

Multilateral Environmental Agreements

Negotiator's Handbook

Third Edition



**Multilateral Environmental
Agreements Negotiator's Handbook**
Third Edition

Kati Kulovesi, Eugenia Recio,
Dan Bondi Ogolla, Paola Bettelli,
Stadler Trengove, Tita Korvenoja

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FOREWORD

Multilateral Environmental Agreement (MEA) negotiations are among the most dynamic negotiations in international law. The process, structure and substance of negotiations has been evolving over time requiring negotiators to be well guided on procedural as well as substantive aspects of negotiations. This is the reason for revising and updating this negotiators' handbook from time to time, this being the third edition, so that negotiators can be well guided on the process and the structure of negotiations.

Since 2004, UNEP and the University of Eastern Finland (UEF) have co-organized an Annual MEA training Course on negotiations and diplomacy focusing on MEAs to equip negotiators on their role as well as on the process and structure of MEA negotiations. The Ministry for Foreign Affairs (MFA) has funded the course along with UNEP and the Ministry of the Environment of Finland.

The Annual Course seeks to transfer experience in the field of international environmental law to current and future MEA negotiators. Each Course is based on a specific theme. The Course also provides a forum to foster North-South co-operation and to take stock of recent developments in multilateral negotiations as well as in the implementation of MEAs and diplomatic practices in the international environmental arena.

To support the course, Environment Canada together with UNEP and the UEF published in 2007 the second edition of the MEA Negotiator's Handbook. Work to update and revise this Handbook was launched in 2021, led by the Center for Climate Change, Energy and Environmental Law (CCEEL) at the UEF. UNEP provided input and expert advice on the handbook as a whole, and solicited comments from legal experts in various MEA Secretariats. Also, independent experts on MEA negotiations, contracted by the UEF, contributed to this work. UNEP is proud of the outcome of this collaboration,

it is even made available as a main content pillar of the Negotiator's section of the InforMEA Portal.

I thank all who have contributed to the preparation of the Third Edition of the Multilateral Environmental Negotiators' Handbook.

Patricia Kameri- Mbote
Director, Law Division, UNEP

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Key individual contributions came from Professor Kati Kulovesi and Dr María Eugenia Recio as lead authors and coordinators of the project at the CCEEL, UEF Law School. Other lead contributors include Paola Bettelli Esq. and Dr. Dan Bondi Ogolla, in the role of independent consultants hired by the UEF, as well as Stradler Tengrove and Tita Korvenoja from UNEP. Assistance was also provided by other staff members at the UEF and UNEP.

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!

1 HISTORY AND CONTEXT OF MEAS

1.1 Key international conferences

We will start by examining the broader context in which multilateral environmental negotiations occur. Large international conferences under the United Nations have played an important role in the evolution of multilateral environmental agreements (MEAs) and international environmental law in general.

Note, however, that not all MEAs have originated in UN fora. One example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (known as CITES – adopted in 1973), which was drafted based on a resolution by members of the IUCN (World Conservation Union).

1.1.1 The Stockholm Conference of 1972

While the origins of international environmental law can be dated back to the end of the 19th century, the evolution of this specialized area of international law began in earnest with the United Nations Conference on the Human Environment, held in Stockholm, Sweden (the Stockholm Conference) in June 1972.

The Stockholm Conference is commonly seen as a watershed event that helped to launch a new period of intensive international environmental diplomacy and law-making; the vast majority of MEAs have been adopted following the Stockholm Conference. The opening day of the Conference, 5 June, is also now annually celebrated as the World Environment Day.

The organization of the Stockholm Conference was based on UN General Assembly resolution 2398(XXIII), which called for a conference to explore relationships between environmental, social and economic issues. The conference was attended by 113 of the then 132 UN Member States.

The key outputs by the Stockholm Conference include:

- the Stockholm Declaration
- creation of the United Nations Environment Programme

- (UNEP – see Annex A on International Bodies)
- an Environment Fund
- an Action Plan with 109 recommendations.

As the Stockholm Conference lacked the mandate to adopt formal decisions, its outputs were formally adopted by the subsequent UN General Assembly.

The Stockholm 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 as Principle 2 of the Rio Declaration on the Environment and Development. Accordingly:

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.¹

¹ See Valverde, Max, "General Principles of International Environmental Law", International Law Students' Association Journal of Int'l and Comparative Law, Vol 3: 1993 (1996) at <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1069&context=ilsajournal>.

The International Court of Justice has subsequently confirmed that Principle 21 has become customary international law, meaning that the principle applies generally and to all States independently of its inclusion in an MEA or other treaty.²

A large number of MEAs, many of them regional, were adopted in the 20 years following the Stockholm Conference. Some MEAs of a global nature adopted during that period 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)
- Convention on International Trade in Endangered Species (CITES) (known as CITES, adopted in 1973)
- 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. This is not purely an environmental agreement, but mainly concerns the law of the sea. Part XII, however, addresses the preservation of the marine environment)
- Vienna Convention on the Protection of the Ozone Layer (known as the Vienna Convention, 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).

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

1.1.2 The Rio Conference of 1992

The work of the World Commission on Environment and Development (WCED), established in 1983, and its 1987 report entitled *Our Common Future* played an important role in the further evolution of international environmental law and MEAs. The Commission and its report are widely known as the Brundtland Commission and Brundtland Report in recognition of the Commission's Chair Gro Harlem Brundtland, former Prime Minister of Norway.

A key element in the Brundtland Report is the concept of sustainable development, defined as:

Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The UN General Assembly welcomed the report and, as a follow up, decided to convene a second international conference, this time broadening the focus from the human environment to development issues.

The United Nations Conference on Environment and Development (known as the Rio Conference or the Earth Summit) was held in Rio de Janeiro, Brazil, in June 1992. It was attended by thousands of participants, including 176 States, 103 of which were represented at the Head of State/Government level. The outcome was significant and included:

- The Rio Declaration on the Environment and Development (known as the Rio Declaration)
- opening for signature of the United Nations Framework Convention on Climate Change (known as the UNFCCC) and the Convention on Biological Diversity (known as the CBD)
- a decision to negotiate the United Nations Convention to Combat Desertification (known as the UNCCD)
- an Action plan called "Agenda 21" (in reference to the 21st century)
- the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation & Sustainable Use of All Types of Forests ("The Forest Principles")

- a decision to establish the Commission on Sustainable Development (CSD – see Annex A on International Bodies. The CSD was replaced in 2013 by the High-level Political Forum on Sustainable Development).

At the Rio Conference, the concept of sustainable development gained broad international support as the key element to consider in international environmental policy. It is included in the Rio Declaration (see Annex D on Reference Texts), which is composed of 27 Principles. Many of these principles have 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 also to a number of other concepts, including:

- 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).

The Rio Conference gave a boost to the development of both international and national environmental law. The focus on sustainable development has helped to bridge long-standing differences between developed and developing countries. Even prior to the Stockholm Conference, developing countries emphasized their development needs, their lower capacity to contribute to environmental protection and the historical responsibility of developed countries for global environmental problems. They also commonly argued that if developed countries want developing countries to forego the use of certain polluting technologies, they needed to provide financial and technological support.

While the origins of the 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 South. Different perspectives need to be taken into account to appropriately address certain issues such as capacity-building, financial mechanisms, technology

development and transfer, liability and compensation provisions and differentiated commitments, that arise in MEA negotiations.

The special situation and needs of developing countries, particularly the least developed countries and those most environmentally vulnerable, was recognized in Principle 6 of the Rio Declaration. Subsequently, provisions recognizing the differentiated situation of developing countries have also been recognized in MEAs, such as the UNFCCC, which affirms that "... responses to climate change should be coordinated with social and economic development in an integrated manner...taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty."³ The Multilateral Fund for the Implementation of the Montreal Protocol provides also a good example of addressing such concerns.

Since the 1992 Rio Conference, many MEAs have been adopted and amended, including the following:

- United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (adopted in 1994)
- Protocol to the London Dumping Convention (adopted in 1996)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (known as the Kyoto Protocol, adopted in 1997)
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (known as the Rotterdam Convention, adopted in 1998)
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention, adopted in 1998 and open to all UN Member States)
- Protocol to the Basel Convention on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes (adopted in 1999)

³ See Preamble, para. 20 UNFCCC at <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

- Cartagena Protocol on Biosafety to the Convention on Biological Diversity (known as the Cartagena or Biosafety Protocol, adopted in 2000)
- Stockholm Convention on Persistent Organic Pollutants (known as the Stockholm or POPs Convention, adopted in 2001)
- Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (adopted in 2010)
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (known as the Nagoya Protocol, adopted in 2010)
- Doha Amendment to the Kyoto Protocol (adopted in 2012)
- Minamata Convention on Mercury (adopted in 2013)
- Paris Agreement under the United Nations Framework Convention on Climate Change (known as the Paris Agreement, adopted in 2015)
- Escazú Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted in 2018 and open to signature by any of the countries of Latin America and the Caribbean).
- Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (adopted in 2023).

1.1.3 The World Summit on Sustainable Development of 2002 (Rio+10)

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 Conference 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 (also known as Rio+10) convened in Johannesburg, South Africa, in 2002. With more than 21 000 participants, it was the largest intergovernmental event at the time. The Summit shifted the focus from international environmental norm

development towards implementation, with sustainable development and poverty alleviation as its key themes.

The Summit resulted in the adoption of the Johannesburg Declaration on Sustainable Development that, in paragraph 5, 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.

1.1.4 The United Nations Conference on Sustainable Development of 2012 (Rio+20)

In March 2010, the UN General Assembly adopted resolution 64/23,⁴ in which it decided to undertake a 20-year review of progress of the implementation of the outcomes of the major summits on sustainable development.

The Summit, known as Rio+20, took place in 2012 in Rio de Janeiro, Brazil, with two main objectives: securing renewed political commitment for sustainable development and assessing the remaining gaps in implementation. More than 45,000 participants attended the Summit. This included 188 countries, over 100 of which were represented at the Head of State/Government level. Nearly 10,000 civil society representatives also participated along with thousands of media representatives.

The main outcome is reflected in General Assembly resolution 66/288 entitled *The Future We Want*. The emphasis is on development and implementation and the key outcomes include the strengthening of UNEP. The Conference also (i) adopted guidelines on green economy policies and established an intergovernmental process to prepare a strategy for sustainable development financing, (ii) took decisions on a number of thematic areas, and resulted in over 700 voluntary commitments on sustainable development by different actors, (iii) launched a process to develop Sustainable Development Goals (SDGs), a series of universal goals, targets, and indicators to pursue focused and coherent international action on sustainable development.

⁴ UNGA res 64/236 (31 March 2010) para 20 (a)

1.1.5 2030 Agenda for Sustainable Development and the Sustainable Development Goals

The development of the SDGs built on the Millennium Development Goals (MDGs). These were a set of eight goals and eighteen associated targets adopted by the UN Millennium Summit in September 2000, focusing on poverty alleviation. The target date for achieving the MDGs was 2015. While progress was made towards the targets, not all of them were achieved globally by 2015.

In 2010, the UN General Assembly recognized the need to advance the post-2015 development agenda after the expiration of the MDGs.⁵ In 2012, the Rio+20 Summit recognized the need to build on progress achieved under the MDGs, while integrating a broader set of objectives related to poverty eradication, environmental sustainability, peace, and partnerships for development.

In September 2015, the UN Sustainable Development Summit adopted the document *Transforming Our World: The 2030 Agenda for Sustainable Development* (known as 2030 Agenda for Sustainable Development or Agenda 2030). Endorsed by the UN General Assembly in its resolution 70/1, the implementation of the Agenda 2030 is reviewed annually by the High-level Political Forum on Sustainable Development. The target date for achieving the SDGs is 2030. The SDGs consist of 17 global goals. Each of the SDGs includes a number of more specific targets. In total, there are 169 targets to be measured through 231 indicators. (See Annex D on Reference Texts.)

1.2 International Environmental Law at 50+

As described above, 1972 marked the beginning of a new era of dynamic international environmental law-making and diplomacy. Fifty years after the Stockholm Conference, the scope of international environmental law has expanded considerably in that it comprises more than 500 MEAs. These include

⁵ Post-2015 Sustainable Development Agenda. Review of European Community and International Environmental Law 25(1), 5-14, at 8.

framework conventions and protocols addressing global environmental threats, such as climate change, biodiversity loss and depletion of the ozone layer. They also include treaties on a range of sectoral issues, such as ocean dumping, mercury and trade in hazardous waste and endangered species.

Some MEAs have acknowledged certain environmental issues as the common concern of humankind.⁶ It has also been recognized that some areas of the planet, such as Antarctica or the global atmosphere are not the sovereign domain of any State. Indeed, it is understood that these components of our global environment require collective action by the international community.

MEAs are typically “living instruments”, in other words, continuously evolving international legal regimes. Their evolution takes place through meetings by their Parties under their governing treaty bodies. Decisions are often prepared intersessionally, including at meetings of subsidiary bodies as well as by technical and expert groups, workshops, and through written submissions. The rationale of this evolutionary approach to international environmental law-making is to keep pace with scientific developments and respond to evolving political, economic and technological circumstances. The dynamic and evolving nature of MEA regimes increasingly requires expertise and specialized knowledge from the negotiators.

The expansion and evolution of MEAs in the past decades can be seen as a sign of recognition by governments that many environmental issues cross national boundaries and that international cooperation is required to address them. At the same time, environmental degradation has often continued regardless of the rapid evolution and expansion of international environmental law. While the ozone layer is showing signs of recovery, global greenhouse gas emissions have continued to grow significantly since the adoption of the UNFCCC in 1992. Also, the 2019 report by the International Panel on Biodiversity and Ecosystem Services indicates that the great majority of indicators of ecosystems and biodiversity are showing a rapid decline.

In 2018, a report called *Gaps in International Environmental Law and Environment-related Instruments : towards a Global Pact for the Environment : report of the Secretary-General* was prepared pursuant to UN General Assembly

⁶ See for example, the CBD (preamble) and the UNFCCC (preamble).

Resolution 72/277. It formed part of discussions concerning the strengthening of international environmental law and governance and proposed a possible Global Pact for the Environment as a potential solution. During the ensuing discussions, countries expressed different views on the need for a new agreement addressing the issues identified in the report.

In March 2022, the UN Environment Assembly (UNEA) met to commemorate the 50th anniversary of the creation of UNEP and adopted a political declaration, according to which the UNEA:

Resolves to continuously strengthen, where needed, environmental laws, policies and regulatory frameworks at the national, regional and global levels, without reducing the existing levels of environmental protection, and to strengthen capacity across all sectors for the effective implementation of international environmental law by closing knowledge gaps, enhancing cross-sectoral coordination, improving monitoring and law enforcement, increasing political will and engaging stakeholders...⁷

Efforts to enhance coordination among MEAs and the SDGs are also ongoing. International organizations, governments, and non-governmental actors are working together to promote synergies and streamline efforts. Additionally, many countries are developing National Sustainable Development Strategies that aim to harmonize their commitments under MEAs with their efforts to achieve the SDGs.

The growing public concern over global environmental threats, such as climate change and biodiversity loss, has resulted in calls for enhanced transparency and public participation. MEA negotiations are typically open to observer organizations, representing various constituencies, such as environmental non-governmental organizations (NGOs), the private sector and indigenous peoples' representatives, along with youth and gender-oriented groups.

⁷ 8 March 2022, Political declaration of the special session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme, UNEP/EA.SS.1/4, para. 15.

Efforts to increase information concerning MEAs and related negotiations include sharing official documents online and making them publicly accessible. The results of the meetings are published in official meeting records on the web. Technological development has also strengthened transparency; for example, parts of MEA negotiations may be webcast and available to watch online all over the world. During the COVID-19 pandemic, several MEA negotiations took place virtually. (See Chapter 4 on Virtual Intergovernmental Meetings).

2 FORMS, NATURE, PRINCIPLES AND ELEMENTS OF MEAS

International law is a distinctive form of law that operates at the international level between States and international organizations. MEAs are part of international law and fall under its specialized area known as international environmental law. International environmental law, in turn, contains increasingly specialized sub-fields, such as international climate change law or international biodiversity law.

While international law shares some similarities with domestic law, there are also important differences. Notably, state sovereignty plays an important role in international law. The concept refers to the supreme and independent authority that a State exercises within its territorial boundaries.

An important aspect of state sovereignty is that States voluntarily decide whether they want to join an international treaty. Thus, even if some MEAs have nearly universal participation, a State is always free to decide that it will not join a specific MEA. States may also withdraw from MEAs in accordance with the specific provisions of the treaty in question (see Section 2.3.14 on withdrawal).

The obligations included in a specific MEA are binding only for the States that are Parties to the MEA in question. Once a State becomes a Party to an MEA, the expectation is that it will develop its national legislation and policies in a way that allows it to implement and comply with its MEA undertakings in good faith.

2.1 Forms of MEAs

From the perspective of international law, MEAs are international treaties or agreements negotiated between multiple States to address specific environmental issues or challenges. They are legally binding and create legal obligations to States that are Parties to the MEA in question.

MEAs are governed by international law on the law of treaties, which covers issues such as formation of international treaties, their interpretation and termination. The Vienna Convention on the Law of Treaties (hereinafter VCLT – adopted in 1969 and in force since 1980) is the most important source of international treaty law. According to Article 2(1)(a) of the VCLT, a treaty 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 and whatever its particular designation.

Also, various other terms can be used to designate a binding international legal instrument: agreement, convention, covenant, protocol, treaty. While distinctions can be made, the words treaty and convention are general terms for legally binding agreements between States.

In international environmental law, convention is one of the most commonly used terms to refer to a binding multilateral treaty, for example, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the UN Convention to Combat Desertification. Also, protocols are often used when States intend to further regulate specific aspects of an MEA, such as the Cartagena Protocol on Biosafety, the Kyoto Protocol and the Montreal Protocol on Substances that Deplete the Ozone Layer. International environmental law also includes other examples, such as the 2015 Paris Agreement on climate change.

Notably, the terminology used is not decisive for determining the international legal status of an instrument. For an agreement to be legally binding under international law, there must be a clear intention by the States creating the instrument to be legally bound by it. Intention to be legally bound is commonly demonstrated in that an international instrument includes provisions on issues, such as signature as well as ratification, acceptance or approval of the treaty and accession. Instruments intended as binding under international law also often include provisions concerning their entry into force and depositary. The depositary is often an international organization,

such as the UN or a government entity and its role includes maintaining the treaty's records and acknowledging the recipient of instruments of ratification.

Several MEAs are based on a regulatory model that builds on a framework convention establishing the key objectives, principles and institutions as well as provisions for the adoption of supplementary legal instruments. A protocol is generally a subsequent and separate legally binding treaty that supplements or modifies an existing convention. An amendment is similar in that it also supplements or modifies an existing agreement.

Examples of framework conventions.

Some of the key examples of framework conventions are the UNFCCC and CBD, with protocols being adopted pursuant to these agreements. General obligations in the framework conventions are usually meant as a first step toward the adoption of much more specific and elaborated obligations. For example, Article 4 of the UNFCCC outlines general obligations on climate change mitigation, while Article 3 of the Kyoto Protocol and Article 4 of the Paris Agreement include more specific formulations. Another well-known example of a protocol is the Montreal Protocol on Substances that Deplete the Ozone Layer, which sets out the specific regulatory obligations established under the framework created by the Vienna Convention for the Protection of the Ozone Layer.

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, as a supplementary instrument, if they so decide.

In line with general international practice, protocols are binding only on those States that become Parties to them. This is to say, States Parties to a framework convention do not automatically become Parties to a protocol adopted under it. Conversely, unless otherwise specified, only States that are Parties to a convention can become Parties to a subsequent protocol.

2.2 What do the concepts hard law and soft law mean in the context of MEAs?

In international environmental law and international law in general, the terms hard law and soft law are often used. What do they mean and how to distinguish them from each other?

Hard law refers to obligations that are legally binding under international law. These are typically established through international treaties, agreements, conventions and protocols (see 2.1 above). As a general rule, an individual treaty provision is binding on all Parties unless a Party has made a valid reservation (see Section 2.3.8 on Reservations). Most global MEAs expressly provide that the treaties do not allow reservations.

Article 38.1 of the Statute of the International Court of Justice (ICJ) plays an important role in defining binding sources of international law. It lists the sources of international law that the Court should consider when resolving cases brought before it. The list includes three main binding sources: treaties, customary international law and general principles of law. The list is not exhaustive and the case law by the International Court of Justice has recognized, for example, that also certain unilateral declarations by States are binding sources of international law.

MEAs typically create binding obligations under international law for their Parties. However, it is important to note that while MEAs are clearly hard-law instruments as such, they can also include soft norms with a mix of commitments and voluntary approaches. This means MEAs may also contain provisions that are flexible rather than containing clear, detailed and specific rules. The lack of clear commitments can also be caused by the extent negotiations take to try and accommodate the views of all Parties when working towards reaching a consensus. Indeed, some MEA provisions may amount to little more than an expression of intent, and provide much room for interpretation and discretion.

Questions concerning implementation and enforcement mechanisms are also relevant here. Unlike domestic law, which is enforced by domestic authorities within a single State's legal system, international law lacks a centralized enforcement mechanism. Compliance with international law is

largely dependent on state self-interest, reciprocity, and the willingness of States to cooperate.

Focusing on the implementation and enforcement of MEAs in particular, even if MEAs include clear and binding rules, the procedures and mechanisms used to ensure their implementation are generally of a facilitative rather than coercive nature. This “soft” approach towards MEA implementation 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.

In general, soft law can be characterized as a category of international norms, principles, agreements, and practices that lack the legally binding character of traditional international treaties and conventions. Instruments that are typically considered as soft law include resolutions by international organizations, declarations by international conferences, voluntary codes of conduct as well as decisions by governing treaty bodies, such as Conference of Parties (COP) established under an MEA.

While soft international law does not create legally enforceable obligations on States, it can still carry significant normative and practical influence in international relations. Also, the International Court of Justice has acknowledged, in its case law, that soft law instruments can have legal effects even if they are not legally binding. For example, they may be relevant for treaty interpretation by helping to clarify the intention of the Parties. Soft law instruments can also constitute evidence concerning the existence of customary international law in terms of state practice and *opinio juris*. Overall, however, the legal nature and impact of soft law is a complex and evolving issue in international law and a topic of debate amongst international legal scholars.

Soft law has played an important role in the development of international environmental law: non-binding instruments, such as the Stockholm Declaration and Rio Declaration have had a profound impact on its development. They include norms that have subsequently evolved into binding norms of customary international law. An important example is Principle 21 of the Stockholm Declaration, discussed in Section 1.1.1.

Thus, soft law instruments and norms can be highly relevant in the context of international environmental law. They can act as catalysts and precursors for the development of binding international environmental norms. It is normally easier for States to reach agreement on a soft law instrument than on treaties. Soft law provides a platform for States to agree on common goals and principles related to environmental protection and sustainability. Soft law instruments can facilitate consensus building among States, helping to bridge gaps in negotiations and create a common understanding of environmental challenges. Soft law can therefore serve as a starting point for more formal treaty negotiations. This is why soft law instruments are often carefully negotiated.

A question that is particularly pertinent in the context of MEAs concerns the legal status of decisions adopted by COPs or other governing treaty bodies (on these, see Section 2.4.10 below). MEAs commonly mandate their governing bodies to review the implementation of the treaty in question and adopt decisions to further its implementation.

Some MEAs develop detailed rules, modalities and guidelines for implementing specific obligations. The Montreal Protocol, for example, authorizes the MOP to adjust Parties' obligations through a decision rather than through the standard amendment procedure. It is widely accepted by legal experts that such governing body decisions may be binding where the relevant treaty contains a specific authorization. However, most COP decisions fall outside of this category and their legal nature is less clear. Many international environmental law experts would argue that they are soft law or situated in a "grey zone" between law and non-law. In practice, as above mentioned, these decisions are frequently used, including in the context of MEAs. They are often carefully negotiated and drafted, playing an important role in their evolution and implementation.

2.3 Treaty-making principles

MEAs include treaties whose geographic scope varies widely. While UN MEAs are generally open to all UN Member States to become Parties, other MEAs are regional (e.g. most of the MEAs under the UN Economic

Commission for Europe) while yet others are sub- regional (e.g. Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas [ASCOBANS] under CMS).

MEAs are commonly subject to rules of international law that govern treaties. The rules that apply to written treaties between States are also codified in the VCLT, which has 116 Parties as of 2022. Some key States (the US, for example) are not Parties to it. However, most rules of the VCLT are considered to apply to all States by virtue of them being customary international law.

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. All Parties to an MEA must perform their obligations in good faith (known as the rule of *pacta sunt servanda*—reflected in Article 26 of the VCLT) and no Party may invoke the provisions of its own domestic law to justify its failure to comply with an MEA obligation (Article 27 of the VCLT).

2.3.2 Parties

States and international organizations that have international legal personality and are subjects of international law have the capacity to enter into treaties and be Parties to an MEA.

Regional economic integration organizations (REIOs) such as the European Union (EU), may also have the capacity to express consent to be bound by treaties and, therefore be a Party to an MEA. This depends on whether their members have conferred on them the international legal capacity to do so and whether the treaty itself provides for this possibility. In the case of the EU, most MEAs fall under an area where competence is shared between the EU and its 27 (as of March 2022) Member States, and the Member States have surrendered part of their national sovereignty to the EU through the founding treaties of the Union. This means that both the EU and its Member States can become Parties to such MEAs, adopting uniform positions and speaking with a common voice in MEA negotiations. All major MEAs fall into

this category known as “mixed agreements” in EU law terminology in which both the EU and its individual Member States are a Party.

2.3.3 Adoption

The traditional method of negotiating and adopting new treaties is through intergovernmental negotiating committees and diplomatic conferences specifically convened for that purpose. These committees and conferences are typically based on a UN General Assembly resolution, or, in the case of many MEAs, a resolution adopted by the United Nations Environment Assembly (UNEA) of UNEP (previously UNEP’s Governing Council) which normally defines the objective and basic conditions for States to participate. These negotiating bodies and conferences typically have an independent existence rather than being organs of the UN. They are hence governed by their own rules of procedure and adopt the final result (treaty) themselves.

A large number of MEAs have, however, been adopted by the COPs of existing MEAs and not at a Diplomatic Conference. This is based on authorizations contained in various MEAs for their governing bodies to develop and adopt new legal instruments that provide for more elaborate and specific obligations arising from the framework convention. Notable examples include the Kyoto Protocol and the Paris Agreement adopted under the UNFCCC; the Cartagena and Nagoya Protocols under the CBD; and the Montreal Protocol under the Vienna Convention for the Protection of the Ozone Layer.

2.3.4 Signature

After the adoption of an MEA, the treaty is opened for signature. A treaty often specifies a limited period of time for States to become a signatory (see Article 12 of the VCLT). For example, the UNCCD was open for signature for one year after its adoption. Exceptionally, treaties may be open for signature indefinitely as is the case with the Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat (known as the Ramsar Convention, adopted in 1971).

The provision with respect to signature is found among the final provisions of an MEA. Some treaties specify that they are only open to signature or

ratification by some limited group of States. A State that has not taken part in the negotiations or that has not signed a treaty prior to the closing date for signature only has the option of acceding to it to become bound.

The signing of an MEA is usually symbolic in the sense that signature does not mean a State becomes a Party and legally bound by the treaty. Instead, the further step of ratification, accession or similar (see Section 2.3.5) is normally required.

Only exceptionally, treaties may provide that signature creates binding obligations. A State may, however, express its consent to be bound through “definitive signature”, more commonly used in the ambit of bilateral treaties. A State may regard itself as having given its consent to be bound by a treaty by signature where the treaty provides that signature shall have that effect, or where it is otherwise established that the negotiating States agreed that signature should have that effect, or where the intention of the State to give that effect to the signature appears from the full powers of its representative.

While a signatory State 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 (Article 18 of the VCLT).

2.3.5 Ratification, accession, acceptance, approval or definitive signature

To become Party to an MEA, a State will have to express its consent to be bound by the treaty. Normally, a State does this by ratifying, accepting or acceding to the MEA (Article 2(1)(b)VCLT).

Legal requirements relating to ratification and other forms of consenting to international treaties vary from country to country. Ratification seems to be the most common at the domestic level. In some cases, expression of consent to be bound may be declared subject to acceptance or approval (Articles 11 and 14 (2) VCLT), terms that are very similar to ratification. 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 VCLT). The variation in terminology mainly refers to a simpler form of ratification and is more common in countries where national procedures do not require ratification by the Head of State.

For example, the Czech Republic signed the Kyoto Protocol on 23 November 1998 and approved it on 15 November 2001. Similarly, Japan signed the Kyoto Protocol on 28 April 1998 and accepted it on 4 June 2002.

Accession is the means through which a State becomes a Party to a treaty it has not signed either because the treaty provides that signature is limited to specific States and it is not such a State, or because a particular deadline for signature has expired. For example, South Africa did not sign the Cartagena Protocol on Biosafety when it was opened for signature and acceded to it on 14 August 2003. Consent by accession is possible if it is so provided in the treaty or negotiating States agree that consent by accession could occur (Article 15 VCLT).

Each country follows its own domestic procedures and legal requirements for expressing its consent to be bound by a treaty. Some States have the domestic legal capacity to enter an agreement by signature, but most require some form of additional executive or legislative process, such as approval by the Cabinet or national parliament.

When a State wishes to ratify, accept, approve or accede to a treaty, it must execute an instrument of ratification. 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.

In the case of multilateral treaties, the usual procedure is for one party as a depositor to collect the ratifications of all States, keeping all Parties

informed of the situation, including its entry into force. In the context of MEAs, it has become increasingly common that the UN Secretary-General act as the depositary for ratifications. In this case, for ratification or accession to take effect, the instrument of ratification or accession must be forwarded to the depositary of the treaty in question (see Section 3.2.1.4 on depositary). Once this is done and a period of time specified in the treaty has elapsed, the MEA becomes binding on the ratifying State, provided that the MEA in question has already entered into force.

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 UN Secretary-General. This facilitates the prompt processing of the relevant actions.

2.3.6 Full powers

In order to adopt, sign, deposit an instrument of ratification or accede to an MEA, a State representative needs to ensure that he or she is appropriately authorized with the power to represent his or her country. Such persons have to produce “full powers” to be accepted as capable of representing their countries. They do so by submitting documents certifying status from the competent authorities of the State in question (see Article 7 VCLT). Nevertheless, some persons, due to their functions and positions, do not need to produce such full powers, as they are assumed to have them, such as Heads of State or Government, and Ministers of Foreign Affairs for the purpose of concluding a treaty, and representatives accredited to international conferences or organizations for the purpose of adopting the text of a treaty in that particular conference or organization. Any act relating to the making of a treaty by a person not authorized as required is without any legal effect, except if the involved State confirms the act (Article 8 VCLT).

2.3.7 Entry into force

An MEA enters into force in accordance with the specific provisions included in that treaty. Commonly, the trigger is a certain number of ratifications or accessions. For example, seven were needed for the Ramsar Convention; 30 for the CBD; and 50 for the Stockholm Convention on Persistent Organic Pollutants or POPs and the Minamata Convention on Mercury. In the case of the Kyoto Protocol, the number of States required depended in part upon aggregate emissions of specified greenhouse gases (see section 2.3.10 on Provisional Application). Similarly, the requirement for the Paris Agreement to enter into force was the ratification by at least 55 Parties accounting in total for at least an estimated 55% of the total global greenhouse gas emissions. Generally, the entry into force for a specific State after depositing the instrument of ratification with the depository is 90 days.

2.3.8 Reservations

A reservation is a unilateral statement by a State that purports to exclude or modify the legal effect of specific provisions of a treaty on that State. For example, upon its ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of Argentina made the following reservation: “The Government of Argentina declares that it does not consider itself bound by Article 29, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. Sometimes States use the term “interpretive declaration”, in which a State or organization declares its understanding, interpretation or clarification of a treaty or provision, to make what would nevertheless be construed as a reservation. 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.

Most MEAs do not permit reservations, which is generally explained as reflecting an intent to promote consistency and coherence of implementation among Parties. Reservations are not allowed, for example, under the CBD

and UNFCCC or the Minamata Convention. An MEA may also only allow reservations to specific provisions. This is the case for the International Convention on the Regulation on Whaling and the CITES.

If there is no specific provision on reservations in an MEA, Parties may make reservations that are not contrary to the object and purpose of the MEA. This is the case for the 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context, known as the Espoo Convention (Espoo Convention). In practice, Canada is the only Party that has made a reservation to the Espoo Convention, while the European Union has made a declaration when signing and approving the Convention.

Other States may object to a reservation (Article 19 to 23 of VCLT for the effect of such objections). For example, Spain and Sweden have registered objections to Canada's reservation to the Espoo Convention.

Article 19 of the VCLT provides for reservations to be made at the time of signature or when depositing an instrument expressing consent to be bound. If a reservation is made upon simple signature, it must be confirmed in writing when the State expresses its consent to be bound either in the relevant instrument itself or annexed to it. If annexed, the reservation has to be separately signed by a person with the same level of authority.

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). Normally, the treaty depositary will circulate all objections.

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) of the 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 of the VCLT). A withdrawal must be formulated and endorsed in the same manner as a reservation and forwarded to the depositary.

2.3.9 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.

The International Law Commission has defined an interpretative declaration as “a unilateral declaration, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to clarify the meaning or scope attributed by the declarant to the treaty or to certain of its provisions”.⁸

Some agreements make specific provision for such declarations, for some agreements they are even mandatory. One example where they are optional is UNCLOS, 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 in the same way as treaty 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 (e.g. there might be uncertainty about whether a declaration amounts to a reservation.)

⁸ See UN Doc. A/CN.4/491/Add. 4, para. 361.

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.

2.3.10 Provisional application

Provisional application of a treaty is a technique which can be used to create legal rights and obligations that emanate from an agreed treaty pending its formal entry into force. It is used as an interim measure to render obligations under international law legally binding while States are going through the formalities toward ratification. This is commonly used when there is some urgency to implement a treaty or some of its provisions, as well in cases where negotiators know that the treaty will obtain the required domestic ratification, with the purpose of ensuring legal continuity between successive treaty regimes, or even to address political challenges to the entry into force of a treaty. The provisional application of treaties is addressed in the VCLT, article 25. Accordingly, a treaty or part of it is applied provisionally when it so provides or if the negotiating States have agreed to provisional application in some other manner.

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). For example, article 7(1) of the 1994 Agreement relating to the implementation of Part XI of UNCLOS provides that "If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force". Another well-known example of a treaty provisionally applied in the past is the General Agreement on Tariffs and Trade (GATT). The GATT entered into force on 1

January 1948 through a Protocol of Provisional Application signed on 30 October 1947. The GATT continued to be applied provisionally until 1 January 1995, when the World Trade Organisation Agreement entered into force.

Other agreement that contemplated its provisional application is the 1994 United Nations International Tropical Timber Agreement.⁹ It stated in its article 13 that:

If the requirements for definitive entry into force are not met by 1 February 1995, the Agreement will enter into force provisionally on that date or on any date within six months thereafter, if 10 Governments producing countries (...) and 14 Governments of consuming countries have either signed the Agreement definitively or have deposited instruments of ratification, acceptance or approval, or have notified the depositary that they will apply the Agreement provisionally.

In the early 2010s, before the first commitment period of the Kyoto Protocol was about to expire, the CMP (Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol) started negotiations to adopt a second commitment period with a view to give continuity to the legal regime established by the Protocol. However, the first commitment period lasted from 2008-2012, and the Doha Amendment providing for a second commitment period from 2013-2020 was only adopted in December 2012. At that time, it was challenging to ensure the timely entry into force of the Doha Amendment due to signature and ratification requirements. One possibility discussed at large was allowing for the provisional application of the amendment, although this option was not finally agreed.

2.3.11 Territorial application

Unless otherwise provided, a treaty is binding on a Party in respect of its whole territory (Article 28 of the VCLT). However, the status of certain territories may be ambiguous or in dispute. Issues may thus arise about the

⁹ United National International Tropical Timber Agreement 1994, 1 January 1997, 1955 U.N.T.S. 81; 33 I.L.M. 1014.

application of an MEA to a specific territory. Such issues are often addressed in MEA governing body decisions, as well as reservations and other official submissions by Parties to treaty bodies and depositaries. Finally, Antarctica is considered *terra nullius* or land that is not the sovereign territory of any country, like the high seas (see Section 3.1.1.13 Proposals and Amendments under Rules of Procedure).

2.3.12 Amendments

An amendment is an instrument to amend the provisions of the treaty or its annexes. If a treaty provides for amendment procedures, these 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 formal proposal to amend a treaty has to be communicated to all Parties. A treaty usually specifies when and how this must be done. For example, the CBD, the UNFCCC and the Minamata Convention all require that amendment proposals be communicated to all Parties by the secretariat at least six months before the meeting at which the amendment is proposed for adoption. In practice, amendments are drafted during a process of multilateral negotiations and their contents continue to evolve after the amendment proposal is communicated to the Parties and, indeed, to the last moments before adoption.

Second, Parties have to decide collectively whether they will adopt the proposed amendment. 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, MEAs may also contain other formula (e.g. two-thirds majority, unanimity, consensus) or to opt for different formulae for different provisions in the treaty and the annexes (e.g. the Stockholm and POPs Convention provide different formulae for the various annexes).

Third, once the amendment is adopted, each Party has to express its consent to become bound by it. This is the “opt-in” procedure. In other cases, amendments once adopted may become effective for all Parties upon the expiry of a specified period of time, unless a Party has notified the Depositary in writing within the specified period that it is unable to approve the amendment (see for example, Article 13.4 of the Gothenburg Protocol to

the Convention on Long-range Transboundary Air Pollution). This is the “opt-out” procedure. 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 the entry into force of a treaty amendment. These include:

- adoption, commonly used for amendments to the governing body of the MEA;
- expiry of a specified time period, typical for technical annexes/appendices to an MEA;
- 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 provides that:

Instruments of acceptance in respect of an amendment shall be deposited with the Depository. 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 Depository of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

On 8 December 2012, the governing body of the Kyoto Protocol adopted the Doha Amendment to the Kyoto Protocol establishing a second commitment period. After 144 States (three fourths of the Parties to the Kyoto Protocol) deposited their instrument of acceptance, the threshold for entry into force of the Doha Amendment was achieved. The amendment entered into force on 31 December 2020.

Another example is the 2016 Kigali Amendment to the Montreal Protocol. According to Article IV,

...this Amendment shall enter into force on 1 January 2019, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

If an agreement is not yet in force, it cannot be amended in accordance with 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. Where an agreement provides for entry into force following ratification, acceptance or accession by a certain proportion of Parties, the question arises 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 of adoption 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.

2.3.13 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 of changes to an agreement, and to avoid the cumbersome amendment process. Adjustments are used, for example, in the Montreal Protocol, where adjustments do not require ratification by Parties and enter into force immediately after adoption, and LRTAP contexts (see Annex B with Case Studies).

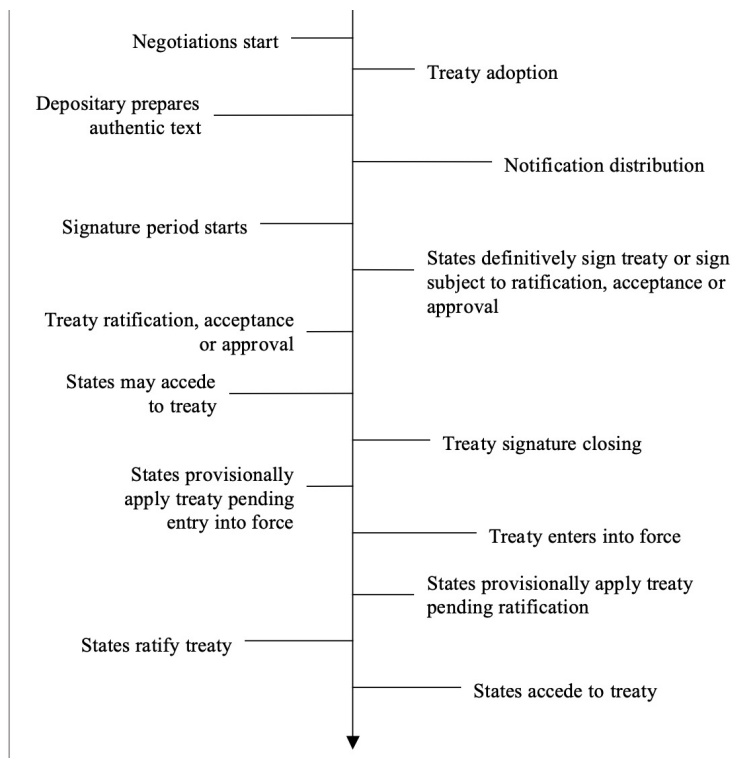
2.3.14 Withdrawal

A provision in an MEA may authorize a Party to withdraw from it. For example, the Basel Convention allows for withdrawal three years after the entry into force of the Convention. The Paris Agreement also allows Parties to withdraw three years after the entry into force of the Agreement. According to Article 28 of the Paris Agreement, the “withdrawal shall take effect upon

expiry of one year from the date of receipt by the Depositary of the notification of withdrawal.”¹⁰

In the absence of a specific provision on withdrawal, a Party may not withdraw unless it 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 (Article 56 of the VCLT). Withdrawal from MEAs is very rare. The main examples are specific to the context of marine agreements. However, Canada withdrew from the Kyoto Protocol in 2011 and the US withdrew from the Paris Agreement in 2020 but rejoined it a few months later in 2021.

2.3.15 Treaty process timeline



¹⁰ The US applied this provision and communicated its notification of withdrawal to the Depositary on 4 November 2019, e.g. the date marking the third anniversary of the entry into force of the Paris Agreement. In accordance with Article 28, the US withdrawal took effect on 4 November 2020. In January 2021 the US deposited, for the second time, its instrument of acceptance and has subsequently rejoined the Paris Agreement.

2.3.16 Interpretation of treaties and decision texts

Treaty interpretation is an important part of MEA implementation. Parties regularly need to interpret MEAs to make decisions related to their domestic and international enforcement, and to elaborate and adopt further decisions through an MEA body.

In order to facilitate interpretation, some MEAs include definitions of terms as one of the first articles. However, sometimes terms used in an MEA have been left intentionally vague to facilitate compromise.

International law contains general principles of treaty interpretation that apply to MEAs. These have been codified in the VCLT but are generally applicable due to their status as customary international law.

Treaty interpretation can be delegated to a specific treaty body or it may arise during judicial proceedings before the International Court of Justice or another international court or tribunal. Interpretation is generally considered to be a matter for the Parties in the sense that the meaning of treaty provisions is not to be decided by a secretariat or other servicing body of the Parties. In practice, governing treaty bodies –usually COPs– play an important role in MEA interpretation. Their latest decision supersedes any previous decision although in general, decisions should be interpreted as being mutually supportive (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 section 2.3.17 on Precedent).

Under Articles 31.1 of the VCLT, the guiding principle is that treaties must be interpreted:

...in good faith in accordance with the ordinary meaning to be given the terms of the treaty in their context and in light of its object and purpose.

Defining the natural and ordinary meaning of words is the starting point for MEA interpretation.¹¹ If the words are ambiguous or lead to an unreasonable

¹¹ ICJ: Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)

result, the interpreter must resort to other means of interpretation.¹² International judicial bodies have sometimes used dictionaries, other treaties as well as soft law instruments to assist them in defining the meaning of treaty terms.

The context of a treaty includes the consideration of all provisions of the treaty, including the preamble and annexes. Treaties should be interpreted in a way that allows for the overall legal or treaty scheme to effectively achieve its objectives. All parts of the text should be given effect: the interpreter cannot ignore part of a text but must attempt to reconcile general and specific aspects of the text.

Agreements and instruments made in the context of the conclusion of the treaty are part of the context that is to be considered during interpretation (VCLT Article 31.2). Subsequent practices in the treaty's application and subsequent agreements on its interpretation between the Parties are also relevant (Article 31.3 of the VCLT). For example, subsequent protocols can offer important support for interpretation. Also, other relevant rules of international law applicable between the Parties play a role (Article 31.3 of the VCLT). According to Article 31.4 of the VCLT the intention of the negotiators at the time of negotiations can be used to determine a meaning of a term. The ICJ has specified that any new environmental norms or standards developed after a treaty's adoption are relevant.¹³

According to Article 32 of the VCLT, recourse can also be had to supplementary means of treaty interpretation. One of the main means here are preparatory work or *travaux préparatoires*, such as minutes of formal negotiations, records of negotiating sessions, prior draft texts and other documents which may be of evidentiary value. Also, the circumstances in which the treaty was adopted can be used as supplementary means of treaty interpretation. However, MEAs often result from complex negotiations with a large number of participants. This means that detailed records of the various

¹² ICJ: Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, p. 8

¹³ ICJ: Case concerning the Gabčíkovo-Nagymaros Project, ICJ Reports 1997, p. 78 para 140.

important informal discussions are commonly not available. This limits the possibility to use *travaux préparatoires* in their interpretation.

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 (Article 33 of VCLT). This means that it is important to examine all authentic versions, as issues often arise with respect to consistency (see Section 3.1.1.19 on 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.

2.3.17 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. 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.

Using an agreed term or phraseology facilitates negotiations and saves negotiators valuable negotiating time. In the UNFCCC process, for example, Parties have had difficulties with the use of the term “report” as a verb with respect to the submission of information by Parties. Consequently, in negotiated text, Parties have invariably used the terms “communicate”, “provide” and “submit” information (see UNFCCC Article 12.1; Kyoto Protocol Article 7.3; and Paris Agreement Articles 9.5 and 13.7).

2.4 Key elements of MEAs

Most MEA key elements 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 and context 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 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 Objectives

The objective of a treaty defines its purpose and scope of application, hence, its importance. This is why article 18 of the VCLT establishes an obligation for States to refrain from acts that would defeat the object and purpose of a treaty when it has signed a treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval. Thus, treaty objectives have an important interpretive value as the MEA is implemented. They can also play a role at the national level. Several courts have, for example, referred to the objectives of the Paris Agreement and the 1.5/2 degree target when interpreting national legislation.

For example, the ultimate objective of the UNFCCC and any related instruments that the Conference of the Parties may adopt, as stated in Article 2 is to:

...achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

While adaptation, as a concept is not explicitly referred to as an objective of the UNFCCC, it can be inferred when Article 2 states that stabilizing GHGs should be achieved “within a time frame sufficient to allow ecosystems to adapt naturally to climate change.” This interpretation is also supported by Article 4 (f), which requires States to take climate change considerations into account to formulate policies and actions with a view to minimizing adverse effects on

the economy, on public health and on the quality of the environment through projects and measures undertaken to mitigate or adapt to climate change. Additionally, the Paris Agreement seeks to enhance the implementation of the Convention by holding the increase in the global average temperature to well below 2 ° C above pre-industrial levels and to increase the ability to adapt to the adverse impacts of climate change.¹⁴

The objective of the Stockholm Convention, as set out in its Article 1 is defined as follows:

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.

The three objectives of the CBD 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.

In some MEAs, there is no specific provision entitled “objective” and, instead, the objectives can be derived from the preamble. For example, in the Basel Convention, the last paragraph of the preamble reads

determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes.

¹⁴ See Article 2 Paris Agreement at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

2.4.4 Principles

Also, generally found amongst the first provisions in an MEA are their guiding principles. For example, Article 3 of the CBD includes the principle that States have “a sovereign right to exploit their own resources” and the responsibility to ensure that “activities within their jurisdiction or control do not cause damage to the jurisdiction of other States or areas beyond the limits of national jurisdiction.” Article 3 of the UNFCCC references several core principles of international environmental law, such as equity, common but differentiated responsibilities and respective capabilities, sustainable development and precaution. These, and in particular the principle of common but differentiated responsibilities, have played an important role in negotiations under the climate treaties.

2.4.5 General provisions / scope

In some MEAs, there are provisions setting out general obligations and parameters for the operation of the agreement. For example, the UNFCCC in its preamble recognizes that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas.¹⁵

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.

2.4.6 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.

¹⁵ See preambular para. 16 UNFCCC at <https://unfccc.int/resource/docs/convkp/conveng.pdf>

They may also include or focus on conduct or 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 Section 3.4.2.4 on Control Provisions).

2.4.7 Financial and technical assistance

An MEA often contains provisions for mechanisms to support developing countries (and usually also countries with economies in transition, see Section 5.2.3.3 for more detail). Such provisions typically cover financial or technical assistance, including multilateral funding mechanisms (e.g. the Multilateral Fund for the Implementation of the Montreal Protocol), funds dedicated to certain purposes, as well as clearinghouse mechanisms or other arrangements to organize technology transfer. Negotiations to conclude a workable financial mechanism at times may require time and sustained efforts as is the case of the financial mechanism agreed under the Minamata Convention (Article 13). Related bilateral activities may be encouraged or referenced, but are rarely elaborated upon in MEAs.

2.4.8 Education, training and public awareness

Some agreements provide for efforts to share information, support training and promote public awareness and discussion and action. For example, the Paris Agreement affirms the importance of education, training, public participation, public access to information and cooperation at all levels on the matters to address the Agreement¹⁶ and the COP decided to establish a Capacity-building Initiative for Transparency in order to build institutional and technical capacity, both pre- and post-2020.¹⁷ From its adoption in 1994, the UNCCD recognized the importance of capacity building for its effective and efficient implementation.¹⁸ At COP 13, the first standalone decision on this issue was adopted, proving that enhancing and building the relevant

¹⁶ See Paris Agreement, preambular para. 14.

¹⁷ See para. 84 FCCC/CP/2015/10/ Add.1.

¹⁸ See UNCCD Article 19.

capacities for implementation is indispensable to a future successful UNCCD process.¹⁹

2.4.9 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, review and verification as a tool to encourage compliance with substantive control provisions. For example, Article 12 of UNFCCC obliges all Parties to communicate to the COP information relevant to the implementation of the Convention, including in relation to greenhouse gases emissions and removals. This allows the Convention to have comprehensive information on emissions, actions and support, thereby providing a basis for understanding current emission levels, and the ambition of existing efforts, as well as progress on both the national and international scale. In the Minamata Convention, national reports (Article 21) are important sources of information on implementation and compliance.

2.4.10 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 observers, as well as authority to adopt rules of procedure and financial rules relating to operations. Often there will be a delegation of general and residual authority, to review implementation and 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

¹⁹ See Decision 8/COP.13

to specific subjects. The most recent decision of such a body supersedes any previous decision, although in practice, decisions are usually interpreted to be mutually supportive, where possible.

2.4.11 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 or MOP 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 and normally be specified in the Rules of Procedure of the COP/MOP.

2.4.12 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.

2.4.13 Compliance

Non-compliance procedures play an important role in the implementation of MEAs. These often involve some form of compliance committee or implementation committee, and are often facilitative, but may in some cases (e.g. the Kyoto Protocol) also include consequences for failure to comply with MEA obligations.

The first compliance mechanism of a MEA was created under Article 8 of the Montreal Protocol at MOP 2 in 1990 resulting in the establishment of the Implementation Committee. This model has influenced the design of compliance mechanisms created subsequently, for example, under the CITES, CMS, Basel Convention, Rotterdam Convention, the Kyoto Protocol, the Biosafety Protocol, and the Minamata Convention.

The focus is mainly on facilitating implementation and prevention of environmental damage. Compliance procedures therefore differ from

traditional dispute settlement and MEAs, such as the Montreal Protocol, which indicates that they do not prejudice the dispute settlement provisions otherwise available.

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.

2.4.14 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.

A recent example is Article 14.1 of the Paris Agreement. It states that the Agreement's governing body CMA

shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals.

The process is known as the global stocktake. The stocktaking must be done in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science. According to Article 14.3, the outcome of the global stocktake shall inform Parties in updating and enhancing their actions and support, as well as in enhancing international cooperation for climate action. An earlier example of an effectiveness evaluation process includes the Stockholm Convention which provides, in its Article 16, that the COP shall evaluate the effectiveness of the Convention at periodic intervals. The Minamata Convention, in its Article 22, sets out that the COP shall evaluate the Convention periodically, too.

2.4.15 Dispute settlement

Most MEAs include a provision concerning the settlement of disputes among Parties. However, for most MEAs, this is not judicial dispute settlement. Some MEAs include an “opt-in” provision that the dispute settlement mechanism only applies if a State consents to when joining the treaty. For example, Article 14.2 of the UNFCCC provides that Parties joining the convention may declare that they recognize the compulsory jurisdiction of the ICJ or arbitration to consider disputes related to the Convention with respect to Parties having accepted the same obligation. Alternatively, Article 14.6 of the UNFCCC includes conciliation as an option to obtain a non-binding resolution of the dispute through a conciliation commission. Similar provisions are found in Article 27 of the CBD, which also additionally mentions good offices or mediation by a third party as dispute settlement options. However, in practice, Parties have seldom availed themselves of dispute settlement provisions included in MEAs.

2.4.16 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 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 section 2.4 on “Elements of MEAs”).

2.4.17 Annexes

Usually, MEAs have annexes restricted to procedural, scientific, technical or administrative matters, for instance with lists or categories of specific items or kinds of items covered by substantive or other provisions (e.g. substances, species, activities, arbitration options). In rarer instances, an annex can elaborate on Parties’ specific substantive commitments (e.g. Annex B of the Kyoto Protocol, Annexes A and B of the Stockholm Convention).

Note that there may be separate provisions for adopting or amending Annexes.

3 MACHINERY

3.1 Conduct of business in MEA Negotiations

We will start by examining the rules of procedure, which play a critical role in MEA negotiations. All too often MEA negotiators will have only a limited awareness of the rules of procedure. This is because negotiators are often technical experts or strategic actors focused on their own specific objectives, and prefer to leave rules of procedure to legal experts. Some may not even recognize the influence that the rules of procedure have on the negotiations and substantive outcomes, as open discussion of the rules is often avoided among negotiators for various reasons.

Yet even where no explicit reference is made to the rules of procedure, they constantly operate in the background, influencing Parties' conduct and exercising an important influence on the multilateral process and its outcomes. An obvious example is a rule on majority decision-making. Voting is generally avoided in international diplomacy, but whether and how consensus is obtained on a given issue may depend to some degree on the understanding of how Parties would vote. Overall, knowing the rules of procedure is critical to deal with procedural moves by other Parties or a presiding officer, because procedural issues can have a dramatic effect on the outcome of negotiations.

When States first form a negotiating body or forum to negotiate a new MEA, one of the first items on the agenda is to adopt rules of procedure for the negotiating body. If the negotiations lead to an MEA, the latter typically provides that a Conference of the Parties (COP- see the section 3.2.1 on structure) will, at its first meeting, adopt by unanimous vote or by consensus the rules of procedure as well as financial rules. Many of the rules of procedure and financial rules are the same for all MEAs. However, a negotiator should always be familiar with the particular rules of the MEA in question – there can be critical differences.

The objective of this introduction is to emphasize the critical importance of understanding the rules of procedure, without which major failures and frustrations can ensue in MEA negotiations, especially if the consequences of procedural decisions are understood only after they have already been taken. 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. It is generally difficult - if not impossible - to undo process decisions in multilateral negotiations. It is therefore important to integrate procedural considerations, such as those governing decision-making, early on in one's negotiating strategy. 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 under different MEAs, and the relevant texts should be consulted in specific cases. (See also Section 6.2 on the Products of Negotiation Phases for more perspective on the conduct of business in MEA fora.)

3.1.1 Key elements in rules of procedure

3.1.1.1 Frequency of meetings

The frequency of sessions/meetings of the COP and other bodies for a specific MEA are laid out in the text of the MEA, its rules of procedure or both. The first session/meeting must be typically held no later than one year after the MEA's entry into force. At the first session/meeting, the COP often adopts the rules of procedure that provide for the frequency of subsequent sessions/meetings. Subsequent COPs often take place yearly or every two years, with variations. However, a COP may decide to alter the frequency.

Extraordinary meetings can be held at such times as may be decided by the COP at an ordinary meeting or at the request of any Party, provided that the request is supported by the number of Parties defined in the rules. Of course, budgetary concerns weigh in heavily when considering such a request.

Extraordinary meetings are typically scheduled ahead of critical COPs. In contrast, due to the COVID-19 pandemic in the early 2020s, many sessions/

meetings and conferences were postponed or took place virtually. This includes the rescheduling of the important CBD COP 15 tasked with developing a post-2020 global biodiversity framework.

As for the meetings of subsidiary bodies, the COP may decide on their dates. Generally, the COP can set the meetings of its subsidiary bodies to coincide with its own meetings. In practice, subsidiary bodies often meet more frequently than the COP to prepare draft decisions and resolutions for adoption by the COP.

3.1.1.2 Observers

Issues related to observer States and other observer organizations are increasingly important in various MEA negotiations. Given the importance of environmental issues, there is a growing demand for transparency and public participation in MEA negotiations. The importance of transparency is also highlighted in Principle 10 of the Rio Declaration indicating that:

Environmental issues are best handled with the participation of all concerned stakeholders , at the relevant level.

It is widely recognized under various MEAs that the engagement of observers allows important perspectives, expertise and information to be brought into the negotiations. The capacity of observers to participate in negotiations is, however, much more limited than that of the Parties.

Different MEAs have adopted somewhat differing practices but as a general rule, observers are not allowed to negotiate text or participate in decision-making. Also, their ability to make interventions and access meetings is often limited, particularly for non-state actors. (See also section 3.1.1.8 on Openness of meetings.)

Different type 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, but do not have the right to vote when present. The presiding officer (President/Chair/Co 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 usually subject to accreditation and participation criteria set by each MEA. First, they generally have to be qualified in matters covered by the MEA. Second, they generally have to inform the relevant MEA secretariat that they want to be represented at a meeting. Under different MEAs, there are established procedures and practices for the accreditation of observer organizations. Third, the presumption is that observer organizations 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 (pursuant to the rules of procedure). Fourth, the presiding officer 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.

Practical example

Under the UNFCCC, the secretariat reviews applications from aspiring observer organizations and communicates the list of eligible applicants to the Bureau. The final decision concerning accreditation is taken by the COP. Normally, a number of new observers is accredited at each COP.

Once accredited, an observer organization does not need to repeat the application process for each meeting. However, it has to register online each participant wishing to attend a meeting. Given the large number of aspiring participants, each observer organization is normally given a quota and limited number of badges for each meeting. At COP 26 in 2021, over 14,000 observers and 3,700 media representatives attended the conference along with nearly 22000 representatives of Parties and observer States.

UNFCCC observer organizations belong to one of the following constituencies: business and industry NGOs; environmental NGOs; farmers and agricultural NGOs; indigenous peoples' organizations; local government and municipal authorities; research-oriented and independent organizations; trade union organizations; women and gender NGOs; and youth NGOs.

3.1.1.3 Agenda

Managing the negotiating agenda is very important strategically. Only issues that are on the agenda will be considered. The agenda can therefore shape, prevent or promote discussion of particular subjects.

Depending on the rules of procedure, the provisional agenda for each meeting is prepared by the secretariat, with the agreement of the President of the COP. The provisional agenda is distributed to the Parties, together with supporting documents, generally at least six weeks prior to a session/meeting.

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, a Party may ask that an item be added in a supplementary provisional agenda. Finally, it may ask the COP to add items to the agenda at the meeting when the provisional agenda and its adoption are being considered. 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.”

Most MEAs contain 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 draft Rules of Procedure of the UNFCCC, which have not been adopted but are nonetheless applied.

The adoption of the agenda is a procedural matter which, failing consensus, is subject to decision making by a simple majority vote under MEAs whose rules of procedure provide so, for instance under the Basel, Rotterdam and Stockholm conventions. Under MEAs where decision making on procedural matters is subject to consensus only, such as the UNFCCC, it is relatively common practice for an agenda item to be “held in abeyance”. 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 there is still no consensus on the inclusion of the item, a common procedure has been established where it will be automatically included in the provisional agenda of the next session (often with appropriate footnotes indicating that it was held in abeyance at the last session/meeting).

The agenda for an extraordinary meeting shall consist only of those items proposed for consideration by the COP at an ordinary session or in the request for the holding of the extraordinary session.

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, the rules of procedure provide, or a practice has developed, whereby 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, some MEA processes provide that 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.

Under the Basel, Rotterdam, Stockholm and Minamata conventions, budgetary implications of all draft decisions are made available to the conferences of the Parties in advance of their meetings. During the meetings, the budgetary aspects of all decisions, including any new proposal contained therein, are reviewed and cleared by the budget contact group prior to their adoption in plenary.

3.1.1.5 Representation and credentials

Each Party shall be represented by a delegation consisting of a head of delegation and such other accredited representatives, alternate representatives and advisers as it may require. Credentials in MEA negotiations are documentary evidence of a person's authority to formally represent a State in the negotiations.

Usually, each Party must submit to the secretariat, "if possible" not later than 24 hours after the opening of a session/meeting, the credentials of its representatives. Credentials have to be issued by the Head of State or Government or by the Minister of Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization. The credentials of representatives are examined by the Bureau which submits a report thereon to the COP. Representatives are entitled to participate provisionally in the session/meeting, pending a decision by the COP on their credentials.

3.1.1.5 Bureau

The Bureau is a body focusing on questions concerning the management of the intergovernmental process. During the session, the Bureau addresses process related issues in the negotiations. Intersessionally, e.g. between sessions of the COP, it provides guidance to the secretariat on the organization of the sessions and meetings of the COP and the subsidiary bodies. Rules of procedure provide for the election of the Bureau's officers by the COP. Specified in the rules are, for example, the composition of officers (President, Vice-presidents, Chair and Vice-Chair 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, in some instances, the *ex officio* members of the Bureau (normally the Chairs 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 State 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 in the Bureau. Those working on such issues should investigate the history and practice of the MEA in question.

3.1.1.6 Subsidiary bodies

Most of the rules of procedure 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 automatically 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. 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 on whether their meetings will be open to the public. 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. Often the COP also elects the Chair for subsidiary bodies but it is not uncommon for the COP 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 based on a proposal by the Bureau). On the use of more limited negotiating settings, see 3.2.1.6 on institutional practices.

Whether a meeting is open or closed to observers can be strategically important. It can affect the behavior 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 themselves are open to the public unless otherwise decided. In some MEAs, COP meetings are webcast and available to watch online either live or through a recording. Normally there is also a specific rule on the openness of subsidiary body meetings for observers (see section 3.2.1.2 on “subsidiary bodies”). Generally, non-Party States may sit as observers, and participate as such at the invitation of the President/Chair, as the general approach discussed under the rules of procedure for MEAs.

Under some MEAs, such as the UNFCCC with a large number of observers and parallel meetings, COP and subsidiary body decisions have been adopted providing more detail concerning the openness of meetings. The UNFCCC COP has decided that observer organizations may attend any open-ended contact group meetings unless “at least one third of the Parties present at the session of the Convention body setting up that contact group object.” However, the presiding officers of such contact groups may determine at any time during the proceedings that the group should be closed. (See UNFCCC Decision 18/CP.4) The UNFCCC Subsidiary Body for Implementation (SBI) has further recommended that at least the first and last meeting of informal

consultations are open to observers while recognizing that the Parties have the right to keep informal meetings closed.

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 adoption 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 the rules of procedure for the Basel, the Rotterdam and the Stockholm Conventions).

3.1.1.10 Interventions

To address a meeting, a delegate must have the permission of the presiding officer (President/Chair/Co Chair). A delegate raises his or her country's nameplate (called "the flag") or activates the electronic system to request the floor to speak. Priority is normally given to representatives speaking on behalf of Regional and Negotiating Groups.

Based on a proposal from a Party or the presiding officer, the COP may decide to limit the time allowed for each speaker as well as the number of times a representative may speak. Such practices are mainly used in plenary settings. In practice the presiding officer usually makes such decisions, without much discussion, though in theory a presiding officer could be overruled by the Parties (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), whereas in other fora, it is more common for regional and other negotiating groups to coordinate their interventions as much as possible in order to more efficiently manage demanding agendas (see also Section 3.4 on Drafting Issues).

3.1.1.11 Points of order

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. Points of order are raised on matters of procedure rather than substance and the presiding officer needs to satisfy the delegate on the nature of the issue raised. The point of order may relate to: the manner in which the presiding officer is exercising the powers conferred on him/her by the rules of procedure or inherent in the office; compliance with the rules of procedure; the manner in which the proceedings or debate is being conducted; or the maintenance of order at the meeting.

A point of order may be raised at any time during a meeting. This is done by making a “T-sign” with the country flag, or using hands only. After a point of order has been raised, the presiding officer must immediately give the floor to the delegate raising a point of order and rule on it before discussion on other issues continues. A ruling may be appealed but will stand unless a majority of Parties present and voting decides otherwise.

Even under such MEAs where decisions must normally be adopted by consensus, procedural questions can be subject to voting and a majority decision. For example, rule 38 of the rules of procedure for the COP to the Minamata Convention on Mercury provides that the ruling of the presiding officer shall stand unless overruled by a majority of the Parties present and voting.

3.1.1.12 Motions

A procedural 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 procedural 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.

3.1.1.13 Proposals and amendments

Proposals and amendments are made by Parties (even if a text is provided, at the request of Parties, by the presiding officer 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 presiding officer 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 sections 2.3.12 and 2.3.13 on Amendments and Adjustments in Treaty Making Principles respectively).

3.1.1.14 Amendments to the rules of procedure

As rules of procedure are adopted by consensus in MEAs, any modifications to the rules also require consensus. Under the UNFCCC and CBD, the rules of procedure have not been formally adopted but the practice is to apply the draft rules of procedure with the exception of the specific and controversial draft rule concerning voting majorities.

3.1.1.15 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 presiding officer will ask if there is consensus. If no Party makes a formal objection, he or she will declare that the issue is decided (often using the phrase, "It is so decided.").

Depending on the applicable rules of procedure, in the 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 ballot. Voting is not to be interrupted unless a point of order is raised regarding the actual conduct of the vote. A delegation may provide a formal explanation of vote prior to or after voting (depending on the presiding officer'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 meeting 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.

3.1.1.16 Voting majority

Voting is exceedingly rare in international negotiations and Parties usually try to avoid them even if the rules of procedure permit voting. Nonetheless the voting rules may come into play in critical points of negotiation, and may also have some effect on how consensus develops.

The voting majority required to decide on some given issues is specified in the MEA 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 Convention, where decision making by consensus is required by Article 22 paragraph 5 of the Convention to amend Annex III listing the chemicals subject to the prior informed consent procedure.)

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 agreement, decisions may be adopted with the support of a specified majority (e.g. two-thirds). In

some cases, 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) or adopted rules of procedure with brackets around the contentious rule (e.g. Rotterdam and Stockholm conventions). 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.

Consensus and Blocking Consensus

In most negotiations, matters are in practice decided by a consensus, even though the rules may provide for decisions based on a voting majority. While MEA rules do not define “consensus,” a common understanding is that it means the lack of known objections.²⁰ Once consensus appears to emerge on an issue, the presiding officer 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 block 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. In many cases, negotiators may have to consult their capital first.

²⁰ Consensus is defined in article 161(8)(e) United Nations Convention on the Law of the Sea 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 decisions concerning matters of procedure, a simple majority rule applies. Whether a matter is substantive or procedural in nature is determined by the presiding officer. Any of the presiding officer’s decisions may be appealed. A majority is required to overrule the decision. If a presiding officer 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).

3.1.1.17 Elections

Rules of procedure usually provide that all elections are 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 through consultations, and the nominees elected by consensus.

3.1.1.18 Languages

Interventions: In the official plenary meeting of the COP, delegates may intervene in any one of the official languages of the MEA in question, which are usually the six UN languages: 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 interpretation 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 interpretation, otherwise there is a risk of a misunderstanding. In practice, Parties often provide interpreters a written copy of their statements in advance through the secretariat. Some negotiators also manage to listen to the interpretation while speaking.

In drafting and informal groups, it is a common practice that negotiations take place in English without interpretation.

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,” which is often 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, e.g. at present Arabic, Chinese, English, French, Russian and Spanish. Rarely is a multilateral agreement silent on this 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.

3.1.1.19 Rectification of textual errors including translation errors

It is possible that corrections to original treaty text or a text adopted under a MEA 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 discrepancy between different authentic texts constituting the originals of the treaty.

With respect to a treaty text, generally it is the depositary that 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 MEA secretariat. A Party may raise an issue informally or through a formal letter to the secretariat or depositary. At COP 2 of the Minamata Convention, for example, the issue was raised immediately following the adoption of the contested decision.

In each case, the potential 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 presiding officer(s) 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 discrepancy 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 all the States represented at 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 is 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 79.2 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 depositary notifies the Parties concerned. If an objection is received after the time-limit has expired, the depositary 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 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 to 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 adopt its own financial rules, though they are often based on UN financial 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 UNCCD provides as follows:

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 UNCCD, participation costs are covered 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 States; 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 from other sources and is 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 UNCCD for the participation of some representatives of NGOs from affected developing country Parties, particularly the least developed among them, and the Specific Trust Fund for the Specific International Programme of the Minamata Convention, a part of its financial mechanism.). 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 favoring the UN General Assembly's 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 explains the main negotiating groups. UN MEAs are also part of a wider network of environment-related governance structures 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 MEAs establish a main governing body called the Conference of the Parties (COP). Most protocols have a Meeting of the Parties (MOP) which performs the same functions set out for the COP below. In some cases, the COP of the Convention also serves as the meeting of the Parties to a Protocol - for example, the COP/MOP of the Cartagena Protocol and the CMP of the Kyoto Protocol. Even in such instances the COP/MOP and the CMP are distinct decision-making bodies and their membership is not necessarily completely overlapping with that of the COP.

All governing treaty bodies are composed of only Parties to the treaty in question and only Parties to a given instrument, such as a protocol, are competent to participate in related decision-making. In other words, if a country

is a Party to the main Convention but not to a protocol, it cannot participate in decision-making under the protocol's governing body (e.g. MOP or CMP).

States that are not Parties to the treaty in question, the United Nations and its specialized agencies as well as other intergovernmental and non-governmental organizations and civil society representatives may attend these meetings as observers in accordance with the applicable rules (see Section 3.1.1.2 on observers).

A COP often includes a High-level Segment (also called “Segment for high-level participation” or “High-level Meeting”). This is composed of the highest-level representatives of States Parties attending a meeting, typically the Minister or equivalent and other senior official as head of delegations. In some of the most important UNFCCC COPs, most Parties have been represented by their Heads of State/Government. It may be noted that the High-Level Segment (HLS) is a forum for high-level political engagement but not commonly a forum for decision-making. This is the practice for instance under the Basel, Rotterdam, Stockholm and UNFCCC conventions. However, this is not the case for the ozone treaties, where decisions are adopted during the high-level segments. The High-level Segment can also show political support through, for example, the adoption of declarations. In 2021, the CBD COP 15 High-level Segment adopted the Kunming Declaration outlining general targets for the restoration and protection of biodiversity and, in 2022, the Ramsar High-level Segment adopted the Wuhan Declaration to halt and reverse the loss of wetlands. In a similar vein, in 2022, the UNCCD adopted the Abidjan call urging for measures to address drought and desertification.

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 promote its effective 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, compliance);
- evaluating periodically the effectiveness of the MEA;
- making decisions regarding financial resources and mechanisms;
- developing and approving non-compliance mechanism;
- co-operating, where appropriate, with other organizations;
- mobilizing financial resources necessary for implementation;
- considering and adopting any 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. Such actions can include the adoption of new agreements under the MEA in question.

3.2.1.2 Subsidiary bodies

Some MEAs establish or mandate the establishment of specific, permanent, subsidiary bodies.²¹ 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 scientific and technological matters relating to the Convention.” It goes on to list various tasks to be performed by this body. The CBD creates the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) to provide the COP and, as appropriate, other subsidiary bodies “with timely advice relating to the implementation of the Convention.” The CBD also includes a list of more specific tasks of the body. Under the Rotterdam Convention, the Chemical Review Committee (CRC) is

²¹ 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).

tasked to review the information provided by Parties on their final regulatory actions. Under the Stockholm Convention, the Persistent Organic Pollutants Review Committee is tasked to review proposals for listing chemicals under the Convention.

Composition: Some of the permanent subsidiary bodies are open-ended, that is, all Parties to the MEAs are entitled to participate in their sessions/meetings while others have limited membership. Thus, the UNFCCC Subsidiary Body for Implementation (SBI) and SBSTA as well as the CBD SBSTTA are open-ended. On the other hand, 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 addition to equitable geographic distribution, some subsidiary bodies also encourage requirements for equitable gender composition and due regard to the special conditions of developing countries. One such example is the Subsidiary Body on Implementation of the CBD.²² Other subsidiary bodies can be composed of independent experts not representing any Party, such as the Compliance Committee under the Aarhus Convention, where it is possible for civil society to submit nominations.

Decision-making: Commonly, subsidiary bodies adopt their decisions by consensus. However, there are some exceptions. The Rotterdam Convention provides that if all efforts at consensus have been exhausted, the Chemical Review Committee may adopt recommendations by a two-thirds majority vote.

MEAs may not preclude the establishment of subsidiary bodies in their text. Instead, the treaty may confer the COP the power to create such subsidiary bodies. For instance, Article 22(2)(c) of the UNCCD provides that the COP shall “establish such subsidiary bodies as are deemed necessary for the implementation of the Convention.” The Technology Executive Committee, The Standing Committee on Finance and the Adaptation Committee are indeed subsidiary bodies established under the UNFCCC on the basis of such a provision.

Some subsidiary bodies are, by the very nature of their tasks, meant to be temporary or *ad hoc* groups. For instance, the COP of the Basel

²² <https://www.cbd.int/doc/meetings/cop/cop-13/official/cop-13-06-en.pdf>

Convention routinely establishes expert working groups to consider specific legal and technical issues, for instance small intersessional working groups on the development of technical guidelines on the environmentally sound management of specific waste streams or the expert working group on the review of Annexes to the Convention with a view to improving legal clarity. COP1 of the UNFCCC set up the *Ad Hoc* Group on the Berlin Mandate (AGBM), which negotiated the Kyoto Protocol. Similarly, in 2011 the UNFCCC COP established the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action (ADP) to develop a protocol, other legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties by no later than 2015. One of its outcomes was the adoption of the Paris Agreement.

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 section 3.3 on Roles).

Subsidiary bodies may also create subgroups to work on part of the mandate. Such groups may also be created directly by the COP. For example, the UNFCCC COP established a joint working group under its two standing subsidiary bodies, the SBSTA and SBI, to develop the compliance system of the Kyoto Protocol (see COP decision 8/CP.4, Annex II). The working group reported to the COP through the subsidiary bodies.

The COP decides how often these bodies will meet. In general, work of subsidiary bodies often 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 standing subsidiary bodies are elected by the COP, although exceptions exist, for instance the Chair of the Implementation and Compliance Committee of the Basel Convention is elected by the Committee. Other officers are subsequently elected by the body itself on the basis of regional representation. However, all officers of the COP Bureau are elected by the COP.

3.2.1.3 Secretariat

MEAs normally establish a secretariat and provide for its functions. MEAs generally provide that, unless the Convention has already done so, the COP shall designate the entity to administer the secretariat at its first meeting. For instance, in its Decision 1/7, COP1 of the Basel Convention requested the Executive Director of UNEP to carry out the functions of the secretariat. UN MEA secretariats generally follow UN administrative rules and regulations and, unless otherwise decided by the COP, UN practices.

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 and substantive 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.

In general, with the evolution of MEAs, the role of the secretariat has expanded considerably. Aside from preparing the documentation for the meetings of the COP and the subsidiary bodies, the secretariat is tasked with keeping the record of documents and decisions, and also keeping the official registries of implementation commitments and documentation. For example, the UNFCCC secretariat is responsible for keeping a registry of national communications, nationally determined contributions (NDCs), national adaptation plans and adaptation communications. The secretariat is also often tasked with writing synthesis reports and technical papers to support Parties in developing, communicating and effectively implementing agreements under the respective MEA. In addition to this, the secretariat, through its legal division, provides independent legal and procedural services to support the sound delivery of all mandated activities under the Convention and to support the intergovernmental process.

Some MEAs list in great detail the tasks of the secretariat. For instance, Article 16.1 of the Basel Convention lists, in 10 subparagraphs, tasks for the secretariat, adding in an eleventh subparagraph that the secretariat 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 performed by the secretariats include arranging and providing logistical support for meetings of the COP 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 President/Chair or bureau, and circulating the agenda 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. In addition, the secretariat arranges for all official documents to be available in the official languages of the MEA. Information (INF) and miscellaneous (MISC) documents and technical papers are normally in English only.

Other tasks carried out by secretariats are:

- 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 designate a depositary which is responsible for managing documentary functions (e.g. recipient of expressions of consent to be bound or not be bound, of declarations or reservations by Parties, and keeper of the authentic versions of the MEAs and any amendments thereto). 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 that is decided by the Parties.

In the case of UN agreements, the UN Secretary-General is commonly given this responsibility, otherwise the depositary is often 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 the depositary 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:

- Provisions of the relevant treaty;
- Resolutions of the General Assembly and other UN organs;
- Bulletin ST/SGB/2001/7, entitled "Procedures to be followed by departments, offices and regional commissions of the United Nations with regard to treaties and international agreements";
- Customary international law; and
- Article 77 of the VCLT.

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 (<https://treaties.un.org/>). 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.²³

²³ The American Society of International Law publishes the International Legal Materials (<https://www.asil.org/resources/international-legal-materials>), which is also broadly considered to be a standard authoritative reference for original treaty materials.

3.2.1.6 Institutional practice – other bodies

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, especially the difficult ones, in plenary meetings attended by all Party representatives along with many observers. This is also true for subsidiary bodies. This is why in MEA negotiating practice, matters are routinely referred to various groups not provided for in the treaties and related decisions. In fact, most of the negotiations in any given session will take place in such groups – in formal and informal settings and spaces. The work of these groups is often crucial to solve issues.

In most cases, the COP or subsidiary body adopts 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.

From the point of view of process management, it is important to ensure that not too many negotiating groups are in existence at the same time; it could be difficult for smaller delegations to cover simultaneously any more than one or two groups. At COPs and other big meetings, several groups are often created to address different issues, but arrangements are made so that they meet at different times of the day. Some MEAs have established specific rules or practices with respect to the number of meetings that can take place concurrently. Under the UNFCCC, a scheduling rule of 2+4 is commonly applied, meaning that no more than two contact groups and four informal consultations may be scheduled in parallel. Under the Basel, Rotterdam and Stockholm conventions, the general approach is not to have more than two contact groups running in parallel.

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 key issues on the agenda. After having introduced an item and given delegations the opportunity to state their opening positions on the matter, the presiding officer 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. At the same time, this allows the presiding officer to move to the next agenda item on the understanding that he or she will return to the deferred item once the working group is ready to report back to the official plenary meeting of the COP.

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 President of the COP or Chair of a subsidiary body 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 3.3.3.1 on the Chair) for the working group.

COPs and subsidiary bodies can both create working groups when needed. For instance, at the 2nd Meeting of the *Ad hoc* Open-ended Inter-sessional 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

A common practice in MEA negotiations is to set up contact groups to deal with a specific issue. The President of the COP, or Chair of a subsidiary body or of a working group may suggest the establishment of a contact group. While a contact group is usually open-ended and open to the participation of observers, it most often involves those States and observers that have most interest in the issues at hand. One exception under some MEAs to the open nature of contact groups is the contact group on programme of work and budget which discusses budgetary matters.

One can expect contact groups to be created at almost all COPs. For instance, during meetings of the Conference of the Parties of the Basel Convention, there is a long-standing practice to establish three such contact groups: on strategic matters, on technical matters and on legal matters. In addition, given that the meetings of the Conference of the Parties of the Basel Convention are convened simultaneously with the meetings of the conferences of the Parties to the Rotterdam and Stockholm conventions, some joint contact groups on issues of common interest (e.g. technical

assistance, international cooperation) are established, with substantively similar outcomes to be considered by each Conference of the Parties.

Under the UNFCCC, the opening plenaries of the COP and its subsidiary bodies routinely refer a number of agenda items to contact groups. These typically prepare draft SBI/SBSTA conclusions and/or COP decisions.

3.2.1.6.3 Informal groups

MEA negotiations commonly also take place in smaller informal settings. Depending on the MEA, informal groups are often established by the presiding officer rather than a plenary (President of the COP, Chair of a subsidiary body or Chair of a contact group) with the concurrence of the group or under his/her own responsibility.

Informal groups tend to have similar characteristics in the various MEA processes and have designations such as: informal consultations, Friends of the President/Chair, informal-informals, drafting groups, spin-off groups, and indabas (the latter being distinctly at the UNFCCC). Such groups are formed with a view to finding compromises on seemingly intractable issues; to advance negotiations on politically sensitive issues; to resolve issues through drafting proposals; to break political deadlocks; or to provide space for Parties to exchange views and identify areas of convergence/divergence. It is normal for work to start in a working or contact group but later continue in an informal group. For example, at UNFCCC COP21 the final text of the Paris Agreement arose out of the work of an informal group christened the Indaba of Solutions established by the President of the COP under the *Comité* de Paris.

3.2.1.6.4 Friends of the Chair

In the context of particularly sensitive or complex negotiations, the President/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. Under the CBD, the "Vienna Setting" was used during negotiations on the Cartagena Protocol

and the “Vienna+ Setting” during negotiations on the Nagoya Protocol. Other actors with relevant interests may also be invited. For example, 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 the group. One of the most obvious examples concerning the importance of transparent negotiating processes and inclusiveness is the UNFCCC COP 15 in Copenhagen where a small group, comprising mostly of Heads of State/Government, convened in parallel with negotiating groups established by the COP and drafted the “Copenhagen Accord.” The group that produced the Copenhagen Accord was chaired by the COP President and included representatives from all regional groups and key UNFCCC negotiating groups. However, at the COP closing plenary, several countries challenged the negotiating process on the basis that it had not been approved by the Parties and was not adequately representative. Ultimately, the Copenhagen Accord was not adopted but only “taken note” of by the COP.

3.2.1.6.5 Committee of the whole

A Committee of the Whole (COW) is a body that can be differentiated from the formal plenary meetings of the COP but is composed of all the Parties. A COW was used to negotiate the final text of the Kyoto Protocol, for example. UNEA, although not an MEA governing body like COPs, establishes a COW to address various items on its agenda. A COW generally runs in a parallel meeting with the COP, allowing the COP to continue with its agenda, and is open-ended. For instance, at COP 3 of the UNCCD, 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 presiding officer of COW was designated and invited to attend meetings of the Bureau.

3.2.1.6.6 Drafting group

The presiding officer may set up a drafting group to develop text on very specific issues. These groups normally meet in closed sessions. For example, 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 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.

An example of a Legal Drafting Group during Negotiation of a Treaty:

A notable example of an LDG is the Open-ended Group of Legal and Linguistic Experts which was established during the negotiation of the Paris Agreement at UNFCCC COP21 and was facilitated by two Co-Chairs appointed by the COP President, one from a developing country Party and one from a developed country Party. The group was open-ended but had a core membership of 11 representatives, comprising two representatives from each of the five UN regional groups and one representative from the Small Island Developing States. The mandate of the group was to undertake a technical review of the text of the draft Agreement with a view to ensuring that: (a) the formulation of the draft provisions is legally and linguistically clear, accurate and consistent, including as between the six authentic language versions of the text; and (b) there is consistency and coherence amongst the provisions within articles of the draft Agreement and across articles. The Group's mandate excluded reopening discussion on any substantive aspect of the draft agreement.

3.2.2 State/country groupings

3.2.2.1 UN regional groups

Originally, UN Member States were unofficially grouped into five geopolitical regional groups. Nowadays, equitable representation of all regions of the world in many UN bodies are allocated on the basis of geographical representation. This is particularly the case in the context of 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 States 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 representatives to be elected as Bureau members.

The regional groups are as follows:

- Group of African States
- Group of Asia and Pacific States
- Group of Latin American and Caribbean States (known as GRULAC)
- Group of Eastern European States
- Group of Western European and Other States (known as WEOG—this group includes Western European countries as well as Australia, Canada and New Zealand. Although the US only has observer status, it does attend the meetings and is considered as a member of WEOG for election purposes. In December 2013 Israel was accepted into the WEOG, to be effective as of 1 January 2014. 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-Pacific group, e.g. Japan.).

3.2.2.2 Country designations

Many MEAs specify different obligations and treatment for countries designated as developing country Parties, least developed country Parties (LDCs), developed country Parties and countries in transition (CITs) to a market economy or economies in transition to a market economy (EITs). See also, section 5.2 on “International Cooperation”, and Section 5.3.4 on “The Rio principle of common but differentiated responsibilities”.

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, e.g. from Germany (Chair), Cameroon, El Salvador, Hungary and Japan (rapporteur).

The Implementation Committee of the Montreal Protocol is composed of 10 members, e.g. 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.

3.2.2.2.1 Developing countries

Many MEAs specify differentiated obligations and treatment for developing countries. In the absence of applicable definitions or mechanisms to determine which countries are developing countries, the practice in some 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 Section 5.2 on International Cooperation). By way of example, the Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, pursuant to Decision IV/7, considers whether a Party can be classified as a developing country on a case-by-case basis. The

MOP has considered such factors as a country's inclusion on World Bank, OECD and UNDP classification lists.

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, Article 4.9 of the UNFCCC uses this definition when it establishes that

the Parties shall take full account of the specific needs and special situations of the least developing countries in their actions with regard to funding and transfer of technology.

The UNFCCC COP has also established a special work programme for the LDCs, a Least Developed Countries Fund (LDCF), and a Least Developed Countries Expert Group (LEG). The designation LDC is also important with respect to bilateral aid, including bilateral aid related to MEAs.

3.2.2.2.3 Other developing country sub-groupings

Under some MEAs, developing country sub-groups other than LDCs have been defined. Under the UNFCCC and related agreements, Small Island Developing States (SIDS) are recognized as a sub-group of developing countries. SIDS are considered particularly vulnerable to the adverse effects of climate change and are given particular consideration in provisions related to adaptation.

The Paris Agreement also refers to developing countries that are “particularly vulnerable to the effects of climate change,” (see, for example, Article 9.4 of the Paris Agreement). The Agreement often mentions SIDS as an example of particularly vulnerable developing countries. The Agreement also extends the particular consideration of SIDS and particularly vulnerable countries from adaptation to also mitigation (Article 4.6), finance (Articles 9.4 and 9.9), capacity building (Article 11.1) and transparency/reporting (Article 13.3).

3.2.2.2.4 Countries with economies in transition

The countries of Central and Eastern Europe and the former Soviet Union Republics began, in the late 1980s/early 1990s, transition from centrally planned communist economies to a market economy. They 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.

3.2.2.2.5 Developed country parties

Many MEAs also specify different obligations and treatment for developed countries, particularly with respect to financing and transfer of technology. This treatment is based in the principle of common but differentiated responsibilities contained in Principle 7 of the Rio Declaration on Environment and Development.²⁴ In general, the MEAs do not provide a definition of developed country. 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.

Some MEAs however, contain more specific definitions. In the UNCCD, “developed country Parties means developed country Parties and regional economic integration organizations constituted by developed countries.”

In the UNFCCC, Annex I lists the countries that were considered as developed ones at the time of its adoption in 1992. Annex I includes 41 countries; those that were members of the OECD in 1992 as well as the Russian Federation and other Central and Eastern European EITs. Annex II of the UNFCCC includes a shorter list of the wealthiest developed countries with special financial responsibilities. Only Annex I countries had emission reduction targets under the Kyoto Protocol. However, the bifurcation between

²⁴ See Principle 7, which indicates that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystems, [and] in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities...”

Annex I and non-Annex I country obligations grew increasingly controversial over the years due to changes in countries' economies and greenhouse gas emissions since 1992. Reflecting this, the Paris Agreement does not refer to Annex I and non-Annex I countries but relies mainly on self-differentiation albeit with certain normative expectations.²⁵

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 described in the following sub-sections.

3.2.2.3.1 Group of Seventy-Seven and China (G77 & China)

The Group was 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 134 developing countries. Meetings of sub-groups are also often held. These are 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. (see section 3.2.2.2 on "Country Designations", and Section 5.2 on "International Cooperation" below). See <http://www.g77.org/>

²⁵ Lavanya Rajamani & Emmanuel Guérin, "Central Concepts in the Paris Agreement and How They Evolved," in: Daniel Klein et. Al (eds.) *The Paris Agreement on Climate Change. Analysis and Commentary* (2017).

G77 & China Member States (As of May 2022)

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia (Plurinational State of),, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, 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, Kiribati, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, 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, State of Palestine, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

3.2.2.3.2 European Union (EU)

As of May 2022, there are 27 States that are Members of the EU. These are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. The United Kingdom was part of the European Union until 2020.

Certain areas of the EU member States are not part of the EU, like the Faroe Islands (Denmark) and Aaland Islands (Finland). 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 and the French Guiana, Guadeloupe, Martinique, Mayotte and Reunion by France. In total, the EU includes 32 special territories.

The EU differs from the other negotiating blocs in that adopting common positions in MEA negotiations is a legal requirement deriving from the Union's

founding treaties and regulated in detail by the Treaty on the Functioning of the European Union. To this effect, the EU Member States and the EU Commission collaborate closely during the inter-sessional period, including through the Environment Council. The Council is made up of Member States' ministers working on environmental matters as well as the EU Commissioner for the Environment and the EU Commissioner for Climate Action. The Environment Council convenes four times a year and is responsible for adopting EU positions for international conferences and UNFCCC negotiations.

The EU Commission is explicitly mandated to represent the Union externally including in the field of international environmental policy-making. In practice, the Commission services and Delegation's staff collaborate to ensure proper external representation in line with agreed positions. For instance, in public venues, such as plenary meetings of international conferences, or for delivering formal statements, the Commission and the Presidency take the floor on behalf of the EU.

3.2.2.3.3 JUSCANZ/JUSSCANNZ

Included in this group are Japan (J), United States (US), Switzerland (S), Canada (C), Australia (A), Norway (N) and New Zealand (NZ). On certain occasions, Andorra, Iceland, Israel, Liechtenstein, Mexico, Monaco, Singapore, Turkey and the Republic of Korea also participate in this group.

3.2.2.3.4 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." Several MEAs have negotiating groups/coalitions which are unique and specific to them.

For example, apart from the aforementioned G77& China and the EU, the UNFCCC process has the following negotiating groups/coalitions as of 2022 (note that their composition may frequently vary):

Umbrella Group

Established upon the adoption of the Kyoto Protocol in 1997 and composed of non-EU developed countries (Australia, Canada, Iceland, Israel, Japan, Kazakhstan, New Zealand, Norway, Ukraine, and the US);

Environmental Integrity Group (EIG)

Established in 2000 and composed of Georgia, Lichtenstein, Mexico, Monaco, Republic of Korea, and Switzerland;

African Group

Composed of 54 UN Member States from the African continent, it operates as a UN regional group as well as a negotiating group in the UNFCCC process.

Alliance of Small Island Developing States (AOSIS)

Composed of 40 highly vulnerable low-lying or small island States;

Least Developed Countries Group (LDCs)

Composed of 46 States mostly in Africa and Asia, and operating throughout the UN system;

BASIC Countries

Formed in the lead up to the 2009 Copenhagen Conference and composed of Brazil, China, India and South Africa;

ALBA Group (Bolivarian Alliance for the Peoples of Our America)

Antigua and Barbuda, Bolivia, Cuba, Dominica, Grenada, Nicaragua, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Venezuela.

AILAC (Independent Alliance of Latin America & Caribbean Countries)

Chile, Colombia, Costa Rica, Guatemala, Honduras, Panama, Paraguay and Peru;

The Arab Group

Composed of 22 States in North Africa and West Asia;

Like-Minded Group of Developing Countries (LMDCs)

Established during the negotiation of the Paris Agreement and representing over 100 low and middle-income developing countries from Africa, Asia & the Pacific, and Latin America & the Caribbean.

Another example of negotiating group is the Landlocked Developing Countries (LLDCs), which occasionally intervenes in MEAs negotiations. This group consists of 32 countries, 17 of which are classified as LDCs. See: <https://www.un.org/ohrlls/content/landlocked-developing-countries>.

The presidency or leadership of each of the negotiating blocs is usually assumed on a rotating basis. The G-77 & China presidency rotates annually, and generally a spokesperson will be designated for specific issues at specific meetings. While the G-77 & China positions will always be expressed by the formal spokesperson, individual G-77 & China 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. 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 discussed above the EU is a special case as it 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 European Commission. 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.

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 are the main actors in international law and possess an international legal personality, including the ability to hold international legal rights and obligations. MEAs, as treaties concluded under international law, are essentially agreements between States. Only States - and, if so provided, regional integration organizations (RIO), have the power to collectively adopt an MEA and an MEA may only enter into force through State - and RIO, acts of ratification or accession. Only States - and RIO, which ratify or accede to the agreement become Parties to that agreement. Other States are termed "non-Parties." A Party's interest to join an MEA may, to a great extent, depend on whether the international activities accomplished through the instrument correspond to domestic priorities.

Once an MEA is in force, decisions on how to implement it may only be taken by Parties as members of the COP. Only Parties may add to the agenda prepared by the President/Chair and the secretariat. In addition, Parties determine which items, within the agenda, will be treated as priorities. While each Party is entitled to a vote at a COP and all Parties are, formally 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 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.

3.3.2 Observers

The category “observers” includes a wide variety of actors, such as States not Party to an MEA, the United Nations and its specialized agencies, international organizations, the secretariats of other MEAs, environmental NGOs, representatives of indigenous peoples, business and industry, youth, gender, the academia and other research organizations.

Observers may participate in the COP and other bodies established under MEAs, but in most cases, they cannot make formal proposals nor can they participate in decision-making.

As mentioned in section 3.1.1.2, among the observers, the United Nations and its specialized agencies and States not Parties to a Convention have more privileges to participate in meetings than the others, but for all observers, participation is a privilege, not a right.

In some processes, 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, 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. This privilege may, however, be withdrawn by the Parties. Even in those cases, 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.

If requested by a COP decision, the United Nations and its 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, for example, in the context of the Basel Convention, the International Maritime Organization and the International Labour Organization engaged in discussions on ship dismantling. The same is true for international organizations, for example, the OECD takes an interest in the work of the Basel Convention in part because OECD members have adopted a binding decision on wastes aiming to be consistent with the Basel Convention.

The secretariats of other MEAs are usually invited to engage in the process of negotiating a new MEA when issues of common concern are discussed. For instance, the secretariat of the Basel Convention, the scope of which covers

hazardous wastes, participated in the INC of the Stockholm Convention on Persistent Organic Pollutants. More recently, in its resolution launching the negotiations of a new treaty to address plastic pollution, UNEA reaffirmed the importance of cooperation, coordination and complementarity among MEAs, including the Basel, Rotterdam and Stockholm conventions, the UNFCCC and the CBD, and requested the UNEP Executive Director to facilitate the participation of and close cooperation and coordination with these MEAs in the work of the Intergovernmental Negotiating Committee.

Observers that are non-State actors, such as environmental NGOs, representatives of indigenous peoples, business and industry and the youth, will each represent the interests of their particular constituency and strive to have them reflected in the decisions taken under an MEA.

There is a growing recognition of the important role that non-State and sub-national actors play in the implementation of MEAs, and the governance structures of MEAs are evolving accordingly. For example, UNFCCC Decision 1/CP.21, which adopts the Paris Agreement: “Welcomes the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;”²⁶ invites non-Party stakeholders to scale up their efforts on adaptation and mitigation²⁷ and to register them in the Non-State Actor Zone for Climate Action platform;²⁸ and creates a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner, for local communities and indigenous peoples.²⁹ The Local Communities and Indigenous Peoples Platform (LCIPP) is an open and inclusive space and seeks to ensure the engagement, inclusion and partnership of indigenous peoples and local communities in UNFCCC processes.³⁰

Under the UNFCCC, the Parties also created the role of High-level Champions and these launched the Marrakech Partnership for Global Climate Action as

²⁶ See 1/CP.21 paragraph 133.

²⁷ Id. paragraph 134.

²⁸ Id. paragraph 117.

²⁹ Id. paragraph 135.

³⁰ See <https://unfccc.int/LCIPP>

a framework to strengthen the collaboration between Parties and non-Party stakeholders. Since the adoption of the Paris Agreement and throughout the evolution of the Marrakech Partnership, there has been unprecedented growth of non-Party stakeholders taking ambitious action on climate change.

Non-State Actors have been influential from early on in the negotiations of the Convention on Biological Diversity (CBD). In fact, the objectives of the Convention are of direct relevance to other organizations and stakeholders. In particular, the CBD recognizes the dependency of indigenous peoples and local communities on biological diversity and, under Article 8 (j) of the Convention, Parties have undertaken to respect, preserve and maintain the knowledge and innovations of indigenous peoples and local communities.

The role of non-State actors varies somewhat under different MEAs. They may be accorded the privilege to intervene in plenary on the various issues, usually after the Parties, non-Parties and the United Nations and its specialized agencies and other MEAs 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. 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 presiding officer. As with non-Party States and IGO actors, 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. But with the evolution of decisions under certain conventions like the CBD and the UNFCCC, non-State actors' rights to actively participate alongside Parties are being increasingly recognized.

For example, the CMS negotiation process is very dynamic and open to the participation of observers. The CBD also gives the right to non-State actors to participate in plenary sessions and contact groups of every working session unless one third of the Parties object to the presence of observers.

In recent developments, some non-State actors have gained the right to deliberate alongside Parties in working groups that inform the subsidiary bodies of the MEA and the COP. For example, the Parties at UNFCCC COP 24 decided to establish a Facilitative Working Group for the Local Communities

and Indigenous Peoples Platform that has a mixed composition of Parties and seven representatives for indigenous peoples' organizations, with members of indigenous peoples as co-chairs.³¹

Under the *Ad Hoc* Working Group on Article 8 (j) under the CBD, observers can present proposals if supported by a Party. Also, this working group has made recommendations to the COP to develop a new programme of work on Article 8 (j) aligned with the post-2020 Kunming-Montreal Global Biodiversity Framework (GBF) with the full and effective participation of indigenous peoples and local communities.³²

Non-state actors 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, hosting side-events, etc. Frequently, they also play an important function in terms of providing information on the extent of domestic implementation and in alerting the international community to new problems not sufficiently addressed by existing MEAs.

Non-state actors can also play a role in terms of addressing compliance. For example, the Aarhus Convention established an independent compliance review body that reviews allegations of Parties' non-compliance submitted by other Parties, but also by "members of the public", in other words, individuals, groups of individuals or NGOs/associations.

³¹ See. Decision 2/CP.24 paragraph 1. FCC/CP/2018/10/Add.1 at <https://unfccc.int/sites/default/files/resource/10a1.pdf>.

³² See CBD/WG8J/REC/11/2, paragraph 1 at <https://www.cbd.int/doc/recommendations/wg8j-11/wg8j-11-rec-02-en.pdf>

3.3.3 Presiding Officers

3.3.3.1 President/Chair of the COP

3.3.3.1.1 General

Elected to preside over the work of a COP, the President/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 President/Chair allow him or her to exercise a great deal of influence on the outcome of meetings, in practice the extent of a President's/Chair's authority depends very much on the political capital he/she has gained with Parties, his or her own personal and diplomatic skills as well as whether there is broad support for the proposals before a meeting. Ultimately, the President/Chair remains under the authority of the COP or relevant governing body and therefore, while in practice a decision of a President/Chair is not often challenged, it is always subject to being overruled.

3.3.3.1.2 Election of the President/Chair

The President/Chair is elected by all Parties to the COP. The position rotates among the five United Nations regional groups. In practice, the host of the COP session normally nominates a high ranking official, often a Minister, for election as President/Chair of the COP. The nominee is then elected by consensus at the first meeting of the session. However, the person elected as President/Chair no longer represents his or her country since the President/Chair must be, and must appear to be, impartial (see section 3.7 on Process Issues and Violations).

There has been increasing recognition of the importance of achieving gender balance in MEA negotiation processes, including for chairing roles. For instance, during their 2017 meetings, the COPs to the Basel, Rotterdam and Stockholm conventions noted that "Efforts are still needed to ensure that women and men from all Parties are represented in the bodies and processes of the three conventions" (Decisions BC-13/20, RC-8/13 and SC-8/23). All Parties are reminded of these decisions in the invitation letters to attend the meetings of the conferences of the Parties and when invited to consider

putting forward candidates for election in bodies of the conventions. A similar approach is followed when choosing the chairs of contact groups during the meetings with an effort to ensure overall gender balance in addition to regional balance.

Another example is that the UNFCCC Parties at COP 18

invited parties to commit to meeting the goal of gender balance by, inter alia, nominating women to bodies established under the Convention and the Kyoto Protocol with the aim of a gradual but significant increase in the participation of women...³³

The COP also requested the Secretariat to maintain information on the gender composition of constituted bodies and to add the issue of gender and climate change as a standing item on the agenda of sessions of the COP.³⁴ In addition to this, the Paris Agreement recognized the need to respect and promote gender equality when taking action on climate change,³⁵ and Parties at UNFCCC COP 25 “recognized that the full, meaningful and equal participation of women in all aspects of the UNFCCC process...is vital for achieving long-term climate goals.”³⁶

A recent innovation is replacing the term “Chairman” with the gender-neutral term “Chairperson.”

3.3.3.1.3 Functions and powers

The main role of the President/Chair is to guide and conduct the process towards a successful outcome. As such, the President/Chair has a facilitative role but also authority under the rules of procedure to ensure that the process is fair, transparent and inclusive. As conductor and facilitator of the

³³ Decision 23/CP.18 paragraph 5 at https://unfccc.int/sites/default/files/cop18_gender_balance.pdf.

³⁴ Id. Paragraph 6 and 9.

³⁵ Decision 1/CP.1 Annex: Paris Agreement, preambular paragraph 11, at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

³⁶ Decision 3/CP.25 paragraph 7 at https://unfccc.int/sites/default/files/resource/cp2019_13a01E.pdf.

process, the President/Chair has to earn the Parties' trust through impartial, efficient and transparent behavior and procedures.³⁷ He/she must ensure the observance of the rules of procedure, that is, the procedural integrity of the process. Once a President/Chair has been elected, they are hired for the process, not for the Party or group of States that they belong to. It is important for a President/Chair to "realize from the outset the importance of the management of people, dynamics, and process, and the ability to listen to everyone's ideas, yet still combine them over time into something coherent."³⁸

As the person formally responsible for the orderly and efficient conduct of a meeting, the President/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 President/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 President/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– chair the meetings of the Bureau held during or in preparation of the meeting;

³⁷ See Chasek et al. at page 32, "Transforming Multilateral Diplomacy: the Inside Story of the Sustainable Development Goals," Routledge, New York (2018), discussing the lack of sufficient transparency in the conduct of negotiations at the UNFCCC COP in Copenhagen in 2009 as an impediment towards a successful outcome.

³⁸ Id. page 73.

- Propose to the meeting the Chairs or co-Chairs of working groups, contact groups, etc. – however, with regard to the Chairs of subsidiary bodies, their election is normally the responsibility of the COP; and,
- the President/Chair may also propose the following to the plenary:
- time limits on interventions;
- the number of times a representative may intervene on any given issue;
- the number of interventions before putting a question to the vote or closing the discussion on an agenda item;
- adjournment or closure of debate on a question under discussion; and,
- adjournment or suspension of a meeting/session.

More generally, a skillful President/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 President/Chair is also frequently called upon to participate and intervene in working groups and contact groups. A President/Chair also has the discretion to form a group of Friends of the Chair to attempt to resolve particularly difficult issues (see section 3.6.3 on smaller groupings). In addition, the President/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 President/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.

The President/Chair also has a key role to play in facilitating informal consultations prior to and during important conferences in order to prepare the ground for the solution of difficult topics or issues during formal negotiation sessions. These informal consultations may now also involve non-State actors because of the growing influence and voice of civil society.

3.3.3.1.4 Functions during negotiations of a draft MEA

The President/Chair may exercise great influence on the development of a negotiating text (see section 3.5.1.3 on Chair's text).

The President/Chair may propose a determination of the point at which 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 President/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 President/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 President/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 President/Chair could intervene in small groups to broker consensus. The role of the President/Chair to facilitate negotiations on difficult topics has become increasingly important as demonstrated by the successful Paris Agreement in 2015 where several inter-sessional high-level meetings involving key delegations developed an innovative solution, blending binding elements of accountability with non-binding emission targets.³⁹

During the plenary, the President/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. Text proposed by the President/

³⁹ See Todd Stern, "The Paris Agreement and Its Future," The Brookings Institution, (2018) at <https://www.brookings.edu/wp-content/uploads/2018/10/The-Paris-Agreement-and-Its-Future-Todd-Stern-October-2018.pdf#page=1&zoom=auto,-257,380>. See also <https://www.theguardian.com/environment/2015/dec/13/paris-climate-deal-cop-diplomacy-developing-united-nations>.

Chair often takes into consideration views expressed by non-State actors during formal and informal negotiation sessions.⁴⁰

3.3.3.2 Presiding Officers of other groups

Any formal or informal group created in the context of an MEA requires a presiding officer (normally a chair/co-chairs or facilitator/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/Facilitators are chosen on a proposal by the President of the COP or the Chair of a subsidiary body, often after informal discussions with interested Parties. In the case of co-Chairs/co-Facilitators, usually one is chosen from a developed country Party and one from a developing country Party. As mentioned above, there is a growing practice to take into account gender balance. In general, the Chairs/Facilitators perform, more or less, the same functions and objectives set out for the President/Chair of the COP above. Whatever the outcome of a particular group, it is for the presiding officer 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 has 5 members, the Bureau of the Stockholm Convention and the Bureau of the Basel Convention each have 10 members, the Bureau of the UNFCCC has 11 members. The Aarhus Convention states in its Rule 22 that:

The Bureau shall invite a representative of non-governmental organizations established for the purpose of, and actively engaged in, promoting environmental protection and sustainable development [...] to attend bureau meetings as an observer.

⁴⁰ See Chasek et al. at page 46 referring to how the negotiation process for the sustainable development goals actively involved non-State actors.

The officers of the Bureau are as follows: a President, Vice Presidents and a rapporteur. The positions of President and Rapporteur rotate among regional groups. In addition, members of subsidiary bodies are, in some MEAs, *ex officio* members of the Bureau. In the case of the Basel Convention for instance, 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. Similarly, under the UNFCCC the Chairs of SBSTA and SBI are members of the COP Bureau. The members of the Bureau are elected by the COP (see section 3.3.4 on Bureau). In practice, discussions are held prior to the meeting between the various regional groups to arrive at an agreement on the members that will serve on the Bureau. Members usually serve up to two terms.

3.3.4.1.1 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 well as guidance with respect to preparations for upcoming sessions. 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 working 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.

The Bureaus of the different MEAs played an important role to determine how best to proceed during the 2020 COVID-19 related lockdowns and travel restrictions. In many instances, the COPs and inter-sessional meetings were postponed for 2021, and in other cases, meetings took place in hybrid formats. For example, the Bureau of the Fourth meeting of the COP to the Minamata

Convention on Mercury decided to organize COP-4 in two segments: a first virtual segment conducted online in November 2021 and one in-person conducted in March 2022 in Bali, Indonesia.; while the 2021 meetings of the COPs to the Basel, Rotterdam and Stockholm Conventions took place virtually in a first segment and many of the COPs' agenda items were deferred to June 2022, when Parties and stakeholders are expected to meet face-to-face.

During the session, the Bureau normally meets daily to discuss how the session is progressing and to address any process related issues as well as 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 of Parties.

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 conferences relate to supporting the presiding officers and Parties to conduct meetings effectively. The secretariat, *inter alia*, arranges logistics for the meetings; ensures availability of documentation; circulates substantive proposals submitted by Parties; maintains a speakers' list; and supports the presiding officer in the conduct of the proceedings by providing substantive, procedural and legal advice upon request.

At the beginning of the session/meeting, after introductory remarks by the President and a representative of the host country, the Executive Secretary of the secretariat will normally address the plenary. As the session/meeting progresses through the agenda, the President will frequently rely on the secretariat to explain the documentation. In addition, the secretariat will actively help the President in the procedural aspects of the meeting. It will take note of changes to a text and proceed to make revisions, under the supervision of the President. As mentioned previously, it will also assist the

President 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 UNEA. 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 a text is proposed for which there is an insufficient basis of common understanding, additional information gathering and discussion options should be explored. For example, a workshop or working group could be considered. Examples of this are the *ad hoc* working groups under the CBD and the UNFCCC that have developed important aspects under each Convention driving its implementation and further development with a view to achieving its objectives. Under the UNFCCC *ad hoc* working groups with time-bound mandates have included: the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol that negotiated the Doha Amendment and the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action that negotiated the Paris Agreement. Under the CBD, a noteworthy example is Working Group on Article 8 (j) on the role and involvement of indigenous peoples and local

communities where a number of voluntary guidelines on this have been developed.⁴¹

Another notable example were the deliberations of the open working group tasked with the development of the 2030 Sustainable Development Agenda and the sustainable development goals, which benefitted from various inputs by experts, UN agencies and civil society on different topics during the course of more than a year leading up to the adoption of the Agenda in 2015.⁴²

3.4.1.2 Strategic flexibility

An agenda and all proposals that are to be the subject to discussion should be made available to Parties prior to the meeting (often there are specific deadlines set in rules of procedure). Including a new agenda item is an important strategic matter that could change the course of direction of a given MEA, which is why there are strict rules of procedure governing this matter. For example, under the UNFCCC, the provisional agenda needs to be distributed at least six weeks before a meeting, including new items proposed by Parties before the provisional agenda is circulated.⁴³ Any item proposed by a Party after the provisional agenda has been circulated is usually included in a supplementary provisional agenda. The COP may add, delete, defer, or amend items when adopting the agenda. Parties may request to include additional items at this time. Only items that are considered urgent and important may be added.

Preparing for a negotiation by developing a national position on the different agenda items is of critical importance to ensure that national interests have been adequately considered and represented. This is why one of the most important work negotiations do often happen before they sit down at the international negotiating table. It is important for negotiators to have mandates from their governments that clearly establish objectives, bottom lines and red lines. Since MEA objectives are long term, it is advisable to take this into account when defining negotiation mandates since they should,

⁴¹ See <https://www.cbd.int/convention/wg8j.shtml>.

⁴² See <https://sustainabledevelopment.un.org/post2015>

⁴³ UNFCCC Rules of Procedure, Rules 10(d) and 11 at https://unfccc.int/sites/default/files/resource/02_0.pdf

overall, contribute to the process moving forward. The mandate obtained 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. When making a drafting suggestion one should remain constructive and flexible. 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 Section 3.4.1.5) must be diplomatic, and preferably should provide precise language to resolve the negotiator's concern, directing the presiding officer and the room to the precise paragraph and line. Strategically, it is better 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 in a persuasive manner 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. When 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 presiding officer 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. During virtual meetings and negotiations (see Chapter 4 on Virtual Intergovernmental Meetings), submission of text and proposed language are commonly required in written form, either through the chat box or as an attachment.

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, language should be as clear as possible in order to enable the determination of compliance by Parties. However, agreed language in COP decisions often has additional meaning because it may be tied to other parts of the document as a result of a compromise. This is why delegations ought to keep records of previous negotiations and to refer to them in preparation for future meetings. 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 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 had not anticipated.

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 clearer and more concise. However, overuse of legal terms should be avoided if plain language suffices.

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 presiding officer 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 presiding officer and other Parties to keep bracketed text 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. 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. However, 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 brackets⁴⁴ :

⁴⁴ 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

Article 6 – Notification

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.

Similarly, the following text from the negotiations towards the Minamata Convention provide an overview of the use of square brackets.⁴⁵

Article 4. International trade [with Parties] in mercury [or mercury compounds]

1. Each Party shall allow the import of mercury [or mercury compounds [listed in Annex B]] only:

(a) For the purpose of environmentally sound storage [of commodity mercury] as set out in Article 12;

[(a) bis For the purpose of environmentally sound disposal as set out in Article 13;] or

(b) For a use allowed to the Party under this Convention.

2. [Without prejudice to paragraph 1 (a) of Article 3,] [E]ach Party shall allow the export of mercury [or mercury compounds [listed in Annex B]] only after the Party has [on an annual basis]:[(a) Provided an export notification to the importing [Party] [State]; and] [either]

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.

⁴⁵ This is cited from the Draft Negotiating Text for the fourth session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury (INC4) held from 27 June to 2 July 2012, contained in UNEP(DTIE)/Hg/INC.4/3.

3.4.1.5.3 Paragraphing

Paragraphing is a common way of arranging legislative text. It involves dividing a sentence into different blocks of text. Paragraphing is hierarchical in the sense that a particular unit may be subdivided into further units. The way in which paragraphing is done in MEAs varies, but commonly, MEAs contain articles that are subdivided in paragraphs and subparagraphs. They are differently numbered, to distinguish their hierarchical relationship. For example:

- Article 1: numbered to address a provision on a specific theme.
- Paragraph: can be divided with or without numbering, e.g. with italicized lower-case letters in round brackets: (a), (b), ...
- Subparagraph, commonly numbered, e.g. with lower case Roman numerals in round brackets: (i), (ii), ...

The following example provides an illustration of paragraphing in the Minamata Convention:

Article 2

Definitions

For the purposes of this Convention:

(a) "Artisanal and small-scale gold mining" means gold mining conducted by individual miners or small enterprises with limited capital investment and production;

(b) "Best available techniques" means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context:

(i) "Best" means most effective in achieving a high general level of protection of the environment as a whole;

(ii) "Available" techniques means, in respect of a given Party and a given facility within the territory of that Party, those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration the costs and benefits, whether or not those techniques are used or developed within the territory of that Party, provided that they are accessible to the operator of the facility as determined by that Party; and

(iii) "Techniques" means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned;

(c) "Best environmental practices" means the application of the most appropriate combination of environmental control measures and strategies;

3.4.1.5.4 Chapeau of an Article

MEA articles, as well as COP decisions may contain opening words (also called the chapeau or umbrella) followed by other units of text.

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:

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

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, as a whole, is generally acceptable as a basis of negotiation, then detailed amendments may be prepared and proposed to specific parts of the text. 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. 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, proofread or provide informal advice on drafting.

This can help avoid difficulty in adopting final texts. There is 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, as well as the use of the word “and” as a means 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, e.g. 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 negotiation 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. Negotiations will unfold more easily when the initial draft text garners more support and is less contested, which is why early consultations with key delegations on the draft during the preparatory phase of negotiations may be critical. 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, and its drafting is typically left till the end of the negotiating process. From a policy perspective, the preamble is used to establish the history and context 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 preambular⁴⁶ text can come into play in treaty interpretation as part of the treaty context as per the *Vienna Convention on the Law of Treaties 1969*, 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 , for example, the Stockholm Convention on POPs, which starts

The Parties to this Convention,
Recognizing that persistent organic pollutants possess toxic properties, resist degradation, bioaccumulate and are transported, through air, water and migratory species, across international boundaries and deposited far from their place of release, where they accumulate in terrestrial and aquatic ecosystems,
Aware of the health concerns, especially in developing countries, resulting from local exposure to persistent organic pollutants, in particular impacts upon women and, through them, upon future generations,
Acknowledging that the Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue,
(...)
Determined to protect human health and the environment from the harmful impacts of persistent organic pollutants,
Have agreed as follows: .

⁴⁶ See Article 31 of the VCLT which establishes that: 1) "a treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of its object and purpose; 2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes..."

3.4.2.3 Objectives

The article on objectives in MEAs is among the most difficult to draft. 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 a 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” or “must” as opposed to “should” or “may”. 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 Section 2.1 on “Forms of MEAs” above, and section 3.4.2.6 on “Decision Texts”.

It is generally important to avoid the word “ensure” whenever possible as it is generally used inappropriately (see 3.4.2.6 on “Decision Text”). 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 conduct. 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 conduct. Again, negotiators will have to consider which type of language is appropriate in the context.

The Paris Agreement is a treaty that combines both legally binding and non-binding components. In this regard, the communication of nationally determined contributions (NDCs) is legally binding, but the emission targets are not. In effect, the obligation created is one of conduct, that is, the “communication of an NDC” and not of result, that is, the “achievement of the NDC”.⁴⁷

⁴⁷ The Paris Agreement is ambiguous in nature since it is considered hard law because it is a treaty under the VCLT, but the nature of the duty to mitigate greenhouse gases is only procedural in nature – meaning, only submitting an NDC is required, but not meeting the stated commitments under the NDC. At the national level, NDCs might become legally binding through climate change litigation and judicial decisions.

Obligation of Conduct – 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 result – 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.)

In various MEAs, a compliance mechanism (see also section 2.4.13) is established to promote implementation of the treaty. This is the case, for example, in both the Kyoto Protocol and the Paris Agreement as well as the Minamata Convention. The Compliance Committee of the Kyoto Protocol has two branches: an Enforcement Branch and a Facilitative Branch. The Enforcement Branch addresses questions of implementation arising from reports of expert review teams and determines whether a Party is in compliance with its emissions target, reporting obligations or eligibility requirements for participation in the Kyoto Protocol mechanisms. In cases of non-compliance, the Enforcement Branch may suspend participation in the mechanisms or impose penalties for non-compliance. The Facilitative Branch, on the other hand, is mandated to provide advice and facilitation to Parties, provide early warning of potential non-compliance, and facilitate financial and technical assistance.

The mechanism to facilitate implementation and promote compliance established under Article 15 of the Paris Agreement consists of an expert-based committee and is conceived as “facilitative in nature” and required to “function in a manner that is transparent, non-adversarial and non-punitive”.

The Committee is mandated to address individual cases of non-compliance and systemic issues affecting several Parties. The Committee has the authority to engage in dialogue with the Party concerned, issue factual findings, make recommendations, and assist the Party to engage with finance, technology and capacity building bodies. The Committee is required to pay particular attention to the respective national capabilities and circumstances of Parties.

In May of 2019, the joint COPs to the Basel, Rotterdam and Stockholm Conventions achieved several notable outcomes, including: the establishment of a compliance mechanism under the Rotterdam Convention on Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The Compliance Committee is a subsidiary body of the COP to the Rotterdam Convention that was established under Article 17 of the Convention. The Committee has a double mandate to:⁴⁸

- Deal with submissions relating to the compliance of an individual party;
- Reviewing systemic issues of general compliance.

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 section 2.4.16 on “Treaty Mechanisms”).

⁴⁸ See http://www.pic.int/TheConvention/ComplianceCommittee/Mandate/tabid/8455/language/en-US/Default.aspx#anchor_2

3.4.2.6 Decision texts (“should” and “shall”, “may” and “must”)

The substantive outcomes of the Conferences or Meetings of the Parties to MEAs are usually decisions and, in some instances, resolutions. Decisions taken under an MEA are considered not to be legally binding unless that MEA explicitly provides the authority for legally binding decisions (see also section 2.2 on Hard and Soft law). If such authority is not provided for, but is required, Parties may decide to amend an agreement (see section 2.3.12 on “Amendments”). 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 3.4.2.4 on “Control Provisions” and 3.4.2.6 on “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.⁴⁹ Indeed, it is possible that a non-binding text could be converted by Parties into 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 2.1. on “Forms of MEAs” as well as 3.4.2.4 on “Control Provisions” above).

⁴⁹ 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 when the negotiations towards the adoption of the Nagoya Protocol started, the Bonn Guidelines had a significant influence.

As noted above, it is preferable to avoid the word “ensure” especially in conjunction with mandatory language, 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 3.4.2.4 on “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”⁵⁰ 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;

since the secretariat is at the service 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...

When Parties are reluctant to “approve” a report an option is to “note” it instead; this can be a useful approach when a report has been insufficiently considered by delegations, for example, when issued with short notice prior to a meeting; where a report has been read and is supported by a delegation, the following words are appropriate: “welcomes,” and where strongly supported: “endorses.”

⁵⁰ Such as to ratify a treaty amendment

Copenhagen Accord at COP15, the UNFCCC COP was forced to simply “take note” of the Copenhagen Accord. Decision 2/COP15 of the UNFCCC therefore simply states:

*“The Conference of the Parties,
Takes note of the Copenhagen Accord of 18 December 2009”.]*

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 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.”

3.4.2.7 Recommendations

Recommendations are typically used by scientific, technical or compliance bodies—e.g. 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 agreeable as possible for the reasons cited above.

3.5 Documents

3.5.1 General

Negotiating MEAs or COP and MOP decisions generates 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.

3.5.1.1 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 or MISC documents.

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 as per the applicable rules of procedure, many may only be ready on the eve of the meeting. This is often the case for pre-sessional documents of a budgetary nature.

3.5.1.2 In-session documents

Different types of documents are distributed at the meeting itself. Included among these are those described in the following sub-sections.

3.5.1.2.1 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 into the official languages, as would be required for an L document.

3.5.1.2.2 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 COP President will then ask Parties to approve it. It will then go through a formal secretariat editing process. Often, a preediting 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 COP President 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.

3.5.1.2.3 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).

3.5.1.3 Chair's text

In order to assist the process of negotiating a draft MEA or a draft decision, the presiding officer 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.

Negotiating text may often contain bridging proposals by the presiding officers linking two or more topics as a means of facilitating an agreement by the Parties. Such was the case for the text proposed by the Ad hoc Working Group on the Durban Platform for Enhanced Action that would serve as a basis for the Paris Agreement on climate change.⁵¹ Unless important national interests are at stake, delegations should refrain from taking stances that might undo these carefully crafted packages, which are intended to constructively move the process forward.

3.5.1.4 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 President 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

⁵¹ See FCCC/ADP/2015/L.6 at https://unfccc.int/files/bodies/awg/application/pdf/draft_paris_agreement_5dec15.pdf.

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 President 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, which often can be done in close cooperation with the Rapporteur. 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.

3.5.1.5 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.

3.5.1.5.1 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/CMS: CMS
- 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.)
- UNEP/MC: The Minamata Convention on Mercury

Documents of other MEAs will simply have the acronym of the MEA in question. (e.g. FCCC for the Climate Change Convention or ICCD for the Desertification Convention).

- FCCC/CP/year/number
- FCCC/PA/CMA/year/number (for the Paris Agreement).

3.5.1.5.2 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. FCCC/CP/2015/10/Add.1 is document that contains the decision adopting the Paris Agreement – 1/CP.21, and the Agreement itself).

- 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 clearing-house.
- 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.

3.5.1.5.3 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.

3.5.1.5.4 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. It is also wise to keep a brief record of your delegation's positions in previous meetings and how they have fared.

3.6.1.2 Venues to build support

Immediately prior to and at the meeting, participate in regional/negotiating groups coordination meetings and discussions related to your issues to generate support for your delegation's approach (e.g. in JUSCANZ, European Union, G-77 and China, AOSIS etc.). 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. Building good relationships and trust with delegates with differing positions during breaks, being courteous and professional at all times and maintaining a constructive demeanor can reap many benefits during difficult negotiation sessions. This is particularly the case in the long-term since you are likely to encounter the same delegates at different COPs and meetings.

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 presiding officer/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 presiding officer: this can be by raising your Party's name card (called the "flag"), by pressing a button or both⁵² and in any meeting, but particularly in smaller groups, by getting the attention of the secretariat member supporting the presiding officer.

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

There are different types of interventions at different stages of MEA meetings and negotiation sessions. For example, during high-level events at COPs, heads of delegation present the foundations of their countries' positions and will point in the direction where they think the overall negotiation process ought to go. These statements are political in nature and, as such, are intended for multiple audiences, including domestic constituencies, which is why some of the issues raised in these statements may, at times, seem not to be as focused as desirable to the tasks at hand during the negotiations. Nonetheless, these statements serve an important purpose in terms of garnering the necessary political support domestically for what delegations are about to undertake during negotiation sessions. Other interventions, at the technical level, happen in contact groups and informal settings and these are meant to bring clarity to issues regarding which there may not be a common understanding as yet. Later in the process, when delegations meet to consider proposed text, the interventions are usually oriented to making changes and suggestions to the language in the document being considered.

⁵² 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.

These interventions need to be informed by national interests and made in good faith (see section 4 below).

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 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 3.6.2 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 presiding officer 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, always taking into consideration the time limits for interventions.

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 reconsider your position in light of what you have learned from delegations with other similar interests and conditions, but any changes in national position must be consulted with and approved by the 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, text message or e-mail 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 presiding officer consider an issue on which your delegation takes no position and step out of the meeting.
- 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 3.4 on Drafting Issues).

- 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 presiding officer 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 presiding officer 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. In practice, the secretariat edits the text while negotiators intervene and all changes are visible to participants.

Keeping a daily record of negotiations, with a brief summary of what happened at the end of the day, will help you report to your delegation next morning and also prepare your final report at the end of the meeting or session.

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 President 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 presiding officer 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 or the negotiating groups/coalitions, as appropriate, 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/negotiating group; 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.

To give the negotiator additional clarity, it is advisable to organize notes by issues of interest to your delegation and noting next to them the delegations that seem to support your country's position on the matter or to oppose it.

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"), which is 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 MEA websites.

Another option is to circulate among potentially like-minded countries an informal document called a "non paper". A "non paper" 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 President 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 or as a footnote to the COP decision 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/COP decision 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 presiding officer 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. Although contact groups, informal consultations and drafting groups are sometimes quite large in number, such as in the context of UNFCCC negotiations where a contact group can consist of more than fifty people. While often they are around hollow square tables, in some cases the presiding officer sits facing the room. Choosing where to sit is often key in contact groups, informal consultations and drafting groups, so arrive early and deposit your papers on your preferred seat. Make sure to be located so that the presiding officer can see you clearly. This will prevent the presiding officer 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.

3.6.3.1 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 geographical 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 presiding officer 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.

3.6.3.2 Secretariat

As previously mentioned, secretariats are intended to be neutral servants of the Parties to an MEA (see Section 3.3 on roles). However, it is important to remember that they also have their own views and advice received from them should be taken with this in mind. Informal conversations with secretariat personnel are often very useful as they will be able to share their insights on an issue and how the meeting is progressing. If you have any doubts or questions concerning procedural or legal matters, it is appropriate to address them to the office of legal affairs of the secretariat.

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.

3.6.3.3 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 a presiding officer 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 presiding officer in a difficult position. Therefore, if you are making interventions with your delegation in the presiding officer, 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 presiding officer, 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 acting as presiding officer ahead of time.

3.6.4 Shaping overall negotiation outcomes

3.6.4.1 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 developing/developed countries, 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.

3.6.4.2 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.

3.6.4.3 Venue

Where an issue is or could be dealt with in 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 the process than to develop strong rationale and substantive positions. However, a combination of both can produce the best results. 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 or ministerial informal consultations or outreach processes as is often the case in climate change negotiations. 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. If the issue continues to prove challenging to address, it can be forwarded 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. Another option is to organize brainstorming or “lab” sessions under Chatham House Rules⁵³ where delegates, in their personal capacity, and protected by confidentiality in what is said during the meeting, can find common ground and better understanding as a result of the more informal setting and topic and interest focused discussions.⁵⁴

3.6.4.4 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 begin with or 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.

⁵³ The Chatham House Rule: When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

⁵⁴ E.g. see Lab 1: On Achieving Policy Integration in Voluntary National Reviews of the 2030 Agenda for Sustainable Development at https://sustainabledevelopment.un.org/content/documents/23696VNR_LAB_1_Concept_note_and_agendaEAPD.pdf.

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, and the high-level decision makers need to be periodically informed on the matter so that they are fully abreast of the issue when the time comes.

3.6.4.5 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.

Different types of communications are involved in negotiation settings, such as *communiqués* to the press, official statements made by delegation representatives, press briefings or interviews. Because of their impact and potential consequences, it is indispensable that they be authorized and cleared prior to delivery or publication by the appropriate national authority or authorities. Larger delegations will usually have dedicated press and communications officers in charge of these matters. This may not be the

case for smaller delegations, which is why extra care should be placed by delegates when dealing with external or public communications.

3.6.4.6 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 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 President 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 President 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/negotiating 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/negotiating 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 COP President 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 COP Presidency. If your delegation is in a position to block

consensus, it is important to be able to convince the President 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.

3.6.5 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 session⁵⁵ and are also known to occur at Conferences of the Parties.⁵⁶ 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.

Fatigue may factor into negotiation accuracy and having another pair of eyes at hand is always useful. Also, keeping a record of late-night discussions is indispensable to correct any mistakes or oversights by the presiding officer or Secretariat when drafting a final version of the text. Regarding safety precautions, be sure to share your lodging, telephone and emergency contacts with at least another member of your delegation, preferably, the head.

⁵⁵ This happened in the case of the Kyoto Protocol, the Biosafety Protocol and the Stockholm Convention on POPs, to name just a few.

⁵⁶ 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

The presiding officer, the secretariat and other actors usually act in good faith and strive to interpret the MEA according to the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. However, in some instances, the presiding officer or other actors may deviate from the spirit of the treaty or the rules of procedure. If this seems to be the case, any delegation has the right to take the floor on a point of order to ask for clarification as to how the process or deliberations are being conducted.

The COP President can make a ruling that there is consensus. Such ruling can be challenged and overruled by a decision of the Parties (see section 3.1.1 on the rules of procedure). 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 President, and it is considered important to maintain the spirit of consensus.

During negotiations, you may encounter some key actors who may not respect processes or rules of procedure, either willfully or not. If you encounter such an actor, or are unsure about it, 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 humor and humility are effective persuasive tools). Working with the secretariat can also be key. A similar approach can be followed whether the actor in question needs help or whether they are the source of the difficulty. In both cases, direct informal approaches 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. Consulting with your capital may be advisable when dealing with sensitive issues such as these. Relevant authorities in your capital may be able to intervene through the appropriate diplomatic channels in the key actor's

capital, if the situation merits such attention, e.g. when the situation is directly affecting your delegation's participation at the meeting.

Examples of infringements:

- When a presiding officer makes "rulings" on matters of substance (a presiding officer can only "rule" on matters of procedure, substance is the purview of the Parties);
- When a presiding officer arbitrarily cuts off debate and gavel a decision over the objection of a Party;
- When a presiding officer ignores a request for the floor or refuses to give the floor to a Party on a point of order;
- When a presiding officer imposes a text upon the Parties;
- When a presiding officer ignores a request to speak from a Party and the list of speakers has not been closed;
- When a presiding officer 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 infringement of the spirit of the rules:

- When a presiding officer becomes a clearly partisan participant in negotiations;
- When the presiding officer of a Conference makes "take it or leave it" proposals;
- When a presiding officer proceeds with a meeting without first ensuring that all negotiating groups are represented;
- When a presiding officer selects participants in small group negotiation forums without consulting the relevant negotiating groups/coalitions;
- When a presiding officer 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 presiding officer from making any kind of proposal, but when they purport to impose text or decisions, this should be seen as a process violation.

It is important to bear in mind that all of the actions that infringe the rules of procedure or their spirit, undermine the transparency and legitimacy of the process and its outcomes. As such, they are very detrimental to the effectiveness of an MEA.

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 presiding officer of a formal group are effectively subject to a certain amount of transparency and inclusiveness, at least with respect to outcomes that a presiding officer may present to a formal group. Parties may block progress in negotiations if they are not satisfied with how informal groups have been organized, how the participants were selected or the inclusiveness of the group.

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, then Parties should have full rights to participate, including the right to interpretation 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/negotiating groups simply select a number of participants, often with lead responsibility for particular issues. Presiding officers have found innovative solutions to this problem. For example, the composition of the Open Working Group (OWG) for the negotiation of the 2030 Sustainable Development Agenda followed a creative format according to which, despite regional groupings, one seat could be shared by more than one country. In this way, the original group of thirty countries that had been envisaged increased to seventy.⁵⁷ For example, Colombia and Guatemala shared a seat, while France, Germany and Switzerland shared another.

3.7.3 Other issues

In some cases, the secretariat may purport to enforce process rules, often on the direction of the COP President 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.

3.7.4 Reporting back to capital and keeping a record of negotiations

Once a negotiation session has ended, it is important to produce a report that summarizes the national interests and positions and how they were reflected in the outcome documents and decisions. The original negotiation brief used by the delegation could be used as a departure point for this

⁵⁷ See Chasek et al. at page 31 and decision 67/555 at <https://digitallibrary.un.org/record/742043?ln=en>.

purpose. The report should also contain a brief recount of the negotiations, the important issues that were on the agenda, how they were resolved and what were regional/negotiation groups' and important countries' positions on the matter. The report should highlight pending issues and make recommendations in this regard for future negotiations, and should contain an overall analysis about the delegation's performance in terms of strategy, tactics and dynamics. In this regard, chairing of contact groups or facilitative roles by delegation members should be featured. Important COP decisions and any statements made by the head of delegation should be annexed. Portions of the report, as appropriate, should be circulated to relevant national agencies and stakeholders, and the full report should be consulted in preparation for future negotiations. In the long run, this report helps to establish a historical record of the country's positions in MEA processes for national authorities and academics to consider.

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 and programme priorities 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 most experienced multilateral fund with USD 5.33 billion USD in pledges in 2022 for the next four years.⁵⁸ The GEF's role is to support developing countries to prioritize environmental action that delivers global environmental benefits. The GEF is the only entity whose mandate embraces all facets of a healthy environment, from biodiversity to climate change and land degradation to international waters, chemicals and waste.

The GEF operates on the basis of collaboration and partnership among the Implementing Agencies (UNDP, UNEP, World Bank), as a mechanism for international cooperation for the purpose of providing new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits. Article 2, Instrument for the Establishment of the Restructured Global Environment Facility.

The GEF's six focal areas are climate change, biodiversity, international waters, land degradation, and chemicals and waste. Investments are made through Executing Agencies, eighteen in total, including the United Nations Development Programme (UNDP), UNEP, the World Bank, the regional development banks and well-recognized non-governmental organizations.⁵⁹

Recipient countries propose projects to the GEF Executing Agencies, that then develop them through the project pipeline before submitting them to the GEF secretariat and Council for approval. The GEF also works in close partnership with civil society organizations to implement projects through non-governmental and community-based organizations.⁶⁰

⁵⁸ The Green Climate Fund was established more recently than the GEF, but now holds USD 11.4 billion in pledges – more than doubling the GEF's.

⁵⁹ See list of GEF Executing Agencies at <https://www.thegef.org/partners/gef-agencies>

⁶⁰ See Article 28, Instrument for the Establishment of the Restructured Global Environment Facility, September 2019 at https://www.thegef.org/sites/default/files/publications/gef_instrument_establishment_restructured_2019_v1.pdf

The GEF is mandated with investing in Global Environmental Benefits (GEBs) that respond to national and international commitments made within the realm of MEAs. This is accomplished through dedicated focal area windows that ensure targeted investments in response to guidance from the MEAs, while at the same time anchoring integrated approaches that deliver impactful outcomes for the people and planet.⁶¹ The GEF is uniquely placed to harness synergies across the different MEAs by financing projects with multiple co-benefits.

The GEF serves as the financial mechanism to five conventions: CBD, UNFCCC, Stockholm Convention, UNCCD and the Minamata Convention on Mercury. The conventions, for which the GEF serves as financial mechanism, provide broad strategic guidance to the two governing bodies of GEF. The GEF Council converts the guidance provided by the COPs into operational criteria (e.g. guidelines) for GEF projects.

With respect to the UNFCCC, the Parties have established three trust funds: the Special Climate Change Fund (SCCF) and the Least Developed Countries' Fund (LDCF), under the Convention managed by the GEF and the Adaptation Fund, established under the Kyoto Protocol, and managed by the Adaptation Fund Board with the GEF providing secretariat services. The GEF also serves the Paris Agreement, including provision of funding to strengthen the institutional and technical capacities of developing countries to meet the enhanced transparency requirements of the Agreement.

Regarding the CBD, the Nagoya Protocol Implementation Fund supports signatory countries, as well as those in the process of signing the protocol to undertake activities related to the access to genetic resources and the fair and equitable sharing of benefits arising from their utilization.

The GEF, although not linked formally to the Montreal Protocol, supports implementation of the Protocol in countries with economies in transition. The GEF is also associated with many global and regional MEAs that deal with international waters or transboundary water systems.

⁶¹ GEF-8 Programming Directions, August 30, 2021 at https://www.thegef.org/sites/default/files/council-meeting-documents/GEF-8%20Programming%20Directions_0.pdf.

3.8.1.2 Project funding

The GEF operates in four-year funding cycles and since its inception, it has provided more than US\$ 21.1 billion in grants and mobilized an additional US\$ 114 billion in co-financing for more than 5,000 projects in 170 countries. Through its Small Grants Programme, the GEF has provided support to more than 25,000 civil society and community initiatives in 133 countries. Since its inception, the GEF has supported the creation and/or management of over 3,300 protected areas totaling more than 860 million hectares of globally significant biodiversity value. GEF investments have also resulted in more than 8 billion tons of avoided greenhouse gas emissions avoided.⁶²

The GEF-6 cycle introduced the Integrated Approach Pilot (IAP) programs and other larger-scale systemic investments. In GEF-7 the Impact Programs were launched to promote large, integrated, and impactful programs across more sectors and address multiple drivers of environmental change. The GEF-8 encourages countries to move more of their programming through eleven Integrated Programs that address the major environmental needs of the planet for which the GEF has a mandate. The GEF- 8 integrated programmes are:

- Food systems
- Ecosystem Restoration
- Sustainable Cities
- Amazon, Congo and critical forest biomes
- Circular solutions to plastic pollution
- Blue and Green Islands
- Clean and Healthy Ocean
- Greening Transportation and Infrastructure Development
- Net-zero, Nature- positive accelerator
- Wildlife conservation for development
- Elimination of hazardous chemicals from supply chains.

Collectively, the proposed eleven integrated programs address major drivers of environmental degradation and/or deliver multiple benefits that

⁶² Pathways to an Equitable, Nature-Positive and Carbon Neutral World Beyond COVID-19, GEF-8 Strategic Positioning and Programming Directions, April 2, 2021 at <https://www.thegef.org/sites/default/files/council-meeting-documents/GEF%208%20Strategic%20Positioning%20and%20Programming%20Directions.pdf>

fall under GEF's mandate.⁶³ The strategy for GEF-8 is framed against the backdrop of three inter-related challenges to the global environment: the COVID-19 pandemic, mounting stressors on natural systems, and the urgency for robust financing and a transformative agenda. The GEF recognized the seriousness of the pandemic and created a task force to assess the impacts and the opportunities created by the pandemic on the work of the GEF.

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

All projects or programmes must abide by the following eligibility criteria for GEF funding:

- A country must have ratified the conventions the GEF serves and conforms with the eligibility criteria decided by the COP; or the country must be eligible to receive World Bank (IBRD/or IDA) financing for development; or if it is an eligible recipient of UNDP technical assistance.
- The project must be country-driven and consistent with national priorities and that these priorities are aimed at tackling the drivers of environmental degradation in an integral fashion, including through "impact programs" on food systems, land use and restoration, sustainable cities, and sustainable forest management;

⁶³ See GEF-8: Moving Towards an Equitable, Nature-Positive, Carbon-Neutral and Pollution-Free World at https://www.thegef.org/sites/default/files/documents/2022-11/GEF_GEF8_IP_Overview_2022_11.pdf.

- The project must seek GEF financing only for the agreed incremental costs and measures to achieve global environmental benefits;
- The project must involve the public in project design and implementation.

3.8.1.2.3 Development streams and project types

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

- Full-sized projects (FSPs) – more than US\$ 2 million. The GEF provides funding for ESPs only to governments and then governments can decide the executing agency. The GEF Council approves the FSP concepts, which are then fully developed over 18 months. The GEF CEO endorses the fully developed ESP for subsequent approval by the GEF Partner Agency to start project implementation.⁶⁴
- Medium-sized projects - between US \$1million and US \$2million. MSPs offer opportunities for a broad range of programming that is typically smaller in scale than full-sized projects. The approval process is simpler, allowing them to be designed and implemented more quickly and efficiently. This project type increases the GEF’s flexibility in allocating resources since a wide range of stakeholders can propose and develop project concepts. The GEF Council delegates approval of MSPs to the GEF CEO.⁶⁵
- Enabling Activities - up to US \$ 1 million. EAs represent the basic building block of GEF assistance to countries. EAs are a means of fulfilling essential reports to conventions. They provide a basic level of information to enable policy and strategic decisions, or help identify priority activities within a country. The GEF Council delegates approval of EAs to the GEF CEO. Either the country or the GEF agency can access funds directly.⁶⁶

Direct Access for NPFs and Convention Reports. The GEF provides resources directly to the countries for National Portfolio Formulation

⁶⁴ See Types of GEF projects at <https://www.thegef.org/about/funding/project-types>

⁶⁵ Id.

⁶⁶ Id.

Exercises (NPFs) and the drafting of convention reports that are undertaken as obligations of countries to the conventions.⁶⁷

Programmatic Approaches. Programs are a strategic combination of FSPs and MSPs with a common focus to build upon or complement another. In this way, they can produce results not possible through a single project. Programs maximize the impact on the global environment. They do this by implementing medium-to-long-term strategies for achieving specific global environmental objectives consistent with national or regional strategies and plans of recipient countries.⁶⁸

3.8.1.3 Relationship to MEAs

The MEAs provide guidance to the GEF through treaty text and through decisions by their respective COPs. The GEF functions under the guidance of, and is accountable to, the COPs. The COPs decide on the policies, programme priorities and eligibility criteria related to the particular MEA.

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 GEF Executing Agencies, 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

⁶⁷ Id.

⁶⁸ Id.

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. Following the procedures set forth in paragraph 34 of the Instrument for its amendment, different amendments to the Instrument were adopted by the GEF Assembly, including in October 2002, August 2006, May 2010, and May 2014.

Representatives of the GEF and Implementing Agencies 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

The System for Transparent Allocation of Resources (STAR) will see continued improvements in GEF-8 to increase flexibility, support vulnerable countries and maximize the impact of GEF resources.

The GEF-8 STAR model will remain within the context of a set of core principles, which are: transparency, performance, commitments assumed by the countries in the MEAs for which the GEF serves as a financial mechanism, country ownership and flexibility to strategically direct scarce resources towards the issues and opportunities where the highest global environmental impact will be achieved.

The GEF has made extensive revisions and updates to its policies and approaches related to stakeholder engagement, gender equality and environmental and social safeguards. The initial STAR country allocations for GEF-8 reflect a total replenishment level for programming of US\$5,330million. In accordance with the agreed resource allocation framework, the GEF-8 envelopes for the three STAR focal areas are US \$1,919million for Biodiversity, US \$852 million for Climate Change, and US \$618 million for Land Degradation.

After adjusting for focal area set-asides, the amounts available for initial STAR country allocations are as follows: \$1,453million for Biodiversity, \$524million for Climate Change, and \$458million for Land Degradation.⁶⁹

3.8.1.4.1 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.

3.8.1.4.2 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.

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 within the scope of the incremental cost agenda

⁶⁹ See: 63rd GEF Council Meeting (December, 2022), Initial GEF-8 STAR Country Allocations at https://www.thegef.org/sites/default/files/documents/2022-07/EN_GEF_C.63_Inf.05_Initial%20GEF-8%20STAR%20Country%20Allocations__0.pdf

3.8.2 Green Climate Fund (GCF)

3.8.2.1 General

The Green Climate Fund was established by the UNFCCC COP 16 in 2010 (COP Decision 1/CP.16, paragraph 102). The GCF is one of the operating entities of the Convention's financial mechanism and is headquartered in the Republic of Korea. The GCF serves the UNFCCC exclusively.

The Fund aims to support a paradigm shift in the global response to climate change by making a significant and ambitious contribution to the global efforts to combat climate change. It aims to deliver climate finance that is adequate and predictable to developing countries.

The GCF is a platform that brings together both public and private funding. Beyond developed countries' contributions agreed under the UNFCCC, the GCF receives funds from other sources, including from developing countries and the private sector.

The GCF has become the largest multilateral climate fund. During the initial resource mobilization, it received pledges worth US\$11.4 billion.

The GCF has its own Secretariat and is governed by the GCF Board. The Board is composed of 24 members – 12 from developing and 12 from developed countries, selected by their respective constituencies. The Board's developing country members include representatives of UN regional groupings, SIDS and LDCs. The Board makes decisions by consensus, although it has adopted procedures for adopting decisions in the event that all efforts at reaching consensus have been exhausted.

The Board has powers to make all the decisions that are necessary for the Fund's operations, including overseeing the operation of the Fund and implementation of funds disbursed, appointing the Executive Director of the Secretariat, approving operational modalities, operational policies and funding proposals.

3.8.2.2 Relationship to the UNFCCC

The GCF draws its existence and mandate from the UNFCCC. The Fund's Governing Instrument was approved by COP17 in 2011 (see COP Decision 3/CP.17, paragraph 2). The COP also has the power and the ultimate responsibility

to decide on the policies, programme priorities and eligibility criteria of the GCF. Hence, the GCF functions under the guidance and is accountable to the COP. The COP provides annual guidance to the GCF, the GCF takes appropriate actions in response to the guidance received and reports back to the COP on an annual basis. The COP also retains the power of assessing the GCF's overall performance and deciding on its termination.

3.8.2.3 Project Funding

The GCF offers financial support through diverse financial instruments, including concessional loans, equity investments, grants and guarantees.

A core GCF principle is to follow a country-driven approach. National Designated Authorities are government institutions that serve as the interface between each country and the Fund. They provide broad strategic oversight of the GCF's activities in the country and communicate the country's priorities for financing. However, the projects financed by the GCF are implemented through partnerships with entities accredited by the GCF. The Accredited Entities work directly with developing countries' National Designated Authorities for project design and project applications. The Accredited Entities are also responsible for overseeing the implementation of approved projects.

The GCF provides funding to projects that qualify under one of eight priority areas. Four impact areas relate to climate change mitigation (Health, Food and Water Security; Livelihoods of People and Communities; Infrastructure; and Ecosystems and Ecosystem Services) and another four to adaptation (Energy Generation and Access; Transport; Buildings, Cities, Industries and Appliances; and Forests and Land Use). The Fund aims for a balance between mitigation and adaptation investments.

The Fund aims for 50 percent of the adaptation allocation for particularly vulnerable countries, including Least Developed Countries (LDCs), Small Island Developing States (SIDS), and African States. Moreover, GCF seeks to engage both with public and private sectors.

4 VIRTUAL INTERGOVERNMENTAL MEETINGS

4.1 Introduction

COVID -19 restrictions made in-person meetings impossible in the period 2020 - 2021, and many intergovernmental meetings were conducted virtually from March 2020. Although large virtual intergovernmental meetings are a recent phenomenon arising from the challenges posed by the COVID 19 pandemic, the United Nations, and global and regional MEAs had prior to March 2020 already developed a significant amount of practice in this area. This is particularly the case with respect to their subsidiary and inter-sessional bodies' meetings, as well as concerning informal consultative processes undertaken on-line between Member States/Parties in advance of in-person intergovernmental meetings. This practice has become useful as many UN organizations and MEAs were forced by the pandemic to hold an increasing number of meetings online/virtually, including the meetings of their governing bodies such as UNEP's UNEA and MEAs' Conferences of the Parties (COPs).

4.1.1 Terminology

The term "inter-governmental meeting" should be understood to mean a meeting of Member States/Parties of a United Nations body or treaty body or a body that is formally constituted by States or Parties to a treaty in accordance with an inter-governmental mandate and/or treaty, that acts in accordance with its Rules of procedure and has the authority to adopt decisions, resolutions and/or recommendations.

The term "virtual meeting" or "meeting virtually" refers to a meeting conducted via an on-line platform such as a telephone or video link, where all or the majority of participants are not physically present in a single place but connect remotely from different locations. The term can also refer to a portal or forum specifically created for discussions by members of a certain group by exchanging written submissions or interventions – sometimes in-real time

and moderated, other times within a certain period of time, where all or the majority of participants are not physically present in a single place but connect remotely from different locations.

However, some prefer the term “online meetings” in order to emphasize that the meeting is conducted through online technology rather than physical presence. The on-line platforms used by UNEP and the MEAs for their meetings so far are: Interprefy, Webex, GoTo Meeting, MS Teams, Interactio, KUDO, and Zoom.

The term “in-person” meeting refers to a meeting where representatives of Member States/Parties are physically present in one meeting room. Treaty bodies also use the term “face to face meeting”.

The terms “decisions” and “resolutions” refer to the outcomes of formal decision-making by inter-governmental bodies, both procedural and substantive, and can also include other forms of outcomes such as the adoption of recommendations and conclusions.

4.1.2 The Legal Basis for Virtual Intergovernmental Meetings

The existing treaty provisions and Rules of procedure of the governing bodies of the United Nations organizations and MEAs do not address virtual meetings by expressly prohibiting or authorizing them. However, many of the subsidiary/constituted bodies of COPs of MEAs have a long-standing practice of conducting meetings “by electronic means” that is understood to mean that participants conduct their work by e-mail or conduct their meetings fully or partially by virtual means. In addition, electronic means of communication have been used to conduct informal consultations in advance of in-person meetings. Since there is no express prohibition to conducting meetings virtually, during COVID-19 a number of governing bodies conducted their sessions online, including with a view to taking decisions of a procedural or substantive nature, although the taking of substantive decisions has been less frequent. Thus, the source of authority to convene virtual intergovernmental meetings has so far been either the Rules of procedure of subsidiary/constituted bodies under MEAs, decisions of the governing bodies or decisions adopted by the Bureaus of the governing bodies.

4.1.3 Rules of procedure of Subsidiary/Constituted Bodies

A number of subsidiary/constituted bodies have rules of procedure that authorize full virtual meetings, the taking of decisions by electronic means or allow some participants to connect remotely to a meeting. There are several examples:

- The Rules of procedure of the Implementation and Compliance Committee of the Minamata Convention on Mercury expressly provides for virtual meetings. Rule 8 states that “Meetings may take place through electronic or other means should the Committee consider that matters under discussion could be addressed in this manner”. This is nevertheless qualified by the provision that unless otherwise decided by the Committee meetings of the Committee shall be held in person at least once during the inter-sessional period between ordinary meetings of the COP.
- The Rules of procedure of the Standing Committee of CITES provides that it may establish such in-session and inter-sessional working groups as may be necessary for the Committee to carry out its functions and that such intersessional working groups shall normally work electronically unless the Committee or the Conference of the Parties have determined otherwise⁷⁰.
- The Rules of procedure for the meetings of the Compliance Committee of the Cartagena Protocol on Biosafety provide that electronic means of communication may be used by the Committee for the purpose of conducting informal consultations on issues under consideration. It clarifies, however, that electronic means of communication shall not be used for making decisions on matters of substance. Similar provisions are contained in the Rules of procedure for the meetings of the Compliance Committee under the Nagoya Protocol on Access and Benefit-sharing⁷¹.
- The Compliance Committee of the Kyoto Protocol has developed a practice of some members participating virtually. In these cases, the meeting is held in-person, but members could join online for interactive

⁷⁰ See <https://cites.org/sites/default/files/eng/com/Sc/73/E-SC73-03.pdf>, Rule 17

⁷¹ See <https://cbd.int/kb/record/decision/10779>, Decision BS II/1, Rule 15

discussions that include the drafting of decisions in closed session. The Committee's rules of procedure allow it to elaborate and take decisions in a written procedure using electronic means.⁷²

- Under the UNFCCC, the Rules of procedure of the constituted bodies – that is, limited membership bodies addressing thematic issues such as the Adaptation Committee, the Technology Executive Committee and the Standing Committee on Finance – provide for the use of electronic means to take decisions as well as a means of communication to facilitate inter-sessional work, and allow members to attend meetings remotely⁷³. Thus, in March 2020, several meetings of the constituted bodies under the UNFCCC framework were organized as virtual meetings, including the eleventh meeting of the Executive Committee of the Warsaw International Mechanism for Loss and Damage⁷⁴ and the seventeenth meeting of the Adaptation Committee.⁷⁵

4.1.4 Decisions of the Governing Bodies

Several governing bodies of MEAs had, prior to the COVID19 pandemic, taken decisions providing discretion to their subsidiary/constituted bodies to hold virtual meetings. Most of these decisions were prompted by financial considerations. Thus, the frequency of meetings and nature of meetings (in-person or virtual) are subject to availability of resources.

⁷² See Rule 11 of the Rules of Procedure of the Compliance Committee of the Kyoto Protocol. https://unfccc.int/files/kyoto_protocol/compliance/application/pdf/consolidated_rop_with_cmp_4&cmp9_amend_2014feb03.pdf. See also the reports on the 34th meeting of the enforcement branch, at paras 3 and 4, <https://unfccc.int/sites/default/files/resource/CC-EB-34-2019-2%20Report%20on%20the%20meeting.pdf>

⁷³ See for example, Rule X.33 of the Rules of Procedure of the Adaptation Committee – https://unfccc.int/sites/default/files/resource/20210319_revised_rop.pdf; Rule 30 of the Rules of procedure of the Executive Board of the Clean Development Mechanism – <https://cdm.unfccc.int/Reference/COPMOP/08a01.pdf>

⁷⁴ <https://unfccc.int/event/11th-meeting-of-the-executive-committee-of-the-warsaw-international-mechanism-for-loss-and-damage>

⁷⁵ <https://unfccc.int/process-and-meetings/bodies/constituted-bodies/adaptation-committee-ac/workshops-meetings/seventeenth-meeting-of-the-adaptation-committee-ac17>

- The Kyoto Protocol CMP in November 2016 decided that one of its subsidiary bodies, the Joint Implementation Supervisory Committee may conduct its meetings using virtual participation, including electronic consultation and decision-making and that “with regard to the meetings referred to in the Rules of Procedure of the Joint Implementation Supervisory Committee, the virtual participation of members or alternates acting as members in its meetings counts towards a quorum and that virtual meetings of the Joint Implementation Supervisory Committee are meetings of the Committee”.⁷⁶
- The COP of the Basel Convention has decided that a subsidiary body may meet face-to-face or by electronic means, depending on the availability of financial resources, and that it may work by electronic means, that is, by email correspondence. This is for instance the case for the Partnership on Plastic Waste working group⁷⁷, the Basel Convention Partnership on Household Waste working group⁷⁸, the various Basel Convention intersessional working groups on the development or updating of technical guidelines⁷⁹, and the Implementation and Compliance Committee, which has held online sessions of its meetings since 2013. In all instances, the Rules of procedure for meetings of the Conference of the Parties apply *mutatis mutandis*, unless otherwise decided by the Conference of the Parties.
- The COP of the Stockholm Convention decided that the intersessional working group on polychlorinated biphenyls would work by electronic means and, subject to the availability of resources, through a face-to-face meeting.⁸⁰ Here again, the Rules of procedure for meetings of the

⁷⁶ <https://unfccc.int/resource/docs/2016/cmp12/eng/08a01.pdf#page=12>

⁷⁷ The terms of reference provide: “Members of the working group should meet at least once a year, face-to-face or by electronic means, subject to the availability of resources”.

⁷⁸ Decision BC-14/19 provides: “The Household Waste Partnership shall operate by electronic means and shall hold physical meetings, subject to the availability of resources”

⁷⁹ Decisions BC-14/4, BC-14/6, BC-14/8 and BC-14/13

⁸⁰ Decision SC-9/3

Conference of the Parties apply *mutatis mutandis*, unless otherwise decided by Conference of the Parties.

- ASCOBANS Parties decided at COP/MOP 9, held online in 2020, that in future their annual Advisory Committee meetings would alternate between in-person one year and online the next, in order to save costs and reduce the CO² footprint.

4.1.5 Decisions of the Bureaus of the Governing or Subsidiary Bodies

As COVID-19 restrictions made in-person meetings impossible in the period 2020 - 2022, many intergovernmental meetings were conducted virtually from March 2020. Some meetings were shortened and took place with a more limited agenda and some meetings took place but were adjourned to a later date. Decisions to convene virtual meetings were taken by the bureaus of the governing or subsidiary bodies of UN organizations and MEAs. The bureaus in most cases met virtually and took decisions either to postpone scheduled meetings of governing or subsidiary bodies or to allow such meetings to be held virtually. The following are examples of such decisions:

- UNEA decided at its 4th session that its 5th session would convene between 22-26 February 2021. Following a broad consultative process involving the UNEA and the Committee of Permanent Representatives (CPR) Bureaus and the CPR itself, the Bureau of UNEA decided to recommend to keep the opening date (22 February 2021) for a virtual meeting but that UNEA would adjourn the meeting after the second day and for the purpose of organizing a resumed in-person meeting on 28 February – 2 March 2022⁸¹.
- Under the UNFCCC, the Bureau of the COP, CMP and CMA decided in April 2020 to postpone a number of meetings due to the inability of Parties to meet in-person. These included COP 26, CMP 16 and CMA 3, which were scheduled to be held in November 2020 as well as the 52nd and 53rd sessions of the the SBI and the SBSTA, which were meant to take place in June and November 2020 respectively. Subsequently, at

⁸¹ See <https://unep.org/environmentassembly/unea5>

its meeting on 25 August 2020, the Bureau decided that meetings of constituted bodies originally mandated to be held in conjunction with a session can be held virtually in the absence of a session. The COP Bureau, in consultation with the Bureaus of the SBI and SBSTA, decided that the first sessional period in 2021 of the subsidiary bodies would take place from 31 May to 17 June 2021 as a fully virtual conference⁸². The duration of the subsidiary bodies (SBSTA and SBI) sessions was thus extended to three weeks to account for the challenges and constraints of remote participation.

- Under the Basel Convention the decision to convene the first part of the Open-ended Working Group (OEWG) meeting online was taken by the co-chairs in agreement with the OEWG-12 Bureau. It was also agreed at that time that there would subsequently be a face-to-face segment of the OEWG-12⁸³. The approach was endorsed by the OEWG-12 during its online segment. For the 14th meeting of the Basel Convention Implementation and Compliance Committee (ICC-14), the decision to meet online on three occasions was taken by the Chair in agreement with the Bureau and endorsed by the ICC during its online sessions. For the other groups, the mandate to organize a meeting of the group was provided by a COP decision and the decision to meet online was made by the chair/co-chairs/lead members based on the information provided by the Secretariat, in consultation with the Bureau, as appropriate.
- The Bureau of the CBD COP decided that the first part of the United Nations Biodiversity Conference (COP 15, CP-MOP 10 and NP-MOP 4) would take place virtually, including an online high-level segment, from 11-15 October 2021 to address agenda items essential to the continued operations of the Convention and its two Protocols⁸⁴. It was also decided that the second part of the Conference would reconvene in a face-to-face meeting in Kunming, China from 25 April to 8 May 2022. The Bureau

⁸² https://unfccc.int/sites/default/files/resource/message_to_parties_and_observers_outcomes_of_cop_bureau_meeting.pdf

⁸³ [https://basel.int/TheConvention/OpenedWorkingGroup\(OEWG\)/Meetings/OEWG12/Overview/tabid/8264/Default.aspx](https://basel.int/TheConvention/OpenedWorkingGroup(OEWG)/Meetings/OEWG12/Overview/tabid/8264/Default.aspx)

⁸⁴ See cbd.int/doc/notifications/2021/ntf-2021-058-cop15-en.pdf

also decided that the Open-ended Working Group on the Post-2020 Global Biodiversity Framework would meet online from 23 August to 3 September to advance draft text.

- The bureau of the Minamata Convention COP-4 decided, at its fifth meeting held on 14 April 2021, to organize COP-4 in two segments: a first segment was conducted online within the period of 1 to 5 November 2021, and, in accordance with Decision MC-4/1 on the dates of the resumed COP-4, a second segment was conducted in-person within the period of 21 to 25 March 2022 in Bali, Indonesia.

4.2 The Organization and Conduct of Virtual Intergovernmental Meetings

Virtual intergovernmental meetings adhere to the principles underpinning intergovernmental meetings and follow, as far as possible, the format, modalities and practices for in-person meetings as well as the Rules of procedure governing the organization and conduct of such meetings. It is instructive that in many instances textual provisions or decisions authorizing virtual intergovernmental meetings do underline the application of the existing Rules of procedure to such meetings.

4.2.1 Guiding Principles and Rules of Procedure

Over the years, some core principles have emerged that guide intergovernmental meetings within the United Nations system and treaty bodies. These core principles have been incorporated in the Rules of procedure adopted by these bodies to regulate the organization and conduct of intergovernmental meetings. Although some MEA bodies had taken decisions providing discretion to their subsidiary/constituted bodies to hold virtual meetings, the Rules of procedure of the United Nations organizations and the Conferences of the Parties to MEAs have never expressly contemplated meetings held entirely or partially by virtual means. However, Member States/ Parties need to have the assurance that an inter-governmental meeting that is meeting virtually will be conducted in accordance with its Rules of procedure

and will guarantee to them the same rights, privileges and protections that they are afforded in an in-person meeting. Due to these concerns, practice has recently developed whereby the Rules of procedure of intergovernmental meetings apply with the same rigor to virtual meetings as they apply to in person meetings.

The guiding principles include the following:

- Equal rights of participation of Member States/Parties and the inclusiveness of the process;
- Translation of documents and simultaneous interpretation into the six official languages of the United Nations or the official languages of the MEAs;
- Transparency and openness of the proceedings, unless the meeting is private/closed;
- The power of the presiding officer to maintain order, while remaining under the authority of the body;
- The right of Member States/Parties to make statements/interventions and to table proposals for consideration;
- The right of Member States/Parties to participate in taking decisions either by consensus or through a vote;
- The right of observers to be present and to be accorded the opportunity to make statements upon invitation by the presiding officer in accordance with the Rules of procedure, unless decided otherwise by the organ/ treaty body;
- The maintenance of a record of the proceedings, including a record of the decisions that have been adopted.

On the other hand, the Rules of procedure of most intergovernmental meetings require, inter alia:

- The formal convening of a meeting through an inter-governmental decision;
- The holding of the meeting at the Headquarters of the UN body or at the seat of the secretariat of an MEA unless the COP decides otherwise, or other appropriate arrangements have been made by the secretariat;
- The formal notification of a meeting to Member States/Parties and observers;

- The circulation of official documents for the meeting, with translation into the official languages of the meeting, if required, in accordance with mandatory time frames;
- The submission of credentials or a formal notification from each Member State/Party listing its representatives;
- The existence of quorum for the commencement of proceedings and for decision-making;
- The authority of the presiding officer to maintain order at a meeting and ensure observance of the Rules of procedure, including granting the right to speak and calling speakers to order;
- The right of Member States/Parties to make interventions, both procedural (points of order, procedural motions) and substantive (proposals for consideration/decision-making);
- The interpretation of statements and interventions into the official languages of the meeting, if required;
- The right of Member States/Parties to submit and to co-sponsor proposals;
- The consideration and adoption of proposals and amendments to proposals either by consensus or by a vote;
- The right of observers to be present and to make statements unless decided otherwise by the organ/treaty body concerned;
- The maintenance of a record of the proceedings of the meeting.

4.2.2 Internet Connectivity

A sound internet connection for an inter-governmental meeting to which all Member States/Parties have access is crucial. The lack of a secure and stable internet connection in the territory of a Member State/Party may limit or even eliminate their ability to participate effectively at a meeting. It will also undermine confidence by Member States/Parties in the virtual meeting. Questions may arise as to how the United Nations and treaty bodies will support participants who participate in virtual meetings for any additional costs associated with “dial-in” or the upgrade of online facilities.

The “digital divide” – in the sense that some delegates experience difficulties to actively participate in online meetings – is particularly evident in developing

countries. However, problems with connectivity are not limited to developing countries, and there are many cases where delegates from developed countries also experienced connectivity challenges – sometimes related to internet security (for example, firewalls) or inability to apply the correct hardware or software (for example, non-applicable internet browsers).

A number of measures could be taken and, in some instances, have been taken by organizers of virtual intergovernmental meetings to address some of the concerns associated with internet connectivity and access:

Securing the internet connection and video conference link in order to ensure that only the representatives of Member States/Parties and observers that had registered for the meeting would have access;

- Support to Member States/Parties through technical training, dedicated ICT and user technical support video broadcasting capabilities, live interpretation capabilities , and including related costs for virtual venue platform that will support participation and active engagement of delegates;
- Financial support to delegates, normally eligible for support, for connectivity and other technical/logistical aspects of their participation;
- In those Member States/Parties with unstable internet connection and/or limited bandwidth, some secretariats of MEAs, for example the UNFCCC secretariat, have liaised with local United Nations offices to explore logistical support or facilities that can be provided;
- The establishment by the secretariat of a direct channel for communication with participants outside the virtual meeting platform, for example, by phone or email in order to resolve connection failures;
- Before a virtual meeting, delegates can be required to join a test video call to confirm the adequacy of the connection and to familiarize themselves with the link that will be used for the meeting. Importantly, training sessions should be offered to Members States/Parties a few days before official sessions. Additional testing of connectivity and equipment could be undertaken in advance of each plenary session. Training materials in video animation format (video tutorials) can be produced for Member States/Parties to learn to use the virtual meeting platform;

- The “virtual meeting room” should be scheduled to be opened at least 30 minutes before the start of the official proceedings to ensure that connection problems can be resolved in good time. However, it may be important to distinguish between smaller meetings of about 50 to 100 people and bigger meetings for which a longer testing period may be needed.
- Support to Member States/Parties could include providing technical support/upgrade or data bundles or payment in order to enable them to participate in virtual meetings and avoid the “digital divide”.

4.2.3 Representation and Credentials

The rules and practice regarding representation and accreditation are the same as with in-person intergovernmental meetings. In accordance with the Rules of procedure of the COPs/MOPs of MEAs, each Party is represented by a national delegation consisting of accredited representatives, alternate representatives and advisers who are required to submit credentials. For virtual meetings, Parties have been invited to submit scanned copies of their credentials signed by competent authorities (either the Head of State or Head of Government or Minister of Foreign Affairs) by email or online and sent electronically to the secretariat. In some instances, on-line registration platforms have been established to allow national focal points to electronically nominate and register their delegations for the sessions/meetings. Meeting links are sent only to those registered through such dedicated official platforms. The timelines for the submission of credentials under the Rules of procedure apply equally to virtual meetings.

4.2.4 Documentation

Technical arrangements for the provision of documentation for on-line meetings do not materially differ from in-person meetings as online platforms already exist for the posting of documents for inter-governmental meetings, including the websites of the MEAs.

However, due to COVID 19, in certain cases there were adjustments to the documents for online meetings to reflect agreements reached about a revised objective of the online meeting which differed from what was

envisaged for the in-person meeting. In addition, timelines for the submission of comments on documents were sometimes longer for virtual than for in-person meetings. Moreover, Parties were, in some cases, invited to raise questions and concerns on Secretariat documents informally prior to a virtual plenary meeting. These were then addressed by the secretariat by responding to points raised by Parties in advance which contributed to a smoother negotiation process. Summaries of some virtual meetings have also been more substantive/detailed to inform delegations who could not participate at the meeting.

4.2.5 Interpretation

The availability of interpretation into the official languages of an intergovernmental meeting is one of the cardinal requirements in the Rules of procedure of all UN and treaty bodies. It is critical that virtual intergovernmental meetings comply with the rule on interpretation, as failure to do so can place certain Parties at a disadvantage. In this regard, every effort needs to be made to ensure that virtual meetings are convened in accordance with the applicable Rules of procedure, including with regard to official interpretation. Thus, MEA Secretariats have ensured that for virtual sessions/meetings, official meetings of plenary bodies, working groups and subsidiary bodies were held in the six official UN languages, with simultaneous interpretation, as appropriate and in accordance with the respective Rules of procedure.

However, for some subsidiary, inter-sessional and constituted bodies, meetings were often held in English only. In certain cases, meetings were held in only two, three or four UN languages based on the membership of the body concerned. Informal meetings – such as contact groups, drafting groups and informal consultations – followed the practice of in-person meetings and operated in English only.

4.2.6 Quorum and Decision-making

4.2.6.1 Quorum

A virtual meeting should follow the format of an in-person meeting and, in accordance with Rules of procedure be split between a “discussion phase” and a “decision-making phase”. United Nations and treaty body meetings require that there be a quorum of Members/Parties present in order for a meeting to be declared open and for proceedings to commence (that is, the discussion phase), which is usually a third of the Parties and a quorum for decisions to be taken (that is, the action phase), which is usually either a majority or two-thirds of the Parties who are required to be present. For virtual meetings, the requirement of “presence” for the purpose of determining quorum to commence a meeting or to take decisions under the Rules of procedure would mean remote presence, via a secure internet or telephone or video link. Thus, the Guidance prepared by the CITES Secretariat on the application of the Rules of procedure in an online meeting clarifies in this regard that: “It is understood that presence in meetings means physical or online presence. The former through physical presence in a room in physical space, the latter through a connection to a meeting held online”.

Quorum can be determined by the Secretariat by doing a roll call of Parties online or using the technology of the on-line system to determine the number of participants on-line, either for the purposes of beginning the meeting or at the time of decision-making. In addition, it is possible for virtual meetings to take decisions, through consensus or through a specified majority of the Parties present and voting. The Rules of procedure and practices of the body should apply with respect to quorum and decision-making.

4.2.6.2 Discussion phase and decision-making

During the discussion phase, agreement on substance, including on substantive proposals, may require several rounds of discussions, which can be held through virtual live discussions, negotiation of proposals via an online platform, and virtual discussions among sub-sets of Parties, such as regional or negotiating groups. Greater use may have to be made of off-line tools such as questionnaires, “chair’s texts” that synthesize input from participants and summaries provided by the secretariat.

Decisions can be taken either by consensus or by a specified majority of those present and voting, in accordance with the body’s Rules of procedure,

with voting proceeding in alphabetical order and representatives indicating “yes”, “no” or “abstention.” This would be done verbally but could also be done in writing in the chat function. Quorum may need to be checked immediately prior to decision-making and voting should be in the form of an alphabetical roll call, when every representative is requested to indicate, “yes”, “no” and “abstain”. In this regard it is very important that no decision be challenged after its adoption at a virtual meeting. In cases of voting conducted by secret ballot, virtual voting should be visible to the secretariat only. Voting by electronic means has been regularly employed in decision-making by the Compliance Committee of the Kyoto Protocol⁸⁵.

It is important to ensure that proposals and final texts on which the body takes a decision are communicated to all those participating remotely including through a clear document version reference. Following the relevant Rule of procedure, the presiding officer(s) should clearly introduce each proposal, announce which proposals have been adopted, and announce the results of any votes.

In cases where Parties are unable to participate due to an unstable connection, then they can authorize the representative of another Party to vote or participate in the consensus on their behalf, provided that this has been communicated to the Secretariat in writing and the representative is not representing his own Party. A representative would not be able to simultaneously represent two Parties at the same meeting. This is the practice of “proxy” that is used for in-person meetings.

Some United Nations bodies and subsidiary bodies of MEAs, while not meeting in person or virtually have adopted decisions through a “no objection procedure” or “silence procedure.” In accordance with this procedure, where a plenary meeting is not practical, a draft decision is circulated in writing by the Secretariat on behalf of a presiding officer to all members of the inter-governmental body under a silence procedure, usually lasting 48-72 hours. If the silence is not broken, the decision is formally adopted. For example, Rule 30 of the Rules of procedure of the Executive Board of the Clean Development

⁸⁵ See for example, FCCC/KP/CMP/2011/5, P. 5

Mechanism under the Kyoto Protocol provides for a no objection procedure for certain decisions where physical meetings are not feasible⁸⁶.

This process of adopting decisions has recently been adopted by the United Nations General Assembly even though it is not foreseen in either the UN Charter or the Rules of procedure of UN bodies.⁸⁷ However, the practice indicates that within the context of the United Nations Environment Assembly and its Committee of Permanent Representatives, while the “no objection” or “silence procedure” is used as an informal mechanism to achieve consensus, it has not been widely used as a formal mechanism to adopt decisions.

In the context of virtual meetings held in the period 2020-2021, some treaty bodies discussed the option of adopting decisions on questions such as elections, programme of work and budget through the “no objection procedure” or “silence procedure” and did not agree to proceed along those lines. For example, the Bureaus of the Basel, Rotterdam and Stockholm COPs discussed the option of adopting decisions during its on-line segment (that is, on elections, programme of work and budget, financial mechanism under the Stockholm Convention) through a “no objection procedure” or “silence procedure” and did not agree to proceed along those lines. Similarly, the Bureau of the OEWG-12 of the Basel Convention discussed but did not agree to adopting decisions through a “no objection procedure” or “silence procedure” during its online segment.

On the other hand, the “silence procedure” was used for the Second Extraordinary Meeting of the Conference of the Parties to the Convention on Biological Diversity; the First Extraordinary Meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety; and the First Extraordinary Meeting of the Conference of the

⁸⁶ See Rule 30 – <https://cdm.unfccc.int/Reference/COPMOP/08a01.pdf>

⁸⁷ General Assembly decision 74/544 of 27 March 2020, entitled, “Procedure for taking decisions of the General Assembly during the Coronavirus disease 2019 (COVID-19), authorizes the President of the General Assembly, where, in his view, a plenary meeting of the Assembly is not practicable due to the coronavirus pandemic, to circulate, after consultation with the General Committee, draft decisions of the Assembly to all Member States under a silence procedure of at least 72 hours. If the silence is not broken, the decision shall be considered adopted, and the General Assembly shall take note of the decision at its first plenary meeting.

Parties serving as the meeting of the Parties to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

The practice indicates that almost all decisions taken by inter-governmental bodies meeting virtually, were taken by consensus. There continues to be no agreed practice for voting on-line. *In extremis*, there could be a roll call vote whereby Parties are called in alphabetical order to vote either, “yes”, “no” or “abstain.”

In certain instances, such as the first part of the United Nations Biodiversity Conference (COP15, CP-MOP10, NP-MOP4) convened from 11-15 October 2021, there was discussion regarding the types of decisions Parties could take during virtual meetings. In the CBD case, Parties decided to limit the decisions to be taken to those that were essential and that were mainly of a procedural nature, it being understood that this included decisions on elections, budget, programme of work and the dates and organization of future meetings. Thus, the virtual segment addressed only agenda items essential to the continued operations of the Convention and its Protocols.

However, where substantive negotiations took place the conclusion of consideration of substantive agenda items and adoption of final outcomes were deferred to a scheduled subsequent physical meeting. Thus, the Scenario Note prepared by the Co-Chairs for the session of the Working Group for the Post-2020 Global Biodiversity Framework (23 August – 3 September) emphasized that: “Sessions in physical setting will be required to conclude any substantive agenda item and to approve the final draft of the post-2020 global biodiversity framework for consideration by the Conference of the Parties at its fifteenth session....Adoption of ‘L’- documents/final documents will be deferred to the physical meeting of the Working Group”⁸⁸. In other instances, the presiding officers were mandated simply to capture the progress made in substantive negotiations during the session in informal documents to be prepared under the presiding officer’s own authority. For example, the Chairs of the UNFCCC SBI and SBSTA clarified with regard to the modalities for the virtual sessions in May – June 2021 that conclusions regarding the

⁸⁸ See CBD/WG2020/3/1/Add.2/Rev.2

work undertaken would be adopted only at the next in-person meetings of the subsidiary bodies and that progress made during the sessions would be captured in informal documents prepared under the Chairs' own authority⁸⁹.

4.2.7 Participation of Observers

Generally, the participation by observers should, as far as possible, not change due to the online nature of a meeting. Indeed, some MEAs have made it clear that the modalities for participation should follow, to the extent possible, the rules and practices pertaining to in-person meetings, including for observers⁹⁰. Thus, during the third meeting of CBD Working Group on the Post-2020 Biodiversity Framework which took place from 23 August to 3 September 2021 observer States and major stakeholder groups were allowed to intervene on all agenda items during plenary sessions. Other observers were provided an opportunity to speak as time allowed. The Co-Chairs were enjoined to ensure balance among the various categories of observers. Observer interventions in contact groups remained at the discretion of the presiding officers. For the UNFCCC subsidiary sessions in May - June 2021, observers were allowed to make interventions during the joint plenary meetings of the SBSTA and SBI. In addition, observers were required to upload their full statements to the submission portal in advance of the session.

If providing for all observers and stakeholders' participation during virtual meetings is either technically complicated or too costly, or if there is insufficient time, then the following options could be considered:

- Observers could post their statements online and be allowed access to the meeting through "listening mode" only;
- A distinction could be made between those who are entitled to speak during the meeting itself and those who can participate through

⁸⁹ See Note by the Chairs of the Subsidiary Bodies on the Modalities for Session Organization in the First Sessional Period 31 May – 17 June 2021; https://unfccc.int/sites/default/files/resource/2021_sbi_scenario_note.pdf

⁹⁰ See for example, UNFCCC Note by the Chairs of the Subsidiary Bodies on the Modalities for Session Organization in the First Sessional Period 31 May – 17 June 2021; and the Revised Scenario Note by the Co-Chairs of the CBD Working Group on the Post-2020 Biodiversity Framework – Doc. CBD/WG2020/3/1/Add.2/Rev.2

providing (a) questions and/or (b) comments through the chat online and/or (c) having their statements posted.

Thus, alternatives for observer participation may have to be considered to ensure an appropriate level of transparency and inclusivity.

4.2.8 Regional/Negotiating Group Consultations/Coordination

Consultations amongst members of regional and negotiating groups in advance of and coordination during intergovernmental meetings has become an indispensable component of modern multilateral negotiation processes. Through such consultations/coordination Parties identify common interests and build consensus on negotiating positions on the agenda items before an intergovernmental meeting.

Due to their significance for the success of multilateral negotiations, Secretariats have facilitated regional/negotiating group consultations prior to and coordination during virtual intergovernmental meetings. The duration of the UNFCCC May - June 2021 subsidiary bodies sessions was extended to three weeks partly to allow for adequate time for regional/negotiating group consultations and coordination. The UNFCCC secretariat was mandated to provide a virtual platform and to facilitate up to four virtual coordination meetings of negotiating groups in the period June-September 2021. It was also required to provide interpretation services in English and French as well as dedicated technical staff to support the coordination meetings. The CBD secretariat provided on-line platforms for regional consultations during the third meeting of CBD Working Group on the Post-2020 Biodiversity Framework. Timing for such meetings were agreed in consultation with the regional/negotiating groups.

4.2.9 Timing of the Sessions/Meetings

In organizing the work of virtual intergovernmental meetings due attention must be paid to the fact that delegates will work from all time zones. There is a need to address the challenge of working across time zones and to minimize the inconvenience to most delegations. A raft of measures could be taken in this regard, including:

- Extension of the normal duration of the intergovernmental meeting. For example, the UNFCCC May – June 2021 subsidiary bodies sessions were extended to three weeks instead of the normal two weeks;
- Varying the timing of meetings to adhere to the principle that no region benefits or is affected disproportionately. In the case of the aforementioned UNFCCC subsidiary bodies sessions time slots were established in advance for all three weeks;
- Limiting the number of negotiation hours per day. During the third meeting of CBD Working Group on the Post-2020 Biodiversity Framework no additional sessions were held when plenary sessions were convened. In addition, only one or two contact group sessions were organized in any two-hour period; and
- Making available sufficient virtual rooms in the Conference platform for coordination and negotiations.

4.2.10 Amendment of the Rules of Procedure & Development of Operating Procedures

As virtual intergovernmental meetings progressively become an established practice, Member States of United Nations bodies and Parties to MEAs may need to consider the revision of the rules of procedure of their governing bodies to make provision for virtual meetings as well as the development of operating procedures to guide the conduct of such meetings. This would not only ensure legal clarity with respect to the nature and scope of virtual intergovernmental meetings but also enhance the openness, transparency and inclusiveness of the intergovernmental process. In addition, it would encourage regular intergovernmental meetings online thereby contributing to much needed cost-cutting in the multilateral negotiations arena. Already the Rules of procedure of a number of subsidiary/constituted bodies of MEAs do provide for virtual meetings, meetings by electronic means or decision-making by electronic means. In addition, some MEAs have developed operating procedures or guidance for virtual intergovernmental meetings as a supplement to the Rules of procedure. For example, in the lead up to COP 6 of the Carpathian Convention, which was held online, the Bureau of the COP adopted Operating Procedures for Virtual Meetings as a supplement

to the Rules of Procedure of the COP⁹¹. The Operating Procedures follow the Rules of procedure closely and address issues such as representation and credentials; duration and nature of meetings; internet connection and related logistics; requesting and giving the floor; quorum, decision-making and voting; and participation of observers. Similarly, the Secretariat of CITES prepared for the 73rd meeting of the Standing Committee Guidance on the application of the Rules of procedure of the Standing Committee in an online meeting⁹². The Guidance covers representation and attendance; credentials; officers and the secretariat; arrangement of the meeting; documents; rules of order and debate; working groups; and executive summary of decisions and summary record.

⁹¹ See CC/COP6/DOC5_FINAL

⁹² See <https://cites.org/sites/default/files/eng/com/sc/73/In/E-SC73-Inf-01.pdf>

5 CROSS-CUTTING ISSUES

5.1 Governance principles and objectives

5.1.1 Overview

As we saw above, the 1972 Stockholm Conference marked the beginning of a new era and created momentum for the rapid evolution and expansion of international environmental law in the next decades and the adoption of a number of MEAs and other environmental agreements. However, the pace of international environmental lawmaking has gradually slowed down. Already with the 2002 World Summit on Sustainable Development (WSSD), the focus began to shift from rulemaking towards governance and implementation. In the past decade since 2012, only three new MEAs – the Nagoya Protocol, the Minamata Convention and the Paris Agreement – have been adopted along with amendments to the Kyoto Protocol and Montreal Protocol.

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 realization of sustainable development. WSSD produced agreement on approaches to governance, 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 also the substance of the resulting decisions to promote conformity with the overarching aims of sustainable development.

In 2012, the Rio+20 Conference, resolved to strengthen the institutional framework for sustainable development, restating these principles and highlighting some other key aspects.

Undertakings to strengthen the institutional framework for sustainable development, which will, *inter alia*:

(from para. 76 of the Rio+20 Outcome Document “The Future We Want”)

- Be based on an action- and result-oriented approach
- Promote full and effective participation of all countries
- Promote the science-policy interface through inclusive, evidence-based and transparent scientific assessments
- Promote the review and stocktaking of progress in the implementation of all sustainable development commitments, including commitments related to means of implementation.

The 2030 Agenda for Sustainable Development emphasized the importance of good governance as a requisite for sustainable development, envisaging “a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.”⁹³ To meet this high level of ambition it established Goal 16 with the purpose of promoting peaceful and inclusive societies for sustainable development and justice for all.⁹⁴

⁹³ See Transforming our World: the 2030 Agenda for Sustainable Development, paragraph 8 at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

⁹⁴ Id. Goal 16.

Goal 16 of the 2030 Agenda for Sustainable Development is intended to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Further elaborating on these concepts, Agenda 2030 acknowledged that the challenges and commitments identified at the major conferences and summits are interrelated and calls for integrated solutions.⁹⁵ To address them effectively, a new approach is needed. From this angle, sustainable development recognizes that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and interdependent.⁹⁶

These governance principles and objectives have been further elaborated and entrenched in MEAs and the Sustainable Development Goals. The 2030 Agenda for Sustainable Development recognized the need for a revitalized and enhanced global partnership to facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, civil society, the private sector, the UN system and other actors and mobilizing all available resources.⁹⁷ Key principles and objectives to promote sustainable development are described below.

5.2 International cooperation and related issues

5.2.1 Official development assistance

Official development assistance (ODA) has been recognized as indispensable for the achievement of development objectives long before the Stockholm Conference on the Human Environment took place in 1972, or

⁹⁵ Id. paragraph 13.

⁹⁶ Id.

⁹⁷ See Transforming Our World: The 2030 Agenda for Sustainable Development, paragraph 60 at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

the United Nations Conference on Environment and Development (UNCED) in 1992. The OECD created the Development Assistance Committee (DAC) by ministerial resolution in 1960.⁹⁸ One of the purposes of the Committee is to monitor, assess, report and promote the provision of resources that support sustainable development by collecting and analyzing data and information on ODA and other official and private flows in a transparent way. It also promotes the importance of global public goods and policy coherence for sustainable development.

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 Gross National Income (GNI). 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. This target was reiterated in the 2030 Agenda for Sustainable Development which calls on developed countries to implement fully their ODA commitments, including the commitment by many developed countries to achieve the target of 0.7 per cent of gross national income for official development assistance (ODA/GNI) to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries.⁹⁹

The first international conference on Financing for Development (FfD), held in Monterrey, Mexico, in 2002, signaled a turning point in the approach to development cooperation by the international community by adopting a

⁹⁸ See OECD Development Assistance Committee Mandate at <https://www.oecd.org/dac/thedevelopmentassistancecommitteesmandate.htm>

⁹⁹ 2030 Agenda for Sustainable Development, Goal 17, at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

holistic approach combining public and private sources of funding, as well as ODA and trade as a means of mobilizing financial resources for development.¹⁰⁰ In 2005, in Paris, over 100 developed and developing countries agreed to the Paris Declaration on Aid Effectiveness. It sets principles for implementation of development aid. They include: ensuring developing countries ownership in using development aid by setting their development strategies; aligning development aid with such strategies; harmonizing the actions by donor countries and organizations; setting mutual accountability; and managing for producing measurable results.

The second international conference on FfD was held in Doha, Qatar, in 2008, which reiterated this approach and also reaffirmed the importance of freedom, peace and security and respect for human rights, including the right to development, the rule of law, gender equality and the overall commitment to just and democratic societies.¹⁰¹ The third international conference on FfD took place in Addis Ababa, Ethiopia in 2015 where the Addis Ababa Action Agenda (AAAA) was adopted as a part of the 2030 Agenda for Sustainable Development, which was also adopted later that year.¹⁰²

The aim of the AAAA is to “promote peaceful and inclusive societies and advance fully towards an equitable global economic system in which no country or person is left behind, enabling decent work and productive livelihoods for all, while preserving the planet for our children and future generations.”¹⁰³ The AAAA’s task is threefold: to follow-up on commitments and assess the progress made in the implementation of the Monterrey Consensus and the Doha Declaration; to further strengthen the framework to finance sustainable development and the means of implementation for the 2030 Agenda.¹⁰⁴

¹⁰⁰ See The Monterrey Consensus at <https://www.un.org/esa/ffd/wp-content/uploads/2014/09/MonterreyConsensus.pdf>

¹⁰¹ See The Doha Declaration on Financing for Development at https://www.un.org/esa/ffd/wp-content/uploads/2014/09/Doha_Declaration_FFD.pdf

¹⁰² See The Addis Ababa Action Agenda at https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf

¹⁰³ Id. paragraph 1

¹⁰⁴ Id. paragraph 2

Since the adoption of the Monterrey Consensus, the world has made significant overall progress. Globally, economic activity and financial flows have increased substantially. However, the Monterrey agenda has not been fully implemented because many countries still fall short of their ODA commitments and new challenges have arisen, including the COVID-19 pandemic, which has set back progress on the SDGs dramatically and affected all aspects of FfD.¹⁰⁵

For example, prior to the COVID-19 pandemic, significant progress had been made in climate finance through the resource mobilization process of the Green Climate Fund (see Section 3.8.2 on GCF).¹⁰⁶ However, the pledge made by rich nations at UNFCCC COP15 in 2009 in Copenhagen to channel at least US\$ 100 billion per year to developing countries has not yet been met. At the UNFCCC COP 26 in Glasgow, developed countries pledged to double their adaptation finance from 2019 levels by 2025.

Support for countries with economies in transition (e.g., 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. The overarching objective of the DAC for the period 2018-2022 is “to promote development cooperation and other relevant policies so as to contribute to the implementation of the 2030 Agenda for Sustainable Development, including sustained, inclusive and sustainable economic growth, poverty eradication, improvement of living standards in developing countries and to a future where no country will depend on aid.”¹⁰⁷

5.2.2 Financial resources

The provision of financial resources to support developing countries in their efforts to implement MEAs and sustainable development goals and objectives has been a constant issue of debate linked to the principle of common but differentiated responsibilities. Principle 7 of the Rio Declaration on Environment and Development, which recognizes that States have common

¹⁰⁵ See A/76/229, Follow-up to and implementation of the outcomes of international conferences on financing for development (2021), at

¹⁰⁶ Id. paragraph 61 <https://undocs.org/en/A/76/229>.

¹⁰⁷ See OECD Development Assistance Committee at <https://www.oecd.org/dac/thedevelopmentassistancecommitteesmandate.htm>

but differentiated responsibilities¹⁰⁸, as well as Principle 6¹⁰⁹, which calls for prioritization of the special situation and needs of developing countries, particularly the least developed and most vulnerable amongst them, are the basis for the provision of financial resources. While separate, these two principles are also interlinked given the asymmetrical responsibilities of countries due to their special circumstances and capabilities. At the outset, ambition on the provision of financial resources for unmet needs was expressed through the term “new and additional,” meaning, generally speaking, an increase in the level of financial resources being provided to developing countries through official development assistance (ODA). But the exact definition of the term remained elusive during negotiations on financing for development.

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 referenced in many instances. For example:

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.

¹⁰⁸ See Rio Declaration and Agenda 21 at <https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/7.html#:~:text=Principle%207,-23&text=States%20shall%20cooperate%20in%20a,have%20common%20but%20differentiated%20responsibilities.>

¹⁰⁹ Id.

In addition to Agenda 21, the term “new and additional” has also been used in the texts of the UNFCCC, the CBD, the UNCCD, the Stockholm Convention and numerous UNGA resolutions throughout the years.

Later, In the context of the international conferences on FfD, the use of the term “new and additional” became rather obsolete under the global partnership established by the Monterrey Consensus and reiterated by the Doha Declaration and the Addis Ababa Action Agenda which adopted a holistic approach to FfD according to which a combination of public and private, national and international resources is to be leveraged to achieve sustainable development objectives. Instead of requesting “new and additional financial resources,” governments now more commonly refer to an “enhanced and revitalized global partnership for sustainable development led by governments.” However, in the AAAA and in MEA decisions, developed countries that have not done so, are urged to make concrete efforts towards the target of 0.7 per cent Gross National Income (GNI) and 0.15 to 0.20 per cent of GNI of developed countries to least developed countries.

5.2.3 ODA Recipient Countries

5.2.3.1 Developing countries

The OECD DAC List of ODA Recipients shows all countries and territories eligible to receive ODA. These consist of all low- and middle-income countries based on gross national income (GNI) per capita as published by the World Bank, with the exception of G8 members, EU members and countries with a firm date for entry into the EU.¹¹⁰

The sub-categories of developing countries are as follows:

- Least Developed Countries
- Low Income Countries which are not LDCs.
- Lower Middle-Income Countries
- Upper Middle-Income Countries and Territories which are not LDCs.¹¹¹

¹¹⁰ See DAC List of ODA Recipients at <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/daclist.htm>

¹¹¹ Id at <https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC-List-ODA-Recipients-for-reporting-2021-flows.pdf>

5.2.3.2 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.¹¹²

5.2.3.3 Countries with economies in transition

The countries of Central and Eastern Europe and the former Soviet Union Republics, in transition to a market economy, were considered Countries in Transition (CITs) or Economies in Transition (EITs) by the DAC and the World Bank. Today, the European Bank for Reconstruction and Development (EBRD) provides a more updated definition with less emphasis on advances towards market competitiveness, but rather, a more balanced approach encompassing governance, inclusiveness, resilience and sustainability.¹¹³

In 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.

5.2.4 Capacity development

Capacity development, along with financing for development and technology transfer are crosscutting issues, which are at the core of the global partnership required to move sustainable development and MEA objectives forward. Currently, all MEAs address capacity development as a fundamental aspect of effective implementation and, thus, specialized bodies on this topic have been created under the different conventions.

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.

¹¹² See UNCTAD list of Least Developed Countries

¹¹³ See EBRD approach to countries with economies in transition at <https://www.ebrd.com/our-values/transition.html>.

The UN Development Group (UNDG) defines the term capacity-building as the process whereby people, organizations and society, as a whole, can unleash, strengthen and maintain their ability to manage their affairs over time.¹¹⁴

Through MEAs and other agreements, including the 2030 Agenda for Sustainable Development and the Paris Agreement, there is general consensus on the fact that capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties.¹¹⁵ It should also be guided by lessons learned and should be an effective, iterative process that is participatory, crosscutting and gender-responsive.¹¹⁶

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 this regard, UNDP’s approach to capacity development involves a number of steps as follows:¹¹⁷

- Engaging stakeholders on capacity development

¹¹⁴ See UNDAF Companion Guidance at <https://unsdg.un.org/sites/default/files/UNDG-UNDAF-Companion-Pieces-8-Capacity-Development.pdf>

¹¹⁵ See Article 11 Paris Agreement

¹¹⁶ Id.

¹¹⁷ UNDP’s guide on supporting capacity development at file:///Users/BETTELLI/Downloads/CDG_Brochure_2009.pdf

- Assessing capacity assets and needs
- Formulating a capacity development response
- Implementing the response
- Evaluating capacity development

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.

Great strides have been made in the establishment of different MEA bodies dedicated to capacity-building. For example, Decision 1/CP.1, adopting the Paris Agreement established the Paris Committee on Capacity-Building whose aim is to address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhance capacity-building efforts, including with regards to coherence and coordination in capacity-building activities under the UNFCCC.¹¹⁸ The Paris Committee on Capacity-Building work plan for the period 2016-2020 focused on: identifying capacity gaps and needs and recommending ways to address them; promoting the development and dissemination of tools and methodologies for the implementation of capacity-building; identifying and collecting good practices, challenges, experiences and lessons learned; and identifying opportunities to strengthen capacity at the national, regional and subnational levels.¹¹⁹

Parties to the CBD, the Cartagena Protocol on Biosafety and the Nagoya Protocol on Access and Benefit-sharing, have identified capacity development as a priority for the effective implementation of these three instruments, as well as the Strategic Plan for Biodiversity 2020 and its Aichi Biodiversity targets. In 2022, CBD COP 15 adopted a long-term strategic framework for capacity-building and development to support nationally determined priorities for the implementation of the Kunming-Montreal Global Biodiversity Framework.¹²⁰

¹¹⁸ See Decision 1/CP.21 paragraph 71, FCCC/CP/2015/10/Add.1 at <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=2>

¹¹⁹ Id. paragraph 73.

¹²⁰ Decision 15/8, Annex I. See also: CBD/SBI/3/7/Add.1.

The framework should also be aligned with the 2050 vision of the Strategic Plan for Biodiversity 2011-2020 of “Living in Harmony with Nature by 2050.”

5.2.5 Technology transfer

Technology transfer has been widely recognized as indispensable to the achievement of MEA objectives and the Sustainable Development Goals. It is inextricably tied to capacity development and has always featured prominently in all MEAs and sustainable development processes and agreements since Agenda 21. In this regard, Agenda 21 recognized that “there is a need for favorable access to and transfer of environmentally sound technologies, in particular to developing countries, through supportive measures that promote technology cooperation and that should enable transfer of necessary technological know-how as well as building of economic, technical, and managerial capabilities for the efficient use and further development of transferred technology.”¹²¹ Furthermore, Agenda 21 acknowledged that environmentally sound technologies are not just individual technologies but total systems. This implies that when discussing transfer of technologies, the human resource development and local capacity-building aspects of technology choices, including gender-relevant aspects, should also be addressed.¹²²

The Rio Conventions acknowledged the need for technology transfer from the outset. For example, the Convention on Biological Diversity (CBD) recognizes that access to and transfer of technology are essential elements for the attainment of the objectives of the Convention;¹²³ and the UNFCCC established a subsidiary body for scientific and technological advice, whose role, among others, is to identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting

¹²¹ See paragraph 34.4 Agenda 21 <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

¹²² Id. at paragraph 34.3.

¹²³ See Article 16 United Nations Convention on Biological Diversity at <https://www.cbd.int/convention/articles/?a=cbd-16>.

and/or transferring such technologies.¹²⁴ One of the central objectives of the Clean Development Mechanism (CDM) of the Kyoto Protocol was to facilitate the transfer of green technologies from developed to developing countries with a view to achieving the ultimate objective of the Convention.¹²⁵

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."¹²⁶ 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.

¹²⁴ See Article 9 (c) of the United Nations Framework Convention on Climate Change at https://unfccc.int/sites/default/files/convention_text_with_annexes_english_for_posting.pdf

¹²⁵ Kyoto Protocol, Article 12 at <https://unfccc.int/resource/docs/convkp/kpeng.pdf>.

¹²⁶ Special Report of IPCC Working Group III "Methodological and Technical Issues in Technology Transfer."

suitable macroeconomic conditions, protection of intellectual property rights, and codes and standards) to attract foreign direct investment that allows technology to be transferred. However, there has been increasing recognition of the prominent role that governments can have in facilitating the transfer of technologies, including through technology transfer mechanisms established for this purpose under MEAs and other sustainable development agreements.

For example, the 2030 Agenda for Sustainable Development launched a Technology Facilitation Mechanism established by the Addis Ababa Agenda for Action in order to support the SDGs.¹²⁷ The Agenda also established an online technology platform used to undertake a comprehensive mapping of, and serve as a gateway for, information on existing STI initiatives, mechanisms and programmes, within and beyond the UN. The on-line platform facilitates access to information, knowledge and experience, as well as best practices and lessons learned, on STI facilitation initiatives and policies.¹²⁸

In line with this, the Paris Agreement acknowledges the importance of “fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.”¹²⁹ The UNFCCC COP16 established a Technology Mechanism consisting of a Technology Executive Committee (TEC) and a Climate Technology Centre and Network (CTCN). The TEC analyses pertinent issues and provides policy recommendations that facilitate climate technology development and transfer. On the other hand, the CTCN is the implementation arm of the Mechanism and provides technical assistance to developing countries, facilitates access to information and knowledge on climate technologies, and fosters collaboration amongst stakeholders through its network of regional and sectoral experts. The Technology Mechanism also serves the Paris Agreement. In this regard, Article 10 of the Paris Agreement establishes a technology framework to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on

¹²⁷ See Transforming Our World, paragraph 70 at <https://sdgs.un.org/2030agenda>

¹²⁸ See Technology Transfer Online Platform at <https://sdgs.un.org/tfm>.

¹²⁹ Id. Paris Agreement, Article 10 at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

technology development and transfer in order to support the implementation of the Agreement.¹³⁰

5.3 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; and innovations in terms of compliance and flexibility mechanisms. The degree of integration of the three dimensions of sustainable development reached a new level with the 2030 Agenda for Sustainable Development. The vision of a truly sustainable world now encompasses intergenerational and social justice, poverty and hunger eradication, protection of human rights, gender equality, resilience and governance.¹³¹

On the other hand, MEA 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, and the increasing challenges of fragmented decision making processes.

The identification of what exactly constitutes a specific trend is an inherently subjective endeavor. 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.

¹³⁰ Id.

¹³¹ See What the World Learned Setting Development Goals, IISD/ENB, January 2021, at <https://www.iisd.org/articles/what-world-learned-setting-development-goals>

5.3.1 Trends in MEA negotiations

- Integration and indivisibility of the three pillars of sustainable development
- Use of time-bound targets
- Implementation of common but differentiated responsibilities with some nuanced developments on this principle.
- Evolution of the common concern of humankind
- Implementation of precaution
- Expansion of a human rights- driven approach across MEAs, including the respect and promotion of human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as gender equality, empowerment of women and intergenerational equity.
- Increasing focus on target-setting and compliance regimes
- Increasing integration of non-State actors

5.3.2 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 (e.g., 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 organizing principle for Agenda 21. As such, the poverty and economic dimensions were not reflected to the same extent in the earlier instruments as the second generation MEAs.

Second generation MEAs such as the CBD represent an important demarche in this regard. The CBD recognizes 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. This has been furthered through the Kunming Montreal GBF, that was adopted in 2022 but which seeks, overall, to reverse biodiversity loss by 2030 and to transition to a nature-positive economy that successfully closes the gap between harmful and

positive incentives.¹³² The GBF also works towards achieving the 2050 vision of “living in Harmony with Nature by 2050” which states:

By 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people. (See Decision X/2)

This vision remains relevant and is a part of the 2022 GBF. The Desertification Convention (UNCCD) is similarly focused, calling for integrated approaches in addressing the physical, biological and socio- economic aspects of desertification and drought.¹³³

This trend has been consolidated in the past decades. Recent MEAs, such as the Paris Agreement, recognize that there is a fundamental relationship between climate change and sustainable development. In particular, the Paris Agreement in its preambular text emphasizes “the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty.”

The integration of the different dimensions of sustainable development has now reached a new level in the context of the 2030 Agenda for Sustainable Development. The 2030 Agenda is transformative in nature and, as such, addresses the different pillars of sustainable development in an indivisible and systemic way, according to which, one cannot be achieved without the other. The 17 Sustainable Development Goals and associated targets are indivisible; the world had never pledged common action and endeavor across such a broad and universal policy agenda.¹³⁴ The vision of a truly sustainable world now encompasses intergenerational and social justice, poverty and hunger eradication, protection of human rights, gender equality, resilience

¹³² See: CBD/COP/DEC/15/4.

¹³³ See Art. 4 Desertification Convention

¹³⁴ See para. 18, Transforming Our World: the 2030 Agenda for Sustainable Development at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

and governance.¹³⁵ The SDGs provide a comprehensive understanding of sustainable development and recognize that action in one area affects the outcomes in other areas. Some of the SDGs concern (for the full list see the Annex D):

- ending poverty in all its forms everywhere
- achieving gender equality
- promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- ensuring sustainable consumption and production patterns
- taking urgent action to combat climate change and its impacts
- conserving and sustainably using the oceans, seas and marine resources
- protect, restore and promote sustainable use of terrestrial ecosystems
- promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions.

5.3.3 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 was reflected in the Montreal and Kyoto Protocols, with their time-bound emissions limitation targets. This has also been a prominent trend in the biodiversity regime. In 2010 the CBD parties adopted the Aichi Targets to halt the loss of biodiversity by 2020. This trend is also exemplified in the Agenda 2030, which contains 17 Sustainable Development Goals and 169 associated targets and indicators for countries to achieve by 2030.

The targets in the Sustainable Development Goals include: “by 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions” (Target 1.2); “by 2030, ensure universal access to affordable, reliable and modern energy services (Target 7.1); “by 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average (Target 10.1); –by

¹³⁵ See What the World Learned Setting Development Goals, IISD/ENB, January 2021, at <https://www.iisd.org/articles/what-world-learned-setting-development-goals>

2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes” (Target 6.6); “strengthen resilience and adaptive capacity to climate related hazards and natural disasters in all countries (Target 13.1) ; integrate climate change measures into national policies, strategies and planning” (Target 13.2).

The trend on target adoption has been accompanied by increasing emphasis on the autonomous role of States in establishing their own targets towards global objectives. This is exemplified in the evolution of the UN climate change regime. In 1997 the Kyoto Protocol set legally binding and internationally agreed emission reduction targets for developed country Parties (see Article 3). However, the 2015 Paris Agreement requires Parties to determine themselves their individual contributions to the global effort to combat and adapt to climate change by preparing, communicating and maintaining successive Nationally Determined Contributions (NDCs).¹³⁶ In contrast to the Kyoto Protocol, this ensures States have autonomy in establishing their climate targets, as they are not subject to international negotiations. Nevertheless, developed countries are required to continue taking the lead by undertaking economy-wide absolute emission reduction targets while developing countries should continue enhancing their mitigation efforts but move progressively towards economy-wide targets in the light of different national circumstances.

Similarly, the Minamata Convention on Mercury provides broad latitude to Parties regarding measures to control emissions and requires the preparation of national plans setting out such measures as well as the expected targets, goals and outcomes (See Article 8). The Minamata Convention establishes a basket of measures from which Parties may select depending on their national circumstances, and the economic and technical feasibility and affordability of the measures. Regulatory mechanisms are also being used, for example in the context of the Basel Convention, the Montreal Protocol, the Rotterdam Convention, and the Biosafety Protocol. These examples of regulatory mechanisms focus on notifications and import and export controls, which are also reflected in other MEAs.

¹³⁶ See Article 4 of the Paris Agreement.

5.3.4 Common but differentiated responsibilities

The Rio Principle 7 of common but differentiated responsibilities has been inserted into more recent MEAs. This principle aims to enable a nuanced approach to international environmental cooperation, recognizing the inequalities and differing priorities of countries. 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 have originated in developed countries, and as such, developed countries should take the lead in combating climate change and its adverse impacts.¹³⁷ Developed countries consider, however, that this is a dynamic concept that should be viewed in light of evolving global socio-economic parameters and national circumstances.

In contrast to the Rio Declaration, the UNFCCC also focuses on the respective capabilities of States. In the climate regime, this principle has been associated with the division between developed and developing countries. For instance, the commitments in the UNFCCC relating to financial and technological transfers apply only to Annex II Parties (that is, Parties that were OECD members in 1992). Other categories of countries are singled out in the UNFCCC, such as those that are especially vulnerable (Articles 3.2, 4.8), least-developed States (Article 4.9) and countries that are highly dependent on fossil fuels (Article 4.10).

The CBDR principle has been nuanced in the 2015 Paris Agreement, which is to be implemented to “reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (See Article 2.2). There is no *a priori* rigid categorization of Parties with respect to commitments, the determining factor being national circumstances which evolve over time. Thus, the Agreement has a multifaceted approach to differentiation - and tailors differentiation

¹³⁷ See Art. 1 of the UNFCCC

to each issue area, e.g. mitigation, adaptation, finance, technology, capacity building and transparency.

5.3.5 Common heritage and living in harmony with nature

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 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.

There has also been a shift in perspective in terms of increased recognition that we are currently living in the Anthropocene, viewed as the period during which human activity has been the dominant influence on climate and the environment. In response, there has been a trend towards recognizing nature's rights and the need to live in harmony with nature. For example, in 2009, the UNGA proclaimed 22 April as International Mother Earth Day. In so doing, Member States acknowledged that the Earth and its ecosystems are our common home and expressed their conviction that it is necessary to promote harmony with nature in order to achieve a just balance among the economic, social and environmental needs of present and future generations. That same year, the UNGA adopted its first resolution on harmony with nature wherein it decided to host annual interactive dialogues on this topic to commemorate Mother Earth Day.¹³⁸

¹³⁸ See UN dialogues on Harmony with Nature at <http://www.harmonywithnatureun.org/>

This shift in perspective is also exemplified in the GBF, which looks towards the achievement of the 2050 Vision “Living in harmony with nature.”¹³⁹

5.3.6 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 cost-effective measures 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 Cartagena Protocol on Biosafety to the CBD; the UNFCCC; and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Straddling Fish Stocks Agreement).

5.3.7 Expansion of a human rights- based approach across MEAs

Along with a focus on the multiple dimensions of sustainable development, there has been further integration of a human rights based approach in MEAs and sustainable development policies. Such emphasis has not only been reflected in the Agenda 2030 but also in MEAs such as the Paris Agreement that states in its preambular text that Parties should,

¹³⁹ See CBD COP decision 14/34 paragraph 5, at <https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-34-en.pdf>

when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development...

This trend towards increasing recognition of the human rights dimension in MEAs and environmental protection issues was also reflected in a United Nations Human Rights Council resolution adopted in 2021¹⁴⁰, which recognizes that

sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations.

Moreover, in a landmark resolution adopted in 2022 the United Nations General Assembly recognized the right to a clean, healthy and sustainable environment as a human right and noted that this right is related to other rights in existing international law. The resolution also affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of MEAs under the principles of international environmental law.¹⁴¹

This trend can be also identified in the increasing recognition in MEAs of the rights of indigenous peoples and local communities. In 1992, the CBD

¹⁴⁰ Resolution adopted by the Human Rights Council (A/HRC/RES/48/13) (8 October 2021).

¹⁴¹ United Nations General Assembly Resolution the Human Right to a Clean, Healthy and Sustainable Environment, (A/RES/76/300) (28 July 2022) at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F300&Language=E&DeviceType=Desktop&LangRequested=False>

already recognized the importance of the rights of indigenous peoples and local communities in its Article 8 (j). 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. The Nagoya Protocol in its Article 7 states that access to traditional knowledge held by indigenous and local communities when it is associated with genetic resources must be premised on the prior and informed consent or approval and involvement of these indigenous and local communities, on the basis of established mutually agreed terms. More recently, the Paris Agreement recognizes in Article 7, paragraph 5, that adaptation action should be based on “traditional knowledge, knowledge of indigenous peoples and local knowledge systems.”

Additionally, there has been increasing recognition of the importance of achieving gender equality as reflected in Agenda 2030 as well as in the Paris Agreement, which provides that capacity building and adaptation activities should follow a gender-responsive approach. Furthermore, gender action plans have been elaborated for the implementation of MEAs, such as the UNFCCC and CBD.

5.3.8 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.

Negotiations on the Kyoto Protocol, Basel Convention, Biosafety Protocol and the Rotterdam Convention recognized 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, CITES and the Minamata Convention.

Recent developments would seem to suggest that States are reluctant to adopt more robust compliance regimes with preference being given to facilitative measures that incentivize and promote compliance. For example, the mechanism to facilitate implementation and promote compliance established by Article 15 of the Paris Agreement is characterized as facilitative in nature and functions in a manner that is transparent, non-adversarial and

non-punitive. In this regard, the Implementation and Compliance Committee is enjoined to engage the Party having compliance difficulties in dialogue, to assist it to engage relevant finance, technology and capacity building bodies, and to provide it with recommendations (See Decision 20/CMA.1).

Similarly, the Compliance Committee established under Article 17 of the Rotterdam Convention is required to provide the Party concerned with advice, non-binding recommendations, and information that would enable it to develop a compliance plan (See Decision RC-9/7 and Annex VII to the Convention). Further, the Committee may recommend to the COP support to the Party including facilitation of access to financial resources, technical assistance and capacity building.

5.3.9 Increased focus on the science-policy interface

There has been an increased focus on enhancing the scientific basis for international decision making on environmental protection.

Created in 1998, the Intergovernmental Panel on Climate Change (IPCC) has provided policymakers with regular scientific reports on the current state of knowledge about climate change and its impacts. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) provides the international community with global and thematic assessments on the state of biodiversity and associated issues.

More recently, UNEA adopted at its resumed fifth session in March 2022 resolution 5/8, deciding that a science-policy panel should be established to contribute further to the sound management of chemicals and waste and prevent pollution.

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

5.3.10 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 and adoption of decisions by MEAs governing bodies that provide necessary guidance to Parties on the implementation of their obligations and commitments. 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 but also in terms of the scope of their work. For example, the Rio Conventions on Biodiversity and Climate Change have each produced various legally binding agreements and protocols, numerous decisions providing guidance on implementation, dozens of work programmes and expert panels, and several subsidiary bodies and processes.

5.3.11 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 ten years to conclude. By contrast, negotiations leading to MEAs in the 1990s and the 2000s, such as the UNCCD as well as the Rotterdam and Stockholm Conventions have been concluded in record time. However, negotiations for the Doha Amendment to the Kyoto Protocol lasted seven years and discussions on strengthening long-term climate change cooperation that culminated in the adoption of the Paris Agreement in 2015 lasted a total of ten years under different mandates.

The slowdown in multilateral treaty-making can be at least partly explained by the fact that multilateral treaties now exist on most environmental issues. Where an area is covered by existing conventions, new treaty-making appears to be more difficult, and countries tend to rely on existing frameworks to further develop environmental regimes. More generally, this has been

referred to as “treaty fatigue.”¹⁴² At the same time, expectations of concluding negotiations at fast pace have not declined, at least as exemplified by how UNEA Member States have set an ambitious target of completing negotiations on a new treaty on plastics within two years.¹⁴³

5.3.12 Fragmentation and Coordination

There is a web of over five hundred multilateral agreements aimed at responding to diverse environmental problems, ranging from climate change to persistent organic pollutants. These regimes have developed piecemeal and in an ad hoc manner, seeking to address specific sectoral environmental challenges. Correspondingly, a large number of global and regional institutions, comprising UN system organizations and treaty bodies established by MEAs participate in international environmental governance.

This fragmentation and the proliferation of regulatory regimes and institutions have created significant coherence and coordination challenges both at the level of policy development and implementation. There is need for coordination amongst UN system organizations, between those organizations and MEAs, and amongst MEAs. The role of UNEP as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the UN system and serves as the authoritative advocate for the global environment has been re-affirmed in Agenda 21 and the Rio+20 outcome document *The Future We Want*. Paragraphs 88 and 89 of the Rio+20 outcome document underlined the need for institutional reforms and the establishment of mechanisms to enhance coordination and coherence within the UN system as well as the enhancement of synergies amongst MEAs.

In this regard, the UNGA in 2012 decided to strengthen and upgrade UNEP and to establish UNEA, with universal membership. Institutional mechanisms for coordination have been established within the UN system. These include the UN system Chief Executives Board (CEB) and the UN Environment

¹⁴² See, e.g., Anton, “Treaty Congestion” in *International Environmental Law*, in S. Alam, J.H. Bhuiyan, T.M.R. Chowdhury, and E.J. Techera (eds), *Routledge Handbook of International Environmental Law* (2012), at 651

¹⁴³ See UNEA Resolution 5/14, paragraph 1).

Management Group (EMG). The work of the CEB is supported by the High-Level Committee on Programmes (HLCP) which has established three inter-agency mechanisms – UN-Water, UN-Oceans and UN-Energy – to increase coherence across the UN system in addressing these urgent sustainable development challenges.

Concerted efforts have also been made to build coherence and synergies amongst the biodiversity conventions, the chemicals conventions- Basel, Stockholm and Rotterdam Conventions - as well as the three Rio conventions – UNFCCC, CBD and UNCCD.

5.3.13 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, inclusiveness 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 negotiating process towards the adoption of the 2030 Agenda. It was also used during the final stages of the negotiation of the Paris Agreement and christened *Indaba of Solutions* under the *Comité de Paris*.

5.3.14 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 & China 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 & China 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 & China. Country coalitions have

become increasingly dynamic and vary across different negotiating fora, but are proliferating in UNFCCC process, where coalitions have also emerged in the context of specific topics, such as on the topic of REDD+, where the Coalition for Rainforest Nation emerged to represent the interests of forested developing countries. (See Section 3.2.2 on country negotiation groups and coalitions).

5.3.15 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 developed 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.

5.3.16 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 UNCCD 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. The participation of non-state and subnational actors such as cities, states, regions, the private sector and other civil society actors including non-governmental organizations has been increasingly significant in these processes.

6 SYNTHESIS

6.1 Typical day in UN negotiations

6.1.1 Registration

When you arrive for the first time to the conference, you will need to follow registration process, where you will be given a credential with your name, name of delegation, function and picture, as well as the identification to the type of entity that you represent: Secretariat, Party or Civil Society. In order to successfully perform your registry process, it is often required that you have filled and sent to the organizer an online form in advance to the meeting with information concerning your personal information and participation in the meeting.

6.1.2 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.

6.1.3 Negotiation group meetings

In most cases, there will also be regional or negotiating 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.

6.1.4 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. It is worth knowing that, in some cases, the schedules are made available only in the early morning, therefore making planning more challenging.

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).

6.1.5 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 or go beyond the scheduled timeframe as is often the case in the UNFCCC process.

Flexibility also refers to the mindset that effective negotiators need marked by patience, perseverance and resilience. Advancing issues under MEA negotiations usually takes years and even decades, so delegates need to keep a long-term framework in mind when negotiating certain issues, since progress may not seem to come about as soon as one would like, which is why perseverance is required. Maintaining a continuously updated institutional memory of negotiations is also important to track progress and to help delegations keep long-term objectives in mind.

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.

6.1.6 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. In addition, embassies can facilitate bilateral meetings, especially at ministerial level, already ahead of the event.

6.2 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.

6.2.1 Pre-negotiations

Phases and Products of MEA Negotiations

No.	Phase	Product
	Pre-Negotiations	
Phase 1	Problem-identification	Statement of the Problem and announcement to launch a negotiating process
Phase 2	Fact-finding	Expert report
Phase 3	Rule-setting and organization of work	Agreed rules of procedures, programme of work and agenda
Phase 4	Issue-definition and issue-framing	Compendium of Party views and secretariat papers
	Formal Negotiations	
Phase 5	Commencement	Opening statements
Phase 6	Consolidation of views	Negotiating text
Phase 7	Expression of initial positions	General comments on negotiating text and synthesis of general comments
Phase 8	Drafting	Detailed amendments and bracketed negotiating text
Phase 9	Formula-building	Counterproposals and/or alternative drafts
Phase 10	Coalition-building	Preliminary issue-based proposals and revised negotiating text
Phase 11	Bargaining	New amendments, proposals and bracketed text for final plenary
Phase 12	Agreement and adoption	Agreed text and formal reservations
	Post-Agreement Negotiations and Activities	
	Signature	
	Ratification	
	Implementation	

6.2.1.1 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 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. 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.

At least a decade of ongoing processes and negotiations under the UNFCCC, including through several ad hoc working groups, ultimately led to the adoption of the Paris Agreement on 12 December 2015.

6.2.1.2 Phase 2: Fact-finding

In many cases, the fact-finding phase will bring together a multi-disciplinary group of experts from UN organizations, 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 anthropogenic sources in contributing to global warming and subsequent reports have identified the need to hold the increase in global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.

6.2.1.3 Phase 3: Rule-setting and organization of work

Once the international community has agreed to embark on an intergovernmental negotiating process and has established a formal intergovernmental negotiating committee (INC), the next phase will focus on the overall organization of the INC's work. For example, at the time of writing

UNEA has just mandated the establishment of an INC for an international legally binding instrument on plastic pollution, including in the marine environment. 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 presiding officers and officers
- Time schedule and venue 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.

6.2.1.4 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 organizations. 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.

6.2.2 Formal negotiations

6.2.2.1 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 blocs¹⁴⁴ (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.

6.2.2.2 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 presiding officer 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 (e.g. 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 presiding officer's text. New texts may be presented in later phases, by a delegation or delegations, or by the presiding officer, but later the stage, the more unlikely and more difficult it

¹⁴⁴ See Section 3.2.3.2 of this Handbook on UN Negotiating Blocs

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.

6.2.2.3 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 presiding officer 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.

6.2.2.4 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 presiding officer 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.

An example of a text that was in the process of being negotiated recently is the 2022 Kunming – Montreal GBF.¹⁴⁵

¹⁴⁵ See Report of the Open-ended Working Group on the post-2020 Global Biodiversity Framework on its Third Meeting (Part 1).

6.2.2.5 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 counterproposals, which are prepared by the blocs and participants in response to the various amendments and proposals already formally tabled. These counterproposals 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.

6.2.2.6 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 counterproposals 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 President/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.

6.2.2.7 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.

6.2.2.8 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 (e.g. 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 President/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).¹⁴⁶ The adoption of the text of a treaty takes place with the agreement of all States participating in the negotiation.

6.2.3 Ratification and post-agreement negotiations

Once the agreement has been adopted, it is open for signature by all the negotiating States 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.¹⁴⁷ 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.

6.3 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.

¹⁴⁶ The period between the adoption of an MEA and its entry into force is known in regime and negotiation literature as the "Operation Phase".

¹⁴⁷ See section 2.1 of this Handbook regarding Treaty-Making Principle.

Item	Timeframe
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*

7 ANNEXES AND REFERENCE

7.1 ANNEX A – International bodies

7.1.1 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) as well as the negotiation of some key treaties under its auspices (e.g. the United Nations Framework Convention on Climate Change and the United Nations Convention on the Law of the Sea).

The General Assembly also designates specific days, weeks, months, years and decades as occasions to mark particular events or topics to promote the objectives of the Organization, often related to MEAs. Usually, it is one or more Member States that propose these observances and the General Assembly establishes them through a resolution. For example, the General Assembly has declared 2010 the International Year of Biodiversity, 2011 the International Year of Forests, 2015 the International Year of Soils, and 2022 will be the International Year of Basic Sciences for Sustainable Development.

Every year it also adopts a number of resolutions that pertain to the environment. A key resolution in this regard concerned the adoption of the Agenda 2030. In addition, some of the resolutions concern specific MEAs. Further, it also influences the codification and progressive development

of international law through subsidiary bodies such as the International Law Commission. The Commission has dealt with environmental issues in different ways. Sometimes, it has done so in an explicit way, such as through including environmental topics in its work programme (e.g. “Protection of the environment in relation to armed conflicts”), sometimes addressing conduct that results in environmental damage (e.g. under the topics of international liability and prevention of transboundary damage from hazardous activities) or providing guidance for the rational management and conservation of natural resources (e.g. under the topics of international watercourses and shared natural resources).

7.1.2 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. Subsidiary bodies such as the United Nations Forum on Forests (UNFF) and programmes such as UNEP, UNDP and UNHABITAT report to ECOSOC. It has also established five regional economic commissions, two of which, the United Nations Economic and Social Commission for Asia and the Pacific, and the United Nations Economic Commission for Europe (see below), have competence in matters of environment. Some of the specialized agencies which have a relationship with and report on their activities to ECOSOC such as the FAO, ICAO, IMO, WMO, WHO and The World Bank also have important environmental mandates and portfolios.

7.1.3 High-level Political Forum on Sustainable Development

Established in 2013, the High-level Political Forum on Sustainable Development (HLPF) replaced the Commission on Sustainable Development (CSD) (See Assembly Resolution 67/290). All States Members of the United Nations participate in HLPF meetings. The Forum meets annually under the auspices of the ECOSOC and every 4 years on the level of Heads of State and Government under the auspices of the UNGA. The HLPF is the main United Nations platform on sustainable development. Its main role is to review and monitor progress in the implementation of Agenda 2030 and its Sustainable

Development Goals (SDGs). Regular reviews by the HLPF are to be voluntary, state-led, undertaken by both developed and developing countries, and shall provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders (See: paragraph 84 of the 2030 Agenda).

7.1.4 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. The Rio+20 outcome document *The Future We Want* reaffirmed the role of UNEP as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the UN system and serves as the authoritative advocate for the global environment. 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 UN Environment Assembly (UNEA) which replaced the Governing Council (GC) in 2012 as result of the United Nations Conference on Sustainable Development (RIO+20). It has a universal membership and is thus, composed of 193 Member States. A bureau and its president lead the UNEA. The Bureau is composed of 10 members (usually Ministers of the Environment and other high-level officials from Member States) 2 from each UN region, with a President, 8 Vice-Presidents and a Rapporteur, which are elected at the closure of each regular session for a term of 2 years. The offices of President and Rapporteur are subject to rotation amongst the five UN regions.

The UNEA meets every two years and at special sessions in between. The rules of procedure provide that decisions are taken by a simple majority of members present and voting. The preparations of these biennial meetings are done by the Committee of Permanent Representatives. In this Committee the 118 accredited Permanent Representatives meet on a quarterly basis led by the five-member Bureau.

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, the Convention on Biological Diversity 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, CITES, the Convention on Biological Diversity and its Protocols, the Stockholm Convention, and the Minamata Convention on Mercury. The secretariat functions of the Rotterdam Convention is performed jointly by UNEP and the FAO.

Every 10 years since 1982, the GC and since 2012 the UNEA adopts a plan for the development and periodic review of environmental law on the recommendation of legal experts. This is known as the Montevideo Programme for the Development and Periodic Review of Environmental Law (see Montevideo Programme V adopted by the UNEA in March 2019) and focuses on promoting and implementing environmental rule of law at the global, regional and national levels.

7.1.5 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 achieve agreed-upon global environmental benefits (on funding by the GEF, see section 3.8.1). The GEF does not disburse funds directly to developing countries but through its 18 executing agencies that include: UNDP, UNEP, World Bank, regional development banks, FAO, World Wildlife Fund (WWF), International Union for Conservation of Nature (IUCN), Conservation International (CI), International Fund for Agricultural Development (IFAD) and the United Nations Industrial Development Organization (UNIDO).

Each of the executing agencies has a particular strength and focus.

The GEF provides funding to assist developing countries in meeting the objectives of international environmental conventions. GEF serves as the financial mechanism for the:

- CBD;
- UNFCCC;
- Minamata Convention on Mercury;
- Stockholm Convention; and
- UNCCD

The GEF also supports initiatives consistent with international waters treaties and activities in Eastern European and Central Asian 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 184 participating countries are represented, meets every three to four years.

7.1.6 The Green Climate Fund

The UNFCCC COP, in order to respond to the global climate change challenge, established in 2010 the Green Climate Fund as an operating entity of its financial mechanism. Its mandate, in the context of sustainable development, is to promote a paradigm shift towards low-emission and climate resilient development pathways by providing funding to developing countries for projects and programmes that reduce or limit their GHG emissions and support adaptation to the impacts of climate change.

The Fund is administered under the GCF Governing Instrument approved by the COP in 2011, but started operating in 2015. The Fund is accountable to, and functions under the guidance of, the COP to support projects and programmes in developing countries. It is funded through contributions from developed country Parties as well as from other public and private sources.

The Fund is governed by a Board composed of 24 members – 12 from developed country Parties and 12 from developing country Parties. Each member has an alternate. Representation from developing country Parties includes representatives from relevant UN regional groups and representatives from small island developing States (SIDS) and least developed countries (LDCs).

The GCF is headquartered in Songdo, Republic of Korea.

7.2 Other relevant UN agencies, commissions and programmes

7.2.1 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 has 194 Member Nations and 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 FAO members, adopted the International Treaty on Plant Genetic Resources for Food and Agriculture.

7.2.2 International Fund for Agricultural Development

The International Fund for Agricultural Development (IFAD) is a specialized agency of the United Nations, that 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 channeling of substantial financial resources to affected developing countries (Article 21, UNCCD).

7.2.3 International Maritime Organization

Created in 1948, the International Maritime Organization (IMO) is competent to address shipping issues. Its mission is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. 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).

7.2.4 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.

7.2.5 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, North America and Asian countries. 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 promoting sustainable development. Notably, UNECE supports countries in the implementation of the 2030 Agenda and the Sustainable Development Goals. In the last 40 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) entered into force on 8 October 2009.

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, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States, Uzbekistan.

7.2.6 United Nations Development Programme

The UN Development Programme (UNDP) was created by the UNGA in 1965. It is the lead UN development agency focusing on the eradication of poverty and the reduction of inequality. The UNDP plays a critical role for building capacities to achieve the SDGs by supporting governments to integrate the SDGs to their national development plans. UNDP works in three main areas: sustainable development, democratic governance and peace building, and climate and disaster resilience.

7.2.7 Others

Below is a non-exhaustive list of other agencies and bodies that regularly attend MEA meetings:

- International Labour Organization (ILO)
- United Nations Industrial Development Organization (UNIDO)
- United Nations Institute for Training and Research (UNITAR)
- World Trade Organization (WTO)
- World Bank
- World Health Organization (WHO)
- World Meteorological Organization (WMO).

7.2.8 Organization for Economic Cooperation and Development

Composed of 38 member States, the Organization for Economic Cooperation and Development (OECD) works on establishing international standards and solutions to a range of social, economic and environmental challenges. 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) implements the OECD's Environment Programme. adopted by the Council. Decisions of the Council, as opposed to recommendations, are legally binding on members (e.g. Decision C(2001) 107/ FINAL on the Control of transboundary movements of wastes destined for recovery operations that was amended on 1 January 2021 by Decision of the Council on the Control

of Transboundary Movements of Wastes Destined for Recovery Operations [OECD/LEGAL/0266]).

OECD Members

Austria, Australia, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, South Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

7.2.9 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 described in the following sections.

7.2.9.1 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. After SAICM's mandate expired in 2020, the fifth session of the International Conference on Chemicals Management (ICCMV) in September 2023 adopted the "Global Framework on Chemicals – For a Planet Free of Harm from Chemicals and Waste."¹⁴⁸ 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/

¹⁴⁸ See SAICM/ICCM.5/4

CRP.4). Multi-stakeholder and multi-sectoral participation have been viewed as one of SAICMs core strengths since its inception in 2006.

7.2.9.2 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. In 2007, the United Nations General Assembly adopted the non-legally binding United Nations Forest Instrument which was negotiated by the UNFF. The purpose of the instrument is to strengthen political commitment and action to implement sustainable forest management, to enhance the contribution of forests to achieve the SDGs and to provide a framework for national action and international cooperation.

7.2.9.3 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 five Assessment Reports (ARs) with the AR6 Synthesis Report released on March 2023. 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 which meets at least 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 other MEAs (guidelines only on request).

As part of the Paris Agreement process, the UNFCCC invited the IPCC to provide a special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways. The Special Report on Global Warming of 1.5 °C was published in 2018 finding that limiting global warming to 1.5°C would require deep emissions reductions.

7.2.9.4 Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services

Established in 2012, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) works for the conservation and sustainable use of biodiversity, long-term human well-being, and sustainable development. It is an independent intergovernmental body and currently has 137 member States. Many NGOs, local and indigenous communities, research institutes, businesses and industries, UN agencies and conventions also participate in the IPBES process as observers. IPBES' Secretariat is supported by UNEP and is located in Bonn, Germany.

IPBES' work is structured along four areas: biodiversity assessments, policy support, building capacity and knowledge, and communications and outreach.

In 2019, IPBES published the Global Assessment Report on Biodiversity and Ecosystem Services, the first assessment on the global state of biodiversity, since the Millennium Ecosystem Assessment was published in 2005.

ANNEX B – CASE STUDIES

7.3 Adjustments to MEAs

7.3.1 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:

- 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
- 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 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,¹⁴⁹ B,¹⁵⁰

¹⁴⁹ 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.

¹⁵⁰ 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.

C¹⁵¹ and E¹⁵² 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 5.¹⁵³

7.3.2 Adjustments under LRTAP

The Gothenburg Protocol entered into force on 17 May 2005. Under Article 13, paragraph 1, of the 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).

¹⁵¹ 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.

¹⁵² Through decision VII/3 on 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.

¹⁵³ Decision VII/3.

- Adjustments are different from amendments in the following respects:
- Adjustments have to be adopted by consensus. There is no option of voting on a proposed adjustment (Article 13, paragraph 6).
- 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).
- Parties do not have the option of notifying the Depositary 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 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).¹⁵⁴

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.

¹⁵⁴ 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.

7.4 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.

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. The 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.

7.5 Points of Order: The Case of the Russian Federation at the 2012 Doha Climate Change Conference (UNFCCC COP18/CMP8)

The Draft rules of procedure of the UNFCCC Conference of the Parties (COP) which, though not adopted, are applied at each Conference with the exception of rule 42 on voting majorities, provide as follows with respect to points of order:

During the discussion of any matter, a representative may at any time raise a point of order which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately and the ruling shall stand unless overruled by a majority of the Parties present and voting. (Rule 34)

During the process of adoption of Decision 1/CMP.8 (document UNFCCC/KP/CMP/2012/L.12) through which the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) adopted the Doha Amendment to the Kyoto Protocol as well as the implementation rules relating to its second commitment period, the Russian Federation, also on behalf of Ukraine and Belarus, raised both substantive and procedural concerns¹⁵⁵. When the President tabled the draft decision for adoption, the representatives of Belarus, the Russian Federation and Ukraine raised their country flags requesting for the floor on points of order. However, the President gavelled the decision as adopted.

After the adoption of the package of decisions constituting the Doha Climate Gateway in the COP and the CMP, as appropriate, the representative of the Russian Federation was given the floor on a point of order. He raised two issues. First, that the President had failed to notice that he had raised his country's name-plate on a point of order before the President began adopting elements of the package with a view to raising concerns "on the way the work was carried out". Secondly, that the President failed to "understand that the

¹⁵⁵ See Document FCCC/KP/CMP/2012/13, paragraph 42 - <https://unfccc.int/resource/docs/2012/cmp8/eng/13.pdf>

essence” of the preceding consultations with the Russian Federation was that “the meeting would be given a proposal made by a group of countries” for its consideration before the adoption of the draft decision contained in document L. 9. He affirmed that he had raised a point of order under rule 34 of the Draft rules of procedure and it was wrong for the President to ignore it. He therefore appealed to the President that the delegates “be presented the proposal that would lead us to general consensus and agreement”.

The President took note of the statement of the Russian Federation and ruled that “it will be reflected in the report of the session along with your proposal.” The President reiterated that “it was my sense that the decisions adopted today reflected the will of the Parties to mark the result of Doha.” In effect, the President ruled that there was consensus.

At this stage, if still not satisfied, the option was available for the Russian Federation to appeal the ruling of the President under rule 34 of the Draft rules of procedure. The appeal would then have been put to the vote immediately and the ruling of the President would stand unless overruled by a majority of the Parties present and voting.

It would seem that the representative of the Russian Federation was well aware of the procedural options open to his delegation and their implications. In his second intervention on a point of order he referred to rule 34 and the right conferred on a Party therein to appeal the decision of the President. He indicated, however, that such “a decision cannot be submitted to a vote because that is not applied in our Conference of the Parties”.

However, rule 34 allows a representative to appeal a procedural ruling of the President and the appeal shall be put to a vote immediately. It is apparent that the Russian Federation did not want to breach the long tradition in the UNFCCC process of decision-making by consensus even though in this particular instance the rules clearly allowed voting. The representative of the Russian Federation emphasized that he was simply seeking an opportunity to explain to delegations the concerns of the Russian Federation, Belarus and Ukraine and the proposals they made to address the issue. In this regard, since the President had failed to bring these proposals to the attention of Parties he wished to formally “register the proposals we made, which would then be included in the report of the Conference of the Parties”. He noted that

this was their understanding of the procedure and hoped that the President would this time listen to the request.

In response, the President reiterated his understanding “that the decisions adopted today reflected the will of the Parties as a whole to mark the result of Doha” and gave assurance to the Russian Federation that its views will be reflected in the report of the Conference.

In its last intervention, the delegation of the Russian Federation made a declaration which it requested should be reflected in the record of the proceedings of the Conference. The declaration has three elements: a statement regarding its disagreement with the outcome of the Conference as well as the procedural errors committed by the Presidency; an interpretive statement regarding some provisions of both Decision 1/CMP.8 and the text of the Doha Amendment; and the proposal prepared by the delegations of Belarus, the Russian Federation, and Ukraine to address their concerns.

It is evident from the above that the Russian Federation did not table a formal objection to the adoption of the decision although there is reference to “general consensus and agreement”. It is also clear from the point of view of procedure that the President made an error in ignoring the raised flags of the three delegations on points of order and proceeding to gavel the decision regardless of these.

7.6 Decision-Making by Consensus: Three Examples

Due to the continuing lack of consensus regarding rule 42 of the Draft rules of procedure of the UNFCCC COP concerning voting majorities, decision-making in the UNFCCC process is by consensus except for the limited cases where the Convention, the Kyoto Protocol, the Paris Agreement or the Draft rules of procedure establish specific voting majorities.

However, the concept of decision-making by consensus has been applied in a very inconsistent manner in the UNFCCC process. In several instances presiding officers have presumed consensus, ignoring raised flags requesting for the floor and gaveling through decisions. In this regard, Rajamani cites the gaveling through of the text of the Convention in 1992 by the Chair of

the INC with OPEC Member States and Malaysia requesting for the floor and the gaveling through of the Berlin Mandate in 1995 by the President of the COP with OPEC Member States waving their flags.¹⁵⁶ More recently, the Doha Amendment to the Kyoto Protocol 2012 was gaveled through notwithstanding a request for the floor by Belarus, the Russian Federation and Ukraine before its adoption. These are cases of potential disagreement rather than actual formal objections as understood in the UN system and the presiding officer would need to grant the floor to the requesting delegation in order to determine whether any expression of disagreement would amount to a formal objection in the legal sense.

7.6.1 UNFCCC COP15/CMP5 (COPENHAGEN 2009)

At COP15 in Copenhagen, the Copenhagen Accord was negotiated by approximately 40 Heads of State/Government and other heads of delegations during the High-Level Segment (HLS) in parallel to the formal negotiating process under the *Ad Hoc* Working Group on Long-term Cooperative Action (AWGLCA) which had been mandated by the Bali Action Plan to undertake the negotiation of “an agreed outcome” for adoption at COP15.

The COP President informed Parties that he had held consultations with a broad group of Heads of State/Government and other heads of delegations attending the Conference during the HLS and that through these consultations the Copenhagen Accord contained in document FCCC/CP/2009/L.7 was developed. The President invited Parties to reflect on the document in their respective regional groups with a view to its adoption by the Conference.

Many Parties expressed concerns with the process by which the Accord was negotiated and presented. Five Parties – Tuvalu, Bolivia, Cuba, Nicaragua and Venezuela – formally objected to the adoption of the Accord on grounds of its substantive content and the manner of its negotiation. They characterized

¹⁵⁶ See L. Rajamani, “The Cancun Climate Agreements: Reading the Text, Subtext And Tea Leaves” (Vol. 60, No.2) *International & Comparative Law Quarterly* (2011) pp. 499 – 519, at pp. 515 – 516.

the Accord as a product of a non-transparent, non-inclusive process and lacking in ambition.¹⁵⁷

After extensive consultations and in view of the formal objections, the President proposed that the COP “takes note” of the Accord. Thus, the Accord was not adopted by the COP. In United Nations practice, the term “takes note” is a neutral term that signifies neither approval nor disapproval¹⁵⁸.

7.6.2 UNFCCC COP16/CMP6 (CANCUN 2010)

A different approach to consensus was taken by the President of the COP at COP16/CMP6 at the Cancun Conference in 2010¹⁵⁹. At the closing plenary of CMP6, Bolivia stated that it was opposed to the draft decisions (the Cancun Agreements) and that it felt that there was no consensus for their adoption. The President of the COP noted the position of Bolivia and assured the delegation that it would be duly reflected in the record of the Conference and gavelled through the decisions to a standing ovation. After adoption the representative of Bolivia reiterated his country’s position regarding lack of consensus and underlined that in the view of his country “if a State explicitly states its objection to a decision there is no consensus”. The President ruled that:

Consensus does not mean unanimity or the possibility of one delegation aspiring to impose a right of veto upon the collective will that had been fashioned and achieved.

The President ruled that she could not disregard the vision or the position and the request of 193 Parties and declared the decisions validly adopted.

¹⁵⁷ See Document FCCC/CP/2009/11, paragraphs 92-96 – <http://unfccc.int/resource/docs/2009/cop15/eng/11.pdf>; IISD, Earth Negotiations Bulletin [Vol. 12, No. 459] (22 December 2009) p. 28-29.

¹⁵⁸ See UNGA Decision 55/488 of 7 September 2001

¹⁵⁹ See Document FCCC/KP/CMP/2010/12, paragraph 29 – <http://unfccc.int/resource/docs/2010/cmp6/eng/12.pdf>.

7.6.3 The Final United Nations Diplomatic Conference on the Arms Trade Treaty 2013

In accordance with United Nations General Assembly resolution 67/234A of 24 December 2012, the Final United Nations Conference on Arms Trade Treaty (ATT) was convened in New York from 18 - 28 March 2013. Rule 33 of the Rules of procedure of the Conference provided that:

The Conference shall take decisions and consider the text of the treaty by consensus, in accordance with General Assembly resolution 64/48".¹⁶⁰

When the Chair of the Conference tabled the proposal contained in document A/Conf.217/2013/L.3 to which the draft text of the Arms Trade Treaty was attached for adoption the representatives of Iran, Syria and the Democratic People's Republic of Korea formally objected to the adoption.¹⁶¹ The representative of Mexico, supported by a number of delegations, proposed that the concerns of the three delegations be reflected in the report of the Conference since the overwhelming majority of States represented at the Conference were in a position to adopt the text as presented. In Mexico's view "the text should be adopted without a vote being understood that at the United Nations there is no definition of what consensus means".¹⁶² The delegation of the Russian Federation protested pointing out that "we should never ignore the views of the minority" and that three countries had clearly stated their objections. In its view the proposal to adopt in spite of the objections was "quite unacceptable", "a manipulation of consensus" and "the Russian Federation categorically opposes".¹⁶³ The Chair concluded from the intervention of the Russian Federation that there was no consensus to adopt the text and ruled accordingly. In the occurrence, the Arms Trade Treaty was not adopted at the Conference but was referred to the United Nations

¹⁶⁰ See Document A/CONF.217/L.1

¹⁶¹ See Report of the Final United Nations Conference on the Arms Trade Treaty, UN Doc. A/CONF.217/2013/2; Also http://legal.un.org/avl/ha/att/att_video_15.html.

¹⁶² See http://legal.un.org/avl/ha/att/att_video_14.html

¹⁶³ Ibid.

General Assembly where it was adopted on 2 April 2013 by a vote of 154 in favour, 3 against and 23 abstentions.¹⁶⁴

It is apparent that where decision-making in a multilateral negotiation process is by consensus, each State and every minority has a veto power over the process. Legally, a single delegation can block consensus.

¹⁶⁴ UNGA Res. 67/234 of 2 April 2013, UN Doc. A/RES/67/234 B.

ANNEX C -

8 OVERVIEW OF SELECTED MEAS - FEATURES AND INNOVATIONS

Disclaimer: the implementation challenges identified herewith are only indicative in nature and their purpose is to point in the direction of areas where negotiators may wish to pause, reflect and conduct their own research and assessment.

This section provides a brief overview of selected MEAs, highlighting key mechanisms, innovations and implementation challenges.

Overview of MEA Innovations and Implementation Challenges

- Biodiversity Convention
- Cartagena Protocol
- Nagoya Protocol
- Desertification Convention
- Kyoto Protocol
- Paris Agreement
- CITES
- Montreal Protocol
- Minamata Convention

8.1 Convention on Biological Diversity

Substantive Innovations	Implementation Challenges
<p>Integration of conservation, sustainable use and benefit-sharing objectives.</p> <p>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.</p> <p>Recognition of the knowledge, practice and innovations of indigenous peoples and local communities (Article 8(j)).</p> <p>Framework for prior informed consent for any public or private enterprises seeking to gain access to biodiversity resources.</p> <p>Organization of work programmes based on both sectoral and cross-sectoral issues.</p>	<p>Possible WTO challenges to national biodiversity laws as disguised trade barriers.</p> <p>Increasing human impacts exacerbating biodiversity loss combined with limited scientific understanding of the pace and volume of biodiversity loss, although scientific knowledge on biodiversity has significantly increased thanks to assessments carried out by IPBES.</p> <p>Accelerating demand for genetic resources and increased pressures by transnational companies to relax national laws regulating access to them.</p> <p>Concerns about the <i>Trade Related Aspects of Intellectual Property Rights agreement</i> (TRIPs) and the patenting of life forms.</p>

8.1.1 Cartagena Protocol on Biosafety

Substantive Innovations	Implementation Challenges
<p>Introduction of procedures for regulating transboundary movements of living modified organisms (LMOs) resulting from biotechnology that may have an adverse effect on biodiversity and its components.</p> <p>Explicit operationalization of the precautionary approach towards LMOs, e.g., in terms of import of a particular LMO (Art. 10(6), Art. 11(8)).</p> <p>Establishment of the Biosafety Clearing-House to facilitate the exchange of information on LMOs.</p>	<p>Interaction with WTO law affects the performance of the Cartagena Protocol as member states influence the trade-off between the competing objectives of free trade and biosafety through domestic action.</p> <p>Recent developments in synthetic biology raise questions about the sufficiency of risk assessment principles and methodologies that are currently applied to evaluate LMOs.</p> <p>Limitations to address liability and redress resulting from transboundary movement of LMOs, which was finally regulated in The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (adopted in 2010 and entered into force in March 2018).</p>

8.1.2 Nagoya Protocol on Access and Benefit Sharing

Substantive Innovations	Implementation Challenges
<p>Significant development of the concept of Access and Benefit-sharing (ABS)</p> <p>Establishment of an equity-based relationship between providers and users of genetic resources</p> <p>Recognition of the intrinsic relationship of traditional knowledge and use of genetic resources for indigenous peoples and requirement of their free prior informed consent to access them. If consent is provided, benefit sharing should be granted.</p>	<p>The Protocol contains flexible language that leaves ample latitude for the development of national laws</p> <p>National implementation of the Nagoya Protocol requires creation of a complex regulatory framework with strong institutional infrastructures and a high level of knowledge about the Nagoya Protocol and the CBD within the member states.</p> <p>Unresolved debate about the status of access to and benefit sharing from Digital Sequence Information (DSI)</p>

8.2 United Nations Convention to Combat Desertification

Substantive Innovations	Implementation Challenges
<p>Requirement of participation of affected communities and civil society in the preparation of national desertification action programmes.</p> <p>Adoption of integrated approach in addressing the physical, biological and socio-economic aspects of the processes of desertification and drought.</p> <p>Integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought.</p>	<p>Need to ensure sufficient funding from the donor community, in part because the problem of desertification is not perceived as a global concern.</p> <p>Growing need for new and better methodologies to promote local communities involvement.</p> <p>Limited scientific attention to the problem of desertification as compared with other MEAs such as the Climate Change and Biodiversity Conventions.</p>

8.3 UN Framework Convention on Climate Change

8.3.1 Kyoto Protocol

Substantive Innovations	Implementation Challenges
<p>Legally binding targets and timetables for cutting emissions by developed countries and countries with economies in transition.</p> <p>Emissions trading regime that allows industrialized Parties to buy and sell emission credits among themselves.</p> <p>Joint implementation projects offering emission reduction units for financing projects in other developed countries.</p> <p>Clean Development Mechanism providing credit for financing emissions-reducing or emissions-avoiding projects in developing countries.</p>	<p>Perceived short-term economic costs of meeting targets in the first commitment period, especially for those Parties who ratified at a later stage (e.g. they will have less time to meet their commitments);</p> <p>Implementation of the flexibility mechanisms;</p> <p>Bringing on board the large CO₂ emitting developing countries in subsequent commitment periods. The first commitment period of the Kyoto Protocol ended in 2012. Although the Doha Amendment to the Kyoto Protocol was adopted in 2012 for a second commitment period until 2020, it only entered in force in December 2020.</p>

8.3.2 Paris Agreement

Substantive Innovations	Implementation Challenges
<p>Sets the first global long-term temperature goal of holding the increase in the global average temperature to well below 2 °C, and pursuing efforts to limit the increase to 1.5 °C, above pre-industrial levels.</p> <p>The implementation of the Agreement is to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, <i>“in the light of different national circumstances”</i>.</p> <p>Is applicable to all Parties, attracting the broadest possible participation in addressing climate change (unlike the Kyoto Protocol). The Agreement adopts a multifaceted approach to differentiation with respect to: mitigation, adaptation, means of implementation, the reporting and review processes, and compliance based on different national circumstances. As regards mitigation, it shifts towards countries’ self-differentiation through nationally determined contributions (NDCs) and recognizes different responsibilities between developing and developed countries. Developed countries are expected to continue taking the lead by undertaking economy-wide absolute emission reduction targets and by providing financial resources, technology and capacity building support to developing countries. On the other hand, developing countries are to enhance their mitigations efforts but move over time towards economy-wide targets in the light of different national circumstances. Significant flexibilities are accorded to small island developing States (SIDS) and least developed countries (LDCs) because of their special circumstances.</p>	<p>Lacks enforcement machinery. Reliance on nationally determined contributions and review of collective ambition through the global stocktake without enforcement mechanism might lead to insufficient compliance with global objective.</p> <p>The compliance regime is facilitative in nature, non-adversarial and non-punitive. Consequently, no legal consequences flow from a country’s non-achievement of its NDC.</p> <p>No ex-ante interrogation either of the adequacy of individual countries’ NDCs in the context of national circumstances and comparability or of the adequacy of the collective effort in the context of the overall global goal and what science requires. However, the Global stocktake provides a mechanism for assessing progress towards the Agreement’s long-term goals and informing the updating of individual actions.</p> <p>Missing concrete national goals on climate finance may hinder collective climate finance goal of provision of \$100 billion annually.</p> <p>Room for improved synergies and policy coherence with other MEAs, such as on biodiversity conservation.</p>

Substantive Innovations	Implementation Challenges
<p>Relies on procedural mitigation obligations through nationally determined contributions (NDCs). The five-yearly NDCs to progress over time and include highest possible ambitions. However, emission targets included in the NDCs are not binding.</p> <p>Establishes long-term architecture that institutionalizes an iterative process with an expectation of progressively stronger action over time. Five-yearly Global Stocktake on Mitigation, Adaptation and Finance to monitor progress</p> <p>Combination of bottom-up (NDCs) and top-down (reporting and Global Stocktake) architecture.</p>	

8.4 CITES

Substantive Innovations	Implementation Challenges
<p>Development of a licensing system for the import, export, and re-export of species threatened with or potentially vulnerable to extinction.</p> <p>Authority of the CITES secretariat to communicate problems of implementation.</p>	<p>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.</p> <p>Greater research efforts needed to enhance understanding and interpretation of baseline data to set out targeted procedures and actions.</p> <p>Insufficient funding, insufficient administrative capacity and corruption remain critical implementation problems.</p> <p>Developing countries often have large land masses which are not always adequately surveyed.</p> <p>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.</p>

8.5 Montreal Protocol

Substantive Innovations	Implementation Challenges
<p>First MEA to recognize the need for phased commitments for developing countries.</p> <p>Binding time schedule for freeze and reduction of ODS and other “controlled substances”.</p> <p>Important catalyst for the development of alternatives to ozone depleting substances.</p> <p>Requirement for country reporting of production, consumption and trade of ODS, to enable the secretariat to monitor compliance and evaluate ozone depletion trends.</p> <p>Hydrofluorocarbons (HFCs), which are powerful greenhouse gases, are currently used as replacements of controlled substances under the Montreal Protocol. In 2016, the Kigali Amendment was adopted to phase-down HFCs by cutting their production and consumption, thus addressing linkages with climate change. (see also, Adjustments and Case Studies)</p>	<p>Developing country perception of ozone depletion as problems of the industrialized world; Multilateral Fund set up for this reason to help developing countries with implementation.</p> <p>Difficulties for developing countries to keep abreast of the constant evolution of “safe technologies” and evolving scientific evidence .</p> <p>Limited capacity on the part of developing countries to assimilate and absorb new technologies.</p> <p>While developing countries do have a ten-year grace period to conform to the Montreal Protocol, 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).</p> <p>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.</p>

8.6 Minamata Convention

Substantive Innovations	Implementation Challenges
<p>First global efforts to reduce anthropogenic mercury emissions to avoid adverse effects on health and the environment</p> <p>Applies the life-cycle approach, meaning to address all stages during which mercury is released into the environment</p> <p>Ban on new mercury mines and phase-out of existing ones</p> <p>Phases out the usage of mercury in numerous products like bulbs or cosmetics, and in industrial processes like alkali chlorine production</p> <p>Sets a financial mechanism consisting of two components: the GEF and the Specific International Programme to support Capacity Building and Technical Assistance (SIP).</p>	<p>Reducing atmospheric emissions of mercury is particularly challenging for developing countries as many depend heavily on coal power plants for energy generation</p> <p>Need of close cooperation between science, policy makers, and industries in mercury monitoring to ensure accurate effectiveness evaluations</p> <p>Need to ensure that WTO law and the Minamata Convention are implemented in a mutually supportive manner in view of limitations on international trade in mercury</p>

8.7 Other treaties of relevance

8.7.1 United Nations Convention on the Law of the Sea

Substantive Innovations	Implementation Challenges
<p>Established an international legal framework for the protection of the marine environment .</p> <p>Living resources not to be endangered or overexploited in Exclusive Economic Zones, and coastal States to consider impacts to associated species.</p> <p>On the high seas, States are to cooperate with other States and maintain or restore fish populations to levels that can produce the maximum sustainable yield (Provided a basis for the creation of the implementing agreement on high seas fisheries, the UN Fish Stock Agreement, which takes a more precautionary approach to fisheries).</p> <p>Represents a shift toward duty as controlling principle in relation to marine environment, and creates a base on which to build future rules.</p>	<p>Freedom of high seas and exclusive flag State jurisdiction are at times at cross purposes with environmental protection.</p> <p>Lack of an effective institution with competence of law of the sea.</p> <p>Focus of Part XII is on pollution but specific standards are not set, rather to be implemented through other international instruments.</p>

**8.7.2 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
(United Nations Fish Stock Agreement or UNFSA)**

Substantive Innovations	Implementation Challenges
<p>Takes a precautionary approach to the management of fish stocks.</p> <p>Recognizes an ecosystem-based management approach.</p> <p>States have the right to monitor and inspect vessels of other States to ensure compliance with treaty provisions.</p> <p>Includes the creation of a compulsory and binding dispute settlement mechanism.</p> <p>Requirement for compatibility between conservation and management measures for areas under national jurisdiction and those beyond national jurisdiction.</p> <p>Provides greater power to regional fishery management organisations (RFMOs)</p>	<p>Many stocks managed by RFMOs are still below numbers required to support maximum sustainable yields.</p> <p>Reaching consensus within RFMOs appears to be difficult.</p> <p>There is a need yet to designate target and limit reference points for many species.</p> <p>Need for implementation of port State controls, and identification of fishing vessels through internationally recognized IMO numbers.</p> <p>Challenges to verify that data collected from vessel monitoring systems is accurate and enable its sharing with authorities.</p>

8.7.3 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol)

Substantive Innovations	Implementation Challenges
<p>Envisioned to update and replace the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention).</p> <p>Takes a more precautionary approach by prohibiting the dumping of all wastes and other materials, except for those listed in Annex I “the reverse list”, which may be considered for dumping.</p> <p>Has included carbon dioxide in Annex I, to allow carbon sequestration in the marine environment, but only in geological formations. Placement within the water column or on the seafloor remains prohibited.</p> <p>In line with a precautionary approach, it includes a new article to prevent iron fertilization, with a potential to expand to other forms of marine geoengineering.</p>	<p>Although it entered into force in 2006, the Protocol has yet to reach universal ratification, as only 53 Parties currently signed up to it.</p> <p>Further ratifications of the Protocol are required to supersede the Convention.</p>

ANNEX D

9 REFERENCE TEXTS AND ELECTRONIC RESOURCES

9.1 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 imperiled 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. 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.

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.

9.2 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. 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.

9.3 Sustainable Development Goals

By 2030, Member States agreed to:

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3. Ensure healthy lives and promote well-being for all at all ages
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, reliable, sustainable and modern energy for all
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, resilient and sustainable

12. Ensure sustainable consumption and production patterns
13. Take urgent action to combat climate change and its impacts
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

9.4 Electronic resources

9.4.1 INTERNATIONAL CONVENTIONS

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

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

Cartagena Protocol on Biosafety, <https://bch.cbd.int/protocol/>

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, <https://unece.org/environment-policy/air>

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention), <https://www.imo.org/en/OurWork/Environment/Pages/London-Convention-Protocol.aspx>

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), <https://www.ramsar.org/>
International Convention for the Prevention of Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

Kyoto Protocol to the United Nations Framework Convention on Climate Change, https://unfccc.int/kyoto_protocol

Minamata Convention on Mercury, <https://www.mercuryconvention.org/en>
Montreal Protocol on Substances that Deplete the Ozone Layer, <https://ozone.unep.org/treaties/montreal-protocol>

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, <https://www.cbd.int/abs>

Paris Agreement, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

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 on the Law of the Sea, https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

United Nations Convention to Combat Desertification, <https://www.unccd.int/>

United Nations Framework Convention on Biological Diversity, <https://www.cbd.int/>

United Nations Framework Convention on Climate Change, <http://www.unfccc.int>

Vienna Convention for the Protection of the Ozone Layer, <https://ozone.unep.org/treaties/vienna-convention>

GLOBAL AND REGIONAL ORGANIZATIONS AND BODIES

United Nations, <http://www.un.org/>

United Nations Treaty Collection, <https://treaties.un.org/>

United Nations Office of Legal Affairs - Treaty Section "Treaty Reference Guide", https://treaties.un.org/pages/Overview.aspx?path=overview/treatyRef/page1_en.xml

United Nations Commission on Sustainable Development, <https://sustainabledevelopment.un.org/csd.html>

United Nations Economic Commission for Europe, <https://unece.org/>

United Nations Economic and Social Council, <http://www.un.org/esa/coordination/ecosoc/>

United Nations Environment Programme, <http://www.unep.org/>

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, <https://www.un.org/en/ga/57/>
(the last number refers to the session number, e.g. 57th session in 2002)

United Nations High-level Political Forum on Sustainable Development (HLPF), <https://sustainabledevelopment.un.org/hlpf>

United Nations Permanent Forum on Indigenous Issues, <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html>

African Union, <https://au.int/>

Asia Pacific Economic Cooperation, <https://www.apec.org/>

Commission for Environmental Cooperation, <http://www.cec.org/>

European Commission, https://ec.europa.eu/info/index_en

European Environment Agency, <https://www.eea.europa.eu/>

European Union, http://www.europa.eu/index_en.htm

Food and Agricultural Organization of the United Nations, <http://www.fao.org/>

Global Environment Facility, <https://www.thegef.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, <https://council.science/>

International Institute for Sustainable Development, <https://www.iisd.org/>

International Joint Commission, <http://www.ijc.org>

International Maritime Organization, <http://www.imo.org>

International Organization for Standardization, <http://www.iso.ch>

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, <https://ipbes.net/>

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 Health Organization, <https://www.who.int/>

World Meteorological Organization, <http://www.wmo.ch/>

World Trade Organization, <https://www.wto.org/>

World Wildlife Fund, <https://www.worldwildlife.org/>

OTHER

University of Joensuu – UNEP Course on International Environmental Law-making and Diplomacy, <https://sites.uef.fi/cceel/uef-unesp/>

10 GLOSSARY

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

AAAA

The Addis Ababa Action Agenda was adopted at the Third International Conference on Financing for Development in 2015 and subsequently endorsed by the UNGA. The Action Agenda establishes a foundation to support the implementation of the 2030 Agenda for Sustainable Development. It provides a new global framework for financing sustainable development by aligning all financing flows and policies with economic, social and environmental policies.

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.

Access and benefit-sharing

One of the three objectives of the Convention on Biological Diversity, as set out in Article 1, is the “fair and equitable sharing of benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by the appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding.” (CBD)

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.

Acronym

An abbreviation formed from the initial letters of other words

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

Actions taken to help communities and ecosystems cope with changing climate conditions (UNFCCC).

Genetically determined characteristic that enhances the ability of an organism to cope with its environment (CBD).

Adaptation Committee

As part of the Cancun Adaptation Framework under the UNFCCC, the purpose of the Adaptation Committee is to promote the implementation of enhanced action on adaptation in a coherent manner under the Convention. The Committee operates under the authority and is accountable to the COP. The Committee also serves the Paris Agreement.

Adaptation Communication

To enhance action on climate change adaptation, the Paris Agreement requests Parties to submit and update periodically adaptation communications which may include its adaptation priorities, support and implementation needs, and plans and actions. Parties can submit their adaptation communications as a component of or in conjunction with their NDCs, national adaptation plans and/or national communications. The Paris Agreement partly ??/Parties provides that adaptation communications shall be recorded??r in a public registry maintained by the secretariat.

Adaptation Fund

This Fund finances projects and programmes that help vulnerable communities in developing countries to adapt to climate change. Originally the Fund was established to finance concrete projects and programmes in developing country Parties that are Parties to the Kyoto Protocol. However, the Fund now also serves the Paris Agreement. The Fund is financed through a 2% share of the proceeds from Certified Emission Reductions issued under the Protocol's Clean Development Fund as well as from public and private donors. (UNFCCC)

Adaptation Knowledge Portal

It is a knowledge hub for climate adaptation and resilience and provides free and open access to adaptation knowledge resources. It provides information on the Nairobi Work Programme's (NWP) network of over 400 leading and diverse partner organizations.

ADB

Asian Development Bank.

Add.

Stands for "addendum". Used to reference additions to existing documents.

Addis Ababa Action Agenda (AAAA)

Action agenda to follow-up on commitments and assess the progress made in the implementation of the Monterrey Consensus and the Doha Declaration, adopted at the third international conference on FfD, 2015.

Additionality

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.

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.

ADP

Ad Hoc Working Group on the Durban Platform for Enhanced Action.

The ADP was established by the UNFCCC COP17 through its decision 1/CP.17 in 2011 to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties by no later than 2015. The Paris Agreement was negotiated under the ADP.

Adoption

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.

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.

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. One of the agreements under the CMS. Adopted in 1995, entered into force in 1999.

AfDB

African Development Bank Group.

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).

2030 Agenda for Sustainable Development

Agenda adopted in 2015 by the UN Sustainable Development Summit containing 17 Sustainable Development Goals and 169 associated targets and indicators for countries to achieve by 2030.

Agreement

Generic term for an international legally binding instrument. In this sense, the term encompasses several instruments, such as treaties, conventions, protocols or oral agreements.

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

Aichi Biodiversity targets

20 targets to halt the loss of biodiversity by 2020, set by the Conference of the Parties to the Convention for Biological Diversity (CBD) at its tenth meeting, under the Strategic Plan for Biodiversity 2011-2020.

AILAC Group

The Independent Association of Latin America and the Caribbean is a negotiation group of eight countries (Chile, Colombia, Costa Rica, Guatemala, Honduras, Panama, Paraguay & Peru) that share interests and positions on climate change in the UNFCCC process.

ALBA Group

Bolivarian Alliance for the Peoples of Our America: Composed of Antigua & Barbuda, Bolivia, Cuba, Dominica, Ecuador, Grenada, Nicaragua, St. Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, and Venezuela. A negotiation group in the UNFCCC process.

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

A modification or addition to an existing legal instrument (e.g., treaty, convention, or protocol).

A modification to a proposal under negotiation (e.g., draft decision, draft recommendation, or draft resolution).

Anthropocene

Proposed geological epoch that describes the most recent period in Earth's history when human activity started to have a significant impact on the planet's climate and ecosystems.

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.

Arab Group

A negotiation group in the UNFCCC process composed of 22 States in North Africa and West Asia

ASCOBANS

Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas. One of the legally-binding Agreements under the CMS. Opened to signatures in 1992, 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 Ban Amendment to Restrict International Trade in Hazardous Chemicals

Since December 5, 2019 the Ban Amendment to the Basel Convention prohibits shipments of hazardous waste from OECD countries to non-OECD countries for disposal or recovery. While the Ban Amendment was originally adopted by the Parties to the Basel Convention in 1995, it languished pending the need for sufficient ratifications to meet its entry into force threshold. In 2019 Saint Kitts and Nevis and Croatia ratified the amendment, thereby meeting the ratification threshold for entry 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 Convention Plastic Waste Amendment

In 2019, the fourteenth meeting of the COP to the Basel Convention adopted amendments to Annexes II, VIII and IX to the Convention with the objectives of enhancing the control of the transboundary movements of plastic waste and clarifying the scope of the Convention as it applies to such waste. The amendments entered into force for all Parties that had not submitted a notification of non-acceptance on expiry of six months from the date of the circulation of the communication by the depository. The new entries in Annexes II, VIII and IX to the Basel Convention became effective as of 1 January 2021.

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

BASIC countries

A negotiation group in the UNFCCC process formed in the lead up to the 2009 Copenhagen Conference and composed of Brazil, South Africa, India & China.

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 of wastes.

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 negotiation and 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.

BINGOs

Business and Industry Non-Governmental Organizations

Biocapacity

A measure of the biological productivity of an area. This may depend on natural conditions or human intervention. (CBD)

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, in some cases, 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 reductions 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.

CBDRRC principle

Principle of common but differentiated responsibilities and respective capabilities. This principle asserts a global responsibility for environmental protection but differentiates such responsibility according to the scope of contribution to the problem and the resources commanded to address the problem and its impacts.

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 (UNFCCC)

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.

CEB

Chief Executives Board

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 Protocol, 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), the Kyoto Protocol and the Paris Agreement.

Closed-door meeting

Meeting to which access is restricted. Usually restricted to Parties and excludes observers.

CMA

Conference of the Parties serving as the meeting of the Parties to the Paris Agreement

CMP

Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol

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

Sub-set 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. A subsidiary body of a treaty (e.g. the compliance committee)

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.

Commonwealth

A voluntary political association of 54 member States, almost all of which are former territories of the British Empire.

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 and promote 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 and decision-making 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 and in the absence of a formal objection. 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.

Conservation of Biodiversity

The management of human interactions with genes, species and ecosystems, so as to provide the maximum benefit to the present generation while maintaining their potential to meet the needs and aspirations of the future generations; encompasses elements of saving, studying and using biodiversity. (CBD).

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 President

Title of the presiding officer of a 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 Members. Should be distinguished from the European Council, as well as of the Council of Europe.

COVID-19 pandemic

Global pandemic of the coronavirus disease (COVID-19). The disease is caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which was initially detected in 2019.

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 the Minister of Foreign Affairs or the competent authority of an intergovernmental organization. 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. It was replaced in 2013 by the High-level Political Forum on Sustainable Development.

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.

CTCN

Climate Technology Centre and Network

CTE

WTO Committee on Trade and Environment

CTESS

WTO Committee on Trade and Environment in Special Session

Customary International Law

Customary international law consists of rules that come from a general practice of States accepted as law and exist independent of treaty law.

D

DAC

Development Assistance Committee (of OECD)

Decision

Formal expression of the will of the governing body of an international organization or international agreement. In general, decisions of the Conferences of the Parties to MEAs are not legally binding unless the treaty provides otherwise.

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.

Definitive signature

When a treaty is not subject to ratification, acceptance or approval, "definitive signature" establishes the consent of a State to be bound by a treaty.

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 participate at a conference and to act on its behalf and whose credentials are in order.

Delegation

Team of delegates to a meeting from the same country or organization.

Depositary

A Depositary acts as the formal custodian of a treaty. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depositary must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the Parties concerned.

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.

Disaster risk reduction

See Sendai Framework for Disaster Risk Reduction

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

Doha Declaration

Outcome document of the second international conference on FFD, held in Doha, Qatar in 2008, to review the implementation of the Monterrey Consensus

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.

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.

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

European Community

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

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').

For emissions trading as a mechanism under the Kyoto Protocol, see 'international emissions trading'.

Enabling Activities (EA)

Project type funded by the GEE. Enabling activities are projects for the preparation of a plan, strategy, or report to fulfill commitments under a Convention.

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, e.g. 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. One of the agreements under the CMS. 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.

Financing for Development (FfD)

Financing for development refers to the ongoing international process to align financing flows and policies with economic, social, and environmental priorities.

Floor

in "to give the floor": Permission granted by the presiding officer of a meeting to make a statement.

in "to seek the floor": To ask permission to the presiding officer of a meeting to make a statement.

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.

Forest Principles

Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests produced at the Rio Conference 1992.

Formal objection

In the context of decision-making by general agreement and without voting (consensus decision-making), a formal statement (oral or written) by which a delegation informs a meeting that it objects to the adoption of a proposed decision, resolution, or recommendation.

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.

Full-sized project (FSP)

Funding by the GEF of more than two million US dollars.

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 1974 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

Hammer used by the presiding officer of a meeting to recall delegations to order and/or signal the adoption of decisions, resolutions, or recommendations.

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 Assessment Report on Biodiversity and Ecosystem Services (GAR -IPBES)

IPBES is to perform regular and timely assessments of knowledge and ecosystem services and their interlinkages at the global level. The overall scope of the assessment is to assess the status and trends with regard to biodiversity and ecosystem services, the impact of biodiversity and ecosystem services on human well-being and the effectiveness of responses, including the Strategic Plan and its Aichi Biodiversity Targets. (IPBES).

Global Biodiversity Framework (GBF)

Adopted in 2022 as the Kunming-Montreal Global Biodiversity Framework for 2022-2030. The GBF sets out an ambitious pathway to reach the global vision of a world living in harmony with nature by 2050. Among the Framework's key elements are 4 goals for 2050 and 23 targets for 2030.

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 Environmental Benefits (GEB)

GEF investments are based on the delivery of global environmental benefits in biodiversity, climate change mitigation, international waters, land degradation and forests, and chemicals and waste.

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 Stocktake

The global stocktake of the Paris Agreement (GST) is a process for taking stock of the implementation of the Paris Agreement with the aim to assess the world's collective progress towards achieving the purpose of the agreement and its long-term goals.

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.

GNI

Gross National Income

GNP

Gross National Product

Governing Council (GC)

The decision-making body of the UN Agencies, Programmes and Funds, eg. Environment Programme (UNEP) which was replaced by the United Nations Environmental Assembly (UNEA) when UNEP was strengthened by Universal Membership. The UNEP Governing Council would then meet 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 (CO₂), methane (CH₄) and nitrous oxide (N₂O). Less prevalent – but very powerful – greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆). Those gases are regulated under the UNFCCC, the Montreal Protocol, the Kyoto Protocol and the Paris Agreement. Many ozone depleting substances controlled by the Montreal Protocol are also greenhouse gases.

Green Climate Fund (GCF)

A fund established under the UNFCCC to provide financial support to developing countries in implementing projects and programmes that promote low-emission and climate-resilient development and to respond to the adverse impacts of climate change. The GCF also serves the Paris Agreement.

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

Place or type of site where an organism or population naturally occurs (CBD).

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.

Harmony with Nature

Principle 1 of the Rio Declaration on Environment and Development of 1992 states that “Human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” In 2009, the UNGA proclaimed 22 April as International Mother Earth Day. In so doing, Member States acknowledged that the Earth and its ecosystems are our common home, and expressed their conviction that it is necessary to promote Harmony with Nature in order to achieve a just balance among the economic, social and environmental needs of present and future generations. That same year, the UNGA adopted its first resolution on Harmony with Nature. During CBD COP 15, Parties adopted the Kunming-Montreal Post-2020 Global Biodiversity Framework as a stepping stone towards the 2050 vision of “Living in Harmony with Nature.”

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, which are chemicals that deplete the ozone layer and also have a global warming effect. Regulated under the Montreal Protocol.

HFCs

Hydrofluorocarbons, which are substances that do not deplete the ozone layer but can have a powerful effect on global warming. 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.

High-level Political Forum on Sustainable Development (HLPF)

The HLPF is the main UN platform on sustainable development. It has a central role in the follow-up and review of implementation of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). All UN Member States as well as representatives from civil society organizations participate in the HLPF, which meets under the auspices of the UN Economic and Social Council (ECOSOC).

HLCP

High-Level Committee on Programmes

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

Area particularly rich in total numbers of species (see "biodiversity hotspot"). 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.

Indaba

Negotiation format which had been introduced at the UNFCCC COP in Durban in 2011 and used extensively during the negotiation of the Paris Agreement in 2015. Indabas come from a Zulu tradition of people getting together to resolve important and pressing social issues.

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.

Integrated Approach Pilot (IAP) program

Approach taken by the GEF launched in 2014 to tackling major drivers of environmental degradation. The programs were designed to enhance synergy in generating multiple global environmental benefits across GEF focal areas, while ensuring that progress in one area does not negatively affect other related objectives.

Inter alia

"Among other things." Often used in legal documents to compress lists of Parties etc.

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)

Independent intergovernmental body established by States in 2012 to strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development.

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.

IPBES

Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services

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

International Plant Protection Convention. Adopted in 1952. Revised in 1997, entered into force in 2005.

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.

Jl

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

La Francophonie

An international organization representing 88 member states and governments that share French as a common language.

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.

Landlocked Developing Countries (LLDCs)

A negotiating group which occasionally intervenes in MEAs negotiations, constituted by 32 developing countries that are landlocked.

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

Leakage

In the context of the CDM and Jl 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.

Lima Adaptation Knowledge Initiative (LAKI)

LAKI helps to address climate adaptation knowledge gaps under the UNFCCC which have been identified as a barrier to scaling up adaptation actions. More than one hundred and fifty priority adaptation knowledge gaps for targeted knowledge users through a systematic methodology spanning seven regions. These have been organized by subregion, thematic area, and cluster to allow stakeholders to pinpoint synergies and design more efficient cost-effective responses.

Listing

Inclusion of a product or species in a list of regulated products or species.

LLDCs

Landlocked Developing Countries

LMG

Like-Minded Group

LMDCs

Like-minded Group of Developing Countries

LMMC

Like-Minded Megadiverse Countries

Local Communities and Indigenous Peoples Platform (LCIPP)

The Local Communities and Indigenous Peoples Platform is an open and inclusive space in the UNFCCC process and brings together people and their knowledge systems to build a climate resilient world for all.

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.

Marrakech Partnership for Global Climate Action

A framework that supports implementation of the Paris Agreement by enabling collaboration between governments and non-state actors.

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

Medium-sized project (MSP)

Funding by the GEF up to two million US dollars.

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).

Minamata Convention

Shorthand for the Minamata Convention on Mercury. Adopted in 2013, entered into force in 2017.

MISC document

Miscellaneous document

Mitigation

In the context of the UNFCCC, the Kyoto Protocol and the Paris Agreement, 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

Mo'otz Kuxtal Voluntary Guidelines

Voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent,” “free, prior and informed consent,” or “approval and involvement,” depending on national circumstances, of Indigenous Peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge (Related to the [CBD](#))

Multilateral Environmental Agreement (MEA)

A generic term for [treaties](#), [conventions](#), [protocols](#), and other [binding international instruments](#) related to the environment. Usually applied to instruments of a geographic scope wider than that of a [bilateral agreement](#) (e.g., 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

Nagoya Protocol

Shorthand for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to

the Convention on Biological Diversity. Adopted in 2010, entered into force in 2014.

Nagoya Protocol Implementation Fund

Fund, managed by the GEE, established to facilitate the early entry into force and implementation of the Nagoya Protocol.

Nairobi Work Programme (NWP)

The Nairobi Work Programme strives to assist all Parties under the UNFCCC, in particular developing countries to improve their understanding and assessment of impacts, vulnerability and adaptation and to make informed decisions on practical adaptation actions and measures to respond to climate change on a sound, scientific, technical and socioeconomic basis.

NAP

National Action Plan. Required under the UNCCD for the implementation of the Convention.

National Adaptation Plan under the UNFCCC. The purpose of the NAP process is to enable Parties to formulate and implement adaptation plans as a means of identifying adaptation needs and priorities. (UNFCCC).

NAPA

National Adaptation Programme of Action. Prepared by least developed countries under the UNFCCC for urgent activities to cope with adaptation to climate change. In the NAPA process, prominence is given to community-level input as an important source of information, recognizing that grassroots communities are the main stakeholders. They are action-oriented, country-driven and based on national circumstances. (UNFCCC).

National Communication (NC)

Under the UNFCCC, document by which a Party informs other Parties of activities undertaken under the Convention.

Nationally Determined Contribution (NDC)

Climate action plan to cut emissions and adapt to climate impacts. Each Party to the Paris Agreement is required to establish an NDC and update it every five years.

National Portfolio Formulation Exercise (NPFE)

Country-level portfolio planning processes that aim to enhance country ownership by determining programming priorities in a given Global Environment Facility (GEF) replenishment period.

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.

NDC

Nationally Determined Contribution

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

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).

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 to, 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.

Non-State actor

All those actors in international relations that are not States, for example international organizations, cities, NGOs, representatives of indigenous communities and industry.

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 rights. In practice, in some processes 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.

OEWG

Open-ended Working Group

Official Development Assistance (ODA)

Also known as "foreign aid". ODA is defined by the OECD Development Assistance Committee (DAC) as government aid that promotes and specifically

targets the economic development and welfare of developing countries. It comprises flows to countries and territories on the DAC List of ODA Recipients and to multilateral development institutions that are:

I. Provided by official agencies, including state and local governments, or by their executive agencies; and

II. Concessional (e.g. grants and soft loans) and administered with the promotion of the economic development and welfare of developing countries as the main objective.

The DAC list of countries eligible to receive ODA is updated every three years and is based on per capita income.

OP 5, 13, XX...

Operational Programme 5, 13, XX...In the context of negotiations this also refers to Operative Paragraphs.

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

"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.

"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

Pacta sunt servanda

Principle of international law according to which agreements that are legally binding must be performed in good faith.

Package deal

Proposal that includes several issues, not necessarily related, which has to be accepted or rejected as a whole.

PAMs

Policies and Measures

Paris Agreement

Legally binding international treaty on climate change. Adopted at the UNFCCC COP 21 in Paris, 2015 and entered into force in 2016.

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

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.

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.

Post-2015 Agenda

Process initiated to define an advanced post-2015 development agenda that would succeed the MDGs which led to the 2030 Agenda for Sustainable Development.

Post-2020 Global Biodiversity Framework

Framework negotiated under the CBD to define targets and pathways for the conservation and management of biodiversity for the time after 2020. It was adopted at COP 15 of the CBD in 2022 and it is called the Kunming – Montreal Global Biodiversity Framework, it has four goals and 23 targets most of them to be achieved by 2030.

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". In the context of negotiations, this can be notated as "PP" in early-stage draft texts.

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, technical papers, information documents (INF. docs), etc.

Presiding Officer

Delegate elected by a meeting to preside over the proceedings, maintain order and lead and facilitate the work of the meeting.

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

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.

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 (e.g., 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

Delegate (more specifically, a member of the Bureau) elected/nominated to prepare or oversee the preparation of the report of a meeting.

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.

REDD+

Reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries. Mechanism developed under the UNFCCC to reduce emissions from deforestation and forest degradation in developing countries.

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 is not the same as minutes, which record all interventions. 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

RINGOs

Research and Independent Non-Governmental Organizations

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.

Rio+20 Summit

Shorthand for the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in 2012.

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 (e.g., for Plenary or working groups).

Rutzolijirisaxik Voluntary Guidelines

Voluntary guidelines for the Repatriation of Traditional Knowledge Relevant for the Conservation and Sustainable Use of Biological Diversity (Related to CBD)

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, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement 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 the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol in the form of recommendations and draft decisions.

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

SDGs

Sustainable Development Goals

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.

Sendai Framework for Disaster Risk Reduction 2015 - 2030

The Sendai Framework for Disaster Risk Reduction 2015 – 2030 outlines seven clear targets and four priorities for action to prevent new and reduce existing disaster risks. It aims to achieve the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries over the next 15 years.

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, the Kyoto Protocol and the Paris Agreement, 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.

Small Grant Programme

Programme set up by the GEF to provide financial and technical support to communities and Civil Society Organizations to meet the overall objective of global environmental benefits secured through community-based initiatives and actions.

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 or conferences (e.g. resolutions of the UN General Assembly, the Stockholm Declaration, the Rio Declaration). Soft-law may be used to encourage broader adherence 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.

Spin-off group

Informal group set up by the presiding officer during negotiations, especially if there is an issue that parties are having difficulty agreeing on.

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."

Strategic Plan for Biodiversity 2021-2020

Ten-year framework for action to halt the loss of biodiversity adopted by the COP to the CBD in 2010 in Nagoya, Japan. The Strategic Plan provides an overarching framework on biodiversity, not only for the biodiversity-related conventions, but for the entire UN system. Parties to the Convention agreed to translate the Strategic Plan and its Aichi targets into revised and updated national biodiversity strategies and action plans (NBSAPs) to ensure implementation at the national and local level.

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 Development Goals (SDGs)

A set of 17 goals and 169 associated targets and indicators established in 2015 by all United Nations Member States to steer the promotion of sustainable development in the period 2016–2030. The SDGs provide a blueprint for peace and prosperity for people and the planet.

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.

System for Transparent Allocation of Resources (STAR)

Framework for the allocation of resources from the GEF Trust Fund to countries over a Replenishment Period.

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.

TEC

Technology Executive Committee

Technology Facilitation Mechanism

Tool to support the implementation of the Sustainable Development Goals (SDGs) by facilitating multi-stakeholder collaboration and partnerships through the sharing of information, experiences, best practices and policy advice among Member States, civil society, the private sector, the scientific community, United Nations entities and other stakeholders.

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.

The Future We Want

Title of the outcome document from the Rio+ 20 Summit reflected in General Assembly resolution 66/288.

TK

Traditional Knowledge

Tkarihwaí:ri Code of Ethical Conduct

Code to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities. Related to CBD

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 or 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).

Troika

Decision group of the EU formed by the European Commission, the European Central Bank and the International Monetary Fund.

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.

UNEA

United Nations Environment Assembly

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.

UNFSA

United Nations Fish Stock Agreement

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.

UNCJ

United Nations International Court of Justice

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

Vienna Convention for the Protection of the Ozone Layer. Adopted in 1985, entered into force in 1985.

Vienna Convention on the Law of Treaties (VCLT). Adopted in 1969, entered into force in 1980.

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)

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.

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.

Y

YOUNGOS

Youth Non-Governmental Organizations.



This guide is tailored to support negotiators working on multilateral environmental agreements (MEAs). It offers crucial information on MEAs: their nature, structure, and content, as well as substantive issues on current trends. The guide also provides strategies for negotiating MEAs effectively and is especially helpful for preparing new diplomats and assisting teams as questions arise during negotiations. Successfully navigating MEA negotiations, an art in itself, requires a deep understanding of specific MEAs, a grasp of the broader context of sustainable development, and a blend of political insight and wisdom. This guide aims to assist those engaged in such endeavors to find this balance.

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