

Consensus-Building in the UNFCCC

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Key Observations

- To newcomers, the complexity of the schedule combined with acronyms, not knowing anyone, and not having access to previous discussions or historical decisions is a lot to digest and interpret.
- Capacity building can help support new negotiators on these challenges, and this is an area that needs further development.
- Making information and data related to sectoral emissions freely available will foster greater transparency and trust by serving as a foundation for negotiations.
- Complementary activities outside UNFCCC negotiations conducted in a relaxed manner ease the understanding and learning phases for newer negotiators.

Background and Introduction: A Brief Evolution of Agreements under the UNFCCC

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

The international political response to climate change began with the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in the United Nations Environment and Development Conference (Rio Summit) in 1992. The convention sets out a framework action aimed at stabilizing atmospheric concentrations of greenhouse gases (GHGs) to avoid anthropogenic interference with the climate system and it finally entered into force in 1994. Currently, there are 165 signatories and 195 Parties (194 States and 1 regional economic integration organization) to the UNFCCC.

The objective of the UNFCCC is to slow the rate of climate change. Each year, parties to the convention discuss progress at dialogue platforms referred to as Conference of Parties (COP). Between COPs, there are various climate talks, often convened under the auspices of the UNFCCC Secretariat or within sub-groupings. The negotiations are structured to address the complexity of the multifarious issues arising from climate

change, so there are several negotiating tracks with Subsidiary bodies, contact groups and informal consultation slots under each track. In addition, parties form different blocs centered on common positions such as their geographic proximity or mutual interests.

However, the framework alone was not enough to curb the pressing environmental problems as it had no obligatory articles and countries continued emitting. This led to the first Conference of Parties (COP 1) in Berlin, Germany in 1995. The major stepping-stone and binding agreement, to become known as the Kyoto Protocol, was reached in Kyoto, Japan at the 3rd COP, in 1997.

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

Overall, these agreements resulted in the extension of the Kyoto Protocol into a second commitment period, which will run until 2020, although it will exclude parties like Canada, Russia, Japan and New Zealand. The voluntary commitment by developing country parties to participate in reducing GHGs was also the outcome of the 3 agreements noted above. Furthermore, the most recent major development in the negotiation was the commitment on the part of the developed country parties to contribute the amount of \$100 billion annually to climate financing from the year 2020.

Perspectives from a Newcomer

Before joining the UNFCCC negotiation process, I worked a little more than a year for the focal institution mandated to follow climate change related issues in the country. As part of my responsibilities I compiled and researched negotiation texts and documents for my office. But this had not prepared me at all for the first ever inter-session meeting I attended at Bonn, Germany in 2011. I was assigned to follow two negotiation tracks that were of strong interest to my country. Some of the immediate challenges included:

- Understanding the complex schedule;
- Lack of context and information about previous negotiations and the historical evolution of the discussions;
- Use of jargon and acronyms;

Understanding the schedule itself was a great struggle. Schedules are packed with different parallel sessions at the same time. The Schedule has items like plenary, UNFCCC bodies' negotiation (list under items), contact group meeting and informals.

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

Negotiations began with parties discussing the last session's texts, which I did not have since texts are circulated only to parties that were present in the last session, or who have given their contact details to the UNFCCC Secretariat.

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

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

Unpacking Consensus-Building in the UNFCCC Process

Why is international cooperation needed? The 21st century brought widespread concern and a growing movement for natural resource protection. The availability of information and data on the impacts and the loss of natural resources required countries' actions. Natural resources are resources, physical or biological and which may be renewable, non-renewable, or part of a complex ecosystem. Such shared natural resources could extend into and across jurisdictions of two or more member states of the international community. Hence the protection of the above stated resources depends on the cooperation of the different states involved as there is no property right to these resources and the impacts of their mismanagement are felt far across borders. National effort alone didn't suffice.

There is need for a more coordinated and multilateral action to address the problems. Parties began developing different types of environmental agreements. Multilateral environmental agreements are international legal commitments that stem from state responsibility for the protection of environment. The nature of the obligation emanates from the existence of supranational legal obligations, whether by loss or damage, as an outcome of unlawful act or omission.¹ Thus, the domestic implications of reaching a multilateral agreement is not easy as it has far reaching political, economic and social consequences. Negotiation of supranational agreements is an immensely political process. These agreements, though they are not a complete surrender of the sovereignty, [can be perceived to] result in the erosion of the state's power of regulation within its borders. This in essence happens within the state, through rigorous political process which may not be available in the negotiations of the international agreements.

The negotiation in the UNFCCC is no different as parties have economic, political and social interests in the process. The decision or an outcome from the process in some cases affects their very existence. The parties know that climate change poses a threat to the human race and they need to reach an agreement to deal with it.

¹ Malcolm N. Shaw International law Cambridge university press 2006

In order to reach an agreement and to make the system more efficient and effective, the author proposes the following suggestions as discussed in three parts.

A. The Role of Negotiators

To a first-time negotiator, the UNFCCC process and the time it takes to understand the issues of the negotiations is always overwhelming. Therefore, the need and importance of capacity building cannot be underestimated; the question, however, I think, is how can the capacity of new and young negotiators be built? I believe capacity building is the first step of reaching an agreement, as it speeds the process and allows it to run more smoothly by enabling all negotiators and their respective countries to engage and contribute to an agreed outcome.

Capacity building of new and young negotiators starts in the negotiating rooms. One of the most effective capacity building systems is a mentorship between a more experienced member of delegation and a newly added negotiator. A year or more before the senior, outgoing negotiator retires, a new negotiator attends the different sessions and shadows their senior colleague. During this time, all official communications and comments comes from the senior, outgoing negotiator. The job of the new negotiator is only to learn and understand the process. Within a few negotiating sessions of this type of capacity building, the new negotiator can more readily serve as one of the lead negotiators in the track.

B. Support Outside the Process

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

It is also important to underscore the importance of complementary activities outside the UNFCCC process. Dialogues within or outside the UNFCCC process will help parties build trust in a less relaxed manner and enable communication in a less demanding, stressful or time-bound setting, with no pressure of getting an outcome. Complementary activities provide important venues for negotiators to understand the main thematic areas of the discussions and to some extent the negotiation positions of other parties, which can inform future formal negotiations.

Furthermore, policy briefs and negotiation summaries are important in improving understanding of key issues and context on specific negotiation issues. The UNFCCC Secretariat produces summaries and decision at the end of negotiations. These reports/decisions are helpful to the newer generation of negotiators for understanding the process and how the decisions evolved.

Negotiators protect their countries' interest; nonetheless also care about the importance of reaching agreement. Policy briefs especially with numbers, data and costs broaden the perspective of the negotiator which at the end might influence a country's positions, i.e., making parties more open for reaching an agreement. The numbers, data and cost

should provide clear impacts of climate change or the cost for mitigating the impacts in order to provide negotiators with a strong scientific evidence base to support their positions.

On the other hand, briefs and summaries also help new and young negotiators by helping them understand what past negotiation processes looked like, as well as outlining possible future scenarios.

C. Inside the Negotiation Process

Trust and Transparency

The UNFCCC negotiation process is tough as mentioned. Parties have political, social and economic interests. Trust between parties will advance the process of getting an outcome but building trust between such parties is not an easy task. Trust helps in understanding the other party's agenda and what it seeks to get from the process, in turn helping negotiators to find compromise and reach an agreement. However, it is not easy to build trust if Parties are not transparent in their positions and interest.

It is necessary to note that agreements are reached when parties feel their positions are well understood and the other party has no other hidden agenda. Transparency of the party helps build the trust that is vital in reaching agreements.

Chairs and Facilitators in the UNFCCC process should gain trust from the parties. When there are two extreme sides in the room the chairs should strive to accommodate all positions and be capable of developing balanced draft decision documents. If chairs push parties like this then it can lead to a draft text.

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

Data and Information

We are in an era where information is as important as capital (both knowledge and money). Parties need information and data not only on the impacts of climate change but also the cost of mitigating the effects. Also, information and data is needed to reduce the emission of GHGs. Therefore, it is no surprise parties develop their negotiating positions based on research, information and data.

The availability of data and information initially helps parties understand the other party's position. This also helps parties know when it is time to compromise for a greater cause and reach consensus. The availability of information and data will help parties build trust as Parties will be confident of no hidden agenda and that will facilitate the process of reaching an agreement.

Furthermore, parties may tend to avoid reaching an agreement in fear of unintended consequences. Hence, the availability of information and data will help pressure such parties to reach an agreement for a greater purpose.

Communication and Dialogue

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

On the other hand, negotiations are stressful. Negotiators are not only expected to reach an outcome but also pressured by different bodies in the process. Research institutions, non-government organization and intergovernmental agencies have indeed helped the process but there could also be lobbying from these entities. Outside entities might put forth their (often rigid); the point is that in such scenarios negotiators should be able to use their own personal judgment and focus more on the outcome. Therefore, negotiators not feeling pressured and freely communicating their views is key to reaching an agreement.

The free flow of different views and expertise helps not just in getting an outcome but a good outcome.

Conclusion

Negotiations for reaching a multilateral agreement are never easy. The experiences and lessons we take from other multilateral negotiation processes like the World Trade Organization (WTO) is that there are significant challenges and complexities in multilateral negotiations and in achieving consensus-based outcomes. However, there are many activities to support UNFCCC negotiations that can be built upon to help new negotiators, chairs and facilitators, and the process itself, make progress.

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

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



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