

82

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HOW TO REFORM THE UN CLIMATE NEGOTIATIONS?

PERSPECTIVES FROM THE PAST,
PRESENT AND NEIGHBOUR NEGOTIATIONS



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
Introduction	5
Streamlining the negotiations	6
The promise of specialized bodies	9
Dealing with decision-making	10
President as strategist	12
Conclusions	16
BIBLIOGRAPHY	19

EXECUTIVE SUMMARY

There is a pressing need to clarify, institutionalize and increase the efficiency of the work of the UN climate negotiations. This task starts with a systematic search for possible solutions and the political will to begin a long battle to push them through. At the next stage of maturity, the United Nations Framework Convention on Climate Change should streamline its work programme, cut sessions, eliminate overlaps, and delete agenda items. These kinds of reforms will be politically fraught, and in practice need to be accomplished together with a package of substantive decisions.

Specialized bodies are a promising, yet untested, way to increase efficiency. Specialized bodies hold the promise of turning professional diplomats into professional problem-solvers. This addresses the over-politicization of technical work and calls for a limited mandate, a specific timeframe, a certain amount of dollars, and the need to produce results for the next meeting. It is not politically feasible to address the lack of majority voting in the decision-making of the Conference of the Parties. Enhancing consensus-building via the leadership of the presidency and tested methods of diplomacy is possible to achieve and can bring remarkable benefits. A vote of confidence in procedural matters, electoral voting, and informal soundings could be introduced, if necessary, by strong and able presidencies.

A skilled president ensures efficiency. The most important skills of the presidency are deal brokering, where a clear vision of what is possible is needed, and gaveling, in other words signalling when the consensus has been reached. The presidency should also engage in “lowering the stakes”, by clearly communicating and repeating what is and what is *not* going to happen in the meeting at hand. A skilled presidency that continues the best practices in strategic oversight, as well as the timely and institutionalized use of ministers, are the keys to efficient consensus-building. An open yet strategic consultation process and assuming a neutral role can help the presidency to build sufficient understanding and political capital to overcome obstacles within the negotiations.

Introduction

International climate change negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) are taking place against the backdrop of the continuing increase in global greenhouse gas emissions, the already observable impacts of climate change and the risk of runaway climate change. The urgency for meaningful action has been highlighted by a number of authoritative sources, as has the fact that the 2°C target – which many argue is not ambitious enough to avoid dangerous climate change – is in danger of slipping out of reach.¹

Many are hopeful that the mandate to negotiate a new legal instrument applicable to all parties by the 2015 Paris meeting marks a new era in international climate policy. This cautious optimism is balanced with sceptical views. The UN negotiations have been constantly hampered by procedural disputes and unclear decision-making. The negotiations have intensified on many levels since the 1990s: there have been more sessions, subgroups, decisions, ministers, heads of state, documents and money in the UNFCCC. Many analysts and practitioners have been growing increasingly weary of UN climate talks, which, especially when viewed from a distance, seem to achieve little progress towards an effective solution.

The UNFCCC regime has undergone a significant evolution on the institutional front. The newly established Green Climate Fund, Standing Committee on Climate Finance, Adaptation Committee, Technology Executive Committee and Technology Centre and Network have arguably enhanced the status of adaptation, technology and finance in international climate policy and increased continuity by ensuring their more frequent and thorough consideration. There is also a new, albeit contested, openness towards recognizing and working with non-UN climate policy processes, which is visible, for example, in the current discussions concerning International Cooperative Initiatives.

Is it possible to enhance the efficiency of the UN climate talks, or would attempts at this just open a Pandora's Box of procedural wrangling? A quick look at the agenda of the 19th Conference of the Parties (COP) in Warsaw shows that procedural issues are actually discussed on three different agenda items.² Meanwhile, the Subsidiary Body for Implementation (SBI) has also discussed submissions from parties on “ways to improve efficiency and effectiveness, planning, as well as the structure of the process to streamline it, including budgetary implications”. There might currently be an opportunity to use the momentum of high-profile talks leading up to Paris 2015 to address at least some of the pressing procedural issues. Naturally this consideration needs to be balanced with the main priority, which is to ensure a successful agreement in Paris.

For the purposes of this Working Paper, “efficiency” will be understood in pragmatic terms, as the utilization of time and resources, while also taking into account the outputs and their relevance for the battle against climate change. An “efficient process” is,

1 UNEP 2013.

2 Agenda item 2 (b): Adoption of the Rules of Procedure; Agenda item 6 (b): Proposal from Papua New Guinea and Mexico to amend Articles 7 and 18 of the Convention; and Agenda item 17 (d): Decision-making in the UNFCCC process.

of course, a politically charged concept as, from a critical perspective, efficiency can also be seen as an attempt to prioritize somebody's political agenda. In international negotiations, even the most pragmatic management may become an aspect of social antagonism, instead of being purely "neutral" or "rational" in the way some developed country parties typically might assume. As in the wider debate on UN reform, great powers typically complain that the UN governance is "ineffective" and "bureaucratic" when they are not able to push through their political agenda. Reliance on the Rules of Procedure and other procedural devices frequently presents a legitimate attempt by less powerful negotiating groups to influence the substantive outcome and ensure that their voices are heard. However, procedural tools can also be used in bad faith to "block" the process and to prevent the negotiations from moving forward. The challenge is to strike a balance between (informal, improvised) efficiency and (slow) proceduralism. Bearing in mind these underlying tensions, this Working Paper sets out to explore the efficiency and decision-making of the UNFCCC negotiations, and the extent to which both could be improved by successful oversight of the negotiating process.³ The paper draws upon the author's participatory observation work in the UNFCCC negotiations,⁴ and interviews with prominent experts,⁵ and a workshop that took place at the Nordic Council of Ministers in Copenhagen.⁶ Many of the ideas presented in this Working Paper are based on the work conducted in this context.⁷ These ideas have also been enriched and further developed in close correspondence with Prof. Kati Kulovesi.

The paper begins by outlining the backdrop of intensive yet inefficient formal intersessional negotiations, and by noting the promising but untested waters of specialized bodies. It then turns to COP decisions, highlighting their continuous and growing importance, and presenting insights into the current discussion on majority voting and consensus. After that, the focus turns to the practices of consensus-building and the role of the presidency.

3 This FIIA Working Paper draws on the author's academic work on the issue. See Vihma & Kulovesi 2013; Vihma 2014.

4 The author has participated as an observer, writer/editor for *Earth Negotiations Bulletin* or as a consultant in the United Nations Framework Convention on Climate Change in Vienna (27–31 August 2007), Bali (3–14 December 2007), Bonn (2–13 June 2008), Poznan (1–12 December 2008), Bonn (2–13 June 2009), Bonn (10–14 August 2009), Barcelona (2–6 November 2009), Copenhagen (7–18 December 2009), Bonn (9–11 April 2010), Bonn (2–6 August 2010), Cancún (29 November–10 December 2010), Bonn (6–17 June 2011), Durban (28 November–10 December 2011), Bangkok (28 August–7 September 2012), Doha (26 November–8 December 2012), Bonn (29 April–3 May 2013), and Warsaw (11–22 November 2013).

5 Fourteen (14) semi-structured interviews were carried out in 2013 with prominent experts to enrich the analysis.

6 A working paper was commissioned by the Nordic Working Group on Global Climate Negotiations (NOAK) to serve as a discussion paper for the workshop, see Vihma & Kulovesi 2012.

7 Vihma & Kulovesi 2012; Vihma & Kulovesi 2013.

Streamlining the negotiations

The substantive scope, pace and complexity of the formal UN climate negotiations have increased significantly over the last twenty years. Several analysts have elaborated on the different aspects of this “intensification” of climate negotiations since the 1990s: there are more bodies, a sophisticated institutional architecture, more meetings and more participants in the process. Although this partly reflects the maturity of the climate regime, “whereby issues evolve and institutional learning uncovers ever more topics of relevance to the negotiations”,⁸ there are also grounds for looking at the intensification from a critical perspective. There seems to be considerable room for enhancing effectiveness. Addressing this requires sustained political efforts, and perhaps a clearer understanding of the role of the UNFCCC within the wider context. Some of the by-products of intensification include:

- *Clear overlaps in the agenda.* Technology issues were an example of this in 2012, and were considered by both the SBI and Subsidiary Body for Scientific and Technological Advice (SBSTA), the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA), as well as the newly founded Technology Executive Committee and Climate Technology Centre and Network.
- *Increasing procedural wrangling and prolonged agenda disputes at COPs and intersessional meetings.* Very recent examples of delays due to agenda controversies include the AWG-LCA14 in April 2011, where the agenda was only agreed on the final day of the five-day meeting. In June 2011, the opening plenaries of the Subsidiary Bodies (SBI34 and SBSTA34) remained suspended for the first three days pending agenda discussions. In May 2012, the Ad Hoc Working Group on Durban Platform for Enhanced Action (ADP) only adopted its agenda on the final day of the two-week meeting. In June 2013, the SBI36 could not adopt its agenda and the whole two-week meeting was de facto cancelled.
- *Slow progress in the Subsidiary Bodies and other formal intersessional negotiations.* An illustrative example of this was the Second Review of the Capacity-Building Framework, which took four (4) years until it was completed in Durban in 2011, although the matter was not particularly sensitive politically, at least not to the extent of several other climate regime agenda items.

The duplication of work, agenda disputes, and slow progress have contributed to the overall sentiment that formal intersessional meetings do not constitute the most efficient use of negotiating time and resources. The feeling is reinforced by the pre-Copenhagen experience, which painted a bleak picture: after nearly fourteen weeks of intense negotiations under the AWG-LCA since 2008, and with some kind of climate meeting organized by the Secretariat on 140 days during 2009,⁹ the official negotiating text before the Copenhagen meeting was still nearly 200 pages long and included over 2,500 parentheses indicating areas of disagreement.¹⁰ This goes to show that the civil servant-

8 Depledge & Chasek 2012, p. 24.

9 See the UNFCCC calendar, available on the Internet at www.unfccc.int (accessed 6 September 2014).

10 *The Earth Negotiations Bulletin*, Vol. 12, No. 459, 22 Dec. 2009.

level negotiations failed to produce a text with any maturity for the political negotiations in Copenhagen, regardless of the considerable amount of extra time allocated to formal negotiations in 2008–2009.

Analysts have voiced several other criticisms regarding the excessive number of meetings.¹¹ They drain donor budgets for multilateral environmental agreement-related activities, including implementation of the agreements under discussion, and spread the resources of poor countries more thinly. The more time officials spend on the road, the less time they spend actually working on treaty implementation on the ground. Increased specialization in different subgroups also leads to implementation challenges. As negotiations become more complex and develop their own lingo and multitude of acronyms, they become harder to communicate to wider audiences. Furthermore, the outcomes become more difficult to implement in the domestic sphere without trained and experienced specialists. One example of this is the tiny percentage of Clean Development Mechanism projects that have taken place in Africa, highlighting the difficulties faced by poor countries in keeping up with the complexities of implementation. From a political perspective, some analysts have also argued that increased intersessional meetings may give the “laggards” in the process opportunities to open up and renegotiate COP decisions. Some experts interviewed for this study noted that the Subsidiary Bodies work predominantly in the framework of the North/South divide, which tends to over-politicize technical and scientific issues. Depledge has also indicated that Saudi Arabia has specialized in provoking conflicts and obstructing intersessional meetings, while staying out of the high-level political conflicts and global media spotlight.¹²

From a political point of view, cutting down on meetings, bodies or groups is by no means easy, as the agenda plays a strategic role in determining which issues will and will not be considered. In this regard, some of the Kyoto Protocol institutions have a good track record – they have trained officers, deleted agenda items and organized joint sessions. However, agenda debates can easily become highly politicized. For instance, the proliferation of agenda items related to technology or “response measures” reflects strategic moves and priorities by some parties. It seems that in both good and bad cases, the agenda modifications are linked to the substance of the negotiations. A more efficient agenda and a streamlined work programme can only be achieved with a careful political balance and ministerial involvement, coupled with a package of substantive decisions. When it comes to agenda management, longer-term and more strategic planning could be introduced. This could entail, for example, a yearly focus – one year “reporting”, next year “financing”, and so on.

A related issue that was addressed by many interviewees is the “COP circus” or the “yearly COP hype”, the common political expectation to produce a new initiative or institution every year, usually attached to the name of the host city. This could be eased with more strategic agenda-planning, and a clearer picture of the key competences of the UNFCCC. Apart from the counterproductive pressure for excess policymaking, big yearly COPs in different locations burden the Secretariat in several ways, and also provide logistical challenges as a result of increased security and delays in accessing meetings. The counterargument is, of course, that if we do not have this implicit yearly

11 See Depledge & Chasek 2012, p. 22.

12 Depledge 2008.

requirement for policymaking, we would not make any progress at all. Some have also suggested that the “COP road show” is vital for publicizing the climate change issue. At least the most non-functional spots for negotiations should be avoided: yearly COPs must be more about effective negotiations than serving Ministries of Tourism or being the global flagship of the public climate change discussion.

As crystallized by a seasoned observer, “there is only so much policy one can make”. Several smaller multilateral environmental agreements have reformed their practices and tightened their focus as the conventions have matured. In a couple of years, opportunities should also arise in the UNFCCC that enable parties to reconsider the organization of work in the broader negotiations, and the possibility of using the new specialized bodies to eliminate agenda overlaps should be thoroughly explored.

The promise of specialized bodies

An interesting trend exists for shifting the workload from plenaries to specialized committees. As noted by a prominent expert, committee work holds the promise of “turning professional diplomats into professional problem solvers”. This takes place via a limited mandate and timeframe, a certain amount of dollars, and the need to produce results for the next COP. In this view, the individual negotiator goes through “professionalization” due to his more specific role as a committee member, raising the question of the force of the mandate (to professionalize, address over-politicizing) vis-à-vis the force of Rules of Procedure in decision-making.

So far there is still only limited evidence on the possible effectiveness of the committees. New institutions on finance, technology and adaptation that were left vague for political and legal reasons in Cancún in 2010 have only recently been operationalized, and remain in the early stages, even following the 2012 Doha decisions.

One promising, albeit short, example was the work of the Transitional Committee for the Design of the Green Climate Fund, which was launched in Cancún and delivered its work to the following COP17 in Durban. Although the Committee’s text ultimately became a political bargaining chip, and the last meeting of the group was unable to reach agreement on adopting its recommendations and the draft governing instrument for the Green Climate Fund, the Transitional Committee was nevertheless successful in doing the necessary preparatory work, as it was ultimately agreed in the COP17 in Durban that basically the same text would serve as the design for the Green Climate Fund.

There is a delicate balance, noted one interviewed insider, in the COP-committee relationship. On the one hand, the specialized body should have the courage to outline alternatives for the COP, not only propose a consensual package text. On the other hand, the mandate must be respected, as the COP may change its view on the usefulness of a specific committee, should it “jump over the fences” and start becoming too proactive. The committee work should also have the trust of the UNFCCC process – a report prepared by the committee should not be “discussed in nine slots in a subsidiary body meeting”. Some concerns have already been raised over the lack of connection between the new committees and entities involved in implementation. There might still be opportunities for some organizational streamlining.

Many interviewed experts also highlighted that committee work is susceptible to the influence of strong personalities and personal dynamics. One person may influence the opinion of the whole group and consequently the decision taken by the COP; one or two people could also hamper the iterative thinking process by, for example, constantly questioning the mandate of the group. Techniques such as breakout sessions can be (and already have been) used as a tool to bypass personalities with obstructive tendencies. Some representatives, on the other hand, “have not said a word in three consecutive meetings”. According to the persons interviewed, it is thus not an easy task to find the right group of people to participate in specialized bodies such as the Standing Committee on Finance or the Technology Executive Committee. In the case of the latter, for example, its members should ideally have extensive expertise in technology issues. As the COP is often unable to provide specific guidance and the Secretariat also lacks profound expertise, the committee should be able to draw on its own expertise to sketch options for the COP. Furthermore, the members should ideally also build networks and linkages with other institutions. On the other hand, members of specialized bodies must also have a good understanding of how the UN climate negotiations work; otherwise the expert bodies risk becoming alienated by the political process in the COP.

While there may be challenges regarding inclusiveness in smaller groups, if the conformation and representation of all the different groups is carefully executed, these groups should still be able to reach agreements that will then be acceptable to the whole membership. This could save resources and promote efficiency considerably. As the Convention creates more bodies and a wider institutional framework, it will be necessary to move towards a system in which these groupings work efficiently and report back to the full membership of the Convention.

It is useful to bear in mind that several less-than-successful bodies have also been created in the past, such as the Special Climate Change Fund founded in 2001. There is reason to remain agnostic, and wait a few more years before we can declare success on any of the newly created bodies on finance, technology and adaptation. However, the potential exists for the specialized bodies to be of significant help in enhancing the efficiency of the climate process.

Dealing with decision-making

The difficulty in reaching agreement on a new climate treaty for the post-2012 period has channelled interest and attention towards examining the possibilities offered by, and the limitations of, COP decisions in implementing the UNFCCC and shaping global climate politics.¹³ Hundreds of COP decisions have been adopted following the entry into force of the UNFCCC. The vast majority cover relatively technical issues; however, there have also been examples of COP and COP/MOP¹⁴ decisions with far-reaching political consequences. The importance of COP decisions is currently underscored by the functions and challenges of the upcoming negotiations, which will aim at *operationalizing* a potentially rather loose agreement of the Paris COP21 from 2015

13 For a more detailed analysis, see Vihma 2014.

14 The equivalent of the COP under the Kyoto Protocol is the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP).

onwards, and *coordinating and mandating* the work of various specialized bodies working on finance, technology and adaptation, as well *establishing relationships* with various International Cooperative Initiatives.

The recent meetings have reminded the wider climate policy community that decision-making under the COP and the COP/MOP takes place in a legal vacuum. This is because the COP has never been able to agree on its Rules of Procedure, as mandated by Article 7.2 of the UNFCCC. Initially, no consensus on their adoption was reached at the last preparatory meeting in 1995 before COP1, with the negotiating aim of Saudi Arabia and OPEC countries becoming the *de facto* outcome: all decisions must be taken by consensus. The sticking point was and remains Rule 42, which contains several options on majority voting. The lack of agreement on the Rules of Procedure means that the COP has held its nineteen sessions operating on the basis of the draft Rules of Procedure (FCCC/CP/1996/2) without Rule 42, under a general understanding that the decisions must be taken by consensus. The climate change regime shares this challenge with its “sister” Convention on Biological Diversity which, for similar reasons, has yet to adopt its voting rules.

The consensus requirement for 195 countries is problematic. It gives undue weight to parties with obstructive tendencies – parties that prefer no outcome to any available outcome may successfully water down agreements with brinkmanship strategies. Political transparency and accountability are called into question as “behind the scenes” opposition is possible and parties do not have to show their hand openly. The application of consensus ultimately depends on the president’s perception and abilities (section 4 below), and final plenaries of big meetings have become increasingly unpredictable and theatrical, as decision packages are gavelled – or not gavelled – through objections.

In the event that things go wrong, according to a popular idiom, one should “never waste a good crisis”, suggesting that procedural reforms can most successfully be addressed at difficult times. Some analysts see that the recent COP history, especially the final plenaries of the Copenhagen, Cancún and Doha meetings, indicates that an opportunity to use such a procedural crisis to revitalize the discussion on majority voting may be on the cards.¹⁵ However, there are many failed COPs in the history of the UNFCCC, and these have not triggered profound reforms to address the chaos caused by the consensus requirement and other unclear practices. In contrast, there have been several unsuccessful attempts to start majority voting in the UNFCCC.¹⁶ The most serious push to reach consensus on the Rules of Procedure took place in informal consultations by the COP presidency in 1997, but did not lead to a breakthrough. A more recent alternative route has been proposed by Mexico and Papua New Guinea, which have tabled a proposal to amend the Convention itself regarding voting. This could, as such, lead to considerable hurdles, as the ratification process tends to be time-consuming, and many key parties would be highly unlikely to ratify. As a pessimistic example, having been adopted in 2005, the Belarus amendment to Annex B of the Kyoto Protocol has not yet entered into force.

15 For this perspective, see Kemp 2014.

16 For an overview, see Werksman 1999.

Moreover, the politics required to support any kind of majority voting do not seem to be in place. In the current negotiations the stakes are high, major emitters such as the US, China and India are becoming more and more cautious, and are in all likelihood positioned against majority voting. Even the EU has shown only lukewarm interest in pushing for a major voting solution to the decision-making quagmire faced by the UNFCCC.¹⁷ Russia has tabled an initiative to discuss the decision-making in the UNFCCC process, after its objections were not noted in the Doha COP18 final plenary. Russia has suggested formalizing the practices of consensus on paper – which also seems like a very challenging task politically, and will likely not gain much support.

In the absence of a rules-based voting system, the interpretation and application of “consensus” remains the predominant path to enhancing UNFCCC decision-making. The mainstream opinion of international lawyers would have it that consensus is denoted by the Chair’s perception that there is no sustained, stated objection. However, international negotiations seem to develop their own contextual interpretation of consensus, either through rules or practice. Detailed discussions on the meaning of consensus took place, for instance, in the context of COP6 of the Convention on Biological Diversity in 2002, as Australia registered a formal objection to the adoption of a decision on invasive alien species. It has certainly been the practice in the UNFCCC – as well as in several other environmental treaties – that decisions have been gavelled through a limited amount of opposition, as far back as Rio (1992) where the Convention was adopted despite objections by OPEC countries, and recently in Cancún (2010) where a package of COP decisions was adopted through the protests of Bolivia, and in Doha (2012) where Russia, Ukraine and Belarus objected to the adoption of the decisions under the Kyoto Protocol.

Smoothing the decision-making process with more modest voting initiatives would require a shift in the political culture of the UNFCCC, but is certainly possible for a limited section of issues. A *vote of confidence* for the chair in procedural questions is possible according to non-contested Rules 34, 35 and 38. The Rules of Procedure also enable voting for the *election of officers*, mandated by Rules 51, 52 and 53. Voting is already a practice in some operational bodies of the Kyoto Protocol, such as the Executive Board of the Clean Development Mechanism and the Compliance Committee. Informal voting has taken place only once in the history of the COP, on the question of whether to locate the Secretariat in Bonn or Geneva. This voting was styled as “informal sounding” and allowed those with the fewest “votes” to withdraw after each round. Officers have never been elected by voting, although in the SBI 36 meeting in May 2012 this was close and an actual ballot box was brought to the plenary. The situation was ultimately resolved without a vote. Sometimes the Chair has called for a show of hands to reveal the amount of opposition – for example the SBSTA Chair, Tibor Farago, used this method at COP2 in 1996 during the negotiations on how to respond to the IPCC Assessment Report. Several experts feel that voting on officers may well be needed in the future, as some countries seem to be increasingly using the nominations process to cause disputes and block progress on new institutions. As is the case when dealing with consensus, procedural/electoral voting, as well as informal soundings, require a strong presidency.

17 Draft EU Position Paper for SBI 38 (2013): Arrangements for Intergovernmental Meetings (AIM). On file with the author.

President as strategist

The COP presidency can play a vital role in the success of climate negotiations. The president leads the strategic organization of the negotiations, to a large extent in cooperation with the Secretariat. Strategic and tactical decisions taken by the COP presidency typically relate to the conduct of decision-making, use of different negotiating settings, choices concerning negotiating texts, time management, transparency, the involvement of ministers, and consultation with other stakeholders. The Rules of Procedure regulate the basic functions of the COP presidency, which is normally subject to rotation among the five UN regional groups. Although the president remains formally in place after the COP, the incoming presidency generally takes charge of preparing for the next one. The annually rotating nature of the COP presidency is a firmly established and widely appreciated practice. It does imply, however, that the strategic leadership style will change with each successive presidency, including the manner, scope and intensity of informal preparations.

The overall context of North-South politics in the UN climate talks influences and limits the role that can effectively be taken by the presidency. It has been pointed out that COP presidencies conducted by developed country parties face a more difficult job and are more easily accused of bias.¹⁸ Moreover, as noted by a prominent expert, there is “a sad history of well-meaning European COP presidents”. In particular, the examples of the Netherlands (2000) and Denmark (2009) – both of which worked hard to make their meetings successful and possess a formidable record in development cooperation – raise questions on whether European countries might have a tendency to overestimate their good reputation and the extent to which they have the ear of the South in multilateral negotiations.

The recent experiences of the high-profile Mexican presidency are worth highlighting. Mexico committed itself to conducting a process that would be transparent and inclusive. This was necessary in the context of 2010, to regain the trust of the parties after the diplomatic conflicts of Copenhagen. Furthermore, in order to achieve this trust, the Mexican presidency identified the need to manage the expectations adequately. After the “Copenhagen hype”, noted one expert, there was a need for the parties to know in advance “what was possible and what was not possible”. The presidency also needed to clearly communicate *how* they intended to achieve what was possible. Thus the Mexican presidency “spent a good part of 2010 discussing the process”. Most of the meetings conducted by Mexico took place in Mexico City, without disturbing or undermining the formal negotiations in three Bonn sessions and Tianjin. This effort, along with the parties’ mutual desire to “save” the UNFCCC process and multilateralism, contributed to the success of the Cancún Conference, where the transparent leadership style of the Mexican COP presidency appeared to be widely appreciated by most parties. Through its leadership strategy, the Mexican COP presidency was able to generate a sufficient degree of support, goodwill and trust to enable COP president Patricia Espinosa to openly overrule Bolivia’s objections to the adoption of the Cancún Agreements without protests from other parties. This manifests how the handling of last-minute procedural issues is a question of the political capital of the presidency, which is built up over the course of the year and informal negotiations.

18 Depledge 2010a, p. 12.

An “open and inclusive process” in the COP may seem to be a highly desirable and legitimate ideal, but as everyone familiar with the UNFCCC negotiations can attest, it is also time-consuming to work towards. The presidency has to complement the inclusive plenary work by convening small groups for informal exchanges of ideas. According to the experts interviewed for this study, the relevant elements contributing to the success of this work are:

- organizing these gatherings as informal meetings under the responsibility of the presidency;
- carefully selecting the topics and the countries invited;
- leaving the door open to everyone even if the invitation is only for countries deemed relevant for a particular topic, and;
- informing the plenary meetings of the informal consultations held by the presidency.

With these elements, a balance between efficiency and inclusiveness may be achieved. The Mexican format proved largely successful, although the Cancún meeting was also accused of setting aside “open and participatory methods normal in the UN”, and it has been claimed that senior negotiators’ work was “overtaken” by ministerial-level guidance.¹⁹ These claims will in any case be made by certain stakeholders and parties that are, it seems, not aiming at environmentally substantive outcomes, but at publicizing the global inter-state class struggle agenda in the spirit of the 1970s and the New International Economic Order.

One interesting example of active presidency outside the climate regime is the crucial and successful Nagoya meeting of the biodiversity regime in 2010. The Japanese COP presidency played an active role, and convened “secret meetings” between key players.²⁰ Japan convened, *inter alia*, a closed meeting in conjunction with the ministerial segment of the COP, which included some, but not all, of the key negotiating groups. While the process upset some negotiators, the Nagoya Protocol’s text was finalized based on the Japanese presidency’s compromise proposal. The outcome also benefited from financial pledges put forward by the Japanese government – although it is worth noting that this amount of funding would be unlikely to unlock any political disagreements in the climate regime, where the financial stakes are arguably much higher.

The key question is the applicability of the Mexican example to the current political circumstances. The Mexican presidency operated before the “Durbanization” of the negotiations, namely the push for “applicability to all” and legal symmetry in the post-2020 agreement, and the formation of Like-Minded Developing Countries, comprising conservative China and India as well as oil-exporting countries, to resist this push. An interesting and quickly spreading tool in consensus-building is “the huddle”, in which key countries negotiate – usually the final details – unofficially under everyone’s noses in the plenary. This replicable model seems to have mushroomed in climate talks since the Durban final plenary in 2011. In Cancún the previous year, all the final wordings were still agreed behind closed doors. The huddle method and the relative transparency it brings about seem to be a reaction to the tension caused by both the Copenhagen

19 Khor 2010.

20 Nijar 2011.

experience and “Durbanization”. In the huddle everyone can see the decision-making process, but few can participate.

Other important themes and questions to be considered by the presidency in the given political context include:

- *Strategic messaging and expectation management before and during the COP.* When the stakes are very high, like in Copenhagen, politicians may fear that playing their hand poorly would lead to enormous political and economic consequences domestically. Such fears may lead to countries stepping on the brakes. The president should engage in lowering the stakes by clearly communicating, and repeating, what is *not* going happen in the meeting at hand. At the same time, the presidency should ensure that the issues of concern for these parties receive close political attention.
- *Sophistication in building inter-linkages between issues.* As noted by one interviewed insider, most of the time “we have been building packages with entire content lumped into one”.
- *Timing of new texts and informal meetings.* This is important in order not to trigger unnecessary negative reactions. The presidency must carefully consider “when would be a good time to have the Like-Minded Developing Countries and the Umbrella Group in one room”.
- *The limitations of the “trust-building” techniques.* These are evident, especially when the stakes are high, as is the case with the crunch meetings of the UN climate regime.²¹ In this regard, it is more productive for the presidency to focus on consistency, transparency, and an understanding of where parties’ key interests lie.
- *Distinguishing between the facilitation and steering roles.* In 2010 Mexico gave a prime example of neutral facilitation, perceiving themselves as “honest brokers”.

According to some experts, some presidencies have felt “unsupported” by the Secretariat, and there is a need for more training as well as transparent and consistent legal support. With the recognition of the leadership and clarification of the roles of the presidency and other officers, they need increased support and high-quality advice. This support must be transparent and consistent, and clearly answer the decision-making concerns: can the Chair call a vote, and when can a decision be gavelled? Clarity and transparency are currently needed, as both presidencies and parties are fearful and uncertain about the process.

The use of ministers has arguably been enhanced in recent years. The old reputation of the UNFCCC being “hostile to ministerial input”, as noted by a veteran negotiator, is no longer warranted. A crucial issue for the presidency is to make the most of the political-level talks at the end of each COP. The presence of ministers lends prestige and political momentum to the decision-making process. Their key function is to provide the political guidance necessary to push forward controversial issues: the assumption is that

21 Davenport et al. 2012, p. 39.

ministers can “rise above the squabbling among officials and sanction bold decisions”.²² Without active ministerial involvement, landmark agreements such as the Convention itself, the Kyoto Protocol, and associated landmark decisions such as the Marrakesh Accords would never have come into being. An element of great relevance in the decision-making process and in the leadership of the presidency is to clearly identify:

- the level at which each topic must be addressed;
- at which point in time to raise the selected issues to higher levels, and;
- the topics and the means of communication that are appropriate for ministers and/or for heads of state.

In principle, only mature, and highly political, choices should be addressed at the ministerial level. In the somewhat over-politicized climate talks, there is a risk of pushing technical work onto the ministers. The formal high-level segment, in which prepared monologues go on late into the night in almost empty plenary rooms, has been complemented with thematic round tables, co-chaired by ministers, typically from developing and developed countries. A recent successful example of this approach was in Cancún COP16, where the leadership and skill of the Indian minister of the environment, Jairam Ramesh, was particularly instrumental in negotiating compromises over transparency and reporting.

There are also some, albeit rare, examples of a skilled and hard-working presidency with low ambitions. In Rio+20 the Brazilian presidency took over the process from the working groups, drafted a careful and unambitious text that did not cross any “red lines” of significant parties, and presented the result as a final package, “take it or leave it”. Brazil correctly assumed that the ambitious parties would agree to the text although it held very little for them, and difficult issues were pushed to further negotiations in the UN General Assembly. No intensive ministerial negotiations took place in Rio, no calls were made late at night to capital cities as the role of the ministers or heads of state was reduced to signing the package. The diplomatic skills of Brazil have been rightfully lauded,²³ but the meeting also left many wondering about the point of having political decision-makers involved in the process at all.

Conclusions

Following the Copenhagen meeting, a narrative took hold that there is a need to “save” multilateralism and safeguard the role of the UNFCCC as the legitimate, universal forum for global climate policy. Thus, at the subsequent Cancún conference, UNFCCC Executive Secretary Christiana Figueres, UN Secretary-General Ban Ki-moon and Mexican President Felipe Calderón all underscored that the Cancún conference was about saving the UN climate regime, and would have important implications for multilateralism as a whole. Also in Durban in 2011, as COP president Maite Nkoana-Mashabane urged the final plenary to adopt the decision texts, she highlighted that the multilateral process remains fragile, and “cannot take another shot”.

²² Depledge 2010b, p. 18.

²³ “Brazil – the Land of Olympian Diplomats”, *Earth Negotiations Bulletin*, Vol. 27 No. 51, p. 22.

At the next stage of maturity, after the passing of the procedural crisis of Copenhagen, the UNFCCC could streamline its work programme, cut sessions, eliminate overlaps, and delete agenda items. These kinds of reforms will be politically fraught, and in practice need to be undertaken together with a package of substantive decisions. Possibilities opened up by expanding the use of specialized bodies must be thoroughly investigated in the coming years. There needs to be increased clarity on how the new bodies on finance, technology and adaptation work together, and how they can enable the COP to do more things in an efficient manner.

In the foreseeable future it does not seem possible to formalize the decision-making – but it is possible to smoothen it, as well as the whole UNFCCC process. Consensus will remain undefined, and consensus-building faces serious problems when dealing with parties that do not, after considerable efforts made by others, engage in the negotiations. Voting is highly unlikely to become a practice at the present stage of the UN climate regime – it currently seems that the support for majority voting has actually declined over the years as the stakes have become higher for key countries. Voting is already technically possible in some limited cases, such as over procedures, the election of officers, and informal soundings. Utilizing these options could be useful. Secondly, the precedent set by the UNFCCC's practice of overruling objections in several COPs leaves some crucial political space for COP presidents. However, the use of this political space runs the risk of stretching the “consensus” too far with an unskilled presidency, coupled with a subsequent political backlash over the legitimacy and effectiveness of the whole UNFCCC.

Decision-making in the UNFCCC process is complex and may be confusing. As one interviewed expert noted, “it is clear that the Convention was drafted by environmentalists and not by diplomats”. This condition also makes the role of the presidency particularly relevant. The process in itself is so complex, with a diversity of meetings and topics, that if the presidency does not have a very clear idea of what it wants to achieve and, equally importantly perhaps, of *how* it wants to achieve this, the process may become a frustrating and ineffective talking shop. Unfortunately, this indispensable leadership role of the presidency has been lacking on many occasions – one could even make the case that it has been lacking most of the time – and it is certainly not fully recognized by all member states. Therefore, each presidency with ambition has had to fight for the leadership position and decide for itself how to play this role. While COP presidencies are based on voluntary offers from UNFCCC parties, and will retain discretion concerning their process and degree of active engagement, one question to strongly consider is how to encourage the continuation and institutionalization of best practices given the rotating nature of the COP presidency. Continuity in the best practices of the presidencies and more strategic planning in the work programme would be much-needed assets.

The most important presidency skills have to do with the hard work of inclusive yet strategic informal preparations, knowing when to listen and when to steer, and timing the tabling of crucial issues effectively. Through enhanced leadership from the presidency, there are possibilities for increased consistency and transparency in COP meeting conduct. The sense of inclusiveness and the ownership of countries are achieved by and large by what happens outside the formal negotiations. Ultimately, the Cancún exercise showed that an open yet strategic consultation process can help to build

sufficient understanding and political capital to overcome last-minute objections from obstructive parties within the negotiations.

Deepening the ministerial involvement is also critical. In recent years it seems that although many ministers attend the COP and the pre-COP meetings, few have the same presence as some key ministers of the past, who had a deep understanding of the parties' views and could even work with actual decision text. However, the utilization of ministers in COP meetings themselves has been increasingly rational and efficient – it would be wise to continue on this path, and get rid of the formal statements in the high-level segment altogether.

Bearing in mind the maxim that “there is only so much policy one can make”, there will always be in-between COPs, meetings that will not be intended to make major breakthroughs but just provide stepping stones on the way to other conferences. For these meetings, there is naturally no need to embark on a great diplomatic initiative. Perhaps in due course the UNFCCC can follow several other MEAs and make its COPs biennial – but this is currently neither feasible nor desirable.

This Working Paper has focused on procedural and organizational ways of enhancing the efficiency of the UN climate talks. Several slightly more substantial issues could contribute to the same end. First and foremost, increased clarity on the role of the UNFCCC and common understanding on what the international community wants the UNFCCC to achieve would make negotiations more effective. Is the target a legally binding treaty for all or not? Is the goal still to create international carbon markets with a centralized system? Second, the country groups should be clarified: Who speaks for whom? How can some parties belong to five different groups? The current groupings, it seems, are not very well adapted to today's politics. The situation is complex and may well create mistrust and misunderstandings.

Finally, the inadequacies of the UN and interstate governance extend far beyond climate, the environment and sustainable development. Is effective and legitimate global governance possible, and where are the limits of rational planning and pragmatic application on the global scale? We are, ultimately, in the realm of political theology. Climate policy and the UNFCCC will be in the front row in answering this question in the twenty-first century.

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