International Environmental Diplomacy and Negotiations for 12th MEAs Course

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International Environmental Diplomacy

Overview

• What constitute international environmental diplomacy?
• What systems and processes of multilateral environmental negotiation exist?
• How does one prepare for negotiation?
• What are the CC institutional negotiation mechanisms?
• What is/are expected outcomes from Paris CoP21?
• What are the roles of different negotiating groups?
• What are negotiation strategies, tactics, etiquette, role and effect of negotiating language?
• What are challenges and hindrances faced by negotiators?
• Finally, what makes a skillful negotiator?
International Environmental Diplomacy

✓ Current issues & Key Milestones
  - UNFCCC, 1992; KP, 1997; Marrakesh Accord 2001; Copenhagen (Failure) 2009; Durban 2011, Paris Agreement 2015?

✓ Diversity of Problems
  - Impacts of CC on common resources (i.e. fisheries, endangered species, rivers, oceans, forests and other transboundary resources)

✓ Diversity of Actors
  - Diplomats, politicians, environmental action groups, scientists, business leaders, journalists, etc; need to find synergies
  - Delegates- Copenhagen -25,000; Lima-35,000; Paris – 40,000?

✓ Diversity of Fora
  - Bilateral diplomacy, multilateral diplomacy, Rio+20, UNEA and SDG process, COP/MOPs, SG Summits, Post Kyoto process;

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International Environmental Diplomacy

✓ IED involves
  – The convergence of foreign, environmental, development and security policy areas (Global environmental concerns (e.g. DRR/Sendai Declaration, Finance-AAAA, SDGs esp. 11 & Paris CoP21) - Convergence; Links btn UNFCCC/Ozone MP.
  – A new constellation of actors, and partnerships, including a greater role for civil society

✓ IED goes beyond traditional state diplomacy
  – Relies on diplomatic channels (bilateral and multilateral) as a vehicle for negotiations of MEAs

✓ The central aim of IED is
  – To stimulate international cooperation galvanize international action in order to generate international agreement on complex transboundary environmental problems; bridging differences in cultural, social and political values, vested interests and scientific uncertainty – New CC Regime
Phases of Multilateral Negotiation

1. Pre-negotiation

2. Formal negotiation: Recall ACT 1-IV (Daniel Bodansky)
   • Involves: consolidation of country views, expression of initial positions, pre-formula building, formula building, coalition building, pre-bargaining, bargaining & adoption, etc.

3. Post-agreement negotiation
   • Involves: signature, ratification, operationalization, review of implementation, new instruments, implementation at national level (administrative, policy, legal frameworks measures), etc.
Systems, Processes, Mechanics

✔ Functions
• Negotiate a treaty (UNFCCC/KP) or review progress of implementation (CoPs)

✔ Outputs
• Binding (UNFCCC/KP) or Non-binding instrument (CoPs/MoPs Decisions)

✔ Size - (actors, interactions)
• Multiple actors, roles and negotiations and interactions

✔ Structures
• Formal: Plenary sessions, Standing Committees
• Informal: Contact/Working groups, corridor work-caucuses

✔ Process and procedures
• Opening and statements, organizational matters, decision-making

✔ Groups and Coalitions – Regional or Contact Groups
• EU, G77 & China, Friends of the Chair, SIDs, OPEC, Rainforest Nations, etc.
Preparing for Negotiations

• Do you know yourself?
  – Your objectives, interests, strategy, proposals/options, alternatives?

• What’s your relationship with others?
  – Play a dominating role?
  – Like-minded or opponent?

• Do you know them?
  – Their objectives, interests, strategy, proposals/options, alternatives?
2015 Road (Ad Hoc WG on the Durban Platform for Enhanced Actions –ADP) to Paris CoP 21

ADP 2-8 - Feb
ADP 2-9 - June
ADP 2-10 - Sept
New text
ADP 2-11 - Oct

Local govt conference
Scientific conference
46 country ministerial
Multicountry ministerial
Heads of State Lunch

Petersberg Dialogue
Business conference
Religious conference
Finance ministerial

Heads of State COP opening

How to Prepare Yourself

✓ As a member of your country’s delegation, you need:
  • *To prepare thoroughly in-country* long before negotiations take place
  • *To have a good understanding of your country’s interests* on the issues under negotiation, and
    - of other delegations or groups and which group(s) is your country
  • *To identify the most significant agenda items* of priority interest to your country and focus closely on them.

✓ A negotiation team should be identified and mobilized well in advance for negotiators to have sufficient time to:
  - become familiar with the agenda items and issues,
  - Prepare & brief important issues for government policy-makers.
How to Prepare Yourself

✓ Learn more about the negotiation you will attend (processes):

• *Research the outcomes of previous negotiation sessions* (e.g. UNFCCC/COPs & CoP/MoP, Subsidiary Bodies – eg: SBI, SBSTA, FM)

• *Familiarize yourself with the Rules of Procedure* especially relating to decision-making: consensus (e.g. UNFCCC, CBD, CMS), two-thirds majority/voting (e.g. CITES), etc.

✓ Planning and organization ahead of time will improve your ability to negotiate successfully.
Reviewing the Agenda

✓ What are the expected outcomes for the negotiation?
- Decisions? (e.g. CBD) or resolution? (e.g. CMS) or international legal instrument? (e.g. New CC legal regime/Paris CoP?)

✓ Are there draft texts that will need to be advanced?
- Locate and review them thoroughly.

✓ Are there agreed Rules of Procedure?
- How are decisions adopted?

✓ Are there existing coalitions in the negotiating process?
- If so, which coalition is your country in?
- Will your coalition meet in advance of the negotiation session to talk and agree on its strategy?
- How will the coalition affect your country’s position? How flexible or stringent are your instructions?
Expected Outcomes from the Paris CoP 21

- **Ambition:** Long term target to keep warming below 2°C
- **Time frame:** Credible process to increase ambition over time, with periodic stock-taking of aggregate efforts (every 5 years) and updates of INDCs (every 5-10 years), safeguards against “back-sliding”
- Operationalization of $100 billion climate finance by 2020 and reorientation of wider investment flows
- Three expected key outcomes of Paris COP on new regime:
  1. Core **legally-binding agreement**, short text
  2. COP decisions to explain text in the agreement
  3. Detailed **work plan on operational arrangements** to be further developed after COP21
Composing the Delegation

• **Mixture of talents and skills needed**
  - technical/scientific, diplomatic, legal, policy makers
  - Identify a Head of Delegation & alternate

• **Submit names early for accreditation**
  - Important for funding and travel arrangements-LDCs

• **Continuity is critical**
  - Serves to train and empower new negotiators through attending negotiation meetings
Composing the Delegation

• Larger delegations
  - greater human and financial capital, can assign representatives to specific issues

• Smaller delegations
  - fewer representatives, delegates ‘wear many hats’, rely on regional groups and coalitions
**Key Negotiators**

**Within the Multilateral Process:**
- Chairs of Subsidiary Bodies (e.g. SBI, SBSTA, FM), Chairs of Contact groups, Rapporteurs, Members of Expert Groups
- More senior negotiators will be called upon to fill these positions of greater responsibility, due to greater familiarity with the issues being negotiated.
- *Required to be impartial (Status of CC/ADP Co-Chairs Draft Text of August 2015 on the new regime?)*

**Within Coalitions:**
- Spokesperson for a coalition (e.g., Chair of the African Group), issue coordinator (e.g., G-77 Coordinator on agenda a specific agenda item).
- *Must represent the interests of their constituencies effectively.*

**Within Delegations:**
- Head of Delegation, issue negotiator, facilitator (working between different groups or coalitions to help reach compromise).
Identifying Negotiating Groups

• **Power-based**
  – Umbrella Group-JUSCANNZ – (developed, non-EU)
  – EU (27) (also ‘institutionalised’)
  – G-77 and China
  – LDC Group / SIDs / AOSIS
  – Environmental Integrity Group

• **Annex I/Non-Annex I dichotomy in CC negotiations**
  o Annex I Parties – industrialized countries, members of OECD in 1992 + CEITs
  o Annex II Parties – OECD members but not CEITs
  o Non-Annex I Parties – developing countries

• **Developed & developing countries** - no agreed list yet.
• **Regional Groups:** Africa, WEOG, Asia & Pacific, GRULAC, EEG/CEITs
Negotiation Groups prior to 1997

- G 77
- JUSSCANZ
- OPEC
- AOSIS
- China+India
- EU
- Russia
- US
- Australia
- Norway
- Japan
- CH
- NZL
- Business NGOs
- Environmental NGOs
Negotiation Groups between 1997-2001

- G77
- OPEC
- China+India
- AOSIS
- EU
- UNEP
- University of Eastern Finland
- UNFCCC
- Business NGOs
- Environmental NGOs

Countries:
- Canada
- US
- Australia
- Norway
- Japan
- CH
- Russia
- NZL
- Canada
- Norway
- Japan
- CH
- Russia
- NZL

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Negotiation Groups between 2001-2006

- Rest of Umbrella Group
- Environmental Integrity Group
- G 77
- OPEC
- GRILA
- African Group
- China+India
- AOSIS
- U.S, Australia
- Russia
- EU
- CG 11
- CACAM
- Business NGOs
- Environmental NGOs
Negotiation Groups between 2007-2009

- Rest of Umbrella Group
- Environmental Integrity Group
- G 77
- OPEC
- AOSIS
- African Group
- GRILA
- India
- China
- Norway
- EU
- Russia
- U.S
- Australia
- CACAM
- Business NGOs
- Environmental NGOs
Negotiation Groups between 2009-2012

EU
Australia
Norway
G 77
African Group
SICA
LDC Group
OPEC
BASIC
China
Brazil
India
South Africa
Bolivia
Cuba
ALBA
CACAM
Environmental NGOs
Business NGOs
AOSIS
Environmental Integrity Group
Mexico
Korea
CH
Canada
Russia
Japan
U.S.
Identifying Your Coalitions

Key Questions to ask yourself:

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

- Understand the rules of procedure
- Judge the discussion point
- Obtain permission to speak
- Time your intervention strategically
- Write down position before speaking
- Be articulate about your position
- Sound polite, diplomatic but state your ideas/position clearly
- Give others room to react and intervene

Negotiation is about give and take – be flexible and willing to compromise
Negotiation Etiquette

• **Do not contradict statements made by the representative of a coalition to which you belong** – these statements are made on your behalf.

• **Use your intervention to**
  – Support statements made by the Coalition spokesperson
  – Elaborate upon that statement or present additional arguments
  – Explain why the issue is of particular concern to your delegation.
  – Provide your support to previous speakers who have expressed a viewpoint with which you agree.

• **When you agree,**
  – Save time by referencing positions taken or arguments made by others.
  – Note the areas in which you agree.

• **When you disagree** with what another speaker has said, refrain from naming that group or country (do not personalise positions)
  – State your position affirmatively
  – Raise difficulties posed by other position for achieving agreed ends
Negotiation Language

• Understand the basic language of negotiations to know when you are making progress or when losing ground!
Negotiation Language

- **Key terms and phrases:**

  - **“May”** is permissive and discretionary on a part of a country and creates no obligation to carry out an action

  - **“Must”** is required to take an action. “Must” is almost always legally binding.

  - **“Shall”** means an action is required, and is almost binding. Unless “shall” is used with another word that weakens its strength – e.g. “A Party shall endeavor to do x, y, or z”

  - **“Should”** means an action is not required, but is advised – e.g. a Party should try to do x, y or z

  - **Beware!** A slight change in verb tense can make an enormous difference in the commitment that a country makes.
Negotiations Strategies & Tactics

 ✓ Prior to negotiations, prepare a **brief on significant issues** containing:

  - Key issues in order of priority, relative importance & weights
  - What deliverables your Government expects?
  - Relevant MEA articles and related instruments & links (UNFCCC, KP, Marrakesh Accord, Cancun Accord)
  - Relevant documents for discussion under that agenda item, with document numbers
  - Relevant previous decisions, conclusions or recommendations on the issue, esp. from immediately preceding session
  - National goals on this issue, if known
  - Assess positions of other Parties or interest groups & their preference, if known
  - Identify options for linkage & trade-offs between your preference and that of others
  - Outcome expected at session
  - Recommendation for a national position & flexible options
Developing a Negotiating Strategy

✔ Prepare a Negotiation Template:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Definition</th>
<th>Problem</th>
<th>Impact Analysis-Interests</th>
<th>Possible Action</th>
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Developing a Negotiating Strategy

✓ Update it with further details:

<table>
<thead>
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<th>Decision</th>
<th>Position</th>
<th>Offensive Strategy</th>
<th>Defensive Strategy</th>
<th>Possible Reaction</th>
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Other issues to consider

- **Build a package** – define a problem, find some implementation options, flexibility to deal with discussion
- **Form a core group**
- **Find trade-offs** – Use exception, create a narrow start, offer a broad brush approach, provide a compensation clause.
- **Find the right timing** to propose solution or option (negotiation by exhaustion)
Challenges and hindrances to negotiations

Delegation-specific challenges:
• Insufficient/deficient expertise regarding substance, process, institutional dimensions
• Inadequate preparation time
• Unclear negotiating instructions from national capitals;
• Lack of political support from national capitals; undue influence of other Government delegations and specific national interest groups.
Challenges and hindrances to negotiations

Procedure-specific challenges:

• Inability to reach agreement on important rules of procedure;
• Interminable debates regarding procedure that overwhelm the substantive negotiations;
• Inability or lack of understanding on how to use the rules of procedure in tactical ways.
Challenges and hindrances to negotiations

Challenges specific to the **Negotiation Bloc:**

- Negotiation blocs that are too large to ensure meaningful and coherent group positions;
- Polarized negotiating climate within bloc and between blocs; (e.g. IPBES – Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services – EU and Member States dispute over voting rights; on going CC debates for a new regime at Paris CoP21)
- Undue influence of certain actors;
- Inefficient bloc decision-making machinery.
Challenges and hindrances to negotiations

Problems related to the Chair:
• Weak and ineffective chairing
• Insufficiently neutral chairing
• Lack of moral authority
• Insufficient political profile
• Inadequate substantive knowledge
• Inability to broker consensus
• Inappropriate or insufficient recourse to formal-informal consultations.

• Status of ADP Co-Chairs August text on new CC regime (from 88 pages to 20 pages – status?)
Challenges and hindrances to negotiations

Problems inherent in the plenary/contact process:

• Insufficiently articulated options to assist in brokering compromise and facilitate bargaining in the tough phases;
• Excessive exercise of political influence or leverage of certain parties (CITES voting process);
• Lack of political will to settle the tough issues at the eleventh hour
• Lack of sense of urgency and deadlines
• Psychological barriers to settlement
Challenges and hindrances to negotiations

Problems with the Secretariat:

• Inadequate secretariat support
• Inadequate substantive analysis
• Lack of guidance for member states regarding rules of procedure and practices that govern intergovernmental negotiations;
• Inappropriate political influence of the secretariat.
Who is a good negotiator?

- Well-prepared
- Shows patience and listens
- Controls emotions
- Is able to break bigger issues down into smaller ones
- Looks for interest-based decisions
- Rejects weak solutions
- Is able to see the bigger picture
- Uses respect and diplomacy when presenting positions or commenting on another delegation’s position.
- Good language skills
- Strong analytical skills
- Knows well own country’s interests and positions
- Knows positions of other States and coalitions
- Has knowledge of prior negotiations and their outcomes
Conclusion

What to remember:

“FAILING TO PREPARE IS PREPARING TO FAIL”
By Benjamin Franklin