greater responsibility because they will be more familiar with the issues being negotiated. Undertaking these positions can provide valuable opportunities to be at the centre of the negotiating process and to have significant input into the final outcome. Nonetheless, if you are from a small delegation, or uncomfortable with the substance of an issue, think carefully before taking on this substantial responsibility. Sometimes, you may also be better able to advocate your country's national position if you are able to make oral interventions from the floor (a Chairperson is not free to express his or her national view from the chair). Or, your negotiating team may need you to have the flexibility to cover other issues that may meet at the same time.

Negotiators may also play a variety of roles within their own delegations, coalitions, informal groups, and working groups. Some negotiators may closely follow one complex issue; others may follow a number of issues. Some negotiators may serve as facilitators, working between different groups or coalitions to help reach a compromise.

5.5 Characteristics of a Good Negotiator

Effective negotiators often display many of the same characteristics. They are well-prepared, show patience, are able to control their emotions, and focus first on the problem, rather than on the solution. Good negotiators are also able to break bigger issues down into smaller ones, look for interest-based decisions, reject solutions that are weak, and maintain their integrity. Most importantly – they are able to see the bigger picture!

It has been said that the characteristics of good negotiators can be broken down into three categories: technical skills or knowledge, personal conduct, and learned skills.⁴⁹

49 FN 47 above, p. 45–48; FN 4 above, p. 49–50; Fry, I., *Pacific Islands Negotiations Manual* (2003).

Technical skills and knowledge

- Strong language skills.
- Strong analytical skills.
- A detailed understanding of your country's interests and positions.
- Knowledge of the interests and positions of other States and coalitions.
- Knowledge of prior negotiations and their outcomes.
- Familiarity with the rules of procedure and their legal effect.
- An understanding of the scientific, financial, and economic implications of the environmental issues under discussion.
- An understanding of national priorities, as well as an understanding that other countries' different priorities may have equal legitimacy.
- An understanding of other Parties' points and objectives.

Personal Conduct

- Use respect and diplomacy when presenting their delegations' position or when commenting on the position of another delegation.
- Remain calm and keep their emotions in check when interacting with other negotiators, whether in informal meetings, working groups, or the plenary body.
- Are prepared to work long hours with little time for relaxation or social activities.
- Use informal meetings to build good will with other delegates, and to build coalitions.
- Manage time efficiently, making sure they are available and on the scene (and not out of the building!) when important discussions are occurring.
- Maintain credibility by respecting previously-granted concessions.
- Are attentive and active listeners.

Learned skills

- Ability to articulate the major similarities and differences of outstanding proposals.
- Ability to present initial positions both orally and in writing.
- Ability to request an appropriate amount of time for further conferencing with delegation, coalition, or State government if needed.
- Willingness to embrace difficult issues, unless avoiding these issues

makes tactical sense (i.e. avoiding a contentious issue in order to build pressure on parties with an opposing viewpoint).

- Flexibility and awareness of cultural differences (as most multilateral negotiations are comprised of culturally diverse negotiators).
- Ability to come up with creative solutions to complex problems.
- Ability to repeat oral proposals that have been put on the table, with slight modifications to enhance their own positions or to promote progress.
- Ability to fix all points of agreement immediately onto paper.

5.6 Negotiating Strategies

MEA negotiations usually involve several related issues. Where there are many issues, Parties often reach agreement through a series of tradeoffs and compromises. In seeking favourable outcomes, it has been said that negotiators can employ either a 'distributive' or an 'integrative' bargaining strategy.⁵⁰

A **distributive approach** is the more basic of the two bargaining strategies. Under a distributive approach, each Party wishes to obtain something from the other Party. Distributive bargaining almost always results in one Party achieving its goals at the other Party's expense.

An **integrative approach** tries to bridge the gap between negotiating Parties by linking a range of issues. Parties make concessions in different areas of interest, but at the end of the day, each Party reaches a satisfying overall result. This strategy tends to favour those Parties who take a proactive role in linking issues. Issues may be linked in different ways. Some issues may be linked through science. Other issues may be linked by policy choices, by timing, or through a deliberate negotiating strategy. Understanding how different issues interconnect will help you negotiate successfully, and better understand the dynamic of the overall negotiating process.⁵¹ In integrative bargaining, strategies can include increasing the amount of goods up for discussion, offering concessions on the side, or trading off lower priority issues. Because these sorts of bargaining strategies incorporate numerous issues, it is important to simplify the negotiating process by breaking issues down into distinct, manageable parts.

⁵⁰ FN 4, p. 50.

⁵¹ FN 42 above, p. 3.

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6. How Do I Negotiate Draft Text?

Even though you will hear many formal statements made during plenary sessions, at the end of the day, the success or failure of a negotiation depends on agreements that are eventually negotiated and reflected in ‘agreed’ decision text. The process of negotiating text is at the centre of the entire negotiation process.

6.1 The distinction between ‘preambular language’ and ‘decision’ text

Resolutions and decisions usually consist of three parts: a *title*, *preamble*, and *operative part* (often called ‘decision text’). The *title* is a simple statement reflecting the content and purpose of the resolution/decision. The *preamble* introduces the operative part (resolution/decision text) and puts it in context. It can be seen as the background for why the resolution/decision text is needed in the first place, and may contain controversial issues. The *operative part* serves as the core of the resolution or decision, and focuses on the action that ought to be adopted by the participating countries. It may also call for the creation of subsidiary bodies or the undertaking of certain studies.

Preambular paragraphs often use words such as ‘recalling’ or ‘noting’. These paragraphs have no binding legal value; only the actual ‘decision text’ that follows is legally binding. Preambular paragraphs are used to guide interpretation of binding clauses in the decision text that follows, and may be used strategically to include the language that people wish to see, without creating binding obligations.

Paragraphs of *decision text* represent the actual ‘agreement’ between Parties. Decision text can be distinguished because it generally begins with the words ‘decides to’ or ‘decides that’. Where there is a direct conflict between the preamble and the binding clauses, binding clauses prevail. When the language of the decision text appears to be ambiguous, preambular language is used to interpret the intentions of the decision makers.

6.2 Where does text come from?

Resolutions, recommendations, conclusions and decisions often begin with a draft text produced by a delegation or a coalition Parties. Draft text may also be produced by a contact group Chairperson or the Secretariat at the request of Parties, after Parties have had an opportunity to express their views on elements that should be included. Draft text is usually first circulated to a range of delegations or coalitions informally, in the hope that it will gain support. Eventually, drafts will be tabled for broader discussion, and may be circulated by the Secretariat to all delegations as official conference documents. At this point, the initiating delegation or entity will formally introduce the proposed text for consideration before the plenary body or relevant contact group.

Usually, by the time a draft text is brought to a closing plenary, it has substantial support and is likely to be adopted with few amendments, if any. Texts that are introduced in contact groups are more likely to be the subject of protracted negotiations. At the end of contact group deliberations, text that has been agreed may be brought back to the plenary for formal adoption by the wider group of Parties.

If a contact group or plenary body fails to reach consensus on a draft text, a vote may be taken. Different agreements have different rules of procedure, often with different voting procedures (e.g., consensus, majority, double majority), which can affect the dynamic of the negotiating process as a whole.

In negotiating a text, the starting point for you as a negotiator is to know what your own position is on a particular issue:

- Does the draft text in front of you align with your country's national interests?
- Should it be modified or improved in some way?
- Does it have any chance of adoption?
- Do you have any unique influence with other countries or coalitions that would help you further your country's interests?
- What do you need to see in the decision and therefore what is not negotiable for you?
- What would you ideally like to accomplish through negotiation?
- What is your walk-away position (what can you absolutely not accept)?

There are a number of ways to influence the drafting process:

- You can draft alternative text and circulate it informally among colleagues and other Party negotiators to get support for your position.
- You can bracket text, and propose new text.
- You can table new proposals.⁵²

6.3 What are 'brackets' and how are they used?

Most MEA negotiations start with a text and end in a modified version of that text. Disagreement on a text is usually expressed by putting contentious words, sentences or paragraphs in 'square brackets' -- []. Brackets reflect text that has not yet been agreed by all Parties. During the negotiation process, some Parties will ask that certain text that they find problematic be 'bracketed'. Other Parties may request

⁵² FN 4 above, p.77.

that new text be included, and other Parties may then request that this new text be bracketed. After a document contains most views, the bracketed text will be slowly “unbracketed” as arguments are made for various positions, and as compromises are made.

Often, the result of a negotiation depends upon the degree of success or failure of individual negotiators in both bracketing text, and in proposing alternatives to bracketed text. For example, good negotiators will propose alternative text that may sound very similar to what is in brackets, but nevertheless shifts the meaning of the text toward a formulation that is more closely aligned with their positions.

When you are asked for comments on a proposed negotiating text, if you are unhappy with any part of it, **you must speak up**. Otherwise, your silence will always be considered as an acceptance of the proposed text. You can ask that text be ‘bracketed’ where you see language that you cannot accept. You may also propose insertions into the negotiating text to protect your position (of course then other negotiators may request that your new text be bracketed!). Or, if you cannot think of specific language at the moment, but know that you would prefer a different phrasing, you may state that you reserve the opportunity to come back later with a specific textual proposal.

In the ‘bracketing’ and ‘unbracketing’ process, it is very important to defend substance, rather than specific language. Make sure the sense of what you need is accurately reflected, rather than defending specific words – some artful negotiators may attempt to change the context in which your specific words sit and although your words are protected, your substance may be lost. Also be careful of unclear text. If new concepts are introduced, always make sure the brackets are in the right place.

BRACKETING – EXAMPLES

Suppose a draft text contains a provision that says:

“If there is a conflict between the Parties, the concerned Parties must submit the disagreement to the ICJ (International Court of Justice) for adjudication...”

If you are unhappy with the mandatory nature of this provision, you could request that the word ‘must’ be placed inside square brackets, and suggest instead that ‘may’ might be a more appropriate word in this context. You can then try to persuade others to agree with your position as negotiations continue. ‘May’ would make the provision only voluntary. During the course of negotiations, it would not be unusual to see a sentence as follows:

‘The Parties [are urged to] [shall] [must] [should] [may] submit their reports to the Secretariat [before] [no later than] [January 1, 2005] [June 30, 2005] [the Xth session of the Subsidiary Bodies].

Tip: Watch the brackets; don't allow [shall] to become [should] or [may], unless it is in your interest! ⁵³

Tip: Be careful not to agree to the removal of text in one place, without considering whether it makes sense to protect your position by requesting the insertion of text in another place. It has been said that a negotiator should never agree to remove one text in one place without adding something at the end of another sentence or text!

Tip: At the same time, do not trade the substance of a sentence or paragraph away, while you are busy defending inclusion of a single word or clause that is important to you. For example, if a clause requires that Parties "shall" do something, and there is heavy negotiation on the text that follows (the thing that needs doing), be careful not to lose the substance of the sentence (i.e. the thing that needs doing), in defending inclusion of the "shall." You may end up with a very weak clause.

Tip: Guard against weakening language unless it is in your favour. You may see negotiators propose the insertion of language such as "if appropriate," "if necessary," if they wish to weaken the text. These kinds of clauses should be removed if a stronger text is desired. Keep alert to context, if another Party wants to include this kind of language.

Tip: If you are looking for the first time at new negotiating text, identify all the text that is related to your negotiating position, directly or indirectly. Where the text goes against your basic position, you may need to have alternative drafts ready for the negotiating process, or insert brackets.

Tip: If new concepts are introduced, it is important to make sure the brackets are in the correct place. One negotiating strategy is to bracket multiple paragraphs within a single set of brackets.

⁵³ FN 4 above, p. 69.

STRATEGIES FOR NEGOTIATING TEXT

- Prepare thoroughly for each negotiating session.
- Have a clear brief outlining what deliverables your government expects. Know your interests and bottom line.
- Be careful not to over-defend your position. You may work yourself into a corner and it is then harder to change your position without losing face.
- Develop more than one version of a proposed text (you may also need to anticipate reactions).
- Consider different strategies and the odds of success when using each one.
- Have reasons ready to defend key concepts and negotiating positions.
- Do not introduce complex language that does not clarify the process or provide a safeguard as it can create unforeseen problems.
- Be prepared to explain why existing text is or is not acceptable.
- Be flexible and prepared for tactical retreats, to take some calculated risks in the hope of gaining a benefit and, if necessary, to change course towards your goal.
- Try to develop useful linkages to other issues of concern to your country
- Try to identify areas in which you can provide concessions to the other Party during the negotiations in return for issues on which your concerns are met.

See Gupta, "On Behalf of My Delegation,...": A Survival Guide for Developing Country Climate Negotiators (p.63) (CSDA/IIISD, 2000). Online: <http://www.cckn.net/www/completeindex.html>

7. How Should I Report Back From Negotiations?

When you return from a negotiating session, it is extremely important that you prepare a mission report. Your mission report should highlight the overall outcomes of the negotiation, the outcomes that most directly affect your country's concerns (e.g., specific conclusions, recommendations, decisions), a description of the issues you followed, any positions you took on those issues, any interventions you made, and the broad positions of other Parties on these issues. You will also want to highlight controversial issues and unresolved issues, and provide an outline of next steps.

Your mission report should be understandable to someone who did not attend the negotiating session, and be helpful as a background document for members of your delegation attending the next negotiating session. It will also serve as a handy overview for you to use in preparing for the next negotiating session. It should be distributed to all relevant government agencies.

Your trip report should include:

- The date, location, title and purpose of the negotiating session.
- Copy of the agenda.
- A list and description of the issues you followed close.
- Copies of decisions reached, highlighting those most significant for your country.
- On issues where final decisions or conclusions could not be reached, copies of bracketed text that will be passed forward to the next negotiating session and position papers on these issues (e.g., G-77 and China position).
- Written copies of oral interventions made by your delegation – or summaries of these interventions.
- List of issues on which comments will be sought from the Parties inter-sessionally, and dates agreed for submission of views.
- List of workshops that have been agreed that will occur inter-sessionally.
- Important contacts made with other governmental representatives.
- Open issues that need to be resolved.

8. Summary

Below is a brief overview of the essential things you will need to do to prepare for negotiations, conduct yourself during negotiations, and report back from negotiations. With the proper preparation, you will be a very effective negotiator for your country!

A TO Z FOR A NEGOTIATOR

1. Before you leave your capital.....

Familiarise yourself thoroughly with the relevant convention text, rules of procedure, COP decisions and other relevant documents.

Underline texts that are relevant for your own position on key issues, so that you can cite them without having to search for the appropriate texts.

Have a clear brief outlining what deliverables your government expects. Know your interests and bottom line.

Explore opportunities domestically to increase the size of the delegation; domestic industry might be willing to finance its own participation and NGOs and academics could try to raise some resources for also joining the delegation.

2. During the negotiation.....

Prepare thoroughly for each negotiating session.

If you are alone on your delegation, you should focus on one or two critical issues for your country and choose the most appropriate plenary session.

If you cannot make sense of all the informal processes, find someone from the NGOs from your region and ask them for a briefing. Find your country, regional or international NGOs -- they sit at the back of the room.

In the long-term, it is absolutely imperative to make coalitions with other Parties and share participation in the informal processes.

Identify the regional group you belong to and attend their strategy meetings. If your country is a G-77 and China member, attend their regular sessions.

Master the internal procedures and workings of the group. Be active within the group.

All G-77 and China members speak through G-77 and China. If you haven't discussed your position in G-77 and China, don't discuss it in public.

Identify the key G-77 and China interests and pursue them under each issue, unless they are incompatible with your national interests.

One voiced objection to a consensus is, theoretically, enough to stop the consensus. Some States have used this power in the negotiations. However, it is not wise to misuse the power of objection. Most countries are extremely diplomatic and cautious in exercising this right.

Some delegates tend to dominate the discussions (in particular English speaking delegates). Try to find ways of communicating to ensure that you too have a

A to Z for a Negotiator(cont'd)

chance. Written submissions are one way to affect the agenda and the internal process.

Familiarise yourself with other Parties' positions to understand what to expect.

Read miscellaneous documents that cover country positions on specific issues.

Keep copies of group positions and submissions from past and ongoing negotiations in their different drafts.

Try to identify areas in which you can provide concessions to the other Party during the negotiations in return for issues on which your concerns are met.

Try to find creative means to develop a negotiating position prior to departure from the capital.

Defend substance, not language. Be aware of language "traps"—unwelcome policy implications stemming from unclear text.

If new concepts are introduced, make sure the brackets are in the correct place.

Watch the brackets; don't allow [shall] to become [should] or [may], unless it is in your interest.

3. After the negotiation....

Keep a diary during the negotiations and record the proceedings and in particular keep a detailed record of how you have negotiated. This will be extremely valuable information for your successor in future negotiation rounds.

Feedback the country's position to policy makers at the national level.

Gupta, J., "On Behalf of My Delegation,...":A Survival Guide for Developing Country Climate Negotiators (CSDA/IIISD, 2000). Online: <http://www.cckn.net/www/completeindex.html>

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ANNEX I

Web Addresses for selected Multilateral Environmental Agreements

Convention on Biological Diversity (CBD) <http://www.biodiv.org>

International Trade in Endangered Species of Wild Fauna and Flora (CITES)
<http://www.cites.org>

Ramsar Convention on Wetlands (Ramsar Convention)
<http://www.ramsar.org>

Convention Concerning the Protection of the World Cultural and Natural Heritage
(World Heritage Convention) <http://whc.unesco.org>

Convention on the Conservation of Migratory Species of Wild Animals (Bonn
Convention)
<http://www.cms.int>

UN Framework Convention on Climate Change (UNFCCC) <http://unfccc.int>

UN Convention to Combat Desertification (UNCCD)
<http://www.unccd.int>

Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain
Hazardous Chemicals and Pesticides in International Trade (PIC Convention)
<http://www.pic.int>

Stockholm Convention on Persistent Organic Pollutants (POPS)
<http://www.pops.int>

The Basel Convention on the Control of Transboundary Movements of Hazardous
Wastes and Their Disposal (Basel Convention)
<http://www.basel.int>

Vienna Convention for the Protection of the Ozone Layer (Vienna Convention on
Ozone) [http://www.ozone/unep.org/](http://www.ozone.unep.org/)

London Convention on the Prevention of Marine Pollution by Dumping of Wastes
and Other Matter (1972 Convention and 1996 Protocol thereto)
<http://www.londonconvention.org/>

International Convention for the Prevention of Pollution from Ships (MARPOL)
http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258_

ANNEX II

Web Addresses for selected Regional Environmental Agreements

Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes Within the South Pacific Region (Waigani Convention)
<http://www.sprep.org/ws/legal/regional.htm>

The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa (Bamako Convention)
<http://www.londonconvention.org/Bamako.htm>

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention)
<http://sedac.ciesin.org/entri/texts/natural.resources.south.pacific.1986.html>

ASEAN Agreement on Transboundary Haze Pollution
http://www.aseansec.org/pdf/agr_haze.pdf

ASEAN Agreement on the Conservation of Nature and Natural Resources
<http://www.oceanlaw.net/texts/asean.htm>

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)
<http://www.unece.org/env/pp/welcome.html>

Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific (Antigua Convention)
http://www.cep.unep.org/services/nepregseas/Convention_English_NEP.doc

ANNEX III

Coalition Membership

Group of 77 and China

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Columbia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of) Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Swaziland, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

African Group

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Democratic Republic of), Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

Group of Latin America and the Caribbean (GRULAC)

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Costa Rica, Cuba, Columbia, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

European Union (EU)

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the Netherlands, United Kingdom.

JUSSCANNZ

Japan, United States, Switzerland, Canada, Australia, Norway, New Zealand, Iceland, Andorra, Korea, Liechtenstein, Mexico, San Marino, Turkey and (Israel)

Alliance of Small Island States (AOSIS)

Antigua and Barbuda, The Bahamas, Barbados, Belize, Cape Verde, Comoros, Cuba, Dominica, Federated States of Micronesia, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius, Nauru, Palau, Papua New Guinea, Samoa, Sao Tome and Principe, Singapore, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Seychelles, Solomon Islands, Suriname, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu.

Least Developed Countries (LDCs)

Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Yemen, Zambia.

Like-Minded Megadiverse Countries (LMMCs)

Bolivia, Brazil, China, Columbia, Costa Rica, Democratic Republic of Congo, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, Philippines, South Africa, Venezuela.

Organization of the Petroleum Exporting Countries (OPEC)

Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates, Venezuela.

Significant Groups in Climate Negotiations

EU, Umbrella Group, G-77 and China, AOSIS, LDC Group, African Group, OPEC

Significant Groups in Biodiversity Negotiations

LMMC, GRULAC, African Group

ANNEX IV

Conventions for naming MEA Documents

-/AC.../	Ad hoc committee
-/INF/	Information documents (background information)
-/Misc/	Miscellaneous documents (views of parties, observers, participants list)
-/WG.../	Working Group
-/AWG.../	Ad Hoc Working Group
-/WP.../	Working Papers
-/L.../	Limited distribution (generally, draft documents)
-/TP.../	Technical papers
-/R.../	Restricted distribution
-/Add.	Addendum (the second part of a document previously submitted)
-/Amend.../	Amendment to the document
-/Corr.	Corrigendum (only corrections to a document)
-/Rev.../	Revision (revised document)

Examples

Framework Convention on Climate Change and Kyoto Protocol

Decision 4/CP.11 – fourth decision taken at the Eleventh Conference of the Parties to the Framework Convention on Climate Change

Decision 3/CMP.1 – third decision taken at the First Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol

FCCC/CP/2005/2 – Framework Convention on Climate Change/Conference of the Parties/document drafted in 2005/document number 2

FCCC/KP/CMP/2005/3 – FCCC/Kyoto Protocol/Conference of the Parties serving as the Meeting of the Parties/ 2005 document/document number 3

FCCC/KP/CMP/2005/3/Add.4 – fourth addendum to the above document

FCCC/SBSTA/2005/5 – FCCC/Subsidiary Body for Scientific and Technological Advice/2005 document/document number 5

FCCC/SBI/2005/4 – FCCC/Subsidiary Body for Implementation/2005 document/document number 4

FCCC/SBI/2005/4/Corr.1 – document making corrections to parts of above document

FCCC/KP/CMP/2005/INF.1 – information document prepared for the Kyoto Protocol/ Conference of the Parties serving as the Meeting of the Parties (to the Kyoto Protocol)

FCCC/SBI/2005/MISC.3 – miscellaneous document prepared for the SBI

FCCC/TP/2005/4 – technical paper

FCCC/CP/2001/L.16 – document relating to the 2001 COP, for limited distribution

Convention on Biological Diversity and Biosafety Protocol

Decision II/1 – Second Conference of the Parties to the CBD/first decision

Decision BS-I/3 – First Conference of the Parties to the CBD Serving as the Meeting of the Parties to the Biosafety Protocol/third decision

UNEP/CBD/COP/6/20 – United Nations Environment Programme/Convention on Biological Diversity/Conference of the Parties – document relating to the 6th Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) (*UNEP serves as the Secretariat of the CBD*)

UNEP/CBD/BS/COP-MOP/2/15 – UNEP/CBD/Biosafety/Conference of the Parties serving as the Meeting of the Parties - report of the 2nd meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) serving as the meeting of the Parties (COP-MOP) to the Cartagena Protocol on Biosafety (BS)

UNEP/CBD/COP/7/INF/37 – information document relating to the 7th COP

UNEP/CBD/SBSTTA/11/7 – document relating to the Scientific Body on Technical and Technological Advice (SBSTTA) at its 11th meeting

UNEP/CBD/SBSTTA/11/7/ADD1 – addendum 1 to the above document

UNEP/CBD/WG8J/4/1 – document relating to the Working Group on Article 8(j) (WG8j) of the Convention on Biological Diversity at its 4th meeting

UNEP/CBD/WG-ABS/3/1 – document relating to the Ad Hoc Open-Ended Working Group on Access and Benefit Sharing at its 3rd meeting

UNEP/CBD/BS/AHTEG-RA/1/1 – document relating to the Ad Hoc Technical Expert Group on Risk Assessment under the Cartagena Protocol on Biosafety at its 1st meeting

Convention on Persistent Organic Pollutants (Stockholm Convention)

Decision SC-2/9 – Stockholm Convention - Second Conference of the Parties/ninth decision

UNEP/POPS/COP.1/1 – United Nations Environment Programme/Persistent Organic Pollutants/Conference of the Parties – document relating to the 1st Conference of the Parties of the Stockholm Convention on Persistent Organic Pollutants (*UNEP serves as Secretariat to the POPS Convention*)

UNEP/POPS/COP.1/INF/13 – information document relating to the 1st COP/document number 13

UNEP/POPS/COP.1/INF/13/Add.1 – addendum to the above document

UNEP/POPS/EGB.3/1 – relating to the Expert Group on Best Available Techniques and Best Environmental Practices at its 3rd Session

UNEP/POPS/EGB.2/INF/14/Rev.1 – a revised information document number 14

UNEP/POPS/INC/CEG/2/2 – UNEP/POPS/Intergovernmental Negotiating Committee/Criteria Expert Group – document relating to the Criteria Expert Group for Persistent Organic Pollutants established by the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants

UNEP/POPS/INC/CEG/2/2/Corr.1 – document making corrections to parts of the above document

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