



This handbook has been prepared as a solid introduction to negotiating or working on Multilateral Environmental Agreements (MEAs) for those with little or no background, as well as a key reference tool for experienced negotiators. Overall, the purpose of the document is to provide a reference tool that will enhance the capacity of those working on MEAs and involved in international negotiations. The book is a second edition and has been updated with new and additional material.

The handbook is a joint publication of Environment Canada and the University of Joensuu – United Nations Environment Programme Course on International Environmental Law-making and Diplomacy. Environment Canada initiated and provided core contributions for the project.

Environment Canada  
70 Crémazie St.  
Gatineau, Quebec  
K1A 0H3  
Canada  
E-mail: [enviroinfo@ec.gc.ca](mailto:enviroinfo@ec.gc.ca)  
[www.ec.gc.ca/](http://www.ec.gc.ca/)

University of Joensuu  
Department of Law  
P.O. Box 111  
FIN-80101 Joensuu  
Finland  
E-mail: [unepcourse@joensuu.fi](mailto:unepcourse@joensuu.fi)  
[www.joensuu.fi/unep/envlaw](http://www.joensuu.fi/unep/envlaw)

United Nations Environment  
Programme (UNEP)  
P.O. Box 30552  
00100 Nairobi  
Kenya  
E-mail: [env.edu@unep.org](mailto:env.edu@unep.org)  
[www.unep.org/training](http://www.unep.org/training)

ISBN 978-952-458-993-2  
ISSN 1795-6706



Multilateral Environmental Agreement  
NEGOTIATOR'S HANDBOOK  
2007

*Multilateral Environmental Agreement*

# NEGOTIATOR'S HANDBOOK



2007

University of Joensuu - UNEP Course Series 5

*Multilateral Environmental Agreement*  
**Negotiator's Handbook**

**Second Edition: 2007**

- University of Joensuu – UNEP Course Series 5
- Publisher** University of Joensuu  
Department of Law  
P.O.Box 111, FIN-80101 JOENSUU, FINLAND
- Contact** Joensuu University Library  
P.O. Box 107, FIN-80101 JOENSUU, FINLAND  
Tel.: +358 13 251 2652, +358 13 251 4509  
Fax: +358 13 251 2691  
E-mail: [joepub@joensuu.fi](mailto:joepub@joensuu.fi)  
<http://www.joensuu.fi/unep/envlaw>
- United Nations Environment Programme (UNEP)  
Division of Environmental Policy Development (DEPI)  
P.O. Box 30552, 00100 Nairobi, Kenya  
E-mail: [envedu@unep.org](mailto:envedu@unep.org)  
<http://www.unep.org/training>
- ISBN** 978-952-458-992-5  
**ISSN** 1795-6706
- Cover Design** Leea Wasenius
- Layout** Saarijärven Offset Oy
- Saarijärven Offset, Saarijärvi 2007

## Foreword

The number of multilateral environmental agreements (MEAs) and institutions has grown steadily over the last few decades. The work taking place under these agreements and within these institutions is increasing in volume and specificity, and it is having an increasingly substantive impact, particularly as there is an increasing focus on practical implementation. More and more, officials from governments all over the world participate in international negotiations, whether in a bilateral, trilateral or multilateral context. We have, in partnership, developed the second edition of the *Multilateral Environmental Agreement Negotiator's Handbook* principally to respond to the need for a practical reference tool to assist in addressing the many complex challenges in such negotiations.

The handbook is a joint publication of Environment Canada and the University of Joensuu – United Nations Environment Programme Course on International Environmental Law-making and Diplomacy. Environment Canada initiated this project and provided core contributions for the main text. UNEP generously provided the glossary, as well as expert advice on the handbook as a whole. Essential contributions and advice also came from Foreign Affairs and International Trade Canada, the Canadian International Development Agency, and the University of Joensuu, Finland.

UNEP and the University of Joensuu signed an agreement of co-operation in 2003 designating the University of Joensuu a UNEP Partner University. Since 2004, UNEP and the University have jointly organized annual Courses on International Environmental Law-making and Diplomacy. In order to publish Course proceedings and other relevant material relating to international environmental law-making, the two institutions established the "University of Joensuu – UNEP Course Series." As an outcome of the fruitful co-operation with Environment Canada, UNEP and the University of Joensuu are delighted to include and publish this handbook in the Series.

The second edition of the handbook for negotiators is intended to add to and improve on what is already recognized as a very useful tool that will contribute to more efficient and effective preparation, participation and representation in international environmental negotiations and meetings. We very much hope that it will help Parties achieve better results, sooner.

Nicole Ladouceur  
Director General  
Multilateral and Bilateral Affairs  
Environment Canada

Achim Steiner  
UNEP Executive Director  
Under-Secretary-General of the United Nations

Professor Perttu Vartiainen  
Rector  
University of Joensuu

## **Message from Maurice Strong**

It has now been more than three decades since representatives of 113 nations assembled in June 1972 for the United Nations Conference on the Human Environment (UNCHE), the Stockholm Conference. Stockholm was the first of the major global conferences. It was the beginning of a 'new journey of hope' where we put the environment firmly on the global agenda.

It strikes me that it would have been very helpful to have had access to this handbook back in 1972. At that time we still had to work out the ideas, tools and approaches you can now find in the following pages of this handbook. A year after Stockholm, action on environmental problems seemed marginal, and there was considerable scepticism about whether the multilateral system could meet our needs. Since then we have come a long way. We have achieved meaningful results on major environmental issues, and we have developed our decision-making and management systems so that we can go farther. MEAs have played a key role in this history.

This handbook reflects some of the important progress that we have made together. In the early 1970s, we lacked the concepts and the institutional arrangements necessary to manage the complex of interrelated social, economic and environmental issues. We needed to elaborate the international machinery required to take well-grounded decisions at the highest level. We now have both the conceptual framework and the procedural machinery we need. The principles and particulars of the system are laid out well in this handbook. But we need to keep working on them and through them, to effect real change. There is still much more to do.

If you are reading this book, you may have some idea of the immense challenges in front of you, and the vital importance of the work. Sometimes it may seem that the challenges are insurmountable. Certainly, when I was contemplating the offer to lead the Stockholm

Conference, many colleagues warned me that it was doomed to fail. Of course we did not 'save the world' in Stockholm - or Rio, or Johannesburg. No single conference can solve all of the problems that such meetings are inevitably asked to address.

A major international gathering offers exciting opportunities. It is the culmination of much preparatory work by many people, and they involve many separate important issues, which call for many difficult decisions. Often it comes down to an intense two weeks, or less. Inevitably, there is much left undone. This is partly attributable to the fact that we need to better organize ourselves to manage the underlying issues on a long-term basis. Partly it is attributable to the limits of the art of the possible, at any given time, in the multilateral context. Yet history reminds us that what is not possible today, may be inevitable tomorrow.

The Earth Summit in Rio de Janeiro provides a glimpse of what is possible. Never before had so many of the world's leaders come together in one place. They made the future of the planet a priority at the highest level. In Rio it also became increasingly clear that we need to find better ways of translating agreements into effective action at local, national and sectoral levels. At the World Summit on Sustainable Development in Johannesburg, the focus was on multi-sector collaboration, because it was understood that to be effective, we needed new kinds of partnerships. At the same time, we have been steadily developing the legal framework of MEAs to support progressive implementation and the further development of State-level commitments. The system is evolving, but State level leadership and authority is still indispensable. Ultimately, the two tracks should be mutually reinforcing.

The maxim 'Think globally, act locally' is only partly valid. In our time we need to act both globally and locally. This requires many different kinds of cooperation and compromise, much of which can only be achieved through difficult multilateral negotiations. But the mechanisms and tools we create in these discussions are not an end in themselves. MEAs are only legal instruments to achieve shared international environmental management and policy objectives.

To make progress towards the goals we set in these MEAs, we often need to take small practical steps, but we almost always need to manage a host of interrelated systematic relationships involving many stakeholders, including business, industry and civil society. Some of the most important relationships have to do with the link between the environment and the economy, particularly in the context of both developing countries and countries with economies in transition.

I firmly believe that this is not a zero-sum game, where gains on one side can come only with losses for the other. As Indira Ghandi said in Stockholm, 'Poverty is the worst form of pollution.' Conversely, sustainable economic development is the only way we can provide for effective environmental protection. We must strive for the dynamic balance of sustainability, which is difficult enough to describe, yet imperative to manage.

I am convinced that the prospects for the future of the global environment and humanity will be determined, perhaps decisively, by what we do, or fail to do in our generation. Depending upon how we use the knowledge and capacities we have, we can make the transition to a sustainable future. To be successful, we must be guided by our shared human values. On this point, it gives me some satisfaction to see the practical wisdom and simple values captured in this handbook, as it reflects the approaches and practices we have developed so far, as a global community, working together over time. The agreements and systems we have created may be complex, but there are simple common threads that hold them together.

In conclusion, I believe that we can and must shape a peaceful, sustainable and equitable future for humanity and the planet. MEAs are an important tool for us in this most worthy of endeavours. I wish you success in your efforts, both to promote the specific interests you represent, and to advance our common interests in sustainability and the environment.



## Introduction

In the *Millennium Report*, the Secretary-General of the United Nations highlighted that "Support for the rule of law would be enhanced if countries signed and ratified international treaties and conventions", but that many countries are unable to engage effectively owing to "the lack of the necessary expertise and resources." This handbook is intended, among other things, to respond to the need identified by the Secretary-General. In addition, it should be useful for negotiators working in other contexts, such as non-legally-binding instruments, including ministerial declarations.

The handbook was prepared as a practical introduction to negotiating or working on Multilateral Environmental Agreements (MEAs) for those with little or no background, as well as a key reference tool for experienced negotiators. While the coverage of the subject matter is relatively broad, depth and detail are limited. It contains pertinent technical information in an accessible format, making no assumptions about the reader has any specific knowledge. But it is not written in 'plain language'. On the contrary, useful technical language is provided, used in context, and set out in a new glossary. The glossary, contributed by UNEP, is a major addition to this edition. The second edition also contains several new sections and many revisions.

Increasingly, the work in the international environmental field is focused on implementation, more than on the development of landmark agreements. And it is, moreover, clear that this work must be ongoing. That is, while we can point to key milestones, MEAs are tools for managing relationships with the environment, for which there is increasing need. To deliver environmental results for the world, we need to continue to negotiate practical issues and technical rules for implementation of existing agreements, as well as to address gaps and promote synergies.

The handbook begins with a brief history of MEAs and major conferences. It lays out the elements of MEAs, common provisions and how they work together; reviews the rules of the game, from the basics of treaty law to rules of procedure and finance; gives an overview of the playing field and the players, looks at structures and roles; provides approaches to drafting and strategic issues; surveys international cooperation issues; provides a synthesis perspective, looks at a typical day in negotiations, negotiation products, then a checklist and reference tools, including the new glossary.

This handbook is available, in both English and French, in bound form for limited distribution, as well as on the internet at [http://www.unep.org/DEC/Information\\_Resources/Publications.asp](http://www.unep.org/DEC/Information_Resources/Publications.asp), at <http://www.joensuu.fi/unep/envlaw/>, and at [http://unfccc.int/essential\\_background/background\\_publications\\_htmlpdf/items/2625.php](http://unfccc.int/essential_background/background_publications_htmlpdf/items/2625.php).

It was designed with a modular approach so that it can also easily be kept in a three-ring binder, and so that additions are easily made. It is intended to be a living document, with periodic additions and updates. You are invited to make suggestions for further improvement. Please contact the Division of Environmental Conventions, UNEP; or, the Department of Law, University of Joensuu with comments, suggestions or inquiries (see Electronic Resources for coordinates).

## Acknowledgements

The *MEA Negotiator's Handbook* is a joint publication of Environment Canada and the University of Joensuu – United Nations Environment Programme course on International Environmental Law-making and Diplomacy. Environment Canada initiated this project, provided core substantive contributions, considerable expertise and funding for the development of the handbook. Essential contributions and advice also came from Foreign Affairs Canada and the Canadian International Development Agency.

Key individual contributions came from Cam Carruthers, editor and contributing author, United Nations Climate Change Secretariat; Yves Le Bouthillier, lead author, University of Ottawa; Anne Daniel, contributing author, Environment Canada; Johannah Bernstein and Désirée McGraw, contributing authors. In addition, Elizabeth Maruma Mrema, the Division of Environmental Conventions, UNEP; Tuomas Kuokkanen, Marko Berglund and Tuula Kolari, University of Joensuu; Maria Socorro Manguiat, United Nations Climate Change Secretariat; and Sylvie Côté, Environment Canada, have provided input and comments to the draft manuscript. The photographs on the cover of the Handbook are courtesy of International Institute for Sustainable Development.

## **Twelve essentials**

1. Representing your country in a multilateral negotiation is a serious undertaking and a major responsibility, not to be entered into lightly.
2. Prepare as much as possible to understand the subject of the negotiations, your country's interests, and the interests of other countries. Learn about the forum and its rules of procedure, both formal and informal.
3. Support the process and participate constructively even in difficult situations. Unwarranted obstructionism can undermine the whole system.
4. Look for the win-win situations, and look for opportunities to support countries with different interests where possible. Their support may be needed in the future.
5. Treat other participants courteously and honestly. Good relationships and trust are invaluable assets, particularly when thinking about the long term. Humour and diplomacy can be very persuasive.
6. Focus on substantive objectives and be flexible on wording when your instructions allow. Focus on the interests of your country and other countries, rather than positions, to make progress.
7. In a session, when concerned and in doubt, request square brackets around the text in question, and allow discussion to move on. However, brackets should not be used lightly, as discussion of brackets can consume valuable negotiation time.

8. A workshop or informal group may help to resolve an impasse. More information and deeper understanding of the issues are sometimes the only way to move forward.
9. Responsible judgment is essential. Think twice before deciding to act or not to act.
10. Listen carefully to what is said and, just as importantly, to what is not said.
11. Prepare carefully for interventions, with a clear focus on objectives. Prioritize interests, and focus the number and length of interventions accordingly. Brevity and restraint are appreciated and are often very effective in winning support from others.
12. Be prepared for practical necessities, including alternative transportation, alternative meals, and local currency (small denominations!). Carrying simple food and a bottle of water is a good idea. Eat when possible – a negotiator's life is unpredictable, and meals do not always happen when planned!

## Short Table of Contents

Foreword .....	iii
Message from Maurice Strong .....	v
Introduction .....	viii
Acknowledgements .....	x
Twelve essentials .....	xi
1. Context .....	1-1
1.1. History and context of MEAs.....	1-1
2. Forms, nature, principles and elements of MEAs .....	2-1
2.1. Forms of MEAs.....	2-1
2.2. Soft law and hard law.....	2-2
2.3. Treaty-making principles.....	2-3
2.4. Key elements of MEAs .....	2-18
3. Machinery.....	3-1
3.1. Conduct of business in MEA meetings .....	3-1
3.2. Institutional and negotiation structures .....	3-21
3.3. Roles.....	3-42
3.4. Drafting issues.....	3-53
3.5. Documents.....	3-72
3.6. Strategic issues .....	3-80
3.7. Process issues and violations.....	3-98
3.8. Funding.....	3-101
4. Cross-cutting issues .....	4-1
4.1. Governance principles and objectives.....	4-1
4.2. International cooperation and related issues .....	4-2
4.3. Trends in MEA negotiations.....	4-7
5. Synthesis.....	5-1
5.1. Typical day in UN negotiations.....	5-1
5.2. Products of MEA negotiation phases .....	5-3
5.3. Checklists .....	5-14
6. Annexes and reference .....	6-1
6.1. ANNEX A – International bodies.....	6-1
6.2. ANNEX B – Case studies .....	6-13
6.3. ANNEX C – Overview of selected MEAs – features and innovations .....	6-18
6.4. ANNEX D – Reference texts and electronic resources.....	6-22
7. Glossary.....	7-37
INDEX .....	7-86

## Detailed Table of Contents

Foreword.....	iii
Message from Maurice Strong .....	v
Introduction .....	viii
Acknowledgements .....	x
Twelve essentials .....	xi
1. Context .....	1-1
1.1. History and context of MEAs .....	1-1
1.1.1. Key international conferences .....	1-1
1.1.1.1. The Stockholm Conference of 1972.....	1-2
1.1.1.2. The Rio Conference of 1992 .....	1-4
1.1.1.3. The World Summit on Sustainable Development of 2002 .....	1-8
1.1.1.4. Growth of law-making in international environmental matters .....	1-8
2. Forms, nature, principles and elements of MEAs .....	2-1
2.1. Forms of MEAs .....	2-1
2.2. Soft law and hard law .....	2-2
2.3. Treaty-making principles .....	2-3
2.3.1. Effect of an MEA.....	2-4
2.3.2. Parties .....	2-4
2.3.3. Signature.....	2-4
2.3.4. Ratification, accession, acceptance, approval or definitive signature .....	2-5
2.3.5. Full powers .....	2-7
2.3.6. Entry into force.....	2-7
2.3.7. Reservations .....	2-7
2.3.8. Interpretative declarations .....	2-9
2.3.9. Provisional application .....	2-10
2.3.10. Territorial application .....	2-11
2.3.11. Amendments.....	2-11
2.3.12. Adjustments.....	2-13
2.3.13. Withdrawal .....	2-13
2.3.14. Treaty process time line.....	2-14
2.3.15. Interpretation of treaties and decision texts.....	2-15
2.3.16. Precedent .....	2-17
2.4. Key elements of MEAs.....	2-18
2.4.1. Preamble.....	2-18
2.4.2. Definitions or use of terms .....	2-18

2.4.3.	Objective and principles .....	2-18
2.4.4.	General provisions / scope.....	2-19
2.4.5.	Substantive commitments.....	2-19
2.4.6.	Financing and technical assistance .....	2-19
2.4.7.	Education, training and public awareness .....	2-20
2.4.8.	Research and monitoring.....	2-20
2.4.9.	Conference of the Parties (COP) / Meeting of the Parties (MOP) .....	2-20
2.4.10.	Subsidiary bodies.....	2-21
2.4.11.	Secretariat, focal points and authorities.....	2-21
2.4.12.	Compliance, communication and reporting.....	2-21
2.4.13.	Review of effectiveness.....	2-22
2.4.14.	Dispute settlement .....	2-22
2.4.15.	Treaty mechanisms .....	2-22
2.4.16.	Annexes .....	2-22
3.	Machinery.....	3-1
3.1.	Conduct of business in MEA meetings.....	3-1
3.1.1.	Rules of procedure.....	3-2
3.1.1.1.	Frequency of meetings .....	3-2
3.1.1.2.	Observers.....	3-3
3.1.1.3.	Agenda.....	3-4
3.1.1.4.	Budgetary implications.....	3-5
3.1.1.5.	Credentials.....	3-5
3.1.1.6.	Bureau.....	3-5
3.1.1.7.	Subsidiary bodies.....	3-6
3.1.1.8.	Openness of the meetings.....	3-7
3.1.1.9.	Quorum.....	3-7
3.1.1.10.	Interventions .....	3-8
3.1.1.11.	Points of order and motions.....	3-8
3.1.1.12.	Proposals and amendments.....	3-9
3.1.1.13.	Amendments to the rules of procedure.....	3-10
3.1.1.14.	Decision-making, voting and explanation of vote (EOV) .....	3-10
3.1.1.15.	Voting majority .....	3-11
3.1.1.16.	Elections .....	3-13
3.1.1.17.	Languages.....	3-13
3.1.1.18.	Rectification of textual errors including translation errors.....	3-14
3.1.2.	Financial rules .....	3-17
3.1.2.1.	Trust funds.....	3-18
3.1.2.1.1.	General trust fund .....	3-18
3.1.2.1.2.	Special trust fund .....	3-18
3.1.2.1.3.	Other trust funds .....	3-19



3.1.2.2.	Contributions .....	3-19
3.1.2.3.	Financial period of the budget .....	3-20
3.1.2.4.	Budget estimates.....	3-20
3.1.2.5.	Budget lines .....	3-20
3.1.2.6.	Budget voting rules.....	3-20
3.1.2.7.	Accounts and audit .....	3-20
3.2.	Institutional and negotiation structures.....	3-21
3.2.1.	Institutional structure provided for in conventions.....	3-21
3.2.1.1.	Conference of the Parties.....	3-21
3.2.1.2.	Subsidiary bodies.....	3-23
3.2.1.3.	Secretariat .....	3-26
3.2.1.4.	Depositary and authoritative citations .....	3-28
3.2.1.5.	Citations and original texts .....	3-29
3.2.1.6.	Institutional practice – other bodies.....	3-29
3.2.1.6.1.	Working groups .....	3-30
3.2.1.6.2.	Contact groups .....	3-31
3.2.1.6.3.	Informal group.....	3-32
3.2.1.6.4.	Friends of the Chair .....	3-32
3.2.1.6.5.	Committee of the whole .....	3-32
3.2.1.6.6.	Drafting group .....	3-33
3.2.1.6.7.	Legal drafting group .....	3-33
3.2.2.	State/country groupings.....	3-34
3.2.2.1.	UN regional groups .....	3-34
3.2.2.2.	Country designations .....	3-35
3.2.2.2.1.	Developing countries .....	3-36
3.2.2.2.2.	Least developed countries .....	3-36
3.2.2.2.3.	Countries with economies in transition .....	3-37
3.2.2.2.4.	Developed country parties .....	3-37
3.2.2.3.	UN negotiating blocs .....	3-37
3.3.	Roles .....	3-42
3.3.1.	States and Parties .....	3-42
3.3.2.	Observers .....	3-43
3.3.3.	Chair .....	3-45
3.3.3.1.	Chair (or President) of the INC or the COP .....	3-45
3.3.3.1.1.	General .....	3-45
3.3.3.1.2.	Election of the Chair .....	3-46
3.3.3.1.3.	Functions and power .....	3-46
3.3.3.1.4.	Functions during negotiation of a draft MEA .....	3-49
3.3.3.2.	Chairs of other groups .....	3-50
3.3.4.	Bureau .....	3-50
3.3.4.1.	Composition and election .....	3-50
3.3.4.2.	Functions of the bureau .....	3-51
3.3.5.	Secretariat .....	3-52

3.4. Drafting issues .....	3-53
3.4.1. General .....	3-53
3.4.1.1. Initiation of discussion on a text.....	3-53
3.4.1.2. Strategic flexibility .....	3-53
3.4.1.3. Clarity versus ambiguity.....	3-55
3.4.1.4. Legalese .....	3-56
3.4.1.5. Drafting terminology .....	3-56
3.4.1.5.1. Square brackets.....	3-56
3.4.1.5.2. Mutatis mutandis .....	3-58
3.4.1.6. Amendments and interim numbering .....	3-60
3.4.1.7. Elaboration and editing of text .....	3-61
3.4.2. Treaties .....	3-62
3.4.2.1. Initial negotiating text.....	3-62
3.4.2.2. Preamble .....	3-62
3.4.2.3. Objectives .....	3-63
3.4.2.4. Control provisions .....	3-64
3.4.2.5. Final provisions .....	3-66
3.4.3. Decision texts ('should' and 'shall').....	3-67
3.4.4. Recommendations .....	3-72
3.5. Documents .....	3-72
3.5.1. General .....	3-72
3.5.2. Pre-sessional documents.....	3-72
3.5.3. In-session documents.....	3-73
3.5.3.1. Conference room paper (CRP):.....	3-73
3.5.3.2. L. document .....	3-73
3.5.3.3. Informal document .....	3-74
3.5.4. Chair's text .....	3-74
3.5.5. Report of the meeting .....	3-75
3.5.6. Identifiers on documents.....	3-76
3.5.6.1. Identifiers for each MEA .....	3-77
3.5.6.2. Identifiers for the nature of the meeting .....	3-77
3.5.6.3. Identifiers to indicate modifications .....	3-79
3.5.6.4. Other identifiers .....	3-79
3.6. Strategic issues.....	3-80
3.6.1. Common strategic issues .....	3-80
3.6.1.1. Meeting preparation.....	3-80
3.6.1.2. Venues to build support .....	3-81
3.6.1.3. At the microphone .....	3-81
3.6.1.4. Note-taking .....	3-85
3.6.2. Strategic issues in a plenary/large meeting.....	3-86
3.6.2.1. Interventions .....	3-86
3.6.2.2. Written proposals.....	3-87
3.6.2.3. Unsatisfactory text at the end of the day .....	3-87
3.6.3. In smaller groupings .....	3-88

3.6.4.	Expert meetings .....	3-89
3.6.5.	Secretariat .....	3-90
3.6.6.	In the Chair .....	3-90
3.6.7.	Shaping overall negotiation outcomes.....	3-91
3.6.7.1.	General .....	3-91
3.6.7.2.	Timing.....	3-92
3.6.7.3.	Venue .....	3-93
3.6.7.4.	Setting up high-level decision-making .....	3-94
3.6.7.5.	Communications.....	3-95
3.6.7.6.	Leadership and vision.....	3-95
3.6.8.	Practicalities .....	3-97
3.7.	Process issues and violations .....	3-98
3.7.1.	Management of meetings .....	3-98
3.7.2.	Participation in meetings .....	3-100
3.7.3.	Other issues .....	3-101
3.8.	Funding .....	3-101
3.8.1.	Global Environment Facility (GEF).....	3-102
3.8.1.1.	General .....	3-102
3.8.1.2.	Project funding .....	3-103
3.8.1.2.1.	Principles .....	3-103
3.8.1.2.2.	Eligibility .....	3-103
3.8.1.2.3.	Development stream and project types .....	3-104
3.8.1.3.	Relationship to MEAs .....	3-104
3.8.1.4.	Resource Allocation Framework .....	3-106
3.8.1.5.	Responsibilities of MEAs focal points .....	3-107
3.8.1.6.	Issues related to relationship with MEAs.....	3-107
4.	Cross-cutting issues .....	4-1
4.1.	Governance principles and objectives .....	4-1
4.1.1.	Overview .....	4-1
4.2.	International cooperation and related issues.....	4-2
4.2.1.	Official development assistance .....	4-2
4.2.2.	New and additional financial resources .....	4-3
4.2.3.	Recipient Countries .....	4-4
4.2.3.1.	Developing countries.....	4-4
4.2.3.2.	Least developed countries .....	4-4
4.2.3.3.	Countries with economies in transition .....	4-4
4.2.4.	Capacity development .....	4-5
4.2.5.	Technology transfer .....	4-6
4.3.	Trends in MEA negotiations .....	4-7
4.3.1.	Substantive trends in MEA negotiations .....	4-8
4.3.2.	Three pillars of sustainable development .....	4-8
4.3.3.	Focus on targets and regulatory mechanisms .....	4-9
4.3.4.	Common but differentiated responsibilities .....	4-10

4.3.5.	Common heritage .....	4-10
4.3.6.	Precaution .....	4-11
4.3.7.	Community resource interests .....	4-11
4.3.8.	Flexibility mechanisms.....	4-12
4.3.9.	Compliance regimes .....	4-12
4.3.10.	Proliferation of post-agreement negotiations .....	4-13
4.3.11.	Increased pace of negotiations.....	4-13
4.3.12.	Fragmentation.....	4-14
4.3.13.	Innovations in negotiation formats .....	4-14
4.3.14.	Formation of like-minded coalitions .....	4-14
4.3.15.	Improved rapport among individual negotiators ..	4-15
4.3.16.	Multi-stakeholder engagement and influence.....	4-15
5.	Synthesis .....	5-1
5.1.	Typical day in UN negotiations .....	5-1
5.1.1.	Delegation Meetings.....	5-1
5.1.2.	Negotiation group meetings .....	5-2
5.1.3.	Formal sessions .....	5-2
5.1.4.	Flexibility .....	5-2
5.1.5.	Side events.....	5-3
5.2.	Products of MEA negotiation phases.....	5-3
5.2.1.	Pre-negotiations.....	5-4
5.2.1.1.	Phase 1: Problem identification .....	5-5
5.2.1.2.	Phase 2: fact-finding .....	5-6
5.2.1.3.	Phase 3: rule-setting and organisation of work .....	5-7
5.2.1.4.	Phase 4: issue-definition and issue-framing .....	5-8
5.2.2.	Formal negotiations .....	5-8
5.2.2.1.	Phase 5: commencement .....	5-8
5.2.2.2.	Phase 6: consolidation of views .....	5-9
5.2.2.3.	Phase 7: Expression of initial positions.....	5-10
5.2.2.4.	Phase 8: Drafting .....	5-10
5.2.2.5.	Phase 9: Formula-building .....	5-11
5.2.2.6.	Phase 10: Coalition-building .....	5-11
5.2.2.7.	Phase 11: Bargaining .....	5-12
5.2.2.8.	Phase 12: Agreement and adoption .....	5-13
5.2.3.	Ratification and post-agreement negotiations.....	5-14
5.3.	Checklists.....	5-14
6.	Annexes and reference .....	6-1
6.1.	ANNEX A – International bodies .....	6-1
6.1.1.	United Nations General Assembly .....	6-1
6.1.2.	Economic and Social Council .....	6-1
6.1.3.	United Nations Commission on Sustainable Development...	6-2
6.1.4.	United Nations Environment Programme .....	6-2

6.1.5.	Global Environment Facility .....	6-4
6.1.6.	Other relevant UN agencies, commissions and programmes .....	6-6
6.1.6.1.	Food and Agriculture Organization .....	6-6
6.1.6.2.	International Fund for Agricultural Development ..	6-6
6.1.6.3.	International Maritime Organization .....	6-6
6.1.6.4.	United Nations Educational, Scientific and Cultural Organization .....	6-7
6.1.6.5.	United Nations Economic Commission for Europe.....	6-7
6.1.6.6.	United Nations Development Programme.....	6-9
6.1.6.7.	Others .....	6-9
6.1.6.8.	Organization for Economic Cooperation and Development.....	6-9
6.1.6.9.	International fora and panels .....	6-10
6.1.6.9.1.	Intergovernmental Forum on Chemical safety .....	6-10
6.1.6.9.2.	International chemicals management ...	6-11
6.1.6.9.3.	United Nations Forum on Forests.....	6-11
6.1.6.9.4.	Intergovernmental Panel on Climate Change .....	6-12
6.2.	ANNEX B – Case studies .....	6-13
6.2.1.	Adjustments under the Montreal Protocol and LRTAP .....	6-13
6.2.1.1.	Adjustments under the Montreal Protocol.....	6-13
6.2.1.2.	Adjustments under LRTAP.....	6-14
6.2.2.	Stockholm Convention on POPs: Adding a substantive element to a draft MEA .....	6-16
6.3.	ANNEX C – Overview of selected MEAs – features and innovations .....	6-18
6.3.1.	Convention on Biological Diversity.....	6-18
6.3.2.	United Nations Convention to Combat Desertification.....	6-19
6.3.3.	Kyoto Protocol.....	6-19
6.3.4.	CITES .....	6-20
6.3.5.	Montreal Protocol.....	6-21
6.4.	ANNEX D – Reference texts and electronic resources .....	6-22
6.4.1.	Principles of the Stockholm Declaration.....	6-22
6.4.2.	Principles of the Rio Declaration.....	6-27
6.4.3.	Electronic resources.....	6-33
7.	Glossary .....	7-37
	INDEX .....	7-86

”They came in slowly, nodding and smiling. There were 116 of them, more heads of government in one place than on any other occasion in history. . . . Eventually they all found places and sat down, and silence fell in the room. They turned in my direction, waiting for me to speak. . . . I looked at the expectant faces, and then it hit me all at once. What am I doing here? Is this really happening? What am I going to say? I had a sudden flutter of nervousness. . . . After all, we were meeting to consider the very future of our planet. . . . Now, what do we do about it? ’We have to continue,’ I said. ’We must.’”

From *Where on Earth are We Going?* By Maurice Strong<sup>1</sup>

## 1. Context

### 1.1. History and context of MEAs

#### 1.1.1. Key international conferences

It is important to understand the context in which environmental discussions and negotiations occur. A key consideration is that MEAs have largely grown out of and been produced by large international conferences convened by the UN. Not all MEAs, however, originated in UN fora. An example is the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (known as CITES – adopted in 1973).

---

<sup>1</sup> Maurice Strong is the former Secretary-General of the 1992 UN Conference on Environment and Development (the Rio Earth Summit); Secretary-General of the UN Conference on the Human Environment (The 1972 Stockholm Conference), first Executive Director of the UN Environment Programme; Under-Secretary-General of the UN; and first President, Canadian International Development Agency, CIDA.

### **1.1.1.1. The Stockholm Conference of 1972**

While environmental treaties date back to the end of the 19th Century, the vast majority of MEAs have been adopted since the 1972 United Nations Conference on the Human Environment (UNCHE), often referred to as the Stockholm Conference. Indeed, UNCHE was a watershed event that helped launch the last 30 years of increasingly intensive treaty-making in the field of international environmental law, as well as much activity within national governments.

The Stockholm Conference also gave birth to:

- **the United Nations Environment Programme** (UNEP – see Annex on International Bodies)
- **an Environment Fund**
- **an Action Plan**
- **the Stockholm Declaration**

Adopted by all 113 States present at the Conference, this Declaration was the first universal document of importance on environmental matters. It placed environmental issues squarely on the international scene. Its 26 Principles give prominence to a number of concepts that would later find their place in MEAs, namely:

- the interest of present and future generations (Principle 1)
- renewable versus non-renewable resources (Principles 2 to 5)
- ecosystems (Principles 2 and 6)
- serious or irreversible damage (Principle 6)
- economic and social development (Principle 8)

- transfer of financial and technological assistance to developing countries as well as the need for capacity building (Principles 9 and 12)
- the integration of development and the environment (Principles 13 and 14)
- the need for international cooperation (Principles 24 and 25)

The best known principle of the Stockholm Declaration is Principle 21, later reaffirmed at the 1992 Rio Conference as Principle 2.

Principle 21:

'States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.'

The International Court of Justice confirmed that this Principle has attained the status of customary international law.<sup>2</sup>

While a great number of MEAs, many regional in scope, were adopted in the 20 years that followed the UNCHE, some MEAs of a global nature deserve special mention:

- *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter* (known as the *London Dumping Convention* – adopted in 1972)

---

<sup>2</sup> Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Rep. (1996), 226, at para. 29



- *Convention on International Trade in Endangered Species (CITES)*
- *International Convention for the Prevention of Pollution by Ships, 1973, as modified by the Protocol of 1978 relating thereto* (known as MARPOL 73/78 – adopted in 1973 and 1978)
- *Convention on the Conservation of Migratory Species of Wild Animals* (known as the Bonn Convention – adopted in 1979)
- *United Nations Convention on the Law of the Sea* (known as UNCLOS – adopted in 1982 – it is not entirely an environmental agreement, but Part XII addresses the preservation of the marine environment)
- *Convention on the Protection of the Ozone Layer* (adopted in 1985)
- *Montreal Protocol on Substances that Deplete the Ozone Layer* (known as the Montreal Protocol – adopted in 1987)
- *Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (known as the Basel Convention – adopted in 1989)

#### **1.1.1.2. The Rio Conference of 1992**

The twin UN goals of environmental protection/conservation and economic development evolved into the concept of sustainable development through the work of the World Commission on Environment and Development (WCED) and its 1987 report entitled "Our Common Future" (known as the Brundtland Report for the President of the Commission, Gro Harlem Brundtland, former Prime Minister of Norway). In this report, the concept of sustainable development was defined

as follows: "[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs." At the United Nations Conference on Environment and Development (UNCED) held in Rio in 1992, this concept gained broad international support as the key element to consider in developing international environmental policy.

The Rio Conference was attended by thousands of participants, including 176 States, 103 of which were represented by the Head of Government. The results were numerous and included:

- the adoption of the *United Nations Framework Convention on Climate Change* (known as UNFCCC)
- the adoption of the *Convention on Biological Diversity* (known as CBD)
- the decision to negotiate the *Convention to Combat Desertification*
- an Action plan called "Agenda 21" (in reference to the 21st century)
- the decision to establish the Commission on Sustainable Development (CSD – see Annex on International Bodies)
- The Rio Declaration (see Annex on Reference Texts) composed of 27 Principles, many of which have, as in the case of the Stockholm Declaration – and possibly to an even greater extent – influenced the subsequent development of international and national environmental law and policy. While many of these Principles deal with issues already touched upon in the Stockholm Declaration, the Rio Declaration gave prominence not only to the concept of sustainable development but also to a number of other issues:

- common but differentiated responsibilities (Principle 7)
- public information and participation (Principle 10)
- precaution (Principle 15)
- polluter pays principle (Principle 16)
- environmental impact assessment (Principle 17)
- States to cooperate in the further development of international law in the field of sustainable development (Principle 27).

Since Rio, international environmental law has developed in tandem with domestic law to elaborate and give different aspects of sustainable development a more specific and concrete form.

This focus on sustainable development helps to bridge the gap between developed and developing countries. Even prior to the Stockholm Conference and since,<sup>3</sup> developing countries have made it clear that environmental protection and conservation should not come at the expense of their development. They have expressed the view that much of the pollution and destruction manifested today is a result of the industrial activities of developed countries. If developed countries want developing countries to forego the use of certain polluting technologies, then to avoid thwarting developing country growth, developed countries need to provide the financial and technological support this requires. While the origins of these expressions of a North-South dichotomy are complex, they are rooted in colonialism, the post-World War II institutions and the global economic order that have affected the development of the

---

<sup>3</sup> See Patricia Birnie and Alan Boyle, *International Law and the Environment*, (Oxford University Press: 2002), at 38.

South.<sup>4</sup> Different perspectives on these issues need to be taken into account to appropriately address certain issues – capacity-building, financial mechanisms, liability provisions and differential obligations – that arise in MEA negotiations. The Rio Declaration and its Agenda 21 provide important background and conceptual tools for progress in these areas.

Since Rio, in addition to the *Framework Convention on Climate Change* and the *Convention on Biological Diversity*, many other MEAs have been adopted, including the following:

- The *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa* (known as the Desertification Convention – adopted in 1994)
- the Protocol to the *London Dumping Convention* (adopted in 1996)
- the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (known as the Kyoto Protocol – adopted in 1997)
- the *Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (known as the Rotterdam Convention – adopted in 1998)
- the *Protocol to the Basel Convention on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes* (adopted in 1999)
- the *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (known as the Biosafety Protocol – adopted in 2000)

---

<sup>4</sup> See for example, Gareth Porter and Janet Welsh Brown, *Global Environmental Politics*, (Westview Press: 1991), at 124-34.

- the *Stockholm Convention on Persistent Organic Pollutants* (known as the Stockholm Convention – adopted in 2001)

#### **1.1.1.3. The World Summit on Sustainable Development of 2002**

In December 2000, the United Nations General Assembly adopted resolution 55/199, in which it decided to embark on a 10-year review of the Rio Earth Summit in 2002. The purpose of the review was two-fold: to track progress made since Rio and to take steps to move global action on sustainable development forward.

The World Summit on Sustainable Development convened in Johannesburg, South Africa in 2002. The largest intergovernmental event ever held, it focused on implementing sustainable development and poverty alleviation as its key themes. It resulted in the adoption of a Political Declaration that, in paragraph 5, clearly reaffirms the three pillars of sustainable development: economic development, social development and environmental protection. States also adopted the Johannesburg Plan of Implementation that sets priorities and targets in a number of areas of concern.

#### **1.1.1.4. Growth of law-making in international environmental matters**

As described above, since 1972 a wide range of environment and sustainable development issues has been addressed at the global level. International environmental law has gone from sectoral treaties on ocean dumping and endangered species, to framework agreements and related protocols, as well as recent agreements of a highly regulatory nature.

International agreements have been used as a basis to promote and establish management frameworks through which to structure practical international activity with respect to environmental protection and conservation. MEAs are living instruments, featuring annual or biennial meetings of the Parties, intersessional meetings of technical and expert groups and intersessional written submissions. These various activities are intended to move the environmental agenda forward and keep pace with scientific developments. Because of this, there has been a proliferation of international meetings, with more public servants than ever taking part in negotiations on a wide range of environmental issues.

While intensified treaty-making is a sign that governments have recognized that many environmental issues cross national boundaries and that international cooperation is required to address them, it has also been recognized that some areas of the planet are not the sovereign domain of any State, such as Antarctica or the global atmosphere. Indeed, it has been recognized that these components of our global environment merit collective protection. In fact, some conventions have recognized certain environmental issues as the common concern of humankind.<sup>5</sup>

As international environmental regulation becomes increasingly complex, other areas of international law are becoming ever more intertwined with it—trade law, maritime law, intellectual property law and human rights are some examples.<sup>6</sup> At

---

<sup>5</sup> See for example, the CBD (preamble) and the UNFCCC (preamble).

<sup>6</sup> Good examples are the current trade and environment debate playing out at the WTO's Committee on Trade and Environment in Special Session (CTESS); the complex inter-linkages between provisions of the Biodiversity Convention on access and benefit-sharing to the WTO TRIPs agreement; the relationship between IMO agreements and the *Basel Convention* regarding the dismantling of ships.

the international level, there is a need for better coordination among environmental agreements, but also among various areas of international law.

The increased pace of treaty-making has been accompanied by increased transparency and public participation at the international level. Meetings are typically open to civil society organizations, including environmental and industry NGOs; meeting documents are placed on the internet prior to meetings and are accessible to the global public; the results of the meetings are published in official meeting records on the web, and are also intensively reported by the Earth Negotiations Bulletin (ENB).<sup>7</sup>

This fast pace of treaty-making may have obscured the fundamental question about whether environmental agreements are actually effective. In the last decade and a half, there has been an increasing focus on compliance with treaty obligations, along with methods of improving domestic implementation.<sup>8</sup> In discussions on strengthening international environmental governance, issues of capacity-building, coherence, coordination, compliance and synergies have been recognized as important in the context of the overall effectiveness of environmental agreements.

---

<sup>7</sup> [www.iisd.ca/linkages](http://www.iisd.ca/linkages) is the website. The ENB provides for daily coverage of important negotiating meetings and maintains archival material on the website. In particular, ENB provides the names of countries and their negotiating position, something the official meeting reports do not do (although convention secretariats are often asked to compile the views of Parties based on their submissions).

<sup>8</sup> For example, a compliance procedure was developed for the *Montreal Protocol* in the early 1990s; one was developed for the protocols under the Long-range Transboundary Air Pollution Convention (called LRTAP – adopted in 1979) in the late 1990s; one was concluded in December 2002 for the *Basel Convention*; work is currently underway in the Rotterdam, Stockholm and London Conventions.

An effectiveness evaluation provision has been introduced into the two most recent global treaties.<sup>9</sup>

In addition to effectiveness, other concerns have arisen with respect to international regulatory congestion, timeliness, efficiency, duplication and overlap. These concerns arise particularly in areas where there is increased interaction between the multilateral treaty bodies and the private sector. For example, the project-based mechanisms of the Kyoto Protocol involve approval of proposals from legal entities (generally private companies) by decision-making bodies constituted under the Protocol. These developments, as well as increasing involvement of civil society, are contributing to changing views on international law, which has traditionally been conceived of as essentially a matter of relations between States.

---

<sup>9</sup> The *Biosafety Protocol* (Art. 35) and *Stockholm Convention* (Art. 16) were both proposed by Canada.





## 2. Forms, nature, principles and elements of MEAs

### 2.1. Forms of MEAs

In this handbook, an MEA is considered to be a legally binding agreement between several States related to the environment. Various terms are used to designate treaties (agreement, convention, covenant, protocol, treaty). The most commonly used term is "convention" (e.g. CBD, *Desertification Convention*). While distinctions can be made, the terms treaty and convention are general terms for legally binding agreements between States. The words "covenant" or "agreement" may also be regarded as treaties, but not in all cases. States may use the terminology differently, but in all cases, for an agreement to be legally binding, there must be a clear intention by the Parties.

The general definition of a treaty in the *Vienna Convention on the Law of Treaties* (hereinafter VCLT – adopted in 1969), Article 2(1)(a) is: ". . . an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments (e.g. Exchange of Notes/Exchange of Letters) and whatever its particular designation".

The essential elements of a Treaty are that it is an agreement between States which have decided to so bind themselves, in written form and governed by international law, whatever it is called.

A "protocol" is generally a subsequent and separate legally binding agreement that adds to or modifies an existing convention only for the States that become Parties to it. An amendment is similar, which also adds to or modifies an existing agreement. But an amendment is not a separate agreement.

The adoption of some agreements is meant to provide a decision-making and organizational framework for the adoption of subsequent complementary agreements. The former are usually

called **”framework conventions”** and contain obligations of a general institutional nature, often including information-gathering provisions (e.g. Article 4, UNFCCC). These obligations are usually meant as a first step toward the adoption of much more specific obligations (e.g. targets, timetables, mechanisms) in subsequent protocols on the same matter (e.g. Article 3, *Kyoto Protocol* to UNFCCC). As a general rule, only the Parties to a framework convention can become Party to a subsequent protocol (though this depends on the text of the convention). In principle, there are no limits to the number of protocols that may be adopted. While there is an expectation that a protocol will be developed following the adoption of a framework convention, nothing precludes Parties to a non-framework convention from deciding to adopt a protocol if they so decide.

Obligations in an MEA are considered to be legally binding for the Parties to the agreement (see 'Soft Law and Hard Law', 'Control Provisions' and 'Decision Texts', below).

## **2.2. Soft law and hard law**

The terms "hard law" and "soft law" are often used to describe the nature of various agreements, particularly with respect to MEAs. The idea is that "hard law" has specific and legally binding obligations, and soft law is either not legally binding or the obligations are flexible or lack specificity. However, a legal obligation is generally considered to be authoritative, prescriptive and binding. So "soft law" is considered by many to be a contradiction in terms. Treaty provisions are binding on all Parties to a treaty (unless a Party has made a valid reservation). To many, this means that all treaty provisions should be considered "hard law". Nonetheless, some provisions are drafted with considerable flexibility. They may amount to little more than an expression of intent, with no clear standard for compliance, and much room for interpretation and discretion.

Decisions may be taken under MEAs that do not result in legal obligations. An MEA may provide authority to create subsidiary instruments such as codes of practice, statements of principle and guidelines that are not legally binding. Decisions may also take the form of invitations or exhortations. In addition, even where clear standards are set, procedures and mechanisms used for compliance in MEAs are generally facilitative rather than coercive. This "soft law" approach is taken in order to encourage broader participation and collective action, especially where framework conventions are concerned, since the fundamental purpose of these agreements is to provide an inclusive discussion and decision-making forum. Often, hard-law and soft-law can work together in a mutually re-enforcing scheme where an inclusive approach is taken to encourage participation, but is backed up by mandatory reporting and transparency requirements to encourage compliance.

There are various other forms of agreement, including memoranda of understanding and political declarations, which may use stronger language, but which are generally not considered legally binding. Different Parties have different views, however. For example, MOUs may be considered binding by some. Accordingly, care should be taken to ascertain the intent of another Party. Nonetheless, declarations and MOUs are among the instruments which may be considered by some to be "soft law". All forms of "soft law" carry the weight of good faith obligation, and are important in terms of the progressive development of the law. There is a concern held by many that "soft law" is a slippery slope, and that it could result in the development of "hard law" obligations without the clear consent of States, through the operation of customary law principles.

### **2.3. Treaty-making principles**

Multilateral environmental agreements (MEAs) are treaties whose geographic scope varies widely. While UN MEAs are generally open to all States to become Parties, other MEAs are regional

(e.g. most of the UNECE MEAs) while yet others are sub-regional.

MEAs are subject to rules of international law that govern treaties. The rules that apply to written treaties between States are reflected in the VCLT, itself a treaty.

In 1980, the VCLT entered into force. Currently 94 States are Parties to it. Some key States (USA, for example) are not. Generally, rules in a treaty apply only to States that are Parties to it. However, in the case of the VCLT, most of its rules are considered to apply to all States.<sup>10</sup>

Some of the key points on treaties that MEA negotiators should keep in mind are laid out below.

### **2.3.1. Effect of an MEA**

As a treaty, an MEA creates binding international obligations between Parties to it. All Parties to an MEA must perform their obligations in good faith (known as the rule of *pacta sunt servanda*—see art. 26 of VCLT) and no Party may invoke the provisions of its own domestic law to justify its failure to comply with an MEA obligation (see art. 27 of VCLT).

### **2.3.2. Parties**

States and international organizations that have the capacity to enter into treaties may be Parties to an MEA. Regional economic integration organizations (REIOs) such as the European Union have the capacity to enter into treaties and, therefore, may be Party to an MEA.

### **2.3.3. Signature**

After the adoption of an MEA at a Diplomatic Conference, the treaty is opened for signature and States are invited to sign it. States usually have a limited period of time to become a signatory. This is specified in the agreement (e.g. the

---

<sup>10</sup> The VCLT is considered to apply to all States, whether or not they are a Party to that Convention, either because these rules were already in existence prior to the Convention or they have been accepted as rules of customary international law since the adoption of the Convention.

Desertification Convention was open for signature for one year after adoption—art. 33; exceptionally, some conventions, such as the *Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat* (known as the Ramsar Convention – adopted in 1971), are open for signature indefinitely).

The signing of an MEA is largely symbolic, and does not necessarily mean that a State becomes a Party to it unless the MEA provides that signature creates binding obligations. A State may, nonetheless, express consent to be bound through 'definitive signature'. When in doubt about a State's intentions, this should be clarified. However, though a signatory does not generally have to comply with specific obligations in the MEA, it must nevertheless refrain from acts that would defeat the object and purpose of the MEA (see art. 18 of the VCLT). The provision with respect to signature is found among the last provisions of an MEA.

#### **2.3.4. Ratification, accession, acceptance, approval or definitive signature**

To become Party to an MEA, a State must ratify it ("accept" or "approve") or "accede" to it. Alternatively, as noted above, a State may make a 'definitive signature' which has the same affect as ratification or accession. After an MEA is adopted, it will usually be open to States for signature and then ratification. A State that has not taken part in the negotiations or that has not signed it prior to the closing date for signature only has the option of acceding to it to become bound. Note that some agreements specify that they are only open to signature or ratification by some limited group of States.

Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise (see article 14(2) of the Vienna Convention 1969). Some obligations may be affected by provisions related to timing and/or deadlines. The key point is that ratification or accession is generally

the mechanism through which a Party accepts binding legal obligations in international law. As noted above, some States have the legal capacity to express a willingness to be bound to an agreement by signature, but most require some form of additional executive or legislative process to enable them to ratify or accede. Each State has its own internal procedure but in international law, for ratification or accession to take effect, the instrument of ratification or accession must be forwarded to the depositary of the treaty. Once this is done and a period of time specified in the treaty has elapsed, the MEA becomes binding on the ratifying State (if at the time of ratification by that State the MEA has already entered into force).

Many countries have specific and often technical legal processes in place to manage ratification. In Canada for example, ratification is exercised by the Executive, expressed by means of an Order in Council issued by the Governor General in Council, which authorizes the Minister of Foreign Affairs to sign an instrument of ratification. Ratification is then effected in the case of a global MEA, by deposit of the instrument of ratification with the Depositary for the treaty, usually the UN Secretary-General.

When a State wishes to ratify, accept, approve or accede to a treaty, it must execute an instrument of ratification, acceptance, approval or accession, signed by one of three specified authorities, namely the Head of State, Head of Government or Minister for Foreign Affairs. There is no mandated form for the instrument, but it must include the following:

- Title, date and place of conclusion of the treaty at issue;
- Full name and title of the person signing the instrument, e.g., the Head of State, Head of Government or Minister for Foreign Affairs or a person acting in such a position temporarily or with full powers for that purpose issued by one of the above authorities;

- An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
- Date and place where the instrument was issued; and
- Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal is not adequate) or any other person acting in such a position for the time being or with full powers for that purpose issued by one of the above authorities.

It is recommended that, where feasible, States provide courtesy translations in English and/or French of instruments in other languages submitted for deposit with the Secretary-General. This facilitates the prompt processing of the relevant actions.

### **2.3.5. Full powers**

In order to adopt, sign, deposit an instrument of ratification or accede to an MEA, a State representative needs "full powers." Some officials are assumed to have such powers (e.g. heads of State, ministers of Foreign Affairs) while others must, as a general rule, produce evidence to this effect (see art. 7 of VCLT).

### **2.3.6. Entry into force**

An MEA only enters into force once the number of ratifications or accessions required has been attained (e.g. seven needed for the *Ramsar Convention*; 30 for the *Biodiversity Convention*; 50 for the Convention on Persistent Organic Pollutants or 'POPs'). In the case of the *Kyoto Protocol*, the number of States required depended in part upon aggregate emissions of specified gases (see also Provisional Application).

### **2.3.7. Reservations**

A reservation is a unilateral statement by a State that, however



phrased, purports to exclude or modify the legal effect of specific provisions of a treaty on that State. Sometimes States use the term "**interpretive statement**" to make what could nevertheless be construed as a reservation. Upon becoming Party to an MEA, a State may formulate reservations to it unless the MEA expressly prohibits reservations (e.g. CBD, UNFCCC). An MEA may also only allow reservations to specific provisions (e.g. *International Convention on the Regulation on Whaling*; CITES). If there is no provision on reservations in an MEA, Parties may make reservations that are not contrary to the object and purpose of the MEA (e.g. the UNECE *Convention on Environmental Impact Assessment in a Transboundary Context*, known as the Espoo Convention – adopted in 1991, to which Canada, for example, has made a reservation). Other States may object to a reservation (see art. 19 to 23 of VCLT for the effect of such objections). Most, if not all, MEAs do not permit reservations, which is generally explained as reflecting an intent to promote consistency and coherence of implementation among Parties.

Article 19 of the VCLT provides that a State may make a reservation unless:

- The reservation is prohibited by the treaty;
- The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the treaty.

Article 19 of the VCLT provides for reservations to be made at the time of signature or deposit of an instrument expressing intent to be bound. If a reservation is made upon simple signature (i.e., signature subject to ratification, acceptance or approval), it must be confirmed in writing when the State expresses its consent to be bound. Normally it must be included in the instrument expressing intent to be bound or be annexed to it. If annexed, it has to be separately signed

by a person with the same level of authority. Normally, the depositary would circulate all objections.

Where a treaty is silent on reservations and a reservation is formulated and subsequently circulated, States concerned are generally considered to have 12 months to object to the reservation, beginning on the date of the depositary notification or the date on which the State expressed its consent to be bound by the treaty, whichever is later (*per* article 20(5) VCLT). An objection to a reservation "... does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State" (article 20(4)(b) VCLT). Normally, to avoid uncertainty, an objecting State specifies the effect of its reservation if it intends to affect entry into force.

Unless the agreement provides otherwise, a State may modify or withdraw its reservation or objection to a reservation completely or partially at any time. In such a case, the consent of the States concerned is not necessary for the validity of the withdrawal (articles 22-23, VCLT). A withdrawal must be formulated and endorsed in the same manner as a reservation and forwarded to the depositary.

### **2.3.8. Interpretative declarations**

A State may make a declaration about its understanding of any issue related to the interpretation of a particular provision of an agreement. Unlike reservations, such declarations are not about excluding or modifying the legal effect of an agreement. They are intended to clarify a provision or the agreement as a whole. Some agreements make specific provision for such declarations, for some agreements they are even mandatory. One example where they are optional is the *United Nations Convention on the Law of the Sea, 1982*, which provides for a State to make declarations with a view to harmonizing laws and regulations with the agreement, as long as they are not about excluding or modifying the effect of the agreement with

respect to that State. Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification, acceptance, approval or accession. Sometimes, a declaration may be lodged subsequently.

As interpretative declarations do not have a legal effect on the order of reservations, they do not need to be signed by a formal authority. Still, they should preferably be endorsed as would a reservation to avoid any doubts (i.e. there might be an uncertainty about whether a declaration amounts to a reservation.)

Optional and mandatory declarations involve the acceptance of a legal obligation and accordingly must be endorsed in the same manner as a reservation.

Similar to reservations, declarations should be circulated by the depositary, and there is a similar practice with respect to objections.

### **2.3.9. Provisional application**

Some treaties provide for provisional application, either before or after their entry into force. For example, article 7(1) of the *Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, provides "If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force". A State provisionally applies a treaty that has entered into force when it unilaterally undertakes to give effect to treaty obligations provisionally, generally in accordance with the provisions of the agreement, even where its national procedures for expressing its intent to be bound have not yet been performed. Unless an agreement provides otherwise, the intention of a State must generally be understood to be that it would ratify, approve, accept or accede to the treaty subject to its national procedural requirements. A State may unilaterally terminate provisional application at any time unless the treaty provides otherwise (*per* Article 25 of the VCLT).

### 2.3.10. Territorial application

Unless otherwise provided, a treaty is binding on a Party in respect of its whole territory (see art. 28 of VCLT). However, it should be noted that the status of certain territories may be ambiguous or in dispute. For example some French overseas departments are also considered part of France, including Martinique and French Guiana. Issues may arise about the application of an MEA to specific territory. Such issues are often addressed in MEA decisions, as well as reservations and other official submissions by Parties to treaty bodies and depositaries. Questions may arise with respect to hundreds of sub-national entities, dependent, neutral, disputed or occupied territories. In addition, Antarctica, for example is considered *terra nullius* or land that is not the sovereign territory of any country, like the high seas (see also Proposals and Amendments under Rules of Procedure).

### 2.3.11. Amendments

An amendment is an instrument to amend the core provisions of the treaty or its annexes. If an agreement provides for amendment procedures, such provisions are normally found among the final provisions of an MEA. There are at least four steps in the process: 1) proposal; 2) adoption; 3) ratification; and 4) entry into force.

**First**, a Party has to circulate to all other Parties a formal proposal to amend a treaty. The treaty usually specifies timing.

**Second**, Parties have to decide collectively whether they will adopt or reject the proposal. Usually an MEA provides that a three-fourths majority is needed for adoption of an amendment to a provision in the core of the treaty. However, Parties are free to provide for any other formula (e.g. two-thirds majority, unanimity) or to opt for different formulae for different provisions in the treaty and the annexes (e.g. the POPs Convention provides different formulae for the various annexes). However, such provisions should be specified in the MEA itself. If Parties wish to adopt a different formula for

a particular amendment, then the MEA should be amended to provide for an alternative amendment formula. An amendment should not provide for an alternative process for its own adoption, since clearly there would be no pre-existing delegated authority to do so.

**Third**, once the amendment is adopted, each Party has to decide whether to ratify and become bound by it. There is generally provision in the agreement for a Party not wishing to be bound by the amendment to give formal notice that it is "opting out" of the proposed amendment. In the case of the *Montreal Protocol*, there is a requirement that a State must ratify all previous amendments before ratifying the most recent amendment.

**Fourth**, there are various formulae for entry into force. For instance, Parties may agree on the number of ratifications needed for entry into force. Another formula, frequently used for amendments to annexes, is for Parties to decide that the amendment, once adopted, will enter into force after a specific time period has elapsed (e.g. the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*).

An amendment can enter into force in a number of ways, for example *via*:

- Adoption of the amendment;
- expiry of a specified time period;
- assumed acceptance by consensus if, within a certain period of time following its circulation, none of the Parties objects;  
or
- Deposit of a specified number of instruments expressing intent to be bound.

For example, article 20(4) of the *Kyoto Protocol*:

"Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted

in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.”

If an agreement is not in force, it cannot be amended under its own provisions. If States agree to revise an agreement following its adoption but before entry into force, the prospective Parties may meet to adopt additional agreements or protocols or to vary the agreement to address the problem.

Where an agreement provides for entry into force following ratification, acceptance or accession by a certain *proportion* of Parties, there may be a question of how this calculation is made. For example, if an amendment is to enter into force after three-quarters of Parties have expressed consent to be bound, the calculation could be based on the number of Parties at the time the amendment is adopted or at any given point following adoption. The UN practice is to apply the latter approach, sometimes called the current time approach, and count all Parties at the first point at which the proportion has been achieved. So, States that adhere to an agreement after the adoption of an amendment but before its entry into force are counted.

### **2.3.12. Adjustments**

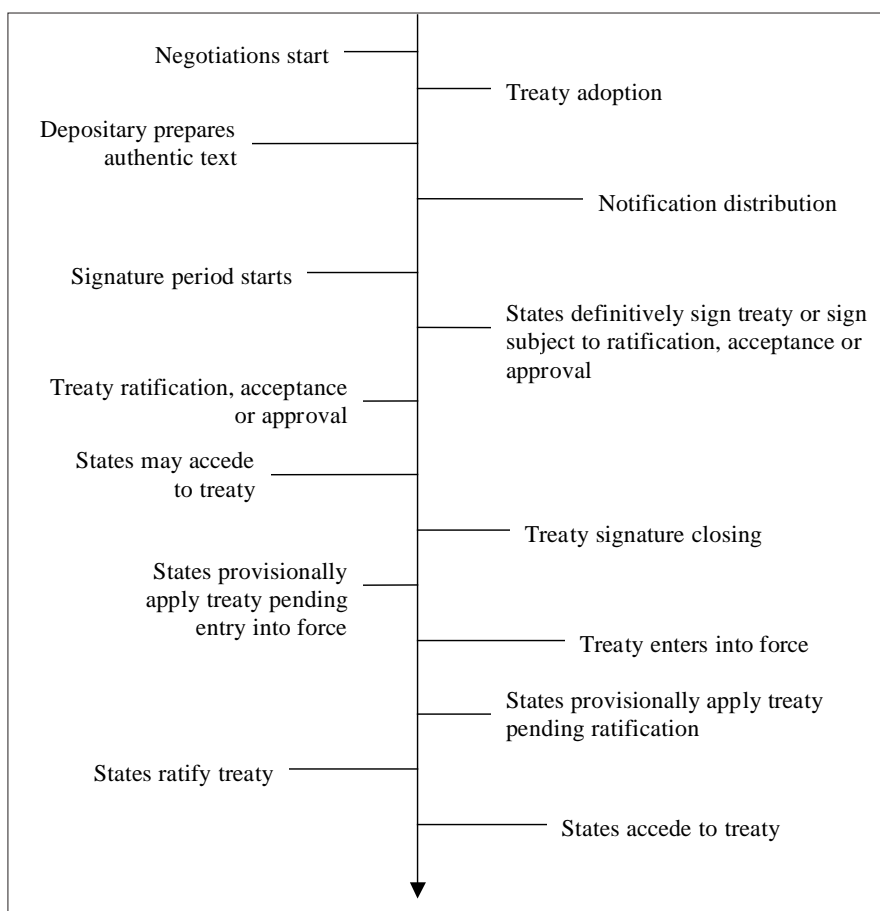
An adjustment is an instrument to modify a treaty or protocol or its annexes in a legally binding manner with respect to a material provision, by a decision of the Parties. It is intended to provide more certainty with respect to the timing of coming into force of certain limited types changes to an agreement, and to avoid the cumbersome amendment process. Adjustments are used, for example, in the Montreal Protocol and LRTAP contexts (see Case Studies).

### **2.3.13. Withdrawal**

A provision in an MEA may authorize a Party to withdraw

from it (e.g. the *Basel Convention* allows for withdrawal three years after the entry into force of the convention). In the absence of such a provision, a Party may not withdraw unless the Party establishes that the intention of the Parties was to allow for this possibility or that it may be inferred from the nature of the treaty (see art. 56 of VCLT). Withdrawal is very rare for MEAs (and the main examples are specific to the context of marine agreements).

### 2.3.14. Treaty process time line



### **2.3.15. Interpretation of treaties and decision texts**

Interpretation is generally considered to be a matter for the Parties - and often the implication is that it is not to be decided on by a secretariat or other servant of the Parties. Parties regularly need to interpret an MEA in order to make decisions related to domestic or international implementation, as well as to elaborate and adopt further decisions in an MEA body. In addition, however, interpretation can be a matter delegated to a specific treaty body or a matter raised before another international body with competent jurisdiction, such as the International Court of Justice (This is very rare). The most recent decision of the supreme decision making body for an agreement, usually a COP or COP/MOP, supersedes any previous decision of that body, although in general decisions should be interpreted to be mutually supportive, where possible (unless a contrary intent is clear). Once a text has repeatedly been interpreted in a consistent manner, this is considered to be a 'customary' interpretation, a kind of precedent, which may or may not be binding (see Precedent).

Depending on context (and the interests of the interpreter), interpretation can be strict or narrow, usually very literal and textually based, or liberal and expansive, usually based on intent. Thus, interpretation may turn on the meaning of words, sentences and context, and on grammar. It may also turn on logic, intent, or 'object and purpose'. Past a certain point, interpretation becomes 'construction.' Construction involves moving beyond what was originally intended but by logical extension.

In interpreting a specific term of a treaty or a decision text, one has to consider the ordinary meaning of that term in the overall context of the treaty as well as its object and purpose or intent of the agreement. This means that context is important, and consideration of all provisions of a treaty is required, including its preamble and annexes. In addition, subsequent practices in the treaty's application and subsequent agreements on its interpretation between the Parties have to be



considered, as well as any relevant rules of international law.

With regard to the object and purpose, one needs to consider how a given interpretation impacts on the effectiveness of the treaty (see art. 31 of VCLT). That is, where the ordinary meaning of terms may be interpreted in different ways, it should be interpreted in a way that allows for the overall legal or treaty scheme to effectively achieve its objectives. At the same time, another general principle is that one should give effect to all parts of the text, that is, one can not simply ignore part of a text that may appear inconsistent with an over all scheme. One must attempt to reconcile general and specific aspects of a text. One may also elucidate intent with the use of other references for interpretation, such as preparatory work or 'Travaux préparatoires' (records of negotiations and other documents which may be of evidentiary value, e.g. statements made by negotiators.) and circumstances in which the treaty was adopted (see art. 32 of VCLT).

It should be understood that interpreting an agreement based upon intent can often be challenging, given that there will generally be evidence of diverging views and different intent from different Parties. So while an understanding of intent is useful, it is rarely determinative.

Even if most MEAs are negotiated in one language (often English), each authentic language version of the treaty will, in principle, be given equal weight when it comes to interpretation, unless provided otherwise in the treaty (see art. 33 of VCLT). This means that it is important to examine all authentic versions, as issues often arise with respect to consistency (see Rectification of textual errors). As a practical matter, translations often reflect the terminology used by the language group in question, and such terminology may reflect differing views on substance, which can lead to issues of consistency.

### 2.3.16. Precedent

Precedent is text, practice or course of action that has been previously adopted, agreed, or used. Precedent may be considered binding, meaning that it must be followed, or non-binding, meaning that it may be but does not need to be followed (see Interpretation). Non-binding precedent may be considered more or less persuasive, subject to agreement. In terms of negotiating a new text, precedent usually refers to a specific pre-existing text, but could also relate to the process for adopting or agreeing on a text, or agreeing on any other course of action.

In general, matters of precedent should be considered very carefully. As a general rule, it is often more efficient and prudent to follow precedent, where it exists, as others may well have given careful consideration to and appropriately addressed the relevant issues. However, precedent should not be taken for granted, and consideration should be given to relevant special or emerging circumstances and demands. When in doubt, legal advice should be sought.

A common practice among negotiators is to agree to a course of action on the condition that something is not to be considered a precedent. This common formulation is elliptical since any action or text is *de facto* a precedent. What is actually meant when negotiators use this formulation is that it should not be considered a binding precedent. While this concept may be a useful tool for obtaining agreement, it should be recognized that it usually amounts to no more than a good faith agreement between those individuals involved in a discussion, and can rarely be enforced, whatever legal significance it may have. However, when such a stipulation is included in an explanation of vote, interpretative declaration, reservation or when a Party requests that it be recorded in the official report of a meeting, it has more significance, and is elevated to a matter of good faith between Parties. Ultimately, such conditions are unlikely to be found in any way legally binding as between Parties.

## **2.4. Key elements of MEAs**

Most MEAs are structured in a similar way, with the same key elements. The following is a brief overview and assessment of related issues.

### **2.4.1. Preamble**

The preamble of an MEA usually sets out a history of issues and related documents. It will often reflect differences of views that remain unresolved, and provide clues about areas that some Parties may promote for further negotiation. When the text leaves ambiguity about rights and obligations of the Parties, the preamble serves as part of the interpretive context by helping to indicate the object and purpose of the treaty, and may thereby assist in resolving such ambiguity.

A preamble may also reflect the history of the instrument and why it has been entered into by the international community. A preamble may therefore become the repository for a wide range of ideas, some of them conflicting. In such a case, its interpretive value may be somewhat lessened.

### **2.4.2. Definitions or use of terms**

The first article in most MEAs is a definition section, which provides some key definitions, often for terms that are of cross-cutting importance throughout the agreement. However, in many cases it is clearer and more efficient to elaborate very important definitions on specific terms in the context of operative provisions of the agreement.

### **2.4.3. Objective and principles**

Also generally found early in MEA texts are provisions that set out the broad policy objectives of the convention, as well as the principles that the Parties agree will guide their actions under the agreement. These provisions can have an important interpretive value as an agreement is implemented. It is therefore important that these sections be clear and concise. Sometimes when Parties are unsuccessful in negotiating

operative provisions, they will try to accomplish similar objectives in these sections. Therefore, many Parties prefer to negotiate important objectives into specific operative provisions, and generally avoid agreeing to principles, since they could lead to ambiguity, uncertainty and unexpected results in future interpretation.

#### **2.4.4. General provisions / scope**

In some MEAs there are provisions that will set out general parameters of the scope and operations of the agreement. These provisions contain key rules of broad application and generally govern the rest of the agreement. However, they cannot always be taken at face value, and should be read in conjunction with other provisions, which may contain exceptions or limitations.

#### **2.4.5. Substantive commitments**

Most MEAs are essentially focused on an agreement to act or not act in a certain way in order to protect, conserve or enhance the environment. These commitments may focus on results, and take the form of control measures, standards or limitations, including specific bans and/or quantifiable targets. They may also include or focus on process (e.g. prior informed consent), or mechanisms to govern decision making and how certain activities are managed, the latter of which may be broken out and elaborated (see also Control Provisions).

#### **2.4.6. Financing and technical assistance**

An MEA often contains provisions for mechanisms to support developing and sometimes countries in economic transition with financial or technical assistance, including multilateral funding mechanisms, funds dedicated to certain purposes, as well as clearinghouse mechanisms or other arrangements to organize technology transfer. Related bilateral activities may be encouraged or referenced, but are rarely elaborated upon in MEAs.

#### **2.4.7. Education, training and public awareness**

Some agreements provide for efforts to share information, support training and promote public awareness and discussion and action.

#### **2.4.8. Research and monitoring**

There is often a provision for information gathering and sharing about Party activities or environmental science related to the agreement. In fact, this is generally a key function performed by framework conventions, linked to communication, review and reporting provisions. Many MEAs rely largely on reporting and transparency as a tool to encourage compliance with substantive control provisions.

#### **2.4.9. Conference of the Parties (COP) / Meeting of the Parties (MOP)**

There will usually be a provision that sets up a governing body for the Parties, and sets out its decision-making authority as the "supreme" body for the agreement. For most MEAs this body is a COP, while a Protocol will have a MOP, the latter of which may sit as a subset of a COP (as a COP/MOP). There will usually be stipulations about participation of Parties and possibly observers, as well as authority to draft rules of procedure. Often there will be a delegation of general and residual authority, to take decisions on actions required to meet the objective of the agreement. This kind of provision generally provides the COP with a broad scope of action, but no specific authority to adopt legally binding decisions. Other provisions may delegate such authority with respect to specific subjects. The most recent decision of such a body supersedes any previous decision, although in practice, usually decisions are interpreted to be mutually supportive, where possible.

#### **2.4.10. Subsidiary bodies**

In some cases, a separate delegation of decision-making authority is also made to bodies which report to the COP or MOP, and which have the authority to make recommendations to the COP on subjects within their mandate. Mandates often relate to technical/scientific or implementation issues. However, if such a provision is not made, the power to create subsidiary bodies could be derived from the general or residual powers delegated to a COP or COP/MOP.

#### **2.4.11. Secretariat, focal points and authorities**

Generally there will be provisions instituting and describing the scope of the functions of treaty institutions, such as a secretariat, and possibly related national or regional institutions, such as Focal Points or competent authorities.

#### **2.4.12. Compliance, communication and reporting**

Some MEAs include provision for the development of procedures and mechanisms to promote compliance, and/or determine and address non-compliance by Parties. These procedures and mechanisms often involve some form of compliance committee or implementation committee, and are often facilitative, but may address due process, the role of experts, standing, triggers, application, and in some cases (e.g., *Kyoto Protocol*), consequences. However, it should be recognized that to date there is generally no clearly binding means of international enforcement in MEAs (that is, there is no clear provision for action to be taken against a Party by other Parties or an international body). There are possible exceptions, including eligibility to participate in the trading/project mechanisms of the *Kyoto Protocol*, and trade measures in the *Montreal Protocol* or the *CITES*. However, Parties have different views on each of these examples.

Compliance, as well as reviews of effectiveness and environmental monitoring functions carried out under MEAs,

are often largely based on the obligations of Parties to submit national communications and to report on key indicators.

#### **2.4.13. Review of effectiveness**

Often there will be a provision for the Parties to periodically examine how effective an MEA has been in accomplishing its objectives, and to consider whether further action is required, often with reference to information gathered under monitoring provisions.

#### **2.4.14. Dispute settlement**

Most MEAs will include provision for the settlement of disputes among Parties, based on standard wording used in other treaty contexts, with a process for compulsory, binding arbitration and conciliation. However, while the Parties are bound to follow the process, generally they are not bound to accept decision outcomes. Parties have seldom availed themselves of these provisions.

#### **2.4.15. Treaty mechanisms**

Formalities, timelines and linkages with other agreements may be addressed in final provisions on signature, ratification, application, depositary, entry into force, voting, amendment, protocols, withdrawal, reservations, voting rules and the equal authority of text in different languages. While these provisions often appear to be *pro forma*, voting and entry into force can be critically important (see also 'Elements of MEAs').

#### **2.4.16. Annexes**

Usually MEAs have annexes with lists or categories of specific items or kinds of items covered by substantive or other provisions (e.g. substances, species, activities, arbitration options, or even Party specific commitments). Note that there may be separate provisions for adopting or amending Annexes.

## 3. Machinery

### 3.1. Conduct of business in MEA meetings

When States first form an intergovernmental negotiating committee (INC) to negotiate a new MEA, one of the first items on the agenda is to adopt rules of procedure for the conduct of meetings during the negotiations. If the negotiations lead to an MEA, the latter typically provides that a Conference of the Parties (COP- see the section on structure) will, at its first meeting, adopt by unanimous vote its own rules of procedure as well as its financial rules.

Many of the rules of procedure and financial rules are the same for all MEAs. However, a negotiator should be familiar with the particular rules of the MEA, he or she is working on, since there are invariably rules specific to each MEA, and in any case, knowing the rules of procedure may be critical to dealing with unexpected procedural moves by other Parties or a Chair, and which could have a dramatic effect on the outcome of negotiations.

All too often negotiators in multilateral environmental *fora* have only a limited awareness of the rules of procedure that define the arena in which they operate. Many negotiators are technical specialists or strategic actors focused on their own specific objectives, and prefer to leave rules of procedure to legal specialists, so as not to interfere with their own priorities. Many may not even be aware of the influence of the rules on the process, as open discussion is often avoided among negotiators for various reasons. Yet even when no reference is made to the rules, and they do not appear to be at issue, they have a profound influence on the multilateral process and its outcomes. An obvious example is a rule on majority decision-making. Votes are generally avoided, but whether and how consensus is obtained on a given issue may depend to some degree on the understanding of how Parties would vote.



However, ignorance of the rules of procedure can be very risky. It can lead to major failures, and frustrations with the process, especially since often problems are discovered after key decisions have been taken. In the multilateral process it is generally difficult if not practically impossible to undo process decisions once they have been taken. And process decisions can have far reaching consequences on outcomes. So it is important to integrate strategic considerations about the decision-making processes, and the rules that govern these processes, early on in any multilateral treaty endeavour. Once a decision-making process is underway, it may result in a proliferation of sub-processes based on a complex set of interrelated decisions. While these processes are susceptible to congestion and inertia, it is also possible that they can move toward an unexpected direction or conclusion very quickly, with considerable time and investment at risk, not to mention the value of substantive outputs.

Some of the most important elements commonly found in rules of procedure and financial rules adopted by COPs are highlighted below. However, there are variations in different treaties, and the relevant texts should be consulted in specific cases.

See also Section on the Products of Negotiation Phases for more perspective on the conduct of business in MEA fora.

### **3.1.1. Rules of procedure**

#### **3.1.1.1. Frequency of meetings**

A rule usually provides for the frequency of meetings of the COP (typically yearly or every two years, with variations). However, a COP may decide to alter the frequency. A Party may also request that an extraordinary meeting be convened. Of course, budgetary concerns weigh in heavily when considering such a request. As for the meetings of subsidiary bodies, the COP will decide on the dates of their meetings. Generally, the COP should set the meetings of its subsidiary bodies to coincide with its own meetings.

### 3.1.1.2. Observers

Issues related to observer States and other bodies do arise, and can lead to concerns related to regional relations or transparency. Rules or treaty text normally provide for two types of observers:

- The United Nations, its specialized agencies and States not Party to the Convention: These observers generally have the right to be present at meetings, without the right to vote. The Chair may invite them to participate (e.g. intervene in the debate), unless at least one third of the Parties present at the meeting object.
- Other bodies or agencies, whether national or international, governmental or non-governmental: Their presence as observers is subject to more conditions. **First**, they generally have to be qualified in matters covered by the Convention. **Second**, they generally have to inform the secretariat of the MEA that they want to be represented at a meeting. **Third**, the presumption is that they will be able to be represented at such meeting, but they could be prevented from doing so if at least one third of the Parties present at that meeting object. **Fourth**, the Chair may invite them to participate without the right to vote, unless at least one third of the Parties present at the meeting object, in the course of any meeting on matters of direct concern to them. In negotiations of this rule in a few MEAs, some States have proposed to add other provisions concerning the participation of these observers such as the duty for the secretariat to notify all Parties, in advance, of the identity of the observers. However, such proposals have been resisted by the great majority of States (wary of administrative burdens and constraints on participation).

### 3.1.1.3. Agenda

Managing the agenda can be **very important** strategically, as it can shape, prevent or promote discussion of particular subjects. The provisional agenda for each meeting is prepared by the secretariat, with the agreement of the Chair of the COP, and is distributed to the Parties, together with supporting documents, generally at least six weeks prior to the meeting, depending upon the rules of procedure. A Party has many opportunities to add items to the agenda. It may do so prior to the circulation of the provisional agenda by addressing its request to the secretariat. If the provisional agenda has already been circulated, it may ask that an item be added to a supplementary provisional agenda. Finally, it may ask the COP to add items to the agenda at the time of its adoption during the meeting. In the latter case, the rules of procedure generally provide that "only items that are considered by the COP to be urgent and important may be added."

It is relatively common practice for an agenda item to be 'held in abeyance' in UNFCCC and now other MEA *fora*. An item on which there is no consensus is set aside but kept on the agenda, or 'held in abeyance', so that the rest of the agenda can be adopted and work can start at a meeting. If at the end of the meeting the agenda item is still held in abeyance, a common procedure has been established where it would automatically be included in the provisional agenda of the next session (often with appropriate footnotes). This practice may rely on the operation of a rule of procedure that provides for an agenda item to be forwarded to the next session of that body if consideration of the item has not been completed. An example is rule 16 of the Rules of Procedure of the UNFCCC.

#### **3.1.1.4. Budgetary implications**

Since budgetary ramifications of any items on an agenda are likely to be of interest to all the Parties concerned, rules provide that the secretariat must report to the COP on the administrative and budgetary implications of all substantive agenda items. To ensure that proper consideration is given to these issues, a substantive item generally may not be discussed until at least 48 hours after the COP has received such a report, unless the COP decides otherwise. Such provisions are often overlooked, but can be useful.

#### **3.1.1.5. Credentials**

Credentials are documentary evidence of a person's authority. Usually, each Party must submit to the secretariat, "if possible" not later than 24 hours after the opening of a meeting, the credentials of its representatives (head of delegation, alternate representatives, advisers). Credentials have to be issued by the Head of State or Government or by the Minister of Foreign Affairs (for Canada, for example, the Minister of Foreign Affairs has this responsibility). Examination of the credentials is made by the Bureau that submits its report to the COP. Representatives are provisionally entitled to participate in a meeting, pending a decision by the COP on whether to accept their credentials.

#### **3.1.1.6. Bureau**

Rules provide for the election of the Bureau's officers by the COP. Specified in the rules are, for example, the officers (President or Chair, Vice-presidents, Chair's of subsidiary bodies, and Rapporteur), their number, the duration of their respective terms, the number of terms they may serve (usually two), the need to represent all five

United Nations regions and the ex-officio members of the Bureau (normally the Chair's of subsidiary bodies). In case an officer of the Bureau resigns or is otherwise unable to complete his or her term, a representative of the same Party is usually appointed by that Party to complete the term. In addition to the rules, practice and precedent has developed for a number of specific sub-issues such as the order of rotation for regional representation. Those working on such issues should investigate the history and practice of the MEA in question.

### 3.1.1.7. Subsidiary bodies

Most of the rules for the COP also apply 'mutatis mutandis' (with such changes as are necessary on points of detail) to subsidiary bodies. Some MEAs lay out rules specific to particular subsidiary bodies or provide that the COP may decide to modify rules for subsidiary bodies based on proposals to that effect from the various subsidiary bodies. In addition, and more commonly, rules of procedure for MEAs contain rules specific to subsidiary bodies.

**One should not assume that these rules will apply to *ad hoc* working groups or committees established by the COP or by subsidiary bodies. Therefore, when establishing such groups or committees, it is often important to determine the key rules (e.g. the voting rule) under which they will operate.**

One particularly important rule for subsidiary bodies is whether meetings are to be held in public or in private (e.g. the rules of procedure for the *Rotterdam Convention* provide that meetings of standing subsidiary bodies are public and those of *ad hoc* subsidiary bodies are private). However, whether the rules specify public or private meetings, the COP always retains the authority to decide otherwise.

Some rules also confer the power on a subsidiary body to decide. The rules also normally provide that the COP is to determine the dates of meetings of such bodies as well as the matters to be considered by each of them. The COP also elects the Chair for subsidiary bodies unless it decides to leave this decision to the members of the body in question. Other officers are subsequently elected by the body itself, on the basis of regional representation.

#### **3.1.1.8. Openness of the meetings**

All formal meetings are generally open to all Parties, unless they agree to another negotiation format (generally through the bureau). Whether a meeting is open or closed to the public or observer States can be strategically important (i.e. it can affect the behaviour of Parties, including their willingness to share information, be seen to compromise, or to be perceived as difficult.). Rules normally provide that meetings of the COP itself are open to the public unless decided otherwise. Generally, non-Party States may sit as observers, and participate as such at the invitation of the Chair. Normally there is also a specific rule on this issue for subsidiary bodies (see 'subsidiary bodies', above). Note that often some sessions of compliance bodies will be closed to the public and other Parties (to encourage open discussion about what problems a Party has and how to address them).

#### **3.1.1.9. Quorum**

There are different types of quorums. In order for a session of the COP to proceed, the rule is normally to require the presence of at least one third of the Parties. Normally, two thirds must be present for the taking of a decision. Rules proposed for more recent MEAs provide that for decisions within the

competence of a regional economic integration organization (such as the EU), that organization shall have the number of votes equivalent to the number of its members to determine if there is quorum. Rules usually also provide for specific quorum for meetings of non-open-ended subsidiary bodies (normally a majority of the Parties participating in the body- see proposed rules of procedure for the *Stockholm Convention*).

### **3.1.1.10. Interventions**

To address a meeting, a delegate must have the permission of the Chair. A delegate raises his or her country's name card (called "the flag") to get permission to speak and the rules provide that the Chair shall call upon speakers in the order in which they signify their desire to speak. Based on a proposal from a Party or the Chair the COP may decide to limit the time allowed for each speaker as well as the number of times a representative may speak. (In practice the Chair usually makes such decisions, without much discussion, though in theory a Chair could be over-ruled. If there are major or repetitive issues, they will often be worked out in the Bureau.). In some MEA fora, it is relatively common for the majority of Parties to intervene on each issue (particularly where there is a high level of diversity in national circumstances), where as in other fora, it is more common for regional and other negotiation groups to coordinate their interventions as much as possible in order to more efficiently manage demanding agendas (see also Drafting Issues).

### **3.1.1.11. Points of order and motions**

A point of order is a formal question by a delegate on whether a specific action by a delegate or presiding officer follows the rules of procedure.

A point of order may be raised at any time and the Chair must rule immediately. A ruling may be appealed but will stand unless a majority of Parties present and voting decides otherwise. A motion is a formal oral proposal on a matter of procedure. For example, a motion may be to decide whether a body has the competence to address an issue or adopt a proposal. Motions may be carried by consensus or vote. Before a vote, a delegate may withdraw a motion he or she has introduced, unless it has been amended. The following motions (in order of priority) have precedence over all other motions and proposals but not points of order:

- suspend or adjourn the meeting
- adjourn the debate on the question under discussion
- close the debate on the question under discussion.

#### **3.1.1.12. Proposals and amendments**

Proposals and amendments are made by Parties (even if a text is provided, at the request of Parties, by the Chair or the secretariat). The objective of a proposal is to have the Parties take a decision, and may include the adoption of a text, such as a work programme, action plan, guidelines or other products. An amendment adds to, deletes from or revises a proposal.

Any proposals as well as amendments to them should normally be introduced in writing, in one of the six official UN languages, and circulated to delegations by the secretariat. As a general rule there are no discussions or votes unless the proposals or amendments have been distributed a day in advance. However, the Chair may decide otherwise with regard to amendments to proposals or procedural



motions. A delegate may withdraw a proposal at any time before the vote, unless the proposal has been amended.

Any delegate may request that any part of a proposal or amendment be voted on separately. If another representative objects, a vote must be taken on whether to have a separate vote on part of a proposal or amendment. Delegates first vote on the amendment and, if adopted, on the amended proposal (see also Amendments and Adjustments in Treaty Making Principles)

#### **3.1.1.13. Amendments to the rules of procedure**

As rules of procedure are adopted by consensus in MEAs, any modifications to the rules also require consensus.

#### **3.1.1.14. Decision-making, voting and explanation of vote (EOV)**

Decision-making is generally accomplished by consensus among the Parties in MEA fora. Normally, after discussion if it appears that consensus is emerging, the Chair will ask if there is consensus. If no Party makes an objection, he or she will declare that the issue is decided (often using the phrase, 'It is so decided.'). It is noteworthy that in the context of the Strategic Approach to International Chemicals Management (SAICM), that NGOs and IGOs may 'participate in consensus'.

In the rare case of an absence of consensus, voting may take place by a show of hands (in practice a delegation would raise its flag) or a recorded vote. In a recorded vote, the way each delegation voted is noted in the report of the meeting. A delegation may also request a secret vote. Voting is not to be interrupted unless a point of order is raised. A

delegation may provide a formal explanation of vote (EOV) prior to or after voting (depending on the Chair's decision).

A Party may also vote or join consensus *ad referendum*. Adoption *ad referendum* would allow a Party to re-open debate on an issue at the subsequent session of the body in question. The effect of adoption *ad referendum* is that the decision would automatically be confirmed at the next meeting unless re-opened. The issue would not be placed on the agenda of the next meeting, and silence would be taken to indicate consent. This approach would allow a Party to consult with national authorities as required, and to reserve the right to re-open debate, but otherwise not impede progress. A similar option would be to provide for a decision to take effect on a no objection basis within a specified time frame (this kind of mechanism has been developed for the adoption of annexes for the *Basel Convention* under its Art. 18).

### **3.1.1.15. Voting majority**

Votes are exceedingly rare. Nonetheless the voting rules may come into play, and may also have some effect on how consensus develops.

The voting majority required to decide on some given issues is specified in the Convention itself (e.g. the adoption of rules of procedure and financial rules requires a consensus). For most other matters, the voting rules are found in the rules of procedure and, for some financial matters, in the financial rules (exceptions include the Rotterdam and Stockholm conventions, where certain consensus requirements are stipulated in the treaty).

During negotiations on rules of procedure, the rule on the majority required for voting on substantive

issues is, for most MEAs, one of the most divisive issues. Most rules provide that Parties make every effort to reach consensus but that, if they fail in their attempts to reach an agreement, decisions may be adopted with the support of a two-thirds majority. In cases where Parties are unable to agree on a voting rule, they have adopted all of the rules of procedure with the exception of the voting rule (e.g. CBD, UNFCCC). Rules of procedure must be adopted by consensus, which is the de facto rule for adoption of any substantive decisions in the absence of an agreed voting rule (e.g. UNFCCC).

### **Consensus and Blocking Consensus**

In many meetings, matters are decided by consensus, even though the rules provide for decisions based on a voting majority. While MEA rules do not define "consensus," it is accepted that there is no requirement for a formal vote as long as there are no known objections.<sup>11</sup> Once consensus appears to emerge on an issue, the Chair can formally put a question to the decision-making body and, absent any expressed dissent, declare the proposal adopted.

However, if any Party objects to a decision, it may take the rare step of blocking consensus, by raising its flag and stating clearly that it objects. The Party must then restate its objection afterwards, if the body purports to take a decision notwithstanding its objection. Generally, a Party must be very certain before blocking consensus. Many Parties may have to consult their capital first.

---

<sup>11</sup> Consensus is defined in article 161(8)(e) of the 1982 *Law of the Sea Convention* as "the absence of any formal objection." The Dispute Settlement Understanding of the WTO states that the Dispute Settlement Body "shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision." These definitions reflect what is customarily understood as consensus.

For matters of procedure, a majority rule applies. Whether a matter is substantive or procedural in nature is determined by the Chair. Any of the Chair's decisions may be appealed. A majority is required to overrule the decision. If a Chair attempts to force an important and contentious issue as a procedural matter, a delegation can challenge his or her ruling - though this is extremely rare (see 'Process Issues and Violations' for other options).

Recent MEAs provide for a voting rule for Regional Economic Integration Organizations (REIOs). The provisions state that for matters within its competence, an REIO shall exercise its right to vote with the number of votes equal to the number of its member States that are Parties to the MEA. It adds that an REIO may not exercise its right to vote if any of its member States exercises its right to vote, and vice versa (see art. 23(2) of the *Rotterdam Convention*).

#### **3.1.1.16. Elections**

All elections are generally by secret ballot unless otherwise decided by the COP. The rules of the body concerned should provide a detailed procedure on how elections should proceed. In practice, however, elections are usually decided before a session, and adopted by consensus.

#### **3.1.1.17. Languages**

**Interventions:** In the meeting of the COP, delegates may intervene in any one of the treaty official languages (usually the six UN languages, i.e. Arabic, Chinese, English, French, Russian or Spanish). All interventions are interpreted in the other official languages. If a representative wishes to intervene in a language other than an official language, he or she may do so only if an interpretation in one of the

official languages is provided by that representative. To continue a meeting after translation services have been discontinued, agreement of the Parties is required (it is generally accepted that consensus is required, although procedural voting rules may apply). Interventions should be made at a measured pace in order to allow time for translation, otherwise there is a risk of a misunderstanding leading to opposition or the need for further explanation.

**Documents:** In a UN forum, official documents are generally negotiated and drawn up in one of the official languages of the UN and then translated into the other official languages. Treaty bodies often designate a "working language". Often the working language is English.

In the UN, the number of authentic languages varies with the body adopting them. In most cases, UN MEAs provide, in their final clauses, that the texts are authentic in all official languages, i.e. at present Arabic, Chinese, English, French, Russian and Spanish. Rarely is a multilateral agreement silent on the point. If the resolution approving or adopting an agreement does not make specific provisions on the subject of language, the practice followed by the UN Secretary-General is to consider all official UN languages as authentic. Concerns about translation errors are addressed in the manner of other textual errors as discussed below.

#### **3.1.1.18. Rectification of textual errors including translation errors**

It is possible that corrections to the original text of a treaty or a text adopted under a treaty may be needed as result of:

- an error in typing or printing, spelling, punctuation, numbering;

- an issue of conformity between the original of the treaty and the official records of the international negotiation conference that adopted the treaty;
- an issue of concordance or translation between different authentic texts constituting the original of the treaty.

With respect to a treaty text, generally the depositary initiates a correction procedure at the request of one or more of the States that participated in the negotiation and adoption of the treaty, or on its own initiative. For a decision text, a similar process would be initiated by the treaty secretariat. A Party may raise an issue informally or through a formal letter to the secretariat or depositary.

In either case, each apparent error should be carefully considered to determine whether there is an error or an issue and whether it effectively modifies the meaning or substance of the agreement. This could involve informal discussions involving Parties/States and the depositary as well as the Chair or co-chairs of the relevant negotiations. If the Parties and the secretariat or depositary cannot resolve the issue, it may be officially referred to the signatory States and/or Parties by the treaty secretariat or depositary, as the case may be. It can be quite important for all Parties to review corrected texts to ensure that their interests have not been improperly undermined.

Where the issue relates to the translation of an official treaty or decision text from a UN forum, the secretariat or depositary concerned would consult with UN translation services, either at UN headquarters in New York or in the relevant regional office. Translation into other languages will be based on this adopted text. Many agreements provide that all official languages are generally taken

to be equally authoritative. However, if an issue of concordance between languages is raised in a timely fashion, as described below, the language of the text adopted by the Parties or the international negotiation conference in question is determinative.

With respect to official treaty text, the long-standing practice of the UN has been to circulate proposed corrections to signatory States and all the States represented at the Conference or the meeting that adopted the treaty, and all signatory States and contracting parties.

In the absence of objections to the proposed corrections within the time limit, a correction is deemed to be accepted and is then effected in the original and initialed by a depositary authority. A corresponding *procès-verbal* of rectification circulated under cover of a depositary notification.

While the depositary may circulate proposed corrections more broadly, only signatories or contracting States have a legal right to participate in any decision related to a correction. Objections to the correction of the original must be notified to the depositary within a certain period of time. Article 79, paragraph 2, of the VCLT provides that the depositary "shall specify an appropriate time-limit within which objection to the proposed correction may be raised". The general UN practice is a time-limit of 90 days from the date shown on the notification. However, in establishing the time-limit for objections to proposed corrections, account will be taken of factual circumstances such as the nature and the number of proposed corrections, and whether or not the treaty is in force.

If the depositary receives an objection to the proposed corrections within the time-limit, the

depository notifies the Parties concerned. If an objection is received after the time-limit has expired the depository will also generally inform Parties, even if it has no legal status.

Any interested State is entitled to object, if it does not accept that the proposed correction is justified or if it considers the correction procedure is inappropriate. For example, a State may object that the time-limit is not sufficient; or it may object that a procedure that presumes tacit consent is not appropriate on the basis that the proposed correction would affect the substance of the agreement and amounts an amendment, which should follow a specified amendment procedure. In case of a disagreement related to a correction, States must resolve it themselves.

### **3.1.2. Financial rules**

In many instances, an MEA will provide that the COP shall establish its own financial rules, though they are often based on UN rules, and may refer to them. These rules are meant to govern the financial administration of the COP, its subsidiary bodies and the MEA secretariat. They cover financial matters essential to MEAs and usually provide that, for other matters, the Financial Rules and Regulations of the United Nations will apply. For example, the *Desertification Convention* provides as follows:

”2. The Conference of the Parties is the supreme body of the Convention. It shall make, within its mandate, the decisions necessary to promote its effective implementation. In particular, it shall: ... (e) agree upon and adopt, by consensus, rules of procedure and financial rules for itself and any subsidiary bodies; ...”

Other MEAs may have different provisions. Key matters found in these rules are laid out below.



### **3.1.2.1. Trust funds**

Income is added to and expenditures drawn from trust funds managed by the entity designated by the convention or the COP. Normally the rules provide for the creation of a number of such funds:

#### **3.1.2.1.1. General trust fund**

This fund is made up of contributions by Parties as well as non-earmarked contributions from other sources. In order to ensure the continuity of operations in case of a temporary cash flow problem, part of the fund is composed of a reserve, the level of which is determined by consensus of the COP. Any amount drawn from the reserve must be restored from contributions as soon as possible.

#### **3.1.2.1.2. Special trust fund**

This fund is used to pay for the cost of participation in meetings of the COP and subsidiary bodies of representatives of specific categories of countries (e.g. in the financial rules for the *Desertification Convention* for representatives of developing, and in particular least-developed country Parties affected by desertification and/or drought, particularly those in Africa; in the financial rules of the UNFCCC for representatives of developing country Parties, in particular those that are least-developed countries or small island developing countries; in the financial rules for the *Stockholm Convention* for representatives of developing countries and countries with economies in transition). It is composed of contributions specifically earmarked for that purpose by Parties and by other sources and additional to those required to be paid by Parties to the general trust fund.

### 3.1.2.1.3. Other trust funds

The rules sometimes provide for other types of trust funds (e.g. a Supplementary trust fund in the *Desertification Convention* for the participation of some representatives of NGOs from affected developing country Parties, particularly the least developed among them in the *Desertification Convention*). In addition, the rules provide that the COP may approve the establishment of other trust funds consistent with the objectives of the Convention.

### 3.1.2.2. Contributions

Contributions of Parties are due annually, normally by January 1, to the general trust fund on the basis of an indicative scale determined by the COP. MEAs do not contain binding obligations on Parties to make contributions, although they are generally treated as obligatory. Typically, the basis for the scale itself is the provision that proves the most difficult to negotiate, some Parties favouring the United Nations General Assembly's (UNGA) scale as a model while others prefer other formulae. Generally, the former is ultimately adopted (modified with respect to Party membership, on a *pro rata* basis). The provision also specifies minimum and maximum contributions. In addition, Parties may make other contributions, including some earmarked for the special trust fund. Parties should give notice of the intended amount and timing of their contributions sufficiently in advance. Non-Party States as well as governmental, intergovernmental and non-governmental organizations may also contribute to any of the funds. The secretariat must inform all Parties of the status of pledges and payment of contributions (depending on the rules this is done at each COP, annually or more often during a year).

### **3.1.2.3. Financial period of the budget**

The rules normally provide for a two-year period or 'biennium'.

### **3.1.2.4. Budget estimates**

A projection of income and expenditures for each year of a financial period must be prepared and forwarded to all Parties to the MEAs in advance (usually 90 days) of the COP meeting at which it is to be adopted.

### **3.1.2.5. Budget lines**

Once the budget is adopted, obligations may be incurred and payments made for the purpose and up to the amount for which the appropriations were approved. Any commitments must be covered by related income unless otherwise specifically authorized by the COP. Transfers within each of the main appropriation lines may be made as well as transfers between such lines up to the limits set by the COP. Any balance remaining at the end of a budget year or at the end of a financial period is transferred to the next year or period.

### **3.1.2.6. Budget voting rules**

The rules normally provide that the COP must adopt the following by consensus: the scale of contributions by Parties (each Party has a set contribution level); the budget for a financial period; the level of capital reserve; and any amendments to the rules.

### **3.1.2.7. Accounts and audit**

During the second year of the financial period, an interim statement of accounts for the first year is provided to the COP. A final audited statement of

accounts for the full period is provided to the COP as soon as possible after the closing of the accounts.

## **3.2. Institutional and negotiation structures**

### **3.2.1. Institutional structure provided for in conventions**

The first part of this section provides a review of the institutional structure of MEAs as well as the informal mechanisms developed during MEA meetings to facilitate negotiations. The second part provides an examination of how States form groupings for negotiation purposes. UN MEAs are also part of a wider network of environment-related infrastructures that together play a key role in the development of norms, policies and mechanisms to protect the environment (see ANNEX A, Key Non-MEA bodies in International Environmental matters).

While MEAs typically establish the key bodies through which their objectives will be pursued, Parties have also developed, through practice, various ways to organize themselves to negotiate the different kinds of issues that need to be addressed on a regular basis.

#### **3.2.1.1. Conference of the Parties**

Most modern MEAs provide for the establishment of a governing body called the Conference of the Parties (COP). Most Protocols to MEAs have a Meeting of the Parties (MOP) which performs the same functions set out for the COP below. Both bodies are composed of all Parties to the agreement in question. Generally, States not Parties to the agreement, the United Nations and its specialized agencies as well as other intergovernmental and non-governmental organizations may attend these meetings as observers.

The term COP/MOP (often further abbreviated as 'CMP') is used when the Conference of the Parties also serves as the Meeting of the Parties to a Protocol, as is the case for the *Kyoto Protocol*. (In this handbook, references to the COP may be taken to include the CMP unless the context indicates otherwise.) Of course only Parties to the Protocol may make decisions on matters concerning the Protocol.

The functions of the COP are set out in each MEA. Generally, a COP's main function is to continuously review and evaluate the implementation of the MEA, and take such decisions as are required to further implementation. Some of the tasks are expressly provided for in the provision establishing the COP as well as in other provisions with specific issues.

Depending on the MEA, these tasks may include:

- adopting rules of procedure and financial rules, rules for arbitration and conciliation procedures as well as financial provisions for the functioning of the secretariat;
- establishing subsidiary bodies;
- receiving and examining periodic reports from Parties or its subsidiary bodies;
- adopting decisions as called for by the MEA (e.g. on guidelines, rules, implementation plans, technical and financial assistance, best practices);
- evaluating periodically the effectiveness of the MEA;
- making decisions regarding financial resources and mechanisms;
- developing and approving non-compliance mechanisms;

- co-operating, where appropriate, with other organizations;
- deciding whether to adopt proposed amendments to the MEA.

A provision of a more general nature usually confers on the COP the authority to consider and undertake any additional action that may be required for the achievement of the objectives of the MEA.

The frequency of meetings of the COP for a specific MEA are laid out in its rules of procedure. MEAs typically provide that the first meeting is to be held no later than one year after its entry into force. At this first meeting, the COP adopts rules of procedure that provide for the frequency of subsequent meetings.

The High-level Segment (also called "Segment for high-level participation" or "High-level Meeting") is composed of the highest-level representatives of States Parties attending a meeting, typically the Minister or equivalent.

### 3.2.1.2. Subsidiary bodies

Some MEAs mandate the establishment of specific, permanent, subsidiary bodies.<sup>12</sup> Many of the essential features of these bodies are included in the MEA itself, including:

- purpose and functions: For instance, the UNFCCC provides that the task of the Subsidiary Body for Scientific and Technological Advice (SBSTA) is to provide "timely information and advice on

<sup>12</sup> For instance, the UNFCCC provides for the Subsidiary Body for Scientific and Technological Advice (SBSTA – art. 9) and the Subsidiary Body for Implementation (SBI – art.10); the Stockholm *Convention* provides for the Persistent Organic Pollutants Review Committee (POPRC – art. 19); the *Rotterdam Convention* calls for the establishment of the Chemical Review Committee (CRC – art. 18).

scientific and technological matters relating to the Convention.” It goes on to list various tasks to be performed by this body.

- composition: For example, the *Stockholm Convention* provides that the Persistent Organic Pollutants Review Committee “shall consist of government-designated experts in chemical assessment or management” and that “the members of the Committee shall be appointed on the basis of equitable geographical distribution.” In some cases the MEAs will state whether the subsidiary body is limited in number or open to participation by all Parties (e.g. article 10 of the UNFCCC on the Subsidiary Body for Implementation (SBI) provides for the latter).
- voting rule: The *Rotterdam Convention* provides, for instance, that, if all efforts at consensus have been exhausted, the Chemical Review Committee may adopt recommendations by a two-thirds majority vote.

Many aspects of these bodies need to be addressed by the COP (e.g. terms of reference, organization and operation). Of course, over time Parties may agree to modify the terms of reference of a subsidiary body.

The subsidiary bodies of most MEAs are not specifically provided for in the MEA. Instead, the COP exercises its power to create such bodies. For instance, article 22(2)(c) of the *Desertification Convention* provides that the COP shall “establish such subsidiary bodies as are deemed necessary for the implementation of the Convention.”

Some subsidiary bodies are, by the very nature of their tasks, meant to be **temporary or ad hoc groups**. For instance, COP1 of the *Basel Convention* created an *ad hoc* working group of legal and

technical experts to consider and develop a draft protocol on liability and compensation. The work of this group came to an end with the adoption of the Protocol. Likewise, COP1 of the UNFCCC set up the Ad hoc Group on the Berlin Mandate (AGBM), which led to the *Kyoto Protocol*.

Others bodies are meant to be more or less permanent bodies even when they are called "ad hoc." For example, COP1 of the *Basel Convention* established an Open-ended Ad Hoc Committee (later called the Working Group for Implementation) to fulfil many of the tasks needed for the implementation of the Convention. In addition, COPs may and do revise on a more or less regular basis the names and functions of subsidiary bodies (for example, bodies may be amalgamated). One subsidiary body found in all MEAs is the Bureau (for details on its functions, see the section on Roles).

Subsidiary groups may also create **subgroups** to work on part of its mandate. For instance, the decision of COP1 of *the Basel Convention* establishing the Open-ended Ad Hoc Committee also provided that the Committee could establish any subgroups needed "to facilitate its work, subject to available resources." Such groups may also be created directly by the COP. For example, COP4 of the UNFCCC established a joint working group under its two standing subsidiary bodies, the SBSTA and SBI, to develop the compliance system of the Protocol. It reported to the COP through the subsidiary bodies.

The COP decides how often these bodies will meet. In general, much of the work of subsidiary bodies takes place intersessionally and is considered at the following COP. For instance, the Legal Working



Group of the *Basel Convention* met a number of times between COP5 and COP6. The work of the group allowed COP6 to adopt a number of decisions on subjects such as a compliance mechanism and an emergency fund mechanism.

Rules of procedure normally provide that the Chairs of subsidiary bodies are elected by the COP. Other officers are subsequently elected by the body itself on the basis of regional representation. However, all officers of the Bureau are elected by the COP.

### **3.2.1.3. Secretariat**

MEAs normally make provisions for a secretariat. MEAs generally provide that the COP shall designate the secretariat at its first meeting. For instance, in its Decision 1/7, COP1 of the *Basel Convention* requested UNEP to carry out the functions of the secretariat. UN MEAs generally follow UN administrative practice.

The functions of a secretariat may vary but it plays an essential role in ensuring the effective functioning of the COP and its subsidiary bodies. Indeed its primary role is generally to provide administrative, logistical, process management and procedural support to the COP. The COP may, and normally does, assign additional tasks to the secretariat. Often these tasks relate to the various international activities required to meet the objectives of the agreement. The tasks may be set out in the MEA, in decisions under the MEA, and often in rules of procedure.

Some MEAs list in great detail the tasks of the secretariat. For instance, paragraph 16(1) of the *Basel Convention* lists, in 10 subparagraphs, numerous tasks for the secretariat, adding in an

eleventh subparagraph that it shall "perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties."

Some of the most common tasks are as follows:

- arrange and provide logistical support for meetings of the Conference of the Parties and its subsidiary bodies. This includes giving notice of dates and venue of meetings, preparing the provisional agenda and reports, generally with the guidance of the Chair or bureau, and circulating it along with any pre-sessional documents; many of these documents are prepared by the secretariat, while others are forwarded to it by Parties or observers; the secretariat arranges for all these documents to be available in the official languages of the MEA;
- support meetings by arranging for interpretation, distribution of documents during the meeting as well as the subsequent publishing and distribution of official documents such as the report of the meeting;
- report at meetings on the activities it has carried out between meetings and on administrative and budgetary matters;
- coordinate as required with other relevant international bodies;
- receive the information required from Parties by the MEA or requested from Parties or other sources by the COP or a subsidiary body and compile it in time for the next meeting;
- communicate all relevant information received from one Party to all other Parties to the MEA, as requested/appropriate;

- arrange for support for Party implementation of COP decisions, and respond to requests to the secretariat in COP decisions.

#### **3.2.1.4. Depositary and authoritative citations**

A treaty will generally delegate a depositary which is responsible to manage documentary functions related to the agreement. Parties may choose to designate any institution as its depositary, and most MEAs make such a provision in the MEA itself. Depositaries may also be joint, with more than one responsible authority, and they may also be transferred from one authority to another, if so decided by the Parties.

In the case of UN agreements, the Secretary-General of the UN is generally given this responsibility, otherwise it is often with the State which hosted the last negotiating conference. The Secretary-General may agree to be responsible for the depositary for other multilateral agreements, subject to certain criteria, but this is not automatic unless it is a UN agreement.

A depositary's duties are international in character, and it is under an obligation to act impartially in the performance of those duties. In the case of the UN, the Secretary-General is guided in the performance of depositary functions by:

- a. Provisions of the relevant treaty;
- b. Resolutions of the General Assembly and other UN organs;
- c. Customary international law; and
- d. Article 77 of the Vienna Convention 1969.

In practice, the Treaty Section of the United Nations Office of Legal Affairs carries out depositary functions on behalf of the Secretary-General.

### **3.2.1.5. Citations and original texts**

For original treaty texts and authoritative citations and references, the UN maintains a comprehensive treaty collection (<http://untreaty.un.org/English/treaty.asp>). Under Article 102 of the Charter of the United Nations, "Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it". The American Society of International Law publishes the *International Legal Materials*, is also broadly considered to be a standard authoritative reference for original treaty materials.

### **3.2.1.6. Institutional practice – other bodies**

While formally it is for a COP to determine how an issue is to be addressed and disposed of, in practice it is never easy to address issues, often difficult ones, in plenary meetings attended by scores of Parties along with many observers. This is also true of open-ended subsidiary bodies. This is why matters are routinely referred to various groups not provided for in the Convention or in decisions. In fact, most of the negotiations in any given session will take place in such groups. The work of these groups is often crucial to solve issues. In most cases, the COP or subsidiary body adopts, often verbatim, the proposals arrived at in such groups. In the end, for any proposal that such a group agrees upon, it must receive the formal approval of the body which created the group in order to move forward.

Some of the most common groups to which the COP and subsidiary bodies employ are described below.

### **3.2.1.6.1. Working groups**

These groups are usually established to look at some key issues on the agenda. After having introduced an item and given delegations the opportunity to state their opening positions on the matter, the Chair may suggest, on his or her own initiative or at the request of one or more Parties, that the item in question be considered in more detail in a working group. This ensures that important issues are carefully considered by a group of interested States while at the same time allowing the Chair to move to the next item on the agenda on the understanding that he or she will return to the deferred item once the working group is ready to report back to the COP or subsidiary body in question.

While the working groups are open-ended, the number of participants to the group will, in practice, vary depending on the number of States interested. The Chair of the COP will normally designate a Chair or, if it is a large group or one that deals with a particularly difficult issue, Co-Chairs (see section on the Chair).

One has to be careful that not too many working groups are in existence at the same time since it could become difficult for many delegations to cover simultaneously any more than one or two groups. Some fora have established specific rules or practices with respect to the number of meetings, e.g. in the UNFCCC process, it is understood that no more than two meetings should occur at the same time. Often a number of groups are created but arrangements are made so that they meet at different times of the day.

COPs and subsidiary bodies can both create working groups when needed. For instance, at the 2nd Meeting of the Ad hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions of the CBD, the delegates met in two sub-working groups for most of the meeting to discuss substantive agenda items.

### **3.2.1.6.2. Contact groups**

Parties may set up contact groups to deal with a specific issue that proves difficult to resolve and that could slow down progress on many related issues. The Chair of the COP, or of a subsidiary body or of a working group may suggest a contact group. While such a group may be open-ended, it most often involves the few States that have strongly opposed opinions on an issue. For instance, at COP6 of the *Basel Convention*, the Working Group on the Strategic Plan created a contact group to develop criteria for the selection of projects under the plan. In addition, two contact groups with related issues may sit as a Joint Contact Group to attempt to resolve differences between them.

One can expect contact groups to be created at almost all COPs. For instance, at COP6 of the *Basel Convention*, a number of contact groups were established. One of them was established on the second day to examine whether there was need for a study (of Annex VII). It met for two days and at the end of the session it reported to the plenary that it had agreed on a compromise text that was subsequently adopted (effectively, it had become a drafting group!).

### **3.2.1.6.3. Informal group**

In order to resolve some difficult issues, a number of Parties may meet in private, often with the participation, depending on the issue, of a chairperson, in order to reach an agreement. For instance, at COP6 of the *Basel Convention*, work on a compliance mechanism started in a working group but later continued in an informal group which then proposed a revised text to the plenary.

### **3.2.1.6.4. Friends of the Chair**

In the context of particularly sensitive or complex negotiations, the Chair may take the initiative of creating an informal group to carry out specific tasks. This group is variously called "Friends of the Chair," or the "Eminent Persons Group". The group is often comprised of a relatively small number of delegates selected to represent regional groupings, to explore strategies for achieving consensus. Those that are invited are often the Parties that have most actively intervened on relevant issues. Other actors with relevant interests may also be invited (e.g. at CBD COP4 indigenous and community representatives joined Parties to draft a decision on traditional knowledge). Inclusion in such groups may be a sensitive issue with some Parties or groups, and it is often preferable to include any Party with strong views in order to avoid protracted discussion in the subsidiary body in question.

### **3.2.1.6.5. Committee of the whole**

A Committee of the Whole (COW) is a body created by a COP in order to coherently address cross-cutting issues that are of concern to more than one subsidiary body. A COW generally runs in a parallel session with the COP, allowing

the COP to continue with its agenda, and is open-ended. For instance, at COP 3 of the *Desertification Convention* the delegates agreed to establish a COW to consider various issues such as a proposal for an additional annex, outstanding rules of procedure, and annexes on arbitration and conciliation procedures. A Chair was designated and invited to attend meetings of the Bureau.

#### **3.2.1.6.6. Drafting group**

The Chair may set up a drafting group to develop text on very specific issues. These groups normally meet in closed sessions. For instance, at INC 6 of the POPs Convention an informal drafting group was set up to prepare a draft decision on methodology standards for effectiveness evaluation. The text was later presented to the INC that adopted it with only minor changes.

#### **3.2.1.6.7. Legal drafting group**

A Legal Drafting Group (LDG) can be set up as an open-ended group composed of lawyers from various delegations, to examine legal issues in general, or such a group may be set up to deal with a specific issue within a specific time frame. These issues vary greatly depending on whether an MEA is still under negotiation, is adopted but not yet in force or has entered into force. During negotiations, a legal drafting group will, among other things, carefully review the wording of each article proposed for inclusion in an MEA. Once the MEA is adopted and prior to its entry into force, the LDG will focus its attention on legal matters that need to be addressed shortly after the entry into force of the MEA (e.g. rules of procedure and financial rules). Once an MEA is in force, other issues may arise, such as the elaboration of a compliance mechanism.



### **3.2.2. State/country groupings**

#### **3.2.2.1. UN regional groups**

In order to provide equitable representation of all regions of the world on UN bodies with limited membership, the UN formally recognizes five regional groups organized primarily on the basis of region, but also in some cases, on the basis of shared interests with States from a particular region (e.g. Australia is part of the Western European and Other Group).

When a subsidiary body or another group has a limited membership (e.g. a group composed of only five members), members of each regional group must decide which Party will represent them in the group. Where members of a regional group do not share the same position on an issue to be addressed, consideration should be given to proposing a body or group with sufficient numbers to fairly represent all interests. One of the chief tasks of each regional group is to nominate Bureau members.

The regional groups are as follows:

- African Group
- Asian Group
- Latin American and Caribbean Group (known as GRULAC)
- Central and Eastern Europe Group (known as CEE)
- Western European and other Group (known as WEOG—this group includes Western European countries as well as Australia, Canada and New Zealand. Although the USA only has observer status, it does attend the meetings and is considered as a member of WEOG for election purposes. In

2000, Israel was admitted to the WEOG electoral group in New York on the understanding that this decision would be reviewed in four years. Since then, Israel has been admitted to WEOG meetings in other fora – e.g. the Governing Council of UNEP and in climate change negotiations. As decisions are made on a case-by-case basis and by consensus within WEOG, MEA negotiators may need to consult their Foreign Ministry for advice if a related issue comes up. In the case of some MEAs, such as the *Montreal Protocol*, the WEOG regional grouping is referred to as the **Like-Minded Group** which includes WEOG members but also the Central and Eastern Europe Group, and some member States of the Asia group, e.g. Japan.).

*Examples of regional representation*

At its first meeting, the Interim Chemical Review Committee of the Rotterdam Convention elected a bureau composed of one representative per region, i.e. from Germany (Chair), Cameroon, El Salvador, Hungary and Japan (rapporteur).

The Implementation Committee of the *Montreal Protocol* is composed of 10 members, i.e. two per region. The composition of the Committee at its 29th session in November 2002 was as follows: Ghana and Senegal for the African group, Bangladesh and Sri Lanka for the Asian group, Bolivia and Jamaica for GRULAC, Bulgaria and Slovakia for CEE, Australia and United Kingdom for WEOG.

**3.2.2.2. Country designations**

Many MEAs specify different obligations and treatment for countries designated as developing country Parties, least developed country Parties,

developed country Parties and countries in transition (CITs) to a market economy or economies in transition to a market economy (EITs). See also, 'International Cooperation', and 'The Rio principle of common but differentiated responsibilities'.

#### **3.2.2.2.1. Developing countries**

Many MEAs specify different obligations and treatment for developing countries. In the absence of applicable definitions or mechanisms to determine which countries are developing countries, the practice in MEAs has been for countries to voluntarily self-identify.

As noted below, the OECD has a list of developing countries for purposes of donor country reporting of bilateral aid. That list includes some countries that are also Eastern European. Other organizations, including the World Bank, have their own definitions. No such list or definition has been taken as authoritative for purposes of interpretation of MEAs, though donor Parties have used them for purposes of managing international cooperation in relation to MEAs (see International Cooperation).

The Climate Change agreements also recognize another sub-group of developing countries, **Small Island Developing States**, which are considered particularly vulnerable to climate change and are given particular consideration in provisions related to adaptation.

#### **3.2.2.2.2. Least developed countries**

The United Nations Conference on Trade and Development (UNCTAD) is the body responsible for compiling the list of least developed countries (LDCs). This definition is used by the OECD and

also in at least one MEA. For example, the Kyoto Protocol to the UNFCCC, uses this definition in relation to the LDC Fund established under that agreement. This designation is also important with respect to bilateral aid, including bilateral aid related to MEAs.

#### **3.2.2.2.3. Countries with economies in transition**

The countries of Central and Eastern Europe and the former Soviet Union Republics, in transition to a market economy, are considered Countries in Transition (CITs) or Economies in Transition (EITs) by the DAC and the World Bank. Under several MEAs, CITs/EITs receive special consideration wherever developing countries are involved, particularly with regard to capacity development and financial assistance for implementation of the MEA in question.

#### **3.2.2.2.4. Developed country parties**

Many MEAs also specify different obligations and treatment for developed countries, particularly with respect to financing and transfer of technology. In general, there MEAs do not provide a definition of developed country. (In the UNCCD "developed country Parties' means developed country Parties and regional economic integration organizations constituted by developed countries.") As with developing countries, in the absence of applicable definitions or mechanisms to determine which countries are developing countries, the practice in MEAs has been for countries to voluntarily self-identify.

#### **3.2.2.3. UN negotiating blocs**

In order to have more leverage in negotiations within the UN system, countries with shared interests have,

over the years, constituted negotiating blocs. These groups have become a permanent feature of the system and are very active in MEA negotiations. While these groups are effectively very important, their status is generally informal, as opposed to the formal status of Parties and even regional groups. The main negotiation groups are as follows:

Group of Seventy-Seven (G-77): First constituted in 1964 when seventy-seven developing countries adopted a common declaration at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD). Today it is composed of 131 developing countries.<sup>13</sup> Meetings of sub-groups are also often held (essentially UN regional groups, e.g. the African Group, the Asian Group, GRULAC as well as the "Arab group"). The G-77 has successfully advocated for the inclusion in MEAs of specific provisions "for developing States" (usually concerning technical and financial assistance) in order to meet the needs of its members. In addition, more recently another sub category of 'least developed countries' has become commonly used." (see also 'Country Designations', and 'International Cooperation' below).

See <http://www.g77.org/>

#### ***G-77 State members***

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, Colombia, Comoros, Congo,

---

<sup>13</sup> Some lists contain 13<sup>2</sup> countries, including Yugoslavia, which has since been dissolved.

Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the 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, Palau, 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, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, 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.

- European Union (composed of the States that are members of the European Union): Currently, there are 27 member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, Bulgaria and Romania). Bulgaria and

Romania became members in 2007. For purposes of MEA provisions, the number of EU States may vary (e.g., for purposes of Article 4 of the Kyoto Protocol, 15 states are considered to be part of the EU).

Certain areas of the member States are not part of the EU, like the Channel Islands, or the Faroe Islands. Areas that are far from Continental Europe on the other hand may be part of the EU. For example, the Azores, and the Madeira islands are represented by Portugal within the EU. (see also, Territorial application).

- JUSCANZ/JUSSCANNZ: Included in this group are Japan (J), United States (US), sometimes Switzerland (S), Canada (C), Australia (A), sometimes Norway (N), New Zealand (NZ). On occasion, Iceland, Mexico and the Republic of Korea are also invited to participate in this group.
- Central/Eastern Europe: Included are the Central and Eastern European countries that are not members of the EU. Russia as well as States that were former Soviet Republics are in this group. Some MEAs contain specific provisions, usually regarding technical and financial assistance, that refer to these States as "countries with economies in transition."

The presidency or leadership of each of these groups is assumed on a rotating basis. The G-77 presidency rotates annually, and generally a spokesperson will be designated for specific issues at specific meetings. While the G-77 positions will always be expressed by the formal spokesperson, individual G-77 members will often take the floor to support the official position tabled. The groups often meet just prior to the beginning of a session and at various

times during the session itself in order to determine priorities, common positions, disagreements and, more generally, to share information and discuss and review together their respective positions as negotiations progress (EU meetings are generally mandatory). Meetings are also held between negotiating groups, e.g. between JUSCANZ and the EU, which comprise WEOG.

Cohesiveness during negotiations is not the same in each bloc. As an REIO, the European Union is rigorously cohesive in presenting a common position in its negotiations with other blocs. Its negotiating team is headed by the presidency and works in what is known as the Troika. The composition of the latter changes every six months and is made up of the Member State holding the presidency at the time of the negotiations, the Member State which will hold it for the next six months and the Commission of the European Union. The presiding Member State usually intervenes on behalf of the Union, although it may delegate this responsibility to another Member State on specific issues.

In contrast, JUSCANZ is more of an informal group and does not intervene as a bloc. Rather, it develops, in advance and to the extent possible, positions based on common interests. Each member then attempts to advance these common interests during negotiations, but intervenes independently with respect to their own interests.

During a session, Parties to an MEA that are also members of other organizations, such as the Commonwealth or La Francophonie, may also decide to meet to discuss issues of common interest and to intervene in a coordinated manner.



The issues addressed in some MEAs may give rise to negotiating blocs that are specific to the MEA in question. For instance, in the climate change negotiations 42 low-lying and island countries, all more or less vulnerable to rising sea-levels, have formed a coalition called the Alliance of Small Island States (AOSIS).

See <http://www.sidsnet.org/aosis/>

***AOSIS State members***

Antigua and Barbuda, Bahamas, Barbados, Belize, Cape Verde, Comoros, Cook Islands, Cuba, Cyprus, Dominica, Federated States of Micronesia, Fiji, Grenada, Guinea-Bissau, Guyana, Jamaica, Kiribati, Maldives, Malta, Marshall Islands, Mauritius, Nauru, Niue, Palau, Papua New Guinea, Samoa, Sao Tome and Principe, Seychelles, Singapore, Solomon Islands, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu (American Samoa, Guam, Netherlands Antilles and the U.S. Virgin Islands are observers)

### **3.3. Roles**

There is a range of actors in MEA negotiations, including States and observers, as well as institutional and individual roles. Their roles, authorities, and limitations are described and related issues are examined in the following section.

#### **3.3.1. States and Parties**

States have traditionally been, and still remain, the main actors in MEAs. MEAs, as treaties, are essentially about State to State agreements. The importance of the role of States is obvious. First, only States have the power to collectively adopt an MEA and an MEA may only enter into force through

State acts of ratification or accession. Only States which ratify or accede to the agreement become Parties or States Parties to that agreement. Second, once the MEA is in force, decisions on how to implement it may only be taken collectively by Parties as members of the COP. Observers may participate in the COP, but have no right to vote. Only States Parties may add to the agenda prepared by the Chair and the secretariat. In addition, States determine which items, within the agenda, will be treated as priorities.

- Once the MEA is in force, States that have consented to be bound by it are called "Parties" while others are termed "non-Parties".
- While each Party is entitled to a vote at a COP and all Parties are, strictly speaking, equal, it is clear that influence within the various bodies of an MEA varies depending on a number of factors. These include whether other Parties have a strong interest in that State's participation, whether the State Party belongs to a bloc in which it plays a lead role, its ability to provide financial and technical resources, and the leadership it has demonstrated during the negotiations leading to the adoption of the MEA and thereafter.
- A Party's interest in an MEA may, to a great extent, depend on whether the international activities accomplished through the instrument correspond to domestic priorities.

### **3.3.2. Observers**

The category "observers" includes a wide variety of actors: States not Party to an MEA, specialized agencies, international organizations, the secretariats of other MEAs, environmental NGOs, representatives of indigenous groups, industry, etc. As mentioned in section 3.1.1.2, among the observers, the specialized agencies and States not Parties to a Convention have more fulsome privileges to participate in meetings than the others, but for all observers, participation is a privilege, not a right.

Obviously, the role of an observer depends very much on its nature.

- **A State not Party to the Convention**, while having no right to vote, is generally accorded the privilege of participating actively in the plenary as well as in the working groups, contact groups and all other groupings. This is not a right, however, and the privilege may be withdrawn. Moreover, a body may not always accord a non-Party the privilege of intervening in any particular session, or may limit the duration and specify the time for such interventions, depending upon the situation. This is, for example, the case of the United States that, although not a Party to the *Basel Convention*, is actively engaged in the work of the various bodies of the Convention.
- **Specialized agencies** will report on the aspect of their work that is relevant to the MEA and may take part in the debates on issues that touch directly or indirectly on their mandate (e.g. in the context of the *Basel Convention*, the IMO and the ILO engaged in discussions on ship dismantling). The same is true for **international organizations** (e.g. the OECD takes an interest in the work of the *Basel Convention* in part because OECD members have adopted a binding decision on wastes which it recently amended to be consistent with the *Basel Convention*). Likewise, the **secretariats of other MEAs** will inform the Parties of their relevant activities (e.g. the secretariat of the *Basel Convention* participated in the INC of the *Stockholm Convention* since the latter Convention expressly notes the need for cooperation between the two conventions.) As with non-Party States and NGOs, these organizations have no right to participate. It is a privilege that may be withdrawn. Moreover, a body may not always accord the privilege of intervening in any particular session, or may limit the duration and specify the time for such interventions, depending upon the situation.

- **Environmental NGOs, representatives of indigenous communities and industry** will each represent the interests of their particular constituency and will attempt to have these interests reflected in the decisions taken by the bodies of an MEA. They may be accorded the privilege to intervene in plenary on the various issues, usually after the Parties, the States not Parties and the specialized agencies have had a chance to intervene. They may also be granted the privilege of participating in working groups and general contact groups but will usually be excluded from drafting and informal groups. However, in some cases, for reasons of transparency, they may be invited to participate as observers in the initial phases of discussion by these groups, with no right to speak except at the invitation of the Chair. Obviously, these observers can also play a key role by lobbying delegations in the corridors, informally suggesting text, holding information sessions on their activities, talking to the media, etc. Frequently, they also play a key role in providing information on the extent of domestic implementation and in alerting the international community to new problems not sufficiently addressed by existing MEAs. However, these organizations have no right to participate. As with non-Party States and IGOs actors the privilege may be withdrawn. Moreover, a body may not always accord the privilege of intervening in any particular session, or may limit the duration and specify the time for such interventions, depending upon the situation.

### **3.3.3. Chair**

#### **3.3.3.1. Chair (or President) of the INC or the COP**

##### **3.3.3.1.1. General**

Elected to preside over the work either of an INC (when an MEA is being developed or is not yet in force) or a COP (once the MEA is in force), the President, commonly and elsewhere in this handbook referred to as the Chair, is a key actor

in MEA negotiations. He or she also Chairs the Bureau. While in theory many of the formal and informal functions of a Chair allow him or her to exercise a great deal of influence on the outcome of meetings, in practice the extent of a Chair's authority depends very much on his or her own personal and diplomatic skills as well as whether there is broad support for the proposals before a meeting. Ultimately, the Chair remains under the authority of the COP and therefore, while in practice a decision of a Chair is not often challenged, it is always subject to being overruled by a COP.

#### **3.3.3.1.2. Election of the Chair**

The President, or Chair, is elected by all Parties to the COP. The position rotates among the five United Nations regional groups (however, the Chair for an INC is often the same person for the duration of the negotiations to promote consistency in the way the negotiations are conducted). In practice, representatives of the five regional groups hold informal discussions prior to the first meeting and a consensus on who will Chair is arrived at long before the matter is formally introduced. The person ultimately chosen as Chair no longer represents his or her country since the Chair must be, and must appear to be, impartial (see Process Issues and Violations).

#### **3.3.3.1.3. Functions and powers**

As the person formally responsible for the orderly and efficient conduct of a meeting, the Chair has many functions and powers, including, to:

- open and close meetings
- introduce, usually with the assistance of the

- secretariat, each item on the agenda;
- recognize and give the floor to a representative of a Party or observer. If more than one delegation wants to intervene on a matter, the Chair will give the floor to delegations in the order they signified their desire to speak. Parties will be allowed to intervene first, followed by observers. The secretariat will assist the Chair in identifying the order in which Parties ask to intervene;
  - allow or refuse discussion and consideration of proposals, amendments to proposals or procedural motions circulated for the first time on that day;
  - determine whether a matter is substantive or procedural in nature;
  - decide when to put a question to the vote;
  - determine the order of voting on proposed amendments;
  - allow or refuse a Party to explain its vote;
  - rule on points of order;
  - call a speaker to order when remarks are irrelevant or repetitious;
  - ensure that the rules of procedure are followed – for instance, a Chair could determine that lack of quorum prevents a vote from taking place;
  - Chair the meetings of the Bureau held during the meeting;
  - designate the Chairs or co-Chairs of working groups, contact groups, etc – however, with regard to the Chairs of subsidiary bodies, their election is normally a responsibility of the COP; and,

- review the draft report of the meeting prior to its adoption.

The Chair may propose to the plenary:

- impose time limits on interventions;
- limit the number of interventions of each representative on any given issue;
- limit the number of interventions before putting a question to the vote or closing the discussion on an agenda item;
- adjourn or conclude a debate; and,
- adjourn a session.

More generally, a skilful Chair is often a key factor to a successful meeting. He or she can lead in plenary by encouraging representatives to focus on key issues, by asking representatives to clarify complex positions, probing positions for challenges and opportunities (in a balanced way), etc. A Chair is also frequently called upon to participate and intervene in working groups and contact groups. A Chair also has the discretion to form a group of Friends of the Chair to attempt to resolve particularly difficult issues (see section on smaller groupings). In addition, the Chair will often be invited to meetings held by regional groups in order to, among other things, discuss in advance upcoming agenda items.

Between meetings, a Chair will prepare with the secretariat and in consultation with the other members of the Bureau, a provisional agenda. Moreover, he or she will preside over inter-sessional meetings of the Bureau.

#### **3.3.3.1.4. Functions during negotiations of a draft MEA**

The Chair may exercise great influence on the development of a negotiating text (see section on Chair's text).

- The Chair may propose a determination of which moment sufficient views have been received from various countries to proceed with the drafting of a negotiating text that can serve as a basis for negotiations. The negotiating text will often be assembled by the Chair with the help of the secretariat, or may proceed based on a text put forward by a Party. The Chair will then present and explain his or her approach to discussing the text to the plenary, and if the text was put forward by a Party, the Chair would normally ask that Party to explain their text.
- Between and during negotiations, the Chair will hold informal consultations with the negotiating blocs and work to identify issues of concern and identify common ground among the various positions. For instance, the Chair could attend a GRULAC meeting to share his or her views on the progress of negotiations and to discuss some of the key issues. In the final days of the negotiations, the Chair could intervene in small groups to broker consensus.
- During the plenary, the Chair will hear various views on a specific issue and may put forward proposals (to delete brackets, eliminate text, suggest new wording for acceptance) when he or she feels that members are ready to compromise and finalize the text.



### **3.3.3.2. Chairs of other groups**

Any formal or informal group created in the context of an MEA requires a Chair or co-Chairs. In some cases the same function will be performed by a facilitator or co-facilitators. In the case of a subsidiary body, the Chair is normally elected by the COP (usually by consensus), unless the latter decides otherwise. For other groups, Chairs are chosen at the suggestion of the Chair of the INC or COP, often after informal discussions with interested Parties. In the case of co-Chairs, usually one is chosen from a northern Party and one from the South. In any case, the Chair's performs the same functions and objectives set out for the Chair of the COP above. Whatever the outcome of a particular group, it is for the Chair of that group to report to plenary on the results of the meeting.

### **3.3.4. Bureau**

#### **3.3.4.1. Composition and election**

The Bureau is composed of at least one representative of each UN regional group. The size of the Bureau varies. For instance, the Bureau of the *Rotterdam Convention* on PIC has 5 members, the Bureau of the Stockholm Convention on POPs has 10 members while the *Basel Convention* has a Bureau of 5 members but also an Expanded Bureau of 13 members. The officers of the Bureau are as follows: a Chair, a rapporteur and Vice-Chairs. The first two positions rotate among regional groups and there is at least one member per region on the Bureau. In addition, members of subsidiary bodies are, in some MEAs, *ex officio* members of the Bureau. In the case of the Expanded Bureau of the *Basel Convention*, the two co-Chairs of the Open-ended Working Group and the Chair of

the Committee administering the mechanism for promoting implementation and compliance with the *Basel Convention* are full members of the Bureau. The members of the Bureau are elected by the COP (see section on Bureau, under Machinery). In practice, discussions are held prior to the meeting between the various regional groups to arrive to an agreement on the members that will serve on the Bureau. Members do not usually serve more than two terms.

#### **3.3.4.2. Functions of the bureau**

Between sessions, the Bureau will work closely with the secretariat to provide administrative and operational direction with regard to the work that the COP or subsidiary bodies have asked the secretariat to accomplish. As the Bureau must also plan for the upcoming meetings, it will discuss agenda items and meeting structure with the secretariat. For instance, the Bureau will consider how many workings groups/contact groups will likely be necessary, how long the High-level segment of the meeting should be, what dates and venues should be selected for future COPs and subsidiary groups, whether there are any pressing budget issues and so on. It will receive and examine reports that are prepared by the secretariat in the interim, including reports of a budgetary nature. It can also be tasked with substantive tasks. For example the Expanded Bureau of the *Basel Convention* frequently examined draft interim guidelines for an Emergency Fund. These guidelines reserved an important role to the Bureau with regard to the fund.

During meeting, the Bureau normally meets daily to discuss how the meeting is proceeding and what to anticipate for the next day. As there is at least

one member per region on the Bureau, each of them usually consults regularly with his or her own regional group in order to keep the Bureau abreast of particular concerns raised in the respective groups.

The Bureau also has the responsibility, at the beginning of the meeting, to examine and report to the COP on the credentials submitted by representatives.

### **3.3.5. Secretariat**

A secretariat's function is to serve the Parties, and in doing so, it is always presumed to be neutral. The secretariat's functions are discussed in more detail in section 3.2.1.3. Its key functions during meetings relate to supporting the Chair to conduct a meeting effectively.

At the beginning of the meeting, after introductory remarks by the Chair and a representative of the host country, the Executive Secretary of the secretariat will normally address the plenary. As the meeting progresses through the agenda, the Chair will frequently rely on the secretariat to explain the documentation. In addition, the secretariat will actively help the Chair in the procedural aspects of the meeting. It will take notes of changes to a text and proceed to make the revisions, under the supervision of the Chair. As mentioned previously, it will also assist the Chair in recognizing delegations from the floor and providing a speakers list. The secretariat can also provide information to the Parties, as well as various experts needed by working groups or contact groups on financial, legal and other matters, as well as the necessary support personnel.

## **3.4. Drafting issues**

### **3.4.1. General**

Drafting issues arise in a number of MEA contexts, such as treaty negotiation, decisions of Conferences of the Parties, recommendations from subsidiary bodies to Conferences of the Parties and meetings of related organizations such as UNEP Governing Council. Approaches to strategic flexibility, drafting terminology (including drafting structures), common provisions of MEAs and other drafting issues are addressed below.

#### **3.4.1.1. Initiation of discussion on a text**

In general, there needs to be a sufficient basis of common understanding of an issue in order to elaborate a text. If either at the point when a text is proposed or at any time during discussion of a text it appears that there is not a sufficient basis of common understanding, alternative information gathering and discussion options should be explored. For example, a workshop could be considered.

#### **3.4.1.2. Strategic flexibility**

An agenda and all proposals that are to be the subject of discussion should be made available to Parties (or other States participating in an INC) prior to the meeting (often there are specific deadlines set in rules of procedure). A national negotiation mandate should be developed, based on the agenda and any proposals received. The mandate should be based on national interests rather than positions set out in specific language. It should also be designed with options and fallbacks so that it is flexible enough to allow negotiators to respond to proposed texts as they evolve during a meeting. Preparation should be done with reference to the whole annotated agenda for the meeting and with specific regard to

the draft proposals under discussion, with a view to minimizing the number of interventions required to achieve your negotiating position.

At the negotiations, Parties will have varying views about negotiating texts. In making a drafting suggestion one should be careful without being pedantic. Nothing loses more negotiating capital with other Parties than repeated stubbornness about insignificant points. In fact, demonstrating a willingness to explore drafting flexibility can help a negotiator build influence and ultimately achieve important points. Negotiators should have a clear sense of priorities, be prepared to adapt priorities depending on opposition and opportunities presented by other Parties, and should avoid proposing meaningless changes for stylistic or grammatical reasons.

Negotiators should always understand their negotiating position well enough so that they can maintain their substantive points as required by the negotiating mandate, yet be flexible enough with language to accommodate proposals by other countries. Interventions on other Parties' proposed text or on bracketed text (see below) must be diplomatic, and preferably should provide precise language to resolve the negotiator's concern, directing the Chair and the room to the precise paragraph and line. It is generally strategic to build on proposals put forward by other negotiators, so it is important to be able to re-conceptualize issues in different ways, based on a clear understanding of national interests. Alternatively, if major structural revisions are required in order to reflect key interests, then providing your own compelling conceptual framework is important.

When another Party's position is compatible with yours, an ideal intervention allows the other language to stand while proposing precise textual additions or changes that meet your negotiating mandate. Where another Party's intervention is directly opposed to your delegation's interests, it is important to express disagreement politely in the form of square brackets around the language. It is also useful to focus and limit opposition as much as possible. Providing a clear, concise rationale for opposition, and a clear alternative proposal may help sway those delegations that have no firm position and enable the room to come to a compromise solution.

When proposed language is longer than a few words it is helpful to read the text at dictation speed, and/or indicate to the Chair that a written copy will be made available to the secretariat for the next textual revision, or for the meeting report, as the case may be.

#### **3.4.1.3. Clarity versus ambiguity**

The type of language used in a treaty depends on the particular context. As treaties are legally binding, it is important that treaty language be as clear as possible in order to measure compliance by Parties. Recognizing that "constructive ambiguity" is often used to produce agreement in the waning hours of negotiation, this should nevertheless be avoided if possible. As ambiguity could mean that there has not been a meeting of the minds, this could later on complicate domestic discussions on how to properly implement the treaty in question. Moreover, ambiguous drafting may lead to a situation where a treaty body, such as a compliance committee, may need to make an interpretation in order to make a decision. This may result in outcomes that negotiators could otherwise have avoided.

#### **3.4.1.4. Legalese**

As noted above, precise and clear use of language is generally preferable for legal drafting, including treaty and decision text. Often, the use of legal language (e.g. terms like *mutatis mutandis*, described below) can make a text more clear and concise. However, the over use of legalistic language appears to be relatively common in MEA texts. It only serves to undermine the clarity of a text, and should be avoided.

#### **3.4.1.5. Drafting terminology**

Understanding certain terminology is important to be able to keep pace with drafting discussions. Words often used are: "square brackets," "chapeau," "article," "paragraph," "sub-paragraph", "preamble" or "recital" and "mutatis mutandis."

##### **3.4.1.5.1. Square brackets**

Square brackets connote a lack of agreement about the text they contain, possibly including when a text has simply not been discussed. Where a proposed text is offered for discussion for the first time in an MEA forum, such as when it is drafted by the secretariat at the request of countries, generally the Chair will invite Parties to insert square brackets in an early round of discussions to indicate those areas with which they have difficulty. (Sometimes the first round of discussion will be limited to the general and conceptual level.) Once areas of difficulty have been identified, the brackets around the whole text can be dropped.

If there is any doubt about the acceptability of any text, square brackets should be considered. However, there will often be pressure from the

Chair and other Parties to a minimum, so one should be prepared to give some justification, even if it is only to indicate that consultation within your delegation is required. Depending upon the time available for discussion, a proliferation of brackets can make it difficult to manage negotiation of a text, especially where a complicated set of nested options is inserted. At worst, Parties might even have to reconsider whether the text or part of a text in question is a useful basis of discussion. When used well, brackets help to focus discussion on points of concern and allow for inclusion of alternatives in brackets for negotiators to consider at subsequent sessions or meetings.

The following, taken from the *Biosafety Protocol* negotiations, provides a glimpse of the complexities of square brackets:

Article 6 – Notification<sup>14</sup>

1. The Party of [import][export][may][shall][notify] [or] require the [importer] [or] [the exporter] to notify in writing [the competent national authority of] the Party of import [and the Biosafety Clearing-House] [and, where applicable, [the designated national competent authority of] the Party of transit] prior to the [first] intentional transboundary movement of an LMO that falls under the scope of Article 5. The notification shall contain at a minimum the information specified in Annex I.

<sup>14</sup> This is cited from the Draft Negotiating Text for the 6th Biosafety Working Group meeting in Cartagena, Colombia in February 1999; text dated November 18, 1998, contained in UNEP/CBD/BSWG/6/2.



### 3.4.1.5.2. Mutatis mutandis

*Mutatis mutandis* is a Latin phrase that is used to mean 'with such changes as are necessary on points of detail.' It is often used where a principle or rule applies in more than one context. For example, the rules of procedure for the COP generally apply *mutatis mutandis* to its subsidiary bodies. This term should be used with care, however, as in some cases it is put forward when there is a need for more specificity.

#### **Chapeau of an article: Article 5 of the *Stockholm Convention***

##### Measures to reduce or eliminate releases from unintentional production {CHAPEAU}

Each Party shall at a minimum take the following measures to reduce the total releases derived from anthropogenic sources of each of the chemicals listed in Annex C, with the goal of their continuing minimization and, where feasible, ultimate elimination:

(a) Develop an action plan or, where appropriate, a regional or sub-regional action plan within two years of the date of entry into force of this Convention for it, and subsequently implement it as part of its implementation plan specified in Article 7, designed to identify, characterize and address the release of the chemicals listed in Annex C and to facilitate implementation of subparagraphs (b) to (e). The action plan shall include the following elements: [SUB-PARAGRAPH]

**Chapeau to a paragraph: Article 4 of the  
Basel Convention.**

Article 4

General Obligations

1....

2. Each Party shall take the appropriate measures to: {CHAPEAU}

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects; [SUB-PARAGRAPH]

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal; [SUB-PARAGRAPH]

Some recitals on precaution:

**Recital in the preamble of the  
Vienna Convention for the Protection of the  
Ozone Layer:**

*Mindful* also of the precautionary measures for the protection of the ozone layer that have already been taken at the national and international levels.

**Preamble to the *Biosafety Protocol* :**

*Reaffirming* the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development...”

**Recital in the preamble of the *Stockholm Convention*:**

*Acknowledging* that precaution underlies the concerns of all the Parties and is embedded within this Convention.

**3.4.1.6. Amendments and interim numbering**

If a text is generally acceptable as a basis of negotiation, then detailed amendments may be prepared and proposed. When providing written revisions, it is useful to follow a standard format, such as:

- Language to be deleted should be put in square brackets with the bolded word "Delete" at the beginning of the square brackets, e.g. **[Delete:** All governments should consider the importance of the global transition to sustainability]
- New language to be added to the text should be put in square brackets, preceded by the bolded word "New" with the new text written in italics, e.g. **[New:** *The new generation of global sustainability challenges require new forms of partnership and solidarity between nations*]
- Existing language to be changed in the text should be put in square brackets, preceded by the bolded word "Revised" with the revised language to be underlined, e.g. **[Revised:** It is particularly important that developed country governments consider the importance of the global transition to sustainability]

Where a text has been under negotiation, new paragraph proposals do not alter the paragraph numbering; otherwise there will be confusion. In such cases, the international technique used is to create provisions called "bis," "ter," "quater," "quinque," etc. to indicate a second, third, fourth, fifth etc. after the original provision. In treaties, this type of numbering will be rectified after the negotiations are over.

#### **3.4.1.7. Elaboration and editing of text**

In general, MEA processes have secretariat support for editing of documents before the adoption of final texts. For UN bodies, there is a standard approach to editing for spelling, grammar and style, including dates, numbers, capitalization, punctuation, quotations, as well as the structure of recitals and operative provisions. Some secretariats will pre-edit, proof read or provide informal advice on drafting. This can help avoid difficulty in adopting final texts. There are a number of simple rules of thumb to keep in mind. In a report or other document it is preferable to use simple sentences. A decision is technically one long sentence, often with many clauses and sub-clauses. There should generally be only one operative verb in each paragraph. Avoid acronyms, the use of the word 'and' to link paragraphs. Refer to other documents with footnotes rather than in the body of the text. With respect to English, standard UN spelling usually (but not always) takes UK forms particularly for nouns, and often takes US forms for verbs that end in 'ize'. Numbers 10 and higher are written in numerals. Note also that the US definition of 'billion' is used, i.e. a thousand million. In most cases, existing model text can be used.

## 3.4.2. Treaties

### 3.4.2.1. Initial negotiating text

Treaty and decision texts are created in a number of ways. For example, the *Stockholm Convention* on POPs evolved from a request by INC-1 to the secretariat to provide a basic text that could be considered by the INC at the next meeting as the negotiating text. In other contexts, such as the *Biosafety Protocol*, the secretariat was requested to draft less controversial provisions while countries made submissions on key issues that eventually were turned into a negotiating text by the Chair. The latter process that included several rounds of Party draft text resulted in a very cluttered "final" negotiating text heading into what was planned as the last session in Colombia.

In every multilateral negotiation, each delegation should consider which type of process is preferable for the creation of the initial treaty text. This decision will be based on a number of factors, including the novelty of the area of international environmental law, the level of controversy, whether your delegation's views would be properly reflected in a secretariat text, the perceived competence of the secretariat, and the process more likely to facilitate negotiations. The more appropriate the initial treaty text, the easier negotiations will be. Annex B Case-Study IV provides a case study of how a Canadian delegation inserted a proposal into the negotiating text of the *Stockholm Convention*, laying the groundwork beginning at INC-3.

### 3.4.2.2. Preamble

Preambular texts tend to be fairly long and less precise than operative provisions, although this is not a virtue, and drafting is typically left till the end of

the negotiating process. From a policy perspective, the preamble is used to establish the history of the issue, to refer to relevant pre-existing conventions and instruments and to explain how it came to be managed by the international community in treaty form; it is also used as a repository for matters not accepted for inclusion in the operative text. Because preambular text can come into play in treaty interpretation as part of the treaty context as per the *Vienna Convention on the Law of Treaties*, it is important that it be crafted in a manner that is supportive of an overall interpretive approach to the treaty that is acceptable.

Preambular text is written as a series of recitals and has a particular form as set out in the example in the annex (e.g. Annex – Preamble to the *Stockholm Convention* on POPs).

#### 3.4.2.3. Objectives

The article on objectives in MEAs is among the most difficult to draft in a sensible fashion. There is an unfortunate tendency to have the objective crafted as, both, means and ends, rather than just the end to be achieved by the treaty. This article may also be used to insert issues that are not gaining traction elsewhere. A clear objective is useful in that it should drive all of the treaty activity and constitute the key basis upon which the evaluation of the effectiveness of the treaty is to be measured.

##### **Objective in the *Stockholm Convention***

**Article 1:** Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants.

### **Objective in the CBD**

**Article 1:** The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

### **Objective in the *Biosafety Protocol***

**Article 1:** In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

#### **3.4.2.4. Control provisions**

As noted above (in 'Elements of MEAs'), control provisions in MEAs are substantive provisions which focus on an agreement to act or not act in a certain way in order to protect, conserve or enhance the environment. These commitments may focus on results, and take the form of control measures, standards or limitations, including specific bans and/or quantifiable targets. They may also include or focus on process (e.g. prior informed consent),

or mechanisms to govern decision making and how certain activities are managed, the latter of which may be broken out and elaborated.

Control provisions should be examined from two perspectives: perceived difficulties a Party might have complying with strong language and environmental impacts if the language will not control other countries strongly enough. Where a Party seeks legally binding obligations, such provisions should be written with the use of mandatory terms such as "shall" as opposed to "should". Negotiators tend to use "shall" coupled with other words that soften the impact of the "shall". For example, "shall, as appropriate" or "shall encourage" or "shall promote". For more on "should" and "shall" see 'Forms of MEAs' above, and 'Decision Texts' below.

It is generally important to avoid the word "ensure" whenever possible as it is generally used inappropriately (see 'Decision Text', below). An obligation should be constructed clearly enough so that it will be fairly obvious as to whether a party has complied or not with its obligations. Consideration should be given to whether obligations should be crafted as obligations of result, or obligations of method. Emission reductions are obligations of result and unless the means of reduction are specified in a treaty, each party will have the option of achieving that target in a number of ways. Alternatively, if the obligation is to implement a prior informed consent system for hazardous wastes, this is an obligation of method. Again, negotiators will have to consider which type of language is appropriate in the context.



**Obligation of method – Article 6(1) of the *Basel Convention*:**

(1) The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

**Obligation of results – Article 2A (1) of the *Montreal Protocol*:**

(1) Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than 10 per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.)

**3.4.2.5. Final provisions**

Final provisions address issues such as depositary, languages, entry into force, voting, reservations,

signature, application, amendments, and annexes (some of which are addressed above). The text of final provision tends to be very similar from treaty to treaty, and negotiators are advised to refer to precedents in other MEAs as these are heavily referenced by secretariats and legal drafting groups in drafting and reviewing these treaty texts. Nevertheless, there is some variety, particularly in texts regarding amendment of annexes, so precedents should be considered very carefully and any variations from precedent given appropriate consideration (see also 'Treaty Mechanisms').

### **3.4.3. Decision texts ('should' and 'shall')**

Conferences or meetings of the Parties to MEAs use decisions to transact their business. Decisions taken under an MEA are generally considered not to be legally binding unless that MEA explicitly provides the authority for legally binding decisions. If such authority is not provided for, but is required, Parties may decide to amend an agreement (see 'Amendments' above). However, amendments generally enter into force only after they are ratified by a certain number of Parties, or in some cases, in the absence of a certain number of objections.

There are examples of decisions including mandatory language (using 'shall') taken under treaty provisions where it is not clear that there is authority to do so (e.g. Article 7 Guidelines under the Kyoto Protocol). Some Parties are of the view that if such decisions are adopted by the Parties, this reflects a clear intent on behalf of the Parties to accept a legally binding obligation. This notion should not be relied upon. In general, so that the intent of all Parties is clearly established, it is preferable to provide a clear delegation of authority in an agreement where this is the intent of the Parties, and to avoid mandatory language in decisions where the agreement in question contains no such authority (see also 'Control Provisions' and 'Decision Texts'). Parties have

different views on these issues, so it is often important to seek legal advice on them.

An example of an agreement, which provides authority for legally binding decisions is the *Montreal Protocol*, and which also provides for the Meeting of the Parties to decide to make adjustments that expand the coverage of the agreement.

**Example of provisions in MEAs providing for binding decisions:**

***Montreal Protocol – Article 2(9)***

(a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:

(i) Adjustments to the ozone depleting potentials specified in Annex A, Annex B, Annex C and/or Annex E should be made and, if so, what the adjustments should be; and...

(d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.

Even non-binding decisions should be carefully negotiated for several reasons. First, they create good faith and political expectations including that Parties will comply with the decision. Second, some treaty bodies use decisions to provide effective interpretations of the treaty that were not made explicit in the treaty. Third, some decisions may contain or approve guidelines on a particular subject that may become the subject of an amendment or separate international agreement on the subject at a later date.<sup>15</sup> Indeed, it is possible that a non-binding text could be converted by Parties into

---

<sup>15</sup> For example, under the *Convention on Biological Diversity*, the Bonn Guidelines have been drafted regarding access to genetic resources and the sharing of their benefits. At the World Summit it was agreed that an international regime would be developed on the same subject matter. The Bonn Guidelines will have an influence on any international regime that is developed.

a binding text through amendment (e.g. under Article 18 of the Kyoto Protocol), and there are examples in other areas of international law where a review or compliance mechanism is then added.

It is very important that decisions that are not intended to be binding are drafted in language that is not mandatory. Other options include permissive language, such as "may"; or hortatory language such as "should"; rather than mandatory language, such as "must" or "shall." It is also very important, if mandatory language is used, that there is a clear authority for the treaty body in question to take a decision with mandatory language on the subject in question. (see 'Forms of MEAs' as well as 'Control Provisions' above).

As noted above, it is preferable to avoid the word "ensure" especially in conjunction with mandatory verbiage, as it is generally used inappropriately. "Ensure" means to make certain or guarantee, so it should not be used in a situation where governments are not in a position to effectively implement. (see 'Control Provisions', above).

When in a particular forum, it is useful to have previous decisions as precedents, but also important from a substantive perspective to have a set of the most recent decisions on the topic under consideration.

**Decision VI/5 of COP VI of the CBD, on Agricultural biological diversity:** ... Moreover, funding for the implementation of the programme of work should be reviewed....Identify and promote the dissemination of information on cost-effective practices and technologies, and related policy and incentive measures that enhance the positive and mitigate the negative impacts of agriculture on pollinator diversity, productivity and capacity to sustain livelihoods, through:...Identification, at international and national levels, in close collaboration with relevant international organizations, of appropriate marketing and trade

policies, legal and economic measures which may support beneficial practices. This may include certification practices, possibly within existing certification programmes, and the development of codes of conduct.

Decisions typically take the form of a series of preambular clauses or recitals, followed by numbered operative text with the actions that Parties are to take. The opening word of each preambular or operative paragraph has significance:

- if a COP is asking for the assistance of another organization, it would not "request" action as it does not control that organization; rather it is considered more appropriate to "invite" the other organization to assist.

Decision VI/38 of COP VI of the *Basel Convention* on Competent authorities and focal points – paragraph 2- Invites non-Parties and interested organizations to identify contact persons for the Convention, if they have not done so, and submit the relevant information to the secretariat, including any modifications or additions as they occur;

- if action is considered urgent, Parties can be "urged"<sup>16</sup> to take action, if less urgent, Parties can be "invited"

Decision VI/3 of COP VI of the *Basel Convention* on the Establishment and functioning of the *Basel Convention* Regional Centres for Training and Technology – paragraph 9: Urges all Parties and non-Parties in a position to do so, as well as international organizations, including development banks, non-governmental organizations and the private sector, to make financial contributions directly to the Technical Cooperation Trust Fund, or in kind contributions, or contributions on a bilateral level, to allow all the Centres to become fully operational;

---

<sup>16</sup> Such as to ratify a treaty amendment

- since the secretariat is the tool of the Parties/countries, it can be "requested" to take certain actions, as can subsidiary bodies or the Parties themselves

Decision VI/27 of COP VI of the *Basel Convention* on the Transmission of information.- paragraph 2- Requests the Parties to use the revised questionnaire and its manual to report data and information to the secretariat in accordance with Articles 13 and 16 of the Convention.

- a subsidiary body or the secretariat can be given firmer direction via "instructed"

Decision V/22 of the CBD on Budget for the programme of work for the biennium 2001-2002- paragraph 20 – Instructs the Executive Secretary, in an effort to improve the efficiency of the secretariat and to attract highly qualified staff to the secretariat, to enter into direct administrative and contractual arrangements with Parties and organizations...

- where a report is not desired to be approved as such, it should only be "noted"; this can be a useful approach when a negotiator is asked to approve a report she/he has never read; where a report has been read and is supported by a delegation, the following words are appropriate: "welcomes," and where strongly supported: "endorses."

Decision V/3 of CBD on the Progress report on the implementation of the programme of work on marine and coastal biological diversity – paragraph 2 – Endorses the results of the Expert Consultation on Coral Bleaching, held in Manila from 11 to 13 October 1999, as contained in the annex to the present decision;

Care also needs to be given that if a particular treaty article directs action to be taken in a certain way, such as by decision, then the draft text's operative provisions should use the word "decides."

#### **3.4.4. Recommendations**

Recommendations are typically used by scientific, technical or compliance bodies—i.e. those bodies that are subsidiary to the Conference of the Parties—to couch advice and propose actions. Sometimes such advice is couched in recommendation form and other times the recommendations are provided to the COP in the form of draft COP decisions. In both situations, even where the ultimate decision will not be legally binding, care needs to be taken to make the recommendations as palatable as possible for the reasons cited above.

### **3.5. Documents**

#### **3.5.1. General**

Negotiating MEAs gives rise to diverse documents. Many of them are official meeting documents prepared either in advance of a meeting (pre-sessional documents) or shortly after it has ended (meeting report). These documents are normally posted on the official website of the MEA in question. Other documents will be drafted and distributed for the first time at the meeting itself

(in-session documents) with the immediate and short-lived aim of influencing negotiations. This type of document dies with the end of the meeting and is not posted on the MEA website.

#### **3.5.2. Pre-sessional documents**

Most of the pre-sessional documents are prepared by the secretariat and made available on the treaty website in advance of the session, although some may be submitted by Parties and circulated by the secretariat as information papers.

As a rule, these documents should be available in the official languages of the MEA. In practice, they are often first issued in one language and later translated. Moreover, while these

documents should be circulated at least six weeks in advance, many may only be ready on the eve of the meeting. This is often the case for pre-sessional documents of a budgetary nature.

### **3.5.3. In-session documents**

Different types of documents are distributed at the meeting itself. Included among these are the following:

#### **3.5.3.1. Conference room paper (CRP):**

These documents serve a number of purposes: to explain in detail the position of a Party or negotiating bloc on a complex issue; to put forward new negotiating text; to report to the plenary on the results of the deliberations of a group. They are officially numbered (CRP.1, CRP.2 etc.) and their origin is clearly identified (from a group of countries, from a working group etc.). As mentioned above, these papers die at the end of the meeting. However, a Party may ask that part or all of a CRP be included in the final report of the meeting. CRP documents are often used when there is not enough time for translation the official languages, as would be required for an L document.

#### **3.5.3.2. L. document**

These documents contain conclusions and decisions, and are central to the process, and must be translated into all six official languages before they are adopted. The "L" stands for "limited distribution" as these documents are distributed only to meeting participants for the limited purpose of adopting their content. For instance, at the end of a COP, the secretariat will distribute to the Parties a draft final report identified as an L.doc. and the Chair will then ask Parties to approve it. It will then go through a formal secretariat editing process. Often, a pre-



editing service is available, which can help avoid difficulties related to the final approval by Parties. Likewise, a draft decision will be circulated as an L. doc. In some cases, the Chair may propose adoption of items without the text having been circulated. If so, you should ask that an L version of the text in question be made available. Reports of sessions often provide an overview and contain addenda that may contain a number of specific decisions that, in turn, may contain annexes. These texts are very important. It should be noted that annexes and addenda are considered to be part of the document to which they are annexed or added. The legal effect of such texts is determined by reading a decision as a whole, with reference to the underlying authority for the decision.

#### **3.5.3.3. Informal document**

A Party may draft what is called a non paper for any number of reasons: for information purposes; to float possible proposals in order to elicit comments from other countries or to generate support. Contrary to CRPs, they have no official numbers. Observers or other groups may also distribute informal documents outside the meeting rooms either to provide information or to attempt to influence negotiations, or for both purposes. The secretariat will also circulate informal documents that contain the most recent version of text still subject to negotiations in various groups (e.g. the Legal Drafting Group will regularly receive an updated informal copy of whatever texts it is working on).

#### **3.5.4. Chair's text**

In order to assist the process of negotiating a draft MEA, a Chair may be asked or may take the initiative to put forward a negotiating text. This may occur either before or during the meeting. In the negotiations of the *Stockholm Convention*,

the Chair was asked by the INC 4 to clean up the draft text of the Convention in time for INC 5, including making attempts to address some of the non-contentious brackets. During the sixth meeting of the Open-ended Ad Hoc Working Group to negotiate a Protocol on Biosafety, the Chair, on the fifth day of the negotiations, introduced a Chair's text (numbered as an L. doc. as it was distributed at the meeting – see UNEP/CBD/BSWG/6/L.2 ). Some of the key provisions in this text differed significantly from the draft negotiating text previously distributed as a pre-sessional document.

### **3.5.5. Report of the meeting**

The report of the meeting is a key document as it records all the substance of the discussions and the main results of the meeting and, most importantly, will include in its annexes the adopted decisions. In addition, other important documents resulting from the meeting may also be included in the annexes. For example, if during the meeting the provisions of a compliance mechanism or the terms of reference of a particular subsidiary body were negotiated in detail, the most recent draft text on these items may be included in the annexes.

The adoption of the report is always the last substantive agenda item at an INC or a COP. As mentioned previously, an L version of the report is distributed and the Chair then proceeds to the adoption of the report, normally one paragraph at a time. If you do not agree with the accuracy of a portion of the report, it is important to say so at that point otherwise it will be too late. At that point you cannot add anything that was not said, discussed or produced in the session.

At INC 6 of the Stockholm Convention, countries had divergent views with regard to the extent of the work that should be done on compliance for INC 7. Some countries would have liked the secretariat to prepare, based on written comments from governments, a draft model for a compliance mechanism. Other countries proposed that the secretariat

only prepare a synthesis based on the comments. A third group of countries wanted the secretariat to limit itself to compiling the written comments received from governments. At the time of the adoption of the report of the meeting, a number of countries stated that the report did not properly reflect the debate and, therefore, proposed modifications to the text. Further debate ensued and, in the end, the work to be accomplished on the compliance issue prior to INC 7 was laid out in some detail in the final report.

Reports of meetings do not usually name a Party that intervenes on a particular issue, referring instead to "a representative" or "some representatives". Therefore, **if you feel that your delegation's position should be clearly reflected in the report, you should mention it to the Chair in plenary and, in order for the report to record verbatim your intervention, give a copy of it to the secretariat.**

In some cases, when a meeting finishes late in the day, only parts of the draft report are available. As a result, the participants have no other choice but to rely on the secretariat to finalize the report in question. If a key issue was outstanding and not included in the draft report, you should review the complete report as soon as it is posted on the web (usually a few weeks after the meeting) to verify its accuracy. If some parts of it do not accurately reflect the meeting, you should immediately communicate suggested changes to the secretariat.

### **3.5.6. Identifiers on documents**

Like all UN documents, official documents prepared for or issued from meetings have series of acronyms and numbers which identify the MEA, the nature of the meeting, the serial number of the particular document, whether the document has been modified, the nature of the document, etc.

### 3.5.6.1. Identifiers for each MEA

For UNEP MEAs the identifiers on the document will first state UNEP, followed by the acronym for the specific MEA. For example:

- UNEP/CHW: the *Basel Convention*
- UNEP/CBD: CBD
- UNEP/POPS: the *Stockholm Convention*
- UNEP/FAO/PIC : The *Rotterdam Convention* (The secretariat functions are to be performed jointly by the Executive Director of UNEP and the Director General of FAO.)

**Documents of other MEAs will simply have the acronym of the MEA in question.**

(e.g. UNFCCC for the Climate Change Convention or ICCD for the *Desertification Convention*).

### 3.5.6.2. Identifiers for the nature of the meeting

Following the name of the MEA, an acronym will indicate which body of the MEA is meeting. The list below is far from exhaustive. While it highlights some of the most common acronyms (e.g. COP), it more than anything else, illustrates the multiplication of bodies, many of which are of a temporary nature.

**COP** – meetings of the Conference of the Parties are indicated by COP followed by a number that indicates which meeting of the COP the document was prepared for or was issued from. For instance, UNEP/CBD/COP/6/20 is the report of the sixth COP of CBD. In some cases, there is no direct reference to the COP but simply a number after the acronym of the MEA. For instance, pre-sessional document UNEP/CHW.6/1 refers to the agenda for COP 6 of the *Basel Convention*. For UNFCCC, the documents refer to the CP for the Conference of the Parties and

to the year of the meeting instead of the number of the meeting (e.g. UNFCCC/CP/2002/1 is the provisional agenda of the 8th meeting of the CP).

**INC** – meetings of the Intergovernmental Negotiating Committee. UNEP/POPS/INC.7/1 is the provisional agenda for the 7th meeting of the POPs INC.

**OEWG** – means a meeting of an open-ended working group. Document UNEP/CHW/OEWG/1/1, a pre-sessional document, is the provisional agenda for the first meeting of the open-ended working group of the *Basel Convention*.

**LWG** – means Legal Working Group. Document UNEP/CHW/LWG/1/9 is the report of the first session of the Legal Working Group of the *Basel Convention*.

**UNEP/CBD/ICCP/2/1** is the provisional agenda of the second meeting of the Intergovernmental Committee for the Biosafety *Protocol*.

**Further examples of documents:**

- **UNEP/CBD/SBSTTA/8/1** is the provisional agenda of the eighth meeting of the Subsidiary body on Scientific, Technical and Technological Advice of CBD
- **UNEP/CBD/BCH/LG-MTE/1/1** is the provisional agenda of the first meeting of the Liaison group of the technical experts of the Biosafety clearinghouse.
- **UNEP/CBD/CHM/Afr.Reg/1/1** is the provisional agenda of the Africa regional meeting of the Clearinghouse mechanism.
- **UNEP/CBD/MYPOW/1** is the provisional agenda of the Open-ended intersessional meeting on the

multi-year programme of work for the Conference of the Parties.

### 3.5.6.3. Identifiers to indicate modifications

Modifications to texts are indicated through the following identifiers added at the end of the series of acronyms and numbers on a document:

**Add.** – this document adds to the initial text. For instance, UNEP/CHW.6/1/add.1 is the annotated provisional agenda that adds information to the provisional agenda for COP 6 of the *Basel Convention*.

**Corr.** – this is a text that corrects an error in a previous document. In UNEP/CHW.6/36/Corr.1 three corrections were made to the document on Consideration of matters related to the budget. UNEP/CBD/COP/5/1/Add.1/Corr.1 is corrections to the annotated provisional agenda for COP 5.

**Rev.** – this means that this text replaces the one previously issued. For instance, UNEP/CHW.6/INF/2/Rev.1 is an updated list of pre-session documents for COP 6 of the *Basel Convention*. UNEP/CBD/COP/5/1/Add.1/Rev.1 is a revision of the annotations to the provisional agenda of COP 5. It supersedes and replaces document UNEP/CBD/COP/5/1/Add.1 and Corr.1.

### 3.5.6.4. Other identifiers

Pre-sessional documents prepared either by Parties, observers or the secretariat for information purposes are known as **INF** documents. For instance, UNEP/CHW.6/INF/10 is a submission by Canada to the COP 6 of the *Basel Convention* providing comments on the "Analysis of issues related to Annex VII". However, comments received from Parties and circulated without any formal editing may be

classified as miscellaneous documents with the identifier **MISC**. Document FCCC/SBSTA/2003/MISC.3 for example contains individual submissions from nine Parties to the Subsidiary Body for Scientific and Technological Advice of the UNFCCC on needs for specific methodological activities and on a strategic approach to future methodological work. Each of the submissions is reproduced in the language in which they were received and without formal editing.

## **3.6. Strategic issues**

Approaches to achieving one's negotiating mandate differ depending on the size of the meeting and the type of group in question: a plenary, a contact group, a drafting group, a "Friends of the Chair" session or a meeting of experts. This section first addresses issues common to most meetings, regardless of their size, and then turns to strategic issues as they play out in meetings of different sizes.

### **3.6.1. Common strategic issues**

#### **3.6.1.1. Meeting preparation**

Always be prepared. Know your brief thoroughly, including all of your fallback positions, and be ready to respond to questions from other delegations, both formal and informal. Always carry your negotiating instructions and briefing book with you.

You should learn about a particular forum before you arrive (e.g. its objectives, history, and structures, key players), and have access to the rules of procedure should you need them. You should also have a copy of the relevant MEA and consult it frequently during your discussions. If you are participating in negotiations with responsibility for specific issues,

you should nevertheless have a copy of the whole draft text in order to keep the overall context in mind.

#### **3.6.1.2. Venues to build support**

Immediately prior to and at the meeting, participate in regional discussions related to your issues to generate support for your delegation's approach (e.g. in JUSCANZ or WEOG). Get to know your foreign but like-minded colleagues responsible for your issues, as this will facilitate reaching agreement as the meeting progresses. In most cases, you should communicate to them your delegation's initial position only.

Informal discussions before the meeting and during breaks are important venues to discuss your delegation's positions "on the margins" and canvass and encourage support for them. Working or social meals with other delegations can also be a means to improve rapport and understanding generally and on specific issues. Be prepared to participate in meetings during lunch hours.

#### **3.6.1.3. At the microphone**

If you are responsible at the microphone for an issue on behalf of your delegation, you should never leave the chair/microphone unattended. When numbers permit, you should ideally have another member of the delegation with whom you can consult, and who can carry notes and drafting proposals to other delegations on your behalf, while you engage in debate.

At the beginning of the meeting, you should ascertain the method of being recognized by the Chair: this can be by raising your Party's name card



(called the "flag"), by pressing a button or both<sup>17</sup> and in any meeting, but particularly in smaller groups, by getting the attention of the secretariat member supporting the Chair.

All interventions are directed to the Chair. Upon being given the floor, you should thank the Chair before moving into your intervention, all of which should be framed as an address to the Chair, even when points are intended for a specific Party.

**A good intervention:**

- **is spoken slowly** for the benefit in particular of the interpreters and for those whose first language is not covered by interpretation services;
- **is concise**;
- provides your delegation's **position** clearly along with a compelling **rationale**;
- provides **precise drafting language** in the simplest terms possible;
- works to the extent possible **with existing language**; and,
- **avoids re-opening issues** that have been laid to rest/have had square brackets eliminated; alternatively, in the rare case where circumstances justify re-opening, be prepared for resistance and justify why your approach should be followed (for example, it helps solve a set of square brackets).

It is critical to listen carefully to the interventions of others and, to the greatest extent possible, support interventions that are generally consistent with your own position in order to generate support for your delegation's proposals. In your intervention, it is

---

<sup>17</sup> It is rare to be in a room where the order of interventions is shown on a screen, so it is often difficult to time an intervention exactly as one would like.

strategic to indicate support for particular countries that have a common position and, in doing so, to name countries from different regions where possible. As noted in the section on Drafting, where you cannot agree with a proposal, you need to clearly say so, identify the concern, ensure that the proposal is bracketed, and if possible, insert your own into the text (in brackets when there are other points of view).

The timing of an intervention is a matter of judgment (see section on Strategic issues in a plenary/large meetings). Whenever possible, let other countries do the heavy lifting. For instance, if another Party has already intervened to secure one of your objectives, for example to insert square brackets around problematic text, and if this has been accepted, you may not need to intervene. However, it may be important to show support and generate momentum for Parties with whose position you agree, but who appear to be isolated. In such cases it is important to at least register your delegation's position, and possibly to provide supporting rationale. Moreover, if it is likely that a small group may be convened to discuss the issue, making an intervention may result in an invitation to join the group. And otherwise, if the other Party concedes, it will be difficult to prevent the Chair from closing the issue.

Before making an intervention, particularly if it is complex or sensitive, you should consult other members of the delegation(s) most concerned with the topic and obtain their views on the intervention. For major interventions, it is ideal to have a printed text available for consultation and for use during the intervention. For responsive interventions in the heat of debate, it is important to jot down your key points before you intervene.

If you are in a meeting and it appears that you have little or no support in a room for your delegation's position, there are a number of options available to you:

- You may wish to confer with other members of your delegation, and possibly with your head of delegation.
- If you are alone, you may wish to intervene with questions for other delegations (without being obstructionist).
- In exceptional cases, such as the final stages of a negotiation where you are alone in a small group, you may try to contact your head of delegation by cell phone, if this is an option. Depending upon the kind of group you are in, you could ask for a brief adjournment, or in extremis you could suggest the Chair consider an issue on which your delegation takes no position and step out of the meeting. If any such a situation is foreseeable, it is strongly preferable to make arrangements ahead of time.
- You can seek the support of other delegations by approaching them via a member of your delegation or others, or if alone, by leaving your microphone only briefly.
- You can apologize to the meeting, clarify your concern, insert square brackets but indicate that you will confer with your delegation/capital to see if you can release the square brackets later in the session.
- You can use a range of drafting/wording strategies (see Drafting).

If these strategies are not successful, another option is to concede a point on the condition that your delegation obtains satisfaction on other issues of

importance to it. If you cannot achieve your bottom line, such a decision should be taken in consultation with your head of delegation. Prior to making this kind of proposal you should, to the extent possible, first conduct informal consultations with other countries. For example, you could indicate to the Chair that this was an important point for your delegation, but that in order not to hold up progress, your delegation is releasing its objection, with some expectation of a sympathetic consideration regarding issue X, which arises later. Depending upon the state of negotiations you may need to make it explicitly clear to the Chair that if your delegation is not satisfied with the outcome on issue X, your delegation will then reserve the right to revisit the original issue. However, sometimes it may be more effective to manage such situations informally, so that Parties are not forced to react for the record.

#### **3.6.1.4. Note-taking**

Be prepared to report to the delegation, clearly and concisely, on what happened on your issue. Take detailed notes, particularly on negotiating text changes. This will help you verify the accuracy of the next version and of the final meeting report. As square bracketing in negotiating text can be complex at times (see, for example, 3.4.1.2.1), it is important to verify that all of your textual changes and square brackets are properly inserted by the secretariat in the succeeding draft. Also, noting which delegations and regions had particular perspectives in support or opposition to your own will enable you to more effectively target delegations you need to win over or support.

## **3.6.2. Strategic issues in a plenary/large meeting**

### **3.6.2.1. Interventions**

As noted in 3.4.1.1 on drafting strategy, it is important in a meeting to intervene only as often as necessary to secure a resolution of an issue in line with your delegation's mandate. In large negotiating venues, such as a plenary, negotiators tend to intervene only once on a particular issue. In plenary, if it is necessary to intervene a second time, the negotiator may apologize to the Chair for intervening again on the matter. However, UN protocol aside, ultimately the bottom line is achieving your delegation's negotiating position by being forthright and speaking when the negotiating text is not satisfactory. Therefore, a sufficient number of interventions should be made to secure your position and also increase the likelihood that the Chair will name your delegation to join any closed drafting groups or friends of the Chair.

Unless you are, for a particular reason, trying to lead opinion in the room and start a wave of support, it is usually wise not to make an intervention too early. It is useful to wait and hear from each of the five UN regions at a minimum; look around the room to gauge the number of flags raised in order to intervene at an appropriate moment. There may be certain countries that you want to follow because you know their position and want to rebut or support it.

As other countries speak, it is important to take note of interventions being made in the room by Party and region; this enables the delegation to assist the negotiator at the microphone to "work the room" by shopping alternative proposals and drafting suggestions to other delegations.

### **3.6.2.2. Written proposals**

If a position is particularly complex, or a completely new negotiating text is desired, a new proposal could be more easily accepted, or at least understood, if presented as a Conference Room Paper ("CRP"), a formal numbered paper distributed only in the language(s) in which it was prepared. CRPs die after the meeting at which they are presented and are not found on the UNEP treaty websites.

Another option is to circulate among potentially like-minded countries an informal document called a "non paper". This handbook provides ideas, allows for the integration of comments from other countries, and can generate support. Because of its informality, it is not submitted to the secretariat as a CRP and does not receive a number.

### **3.6.2.3. Unsatisfactory text at the end of the day**

Where the delegation is not successful in having a text finalized according to instructions, whether the text is a draft provision of an MEA or a COP decision, it may insist to the Chair that its particular understanding of the text in question be reflected in the meeting report. This understanding may later serve as interpretative guidance.

Where the text at issue is a provision of a draft MEA, a delegation may:

- seek to have an issue mentioned in a resolution at the diplomatic conference formally adopting the treaty. This is often done when an issue has not been addressed directly in the treaty itself. Mention of it in the resolution may keep this issue alive for the future.
- seek to have the issue included in the interim work programme.

- formulate, in cases where there are serious concerns about the text, an interpretive statement upon signature or file it with an instrument of ratification. Since most MEAs preclude the filing of reservations to the treaty (see section 2.3.7.), these interpretive statements should be prepared in consultation with legal and policy advice.
- **block**, if the concern is of paramount importance, **adoption of a treaty text** where the decision making rule is by consensus. This is done only in rare and very serious cases, and would have to be done by the head of delegation, probably in consultation with capital.

### **3.6.3. In smaller groupings**

As mentioned above, most negotiations take place in groups other than the plenary, whether in working groups, in contact groups, in informal groups in drafting groups, through Friends of the Chair, or otherwise. Many of the methods previously mentioned may be employed to make your point in these venues. You should continue to speak through the Chair unless the level of informality does not require it. It is acceptable to make more frequent interventions, and such meetings are often heavily influenced by personality and the synergy that arises when compromises are actively sought.

Meetings of smaller groupings are held in various places. While often they are around hollow square tables, in some cases the Chair sits facing the room. **Choosing where to sit is often key in small groups**, so arrive early and deposit your papers on your preferred seat. Make sure to be located so that the Chair can see you clearly. This will prevent the Chair from "conveniently" not recognizing you for whatever reasons, including when you are about to express a controversial position. On occasion it may be important to sit beside the delegation of another Party with a similar position to facilitate consultations. However, if too many like-minded countries

sit together, be aware that this may be perceived negatively. For instance, if some like-minded countries are seen as intransigent, while you want to be perceived as more flexible, this seating arrangement could hurt your position. If you wish to intervene after others have done so, it is useful to sit at the back of a room where you can see all of the flags raised. In other situations, such as in a very small drafting group, you may wish to sit in the middle to have more influence and eye contact with the entire group.

Location can also be important at meetings where text is negotiated on an overhead screen. You definitely want a seat where you have an unobstructed view of the text. This type of negotiation is easier because there will be a print-out at the end of the session, but you should still take notes and verify the text carefully before and after it is printed out.

#### **3.6.4. Expert meetings**

Expert meetings will normally be set up with a clear mandate from another body, typically the COP. Usually a group, anywhere from roughly 30 to 60, is selected, based on equitable geographic representation and relevant qualifications.

Individuals attending expert meetings are not expected to represent national positions, but rather to provide expert advice (nonetheless, representatives are generally expected to avoid openly criticizing their Party's own position). If a participant has any doubts about this, it can be clarified beforehand with the Chair or secretariat and made clear to all at the outset of the meeting. This means that the results of an experts meeting may later be disclaimed by any government, including those that sent participants. However, you should be mindful that if your delegation's participant agreed with a report from an expert meeting, there will be some expectation that your delegation will likewise agree with it when the report is presented to the COP.



Because an expert is not expressing a government view, there is typically less strategizing at these meetings. Nevertheless, the techniques on interventions are still relevant, as are the strategies of speaking to other experts outside the meeting to try to influence their interventions. Ultimately, your delegation's expert should try to ensure that his or her views are reflected fairly in the meeting report. This is even more important when these views are not shared by the majority of participating experts.

It is important to understand at the outset the nature of the outcome to be generated by the meeting. In other words, you should be careful to ensure that the meeting report reflects what the mandate required. If the COP did not ask for recommendations on an issue, no such recommendations should be included in the meeting report; it should only contain a summary of the different perspectives raised.

### **3.6.5. Secretariat**

As previously mentioned, secretariats are intended to be neutral servants of the Parties to an MEA (see the section on roles). However, it is important to remember that some secretariats have an agenda of their own and advice received from them should be taken with this in mind. On the other hand, informal conversations with secretariat personnel are often very useful as they will often be able to share their insights on how the meeting is progressing. At the same time, secretariat staff does not necessarily always have accurate information or a clear understanding of rules or process.

When proposals are made from the floor, these should be provided to the secretariat in writing as soon as possible to facilitate inclusion in the text or meeting report.

### **3.6.6. In the Chair**

If you are approached to chair an ad hoc meeting, you should speak/consult with your head of delegation to consider whether this is in your delegation's best interests. There

are a number of considerations to be taken into account. If your delegation is small, it may deplete your numbers too much to be able to allow it to function effectively in that and later sessions. At times, you may be asked to act as Chair because you are clearly one of the most qualified persons to do so; alternatively, it can be because you are a compromise candidate or your delegation's strong position is known and the offer to chair is intended to neutralize your delegation.

When your delegation is chairing a session, it may make it more difficult for your delegation to take strong positions – without putting the Chair in a difficult position. Therefore, if you are making interventions with your delegation in the Chair, you should generally take as low key an approach as possible in achieving your negotiating position. Further, there may be times when your colleague will rightfully rely on you to facilitate his or her role as Chair, by proposing compromises or supporting procedural approaches and decisions. However, there are times when your mandate will require you to intervene forcefully. If you can foresee such a situation, it is a good idea to warn your colleague in the Chair ahead of time.

### **3.6.7. Shaping overall negotiation outcomes**

#### **3.6.7.1. General**

It is always important to keep in mind that the result of any negotiation session is almost never just a collection of outcomes on specific issues. All Parties and actors need to consider the overall balance of outcomes, that is, the degree to which individual Parties and groups of Parties have been more or less successful in achieving their objectives. Particularly at the higher official and political levels, overall outcomes need to be seen to have 'something for everybody.' In this respect, regional balance is consistently an important consideration, particularly with regard to North / South and sometimes EU /

JUSCANZ balance, but every situation is different.

Even if you are working on a specific issue, you need to consult with others, and particularly your head of delegation, on how your issue fits into the different scenarios for overall outcomes. Even if you believe that your interventions provide the most compelling rationale, you may find that the outcome on your issue will be determined more by considerations of overall balance than of substance. Therefore, it is important to be able to position negotiation objectives within a rationale for how a package of outcomes can be constructed to satisfy concerns about overall balance, as well as producing coherently integrated results which make sense at a practical level.

The bigger and more important the negotiations, the more important are macro level considerations, including timing, venue, High-level decision making, communications, leadership and vision. While these issues are clearly the domain of higher level officials and Ministers, all members of a delegation need to consider how their issues may fit into and be affected by big picture considerations.

### **3.6.7.2. Timing**

In some cases, an issue may not be "ripe" for decision by the COP, and may be deferred for decision at a later date. There may be various substantive or strategic reasons for either timely or delayed decisions, including the availability of relevant information, urgency, progress on related issues, or how an issue fits into the overall package at a specific meeting.

Strategic thinking about shaping the final package is important from the outset, but there are certain

critical points of particular importance, such as when the agenda is being set, or when negotiations are at the point of moving from one body to another.

### **3.6.7.3. Venue**

Where an issue is or could be dealt within different groups, it is also important to consider how the structure of the meeting, and the influence of different actors may impact outcomes, and to consider working through the bureau for the most reasonable or advantageous allocation of issues among negotiation groups. Often it is more important to influence process than to develop strong rationale and substantive positions. Strategically influencing the venue and participants, in key discussions at the official and ministerial level, can be much more efficient and effective at producing desired outcomes. Relationships are important in this context, and delegates who are more familiar with the key players and the process have a distinct advantage.

In general, technical discussions are best handled in smaller groups, subsidiary bodies, or informal groups. The more an issue involves policy choice, the more it will need to be addressed by the plenary of a subsidiary body, the COP or a High-level forum. Where there is a lack of agreement on policy issues, often a solution can be brokered among key players in a "Friends of the Chair" format. If an issue is still unresolved toward the end of a session, another option is to set up more technical discussions in order to develop more options for policy makers. The issue can be sent back to a technical group for the next session, or to an intersessional technical meeting or workshop.

Where it can be foreseen that there will be difficulty reaching consensus on an issue with technical dimensions, often a side event during a session may be a useful way to raise understanding and comfort levels on policy options.

#### **3.6.7.4. Setting up high-level decision-making**

Some diplomatic conferences are set up with a view to addressing high-level policy choice issues, some of which will require high-level political decision making, and generally require the involvement of Ministers. These conferences require a higher level of organization and strategic preparation, and generally culminate in a 'high-level segment' that is set up to resolve key issues. Other conferences will be of a more technical nature, or the policy choice issues can be resolved at a relatively lower official level, and do not require this much preparation.

Setting up higher level decision making in order to achieve desired outcomes requires a broad perspective not only of the specific issues under negotiation in any given session, but also of related, current, past and future negotiations, as well as relationships among key players. At this level, the art of the deal involves setting up the trade-offs in such a way as to allow for balanced outcomes, aggregating issues and constructing options so as to produce desired outcomes. If emerging outcomes are unexpected or undesirable, it becomes necessary to focus on how the most important issues are treated, and how they could quickly be realigned in a new strategy.

It is particularly important to keep in mind that high-level officials and Ministers will generally not be able to deal with more than a very few issues (usually a half a dozen or less) with clear options.

If they are overloaded, they will generally opt for simple solutions. This dynamic can be and is used strategically, and is of particular concern to those Parties whose proposals are complex. If you are supporting such a position, you need to make progress at the working level, and be concerned about delay tactics. Another consideration to keep in mind is that high-level decision making is relatively final. Whereas technical issues may be re-considered as a matter of course in relation to new developments, high-level decisions are rarely reconsidered, and once an issue is set up for a high-level decision it is very difficult to stop or change the direction of the decision making process. So it needs to be set up well in the first place.

#### **3.6.7.5. Communications**

Communications can often be used as an effective tool to put pressure on other delegations in negotiations, particularly during high-level negotiation segments, where ministers are involved as they are more politically sensitive. Communications tactics are also generally advantageous for those Parties or stakeholders whose positions are or can be made to appear simple and straightforward. Many Parties regularly integrate communications into their overall negotiation strategy. When communications are at issue, it may be particularly useful and important to consult and coordinate with stakeholders inside and outside the delegation.

#### **3.6.7.6. Leadership and vision**

It is very important to consider the role of leadership, such as the bureau and presidency of a COP, and the secretariat role in supporting such leadership. The secretariat and the Chair or presidency will often

develop a strategy and an overarching vision of the package of outcomes which they see as necessary in order to gain agreement and move forward. Parties that can work on this level, influencing or presenting their own compelling vision, can greatly increase the likelihood of being successful with their mandate. In almost every case the Chair and the secretariat will endeavour to be neutral, but they nevertheless need to show leadership.

It is generally important to work with and support the Chair and the secretariat, but in some cases you may find that they are consistently working toward outcomes that are incompatible with your mandate. In the latter situation, it is very important to work at high levels and through the bureau to ensure that your concerns are addressed. And in any case, it is always important for the delegation to follow bureau discussions to learn about issues that are raised by others.

Regional groups play a key role, organizing and coordinating leadership on different issues of common concern to the group, as well as feeding into bureau discussions. Not only is it important for the delegation to participate in the appropriate regional group, but it may also be useful to monitor and, where possible, influence the deliberations of other groups.

One of the most powerful tactics that can be employed by a Chair is to present a 'take it or leave it' package near the end of a session. In some cases they may indicate that they will consider a limited number of changes only. In such situations, one or a few Parties may be isolated. If you can foresee a likelihood of your delegation being isolated in such a way, it is important to consider whether or not

your delegation is in a position to block consensus. It is far preferable to seek solutions before a public ultimatum comes from the Chair. If your delegation is in a position to block consensus, it is important to be able to convince the Chair that your delegation's position is firm, and that if negotiations are to have a successful outcome, other options must be found. Similarly, if another Party is likely to block consensus, it is important to seek solutions, and consider how this may affect general and specific outcomes.

### **3.6.8. Practicalities**

Often delegates will be asked to negotiate under conditions where they lack sleep, food, water and other amenities. All-night sessions are typical on the eve of the final negotiating session<sup>18</sup> and are also known to occur at Conferences of the Parties.<sup>19</sup> The ultimate strategy is to come prepared. Start the day with a good breakfast as it may be your last meal of the day. Always be prepared with food, drink, medication, tissues, coins for vending machines and the like. If you are not tied up in a late-night group, try to support other members of your delegation by sitting with them to provide moral, drafting, and food-fetching support. No one should be left alone negotiating late at night for both security and substantive reasons.

---

<sup>18</sup> This happened in the case of the *Kyoto Protocol*, the *Biosafety Protocol* and the *Stockholm Convention on POPs*, to name just a few.

<sup>19</sup> For example, COP6 of the CBD ended after two weeks at midnight; COP6 of Basel ended at 2 a.m. on the Saturday morning



## **3.7. Process issues and violations**

### **3.7.1. Management of meetings**

It is not uncommon for the Chair, secretariat or other actors in a negotiation process to violate applicable rules, or to violate the apparent spirit of those rules either intentionally or otherwise. Often they do so with the implicit consent of the Parties, and in fact, if not challenged it would be presumed that Parties have consented. In many cases, Parties may consciously acquiesce, in the interests of supporting an agreement. However, often Parties appear to accept violations from actors in roles of authority without recognizing that such violations can be challenged.

Ultimately, any decision of a Chair can be challenged and overruled by a decision of the Parties (see section on the rules of procedure). Moreover, where consensus is required, any Party can block a decision by the Chair. However, it is rare for Parties to take such an action even if they consider it, as there may be a number of direct and indirect disadvantages to opposing a Chair, and it is considered important to maintain the appearance of consensus.

Nonetheless, there are some key actors who may consistently violate processes, either wilfully or not, and most negotiators will eventually encounter at least one. The most obvious example of a key actor in a position to make such violations is the Chair of a meeting. If you encounter such an actor, or are unsure, it is important to consult your delegation's legal advisor and/or head of delegation to consider the implications and options.

Often it is possible to coordinate with like minded Parties and develop a strategy to manage such an actor, with informal discussions, polite interventions from the floor (often humour and humility are effective persuasive tools). Working with the secretariat can also be key, as they may be the source of the problem or the solution, or both. A similar approach can be

followed whether the Chair or actor in question needs help or whether they are the source of the difficulty. In both cases, direct informal approaches to the Chair can be effective, but obviously the strategy varies. Such approaches, if necessary, usually need to be taken at a senior official or head of delegation level.

*Examples of specific violations:*

- When a Chair makes "rulings" on matters of substance (a Chair can only 'rule' on matters of procedure, substance is the purview of the Parties);
- When a Chair arbitrarily cuts off debate and gavel a decision over the objection of a Party;
- When a Chair imposes a text upon the Parties;
- When a Chair ignores a request to speak from a Party;
- When a Chair requests approval of a decision before Parties have been provided documentation of a decision (sometimes even before a decision has been formulated);
- When decisions on amendments or supplemental agreements are taken which are not in accordance with the relevant provisions of a treaty;
- When subsidiary bodies exceed the terms of their mandate;

*Examples of violations of the spirit of the rules:*

- When a Chair becomes a clearly partisan participant in negotiations;
- When the Chair of a Conference makes "take it or leave it" proposals;
- When a Chair attempts to isolate, exclude or undermine a Party, or privileges or colludes with a Party;
- When a host or other influential Party abuses its position and influence (by, for example, announcing or attempting to impose agreements unilaterally or prematurely);

- When new texts are presented at the last minute and accepted as the basis of negotiation, without a rationale for urgency or other justification;
- When informal negotiations disadvantage a Party because of language ability;
- In general, nothing prevents a Chair from making any kind of proposal, but when they purport to impose text or decisions, this should be seen as a process violation.

### **3.7.2. Participation in meetings**

In general, formal meetings are open to participation by all Parties, unless the rules or a decision provide otherwise (see 3.1.1.8). Informal meetings are not subject to the rules, and may be organized by any Party or actor in any way that they wish. Informal meetings are often called "informals", "informal working groups", and "Friends of the Chair" are also considered informal. Informal meetings organized by the Chair of a formal group are effectively subject to a certain amount of transparency, at least with respect to outcomes that a Chair may present to a formal group. Parties may block progress in negotiations if they are not satisfied with how informal groups have been organized.

In many contexts, there is some uncertainty about the status of particular groups, such as "working groups" and "contact groups" (an exception to this observation is the POPs Convention, where decisions are being considered which would clarify that working groups and contact groups are subject to the rules of procedure). The latter are generally treated as formal groups subject to the rules of procedure, but not in all cases. The former can be treated as either formal or informal. Determination of the status of a group can be made by ascertaining whether or not the group was created by agreement or decision (there are a number of "ad hoc groups" or "joint working groups" which have been created by decision and are treated as formal bodies, subject to the rules).

If a group is created by decision, then unless that decision provides otherwise, the rules of procedure can be expected to apply. Therefore all Parties, even those bodies with designated or elected membership, should have access, at least as observers. If membership is not limited in such a decision, than Parties should have full rights to participate, including the right to translation services.

In some cases, particularly for high-level negotiations, a decision may be taken by the bureau to limit participation in focused negotiation formats. Such decisions can be controversial, and issues of representation are common, although generally regional groups simply select a number of participants, often with lead responsibility for particular issues.

### **3.7.3. Other issues**

In some cases, the secretariat may purport to enforce process rules, often on the direction of the Chair and/or the bureau. Usually these rules should be respected, but if you are prevented from doing something you need to do, you may wish to consult your head of delegation or legal advisor. In general, a rule that would deny access to a member of your own delegation is very questionable.

## **3.8. Funding**

To achieve the goals set out by MEAs, funding mechanisms are often an integral part of individual agreements. These MEAs and their associated financial support are complex, and requirements and restrictions regarding access to funds are variable and subject to frequent change. The Global Environment Facility (GEF) and Thematic Trusts are the most common funding mechanisms for MEAs. Regardless of the agency, eligibility criteria are usually specified by the MEA and/or designated convention authority and may be subject to change annually.

### **3.8.1. Global Environment Facility (GEF)**

#### **3.8.1.1. General**

The GEF is the designated financial mechanism for some MEAs (CBD and UNFCCC) and the interim mechanism for others (*Stockholm Convention and the Desertification Convention*). The GEF has a 32 member Governing Council as well as an assembly. Since 1991, GEF has distributed over \$6.2 billion in grants and generated over \$20 billion in co-financing from other sources to support over 1,800 projects that produce global environmental benefits in 140 developing countries and countries with economies in transition.

The GEF has a 32 member Governing Council as well as an assembly. Consistent with the GEF's 13 operational programmes, projects are supported in six interlinked focal areas:

- biodiversity
- climate change
- international waters
- ozone
- land degradation
- persistent organic pollutants

Capacity building is both a cross-cutting and a stand-alone theme.

Funding is administered by the GEF secretariat, while projects are developed and undertaken by the three Implementing Agencies (IAs) – World Bank, UNDP and UNEP – and seven Executing Agencies – Food and Agriculture Organization (FAO), United Nations Industrial Development Organization (UNIDO), Asian Development Bank (ADB), Inter-American Development Bank (IDB), African

Development Bank (AfDB), International Fund for Agricultural Development (IFAD) and the European Bank for Reconstruction and Development (EBRD) – in collaboration with recipient countries.

Recipient countries propose projects to the Implementing and Executing Agencies that then develop them through the project pipeline before submitting them to the GEF secretariat and Council for approval.

### **3.8.1.2. Project funding**

#### **3.8.1.2.1. Principles**

GEF funds activities based on the following principles:

- **Additionality:** funded activities would not be undertaken in absence of GEF support
- **Incrementality:** funded activities produce global environmental benefits that are beyond local or regional benefits required for national development. GEF determines incremental costs by subtracting the costs of baseline activities from estimated total project costs.
- **Complementarity:** funded activities must be coherent with national programmes and policies to maximize global environmental benefits

#### **3.8.1.2.2. Eligibility**

In addition to using GEF Operational Programmes (OPs) as a guiding framework, project eligibility requirements include endorsement by host government, identifiable global benefit, participation of all affected groups, transparency, consistency with Conventions, strong scientific and technical merit, financial and institutional sustainability, inclusion of monitoring and

evaluation frameworks, and catalytic role in leveraging other financing.

### **3.8.1.2.3. Development streams and project types**

There are three proposal development streams and four project types funded by the GEF.

- **Project Preparation and Development Facility (PDF)**
- **Block A (<\$25,000):** fund early stages of project identification, approval by IAs
- **Block B (<\$350,000):** fund necessary information gathering, approval by GEF CEO
- **Block C (<\$1 million):** fund technical design and feasibility work, approval by GEF Council
- **Regular projects** (over \$1 million in GEF contribution): require co-financing, go through entire project cycle – approval by GEF Council
- **Medium-sized projects** (not more than US \$1 million in GEF contribution): require co-financing, go through expedited processing – approval by the GEF CEO
- **Enabling Activities** (not more than US \$450,000): do not require co-financing, designed under Operational Guidelines for Enabling Activities – approval by GEF CEO
- **Small Grants** (up to \$50,000): managed by UNDP, help community-based groups and NGOs address local problems related to GEF focal areas – approval by UNDP

### **3.8.1.3. Relationship to MEAs**

- The MEAs provide guidance to the GEF through their text and through decisions by their respective COPs.

- The GEF secretariat is responsible for coordinating with MEAs secretariats and for representing the GEF at meetings of the MEAs. The GEF Council is responsible for ensuring that GEF-financed activities conform to convention guidance.
- Parties to MEAs should keep in mind that the GEF provides incremental costs; therefore, guidance provided to the GEF should address incremental costs only.
- The MEAs providing guidance should address policies, programme priorities and eligibility criteria, but should avoid micromanaging the GEF with too much guidance.
- The GEF secretariat proposes to the Council how guidance from the MEAs may best be incorporated into GEF policies, programmes and strategies. The secretariat consults with the IAs, the Scientific and Technical Advice Panel (STAP), and the appropriate MEA secretariat in preparing proposals.
- MEA guidance is operationalized by translating it into guidelines and criteria that, with the GEF's OPs, are used to develop operational activities.
- GEF's OPs correspond to Focal Areas and directly reflect MEA objectives and priorities. They provide a conceptual and planning framework for the design, implementation, and coordination of a set of projects within a focal area.
- The GEF Instrument is amended when new focal areas are introduced. At the October 2002 Council meeting, the Instrument was amended to allow POPs and Land Degradation as focal areas.
- Representatives of the GEF and IAs attend COPs as observers but do not actually participate in negotiations. GEF organizes workshops at these



meetings to communicate current activities and to informally solicit input on further guidance. Where appropriate, negotiators should undertake consultation with GEF staff to promote guidance that is realistic and practical.

- The GEF reports regularly to the conventions, through the CEO, on the development of operational strategies and the results being attained by GEF-funded projects. Individual countries are not required to report on GEF-funded activities in their national reporting and communications to the COPs.

#### **3.8.1.4. Resource Allocation Framework**

As one of the policy recommendations for the Third Replenishment of the GEF, which was finalized in November 2002, the GEF agreed to develop a system for allocating resources to countries based on the ability to deliver global environmental benefits and performance. In September 2005, the GEF Council adopted the Resource Allocation Framework (RAF), a new system for allocating resources to increase the impact of GEF funding on the global environment. The RAF allocates resources to a country based on its potential to generate global environmental benefits and its capacity, policies and practices to successfully implement GEF projects. The implementation of the RAF began in July 2006 and applies to resources for financing biodiversity and climate change projects. The Council has expanded support for GEF to develop national focal points and national capacity to assist countries to better understand and make use of the RAF approach. Two new initiatives – Country Support Programme (CSP) for focal points and the GEF National Dialogue Initiative, which are expected to provide

opportunities for stakeholders to seek clarification and provide feedback about the RAF.2006 – were organized by the GEF to explain the RAF and its operational aspects to all countries. Operational experience with the RAF is to be reviewed by the GEF Evaluation Office, which is an independent office, after two years of implementation.

#### **3.8.1.5. Responsibilities of MEAs focal points**

- National MEA Focal Points provide guidance to the GEF through their participation in COPs negotiations. They may also provide guidance through communication with National Operational and Political GEF Focal Points represented at GEF Council.

In relation to the GEF, National Convention Focal Points are responsible for:

- receiving and distributing convention documentation
- coordinating national policies consistent with the conventions
- communicating government views and reporting on conventions
- acting as in-country contact points for consultations

#### **3.8.1.6. Issues related to relationship with MEAs**

- GEF can have difficulties in translating broad MEA guidance into practical operational activities. As a result, clarity in the decisions of the COPs to the MEAs is essential. MEAs should consistently provide clear guidance that can be translated into meaningful action in support of MEA objectives.
- GEF is limited in its ability to respond to guidance. MEAs bodies should work to ensure that new

language factors in previous guidance to the GEF. New activities inserted by delegates without appreciating that the GEF has a limited amount of funds earmarked for each focal area necessarily reduce funding of previously approved areas.

- The Subsidiary Body for Scientific and Technological Advice (SBSTA – a subsidiary body of the UNFCCC) should not be seen as an opportunity to provide guidance to the GEF. It is at the COP itself where guidance is provided, even though wording from the SBSTA is often incorporated.
- The GEF secretariat should consult with GEF and MEA National focal points when developing operational criteria from convention guidance.
- It is important to promote country coordination among the GEF Focal Point and the National Focal Points for the MEAs.
- Guidance needs to be in the scope of the incremental cost agenda.

## 4. Cross-cutting issues

### 4.1. Governance principles and objectives

#### 4.1.1. Overview

Since the World Summit on Sustainable Development (WSSD) there has been a common understanding in the international community that international institutional frameworks are essential for the full implementation of MEAs, and more broadly, the realisation of sustainable development. WSSD produced agreement on approaches to governance, which should therefore be applicable in the elaboration of MEA implementation decisions and tools.

**Governance Principles and Objectives** (from para. 139 of *the Johannesburg Plan of Implementation* from WSSD)

- Strengthening commitments to sustainable development
- Promoting integration of the three pillars of sustainable development
- Strengthening the implementation of Agenda 21, including capacity building, particularly for developing countries
- Strengthening coherence, coordination and monitoring
- Promoting the rule of law and strengthening governmental institutions
- Increased effectiveness and efficiency of international organizations within and outside the UN system based on mandates and comparative advantages
- Enhanced participation for civil society and other relevant stakeholders

Paragraph 139 of the *Johannesburg Plan of Implementation* identifies a number of guiding principles and objectives for governance reform at the international level.

These principles and objectives guide not only the way in which MEAs are actually negotiated, but as well, the substance of the resulting decisions to promote conformity with the overarching aims of sustainable development. These principles and objectives are described below.

## **4.2. International cooperation and related issues**

### **4.2.1. Official development assistance**

Official development assistance (ODA), or foreign aid, consists of loans, grants, technical assistance and other forms of cooperation extended by governments to developing countries. As defined by the Organization for Economic Cooperation and Development (OECD), each ODA transaction must be:

- administered with the promotion of the economic development and welfare of developing countries as its main objective; and
- concessional in character and contain a grant element of at least 25 per cent.

Many states remain committed to improving aid effectiveness and to making progress towards the ODA target of 0.7% of GNP. The target was recommended in the 1974 UN Resolution on the New International Economic Order. A number of donor countries have recommitted themselves to this target at several UN conferences.

Support for countries in transition (i.e. Eastern Europe) is called Official Aid (OA). The OECD Development Assistance Committee (DAC) is the primary source for policy and statistics on ODA, as well as other related aid subjects including OA.

#### 4.2.2. New and additional financial resources

The term "new and additional" first gained prominence at the UNCED in Rio in 1992 (see section 1.1.1.2). In Chapter 33 of Agenda 21 titled "Financial Resources and Mechanisms" the term "new and additional" is used in the following contexts:

- Chapter 33.1: "...the United Nations Conference on Environment and Development should: identify ways and means of providing new and additional financial resources, particularly to developing countries, for environmentally sound development programmes and projects..."
- Chapter 33.10: "The implementation of the huge sustainable development programmes of Agenda 21 will require the provision to developing countries of substantial *new and additional* financial resources."
- Chapter 33.11 (b): "To provide *new and additional* financial resources that are both adequate and predictable."
- Chapter 33.13: "... substantial *new and additional* funding for sustainable development and implementation of Agenda 21 will be required."
- Chapter 33.14: "Funding for Agenda 21 and other outcomes of the Conference should be provided in a way that maximizes the availability of *new and additional* resources and uses all available funding sources and mechanisms."
- Chapter 33.14 (a-iii): "Ensure *new and additional* financial resources on grant and concessional terms, in particular to developing countries".

The term "new and additional" is used in the UNFCCC , CBD, the *Desertification Convention*, and the *Stockholm Convention* as well as the Johannesburg Plan of Implementation. There are many possible interpretations of the term "new and additional". These include:

1. only funding in addition to the UN target level of 0.7% of ODA/GNP

- this interpretation has been suggested by the Netherlands
- the Netherlands reports on new and additional according to this interpretation in their national communications

2. new and additional to annual general ODA funding which has remained constant or increased, in absolute terms or in ODA/GNP terms.

Negotiation of the meaning of this term is usually unproductive.

### **4.2.3. Recipient Countries**

#### **4.2.3.1. Developing countries**

The OECD identifies "developing country" by inclusion on Part I of the DAC List of Aid Recipients. Other organizations have their own definitions. The World Bank usually uses the term to refer to low and middle-income countries, assessed by reference to per capita GNP. This includes Eastern European countries, which are included on Part II of the DAC List.

#### **4.2.3.2. Least developed countries**

The United Nations Conference on Trade and Development (UNCTAD) is the body responsible for compiling the list of Least Developed Countries (LDCs). Bilateral donors officially report to the OECD on activities and levels of commitments for ODA in these countries. The list of LDCs used by the DAC is borrowed directly from UNCTAD.

#### **4.2.3.3. Countries with economies in transition**

The countries of Central and Eastern Europe and the former Soviet Union Republics, in transition to a market economy, are considered Countries in Transition (CITs) or Economies in Transition (EITs) by the DAC and the World Bank. Under several

MEAs, CITs/EITs receive special consideration wherever developing countries are involved, particularly with regard to capacity development and financial assistance for implementation of the MEA in question.

#### **4.2.4. Capacity development**

The expression is commonly used, but it can mean at least two different things:

- the process whereby individuals, groups, organizations, and societies create and implement approaches and strategies to enhance their abilities to meet development objectives in a sustainable manner; and,
- the efforts of development agencies to promote this process.

Capacity development is an endogenous process of change, which donors may attempt to promote. Donor initiatives should take a systemic, rather than a gap-filling approach. They should emphasize issues of process, such as participation, local ownership, and the adoption of appropriate timeframes.

The promotion of capacity development is meant to enhance the potential of society to act by developing technical skills and knowledge, as well as "core" capacities such as the creativity, resourcefulness, and capacity of individuals and social entities to learn and adapt. These core capacities recognize intangible capabilities: skills, experience, social cohesion, values and motivations, habits and traditions, vision, and institutional culture.

Effective capacity development should involve or take into account:

- a locally-driven agenda and broad-based participation
- building on local capacities
- starting small



- ongoing learning and adaptation
- long-term investments
- systemic approaches, integration of activities at various levels, need to address complex problems
- political realities and social values

In the context of MEAs, it is capacity development in the sense of donor assistance that is most often requested by developing countries and CITs/EITs. It usually takes the form of training, technology transfer and cooperation, and other short-term activities. For instance, Canada usually promotes a problem-based approach that is broader and country-driven, so that countries can identify their capacity needs and donors can then work to address them based on identified priorities. There is often a tendency to create lists of expertise and technologies on central websites or clearing-house mechanisms so that developing countries and CITs/EITs can search for solutions. However this has sometimes led to fitting problems to solutions, rather than the opposite.

#### **4.2.5. Technology transfer**

There are several definitions of technology transfer. For example, the Intergovernmental Panel on Climate Change (IPCC) defines it as "a broad set of processes covering the flows of know-how, experience and equipment for mitigating and adapting to climate change amongst different stakeholders such as governments, private sector entities, financial institutions, NGOs, and research/education institutions." (Special Report of IPCC Working Group III "Methodological and Technical Issues in Technology Transfer"). Technology can be defined as know-how or expertise, policy or regulatory approaches, and organizational or managerial models in addition to equipment or products. The transfer of technology is defined as the transmission of this know-how or product to partner institutions and organizations and its adaptation for use in their own cultural and development environment. This

definition implies a locally-driven, endogenous process that can only be successful using a capacity-building approach.

MEAs often call for the transfer of clean, environmentally sound technologies to developing countries to enable them to address the sources or impacts of global environmental problems within their borders. The dynamic of negotiations on this issue is often characterized by demands for the outright transfer of the ownership of clean technologies from developed countries. On the other hand, developed countries respond that most technologies are not owned by governments but by the private sector and therefore their role as Parties to an MEA is to facilitate the transfer of technologies to developing countries by, among other things, helping them to identify their needs as well as the appropriate available technologies to meet those needs. Developed countries also point to the need for an enabling environment (e.g. suitable macroeconomic conditions, protection of intellectual property rights, and codes and standards) to attract foreign direct investment that allows technology to be transferred.

### **4.3. Trends in MEA negotiations**

This section examines trends within MEA negotiations both in terms of substance and process. Substantive trends relate to the quality, scope and orientation of the actual MEA instruments. These include, for example: the increasing use of targets and integration of the three pillars of sustainable development in MEAs; the increased operationalization of Rio principles, including common but differentiated responsibilities and precaution; the enhanced recognition of the importance of community resource interests; and innovations in terms of compliance and flexibility mechanisms.

By contrast, process trends focus on the innovations and other developments that characterize the way in which MEA decisions have actually been made. These include, for example:

the increased pace of negotiations and proliferation of post-agreement negotiations; innovations related to negotiation formats and alliances; multi-stakeholder processes (e.g. the Strategic Approach to International Chemicals Management negotiating process allowed non-State stakeholders – NGOs, industry, labour organizations – a seat at the negotiating table), and the increasing challenges of fragmented decision making processes.

The identification of what exactly constitutes a specific trend is an inherently subjective endeavour. However, the trends noted below are distilled from a wide array of sources, including continuing review of the current regime and negotiation literature as well as first-hand observations of developments in a wide range of sustainable development negotiations since the 1992 Earth Summit, combined with regular communication with senior level officials active in these processes.

#### **4.3.1. Substantive trends in MEA negotiations**

Substantive Trends in Multilateral Environmental Negotiations

- Integration of the three pillars of sustainable development
- Increasing focus on time-bound targets
- Implementation of common but differentiated responsibilities
- Evolution of the common concern of humankind
- Implementation of precaution
- Increasing recognition of community resource interests
- Development of flexibility mechanisms
- Increasing focus on compliance regimes
- Increasing integration of non-State actors

#### **4.3.2. Three pillars of sustainable development**

One of the more prominent trends in the new generation MEAs is the extent to which key environmental concerns

are being increasingly addressed in a broader sustainability framework. Related to this is the increasing importance placed on the integration of the three pillars of sustainable development in those instruments. First generation (i.e., pre-Rio) MEAs such as the *Vienna Convention on the Protection of the Ozone Layer*, CITES, RAMSAR, UNCLOS had been negotiated before the concept of sustainable development had been pronounced by the 1987 Brundtland Commission and elevated as the key organising principle for Agenda 21. As such, the poverty and economic dimensions have not been addressed in the earlier instruments to quite the same extent as the second generation MEAs.

Second generation MEAs such as the CBD represent an important demarche in this regard. The CBD recognises that resource conservation must be considered in a broader sustainability framework, which embraces issues such as the sustainable use of biological resources and the equitable sharing of benefits arising from their use. The *Desertification Convention* is similarly focused, calling for integrated approaches in addressing the physical, biological and socio-economic aspects of desertification and drought.<sup>20</sup>

#### **4.3.3. Focus on targets and regulatory mechanisms**

There is an increasing use of time-bound targets and regulatory mechanisms to place substantive controls on activities of the Parties to MEAs. The trend toward targets is reflected in the Montreal and Kyoto Protocols, with their time-bound emissions limitation targets, and as a result of the Millennium Development Goals, and the Johannesburg Plan of Implementation, which contains over 30 quantitative environment and development targets. Some of the WSSD targets include: to "halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water and the proportion of people who do not have access to basic sanitation (paragraph 8); restoring the world's depleted

<sup>20</sup> See Art. 4 *Desertification Convention*

fish stocks to commercial health by 2015; and reversing the processes that lead to biodiversity loss by 2010.” Regulatory mechanisms are also being used, for example in the context of the *Basel Convention*, the *Rotterdam Convention* and the *Biosafety Protocol*. These examples of regulatory mechanisms focus on import and export controls, which are also reflected in other MEAs, including the *Montreal Protocol*.

#### **4.3.4. Common but differentiated responsibilities**

The Rio principle of common but differentiated responsibilities has been inserted into more recent MEAs. Principle 7 of the Rio Declaration on Environment and Development asserts a global responsibility for environmental protection but differentiates that responsibility according to the scope of contribution to the problem and the resources commanded to redress the impacts. The UNFCCC provides a good illustration of the principle, asserting that the largest share of historical and current emissions originates in developed countries, and as such, developed countries should take the lead in combating climate change and its adverse impacts.<sup>21</sup> Moreover, the specific commitments in the UNFCCC relating to financial and technological transfers apply only to OECD countries.

#### **4.3.5. Common heritage**

The principle of the common heritage of mankind (which affirms that no State may assert national sovereignty over global commons resources) has undergone considerable evolution since its first articulation during the UNCLOS negotiations. During the Biodiversity Convention negotiations, the principle of the common heritage of mankind was rejected by developing countries on the assumption that it would subject their biological resources to international control. This debate led to the articulation of the principle of common concern of humankind, which provides a conceptual framework for natural resources that are located within

---

<sup>21</sup> See Art. 1 of the UNFCCC

national borders but which have global significance. In this regard, the Biodiversity Convention not only generated a substantive innovation in terms of the new concept of common concern, but it was also the first MEA to expressly affirm the sovereign right of developing countries over their biological and genetic resources.

#### **4.3.6. Precaution**

In international law, the traditional obligation to prevent transboundary harm has always been triggered by a high standard of proof, namely the existence of convincing evidence that such harm will occur. By contrast, a precautionary approach provides that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm. The application of precaution is particular to the context of science-based risk management and is characterized by three basic tenets: the need for a decision; a risk of serious or irreversible harm; and a lack of full scientific certainty.

Generally, the precautionary approach is seen as shifting the burden of scientific proof necessary for triggering action from those who support prohibiting or reducing a potentially offending activity toward those who wish to initiate or continue the activity.

The precautionary approach is included in a wide range of international instruments such as: Agenda 21; *Stockholm Convention*; the Rio Declaration (see Annex D); the CBD; the UNFCCC; and the *Straddling Stocks Agreement*.

#### **4.3.7. Community resource interests**

Another interesting CBD-generated trend is the growing recognition of the importance of community-based resource rights. One of the most concrete examples of the formal recognition of the role of local communities and indigenous people is embodied in Article 8(j) of the Convention. This provision recognizes the role of traditional knowledge, as

well as the innovations and practices of these groups to the conservation and sustainable use of biodiversity.

#### **4.3.8. Flexibility mechanisms**

Another *Kyoto Protocol*-generated innovation is the development of flexibility mechanisms. The Protocol contains several mechanisms that Parties can use to obtain credit for reducing emissions in other countries. For example, the Protocol's International Emissions Trading (IET) regime allows Parties with targets to buy and sell emission credits among themselves; the Clean Development Mechanism (CDM) allows for the production of credits in developing countries; and, Joint Implementation (JI) allows for project based trading among Parties with targets. Trading allows countries that limit or reduce emissions by an amount over and above what is required by their agreed targets to sell the excess emission credits to countries that may have difficulty in meeting their own targets.

#### **4.3.9. Compliance regimes**

The UNEP International Environmental Governance process has highlighted the need for strengthening compliance regimes. In most MEAs, particularly framework conventions, compliance mechanisms tend to be weak or non-existent, with self-reporting and monitoring as the standard norm. Recent negotiations on the *Kyoto Protocol*, *Basel Convention*, *Biosafety Protocol* and the *Rotterdam Convention* have recognised the need for stronger non-compliance procedures. However, MEAs generally do not have effective means of international enforcement, with the possible exception of trade related measures, in the *Montreal Protocol* or CITES. Even the consequences agreed to under the *Kyoto Protocol* are effectively only additional obligations given to a Party.

### **Process Trends in MEAs**

- Proliferation of post-agreement negotiations
- Increased pace of negotiations
- Fragmentation
- Innovations in negotiation formats and alliances
- Formation of like-minded coalitions
- Improved rapport among individual negotiators
- Multi-stakeholder engagement and influence

#### **4.3.10. Proliferation of post-agreement negotiations**

Post-agreement negotiations have proliferated in the post-UNCED era. This trend is due to two key factors. First, the predominant framework-protocol approach to environmental treaty-making has generated a considerable volume of post-agreement negotiations related to annexes and legally binding protocols, as well as non-binding work programmes. Second, the consensus approach to UN decision making has resulted in many contentious issues left unresolved at the time of their adoption. Thus not only have post-agreement negotiations increased in volume, so too in terms of the scope of their work. For example, the Rio Conventions on Biodiversity and Climate Change have each produced one legally binding protocol, dozens of work programmes and expert panels, and several subsidiary bodies and processes.

#### **4.3.11. Increased pace of negotiations**

Another noticeable trend is the increased speed with which MEA negotiations are being conducted. The 1973 CITES was not signed until 10 years after the IUCN (known as the World Conservation Union, which includes governmental and non-governmental members) first drew international attention to the need for regulation of the trade in endangered species. Similarly, the UNCLOS negotiations took 10 years to conclude. By contrast, new generation MEA negotiations such



as the *Desertification Convention* as well as the Rotterdam and Stockholm Conventions have been concluded in record time.

#### **4.3.12. Fragmentation**

There is a web of over three hundred multilateral agreements and institutions aimed at responding to environmental problems ranging from climate change to persistent organic pollutants. However, the manner in which these environmental regimes have been established and implemented has been ad hoc and fragmented. The fragmentation is particularly pronounced in long-standing issue areas with multiple MEAs such as biodiversity and oceans. Addressing the fragmentation challenge has been a key focus of the UNEP International Environmental Governance process.

#### **4.3.13. Innovations in negotiation formats**

Another innovation in MEA negotiations has been the return to a diplomatic tradition called the "Vienna Setting" – one that involves representation from all stakeholders groups at the negotiating table. The openness and transparency of the process makes it more difficult for any government or interest group to stall the process or disown the end result. This negotiation format was successfully employed during the final stage of the Biosafety negotiations and the World Summit on Sustainable Development.

#### **4.3.14. Formation of like-minded coalitions**

Since the 1992 Earth Summit, MEA negotiations have become increasingly characterized by the formation of like-minded negotiation blocs. This trend has developed in response to the difficult challenges faced by the traditional negotiation blocs such as the G-77 in forging meaningful and coherent bloc positions.

An illustration of this trend is the AOSIS (Alliance of Small Island States) bloc that formed during the first Conference of the Parties to the UNFCCC. Recognizing the difficulties

inherent in reaching consensus within the G-77 on key contentious and politically sensitive issues related to climate change, the pre-existing group of Small Island Developing States (SIDS) maintained that they would have greater success in promoting their unique concerns outside of the confines of the G-77. The *Kyoto Protocol* also spawned another issue-based coalition, in the form of the Umbrella Group, a loose coalition usually made up of Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, Ukraine and the United States.

#### **4.3.15. Improved rapport among individual negotiators**

The increased number and pace of MEA negotiations has contributed to increased opportunities for interaction among individual delegates. The international circuit of MEA negotiations has fostered a breed of specialist diplomats, both from developing and industrialized countries, who may spend their entire working year participating in various MEA-related meetings. The above-noted problem of fragmentation has in part been mitigated by the contribution of these so-called 'super-delegates' who have helped to promote increased consistency in language and approach between agreements by highlighting potential conflicts and cross pollinating ideas.

#### **4.3.16. Multi-stakeholder engagement and influence**

Multi-stakeholder participation in MEA negotiations has increased considerably since the Stockholm Conference in 1972. Increased participation has been coupled with the increased influence of major groups in the actual substantive development of the MEA negotiations. It also reflects one of the most important trends in recent years, namely the so-called New Diplomacy Model, which is characterized by a broad range of non-State actors in the formal negotiation process. An interesting example is the role that the IUCN played in preparing the original draft of the CBD. Similarly, NGOs played an important role in ensuring that the

*Desertification Convention* included an important requirement for governments to promote the participation of NGOs and local communities in the policy planning, decision making and implementation and review of national desertification programmes.

## **5. Synthesis**

### **5.1. Typical day in UN negotiations**

#### **5.1.1. Delegation Meetings**

Usually there will be a delegation meeting on the day prior to the beginning of formal negotiations. It is important to deal with logistics issues early on, so that the delegation is ready to react at need (in some cases, delegations have had to engage in intense negotiations about agendas, prior to the opening of a session).

A typical day in UN negotiations begins with a general delegation meeting in the morning. Subgroups from the delegation may also hold their own morning meetings, usually before or after the full delegation meeting. In some cases, members of the delegation may have bilateral or other small group breakfast meetings with colleagues from other delegations.

It is important to ensure that as many members of the delegation as possible attend the general delegation meeting, which is almost always held in the morning, prior to the beginning of formal meetings. General delegation meetings are an important forum for alerting negotiators to cross-cutting issues and other issues of common interest, as well as providing opportunities to coordinate coverage of meetings and side events, and to identify areas of collaboration. In most large delegations, general delegation meetings focus on reports from lead negotiators and the head of delegation. This is very important for members of the delegation who are external to the national government, who can also often provide useful perspective to negotiators.

### **5.1.2. Negotiation group meetings**

In most cases, there will also be regional or like-minded group meetings in the morning, prior to the beginning of formal sessions. The Head of Delegation or their alternate will usually attend these meetings, along with a limited number of negotiators. Discussions in these meetings generally focus on high level strategy and strategic problem solving. These groups will also often meet the day prior to the beginning of formal negotiations for more in depth discussions. Lead negotiators in various areas also often participate in subject specific meetings with like-minded colleagues throughout negotiations, on either a regular or ad hoc basis.

### **5.1.3. Formal sessions**

Once morning meetings are concluded, delegates then move on to formal sessions, or depending upon the schedule of negotiations, they may use the time to prepare or consult. Formal sessions are usually broken into morning, afternoon and sometimes evening blocks. They may continue very late into the evening or even the early morning (though hours may be limited by translation and the capacity of delegations to participate).

### **5.1.4. Flexibility**

Delegates need to be prepared to adapt (with priorities and appropriate coordination in mind). Formal and informal sessions and meetings may be set up or changed at any time.

Negotiations are also often scheduled on any Saturday within the span of negotiations, but rarely continue beyond the last day of scheduled negotiations, as arrangements for facilities generally have deadlines and may be hosting other events. Nonetheless, it is not uncommon for negotiations to continue through the last night of a session.

Even if a delegate has no negotiation scheduled, or needs to do independent preparatory work, it is useful and important to be in contact with other members of the delegation, and if possible to circulate in the area where negotiations are being conducted, in order to take advantage of the opportunity to participate in informal discussions with other delegates and to be aware of the latest developments.

#### **5.1.5. Side events**

Side events, hosted by Parties, NGOs, IGOs and business, are often scheduled throughout the day, and these can provide useful opportunities to gather intelligence or to influence discussions in an informal way. Bilateral or small group meetings may also be scheduled with like-minded Parties, or with Parties in a position to lead compromise. Receptions provide similar opportunities for informal advocacy and information gathering. Sometimes a delegation will hold a reception, as may a Convention Secretary, local officials, business organizations or NGOs.

## **5.2. Products of MEA negotiation phases**

This section provides an overview of the overarching phases that characterize the overall multi-year intergovernmental negotiation process for MEAs. It also outlines the concrete deliverable products that emanate from each of these phases and the specific steps to be followed. The description below aims to provide a thorough overview of these phases and steps, while recognizing that they often overlap. Indeed, the following sequence described is often modified in the course of negotiations.

### 5.2.1. Pre-negotiations

#### Phases and Products of MEA Negotiations

No.	Phase	Product
	<b>Pre-Negotiations</b>	
<b>Phase 1</b>	Problem-identification	Statement of the Problem and announcement to launch a negotiating process
<b>Phase 2</b>	Fact-finding	Expert report
<b>Phase 3</b>	Rule-setting and organization of work	Agreed rules of procedures, programme of work and agenda
<b>Phase 4</b>	Issue-definition and issue-framing	Compendium of Party views and secretariat papers
	<b>Formal Negotiations</b>	
<b>Phase 5</b>	Commencement	Opening statements
<b>Phase 6</b>	Consolidation of views	Negotiating text
<b>Phase 7</b>	Expression of initial positions	General comments on negotiating text and synthesis of general comments
<b>Phase 8</b>	Drafting	Detailed amendments and bracketed negotiating text
<b>Phase 9</b>	Formula-building	Counter-proposals and/or alternative drafts
<b>Phase 10</b>	Coalition-building	Preliminary issue-based proposals and revised negotiating text
<b>Phase 11</b>	Bargaining	New amendments, proposals and bracketed text for final plenary
<b>Phase 12</b>	Agreement and adoption	Agreed text and formal reservations
	<b>Post-Agreement Negotiations and Activities</b>	
	<b>Signature</b>	
	<b>Ratification</b>	
	<b>Implementation</b>	

### **5.2.1.1. Phase 1: Problem identification**

The problem-identification phase is normally preceded by the actual precipitation of key events that bring the environmental problem to the attention of the international community. This phase may well extend over several years before the actual decision to proceed with an intergovernmental negotiation process is formally announced. It will be an acknowledgement by the international community of the problem in question (as articulated by the scientific or some other expert community) together with an announcement to formally launch a process of intergovernmental negotiations.

The time it takes for the intergovernmental process to develop varies according to various factors, such as the urgency of the problem and those who champion it as well as political, social, and economic considerations.

The precipitating events typically include a particular incident of human-induced pollution (e.g. the Chernobyl crisis), or the presentation of new scientific evidence (e.g. the growing ozone hole), or perhaps recognition of the economic repercussions from the exploitation of natural resources (e.g. the consequences of global warming).

Environmental NGOs play a pivotal role in highlighting environmental problems for the general public, raising awareness and helping to galvanize the political pressure that must be brought to bear on political leaders before any decision is taken to subject the issue in question to a process of intergovernmental negotiation.

In many other cases, the scientific community can play a decisive role in the determination of whether or not to proceed by way of an international



negotiation process. Once the issue is sufficiently brought to the fore, political leaders will be faced with the decision of how to proceed, if at all, and the type of instrument to be negotiated.

In most cases, the decision to develop a new negotiating process for an issue is made at existing UN fora. For instance, in decision 19/13 C of February 1997 the Governing Council of UNEP concluded that a global legally binding instrument on POPs was required. This decision eventually led to the adoption of the *Stockholm Convention*.

Very little time elapsed between the end of the Earth Summit and the commencement of the *Desertification Convention* negotiations. On the other hand, negotiations are ongoing on how to proceed with regard to an instrument on forest. At the 1992 Earth Summit, governments agreed to a non-binding statement of principles to promote sustainable forest management. This was the subject of further discussions at the CSD, which, years later, agreed to establish an intergovernmental panel of forest experts to decide on whether or not to commence the process for a legally binding instrument on forests. That Panel was later transformed into the Intergovernmental Forum on Forests and subsequently into the United Nations Forum on Forests where discussions are ongoing.

#### **5.2.1.2. Phase 2: fact-finding**

In many cases, the fact-finding phase will bring together a multi-disciplinary group of experts from UN organisations, scientific research institutes and other bodies to work towards finding fact and further definition of the problem. The role of science in this phase is to articulate a common language that

can facilitate discussion at the policy level. The fact-finding phase will typically involve framing the scientific debate and providing consolidated scientifically- projected outcomes.

The Intergovernmental Panel on Climate Change (IPCC) is one of the most important examples of the positive influence that a well-organized scientific expert body can have in driving substantive negotiations forward. The IPCC's second Assessment Report was instrumental in convincing the diplomatic community to consider the role of anthropocentric sources in contributing to global warming.

#### **5.2.1.3. Phase 3: rule-setting and organisation of work**

Once the international community has agreed to embark on an intergovernmental negotiating process and has established a formal negotiating body (INC), the next phase will focus on the overall organization of the INC's work. The organizational work will typically take place over a period of one week, usually at the first meeting of the INC. The products of this phase are the key procedural decisions, which are concluded at this point. These include decisions on:

- Formal rules of procedure to govern the process of negotiation
- Composition of the Bureau, including election of the Chair and officers
- Time schedule for formal sessions of the INC
- Participation of observers and non-state actors
- Substantive programme of work
- Agreement on funding of the meetings

- Role of the secretariat in supporting the negotiating process

In certain difficult negotiations, debates on procedural matters such as voting rules can become politically charged. In other cases, debates regarding procedure may be used to delay the commencement of substantive discussions.

#### **5.2.1.4. Phase 4: issue-definition and issue-framing**

The issue-definition and issue-framing phase takes place once procedural matters are finalized, usually at the end of the first week of the first INC meeting. This phase will involve an informal exchange of delegation views in the form of presentation of statements, as well as statements by major groups and international organisations. It is during this phase that multiple ideas are presented and debated. A few become the basis for further discussion, often with a call for more research by the secretariat.

The product of this phase is a compendium of views, as prepared by the secretariat to the INC. As well, the secretariat might prepare or commission additional background reports, which address the problem in more detail and set out a range of possible policy options. These documents have no official status. Rather, the compendium and synthesis of views provide delegations with an overall sense of areas of both convergence and divergence, as well as highlight those issues that may underpin the substantive negotiations.

### **5.2.2. Formal negotiations**

#### **5.2.2.1. Phase 5: commencement**

The commencement of the INC is marked by an official opening plenary session, which is attended by all the government delegations, most of which

negotiate through distinct negotiation blocs<sup>22</sup> (e.g. EU, G-77 + China, AOSIS, JUSCANZ and, CEIT).

The product of this phase consists of the opening statements by State and non-State actors. These statements will rarely address the specifics of the negotiation text. Instead, they outline the overarching priorities of the key blocs and participants as well as provide a general indication of the general parameters within which substantive debate will be carried out.

#### **5.2.2.2. Phase 6: consolidation of views**

The preparation of the actual negotiating text is an iterative process of refining and reframing bloc and country views. It is a process that is repeated in other phases throughout the negotiations. The preparation of the text is preceded by the consolidation of views, based on efforts by the INC Chair together with Bureau members and secretariat. In some cases, the actual consolidation of views takes the form of a Chair's informal summary. In other cases, where views and positions have been sufficiently crystallized, the Chair may well be in a position to commence drafting a text that will serve as the basis for formal negotiations.

At this early phase, the actual draft negotiating text will not include all of the standard elements of a typical MEA (i.e. preamble, definitions, control measures, reporting, compliance, assessment and review, reservations and amendments, Conference of the Parties, secretariat, subsidiary bodies etc). Rather, it is limited to the key substantive elements. In some cases, it is not uncommon for certain blocs to table their own version of the draft negotiating text to be used as a substitute for the Chair's text. New texts

---

<sup>22</sup> See Section 3.2.3.2 of this Handbook on UN Negotiating Blocs

may be presented in later phases, by a delegation or delegations, or by the Chair, but later the stage, the more unlikely and more difficult it would be to have such a text accepted, unless the existing text has proven to be incapable of supporting agreement, and a new approach needs to be tried.

### **5.2.2.3. Phase 7: Expression of initial positions**

The next phase in the negotiations consists of the articulation of initial positions regarding the draft negotiating text. The Chair and secretariat will first present the draft text to the INC plenary session and provide further explanation for its orientation, scope and substance. The floor is then opened for general comments, which comprise the main product at this phase. The comments typically outline overarching concerns vis-à-vis the negotiating text, including whether or not the text is an acceptable basis for negotiation, while foreshadowing the thrust of amendments that will be proposed at a later stage.

### **5.2.2.4. Phase 8: Drafting**

In this phase, participants elaborate their specific positions in the form of detailed amendments, which constitute the first product at this phase. The detailed amendments will typically address: text language that is unacceptable; new language to be included in the draft text; and problematic language to be changed.

The second product is the resulting bracketed negotiating text. This consists of the original draft text with square brackets indicating key areas of disagreement. This bracketed text will be refined and transformed into a revised negotiation text at a later stage by the Chair and secretariat. They will attempt to consolidate many of the detailed amendments put

forward by the participants. This revised negotiation text is often tabled during the formula-building or coalition-building phases, which themselves might overlap.

#### **5.2.2.5. Phase 9: Formula-building**

The formula-building phase, which can often extend over several negotiation sessions, marks the shift in focus from the articulation of positions to the actual work of forging consensus on the substance of the negotiation text.

There are two key products at this phase. The first product is a set of counter-proposals, which are prepared by the blocs and participants in response to the various amendments and proposals already formally tabled. These counter-proposals will identify: proposed amendments that are acceptable; amendments that are unacceptable; and proposed amendments that can be agreed to in principle, but only on the condition of substantive changes. The second product consists of the alternative texts that various participants might have prepared in smaller working or drafting groups, chaired by a designated coordinator. A possible third product could also include the newly revised negotiation text.

#### **5.2.2.6. Phase 10: Coalition-building**

In some cases, distinct new alliances might be formed over and above the constellation of the permanent negotiation blocs. While this phase may occur earlier in some negotiations, it is more likely to occur once the counter-proposals have been presented and the critical issues identified (e.g. Miami Group in the *Biosafety Protocol* negotiations).

There are two main products at this phase. The first product consists of the new concrete proposals that will have been prepared by the new issue-based coalitions. One proposal might even be an entire new text (e.g. text presented by AOSIS as a proposed basis for continued negotiation in the first meeting of the Conference of the Parties to the UNFCCC).

The second product is the revised negotiating text, which is prepared by the Chair, together with Bureau members and secretariat, based on the proposed amendments, additional proposals and informal consultations. Once presented to the INC plenary, certain delegations may argue that their views have not been accurately reflected in the revised text. At this point, participants will typically call for an adjournment to provide them with the time needed to review the revised text and to prepare their next round of amendments and proposals.

#### **5.2.2.7. Phase 11: Bargaining**

The bargaining phase is characterized by a continued process of trade-offs until final agreement is reached on the entire negotiating text. This phase will extend over a wide range of negotiating formats, including formal working groups, contact groups, informal consultations and Friends of the Chair consultations. Some or all of these negotiating formats may also have been employed in previous phases.

The products typically generated during the bargaining phase include: new detailed amendments to the revised negotiation text; new coalition-generated proposals; and bracketed text based on the discussion and debate of the amendments and new proposals.

#### **5.2.2.8. Phase 12: Agreement and adoption**

This final phase includes two distinct but related components:

First, there is a closing plenary session in which the agreed text is approved. Normally, the final text (i.e. the main product at this phase) will be approved by consensus. However, at the time of signature or ratification, a State could table a formal reservation as long as the agreement does not prohibit reservations. Once the text has been agreed, formal closing statements will be made by negotiating blocs, individual delegations and observers. The Chair will be the last to speak, summarizing the main points of the agreement and addressing the next required steps for formal adoption.

Second, there is a diplomatic conference, which formally adopts the text. The meeting may be held either immediately following the closing plenary (as in the case of the adoption ceremony of the CBD) or several weeks or months following approval of the agreed text by the final negotiation session. The diplomatic conference will formally adopt the text of the MEA. In addition, it will agree on the programme of work to be undertaken by an interim body (e.g. an intergovernmental committee for a given convention) prior to the entry into force of the MEA and the ensuing establishment of the Conference of the Parties (COP).<sup>23</sup> The adoption of the text of a treaty takes place with the agreement of all states participating in the negotiation.

---

<sup>23</sup> The period between the adoption of an MEA and its entry into force is known in regime and negotiation literature as the "Operation Phase".



### **5.2.3. Ratification and post-agreement negotiations**

Once the agreement has been adopted, it is open for signature by all the negotiating Parties for a limited period of time. The next step is ratification or some other measure of accession by which national governments formally agree to be bound by the MEA in question. The treaty will always specify the requisite number of ratifications/accessions and time-frame for its entry into force.<sup>24</sup> Once the agreement enters into force, the negotiations are likely to continue on matters left unresolved in the original negotiation process. These post-agreement negotiations will also address key issues regarding the implementation of the MEA.

## **5.3. Checklists**

The following is a list of key matters to address during negotiations, without detailed elaboration, but with an indicator of timelines. Subjects covered here are detailed in other sections of this handbook.

---

<sup>24</sup> See section 2.1 of this Handbook regarding Treaty-Making Principle.

<b>Item</b>	<b>Timeframe</b>
Confirm local logistics arrangements	Days
Hold initial delegation meeting, review logistics arrangements and contacts; review session schedule and assign responsibilities; review negotiation group meetings	Day(s) before official sessions
Consult key negotiation partners, including secretariat; hold regional or like-minded group meetings	Days before official sessions
Hold first general delegation, introductions, review logistics and contacts, general approach, roles, highlights of first day and full session; arrange subsequent meetings; delegation reception	First day
Regularly consult key negotiation partners (like-minded and regional groups, bureau contacts, secretariat)	Throughout
Manage specific issue and overall negotiations, ensuring that priorities are on track for resolution in final package; identify items for high level decision making	Throughout
Ensure appropriate information flow in delegation and with capital contacts, including consultation on overall and issue specific developments, tactics, and interventions	Throughout
Provide for additional/periodic stakeholder and NGO consultations as required	Throughout
Ensure proper consultation with contacts in capital	Throughout
Prepare for High-level segment, as required	As scheduled
Prepare delegation reports; gather important negotiation documents and relevant material from negotiation partners and side events	Throughout – drafts before departure
Confirm logistics and travel arrangements for departure	Days before departure
Ensure proper conclusion of agenda items, adoption of items in meeting report (e.g. continuation on agenda is not a given); consider input into draft meeting reports; make arrangements for follow-up and subsequent matters with secretariat, negotiation partners; election of officers for subsequent sessions.	Final days of session
If an agreement is to be concluded or documents to be adopted, consider need for final legal review, communications, formalities (plan Ministerial formalities in advance)	Final days*



## 6. Annexes and reference

### 6.1. ANNEX A – International bodies

#### 6.1.1. United Nations General Assembly

The United Nations General Assembly (UNGA) is the main political body of the UN organization. As part of its general functions and powers, provided for under articles 10 and 13 of the UN Charter, the UNGA can discuss any question or matter within the scope of the Charter and initiate studies and adopt resolutions on any of these. Each UN member State has one vote at the UNGA. It meets annually for regular sessions from September to December and at other times for special sessions.

Its resolutions are not binding, although it is awkward for countries if their positions at UNGA are inconsistent with positions in MEA fora. One of the UNGA's main contributions in environmental matters has been the convening of key conferences (e.g. *UN Conference on Human Environment – Stockholm 1972*; *UN Conference on Environment and Development – UNCED 1992*). Every year it also adopts a number of resolutions that pertain to the environment. For instance, some of the resolutions it adopted at its 2002 session concerned MEAs (e.g. the resolution on the CBD; the resolution on the protection of the global climate for present and future generations of mankind). In addition, it also influences the codification and progressive development of international law through subsidiary bodies such as the International Law Commission. In 2001, the Commission adopted draft articles on the prevention of transboundary harm from hazardous activities.

#### 6.1.2. Economic and Social Council

The Economic and Social Council (ECOSOC) is composed of 54 member States elected by the UNGA. It may make

recommendations to the UNGA in economic, social, cultural, educational, health and other related matters such as the environment. With regard to the latter, its key role is to promote the implementation of the plan of action for sustainable development adopted at UNCED 1992 (Agenda 21). This is done through coordination of the work of specialized agencies, commissions and programmes. Commissions such as the Commission on Sustainable Development and programmes such as UNEP report to ECOSOC. It has also established five regional economic commissions, one of which, the United Nations Economic Commission for Europe—see below), has competence in matters of environment.

### **6.1.3. United Nations Commission on Sustainable Development**

Established following the 1992 Rio Earth Summit, the United Nations Commission on Sustainable Development (CSD) is composed of 53 States elected by ECOSOC for three-year terms. It is the key forum for the consideration of issues related to the integration of the three dimensions of sustainable development. As such, its mandate is not limited to environmental issues. Its main role is to review and monitor progress in the implementation of Agenda 21. CSD also acted as the preparatory body for the World Summit on Sustainable Development.

### **6.1.4. United Nations Environment Programme**

The United Nations Environment Programme (UNEP) was established by the UNGA following the 1972 Stockholm Conference on the Human Environment. It is the designated authority of the UN system in environmental issues at the global and regional level. Its mandate is to coordinate the development of environmental policy consensus by keeping the global environment under review and bringing emerging issues to the attention of governments and the international community for action. Its headquarters are located in Nairobi,

Kenya. As part of its mandate, UNEP:

- provides general policy guidance for the coordination of environmental issues throughout the UN system;
- furthers the development of international environmental law, in particular through MEAs and guidelines;
- strives for coherence among MEAs given their ever-increasing numbers;
- advances the implementation of agreed international norms and policies;
- monitors and fosters compliance with MEAs;
- assesses and reports on the state of the global environment and attempts to identify emerging issues;
- promotes greater awareness and facilitates effective cooperation among all sectors of society and actors involved in the implementation of the international environmental agenda;
- provides policy and advisory services in key areas of institution building to governments and other relevant institutions.

The primary decision making body of UNEP is the Governing Council (GC), composed of 58 member States elected for four-year terms by the General Assembly. Half of the membership is elected every two years. The composition of the GC is based on the following regional allocation:

- Africa – 16
- Asia – 13
- Latin America – 10
- Eastern Europe – 6
- Western Europe and Others Group – 13

The GC meets every two years and at special sessions in between. Part of each Council meeting is reserved for discussions of important environmental matters at the ministerial or equivalent level in the "Global Ministerial Environment Forum" (GMEF). The rules of procedure provide that decisions are taken by a simple majority of members present and voting.

UNEP's contribution to the development of MEAs is significant. It has initiated and promoted the negotiation of conventions such as the *Vienna Convention on the Protection of the Ozone Layer*, the *Basel Convention* and the *Stockholm Convention* (see, for instance, the UNEP Governing Council decision 19/13 C of February 7, 1997, listing the elements to be included in the *Stockholm Convention*). It acts as the secretariat for a number of MEAs, including the *Basel Convention*, the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* and the *Stockholm Convention*. The secretariat functions of the *Rotterdam Convention* is performed jointly by UNEP and the FAO.

Every 10 years since 1982, the UNEP Governing Council adopts a plan for the development of public international environmental law on the recommendation of legal experts. This is known as the Montevideo Programme (see Montevideo Programme III adopted by the UNEP Governing Council in February 2003).

#### **6.1.5. Global Environment Facility**

Created by the World Bank, UNEP and UNDP in 1991 in anticipation of the Rio Summit, the primary role of the Global Environment Facility (GEF) is as co-financier. It supports international cooperation by providing developing countries with new, and additional, grants and concessional funding to meet the enabling and incremental costs of measures to achieve agreed-upon global environmental benefits (on funding by the GEF, see section 3.8.1). The GEF does not

disburse funds directly but through its implementing agencies (i.e. UNDP, UNEP, World Bank) and executing agencies (the regional development banks as well as FAO and UNIDO). Each of the implementing agencies has a particular strength and focus: UNEP supports technical and scientific inputs; UNDP focuses on capacity building to improve the livelihoods of the poor while encouraging economic growth and the World Bank does larger scale investments. Donor countries also provide funding to these institutions directly to carry out their mandates.

GEF is the designated financial mechanism for the:

- CBD; and
- UNFCCC.

It is the interim mechanism for the:

- *Stockholm Convention* ; and
- *Desertification Convention*

The GEF also supports initiatives consistent with international waters treaties and activities in Central and Eastern European countries to meet the objectives of the *Montreal Protocol*.

Its main governing body is the GEF Council which develops, adopts, and monitors policies, programmes, operational strategies and projects. It is composed of 32 members, 16 of which are from developing countries, 14 from developed countries and two from economies in transition. It meets twice a year. Decisions are adopted by consensus. However, if no consensus can be reached, a member may ask for a formal vote. In these cases, a decision may only be adopted if it is supported by both a 60 percent majority of the total number of Participants and a 60 percent majority of the total contributions. The GEF Assembly, in which all 174 participating countries are represented, meets every three years. (see Funding.)



## **6.1.6. Other relevant UN agencies, commissions and programmes**

### **6.1.6.1. Food and Agriculture Organization**

Founded in 1945, the Food and Agriculture Organization (FAO) is the lead agency for agriculture, forestry, fisheries and rural development. It plays a major role in some MEAs. For instance, it provides, jointly with UNEP, the secretariat functions for the *Rotterdam Convention*. In 2001, the FAO Conference, comprised of all 184 FAO members, adopted the *International Treaty on Plant Genetic Resources for Food and Agriculture*.

### **6.1.6.2. International Fund for Agricultural Development**

The International Fund for Agricultural Development (IFAD) is a specialized agency of the United Nations, was established as an international financial institution in 1977. IFAD was created to mobilize resources on concessional terms for programmes that alleviate rural poverty and improve nutrition. Unlike other international financial institutions, which have a broad range of objectives, the Fund has a very specific mandate: to combat hunger and rural poverty in developing countries. At the First Conference of the Parties to the *Desertification Convention* in 1997, IFAD was designated to house the Global Mechanism. The Global Mechanism was established by the UNCCD to promote actions leading to the mobilization and channelling of substantial financial resources to affected developing countries (Article 21, UNCCD).

### **6.1.6.3. International Maritime Organization**

Created in 1948, the International Maritime Organization (IMO) is competent to address shipping issues. Many of the conventions adopted

under its auspices have as their purpose the protection of the marine environment from shipping activities. Among the most notable are the *London Dumping Convention*, the *MARPOL Convention* and the *International Convention on Oil Pollution Preparedness, Response and Cooperation*. In 2001 it adopted the *International Convention on the Control of Harmful Anti-Fouling Systems on Ships*. Its main environmental body is the open-ended Marine Environment Protection Committee (MEPC). The IMO cooperates with the secretariat of MEAs on issues of common concern (e.g. with the secretariat of the *Basel Convention* on the issue of ship dismantling).

#### **6.1.6.4. United Nations Educational, Scientific and Cultural Organization**

Created in 1945, the United Nations Educational, Scientific and Cultural Organization's (UNESCO) key contribution with regard to MEAs is the adoption of the *Convention concerning the Protection of the World Cultural and Natural Heritage* in 1972.

#### **6.1.6.5. United Nations Economic Commission for Europe**

Founded in 1947, the United Nations Economic Commission for Europe (UNECE) is one of five regional economic commissions of the UN (the other commissions are for Africa, Latin America and the Caribbean, Asia and the Pacific, and Western Asia). It is composed of 56 member States including European countries and Countries in Transition former Soviet Republics as well as Canada, Israel and the USA. While the main aim of the UNECE is to maintain and strengthen economic cooperation among member States as well as with other States, its mandate also includes environmental matters.

In the last 25 years, the UNECE has produced the following environmental conventions and protocols:

- *Convention on Long Range Transboundary Air Pollution (LRTAP)* and its eight protocols
- *Espoo Convention on Environmental Impact Assessment in a Transboundary Context. A Protocol on Strategic Environmental Assessment* (known as the SEA Protocol) was adopted in May, 2003
- *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* and its *Protocol on Water and Health*.
- *Convention on the Transboundary Effects of Industrial Accidents*
- *Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters* (known as the Aarhus Convention). *A Protocol on Pollutant Release and Transfer Registers* (known as the PRTR Protocol) was adopted in 2003

#### **Members of the UNECE**

Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan

#### **6.1.6.6. United Nations Development Programme**

The UN Development Programme (UNDP) was created by the UNGA in 1965. In matters of sustainable development, it was given the task, in Agenda 21, to promote the strengthening of capacity building in developing countries (an initiative known as Capacity 21). UNDP works closely with UNEP.

#### **6.1.6.7. Others**

Below is a non-exhaustive list of other agencies and bodies that regularly attend MEA meetings:

1. International Labour Organization (ILO)
2. United Nations Industrial Development Organization (UNIDO)
3. United Nations Institute for Training and Research (UNITAR)
4. World Trade Organization (WTO)
5. World Bank
6. World Health Organization (WHO)
7. World Meteorological Organization (WMO)

#### **6.1.6.8. Organization for Economic Cooperation and Development**

Composed of 30 member States, the Organization for Economic Cooperation and Development (OECD) promotes democratic forms of government and a market economy. It provides a discussion forum and an integrated framework for the broadest economic, social and environmental policy concerns of governments. Its main body is the Council, composed of all member States. Environmental matters are discussed mainly in the OECD Environment Policy Committee (EPOC) whose task is to implement the environmental dimensions of the

work programme adopted by the Council. Decisions of the Council, as opposed to recommendations, are legally binding on members (e.g. C(2001) 107/FINAL on the Control of transboundary movements of wastes destined for recovery operations).

#### **OECD Members**

Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States

### **6.1.6.9. International fora and panels**

Some environmental issues are addressed through the creation of *fora* and panels that typically draw on the participation of a wide variety of interested actors. Some of the more notable ones are as follows:

#### **6.1.6.9.1. Intergovernmental Forum on Chemical Safety**

Called for in Chapter 19 of Agenda 21, the Intergovernmental Forum on Chemical Safety (IFCS) was created by the ILO, WHO and UNEP in 1994 to promote the environmentally sound management of chemicals. It does so through advice and recommendations adopted at meetings where representatives of governments meet with intergovernmental and non-governmental organizations. Its further purposes are to provide policy guidance, develop strategies in a coordinated and integrated manner, foster understanding of issues and promote the required policy support. In addition, the Forum is an opportunity for any participant to bring emerging

and contentious issues to the international agenda. For instance, Canada used the Forum to raise the need to address POPs at the international level.) The work of the Forum is taken into account in meetings of relevant MEA bodies. The World Health Organization serves as its secretariat.

#### **6.1.6.9.2. International chemicals management**

Adopted by the International Conference on Chemicals Management (ICCM) on 6 February 2006, the Strategic Approach to International Chemicals Management (SAICM) is a policy framework for international action on chemical hazards with a goal of ensuring that, by the year 2020, chemicals are produced and used in ways that minimize significant adverse impacts on the environment and human health.

The SAICM and the ICCM have taken a unique approach to inclusion of IGO and NGO participants. The rules of procedure of the SAICM, which were provisionally applied by the ICCM in 2006, provide for governmental participants to consult with IGO and NGO participants before adopting or revising session agenda. Furthermore, IGO and NGO participants are included in consensus decision-making and quorum. Nonetheless, intergovernmental and/or non-governmental participants may be excluded from the consideration of all or part of the agenda, if so decided by governmental participants. (see SAICM/PREPCOM.1/CRP.4).

#### **6.1.6.9.3. United Nations Forum on Forests**

The United Nations Forum on Forests (UNFF), created in 2000 by ECOSOC, was preceded by the Intergovernmental Panel on Forests (IPF – 1995 to

1997) and the Intergovernmental Forum on Forests (IFF – 1997 to 2000). Composed of all members of the United Nations as well as specialized agencies, it encourages the participation of other actors such as NGOs, industries and aboriginal groups. It fosters common understanding on sustainable forest management, identification of emerging issues, policy development and dialogue, and cooperation among the various actors. Given the current lack of a comprehensive international binding instrument for forests, one of the stated aims of the UNFF is to consider a mandate to develop a legal framework on all types of forests.

#### **6.1.6.9.4. Intergovernmental Panel on Climate Change**

Created in 1988 by the World Meteorological Organization (WMO) and UNEP, the purpose of the Intergovernmental Panel on Climate Change (IPCC) is to assess, on a continuing basis, the scientific, technical and socio-economic information on climate change. Since 1990 the IPCC has published three Assessment Reports (TARs). These reports are the result of the collective work of thousands of experts around the world channeled through three working groups. Reports are based on information from sources such as peer-reviewed literature, journals, books, etc, and then reviewed by other experts and governments. They are ultimately presented for adoption by the plenary session that is composed of States' representatives and which meets once a year. International organizations and NGOs may attend plenary sessions as observers. Their presence at other meetings is by invitation only.

The publication of the first report in 1990 was one of the catalysts for the *United Nations Framework Convention on Climate Change*, while the second one facilitated the negotiations that culminated in the adoption of the *Kyoto Protocol*. The IPCC also provides reports, technical papers and guidelines, on its own initiative or on request of the Parties to the UNFCCC or another MEA (guidelines only on request).

## **6.2. ANNEX B – Case studies**

### **6.2.1. Adjustments under the Montreal Protocol and LRTAP**

#### **6.2.1.1. Adjustments under the Montreal Protocol**

Under Article 2, paragraph 9 (a) of the Montreal Protocol on Substances that Deplete the Ozone Layer, based on assessments made pursuant to Article 6 of the Protocol, Parties may decide whether:

- (i) Adjustments to the ozone depleting potentials specified in Annex A, Annex B, Annex C and/or Annex E should be made and, if so, what the adjustments should be; and
- (ii) Further adjustments and reductions of production or consumption of the controlled substances should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be.

Decisions on adjustments are binding on Parties and are forthwith communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, these adjustments enter into force on six months from the date of the circulation and communication by the Depositary (Article 2, paragraph 9 (d), Montreal Protocol).



The meeting of the Parties (MOP) to the Montreal Protocol has, as of March 2007, adopted 12 decisions relating to adjustments. Through these decisions, the MOP has adopted adjustments and reductions of production and consumption of the controlled substances listed in Annexes A,<sup>25</sup> B,<sup>26</sup> C<sup>27</sup> and E<sup>28</sup> of the Montreal Protocol. These adjustments have resulted in the revision of and replacement of text within the Protocol relating the calculated levels of production for the scheduled phase-out of substances listed in Annexes A, B, C and E of the Protocol. The ozone depleting potential specified in Annex E of the Protocol has also been adjusted through a MOP decision (decision VIII/3). These decisions have also allowed the MOP to schedule consideration of the need for further adjustments, e.g., to the phase-out schedule for hydrofluorocarbons for Parties operating under paragraph 1 of Article 5.<sup>29</sup>

### **6.2.1.2. Adjustments under LRTAP**

The Gothenburg Protocol entered into force on 17 May 2005. Under Article 13, paragraph 1, of the

---

<sup>25</sup> Decision II/1. Adjustments and reductions; Decision IV/2. Further adjustments and reductions, Decision VII/1. Further adjustments and reductions: controlled substances listed in Annex A to the Protocol; Decision IX/1. Further adjustments with regard to Annex A substances. Decision XI/2. Further adjustments with regard to Annex A substances.

<sup>26</sup> Decision IV/3. Further adjustments and reductions; Decision VII/2. Further adjustments and reductions: controlled substances listed in Annex B to the Protocol; Decision IX/2. Further adjustments with regard to Annex B substances. Decision XI/3. Further adjustments with regard to Annex B substances

<sup>27</sup> Through decision VII/3. Further adjustments and reductions: controlled substances listed in Annexes C and E to the Protocol, the MOP adopted adjustments and reductions of production and consumption of the controlled substances listed in Annexes C and E of the Protocol.

<sup>28</sup> Through decision VII/3. Further adjustments and reductions: controlled substances listed in Annexes C and E to the Protocol, the MOP adopted adjustments and reductions of production and consumption of the controlled substances listed in Annexes C and E of the Protocol. Decision IX/3. Further adjustments and reductions with regard to the Annex E substances. Decision XI/4. Further adjustments with regard to Annex E substance.

<sup>29</sup> Decision VII/3. Further adjustments and reductions: controlled substances listed in Annexes C and E to the Protocol.

Protocol, any Party may propose an adjustment to annex II to the Protocol to add its own name, together with emission levels, emission ceilings and percentage emission reductions. Adjustments to annex II are adopted by consensus of the Parties present at a session of the Executive Body and shall become effective for all Parties to the Protocol on the ninetieth day following the date on which the Executive Secretary of the Commission notifies those Parties in writing of the adoption of the adjustment (Article 13, paragraph 6). Adjustments, once agreed upon, are reflected in the report of the sessions of the Executive Body for the *Convention on Long-Range Transboundary Air Pollution* (LRTAP).

The same provision can be found in the *Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions* (Article 11, 1994 Oslo Protocol).

Adjustments are different from amendments in the following respects:

1. Adjustments have to be adopted by consensus. There is no option of voting on a proposed adjustment (Article 13, paragraph 6).
2. An adjustment is effective for all Parties to the Protocol. In contrast, an amendment to annexes II to IX enter into force for Parties which have accepted them on the ninetieth day after the date on which two thirds of the Parties have deposited their instruments of acceptance thereof, and on the ninetieth day after the date on which that Party has deposited its instrument of acceptance for any other Party (Article 13, paragraph 3).
3. Parties do not have the option of notifying the Depository that they are unable to approve an

adjustment to the annex, which they would have with regard to amendments to annexes other than annexes II to IX (Article 13, paragraph 5).

At its 23<sup>rd</sup> session, the LRTAP Executive Body agreed to adjust annex II of the 1999 Gothenburg Protocol to include Cyprus with the following emission ceilings: (in kilotonnes per year): sulphur 28 (1980); 46 (1990); 39 (2010); nitrogen oxides 18 (1990); 23 (2010); ammonia 7 (1990); 9 (2010); volatile organic compounds (VOCs) 18 (1990); 14 (2010).<sup>30</sup>

It would appear that if a Party that is already in Annex II of the 1999 Gothenburg Protocol wishes to change any of the emission ceilings, it would need to do so through an amendment. However, emission reduction commitments with respect to sulphur, nitrogen oxides and volatile organic compounds of Canada and the United States of America will be automatically incorporated into annex II once they are submitted to the Executive Body upon their ratification, acceptance or approval of, or accession to, the 1999 Gothenburg Protocol (Article 3, paragraph 11). In this case, the names of Canada and the U.S.A. are already in Annex II, but no emission ceilings are inscribed beside their names.

### **6.2.2. Stockholm Convention on POPs:**

#### **Adding a substantive element to a draft MEA**

Canada was successful in having Article 16, Evaluation of Effectiveness, included in the *Stockholm Convention*. This article was included as a result of informal discussions to generate support, coupled with a formal draft text circulated first as a room document.

---

<sup>30</sup> Paragraph 23, Report of the twenty-third session of the Executive Body for the Convention on Long-Range Transboundary Air Pollution, ECE/EB.AIR/87.

Between INC-2 and INC-3, the Canadian delegation concluded that the draft convention text was missing two critical elements: a monitoring provision, and a review of effectiveness provision. Canadian delegates were also mindful of the concern of northern indigenous people that Parties comply with the convention.

At INC-3, Canada raised the issue through a Conference room paper (CRP), which it presented and then consulted on informally with other countries. Our proposal was to add text to Article I on Research, Development and Monitoring. However, as this Article was not discussed at the meeting, no real opportunity arose to address Canada's proposal in detail. Nevertheless, Canada requested that the meeting report include a reference to its intervention describing the proposal. Canada also indicated that it would appreciate comments on it as Canada would take these comments into account when re-introducing the proposal at INC-4.

At INC-4, Canada again circulated a CRP and was quick off the mark to get CRP.1 as its number (initial CRPs tend to get more attention than later ones). Canada introduced it in plenary as an amendment to Article I, involving monitoring, and the INC agreed to include it in the negotiating text. The Legal Drafting Group later made a recommendation to establish it as a separate article. Intersessionally, Canada promoted the new article with other countries, and in particular within WEOG.

At INC-5, Canada worked on the margins to generate support on a definitive article, based on consultations with other delegations. As Article 16, the final text retains the Canadian idea. However, in order to gain support for the provision, the language ultimately adopted is somewhat less precise than the original Canadian proposal.

As part of the interim work programme, the secretariat is undertaking studies to develop the global monitoring system required by Article 16.

## 6.3. ANNEX C – Overview of selected MEAs – features and innovations

What follows is a brief overview of selected MEAs, highlighting key mechanisms, innovations and implementation challenges.

### Overview of MEA Innovations and Implementation Challenges

- *Biodiversity Convention*
- *Desertification Convention*
- *Kyoto Protocol*
- CITES
- *Montreal Protocol*

#### 6.3.1. Convention on Biological Diversity

Substantive Innovations	Implementation Challenges
<ul style="list-style-type: none"> <li>• Integration of conservation, sustainable use and benefit-sharing objectives.</li> <li>• Compromise between rights of developing countries for benefit-sharing with the rights to access by technology-rich countries of biodiversity resources in biodiversity-rich countries.</li> <li>• Recognition of the knowledge, practice and innovations of indigenous peoples and local communities (Article 8(j)).</li> <li>• Framework for prior informed consent for any public or private enterprises seeking to gain access to biodiversity resources.</li> <li>• Organization of work programmes based on both sectoral and cross-sectoral issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Increasing WTO challenges to national biodiversity laws as disguised trade barriers.</li> <li>• Increasing human impacts exacerbating biodiversity loss combined with limited scientific understanding of the pace and volume of loss.</li> <li>• Accelerating demand for genetic resources and increased pressures by TNCs to relax national laws regulating access.</li> <li>• Concerns about the <i>Trade Related Aspects of Intellectual Property Rights agreement (TRIPs)</i> and the patenting of life forms.</li> </ul>

### 6.3.2. United Nations Convention to Combat Desertification

Substantive Innovations	Implementation Challenges
<ul style="list-style-type: none"> <li>• Requirement of participation of affected communities and civil society in the preparation of national desertification action programmes.</li> <li>• Adoption of integrated approach in addressing the physical, biological and socio-economic aspects of the processes of desertification and drought.</li> <li>• Integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought.</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of sufficient funding from the donor community, in part because the problem of desertification is not perceived as a global concern.</li> <li>• Growing need for new and better methodologies for promoting local participation and community-based capacity building.</li> <li>• Limited scientific attention to the problem of desertification as compared with other MEAs such as the Climate Change and Biodiversity Conventions.</li> </ul>

### 6.3.3. Kyoto Protocol

Substantive Innovations	Implementation Challenges
<ul style="list-style-type: none"> <li>• Legally binding targets and timetables for cutting developed country emissions and countries with economies in transition.</li> <li>• Emissions trading regime that allows industrialized Parties to buy and sell emission credits among themselves.</li> <li>• Joint implementation projects offering emission reduction units for financing projects in other developed countries.</li> <li>• Clean Development Mechanism providing credit for financing emissions-reducing or emissions-avoiding projects in developing countries.</li> </ul>	<ul style="list-style-type: none"> <li>• Perceived short-term economic costs of meeting targets in the first commitment period, especially for those Parties who ratified at a later stage (i.e. they will have less time to meet their commitments);</li> <li>• Implementation of the flexibility mechanisms;</li> <li>• Bringing on board the large CO<sub>2</sub> emitting developing countries in subsequent commitment periods.</li> </ul>

### 6.3.4. CITES

Substantive Innovations	Implementation Challenges
<ul style="list-style-type: none"><li>• Development of a licensing system for the import, export, and re-export of species threatened with or potentially vulnerable to extinction.</li><li>• Authority of the CITES secretariat to communicate problems of implementation.</li></ul>	<ul style="list-style-type: none"><li>• Dearth of reference materials and tools to assist law enforcers in understanding the nature of illegal trade, the impacts, the need for CITES enforcement and the vested interests in ensuring the regime's effectiveness.</li><li>• Greater research efforts needed to enhance understanding and interpretation of baseline data to set out targeted procedures and actions.</li><li>• The lack of funding, insufficient administrative capacity and corruption remain critical implementation problems.</li><li>• Developing countries often have large land masses which are not always adequately surveyed.</li><li>• In some countries where the seizures of CITES species have increased in value and volume, it is not clear whether these trends reflect better enforcement or more sophisticated smuggling techniques. More analytical tools are needed to evaluate the underlying factors in increased seizure trends.</li></ul>

### 6.3.5. Montreal Protocol

Substantive Innovations	Implementation Challenges
<ul style="list-style-type: none"> <li>• First MEA to recognize the need for phased commitments for developing countries.</li> <li>• Binding time schedule for freeze and reduction of ODS or "controlled substances".</li> <li>• Important catalyst for the development of alternatives to ozone depleting substances.</li> <li>• Requirement for country reporting of production, consumption and trade of ODS, to enable the secretariat to monitor compliance and evaluate ozone depletion trends.</li> </ul> <p>(see also, Adjustments and Case Studies)</p>	<ul style="list-style-type: none"> <li>• Developing country perception of air pollution and ozone depletion as problems of the industrialized world.</li> <li>• Difficulties for developing countries to keep abreast of the constant evolution of "safe technologies" and changing scientific views regarding the efficiency of these new technologies.</li> <li>• Reduced capacity on the part of developing countries to assimilate and absorb new technologies.</li> <li>• While developing countries do have a ten-year grace period to conform to the <i>Montreal Protocol</i>, implementation has in many cases presented undue economic burdens on those developing countries who have invested heavily in capital equipment using CFCs (which have a normal life of 30 to 40 years).</li> <li>• Difficulties in terms of information gathering and reporting for developing countries in light of limited capacity and resources to report production, consumption and trade in ozone depleting substances.</li> </ul>



## **6.4. ANNEX D – Reference texts and electronic resources**

### **6.4.1. Principles of the Stockholm Declaration**

#### **Principle 1**

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

#### **Principle 2**

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

#### **Principle 3**

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

#### **Principle 4**

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

#### **Principle 5**

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

**Principle 6**

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported.

**Principle 7**

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

**Principle 8**

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

**Principle 9**

Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

**Principle 10**

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account.

### **Principle 11**

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

### **Principle 12**

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate- from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

### **Principle 13**

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

### **Principle 14**

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

### **Principle 15**

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and

environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.

**Principle 16**

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

**Principle 17**

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the 9 environmental resources of States with a view to enhancing environmental quality.

**Principle 18**

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

**Principle 19**

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and improve the environment in order to enable man to develop in every respect.

### **Principle 20**

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

### **Principle 21**

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

### **Principle 22**

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

### **Principle 23**

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each Party, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

### **Principle 24**

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

### **Principle 25**

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

### **Principle 26**

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

## **6.4.2. Principles of the Rio Declaration**

### **Principle 1**

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

### **Principle 2**

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

### **Principle 3**

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

### **Principle 4**

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

### **Principle 5**

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

### **Principle 6**

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

### **Principle 7**

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

### **Principle 8**

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

### **Principle 9**

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

### **Principle 10**

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

### **Principle 11**

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.



### **Principle 12**

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing Party should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

### **Principle 13**

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

### **Principle 14**

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

### **Principle 15**

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

### **Principle 16**

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

### **Principle 17**

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

### **Principle 18**

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

### **Principle 19**

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

### **Principle 20**

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

### **Principle 21**

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

**Principle 22**

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

**Principle 23**

The environment and natural resources of people under oppression, domination and occupation shall be protected.

**Principle 24**

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

**Principle 25**

Peace, development and environmental protection are interdependent and indivisible.

**Principle 26**

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

**Principle 27**

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

### **6.4.3. Electronic resources**

#### **INTERNATIONAL CONVENTIONS**

**Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal**

<http://www.unep.ch/basel/index.html>

**Cartagena Protocol on Biosafety**

<http://www.biodiv.org/biosafety/>

**Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)**

<http://www.cms.int>

**Convention on International Trade in Endangered Species of Wild Fauna and Flora**

<http://www.cites.org/>

**Convention on Long-range Transboundary Air Pollution**

<http://www.unece.org/env/lrtap>

**Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention)**

<http://www.imo.org>

**Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)**

<http://iucn.org/themes/ramsar/>

**International Convention for the Prevention of Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)**

<http://www.imo.org>

**Kyoto Protocol to the United Nations Framework Convention on Climate Change**

<http://www.unfccc.int>

**Montreal Protocol on Substances that Deplete the Ozone Layer**

<http://www.ozone.unep.org/unep/>

**Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**

<http://www.pic.int>

**Stockholm Convention on Persistent Organic Pollutants (POPs)**

<http://www.pops.int>

**United Nations Convention to Combat Desertification**

<http://www.unccd.int/main.php>

**United Nations Framework Convention on Biological Diversity**

<http://www.biodiv.org>

**United Nations Framework Convention on Climate Change**

<http://www.unfccc.int>

**Vienna Convention for the Protection of the Ozone Layer**

<http://www.ozone.unep.org>

**GLOBAL AND REGIONAL ORGANIZATIONS AND BODIES**

**United Nations**

<http://www.un.org/>

**United Nations Treaty Collection**

<http://http://untreaty.un.org/English/treaty.asp>

**United Nations Office of Legal Affairs - Treaty Section  
"Treaty Reference Guide"**

<http://untreaty.un.org/English/guide.asp>

**United Nations Commission on Sustainable Development**

<http://www.un.org/esa/sustdev>

**United Nations Economic Commission for Europe**

<http://www.unece.org/welcome.html>

**United Nations Economic and Social Council**

<http://www.un.org/esa/coordination/ecosoc/>

**United Nations Environment Programme**

<http://www.unep.org/>

<http://www.unep.org/dpdl/>

<http://www.unep.org/dec/>

**United Nations Educational, Scientific and Cultural Organization**

<http://www.unesco.org>

**United Nations Forum on Forests**

<http://www.un.org/esa/forests/index.html>

**United Nations General Assembly**

<http://www.un.org/ga/57>

(the last number refers to the session number, i.e. 57th session in 2002)

**Asia Pacific Economic Cooperation**

<http://www.apecsec.org.sg/>

**Commission for Environmental Cooperation**

<http://www.cec.org/>

**European Commission**

<http://www.europa.eu>

**European Environment Agency**

<http://www.eea.eu.int>

**European Union**

[http://www.europa.eu/index\\_en.htm](http://www.europa.eu/index_en.htm)

**Food and Agricultural Organization of the United Nations**

<http://www.fao.org/>

**Global Environment Facility**

<http://www.gefweb.org>

**Inter-American Institute for Global Change Research**

<http://www.iai.int>

**Intergovernmental Forum on Chemical Safety**

<http://www.who.int/ifcs/>

**Intergovernmental Panel on Climate Change**

<http://www.ipcc.ch/>

**International Council for Science**

<http://www.icsu.com>

**International Institute for Sustainable Development**

<http://www.iisd.ca/>

**International Joint Commission**

<http://www.ijc.org>

**International Maritime Organization**

<http://www.imo.org>

**International Organization for Standardization**

<http://www.iso.ch>

**OECD's Environment Directorate**

<http://www.oecd.org/env>

**The World Bank Group**

<http://www.worldbank.org/>

**World Conservation Union**

<http://www.iucn.org/>

**World Meteorological Organization**

<http://www.wmo.ch/>

**World Wildlife Fund**

<http://www.panda.org/home.cfm>

**OTHER**

**University of Joensuu – UNEP Course on International  
Environmental Law-making and Diplomacy**

<http://www.joensuu.fi/unep/envlaw>

## 7. Glossary<sup>31</sup>

### User Notes

When an acronym, word, or phrase in a definition is underlined, the acronym, word, or phrase has its own separate definition in the glossary. When a definition is the definition provided under an MEA, the source has been provided in parenthesis (e.g. "CBD").

### A

#### Aarhus Convention

Shorthand for the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Adopted in 1998, entered into force in 2001.

#### ABS

Access to genetic resources and benefit sharing. Acronym used to refer to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization as set out in CBD.

#### ACAP

Agreement on the Conservation of Albatrosses and Petrels. Adopted in 2001, entered into force in 2004.

#### Acceptance

In practice acceptance is used instead of ratification when, at a national level, constitutional law does not require an agreement to be ratified by the head of State. Acceptance has the same legal effect as ratification.

#### Accession

Act whereby a State becomes a Party to an international agreement already negotiated and closed for signature. Accession has the same legal effect as ratification, although an acceding State has not signed the agreement.

#### Acclamation

A mode of adoption of decisions without voting. The decision is considered adopted when all delegations have indicated their support by applause.

#### Accreditation

Approval and assertion of the fact that credentials submitted by delegates to a particular meeting are in order.

---

<sup>31</sup> This glossary is a modified and edited version of a glossary prepared by the Division of Environmental Law and Conventions of UNEP on the basis of publicly available information, including the United Nations Treaty Collection Treaty Reference Guide, websites of the global MEAs, the UNITAR Glossary of Terms for UN Delegates, and literature on international negotiations and international law.



**Ad hoc**

Latin word meaning "for this purpose." An ad hoc committee, for example, is created with a unique and specific purpose or task and once it has studied and reported on a matter, it is discontinued.

**Adaptation**

1) Actions taken to help communities and ecosystems cope with changing climate conditions (UNFCCC).

2) Genetically determined characteristic that enhances the ability of an organism to cope with its environment (CBD).

Adaptation Fund

Fund established under the Kyoto Protocol to provide support for adaptation projects.

**ADB**

Asian Development Bank. Can also stand for the African Development Bank.

**Add.**

Stands for "addendum". Used to reference additions to existing documents.

**Additionality**

1) Funding principle envisaged to ensure that the Global Environment Facility funds do not substitute for existing development finance but provide new and additional funding to produce agreed global environmental benefits.

2) Approval test for projects under the CDM of the Kyoto Protocol. A CDM project activity is additional if anthropogenic GHG emissions are reduced below the level of emissions that would have occurred in the absence of that project activity.

Accordingly, additionality forms the basis for issuing CERs.

**Adoption**

1) Adoption by a country of an international agreement refers to the process of its incorporation into the domestic legal system, through signature, ratification or any other process required under national law.

2) Adoption by the international community of an international agreement is the formal act by which the form and content of a proposed treaty text are established.

3) Adoption of a decision, resolution, or recommendation is the formal act (e.g. strike of gavel) by which the form and content of a proposed decision, resolution or recommendation are approved by delegations.

**Ad referendum**

A Latin term meaning "subject to reference." When a delegate is asked for agreement on a topic he or she is not authorized to give, he or she may agree ad referendum (or ad ref.). When a decision is adopted in this manner, the practice is that any Party may re-open debate on the question at the next meeting of the body in question, and if the question is not reopened, it is thereafter considered to be adopted.

**Advanced Informed Agreement (AIA)**

Principle or procedure whereby the international exchange of resources or products that could have adverse effects on the environment should not proceed without the informed agreement of, or contrary to the decision of, the competent authority in the recipient country.

**AEWA**

Agreement on the Conservation of African-Eurasian Migratory Waterbirds. Adopted in 1995, entered into force in 1999.

**AfDB**

African Development Bank Group (sometimes also abbreviated as ADB).

**Afforestation**

The direct human-induced conversion of land that has not been forested for a period of at least 50 years to forested land through planting, seeding and/or the human-induced promotion of natural seed sources (UNFCCC). Should be distinguished from "reforestation".

**AGBM**

Ad Hoc Group on the Berlin Mandate.

**Agenda**

Programme of work during a meeting.

**Agenda 21**

Programme of action on sustainable development adopted at the UN Conference on Environment and Development in 1992, often referred to as the "Blueprint for Sustainable Development." Agenda 21 has 40 chapters dealing with all aspects of sustainable development, including social and economic dimensions (combating poverty and promoting human health), conservation and resource management, major groups (e.g. women, indigenous people, business and unions), and means of implementation (e.g. financial resources, transfer of technology, public awareness and education).

**Agreement**

- 1) Generic term for an international legally binding instrument. In this sense, encompasses several instruments, such as treaties, conventions, protocols or oral agreements.
- 2) Specific term used to designate international instruments that are sic "less formal", thus corresponding to soft law and deal with a narrower range of subject-matter than treaties.

**AIA**

Advanced Informed Agreement

**Alien species**

Species occurring in an area outside of its historically known natural range as a result of intentional or accidental dispersal by human activities. Alien species are not necessarily invasive species.

**AMCEN**

African Ministerial Conference on the Environment. Established in 1985 to strengthen cooperation between African governments on economic, technical and scientific activities to halt the degradation of Africa's environment. AMCEN plays an important role in providing political guidance to Africa's positions on many MEAs.

**Amendment**

- 1) A modification or addition to an existing legal instrument (e.g., treaty, convention, or protocol).
- 2) A modification to a proposal under negotiation (e.g., draft decision, draft recommendation, or draft resolution).

**Anthropogenic emissions**

Greenhouse-gas emissions resulting from human activities, under the UNFCCC.

**AOSIS**

Alliance of Small Island States. A negotiating group and ad hoc coalition of 43 small island and low-lying coastal States in the UNFCCC process. These nations are particularly vulnerable to rising sea levels and thus share common positions on climate change.

**Approval**

In practice, approval has been used instead of ratification when, at a national level, constitutional law does not require an international agreement to be ratified by the head of State. Approval has the same legal effect as ratification.

**ASCOBANS**

Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas. One of the agreements under the CMS. Adopted in 1991, entered into force in 1994.

**ASEAN**

Association of Southeast Asian Nations. A regional community of 10 States with the aim of accelerating economic growth and social progress, and promoting peace and security.

**Assessed contribution**

Contribution, expressed in percentage, of a Member State to the budget of an international organization. Should be distinguished from the notion of "voluntary contribution".

**ATS**

Antarctic Treaty System. Refers to all instruments adopted within the framework of the Antarctic Treaty, adopted in 1959, entered into force in 191.

**Awké Kon Guidelines**

Voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Related to CBD.

**B**

**Ballast Water Convention**

Shorthand for the International Convention for the Control and Management of Ships' Ballast Water and Sediments. Adopted in 2004, not yet entered into force.

**Basel Convention**

Shorthand for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Adopted in 1989, entered into force in 1992.

**Basel Protocol**

Shorthand for the Basel Protocol on Liability and Compensation to the Basel Convention on Hazardous Wastes. Adopted in 1999, not yet entered into force.

**Baseline**

A projected level of future emissions of a pollutant that reasonably represents the emissions that would occur in the absence of a proposed project activity. In the context of the CDM of the Kyoto Protocol, the baseline, together with adjustment for leakage, determines the (extent of) additionality a CDM project and thus also the amount of CERs generated by it.

**BAT**

Best available technique or best available technology

**BCH**

Biosafety clearing-house (in the context of the Biosafety Protocol)

**BCRCs**

Basel Convention Regional Centres. Centres established under the Basel Convention to assist developing countries and countries with economies in transition (CEITs), within their own region, to achieve the objectives of the Convention, through capacity building for environmentally sound management.

**Berlin Mandate**

A decision adopted at the first Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) and which led to the adoption of the Kyoto Protocol.

**Bern Convention**

Shorthand for the Convention on the Conservation of European Wildlife and Natural Habitats. Adopted in 1979, entered into force in 1982.

**Best available technique**

Most effective and advanced technique, the environmental impacts of which are limited.

**Binding**

Adjective that means that an instrument entails an obligation (usually for States) under international law.

**Biodiversity**

Shorthand for biological diversity. Variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (CBD, CITES, CMS, Ramsar, WHS).

**Biodiversity Liaison Group (BLG)**

Group of representatives of the secretariats of biodiversity-related MEAs to enhance coherence and cooperation in the implementation of these conventions.

**Biological resources**

Genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity (CBD).

**Biomass fuels**

Fuels from dry organic matter (e.g. firewood, alcohol fermented from sugar) or combustible oils produced by plants (e.g. oil extracted from soybeans). They are considered renewable energy sources as long as the vegetation producing them is maintained or replanted. Their use in place of fossil fuels cuts greenhouse gas emissions because the plants that are their sources recapture carbon dioxide from the atmosphere.

**Bioprospecting**

Exploration of biodiversity for commercially, scientifically, or culturally valuable genetic and biochemical resources.

**Biosafety**

Set of measures or actions addressing the safety aspects related to the application of biotechnologies (see biotechnology) and to the release into the environment of transgenic plants and other organisms, particularly microorganisms, that could negatively affect plant genetic resources, plant, animal or human health, or the environment.

**Biosafety Protocol**

Protocol to the Convention on Biological Diversity. Also referred to as the "Cartagena Protocol." Adopted in 2000, entered into force in 2004. The Protocol regulates the transboundary movement, transit, handling and use of living modified organisms (LMOs) that may have an adverse effect on the conservation and sustainable use of biodiversity, taking also into account human health.

**Biosphere reserves**

Sites recognized under UNESCO's Man and Biosphere Programme which innovate and demonstrate approaches to conservation and sustainable development. They are of course under national sovereign jurisdiction, yet share their experience and ideas nationally, regionally and internationally within the World Network of Biosphere Reserves. There are 482 sites worldwide in 102 countries.

**Biotechnology**

Any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use (CBD).

**BLG**

Biodiversity Liaison Group

**Bonn Guidelines**

Shorthand for the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization. Adopted by the sixth Conference of the Parties to the Convention on Biological Diversity (CBD), in 2002.

**Bottom-up approach**

Approach based on the participation of all stakeholders, particularly those at the local levels.

**BPOA**

Barbados Programme of Action for the Sustainable Development of Small Island States. Adopted at the Global Conference on the Sustainable Development of Small Island States in 1994.

**Bretton Woods Institutions**

International Bank for Reconstruction and Development (IBRD) (now one of five institutions in the World Bank Group) and the International Monetary Fund (IMF). Established by the Bretton Woods Agreements in 1944, Bretton Woods, New Hampshire, USA.

**Brundtland Commission**

Shorthand for the World Commission on Environment and Development. Named after its Chair, Gro Harlem Brundtland, Norwegian Prime Minister. The Commission produced a report in 1987, *Our Common Future*, which laid down the concept of sustainable development.

**Brundtland Report**

The outcome of the Brundtland Commission. Published in 1987.

**Bureau**

A formal structure that oversees the running of meetings. The Bureau is usually composed of representatives of each regional group and a secretariat representative. In some instances, such as the International Conference on Chemicals Management an extended bureau may be created that includes intergovernmental organizations and non-governmental organizations.

**C**

**CACAM**

Negotiating coalition of countries of Central Asia and the Caucasus, Albania, and the Republic of Moldova.

**Capacity building**

Process of developing the technical skills, institutional capability, and personnel to, e.g., implement MEAs.

**Carbon Market**

A popular term for a trading system through which countries may buy or sell units of greenhouse-gas emissions in an effort to meet their national limits on emissions, either under the Kyoto Protocol or under other agreements, such as that among member States of the European Union.

**Carbon sequestration**

The process of removing additional carbon from the atmosphere and depositing it in other "reservoirs", principally through changes in land use. In practical terms, the carbon sequestration occurs mostly through the expansion of forests.

**Carbon tax**

Tax by governments on the use of carbon-containing fuels.

**CARICOM**

Caribbean Community and Common Market. Regional economic integration community.

**Cartagena Convention**

Shorthand for the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region. Adopted in 1983, entered into force in 1986.

**Cartagena Protocol**

Other name of the Biosafety Protocol to the Convention on Biological Diversity (CBD).

**Cartagena Setting**

See: Vienna Setting.

**Cap and trade**

See emissions trading.

**Cast**

in "to cast a vote": to vote

**Caucus**

A group of like-minded delegations, which meet both during and outside negotiations to develop common positions and negotiation strategies.

**CBD**

Convention on Biological Diversity. Adopted in 1992, entered into force in 1993. One of the Rio Conventions.

**CCAMLR**

Convention for the Conservation of Antarctic Marine Living Resources (Part of ATS) Acronym also used for the Commission, which administers the Convention

**CCAS**

Convention for the Conservation of Antarctic Seals. (Part of ATS).

**CDM**

Clean Development Mechanism

**CEE**

Central and Eastern Europe

**CEIT**

Country with Economy in Transition (also EIT). Designates a country that was formerly a centrally planned economy and is undergoing transition to a market-oriented economy.

**CEO**

Chief Executive Officer

**CERs**

Certified Emissions Reductions

**Certified Emissions Reductions (CERs)**

Unit equal to one metric ton of carbon dioxide equivalent, which may be used by countries listed in Annex I of the Kyoto Protocol towards meeting their binding emission reduction and limitation commitments. CERs are issued for emission reductions from CDM project activities.

**CFCs**

Chlorofluorocarbons. A category of chemical substances that contributes to the depletion of the ozone layer. Regulated under the Montreal Protocol.

**CGRFA**

Commission on Genetic Resources for Food and Agriculture. Permanent forum established under the FAO, where governments discuss and negotiate matters relevant to genetic resources for food and agriculture.

**Chair / Chairman / Chairperson**

Title of the presiding officer of a meeting, and way he/she should be addressed.

**Chair's compilation**

Text prepared by the presiding officer of a meeting that lays out proposals made by delegations.

**Chair's text/draft**

Proposal prepared by the presiding officer of a meeting to assist reaching consensus.

**Chapeau**

Phrase at the beginning of an article or paragraph to guide the interpretation of this article or paragraph.

**Chemical Review Committee (CRC)**

Subsidiary body under the Rotterdam Convention.

**CHM**

Clearing-house Mechanism

**CIDA**

Canadian International Development Agency

**CIS**

Commonwealth of Independent States. A community of States and economic union composed of 12 former constituent republics of the Soviet Union.

**CIT**

Countries in Transition (see CEIT or EIT).

**CITES**

Convention on International Trade in Endangered Species of Wild Fauna and Flora. Adopted in 1973, entered into force in 1975.

**Clean Development Mechanism (CDM)**

One of the three market-based mechanisms under the Kyoto, whereby developed countries may finance greenhouse gas emissions-avoiding projects in developing countries, and receive credits (called CERs) for doing so which they may apply towards meeting mandatory limits on their own emissions.

**Clean technologies**

Both process and product engineering that reduces the pollutants and environmental impacts inherent in industrial production.

**Clearing House Mechanism**

The term originally referred to a financial establishment where checks and bills are exchanged among member banks so that only the net balances need to be settled in cash. Today, its meaning has been extended to include any agency that brings together seekers and providers of goods, services or information, thus matching demand with supply. The CBD has established a Clearing-house Mechanism to ensure that all governments have access to the information and technologies they need for their work on biodiversity.

**Climate change**

Change of climate, which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability over comparable time periods.

**Climate conventions**

The UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

**Closed-door meeting**

Meeting to which access is restricted. Usually restricted to Parties and excludes observers.

**CMS**

Convention on Migratory Species of Wild Animals. Also called the "Bonn Convention". Adopted in 1979, entered into force in 1983.



**Coalition**

A group of like-minded States or delegations that work together towards a common objective.

**Code of conduct**

Set of rules to guide behaviour and decisions.

**Codex**

Usually reference to a code of law. Also used as shorthand for Codex Alimentarius. A publication on food standards maintained jointly by the FAO and the WHO.

**COFI**

Committee on Fisheries of the Food and Agriculture Organization of the UN (FAO).

**COFO**

Committee on Forestry of the Food and Agriculture Organization of the UN (FAO).

**Committee**

Subset of a Plenary, open to all Parties, established to perform particular tasks (e.g., drafting committee), address a particular issue (e.g., credentials committee) or a particular set of agenda items (then equivalent to a working group). Committees make recommendations to the Plenary.

**Committee of the Whole (CoW / COW)**

Often created by a COP to aid in negotiating text. It consists of the same membership as a COP and is usually intended to operate like a subsidiary body, but covering the full scope of issues of the COP. When the Committee has finished its work, it turns the text over to the COP, which finalizes and then adopts the text during a plenary session.

**Community Forestry**

Forestry management that includes local people in planning and implementing forestry activities.

**Complementarity**

Funding principle according to which funded activities must be coherent with national programmes and policies to maximize global environmental benefits.

**Compliance**

Fulfillment by a Party of its obligations under an international agreement.

**Compliance Committee**

Committee mandated to review compliance with the provisions of an international agreement. The powers of compliance committees vary according to each agreement.

**Conference of the Parties (COP)**

One of the designations for the main negotiating body under an international agreement. The COP is a policy-making body that meets periodically to take stock of implementation of the agreement and adopt decisions, resolutions, or recommendations for the future implementation of the agreement.

**Conference Room Paper (CRP)**

A category of in-session document containing new proposals or outcomes of in-session work and is for use only during the sessions concerned.

**Consensus**

A mode of adoption of decisions, resolutions, or recommendations without voting. A decision is adopted by consensus if there is no formal explicit objection made. Whether there is consensus on an issue or not is determined by the presiding officer on the basis of the views expressed by delegates and his/her subjective assessment of the sense of the meeting.

**Contact Group**

A group formed during negotiations to reach consensus on an issue proving particularly contentious. May be established by the COP or a Committee of the Whole and is open to all Parties and sometimes to observers.

**Contracting State**

A State which has consented to be bound by an international agreement, whether or not the international agreement has entered into force (Vienna Convention on the Law of Treaties).

**Contribution**

Amount that a Party owes annually to the general trust fund of an agreement or an international organization. Determined on the basis of an indicative scale adopted by the governing body of the agreement or the international organization.

**Convention**

A binding agreement between States. Generally used for formal multilateral instruments with a broad number of Parties.

**COP**

Conference of the Parties

**COP/MOP**

Conference of the Parties to a Convention serving as Meeting of the Parties to a Protocol (e.g., Biosafety Protocol COP/MOP).

**Corr.**

Stands for the Latin term corrigendum. Used to reference corrected versions of documents during a meeting.

**Council of Europe**

A regional international organisation founded in 1949. Its goal is to strengthen democracy, human rights and the rule of law. Not to be confused with the Council of the European Union and the European Council.

**Council of the European Union**

The Council of the European Union forms together with the European Parliament the legislative arm of the EU. It is composed of Ministers from all the EU Member. Should be distinguished from the European Council, as well as of the Council of Europe.

**COW / CoW**

See Committee of the Whole.

**CPF**

Collaborative Partnership on Forests. A partnership of 14 international organizations, the work of which has relevance to forests.

**CRAMRA**

Convention for the Regulation of Antarctic Mineral Resource Activities. (See ATS). Not yet into force.

**CRC**

Chemical Review Committee.

**Credentials**

A document evidencing a person's authority. Signed by the Head of State or Government or other high authority. Without credentials in order, a person is not considered a delegate and cannot legally act on behalf of his/her State and participate in decision making.

**Credentials Committee**

A committee established by the Plenary of a meeting to review the credentials submitted by delegations.

**CRIC**

Committee for the Review of Implementation of the Convention. Within the context of the UNCCD, the subsidiary body that reviews how Parties implement their commitments.

**CRP**

Conference Room Paper. The acronym is also used to reference these documents.

**CSD**

Commission on Sustainable Development. Called for in Agenda 21 and established by ECOSOC as the highest level forum within the UN on sustainable development. Mandated to monitor the implementation of Agenda 21 and the JPOI.

**CST**

Committee on Science and Technology. Subsidiary body established under the UN Convention to Combat Desertification (UNCCD) to provide advice to the COP on scientific and technical matters.

**CTE**

WTO Committee on Trade and Environment

**CTESS**

WTO Committee on Trade and Environment in Special Session

**D**

**DAC**

Development Assistance Committee (of OECD)

**DCPI**

Division of Communications and Public Information of UNEP.

**DELIC**

Division of Environmental Law and Conventions of UNEP.

**Decision**

Formal expression of the will of the governing body of an international organization or international agreement. Usually binding but may also correspond to soft law.

**Declaration**

A formal statement of aspirations issued by a meeting. Usually issued by high-level representatives. A declaration is not binding.

**Declaratory**

Said of something that declares an intention, opinion or reserve, rather than expresses an agreed commitment.

**Declaratory interpretation**

Statement made at the time of signature or ratification of an international agreement. Spells out a State's interpretation of one or more of the provisions of the agreement.

**Deforestation**

The direct human-induced conversion of forested land to non-forested land (UNFCCC).

**Delegate**

Representative of a State or organization who has been authorized to act on its behalf and whose credentials are in order.

**Delegation**

Team of delegates to a meeting from the same country or organization.

**DEPI**

Division of Environmental Policy Implementation of UNEP.

**Desertification**

Degradation of land in arid, semi-arid and dry sub-humid areas, resulting from various factors, including climatic variations and human activities (UNCCD).

**Designated National Authority**

The national agency responsible for addressing specific issues or acting as the focal point for an MEA.

**DEWA**

Division of Early Warning and Assessment of UNEP.

**DGEFC**

Division of Global Environment Facility Cooperation of UNEP.

**Diplomatic Conference**

Conference of plenipotentiaries held to adopt and sign an international agreement. The text of the agreement has usually been negotiated before the Conference convenes.

**Dispute**

Disagreement on a point of law (e.g., the interpretation of an international agreement) or fact (e.g., an action taken by a State).

**DNA**

Designated National Authority

**Drafting group**

Informal group established by the presiding officer of a meeting, committee, or working group to draft consensus text. Observers generally may not attend drafting group meetings.

**DRC**

Division of Regional Cooperation of UNEP.

**DSA**

Daily Subsistence Allowance. Allowance paid to UN staff or delegates to a UN meeting, which is intended to account for lodging, meals, gratuities and other business-related expenses during the period of the meeting.

**DTIE**

Division of Trade, Industry and Economics of UNEP.

## **E**

### **Earmarked**

Dedicated to a particular purpose. Usually said of funds or contributions.

### **Earth Negotiations Bulletin (ENB)**

An independent, impartial reporting service published by the International Institute for Sustainable Development (IISD), providing daily summaries of major international environmental meetings and Conferences of the Parties to various MEAs.

### **EBRD**

European Bank for Reconstruction and Development

### **EC**

1) European Community

2) Environment Canada

Economic Instruments

A tool for environmental protection that makes use of fiscal incentives (subsidies) and deterrents (taxes), as well as market measures such as tradable emissions permits, rather than regulating specific outcomes.

### **ECOSOC**

UN Economic and Social Council. One of the principal organs of the UN, addressing economic, social, cultural, educational, health, environmental and other related matters.

### **Ecosystem**

Dynamic complex of plant, animal, micro-organism communities and their non-living environment, interacting as a functional unit (CBD). Ecosystems are irrespective of political boundaries.

### **Ecosystem approach**

Strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way (CBD, FAO, Ramsar Convention).

### **Ecosystem services**

Processes and functions provided by natural ecosystems that sustain life and are critical to human welfare.

### **Eco-tourism**

Travel undertaken to witness sites or regions of unique natural or ecologic quality, or the provision of services to facilitate such travel.

### **EECCA countries**

Eastern Europe, Caucasus and Central Asia countries, namely: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

### **EGTT**

Expert Group on Technology Transfer, a subsidiary body under the UNFCCC.

### **EIA**

Environmental Impact Assessment

**EIT**

Countries with economies in transition (see also CEIT). Designates a country that was formerly a centrally planned economy and is undergoing transition to a market-oriented economy.

**EMG**

Environmental Management Group created in 1999 by the UN General Assembly to enhance cooperation in the field of environment and human settlements within and beyond the UN system. Chaired by the Executive Director of UNEP, the EMG meets periodically. Members are the specialized agencies, funds and programmes of the United Nations system and the secretariats of multilateral environmental agreements, as well as the Bretton Woods Institutions and the World Trade Organization (WTO).

**Emission-reduction Unit (ERU)**

A unit equal to one metric tonne of carbon dioxide equivalent, applicable to binding emissions-reductions targets under the Kyoto Protocol, and generated through Joint Implementation projects.

**Emissions trading**

1) General notion: Mechanism in which an authority sets a limit or 'cap' on the amount of a pollutant that can be emitted within a given timeframe by entities participating in the emissions trading scheme (this 'cap' could e.g. follow from national QELROs under the Kyoto Protocol). The authority then assigns to each participating entity a number of emission credits or allowances, with each credit representing a license to emit one unit of the pollutant. The total numbers of credits assigned cannot exceed the cap. Entities whose emissions exceed the amount that was assigned to them, must buy additional credits to cover their actual emissions from those entities that have emitted less than their assigned amount, and thus have spare emission credits. This transaction is known as emissions trading. By allowing participants the flexibility to trade credits the overall emissions reductions are achieved in the most cost-effective way possible. (Also referred to as 'cap and trade').

2) For emissions trading as a mechanism under the Kyoto Protocol, see 'international emissions trading'.

**ENB**

Earth Negotiations Bulletin.

**Endemic**

Native and restricted to a specific geographic area, usually referring to plants or animals.

**Enforcement**

Range of procedures and actions taken by a State and its competent authorities to ensure that persons or organizations failing to comply with laws or regulations are brought back into compliance or punished through appropriate action.

**Entry into force**

Coming into legal effect of an international agreement, i.e. time at which an international agreement becomes legally binding for the States that have ratified it or acceded to it or otherwise expressed their consent to be bound by the agreement.

**European Council**

Institution of the EU that brings together the heads of State or government of the EU and the president of the European Commission. It meets at least twice a year and defines the general political guidelines of the EU. Not to be confused with the Council of the European Union and the Council of Europe.

**Environmental Impact Assessment (EIA)**

Process by which the environmental consequences of a proposed project or programme are evaluated and alternatives are analyzed. EIA is an integral part of the planning and decision-making processes.

**Environmental Integrity Group**

A coalition or negotiating alliance in the UNFCCC process consisting of Mexico, the Republic of Korea, and Switzerland.

**Environmental Management Group (EMG)**

Group created in 1999 by the UN General Assembly to enhance worldwide cooperation in the field of environment and human settlements. The EMG meets periodically. Members are the specialized agencies, programmes and organs of the United Nations system, including secretariats of multilateral environmental agreements, as well as the Bretton Woods Institutions and the World Trade Organization (WTO).

**Environmentally Sound Management**

Defined as taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against adverse effects which may result from such wastes, in terms of the Basel Convention.

**EOV**

Explanation of Vote

**ERU**

Emission-Reduction Unit

**EU**

European Union

**EUROBATS**

Agreement on the Conservation of Populations of European Bats. Adopted in 1991, entered into force in 1994.

**European Commission**

The executive body of the European Union. Alongside the European Parliament and the Council of the European Union, it is one of the three main institutions governing the Union. Its primary roles are to propose and implement legislation, and to act as "guardian of the treaties" which provides the legal basis for the EU. The Commission negotiates international trade agreements (in the WTO) and other international agreements on behalf of the EU in close cooperation with the Council of the European Union.

**European Community (EC)**

Most important one of the three European Communities. Originally European Economic Community. That name changed with the Maastricht Treaty in 1992, which at the same time effectively made the European Community the first of

three pillars of the European Union, called the Community (or Communities) Pillar. Member in its own right of several international organizations and a Party to various international agreements, sometimes alongside its member States.

**European Union (EU)**

The European Union is an intergovernmental and supranational union of 27 democratic member States. The EU was established under that name in 1992 by the Treaty on European Union (the Maastricht Treaty).

**Ex officio**

Latin phrase meaning "by virtue of one's position or function."

**Ex situ**

Latin phrase meaning "not the original or natural environment."

**ExCOP/ Ex-COP**

Extraordinary Conference of the Parties. Conference of the Parties held outside the normal scheduled cycle of meetings of the Conference of the Parties.

**Executive Director**

Title of the head of some international organizations (e.g., the Executive Director of UNEP).

**Executive Secretary**

Title of the head of some international organizations or secretariats of MEAs (e.g., Executive Secretary of the Convention on Biological Diversity).

**Extraterritorial**

Set of measures or laws that apply beyond a State's jurisdiction.

**F**

**FAO**

Food and Agriculture Organization of the United Nations. The UN specialized organization for agriculture, forestry, fisheries and rural development. Established in 1945.

**Final clauses/provisions**

Clauses/provisions of an international agreement that set the rules of the functioning of the agreement.

**Financial rules**

Rules governing the financial administration of an international organization, a COP, subsidiary bodies, and the secretariat.

**Floor**

- 1) in "to give the floor": Permission granted by the presiding officer of a meeting to make a statement.
- 2) in "to seek the floor": To ask permission to the presiding officer of a meeting to make a statement.
- 3) in "to take the floor": To make a statement during a meeting.

**FoC**

Friends of the Chair

**Focal point**

An official or agency designated by a government to serve as the focus or channel of communications for a particular issue or agreement.



**Framework convention**

Convention that provides a decision-making and organizational framework for the adoption of subsequent complementary agreements (e.g., Protocol). Usually contains substantial provisions of a general nature, the details of which can be provided in the subsequent agreements.

**Friends of the Chair (FoC)**

An informal group of a few prominent negotiators invited to assist the Chair of a meeting, working group, or contact group to develop a consensus proposal on a specific issue.

**Full powers**

A document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of an international agreement, for expressing the consent of the State to be bound by an international agreement, or for accomplishing any other act with respect to an international agreement.

**G**

**G-8**

Group of eight industrialized countries comprising Canada, France, Germany, Italy, Japan, Russia, the UK and the US.

**G77**

Originally group of 77 developing countries established in 194 at the first session of UNCTAD. Now gathering 131 developing States. The Group seeks to harmonize the positions of developing countries prior to and during negotiations. China sometimes also associates itself with the G77, in which case the group is referred to as "G77/China" or "G77 plus China."

**GATT**

General Agreement on Tariffs and Trade. One of the agreements annexed to the Marrakesh Agreement establishing the World Trade Organization (WTO).

**Gavel**

- 1) Hammer used by the presiding officer of a meeting to recall delegations to order and/or signal the adoption of decisions, resolutions, or recommendations.
- 2) Also used as verb in many expressions:
  - "Gavel the meeting to a close": to declare a meeting closed.
  - "Gavel down objections": to silence delegates who are vociferously raising objections.
  - "Gavel through a decision": to strike the gavel at a pace that does not allow time for delegations to raise objections.

**GBF**

Global Biodiversity Forum

**GBO**

Global Biodiversity Outlook

**GC**

Governing Council

**GCOS**

Global Climate Observing System

**GEF**

Global Environment Facility

**General Assembly (UN GA or UNGA)**

Shorthand for the UN General Assembly. The main political body of the United Nations. It is composed of representatives of all member States, each of which has one vote.

**General clauses/provisions**

Clauses/provisions of an international agreement or decision that create the context, principle and directions helping the understanding and application of the rest of the agreement or decision.

**Genetic Use Restriction Technologies (GURTs)**

Genetic engineering of plants to produce sterile seeds

**GEO**

Global Environment Outlook

**GHGs**

Greenhouse gases

**GHS**

Globally Harmonized System of Classification and Labeling of Chemicals. Managed by an ECOSOC sub-committee of experts.

**Global Biodiversity Forum (GBF)**

Open and independent mechanism, founded in 1993, to encourage analysis, dialogue and partnership on key ecological, economic, social and institutional issues related to biodiversity.

**Global Biodiversity Outlook (GBO)**

Periodic report prepared by the secretariat of the CBD on the status and trends of biological diversity at the global and national level, as well as the steps taken to conserve and use sustainably the biodiversity and share equitably the benefits arising out of the utilization of genetic resources.

**Global Compact**

A UN initiative launched in 1999 to bring the private sector together with UN agencies and civil society to support ten principles related to human rights, labour, anti-corruption and the environment.

**Global Environment Facility (GEF)**

Launched in 1991, the Global Environment Facility provides grant and concessional funds to developing countries and EITs for projects and programmes targeting global environmental issues: climate change, biological diversity, international waters, ozone layer depletion, land degradation and persistent organic pollutants. Its implementing agencies are UNEP, UNDP, and the World Bank. Designated as the operating entity of the financial mechanism for some MEAs (e.g., the CBD and the UNFCCC).

**Global Environment Outlook (GEO)**

A periodic report that provides a comprehensive overview of the State of the global environment. Published every five years by UNEP. Completed by the GEO Yearbooks, published annually.

**Global Taxonomy Initiative (GTI)**

Initiative established by the COP to the CBD to address the lack of taxonomic information and expertise around the world.

**GMEF**

Global Ministerial Environment Forum. A ministerial-level forum on environmental policy open to all States. Held periodically in conjunction with the sessions of the Governing Council of UNEP.

**GMO**

Genetically Modified Organism. Organism, plant or animal modified in its genetic characteristics by inserting a modified gene or a gene from another variety or species. Usually considered to be the same as an LMO, which is the term used by the Biosafety Protocol.

**GNP**

Gross National Product

**Governing Council (GC)**

The decision-making body of the UN Agencies, Programmes and Funds, eg. Environment Programme (UNEP). Meets annually through regular and special sessions.

**GPA**

Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. Adopted in 1995 and administered by UNEP.

**Greenhouse gas (GHG)**

Atmospheric gas that traps the heat and is responsible for warming the earth and climate change. The major greenhouse gases are: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O). Less prevalent – but very powerful – greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>). Those gases are regulated under the UNFCCC and the Kyoto Protocol. Some greenhouse gases are also regulated under the Montreal Protocol for their effects on the ozone layer.

**GRID**

Global Resources Information Database. The basis for UNEP's environmental assessment programme.

**GRULAC**

Group of Latin American and Caribbean Countries. A regional negotiating group.

**GTI**

Global Taxonomy Initiative

**GURTs**

Genetic Use Restriction Technologies

**H**

**Habitat**

- 1) Place or type of site where an organism or population naturally occurs (CBD).
- 2) Shorthand for UN-Habitat.

**Hard law**

Term used to describe the legally binding nature of various agreements or provisions, which leave no or little room for discretion. Often opposed to soft law.

**Hazardous wastes**

Wastes that exhibit one or more hazardous characteristics, such as being flammable, oxidizing, poisonous, infectious, corrosive, or ecotoxic (Basel Convention).

**Haze Agreement**

Shorthand for the ASEAN Agreement on Transboundary Haze Pollution. Adopted in 2002, entered into force in 2003.

**HCFCs**

Hydrochlorofluorocarbons. Regulated under the Montreal Protocol.

**HFCs**

Hydrofluorocarbons. Regulated under the Kyoto Protocol, as well as under the Montreal Protocol.

**High-level segment**

Segment of a meeting composed of the highest-level representatives of State Parties attending the meeting.

**HNS Convention**

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea. Adopted in 1996, not yet entered into force.

**HOD**

Head of Delegation

**Hotspot**

- 1) Area particularly rich in total numbers of species (see "biodiversity hotspot").
- 2) Area of especially high concentrations of pollutants.

**I**

**IA**

Implementation Agency

**IBM**

Issue-Based Modules for the Coherent Implementation of Biodiversity-related Conventions. UNEP web-based analytical tool to facilitate the coherent implementation of biodiversity-related conventions. Aimed to be replicated for the other clusters of MEAs (e.g., chemicals).

**IBRD**

International Bank for Reconstruction and Development, one of the two development institutions (together with IDA) of the World Bank. One of the Bretton Woods Institutions.

**ICJ**

International Court of Justice. The principal judicial organ of the UN. The ICJ has established a special chamber for environmental disputes.

**ICRAN**

International Coral Reef Action Network

**ICRI**

International Coral Reef Initiative. A partnership of governments, international organizations, and non-governmental organizations to preserve coral reefs and related ecosystems. Established in 1994.

**ICRW**

International Convention for the Regulation of Whaling. Adopted in 1946, entered into force in 1948. Also called the "Whaling Convention."

**IDA**

International Development Association, one of the two development institutions (together with IBRD) of the World Bank.

**IDB**

Inter-American Development Bank

**IET**

International Emissions Trading

**IFCS**

International Forum on Chemical Safety. Established in 1994 to promote the environmentally sound management of chemicals.

**IFI**

International Financial Institution

**IIFB**

International Indigenous Forum on Biodiversity

**IGO**

Intergovernmental Organization

**IJC**

International Joint Commission / Canada - U.S.

**ILO**

International Labour Organization. UN specialized agency, which seeks the promotion of social justice and internationally recognized human and labour rights. Founded in 1919.

**IMF**

International Monetary Fund. International organization established to, inter alia, promote international monetary cooperation, foster economic growth and high levels of employment, and provide temporary financial assistance to countries to help ease balance of payments adjustment. Established in 1945 as one of the Bretton Woods Institutions.

**IMO**

International Maritime Organization. UN organization, created in 1948, to address shipping activities.

**Implementation**

For a Party to an international agreement, process of adopting relevant policies, laws and regulations, and undertaking necessary actions to meet its obligations under the agreement.

**In situ**

Latin phrase meaning "within the original place." In situ condition is the condition of genetic resources in their ecosystems and natural habitats and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (CBD).

**INC**

Intergovernmental Negotiating Committee. Forum established to negotiate an international agreement.

**Incrementality**

Funding principle according to which funded activities produce global environmental benefits.

**Indigenous people/s**

No universal, standard definition. Usually considered to include cultural groups and their descendants who have a historical continuity or association with a given region, or parts of a region, and who currently inhabit or have formerly inhabited the region either before its subsequent colonization or annexation, or alongside other cultural groups during the formation of a nation-State, or independently or largely isolated from the influence of the claimed governance by a nation-State, and who furthermore have maintained, at least in part, their distinct linguistic, cultural and social / organizational characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the nation-State. Also includes people who are self-identified as indigenous, and those recognized as such by other groups.

**INF.**

Information document. Usually provided during meetings to provide background information to draft decisions, resolutions, and recommendations. These documents are not subject to negotiation.

**Informal consultations**

Exchange of views among delegations which take place outside the formal setting of negotiations. Usually undertaken with the aim of identifying a compromise position.

**In-session documents**

Documents distributed during a meeting, such as conference room papers (CRP), limited distribution documents (L. docs), informal documents, etc.

**Institutional clauses/provisions**

Clauses/provisions of an international agreement that relate to the institutions established under the agreement.

**Inter alia**

"Among other things." Often used in legal documents to compress lists of Parties etc.

**Interlinkages**

Connections between and among processes, activities, or international agreements.

**International Emissions Trading (IET)**

Regime that allows Parties subject to quantified emissions limitation or reduction commitments to buy and sell emissions credits among them (within the Kyoto Protocol context).

**International Indigenous Forum on Biodiversity (IIFB)**

Group of representatives from indigenous governments, indigenous NGOs and indigenous scholars and activists organized around the CBD and other major international environmental meetings to help coordinate indigenous strategies at these meetings and provide advice to governments.

**International Seabed Authority (ISA)**

International organization established under the UNCLOS to address matters related to The Area.

**Intervention**

Synonym for "statement."

**Invasive species**

A species that invades natural habitats.

**IOC**

Intergovernmental Oceanographic Commission of UNESCO.

**IOPC Funds**

International Oil Pollution Compensation Funds. Provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

**IPCC**

Intergovernmental Panel on Climate Change. Established jointly by the WMO and UNEP in 1998 to assess the scientific, technical and socio-economic impacts of climate change.

**IPPC**

- 1) International Plant Protection Convention. Adopted in 1952. Revised in 1997, entered into force in 2005.
- 2) Integrated Pollution Prevention and Control.

**IPRs**

Intellectual property rights

**ISA**

International Seabed Authority

**ISO**

International Organization for Standardization. Non-governmental organization, the members of which are national standards institutes of 15 countries. Established in 1947 to facilitate the international coordination and unification of industrial standards.

**ITLOS**

International Tribunal for the Law of the Sea. Judicial organ established under UNCLOS to deal with disputes related to the law of the sea.

**ITPGRFA**

International Treaty on Plant Genetic Resources for Food and Agriculture. Adopted in 2001, entered into force in 2004.

**ITTA**

International Tropical Timber Agreement. Commodity agreement that regulates trade in tropical timber. Adopted in 1983 and renegotiated periodically.

**ITTC**

International Tropical Timber Council. The governing and policy-making body of the ITTO. Meets annually.

**ITTO**

International Tropical Timber Organization. Established under the ITTA to administer the agreement.

**IUCN**

The World Conservation Union. A hybrid international organization, the membership of which is composed of governments and non-governmental organizations. Originally called International Union for the Conservation of Nature and Natural Resources.

**IUU**

Illegal, Unregulated, and Unreported (fishing).

**IWC**

International Whaling Commission. The governing body of the ICRW.

**J**

**Jakarta Mandate**

Shorthand for Jakarta Mandate on Marine and Coastal Biological Diversity. Global consensus on the importance of marine and coastal biological diversity, adopted in 1995 by the second COP to the CBD. Includes the programme of work on marine and coastal biodiversity under the CBD.

**JI**

Joint Implementation

**JLG**

Joint Liaison Group

**Johannesburg Plan of Implementation (JPOI)**

One of the outcomes of the 2002 World Summit on Sustainable Development (WSSD). Outlines a framework for action to implement the commitments undertaken at the 1992 UN Conference on Environment and Development (UNCED), including goals and time-bound targets.

**Joint Implementation (JI)**

A mechanism under the Kyoto Protocol through which a developed country can receive emission reduction units when it helps to finance projects that reduce net greenhouse gas emissions in another developed country (in practice, the recipient State is likely to be an EIT).

**Joint Liaison Group (JLG)**

Group of representatives of the secretariats of the UNFCCC, the CBD, and the UNCCD. Set up to explore common activities related to climate change, biodiversity, and desertification. The Ramsar Convention secretariat is an invited observer to this Group.

**JPOI**

Johannesburg Plan of Implementation

**JUSCANZ/JUSSCANZ**

A negotiating group composed of Japan, the US, Switzerland, Canada, Australia, Norway and New Zealand. Other delegations sometimes associate with it.



## **K**

### **Kyoto Protocol**

Protocol to the UN Framework Convention on Climate Change (UNFCCC). Provides for binding emission reductions for Annex I Parties to the UNFCCC. Adopted in 1997, entered into force in 2005.

## **L**

### **Land degradation**

Reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rain fed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land use or from a process or combination of processes, including processes arising from human activity and habitation patterns.

### **L. docs**

Limited distribution documents.

### **LDC Expert Group**

Panel of experts providing advice to Least Developed Countries (LDCs) on the preparation and implementation of National Adaptation Programme of Action (NAPAs) under the UNFCCC.

### **LDC Fund**

Fund established by the UNFCCC COP to assist least developed countries to undertake activities to adapt to the adverse effects of climate change.

### **LDCs**

Least Developed Countries

### **LDG**

Legal Drafting Group

### **Leakage**

In the context of the CDM and JI of the Kyoto Protocol, leakage refers to the net change in GHG emissions, which occurs outside the boundary of a project, and which is measurable and attributable to that project.

### **Least Developed Countries (LDCs)**

Countries at the lowest level of the scale of development. Status defined according to level of income, human resources, and economic vulnerability.

### **Like-Minded**

Group of delegations that share common interests and positions on specific issues.

### **Like-Minded Megadiverse Countries (LMMC)**

A negotiating group of 17 megadiverse countries, among those that collectively account for 70% of the world's biodiversity. Mainly operates during negotiations on access to genetic resources and benefit sharing under the CBD.

### **Listing**

Inclusion of a product or species in a list of regulated products or species.

### **LMG**

Like-Minded Group

### **LMMC**

Like-Minded Megadiverse Countries

**LMO**

Living Modified Organism. Any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology (Biosafety Protocol). The Biosafety Protocol uses this term, but in everyday usage also GMO is used.

**London Convention**

Shorthand for the Convention on the Prevention of Marine Pollution by Dumping Waste and Other Matter. Adopted in 1972, entered into force in 1975. Will be replaced by the 1996 Protocol to the London Convention, when the Protocol enters into force.

**LRTAP**

Shorthand for the Convention on Long-range Transboundary Air Pollution. Negotiated under the auspices of the UNECE. Adopted in 1979, entered into force in 1983.

**LULUCF**

Land Use, Land-Use Change and Forestry. Within the context of the UNFCCC, refers to the impact of the type of land use by humans, and changes in such land use, on greenhouse gas emissions.

**M**

**MA**

Millennium Ecosystem Assessment. Sometimes also wrongly abbreviated as MEA.

**MAI**

Multilateral Agreement on Investment. Proposed agreement negotiated under the auspices of the OECD between 1995-1998, but which was never adopted.

**Mandate**

What a meeting, organization or individual has been given authority to do.

**MARPOL**

Shorthand for the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 relating thereto. Adopted in 1973, entered into force in 1983.

**Marrakech Accords**

Series of decisions adopted at the seventh Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC), related to the Kyoto Protocol.

**MAT**

Mutually Agreed Terms, within the context of the Convention on Biological Diversity (CBD).

**May**

As negotiating language, "may" entails discretionary action and creates no obligation for the addressee. It is not binding.

**MC**

Memorandum to Cabinet

**MDGs**

Millennium Development Goals.

**MEA**

Multilateral Environmental Agreement

**Meeting**

Generic term used for conferences, summits, sessions, etc.

**Meeting of the Parties (MOP)**

A body equivalent to the Conference of the Parties. The terminology differs according to agreements. In practice, there is a tendency within environment negotiating fora to use "Conference of the Parties" for the conventions and Meeting of the Parties for the protocols.

**Megadiverse Countries**

Countries which collectively account for 70% of the world's biodiversity. These countries are Australia, Bolivia, Brazil, China, Colombia, Democratic Republic of the Congo, Ecuador, India, Indonesia, Madagascar, Malaysia, Mexico, Papua New Guinea, Peru, Philippines, South Africa, Venezuela.

**Member State**

State which is a member of an international organization.

**Memorandum of Understanding (MoU / MOU)**

A simplified type of international instrument, which can be concluded between States, between States and international organizations or between international organizations. MoUs can provide a framework for cooperation or be concluded for specific time-bound activities.

**Micro-organism**

Group of microscopic organisms, some of which cannot be detected without the aid of a light or electron microscope, including viruses, prokaryotes (bacteria and archaea), and eukaryotic life forms, such as protozoa, filamentous fungi, yeasts and micro-algae.

**Millennium Development Goals (MDGs)**

A set of eight goals and associated targets to achieve poverty alleviation by 2015, which found their origin in the Millennium Summit.

**Millennium Ecosystem Assessment (MA)**

A global assessment of the earth's ecosystems supported by the UN Secretary-General. The MA completed its work in 2005 with the publication of its report. The acronym MEA is often used wrongly for the MA.

**Millennium Summit**

Meeting of high-level government representatives convened in 2000. The Summit adopted an agenda for the elimination of poverty through the implementation of target-oriented goals (MDGs).

**Mitigation**

In the context of the UNFCCC and the Kyoto Protocol, actions to cut net emissions of greenhouse gases and reduce climate change as a consequence.

**Monterrey Conference**

Shorthand for the International Conference on Financing for Development, held in Monterrey, Mexico, in 2002.

**Monterrey Consensus**

Outcome of the Monterrey Conference.

**Montreal Protocol**

Shorthand for the Montreal Protocol on Substances that Deplete the Ozone Layer. Protocol to the Vienna Convention for the Protection of the Ozone Layer. Adopted in 1987, entered into force in 1989.

**Montreux Record**

The principal tool of the Ramsar Convention for highlighting those sites where an adverse change in ecological character has occurred, is occurring, or likely to occur.

**MOP**

Meeting of the Parties

**MOS**

Meeting of the Signatories

**Motion**

Formal oral proposal on a matter of procedure.

**MoU or MOU**

Memorandum of Understanding

**Multilateral Environmental Agreement (MEA)**

A generic term for treaties, conventions, protocols, and other binding instruments related to the environment. Usually applied to instruments of a geographic scope wider than that of a bilateral agreement (i.e., between two States).

**Multilateral Fund**

Shorthand for the Multilateral Fund for the Implementation of the Montreal Protocol. Assists developing countries to implement the Montreal Protocol.

**Must**

As negotiating language, "must" creates an obligation to act for the addressee. It is binding.

**Mutatis Mutandis**

Latin phrase meaning "with such changes as are necessary on the points of detail" (e.g., "the dispute settlement provisions of the Convention apply *mutatis mutandis* to the Protocol").

**MYPOW**

Multi-Year Programme of Work

**N**

**NAFTA**

North American Free Trade Agreement

**NAP**

National Action Plan. Required under the UNCCD for the implementation of the Convention.

**NAPA**

National Adaptation Programme of Action. Prepared by least developed countries under the UNFCCC for urgent activities to cope with adaptation to climate change.

**National Communication (NC)**

Under the UNFCCC, document by which a Party informs other Parties of activities undertaken under the Convention.

**NBSAP**

National Biodiversity Strategy and Action Plan. Required under the CBD for the implementation of the Convention.

**NC**

National Communication

**NCSA**

National Capacity Self-Assessment for Global Environmental Management. Initiative by the Global Environment Facility that aims to assist countries to assess their capacity needs to implement the Rio Conventions on the basis of synergies between these conventions.

**NEPAD**

New Partnership for Africa's Development. A framework for action towards the socio-economic development of Africa. Adopted in 2001 by the Organization of African Unity (now African Union).

**New and additional financial resources**

- 1) Financial resources that are provided in addition to the UN target level of 0.7% of Gross National Product (GNP) for Official Development Assistance (ODA).
- 2) Financial resources that are new and additional to annual general ODA funding which has remained constant or increased, in absolute terms or in ODA/GNP terms.

**NGO(s)**

Non-governmental organization(s)

**NIP**

National Implementation Plan, required under the Stockholm Convention on Persistent Organic Pollutants.

**Non-Governmental Organization(s) (NGO(s))**

Applied to community groups and not-for-profit organizations. In the UN system, it also includes business associations. The term gathers organizations with different mandates (e.g., research, education and awareness building, lobbying, technical assistance, field projects, etc.).

**Non-Paper**

Informal text aimed at facilitating negotiations. It is not a formal proposal.

**Non-Party**

Refers to a State that has not ratified, acceded, or otherwise become a Party to an international agreement. As a Non-Party, a State may have limited rights to participate in negotiations or deliberations under the agreement, or to invoke provisions of the agreement.

**Non-recorded vote**

Vote where the way in which each delegation voted is not reported in the official records or the report of the meeting.

**NOO**

National Ozone Officer (under the Montreal Protocol)

**Notification**

Formal communication that bears legal consequences (e.g. start of a time-bound period).

**NOU**

National Ozone Unit (under the Montreal Protocol)

**Noumea Convention**

Shorthand for the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. Adopted in 1986, entered into force in 1990.

**NR**

National Report

**O**

**Objection**

Oral or written statement by which a delegation informs a meeting that it objects to the adoption of a proposed decision, resolution, recommendation, or measure.

**Obligation clauses/provisions**

Clauses/provisions of an international agreement or decision that provide for the actions to be taken, individually or jointly, by the Parties to achieve the objectives of the agreement or decision.

**Observer**

Non-State or State actor invited to participate in a limited capacity in discussions during negotiations. Observers are not allowed to negotiate text and have no voting powers. In practice, some observer States do negotiate, although they do not participate in final decision making.

**ODA**

Official Development Assistance

**ODS**

Ozone-depleting substance (under the Montreal Protocol and the Vienna Convention)

**OECD**

The Organisation for Economic Co-operation and Development is an organization of 30 advanced economies in North America, Europe, and the Pacific region that share a commitment to democratic government and a market economy. Originated in 1948 as the Organisation for European Economic Co-operation (OEEC) to help administer the Marshall Plan for the re-construction of Europe after WW II.

**OECS**

Organisation of Eastern Caribbean States. Regional cooperation organization created in 1981.

**OWEG**

Open-ended Working Group

**Official Development Assistance (ODA)**

Also known as "foreign aid". Consists of loans, grants, technical assistance and other forms of cooperation from developed to developing countries.

**OP 5, 13, XX...**

Operational Programme 5, 13, XX...

**OPEC**

Organization of the Petroleum Exporting Countries. Organization of eleven developing countries whose economies rely on oil export revenues. Created in 1960 to, inter alia, achieve stable oil prices, which are fair and reasonable for both producers and consumers.

**Open-ended**

Said of a meeting or a group which is not time-bound (unless specified otherwise) and participation is not restricted.

**Operational Programme (OP)**

Conceptual and planning framework of the GEF for the design, implementation, and coordination of a set of projects in a particular focal area. Developed on the basis of priorities identified by Parties to various MEAs, the Council of the GEF, advice from the Scientific and Technical Advisory Panel (STAP) and country-driven projects. There are 15 Operational Programmes.

**Operative paragraphs**

Paragraphs of an international agreement, decision, resolution, or recommendation that provide for the actions to be taken, individually or jointly, by the Parties to achieve the objectives of the agreement, decision, resolution, or recommendation. Often contrasted with the preamble.

**OPRC**

Convention on Oil Pollution Preparedness, Response and Cooperation. Adopted in 1990, entered into force in 1995.

**Order**

- 1) "Call to order": direction by the presiding officer of a meeting that a delegate or group of delegates should be silent to allow the meeting's proceedings to take place in an orderly manner.
- 2) "Out of order": the status of something that is not in accordance with the rules of procedure.

**Out of order**

Not behaving in accordance with the rules of procedure.

**Ozone secretariat**

secretariat administered by UNEP. Services the Vienna Convention and the Montreal Protocol.

**P**

**Package deal**

Proposal that includes several issues, not necessarily related, which has to be accepted or rejected as a whole.

**PADELIA**

UNEP Partnership for Development of Environmental Law and Institutions in Africa.

**PAMs**

Policies and Measures

**Party**

Refers to a State (or regional economic integration organization such as the European Union) that has ratified, acceded to, or otherwise formally indicated its intent to be bound by an international agreement, and for which the agreement is in force. Also called "Contracting Party." While most Parties have signed the instrument in question, it is not usually a necessary step in order to become a Party (see "accession").

**Patent**

Government grant of temporary monopoly rights on innovative processes or products.

**PCA**

Permanent Court of Arbitration.

**Permanent Forum on Indigenous Issues (PFII)**

Advisory body to the ECOSOC, established in 2000 to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

**Persistent Organic Pollutants (POPs)**

Chemicals that remain intact in the environment for long periods of time. Regulated under the Stockholm Convention.

**Permanent Representative (PR)**

The head of a permanent mission.

**PFCs**

Perfluorocarbons. Regulated under the UNFCCC.

**PFII**

Permanent Forum on Indigenous Issues

**PGRFA**

Plant Genetic Resources for Food and Agriculture. Any genetic material of plant origin of actual or potential value for food and agriculture.

**PIC**

1) Prior informed consent. Used in the context of negotiations on access to genetic resources and benefit sharing, as well as on traditional knowledge of local and indigenous communities (see indigenous people). Also used in the context of the PIC Convention.

2) Pacific Island Country.

**PIC Convention**

Shorthand for the Rotterdam Convention on the Prior Informed Consent Procedure For Certain Hazardous Chemicals and Pesticides in International Trade. Also called the "Rotterdam Convention."

**Plenary**

The main meeting format of a COP or a Subsidiary Body. Decisions or recommendations approved by sub-sets of the Plenary have to be forwarded to the Plenary for formal final adoption.

**Plenipotentiary**

Individual who carries or has been conferred the full powers to engage the State he or she represents.



**Point of order**

Formal question raised by a delegation as to whether the proceedings are in order or a particular action by a delegate or a presiding officer follows the rules of procedure.

**Policies and Measures (PAMs)**

Steps taken or to be taken by countries to achieve greenhouse gas emissions targets under the UNFCCC and the Kyoto Protocol.

**POPRC**

Persistent Organic Pollutant Review Committee, a subsidiary body under the Stockholm Convention.

**POPs**

Persistent Organic Pollutants

**POPs Convention**

Shorthand for the Stockholm Convention on Persistent Organic Pollutants.

**Poverty Reduction Strategy Paper (PRSP)**

Country-led, country-written document that provides the basis for assistance from the World Bank and the International Monetary Fund (IMF), as well as debt relief under the Heavily Indebted Poor Country Initiative. A PRSP describes a country's macroeconomic, structural, and social policies and programs to promote growth, and the country's objectives, policies, and measures for poverty reduction

**PPP**

Public-Private Partnership

**Preamble**

Set of opening statements, called "recitals," of an international agreement, decision, resolution, or recommendation that guides the interpretation of the document. Often contrasted with the operative paragraphs.

**Preambular paragraphs**

The paragraphs found in the Preamble to an international agreement, decision, resolution, or recommendation and that help interpreting the document. Also called "recitals".

**Precautionary approach/principle**

Approach/principle according to which the absence of full scientific certainty shall not be used as a reason for postponing action where there is a risk of serious or irreversible harm to the environment or human health. The approach/principle is embedded in several instruments, including Principle 15 of the 1992 Rio Declaration on Environment and Development. Whereby the precautionary approach is often used in negotiations to infer a less definite meaning than the precautionary principle.

**Prep Com / PrepCom**

Preparatory Committee. A committee mandated to prepare a meeting. It can be mandated to address substantive issues or not. The phrase is often used to refer to the meetings of the preparatory committee.

**Pre-session documents**

Documents prepared by the secretariat for distribution before a meeting. These include draft decisions, resolutions, recommendations, non-papers, information documents (INF. docs), etc.

**Presiding Officer**

Delegate elected by a meeting to preside over the proceedings, maintain order and lead the work of the meeting.

**Primary forest**

Forest largely undisturbed by human activities. Also called "natural forest."

**Prior informed consent (PIC)**

Consent to be acquired prior to accessing genetic resources or shipping internationally regulated chemicals, substances or products. Granted by competent authorities on the basis of the information provided by the partners to a prior informed consent agreement. The notion is linked to the principle of the Advanced Informed Agreement.

**Procès verbal**

Record of all statements made during a meeting.

**Protocol**

- 1) International legal instrument appended or closely related to another agreement, which constitutes a separate and additional agreement and which must be signed and ratified by the parties to the convention concerned. Protocols typically strengthen a convention by adding new, more detailed commitments.
- 2) Rules of diplomatic procedure, ceremony and etiquette.
- 3) Department within a government or organization that deals with relations with other missions.

**Provisional agenda**

Draft agenda of a meeting that has yet to be adopted.

**PRSP**

Poverty Reduction Strategy Paper

**PRTR**

Pollutant Release and Transfer Register

**Public-Private Partnership (PPP)**

A cooperative initiative between public (i.e., governmental) and private entities (including businesses, NGOs, etc.) toward a specific action.

**Q**

**QELROs**

Quantified Emissions Limitation or Reduction Commitments

**Quantified emissions limitation or reduction commitments (QELROs)**

Legally binding targets and timetables under the Kyoto Protocol for the limitation or reduction of greenhouse-gas emissions by developed countries.

**Quorum**

The minimum number of Parties or members that must be present for a meeting to start or decisions to be made. The quorum is stated in the rules of procedure, and it may be expressed in absolute numbers or as a percentage of an overall number (e.g., 70% of the Parties).

## **R**

### **Ramsar Convention**

Shorthand for the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Adopted in 1971, entered into force in 1975.

### **Ramsar List**

List of Wetlands of International Importance. List of wetlands which have been designated by the Parties to the Ramsar Convention as internationally important according to one or more of the criteria that have been adopted by the Ramsar COP.

### **Rapporteur**

1. Delegate (more specifically, a member of the Bureau) elected/nominated to prepare or oversee the preparation of the report of a meeting.
2. Person appointed by a body to investigate and issue or function and report back to that body.

### **Ratification**

Formal process by which a Head of State or appropriate governmental official or authority signs a document which signals the consent of the State to become a Party to an international agreement once the agreement has entered into force and to be bound by its provisions.

### **Recitals**

Set of opening statements of an international agreement, decision, resolution, or recommendation that guides the interpretation of the document. Also referred to as "Preamble" or "preambular paragraphs."

### **Recommendation**

Formal expression of an advisory nature of the will of the governing body of an international organization or international agreement. It is not binding.

### **Recorded vote**

Vote where the way in which each delegation voted is reported in the official records or report of the meeting.

### **Reforestation**

The direct human-induced conversion of non-forested land to forested land through planting, seeding and/or the human-induced promotion of natural seed sources, on land that was forested but that has been converted to non-forest land (UNFCCC). Should be distinguished from the notion of afforestation.

### **Regional groups**

Alliances of countries, more or less from by geographic location, which meet privately to discuss issues and nominate bureau members and other officials for activities under the Convention. The five regional groups are Africa, Asia, Central and Eastern Europe (CEE), Latin America and the Caribbean (GRULAC), and the Western Europe and Others Group (WEOG).

### **Registration**

Process by which delegates are issued a pass to access a meeting's venue and discussions.

### **Registries, registry system**

Systems, including electronic databases, that will track and record all transactions under the Kyoto Protocol's greenhouse-gas emissions trading system (the "carbon market") and under mechanisms such as the CDM.

**REIO**

Regional Economic Integration Organization (e.g. the EC)

**Report on/of the meeting**

Document that records all discussions and results of a meeting. A report "on" the meeting does not need the approval of the body in question whereas a report "of" a meeting does.

**Reservation**

Unilateral statement made by a State upon signature, ratification, acceptance, approval or accession to an international legal instrument, indicating that it wishes to exclude or alter the legal effect of certain provisions in their application to that State. Reservations are generally permitted, but some international agreements expressly prohibit reservations.

**Resolution**

Formal expression of the opinion or will of the governing body of an international organization or international agreement. Usually non-binding.

**Rev.**

Stands for "revision". Used to reference revised versions of documents during negotiations.

**Review of Significant Trade (RST)**

Review of the biological, trade and other relevant information on species listed in Appendix II of the CITES), and subject to levels of trade that are significant in relation to the population of the species, in order to identify problems concerning the implementation of the Convention.

**RFMO**

Regional Fisheries Management Organization

**Rio Conference**

Shorthand for the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, Brazil, in 1992.

The outcomes of the Conference include:

- The UN Framework Convention on Climate Change (UNFCCC)
- The Convention on Biological Diversity (CBD)
- Agenda 21
- The establishment of the Commission on Sustainable Development (CSD)
- The Rio Declaration on Environment and Development
- The Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, conservation and sustainable development of all Types of Forests (also known as "the Forest Principles")

UNCED also led to negotiation and adoption of the UN Convention to Combat Desertification (UNCCD).

**Rio Convention(s)**

Used to designate the conventions negotiated and adopted during the Rio Conference in 1992. These Conventions are the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC), to which the UN Convention to Combat Desertification (UNCCD), adopted in 1994, is also added.

**Rio Declaration**

Shorthand for the Rio Declaration on Environment and Development adopted at the Rio Conference. Set of 27 Principles on sustainable development.

**Roster of experts**

Experts nominated to perform certain tasks as defined by the governing body of an international agreement or international organization.

**Rotterdam Convention**

Shorthand for Rotterdam Convention on the Prior Informed Consent Procedure For Certain Hazardous Chemicals and Pesticides in International Trade. Also referred to as the "PIC Convention

**RSPB**

Royal Society for the Protection of Birds, a non-governmental organization.

**RST**

Review of Significant Trade

**Rules of Procedure**

Set of rules adopted by a meeting to govern the work and decision making of its formal settings (i.e., for Plenary or working groups).

**S**

**SACEP**

South Asia Cooperative Environment Programme

**SADC**

Southern African Development Community

**SAICM**

Strategic Approach to International Chemicals Management. Approach developed on the basis of an open-ended consultative process involving representatives of all stakeholder groups, jointly convened by the Inter-Organization Programme for the Sound Management of Chemicals (IOMC), the Intergovernmental Forum on Chemical Safety (IFCS) and UNEP. Adopted in 2006.

**SBI**

In the context of the UNFCCC, the Subsidiary Body for Implementation. Advises the Conference of the Parties to the Convention and/or the Meeting of the Parties to the Kyoto Protocol in the form of recommendations and draft decisions.

**SBSTA**

In the context of the UNFCCC, the Subsidiary Body for Scientific and Technological Advice. Advises the Conference of the Parties to the Convention and/or the Meeting of the Parties to the Kyoto Protocol in the form of recommendations and draft decisions.

**SBSTTA**

In the context of the CBD, the Subsidiary Body for Scientific, Technical and Technological Advice. Provides advice to the Conference of the Parties to the Convention and/or the Meeting of the Parties to the Biosafety Protocol in the form of recommendations.

**Scale of assessment**

Agreed formula for determining the scale of contribution of each Member State of an international organization.

**SCCF**

Special Climate Change Fund

**SD**

Sustainable Development

**SEA**

Strategic Environmental Assessment

**SEE**

South Eastern Europe

**Secret ballot/vote**

Type of vote. Organized to ensure that each delegation's vote remains secret.

**Secretariat**

The body established under an international agreement to arrange and service meetings of the governing body of that agreement, and assist Parties in coordinating implementation of the agreement. Also performs other functions as assigned to it by the agreement and the decisions of the governing body.

**Secretary-General**

Normally: Head of the United Nations secretariat.

**Session**

Meeting or series of meetings of a particular body (e.g., Eighth Special Session of UNEP Governing Council; "working group II met in four sessions").

**SFM**

Sustainable Forest Management

**Shall**

As negotiating language, "shall" creates an obligation for action for the addressee. It is binding.

**Should**

As negotiating language, "should" entails an advice, not an obligation, to do something. However, while non-binding, it implies a stronger imperative than "may."

**Show of hands**

Type of voting procedure by which delegations raise a hand or nameplate to signal "yes," "no," or "abstain." A vote by show of hands is a non-recorded vote.

**Side events**

Events taking place concurrently with a meeting. Usually in the form of discussion panels, workshops, seminars, launches, etc. organized either by the secretariat, States, international organizations or NGOs.

**SIDS**

Small Island Developing States. Low-lying coastal countries that share similar development challenges and concerns about the environment, especially their vulnerability to the adverse effects of global climate change. Agenda 21 recognized that SIDS and islands supporting small communities are a special case both for environment and development. Currently 41 SIDS are included in the list used by United Nations Department of Economic and Social Affairs.

**Signatory**

A State that has negotiated and signed an international agreement.

**Signature**

Act by which the head of State or government, the foreign minister, or another designated official indicates the authenticity of an international agreement and, where ratification is not necessary, it may also indicate the consent of the State to be bound by the agreement.

**Single negotiated text**

Draft text compiling all the delegations proposals into a coherent whole.

**Sinks**

In the context of the UNFCCC and the Kyoto Protocol, any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. The major sinks are forests and other vegetation which remove carbon dioxide through photosynthesis.

**Soft law**

The term used for quasi-legal instruments which do not have any binding force, or those whose binding force is somewhat "weaker" than the binding nature of traditional law, often referred to as "hard law". In the field of the international law, soft law consists of non-treaty obligations which are therefore non-enforceable and may include certain types of declarations, guidelines, communications and resolutions of international bodies (e.g. resolutions of the UN General Assembly). Soft-law may be used to encourage broader adhesion to a proposal.

**Sound management**

Taking all practicable steps to ensure that management takes place in a manner which protects human health and the environment against the adverse effects of activities, processes, products or substances.

**Speakers' list**

List of delegations seeking the floor. Maintained by the presiding officer, in the order in which delegations have made the request.

**Special Climate Change Fund (SCCF)**

A fund established under the UNFCCC to finance projects relating to adaptation; technology transfer and capacity building; energy, transport, industry, agriculture, forestry and waste management; and economic diversification.

**Special session**

A session of a body outside and additional to its regularly scheduled sessions. Focused on a particular issue.

**Specialized agency**

Autonomous international organization linked to the United Nations through special agreement.

**Spokesman/spokesperson**

A delegate speaking on behalf of a group of countries or organizations.

**Sponsor**

Delegation which proposes a decision, resolution, recommendation, or amendment for adoption by a meeting.

**SPREP**

Pacific Regional Environment Programme

**Square brackets**

Typographical symbols placed around text under negotiation to indicate that the language enclosed is being discussed but has not yet been agreed upon. It is possible to have square brackets within square brackets, as there may be disagreement about both the general provision and the specific language. Square brackets are also used to indicate changed or added text in quote.

**Stakeholder**

Individuals or institutions (public and private) interested and involved in a process or related activities.

**Stalemate**

Point at which negotiations make no progress and no possible solution is in sight.

**Stalled**

Said of negotiations which are making no progress. Usually temporary situation.

**Standard Nomenclature**

The scientific names adopted by the Conference of the Parties to the Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES) for CITES-listed species.

**Standing Committee**

Committee established under various international agreements to perform certain functions as agreed to by the Conference of the Parties.

**STAP/stap**

Scientific and Technical Advisory Panel of the Global Environment Facility. Provides strategic scientific and technical advice to the GEF on its strategy and programs.

**Statement**

Oral or written expression of opinion.

**Status quo**

Latin phrase meaning "the current state of affairs."

**Steering Committee**

Restricted group of individuals planning the work of a major meeting. Deals exclusively with procedural matters.

**Stockholm Conference**

Shorthand for the UN Conference on the Human Environment, held in Stockholm, Sweden, in 1972. The outcomes of the Stockholm Conference were:

- the establishment of the UN Environment Programme (UNEP)
- the establishment of an Environment Fund
- an Action Plan
- the Stockholm Declaration

**Stockholm Convention**

Shorthand for the Stockholm Convention on Persistent Organic Pollutants. Adopted in 2001, entered into force in 2004. Also referred to as the "POPs Convention."



**Stockholm Declaration**

One of the outcomes of the 1972 Stockholm Conference. A set of Principles on environmental protection.

**Strategic environmental assessment (SEA)**

Procedure for incorporating environmental considerations into national policies, plans and programmes. Sometimes referred to as "strategic environmental impact assessment."

**STRP**

Scientific and Technical Review Panel, a subsidiary body under the Ramsar Convention.

**Sub-committee**

Committee created by another committee to address a specific issue.

**Subsidiary body**

A body, usually created by the governing body of an international agreement or international organization, with a specific mandate (e.g., Subsidiary Body for Scientific, Technical and Technological Advice under the CBD). Different from a working group in that it is usually permanently established to assist the governing body.

**Sui generis**

A Latin term meaning "being the only example of its kind; constituting a class of its own; unique". Often used to describe a unique (legal) system.

**Summit**

Meeting at which the participants are high-level officials, such as Heads of State or Government.

**Sustainable development (SD)**

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

**Sustainable forest management (SFM)**

Concept according to which the full range of social, economic and environmental values inherent to forests are managed and sustained.

**Sustainable use**

Use in a way and at a rate that does not lead to the long-term degradation of the environment, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

**Synergies**

Result of joint activities that goes beyond the sum of individual activities, making efforts more effective and efficient.

**T**

**Table**

In "to table a proposal": To present the text of a proposal for consideration by other delegations. (This represents the preferred international usage of the term).

**Tally**

Count of positive and negative votes and abstentions.

**Taxonomy**

Naming and assignment of biological organisms to taxa.

**TEAP**

Technology and Economic Assessment Panel. Created within UNEP to provide technical information to Parties to the Vienna Convention and the Montreal Protocol on alternative technologies to the use of ozone-depleting substances.

**Technology Transfer**

Transmission of know-how, equipment and products to governments, organizations or other stakeholders. Usually also implies adaptation for use in a specific cultural, social, economic and environmental context.

**Tehran Convention**

Framework Convention for the Protection of the Marine Environment of the Caspian Sea. Signed in 2003 and entered into force in 2006.

**TEK**

Traditional Ecological Knowledge

**Terms of Reference (ToRs / TORs)**

The mandate and scope for work of a body or individual.

**TK**

Traditional Knowledge

**ToRs / TORs**

Terms of Reference

**Traditional knowledge**

The knowledge, innovations and practices of indigenous people and local communities. Traditional knowledge is the object of various MEA provisions, including Article 8(j) of the CBD.

**Transboundary movement**

Movement from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State to or through an area not under the national jurisdiction of any State.

**Travaux préparatoires**

Preparatory work. Record of negotiations and other documents which may be of evidentiary value in establishing the meaning of an international agreement.

**Treaty**

International agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (Vienna Convention on the Law of Treaties).

**TRIPS Agreement**

Agreement on Trade-Related Aspects of Intellectual Property Rights. One of the agreements under the World Trade Organization (WTO).

**Trust fund**

Fund to which the income of an international organization is added and from which the expenditures are drawn.

**There are two main types of trust funds:**

- general trust fund, made up of contributions from Parties and non-earmarked contributions from other sources;
- special trust fund, made up of earmarked contributions to pay for the cost of participation of representatives of a specific category of countries in meetings of the governing body and subsidiary bodies.

**TT: CLEAR**

Technology Transfer Information Clearing House, operated by the secretariat of the UNFCCC.

**Type II Partnership**

A multi-stakeholder partnership involving, inter alia, governments, NGOs, businesses, universities, and/or other institutions. Type of partnership launched at the World Summit on Sustainable Development (WSSD) to implement commitments embedded in the Johannesburg Plan of Implementation.

**U**

**Umbrella Group**

A negotiating group within the climate change negotiations. The loose coalition is usually made up of Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine and the US.

**UN GA / UNGA**

UN General Assembly

**UN SG**

UN Secretary-General

**UN/ECA or UNECA**

Economic Commission for Africa. One of the regional commissions of ECOSOC.

**UN/ECE or UNECE**

Economic Commission for Europe. One of the regional commissions of ECOSOC.

**UN/ECLAC or UNECLAC**

Economic Commission for Latin America and the Caribbean. One of the regional commissions of ECOSOC.

**UN/ESCAP or UNESCAP**

Economic and Social Commission for Asia and the Pacific. One of the regional commissions of ECOSOC.

**UN/ESCWA or ESCWA**

Economic and Social Commission for Western Asia. One of the regional commissions of ECOSOC.

**Unanimity**

Type of decision making. A decision is adopted by unanimity when it has received the support of all delegations. Established by show of hands, voting, or other means.

**UNCCD**

UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, especially in Africa. Adopted in 1994, entered into force in 1996. Often referred to as one of the Rio Conventions, as impetus for the Convention was gathered at the 1992 Rio Conference).

**UNCED**

UN Conference on Environment and Development, held in Rio, Brazil, in 1992 (see Rio Conference).

**UNCHE**

UN Conference on the Human Environment (see Stockholm Conference)

**UNCLOS**

UN Convention on the Law of the Sea. Adopted in 1982, entered into force in 1994.

**UNCTAD**

UN Conference on Trade and Development. Established in 1964 to promote the development-friendly integration of developing countries into the world economy and help shape policy debates and thinking on development, with a particular focus on ensuring that domestic policies and international action are mutually supportive in bringing about sustainable development.

**UNDG**

United Nations Development Group. A forum bringing together UN agencies working on development and the Millennium Development Goals.

**UNDP**

United Nations Development Programme. Created in 1965. Body responsible for coordinating UN development-related work.

**UNEP**

United Nations Environment Programme. Established in 1972 to lead and coordinate UN environment-related work.

**UNEP – WCMC**

UNEP World Conservation Monitoring Centre. The biodiversity assessment and policy implementation arm of UNEP.

**UNESCO**

UN Educational, Scientific and Cultural Organization. Created in 1945.

**UNFCCC**

UN Framework Convention on Climate Change. Adopted in 1992, entered into force in 1994. One of the Rio Conventions.

**UNFF**

United Nations Forum on Forests. Created in 2000. Provides a forum for policy development and cooperation on matters related to sustainable forest management.

**UN-Habitat**

United Nations Human Settlements Programme. Established in 1978 to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all.

**UNIDO**

United Nations Industrial Development Organization. Set up in 1966 and became a specialized agency of the UN in 1985. Has responsibility for promoting industrialisation throughout the developing world.

**UNITAR**

United Nations Institute for Training and Research. Established in 1965 to enhance the effectiveness of the UN through appropriate training and research, including through the conduct of training programmes in multilateral diplomacy and international cooperation and training programmes in the field of social and economic development.

**UNOG**

United Nations Offices at Geneva.

**UNON**

United Nations Offices at Nairobi.

**UNOV**

United Nations Offices at Vienna.

**UNU**

United Nations University. Established in 1973 to contribute, through research and capacity building, to efforts to resolve the pressing global problems that are of concern to the UN and its Members States.

**UNWTO**

World Tourism Organization. The UN specialized agency, which serves as a global forum for tourism policy issues and practical source of tourism know-how.

**UPOV**

International Union for the Protection of New Varieties of Plants. International organization established by the 1961 International Convention for the Protection of New Varieties of Plants.

**V**

**Verbatim**

Latin phrase meaning "word-for-word," "in full." Way of recording a meeting's discussions.

**VCLT**

Vienna Convention on the Law of Treaties (see Vienna Convention)

**Vienna Convention**

- 1) Vienna Convention for the Protection of the Ozone Layer. Adopted in 1985, entered into force in 1985.
- 2) Vienna Convention on the Law of Treaties (VCLT). Adopted in 1969, entered into force in 1980.
- 3) Vienna Convention on Succession of States in respect of Treaties. Adopted in 1978, entered into force in 1996.

**Vienna Setting or Vienna Process**

The 'Vienna Setting' is an informal negotiating format established to help delegates reach agreement during the final stages of a meeting. It involves a relatively small group of delegates, with each major negotiating group (such as the EU or the G-77) represented by only one or two people mandated to make a deal on behalf of their group. It was a format modelled after the final negotiations on the Cartagena Protocol on Biosafety involving spokespersons for the major negotiating groups. Also referred to as the Cartagena Setting.

**VOCs**

Volatile Organic Compounds

**Voluntary commitments**

A draft article considered during the negotiation of the Kyoto Protocol that would have permitted developing countries to voluntarily adhere to legally binding emissions targets. The issue remains important for some negotiators but the proposed language was dropped in the final phase of the negotiations.

**Voluntary Contribution**

A contribution of any kind that unlike assessed contributions, is not assessed under a binding international agreement, including the furnishing of funds for other financial support; services of any kind (including the use of experts or other personnel); or commodities, equipment, supplies, or other material.

**Vulnerability**

The degree to which a community, population, species, ecosystem, region, agricultural system, or some other quantity is susceptible to, or unable to cope with, adverse effects of climate change.

**W**

**Waiver**

Agreed exemption from an obligation, usually for a limited period of time.

**Wastes**

Substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law (Basel Convention).

**WCC**

World Climate Conference

**WCED**

World Commission on Environment and Development

**WCMC**

UNEP World Conservation Monitoring Centre. The biodiversity assessment and policy implementation arm of UNEP.

**WCO**

World Customs Organisation. International organization established in 1952 to enhance the effectiveness and efficiency of Customs administrations and to promote an honest, transparent and predictable Customs environment.

**Weighted voting**

System in which the votes of different delegations are not equal but instead counted with reference to an agreed formula.

**WEOG**

Western European and Others Group

**WFP**

World Food Programme. Established in 191. The food aid arm of the UN.

**WG**

Working Group. Also used for referencing documents from Working Groups.

**Whaling Convention**

Shorthand for the International Convention for the Regulation of Whaling (ICRW). Adopted in 194, entered into force in 1948.

**WHC**

World Heritage Convention. Shorthand for the Convention Concerning the Protection of the World Cultural and Natural Heritage. Adopted in 1972 under the aegis of UNESCO, entered into force in 1975. Also used as shorthand for the World Heritage Centre, the equivalent of the Convention's secretariat.

**WHO**

World Health Organization. The UN specialized agency for issues related to health. Established in 1948.

**WIPO**

World Intellectual Property Organization. A UN specialized agency, established in 1970 to administer all matters related to intellectual property. WIPO has established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which meets periodically.

**Wise use**

Sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of ecosystems within the context of sustainable development.

**WMO**

World Meteorological Organization. One of the UN specialized agencies, established in 1950 to address matters related to meteorology (weather and climate), operational hydrology and related geophysical sciences.

**Working Group (WG)**

- 1) During a meeting, a sub-division of the Plenary mandated to negotiate specific issues of the agenda, usually arranged by clusters. Open to all Parties.
- 2) Between meetings, a subsidiary body established by the governing body of an international agreement to provide it with advice on specific issues. These working groups can be open-ended and meet periodically or be time-bound and meet once only. Open to all Parties. Example: the Ad Hoc Open-Ended Working Group on Access to Genetic Resources and Benefit Sharing under the CBD.

**Working languages**

Languages in which texts are circulated and considered, and statements may be made during meetings. The official languages of the UN are: Arabic, Chinese, English, French, Russian and Spanish. The working language(s) of a particular meeting may be limited to one language, or may include a variety of languages that extend beyond the six UN languages.

**Working paper**

Informal paper used during a meeting to support negotiations.

**World Bank Group**

The World Bank is an international organization composed of two development institutions, the IBRD and the IDA. The World Bank Group comprises the two former institutions, as well as the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID).

**World Heritage Site**

Designation for places on earth that are of outstanding universal value to humanity and as such, have been included on the World Heritage List to be protected for future generations to appreciate and enjoy, according to the World Heritage Convention (WHC).

**WSSD**

World Summit on Sustainable Development. Held in 2002, in Johannesburg, South Africa.

The outcomes of the WSSD are:

- The Johannesburg Declaration on Sustainable Development
- The Johannesburg Plan of Implementation
- Type II Partnerships.

**WTMU**

Wildlife Trade Monitoring Unit of INTERPOL

**WTO**

World Trade Organization. An international organization established in 1995 to provide a forum for trade negotiations, handle trade disputes, monitor national trade policies and provide technical assistance and training for developing countries, among others.



# INDEX

## A

accession .....	2-6, 3-43, 5-14, 6-16
<i>ad referendum</i> .....	3-11
adoption.....	3-11
agenda .....	3-4, 5-15
Agenda 21 .....	1-5, 1-7, 4-1, 4-3, 4-9, 6-2, 6-9, 6-10
annotated agenda .....	3-53
managing the agenda .....	3-4
amendments .....	3-9
annexes.....	2-12, 2-22, 3-33, 3-67, 3-74
AOSIS .....	3-42, 4-14, 5-9

## B

<i>Basel Convention on Transboundary Movement of Hazardous Wastes</i> .....	
<i>Wastes</i> .....	1-4, 2-12, 2-14
binding .....	2-5
binding obligations .....	2-2, 2-6, 3-19
legally binding .....	2-1, 2-2, 4-13
blocs .....	3-37, 3-38, 3-41, 4-14, 5-9, 5-11
Brundtland Report.....	1-4
budget.....	3-20
bureau.....	3-5, 3-6, 3-50, 3-51, 3-52, 5-7

## C

capacity building / development .....	1-3, 4-1, 4-5, 6-5
<i>Cartagena Protocol</i> .....	1-7, 3-57, 4-10, 4-12
chair.....	3-5, 3-8, 3-9, 3-10, 3-27, 3-45, 3-98, 3-99, 5-7
chapeau .....	3-58, 3-59
Clean Development Mechanism (CDM) .....	4-12, 6-19
common heritage of mankind .....	4-10
compensation .....	3-25, 6-30
composition (see also, voting, election).....	3-24, 3-50
Conference of the Parties .....	2-20, 3-1, 3-21, 5-13
contribution .....	3-19, 4-10
scale of contribution .....	3-19
Convention on International Trade in Endangered Species (CITES) .	1-4, 4-9, 6-20
countries in transition.....	4-4
countries with economies in transition (EITs) .....	3-37, 4-4
credentials .....	2-7, 3-5

**D**

delegation..... 2-20, 3-81, 5-11  
     head of delegation..... 3-84, 3-85, 5-1  
 developing country..... 1-6, 4-4  
 drafting  
     drafting issues ..... 3-53  
     drafting proposals ..... 3-83  
     legal drafting group..... 3-33

**E**

Economic and Social Council (ECOSOC) ..... 6-1  
 elections (see also, voting, composition) ..... 3-20, 3-24  
 enforcement..... 2-21  
 entry into force..... 2-7, 2-10, 2-12, 2-14, 5-14  
 European Union / Commission ..... 3-8, 3-39, 3-41

**F**

final provisions..... 3-66  
 financing..... 2-19, 3-103, 3-104  
     financial mechanism ..... 1-7, 3-101  
     financial rules..... 3-1, 3-17  
 force ..... *See* entry into force  
 friends of the chair ..... 3-32, 3-88

**G**

Global Environmental Facility (GEF) ..... 3-101, 3-102, 6-4, 6-5  
 guidance (see also 'GEF')..... 3-104  
 guidelines ..... 2-3

**H**

hard law..... 2-2

**I**

implementation ..... 1-8, 4-12  
     implementation challenges ..... 6-18  
     Johannesburg Plan of Implementation..... 1-8, 4-1  
 in-session documents ..... 3-73  
 institutional structure ..... 3-21  
 Intergovernmental Forum on Chemical Safety (IFCS)..... 6-10  
 International Emissions Trading (IET) ..... 4-12  
 interventions..... 3-8, 3-13, 3-82, 3-86, 3-90

**J**

JUSCANZ..... 3-40, 3-41

**K**

- Kyoto Protocol*.. 1-7, 1-11, 2-2, 2-7, 2-12, 2-21, 3-22, 3-25, 3-37, 3-40, 3-67, 3-69, 3-97, 4-9, 4-12, 4-15, 6-13, 6-19, 6-33  
Clean Development Mechanism (CDM)..... 4-12, 6-19  
International Emissions Trading (IET) ..... 4-12, 6-19  
Joint Implementation (JI)..... 4-12, 6-19

**L**

- languages.....2-7, 2-22, 3-9, 3-13, 3-14, 3-15, 3-27, 3-66, 3-72, 3-73  
liability ..... 1-7, 3-25, 6-26, 6-30

**M**

- Meeting of the Parties ..... 2-20, 3-21, 3-22, 3-68, 6-14  
Millennium Development Goals (MDGs) .....4-9  
monitoring..... 2-20, 2-21, 2-22, 3-103, 4-1, 4-12, 6-17  
motions..... 3-5, 3-24  
*mutatis mutandis* ..... 3-8, 3-9, 3-10, 3-47

**N**

- negotiating text.....3-49, 3-54, 3-57, 3-62, 3-73, 3-74, 3-75, 3-85, 3-86, 3-87, 5-4, 5-9, 5-10, 5-12, 6-17  
new and additional ..... 4-3, 4-4, 6-4  
non-governmental organization (NGO)... 1-10, 3-10, 3-19, 3-21, 3-28, 3-43, 3-44, 3-45, 3-70, 3-104, 4-6, 4-8, 4-15, 4-16, 5-3, 5-5, 5-15, 6-10, 6-11, 6-12, 6-18

**P**

- pacta sunt servanda .....2-4  
persistent organic pollutants See Stockholm Convention on Persistent Organic Pollutants (POPs)  
point of order..... 3-8, 3-10  
preamble..... 1-9, 2-15, 2-18, 3-56, 3-59, 3-60, 3-62, 3-63, 5-9  
pre-sessional documents ..... 3-27, 3-72, 3-73, 3-79  
principles 1-2, 1-3, 1-5, 2-1, 2-3, 2-18, 2-19, 3-10, 3-103, 4-1, 4-2, 4-7, 5-6, 6-22, 6-26, 6-27, 6-32  
proposals 1-11, 3-3, 3-6, 3-9, 3-29, 3-46, 3-47, 3-49, 3-53, 3-54, 3-61, 3-74, 3-81, 3-82, 3-86, 3-87, 3-90, 3-95, 3-99, 3-105, 5-4, 5-11, 5-12

**Q**

- quater* .....3-61  
*quinque*.....3-61  
quorum ..... 3-7, 3-8, 3-47, 6-11

**R**

*Ramsar* .....2-5, 2-7, 4-9, 6-33  
 rapporteur..... 3-5, 3-35, 3-50  
 ratification...2-5, 2-6, 2-7, 2-8, 2-10, 2-11, 2-12, 2-13, 2-22, 3-43, 3-88, 5-4, 5-13,  
 5-14, 6-16  
 recital..... 3-56, 3-59, 3-60, 3-61, 3-63, 3-70  
 Regional Economic Integration Organizations (REIOs) ..... 2-4, 3-13, 3-37  
 report  
     report of the meeting..... 3-10, 3-27, 3-48, 3-73, 3-75, 3-76  
     reporting..... 2-3, 2-20, 2-21, 3-36, 3-106, 3-107, 4-12, 5-9, 6-21  
 repository ..... 2-18, 3-63  
 reservations .....2-7, 2-8, 2-9, 2-10, 2-11, 2-22, 3-66, 3-88, 5-4, 5-9, 5-13  
 Rio Declaration... .....1-5, 1-7, 3-60, 3-63, 3-64, 4-10, 4-11, 6-27  
*Rotterdam Convention on Prior Informed Consent (PIC)*..... 1-7, 1-10, 3-6, 3-11,  
 3-13, 3-23, 3-24, 3-35, 3-50, 3-62, 3-77, 4-10, 4-12, 4-14, 6-4, 6-6, 6-34

**S**

signature..... 2-4, 2-5, 2-6, 2-7, 2-8, 2-10, 2-22, 3-67, 3-88, 5-4, 5-13, 5-14  
 soft law ..... 2-2, 2-3  
 square brackets..... xi, 3-55, 3-56, 3-57, 3-60, 3-82, 3-83, 3-84, 3-85, 5-10  
*Stockholm Convention on Persistent Organic Pollutants (POPs)*..... 1-8, 2-7, 2-11,  
 3-33, 3-50, 3-62, 3-63, 3-77, 3-78, 3-97, 3-100, 3-105, 5-6, 6-11, 6-16, 6-34  
 structure..... 1-9, 2-18, 3-1, 3-21, 3-51, 3-53, 3-61, 3-80, 3-93  
     institutional structure .....3-21  
     meeting structure .....3-51  
 subsidiary bodies 2-21, 3-2, 3-5, 3-6, 3-7, 3-17, 3-18, 3-22, 3-23, 3-24, 3-25, 3-26,  
 3-27, 3-29, 3-31, 3-47, 3-50, 3-51, 3-53, 3-58, 3-71, 3-93, 3-99, 4-13, 5-9, 6-1

**T**

technology, transfer of .....2-19, 3-37, 4-6, 4-7  
 terminology ..... 2-1, 2-16, 3-53, 3-56

**U**

United Nations Conference on the Human Environment (UNCHE)..... 1-2  
 United Nations Convention to Combat Desertification (UNCCD)... 1-7, 6-19, 6-34  
 United Nations Economic Commission for Europe (UNECE)....6-2, 6-7, 6-8, 6-34  
 United Nations Environment Programme (UNEP)..... 1-2, 3-26, 3-35, 3-77, 3-87,  
 3-102, 4-12, 4-14, 5-6, 6-2, 6-3, 6-4, 6-5, 6-6, 6-9, 6-10, 6-12, 6-35  
 United Nations Forum on Forests ..... 5-6, 6-11, 6-35  
 United Nations Framework Convention on Climate Change (UNFCCC)..... 1-5,  
 1-7, 1-9, 2-2, 2-8, 3-4, 3-12, 3-18, 3-23, 3-24, 3-25, 3-30, 3-37, 3-77, 3-80,  
 3-102, 3-108, 4-3, 4-10, 4-11, 4-14, 5-12, 6-5, 6-13, 6-34  
 United Nations General Assembly..... 1-8, 3-19, 3-28, 6-1, 6-3, 6-35  
 United Nations Regional Group  
     Central and Eastern Europe group (CEE)..... 3-34, 3-35

United Nations Regional Groups.. 3-34, 3-38, 3-46, 3-48, 3-50, 3-51, 3-96, 3-101, 5-15

**V**

Vienna Convention on the Law of Treaties (VCLT).. .....2-1, 2-5, 3-28, 3-63  
Vienna setting.....4-14  
voting (see also, composition, election)..... 2-22, 3-6, 3-9, 3-10, 3-11, 3-12, 3-13, 3-14, 3-20, 3-24, 3-47, 3-66, 5-8, 6-4, 6-15

**W**

withdrawal.....2-9, 2-13, 2-14, 2-22  
World Commission on Environment and Development (WCED)..... 1-4  
World Conservation Union (IUCN)..... 4-13, 4-15, 6-36  
World Summit on Sustainable Development (WSSD) ..... 1-8, 4-1, 4-9, 4-14, 6-2