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PROE**

# Multilateral Environmental Agreement **NEGOTIATOR'S HANDBOOK**

PACIFIC REGION 2013



 **THE UNIVERSITY  
OF AUCKLAND**

 NZ Centre for  
Environmental Law

  
**UNEP**



**ACP MEAs**



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## Foreword

The acronym "IEG", also known as International Environmental Governance, is ubiquitous in international Sustainable Development meetings and debates. Even more so is the term "Multilateral Environmental Agreements" (MEAs). These terms have contributed significantly to the proposed International Framework for Sustainable Development, highlighting the cross-cutting nature of environmental issues.

Increasingly, officials from governments throughout the world are participating in international negotiations, whether multilateral or bilateral. This Handbook has been developed to respond to the needs of these negotiators, as a practical reference tool to assist them in handling the many complex challenges they will encounter.

Negotiators need, of course, to be thoroughly versed on the subject matter they are expected to debate and to be able to anticipate how the outcomes will affect their countries. They need an intimate knowledge of the procedures and workings of these meetings and of the various actors involved. This Handbook provides comprehensive and practical advice to negotiators of every stripe in what is an intensely dynamic and pressured environment.

These negotiations result in the creation of international law and policy so Pacific Island negotiators need to find their seat at the table of the global community, represent their region effectively and then collaborate with others in the implementation of these norms.

This Handbook will be the perfect companion to the earlier released booklet for Pacific Island negotiators: "Taking the Floor". Applied diligently, these two tools will provide a solid basis for improvement in the skill and confidence levels of Pacific Island negotiators.

Building the capacity of the MEAs actors in the Pacific region is one of the main objectives of the ACP-MEAs programme. I would like to thank, on behalf of UNEP, the European Commission for their funding of the ACP-MEAs Capacity Building Programme, which has made possible the production of this Handbook.

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# Introduction

In the Millennium Report, the Secretary-General of the United Nations highlighted that “Support for the rule of law would be enhanced if countries signed and ratified international treaties and conventions”; however he noted many countries are unable to engage effectively owing to “the lack of the necessary expertise and resources.” In response to this need UNEP and its joint partner University, the University of Joensuu, produced the first and second editions of this Handbook [*Multilateral Environmental Agreement Negotiator’s Handbook*, 1st edition (University of Joensuu, 2004), *Multilateral Environmental Agreement Negotiator’s Handbook*, 2nd edition (University of Joensuu, 2007)]. More recently, as part of capacity building efforts targeting the specific needs and interests of the Pacific region, it was recognized that the second edition of the Handbook could usefully be reworked to create a document more suited to the needs of the region. The New Zealand Centre of Environmental Law, in association with the Secretariat of the Pacific Regional Environment Programme (SPREP), undertook this work.

The first and second editions of the Handbook, on which this Pacific version is substantially based, were prepared as a practical introduction to negotiating or working on Multilateral Environmental Agreements (MEAs). They were prepared for people with little or no technical background in negotiations. They were also intended to function as a key reference tool for experienced negotiators. As a result the subject matter is developed at a relatively broad level. However, technical information and language was retained and used in context, with understanding facilitated by a comprehensive glossary prepared by UNEP. This new Handbook preserves these key aspects but has enhanced the accessibility of information and, where appropriate, used examples and material of particular relevance to the Pacific Region.

In recent years, work in the international environmental field is focused more on the implementation of existing MEAs than on the development of new agreements. To deliver the intended environmental outcomes we need to increase efforts to negotiate practical issues and technical rules for implementation while also addressing gaps when promoting integration between MEAs. Our abilities to achieve these tasks will be tested by the complexity and urgency of issues such as climate change, biodiversity loss and human development. As the outcomes of the 2009 Copenhagen meeting on climate change demonstrated, our resolve to agree will be tested by a range of factors, and this may lead to new approaches to negotiation processes and objectives.

This Handbook begins with a brief history of MEAs and major conferences. It lays out the elements of MEAs, common provisions and the relationships between them. It reviews the “rules of the game” (from the basics of treaty law to rules of procedure and finance) and gives an overview of the playing field and key actors. It also looks at structures and roles, provides approaches to drafting and strategic issues, surveys international cooperation issues, provides a synthesis perspective, and looks at a typical day in negotiations. This Handbook covers negotiation products and provides a useful checklist. The reference tools include information on agencies most active in the Pacific region, a new bibliography of useful literature (including electronic sources) and the *Glossary of Terms for Negotiators of Multilateral Agreements* (UNEP, 2007). Every effort has been made to provide up-to-date information.

In addition to the *Multilateral Environmental Agreement Negotiator’s Handbook*, 1st edition (University of Joensuu, 2004) and the *Multilateral Environmental Agreement Negotiator’s Handbook*, 2nd edition (University of Joensuu, 2007), the other key sources for this Handbook were the *United Nations Treaty Handbook* (revised edition, 2012) and the *Glossary of Terms for Negotiators of Multilateral Agreements* (UNEP, 2007).

MEAs are becoming more common in government life necessitating greater familiarity by more people. We hope this book will greatly assist in that regard.



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# Acknowledgements

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

Copyright in the first and second editions of the Handbook is held by UNEP in association with the University of Joensuu.

This Handbook for negotiators is intended to be a useful tool for the myriad processes of international environmental negotiations. Readers are invited to send any comments, suggestions or updates they may have for this material.



# Four Key Principles in multilateral negotiations

## 1. Understand the importance of negotiations:

- Representing your country is a serious undertaking and a major responsibility.
- Ensure that you fully understand the subject matter, your country's interests, and the interests of other countries.
- Responsible judgment is essential. Think twice before acting.
- Listen carefully to what is said and, just as importantly, to what is not said.

## 2. Respect the process and the participants:

- Learn about the forum's formal and informal rules of procedure.
- Unwarranted obstructionism can undermine the whole system:
  - Treat every participant courteously and honestly. Good relationships are invaluable assets when thinking about the long-term.
  - Participate constructively, even in difficult situations.
  - Look for win-win situations, as well as opportunities to support countries with different interests.

## 3. Aim for progress and efficiency:

- Focus on substantive objectives and remain flexible on the wording of treaty or decision texts when your instructions allow.
- Focus on the interests of each country, rather than positions.
- When concerned and in doubt, request square brackets around any contentious text and allow discussion to move on. This use of brackets must be a careful decision as discussion of brackets can consume valuable negotiation time.
- Sometimes, acquiring more information and a deeper understanding of issues is the only way to move forward in negotiations. A workshop or informal group may help to resolve an impasse.
- Prepare carefully for interventions (oral statements) with a clear focus on objectives. Prioritize interests, and focus the number and length of interventions accordingly. Brevity and restraint are appreciated for interventions.

## 4. Consider the practical necessities:

- Be prepared for practical necessities, including visa entry requirements, alternative transportation and meals.
- Understand the local currency.

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# Context

## 1.1. History and context of MEAs

### 1.1.1. Key international conferences

It is important to understand the contexts of environmental discussions and negotiations. MEAs have largely been produced by significant international conferences convened by the United Nations (UN), such as the Stockholm Conference, the Rio Conference, and the World Summit on Sustainable Development.<sup>1</sup> However, not all MEAs originated in UN fora, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). This treaty evolved from an initiative of the International Union for the Conservation of Nature (formerly the World Conservation Union) and was adopted at a meeting of government representatives in 1973.

#### 1.1.1.1. The Stockholm Conference of 1972

Most MEAs have been adopted since the 1972 United Nations Conference on the Human Environment (UNCHE) held in Stockholm, Sweden.

This Stockholm Conference was a watershed event that helped launch 30 years of intensive treaty-making in international environmental law, as well as activity within national governments.

The Conference prompted notable initiatives:

- The United Nations Environment Programme (UNEP)<sup>2</sup>
- An Environment Fund
- An Action Plan for the Human Environment
- The Stockholm Declaration on the Human Environment<sup>3</sup>

#### The Stockholm Declaration

The Pacific region actively engaged in the Conference with representatives from Australia, Fiji and New Zealand. This participation featured the election of an Australian representative to serve as a Vice-President of the Conference. The Declaration adopted by all 113 participating States present at the conference was the first important universal document to frame environmental matters as global concerns that transcended national boundaries.

The 26 Principles of the declaration accord prominence to concepts that were later incorporated in MEAs, namely:

- Intergenerational equity: the interests of present and future generations (*Principle 1*)
- Renewable versus non-renewable natural resources (*Principles 2 to 5*)
- Safeguarding natural ecosystems (*Principles 2 and 6*)
- Averting serious or irreversible damage to ecosystems (*Principle 6*)
- Economic and social development (*Principle 8*)
- Transfer of financial and technological assistance to developing countries as facets of capacity-building (*Principles 9 and 12*)

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<sup>1</sup> Discussed below from sections 1.1.1.1 to 1.1.1.3.

<sup>2</sup> See Annexes A and B of this Handbook (6.1.2; 6.2.4) for information on the composition and projects of UNEP.

<sup>3</sup> The Stockholm Declaration is recited in this Handbook at Annex H: Reference Texts and Electronic Sources (6.8.1).

- The integration of development and environmental protection (*Principles 13 and 14*)
- The need for international cooperation (*Principles 24 and 25*)

## Principle 21

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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.

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Principle 21 is the best-known principle of the Stockholm Declaration. It has acquired the status of **customary international law**,<sup>4</sup> and was later reaffirmed as **Principle 2** in the Rio Declaration (1992).

### MEAs of a global nature

While many regional MEAs were adopted in the 20 years following the UNCHE, some global MEAs deserve special mention:

- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention/LC '72, 1972).
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES/Endangered Species Convention, 1973).
- International Convention for the Prevention of Pollution by Ships (MARPOL, 1973 as modified by the Protocols of 1978 and 1997 relating thereto).
- Convention on the Conservation of Migratory Species of Wild Animals (CMS/Bonn Convention, 1979).
- United Nations Convention on the Law of the Sea (UNCLOS, 1982). This is not entirely an environmental agreement, but specific parts address the management and preservation of the marine environment.<sup>5</sup>
- Vienna Convention for the Protection of the Ozone Layer (1985, as modified by the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer).<sup>6</sup>
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention, 1989).

### 1.1.1.2. The Rio Conference of 1992

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**Sustainable development:** “[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.”<sup>7</sup>

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The precept of ‘sustainable development’ evolved from innovative projects such as the World Conservation Strategy (WCS) produced by the IUCN in 1980 that contributed to galvanizing approval of the World Charter

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4 Confirmed by the International Court of Justice (Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, I.C.J. Reports 1996, p. 226 at paragraph 29).

5 In particular, Parts VII and XI of the Convention elaborate the legal framework for the management and conservation of the high seas and seabed resources, while Part XII governs the control of marine pollution.

6 See also the adjustments and/or amendments to the Montreal Protocol adopted in London, 29 June 1990; Copenhagen, 25 November 1992; Montreal, 17 September 1997; and Beijing, 3 December 1999. See 2.3.12. and 6.3.1. (Annex C) of this Handbook on the procedure for adopting adjustments.

7 Definition extracted from Brundtland, G.H. et al. (1987). Our Common Future. World Commission on Environment and Development (WCED), Oxford University Press, at 43.

for Nature at the 48th plenary of the UN General Assembly in 1982. The work of the World Commission on Environment and Development (WCED) transformed the twin UN goals of environmental protection/conservation and economic development into the concept of “sustainable development”.<sup>8</sup>

In 1992 the United Nations Conference on Environment and Development (UNCED) convened in Rio de Janeiro, Brazil. At this first Earth Summit, the concept of sustainable development gained broad international support as the key element in developing international environmental policy. President Olter of the Federated States of Micronesia articulated the aspirations of Pacific island nations: “The Pacific is both valuable to future generations for its vast resources and home to present generations of peoples who have never willingly accepted that their backyards be made dumping grounds or testing and disposal areas”.<sup>9</sup>

The Conference was attended by thousands of participants with 103 of 176 States represented by their Head of Government. The historic event sparked a range of notable outcomes:

- Adoption of two treaties: the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD/Biodiversity Convention)
- The decision to negotiate the Convention to Combat Desertification (UNCCD)
- Agenda 21: Programme of Action for Sustainable Development<sup>10</sup>
- The decision to establish the UN Commission on Sustainable Development (CSD)<sup>11</sup>
- Statement of Principles for the Sustainable Management of Forests<sup>12</sup>
- The Rio Declaration on Environment and Development<sup>13</sup>
- Legitimizing the participation of nine Major Groups from civil society in sustainable development processes within the UN system.

## The Rio Declaration

The Rio Declaration is composed of 27 Principles that have influenced the subsequent development of international and national environmental law and policy.

Although the short document canvasses similar issues as the Stockholm Declaration, it highlights fundamental principles and concepts to guide future sustainable development:

- Common but differentiated responsibilities (*Principle 7*)
- Public information and participation (*Principle 10*)
- Precautionary approach (*Principle 15*)
- Polluter pays principle (*Principle 16*)
- Environmental impact assessment (*Principle 17*)
- States cooperation in the further development of international law governing sustainable development (*Principle 27*).

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8 This 1987 WCED report noted above is also branded the “Brundtland Report” in respect of the President of the Commission, Gro Harlem Brundtland (former Prime Minister of Norway).

9 The quote was extracted from the 1997 Address of Vice-President Falcam, Federated States of Micronesia: Address to the 16th Annual Pacific Islands Conference on “Sustainable Development of the Pacific Islands”. This statement is available from the official website of the Government of the FSM at <http://www.fsmgov.org/sdconf.html>

10 UN Conference on Environment and Development, UN Doc. A/CONF.151/26/Rev.1 (1992). The number “21” references the 21<sup>st</sup> Century.

11 See the section on the CSD in Annex B: Other International Bodies at 6.2.3 in this Handbook.

12 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests. See the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I: Resolutions adopted by the Conference, resolution 1, annex III (United Nations publication, Sales No. E.93.I.8 and corrigenda). Online at <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>. See the section on the UN Forum on Forests at Annex B: Other International Bodies (6.2.7.2.3).

13 The principles of this declaration are elaborated in Annex H: Reference Texts and Electronic Sources at 6.8.2. See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, Resolutions Adopted by the Conference, resolution 1, annex I (United Nations publication, Sales No. E.93.I.8 and corrigendum).

As a global action plan for sustainable development, **Agenda 21** is a model for devising strategies to balance environmental protection and socio-economic development. The 40 chapters of the innovative plan address matters such as conservation and management of natural resources; patterns of production and consumption; poverty alleviation; inclusive participatory processes; and mechanisms for implementing the dimensions of the Agenda.<sup>14</sup>

At the parallel Global Forum Conference during the Earth Summit, discussions refined the elements of an **Earth Charter**. This Charter evolved as a global ethical guide imparting shared values and norms that acknowledge the intrinsic value of all life forms, a transnational responsibility for nature conservation and the role of humans as guardians of the biosphere. The civil society initiative incorporates a diverse range of cultural and spiritual precepts, and the entire Charter has been endorsed by thousands of organizations.<sup>15</sup>

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

### **A focus on sustainable development helps bridge the gap between developed and developing countries**

Even prior to the Stockholm Conference and thereafter,<sup>16</sup> developing countries have emphasized that environmental protection should not compromise their development. These countries assert that much of the environmental pollution and destruction is a result of the industrial activities of developed countries. For example, some researchers postulate that small island developing states only account for roughly one percent of greenhouse gas emissions yet they shall encounter the most pervasive adverse impacts of global climate change that may entail the mass migration of island communities and loss of sovereignty if entire territories are submerged by elevated sea levels.

This North-South dichotomy has complex origins embracing colonialism, post-World War II institutions, and the global economic order that have affected the development of the South.<sup>17</sup> If developed countries advocate that developing countries forego the use of polluting technologies, they must provide the financial and technological support to avoid thwarting development.

Different perspectives on these North-South dynamics must be considered as they invoke specific issues in MEA negotiations:

- Capacity-building
- Financial mechanisms
- Liability provisions
- Differential treatment and obligations

The Rio Declaration and its Agenda 21 provide important contexts and conceptual tools for progress in these areas.

### **After Rio**

A selection of the MEAs, amendments and protocols adopted since the 1992 conference is presented below:

- United Nations Framework Convention on Climate Change (UNFCCC, 1992).
- Convention on Biological Diversity (CBD/Biodiversity Convention, 1992).
- United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD/Desertification Convention, 1994).

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14 For more information on Agenda 21 see *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, Resolutions Adopted by the Conference, resolution 1, annex II (United Nations publication, Sales No. E.93.I.8 and corrigendum) as well as the online version at <http://www.un.org/esa/dsd/agenda21/>

15 The Earth Charter Initiative presents analysis and current updates at <http://www.earthcharterinaction.org/>

16 See Birnie, P. and Boyle, A. (2002). *International Law and the Environment*. Oxford, UK: Oxford University Press, at 38.

17 See Porter, G. and Welsh Brown, J. (1991). *Global Environmental Politics*. Boulder, USA: Westview Press, at 124-34.



- Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994).
- 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 (FSA/Fish Stock Agreement, 1995).
- Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (1996).
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol, 1997)<sup>18</sup>
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, 1998 as amended in 2005).
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam PIC Convention, 1998).
- Protocol to the Basel Convention on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes (1999).
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Biosafety Protocol, 2000).
- Stockholm Convention on Persistent Organic Pollutants (POPs/Stockholm Convention, 2001).
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR, 2001).
- International Tropical Timber Agreement (2006).
- 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 (2010).<sup>19</sup>
- Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (2010).
- Potential new MEAs or protocols to existing MEAs may evolve from the fourth Earth Summit scheduled for 2012 (see below at 1.1.1.4).

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

A series of notable conferences on sustainable development and environmental protection were convened in the years since the historic Stockholm and Rio Conferences.

In September 2000, the Millennium Summit forged the adoption of the Millennium Declaration by 189 States members of the United Nations. This declaration spawned the refinement of concrete, measurable objectives labeled the “Millennium Development Goals”. The time-bound targets focus on global challenges such as poverty, disease, education and environmental sustainability.<sup>20</sup>

In December 2000, the United Nations General Assembly adopted Resolution 55/199 declaring the goal to embark on a 10-year review of the Rio Earth Summit in 2002. A five year review of Earth Summit progress (Rio+5) had already been conducted in June 1997 by the UN General Assembly meeting in special session and adopting Resolution S/19-2 that designed a Programme for the Further Implementation of Agenda 21.

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**Purpose:** to track post-Rio progress and promote global action on sustainable development.

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<sup>18</sup> Also consult the amendment to Annex B of the Kyoto Protocol to the UN Framework Convention on Climate Change (Nairobi, 17 November 2006).

<sup>19</sup> The Nagoya Protocol evolved from the 2002 Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (COP6 Decision VI/24).

<sup>20</sup> The text of this Declaration and progress on achieving the development goals are reported on the UN website at <http://www.un.org/millenniumgoals/>

The World Summit on Sustainable Development (WSSD) convened in Johannesburg, South Africa during the spring season of 2002. The Earth Summit and parallel events engaged the participation of one hundred Heads of State and Government as well as thousands of representatives from non-governmental organizations (NGOs), civil society, industry and business. The States from the Pacific region that dispatched representatives to such events included Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.<sup>21</sup> At that time, the Summit was the largest intergovernmental event ever held and focused on sustainable development as well as poverty alleviation.

The Summit resulted in the adoption of the Johannesburg Declaration on Sustainable Development that reaffirms the three intertwined pillars of sustainable development: economic development, social development and environmental protection.<sup>22</sup> States also adopted the Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Plan of Implementation/JPOI) that sets time-bound priorities and targets in several areas of concern.<sup>23</sup>

At the 2005 World Summit, government leaders reiterated their commitment to concrete global action on sustainable development through effectuating Agenda 21, Johannesburg Plan of Implementation, Millennium Development Goals, and principles of the Rio Declaration. In acknowledging the pervasive threat of climate change, they advocated the provision of assistance to the States most vulnerable to climate change (such as Small Island Developing States) and the launch of negotiations on a more inclusive international framework for climate change beyond 2012.<sup>24</sup>

#### 1.1.1.4. The Earth Summit of 2012

##### Rio + 20<sup>25</sup>

In response to governmental and non-governmental pressure, the UN General Assembly resolved on 24th December 2009 to organize a UN Conference on Sustainable Development (UNCSD) for 2012 in Rio de Janeiro, Brazil.<sup>26</sup> This impending Earth summit is also designated “Rio+20” to reference the progress of 20 years after the initial Rio conference in 1992.

##### The Resolution outlines:

###### *Objectives*

- Secure renewed political commitments to sustainable development
- Review progress in the implementation of the outcomes of the relevant major summits
- Address new and emerging issues

###### *Themes*

- A green economy within the context of poverty eradication and sustainable development
- The institutional framework for sustainable development

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21 Information is available from the website <http://www.johannesburgsummit.org>

22 Paragraph 5 of the Johannesburg Declaration on Sustainable Development, adopted at the 17th plenary meeting of the World Summit on Sustainable Development on 4 September 2002.

23 *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002*, chap. I, resolution 2, annex (United Nations publication, Sales No. E.03.II.A.1 and corrigendum).

24 For elaboration of the 2005 World Summit Outcome see the UN General Assembly Resolution 60/1 adopted on 24 October 2005. See also the UN website at <http://www.un.org/summit2005/>

25 See the official website of the UN Conference on Sustainable Development, Rio+20, at <http://www.uncsd2012.org> and the Earth Summit 2012 resources of the Stakeholder Forum at <http://www.earthsummit2012.org/>

26 UN General Assembly Resolution A/RES/64/236, 24 December 2009.

All stages of the preparatory process feature meetings among UN member States, UN system organizations, international financial institutions, regional development banks, the Major Groups identified in Agenda 21 and other stakeholders from diverse international and regional organizations.<sup>27</sup> For example, Pacific regional preparatory meetings for Small Island Developing States have been convened that engaged local Ministers of Environment, Finance and Fisheries as well as representatives from regional organizations (such as the Secretariat of the Pacific Regional Environment Programme and the Pacific Islands Forum Secretariat), nongovernmental/civil society organizations (such as the IUCN and Conservation International) and UN bodies (such as the UN Development Programme and UN Environment Programme).<sup>28</sup>

Small Island Developing States have identified priority issues for substantive discussions, such as the concept of the Blue Economy (the conservation, sustainable management and equitable sharing of marine and ocean resources as an integral component of the Green Economy to enable sustainable economic development and eradicate poverty in SIDS); the institutional framework for sustainable development must address the unique and particular vulnerabilities of SIDS; and the negative impacts of climate change and ocean acidification that are severely undermining sustainable development goals (such as food security and alleviation of poverty) as well as threatening the territorial integrity, viability and the existence of SIDS.<sup>29</sup>

## Stakeholder Forum for a Sustainable Future

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**Stakeholder Forum:** an “international multi-stakeholder organization working on sustainable development; supporting the increased involvement of stakeholders in international and national governance processes.”<sup>30</sup>

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The Stakeholder Forum was involved in the preparatory work for the World Summit on Sustainable Development in 2002 as well as the ensuing activities to enhance stakeholder engagement in intergovernmental meetings and the creation of international policies. The nine categories of civil society formalized by Agenda 21 and recognized within the UN Commission on Sustainable Development (CSD) are officially labeled ‘Major Groups’ through which citizens can engage in sustainable development processes. These Major Groups encompass non-governmental organizations (NGOs); indigenous peoples; business, trade and industry; local government; science and technology community; women; children and youth; workers and trade unions; and farmers. Notably, over three thousand NGOs have acquired consultative status with the UN Economic and Social Council (ECOSOC) whilst other organizations have contributed to meetings and negotiations through avenues such as special accreditation, open sessions or multi-stakeholder dialogues. The Forum is currently involved in diverse preparatory processes for the next Earth Summit, such as organizing stakeholder meetings and activities, producing discussion papers on international governance for sustainable development and synthesizing inputs from the Major Groups. Regular updates are provided on their Internet website as well as background information, analysis, and details regarding pre-Summit workshops.

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27 See the Earth Negotiations Bulletin Report for the analysis of meetings and a calendar of UNCSD-related events at <http://uncsd.iisd.org>

28 For example, a Rio+20 Pacific Preparatory Meeting/Joint Ministerial Meeting was convened in Apia, Samoa from 21-22 July 2011 as reported at <http://www.uncsd2012.org>

29 Progress on these focus areas is tracked through the myriad reporting services of the International Institute for Sustainable Development online at <http://uncsd.iisd.org>.

30 More information is available at the Stakeholder Forum website at <http://www.stakeholderforum.org/>

## Small Island Developing States (SIDS) – A Special Case

The unique challenges facing Small Island Developing States within the context of sustainable development were first formally recognized by the international community when it articulated the special case of SIDS at the United Nations Conference on Environment and Development (UNCED) in 1992. Chapter 17 of Agenda 21:

“Small island developing States, and islands supporting small communities are a special case both for environment and development. They are ecologically fragile and vulnerable. Their small size, limited resources, geographic dispersion and isolation from markets, place them at a disadvantage economically and prevent economies of scale. Because small island development options are limited, there are special challenges to planning for and implementing sustainable development. Small island developing states will be constrained in meeting these challenges without the cooperation and assistance of the international community.”

The Barbados Programme of Action (BPOA) adopted in 1994, further complemented by the Mauritius Strategy of Implementation (MSI) of 2005 and MSI+5 Outcome document, recognized that although they are afflicted by economic difficulties and confronted by development imperatives similar to those of developing countries generally, SIDS have their own peculiar vulnerabilities and characteristics so that the difficulties they face in the pursuit of sustainable development are particularly severe and complex.

**Small size** – There are many disadvantages that derive from small size, including a narrow range of resources, which forces undue specialization; excessive dependence on international trade and hence vulnerability to global developments; high population density, which increases the pressure on already limited resources; overuse of resources and premature depletion; relatively small watersheds and threatened supplies of fresh water; costly public administration and infrastructure, including transportation and communication; and limited institutional capacities, domestic markets and limited export volumes, which are too small to achieve economies of scale.

**Isolation** – Their geographic dispersion and isolation from markets, due to remote locations, place many SIDS at a disadvantage economically that leads to high freight costs and reduced competitiveness.

**Climate change and sea-level rise** – Due to the coastal zone concentration in a limited land area, the adverse effects of climate change and sea-level rise present significant risks to the sustainable development of SIDS, and the long-term effects of climate change may threaten the very existence and viability of some SIDS (thereby invoking questions over the loss of territory, national identity, climate-induced displacement and environmental refugees).

**Natural and environmental disasters** – SIDS are located among the most vulnerable regions in the world in relation to the intensity and frequency of natural and environmental disasters and their increasing impact, and face disproportionately high economic, social and environmental consequences.

These special vulnerabilities of SIDS accentuate other challenges facing developing countries in general such as difficulties in benefitting from trade liberalization and globalization; heavy dependence on coastal and marine resources for their livelihood including food security; heavy dependence on tourism which can be easily impacted by climate change and natural disasters; energy dependence and access issues; the limited freshwater resources; limited land resulting in land degradation, which affects waste management, and vulnerable biodiversity resources.

SIDS are located in three geographical regions: the Caribbean, the Pacific and the AIMS (Atlantic, Indian Ocean, Mediterranean and South China Sea). See section 6.1.3. of this Handbook for a timeline of the SIDS programme of action.

Source: Small Island Developing States Network (SIDSNet) <http://www.sidsnet.org/about-sids>

### 1.1.1.5. Growth of law-making in international environmental matters



International agreements have been used to promote and establish management frameworks for structuring practical activity on environmental protection and conservation.

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**MEAs:** living instruments, with annual or biennial meetings of the Parties, intersessional meetings of technical and expert groups, and intersessional written submissions.

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#### Increased participation

These activities are intended to move the environmental agenda forward to keep pace with scientific developments. This progress has led to a proliferation of international meetings that increasingly engage the participation of more public servants in negotiations on diverse issues. Intensified treaty-making is a sign that governments recognize that environmental issues cross national boundaries and require international cooperation. However, areas that are not the sovereign domain of any State (such as Antarctica or the global atmosphere) also merit collective protection as components of the global environment and are recognized in some conventions as the common concern of humankind.<sup>31</sup>

#### Increased complexity

As international environmental regulation becomes increasingly complex, it interacts with other areas of international law governing trade relations, maritime activities, intellectual property and human rights.<sup>32</sup> At the international level, these interactions prompt the need for better coordination among environmental agreements and various areas of international law.

#### Increased pace

The increased pace of treaty-making has been accompanied by increased transparency and public participation at the international level:

- Meetings are typically open to civil society organizations, including environmental and industry NGOs
- Prior to meetings, background documents are placed on the Internet and are freely accessible to the global public
- The outcomes of meetings are published in official meeting records on the Internet, and are intensively reported by the Earth Negotiations Bulletin (ENB)<sup>33</sup>

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31 See for example, the preambles of the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC).

32 Good examples are the current trade and environment debates at the WTO's Committee on Trade and Environment in Special Session (CTESS); the complex interlinkages between provisions of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and both the Biodiversity Convention and Nagoya Protocol on access and benefit-sharing; and the relationship between the agreements of the International Maritime Organization (IMO) and the Basel Convention regarding the dismantling of ships.

33 See information available at <http://www.iisd.ca/>. The ENB provides daily coverage of important negotiations and maintains archival material on the website. In particular, the ENB reports the names of countries and their negotiating position. Such details are not always recorded in the official meeting reports (although convention secretariats are often asked to compile the views of Parties based on their submissions).

### Increased effectiveness?

The fast pace of treaty-making may complicate assessments for the effectiveness of environmental agreements. In the last 20 years, there has been an increasing focus on *compliance* with treaty obligations and methods for improving domestic implementation.<sup>34</sup> Capacity-building, coherence, coordination, compliance and synergies have all been recognized as important elements in assessing the overall effectiveness of environmental agreements. A provision addressing an *effectiveness evaluation* has been enshrined in global environmental treaties, such as the Stockholm Convention.<sup>35</sup>

### Increased efficiency?

Concerns have arisen with respect to 'treaty congestion', competing or unrealistic timelines, efficiency, duplication and overlap of agreements. In particular, these issues emerge with the increased interaction between multilateral treaty bodies and the private sector.

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**Example:** the project-based mechanisms of the Kyoto Protocol involve decision-making bodies, constituted under the Protocol, approving proposals from legal entities (generally private companies).

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As well as increasing the involvement of civil society, these developments contribute to changing the traditional view of international law as a matter of relations only between States.<sup>36</sup>



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34 For example, procedures and mechanisms on compliance were adopted in the early 1990s for the 1987 Montreal Protocol; in the late 1990's for the 1979 Long-range Transboundary Air Pollution Convention (LRTAP) in the form of protocols; in late 2002 for the 1989 Basel Convention, and in late 2007 for the 1972 London Dumping Convention. Work is currently underway on compliance procedures pursuant to the 1998 Rotterdam Convention and 2001 Stockholm Convention.

35 The assessment and review provisions of the 2000 Cartagena Biosafety Protocol (Article 35) and 2001 Stockholm Convention (Article 16) were both proposed by Canada.

36 See Depledge, J. and Chasek, P.S. (2012). "Raising the Tempo: The Escalating Pace and Intensity of Environmental Negotiations" in Chasek, P.S. and Wagner, L.M. (eds.). *The Roads from Rio: Lessons Learned from Twenty Years of Multilateral Environmental Negotiations*. Oxford, UK: Routledge, 19.

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# Forms, nature, principles and elements of MEAs

## 2.1. Forms of MEAs

As States may use different terminology, the following definitions are used in this Handbook

**MEA:** a legally binding Multilateral Environmental Agreement between several States and/or other subjects of international law such as international organizations.

**Convention:** the most commonly used term for a legally binding agreement between States and/or international organizations. This may also be expressed as a 'treaty', 'agreement', 'charter', 'accord', 'final act', 'pacts', 'covenant', or 'protocol'. Regardless of the descriptor used, an agreement is only legally binding if Parties display a clear intention to so bind themselves.

**Treaty:** Article 2(1)(a) of the Vienna Convention on the Law of Treaties (VCLT, 1969) and Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLTSIO, 1986) defines the three essential elements of a treaty:

1. An international agreement;
2. Governed by international law;
3. Concluded in written form:
  - (i) between one or more States and one or more international organizations;
  - (ii) or between international organizations.

The agreement may be embodied in a single instrument or in two or more related instruments, and its particular designation has no legal significance.

**Protocol:** a subsequent and separate legally binding agreement that adds to or modifies an existing convention for State Parties.

**Amendment:** also adds to or modifies an existing agreement, but is not a separate agreement.

**Framework conventions:** an agreement that provides a decision-making and organizational framework for the adoption of subsequent complementary agreements. Such agreements contain obligations of a general institutional nature, often including information-gathering provisions (e.g. Article 4, UNFCCC). They are usually designed as a first step towards the adoption of specific obligations in subsequent protocols on the same matter (e.g. Article 3, Kyoto Protocol to UNFCCC). Generally, only the Parties to a framework convention can become Parties to a subsequent protocol and 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, Parties to a non-framework convention are not precluded from adopting a protocol.

## 2.2. Soft law and hard law

These terms are used to describe the nature of agreements, particularly with respect to MEAs.

HARD LAW	SOFT LAW
Has specific and legally binding obligations	Either not legally binding or the obligations are flexible or lack specificity

### Controversy

“Soft law” can be a contradiction in terms, because legal obligations are generally authoritative, prescriptive and binding. MEAs that adhere to the precepts of the Vienna Convention on the Law of Treaties are often regarded as “hard law” instruments. In contrast, diverse global and regional devices are labeled “soft law” instruments as they do not precisely conform to the VCLT and resemble good faith obligations.

As treaty provisions are binding on all Parties,<sup>37</sup> it has been argued that all treaty provisions should be considered “hard law”. However, some provisions are drafted with considerable flexibility that merely convey an expression of intent without any clear standard for compliance. This presents wide room for interpretation and discretion.

### The “soft law” approach

Multilateral debates on environmental issues are often facilitated by a soft law approach that is conducive to generating binding agreements. This approach is aligned with the fundamental purposes of MEAs to provide an inclusive discussion and decision-making forum, and to encourage broader participation and collective action (especially regarding framework conventions).

Parties to an MEA may formulate decisions that do not entail legal obligations, such as decisions in the form of invitations or exhortations. An MEA may provide authority for the creation of non-binding soft law instruments such as codes of practice, statements of principle, guidelines and action plans. Even where clear standards of conduct are set in an MEA, the procedures and mechanisms used for compliance are generally facilitative rather than coercive. Global soft law has been devised to assist governments in implementing sustainable environmental management in a constellation of areas such as shared natural resources, marine pollution, hazardous wastes, biotechnology and environmental impact assessment. Illustrations of soft law instruments embrace:

- 1972 Declaration of the UN Conference on Human Environment (Stockholm Declaration)
- 1978 Principles on the Conservation and Harmonious Use of Shared Natural Resources
- 1987 Environmental Impact Assessment Guidelines
- 1992 Rio Declaration on Environment and Development
- 1992 Agenda 21: Programme of Action for Sustainable Development
- 1992 Statement of Principles for the Sustainable Management of Forests
- 1995 Code of Conduct for Responsible Fisheries
- 1995 Global Programme of Action for the Protection of the Marine Environment (GPA)
- 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA for IUU Fishing)
- 2002 Guidelines for the Enforcement of and Compliance with Multilateral Environmental Agreements

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<sup>37</sup> Unless a Party has made a valid reservation to a treaty. See section 2.3.7 “Reservations” in this Handbook.

Although such devices are non-binding, they are important in promoting debate on international matters, enhancing cooperative efforts at global and regional levels to confront environmental challenges, and developing guiding policies, rules and law. For example, many principles of the Rio and Stockholm Declarations have been enshrined in national policies and legislation. Some soft law instruments have ignited the negotiation of legally binding instruments (hard law) as illustrated by Principle 10 of the Rio Declaration that was a precursor to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Another illustration is the series of non-binding instruments voluntarily applied by States that spawned the principle of prior informed consent (PIC) in the context of the global trade and movement of hazardous substances, such as the UNEP 1984 Provisional Notification Scheme for Banned and Severely Restricted Chemicals and 1987 Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes. These guidelines contributed to forging the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998) and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989). It is important to note that there is a concern that soft law in the form of customary law principles could evolve into “hard law” obligations without the clear consent of States.

### **Mutual re-enforcement**

The spectrum of hard law and soft law measures may together create an inclusive legal approach to governance that encourages participation of all sectors of the global community. This process is bolstered by the mandatory reporting and transparency requirements of compliance mechanisms.

### **Other forms of agreement**

Memoranda of Understanding (MOUs) and political declarations may use stronger language than other forms of agreement. Though they are not generally legally binding, Parties may have different views on the status of MOUs and thus it is important to ascertain the intent of another Party.

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

**Geographic scope:** the geographic scope of MEAs varies widely. Generally, all States can become Parties to United Nations MEAs but other agreements are region-specific or sub-regional (such as the MEAs crafted under the UN Economic Commission for Europe).

An illustration of a global MEA is the Biodiversity Convention (1992), whilst a regional MEA is typified by the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (Waigani Convention, 1999).

**International law:** MEAs are subject to the rules of international law that govern treaties. The rules that apply to written treaties between States are codified in the Vienna Convention on the Law of Treaties (VCLT, 1969) that entered into force in 1980. This treaty is augmented by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLTSIO, 1986) that is not yet in force.

At present, the ratification status of the 1969 Vienna Convention reveals 45 signatories and 111 Parties. States that have signed the treaty but not completed the ratification process include Afghanistan, Bolivia, Kenya and the United States of America. Although the USA is not legally bound to conform to the precepts of the VCLT, it does follow many of the rules for negotiating treaties. The myriad Parties that ratified or acceded to the treaty include Australia, New Zealand, Kiribati, Nauru, Canada, and Solomon Islands.<sup>38</sup> The prominence of the

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38 The status of these two treaties may be accessed from the online UN treaty collection at <http://treaties.un.org/Pages/ParticipationStatus.aspx>

1986 Vienna Convention was enhanced when the UN Secretary-General deposited an instrument of formal confirmation of the Convention on behalf of the UN in 1998. The International Maritime Organization (IMO), the World Health Organization, and International Labour Organization have also deposited instruments of formal confirmation.

**Application:** generally, rules in a treaty apply only to the Parties that have adopted the agreement. However, an MEA can affect non-Parties in the form of provisions that prohibit or restrict trade by Parties with non-Parties (as exemplified by the trade bans pursuant to CITES). Furthermore, most rules of the VCLT apply to all States whether or not they are a Party to a particular Convention. The rationales are that these rules for creating treaties existed before the adoption of a particular Convention or have been accepted as rules of customary international law since the adoption of that Convention.

Some key points on treaties that MEA negotiators should keep in mind are outlined below.

### 2.3.1. Effect of an MEA

An MEA creates binding international obligations:

- *Pacta sunt servanda* – Parties must perform their obligations in good faith (VCLT, Article 26);
- No Party may invoke domestic law to justify a failure to comply with an MEA obligation (VCLT, Article 27).

### 2.3.2. Parties

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

### 2.3.3. Signature

Following the adoption of an MEA at a Diplomatic Conference or a Conference of Plenipotentiaries, the treaty is ‘opened’ for State representatives to sign that instrument. Multilateral treaties contain signature provisions that indicate the venue of the conference, date of opening for signature and the time period for the signatory process. MEAs generally specify a time limit to remaining open for signature,<sup>39</sup> but there are rare cases where some conventions are open for signature indefinitely.<sup>40</sup>

#### The signing of an MEA is largely symbolic

A ‘**simple signature**’ of the instrument is evidence of a State’s initial endorsement of a treaty subject to ratification, acceptance or approval. The act of signing conveys the State’s intent to evaluate the instrument, seek approval for the treaty within its own domestic procedures and enact any legislation required to implement the treaty domestically. Although this process means a signatory may not have to comply with specific obligations of the agreement, it must refrain from acts that would defeat or undermine the object and purpose of the MEA (VCLT, Article 18; see ‘Provisional application’ at 2.3.9). The State then submits an instrument of ratification, acceptance or approval to express their consent to be legally bound to that treaty at the international level.

In contrast, a ‘**definitive signature**’ is an act of signing that expresses the State’s consent to be legally bound by the treaty and there is no subsequent step of ratification. This signature process only occurs when the MEA provides that signature creates binding legal obligations (this provision is among the last in an MEA).

It is important to clarify any doubts over whether a State intends the signatory process to involve a simple or definitive signature.

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<sup>39</sup> For example, the Desertification Convention was open for signature for one year after adoption (Article 33).

<sup>40</sup> An illustration is the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (“Ramsar Convention”, adopted in 1971).

## 2.3.4. Ratification, accession, acceptance, approval or definitive signature<sup>41</sup>

In order to become a Party to a multilateral treaty, a State must demonstrate its willingness to undertake the legal rights and obligations embodied in the treaty. The final clauses of the relevant treaty recite the mechanisms whereby a State may express this consent to be legally bound by the treaty. The most common mechanisms are:

- Definitive signature
- Ratification
- Acceptance or approval
- Accession

### **Definitive signature**

Some treaties provide that States can express their consent to be legally bound solely upon signature. This method is most commonly used in bilateral treaties and rarely used for multilateral treaties. In the latter case, the entry into force provision of the treaty expressly provides that a State can express consent to be bound by definitively signing the treaty, i.e., signing without reservation as to ratification, acceptance or approval. Definitive signature has the same legal effect as ratification, acceptance, approval or accession (VCLT, Article 12).

### **Ratification**

Ratification is a process that involves a series of actions by the State: 1) signing a treaty; 2) completing national legislative procedures for a formal decision of approval to be bound by signature and executing a written instrument of ratification; and 3) forwarding the instrument to the depositary for the treaty (VCLT, Article 14(1)). This process allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level. Note that some multilateral treaties impose specific limitations or conditions on ratification. Once a State has become party to a treaty at the international level, its international responsibility is triggered. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon entry into force of the treaty for a State, that State becomes legally bound under the treaty.

Many countries have specific legal processes to manage ratification of an international agreement.

Example: in Canada, ratification of a global MEA is exercised by the Executive through an Order in Council issued by the Governor General, which authorizes the Minister of Foreign Affairs to sign an instrument of ratification. Ratification is then effected by deposit of the instrument of ratification with the depositary for the treaty (usually the UN Secretary-General).

### **Acceptance or approval**

Acceptance or approval of the treaty is expressed by a State's act of signing the treaty and completing similar requirements for ratification (unless otherwise indicated by the treaty). This mechanism has the same legal effect as ratification, unless the treaty provides otherwise (VCLT, Article 14(2)).

### **Accession**

A State that did not participate in the treaty negotiations nor sign the treaty before the closing date for signature may still 'accede' to become bound by that treaty. Ratification, acceptance or approval are preceded by signature to create binding legal obligations under international law, whereas accession only requires one step: the deposit of an instrument of accession with the depositary. This mechanism has the same legal effect as ratification, acceptance or approval (VCLT, Article 15). Accession usually occurs after the treaty has entered into force, but some modern MEAs even provide for accession during the time the treaty is open for signature.

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41 This section replicates information from United Nations, Treaty Section of the Office of Legal Affairs. (revised edition, 2012). Treaty Handbook. New York, US: United Nations, at 8-11. See also pages 52-53 for the template instruments of ratification, acceptance or approval: <http://treaties.un.org/doc/source/publications/THB/English.pdf>

## Internal procedures and the form of instruments

While some States have the legal capacity to express consent to be legally bound by an agreement through definitive signature, most require a national executive or legislative process for formally authorizing the government to ratify, accept, approve or accede to an international agreement. There is no mandated form for the instrument of ratification, acceptance, approval or accession to be deposited with the depositary. However, the written document must include the following details:

- Title, date and place of conclusion of the treaty;
- Full name and title of the person signing the instrument, such as the Head of State, Head of Government, Minister of Foreign Affairs 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;
- 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, Minister of 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.

The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty's entry into force (see section 2.3.6.). Consent to be bound is the act whereby a State demonstrates its willingness to undertake the legal rights and obligations under a treaty through definitive signature or the deposit of an instrument of ratification, acceptance, approval or accession. Such an instrument becomes effective only when it is deposited with the depositary. Entry into force of a treaty with regard to a State is the moment the treaty becomes legally binding for the State, that is, the moment at which that State becomes party to the treaty.

## Courtesy translations

To facilitate the processing of relevant actions, States should endeavour to provide courtesy translations in English and/or French of the instruments composed in other languages and placed in the custody of the depositary for the treaty.

## 2.3.5. Full powers

A State representative must have "full powers" to adopt, sign and deposit an instrument of ratification or accede to an MEA. Some officials are assumed to have such powers (such as Heads of State and Ministers of Foreign Affairs), while others must produce evidence to this effect (VCLT, Article 7).

## 2.3.6. Entry into force

The provisions of an MEA may identify the moment when the treaty enters into force and thus becomes legally binding for States that are Parties to the treaty. Treaties may enter into force upon a certain number of States depositing instruments of ratification, acceptance, approval or accession with the depositary; a specific time after a particular number, percentage, proportion or category of States deposited instruments of ratification, acceptance, approval or accession with the depositary; or on a specific date after certain conditions are fulfilled. The methods for entry into force are convention-specific as illustrated below:

- Seven instruments required for the Ramsar Convention to enter into force;
- 30 instruments for the entry into force of the Biodiversity Convention;
- 50 instruments for the UNFCCC to enter into force;
- The Kyoto Protocol adopted a different strategy to secure a level of participation from certain parties: the two requirements for entry into force were ratification by at least 55 Parties to the UNFCCC and

ratification by Annex I Parties (developed country parties) accounting for at least 55 percent of the total 1990 level of carbon dioxide emission from all developed country Parties listed in Annex 1.

If an MEA does not identify a date or another method for its entry into force, there is an inference that the Parties intended the treaty to enter into force once all the negotiating States have expressed consent to be bound by the treaty. Note that some treaties include provisions for their provisional entry into force.

Where a State definitively signs or ratifies, accepts, approves or accedes to a treaty that has already entered into force, the treaty enters into force for that State according to the relevant provisions of the treaty. Treaties often provide for entry into force for a State at a specific time after the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession; or on the date the State definitively signs or deposits its instrument of ratification, acceptance, approval or accession.

## 2.3.7. Reservations

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**Reservation:** a unilateral statement by a State that purports to exclude or modify the legal effects of provisions of the treaty in their application to the State concerned. “Interpretive statement” is a term that is sometimes used to make a reservation.<sup>42</sup>

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### 1. In what circumstances are reservations permitted?

Many MEAs do not permit State Parties to formulate reservations as such action may diminish the consistency and coherence of treaty implementation among all Parties. The VCLT elaborates that a State Party is entitled to issue a reservation to an MEA, unless:<sup>43</sup>

- The MEA expressly prohibits reservations (such as the 1985 Vienna Convention on the Protection of the Ozone Layer, 1987 Montreal Protocol, 1992 Biodiversity Convention and 1992 Climate Change Convention).
- The MEA only permits reservations regarding specific provisions, not including the one in question (such as the 1946 International Convention for the Regulation of Whaling and 1973 Convention on Endangered Species/CITES).
- In cases not falling under the above two categories, the reservation is incompatible with the object and purpose of the MEA.<sup>44</sup>

### 2. When can reservations be made?

Reservations may be made at the time of signature or when depositing an instrument of ratification, acceptance, approval or accession.<sup>45</sup> If a reservation is made upon simple signature (i.e., signature subject to ratification, acceptance or approval), it is merely declaratory and must be formally confirmed in writing when the State expresses its consent to be bound.<sup>46</sup>

### 3. How can a reservation be made?

Usually, the reservation must be contained in the instrument of ratification, acceptance, approval or accession or in an annex to that instrument. If the reservation is attached as an annex, it must be separately signed by the Head of State, Head of Government, Minister of Foreign Affairs or a person assigned full powers for that purpose.

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42 See the definition of reservations in Article 1(d) of the VCLT. Information in this section is replicated from the United Nations, Treaty Section of the Office of Legal Affairs. (revised edition, 2012). Treaty Handbook. New York, US: United Nations, at 12–16.

43 Articles 19 and 20, VCLT.

44 For example, Canada formulated a reservation to the 1991 UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) that prompted other States such as Finland, Italy and Spain to assert that the reservation was incompatible with the object and purpose of the agreement.

45 Article 19, VCLT.

46 Article 23(2), VCLT.

#### 4. When can objections to reservations be made?

Where a State formulates a reservation that is expressly authorized by the relevant treaty, the depositary informs the States concerned by depositary notification. A reservation of this nature does not require any subsequent acceptance by the States concerned, unless the treaty so provides. If a treaty does not specify the time frame for submitting objections to reservations, States generally have 12 months to object to a reservation that starts from either the date of the depositary notification or the date on which the State expressed consent to be bound (whichever is the later date).<sup>47</sup> Normally, the depositary would then circulate the objections to reservations.

#### 5. What is the effect of an objection to a reservation?

An objection generally does not prevent a treaty from entering into force as between the objecting and reserving States.<sup>48</sup> If an objecting State wishes to affect the entry into force of an MEA, it will usually specify this intent in the written objection to the reservation. If a State does not object to a reservation issued by another State, the first State is construed as having tacitly accepted the reservation.<sup>49</sup>

#### 6. Can reservations or objections be withdrawn?

Unless the agreement provides otherwise, a State may withdraw its reservation or objection to a reservation at any time: in such a case, the consent of the States concerned is not necessary for the validity of the withdrawal.<sup>50</sup> The withdrawal of a reservation becomes operative in relation to another State only when that State has been notified of the withdrawal. Similarly, the withdrawal of an objection to a reservation becomes operative when the reserving State is notified of the withdrawal. A withdrawal must be composed and endorsed in the same manner as a reservation, and forwarded to the depositary.

#### 7. Can reservations be modified?

A reservation may be modified to an extent that it entails a partial withdrawal or creates new exemptions from, or modifications of, the legal effects of specific treaty provisions. The latter form of modification resembles a new reservation and the depositary circulates notification of this modification to the States concerned. The time provided for objections to modifications is 12 months from the date of the depositary notification containing the modification. In the absence of any objection, the depositary accepts the modification in deposit.

### 2.3.8. Interpretative declarations

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**Interpretative declaration:** a declaration by a State as to its understanding of some matter covered by a treaty, or its interpretation of a particular provision or of the entire treaty. Unlike reservations, declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.<sup>51</sup>

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#### 1. In what circumstances are interpretative declarations permitted?

Agreements may contain specific provisions for interpretative declarations.

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**Example:** the United Nations Convention on the Law of the Sea (UNCLOS, 1982) permits a State Party to issue an declaration in the interests of harmonizing its laws and regulations with the agreement. Such declarations must not purport to exclude or modify the legal effect of the provisions of the agreement in their application to that State.

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47 Article 20(5), VCLT.

48 Article 20(4)(b), VCLT.

49 Article 21(1), VCLT.

50 Articles 22-23, VCLT.

51 Information in this section is extracted from United Nations, Treaty Section of the Office of Legal Affairs. (revised edition, 2012). Treaty Handbook. New York, US: United Nations, at 16-18.



## 2. When can an interpretative declaration be made?

Declarations are usually deposited at the time of signature or at the time of deposit of the instrument of ratification, acceptance, approval or accession. However, in some cases a declaration may be lodged subsequently.

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**Example:** at the time of signature for the UN Climate Change Convention, several island nations entered declarations as to the non-exclusion of general law on state responsibility. The declarations of Fiji, Kiribati, Nauru, Papua New Guinea, and Tuvalu essentially recited their understanding that signature and/or ratification of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law.<sup>52</sup>

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## 3. How can an interpretative declaration be made?

As an interpretative declaration does not have a legal effect similar to that of a reservation, it does not require the signature by a formal authority of the State Party issuing such a document (the 'declarant'). However, these documents must clearly identify the declarant and this may require the signature of an authority such as the Head of State, Head of Government or Minister of Foreign Affairs. This action may also avert any potential confusion over whether the declaration closely resembles a reservation in such a way as to modify the legal effects of the treaty and thus is not a 'true' interpretative declaration. The depositary communicates the text of the declaration to all States concerned by depositary notification.

## 4. How are optional and mandatory declarations made?

MEAs may provide for States to make optional and mandatory declarations: these declarations are legally binding on the declarants. An illustration of a treaty provision for an optional declaration is Article 11(3) of the Vienna Convention for the Protection of the Ozone Layer: "When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory".

In contrast, a treaty may require State Parties to formulate a mandatory declaration as illustrated by the UN Convention on the Law of the Sea (UNCLOS): when an international organization signed the treaty it had to issue a declaration specifying the matters governed by UNCLOS in respect of which the organization's member States have conferred competence/responsibility on the organization as well as the nature and extent of that competence.

Optional and mandatory declarations impose legal obligations on the declarant and therefore must be signed by the Head of State, Head of Government or Minister of Foreign Affairs or by a person having full powers for that purpose issued by one of the above authorities. The depositary circulates the optional or mandatory declaration to all States concerned.

## 5. When can objections to declarations be made?

In some cases, State Parties may submit written objections to a declaration regarding a treaty that does not address reservations. Such objections may debate whether the statement is merely an interpretative declaration or is in fact a true reservation sufficient to modify the legal effects of the treaty. If the objecting State concludes that the declaration is a reservation and/or incompatible with the object and purpose of the treaty, the objecting State may prevent the treaty from entering into force between itself and the reserving State. If an objecting State intends this result it should specify such an intent in the objection. Usually, objecting

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<sup>52</sup> United Nations Framework Convention on Climate Change, 9 May 1992, UNTS vol.1771 p. 107. The list of declarations is online at [http://unfccc.int/essential\\_background/convention/items/5410.php](http://unfccc.int/essential_background/convention/items/5410.php)

States specify that the objection does not preclude the entry into force of the treaty between them and the reserving State. An objecting State sometimes requests that the declarant “clarify” its intention. In this case, a declarant may agree that their statement is a reservation rather than an interpretative declaration: it may either withdraw its reservation or verify that its statement is only a declaration.

### 2.3.9. Provisional application

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**Provisional application:** when a State’s national procedures for expressing intent to be bound have not been performed at the time a treaty has entered into force, the State may make a unilateral undertaking that it will provisionally give effect to its treaty obligations.

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#### 1. When can a provisional application be made?

Multilateral treaties may provide for a provisional application either before or after their entry into force. An illustration is contained in article 7(1) of the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982:

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**Example:** “[i]f on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force”

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#### 2. Under what circumstances are provisional applications made?

Unless an agreement provides otherwise, a State must intend to ratify, approve, accept or accede to the treaty subject to its national procedural requirements.

#### 3. How can a provisional application be terminated?

A State may unilaterally terminate a provisional application at any time, unless the treaty provides otherwise.<sup>53</sup>

### 2.3.10. Territorial application

Unless otherwise provided, a treaty is binding on a Party in respect of its whole territory.<sup>54</sup> However, the following issues may arise:

- The ambiguous or disputed status of certain territories;<sup>55</sup>
- Confusion regarding the application of an MEA to specific territory;
- Questions regarding sub-national entities; or dependent, neutral, disputed or occupied territories;
- Disagreement over areas considered *terra nullius*, such as Antarctica; or areas that are not the sovereign territory of any country, such as the high seas.

Parties usually address these territorial issues in MEA decisions, reservations, and other official submissions to treaty bodies and depositaries.

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<sup>53</sup> Article 25, VCLT.

<sup>54</sup> Article 28, VCLT.

<sup>55</sup> For example, some French overseas territories are considered part of France, including Martinique and French Guiana.

## 2.3.11. Amendments

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**Amendment:** an instrument to amend the core provisions of the treaty or its annexes.

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The procedure for amending an MEA may be specified in the amendment provisions of the treaty itself or governed by Chapter IV of the 1969 VCLT and 1986 VCLTSIO. If amendment procedures are not embodied in a treaty, a new treaty or agreement may be negotiated by the Parties to amend the existing treaty.<sup>56</sup>

**The amendment process has at least four steps as follows:**

### 1. Proposal: Filing and circulation

The relevant treaty secretariat circulates a proposed amendment that has been filed by a State Party to the MEA. In the context of MEAs forged within the UN system, if a proposed amendment has not been circulated by the secretariat then the Secretary-General, as depositary, may execute this function. The timing of this circulation is often elaborated in the treaty itself, such as the amendment provisions in the UN Framework Convention on Climate Change and the Kyoto Protocol that stipulate the secretariat must circulate the text of any proposed amendment at least six months before the meeting at which the amendment is proposed to be adopted.

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**Example:** pursuant to Article 15(1) of the Framework Convention on Climate Change, Papua New Guinea and Mexico proposed amendments to the treaty and transmitted their joint proposal to the Secretariat on 26 May 2011 with a view for adoption at the 17th session of the Conference of the Parties from 28 November-9 December 2011. The proposal addresses the disagreement of the Parties over the draft voting rule on substantive decisions (draft Rule 42) and offered a solution in the form of an amendment that facilitates the full effectuation of the fundamental right to vote enshrined in the Convention (Article 18). In adherence to Article 15(2) of the Convention, the Secretariat circulated the proposed amendment to all the Parties and signatories to the Convention as well as the depositary (FCCC/CP/2011/4).

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### 2. Adoption: Parties decide collectively whether they will adopt or reject the proposal

An MEA will usually specify that the adoption of an amendment to a provision requires unanimity, consensus or majority voting of the State Parties present and casting a negative or affirmative vote at the meeting of the Conference of the Parties (COP). Parties to an MEA may select the voting formula or apply different formulae to different provisions in the treaty and annexes as long as such voting options are specified in the MEA itself (see 3.1.1.12 and 3.1.1.14 on voting).<sup>57</sup> Pursuant to the Ramsar Convention, London Dumping Convention, CMS/Bonn Convention and CITES, the COP may adopt amendments by a two-thirds majority vote. The amendment procedures enshrined in more recent agreements require all efforts of the Parties to reach agreement on any proposed amendment by consensus. As a last resort, if no agreement is reached an amendment may be adopted by a three-fourths majority vote (Basel and Stockholm Conventions, UNFCCC, Kyoto Protocol)<sup>58</sup> or by a two-thirds majority vote (Biodiversity Convention, Montreal Protocol, Desertification Convention).<sup>59</sup> If Parties wish to adopt a different amendment formula, the MEA should be revised accordingly. An amendment should not specify an alternative process for its own adoption, as there would be no pre-existing delegated authority

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<sup>56</sup> Information in this section is extracted from United Nations, Treaty Section of the Office of Legal Affairs. (revised edition, 2012). Treaty Handbook. New York, US: United Nations, at 25-27. See also Articles 39-41 of the VCLT.

<sup>57</sup> For example, Article 22 of the Stockholm Convention on Persistent Organic Pollutants (POPs Convention) enumerates different voting formulae for the adoption of new amendments to the various annexes.

<sup>58</sup> See Article 17(3), Basel Convention; Article 21(3), Stockholm/POPs Convention; Article 15(3), UNFCCC; and Article 20(3), Kyoto Protocol to the UNFCCC.

<sup>59</sup> See Article 29(3), Biodiversity Convention; Article 2(9)(c), Montreal Protocol; Article 10 Bis (5), Ramsar Convention; Article 30(3), Desertification Convention; Article XV(1)(a), London Dumping Convention; Article X(4), CMS/Bonn Convention; and Article XVII(1), CITES.

to do so. There may be separate provisions in a treaty for adopting amendments to annexes (see 2.4.16.).

As noted earlier, some MEAs empower the COP to adopt protocols, such as the UNFCCC (Article 17), Biodiversity Convention (Article 28) and Vienna Convention for the Protection of the Ozone Layer (Article 8). Amendments to protocols are usually adopted in the same manner as amendments to treaty provisions: by consensus or, failing consensus, by a three-fourths majority or two-thirds majority vote.

### 3. Ratification: Each Party decides whether to ratify and become bound by the amendment

After adoption of the amendment, the consent of a State to be bound by the amendment is evidenced in the deposit of an instrument of ratification, acceptance or approval with the depositary.<sup>60</sup> In general, a Party that decides not to be bound by the amendment must submit formal notice that it is “opting out”.

### 4. Entry into force: Parties decide the procedure for the amendment to enter into force

An amendment enters into force in accordance with the amendment provisions of a treaty, such as upon the elapse of a specified time period following deposit of a specified number or percentage of instruments of ratification, acceptance or approval of the amendment; or within a certain period of time following its circulation, provided none of the parties to the treaty objects.<sup>61</sup>

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**Example:** Article 29(4) of the Convention on Biological Diversity dictates that an amendment shall enter into force on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two-thirds of the Contracting Parties to the Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. In contrast, Article 20(4) of the Kyoto Protocol specifies an amendment shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the depositary of an instrument of acceptance by at least three-fourths of the Parties to this protocol.

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An amendment that has entered into force may legally bind only those States that accepted the amendment in the prescribed formal manner (UNFCCC, Article 15) or all States Parties to the treaty (a rare case). If a State becomes party to a treaty that has been amended, it becomes party to the treaty as amended unless provisions dictate otherwise. If an agreement is not in force, it cannot be amended under its own provisions. A problem is posed when States agree to revise the text of a treaty after it has been adopted (step two) but has not yet entered into force. The solution involves the signatories, contracting States and perhaps interested countries all participating in the negotiation of additional agreements or protocols that resolve the problem, as illustrated in the negotiation history of the 1994 Agreement Relating to the Implementation of Part XI of UNCLOS (1982).

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60 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.

61 Where an agreement provides for entry into force of an amendment following ratification, acceptance or approval by a certain proportion of Parties, there may be a question of how this calculation is determined. For example, if an amendment is to enter into force after three-quarters of the Parties have expressed consent to be bound, the calculation could be based on the number of Parties at the time the amendment is adopted (‘fixed time’ approach) or at any given point following adoption (‘current time’ approach). The UN practice is to apply the latter approach, and count all Parties at the first point at which the set proportion has been achieved. States that become parties to an agreement after the adoption of an amendment but before its entry into force are counted. See the United Nations Treaty Handbook (2006), at 24.

## 2.3.12. Adjustments

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**Adjustment:** an instrument to modify a treaty or protocol or its annexes in a legally binding manner with respect to a material provision as agreed upon by the Parties.

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### **Objectives of an adjustment:**

- To provide certainty regarding the time frame for entry into force of changes to an agreement;
- To avoid the cumbersome amendment process.

In the context of the Montreal Protocol, the Parties may decide whether to formulate adjustments to the regulated ozone depleting potentials as well as adjustments to the production or consumption of the controlled substances.

The secretariat circulates any proposals for adjustments to all the Parties at least six months before the meeting at which the adjustments shall be presented for adoption. Similar to the procedures for amending treaties and related annexes, Article 2(9)(c) of the Montreal Protocol specifies that adjustments are adopted by consensus of all the Parties. In the absence of consensus, an adjustment may be adopted by a two-thirds majority of the Parties present and casting a vote at the meeting. Such adjustments are subject to ratification and enter into force once a specified number of Parties have ratified the adjustment. These procedures are sketched in the case studies of this Handbook (6.3.) regarding the Montreal Protocol and the Convention on the Long-Range Transboundary Air Pollution (LRTAP).

## 2.3.13. Withdrawal

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**Withdrawal:** a Party may withdraw from an MEA in accordance with any provisions of the treaty that authorize withdrawal or at any time with the consent of all the Parties after consultations with all contracting States. For example, the Basel Convention and Climate Change Convention permit a Party to withdraw three years after the entry into force of the respective conventions. The rare episodes of withdrawal from MEAs appear specific to marine agreements.

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**Without a withdrawal provision,** a Party may only withdraw from a treaty if it establishes:

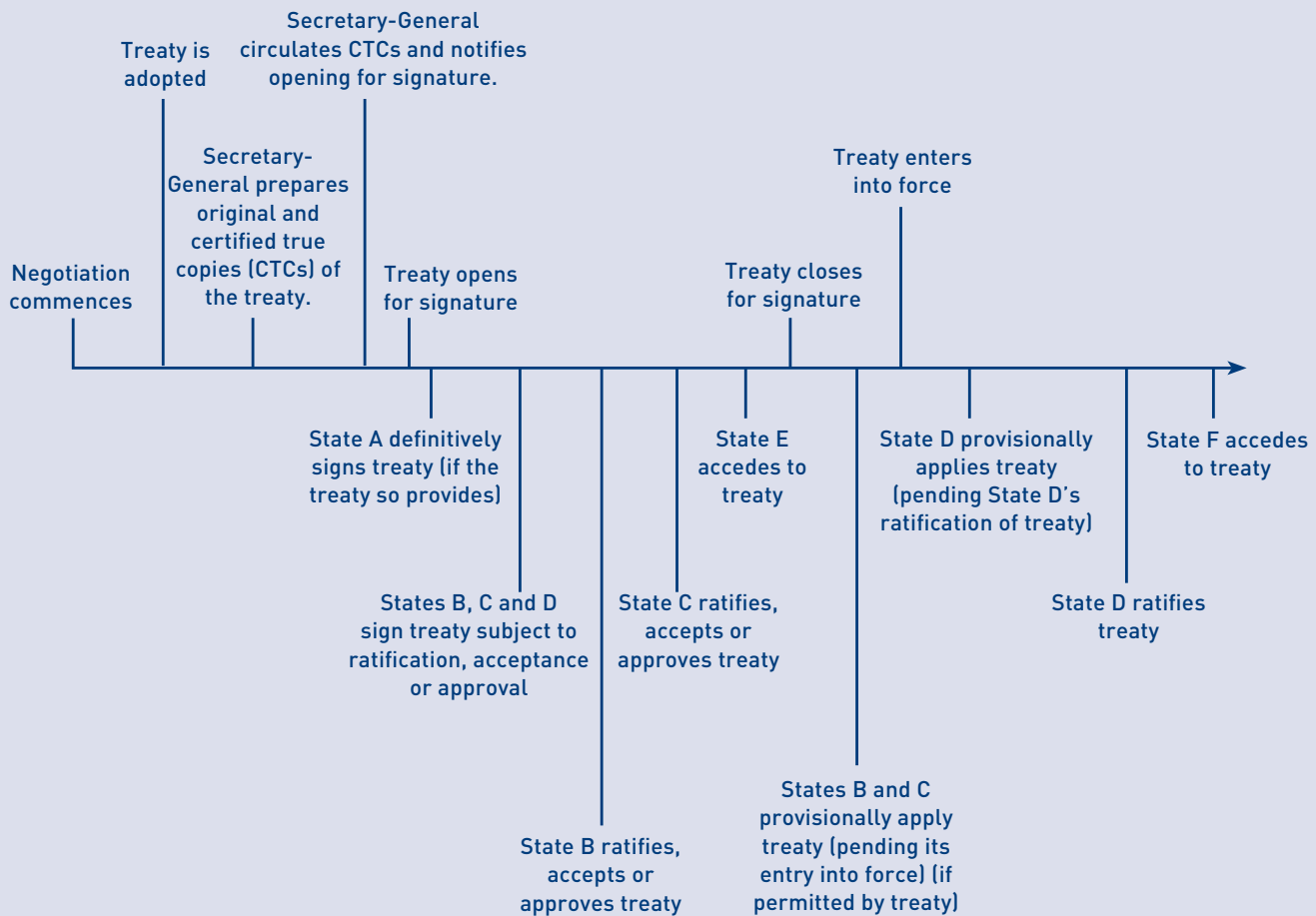
- The intention of the Parties was to permit withdrawal; or
- An ability to withdraw is inferred from the nature of the treaty.<sup>62</sup>

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62 Article 56 (a)-(b), VCLT. See also Article 54 of the VCLT regarding withdrawal from a treaty pursuant to its own withdrawal provisions.

### 2.3.14. Treaty process timeline

This graph sketches the possible sequence of events from the start of negotiations to the adoption of a treaty and its entry into force. It is replicated from the UN Treaty Handbook composed by the Treaty Section of the Office of Legal Affairs.<sup>63</sup>



### 2.3.15. Interpretation of treaties and decision texts

#### Interpretation is generally a matter for the Parties

- It is inferred that a secretariat or other servant of the Parties should not determine the interpretation of a treaty or decision text.
- Parties must regularly interpret an MEA to make decisions related to domestic or international implementation of treaty obligations. Interpretation is also essential for devising and adopting further decisions in an MEA body.

<sup>63</sup> United Nations, Treaty Section of the Office of Legal Affairs. [revised edition, 2012]. Treaty Handbook. New York, US: United Nations, at 21.

### On rare occasions, the task of interpretation can be delegated

- Interpretation can be delegated to a treaty body or raised before an international body with competent jurisdiction, such as the International Court of Justice.<sup>64</sup>

### Interpretation depends on the context and interests involved

- **Strict interpretation:** narrow, literal and textually based; shaped by the meaning of words, sentences and context as well as grammar.
- **Liberal interpretation:** expansive, based on intent; shaped by logic, intent or “object and purpose”.
- **Construction:** logical extension of the original intentions expressed in the treaty.

### General factors to consider for interpretation of a treaty or decision text<sup>65</sup>

- The ordinary meaning of terms in the overall context;
- All provisions in the treaty, including the preamble and annexes;
- The object and purpose of the agreement;
- The relevant rules of international law (i.e. VCLT, Articles 31–33);
- The rules of legal precedent: the most recent decision of the supreme decision-making body supersedes any previous decision (where possible, decisions should be interpreted consistently);
- A “customary” interpretation refers to the interpretation that has repeatedly been given to a text. This is a form of precedent, which may or may not be binding (see “Precedent” at 2.3.16);
- Subsequent agreements between the Parties on the interpretation of the treaty; and
- Subsequent practices in the application of the treaty that establishes the agreement of the Parties regarding its interpretation.

### The impact of interpretation and construction on the effectiveness of a treaty<sup>66</sup>

- The ordinary meaning of terms should be interpreted in a way that supports the treaty to effectively achieve its objectives.
- The intention of the States Parties to a treaty may be elucidated via preparatory work (“*travaux préparatoires*”),<sup>67</sup> and the circumstances in which the treaty was adopted.<sup>68</sup>
- As the diverging views and intentions of Parties can present challenges for interpreting an agreement, an understanding of intent is useful but rarely determinative.
- Do not ignore part of a text that appears inconsistent with the overall scheme. Attempt to reconcile the general and specific aspects of a text.

### Translations

- Even if most MEAs are negotiated in one language, each authentic language version of the treaty has equal weight for the purposes of interpretation.<sup>69</sup> It is therefore important to examine all language versions as issues often arise concerning consistency between the texts.

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64 Usually a Conference of the Parties (COP) or a Conference of the Parties serving as a Meeting of the Parties (COP/MOP). Camenzuli illustrates this delegated power of interpretation by Article 10(1) of the Montreal Protocol that specifies a financial mechanism to facilitate Party compliance with the control measures, and authorizes the MOP to interpret the term “agreed incremental costs” by creating “an indicative list of the categories of incremental costs”. See Camenzuli, L.K. (2007). “The Development of International Environmental Law at the Multilateral Environmental Agreements’ Conference of the Parties and its Validity.” Available from the IUCN Commission on Environmental Law, Online Papers: [http://cmsdata.iucn.org/downloads/cel10\\_camenzuli.pdf](http://cmsdata.iucn.org/downloads/cel10_camenzuli.pdf).

65 See “Decision texts” at 3.4.3 of this Handbook.

66 Article 31, VCLT.

67 Records of negotiations and other documents that may have evidentiary value, such as statements of negotiators.

68 Article 32, VCLT.

69 Article 33, VCLT.

- Translations often reflect the terminology used by a specific language group, and may reveal differing views on substance that invoke issues of consistency.

### 2.3.16. Precedent

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**Precedent:** a text, practice or course of action that has been previously adopted, agreed, or used. When negotiating a new text, “precedent” usually refers to a pre-existing text. However, the term may also relate to the process for adopting or agreeing on a text, or any other course of action.

**Binding precedent:** precedent that must be followed.

**Non-binding precedent:** precedent that does not need to be followed. It may be considered more or less persuasive, subject to agreement.

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#### **Matters of precedent should be carefully considered**

- Generally, following precedent is efficient and prudent as others may have carefully considered and appropriately addressed the relevant issues.
- However, precedent should not be taken for granted – consideration must be given to emerging circumstances and demands.

#### **Stipulations**

- Negotiators often agree to a course of action on the condition that a certain action or text shall not to be considered a binding precedent.
- This useful tool for obtaining agreement usually amounts to no more than a good faith condition between the relevant individuals.
- A stipulation or condition is regarded as more significant when it is included in an explanation of vote, interpretative declaration, reservation, or the official report of a meeting (included at the request of a Party).
- Ultimately, such conditions are unlikely to be legally binding between Parties and thus are rarely legally enforced.
- When in doubt of the legal significance of stipulations or conditions, seek legal advice.

## 2.4. Key elements of MEAs

Most MEAs are structured in a similar way with the same key elements as briefly outlined in the following sections.

### 2.4.1. Preamble

- The preamble provides interpretive context by indicating the object and purpose of the treaty. However, it may become the repository for a wide range of diverging ideas. In such a case, the interpretive value of the preamble is reduced.
- It usually sets out issues and related documents that reflect the history of the instrument and the reasons compelling its adoption by the international community.
- It will often reflect differences in views that remain unresolved, and areas that Parties may promote for further negotiation (see Annex D for illustrations of preambular terms).



### 2.4.2. Definitions or use of terms

- The definition section is the first article in most MEAs.
- It provides key definitions, often for terms of cross-cutting importance throughout the agreement (such as “representatives present and voting” at a meeting).
- However, it is often more clear and efficient to elaborate important definitions in the operative provisions of the agreement.

### 2.4.3. Objective and principles

- Most MEAs contain provisions that outline the broad policy objectives of the convention as well as the principles for guiding the actions of States Parties to the agreement. Such provisions are usually located near the beginning of MEA texts.
- These sections must be clear and concise, as they can have an important interpretive value.
- When Parties are unsuccessful in negotiating operative provisions, they may endeavour to accomplish similar objectives in these sections.
- Many Parties prefer to negotiate important objectives into specific operative provisions, and avoid agreeing to principles that could lead to ambiguity, uncertainty and unexpected results.

### 2.4.4. General provisions / scope

- Some MEAs contain provisions that describe the general scope and operation of the agreement.
- These provisions express key rules that broadly govern the rest of the agreement.
- However, they should be read in conjunction with other provisions that may impose exceptions or limitations to the scope of the agreement.

### 2.4.5. Substantive commitments

- Most MEAs involve an agreement to act or not act in a certain way to protect, conserve or enhance the environment. These commitments may focus on:
  - **Results** in the form of control measures, standards or limitations such as specific bans and/or quantifiable targets (see “Control provisions” at 3.4.2.4);
  - **Processes**, such as prior informed consent; or
  - **Mechanisms** to govern decision-making and the management of activities.

### 2.4.6. Financing and technical assistance

- An MEA often contains mechanisms to provide financial or technical assistance to developing countries or countries in economic transition, including:
  - Multilateral funding mechanisms;
  - Funds dedicated to certain purposes; and
  - Clearinghouse mechanisms or other arrangements to organize technology transfers (see “Funding” at 3.8, “Official development assistance” at 4.2.1 and “Technology transfer” at 4.2.5).
- Related bilateral activities may be encouraged or referenced, but are rarely elaborated.

### 2.4.7. Education, training and public awareness

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

For example, the UNFCCC recognizes that education, training and public awareness are an important foundation in the development and implementation of policies and programmes to address climate change (see Article 4.1(i), Article 6, New Delhi Work Programme, CC:iNet). All Parties not included in Annex I to the UNFCCC have reported that these activities are a priority in implementing the Convention. Education, training and public awareness programmes are often a component of projects either funded by the GEF (see 3.8.1. of this Handbook) or launched in cooperation with bilateral and multilateral agencies as well other organizations.

### 2.4.8. Research and monitoring

- Facilitating the collection and sharing of information on Party activities or environmental science is generally a key function in framework conventions that is linked to provisions addressing communication, reviews and reporting (UNFCCC, Article 12; CBD, Article 26).
- Many MEAs rely on reporting and transparency to encourage compliance with substantive control provisions.

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

- Agreements usually include a provision that establishes a “supreme” decision-making governing body for the Parties.
- For MEAs, the designated body is a COP while a Protocol has a MOP that may sit as a subset of a COP (as a COP/MOP). Both bodies are composed of all Parties to the relevant agreement.
- The term COP/MOP (“CMP”) is used when the Conference of the Parties also serves as the Meeting of the Parties to a Protocol.<sup>70</sup> In this Handbook, references to the COP generally include the CMP.
- Only Parties to a Protocol may make decisions on matters concerning a Protocol.
- The most recent decision of a COP or MOP is the most persuasive, but efforts are made to interpret all decisions as mutually supportive.
- The provision establishing the governing body may include the following:
  - Stipulations on the participation of Parties and observers;
  - Authority to draft rules of procedure (see 3.1.1);
  - Delegation of authority with respect to specific subjects; and
  - Delegation of general and residual authority to take decisions on actions required for attaining the objectives of the agreement. This generally provides the COP with a broad scope of action, but no specific authority to adopt legally binding decisions (see 3.1.1.14. on decision-making).

### 2.4.10. Subsidiary bodies

- A separate delegation of decision-making authority may be made to bodies that report to the COP or MOP. Such bodies devise recommendations to the COP on subjects within their mandates that often relate to technical/scientific or implementation issues (see “Subsidiary bodies” at 3.1.1.7 and 3.2.1.2).
- If there is no existing provision for creating subsidiary bodies, the requisite power could be derived from the general or residual powers delegated to a COP or COP/MOP.

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<sup>70</sup> For example, the Kyoto Protocol.

### 2.4.11. Secretariat, focal points and authorities

Generally, a multilateral treaty will contain provisions for establishing and defining the functions of treaty institutions. This encompasses a secretariat and related national or regional institutions (Focal Points or competent authorities, see 3.8.1.4).

### 2.4.12. Compliance, communication and reporting

- Some MEAs include provision for the development of procedures and mechanisms to promote compliance, as well as determining and addressing non-compliance.
- These mechanisms may involve a compliance or implementation committee with a facilitative role extended to address due process, the role of experts, standing, triggers, application, and consequences for non-compliance (e.g. the Kyoto Protocol).
- There is generally no clear binding means of international enforcement in MEAs. However, some Parties may use trade relations or devices to influence compliance with instruments, such as the eligibility criteria for participating in the trading/project mechanisms of the Kyoto Protocol and the trade measures of the Montreal Protocol or CITES.
- Compliance is often based on the obligations of Parties to submit national communications and report on key indicators. These reporting provisions are also applicable to the reviews of treaty effectiveness and environmental monitoring functions (UNFCCC, Article 12).

### 2.4.13. Review of effectiveness

There is often provision for Parties to periodically examine the effectiveness of an MEA in accomplishing its objectives and to determine whether further action is required. References to such reviews are often attached to information collected under the monitoring and reporting provisions of an MEA.

### 2.4.14. Dispute settlement

- Most MEAs include provision for dispute settlement among Parties based on the standard procedures used in other treaty contexts, such as compulsory, binding arbitration and conciliation (UNFCCC, Article 14; CBD, Article 27; Stockholm Convention/POPs, Article 18).
- While Parties are bound to follow such processes, they are generally not bound to accept the decision outcomes.
- Parties seldom avail themselves of these provisions for dispute resolution.

### 2.4.15. Treaty mechanisms

- Formalities, timelines and linkages with other agreements may be addressed in the final provisions of an MEA canvassing signature, ratification, application, depositary, entry into force, amendment, protocols, withdrawal, reservations, voting rules, and the equal authority of text in different languages.
- While these provisions often appear “as a matter of form” (*pro forma*), the procedures for voting and entry into force can be critically important (see the sections on voting at 3.1.1.14 and entry into force at 2.3.6.).

### 2.4.16. Annexes

Usually MEAs have annexes with lists or categories of items covered by substantive or other provisions (such as substances, species, activities, arbitration options, or Party-specific commitments). Note, there may be separate provisions in a treaty for adopting or amending annexes (see section 2.3.11. on amendment procedures).

## Background Reading: Treaty Law and Interpretation

Aust, A. (2007). *Modern Treaty Law and Practice*. Second Edition. Cambridge, UK: Cambridge University Press.

Corten, O. and Klein, P. (eds.). (2011). *The Vienna Conventions on the Law of Treaties: A Commentary*. First Edition. Oxford, UK: Oxford University Press.

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Orakhelashvili, A. (2008). "The Regime and Methods of Interpretation in International Law" in *The Interpretation of Acts and Rules in Public International Law*. Oxford, UK: Oxford University Press, 285-526.

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# Machinery

## 3.1. Conduct of business in MEA meetings

### Rules

When States first form an intergovernmental negotiating committee (INC) to craft an MEA, they adopt rules of procedure for the conduct of meetings during negotiations. Typically, the secretariat of this negotiating forum drafts the rules of procedure that are subsequently discussed at the first negotiating meeting. The MEA usually stipulates that a COP at this first meeting shall adopt by consensus its own rules of procedure as well as financial rules for itself, any subsidiary bodies and the secretariat (UNFCCC, Article 7(2)(k); CBD, Article 23(3); POPs, Article 19(4)). Most MEAs display similar rules of procedure that address definitions, election of officers, role of the secretariat, representation, participation of observers, subsidiary bodies, agenda, speeches, procedural motions, points of order, voting, amendment of the rules of procedure, dates and location of the negotiating meetings as well as the language and records of the meetings. These rules of procedure are usually displayed on the official internet website for the relevant treaties: it is vital to check this documentation for any additions or deletions and to carry a copy of these rules for the entire negotiation process (see Annex H of this Handbook at 6.8.3 for the UNFCCC rules of procedure).

**A negotiator should be familiar with the rules of the MEA** he or she is working on. There are invariably rules specific to each MEA, and knowing these may be critical to dealing with unexpected procedural moves by other Parties or a Chair (see 3.7 on process issues and violations). For example, some Parties may exploit the procedural rules as a negotiation tactic to delay substantive discussions: adjournment of debate or of the meeting as well as closure of debate and suspension of the meeting are procedural motions that notably impact on the negotiation process. However, negotiators often have limited awareness of the rules of procedure in their arena:

- Many negotiators are technical specialists or strategic actors focused on their own specific mandates, and prefer to leave rules of procedure to legal specialists.
- As open discussion may be avoided among negotiators, many are unaware that these rules may have a profound influence on the multilateral process and its outcomes.

Even when the rules are not referenced during a meeting or do not appear to invoke any problems, it is essential to understand them to identify any potential issues *before* key decisions are made.

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**Example:** a rule on majority decision-making. Votes are generally avoided, but a decision to obtain consensus on a specific issue and selecting the appropriate method for determining such consensus may depend on an understanding of how Parties would vote (see 3.1.1.14).

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### Process decisions

Process decisions can have far-reaching consequences, and it is difficult to reverse them. Early in treaty negotiations, it is important to integrate strategic considerations with the rules that govern the decision-making process.

Decision-making may result in numerous sub-processes based on interrelated decisions. While this process is susceptible to congestion, it can quickly move in an unexpected direction that may risk considerable time and investment as well as the value of substantive outputs.

Some of the most important elements in the rules of procedure and financial rules are highlighted below. There are variations on these rules in different treaties and thus the relevant texts should be consulted (see 6.8.6. for a list of treaty websites).

### 3.1.1. Rules of procedure

#### 3.1.1.1. Frequency of meetings

A rule usually specifies the frequency of COP meetings, which is typically annually (UNFCCC, Rule 4) or every two years (CBD, Rule 4). This meeting schedule may be altered (subject to budgetary concerns) by the COP or by a Party that requests an extraordinary meeting.

The COP will determine the meeting dates of subsidiary bodies (see sections 3.1.1.7 and 3.2.1.2). Generally, the meetings of subsidiary bodies should coincide with COP meetings.

#### 3.1.1.2. Observers

The rules of procedure or treaty text normally address the attendance and participation of two types of observers:

- **The United Nations, its specialized agencies and States not party to the Convention.** Representatives of these entities are generally entitled to attend meetings as non-voting observers (CBD and UNFCCC, Rule 6). The Chair may invite them to participate or intervene in the debate, unless there is an objection from one-third of the Parties to the relevant treaty present at the meeting.
- **Other bodies or agencies, whether national or international, governmental or non-governmental** (CBD and UNFCCC, Rule 7). This category may include representatives from environmental non-governmental organizations (NGOs), indigenous communities and industry as well as secretariats of other MEAs. These observers must notify the treaty secretariat of their wish to be represented at an impending meeting, and it is thereafter presumed they shall designate representatives to sit as observers at the public meetings of the negotiation process. However, their presence at such a meeting is subject to the objection of at least one-third of Parties present at the meeting as well as the following conditions:
  1. Qualification in matters covered by the Convention.
  2. The Chair may invite them to participate without the right to vote in a meeting on matters of direct concern to them. States negotiating this rule have proposed to add provisions that, for example, impose a duty on the secretariat to disclose the identity of observers to all Parties in advance of a meeting. Thus observer status may invoke concerns over transparency of treaty processes and the dynamics of regional relations. Most States who are wary of administrative burdens and constraints on participation in meetings have resisted such provisions.

#### 3.1.1.3. Agenda

Managing the agenda is strategically important as it can shape the discussion of particular subjects.<sup>71</sup>

**Time frame:**

1. The secretariat prepares the **provisional agenda** with the agreement of the Chair of the COP.
2. The provisional agenda and supporting documents are **distributed to the Parties** at least six weeks prior to the meeting, depending on the rules of procedure.
3. A Party has many opportunities to **add items** to the agenda:
  - a. By submitting a request to the secretariat for an additional item before the circulation of the provisional agenda.
  - b. After the circulation of the provisional agenda, a Party may request the addition of an item to a supplementary provisional agenda.

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<sup>71</sup> See Rules 8-15 of the Biodiversity Convention and Rules 9-16 of the UNFCCC referencing the structure and content of the agenda.

- c. At the time the agenda is adopted during the meeting, a Party may ask the COP to add items. In this case, the rules of procedure generally provide that only items the COP considers as urgent and important may be added to the agenda.
4. To keep the meeting on-schedule, it is common for the COP to set aside an item that the Parties cannot agree on but retain this item on the agenda (“**held/left in abeyance**”).
5. At the end of the meeting, if this agenda item is still held in abeyance it will be **included in the provisional agenda of the next session** (this may depend on a rule of procedure).

#### 3.1.1.4. Budgetary implications

The secretariat must report to the COP on the administrative and budgetary implications of all substantive agenda items. To ensure proper consideration of a substantive item, it is not generally discussed until at least 48 hours after the COP has received a report on that item (unless the COP decides otherwise).

#### 3.1.1.5. Credentials

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**Credentials:** documentary evidence of a person’s authority.

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- Credentials are **issued** by the Head of State, Head of Government, or the Minister of Foreign Affairs.
- Usually, each Party must **submit** the credentials of its representatives to the secretariat no later than 24 hours after the opening of the meeting for negotiations.
- Representatives are **provisionally entitled** to participate in a meeting, pending a decision by the COP on whether to accept their credentials.
- The Bureau **examines** the credentials and submits its report to the COP.

#### 3.1.1.6. Bureau

The Bureau provides administrative and operational direction for the negotiation process.

**The rules of procedure specify the following:**

- The COP shall **elect** officers of the Bureau **from among the representatives of the Parties**;
- The **officers** that will serve as the Bureau (President or Chair, Vice-president, Chairs of subsidiary bodies, and Rapporteur);
- The **number** of persons to be elected;
- The duration of their respective terms and the maximum terms they may serve (usually two consecutive terms);
- Representation of the five regional groups recognized by the UN (based on the principle of equitable geographic representation) and the *ex-officio* members of the Bureau (normally the Chairs of subsidiary bodies); and
- If an officer of the Bureau **resigns** or cannot complete his or her term, a representative of the same Party is usually appointed by that Party to complete the term.

**State practice and precedent** have developed for specific sub-issues, such as the order of rotation for regional representation. Those working on such issues should investigate the history and practice of the MEA in question (see 3.3.4 and Annex F for further information on the Bureau).

### 3.1.1.7. Subsidiary bodies

#### *Mutatis mutandis*

Most of the rules for the COP apply to the proceedings of subsidiary bodies as “*mutatis mutandis*” (with such changes as are necessary on points of detail).<sup>72</sup>

- It is common for rules of procedure to contain rules that are specific to subsidiary bodies.
- Some MEAs provide that the COP may modify rules for subsidiary bodies based on proposals to that effect from the subsidiary bodies.

**These rules may not apply to ad hoc working groups or committees established by the COP or by subsidiary bodies. When establishing such groups or committees, it is important to determine the key operating rules (such as the voting rule).**

#### **An important rule for subsidiary bodies is whether meetings are to be held in public or private**

- Even if the rules specify the open or closed nature of meetings, the COP always has the authority to change the format.
- Some rules also confer the power on a subsidiary body to determine this matter.

#### **Duties of the COP regarding subsidiary bodies**

- The rules normally provide that the COP shall determine the dates of meetings as well as the matters to be considered.
- The COP also elects the Chair for subsidiary bodies, unless it leaves this decision to the members of the body in question. The subsidiary body may subsequently elect other officers on the basis of equitable regional representation.

### 3.1.1.8. Openness of the meetings

#### **Strategy**

It is strategically important whether a meeting is open or closed to the public or observers as this may affect the behavior of Parties, including their willingness to share information and appear conciliatory rather than difficult.

#### **Formal meetings are generally open to all Parties**

- Rules of procedure normally provide that **meetings of the COP** are open to the public.<sup>73</sup> The Chair may invite non-Party States to attend the meeting and participate as non-voting observers.
- Parties can agree on **another format**, and generally do so through the Bureau.
- Often, the sessions of **compliance bodies** will be closed to the public in the interests of promoting open discussion and resolution of any problems encountered by a Party.
- In contrast, informal meetings are not subject to the rules of procedure but may require a certain amount of transparency. For example, informal meetings organized by the Chair of a formal group may have transparency issues relating to the outcomes they intend to present to a formal group (see “Institutional practice of other bodies” at 3.2.16 and “Informal group” at 3.2.1.6.3).

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<sup>72</sup> See Rule 27, paragraph 1, of the UNFCCC draft Rules of Procedure for the Conference of the Parties and its Subsidiary Bodies displayed in Annex H at 6.8.3. of this Handbook; and Rule 26, paragraph 5, of the CBD Rules of Procedure for the COP and its Subsidiary Bodies.

<sup>73</sup> Pursuant to Rule 29 of the Rules of Procedures for the COP and its Subsidiary Bodies to the Biodiversity Convention, sessions shall be held in public unless the Parties or body decide otherwise. Rule 30 for the COP and its Subsidiary Bodies to the UNFCCC specifies that the meetings of the COP shall be held in public whereas the meetings of the subsidiary bodies shall be conducted in private unless the Parties decide otherwise (duly accredited observers may participate in such private meetings).



### 3.1.1.9. Quorum

#### General rules for different types of quorums

- The presence of at least one-third of the Parties is required for the President or Chair to declare a session of the COP open and permit the debate to proceed.
- At least **two-thirds** of the Parties must be present at a session for the taking of a decision (UNFCCC, Rule 31; CBD, Rule 30).
- According to rules proposed for recent MEAs, an organization must have a number of votes **equivalent to the number of its members** to determine a quorum for decisions within the competence of a regional economic integration organization (such as the EU).<sup>74</sup>
- Meetings of non open-ended subsidiary bodies require a **majority of Parties participating** in the body to constitute a quorum.<sup>75</sup>

### 3.1.1.10. Interventions

#### Rules relating to interventions (oral statements)

##### 1. A delegate requires the permission of the Chair to address a meeting

- A delegate raises his or her country's name card ("the flag") to get permission to speak.
- The Chair calls upon speakers in the order in which they signify an intention to speak.

##### 2. Based on a proposal from a Party or the Chair, the COP may limit the time period allowed for each representative and the number of times they may speak

- In practice, the Chair determines these time limits without discussion but such decisions can be overruled.
- If there are major or repetitive issues, they will often be worked out in the Bureau.

##### 3. In some MEA fora, it is common for the majority of Parties to intervene on each issue

- This trend particularly occurs where there is a high level of diversity in national circumstances.
- In other fora, it is more common for regional and other negotiation groups to coordinate interventions to efficiently manage demanding agendas.

### 3.1.1.11. Points of order and motions

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**Point of order:** a formal question by a delegate regarding whether a specific action by a delegate or presiding officer follows the rules of procedure.

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#### Procedure for a point of order

- A point of order may be made at any time during a meeting (UNFCCC, Rule 34; CBD, Rule 33; POPs, Rule 38).
- A delegate may signal their intention to raise a point of order by making a "T" with their hand and country name card. If the delegate merely raises their hand or name card, the Chair may interpret this action as a

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<sup>74</sup> For example, Article 23 of the Stockholm/POPs Convention stipulates that a "regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa". Similar provisions exist in the UNFCCC, Article 18(2); and CBD, Article 39(2).

<sup>75</sup> See Rule 27, paragraph 3, of the UNFCCC draft Rules of Procedure for the meetings of the COP and Subsidiary Bodies as displayed in Annex H at 6.8.3. of this Handbook; and Rule 26, paragraph 5(a) of the Rules of Procedure for the COP to the Biodiversity Convention.

request from the delegate to add their name to the speakers' list rather than asking for the floor to raise a point of order.

- The Chair must interrupt the meeting or proceedings to hear the point of order.
- When permission to speak is granted by the Chair, the delegate may begin with the words: "I would like to make a point of order..."<sup>76</sup>
- In raising a point of order, a delegate may not speak on the substance of the matter under discussion.
- The rules of procedure require the Chair to rule immediately on the point of order ('rule' means to declare either that the point of order has no merit or to accept it and instruct any delegate who is 'out of order' to comply with the rules of procedure).
- If any delegate believes that the Chair's ruling is incorrect, he/she may appeal against the ruling. An appeal must be immediately put to the vote.
- The Chair's ruling will stand unless overruled by a majority of Parties present and voting.
- If the appeal is successful, the Chair must immediately rule according to the appeal.

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**Motion:** a formal oral proposal on a matter of procedure. For example, a motion may decide whether a body has the competence to address an issue or adopt a proposal or an amendment to a proposal.

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#### Procedure for a motion

- After the delegate indicates a request to speak and permission to do so is granted by the Chair, the delegate may begin with the words: "I would like to make a motion...".
- Motions may be carried (accepted) by consensus or vote of the Parties (UNFCCC, Rules 35-40; CBD, Rules 34-38; POPs, Rules 39-43).
- A delegate may **withdraw their motion** at any time before the vote, unless it has been amended. A proposal or motion thus withdrawn may be reintroduced by any other Party.
- When a proposal has been adopted or rejected, it may not be reconsidered at the same meeting unless a two-thirds majority of the Parties decide in favour of reconsideration.
- It is important to detect whether other Parties are wielding procedural motions as a delay tactic or for a genuine reason.
- In order of priority, the following motions 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; and
  - Close the debate on the question under discussion.
- Potentially, a delegate could request an adjournment or closure of the debate if they feel a debate is not generating constructive results; or request suspension of a meeting to enable more time for consultations when any conflicting positions of the major Parties is deterring consensus, or a new idea is introduced that requires the delegate to confer with colleagues before offering a response (i.e. an alternative method for the Chair to tackle an issue).<sup>77</sup> An illustration is the negotiation history for the Cartagena Protocol to the Biodiversity Convention where the Parties at the first extraordinary COP meeting in 1999

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<sup>76</sup> Paraphrased from Timoshenko, A. (2003). *Environmental Negotiator Handbook*. The Hague, NL: Kluwer Law International, at 54; and Gupta, J. (2000). "On Behalf of My Delegation,..." *A Survival Guide for Developing Country Climate Negotiators*. Washington D.C, US: Center for Sustainable Development in the Americas and the International Institute for Sustainable Development, at 23.

<sup>77</sup> Paraphrased from the article by J. Gupta referenced above, at 23. See section 3.7 of this Handbook on process issues and violations in relation to points of order and motions.

were scheduled to forge the final agreed text of the Protocol on time. However, the diverse positions of the Parties thwarted this goal and the meeting was suspended which ignited months of informal consultations entailing completion of the negotiations at the reconvened meeting in 2000.

### Procedural issues<sup>78</sup>

DECISION	METHOD
Point of order	Ruling by the Chair
Appeal over point of order	Unrecorded vote
Procedural motion	Unrecorded vote (nearly always)
Procedural oral motion	Consensus (typically) Unrecorded vote (sometimes)

### 3.1.1.12. Proposals and amendments

**Objective of a proposal:** Parties make a decision on matters, such as the adoption of a work programme, action plan, guidelines or other products. An amendment adds to, deletes from, or revises a proposal.

#### Rules relating to proposals and amendments

- Parties formulate these devices, even if they request the Chair or secretariat to provide a text containing such proposals or amendments.
- They should be **introduced in writing using** one of the six official UN languages, and circulated to delegations by the secretariat.
- Generally, there are **no discussions or votes unless the proposals or amendments have been distributed a day in advance**. However, the Chair may decide otherwise with regard to amendments to proposals or procedural motions.
- A delegate may **withdraw their proposal** at any time before the vote, unless it has been amended.
- Any delegate may request that part of a proposal or amendment is **voted on separately**.
- If a representative **objects to this request**, delegates must vote 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 “Amendments” at 2.3.11 and “Adjustments” at 2.3.12).

### 3.1.1.13. Amendments to the rules of procedure

As the rules of procedure for MEAs are adopted by consensus, any modification to those rules also requires consensus by the Conference of the Parties. For example, Rule 58 of the UNFCCC draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies dictates that any amendment to a rule of procedure, deletion of an existing rule or adoption of a new rule requires the consensus of the COP.<sup>79</sup> Different methods for decision-making may exist for amending the rules of procedure governing subsidiary bodies constituted under other MEAs (see 3.2.1.2).

<sup>78</sup> Walker, R.A. (2011). Manual for UN Delegates. Conference Process, Procedure and Negotiation. Geneva, CH: United Nations Institute for Training and Research, at 71 and 182.

<sup>79</sup> UNFCCC draft Rules of Procedure, document FCCC/CP/1996/2, replicated in Annex H at 6.8.3. of this Handbook and also available online at the UNFCCC website listed in section 6.8.6.

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

#### Options for the decision-making procedure in MEA fora

##### 1. Consensus

- The most common method for decision-making is without voting: in this case, the decision is deemed to have been taken by consensus.<sup>80</sup>
- If it appears that consensus is emerging after discussion on an issue the Chair may ask the Parties if there is consensus, then look around the room and interpret silence as consent.
- If no Party objects, the Chair will tap the gavel and declare that the issue is decided.<sup>81</sup>

##### 2. Absence of consensus

- In this rare situation, voting may take place through an electronic system, show of hands or a roll-call (in practice, a delegation would raise its flag).
- Alternatively, there may be a recorded vote where the way each delegation voted is noted in the report of the meeting.
- Voting is not to be interrupted, unless a point of order is raised in connection with the actual conduct of the voting (CBD, Rule 48; see 3.1.1.11).

##### 3. Voting by secret ballot

- A delegation may request a secret vote on decisions and elections.

##### 4. Vote or join in a consensus *ad referendum*

- A decision adopted by *ad referendum* allows a Party to re-open debate on a matter at a subsequent meeting.
- The decision is automatically confirmed at the next meeting, unless it is re-opened for debate.
- The issue is not placed on the agenda of the next meeting, and silence is considered to indicate consent.
- This approach allows a Party to consult with national authorities and to reserve the right to re-open debate, but otherwise not impede progress.

##### 5. No objection basis

- This option is similar to consensus *ad referendum* in that it provides for a decision to take effect on a 'no objection' basis within a specified time frame. For example, this has been developed for the adoption of annexes for the Basel Convention (Article 18).

##### 6. Explanation of vote

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

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80 This decision-making method is stipulated in the Rules of Procedure for the COPs to the Biodiversity Convention, Rule 40; UNFCCC, draft Rule 42 (see 6.8.3. of this Handbook); and the Stockholm Convention, Rule 45. Note, the contentious negotiating history of the voting rules in the first two treaties.

81 The Chair may use the phrase "it is so decided". Note, in the context of the Strategic Approach to International Chemicals Management (SAICM), NGOs and IGOs may "participate in consensus".

### 3.1.1.15. Voting majority

The voting rules on the required majority may affect the development of consensus.

#### Voting rules

- The Convention may specify the voting majority required to decide on specific issues.<sup>82</sup>
- For most other matters, the voting rules are elaborated in the rules of procedure adopted by the Parties usually at the first meeting of the COP (see 3.1).
- For some financial matters, the voting rules are contained in the financial rules.<sup>83</sup>
- Each Party is entitled to a vote at a COP. As noted earlier, recent MEAs provide a voting rule for regional economic integration organizations (REIOs). For matters within its competence, a REIO may exercise its right to vote and the number of votes is equal to the number of its member States that are Parties to the MEA. A REIO may not exercise this right to vote if any of its member States independently exercises its right to vote, and vice versa.<sup>84</sup>

#### Negotiations on rules of procedure

- One of the most divisive issues is the rule on the majority required for voting on substantive issues.
- Most rules provide that Parties must endeavour to reach consensus on substantive decisions (UNFCCC, draft Rule 42; CBD and Ramsar Convention, Rule 40). In the event the Parties fail to reach consensus, most rules provide that decisions may be adopted with the support of a two-thirds majority vote of the Parties present and voting at the meeting.<sup>85</sup>
- In cases where Parties cannot agree on a voting rule, they have adopted all of the rules of procedure but not the rules on voting methods (CBD, UNFCCC).<sup>86</sup>
- Rules of procedure must be adopted by consensus, which is the *de facto* rule for adoption of substantive decisions in the absence of an agreed voting rule.

#### Substantive versus procedural matters

- The Chair determines whether a matter is substantive or procedural in nature, which is an important distinction. For example, a voting majority rule applies for matters of procedure whilst matters of substance are governed by the consensus rule.<sup>87</sup>
- The decisions of a Chair may be appealed and overruled by a majority vote of the Parties.

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82 For example, the adoption of rules of procedure and financial rules requires a consensus of the Parties in MEAs such as the Basel Convention, Article 24(3); and UNFCCC, Article 7(2)(k).

83 Exceptions include the Rotterdam and Stockholm Conventions, where certain consensus requirements are stipulated in the treaties rather than the rules of procedures.

84 See Article 23(2) of the Rotterdam Convention and Article 22(2) of the Kyoto Protocol to the UNFCCC.

85 An illustration is the contentious Rule 40 of the Rules of Procedure governing the COP to the Biodiversity Convention which is scattered with square brackets to reflect disagreement: “[1. The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision, except a decision under paragraph 1 or 2 of Article 21 of the Convention] shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, the financial rules referred to in paragraph 3 of Article 23 of the Convention, or the present rules of procedure. [Decisions of the Parties under paragraphs 1 and 2 of Article 21 of the Convention shall be taken by consensus.]”.

86 For example, the draft Rules of Procedure pursuant to the UNFCCC have ignited disagreements on Rule 22 (paragraph 1) and Rule 42 (paragraph 1). However, these Rules of Procedure are applied on an interim basis with the exception of Rule 42. See section 2.3.11. for the solution proposed by Papua New Guinea and Mexico in the form of an amendment to the treaty provisions on the COP and the right to vote.

87 As illustrated by Rule 40 of the Rules of Procedure for the Biodiversity Convention that clarifies the Parties must endeavour to reach consensus on substantive decisions but decisions on matters of procedure shall be accomplished by a majority vote of the Parties present and voting at the meeting. Rule 40(3) specifies that the President shall rule on any question regarding whether a matter is one of a procedural or substantive nature. An appeal against this ruling shall be put to the vote immediately and the President’s ruling shall stand unless overruled by a majority of the Parties. A similar formula is embodied in the Rules of Procedure for the Stockholm Convention, Rule 45(1)-(3); and the UNFCCC, draft Rule 42 (1)-(3) as displayed in Annex H at 6.8.3. of this Handbook.

- If a Chair attempts to force an important and contentious issue as a procedural matter, a delegation can challenge the ruling (this is a rare action).<sup>88</sup>

### Substantive issues<sup>89</sup>

Decision	Method
When delegations are unanimous	Consensus
When delegations are indifferent	Consensus
When majority opinion is evident and objectors see no advantage in demonstration	Consensus (frequently)
When divisions are deep and outcome of vote is not certain	Unrecorded vote (where RoP permit)
When divisions are deep and delegations wish to make a political demonstration	Unrecorded vote (where RoP permit) Recorded or roll call vote (sometimes)

### Consensus and blocking consensus

- Matters are often decided by consensus, even though the rules provide for decisions based on a voting majority.
- While MEA rules do not define “consensus,” it is accepted that there is no requirement for a formal vote on a proposed decision if there are no known objections to that decision.<sup>90</sup>
- Once consensus appears to emerge, the Chair can formally ask the decision-making body to confirm if a consensus has been reached and there are no objections. Thereafter, the Chair may announce the proposal as adopted by the Parties.
- A Party may block consensus by raising its flag and stating clearly that it objects to the proposed decision. It must convince the Chair that their delegation’s position is firm and that other options must be explored for achieving successful outcomes in the negotiations. This event rarely occurs, and a Party must be certain before expressing an objection and may consult their delegation for confirmation. One possible scenario where a Party may choose to block consensus is when a Chair introduces a “take it or leave it” package near the end of a session and indicates they will only consider a limited number of changes, thereby isolating the objecting Party.
- If the rules of procedure specify that all decisions can only be taken by consensus, a single delegation could object to any proposed decision and block consensus thereby preventing a COP from adopting that decision (this veto power is rarely used). Possible solutions to avoid this situation:<sup>91</sup>
  - The rules of procedure could allow voting on procedural issues so that the COP avoids an unnecessarily prolonged discussion of a procedural issue or a small minority of delegates blocking a substantive decision they oppose by blocking procedural actions enabling that decision. In these circumstances, the rules could permit voting on whether a proposal is procedural or substantive.
  - The rules of procedure could specify that decisions should normally be taken by consensus but allow voting as a last resort and/or require a greater majority than 50% +1 for a decision to be adopted.

88 See the section on “Process Issues and Violations” at section 3.7 for other options.

89 Walker, R.A. (2011). *Manual for UN Delegates. Conference Process, Procedure and Negotiation*. Geneva, CH: United Nations Institute for Training and Research, at 182.

90 Consensus is defined in Article 161(8)[e] of the 1982 Law of the Sea Convention as “the absence of any formal objection”. The Dispute Settlement Understanding of the WTO directs 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 the customary meaning of “consensus”.

91 Information extracted from Walker, R.A. (2011). *Manual for UN Delegates. Conference Process, Procedure and Negotiation*. Geneva, CH: United Nations Institute for Training and Research, at 174.

- The possibility of voting may pressure delegations to forge a consensus and prevents them from unreasonably wielding a virtual veto power: a delegation that presses a minority view too far runs the risk that others will insist on a vote (which it will lose).
- Rather than blocking consensus, a delegation could request that its views are reflected in the meeting report (see 3.5.5).

### 3.1.1.16. Elections

The officers of meetings are generally elected by secret ballot from a list of persons nominated by the States Parties, unless decided otherwise by the COP. The rules adopted by a treaty body should provide a detailed procedure for such elections. In practice, candidates for the elections are usually nominated and adopted by consensus before the actual meeting scheduled to formally introduce elections.

### 3.1.1.17. Languages

#### Interventions

- In the meeting of the COP, delegates may intervene in any of the treaty official languages (usually the six UN languages: Arabic, Chinese, English, French, Russian, or Spanish). Interventions or oral statements are interpreted in the other official languages.
- If a representative wishes to intervene in another language, he or she must provide an interpretation in one of the official languages.
- Interventions should be made at a measured pace to allow time for translation, otherwise the Party risks a misunderstanding leading to opposition or the need for further explanation.
- Parties must agree to continue a meeting after translation services has finished. Agreement by consensus is generally required for this action, although voting rules on procedure may apply.

#### Documents in a UN forum

- Official documents are generally negotiated and composed in one of the official languages and then translated into the other official languages. Treaty bodies often designate a “working language” for negotiations, and a common selection is the English language.
- The number of authentic languages varies with the body adopting them. In their final clauses, most UN MEAs provide that the texts are authentic in all official languages (a multilateral agreement is rarely silent on this point).
- If the resolution approving or adopting an agreement does not make specific provisions regarding language, the UN Secretary-General will consider all official UN languages as authentic.
- Concerns about translation errors in texts are addressed in the same manner as other textual errors.

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

**The original treaty or text adopted under a treaty may require corrections where there is –**

- An error in typing, printing, spelling, punctuation, or numbering;
- A conformity issue between the original treaty and the official records of the Diplomatic Conference that adopted the treaty; or
- A concordance or translation issue between different authentic texts constituting the original of the treaty.

**It is important to distinguish between the discovery of an *error* or an *issue*, and whether it modifies the meaning or substance of the agreement**

- Initially, resolving an error or issue may involve informal discussions with Parties, the depositary, secretariat and the Chair or Co-Chairs of the negotiations.
- If these discussions do not resolve the matter, the treaty secretariat or depositary may officially refer the matter to the signatory States and/or Parties.

#### **Translation concerns**

- If an issue relates to the translation of an official treaty or decision text from a UN forum, the relevant secretariat or depositary will consult the UN translation services at UN headquarters (New York) or in the relevant regional office. Translation into other languages will be based on the adopted text.
- Many agreements provide that all official languages are equally authoritative. If an issue of concordance is raised in a timely fashion as described below, the language of the text adopted by the Parties or the international negotiation conference is determinative.

#### **Correction procedure**

- The depositary can correct errors in a treaty text at its own initiative or at the request of the States that participated in the negotiation and adoption of the treaty.
- Regarding a decision text, the treaty secretariat may initiate a similar process to correct errors. When a Party has noticed an error, it may report the matter informally as noted above or through a formal letter to the secretariat or depositary.
- Regarding the official treaty text, the established UN practice is to circulate proposed corrections to:
  - Signatory States;
  - States represented at the Diplomatic Conference for adopting the treaty; and
  - Contracting Parties.
- While the depositary may circulate proposed corrections to more broad groups involved in negotiations, only the signatories or contracting States to the MEA have a legal right to participate in a decision related to a correction.
- It is inferred that a proposed correction is accepted when no objections are raised within a specified time period. The correction is then inserted in the original treaty text and initialed by a depositary authority. A *procès-verbal* of rectification is circulated as part of the depositary notifications.
- All Parties should review corrected texts to ensure that their interests have not been undermined.

#### **Objections to proposed corrections**

- Any interested State may object where:
  - It does not accept that the correction is justified; or
  - It considers the correction procedure is inappropriate, for example –
    - A procedure presumes tacit consent for a proposed correction that would affect the substance of the agreement. In this case, the correction may be reclassified as an amendment governed by a specific procedure; or
    - The time limit for notifying objections is regarded as inadequate.
- If the depositary receives an objection within the specified time limit, it will notify the Parties concerned.
- If an objection is received after the time limit has expired, the depositary will generally inform Parties even though the formal objection has no legal status.



### Time limits

- Objections to proposed corrections must be notified to the depositary within a certain period of time.
- The general UN practice is a time limit of 90 days from the date shown on the written notification of an objection from a Party.
- The VCLT provides that the depositary “shall specify an appropriate time-limit within which objection to the proposed correction may be raised”.<sup>92</sup>
- A time limit for submitting objections is governed by factors such as the nature and number of proposed corrections as well as whether the treaty has entered into force.

## 3.1.2. Financial rules

An MEA often directs the COP to establish its own financial rules that are adopted by consensus (UNFCCC, Article 7(2)(k) and Annex 1 of Decision 15/CP.1). Such rules are usually modeled on UN practice and are designed to govern:

- The COP’s financial administration;
- Its subsidiary bodies; and
- The MEA secretariat.

The rules address the financial matters essential to MEAs, and usually specify that the Financial Rules and Regulations of the UN shall govern other matters.

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**Example:** Article 22(2) of the Desertification Convention –

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.

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Other MEAs may have different provisions, so consult the relevant treaty texts and rules of procedure (see 6.8.6 for a list of electronic resources). Key matters in these rules are outlined 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 several funds as described in the following sections.

#### 3.1.2.1.1. General trust fund

This fund is comprised of contributions by Parties and non-earmarked contributions from other sources. To ensure continuity of operations in case of a temporary cash flow problem, part of the fund is composed of a reserve set at a level determined by consensus of the COP. Any funds drawn from the reserve must be restored from contributions as soon as possible.

#### 3.1.2.1.2. Special trust fund

This fund is composed of contributions by Parties and other sources earmarked to cover the cost for delegates from specific categories of countries to participate in meetings of the COP and subsidiary bodies (e.g Parties

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<sup>92</sup> Article 79(2), VCLT.

from developing or least-developed countries).<sup>93</sup> *The contributions to this special trust fund are additional to those required to be paid by Parties to the general trust fund.*

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**Example:** the financial rules of the UNFCCC reference the creation of a Trust Fund for Participation in the Convention Process that supports the attendance of delegates from developing country and EIT Parties in the COP and its subsidiary bodies (especially the least-developed countries and small island developing countries).

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### 3.1.2.1.3. Other trust funds

The rules occasionally empower the COP to create other types of trust funds that are consistent with the objectives of the treaty.

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**Example:** pursuant to the Desertification Convention, a Trust Fund for the Supplementary Contribution to the Convention Activities by the Host Government ('Bonn Fund') provides for the travel costs of NGOs from developing country Parties to facilitate their participation in pertinent activities.

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### 3.1.2.2. Contributions

Contributions to the general trust fund are due annually (normally by 1 January) on the basis of an indicative scale determined by the COP. Rules relating to contributions are as follows:

- MEAs do not contain binding obligations for Parties to make contributions, although these payments are generally treated as obligatory.
- The formula for the scale of contributions is often difficult to negotiate. Generally, the COP adopts the scale used by the United Nations General Assembly and modifies this scale on a *pro rata* basis with respect to Party membership.
- The relevant provision will specify minimum and maximum contributions, but Parties may make other contributions such as those earmarked for the special trust fund.
- Parties should give advance notice of the intended amount and timing of their contributions.
- Non-Party States, and 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 information is reported at each COP on an annual basis or a more frequent period.

### 3.1.2.3. Financial period of the budget

The rules normally provide for a two-year financial period or "biennium" as illustrated by the UNFCCC.

### 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 in advance (usually 90 days) of the COP meeting scheduled to adopt such documentation.

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<sup>93</sup> For example, the Desertification Convention has spawned a Special Trust Fund for Participation that finances the meeting attendance of representatives from developing countries, especially the least-developed countries affected by desertification; whilst the financial rules for the Stockholm Convention provide for the participation of representatives from developing countries and countries with economies in transition (EITs).

### 3.1.2.5. Budget lines

Once the budget is adopted, obligations may be incurred and payments made for the purposes and up to the amounts for which the appropriations were approved.

- **Commitments** must be covered by related income unless otherwise authorized by the COP.
- **Transfers** within the main appropriation lines may be made, as well as transfers between such lines to the maximum limits as determined by the COP.
- **The 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

Normally, the following must be adopted by consensus at the COP:

- 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.

## Background Reading: Rules of Procedure

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## 3.2. Institutional and negotiation structures

### 3.2.1. Institutional structures of conventions

**This section is divided into two parts**

1. A review of the institutional structure of MEAs and the informal mechanisms developed during MEA meetings to facilitate negotiations.
2. An examination of how States form groups for negotiation purposes.

UN MEAs are part of a wider network of environment-related infrastructures that together play a key role in the development of norms, policies and mechanisms to protect the environment.<sup>94</sup> While MEAs typically establish key bodies to pursue treaty objectives, Parties have also developed methods to organize themselves for negotiating issues.

#### 3.2.1.1. Conference of the Parties

##### Functions of the COP

- The main function of the COP is to continuously review and evaluate the implementation of the MEA, and take such decisions necessary for further implementation.
- Depending on the MEA, specific tasks include:
  - Adopting rules of procedure, financial rules and provisions for the functioning of the secretariat as well as arbitration and conciliation procedures;
  - Establishing subsidiary bodies;
  - Receiving and examining reports from Parties or subsidiary bodies;
  - Adopting decisions as required by the MEA (e.g. on guidelines, implementation plans, technical and financial assistance, best practices);
  - Developing and approving mechanisms to address non-compliance;
  - Co-operating, where appropriate, with other organizations;
  - Deciding whether to adopt proposed amendments to the MEA; and
  - Initiating any additional action required to achieve the objectives of the MEA.

##### Frequency of meetings

- The frequency of meetings is specified in the rules of procedure.
- Typically, the first meeting must be held no later than one year after an MEA has entered into force. At this meeting, the COP adopts rules of procedure for the frequency of subsequent meetings (see 3.1.1).
- The High-level Segment (“Segment for High-level Participation” or “High-level Meeting”) refers to the highest-level representatives of State Parties attending a meeting, such as the Minister of Foreign Affairs.

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<sup>94</sup> See Annexes A and B for a brief survey of key non-MEA bodies in international environmental matters.

### 3.2.1.2. Subsidiary bodies

#### MEAs that provide for subsidiary bodies

Some MEAs mandate the establishment of permanent subsidiary bodies to tackle specific treaty issues (see 3.1.1.7).<sup>95</sup> Many essential features of these bodies are elaborated in such treaties, but the COP must address matters such as the terms of reference, organizational structure and operation of subsidiary bodies. Over time, Parties may modify the terms of reference as well as the names and functions of subsidiary bodies (such as amalgamating bodies).

The basic elements of subsidiary bodies may be illustrated by several pivotal agreements:

- **Purpose and functions:** the UNFCCC specifies the tasks of the Subsidiary Body for Scientific and Technological Advice (SBSTA), such as providing “timely information and advice on scientific and technological matters relating to the Convention”.
- **Composition:** the Stockholm Convention stipulates that the Persistent Organic Pollutants Review Committee “shall consist of government-designated experts in chemical assessment or management” and that “members of the Committee shall be appointed on the basis of equitable geographical distribution.” MEAs may state whether the subsidiary body is limited or open to participation by all Parties (the latter is specified in Article 10 of the UNFCCC regarding the Subsidiary Body for Implementation/“SBI”).
- **Voting rule:** the Rotterdam Convention provides that if efforts for obtaining consensus have not been successful, the Chemical Review Committee may adopt recommendations by a two-thirds majority vote.

#### MEAs that do not provide for subsidiary bodies

Generally, the COP exercises its power to create and revise subsidiary bodies. Examples are as follows:

- The Desertification Convention provides that the COP shall “establish such subsidiary bodies as... necessary for the implementation of the Convention” (Article 22(2)(c)).
- *Ad hoc* (temporary) groups –
  - The COP1 of the UNFCCC established the Ad Hoc Group on the Berlin Mandate (AGBM), which led to the Kyoto Protocol.
- Groups labeled as *ad hoc* even though they are actually meant to be relatively permanent –
  - COP1 of the Basel Convention established an Open-ended Ad Hoc Committee (later called the Working Group for Implementation) to fulfill the tasks required to implement the Convention.

#### The COP or subsidiary groups may create subgroups

- For example, the COP4 of the UNFCCC established a joint working group under its two standing subsidiary bodies: the Subsidiary Body for Scientific and Technological Advice (SBSTA) and Subsidiary Body for Implementation (SBI). The working group was assigned the task of developing the compliance system of the Kyoto Protocol, and reported to the COP through the subsidiary bodies.

#### The COP decides the frequency of meetings for subsidiary bodies

- The work of subsidiary bodies generally occurs at intersessions and is considered at the following COP.
- For example, the Legal Working Group of the Basel Convention met several times between COP5 and COP6. The work of the group allowed COP6 to adopt decisions on subjects such as a compliance mechanism and an emergency fund mechanism.

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<sup>95</sup> For instance, the UNFCCC provides for the Subsidiary Body for Scientific and Technological Advice (SBSTA, Article 9) and the Subsidiary Body for Implementation (SBI, Article 10); the Stockholm Convention provides for the Persistent Organic Pollutants Review Committee (POPRC, Article 19); and the Rotterdam Convention calls for the establishment of the Chemical Review Committee (CRC, Article 18).

### **Election of Chairs of subsidiary bodies**

- The rules of procedure normally provide that the COP elects Chairs of subsidiary bodies.
- The COP elects officers of the Bureau (see 3.1.1.6 and Annex F).
- The subsidiary body itself elects other officers on the basis of equitable regional representation.

### **3.2.1.3. Secretariat**

#### **Provision in MEAs**

- MEAs generally provide that the COP shall designate the secretariat at its first meeting.
- For example, COP1 of the Basel Convention produced Decision 1/7 that requested UNEP to perform the functions of the secretariat.
- UN MEAs generally follow UN administrative practice.

#### **The secretariat ensures the effective functioning of the COP and its subsidiary bodies**

- Though the functions vary, the primary role of the secretariat is to provide administrative, logistical, process management and procedural support to the COP (see Annex F).
- The COP may assign additional tasks to the secretariat that often relate to the international activities required to attain the objectives of the agreement. The tasks may be elaborated in the MEA, decisions under the MEA or rules of procedure.

#### **Common tasks**

- Arrange and provide logistical support for meetings of the COP and subsidiary bodies:
  - Give notice of dates and venue of meetings;
  - Prepare the provisional agenda and reports with the guidance of the Chair or Bureau, and circulate this material along with any pre-session documents (these may be prepared by the secretariat, or forwarded by Parties or observers);
  - Arrange for documents to be available in the official languages of the MEA;
  - Arrange for interpretation and distribution of documents during the meeting;
  - Arrange the subsequent publishing and distribution of official documents, such as the report of the meeting;
- Report at meetings on its activities as well as on administrative and budgetary matters;
- Coordinate with other international bodies;
- Receive and compile information for the next meeting;
- Communicate relevant information received from one Party to other Parties as requested or appropriate;
- Arrange support for Party implementation of COP decisions; and
- Respond to requests to the secretariat in COP decisions.

### **3.2.1.4. Depository and authoritative citations**

#### **A treaty generally delegates a depository to manage documentary functions**

Most MEAs have a provision that allows Parties to designate a State or institution as a depository:

- Depositories may be comprised of more than one responsible authority,
- Parties may decide to transfer depositaries from one authority to another.

## UN agreements

The Secretary-General is generally the depositary for multilateral agreements. In practice, the Treaty Section of the UN Office of Legal Affairs performs depositary functions on behalf of the Secretary-General. Alternatively, the depositary is the State that hosted the last negotiating conference. The Secretary-General may agree to be responsible for the depositary for other multilateral agreements forged outside the UN organization.

## Duties

As a depositary's duties are international in character, it is obliged 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;
- Customary international law; and
- Article 77 of the VCLT.

### 3.2.1.5. Citations and original texts

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**Article 102 of the Charter of the United Nations (1945):** 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.

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The UN maintains a comprehensive treaty collection for original treaty texts, authoritative citations and references.<sup>96</sup> In addition, the American Society of International Law publishes a standard authoritative reference for original treaty materials entitled *International Legal Materials*.<sup>97</sup>

### 3.2.1.6. Institutional practice of other bodies

#### **Problem: it is difficult to address issues in busy meetings**

Officially, a COP determines the method for addressing and disposing of issues in meetings. However, in practice it is hard to address issues in plenary meetings and meetings of open-ended subsidiary bodies that are attended by scores of Parties along with many observers.

#### **Solution: matters are often referred to groups not referenced in the treaty or decision texts**

- These groups are often crucial in solving issues – most negotiations in any given session will take place in such groups.
- Usually, the COP or subsidiary body adopts (often *verbatim*) the proposals developed and endorsed in such groups.
- To initiate further progress, an agreed proposal of a group must obtain the formal approval of the body that created the group. Some of the most common groups are described below.

#### 3.2.1.6.1. Working groups

##### **Working groups are composed of States interested in tackling key issues on the agenda**

- Once the Chair has introduced an item and given delegations the opportunity to state their opening positions, it may suggest at its own initiative or at the request of one or more Parties that a working group consider the item in detail. This ensures that:

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<sup>96</sup> See the official United Nations website at <http://untreaty.un.org>

<sup>97</sup> The current and archived table of contents are available on their website at <http://www.asil.org/ilm.cfm>

- Important issues are carefully considered; and
- The Chair can move to the next item on the agenda and return to the deferred item once the working group is ready to report to the COP or subsidiary body.
- The Chair of the COP designates –
  - A Chair; or
  - Co-Chairs, if it is a large group or one that deals with a particularly difficult issue.
- The formal or informal status of a working group depends on whether it was created by agreement or decision.
  - Several “ad hoc groups” or “joint working groups” may be created by decision and thus treated as formal bodies governed by the rules of procedure.
  - All Parties, even those bodies with designated or elected membership, should have access to the meetings of formal working groups (at least as observers). If such a decision does not impose membership limits, Parties should have full rights to participate and this encompasses access to translation services and other features.

### Number of working groups

- Working groups are open-ended, but the number of participants varies depending on the number of interested States.
- The number of simultaneous working groups must be limited, as it could become difficult for delegations to cover more than one or two groups.
- Some fora have specific rules or practices with respect to the number of meetings. For example, in the UNFCCC process it is implicit that no more than two meetings should occur at the same time.
- Often a number of groups are created with arrangements to meet at different times of the day.
- COPs and subsidiary bodies can both create working groups. For instance, at the 2nd Meeting of the *Ad hoc* Open-ended Intersessional Working Group on Article 8(j) and Related Provisions of the Biodiversity Convention, 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

##### Contact groups explore issues difficult to resolve that may impede progress on related issues

- Contact groups are expected to be created at almost all COPs and are regarded as formal groups subject to the rules of procedure.<sup>98</sup>
- The Chair of the COP, a subsidiary body, or a working group may suggest the creation of a contact group.
- The group may be open-ended, but usually involves States with strongly opposed opinions on an issue.<sup>99</sup>
- Two groups with related issues may sit as a Joint Contact Group to resolve their differences.

#### 3.2.1.6.3. Informal groups

To resolve complicated issues, Parties may meet in private for discussions and engage the participation of the Chair.<sup>100</sup>

98 For instance, at COP6 of the Basel Convention several contact groups were established. One such group was created on the second day of the meeting to examine the feasibility of a study on Annex VII. The session extended over two days with the delivery of a report to the plenary that it had agreed on a compromise text that was subsequently adopted (effectively, it had become a drafting group!).

99 Another illustration from COP6 of the Basel Convention is the creation of the Working Group on the Strategic Plan. This contact group developed criteria for the selection of projects under the Strategic Plan.

100 A further productive outcome of COP6 of the Basel Convention was the work on devising a compliance mechanism. This started in a working group and was later transferred to an informal group culminating in a proposed revised text to the plenary.



- As noted earlier, informal meetings are not subject to the rules of procedure but may be subject to a certain amount of transparency. These meetings are often called “informals” or “informal working groups”. In contrast, formal groups are normally open to participation by all Parties and are subject to the rules of procedure;
- Parties may block progress in negotiations if they are not satisfied with the organization of informal groups.
- In many contexts, there is an uncertain status of informal groups.

#### 3.2.1.6.4. Friends of the Chair

##### “Friends of the Chair” / “Eminent Persons Group”

For particularly sensitive or complex negotiations, the Chair may create an informal group:

- The group is comprised of a small number of delegates representing regional groupings that explore strategies for achieving consensus.
- Often the parties invited to join such a group have most actively intervened on the issues. Other actors with relevant interests may also be invited such as representatives of an indigenous community.<sup>101</sup>
- Inclusion in such groups may be a sensitive issue, and it is often preferable to include any Party with strong views so as to avoid protracted discussion in the subsidiary body.

#### 3.2.1.6.5. Committee of the whole

A Committee of the Whole (COW) is an open-ended body created by a COP to coherently address cross-cutting issues of concern to more than one subsidiary body. A COW generally runs in a parallel session with the COP that enables the latter to continue with its meeting agenda.

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**Example:** at COP3 of the Desertification Convention the delegates agreed to establish a COW to consider various issues such as a proposal for an additional annex, outstanding rules of procedure, and annexes on arbitration and conciliation procedures. A Chair was designated and invited to attend meetings of the Bureau.

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#### 3.2.1.6.6. Drafting group

The Chair may establish a drafting group to develop text on specific issues, and such groups normally meet in closed sessions.

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**Example:** at INC6 of the POPs Convention an informal drafting group was created 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.

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#### 3.2.1.6.7. Legal drafting group

**A Legal Drafting Group (LDG) is an open-ended group comprised of lawyers from various delegations:**

- The legal issues this group explores varies depending on whether an MEA is under negotiation, adopted but not yet in force, or has entered into force:
  - **During negotiations**, the LDG will review the wording of each article proposed for inclusion in the treaty.
  - **Once the MEA is adopted and prior to its entry into force**, the LDG will focus on legal matters that must 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 devising an effective compliance mechanism.

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<sup>101</sup> At COP4 of the CBD, indigenous and community representatives joined Parties to draft a decision on traditional knowledge.

## 3.2.2. State/country groupings

### 3.2.2.1. UN regional groups

#### Equitable representation of world regions on UN bodies with limited membership

As noted earlier, the UN formally recognizes five regional groups. These are primarily organized on the basis of region, and in some cases on the basis of shared interests. For example, New Zealand is part of the Western European and Other Group.

As decisions are made on a case-by-case basis and by consensus, MEA negotiators may need to consult their Ministry of Foreign Affairs for advice if a related issue arises.

#### Limited membership

- When a group has a limited membership (e.g. it only has five members), members of each regional group must decide which Party will **represent** them.
- Where members **disagree** on an issue, they should consider proposing a body or group with sufficient numbers to fairly represent all interests of the Parties.
- One of the **chief tasks** of each regional group is to nominate Bureau members.

#### Regional groups

- African Group
- Asia-Pacific Group
- Eastern European Group
- Latin American and Caribbean Group (GRULAC)
- Western European and Others Group (WEOG).

#### Illustrations of membership in the regional grouping system

##### Asia-Pacific Group

- This regional group is comprised of 53 member States, representing over 60% of the world's population, and encompasses the island nations of Fiji, Marshall Islands, Nauru, Palau, Papua New Guinea, Tonga, and Vanuatu. The Permanent Representative of Fiji to the United Nations was appointed to Chair the Asian Group for the month of February 2011, which entailed diverse tasks such as the delivery of statements on behalf of the group at UN meetings, circulating notifications presented to the group and leading consultations with the candidates for Presidency of the General Assembly's 66th Session.
- In 2000, the Government of Nauru proposed a review of regional groups within the UN and the creation of a group for the distinct region of "Oceania" that encompassed Australia, New Zealand, Japan, South Korea and other island nations located in this demarcated expanse.<sup>102</sup>

##### WEOG

- WEOG includes Australia and New Zealand as nations with shared interests.<sup>103</sup>
- The United States of America has observer status, but attends meetings and is considered a member for election purposes.
- The WEOG regional grouping is referred to as the "Like-Minded Group" in some MEAs such as the

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<sup>102</sup> Information extracted from UN website at <http://www.un.org/ga/webcast/statements/nauruE.htm>

<sup>103</sup> In 2000, Israel was admitted to the WEOG electoral group in New York on the understanding that the decision would be reviewed in four years and in 2004 this membership was officially extended. Since this date, Israel has been admitted to meetings in other fora, e.g. the Governing Council of UNEP and in climate change negotiations.

Montreal Protocol. This group includes members from WEOG, the Central and Eastern Europe Group, and the Asian Group (e.g. Japan).

### Examples of regional representation

- At its first meeting, the **Interim Chemical Review Committee of the Rotterdam Convention** elected a Bureau composed of one representative per region: Germany (Chair), Cameroon, El Salvador, Hungary, and Japan (Rapporteur).
- The **Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol** is composed of 10 members (two per region). At its 43rd session in late 2009, the Committee was comprised of representatives from Armenia and the Russian Federation (CEE), Jordan and Sri Lanka (Asian Group); Mexico and Nicaragua (GRULAC); Niger and Mauritius (African Group); New Zealand (President of the Committee) and Germany (WEOG).

### 3.2.2.2. Country designations

Many MEAs specify different treatment and obligations of 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).<sup>104</sup>

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**Example:** Article 5 of the Montreal Protocol elaborates that the developing countries with a specific annual level of consumption of ozone depleting substances are entitled to delay their compliance with features of the control measures under the Protocol.

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#### 3.2.2.2.1. Developing countries

##### Identification of developing countries

- Organizations have devised their own definitions of ‘developing countries’ for the purposes of donor country reporting of bilateral aid. For example, the OECD identifies a ‘developing country’ by its eligibility for development assistance and inclusion on the Development Assistance Committee (DAC) List of ODA Aid Recipients (such as Kiribati, Papua New Guinea, Marshall Islands and Tonga on the 2009-2010 list).
- Annexes I and II of the UNFCCC lists industrialized countries, countries with economies in transition and OECD members. The group of non-Annex I Parties are basically deemed developing countries. The Climate Change agreements also recognize Small Island Developing States (SIDS) as a sub-group of developing countries and this category includes many Pacific island nations vulnerable to global climate change. These countries are often accorded special consideration in agreements regarding financial and technical assistance for mitigation and adaptation strategies.
- No particular definition or list of ‘developing countries’ is uniformly authoritative for the purposes of interpreting MEAs, though donor Parties have used the lists from the OECD, World Bank or climate agreements to manage international cooperation.
- In the absence of such definitions or guiding mechanisms, the practice in MEAs has been for countries to voluntarily self-identify as developing countries.

#### 3.2.2.2.2. Least developed countries

The United Nations Conference on Trade and Development (UNCTAD) is responsible for compiling the list of least developed countries (LDCs), and the OECD as well as some MEAs use this designation. The LDCs are identified according to specific geographical and structural criteria, and the countries that are designated LDCs as well as Small Island States (SIDS) encompass Kiribati, Samoa, Solomon Islands, Timor-Leste, Tuvalu,

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<sup>104</sup> See also the sections on “International Cooperation” at 4.2, and the principle of common but differentiated responsibilities at 4.3.1.3.

and Vanuatu.<sup>105</sup> The LDCs emerged as a formal coalition group during the negotiations on the climate change regime in September 2000, and a representative of Vanuatu served as the first coordinator of this group. The Fourth UN Conference on Least Developed Countries was convened in May 2011 to dissect progress on poverty alleviation and the Brussels Programme of Action for LDCs as well as the structural transformation of LDC economies. Notably, 40 of the 49 LDCs are also members of the African, Caribbean and Pacific (ACP) Group of States that have formed an ACP-EU partnership galvanizing sustainable development projects in the South Pacific region.

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**Example:** the Kyoto Protocol to the UNFCCC uses this designation in relation to the LDC Fund established under that agreement. The designation is also important with respect to bilateral aid related to MEAs.

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### 3.2.2.2.3. Countries with economies in transition

The Development Assistance Committee (DAC) of the OECD and World Bank consider countries in Central/Eastern Europe and the former Soviet Union Republics as **Countries in Transition** (CITs) to a market economy or **Economies in Transition** (EITs).

Several MEAs instruct special treatment and consideration of CITs/EITs in the form of organizing contributions from developed country Parties towards capacity development and financial assistance to enhance implementation of treaty obligations.

### 3.2.2.2.4. Developed countries

Many MEAs elaborate different obligations and treatment of developed countries, particularly regarding financing and technology transfer –

- MEAs generally do not provide a definition of ‘developed country’.
- In the UNCCD, ‘developed country Parties’ means ‘developed country Parties and regional economic integration organizations constituted by developed countries.’
- As with developing countries, in the absence of applicable definitions or mechanisms to determine which countries are developing countries, the practice in MEAs has been for countries to voluntarily self-identify.

### 3.2.2.3. UN negotiating blocs

To obtain more leverage in UN negotiations, countries with shared interests have constituted **negotiating blocs**. These groups have become a permanent, active feature of MEA negotiations. Although these blocs are important, their status is **informal** as opposed to the formal status of Parties and the five regional groups recognized by the UN system. The membership composition of these blocs is not necessarily static, so it is important to ascertain any membership changes over time (see Annex H at 6.8.6. for a list of electronic resources to track such changes). The main negotiation groups are as follows:

#### **Group of 77 (G-77)**<sup>106</sup>

- Constituted in 1964, the Group evolved from a common declaration adopted by 77 developing countries at the end of the first session of the UN Conference on Trade and Development (UNCTAD). The negotiations at this conference endeavored to forge a new international economic order to redress the historic imbalances between developing and developed countries.
- The group is composed of 130 developing countries such as Fiji, Tonga, Papua New Guinea, Palau and

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<sup>105</sup> See UN OHRLLS. (2009). The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States. New York, US: UN OHRLLS, online at <http://www.unohrlls.org>

<sup>106</sup> See the official website for this negotiating bloc at <http://www.g77.org>

Vanuatu (see Annex E for a full membership list).<sup>107</sup> China is not a full member of this group, but is an associate often engaged in joint work on the climate change regime. Thus the G-77 group may issue statements on behalf of the “G-77 and China”.

- The G-77 exists as the main negotiating bloc in the UN system for promoting the common interests of developing countries. It has successfully advocated the inclusion of provisions in MEAs for developing States, which usually concern technical and financial assistance.<sup>108</sup>

### European Union

- There are currently 27 member States of the European Union (EU) mainly located in Europe such as Finland, Germany, the Netherlands, and the United Kingdom (see Annex E for a full membership list). However, the number of States considered as part of the EU may vary for the purposes of MEA provisions.<sup>109</sup>
- Certain territories of member States are not part of the EU, such as the Channel Islands and the Faroe Islands. On the other hand, areas remote from Continental Europe may be classified as part of the EU such as the Azores and the Madeira islands that are represented by Portugal within the UN.

### JUSCANZ /JUSSCANNZ

- This regional group alliance is comprised of Japan, United States, Canada, Australia, New Zealand, Norway and Switzerland. Iceland, Mexico, and the Republic of Korea are occasionally invited to participate in the group meetings.
- After the negotiations on the Kyoto Protocol, this regional group spawned the ‘Umbrella Group’ that is usually composed of non-EU developed countries such as Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine and the United States.

### The Alliance of Small Island States (AOSIS)<sup>110</sup>

- This coalition presents a united position to propel climate change mitigation and adaptation onto the international agenda. It is comprised of small island and low-lying coastal countries from all regions on the globe encountering similar developmental and environmental challenges – there are 39 member countries and four non-member observers (see Annex E). Notably, many of the member countries are also members of the G-77 and the United Nations. Ambassador Robert Van Lierop of Vanuatu served as the first Chair of the group from 1991-1994.
- The member grouping in the Pacific encompasses countries where global warming and elevated sea levels has compelled the evacuation of homes (Papua New Guinea and the Solomon Islands) or the survival of island communities is endangered by the projected submerging of their territory by the end of the century (Tuvalu, Kiribati, and the Marshall Islands). In this scenario, uninhabitable territories will entail mass migrations and a loss of sovereignty that has prompted AOSIS to articulate climate change as a human rights issue.
- The Pacific Small Island Developing States surfaced in 2007 as an informal coalition of 11 Pacific island countries represented at the United Nations (namely Fiji, Marshall Islands, Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tuvalu, Tonga, and Vanuatu). Ambassador Marlene Moses as Nauru’s Permanent Representative to the United Nations has been the Chair of Pacific SIDS since 2009 and shall Chair the AOSIS according to the next regional rotation at the end of 2011.

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107 Some lists contain more countries, including Yugoslavia that has since been dissolved. The official G-77 website updates the list of member States at <http://www.g77.org/doc/members.html>

108 See also the sections on “Country designations” at 3.2.2.2 and “International cooperation” at 4.2.

109 For example, Article 4 of the Kyoto Protocol is interpreted to mean that 15 States are recognized as part of the EU.

110 Further information is available from <http://aosis.org/>. Some AOSIS member countries are also members in another negotiating bloc: the Organization of Eastern Caribbean States (OECS). Established in 1981, this group is comprised of Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines (Anguilla and the British Virgin Islands were admitted as Associate Members in 1995 and 1984 respectively). See <http://www.oecs.org>

- The coalition has presented legal policy papers and draft submissions in negotiations with the assistance of groups such as the Foundation for International Environmental Law and Development (FIELD).
- The group was pioneering in introducing a draft text during the negotiations on the Kyoto Protocol that specified a target for reducing the emissions of carbon dioxide by 20% below 1990 levels with a target date of 2005.<sup>111</sup>
- It advocates a package of mitigation activities and proposes that any increases in the global average surface temperatures should be limited to well below 1.5° Celsius.<sup>112</sup> The common vulnerability of these small islands prompted the crafting of an AOSIS Climate Change Declaration in 2009. Their campaign was bolstered when the Group of Least Developed Countries (roughly 80 nations) joined their demands for reducing global warming.
- This aspiration for a collective political commitment to limit global temperature rise below 1.5° Celsius compared to pre-industrial levels was not secured at the UN Conference on Climate Change in Copenhagen, Denmark. A binding international agreement as the successor to the Kyoto Protocol did not emerge from this summit in December 2009 (COP15). Instead, the 'Copenhagen Accord' forged non-binding government pledges to limit greenhouse gas emissions and not exceed a 2° Celsius increase in global temperature. The Accord has been endorsed by Pacific Island nations such as Papua New Guinea, the Marshall Islands and Samoa; whilst nations such as Tuvalu, Cook Islands and Nauru have criticized the Accord on several grounds, such as identifying the 2° Celsius benchmark as inadequate for averting climate emergencies in low-lying coastal nations.
- Many AOSIS members have established permanent climate change national Focal Points, launched regional capacity-building initiatives (such as the Pacific Islands Climate Change Assistance Program), participated in international programs (for example, the South Pacific Sea Level and Climate Monitoring Project as well as the Regional Climate Outlook Forum), and forged partnerships with multilateral development agencies to facilitate vulnerability assessments and adaptation measures (see 3.8 as well as Annexes A-B of this Handbook).
- AOSIS is also active in other global environmental arenas such as the work attached to the Biodiversity Convention and the Commission on Sustainable Development (CSD).

### Central/Eastern Europe

- The non-EU countries of the Russian Federation, former Soviet Republics such as Uzbekistan and Kazakhstan as well as other Central and Eastern European territories have formed a regional negotiating bloc.
- Some MEAs contain specific provisions, usually regarding technical and financial assistance, that refer to these States as “countries with economies in transition” (EITs).

### Group of Like-Minded Megadiverse Countries (LMMC)

- Formed in 2002, this group of countries was prominent in obtaining a decision at the 7th meeting of the COP to the Biodiversity Convention to initiate negotiations on an international regime on access and benefit sharing that tackles the nexus between genetic resources, traditional knowledge and intellectual property rights. The negotiations culminated in the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD adopted in late 2010 at the 10th meeting of the COP. The group retains an active role in initiatives such as the Multi-Year Plan of Action on Biodiversity for Development that features a South-South cooperation process specifically addressing biodiversity-related concerns.
- The group is comprised of 17 members that possess 60-70% of the world's biodiversity: Bolivia,

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<sup>111</sup> Information extracted from the official website of the UNFCCC at [http://unfccc.int/parties\\_and\\_observers/parties/negotiating\\_groups/items/2714.php](http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php)

<sup>112</sup> Information available from the UN website at [http://www.un.org/esa/dsd/dsd\\_aofw\\_sids/sids\\_pdfs/AOSISummitDeclarationSept21FINAL.pdf](http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/AOSISummitDeclarationSept21FINAL.pdf)

Brazil, China, Colombia, Costa Rica, Democratic Republic of Congo, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, Philippines, South Africa, and Venezuela.<sup>113</sup>

**Presidency or leadership of these groups is assumed on a rotating basis:**

- For example, the Chairmanship of G-77 rotates on an equitable regional basis with a term of one year.
- Generally, a formal spokesperson of the G-77 will be designated for specific issues at meetings but individual members will often take the floor to support the official position of the group.

**Meetings of negotiation groups**

- The diverse groups often meet before and during a negotiating session to identify priorities, common positions and any conflicting views; and to share information and review their respective positions as negotiations progress (EU meetings are generally mandatory).
- Meetings are also held between negotiating groups such as JUSCANZ and the EU (which comprises WEOG). Cohesiveness during negotiations is not the same in each bloc.
- European Union:
  - The EU 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 the “Troika”.
  - The Troika’s composition changes every six months and is comprised of –
    - The member State holding the presidency at the time of negotiations;
    - The member State that will hold it for the next six months; and
    - The Commission of the European Union.
  - The presiding member State usually intervenes on behalf of the Union, though it may delegate this responsibility to another member State on specific issues.
- JUSCANZ:
  - In contrast, JUSCANZ is more informal and does not intervene as a bloc.
  - To the extent possible, it develops positions based on common interests in advance of treaty negotiations. Each member attempts to advance these interests during negotiations, but intervenes independently with respect to their own national interests.
- During a session, Parties to an MEA that are also members of other organizations (such as the Commonwealth and La Francophonie) may meet to discuss issues of common interest and intervene in a coordinated manner.
- Some issues may compel the creation of MEA-specific negotiating blocs:
  - The Alliance of Small Island States was formed in response to climate change negotiations and their shared vulnerability to rising sea-levels;
  - The CACAM Group emerged during negotiations on the climate regime and is comprised of nations from Central Asia, Caucasus, Albania and Moldova;
  - The Environmental Integrity Group (EIG) was formed by Mexico, Republic of Korea (South Korea) and Switzerland after the Kyoto Protocol (Switzerland did not share the same interests of the Umbrella Group and this sparked the creation of the EIG).
  - Several coalitions were forged during the negotiation process for the Protocol on Biosafety to the Biodiversity Convention, such as the Compromise Group that included Mexico, New Zealand, Norway, Switzerland, and Singapore; and the Miami Group comprised of Argentina, Australia, Canada, Chile, Uruguay and the United States.

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113 Other groups sharing common positions in negotiations within the context of the CBD include the G-15 (comprised of Algeria, Argentina, Brazil, Chile, Egypt, India, Indonesia, Jamaica, Kenya, Nigeria, Malaysia, Mexico, Peru, Senegal, Sri Lanka, Venezuela and Zimbabwe).

## 3.3. Roles

The following sections elaborate the roles, authorities and limitations of the diverse actors in MEA negotiations.

### 3.3.1. States and Parties

#### The main actors in MEAs

- States enter into multilateral treaties with other States and international organizations (VCLT, VCLT/SIO).
- The important role of States:
  - Only States and international organizations with legal capacity can collectively adopt an MEA, and an MEA may only enter into force through a signatory's acts of ratification or accession;
  - Once the MEA is in force, only Parties as members of the COP may collectively make decisions on treaty implementation, add items to the agenda and determine the priority of items within the agenda.

#### Parties

- Once the MEA has entered into force, States that have expressed their consent to be bound through ratifying or acceding to the agreement are called "Parties", while others are termed "non-Parties".
- Each Party is entitled to a vote at a COP, and all Parties are technically equal (see 3.1.1.14). As noted earlier, a Regional Economic Integration Organization (REIO) may exercise its right to vote and the number of votes is equal to the number of its member States that are Parties to the MEA. A REIO may not exercise this right to vote if any of its member States independently exercises its right to vote, and vice versa.
- However, the influence of a State Party within the bodies of an MEA varies depending on several factors:
  - The interest of other Parties in the participation of that State Party;
  - Whether the State Party belongs to a negotiating bloc and has a leadership role;
  - Its ability to provide financial and technical resources; and
  - The leadership of that State Party demonstrated during negotiations and after the adoption of the MEA.
- A Party's interest in an MEA may greatly depend on whether the international activities accomplished through the instrument correspond with domestic priorities.

### 3.3.2. Observers

As mentioned in section 3.1.1.2, the category of "observers" includes many actors such as States not party to an MEA, representatives of community groups, UN entities and specialized agencies. The role of an observer depends on its nature as illustrated by the non-voting observer status of specialized agencies and non-Parties. Such observers cannot vote in meetings but may be invited to actively participate in the plenary and specific groups created pursuant to an MEA.

#### Participation is not a right, and may be withdrawn

- A body may not always accord a non-Party the privilege of intervening in meetings, or may specify time limits for such interventions or oral statements.
- For example, the United States is not a Party to the Basel Convention but it is actively engaged in the work of the various bodies of the Convention.

#### Specialized agencies and international organizations

- Specialized agencies and international organizations may report on their work relevant to the MEA and participate in debates. For example, the International Maritime Organization (IMO) and the International Labour Organization (ILO) discussed ship dismantling in the context of the Basel Convention.



### Other MEAs

- The secretariats of other MEAs may inform the Parties of their relevant activities. For example, the secretariat of the Basel Convention participated in the INC of the Stockholm Convention as the latter expressly notes the need for cooperation between the two conventions.
- As with non-Party States and NGOs, participation of these secretariats in a meeting is a privilege that may be withdrawn or attached to time limits for interventions.

### Environmental NGOs, representatives of indigenous communities and industry

- These groups represent the interests of their constituency and endeavour to have these interests reflected in the decisions of treaty bodies.
- **They play a key role:**
  - The groups lobby delegations in corridors, informally suggest treaty or decision text, hold information sessions on their activities and talk to the media.
  - They may also provide information on the extent of domestic implementation of a treaty, alert the international community to new problems not sufficiently addressed by existing MEAs and have their written statements on agenda items of the COP circulated by the secretariat (other materials may be placed in displays outside meeting rooms).
- **Participation:**
  - As with non-Party States and NGO actors, these organizations have no right to participate in treaty meetings. A granted privilege to intervene in such meetings may specify time limitations or be withdrawn.
  - They may be allowed to intervene in plenary sessions, usually after the Parties, non-Party States, and specialized agencies have had a chance to intervene on issues.
  - They may also be allowed to participate in working groups and general contact groups, but are usually excluded from drafting and informal groups. In the interests of transparency, these groups may be invited to participate as observers in the initial phases of discussion without a right to speak except at the invitation of the Chair.

## 3.3.3. Chair

### Role of the Chair/President of the INC or the COP

All the Parties to the COP elect the Chair or President to preside over the work of an **INC** (during development of an MEA or when a treaty is not yet in force) or a **COP** and the **Bureau** (once the MEA is in force).

- The Chair must act impartially and thus cannot represent the interests of his or her country.
- Ultimately, the Chair is **under the authority of the COP**. Although the decisions of a Chair are not often challenged, they are subject to being overruled by a COP.

### Functions and power

The Chair has diverse functions and powers, including the following –

- Open and close meetings;
- Introduce each item on the agenda (usually with the assistance of the secretariat);
- Recognize and give the floor to the representatives of Parties in the order they signified an intention to speak (through raising their country 'flags');
- Allow or refuse discussion and consideration of proposals and amendments;
- Decide when to put a question to the vote and determine the order of voting;
- Ensure that the rules of procedure are followed (see 3.1.1.);

- Propose a determination of the moment when sufficient views have been received to proceed with the drafting of a text to serve as a basis for negotiations;
- At its own initiative or at the request of Parties, participate in small groups such as working and contact groups; and in informal consultations with the negotiating blocs and regional groups (see Annex F for further information on the Chair).

### 3.3.4. Bureau

#### Composition and election

- As noted at 3.1.1.6, the officers of the Bureau are the Chair, Rapporteur and Vice-Chairs elected by the COP.
- The Bureau is composed of at least one representative from each of the five regional groups recognized by the United Nations.

#### Functions of the Bureau

- The Bureau provides administrative and operational direction for the work that the COP or subsidiary bodies have assigned to the secretariat.
- To plan for upcoming meetings, the Bureau will discuss agenda items and a meeting structure with the secretariat (see Annex F for further information).

### 3.3.5 Secretariat

#### Key functions

- The general duties of a secretariat during meetings are to support the Chair in effectively conducting the meeting.
- As the meeting progresses, the Chair often relies on the secretariat to clarify the documentation. The secretariat also records the changes to a text and makes revisions under the supervision of the Chair. Another task is recognizing the delegations from the floor signifying an intention to intervene and compiling a list for the order of such speakers.
- The secretariat also assists the Parties, working groups and contact groups by providing information; and supplying experts for financial, legal and technical matters as well as support personnel (see 3.2.1.3 and Annex F for further information).

## 3.4. Drafting issues

### 3.4.1. General

#### Drafting issues arise in several MEA contexts, such as –

- Treaty negotiation;
- Decisions of the COP;
- Recommendations from subsidiary bodies to the COPs; and
- Meetings of related organizations, such as the UNEP Governing Council.

### 3.4.1.1. Initiation of discussion on a text

Generally, the Parties must forge a common understanding of issues to initiate discussions on elaborating a text. If there is an insufficient basis of mutual understanding when a text is proposed or discussed, alternative information gathering and discussion options should be explored (such as creating a workshop).

### 3.4.1.2. Strategic flexibility

#### Before negotiations

- **The agenda and proposals should be made available** to Parties or participating States prior to the meeting (there are often specific deadlines contained in the rules of procedure).
- **Each party should develop a national negotiation mandate** based on the agenda and proposals. This mandate should focus on national interests rather than specific positions, and explore options and fallbacks so that negotiators can respond to the proposed texts as they evolve in meetings.
- **Preparations should consider the whole annotated agenda** for the meeting with specific regard to the draft proposals scheduled for discussion, and endeavour to limit the number of interventions required to achieve a negotiating position.

#### During negotiations – general

- **Negotiators should understand the priorities of their national negotiating mandate**, and prepare to adapt these depending on opposition and opportunities presented by other Parties. Negotiators familiar with their negotiating position can maintain the substantive points of their national mandates and accommodate proposals by other countries for the draft treaty language.
- **In making a drafting suggestion, Parties should avoid focusing on** insignificant stylistic or grammatical points as this may waste negotiating capital. A negotiator willing to explore drafting flexibility may foster influence among the Parties and achieve important points in the meetings.

#### During negotiations – interventions

- **Interventions must be diplomatic** and provide precise language to resolve the negotiator's concern regarding the text proposed by other Parties or text placed in square brackets. The negotiator should thus direct the Chair and participants in the room to the specific paragraph and line of text (see section 3.6.1.3. "At the microphone").
- **When proposed language is longer than a few words**, read the text at dictation speed and/or indicate to the Chair that a written copy will be made available to the secretariat for the next textual revision or meeting report.
- **It is generally strategic to build on proposals introduced by other negotiators. One method is to re-**conceptualize the issues in different ways based on a clear understanding of national interests. A compelling conceptual framework is also important if major structural revisions are required to reflect the key interests of your country.
- **When another Party's position is compatible with your own national mandate**, an ideal intervention is to allow the other text language to stand/remain and propose textual additions or changes that support your national interests.
- **When another Party's intervention is opposed to your national interests**, express disagreement politely in the form of inserting square brackets around the contentious text and consider the possibility of verbalizing an objection to the proposed text.
- **Focus and limit opposition.** Provide a clear, concise rationale for opposition with a compelling alternative proposal that may sway delegations with no firm position and enable the Parties to forge a compromise.

### 3.4.1.3. Clarity versus ambiguity

#### Clarity

- The language of a treaty depends on the context.
- As treaties are legally binding, the text language must be as clear as possible to facilitate consistent and coherent domestic implementation of treaty obligations. This clarity is useful for ascertaining the effectiveness of the treaty and compliance of the Parties.

#### Ambiguity

- Although “constructive ambiguity” is a negotiation tactic often used to obtain agreement on a sensitive issue in the final hours of negotiation, it should be avoided.
- Ambiguity could mean the absence of agreement on a contentious issue that could then complicate implementation of the MEA.
- Ambiguous drafting may lead to a situation where a treaty body, such as a compliance committee, must interpret the treaty language to make a decision and thereby produce outcomes not anticipated by the negotiators of the treaty.

### 3.4.1.4. Legalese

#### Precise and clear language is preferable for drafting treaty and decision text

- Often, the use of legal language (terms like *mutatis mutandis*) can make a text clear and concise.
- However, **overuse** of legalese is relatively common in MEA texts and undermines the clarity of a text.

### 3.4.1.5. Drafting terminology

**Understanding terminology is important to maintain the pace of drafting discussions.** Common drafting words include ‘square brackets’, ‘chapeau’, ‘article’, ‘paragraph’, ‘sub-paragraph’, ‘preamble’ or ‘recital’, and ‘*mutatis mutandi*’ (see the glossary).

#### 3.4.1.5.1. Square brackets

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Square brackets inserted around text signify areas of disagreement or the fact that a text has not been discussed.

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Be prepared to justify your use of square brackets to the Chair and other Parties, even if the brackets were inserted to simply indicate the requirement for consultation within your delegation.

Depending on the time available, too many brackets and insertion of complex options may complicate management of the text negotiations. For example, at the sixth session of the biodiversity INC the revised negotiating text had retained 350 square brackets.<sup>114</sup> This congestion of brackets may cause Parties to reconsider the text or part of the text as a useful basis for discussion. However, the proper use of brackets can focus the discussion on points of concern and enable the inclusion of alternatives for consideration at subsequent meetings.

#### When and how should square brackets be used?

- If there is any doubt about the acceptability of proposed text, bracket that text;

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<sup>114</sup> Tolba, M.K. and Rummel-Bulska, I. (1998). *Global Environmental Diplomacy: Negotiating Environmental Agreements for the World 1973-1992*. Cambridge, US: MIT Press, at 155.

- Where a proposed text is offered for discussion for the first time in an MEA forum, the Chair will invite Parties to insert square brackets around text to indicate areas of concern;<sup>115</sup>
- Once areas of concern are identified, discussed and resolved among the Parties the brackets around the whole text are removed and this action creates a 'clean text'.

Example of the complexities of square brackets:<sup>116</sup>

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***Biosafety Protocol negotiations, Draft Article 6 – Notification***

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.

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**3.4.1.5.2. *Mutatis mutandis***

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***Mutatis mutandis***: with such changes as are necessary on points of detail.

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**Use of *mutatis mutandis***

- *Mutatis mutandis* is used where a rule applies in more than one context. For example, the rules of procedure for the COP generally apply *mutatis mutandis* to its subsidiary bodies (see “Subsidiary bodies” at 3.1.1.7).
- Carefully use this Latin phrase, as it is not appropriate in cases when more specific language is required.

**3.4.1.5.3. Preamble, recital and chapeau**

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**Preamble**: set of opening statements of an international agreement, decision, resolution, or recommendation that guides the interpretation of the document. Often contrasted with the operative paragraphs and called “recitals” (see 3.4.2.2).

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**Examples:**

- **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.
- 

**Chapeau**: phrase at the beginning of an article or paragraph to guide the interpretation of that article or paragraph.

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**Example:**

- **Chapeau of Article 5 of the Stockholm Convention –**  
*Measures to reduce or eliminate releases from unintentional production {CHAPEAU}*

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<sup>115</sup> Note that the first round of discussion is often held at a general and conceptual level.

<sup>116</sup> This is cited from the Draft Negotiating Text for the 6th Ordinary Meeting of the Open-ended Ad Hoc Working Group on Biosafety in Cartagena, Colombia in February 1999 (UNEP/CBD/BSWG/6/2).

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...

#### 3.4.1.6. Amendments and interim numbering

If a text is generally acceptable to all Parties as a basis of negotiation, detailed amendments to the text may be proposed.

##### Standard format for written revisions:

- **Language to be deleted** should be placed in square brackets with the word “Delete” placed at the beginning in bold font style:  
[Delete: All governments should consider the importance of the global transition to sustainability].
- **Language to be added** should be placed in square brackets with the word “New” placed at the beginning in bold font style and the new text written in italics:  
[New: *The new generation of global sustainability challenges require new forms of partnership and solidarity between nations*].
- **Existing language to be changed** should be placed in square brackets with the word “Revised” placed at the beginning in bold font style and the revised language underlined:  
[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**, paragraph proposals do not alter the paragraph numbering. In such cases, the international technique for creating provisions or subparagraphs uses the Latin expressions of “bis”, “ter”, “quater”, “quinque” and such like. These terms indicate the subparagraphs after the original provision, e.g “bis” means two/second and may be written as “1.2” or “1 bis”. In treaties, this type of numbering is rectified after the negotiations are over.

#### 3.4.1.7. Elaboration and editing of text

MEA processes usually have secretariat support for editing documents before the adoption of final texts. There is a standard editing format for UN bodies regarding the following details:<sup>117</sup>

- Spelling;
- Grammar and style – dates, numbers, capitalization, punctuation, and quotations; and
- The structure of recitals and operative provisions.

Some secretariats of MEAs pre-edit, proofread, or provide informal advice on drafting to help avoid any difficulties that may delay the adoption of final texts. Negotiators may consult model texts for guidance on drafting as well as the following basic rules:

- Use simple sentences in reports and other documents;
- A decision is technically one long sentence, often with many clauses and sub-clauses (see 3.4.3 “Decision texts”);
- Each paragraph should generally contain only one operative verb;
- Avoid acronyms/abbreviations;
- Avoid the word “and” to link paragraphs;
- Refer to other documents in footnotes, rather than in the body of the text;

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<sup>117</sup> See United Nations. (2004-2010). Editorial Manual Online. The Editorial Control Section, Department for General Assembly and Conference Management, United Nations, available at <http://69.94.137.26/editorialcontrol>

- Standard UN spelling is usually based on the UK English language, particularly for nouns; and the American forms for verbs that end in “ize” are often used;
- Numbers 10 and higher are written in numerals.

## 3.4.2. Treaties

### 3.4.2.1. Initial negotiating text

#### Treaty and decision texts are created in different ways

- The Stockholm Convention on POPs evolved from a request by INC-1 to the secretariat to provide a basic text that could be considered at the next meeting as the negotiating text.
- In the negotiations of the Biosafety Protocol, the secretariat was requested to draft less controversial provisions while countries made submissions on key issues that the Chair later turned into a negotiating text. The latter process included several rounds of discussion on the proposed draft texts that produced a cluttered “final” negotiating text for the next session that was originally planned as the last of negotiations in Colombia.

In every multilateral negotiation, each delegation should consider which type of process is preferable for the creation of the initial treaty text. This decision will be based on several factors, including the following:

- The novelty of the area of international environmental law;
- The level of controversy;
- Whether your delegation’s views would be reflected in a secretariat text;
- The perceived competence of the secretariat; and
- The process most likely to facilitate negotiations.

The negotiating process is simplified by an initial treaty text that is most acceptable or appropriate for all the Parties. The case study at 6.3.2 of Annex C illustrates the process for a Canadian delegation to insert a proposal into the negotiating text of the Stockholm Convention on POPs (2001).

### 3.4.2.2. Preamble

#### Features of preambular texts

- **They tend to be long and imprecise** compared to operative provisions, and drafting is typically left until the end of the negotiating process.
- **The preamble is used to establish the history of the issue** from a policy perspective; reference related conventions and instruments; describe the management of the issue by the international community; and contain matters not accepted for inclusion in the operative text.
- **The preambular text must support an acceptable overall interpretative approach** to the treaty. It forms part of the treaty context that is valuable for the purposes of interpretation (VCLT, Article 31; see also 2.3.15 of this Handbook).
- **Preambular text is written as a series of recitals** and has a particular form as illustrated at 3.4.1.5.3 and Annex D.

### 3.4.2.3. Objectives

#### The article on the objectives of an MEA is often difficult to formulate and draft

- This article may be used to insert issues that are not gaining traction elsewhere;
- A clear objective is useful for spurring treaty activity, and constitutes the basis for measuring the effectiveness of the treaty.

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### Objectives of 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.

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### 3.4.2.4. Control provisions

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**Control provisions:** substantive provisions that focus on an agreement to act or not act in a certain way to protect, conserve or enhance the environment.

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#### The commitments have different purposes

- The commitments or obligations expressed in control provisions may focus on **results** by specifying control measures, standards or limitations (such as specific bans or quantifiable targets).
- They may specify a **process** (such as prior informed consent), or **mechanisms** to govern decision-making and procedures (see “Substantive commitments” at 2.4.5).

#### Control provisions should be examined from two perspectives

1. Perceived difficulties a Party might have complying with any obligations framed in mandatory or strong language (see section on mandatory language at paragraph 3.4.3. “Decision texts”).
2. The use of vague or permissive treaty language invokes the possibility that the treaty will not effectively control the activities of other countries and thus lead to adverse environmental impacts.

#### Crafting obligations of result or obligations of method

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**Obligations of result:** in the context of the climate change regime, each party may select the methods for achieving emission reduction targets (unless a treaty specifies otherwise).

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#### Example:

- **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.

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**Obligations of method:** in the context of international trade in hazardous chemicals and pesticides, treaties may instruct the application of a prior informed consent system.

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#### Example:

- **Article 6(1) of the Basel Convention:**

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.

### 3.4.2.5. Final provisions

The final provisions of a multilateral treaty address procedures for the depositary, languages, entry into force, voting, reservations, signature, application, amendments, and annexes. The text of these provisions is similar between treaties, and negotiators are advised to refer to precedents in other MEAs. Such precedents are referenced by secretariats and legal drafting groups in formulating and reviewing treaty texts. Nevertheless, there is some variety in such texts regarding the amendment of annexes and it is important to carefully consider any variations from precedent (see “Precedent” at 2.3.16).

### 3.4.3. Decision texts

#### Negotiating binding and non-binding decisions

- Conferences or meetings of the Parties to MEAs use decisions to transact their business.
- Decisions taken under an MEA are generally not legally binding unless the MEA explicitly provides authority for legally binding decisions. If such authority is required but not provided, Parties may craft an amendment to the agreement that generally enters into force upon ratification by a certain number of Parties or upon the absence of a fixed number of objections (see “Amendments” at 2.3.11).
- Decisions are important for creating good faith and political expectations, such as the assurance that Parties will comply with the terms of decisions.
- Some treaty bodies use decisions to provide effective interpretations of the treaty that were not explicit in the treaty itself (see 2.3.15 on the interpretation of treaties and decision texts).
- Decisions may contain or approve guidelines on a particular subject that prompts a future amendment or separate international agreement.<sup>118</sup>
- An amendment may convert a non-binding text into a binding text,<sup>119</sup> and add a review or compliance mechanism.
- In a particular forum, it is useful to have previous decisions as precedents and recent decisions on the topic under consideration.

#### The mandatory and permissive language of decisions

- Where a Party seeks legally binding obligations, provisions should be written with mandatory terms such as the verb “shall” rather than “should”.
- Negotiators tend to use “shall” alongside words that soften its impact, e.g. “shall, as appropriate”, “shall encourage”, or “shall promote”.

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<sup>118</sup> For example, the Bonn Guidelines adopted in 2002 at COP VI (Decision VI/24) were drafted pursuant to the Convention on Biological Diversity addressing access to genetic resources and the sharing of their benefits. At the World Summit on Sustainable Development (2002), representatives agreed that an international regime would be developed on the same subject matter. Thus, the Bonn Guidelines influenced the crafting of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) adopted in late 2010 at the 10th meeting of the COP.

<sup>119</sup> For example, under Article 18 of the Kyoto Protocol.

- Avoid the word “ensure”, especially in conjunction with mandatory terms. “Ensure” means to make certain or guarantee, and is not an appropriate word choice when some Parties are not in a position to effectively implement an MEA (see “Control provisions” at 3.4.2.4).
- An obligation should be drafted in sufficiently clear language so that it is simple to evaluate whether a Party has complied with such an obligation.
- Some past decisions of Parties to MEAs have included mandatory language where it was not clear that there was authority to do so.<sup>120</sup> Though some Parties view the adoption of such decisions as demonstrating a clear intent to be legally bound, this notion should not be relied upon.
- To clearly establish the intent of all Parties, it is best to provide a clear delegation of authority in an agreement and avoid mandatory language in decisions where the agreement contains no such authority.<sup>121</sup> Parties have different views on these issues, so it is often important to seek legal advice.
- The language for drafting decisions with non-binding obligations may include permissive words such as “may” and “should”. In these cases, avoid the use of mandatory expressions such as “must” and “shall”.

The Montreal Protocol is an example of an instrument that provides authority for legally binding decisions and for the Meeting of the Parties to make adjustments that expand the scope of the agreement.

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#### 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.

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#### Specific word choices for decision texts

Decisions are typically composed as a series of preambular clauses or recitals, followed by numbered operative text that specifies the expected conduct or actions of Parties to the treaty. The opening word of each preambular or operative paragraph has significance (see 2.4.1, 3.4.2.2, 3.4.2.4 and Annex D for illustrations of preambular and operative text).

#### “Request”, “invite”, “urge” or “instruct”

If a COP wishes to request assistance from another organization, it would not “request” action as it does not control that organization. Instead, the COP would “invite” the other organization to assist.

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**Example:** 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.

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120 In this regard, see reference to the COP adoption of guidelines for the preparation of information required pursuant to Article 7 of the Kyoto Protocol.

121 See also the section on “Control provisions” at 3.4.2.4 of this Handbook.

If action is considered urgent, Parties can be “urged” to take action such as ratifying an amendment. If action is less urgent, Parties can be “invited” to pursue the action.

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**Example:** 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.

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As the secretariat serves the Parties, it can be “requested” or “instructed” to take certain actions as can subsidiary bodies or the Parties themselves.

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**Example:** 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.

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#### “Note”, “welcome” or “endorse”

A report should be “noted” when it is not necessary to formally approve the document. This term is useful when a negotiator is asked to approve a report she/he has never read. A report is “welcomed” when it has been read and is supported by a delegation; the report is “endorsed” when it is strongly supported by a delegation.

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**Example:** 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.

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#### “Decide”

If a treaty article specifies the manner of an action, such as by decision, the draft operative provisions should use the word “decides”.

### 3.4.4. Recommendations

Scientific, technical or compliance bodies (subsidiary to the COP) typically use recommendations to express advice and propose actions. This advice to the COP may be presented in recommendation form or as draft COP decisions. It is important to formulate such recommendations that would appear most acceptable to all Parties, even where the ultimate decision is not legally binding.

## 3.5. Documents

### 3.5.1. General

#### **Negotiating MEAs produces diverse documents**

- Many documents are official meeting materials 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 Internet website of the MEA.
- Other documents are drafted and distributed at the meeting itself with the aim of influencing negotiations (**in-session documents**). This type of document is not posted on the MEA website.

### 3.5.2. Pre-sessional documents

- Most pre-sessional documents are prepared by the secretariat and made available on the treaty website in advance of the session.
- Parties may submit some documents to the secretariat that are then circulated to other Parties as information papers.
- While they should be circulated at least six weeks in advance of a meeting, many documents are only available on the eve of the meeting. This delay is often the case for pre-sessional documents of a budgetary nature.
- These documents should be available in the official languages of the MEA, but are often first issued in one language and later translated.

### 3.5.3. In-session documents

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

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

##### **These documents serve various purposes**

- To describe the position of a Party or negotiating bloc on a complex issue;
- To propose new negotiating text;
- To report to the plenary on the outcomes of a group meeting.

##### **Numbering**

- These documents are officially numbered (CRP.1, CRP.2, etc) with clear identification of their origination from a group of countries, a working group or such like.
- These papers are only relevant for the purposes of a specific meeting and are not posted on the official website of the MEA. However, a Party may request that all or part of a CRP is included in the final report of the meeting.
- CRP documents are often used when there is insufficient time to translate the official languages, as would be required for an L. document.

### 3.5.3.2. L. document

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**L. documents:** documents that contain conclusions and decisions. These are central to the negotiation process, and must be translated into all six official languages before they are adopted. “L” is an abbreviation of the phrase “limited distribution” that means these documents are distributed only to participants for the purpose of adopting their content.

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#### Procedure

- At the end of a COP, the secretariat distributes a draft final report (“L.doc.”) and the Chair will ask Parties to approve this report. Once approval is obtained, the secretariat will launch a formal editing of the document.
- A draft decision will be circulated as an “L. doc.”.
- Often, a pre-editing service is available which is useful for identifying any potential difficulties that may affect the final approval of the document by Parties.
- The Chair may propose the adoption of items without circulating the text to all Parties. If this event occurs, you should request the distribution of an L.doc. version of that text.
- Reports of sessions often provide an overview and contain addenda with specific decisions that may contain annexes – these texts are important.
  - Annexes and addenda are deemed part of the document to which they are annexed or added.
  - The legal effect of such texts is determined by reading a decision as a whole with reference to the underlying authority for the decision.

### 3.5.3.3. Informal document

#### A Party may draft a “non-paper” for several reasons:

- Information purposes, such as integrating the ideas and comments from other countries;
- To float proposals to elicit comments from other countries; or
- To generate support.

Contrary to CRPs, these documents are not assigned official numbers. Observers or other groups may distribute informal documents outside the meeting rooms to provide information and/or to influence negotiations. The secretariat will also circulate informal documents that contain the most recent version of text still subject to negotiations in various groups. For example, the Legal Drafting Group will regularly receive an updated informal copy of the relevant texts it is working on.

### 3.5.4. Chair’s text

To assist the negotiations of a draft MEA, a Chair may craft a negotiating text at its own initiative or at the request of the Parties either before or during a meeting.

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#### Example:

- In the negotiations of the Stockholm Convention, the Chair was asked by the INC4 to refine the draft text of the Convention in time for INC5 and this task included addressing the content of some non-contentious bracketed text.
  - At the fifth session of negotiations on the Rotterdam PIC Convention, the Chair of the INC introduced an annotated version of the consolidated negotiating text that reflected their efforts to resolve the contentious issues between the Parties and prompt consensus.
-

### 3.5.5. Report of the meeting

#### The report of the meeting is a key document

- It records the substance of the discussions and the main results of the meeting; and
- Its annexes include the adopted decisions as well as other important documents resulting from the meeting. This may include the most recent draft provisions of a compliance mechanism or the terms of reference of a particular subsidiary body.

#### Adoption of the report

- The adoption of the report is the last substantive agenda item at an INC or a COP.
- An L.doc. version of the report is distributed before the Chair proceeds to the adoption of the report, normally one paragraph at a time.
- Parties cannot add information that was not verbalized, discussed or produced in the session.
- If a Party disagrees with the accuracy of the report, they may indicate disagreement before the process for adopting the report or otherwise it will be too late.

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**Example:** at INC6 of the Stockholm Convention, countries had divergent views regarding the extent of the work required for developing draft non-compliance procedures and institutional mechanisms in preparation for INC7: some wanted the secretariat to prepare a draft model for a compliance mechanism based on written comments from governments; or only prepare a synthesis based on the comments; or to limit itself to compiling the written comments received from governments. At the time of adopting the report of the meeting, many countries expressed their view that the report did not reflect the debate and thus proposed modifications to the text. Further debate ensued. In the end, the required work on the compliance issue prior to INC7 was detailed in the final report.

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#### Representations of your Party's position

- **Reports of meetings do not usually name a Party that intervenes**, referring instead to “a representative” or “some representatives”. If you want your delegation's position clearly reflected in the report, you should mention this matter to the Chair in plenary. Also, supply a written copy of your position to the secretariat so that the report precisely records your intervention.
- **Sometimes when a meeting finishes late, only parts of the draft report are available** and participants must rely on the secretariat to finalize the report. If a key issue was not resolved and included in the draft report, review the complete report as soon as it is available on the website of the MEA to verify its accuracy (usually posted a few weeks after the meeting). If parts of the report do not reflect the events of the meeting, you should immediately communicate suggested changes to the secretariat.

### 3.5.6. Identifiers on documents

Like all UN documents, official documents related to treaty meetings have a series of acronyms and numbers that 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 and such like.<sup>122</sup>

#### 3.5.6.1. Identifiers for each MEA

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

- UNEP/CHW: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

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<sup>122</sup> More information is contained in the UN research guide on document symbols and identifiers available from the UN website at <http://www.un.org/Depts/dhl/resguide/symbol.htm>

- UNEP/CBD: Convention on Biological Diversity.
- UNEP/POPS: Stockholm Convention on Persistent Organic Pollutants ('POPs').
- UNEP/FAO/PIC: Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ('PIC Convention', the secretariat functions are performed jointly by the Executive Director of UNEP and the Director General of the UN Food and Agriculture Organization/FAO).

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

- UNFCCC for the UN Framework Convention on Climate Change.
- UNCCD for the UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.

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

Following the name of the MEA, an acronym will indicate the specific treaty body and the particular meeting. The list below highlights some common acronyms and illustrates the multiplication of bodies (temporary and permanent):

- **COP (Conference of the Parties):**
  - "COP" indicates the meeting of the Conference of the Parties, and this designation is followed by a number that indicates which meeting the document was prepared for or was issued from. For example, UNEP/CBD/COP/6/20 is the report of the sixth COP of the Biodiversity Convention (CBD).
  - There is sometimes no direct reference to the COP, but simply a number after the acronym of the MEA. For example, pre-sessional document UNEP/CHW.6/1 is the agenda for COP6 of the Basel Convention.
  - For the UNFCCC, the documents refer to the "CP" for the Conference of the Parties and the year of the meeting rather than listing the number of the meeting. For example, UNFCCC/CP/2002/1 is the provisional agenda of the 8th meeting of the CP.
- **INC (Intergovernmental Negotiating Committee):** UNEP/POPS/INC.7/1 is the provisional agenda for the 7th meeting of the POPs INC formed pursuant to the Stockholm Convention.
- **OEWG (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 (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.

**Further examples of documents:**

- **UNEP/CBD/ICCP/2/1** is the provisional agenda of the second meeting of the Intergovernmental Committee for the Biosafety Protocol.
- **UNEP/CBD/SBSTTA/8/1** is the provisional agenda of the eighth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the CBD.
- **UNEP/CBD/BCH/LG-MTE/1/1** is the provisional agenda of the first meeting of the Liaison Group of the Technical Experts of the Biosafety Clearinghouse.
- **UNEP/CBD/CHM/Afr.Reg/1/1** is the provisional agenda of the Africa regional meeting of the clearinghouse mechanism.
- **UNEP/CBD/MYPOW/1** is the provisional agenda of the open-ended intersessional meeting on the multi-year programme of work for the Conference of the Parties (COP).

### 3.5.6.3. Identifiers to indicate modifications

Text modifications are indicated through the following identifiers added at the end of the acronyms and numbers:

- **Add.:** this document adds to the initial text, e.g. UNEP/CHW.6/1/add.1 is the annotated provisional agenda that adds information to the provisional agenda for COP6 of the Basel Convention.
- **Corr.:** this text corrects an error in a previous document, e.g. 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 COP5.
- **Rev.:** this text replaces the one previously issued, e.g. UNEP/CHW.6/INF/2/Rev.1 is an updated list of pre-session documents for COP6 of the Basel Convention. UNEP/CBD/COP/5/1/Add.1/Rev.1 is a revision of the annotations to the provisional agenda of COP5. It supersedes and replaces document UNEP/CBD/COP/5/1/Add.1 and Corr.1.

### 3.5.6.4. Other identifiers

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**INF documents:** pre-sessional documents prepared either by the Parties, observers or secretariat for information purposes.

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**Examples:**

- UNEP/POPS/COP.4/INF/10 is an information document containing a compilation of submissions to the Secretariat of the Stockholm Convention on POPs. It outlines national implementation plans, such as those of New Zealand, and was distributed for the 4th Meeting of the COP to the Stockholm Convention.
- Comments received from Parties and circulated without any formal editing may be classified as miscellaneous documents with the identifier MISC. For example, document FCCC/SBSTA/2003/MISC.3 contains individual submissions from nine Parties to the Subsidiary Body for Scientific and Technological Advice (SBSTA) of the UNFCCC. Each of the submissions was reproduced in the language in which they were received and without formal editing.

## Background Reading: Negotiating Multilateral Environmental Agreements

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## 3.6. Strategic issues

The approach of a national negotiating mandate depends on the size of the meeting and the type of group: a plenary, contact group, drafting group, a “Friends of the Chair” session, or a meeting of experts. This section addresses general issues common to most meetings and strategic issues in meetings of different sizes, and is followed by a brief list of materials on general negotiation structures and strategies.

### 3.6.1. Common strategic issues

#### 3.6.1.1. Meeting preparation

##### Always be prepared

- **Know your national brief or negotiating mandate thoroughly**, including your options and fallback positions;
- **Be ready to respond** to formal and informal questions from other delegations;
- **Carry your negotiating instructions**, briefing book and rules of procedure with you at all times;
- **Learn about the forum** before you arrive (e.g. objectives, history, structures, and key players), and have access to the rules of procedure;
- **Have a copy of the MEA** and consult it frequently during your discussions; and
- **Have a copy of the entire draft text** to keep the overall context in mind, even in negotiations where you only have responsibility for specific issues.

#### 3.6.1.2. Venues to build support

##### To facilitate negotiations, consider the following tactics –

- **Before and during the meeting**, participate in regional discussions related to the issues of your national mandate to generate support for your delegation’s approach (e.g. in JUSCANZ or WEOG; see 3.2.2.1 on UN regional groups and 3.2.2.3 on negotiating blocs).
- **Get to know foreign but like-minded colleagues** responsible for your issues as this may facilitate reaching agreement as the meeting progresses. You should usually communicate only your delegation’s initial position on issues.
- **Informal discussions before the meeting and during breaks** are important to discuss your delegation’s positions “on the margins” as well as canvassing and encouraging support from other Parties (see a list of materials on negotiation structures and strategies at 6.8.4).
- **Working or social meals** with other delegations can also improve rapport and common understanding of issues. Be prepared to participate in meetings during lunch hours.

#### 3.6.1.3. At the microphone

##### If you are responsible at the microphone for a specific issue of your national mandate, consider the following tips –

- **Never leave the chair/microphone unattended.**
- **Have another member of the delegation nearby for consultation** and for carrying notes as well as drafting proposals to other delegations on your behalf while you engage in debate (this is subject to the size of your delegation).

- **Ascertain the method for being ‘recognized’ by the Chair** at the beginning of the meeting. The method may require the raising of your Party’s name card (the “flag”), pressing a button,<sup>123</sup> or getting the attention of the secretariat supporting the Chair.<sup>124</sup>

## Interventions

Upon being given the floor, thank the Chair before moving to your intervention (oral statement). As interventions are directed to the Chair, frame your oral statement as an address to the Chair even when points are intended for a specific Party. **A good intervention:**

- **Is spoken slowly** for the benefit of interpreters and for those whose first language is not covered by interpretation services;
- **Is concise;**
- **Presents your delegation’s position clearly** with a compelling rationale;
- **Provides precise, simple drafting language;**
- **Works with existing language** to the extent possible; and
- **Avoids re-opening issues** that have been resolved and meant the removal of square brackets from the text. In the rare circumstances that justify such a re-opening, clarify the reasons that Parties should follow your approach (e.g it resolves a set of square brackets) and prepare for resistance.

## Intervention strategy

- **Listen to the interventions of others** and endeavour to support interventions that are generally consistent with your position. This approach may foster support from other Parties for your delegation’s proposals.
- **Indicate support for countries with a common position** and name such countries from different regions in your intervention.
- **Clearly express any disagreement with a proposal**, and identify the details of your concern (if a delegation does not accept a proposal, they communicate this dissent with phrases such as “my delegation has some difficulty with the proposed text” or “my delegation would prefer alternative language”). Ensure the proposal is placed in square brackets and, if possible, insert your own proposal into the text (in brackets when there are other points of view). See the section on “Drafting issues” at 3.4 of this Handbook.

## Timing of an intervention

- **The timing of an intervention is a matter of judgment.**
- **Do not intervene early** in discussions, unless you are trying to lead opinion and start a wave of support.
- **Wait and hear from each representative of the five UN regions** at a minimum, and gauge the number of flags raised in order to intervene at an appropriate moment. You may want to follow certain countries because you know their position and intend to rebut or support it.
- **Consult other delegation(s) concerned** with the same issue and obtain their views on the contents of your proposed intervention, particularly if the issue is complex or sensitive.
- **Let other countries forge the groundwork for introducing proposals** whenever possible. For instance, you may not need to intervene after another Party has successfully intervened to secure an objective aligned with your own interests (ie to insert square brackets around problematic text).
- **Show support and generate momentum** for Parties with whose position you agree, but who are isolated. It is important to intervene and communicate your delegation’s position as well as the supporting rationales.

123 It is rare for the order of interventions to be displayed on a screen in the room, so it is often difficult to time an intervention exactly as one would like.

124 The latter approach is often used in small groups.

- **Making such an intervention may result in an invitation to join a small group convened** to discuss the relevant issue. Otherwise, if the other Party concedes a point this creates difficulty in preventing the Chair from closing the issue.
- **For major interventions**, have a printed negotiating text available for use during the intervention.
- **For responsive interventions** in the heat of debate, make a note of your key points before you intervene.

#### **Regardless of UN protocol, the bottom line is achieving your delegation’s negotiating position**

- You must be forthright when the negotiating text is not satisfactory.
- A sufficient number of interventions should be made to secure your position and increase the likelihood that the Chair names your delegation to join closed drafting groups or a small group (such as “Friends of the Chair”, see 3.2.1.6.4).

#### **If there is little or no support for your delegation’s position, there are several options:**

- **Confer with other members of your delegation** and possibly your Head of Delegation.
- **If you are alone**, intervene with questions for other delegations (without being obstructionist).
- **Request a brief adjournment of the meeting** or, in extreme cases, suggest the Chair consider an issue on which your delegation takes no position and step out of the meeting (see procedural motions at 3.1.1.11). If such a situation is foreseeable, make arrangements ahead of time.
- **Seek the support of other delegations** by approaching them via a member of your delegation or others. If alone, leave your microphone briefly to consult with other delegations.
- **Apologize to the meeting, clarify your concern and insert square brackets** around the relevant text to signify your disagreement (see “Square brackets” at 3.2.1.5.1). Indicate that you will confer with your delegation to see if you can release or remove the square brackets later in the session.
- **Use a range of drafting or wording strategies** (see “Drafting issues” at 3.4).
- If you cannot achieve your bottom line or essential objectives, **consult your Head of Delegation before deciding to concede a point**. The concession could be made on the condition that your delegation obtains satisfactory outcomes on other issues.
- **Conduct informal consultations with other countries** prior to a proposed concession. For example, indicate to the Chair the importance of a point to your delegation and willingness to conditionally release the objection so that the meeting may progress on-schedule. Clearly express that withdrawing this objection is based on an expectation of a sympathetic consideration of your specific issues that shall arise later in the meeting. You may need to explicitly communicate that if your delegation is not satisfied with the outcome on such issues, it reserves the right to revisit the original issue (depending upon the state of negotiations). 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 the progress on your specific issue of the national mandate to the delegation**

- **Take detailed notes**, particularly on changes to the negotiating text as this will help you verify the accuracy of the next version of the text and the final meeting report. Use clear, concise language to communicate a summary of those notes to your delegation.
- **Verify that textual changes and square brackets are properly inserted** by the secretariat in the succeeding draft, as square bracketing can be complex (see “Square brackets” at 3.4.1.5.1).
- **Note the delegations and regions with particular perspectives** in support or opposition to your own position, as this will enable you to effectively target delegations you need to win over or support.

## 3.6.2. Strategic issues in large and small group meetings

### 3.6.2.1. Interventions

#### Rules for interventions

- Intervene only as often as necessary to secure a resolution of an issue aligned with your national negotiating mandate.
- In large negotiating venues, negotiators tend to intervene only once on a particular issue.
- If it is necessary to intervene twice on the same issue in a plenary session, the negotiator may apologize to the Chair.
- In the meetings of smaller groups, negotiators may make more frequent interventions.
- Such meetings are often influenced by personality and the synergy that arises when compromises are actively sought.
- Address concerns to the Chair, unless the level of informality in smaller groups does not require this approach.

#### As other negotiators speak, make a note of both the Party and region they represent

- This enables the delegation to assist the negotiator at the microphone to “work the room” by exploring or ‘shopping’ alternative proposals and drafting suggestions to other delegations.

#### Choosing where to sit is important in small groups

Most negotiations occur in groups other than the plenary, such as working groups, contact groups, informal groups, drafting groups, and “Friends of the Chair”. Meetings of smaller groupings are held in various places. While they are often held around hollow square tables, in some cases the Chair sits facing the room.

- **Arrive at the room early** and deposit your papers on your preferred seat.
- **Arrange a seating position where the Chair can see you clearly** to formally recognize your presence and intentions to intervene (ie a raised ‘flag’). This seating position is important to reduce the possibility of the Chair “not recognizing” you, especially when you are about to express a controversial point.
- **Sit beside the delegation of another Party with a similar position** to facilitate consultations. However, it may be perceived negatively if too many like-minded countries sit together.
- **Sitting next to like-minded countries that are seen as intransigent** or uncooperative could damage your negotiating position if you want to be perceived as flexible.
- **If you wish to intervene after other Parties**, sit at the back of a room where you can see all of the flags raised signifying the intention of Parties to intervene.
- **In a small drafting group**, sit in the middle to have more influence and eye contact with the entire group.
- **Where an overhead screen is used to display negotiated text**, sit where you have an unobstructed view of the text. Although a print out of the text is available at the end of the session, take notes and verify the text carefully before and after it is printed out.

### 3.6.2.2. Written proposals

If a position is complex or a new negotiating text is desired, a new proposal may be more easily accepted or understood if it is presented as a Conference Room Paper (CRP) or an informal “non-paper” circulated among potentially like-minded countries (see 3.5.3.1 and 3.5.3.3).

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

Where a delegation is unsuccessful in negotiating a finalized text according to national instructions, it may address the Chair and insist that its understanding of the text be reflected in the meeting report. This approach is applicable to text that is a draft provision of an MEA or a COP decision. The delegation's perspective incorporated in this report may later serve as interpretative guidance.

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

- Seek to have an issue mentioned in a resolution at the Diplomatic Conference formally adopting the treaty (see 5.2.2.8 on the 'Final Act' containing such resolutions). This often occurs when an issue has not been directly addressed in the treaty, and such a resolution may sustain the relevancy of the issue.
- Seek the inclusion of the issue in the interim work programme.
- Formulate an interpretative statement upon signature of the new treaty, or file it with an instrument of ratification (where there are serious concerns about the text). Since most MEAs preclude the filing of reservations to the treaty, interpretative statements or declarations should be prepared in consultation with legal and policy advice (see "Reservations" at 2.3.7 and "Interpretative declarations" at 2.3.8).
- If the concern has paramount importance to your national interests, block the adoption of a treaty text where the decision-making rule is by consensus (check the rules of procedure, see 3.1.1.14). This action is initiated in serious cases by the Head of Delegation who may first consult other national officials.

### 3.6.3. Expert meetings

Expert meetings are normally established with a clear mandate from another body, typically the COP. Usually a group of 30 to 60 representatives are selected on the basis of their qualifications and equitable geographic representation.

#### **National positions**

- Representatives attending expert meetings are expected to provide expert advice rather than represent national positions. However, they are expected to avoid openly criticizing their Party's position.
- If a participant has any doubts, this issue can be clarified before the meeting with the Chair or secretariat and made clear to all participants at the outset of the meeting.
- Any government, including those that sent participants, may disclaim the results of the meeting. However, if your delegation's participant agreed with a report from an expert meeting there might be an expectation that your delegation will share this agreement when the report is presented to the COP.

#### **Meeting techniques**

- Because an expert is not expressing a government view, there is typically less strategizing at these meetings.
- Nevertheless, the techniques on interventions and strategies are relevant for canvassing the support of other experts.
- An expert should endeavour to have his or her views reflected fairly in the meeting report, especially if their views are not shared by the majority of experts.

#### **The meeting report**

- At the outset, understand the nature of the intended outcome of the meeting and ensure this objective is reflected in the meeting report.
- If the COP did not ask for recommendations on an issue, no such recommendations should be included in the meeting report. This document should contain a summary of the different perspectives raised in the meeting.

### 3.6.4. Secretariat

#### The role of the secretariat

- Though secretariats are intended to be neutral servants of the Parties, some may have their own agenda and do not necessarily have all the accurate information or a clear understanding of rules or processes. This is important to remember when interpreting their advice.
- On the other hand, informal conversations with secretariat personnel are often useful as they can share insights on the progress of the meeting.
- Proposals from the floor should be provided to the secretariat in writing as soon as possible to facilitate inclusion in the text or meeting report (for further information on the secretariat see Annex F).

### 3.6.5. In the Chair

If you are approached to Chair an *ad hoc* meeting, you should consult your Head of Delegation to ascertain whether this proposed role is in your delegation's best interests. There are several considerations:

- If your delegation is small, serving as the Chair of a meeting may deplete the number of negotiators in your delegation to an extent that impedes the effective functioning of the delegation in sessions.
- You may be asked to Chair a meeting based on your qualifications. Alternatively, the request may derive from the fact you are a compromise candidate or your delegation has displayed a strong position that may be neutralized if you serve as Chair.
- When a member of your delegation is chairing a meeting, it may be hard to take strong positions without putting the Chair in a difficult position. In these cases, your interventions should take a low-key approach for achieving your negotiating position.
- Your colleague may rely on you to facilitate his or her role as Chair by proposing compromises or supporting procedural approaches and decisions (see 3.3.3 on the Chair's role).
- If you can foresee a situation where your national negotiating mandate will require you to intervene forcefully, it is a good idea to warn your colleague in the Chair ahead of time.

### 3.6.6. Shaping overall negotiation outcomes

#### 3.6.6.1. General

##### **The result of any negotiation session is rarely a collection of outcomes on specific issues**

Parties must consider the overall balance of outcomes – the degree to which participants have been more or less successful in achieving objectives of their negotiating mandates. Especially at the higher official and political levels, overall outcomes need to have “something for everybody”. Regional balance is an important consideration, particularly with regard to the North/South and EU/JUSCANZ dynamics.

##### **Even when working on a specific issue, consult your delegation on how your issue may be integrated into the different scenarios for overall outcomes**

Even if you believe that your interventions provide the most compelling rationale for your position, the outcome may be determined more by considerations of overall balance than of substance. It is important to position negotiation objectives within a rationale for how outcomes can be constructed to satisfy concerns about overall balance. Such outcomes should also coherently integrate results that make sense at a practical level.

##### **Large, significant negotiations have more important macro-level considerations**

These considerations include timing, venue, high-level decision-making, communications, leadership and vision. While these issues are the domain of higher-level officials and Ministers, all members of a delegation should consider how their issues may fit into and be affected by such wider considerations.

### 3.6.6.2. Timing

An issue may not be “ripe” for decision by the COP, and may be deferred for decision at a later date. The substantive or strategic reasons for timely or delayed decisions include the availability of information, urgency, progress on related issues, or integrating an issue into the overall package at a meeting.

From the start of negotiations, **strategic thinking** on shaping the final package is important and there are critical points of negotiations that deserve special attention, such as the moment when agenda items are determined or when negotiations are ready to move from one treaty body to another.

### 3.6.6.3. Venue

**Where an issue may be dealt with in different groups, consider the following –**

- How the structure of the meeting and the influence of different actors may impact outcomes; and
- 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 develop strong substantive positions**

- Strategically influencing the venue and participants in key discussions at the official and ministerial level can be more effective at producing desired outcomes.
- Relationships are important in this context, so the delegates familiar with the negotiation process and key actors have a distinct advantage.
- If an issue essentially involves policy choices, it should be addressed by the plenary of a subsidiary body, the COP, or a High-level forum. In contrast, technical discussions are generally best addressed in smaller groups, subsidiary bodies, or informal groups.

**Strategic options to solve a disagreement on policy issues**

- Often a solution can be forged among key actors using a “Friends of the Chair” format (see 3.2.1.6.4).
- If an issue remains unresolved towards the end of a session, there is the option for more technical discussions to create a range of alternatives for policy makers.
- The issue can be referred back to a technical group for the next session, or to an intersessional technical meeting or workshop (see 3.2.1.6).
- A predicted difficulty in reaching consensus on an issue with technical dimensions may prompt the creation of a side event during a session for raising understanding and support on policy options.

### 3.6.6.4. Creating high-level decision-making

**Conferences of a technical nature or lower-level policy issues**

Some conferences have a technical nature or the issues on policy choices can be resolved at a lower official level. Both scenarios do not require as much preparation as conferences that involve high-level decision-making.

**Conferences involving high-level policy issues**

Other diplomatic conferences are established for policy choice issues tackled by high-level political decision-making and generally involve Ministers. These conferences require a greater level of organization and strategic preparation, and generally culminate in a “High-level Segment” to resolve key issues.



### **Requirements for establishing higher-level decision-making to achieve desired outcomes**

- A broad perspective of the issues under negotiation and related negotiations from different time periods as well as the relationships among key actors.
- The 'art of the deal' involves setting up the trade-offs to allow for balanced outcomes, aggregating issues, and constructing options to produce desired outcomes.
- If emerging outcomes are unexpected or undesirable, focus on how the most important issues are treated and how to quickly realign them in a new strategy.

### **It is important to remember that high-level officials and Ministers are generally unable to deal with more than a few issues with clear options**

When overloaded with work, these officials will generally choose simple solutions. This dynamic can be used strategically, particularly by Parties with complex proposals. If you support such a complex position, you need to make progress at the working level and remain alert to the delay tactics of other Parties (see points of order and motions at 3.1.1.11, and process issues at 3.7). Further, high-level decision-making is relatively final and must be well organized in the first place. Whereas technical issues may be reconsidered in relation to new developments, high-level decisions are rarely reconsidered. Once an issue is set up for a high-level decision it is difficult to stop or change the direction of the decision-making process.

### **3.6.6.5. Communications**

#### **Communications can be effective tools to put pressure on other delegations**

This is particularly the case during high-level negotiation segments where Ministers are involved, as they are more politically sensitive.

#### **Communication tactics are also advantageous for Parties or stakeholders whose positions appear simple and straightforward**

Many Parties regularly integrate communications into their overall negotiation strategy. When communications are at issue, it may be particularly useful to consult and coordinate with stakeholders inside and outside the delegation.

### **3.6.6.6. Leadership and vision**

#### **It is important to consider the role of leadership, such as the Bureau and Chair of a COP, and the secretariat role in supporting such leadership**

The secretariat and the Chair/Presidency often develop a strategy and overarching vision for the package of outcomes they regard as necessary to obtain agreement and advance the negotiations. Though these officials endeavour to be neutral, they must show leadership. Parties that work on this level by influencing or presenting their own compelling vision greatly increase the likelihood of success with their national negotiating mandates.

#### **Though you should generally work with and support the Chair and the secretariat, they may sometimes work towards outcomes that are incompatible with your mandate**

In this situation, you must work at high-level negotiations and through the Bureau to ensure that your concerns are addressed. In any case, it is always important to follow Bureau discussions to learn about issues that are raised by other Parties.

#### **Regional groups**

These groups play a key role in organizing and coordinating leadership on different issues of common concern to the group, as well as feeding into Bureau discussions. Not only is it important for the delegation to participate in the appropriate regional group, it may be useful to monitor and influence the deliberations of other groups (see 3.2.2.1 on UN regional groups).

### Ultimatums: “Take it or leave it” packages

One of the most powerful tactics of a Chair is to present a “take it or leave it” package near the end of a session. The Chair may sometimes indicate they will only consider a limited number of changes, which may thus isolate one or more Parties. If you foresee this happening to your delegation, consider whether your delegation is in a position to block consensus (see 3.1.1.15 on consensus and 3.7 on process issues).

However, it is preferable to seek solutions before the Chair expresses a public ultimatum. If your delegation can block consensus, convince the Chair that your delegation’s position is firm and that other options must be explored for achieving successful outcomes in the negotiations. Similarly, if another Party is likely to block consensus it is important to seek solutions and consider the impacts on all outcomes.

### 3.6.7. Practicalities

#### Delegates are often asked to negotiate under conditions where they lack sleep, food, water, and other amenities

All-night sessions are typical on the eve of the final negotiating session,<sup>125</sup> and are also known to occur at Conferences of the Parties.<sup>126</sup> Preparation for these events is important:

- Start the day with a good breakfast as it may be your last meal of the day.
- Be prepared with food, drink, medication, tissues, coins for vending machines and such like.
- If you are not tied up in a late-night group, support members of your delegation by sitting with them to provide morale, drafting assistance, and food-fetching support.
- For security and substantive reasons, no one should be left alone negotiating late at night.

### Background Reading: General Negotiation Structures and Strategies

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<sup>125</sup> For example, this occurred in the case of the Kyoto Protocol, the Biosafety Protocol and the Stockholm Convention on POPs.

<sup>126</sup> An illustration is COP6 of the CBD that finally ended at midnight after two weeks of work; whilst COP6 of the Basel Convention ended at 2 am on a Saturday morning.

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Walker, R.A. (2011). *Manual for UN Delegates. Conference Process, Procedure and Negotiation*. Geneva, CH: United Nations Institute for Training and Research, at 83-144.

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## 3.7. Process issues and violations

### 3.7.1. Management of meetings

**The Chair, secretariat or other actors in a negotiation process may violate applicable rules or the apparent spirit of those rules**

The violation of such rules may occur intentionally or otherwise, and often with the implicit consent of Parties. If a violation is not challenged, it is presumed that Parties have consented or consciously acquiesced to support an agreement. However, often Parties appear to accept violations from actors in roles of authority without recognizing that such violations can be challenged.

#### **Examples of specific violations:**

- When a Chair makes “rulings” on matters of substance. A Chair can only “rule” on matters of procedure (see 3.1.1.11) whereas matters of substance are the purview of the Parties;
- When a Chair arbitrarily cuts off debate and ‘gavels’/makes a decision over the objection of a Party;
- When a Chair imposes a text upon the Parties;
- When a Chair ignores a Party’s request to speak;
- When a Chair requests approval of a decision before a decision has been formulated, or before Parties have received documentation of a decision;
- When decisions on amendments or supplemental agreements are taken which are not in accordance with the relevant provisions of a treaty; or
- When subsidiary bodies exceed the terms of their mandate.

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

- Although the Chair generally is entitled to make any kind of proposal, it is a process violation if he or she purports to impose text or decisions on the Parties;
- When a Chair becomes a clearly partisan participant in negotiations;
- When the Chair of a Conference makes “take it or leave it” proposals (see “Ultimatums” at 3.6.6.6);
- When a Chair attempts to isolate, exclude or undermine a Party; or privileges or colludes with a Party;
- When a host or other influential Party abuses its position and influence (e.g. by unilaterally or prematurely attempting to impose agreements on other Parties);

- When new texts are presented at the last minute of a meeting and accepted as the basis of negotiation without a rationale for the urgency; or
- When informal negotiations disadvantage a Party because of their language ability.

#### **Ultimately, any decision of a Chair can be challenged and overruled by a decision of the Parties**

Where consensus of the Parties is required for a decision, any Party can block a decision made by the Chair. However, this action is rare as there may be several disadvantages to opposing a Chair and it is important to maintain the appearance of consensus (see “Rules of procedure” at 3.1.1 as well as “Points of order and motions” at 3.1.1.11).

#### **There are some key actors who consistently violate processes (willfully or otherwise)**

Most negotiators will eventually encounter at least one such actor and the most obvious example is the Chair of a meeting. If you encounter such an actor or are unsure of the appropriate reaction, consult your delegation’s legal advisor and/or Head of Delegation to consider the options.

**It is often possible to coordinate with like-minded Parties to develop a strategy to manage such an actor. This option is canvassed via:**

- Informal discussions;
- Polite interventions from the floor (humor and humility are effective persuasive tools);
- Working with the secretariat (who may be the source of the problem and/or the solution).

#### **Adopt a similar approach when the actor in question needs help or they are the source of the difficulty**

The strategy varies in each situation, but direct informal approaches to the Chair can be effective for resolving the problem. A senior official or Head of Delegation usually organizes such approaches.

### **3.7.2. Other issues**

In some cases, the secretariat may purport to enforce process rules on the direction of the Chair and/or the Bureau. These rules should be respected, but if they impede you from necessary action it is wise to consult your Head of Delegation or legal advisor. For example, a rule denying access to a member of your own delegation is questionable and an appropriate action may be to challenge such a rule.

## **3.8. Funding**

### **Funding mechanisms are often integral to achieving the goals of MEAs**

An illustration is the substantive financial mechanisms requisite for climate change mitigation and adaptation measures mandated by the UNFCCC. MEAs and their financial support mechanisms are complex with diverse requirements and restrictions on access to funds that are subject to frequent change. Annexes A-B of this Handbook present a brief survey of projects funded in the South Pacific by donors such as the Global Environment Facility and multilateral development agencies pursuant to MEA objectives.<sup>127</sup>

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<sup>127</sup> Other climate change projects targeting mitigation and adaptation planning as well as technical and institutional capacity-building initiatives in the South Pacific have been funded by non-GEF donors, such as the Environmental Vulnerability Index supported by New Zealand, Ireland and Norway; the Capacity Building for the Development of Adaptation Measures in Pacific Island Countries (CBDAMPIC) operating from 2003-2006 and bilaterally funded by the Canadian International Development Agency (CIDA); extensive funding from the New Zealand government (NZ Aid) and Australian government (AusAID) for projects such as Climate Change Adaptation in Rural Communities of Fiji (CCA); and NGO funded activities such as the World Wildlife Fund (WWF) South Pacific Programme that created the Climate Witness project; and Red Cross/Red Crescent Preparedness for Climate Change Programme (Pacific PCCP) that galvanized pilot projects in the Cook Islands, Solomon Islands, Tonga, Kiribati, Samoa and Tuvalu.

## **The Global Environment Facility (GEF) and Thematic Trusts are the most common funding mechanisms for MEAs**

Regardless of the agency, the eligibility criteria for funding are usually specified by the MEA and/or designated convention authority and may be subject to change annually (see “Trust funds” at 3.1.2.1).

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

#### **3.8.1.1. General**

##### **Primary role as co-financier**

The GEF unites 182 countries in partnership with international institutions, civil society organizations (CSOs), and the private sector to address global environmental issues while supporting national sustainable development initiatives. Presently, the GEF is the largest public funder of projects to improve the global environment. As an independent financial organization, the GEF facilitates international cooperation by providing new and additional grants as well as concessional funding associated with transforming a project with national benefits into one with global environmental benefits.

The GEF funding assists developing countries in meeting the objectives of international environmental conventions and serves as the designated financial mechanism for four MEAs:

- The Convention on Biological Diversity
- The United Nations Framework Convention on Climate Change
- The United Nations Convention to Combat Desertification
- The Stockholm Convention on Persistent Organic Pollutants

The organization is composed of a Governing Council, Assembly and Secretariat as well as a Scientific and Technical Advisory Panel (STAP). This governance structure engages the participation of GEF members such as Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Samoa and Tonga. The GEF Operational Strategy is comprised of ten operational principles for the development and implementation of the GEF's Work Program. These principles are also grafted to the GEF Project Review Criteria employed to review project proposals at different stages of the project cycle. The GEF Instrument and Operational Programmes (OPs) create the framework for the preparation of GEF projects that cover the following interlinked focal areas: biodiversity, climate change, international waters, land degradation, ozone layer depletion and persistent organic pollutants.

##### **Funding**

The GEF portfolio records an allocation of \$10.5 billion, supplemented by more than \$51 billion in cofinancing, for more than 2,700 projects in over 165 countries. Through its Small Grants Programme (SGP), the GEF has also issued more than 14,000 small grants directly to civil society and community based organizations to a total of \$634 million. The GEF-administered funds embrace the Global Environment Facility Trust Fund (GEF Trust Fund); Special Climate Change Fund (SCCF); Least Developed Countries Fund (LDCF) and Nagoya Protocol Implementation Fund (NPIF). It provides secretariat functions on an interim basis for the Adaptation Fund (AF) created in connection with the Kyoto Protocol. It has initiated a pilot program called the “GEF Earth Fund” to engage the participation of the private sector, devised the Capacity Development Initiative (CDI) and a Small Grants Programme. Each GEF member country has an appointed Operational Focal Point for managing GEF projects. The agencies within the GEF may assist eligible applicants in the formulation, submission and management of projects (see section 6.2.5. of this Handbook for the different modalities of projects).

Funding is administered by the GEF secretariat, while projects are developed and launched by the following organizations in collaboration with recipient countries –

- **Three Implementing Agencies (IAs):**
  - The World Bank
  - United Nations Development Programme (UNDP)
  - United Nations Environment Programme (UNEP)
  
- **Seven Executing Agencies:**
  - United Nations Food and Agriculture Organization (FAO)
  - United Nations Industrial Development Organization (UNIDO)
  - Asian Development Bank (ADB)
  - Inter-American Development Bank (IDB)
  - African Development Bank (AfDB)
  - International Fund for Agricultural Development (IFAD)
  - European Bank for Reconstruction and Development (EBRD)

Potential recipient countries propose projects to the Implementing and Executing Agencies that evaluate and develop these proposals before submitting them to the GEF secretariat and Governing Council for approval.

### 3.8.1.2. Project funding

#### 3.8.1.2.1. Principles

**GEF funds activities based on the following principles:**

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

#### 3.8.1.2.2. Eligibility

**In addition to using GEF Operational Programmes as a guiding framework, project eligibility requirements include:**

- Endorsement by the host government;
- Addresses one or more of the GEF Focal Areas and has an identifiable global benefit;
- Involves public participation in devising and implementing the project;
- Transparency;
- Consistency with national priorities and programs, and the conventions supported by GEF;
- Strong scientific and technical merit;
- Financial and institutional sustainability;
- Inclusion of monitoring and evaluation frameworks; and
- Catalytic role in leveraging other financing.

### 3.8.1.3. Relationship to MEAs

The GEF secretariat is responsible for coordinating with MEA secretariats and representing the organization at treaty meetings. The GEF Council is responsible for ensuring that GEF-financed activities conform to convention guidance. **MEAs provide guidance to the GEF through their treaty text and COP decisions. Points to remember:**

- As the GEF provides financing for agreed-upon incremental costs on measures to achieve global environmental benefits, guidance provided to the GEF should only address such incremental costs.
- MEAs formulating guidance to the GEF should address programme priorities, policies and eligibility criteria. They should avoid micromanaging the GEF with too much guidance.
- The GEF secretariat proposes the best methods to the Council for incorporating guidance from the MEAs into GEF policies, programmes and strategies. The secretariat consults with the IAs, the Scientific and Technical Advice Panel (STAP), and the appropriate MEA secretariat in preparing proposals.
- MEA guidance is translated into procedures and criteria that assist the development of operational activities in concert with the GEF's Operational Programmes. Thus clarity in COP decisions to the MEA is essential as the GEF can have difficulties translating MEA guidance into practical operational activities.
- The GEF's OPs correspond to Focal Areas and directly reflect MEA objectives and priorities. They provide a conceptual and planning framework for the design, implementation, and coordination of several projects within a Focal Area.
- The GEF Instrument is amended when new Focal Areas are introduced. At the October 2002 Council meeting, the Instrument was amended to endorse Persistent Organic Pollutants and Land Degradation as Focal Areas.
- At the COPs for a multilateral environmental treaty, representatives of the GEF and IAs attend as observers but do not actually participate in negotiations. The GEF organizes workshops at these meetings to communicate current activities and to informally solicit input on further guidance on projects.
- Where appropriate, negotiators should consult GEF staff to promote guidance that is realistic and practical.
- The CEO of the GEF reports regularly to the conventions on the development of operational strategies and the results attained in GEF-funded projects. Individual countries are not required to report on GEF-funded activities in their national reporting and communications to the COPs.

The table below displays some GEF-funded projects designed to improve convention implementation, reporting, policy development as well as monitoring and evaluating environmental impacts and trends.

GEF ID	PROJECT NAME	FOCAL AREA	GEF AGENCY
5195	Building National and Regional Capacity to Implement MEAs by Strengthening Planning, and State of Environment Assessment and Reporting in the Pacific Islands	Multi Focal Area	UNEP
4746	Implementation of Global and Regional Oceanic Fisheries Conventions and Related Instruments in the Pacific Small Island Developing States (SIDS)	International Waters	UNDP
3707	Piloting Integrated Processes and Approaches to Facilitate National Reporting to Rio Conventions	Multi Focal Area	UNEP
4829	Support to GEF Eligible Parties for Alignment of National Action Programs and Reporting Process under UNCCD	Land Degradation	UNEP
4513	Support to GEF Eligible Parties (LDCs & SIDS) for the Revision of the NBSAPs [National Biodiversity Strategies and Action Plans] and Development of Fifth National Report to the CBD – Phases I	Biodiversity	UNEP
299	Climate Change Training Phase II – Training Programme to Support the Implementation of the UNFCCC	Climate Change	UNDP
3663	PAS Supporting the POPs Global Monitoring Plan in the Pacific Islands Region	POPs	UNEP

### GEF-funded Projects in the Pacific Region

As well as funding projects designed to generate global environmental benefits, the GEF supports myriad national and regional sustainable development initiatives related to biodiversity, forest management, climate change, international waters, land degradation and persistent organic pollutants. Since its inception in 1991, the GEF has provided over \$86 million in grants for projects in 15 Pacific Island Countries (PICs) to address unresolved environmental and natural resource management issues. The GEF has contributed funds to notable regional projects encompassing the South Pacific Biodiversity Conservation Program (SPBCP), Pacific Islands Climate Change Assistance Program (PICCAP), Pacific Adaptation to Climate Change (PACC) Project, Pacific Islands Greenhouse Gas Abatement through Renewable Energy Project (PIGGAREP) and Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF).<sup>128</sup>

The objective of capacity building in the Pacific region has ignited GEF-funded enabling activities with respect to multilateral environmental agreements resulting in national reports, communications, strategies and action plans such as the following:

- National Implementation Plan (NIP) for the Stockholm Convention on Persistent Organic Pollutants
- National Action Programmes (NAPs) and Reporting Process under the UNCCD
- National Biodiversity Strategy and Action Plan (NBSAP) pursuant to the CBD
- Nation Report on Biodiversity pursuant to the CBD
- National Communication to the UNFCCC
- National Adaptation Programme of Action (NAPA) pursuant to the UNFCCC
- National Capacity Self-Assessments (NCSAs)

<sup>128</sup> For an intricate assessment of climate change projects, aid flows, major donors and regional agencies operating in the Pacific region see Barnett, J. and Campbell, J. (2010). *Climate Change and Small Island States: Power, Knowledge, and the South Pacific*. London, UK: Earthscan.



These country-relevant activities forge the groundwork for a consideration of the actions required to fulfill the priorities and commitments to global environmental conventions, including actions that are eligible for GEF support. For example, NCSAs ascertain national priorities and needs for capacity development to conserve biodiversity, tackle land degradation, mitigate against the impacts of climate change and implement the CBD, UNCCD and UNFCCC conventions. Amongst the 153 countries that received GEF funding for compiling NCSAs were the Cook Islands, Fiji, Kiribati, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu. In the context of climate change, the GEF has supported the NAPA process for Least Developed Countries (LDCs) such as Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu (47 NAPAs from across the globe have been received by the UNFCCC secretariat). The preparation of initial and subsequent national communications from Parties not included in Annex I to the UNFCCC has entailed submissions from the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tuvalu, and Vanuatu. From a global perspective, the UNFCCC secretariat has received 144 initial national communications, 87 second national communications and 3 third national communications from non-Annex I Parties.<sup>129</sup>

### **The GEF Pacific Alliance for Sustainability (GEF-PAS)**

The long-term goal of the GEF Pacific Alliance for Sustainability is to increase the efficiency and effectiveness of GEF support to PICs, thereby enhancing achievement of both global environmental and national sustainable development goals. It addresses the main barriers preventing effective action by the PICs: (i) balancing community-focused actions, country drivenness, regional coordination and delivery of global benefits; (ii) ensuring GEF modalities are more reflective of national and regional circumstances; (iii) adopting an integrated, programmatic rather than focal area and project-based approach; (iv) balancing national and regional projects; (v) emphasizing on-the-ground action rather than planning and assessments; (vi) ensuring that countries and the region have the absorptive capacity required to undertake activities in an efficient and effective manner; and (vii) recognizing the limited co-financing opportunities for environment-related projects in PICs as well as the importance of sharing expertise and information.

The program facilitates international financing for sustainable development, biodiversity and environmental protection, integrated water resources management and climate change responses in the Pacific. It covers each GEF Focal Area as well as additional cross-cutting initiatives, namely capacity enhancement, enabling activities and support for relevant initiatives undertaken by both civil society and the private sector. The emphasis on a cross-cutting design reflects the need for an integrated approach to address the pervasive nature of some issues facing PICs, the synergies that can be gained from a highly integrated approach, and the limited absorptive capacity in the region. GEF-PAS has forged partnerships between GEF Agencies, regional organizations, bilateral aid agencies as well as the private sector and civil society to ensure that governments develop capacity and access funds for effective environmental protection outcomes (overall coordination is provided by the World Bank).

The table below displays a sample of GEF-funded regional projects for assisting the PICs to implement and comply with MEAs as well as related commitments, and thereby improving management of the environment and natural resources.

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<sup>129</sup> Information in this section derives from the UNFCCC website at <http://unfccc.int>

GEF ID	PROJECT NAME	FOCAL AREA	GEF AGENCY
3819	PAS Forestry and Protected Area Management	Biodiversity	FAO
4023	PAS Implementing the Island Biodiversity Programme of Work by Integrating the Conservation Management of Island Biodiversity	Biodiversity	UNEP
2586	PAS Implementing Sustainable Integrated Water Resource and Wastewater Management in the Pacific Island Countries	International Waters	UNDP
3664	PAS Prevention, Control and Management of Invasive Alien Species in the Pacific Islands	Biodiversity	UNEP
4066	PAS Pacific POPs Release Reduction Through Improved Management of Solid and Hazardous Wastes	POPs	UNEP
3641	PAS Promoting Energy Efficiency in the Pacific	Climate Change	ADB
3591	PAS Strengthening Coastal and Marine Resources Management in the Coral Triangle of the Pacific	Multi Focal Area	ADB
3626	PAS The Micronesia Challenge: Sustainable Finance Systems for Island Protected Area Management	Biodiversity	UNEP

The array of national and regional projects funded by the GEF are consistent with the objectives of regional plans such as the Pacific Plan for Strengthening Regional Integration and Cooperation, Micronesia Challenge and Pacific Islands Regional Ocean Policy as well as the objectives of bilateral agencies (such as AUSAID, NZAID, USAID, European Union, France and United Kingdom).

#### 3.8.1.4. Responsibilities of MEAs focal points

National MEA Focal Points provide guidance to the GEF through their participation in COPs negotiations, and through communication with National Operational and Political GEF Focal Points represented at the GEF Governing 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; and
- Acting as in-country contact points for consultations.

# Cross-cutting issues

## 4.1. Governance principles and objectives

### 4.1.1. Overview

Since the World Summit on Sustainable Development (WSSD), the international community has progressively advocated that institutional frameworks are essential for the full implementation of MEAs and goals of sustainable development. WSSD produced agreement on approaches to governance, which is applicable in the elaboration of MEA implementation decisions and tools.

#### **Paragraph 139 of the Johannesburg Plan of Implementation (WSSD)**

This section of the Johannesburg Plan identifies many guiding principles and objectives for international governance reform. These elements guide the negotiation process for MEAs and the substance of the resulting decisions. Such guidance is designed to promote conformity with the overarching aims of sustainable development. All references to Agenda 21 in this section also capture the Programme for the Further Implementation of Agenda 21 and the outcomes of the Summit (see section 1.1.1.2 of this Handbook on Agenda 21).

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#### **Governance Principles and Objectives**

- 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 of civil society and other relevant stakeholders in the implementation of Agenda 21, as well as promoting transparency and broad public participation
  - Strengthening capacities for sustainable development at all levels
  - Strengthening international cooperation on reinforcing implementation of Agenda 21 and the outcomes of WSSD.
- 

## 4.2. International cooperation and related issues

### 4.2.1. Official development assistance

Official development assistance (ODA) or foreign aid is comprised 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 to pursue the main goal of promoting the economic development and welfare of developing countries; and
- Concessional in nature (below market interest rates) with a grant element of at least 25% (calculated against a notional reference rate of 10% per annum).<sup>130</sup>

**States are committed to improving effectiveness of aid and achieving the ODA target of 0.7% of GNI**

This target was recommended in the 1974 UN Resolution on the New International Economic Order and several donor countries have recommitted themselves to this target at specific UN conferences.<sup>131</sup>

**Official Aid (OA)** refers to aid flows from official donors to countries and territories on Part II of the Development Assistance Committee (DAC) List of Aid Recipients: more advanced countries of Central and Eastern Europe, the countries of the former Soviet Union, and certain advanced developing countries and territories.<sup>132</sup>

#### 4.2.2. New and additional financial resources

The term 'new and additional' first gained prominence at the UN environment summit in 1972 – the Stockholm Declaration stated that 'additional international technical and financial assistance' should be made available for environmental protection in developing countries. At the Rio Earth Summit in 1992, 'new and additional financial resources' were pledged to support sustainable development. The term is used in treaties and action plans such as the CBD, Desertification Convention, Stockholm Convention and Johannesburg Plan of Implementation. The promise of developed countries to provide 'new and additional' financial resources to support climate mitigation, adaptation, technology development and transfer, and capacity-building in developing countries has been iterated in every major climate agreement: Framework Convention on Climate Change, Kyoto Protocol and Copenhagen Accord.

The pledge that these financial resources will be 'new and additional' has invoked the concern of developing countries that some of these resources will be diverted from development goals (such as poverty alleviation, food security and education) to meeting commitments under climate agreements. Currently, there is no consensus on the meaning of the term or on the baseline to use for assessing whether financial resources provided for climate change are 'new and additional'.

**Possible baselines to assess whether pledged funds are 'new and additional':**<sup>133</sup>

- A baseline defined by each contributor – no agreed baseline;
- Previously announced climate finance – any new climate finance is additional;
- The current level of climate finance – climate finance in excess of the current level is additional;
- The current level of official development assistance (ODA) – climate finance in excess of the current level of ODA is additional;
- Projected ODA – climate finance in excess of projected ODA is additional;
- ODA equal to 0.7% of GNI – climate finance in excess of ODA of 0.7% of GNI is additional;
- A maximum share of ODA – climate finance may include a maximum of x% (10%) of ODA;

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<sup>130</sup> This information was extracted from the OECD 2008 factsheet "Is it ODA?" available from their official website at <http://www.oecd.org>

<sup>131</sup> The UN General Assembly adopted a Resolution in 1970 expressing the commitment of industrialized nations to increasing development assistance to 0.7% of their Gross National Product (GNP) by 1975. See also the UN Resolution on the New International Economic Order (Resolutions 3201 (S-VI) and 3202 (S-VI)). The revised System of National Accounts promulgated in 1993 discontinued the term "gross national product" and replaced it with "gross national income" (GNI), an equivalent concept. Developed countries have reaffirmed commitment to this 0.7% target at global conferences such as the World Summit on Sustainable Development in 2002, Monterrey Consensus in 2002, and Gleneagles G8 summit in 2005.

<sup>132</sup> The statistics on aid and list of ODA recipients are available at the OECD website at <http://www.oecd.org/>

<sup>133</sup> OECD Development Assistance Committee, Development Perspectives for a Post-2012 Climate Financing Architecture. OECD, at 41. Available from <http://www.oecd.org/greengrowth/green-development/47115936.pdf>

- Only funding that is not reported as ODA is additional;
- Only funds provided through funds under the Convention are additional;
- Only funds generated by new sources are additional.

#### Use of the term in the context of Chapter 33 of Agenda 21 (“Financial Resources and Mechanisms”):

- 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 33.14: “Funding for Agenda 21 and other outcomes of the Conference should be provided in a way that maximizes the availability of *new and additional* resources and uses all available funding sources and mechanisms” (see also Chapters 33.11(b); 33.13 and 33.14 (a-iii)).

#### Use of the term in the context of climate change agreements:

- Article 4(3) of the UNFCCC promises that developed country Parties will provide “*new and additional* financial resources to meet the agreed full costs incurred by developing country Parties” to develop, implement and communicate various national policies.
- Article 11 of the Kyoto Protocol to the UNFCCC reaffirms these commitments of developed country Parties to provide “*new and additional* financial resources” to developing countries.
- Paragraph 8 of the Copenhagen Accord promises developing countries “scaled up, *new and additional*, predictable and adequate funding as well as improved access...to enable and support enhanced action on mitigation, ...adaptation, technology development and transfer and capacity-building, for enhanced implementation of the [UNFCCC] Convention”.

## 4.2.3. Recipient countries

### 4.2.3.1. Developing countries

Organizations have crafted their own definitions of “developing countries”, for example –

- **The OECD** identifies a “developing country” by its inclusion on the DAC List of ODA Aid Recipients that is revised every three years (see section 3.2.2.2.1). The DAC list excludes countries that are members of the G8 or the EU, or that have a firm accession date for EU membership;
- **The World Bank** uses the term to refer to low and middle-income countries assessed on the basis of their Gross National Income (GNI) per capita. This category includes Pacific island countries such as Fiji, Kiribati, Palau, Tuvalu and Samoa.<sup>134</sup>

### 4.2.3.2. Least developed countries

The United Nations Conference on Trade and Development (UNCTAD) is responsible for compiling the list of Least Developed Countries (LDCs) as noted at section 3.2.2.2.2.<sup>135</sup> Bilateral donors officially report to the OECD on activities and commitments for ODA in these countries. The list of LDCs used by the DAC is borrowed directly from UNCTAD.

<sup>134</sup> See the section of the World Bank website “How We Classify Countries” at <http://data.worldbank.org/about/country-classifications> and the aid statistics displayed on the OECD website <http://www.oecd.org/>

<sup>135</sup> This list of Least Developed Countries and an unofficial list of SIDS is available from the UNCTAD website at <http://www.unctad.org/>

### 4.2.3.3. Countries with economies in transition

As mentioned earlier at 3.2.2.2.3, countries that are in transition to a market economy are designated as Countries in Transition (CITs)/Economies in Transition (EITs). For example, the DAC and the World Bank consider this category of CITs or EITs as including Central and Eastern European countries as well as the former Soviet Union Republics.

Under several MEAs, CITs/EITs receive special consideration wherever developing countries are involved. This consideration often regards capacity development and financial assistance for the implementation of treaty obligations.

### 4.2.4. Capacity development

**This commonly used expression has two possible meanings:**

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

**Capacity development is an endogenous process of change, which donors may promote**

Donor initiatives should take a systemic, integrated approach rather than a gap-filling approach. Such initiatives should emphasize issues of process such as the inclusive participation of all stakeholders, local ownership of projects, and the adoption of appropriate time frames. Capacity building may enhance the potential of a society to implement a treaty through developing **technical skills, knowledge and “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.

**Factors for effective capacity development:**

- A locally-driven agenda with the participation of broad groups;
- Building on local capacities;
- Starting small;
- Ongoing learning and adaptation;
- Long-term investments;
- Systemic approaches, integration of activities at various levels, complex problem-solving; and
- Political realities and social values.

**Capacity development in the context of MEAs**

Developing countries and CITs/EITs often request donor assistance for capacity building activities that enhance the implementation of environmental treaties. Granted assistance usually takes the form of training, transfer of technology and cooperation as well as other short-term activities illustrated by projects such as the EU-Pacific Joint Initiative on Climate Change with the Global Climate Change Alliance; and EU-UNEP project “Capacity Building related to MEAs in African, Caribbean and Pacific (ACP) Countries” (ACP MEA project).

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**Example:** Canada usually promotes a problem-based approach that is broader and country-driven, so that countries can identify their capacity needs and donors can work to address them based on identified priorities.

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Lists of expertise and technologies or clearing-house mechanisms facilitate the search of developing countries and CITs/EITs for solutions, but this may lead to fitting problems to solutions rather than the opposite.

## 4.2.5. Technology transfer

MEAs often require 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 national borders.

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**Technology:** know-how or expertise, policy or regulatory approaches, and organizational or managerial models in addition to equipment or products.

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### There are several definitions of technology transfer

The notion is generally understood as the transmission of technology 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 is only successful using a capacity-building approach.

The Intergovernmental Panel on Climate Change (IPCC) defines the notion 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.”<sup>136</sup>

### Technology transfer in MEAs

The dynamic of negotiations on this issue is characterized by demands for developed countries to transfer ownership of clean technologies to developing countries. Developed countries often respond to such demands with the following points:

- **Most technologies are owned by the private sector**, not governments. Therefore, the role of the Parties is to facilitate the transfer of technologies to developing countries by helping to identify their needs as well as the appropriate technologies available.
- **An enabling environment must exist for these transfers**, such as suitable macroeconomic conditions, protection of intellectual property rights, as well as codes and standards. This environment attracts foreign direct investment that allows technology to be transferred.

## 4.3. Trends in MEA negotiations

This section examines trends within MEA negotiations both in terms of substance and process.

**Substantive trends** relate to the quality, scope and orientation of MEA instruments. These trends reflect the increased operationalization of the principles and concepts embodied in the 1992 Rio Declaration, such as common but differentiated responsibilities.

**Process trends** focus on the innovations and developments that characterize the processes of decision-making under MEAs. These include the formation of alliances, an increased pace of negotiations and other elements addressed at section 4.3.2 below.

### Identifying what constitutes a specific trend is an inherently subjective endeavour

However, the trends noted below are distilled from a wide array of sources –

- A continuing review of current regimes and negotiation literature;
- First-hand observations of developments in a wide range of sustainable development negotiations since the 1992 Earth Summit; and
- Regular communication with senior level officials active in these processes.

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<sup>136</sup> Special Report of the IPCC Working Group III entitled “Methodological and Technical Issues in Technology Transfer”. More information available from the IPCC website at <http://www.ipcc.ch/>

## 4.3.1. Substantive trends in MEA negotiations

### Substantive trends

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

### 4.3.1.1. Three pillars of sustainable development

#### **A prominent trend in new generation MEAs is the progressive management of key environmental concerns in a broader sustainability framework**

This trend is attached to an increasing recognition of the importance in integrating the three pillars of sustainable development in those instruments: economic development, social development and environmental protection.

#### **First generation MEAs (pre-1992 Rio Conference)**

This generation of multilateral treaties include the Vienna Convention on the Protection of the Ozone Layer (1985), the Convention on International Trade in Endangered Species (CITES, 1973); the Convention on Wetlands of International Importance (Ramsar Convention, 1971) and the Law of the Sea (UNCLOS, 1982). These treaties were negotiated before the concept of sustainable development was pronounced by the 1987 Brundtland Commission and elevated as the key organizing principle for Agenda 21 adopted at the 1992 Earth Summit in Rio de Janeiro, Brazil. As such, these instruments do not address the poverty and economic dimensions of sustainable development to quite the same extent as second generation MEAs (see section 1.1.1.1 for a selective list of treaties spawned prior to the Earth Summit).

#### **Second generation MEAs**

After the Rio Conference, several notable environmental agreements were forged such as the 1992 Convention on Biological Diversity (CBD) and the 1994 Desertification Convention (see section 1.1.1.2 for a selective list of such MEAs). The CBD is a pivotal treaty as it recognizes that resource conservation must be considered in a broader sustainability framework that tackles issues such as the sustainable use of biological resources and the equitable sharing of benefits arising from their use. The Desertification Convention has a similar focus advocating an integrated approach for responding to the physical, biological, and socioeconomic aspects of desertification and drought.<sup>137</sup>

### 4.3.1.2. Focus on targets and regulatory mechanisms

#### **Time-bound targets and regulatory mechanisms are increasingly used to place substantive controls on Parties' activities. Examples of this trend include the following –**

- The time-bound targets for emission limitations elaborated in climate change agreements such as the Montreal and Kyoto Protocols;

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137 See Article 4 of the UN Desertification Convention.



- The quantitative environment and development targets of the Millennium Development Goals elaborated in the UN Millennium Declaration (2000) and the Johannesburg Plan of Implementation (World Summit on Sustainable Development/ WSSD, 2002);
- The targets of the WSSD Plan of Implementation to “halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation;<sup>138</sup> restoring the world’s depleted fish stocks to commercial health by 2015; and reversing the processes that lead to biodiversity loss by 2010.”
- Regulatory mechanisms are also used for import and export controls as demonstrated in the Basel Convention, Rotterdam Convention, Montreal Protocol, and the Biosafety Protocol to the CBD.

#### 4.3.1.3. Common but differentiated responsibilities

Principle 7 of the Rio Declaration asserts a global responsibility for environmental protection, but differentiates that responsibility according to the scope of the contribution to the problem and the resources commanded to redress the impacts.

This principle has been inserted into recent MEAs, such as the UNFCCC and Stockholm Convention. Provisions may declare that the largest share of historical and current emissions derives from the activities of developed countries, and thus these countries should take the lead in combating climate change and its adverse impacts.<sup>139</sup> The specific commitments in the UNFCCC relating to financial and technological transfers apply only to OECD countries such as Australia and New Zealand.

This principle of common but differentiated responsibilities is also enshrined in development agreements such as the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States (2000):

“differentiation and regionalization: cooperation arrangements and priorities shall vary according to a partner’s level of development, its needs, its performance and its long-term development strategy. Particular emphasis shall be placed on the regional dimension. Special treatment shall be given to the least-developed countries. The vulnerability of landlocked and island countries shall be taken into account”.<sup>140</sup>

#### 4.3.1.4. Principle of the common heritage and common concern of humankind

The principle of the common heritage of mankind (CHM) affirms that no entity may appropriate and no State may assert national sovereignty over global commons resources such as the deep seabed located beyond the jurisdiction of national territories. This principle has undergone considerable evolution since its first articulation in negotiations on the Law of the Sea (UNCLOS). It is enshrined in the legal regimes governing outer space, human genomics and bioethics as well as cultural and natural heritages of universal value. At its core, it requires the collective management of the interdependent commons, for the present and long-term benefit of all life. Collective management includes ecological and social responsibilities.

##### **Biodiversity Convention negotiations**

- During the negotiations, the CHM principle was rejected by developing countries that assumed it would subject their biological resources to international control.
- This debate led to the articulation of the principle of “common concern of humankind” (CCH), which provides a conceptual framework for natural resources that are located within national borders but have global significance.

138 Paragraph 7 of the WSSD Plan of Implementation. The text of this WSSD plan is available from [http://www.un.org/jsummit/html/documents/summit\\_docs/2309\\_planfinal.htm](http://www.un.org/jsummit/html/documents/summit_docs/2309_planfinal.htm)

139 See Article 1 of the UNFCCC.

140 Article 2. This agreement is also known as the “Cotonou Agreement”, and the text is available at <http://www.paclii.org/>

- Notable outcomes of the Biodiversity Convention:
  - Innovation of the new concept of common concern; and
  - Express affirmation of the sovereign right of developing countries over their biological and genetic resources (the first MEA to expressly affirm these rights).

#### 4.3.1.5. The precautionary approach

In international law, the traditional obligation to prevent transboundary harm is triggered by a high standard of proof, namely the existence of convincing evidence that such harm will occur from a certain activity. In contrast, a precautionary approach provides that the absence of full scientific certainty is not a reason for postponing decisions where there is a risk of serious or irreversible harm to the environment.

**The application of the precautionary approach is particular to science-based risk management, and is characterized by three basic tenets:**

- The need for a decision
- Risk of serious or irreversible harm
- Lack of full scientific certainty

Generally, the precautionary approach shifts the burden of scientific proof necessary to trigger action from those who support prohibiting or reducing a potentially offending activity toward those who wish to initiate or continue the activity. This approach is included in a wide range of international instruments: Agenda 21, Stockholm Convention, Rio Declaration (see Annex H of this Handbook), CBD, UNFCCC, and UN Straddling Fish Stocks Agreement.

#### 4.3.1.6. Community resource interests

**There is an increasing recognition of the importance of community-based resource rights**

This trend is reflected in the CBD with a concrete example in Article 8(j) of the Convention that accords formal recognition to the role of local communities and indigenous people. This provision acknowledges the pivotal role of traditional knowledge, innovations and practices for the conservation and sustainable use of biodiversity.

#### 4.3.1.7. Flexibility mechanisms

**The Kyoto Protocol generated an innovation in flexibility mechanisms**

The Protocol contains several mechanisms whereby Parties may obtain credit for reducing emissions in other countries. For example:

- The International Emissions Trading (IET) regime allows Parties with targets to buy and sell emission credits among themselves;
- The Clean Development Mechanism (CDM) allows for the production of credits in developing countries; and
- Joint Implementation (JI) allows for project-based trading among Parties with targets.

Trading allows countries that limit or reduce emissions by an amount that exceeds the levels of their agreed targets to sell the excess emission credits to countries that have difficulty in meeting their own targets.

#### 4.3.1.8. Compliance regimes

**In most MEAs, particularly framework conventions, compliance mechanisms are weak or non-existent**

MEAs generally do not have effective means of international enforcement<sup>141</sup> and rely on self-reporting and monitoring procedures to track the compliance of Parties. Even the consequences of non-compliance forged

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<sup>141</sup> With the possible exception of trade related measures in the Montreal Protocol and CITES.

under the Kyoto Protocol are effectively only additional obligations assigned to a Party (see section 2.4.12 for more information on compliance issues). The UNEP International Environmental Governance process has highlighted the need for strengthening compliance regimes; and recent negotiations on the Kyoto Protocol, Basel Convention, Biosafety Protocol, and Rotterdam Convention recognize the need for robust non-compliance procedures.

### 4.3.2. Process trends in MEAs

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

#### 4.3.2.1. Proliferation of post-agreement negotiations

**After UNCED of 1992, post-agreement negotiations have proliferated due to two key factors:**

- **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.
- **The consensus approach to UN decision-making** has resulted in many contentious issues left unresolved at the time of treaty adoption. Thus post-agreement negotiations have increased in both the volume and scope of their work. For example, the Rio Conventions on Biodiversity and Climate Change have produced legally binding protocols (see section 1.1.1.2. of this Handbook), many work programmes and expert panels, as well as several subsidiary bodies and processes.

#### 4.3.2.2. Increased pace of negotiations

**Another notable trend is the increased speed of negotiations for an MEA**

The 1973 CITES was not signed until 10 years after the International Union for Conservation of Nature (IUCN)<sup>142</sup> first drew international attention to the need for regulation of the trade in endangered species. Similarly, the UNCLOS negotiations spanned a decade for forging the treaty. In contrast, new generation MEA negotiations have been concluded in record time, such as the Desertification Convention as well as the Rotterdam and Stockholm Conventions.

#### 4.3.2.3. Fragmentation

Multilateral agreements and institutions created to tackle miscellaneous environmental problems are often established and implemented in an *ad hoc* manner. This fragmentation is particularly evident in long-standing issue areas that have spawned multiple MEAs, such as biodiversity and the oceans. Addressing this fragmentation has been a key focus of the UNEP International Environmental Governance process.

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<sup>142</sup> Also known as the World Conservation Union, which is comprised of governmental and non-governmental members. More information is available in Annexes A and B of this document and the IUCN website at <http://www.iucn.org/>

#### 4.3.2.4. Innovations in negotiation formats

##### Vienna Setting

The return to a diplomatic tradition called the “Vienna Setting” is another innovation in MEA negotiations. This tradition involves representation from all stakeholder groups at the negotiating table. The openness and transparency of the process makes it difficult for governments or interest groups to stall the process or disown the end result. This negotiation format was successfully employed during the final stages of the negotiations for the Biosafety Protocol to the CBD and the World Summit on Sustainable Development (WSSD).

#### 4.3.2.5. Formation of like-minded coalitions

Since the 1992 Earth Summit, MEA negotiations have become increasingly characterized by the formation of like-minded negotiation blocs. These blocs have developed in response to the challenges faced by traditional negotiation blocs (ie G-77) in forging meaningful and coherent positions.

##### Examples:

- As noted earlier at 3.2.2.3, the AOSIS bloc (Alliance of Small Island States) was formed during the first COP to the UNFCCC. Recognizing the difficulties inherent in reaching consensus within the G-77 on 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 the confines of the G-77.
- The Kyoto Protocol spawned the Umbrella Group, which is an issue-based coalition noted earlier in the section “UN negotiating blocs” at 3.2.2.3.

#### 4.3.2.6. Improved rapport among individual negotiators

##### Evolving tasks of delegates

- **The opportunities for interaction among delegates have increased in tandem** with the increased number and pace of MEA negotiations.
- **The international negotiation circuit has fostered a breed of specialist diplomats** from both developing and industrialized countries, who may spend their entire working year participating in various MEA-related meetings.
- **Fragmentation of the process has been partly mitigated by these “super-delegates”** who highlight potential conflicts and cross-pollinating ideas, and promote consistency in language and approach.

#### 4.3.2.7. Multi-stakeholder engagement and influence

##### The New Diplomacy Model

One of the most important recent trends is the “New Diplomacy Model” characterized by a broad range of non-State actors participating in the formal negotiation process. This trend is reflected in the increased participation of multi-stakeholders and the influence of major groups in the substantive development of MEA negotiations since the Stockholm Conference in 1972.

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**Examples:** the role that the IUCN played in preparing the original draft of the CBD. NGOs have played a similarly important role in ensuring that the Desertification Convention included a 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.

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## **Background Reading: International Environmental Law**

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# Synthesis

## 5.1. Typical day in UN negotiations

### 5.1.1. Delegation meetings

Usually, a delegation meeting is held the day before the formal negotiations start. Logistic issues must be promptly addressed in advance of the formal negotiations so that the delegation is ready to react to any problems.<sup>143</sup>

#### **A typical day in UN negotiations begins with a general delegation meeting in the morning**

Ensure that as many delegation members as possible attend this meeting, which is an important forum for alerting negotiators to issues that are cross-cutting and of common interest. It also may present opportunities to coordinate the 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 important for delegation members who are external to the national government and often provide a useful perspective to negotiators.

Subgroups may hold their own morning meetings, usually before or after the full delegation meeting. Members of the delegation may have bilateral or other small group breakfast meetings with colleagues from other delegations.

### 5.1.2. Negotiation group meetings

In most cases, regional or like-minded group meetings are held in the morning before the formal negotiation sessions. The Head of Delegation or their alternate as well as a limited number of negotiators attend these meetings. Discussions generally focus on high-level strategies and problem-solving tactics. Lead negotiators in various issue areas often participate in subject-specific meetings throughout negotiations on a regular or *ad hoc* basis.

### 5.1.3. Formal sessions

Once morning meetings are concluded, delegates may then attend formal sessions or use any available time between scheduled negotiations to prepare work or consult with other delegations/groups. Formal sessions are usually scheduled as morning and afternoon blocks of time with the occasional evening period. These sessions may continue late into the evening or even the early morning (though hours may be limited by the availability of translation services and the capacity of delegations to participate).

### 5.1.4. Flexibility

#### **Delegates must be prepared to adapt to changes in the negotiation schedule**

- Formal and informal sessions and meetings may be established or changed at any time. Adapt to these changes with your negotiating priorities and appropriate coordination in mind.

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<sup>143</sup> In some cases, delegations had to engage in intense negotiations about agendas prior to the opening of a session.

- Negotiations are often scheduled on any Saturday within the span of negotiations, and rarely continue beyond the last day of scheduled negotiations. However, negotiations may continue through the last night of a session.
- Even if you have no preparatory work or negotiation meeting scheduled, remain in contact with other members of your delegation. If possible, circulate in the area where negotiations are conducted in order to participate in informal discussions with other delegates and learn of latest developments.

### 5.1.5. Side events

#### **Side events hosted by Parties, NGOs, IGOs, and business are often scheduled during the day**

These occasions can provide useful opportunities to gather information or influence discussions in an informal way. Bilateral or small group meetings may also be scheduled with like-minded Parties or Parties in a position to lead compromise in negotiations.

#### **Receptions provide similar opportunities for informal advocacy and information gathering**

Sometimes a delegation, Convention Secretary, local officials, business organizations, or NGOs will hold a reception.



## 5.2. Products of MEA negotiation phases

This section provides an overview of the general phases that characterize the multi-year intergovernmental negotiation process for MEAs. It outlines the products of each of these phases and the specific steps to be followed. As these steps often overlap, the following sequence is often modified in the course of negotiations.

NO.	PHASE	PRODUCT
	<i>Pre-negotiations</i>	
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 procedure, programme of work and agenda
Phase 4	Issue-definition and issue-framing	Compendium of Party views and secretariat papers
	<i>Formal Negotiations</i>	
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	Counter-proposals 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 the final plenary
Phase 12	Agreement and adoption	Agreed text and formal reservations
	<i>Post-Agreement Negotiations and Activities</i>	
	Signature	
	Ratification	
	Implementation	

### 5.2.1. Pre-negotiations

#### 5.2.1.1. Phase 1: Problem identification

##### Announcement

This announcement is normally preceded by key events that propel the environmental problem into the international arena. This phase may extend over several years before the decision to proceed with an intergovernmental negotiation process is formally announced. The announcement conveys an acknowledgement



by the international community of a global environmental challenge (as articulated by the expert community) that has prompted the formal launch of intergovernmental negotiations. The development period of this process varies according to the urgency of the problem and activity of advocates, as well as political, social and economic considerations.

**Precipitating events typically include –**

- A particular incident of human-induced pollution (e.g. the Chernobyl crisis);
- The presentation of new scientific evidence (e.g. the growing ozone hole); or
- Recognition of the economic repercussions from the exploitation of natural resources (e.g. the consequences of global warming).

**Environmental NGOs**

These organizations play a pivotal role in highlighting environmental problems for the public, raising awareness, and consolidating political pressure on political leaders to spur a decision for intergovernmental negotiations on the issue.

**The scientific community may play a decisive role in determining whether to initiate an international negotiation process**

Once the issue is highlighted, political leaders are faced with the decision of whether to proceed with a negotiation process and, if so, the method to engage and the type of instrument to negotiate. In most cases, the decision to develop a new negotiating process for an issue is made at existing UN fora.

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**Example:** in decision 19/13 C of February 1997, the Governing Council of UNEP concluded that a global legally binding instrument to address persistent organic pollutants was required. This decision eventually led to the adoption of the Stockholm Convention (2001).

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**Example:** Sustainable Forest Management

Little time elapsed between the end of the Earth Summit and the commencement of the Desertification Convention negotiations. On the other hand, negotiations are ongoing as to how to proceed regarding an instrument on forest management. 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 that many 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 (see 6.2.7.2.3 of this Handbook).

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### 5.2.1.2. Phase 2: Fact-finding

The fact-finding phase will often bring together a multi-disciplinary group of experts from UN organizations, scientific research institutes, and other bodies to collate facts and define the problem. The role of science is to articulate a common language to facilitate policy discussion. The fact-finding phase typically involves framing the scientific debate and providing consolidated scientifically-projected outcomes.

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The Intergovernmental Panel on Climate Change (IPCC) is an important example of the positive influence of a well-organized scientific expert body in driving substantive negotiations forward. The IPCC's second Assessment Report: Climate Change (1995) was instrumental in convincing the diplomatic community to consider the role of anthropocentric sources in contributing to global warming (see also the 2007 fourth assessment report).

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### 5.2.1.3. 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 negotiating body (INC), they focus on the overall organization of the INC's work. The organizational work typically takes place over one week, usually at the first meeting of the INC. The products 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 (see 3.1.1.)
- Composition of the Bureau, including election of the Chair and officers (see 3.1.1.6.)
- Time schedule for formal sessions of the INC
- Participation of observers and non-State actors (see 3.1.1.2.)
- Substantive programme of work
- Agreement on funding of the meetings (see 3.1.2.)
- Role of the secretariat in supporting the negotiating process

In certain difficult negotiations, debates on procedural matters such as voting rules can be politically charged (such as draft Rule 42 of the UNFCCC). In other cases, debates regarding procedure may delay the commencement of substantive discussions.

### 5.2.1.4. Phase 4: Issue-definition and issue-framing

Issue-definition and framing takes place once procedural matters are finalized, usually at the end of the first week of the first INC meeting. This phase involves an informal exchange of delegation views through the presentation of statements as well as input from major groups and international organizations.

During this phase, multiple ideas are presented and debated. A few ideas may form the basis for further discussions, often with a call for more research by the secretariat. The product of this phase is a compendium of views prepared by the secretariat to the INC. The secretariat may also prepare or commission background reports that address issues in detail and set out a range of possible policy options (these documents have no official status). The compendium and synthesis of views provide delegations with an overall sense of areas of convergence and divergence, as well as highlighting issues that may underpin substantive negotiations.

## 5.2.2. Formal negotiations

### 5.2.2.1. Phase 5: Commencement

The commencement of the INC is marked by an official opening plenary session, which is attended by all the government delegations. Many such delegations negotiate through distinct negotiation blocs (such as the EU, G-77 + China, AOSIS, JUSCANZ, and CEIT as noted in section 3.2.2.3).

**The product of this phase consists of the opening statements by State and non-State actors**

These statements rarely address the specific details of the negotiation text, but they outline the overarching priorities of the key negotiating blocs and participants as well as indicating the parameters within which substantive debate will be conducted.

### 5.2.2.2. Phase 6: Consolidation of views

**The preparation of a negotiating text is a process of refining and reframing the views of blocs and countries, and is repeated in other negotiations phases**

This text preparation is preceded by the consolidation of views based on efforts by the INC Chair, Bureau members, and secretariat. Sometimes, these efforts are in the form of a Chair's informal summary. In cases

where views and positions are crystallized, the Chair has the option of drafting a text that will serve as the basis for formal negotiations (see 3.5.4. “Chair’s text”).

#### **At the early phase, the draft negotiating text is limited to the substantive elements**

The draft will not include standard elements such as the preamble and definitions, as well as provisions addressing control measures, reporting, compliance, assessment and review, reservations and amendments, Conference of the Parties, secretariat, subsidiary bodies and such like (see 3.4.2.1 “Initial negotiating text”). In some cases, negotiating blocs may table their own version of the draft negotiating text as a substitute for the Chair’s draft text. A delegation or delegations, or the Chair may present new texts in later phases. As the phases of negotiation progress, it is more difficult to have such a text accepted by all the Parties (unless the existing text is incapable of supporting agreement).

### **5.2.2.3. Phase 7: Expression of initial positions**

#### **This phase consists of articulating initial positions regarding the draft negotiating text**

The Chair and secretariat first present the draft text to the INC plenary and explain its orientation, scope, and substance. The floor is then opened for general comments from the participants, which comprises the main product of this phase. Comments typically outline concerns regarding the negotiating text, such as whether it is an acceptable basis for negotiation. Such concerns and comments may foreshadow the theme of future proposals for amendments to the text.

### **5.2.2.4. Phase 8: Drafting**

**The first product** is the detailed amendments to the draft text submitted by participants to elaborate their negotiating positions (see “Drafting issues” at 3.4). The amendments typically address:

- Unacceptable text language;
- New language to be included in the draft text; and
- Problematic language to be changed.

**The second product** is the resulting negotiating text comprised of the original draft text and square brackets indicating areas of disagreement (see 3.4.1.5.1).

- This bracketed text is refined and transformed into a revised negotiation text at a later stage by the Chair and secretariat.
- These officials attempt to consolidate the detailed amendments proposed by participants.
- The revised negotiation text is often tabled during the formula-building or coalition-building phases of negotiation, which may overlap.

### **5.2.2.5. Phase 9: Formula-building**

This phase often extends over several negotiation sessions, and marks the shift in focus from the articulation of positions to the work of forging consensus on the substance of the text.

#### **The main products at this phase:**

1. **A set of counter-proposals** prepared by the negotiating blocs and participants in response to the formally tabled amendments and proposals. Counter-proposals identify:
  - a. Proposed amendments that are acceptable;
  - b. Amendments that are unacceptable; and
  - c. Proposed amendments that can be endorsed on the condition of substantive changes.

2. **The alternative texts** that participants have prepared in smaller working or drafting groups chaired by a designated coordinator.
3. **Possibly, a revised negotiation text.**

#### 5.2.2.6. Phase 10: Coalition-building

Distinct new alliances may form in addition to the permanent negotiation blocs (see 3.2.2.3). New alliances are most likely to form once counter-proposals have been presented and the critical issues identified, or even at an earlier stage in negotiations. There are two main products at this phase:

1. **New concrete proposals** prepared by the new issue-based coalitions. A proposal could present an entire new text, as illustrated at the first meeting of the COP to the UNFCCC where the AOSIS submitted text advocating a new basis for continued negotiation.
2. **A revised negotiating text** prepared by the Chair, Bureau members and secretariat that is based on the proposed amendments, additional proposals and informal consultations. Once presented to the INC plenary, delegations may argue that their views are not accurately reflected in the revised text. Participants then typically call for an adjournment to provide them with time to evaluate the revised text and prepare their next round of amendments and proposals.

#### 5.2.2.7. Phase 11: Bargaining

This phase is characterized by a process of trade-offs or bargaining until a final agreement is reached on the entire negotiating text.<sup>144</sup> It extends 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 negotiation formats may have been employed in previous phases.

**The products typically generated in the bargaining phase include:**

- New detailed amendments to the revised negotiation text;
- New proposals from coalitions; and
- Bracketed text based on the discussion and debate of the amendments and new proposals.

#### 5.2.2.8. Phase 12: Agreement and adoption

**The final phase includes two distinct but related components:**

##### 1. A closing plenary session in which the agreed text is approved

The final text (the main product at this phase) is usually approved by consensus of the States participating in the negotiations. However, a State could table a formal reservation or declaration to the final text at the time of signature or ratification (unless the treaty provides otherwise, see section 2.3.7. on reservations and 2.3.8. on interpretative declarations). Once the text has been agreed, formal closing statements are made by negotiating blocs, individual delegations and observers. As the last to speak at this session, the Chair summarizes the main points of the agreed text and the steps required for its formal adoption.

##### 2. A Diplomatic Conference that formally adopts the text of the MEA

This conference may be held immediately after the closing plenary, or several weeks or months following approval of the agreed text. The adoption of the treaty text occurs with the agreement of all States participating in the negotiations (VCLT, Article 9). In addition to adopting the MEA text, the conference will agree on the programme of work to be undertaken by an interim body (e.g. an intergovernmental committee)

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<sup>144</sup> See the bibliography at 6.8.4. for suggested readings on negotiation styles and strategies.

before the treaty enters into force and the ensuing establishment of the COP.<sup>145</sup> This phase of negotiations also features a conclusive document labeled the 'Final Act' that recites details such as the negotiation history, the participating States and observers, agenda of the conference as well as the adoption of rules of procedure and adoption of the international agreement, special resolutions and decisions. Annexes are appended to the Final Act, such as the text of the international agreement, declarations and interpretative statements, and resolutions that may elaborate action for the interim operation of the adopted agreement or illuminate unresolved issues that may dictate future negotiations.<sup>146</sup>

### 5.2.3. Ratification and post-agreement negotiations

**Once the agreement has been adopted**, it is open for signature to all negotiating Parties for a limited period of time. The next step is ratification, approval, acceptance or accession by which national governments formally agree to be bound by the MEA. The treaty will specify the time-frame and requisite number of instruments of ratification, approval, acceptance or accession deposited by States to trigger the entry into force of the treaty (see section 2.3.4-2.3.6 of this Handbook).

**Once the agreement enters into force**, post-agreement negotiations continue on matters left unresolved in the original negotiation process and key issues regarding implementation of the treaty.

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145 In regime and negotiation literature, the period between the adoption of an MEA and its entry into force is known as the "Operation Phase". An international agreement may also be adopted at the end of a final negotiating session rather than at a special forum, which is illustrated by the case of the UNFCCC that was adopted during the second part of the fifth session of the INC. The conference for the adoption and signature is equipped with an agenda that canvasses matters such as the order of opening and closure of the conference, election of officers, adoption of rules of procedure and resolutions, and appointment of the credentials committee. See the section 2.3.5. "Full powers" regarding the authority of a State representative to perform the adoption and signature of an instrument.

146 For example, the obligation of the Parties to the Basel Convention to devise a protocol on liability and compensation for environmental damage (Article 12) was reiterated in a resolution at the conference for adoption of the agreement. The resolution specified the creation of an ad hoc working group to draft the future protocol that was eventually adopted in 2000. Timoshenko, A. (2003). *Environmental Negotiator Handbook*. The Hague: Kluwer Law International, at 145-147.

## 5.3. Checklists

The following is a brief list of key matters to address during negotiations with an indicator of timelines. Subjects covered in this list are detailed in other sections of this handbook.

ITEM	TIMEFRAME
Confirm local logistics arrangements	Days before official sessions
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 the secretariat; hold regional or like-minded group meetings	Day(s) before official sessions
Hold first general delegation meeting for introductions, review of logistics and contacts, confirming general approach and roles, relaying highlights of the first day and full session; arrange subsequent meetings; attend delegation reception	First day
Regularly consult key negotiation partners (like-minded and regional groups, Bureau contacts, secretariat)	Throughout
Manage your specific issue in the national mandate and the overall negotiations, ensuring that priorities are on track for resolution in the final package; identify items for high-level decision-making	Throughout
Ensure appropriate information flow within your delegation and with national 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 prepared before departure
Confirm logistics and travel arrangements for departure	Days before departure
Ensure proper conclusion of agenda items and 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 the secretariat, negotiation partners; participate in the election of officers for subsequent sessions.	Final days
If an agreement is to be concluded or documents to be adopted, consider the need for a final legal review, communications and formalities (plan Ministerial formalities in advance)	Final days

# Annexes and references

## 6.1. Annex A – Key Organizations in the Pacific Region

### 6.1.1. Pacific Regional Environment Programme<sup>147</sup>

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**SPREP's Mandate:** to “promote cooperation in the Pacific islands region and to provide assistance in order to protect and improve the environment and to ensure sustainable development for present and future generations.”

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The Pacific Regional Environment Programme began as a programme under the South Pacific Commission (now the Secretariat of the Pacific Community) in New Caledonia in the early 1980s. It gradually evolved to become the region's competent intergovernmental organization for environment and sustainable development and located to Samoa in 1992.

#### Membership

SPREP (the Secretariat) is based in Apia, Samoa with a membership of 21 Pacific Island Countries and Territories and five countries with direct interests in the Pacific region.

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**Member States:** American Samoa, Australia, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, the United Kingdom, the United States, Vanuatu, Wallis and Futuna.

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The organization operates under the guidance of its Strategic Plan 2011-2015 which is delivered under five Divisions:

- Climate Change
- Biodiversity and Environmental Management
- Waste Management and Pollution Control
- Environmental Monitoring and Governance
- Corporate Services

SPREP provides policy and technical advice to its Member States and implements a number of multi-year multicountry projects in each of the first four Divisions mentioned above.

### 6.1.2. United Nations Environment Programme<sup>148</sup>

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**UNEP's Mission:** “to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations.”<sup>149</sup>

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The 1972 Stockholm Conference on the Human Environment prompted the creation of the United Nations Environment Programme by the UN General Assembly.

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147 Information from the SPREP website at <http://www.sprep.org/About-Us>

148 Information extracted from the UNEP website at <http://www.unep.org/>

149 Quote from the UNEP website at [http://www.unep.org/Documents.Multilingual/Default.asp? DocumentID=43](http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=43)

### General functions and powers

- It is the designated authority of the UN system in global and regional environmental issues.
- Its mandate is to coordinate the development of environmental policy consensus. This objective is pursued through diverse initiatives such as reviews of the global environment and campaigns to enhance international awareness of emerging issues.

### Structure

The organization has a global base in Nairobi (Kenya) and is comprised of several regional offices and specialized groups or systems:

- **Six regional offices:** Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, North America, and West Asia.
- **The Asia Pacific Regional Office (UNEP ROAP)** is comprised of five subgroups supported by a resource centre (RRC.AP) located within the Asian Institute of Technology in Bangkok, Thailand. This resource centre is an implementing agency for UNEP's Division of Early Warning and Assessment (DEWA) that focuses on (i) Capacity Building and Servicing, (ii) Data Management, and (iii) Assessment and Reporting;
- **The South Pacific subgroup of ROAP** has established a vital partnership with the Pacific Regional Environmental Programme (SPREP);
- The Global Resource Information Database (GRID) network has centers located in areas such as Christchurch, New Zealand;
- The UNEP World Conservation Monitoring Centre (UNEP WCMC);
- United Nations Inter-Agency Cooperation; and
- Scientific Advisory Groups.

### Projects

UNEP describes itself as a "catalyst, advocate, educator and facilitator to promote the wise use and sustainable development of the global environment". The work of this organization encompasses the following focus areas:<sup>150</sup>

- Assessing environmental conditions and trends;
- Developing international and national environmental instruments;
- Strengthening institutions to ensure sustainable management;
- Facilitating knowledge and technology transfer; and
- Encouraging partnerships within civil society and the private sector.

The organization adopts a global and cross-sectoral outlook by working with a diverse range of partners, such as other UN entities (ie Commission on Sustainable Development), international organizations, IGOs, NGOs, the private sector and civil society.

### Examples:

A collaborative project of UNEP and pivotal UN agencies, international organizations, governments, foundations and research centres involves establishing the Global Climate Change Adaptation Network in Asia and the Pacific as well as other global regions. The Asia and Pacific Adaptation Network shall inject resilience into human systems, ecosystems and economies vulnerable to climate change by sharing precious information and mobilizing technologies to facilitate adaptation capacity-building, policy design, planning and practices. These target areas embrace vulnerable ecosystems such as high mountains and low-lying coasts, as well as vulnerable sectors such as water and agriculture. Other projects encompass the partnership between UNEP/Convention on the Conservation of Migratory Species of Wild Animals and SPREP in implementing the innovative action plan for the protection of dugong and its seagrass habitats in the Pacific region; as well as

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<sup>150</sup> Information adapted from the website at <http://www.unep.org>



the action plans devised for the protection and sustainable development of marine areas in the East Asian Seas Region (East Asian Seas Action Plan) and the Northwest Pacific Region (NOWPAP).<sup>151</sup>

### Secretariat Functions

UNEP hosts environmental convention secretariats, including the following –

- The Vienna Convention for the Protection of the Ozone Layer;
- The Multilateral Fund for the Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer;
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- The Convention on Biological Diversity (CBD);
- The Convention on the Conservation of Migratory Species of Wild Animals (CMS/Bonn Convention);
- The Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal;
- The Stockholm Convention on Persistent Organic Pollutants (POPs); and
- (jointly with FAO) the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC/Rotterdam Convention).

## 6.1.3. UN Department of Economic and Social Affairs, Division for Sustainable Development<sup>152</sup>

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**DSD's Goals:** "integration of the social, economic and environmental dimensions of sustainable development in policy-making at international, regional and national levels; wide-spread adoption of an integrated, cross-sectoral and broadly participatory approach to sustainable development; measurable progress in the implementation of the goals and targets of the Johannesburg Plan of Implementation".

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The UN Economic and Social Council is serviced by the Department of Economic and Social Affairs (DESA), which has a pivotal role in governing the Division for Sustainable Development (DSD). The latter division is involved in the regular reviews of progress in effectuating Agenda 21, the Barbados Programme of Action for Sustainable Development of Small Island Developing States (BPoA), Johannesburg Plan of Implementation and the Mauritius Strategy for Implementation of the BPoA.

### DSD's Partnership with Small Island Developing States

The unit for the Small Island Developing States (SIDS) emerged in 1995 within the DSD to facilitate and implement the Barbados Programme of Action. Small Island Developing States are defined as follows:<sup>153</sup>

*"low-lying coastal countries that share similar sustainable development challenges, including small population, limited resources, remoteness, susceptibility to natural disasters, vulnerability to external shocks, and excessive dependence on international trade. Their growth and development is often further stymied by high transportation and communication costs, disproportionately expensive public administration and infrastructure due to their small size, and little to no opportunity to create economies of scale."*

There are currently 51 small island developing States and territories in the list used by the DESA for monitoring the sustainable development of SIDS. These island nations are often categorized according to their geographic regions: the Caribbean, the Pacific, and the AIMS (Africa, Indian Ocean, Mediterranean and the South China Sea).

This constellation of States and territories often unify as a negotiating bloc within the UN: the Alliance of Small Island States (AOSIS) as noted at 3.2.2.3.

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<sup>151</sup> Information on these initiatives is available from the UNEP website at <http://www.unep.org/roap/>

<sup>152</sup> Information on this UN branch is available at the website at <http://sustainabledevelopment.un.org>

<sup>153</sup> SIDS country profiles and information on collaborative projects are available from the SIDS Unit sites at <http://www.sidsnet.org/> and <http://sustainabledevelopment.un.org/>

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**List of Pacific SIDS (UN Members and non-UN Members):** American Samoa, Commonwealth of the Northern Marianas, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu.

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## Timeline of the SIDS Programme of Action<sup>154</sup>

### **UN Conference on Environment and Development (UNCED)**

*2 June 1992 - 14 June 1992*

The unique challenges facing Small Island Developing States (SIDS) within the context of sustainable development were first formally recognized by the international community at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil in 1992. The special case of small islands and coastal areas was highlighted in Agenda 21 - the programme of action for sustainable development adopted as an essential outcome of the conference. Chapter 17, Section G of Agenda 21 elaborates a programme area on the sustainable development of small islands: "Their small size, limited resources, geographic dispersion and isolation from markets, place them at a disadvantage economically and prevent economies of scale." It also called for a global conference on the sustainable development of SIDS. The UN Commission on Sustainable Development (CSD) was established by the UN General Assembly (UNGA) in December 1992 to ensure effective follow-up to UNCED.

### **Barbados Programme of Action (BPOA)**

*25 April 1994 - 6 May 1994*

Established by UN General Assembly Resolution 47/189, the UN Global Conference on the Sustainable Development of SIDS reaffirmed the principles and commitments to sustainable development embodied in Agenda 21 and translated them into specific policies, actions and measures to be executed at the national, regional and international levels. The Conference adopted the Barbados Declaration and the Barbados Programme of Action for the Sustainable Development of SIDS (BPOA). The latter 14-point programme identified priority areas and specific actions necessary for addressing the special challenges faced by SIDS (UN Doc A/CONF.167/9). The priority areas included climate change and sea-level rise, natural and environmental disasters as well as coastal, marine, biodiversity, land and energy resources. The BPOA also specified the cross-sectoral areas requiring attention such as capacity building; institutional development at the national, regional and international levels; trade and economic diversification. The highlighted SIDS-specific challenges encompassed the excessive dependence of SIDS on international trade; high population density, which increases the pressure on already limited resources; overuse of resources and premature depletion; relatively small watersheds and threatened supplies of fresh water; and limited institutional capacities. The CSD was conferred the responsibility to follow-up on the implementation of the BPOA and review progress.

### **Five-year review of the Barbados Programme of Action (BPOA+5)**

*27 September 1999 - 28 September 1999*

The 22nd Special Session of the UNGA comprehensively reviewed implementation of the BPOA entailing the adoption of a declaration reaffirming commitment to the principles of sustainable development embodied in Agenda 21, the Barbados Declaration and the BPOA. It also adopted the "State of Progress and Initiatives for the Future Implementation of the Programme of Action for the Sustainable Development of SIDS" (UN Doc A/S-22/2). The latter identified problem areas in need of urgent attention such as adapting to climate change and rising sea-levels, improving preparedness for and recovery from natural and environmental disasters, preventing worsening shortages of freshwater as demand grows as well as protecting coastal ecosystems and coral reefs from pollution and over-fishing. The means of implementation that were highlighted for attention included sustainable development strategies, capacity building, resource mobilization and finance, transfer of environmentally sound technology and information management.

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<sup>154</sup> The following information is paraphrased from the SIDSNet website at <http://www.sidsnet.org> and UN-DESA website at <http://sustainabledevelopment.un.org>

## **World Summit on Sustainable Development (WSSD)**

*26 August 2002 - 4 September 2002*

The World Summit on Sustainable Development (WSSD) reaffirmed the international community's commitment to 'full implementation' of Agenda 21 alongside achievement of the Millennium Development Goals (MDGs) and other international agreements (UN Doc A/CONF.199/20). Adopted at the WSSD, the Johannesburg Plan of Implementation (JPOI) elaborated new commitments and priorities for action on sustainable development as well as dedicating Chapter VII to the special case of SIDS and requesting the UNGA to consider convening an international meeting on the sustainable development of SIDS. Non-negotiated partnerships for sustainable development - Type II partnerships/initiatives - were a key outcome of the WSSD. In a follow-up to WSSD the UNGA adopted Resolution A/57/262 that, inter alia, called for a 10-year comprehensive review of the BPOA at a high-level international meeting.

## **Mauritius Strategy of Implementation (MSI)**

*10 January 2005 - 14 January 2005*

Mandated by UNGA Resolution A/57/262, the high-level Mauritius International Meeting served as the culmination of a 10-year comprehensive review of the BPOA (BPOA+10). The meeting adopted the Mauritius Declaration and the Mauritius Strategy for the further Implementation (MSI) of the BPOA (UN Doc A/CONF.207/11). In augmenting the original thematic areas of BPOA, the MSI introduced new areas (such as sustainable production and consumption, health, knowledge management and culture) as well as actions and strategies to support SIDS in achieving internationally agreed targets and goals (such as the MDGs). The meeting acknowledged the slow progress of the international community in implementing the objectives of the BPOA: SIDS had pursued the implementation of the plan within the constraints posed by limited financial resources, including an overall decline in official development assistance.

## **Five-year review of the Mauritius Strategy of Implementation (MSI+5)**

*24 September 2010 - 25 September 2010*

Pursuant to UNGA Resolutions 63/213 and 64/199, Member States at the high-level segment of the 65th Session of the UNGA undertook a 5-year review of the Mauritius Strategy of Implementation (MSI) and adopted a political declaration (UNGA Resolution A/RES/65/2). Key issues and priorities highlighted in the high-level review include: strengthening data management capacities of SIDS for monitoring and evaluation; enhancing strategic partnerships, which encompasses the strengthening of South-South and SIDS-SIDS cooperation; need for a results-oriented approach and improved measures to effectively address the vulnerabilities of SIDS; and exploring the formal recognition of SIDS as a special category in the UN (UN Doc A/65/115).

## **United Nations Conference on Sustainable Development (Rio+20)**

*20 June 2012 - 22 June 2012*

Pursuant to UNGA Resolution A/RES/64/236 of 2009, the UNGA resolved to organize a UN Conference on Sustainable Development (UNCSD) for 2012 in Rio de Janeiro, Brazil. The objective of the impending conference is to secure renewed political commitment for sustainable development, assess the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development as well as to address new and emerging challenges. It shall focus on two themes: (a) a green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development. SIDS held a series of consultations in preparation for global negotiations for Rio+20: a Regional Preparatory Meeting was held on 21-22 July 2011 in Apia, Samoa. In their inputs to the Rio+20 process, the Pacific SIDS identified critical issues - such as the Blue Economy, climate change and sea-level rise - and called for the convening of the third international conference for the sustainable development of SIDS in 2014 (see section 1.1.1.4. of this Handbook).

#### 6.1.4. World Wildlife Fund in the South Pacific<sup>155</sup>

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“The South Pacific’s greatest assets are our people, culture, and environment. If we destroy our environment, we lose our livelihood.”

Kesa Tabunakawai<sup>156</sup>

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The World Wildlife Fund in the South Pacific (WWF SPPO) was established in 1990 to allow WWF to work effectively within Pacific island countries. Its mission:

- Conserving the world’s biodiversity.
- Ensuring the sustainable use of natural resources.
- Promoting the reduction of pollution and wasteful consumption.

**The structure of WWF SPPO includes:**

- A regional base in Suva, Fiji that manages conservation field projects, policy reviews, and campaigns (such as the Climate Witness initiative).
- A Regional Secretariat (Suva);
- Country programme offices (Cook Islands, Fiji, Solomon Islands, Papua New Guinea).

WWF SPPO collaborates with WWF France on regional issues and projects launched in Pacific island nations, such as New Caledonia and French Polynesia.

#### **Conservation Partnership Programme**

The group regards the elimination of poverty as inextricably linked to environmental protection and thus effective conservation is dependent on the collaborative participation of diverse stakeholders. This view prompted the establishment of the Conservation Partnership Programme, which facilitates formal institutional relationships based on shared objectives and plans of action. These relationships have been forged with governments and entities such as:

- The University of the South Pacific (ongoing since the 1990s);
- Marine Aquarium Council (2003); and
- Conservation International

#### 6.1.5. Conservation International<sup>157</sup>

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**CI’s Mission:** “Building upon a strong foundation of science, partnership and field demonstration, CI empowers societies to responsibly and sustainably care for nature for the well-being of humanity.”

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Established in 1987, Conservation International (CI) operates from over 30 Global Offices that engage a diversity of partners encompassing governments, NGOs, communities and corporations.

#### **Focus**

CI pursues the following issues:

- Actions to stabilize the global climate;
- Information on fresh water management and protective actions;
- Ensuring nature’s capacity to provide food for human needs;

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155 Information paraphrased from the website of the organization at <http://www.wwfpacific.org.fj/>

156 Kesa Tabunakawai is the Representative of the WWF SPPO in Suva, Fiji.

157 All information paraphrased from the Conservation International website at <http://www.conservation.org>

- Minimizing environmental pressures on human health;
- Valuing the role of nature in human cultures; and
- Safeguarding the intrinsic values of nature.

### Structure

CI is composed of a Board of Directors, Chairman's Council, Senior Staff, and Field Offices. These are comprised of scientists, field staff, and policy experts who execute the following goals:<sup>158</sup>

- Measure the contribution of healthy ecosystems to human well-being;
- Assess the implications of development decisions;
- Put cutting-edge information in the hands of decision-makers and the public; and
- Demonstrate through field models how economic opportunity and the stewardship of natural resources can leverage change at an international scale.

To efficiently address their wide-ranging goals, CI works in centers and programmes such as:

- Centre for Applied Biodiversity Science (CABS)
- Centre for Conservation and Government (CCG)
- Centre for Environmental Leadership in Business (CELB)
- Conservation Leadership Programme (CLP)
- Critical Ecosystem Partnership Fund (CEPF)
- Global Conservation Fund (GCF)
- Marine Program
- Population, Health and Environment Program

### 6.1.6. Secretariat of the Pacific Community<sup>159</sup>

This non-political organization celebrated its 65th anniversary in 2012 as a preeminent facility for research, policy advice, training and technical assistance in the Pacific region. Diverse initiatives have assisted 22 Pacific island territories operating from a headquarters in Noumea (New Caledonia) with bases in Suva (Fiji Islands), and Pohnpei (Federated States of Micronesia).

#### Vision

It pursues a united vision for securing the prosperous welfare of Pacific communities and implementing the three pillars of sustainable development.

#### Membership

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American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna. In addition, there are the founding nations of Australia, France, New Zealand, and the United States.

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#### Projects

The SPC has launched projects to address common environmental challenges such as biosecurity and trade; forestry diversification, genetic resources, public health, climate change and oceanic fisheries.

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<sup>158</sup> These goals are paraphrased from the same website page noted above.

<sup>159</sup> Information extracted from the website of the organization at <http://www.spc.int>

The SPC Division of Fisheries, Aquaculture and Marine Ecosystems (FAME) have formulated an integrated strategic plan to enhance the sustainable management of marine resources for economic growth, food security and environmental conservation. Thus it tackles historic problems such as overfishing of bigeye tuna stocks and fishery-induced impacts on ecosystems, and adapting to climate change.<sup>160</sup> The Strategic Plan records the global significance of marine resources in the Pacific region as illustrated by the following:

- local harvests of the tuna fishery now represent a quarter of the world's catch of tuna,
- the increasing value of pearl and prawn aquaculture, and
- half of the world's hard coral reefs are located in delicate habitats of the Pacific that also sprawl into the centre of tropical marine biodiversity.

Other entities contributing to Pacific fishery management include the Forum Fisheries Agency (FFA) to develop bio-economic models for tuna resources, the Council of Regional Organizations in the Pacific (CROP) and the Secretariat of the Pacific Regional Environment Programme (SPREP). The latter two organizations have devised policies for governing fishery by-catch and coastal marine management, whilst the University of the South Pacific (USP) has presented training in the intricacies of fisheries management.

### 6.1.7. Council of Regional Organizations in the Pacific

CROP is a high-level advisory entity established by the Pacific Islands Forum Secretariat (formerly known as the South Pacific Forum) with the mandate to enhance cooperation, coordination, and collaboration among the various intergovernmental regional organizations to work toward achieving the common goal of sustainable development in the Pacific region. CROP functions as (i) a coordination mechanism between the heads of the regional organisations in the Pacific, and (ii) a high-level advisory body, to provide policy advice and assistance in facilitating policy formulation at national, regional and international level. The Secretary General of the Forum Secretariat is the designated permanent chair of CROP. The Pacific Plan is the master regional strategy for sustainable development and the work of CROP agencies – this is aligned with the Pacific Islands Regional Ocean Policy and the Pacific Oceanscape Framework. The agencies comprising CROP are actively engaged in enhancing the implementation of regional action plans, such as the Pacific Islands Framework for Action on Climate Change 2006-2015 (PIFACC) and the Pacific Disaster Risk Reduction and Disaster Management Framework for Action 2005-2015 (Pacific DRR & DM Framework for Action). Both initiatives advocate strategies for mainstreaming climate change issues into national planning and budgeting processes. CROP also collaborates with the Pacific Climate Change Roundtable (PCCR), which is the coordinating body for climate change-related initiatives in the region. In the interests of sharing or merging resources, CROP is comprised of several Pacific intergovernmental organizations:

- Fiji School of Medicine (FSMed) - Suva, Fiji Islands
- Pacific Islands Forum Fisheries Agency (PIFFA) - Honiara, Solomon Islands
- Pacific Islands Development Program (PIDP) - Honolulu, Hawaii
- Secretariat for the Pacific Community (SPC) - Noumea, New Caledonia and Suva, Fiji Islands<sup>161</sup>
- Secretariat of the Pacific Regional Environment Programme (SPREP) - Apia, Samoa
- South Pacific Tourism Organization (SPTO) - Suva, Fiji Islands
- University of the South Pacific (USP) - Suva, Fiji Islands
- Pacific Power Association (PPA) - Suva, Fiji Islands
- Pacific Aviation Safety Office (PASO) – Port Vila, Vanuatu

The structure, functions and projects of these individual organizations are elaborated in Clarke, P., Millar, I. and Sollberger, K. (2008). South Pacific Regional Environmental Law Capacity Building Project. Scoping Report. Gland, CH: IUCN.

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<sup>160</sup> Information on the marine resource strategies is available from the SPC website at <http://www.spc.int/oceanfish>

<sup>161</sup> In 2011, the South Pacific Applied Geoscience Commission (SOPAC) merged with the SPC.

### 6.1.8. Greenpeace Australia-Pacific

Since an inaugural campaign in 1971 against nuclear testing, Greenpeace has robustly pursued the 'core values of bearing witness, non-violence, independence and promotion of solutions' to environmental degradation on a global scale.<sup>162</sup> This global environmental organization focuses on the issue areas of climate change, forests, oceans, agriculture, toxic pollution and nuclear power. Greenpeace International coordinates global campaigns from a base in Amsterdam (Stichting Greenpeace Council) that is augmented by 28 national and regional offices across the world that each designate representatives to constitute the Council and form its members.

In the early 1970s, the nuclear testing in Polynesia prompted Greenpeace's first campaign work in the Pacific region. This work evolved to establish the regional offices of Greenpeace New Zealand (Auckland) and Greenpeace Australia-Pacific (Sydney) with bases in Fiji, Papua New Guinea and the Solomon Islands. The myriad victories of Pacific campaigns are illustrated by the cessation of French nuclear testing in the region as well as driftnet fishing on the high seas, protection of Antarctica as a World Park and establishment of the Southern Ocean Whale Sanctuary.

Greenpeace actively supports community-based ecoforestry projects in the Solomon Islands and Papua New Guinea. It campaigns to conserve the last remaining ancient forests in these islands, end illegal and destructive logging as well as curb the import and trade of illegal timber products. To safeguard marine resources and island livelihoods, Greenpeace has launched ship expeditions to track and expose destructive, illegal and unsustainable fishing in Pacific waters (i.e. the 2011 'Defending Our Pacific' expedition of the Greenpeace ship *Esperanza*). The organization also works with diverse stakeholders to advocate a suite of measures for conserving marine biodiversity, such as precautionary, ecosystem-based management (i.e. harvest control rules that install a complete year-round ban on Fish Aggregating Devices and radically cut the fishing rate for bigeye tuna) and establishing a global network of marine reserves.

Greenpeace has engaged with Pacific Island governments and conservation organizations to establish a network of marine reserves in the Pacific Commons. In particular, Greenpeace has worked with the eight member States Parties to the Nauru Agreement (PNA)<sup>163</sup> which pioneered a new approach for conserving bigeye, yellowfin, skipjack and other tropical tuna species:

- In 2008, the PNA unilaterally decided to close pockets of the Pacific Commons to purse seine fishing for tuna effective from January 2010 (later endorsed by the Western and Central Pacific Fisheries Commission).<sup>164</sup>
- In April 2010, the PNA announced the decision to extend their prohibition on tuna purse-seine fishing effective from 1 January 2011.
- A total of roughly 4.5 million square kilometers of high seas around PNA countries is now closed to purse seine fishing vessels licensed to fish in their EEZs – this represents the world's largest high seas closure.

### 6.1.9. International Union for the Conservation of Nature - Oceania

Representing around four per cent of the global IUCN membership, the 48 members of IUCN Oceania consist of seven State members (Australia, Fiji, New Zealand, Nauru, Samoa, Solomon Islands and Tonga); 10 government agencies; 30 non-governmental organizations; and one affiliate. The Regional Oceania Office in Suva, Fiji galvanizes four main programme areas of conservation action in alignment with the IUCN Global Programme: energy, marine, species, water and wetlands. Each area of work is injected with the key principles of bolstering resilience and adaptive capacity to climate change, enhancing livelihoods as well as tackling economic and development policies.

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<sup>162</sup> Extracted from their website at <http://www.greenpeace.org/international/en/about/>

<sup>163</sup> Parties to the Nauru Agreement (PNA) entered into force on 4 December 1982. The member States are the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.

<sup>164</sup> The Western and Central Pacific Fisheries Commission (WCPFC) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention), which entered into force on 19 June 2004.

Collaborating with partners in the Pacific region, IUCN has actively supported conservation solutions, community-focused action and capacity-building. The constellation of partnership initiatives include the Coral Triangle, Micronesia Challenge, Pacific Mangroves, Pacific Invasives, Pacific Ocean 2020 Challenge and the Green Growth Leaders Coalition Project. In concert with SPREP and the Roundtable for Nature Conservation, IUCN supports the implementation of the Action Strategy for Nature Conservation and Protected Areas in the Pacific Islands Region. The Mangrove Ecosystems for Climate Change Adaptation & Livelihoods (MESCAL) project of IUCN envisages outcomes such as the compilation of national baseline information on climate change scenarios, use and values of mangrove ecosystems; improved conservation and/or restoration of selected mangrove sites; and the potential use of mangrove ecosystem-based carbon credits from conserved and restored mangroves for participating in the REDD related global carbon trade. An IUCN project titled Managing the Ecosystem and Livelihood Implications of Energy Policies in the Pacific Island States (Pacific SIDS EESLI) shall expedite the transition of small island countries to renewable energy and energy supply systems that are ecological sustainable, efficient and socially equitable. This work involves the development of sustainable energy policies and launching renewable energy pilot projects:

- Marshall Islands - Efficient and Renewable Public Lighting for Urban Centres
- Palau - Energy Efficiency Home Loans
- Samoa - GHG Abatement through Energy Efficiency in the Land Transport Sector
- Tonga - Solar Rehabilitation
- Tuvalu - Photovoltaic Electricity Network Integration
- Vanuatu - Renewable Energy

The Pacific Islands Oceanic Fisheries Management Project (OFM Project)<sup>165</sup> is executed by the Pacific Islands Forum Fisheries Agency in collaboration with IUCN and the Secretariat of the Pacific Community. The project is tailored to the conservation and sustainable management of transboundary oceanic fishery resources as well as biodiversity protection for the Western Tropical Pacific Warm Pool Large Marine Ecosystem (i.e. by supporting the Ecosystem Approach to Fisheries Management (EAFM) and exploring the ecological impacts of longline tuna fishing on seamount ecosystems). IUCN Oceania and member organizations, such as Te Ipukarea Society, have also advocated the Cook Islands proposal to declare around one million square kilometers of national waters as a multiple use marine park.

IUCN Oceania has established information networks on natural resources and economic analysis, such as the Pacific Centre for Environmental Governance (PCEG), and the Pacific Resource and Environmental Economics Network (PREEN). Input into devising and implementing natural resource policies and laws in the Pacific region is augmented by the activities of the IUCN Environmental Law Program (ELP), Commission on Environmental Law (CEL) and Environmental Law Centre (ELC). This support is illustrated by the work of the Species Programme in providing technical capacity for CITES implementation in the South Pacific, provision of regional workshops on environmental law and policy as well as the Pacific information briefs, technical reports and publications from the ELP.

### 6.1.10. BirdLife International

BirdLife International has forged the world's largest partnership of conservation organizations galvanized to conserve bird species, habitats and biodiversity. As the preeminent authority on the status of bird species and related survival issues, this organization pioneered the IUCN Red List Index and is the official Red List Authority for birds (42 Critically Endangered bird species in the Pacific region are identified on this list). Species, sites, habitats, and people are the four themes pursued in conservation work tailored to the regions of Africa, the Americas, Asia, Europe and Central Asia, the Middle East, the Pacific and the Caribbean.

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<sup>165</sup> The Pacific small island developing beneficiary countries of the UNDP/GEF-funded project include the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tokelau, Tuvalu and Vanuatu.



Operating in the Pacific region, the activities of BirdLife International capture fourteen island countries and eight territories as well as Australia and New Zealand. In 2008, the organization adopted the Pacific Regional Programme 2009-2012 to systematize national conservation efforts. Their initiatives range from tackling core threats to birdlife biodiversity (such as adverse development activities and invasive alien species) to capacity-building activities and conservation awareness. The initiatives of the BirdLife International Pacific Partnership and Secretariat are illustrated by the following:

- Supporting efforts in Fiji to establish Protected Areas and Permanent Forest Estates to benefit wildlife and local communities.
- Completing the terrestrial Important Bird Areas (IBA) inventories and identifying Marine IBAs (the Sisi Initiative to conserve the Natewa Tunuloa IBA on Vanua Levu recently won the prestigious Equator Prize that attracted over 800 entries).
- Restoring important Pacific seabird islands and their ecosystems critical to people and biodiversity.
- Establishing networks of Site Support Groups (Local Conservation Groups) to manage large segments of IBAs.
- Exploring opportunities to develop landscape-scale conservation programmes (such as sustainable forestry and catchment management).
- Implementing the Preventing Extinctions Programme.

### 6.1.11. Wildlife Conservation Society

Established in 1895, the Wildlife Conservation Society (WCS) has pursued the protection of wildlife and wild places all over the globe. The global conservation work of WCS encompasses the management of over 200 million acres of protected lands across the world as well as 500 projects in more than sixty countries and five living institutions in New York City. In the Pacific, it operates programmes in Papua New Guinea and Fiji. The four thematic areas of conservation projects are climate change, natural resource exploitation, the interconnection between the health of wildlife and human health, and the sustainable development of local livelihoods.

WCS Fiji collaborates with local communities and the national government for biodiversity protection through integrating the principles of ecosystem-based management (EBM) into plans for natural resource management and measures for climate-change adaptation; devising protected area networks to bolster environments against the impacts of climate change and to secure ecosystem services; and enhancing capacity-building for resource management planning and enforcement.<sup>166</sup> A sample of their initiatives to fortify natural resource management include:

- Facilitating EBM ('ridge-to-reef' management) planning processes with stakeholders and working towards establishing a network of protected areas (i.e. in the Kubulau District, Fiji).
- Launching adaptive management workshops, such as reef resilience training and workshops on provincial-level integrated coastal management (ICM) plans.
- Providing communication tools to enhance local awareness of ecosystem-based management/adaptation and guidance for implementation.
- Maintaining a proactive presence on national and regional committees, steering groups and working groups (such as the Integrated Coastal Management Committee and Pacific Islands Roundtable for Nature Conservation).

### 6.1.12. Environmental Defender's Office

The Environmental Defender's Office based in New South Wales (EDO NSW) is a community legal centre specializing in public interest environmental law. It is the largest office forming part of the Australian Network of Environmental Defender's Offices (ANEDO) - nine independent legal centres operating in each State and

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<sup>166</sup> Information paraphrased from the *Annual Report: Wildlife Conservation Society Fiji Country Program 2011* at 1, available from their website at <http://www.wcsfiji.org>

territory of Australia. The work of the EDO NSW is grafted to a mission of promoting the public interest in environmental decision-making and improving environmental outcomes through the informed use of the law. The core areas of operation are legal advice and representation; scientific assessment and advice; policy and law reform; and community programs (education, international and indigenous engagement). The array of priority areas include climate change and energy, planning and development, biodiversity conservation, natural resource management, environmental justice, corporate social responsibility and governance.

Since 1991, the EDO International Program has contributed to the development of environmental law, policy, litigation and capacity-building in the Pacific region. EDO NSW has the lead role within ANEDO for the myriad activities in the Pacific Islands that include the following sample:

- Provision of legal advice and litigation support (such as the Collingwood Bay case in Papua New Guinea).
- Drafting and reviewing legislation, policies and proposals (i.e. analyzing proposals during the UNFCCC negotiations on fast-start funding for adaptation within SIDS).
- Participating in key international meetings particularly on climate change and biodiversity.
- Providing multidisciplinary capacity-building support (i.e. working with conservation organizations in Papua New Guinea and researching the impacts of climate change on coastal communities).
- Fostering lawyer exchanges, volunteer placements and international networks.

It operates an extensive conference, workshop and publications program: workshops canvass topic areas such as climate change law and science (i.e. climate change litigation training for the Ministry for Natural Resources and Environment in Samoa during April 2010), biodiversity protection, policy and law reform as well as case management. A notable publication is the 2008 "South Pacific Regional Environmental Law Capacity Building Project. Scoping Report" prepared by EDO NSW at the request of the IUCN Environmental Law Program.

The organization works with individuals, community groups, non-government organizations, inter-governmental organizations and government departments across the Pacific (such as the Centre for Environmental Law and Community Rights in Papua New Guinea, and SPREP in Samoa). The EDO office in NSW is also the Australian coordinator of the Environmental Law Alliance Worldwide (E-LAW) comprised of public interest lawyers, scientists and academics from over 40 countries dedicated to environmental protection on a global scale.

### 6.1.13. The New Zealand Centre for Environmental Law

The New Zealand Centre for Environmental Law (NZCEL) is a specialist centre hosted by the Faculty of Law at the University of Auckland. The establishment of the Centre in 1998 represents a culmination of landmark initiatives including the introduction of a specialist postgraduate Master of Laws in Environmental Law (1996), the founding of the New Zealand Journal of Environmental Law (1997) and the staging of an international conference called 'Environmental Justice and Market Mechanisms' (1998). The NZCEL is a focal point for award-winning research, education, community-service, and a range of environmental law activities in New Zealand as well as the wider Asia-Pacific region. It has pioneered the field of sustainable development law integrating environmental, social, cultural and economic policies on the basis of ecological integrity. The national membership of the Centre is composed of environmental law teaching staff from the Faculty of Law and the School of Architecture and Planning at the University of Auckland, and academics from four other universities.

The NZCEL possesses a considerable array of expertise in areas encompassing international environmental law, environmental law in developing countries, European Community law, biodiversity conservation law, New Zealand resource management and planning law, governance for sustainability as well as mining and energy law. A sample of the Centre's myriad aims are sketched below:

- Develop monodisciplinary and multidisciplinary research programmes in the various fields of environmental law and policy.
- Explore the relationship between environmental law and the Treaty of Waitangi and developments in environmental law in relation to the aims, aspirations and rights of indigenous peoples.

- Provide a wide range of expertise for consultancy work with clients from central and local government, environmental and local groups in New Zealand as well as government agencies and environmental organizations across the globe.
- Make submissions to government on environmental law reform proposals.
- Organize conferences and seminars for scholars and researchers, the legal profession, government agencies and business.

The Centre maintains close links with national and international institutions, environmental and industry groups as well as with lawyers practicing in the field. At the international level, the Centre has a reputation as one of the world's leading research centres. The University of Auckland was named as one of six world Centres of Excellence in environmental law by the IUCN, and together with the other five centres is a founding member of the IUCN Academy of Environmental Law. Notably, the NZCEL was named as the leading environmental law centre for the Oceanic-Pacific region. NZCEL initiated the Universitas 21 Environmental Law Network and cultivated collaborations with several leading universities in Europe (such as the University of Nottingham/UK and Freiburg University/Germany). The publications of the Centre with their focus on sustainability-based legal research are well-known around the world and highly regarded for their impact on the general development of environmental law.

NZCEL staff have forged close partnerships and academic contacts in the South Pacific islands, and regularly participate in international events concerning the region. Illustrations of this work include this MEA Negotiator's Handbook prepared by the NZCEL in association with SPREP; NZCEL hosting a UNEP-sponsored Pacific Islands Chief Justices Conference in 2003 that sparked ongoing collaborations with UNEP, SPREP and IUCN; the Centre initiating the establishment of a Pacific Asian Network of Environmental Law (PANEL) and fostering relationships with regional environmental organizations and institutions such as the Australian Centre for Environmental Law at the University of Sydney (ACEL).

## 6.2. Annex B – Other International Bodies

### 6.2.1. United Nations General Assembly

The General Assembly (UNGA) is the main political body of the United Nations. The Charter of the United Nations (1945) elaborates the functions and powers of the General Assembly in Chapter IV.

#### **General functions and powers**

- The UNGA can discuss any question or matter within the scope of the Charter as well as initiate related activities such as studies and resolutions.
- Each UN Member State has one vote at the UNGA.
- The UNGA meets annually for regular sessions from September to December each year, and other time periods for special sessions.
- Though the GA's resolutions are not legally binding, it is awkward for countries if their positions at the UNGA are inconsistent with their positions expressed in MEA fora.

#### **The UNGA's main environmental contributions are convening key conferences such as:**

- The UN Conference on Human Environment – Stockholm, Sweden 1972.
- The UN Conference on Environment and Development – Rio de Janeiro, Brazil 1992.
- The UN Conference on Sustainable Development (Rio+20) - Rio de Janeiro, Brazil 2012.

Every year it adopts several resolutions pertaining to the environment such as:

- Resolution 61/203 of 2007 that declares 2010 as the International Year for Biodiversity (IYB)
- Resolution 53 of 1988 on the protection of the global climate for present and future generations.

**It also influences the codification and progressive development of international law through subsidiary bodies, such as the International Law Commission**

For example, in 2001 the Commission adopted draft articles on the responsibility of States for internationally wrongful acts. The 59 draft articles address the internationally wrongful acts of a State (attribution of conduct to a State, breach of an international obligation, responsibility of a State in connection with the act of another State, and circumstances precluding wrongfulness); the content of the international responsibility of a State (general principles, reparation for injury, and serious breaches of obligations under peremptory norms of general international law); implementation of the international responsibility of a State (invocation of the responsibility of a State and countermeasures); and general provisions.<sup>167</sup>

## 6.2.2. United Nations Economic and Social Council

The Economic and Social Council (ECOSOC) is composed of 54 member States elected by the UN General Assembly (UNGA) based on geographical representation to serve three overlapping terms. In 2010, the present members from the Asia-Pacific region include Australia, Japan, Republic of Korea, Malaysia and the Philippines.

### General functions and powers

- The Council makes recommendations to the UNGA in economic, social, cultural, educational, health, and environmental matters.
- Commissions such as the Commission on Sustainable Development report to ECOSOC. It also evaluates reports on the related activities of other UN agencies such as UNEP.
- The Council's key environmental role is to promote implementation of the action plan for sustainable development adopted at UNCED 1992 (Agenda 21). This role involves coordinating the work of specialized agencies, commissions, and programmes.
- It has established five regional economic commissions that embrace the Europe region and the Asia-Pacific as elaborated below at section 6.2.6.5.

## 6.2.3. United Nations Commission on Sustainable Development

Established following the 1992 Rio Earth Summit, the United Nations Commission on Sustainable Development (CSD) is composed of 53 States elected by ECOSOC for three-year terms.

### The CSD's mandate is not limited to environmental issues

The main role of the CSD is to review and monitor the implementation of Agenda 21, and serve as the key forum for issues related to the integration of the three dimensions of sustainable development. CSD also acted as the preparatory body for the World Summit on Sustainable Development (see 6.1.3. for details of the CSD's work on the focus area of SIDS).

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<sup>167</sup> See an online summary of the ILC's work in this area at [http://untreaty.un.org/ilc/summaries/9\\_6.htm](http://untreaty.un.org/ilc/summaries/9_6.htm)

## 6.2.4. United Nations Environment Programme

As noted in Annex A, UNEP operates as a global forum to address environmental issues within the United Nations system.

### General mandate:

- Provide policy guidance for the coordination of environmental issues throughout the UN;
- Promote the development of international environmental law, especially through MEAs and guidelines;
- Strive for coherence among the ever-increasing number of MEAs;
- Advance the implementation of agreed international norms and policies;
- Monitor and foster compliance with MEAs;
- Assess and report on the global environment, and identify emerging issues;
- Promote awareness and facilitate cooperation among civil society and other actors involved in the implementation of the international environmental agenda; and
- Provide policy and advisory services to governments and institutions in key areas of institution-building.

### Structure

UNEP's primary decision-making body is the Governing Council (GC), composed of 58 member States elected by the General Assembly to serve four-year terms. Half of this membership is elected every two years.

The Governing Council has been comprised of member States from the Pacific region such as Australia, Fiji and Tuvalu.<sup>168</sup> The composition of the GC is generally based on the following regional allocation:

- Africa – 16
- Asia – 13
- Latin America – 10
- Eastern Europe – 6
- Western Europe and Others Group – 13

### Council meetings

- The GC meets every two years and at special sessions held during this period.
- Part of each meeting is reserved for discussions on important environmental matters at the Ministerial or equivalent level in the "Global Ministerial Environment Forum" (GMEF).
- The rules of procedure provide that decisions are taken by a simple majority of members present and voting at the meeting.

### UNEP has made significant contributions to MEA development

- It has initiated and promoted the negotiation of conventions such as the Vienna Convention on the Protection of the Ozone Layer, the Basel Convention, and the Stockholm Convention.<sup>169</sup>

### The Montevideo Programme

Every 10 years since 1982, the UNEP Governing Council has adopted a plan for the development and periodic review of environmental law (the Montevideo Programme). These programmes are designed to galvanize the development of international environmental principles, guidelines and standards based on sources such as the requirements outlined in Agenda 21 adopted at the 1992 Rio Conference. In Chapter 38 of Agenda 21,

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<sup>168</sup> This country information is available from the UNEP website at <http://www.unep.org/resources/gov/PermanentMissions.asp>

<sup>169</sup> See, for instance, the UNEP Governing Council Decision 19/13 C of February 7, 1997 that listed the elements to be included in the Stockholm Convention.

environmental law is identified as one of the priority areas for UNEP to intensively address. The essential role of UNEP in developing and implementing international environmental law is emphasized in the Nairobi Declaration on the Role and Mandate of UNEP; the Programme for the Further Implementation of Agenda 21 adopted by the General Assembly at its nineteenth special session; and the Malmö Ministerial Declaration. A series of Montevideo Programmes have been launched over the years that have focused on the effectiveness of environmental law, conservation and management, and relationships to other fields. In addition to the existing components of these programmes, the fourth programme shall tackle the challenges to environmental law posed by climate change, new technologies, environmental emergencies and poverty.<sup>170</sup>

## 6.2.5. Global Environment Facility

In 1991, the GEF was created within the World Bank as a pilot programme for protecting the natural environment and facilitating sustainable economic development. The initial partners implementing the GEF projects were the World Bank, UNEP, and UNDP. In 1994, the GEF was extracted from the World Bank system to operate as a permanent independent organization and this restructuring involved the World Bank serving as a trustee of the GEF Trust Fund.

### Primary role as co-financier

- As noted at section 3.8.1 above, the GEF disburses funds through its implementing agencies (UNDP, UNEP, World Bank) and executing agencies (regional development banks, FAO, UNIDO). Each of the implementing agencies has a particular strength and focus:
  - UNEP supports technical and scientific inputs;
  - UNDP focuses on capacity building to improve the livelihoods of the poor while encouraging sustainable economic development;
  - The World Bank addresses large-scale investments;
  - Donor countries directly provide funding to these institutions to enable implementation of their mandates.

### The GEF Council

- GEF's main governing body is the GEF Council that develops, adopts, and monitors policies, programs, operational strategies, and projects in conformity with the present GEF Instrument and consideration of the reviews conducted by the Assembly. Where the GEF serves as the financial mechanism for several conventions (noted previously in section 3.8.1), the Council shall act in conformity with the policies, program priorities and eligibility criteria decided by the Conference of the Parties for the purposes of the conventions concerned.
- The Council is composed of 32 members, representing constituency groupings formulated and distributed taking into account the need for balanced and equitable representation of all participants and according due weight to the funding efforts of all donors: 18 constituencies are composed of recipient countries ("recipient constituencies"), and 14 constituencies are composed principally of non-recipient countries ("non-recipient constituencies"). There are 16 members from developing countries, 14 members from developed countries, and two members from the countries of Central and Eastern Europe and the former Soviet Union.
- Meetings are scheduled twice a year and decisions are adopted by consensus. If no consensus is reached, on a matter of substance, any member of the Council may request a formal vote. In this case, a decision may be adopted if it is supported by a 60% majority of the total number of participants and a 60% majority of the total contributions ("double weighted majority").

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<sup>170</sup> See the Montevideo Programme IV adopted by the UNEP Governing Council in February 2009 as well as the work to implement the goals of this programme: <http://www.unep.org/delc/MontevideoProgramme/tabid/54416/Default.aspx>

## The GEF Assembly

The GEF Assembly is comprised of representatives from all 182-member countries, and meetings are scheduled for every three to four years. This Assembly is assigned myriad functions such as reviewing the general policies of the Facility; reviewing and evaluating the operation of the Facility on the basis of reports submitted by the Council; and considering, for approval by consensus, amendments to the GEF Instrument on the basis of recommendations by the Council.

## The GEF Secretariat

The Secretariat was installed to service and report to the Assembly and the Council. Operating in a functionally independent manner, it is headed by the CEO/Chairperson of the Facility and supported administratively by the World Bank. The myriad functions of the Secretariat include implementing the decisions of the Assembly and the Council; coordinating the formulation and overseeing the implementation of program activities pursuant to the joint work program, ensuring liaison with other bodies as required; coordinating with the Secretariats of other international bodies, in particular, the Secretariats of the conventions for which the GEF is the designated financial mechanism (such as the CBD and UNFCCC).

## Scientific and Technical Advisory Panel (STAP)

STAP is an advisory body to the Facility with a Secretariat provided by UNEP that operates as the liaison between the Facility and the STAP.

## Projects and Funding

GEF activities are designed to maximize agreed global environmental benefits in the six focal areas that GEF supports: climate change, biodiversity, international waters, land degradation, ozone depleting substances and persistent organic pollutants. The GEF provides resources for two main classes of activities in the context of a country's sustainable development priorities: (i) investments geared toward generating global environmental benefits; and (ii) technical assistance to strengthen the enabling environment. These classes of activities are supported by the GEF through different modalities of projects with specific processing steps and documentation that engage the Council, the GEF Secretariat and the GEF Agencies. Below is a sketch of the three proposal development streams and five project types funded by the GEF:<sup>171</sup>

### Project Preparation and Development Facility (PDF)

- 1) **PDF-A:** financing not exceeding US\$25,000 for concept development work at the national level. For any PDF-A amounts exceeding \$25,000, on an exceptional basis, the CEO will authorize PDF-As up to a maximum of \$50,000 when it is determined by the CEO that additional financing is justified.
- 2) **PDF-B:** financing not exceeding US\$350,000 for projects in single countries, and up to \$700,000 for projects involving preparatory activities in multiple countries as in the case of regional/global projects.
- 3) **PDF-C:** financing not exceeding US\$1 million to provide additional funding to complete technical design and feasibility work.

**Full-sized Projects (FSPs):** requests for over US\$1 million in GEF resources to develop project concepts and prepare Project Identification Forms (PIFs). All FSPs must satisfy the requirements of the focal area strategic objectives. These projects progress through each step of the GEF project cycle, subject to the applicable project review criteria, and the concepts are approved by the Council.

**Medium-sized Projects (MSPs):** limited to a maximum of US\$1 million in GEF and SCCF funds, and US\$2

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<sup>171</sup> All information is extracted from the GEF website at <http://www.thegef.org>. For details on PDFs refer to GEF/C.3/6, *The Project Development and Preparation Facility (PDF)*; and for details on project cycle phases and procedures, see documents such as GEF/C.39/Inf. 3, *GEF Project and Programmatic Approach Cycles*.

million in LDCF funds. An expedited approval process is available - the Council has delegated to the GEF CEO the authority to approve MSPs. MSPs are subject to project review criteria that are similar to the criteria applicable to the FSPs, and must satisfy the requirements of the focal area strategic objectives. MSPs may be submitted to the Secretariat on a rolling basis throughout the year, and the final MSP project document undergoes a one-step approval by the CEO.

**Enabling Activities (EAs):** these projects provide financing for the preparation of a plan, strategy, program or national communication or report to fulfill commitments under one of the global conventions that the GEF serves. The GEF currently finances up to US\$500,000 for enabling activities related to the conventions on biodiversity, climate change and persistent organic pollutants; and a maximum of US\$150,000 for projects in the focal area of desertification and US\$200,000 for National Capacity Self Assessments (NCSAs). EAs are submitted to the Secretariat on a rolling basis throughout the year, and if the total cost of GEF financing is within the ceiling that was approved by the Council, these projects may be processed in accordance with GEF expedited procedures and must be approved by the CEO. Under expedited procedures, there are operational guidelines that must be followed in preparing a project for each type of enabling activity. Projects requiring more financing than the Council-approved ceiling may be processed through the regular GEF project cycle as full-sized projects.

**Programmatic Approaches (PAs):** the definition of a GEF program is a strategic combination of projects and activities with a common focus that build upon or complement one another to produce results that would not be possible to achieve through a project-by-project approach. A GEF program can be national, regional or global. The global environmental objectives specified in the results frameworks of GEF programs and their underlying projects must be consistent with the GEF focal area strategies and overarching strategic principles. The GEF programmatic approach is executed in partnership with the country/-ies, and other partners (including NGOs, scientific community and the private sector) based on their comparative advantages.

**Small Grants Programme (SGP):** this modality is designed to support community-level initiatives that contribute to the conservation of global biodiversity, the mitigation of climate change and/or the protection of international waters, including through capacity development. UNDP manages the program in each country through a National Coordinator and a National Steering Committee, which is a broad-based group composed of representatives of civil society organizations (CSOs) and community based organizations (CBOs), academic and research institutions, government agencies, other donors, the private sector and UNDP.

## Resource Allocations

*2002:*

In accordance with policy recommendations for the Third Replenishment of resources of the GEF Trust Fund ('GEF-3'), the organization agreed to devise a system for allocating resources to countries based on the ability to deliver global environmental benefits and performance (every four years donor nations commit funds to the GEF through a process called the 'GEF Replenishment'). The GEF Instrument was amended by the Council to introduce the new Focal Areas of persistent organic pollutants and land degradation.

*2005:*

The GEF Council adopted the Resource Allocation Framework (RAF) for the GEF-4 Replenishment (2006–2010) as a new system for allocating resources to increase the impact of GEF funding on the global environment. The RAF assigns resources to a country based on its potential to generate global environmental benefits as well as its capacity, policies, and practices to successfully implement GEF projects. The GEF-4 RAF restricted the allocation of resources to the biodiversity and climate change focal areas.

*2007:*

Implementation of the RAF officially commenced for financing biodiversity and climate change projects. The Council expanded support for the GEF to develop national Focal Points and national capacity to enhance the



knowledge of countries on the RAF approach. The GEF organized two new initiatives to clarify the RAF and its operational aspects to all countries as well as inviting input and feedback from stakeholders regarding the RAF 2006.

*2008/2009:*

This period featured the GEF Evaluation Office presenting the Mid-term Review of the RAF as well as the discussion process for the Fifth Replenishment of the GEF Trust Fund. The recommendations of the review prompted collaborative efforts to improve the design of the resource allocation system and indices for GEF-5. The options, scenarios and elements of a new system were discussed by the GEF Council at its meetings in 2009.

*2010:*

The GEF Evaluation Office completed the Fourth Overall Performance Study (OPS4), and such studies present an independent assessment of GEF achievements. The new resource allocation system labeled STAR (System for Transparent Allocation of Resources) was introduced to forge greater functionality, transparency, and structural simplicity (hence a new GDP-based index, and revisions to the global performance index and indicators for the global benefits indices). Donor countries pledged a total of US\$ 4.25 billion for the fifth replenishment to support GEF operations and activities for the next four years (July 1, 2010 – June 30, 2014).

*2011:*

The countries allocated project support in the GEF-5 STAR focal areas of biodiversity, climate change and land degradation include the Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru and Palau.

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

- MEAs should consistently provide clear guidance to the GEF that can be translated into meaningful action that supports its objectives.
- The GEF is limited in its ability to respond to guidance, so MEAs bodies should work to ensure that new language factors in previous guidance to the GEF. As the GEF has limited funds for each Focal Area, new activities reduce funding of previously approved areas.
- The Subsidiary Body for Scientific and Technological Advice (SBSTA) established pursuant to the UNFCCC is not an opportunity to provide guidance to the GEF. Guidance is provided at the COP itself and often incorporates wording from the SBSTA.
- 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 Points and the National Focal Points for the MEAs.
- Guidance must be formulated within the scope of the incremental cost agenda.

## **6.2.6. Other relevant UN agencies, commissions and programmes**

### **6.2.6.1. Food and Agriculture Organization**

Founded in 1945, the United Nations Food and Agriculture Organization (FAO) is the lead agency for agriculture, forestry, fisheries, and rural development.

#### **The FAO plays a major role in some MEAs**

- In unison with UNEP the FAO provides secretariat functions for the Rotterdam Convention.
- In 2001, the FAO Conference (comprised of all 184 FAO members) adopted the International Treaty on Plant Genetic Resources for Food and Agriculture.

## FAO projects in the Pacific

- The small island and low-lying coastal countries in the Pacific display a structural vulnerability that moulds their productivity and development policies. This has spurred the FAO to enhance the sustainable development of these island nations by assisting SIDS to integrate policies on sustainable food security within national strategies for poverty alleviation.<sup>172</sup>

### 6.2.6.2. 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.

#### Mandate

- IFAD was created to mobilize resources on concessional terms for programmes that alleviate rural poverty and improve nutrition.
- The Fund is dedicated to the specific objectives of combating hunger and rural poverty in developing countries (unlike other international financial institutions, which have a broad range of objectives).

#### The Global Mechanism

- At the first COP to the Desertification Convention (UNCCD) in 1997, IFAD was designated to house the Global Mechanism.
- The Global Mechanism was established by the UNCCD to promote actions for mobilizing and channelling substantial financial resources to affected developing countries (Article 21, UNCCD).

### 6.2.6.3. International Maritime Organization

Created in 1948, the International Maritime Organization (IMO) addresses shipping issues and cooperates with the secretariat of MEAs on issues of common concern (e.g. the Basel Convention on ship dismantling). The IMO's main environmental body is the open-ended Marine Environment Protection Committee (MEPC). The composition of this organization embraces 170 member States, such as Australia, Cook Islands, Fiji, Kiribati, New Zealand, Palau, Samoa and Tuvalu.

Many of the conventions adopted under the auspices of the IMO are designed to protect the marine environment from adverse impacts of shipping activities, for example:

- The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969)
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972, and 1996 Protocol relating thereto)
- The International Convention for the Prevention of Pollution from Ships (MARPOL, 1973 as modified by the Protocols of 1978 and 1997 relating thereto)
- The International Convention on Oil Pollution Preparedness, Response and Cooperation (1990)
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS, 1996 and 2010 Protocol relating thereto)
- The International Convention on the Control of Harmful Anti-Fouling Systems on Ships (2001)
- The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001)
- The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM/ Ballast Water Convention, 2004)
- Nairobi International Convention on the Removal of Wrecks (2007)
- The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (2009).

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172 The work of the FAO in relation to SIDS is available from the website at [http://www.fao.org/sids/index\\_en.asp](http://www.fao.org/sids/index_en.asp)

#### 6.2.6.4. United Nations Educational, Scientific and Cultural Organization

The United Nations Educational, Scientific and Cultural Organization (UNESCO) emerged after the Second World War with the universal task to forge peaceful co-existence between States. The impetus to pursue nature conservation as well as cultural preservation culminated in the adoption of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).<sup>173</sup> This unique treaty is a model for successive global heritage laws and has been hailed for securing acceptance from a broad range of the international community. Global heritage laws seek to protect the value of cultural and natural resources in forging human identity, creativity, cultural tolerance, allegiance and solidarity.

- The World Heritage List enumerates the names of the sites from different national territories, ethnic groups and time periods that represent the history of life on Earth.
- Sites identified as World Heritage properties are monitored and protected through the joint initiatives of UNESCO, States Parties, and other stakeholders such as local communities and NGOs.
- The IUCN monitors the status of natural properties, reviews requests for capacity-building packages from State Parties and supports the activities attached to approved requests.
- In 1993, the volcanic Mount Tongariro in New Zealand was the first property inscribed on the World Heritage List as a cultural landscape entwined with Maori traditions, beliefs and identity.
- In 2005, the criteria for selecting cultural and natural sites were consolidated into one set of ten criteria adaptable to new conceptions of world heritage. Thus the listed heritage properties include Neolithic flint mines, mangrove forests, volcanic formations, small islands, deserts, fossil mammal sites, and the habitats and conditions for sustaining living cultures.
- It has launched action plans for the conservation of natural heritage sites such as the Global Strategy for a Representative Heritage, and the Man and Biosphere Reserve Programme designed to sustainably manage shared ecosystems.

#### Activities in the Pacific Region

The Global Strategy prompted the compilation of regional actions plans targeting the under-represented regions in Asia/Pacific. The classification of SIDS in the context of the heritage treaty incorporates the following self-governing Island States: Cook Islands; Fiji; Kiribati; Maldives; Marshall Islands; Micronesia; Nauru; Niue; Palau; Papua New Guinea; Samoa; Singapore; Solomon Islands; Timor-Leste; Tokelau; Tonga; Tuvalu; and Vanuatu (only six members of SIDS have yet to ratify the treaty).

The review of emerging issues and progress in the action plans has been conducted at several meetings.

- One such meeting was convened at Tongariro National Park, New Zealand in 2004 comprised of representatives from 14 Pacific island countries as well as from Australia and New Zealand.
- Port Louis in Mauritius hosted the 2005 global meeting instigated by the UN to review the implementation of the Barbados Programme of Action for the sustainable development of SIDS.
- In adopting the Mauritius Strategy for SIDS, the World Heritage Center then designed the World Heritage Programme for SIDS (2005) to integrate “sustainable island living and development with intergenerational and interregional perspectives”.<sup>174</sup>
- In collaboration with the World Heritage Centre, Australia and New Zealand organized a workshop in 2008 with small island nations to enhance capacity for site management, explore the future creation of a Pacific World Heritage Fund, and craft an interim action plan for the 2010–2015 period.

Progress on implementing the SIDS projects is illustrated in the workshops engaging Pacific islands, and the submission of new tentative lists of cultural and natural heritage sites from the Marshall Islands (2005), Papua

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<sup>173</sup> More information on preservation efforts for the global heritage is available from the UNESCO website at <http://www.unesco.org>

<sup>174</sup> World Heritage Committee, Thirty-third Session, Item 5B of the Provisional Agenda: Report on the World Heritage Programme for Small Island Developing States (SIDS). WHC-09/33.COM/5B Paris, 11 May 2009.

New Guinea (2006), Samoa (2006), Kiribati (2007), and Tonga (2007). The WHC Committee has inscribed sites in the Pacific region on the World Heritage List, such as:

- Kuk Early Agricultural Site, Papua New Guinea (2008)
- Chief Roi Mata's Domain, Vanuatu (2008)
- Lagoons of New Caledonia: Reef Diversity and Associated Ecosystems (2008)

#### 6.2.6.5. United Nations Economic Commissions

##### Europe

Founded in 1947, the United Nations Economic Commission for Europe (UNECE) is one of the five UN regional economic commissions.<sup>175</sup> It is composed of 56 member States, including European countries, former Soviet Republics, Canada, Israel, and the United States of America. While its main aim is to maintain and strengthen economic cooperation among member States and other States, its mandate also includes environmental matters.

**The UNECE has produced the following environmental conventions and protocols:**

- 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP/Air Pollution Convention) and the eight protocols relating thereto;
- 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context (Espoo EIA Convention) and 2003 Protocol on Strategic Environmental Assessment (SEA Protocol);<sup>176</sup>
- 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes as well as the 1999 Protocol on Water and Health;
- 1992 Convention on the Transboundary Effects of Industrial Accidents;<sup>177</sup>
- 1998 Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention); and
- 2003 Protocol on Pollutant Release and Transfer Registers (PRTR Protocol).

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**Member States:** 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, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan.

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##### Asia and the Pacific Region

The UN Economic and Social Commission for Asia and the Pacific (ESCAP) has an expansive ambit of operation encompassing a geographic area from Turkey to the island nation of Kiribati. Sixty-two governments comprise the membership of the organization that has an established base in Bangkok, Thailand. It exists as the largest of the five UN regional commissions and as the largest UN body addressing developmental issues in the Asia-Pacific region.<sup>178</sup> Subregional activities have been launched in collaboration with the Pacific nations of Australia, Fiji, Kiribati, Marshall Islands, the Federated States of Micronesia, Nauru, New Zealand, Palau, Papua New

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<sup>175</sup> The other commissions focus on Africa, Latin America and the Caribbean, Asia and the Pacific, and Western Asia.

<sup>176</sup> Also see the amendments to the Espoo Convention adopted in Sofia, 27 February 2001; and adopted in Cavtat, 4 June 2004.

<sup>177</sup> Also see the 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and to the 1992 Convention on the Transboundary Effects of Industrial Accidents (Kiev, 21 May 2003).

<sup>178</sup> More information is available from the website at <http://www.unescap.org/>

Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. A present task is implementation of the South Asian Association for Regional Cooperation Action Plan on Climate Change which embraces technical and institutional capacity-building initiatives, such as devising training modules on climate risk assessments and guidelines for facilitating the integration of Disaster Risk Reduction (DRR) into Climate Change Adaptation (CCA).

**ESCAP endeavors to implement the Millennium Development Goals and address prevailing challenges in the region, such as:**

- Environment and sustainable development
- Trade and investment
- Technology for disaster risk management

The Committee on Environment and Development pursues the integration of environmental sustainability in development policies. ESCAP has forged partnerships to facilitate this ambition, which is illustrated by its collaboration with the Secretariat of the Pacific Community (SPC) noted above in Annex A.

#### 6.2.6.6. United Nations Development Programme

The UN Development Programme (UNDP) was created by the UNGA in 1965, and it works closely with UNEP. In matters of sustainable development, Agenda 21 assigned this UN entity the task to strengthen capacity-building in developing countries (an initiative known as “Capacity 21”).

Confronting the challenges of sustainable development in the context of Pacific SIDS prompted the creation of another UNDP regional programme entitled “Capacity 2015”:

- One objective of this programme is to enhance capacities to implement the Millennium Developmental Goals and the Barbados Programme of Action.<sup>179</sup>
- It shall identify the precise rationales for the vulnerability of these islands as well as the unique interactions between the social, economic, environmental and physical features of member States.
- This process aspires to limit the vulnerability of SIDS, bolster their resilience and enhance sustainable development in the region.
- The Pacific Islands Greenhouse Gas Abatement through Renewable Energy Project (PIGGAREP) is a joint venture of the UNDP and the GEF. It is designed to promote the adoption of renewable energy by erasing major barriers such as the costs of implementation. The Secretariat of the Pacific Regional Environment Programme (SPREP) is the implementing partner for this project.

#### 6.2.6.7. United Nations Institute for Training and Research

The United Nations Institute for Training and Research (UNITAR) is an integral facet of the United Nations system for capacity development and training in UN member States.<sup>180</sup> The innovative training and research programs of the Institute target four thematic areas:

- Environment;
- Governance;
- Peace, security and diplomacy; and
- Research.

The issues of environmentally sustainable development and implementation of MEA’s have prompted training initiatives addressing chemicals and waste management, climate change, biodiversity, environmental

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179 References to this goal are available at <http://www.undp.org/>

180 Consult the official website for comprehensive information <http://www.unitar.org>

governance and law. The training methods have guided the composition of National Profiles, action plans, and review processes; management of knowledge bases; and development of technical tools and skills such as multilateral diplomacy taught in the Diploma in International Environmental Law (courses are delivered via the internet as well as the traditional face-to-face academic setting).

Representatives of these programmes also contribute to significant forums on treaty negotiations and policy debates. At the UN Climate Change Conference during the 2009 winter season in Copenhagen, UNITAR presented lectures and side events to enrich the knowledge on global warming and appropriate protective action.

The UNITAR Climate Change Program (CCP) is comprised of three main components:

- Capacity Development for Climate Change Adaptation and GHG Mitigation in Non-Annex 1 countries (C3D+)
- Advancing Capacity to Support Climate Change Adaptation (ACCCA)
- National Adaptation Programme of Action (NAPA-PANA)

The C3D Project<sup>181</sup> is designed to enhance the institutional capacity and resources in developing nations as urged in the UNFCCC Decisions (COP7). Countries designated as “Non-Annex 1” Parties in UNFCCC negotiations have encountered challenges in implementing the decisions and policies on climate change. In recognising these capacity constraints, UNITAR has forged partnerships with regional organizations and networks of experts to pool resources for capacity-building activities.

In the Pacific area, the Pacific Regional Environment Programme (SPREP) is a collaborative partner in the C3D project.

- SPREP has recommended the integration of climate change adaptation into the strategic policies of the Pacific Adaptation to Climate Change (PACC) Project.<sup>182</sup>
- Two training workshops in Niue and Tuvalu were organized in March 2010 to address the synergies between national climate policies, adaptation strategies and the C3D project. Participants also explored pragmatic tasks such as conducting local vulnerability assessments and responding to projected climate scenarios.

#### 6.2.6.8. International Union for Conservation of Nature

Heralded as the oldest and largest global environmental organization, the International Union for Conservation of Nature (IUCN) launched in 1948. It has since established partnerships with governments, civil society and non-governmental organizations as well as private sectors to galvanize action on biodiversity conservation and sustainable development. IUCN’s conservation work assists societies to ‘conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable’.

- More than 1200 entities from across the globe are members of the IUCN. This membership is comprised of over 200 government and over 900 non-governmental organizations as well as 43 affiliates. These members elect the officers of the IUCN Council every four years at the World Conservation Congress.
- The organization participates in key international meetings and influences key policy arenas – it is the only environmental organization with Official Observer Status at the UN General Assembly and is the official technical advisory body to UNESCO.
- Specialist groups and task forces within the IUCN are recognized as global authorities, such as the WCPA High Seas Marine Protected Areas Task Force which is a preeminent source of expertise on high and deep seas protection.

The IUCN network is composed of a headquarters in Gland, Switzerland with eight regional offices: Eastern and Southern Africa, South America, Washington DC Office, Central America, Asia, West Asia, Europe, Mediterranean, Oceania, Central and West Africa. Roughly 11,000 voluntary scientists and experts from

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181 For more information see <http://c3d-unitar.org/>

182 See King, P. (May 2010). “Mainstreaming Climate Change – A Guidance Manual for the Pacific Islands Countries and Territories”. Draft version online at the SPREP website <http://www.sprep.org>

diverse nations and disciplines work within the six Commissions that form part of this network: Commission on Education and Communication (CEC); Commission on Environmental, Economic and Social Policy (CEESP); Commission on Environmental Law (CEL); Commission on Ecosystem Management (CEM); Commission on Species Survival (SSC) and Commission on Protected Areas (WCPA). The Global Programme targets the four broad areas of biodiversity conservation, environment and development, economics and environmental governance, programme policy and development coordination.

In addition to propelling diverse field projects for conserving nature, the IUCN is pivotal in developing environmental policy, laws and best practice standards. The Environmental Law Programme (ELP) has forged a global environmental law network with a membership of over 700 international and environmental law specialists from 120 countries. The notable contributions of the ELP to the formulation, negotiation and implementation of international treaty law are illustrated by CITES, CMS, CBD as well as the International Covenant on Environment and Development (conjointly drafted with the International Council of Environmental Law and UNEP). The ELP has produced critical technical commentary and proposals for textual language relating to the Law of the Sea Convention, the marine pollution and hazardous waste conventions, the international agreement on tropical timber and Antarctic treaties. It facilitates the implementation of various MEAs through producing guidebooks, studies and analyzes of implementation issues; supporting IUCN delegations during the COPs of MEAs; and providing technical assistance on legal issues to the secretariats of MEAs (particularly CITES, CMS, CBD and Ramsar Convention).

The ELP contributes to the evolution of soft law documents, such as the Stockholm Declaration on the Human Environment, Rio Declaration on Environment and Development as well as the World Charter for Nature and the Earth Charter. In August 2010, the Ocean Specialist Group of the CEL composed and submitted statements on behalf of IUCN to the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS) in its Advisory Opinion case regarding the responsibility of states sponsoring activities in the seabed area beyond national jurisdiction. Notably, these written and oral statements represented the first introduction of IUCN as a party before either the ITLOS or International Court of Justice. The ELP has initiated local and regional capacity-building in environmental law through seminars, workshops and training courses. Some of these activities are initiated through partnerships with organizations such as SPREP and UNITAR. The IUCN Environmental Law Centre is the management unit for ECOLEX operated conjointly with the FAO and UNEP.

## 6.2.7. Others

### A brief list of other agencies that regularly attend MEA meetings:

- International Labour Organization (ILO)
- United Nations Industrial Development Organization (UNIDO)
- World Trade Organization (WTO)
- World Bank
- World Health Organization (WHO)
- World Meteorological Organization (WMO)

### 6.2.7.1. Organization for Economic Cooperation and Development

Composed of 34 member States, the Organization for Economic Cooperation and Development (OECD) promotes democratic forms of government and a market economy. It provides a discussion forum and integrated framework for the broadest economic, social, and environmental policy concerns of governments. The Council is composed of all member States, whose decisions are legally binding on members.<sup>183</sup>

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183 For example, C(2001) 107/FINAL on the Control of Transboundary Movements of Wastes Destined for Recovery Operations. The OECD website contains extensive material at <http://www.oecd.org>

## The OECD Environment Policy Committee (EPOC)

Environmental matters are discussed in the EPOC which has the mandate to implement the environmental dimensions of the work programme adopted by the Council.

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**Member States:** Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States.

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### 6.2.7.2. International fora and panels

Some environmental issues are addressed through the creation of fora and panels that allow a wide variety of interested actors to participate. Some notable entities are described below.

#### 6.2.7.2.1. Intergovernmental Forum on Chemical Safety

In 1994, the ILO, WHO and UNEP established the Intergovernmental Forum on Chemical Safety (IFCS) in a collaborative effort to tackle the global threat of toxic chemical contamination and pollution. The Forum has initiated action plans to facilitate implementation of Chapter 19, Agenda 21 adopted by UNCED in 1992.

##### Purposes

- To promote the environmentally sound management of chemicals through advice and recommendations shared at meetings with government representatives as well as IGOs and NGOs.
- To provide policy guidance, develop strategies in a coordinated and integrated manner, foster understanding of issues and promote the required policy support.

##### The Forum

- The Forum is also an opportunity for any participant to introduce emerging and contentious issues to the international agenda. For example, Canada used the Forum to raise the need to address POPs at the international level.
- The work of the Forum is taken into account in meetings of relevant MEA bodies, and the World Health Organization serves as its secretariat.
- The Pacific Regional Environment Programme (SPREP) has contributed to activities such as the formulation of national profiles that identify priorities in reinforcing local infrastructures for chemicals management.

#### 6.2.7.2.2. International Chemicals Management

In February 2006, the International Conference on Chemicals Management (ICCM) adopted the Strategic Approach to International Chemicals Management (SAICM) as a policy framework for international action on chemical hazards. Its goal is to ensure that by 2020 chemicals are produced and used in ways that minimize the significant adverse impacts on the environment and human health.

##### The SAICM and the ICCM take a unique approach to inclusion of IGO and NGO participants

- The SAICM's rules of procedure, provisionally applied by the ICCM in 2006, provide for governmental participants to consult with IGO and NGO participants before adopting or revising the agenda of sessions (Rule 7).
- IGO and NGO participants are also included in consensus decision-making and quorum.



- However, governmental participants may decide to exclude intergovernmental and/or non-governmental participants from consideration of all or part of the agenda (Rule 3).<sup>184</sup>

### 6.2.7.2.3. United Nations Forum on Forests

The United Nations designated 2011 as the International Year of Forests to illuminate forests as an essential part of the global environment and human well-being. The Intergovernmental Panel on Forests (IPF, 1995-1997) and the Intergovernmental Forum on Forests (IFF, 1997-2000) were the precursors for the United Nations Forum on Forests (UNFF) created in 2000 by the UN ECOSOC. This Forum is composed of all members of the United Nations and specialized agencies, and encourages the participation of other actors such as NGOs, industries, and indigenous groups (see 6.8.6. for the official internet website).

#### Aims

- UNFF fosters common understandings on sustainable forest management, identification of emerging issues, policy development and dialogue, and cooperation among the various actors.
- The lack of a comprehensive international binding instrument for forests has prompted UNFF to devise a mandate to develop a legal framework on all types of forests.

A 'non-legally binding instrument on all types of forests' (NLBI) was adopted by the UN General Assembly in Resolution 62/98 of 17 December 2007.<sup>185</sup> In this instrument, member States recognized that forests and trees outside forests engender diverse benefits in the economic, social and environmental realms for the benefit of present and future generations. The members emphasized sustainable forest management had a significant role in sustainable development and the elimination of poverty. The members expressed concern over the prevailing incidences of deforestation and forest degradation as well as the glacial pace of afforestation and forest cover recovery and reforestation that all spawn adverse impacts on the environment, economies and the livelihoods of at least a billion people and their precious cultural heritage. Effective implementation of sustainable forest management dictates increased financing, capacity development and the transfer of environmentally sound technologies to developing countries (such as small island developing States). The instrument reaffirms the four global objectives on forests: to reverse the loss of forest cover on the planet; enhance the economic, social and environmental benefits of forests; increase the area of protected forests; and mobilize financial resources for sustainable forest management.

Present efforts target implementation of these four goals as well as the forest-related outcomes of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals agreed in September 2010. Notably, the GEF has supported the conservation of forests and forest carbon related projects captured within the GEF focal areas of biodiversity and land degradation as well as the climate change LULUCF window. At present, the UNFF and UNEP are designing a project to garner political support and financing for sustainable forest management in low-forest-cover countries. It shall endeavour to identify the major barriers to financing sustainable forest management and devise better governance frameworks for financing forest management and the valuable ecosystem services generated by forests. The three relevant conventions addressing the issue of forests embraces the UNFCCC, UNCCD and CBD (see FAO, (2011). *State of the World's Forests*. Stevenage Hertfordshire, UK: Earthprint).

### 6.2.7.2.4. Intergovernmental Panel on Climate Change

The World Meteorological Organization (WMO) and UNEP created the Intergovernmental Panel on Climate Change (IPCC) in 1988. Its purpose is to continually assess the scientific, technical and socio-economic information on climate change.

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<sup>184</sup> International Conference on Chemicals Management, Dubai, 4-6 February 2006, Item 2(a) of the provisional agenda, Adoption of the rules of procedure [SAICM/ICCM.1/6 18 November 2005]. See SAICM/PREPCOM.1/CRP.4 referenced in the Earth Negotiations Bulletin available at <http://www.iisd.ca/enbvol/enb-background.htm>

<sup>185</sup> United Nations Forum on Forests, Report of the Seventh Session (24 February 2006 and 16-27 April 2007), Economic and Social Council Official Records, 2007 Supplement No. 22.

## Assessment Reports

- From 1990–2007, the IPCC has published four assessment reports that evolved from the work of thousands of experts around the world channeled through three working groups.
- The publication of the first report in 1990 was one of the catalysts for the United Nations Framework Convention on Climate Change. The second report facilitated the negotiations that culminated in the adoption of the Kyoto Protocol.
- Reports are based on peer-reviewed literature, journals and books that are then reviewed by other experts and governments.
- They are ultimately presented for adoption by the plenary session that is composed of States' representatives and meets once a year.
- While international organizations and NGOs may attend plenary sessions as observers, their presence at other meetings is only permitted if they are invited by the IPCC.
- The IPCC also provides reports, technical papers and guidelines on its own initiative or on request of the Parties to the UNFCCC or another MEA (see 6.8.6. for the internet address).

## 6.3. Annex C – Case Studies

### 6.3.1. Adjustments under the Montreal Protocol and the Convention on Long-Range Transboundary Air Pollution (LRTAP)

#### 6.3.1.1. Adjustments under the Montreal Protocol

**Under Article 2, paragraph 9(a) of the Montreal Protocol on Substances that Deplete the Ozone Layer, based on assessments made pursuant to Article 6, Parties may decide whether:**

- (i) Adjustments to the ozone depleting potentials specified in Annex A, Annex B, Annex C, and/or Annex E should be made and, if so, what the adjustments should be; and
- (ii) Further adjustments and reductions of production or consumption of the controlled substances should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be.

Article 2, paragraph 9(c), specifies that adjustments may be adopted by consensus of all the Parties. In the absence of consensus, an adjustment may be adopted by a two-thirds majority of the Parties present and casting a vote at the meeting (see section 2.3.12. of this Handbook).

#### **Decisions on adjustments are binding and are communicated to the Parties by the depositary**

Adopted adjustments are subject to the ratification process and usually enter into force six months from the date of the circulation and communication by the depositary (Article 2, paragraph 9(d), Montreal Protocol).

**By March 2007, the MOP had adopted 12 decisions relating to adjustments:**

- Through these decisions, the MOP has adopted adjustments and reductions of production and consumption of the controlled substances listed in Annexes A,<sup>186</sup> B,<sup>187</sup> C,<sup>188</sup> and E.<sup>189</sup>

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186 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; and Decision XI/2: Further adjustments with regard to Annex A substances.

187 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; and Decision XI/3: Further adjustments with regard to Annex B substances.

188 Decision VII/3: Further adjustments and reductions: controlled substances listed in Annexes C and E to the Protocol. Pursuant to this decision, the MOP adopted adjustments and reductions of production and consumption of the controlled substances listed in Annexes C and E of the Protocol.

189 Decision IX/3 and Decision XI/4 on further adjustments and reductions with regard to the Annex E substances.

- These adjustments resulted in the revision and replacement of text within the Protocol relating to the calculated levels of production for the scheduled phase-out of substances listed in Annexes A, B, C, and E.
- The ozone depleting potential specified in Annex E of the Protocol has also been adjusted through a MOP decision (Decision VIII/3).<sup>190</sup>

**These decisions have also allowed the MOP to schedule consideration of the need for further adjustments**

For example, this approach applies to the phase-out schedule for hydrofluorocarbons applicable to Parties operating under paragraph 1 of Article 5.<sup>191</sup>

### 6.3.1.2. Adjustments under LRTAP

Pursuant to LRTAP, the Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone was adopted in 1999 and entered into force in 2005 (negotiations on proposed revisions are ongoing).

#### **Adjustments to Annex II: Article 13, paragraph 1 of the Protocol**

- Any Party may propose an adjustment to Annex II to add its own name 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 become effective for all Parties 90 days after they are notified in writing by the Executive Secretary of the Commission (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 for adjustments appears in the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (Article 11, 1994 'Oslo Protocol').

#### **Adjustments are different from amendments in three ways:**

1. Adjustments are adopted by consensus – there is no option of voting (Article 13, paragraph 6).
2. An adjustment is effective for all Parties to the Protocol. In contrast, an amendment to Annexes II to IX enters 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, or for any other Party on the ninetieth day after the date on which that Party has deposited its instrument of acceptance thereof (Article 13, paragraph 3).
3. Parties do not have the option of notifying the depositary that they are unable to approve an adjustment to the annex - this option is only available with regard to amendments to annexes other than Annexes II to IX (Article 13, paragraph 5).

**At its 23rd session, the LRTAP Executive Body agreed to adjust Annex II of the Gothenburg Protocol to include Cyprus with the following emission ceilings (kilo-tonnes per year):**

- Sulphur 28 (1980); 46 (1990); 39 (2010);
- Nitrogen oxides 18 (1990); 23 (2010);
- Ammonia 7 (1990); 9 (2010);
- Volatile organic compounds (VOCs) 18 (1990); 14 (2010).<sup>192</sup>

<sup>190</sup> The adjustments and/or amendments to the Montreal Protocol were adopted in London, 29 June 1990; Copenhagen, 25 November 1992; Montreal, 17 September 1997; and Beijing, 3 December 1999.

<sup>191</sup> Decision VII/3. Further adjustments and reductions: controlled substances listed in Annexes C and E to the Protocol.

<sup>192</sup> Paragraph 23, Report of the twenty-third session of the Executive Body for the Convention on Long-Range Transboundary Air Pollution, ECE/EB.AIR/87.

## Canada and the United States of America

A Party listed in Annex II of the Gothenburg Protocol may only change the emission ceilings 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 ratifying, accepting, approving or acceding to the 1999 Gothenburg Protocol (Article 3, paragraph 11). In this case, the names of Canada and the USA are already listed in Annex II but without emission ceilings inscribed beside their names.

### 6.3.2. Stockholm Convention on POPs: Adding a substantive element to a draft MEA

#### Canada was successful in negotiating Article 16 Evaluation of Effectiveness into 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 conference room document.
- Canadian delegates considered the concern of northern indigenous people that Parties comply with the convention. Additionally, they concluded that the draft convention text was missing two critical elements between INC-2 and INC-3:
  - A monitoring provision; and
  - A review of effectiveness provision.

#### INC-3

At INC-3, Canada raised the issue through a conference room paper (CRP), which it presented and consulted on informally with other countries. Representatives of Canada proposed to add text to Article I on Research, Development and Monitoring. However, as this Article was not discussed at the meeting there was no real opportunity to address Canada's proposal in detail. Nevertheless, Canada requested that the meeting report include a reference to its intervention that described the proposal; and that it would appreciate comments, which it would take into account when reintroducing the proposal at INC-4.

#### INC-4

At INC-4, Canada again circulated a CRP and was quick to get CRP.1 as its number (initial CRPs get more attention than later ones). Canada introduced the proposal 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 (especially within WEOG).

#### INC-5

At INC-5, Canada worked to generate support on a definitive article based on consultations with other delegations. Article 16 of the final text retains the Canadian idea. To obtain support for the provision, the language ultimately adopted is 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. According to this article, the effectiveness of the Convention shall be evaluated starting four years after the date of entry into force of the Convention and periodically thereafter.

## 6.4. Annex D – Preamble and Operative Text

From sections 6.4.1-6.4.3, the illustrations of treaty language derive from *The International Negotiations Passport for Developing Countries* composed by Ian Fry (Tidal Wave Media, Australia, May 2009).

### 6.4.1 Examples of preambular text

Text in a preamble usually ends in “ing” to denote ongoing action:

<b>Affirming:</b>	Agreeing on this
<b>Bearing in mind:</b>	Giving thought to
<b>Calling for:</b>	Asking for action from governments
<b>Calling upon:</b>	Asking someone else to do something
<b>Concurring:</b>	Agreeing with some other decision
<b>Conscious:</b>	Aware of
<b>Considering:</b>	Thinking about it but not intending to do anything
<b>Desiring:</b>	Wishing to do something
<b>Developing:</b>	Something that will happen in the future
<b>Encouraging:</b>	Hoping that someone will do something
<b>Endorsing:</b>	Giving legal support to a previous decision or action
<b>Enhancing:</b>	Building on something
<b>Establishing:</b>	Creating something
<b>Expressing concern:</b>	Strong diplomatic language to express annoyance
<b>Maintaining:</b>	Supporting ‘business as usual’/normal course of activity
<b>Noting:</b>	Acknowledging something with little emotion
<b>Promoting:</b>	Giving publicity to
<b>Reaffirming:</b>	Agreeing again
<b>Recalling:</b>	Remembering a past agreement or issue
<b>Recognizing:</b>	Noting, acknowledging
<b>Reiterating:</b>	Restating something already agreed
<b>Stressing:</b>	Giving significance to
<b>Taking into consideration:</b>	Acknowledging something but likely to ignore it

### 6.4.2. Examples of operative text

Decision text that may or may not decide to do something depending on the key verb at the start of the text.

<b>Agrees:</b>	Having the same opinion
<b>Calls on:</b>	Strong encouragement to do something
<b>Decides:</b>	Binding agreement
<b>Declares:</b>	Announcing a resolution to something

<b>Encourages:</b>	Similar to the word “Urges” but not so strong
<b>Endorses:</b>	Gives legal support to
<b>Emphasizes:</b>	Gives importance to without deciding on anything
<b>Expresses its appreciation to:</b>	Thanks someone
<b>Invites:</b>	Asks someone to do something
<b>Notes:</b>	Recalls in a neutral manner
<b>Requests:</b>	Asks someone to do something
<b>Stresses:</b>	Emphasizes, without deciding to do something
<b>Strongly Agrees:</b>	Having the same opinion with emphasis
<b>Supports:</b>	Gives support to something, usually done by someone else
<b>Takes note of:</b>	Notes without support or endorsement
<b>Underlines the importance of:</b>	Similar to the word “Stresses”
<b>Urges:</b>	Encourages somebody to do something
<b>Welcomes:</b>	Notes positively

### 6.4.3. Slippery negotiating words

- **Amongst them:** a subset of the group being discussed
  - “The least developed countries, and the small island developing States amongst them, are among the most vulnerable to extreme weather events and the adverse effects to climate change”.
- **As appropriate, if appropriate, as necessary, if necessary:** conditional words, which gives discretion to a country to decide whether the action is appropriate or not
  - “Developing and implementing, as appropriate, prioritized projects identified in their national communication”.
- **Any future elaboration:** the issue is not closed and can be worked on in the future
  - “In accordance with the Revised 1966 IPCC Guidelines for National Greenhouse Gas Inventories, any future elaboration of these guidelines, or parts of them...”
- **Consider:** think about further and not necessarily make a decision
  - “Decides to consider, at its eight session, the implementation of insurance-related actions...”

## 6.5. Annex E – Negotiating Blocs

### 6.5.1. Group of 77 (G-77)<sup>193</sup>

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**Member States:** Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, 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, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, and Zimbabwe.

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### 6.5.2. European Union (EU)

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**Member States:** Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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### 6.5.3. The Alliance of Small Island States (AOSIS)

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

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<sup>193</sup> See <http://www.g77.org/>

## 6.6. Annex F – The Chair, Bureau and Secretariat

### 6.6.1. Chair

Role of the Chair/President of the INC or the COP

- The Chair or President is elected to preside over the work of an **INC** (during development of an MEA or when a treaty is not yet in force) or a **COP** (once the MEA is in force).
- He or she also Chairs the **Bureau**.
- In theory, the Chair's formal and informal functions allow him or her to greatly influence the outcomes. The extent of a Chair's authority often depends on their **personal and diplomatic skills** as well as whether there is broad **support** for the proposals.
- Ultimately, the Chair is **under the authority of the COP**. A Chair's decision is not often challenged, but still remains subject to being overruled by the COP.

Election of the Chair

- The Chair/President is **elected by all Parties** to the COP.
- The position **rotates** among the five United Nations regional groups. In the interests of consistency, the Chair for an INC is often the same person for the duration of negotiations.
- In practice, representatives of the five regional groups hold **informal discussions** to forge **consensus** on the Chair nomination before the first formal meeting.
- The Chair must act impartially and thus cannot represent his or her country.

Functions and power

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

- Open and close meetings;
- Introduce each item on the agenda (usually with the assistance of the secretariat);
- Recognize and give the floor to a representative of a Party or observer. If more than one delegation wishes to intervene, the Chair gives the floor to delegations in the order they signified their desire to speak. Parties are allowed to intervene first, followed by observers. The secretariat assists the Chair in identifying the order in which Parties ask to intervene (see 3.3.3);
- Allow or refuse discussion and consideration of proposals and amendments;
- Call a speaker to order when remarks are irrelevant or repetitious;
- Determine whether a matter is substantive or procedural;
- 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 (see 3.1.1.14);
- Rule on points of order (see 3.1.1.11);
- Ensure that the rules of procedure are followed (see 3.1.1.);
- Chair the meetings of the Bureau held during the meeting;
- Designate the Chairs or Co-Chairs of working groups, contact groups and such like. However, election of the Chairs of subsidiary bodies is normally a responsibility of the COP; and
- Review the draft report of the meeting prior to its adoption.



The Chair may propose the following matters to the plenary

- Impose time limits on interventions;
- Limit the number of interventions of each representative on any given issue;
- Limit the number of interventions before putting a question to the vote or closing the discussion on an agenda item;
- Adjourn or conclude a debate; and
- Adjourn or suspend a session.

Further tasks of the Chair

- He or she is frequently called upon to participate and intervene in working groups and contact groups (see 3.2.1.6).
- A Chair has the discretion to form a group labeled “Friends of the Chair” to tackle particularly difficult issues (see 3.2.1.6.4).
- A Chair is often invited to meetings held by regional groups in order to discuss upcoming agenda items.
- Between meetings, a Chair will prepare a provisional agenda with the secretariat and in consultation with the other members of the Bureau. He or she will also preside over intersessional meetings of the Bureau.

Skills required

- A skillful Chair is often a key factor to a successful meeting. He or she can lead in a plenary session by –
  - Encouraging representatives to focus on key issues;
  - Asking representatives to clarify complex positions; and
  - Probing positions for challenges and opportunities (in a balanced way).

Functions during negotiation of a draft MEA

**The Chair may exercise great influence on the development of a negotiating text**

- The Chair may propose a determination of which moment sufficient views have been received to proceed with the drafting of a negotiating text to serve as a basis for negotiations.
  - The negotiating text is often assembled by the Chair with the help of the secretariat, or may proceed based on a text submitted by a Party.
  - The Chair will then present and explain the approach of the prepared text to the plenary session.
  - If the text was proposed by a Party, the Chair would normally ask that Party to clarify the text.
- In the negotiation phase, the Chair holds informal consultations with the negotiating blocs to identify issues and common ground among the Parties.
  - For instance, the Chair could attend a GRULAC meeting to share his or her views on the progress of negotiations and discuss key issues.
  - In the final days of negotiations, the Chair could intervene in small groups to facilitate consensus on issues.
- During the plenary, the Chair will hear views on a specific issue and may submit neutral proposals when members appear ready to compromise and finalize the text.

Chairs of other groups

**MEA context**

- Chairs or Co-Chairs are required for any formal or informal group created in the context of an MEA.
- Sometimes, a facilitator or co-facilitators will perform the same function.

### Other groups

- In the case of subsidiary bodies, the Chair is normally elected by consensus of the COP (unless the COP decides otherwise).
- For other groups, Chairs are selected at the suggestion of the Chair of the INC or COP, often after informal discussions with interested Parties.

### Co-Chairs

- Usually, one Co-Chair is selected from a Party in the geographic North and one from the South in the interests of equitable geographical representation of the regional groups recognized by the UN.
- Co-Chairs perform the same functions and objectives as the Chair of the COP.
- Regardless of the outcome of a particular group, the Chair of that group must report to the plenary on the results of the meeting.

## 6.6.2. Bureau

### Composition and election

- As noted at 3.1.1.6, the **officers** of the Bureau are the Chair, Rapporteur and Vice-Chairs.
- The **size** of the Bureau varies –
  - The Bureau of the Stockholm Convention on POPs has 10 members;
  - The Basel Convention has a Bureau of five members and an Expanded Bureau of 13 members.
- The **composition** of the Bureau is regionally representative:
  - The Bureau is composed of at least one representative of each UN regional group; and
  - The roles of the Chair and Rapporteur are usually rotated among the regional groups.
- **Membership** of the Bureau:
  - As noted at 3.1.1.6, some MEAs specify that members of subsidiary bodies are *ex officio* members of the Bureau.
  - For example, the membership of the Expanded Bureau of the Basel Convention included the two Co-Chairs of the Open-ended Working Group and the Chair of the Committee that administered the mechanism for promoting implementation and compliance.
- **Election:**
  - Bureau members are elected by the COP.
  - In practice, discussions are held before the meeting between the various regional groups to agree on the members that will serve on the Bureau.
  - Members do not usually serve more than two terms.

### Functions of the Bureau

#### Between sessions:

- The Bureau provides administrative and operational direction for the work that the COP or subsidiary bodies have asked the secretariat to accomplish.
- To plan for upcoming meetings, the Bureau will discuss agenda items and a meeting structure with the secretariat. For instance, it will consider the required number of working/contact groups, the duration of the High-level Segment of the meeting, the dates and venues of future COPs and subsidiary groups, critical budget issues and such like.
- In the interim, it receives and examines reports prepared by the secretariat.

- It also undertakes substantive tasks, for example the guidelines for the Expanded Bureau of the Basel Convention allowed it to frequently examine the draft interim guidelines for an Emergency Fund.

#### **During meetings:**

- The Bureau normally meets daily to discuss progress of the meeting and potential issues.
- Each regional representative usually consults regularly with his or her own regional group so as to update the Bureau on particular concerns raised in the respective groups.
- At the beginning of the meeting, the Bureau is responsible for examining and reporting to the COP on the credentials submitted by representatives.

### **6.6.3. Secretariat**

#### Key functions

- As a secretariat's purpose is to serve the Parties, it is always presumed to be neutral. Its general duties during meetings are to support the Chair in effectively conducting the meeting.
- **A meeting usually proceeds with the introductory remarks of the Chair** and a representative of the host country followed by an address of the Executive Secretary of the secretariat.
- **As the meeting progresses**, the Chair often relies on the secretariat to clarify the documentation. The secretariat also records the changes to a text and makes revisions under the supervision of the Chair. Another task is recognizing delegations from the floor and providing a speakers list.
- The secretariat also **assists the Parties, working groups and contact groups** by providing information and supplying experts for financial, legal and technical matters as well as support personnel (see 3.2.1.3 and 3.3.5).

## 6.7. Annex G – Overview of Selected MEAs

Key mechanisms, innovations and implementation challenges are highlighted in this brief survey of key MEAs.

- Convention on Biological Diversity (CBD, 1992);
- United Nations Framework Convention on Climate Change (UNFCCC, 1992);
- Kyoto Protocol to the UNFCCC (1997);
- Montreal Protocol on Substances that Deplete the Ozone Layer (1987);
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973);
- United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Desertification Convention/UNCCD, 1994).

### 6.7.1. Convention on Biological Diversity

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ Integration of conservation, sustainable use and benefit-sharing objectives.</li> <li>▪ Compromise between the rights of developing countries for benefit-sharing with the rights of technology-rich countries to access resources in biodiversity-rich countries.</li> <li>▪ Recognition of the knowledge, practice, and innovations of indigenous peoples and local communities (Article 8(j); and Nagoya Protocol adopted in 2010).</li> <li>▪ Framework for prior informed consent for public or private enterprises that seek access to biodiversity resources.</li> <li>▪ Organization of work programmes based on sectoral and cross-sectoral issues.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increasing WTO challenges to national biodiversity laws as disguised trade barriers.</li> <li>▪ Increasing human impacts exacerbating loss of biodiversity combined with limited scientific understanding of the pace and volume of loss.</li> <li>▪ Accelerating demand for genetic resources and increased pressures by transnational corporations (TNCs) to relax national laws regulating access.</li> <li>▪ Concerns about the Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS) and the patenting of life forms.</li> </ul>

## 6.7.2. United Nations Framework Convention on Climate Change

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ Aims to stabilize greenhouse gas (GHG) emissions at a level that allows ecosystems to adapt naturally to climate change so that food production is not threatened and economic development may progress in a sustainable manner (Article 2).</li> <li>▪ Global environmental responsibility is enshrined in the precautionary approach, the right to sustainable development as well as the principles of inter-generational equity and ‘common but differentiated responsibilities’ (Article 3).</li> <li>▪ The Convention commits all Parties to general protective actions such as the establishment of national inventories of greenhouse gas emissions and sinks; and the sustainable management of natural resources (Article 4.1).</li> <li>▪ Countries classified as ‘Annex 1 Parties’ (such as industrialized countries) have further voluntary commitments to mitigate the adverse effects of climate change, such as returning their GHG emissions to 1990 levels by the year 2000 (Article 4.2 (a) and (b)). The Kyoto Protocol to the UNFCCC sets binding emission targets for Annex I Parties during the period 2008-2012 (Article 3 and Annex B).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Perceived ambiguity as to the legally binding or non-binding nature of commitments elaborated in the Convention.</li> <li>▪ Absence of effective mechanisms to determine and address cases of non-compliance (later tackled by the Kyoto Protocol).</li> <li>▪ Debates on the principle of ‘common but differentiated responsibilities’. Developed country Parties (Annex II Parties) have an obligation to provide financial resources and facilitate the transfer of environmentally sound technology to developing country Parties. This support for their low-carbon sustainable development, adaptation to climate change and treaty implementation includes small island developing states such as Nauru, Kiribati and the Marshall Islands. The obstacles to progress include technologies and information protected by intellectual property rights; the roles of the private sector and government in facilitating transfers; and lack of enabling environments within developing countries.</li> <li>▪ Criticism that developing countries are not required to reduce GHG emissions unless developed countries contribute funding and technology.</li> </ul>

## 6.7.3. Kyoto Protocol

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ Legally binding targets and timetables for cutting the emissions of developed countries and countries with economies in transition.</li> <li>▪ Emissions trading regime that allows industrialized Parties to buy and sell emission credits among themselves.</li> <li>▪ Joint implementation projects offering emission reduction units for financing projects in other developed countries.</li> <li>▪ Clean Development Mechanism providing credit for financing emissions-reducing or emissions-avoiding projects in developing countries.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Perceived short-term economic costs of meeting targets in the first commitment period, especially for Parties that ratified at a later stage (i.e. those that have less time to meet their commitments)</li> <li>▪ Implementation of the flexibility mechanisms</li> <li>▪ Bringing on board large CO<sub>2</sub>-emitting developing countries in subsequent commitment periods.</li> </ul>

#### 6.7.4. Montreal Protocol

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ First MEA to recognize the need for phased commitments for developing countries.</li> <li>▪ Binding time schedule for freeze and reduction of ozone depleting substances (ODS) or “controlled substances”.</li> <li>▪ Important catalyst for the development of alternatives to ozone depleting substances.</li> <li>▪ Requirement for country reporting of production, consumption, and trade of ODS to enable the secretariat to monitor compliance and evaluate ozone depletion trends.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Developing country perception of air pollution and ozone depletion as problems of the industrialized world.</li> <li>▪ Difficulties for developing countries to keep abreast of the constant evolution of “safe technologies” and changing scientific views regarding the efficiency of these new technologies.</li> <li>▪ Reduced capacity on the part of developing countries to assimilate and absorb new technologies.</li> <li>▪ While developing countries have a 10-year grace period to conform, implementation has often presented undue economic burdens on developing countries who have invested heavily in capital equipment using chlorofluorocarbons (CFCs, which have an average life span of 30–40 years).</li> <li>▪ Difficulties in information gathering and reporting for developing countries in light of limited capacity and resources to report production, consumption and trade in ozone depleting substances.</li> </ul>

#### 6.7.5. Convention on International Trade in Endangered Species of Wild Fauna and Flora

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ Development of a licensing system for import, export, and re-export of species threatened with or potentially vulnerable to extinction.</li> <li>▪ Authority of the CITES secretariat to communicate problems of implementation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Dearth of reference materials and tools to assist law enforcers in understanding the nature of illegal trade, the impacts, the need for CITES enforcement and the vested interests in ensuring the regime’s effectiveness.</li> <li>▪ Greater research efforts needed to enhance understanding and interpretation of baseline data to set out targeted procedures and actions.</li> <li>▪ Critical implementation problems relating to the lack of funding, insufficient administrative capacity, and corruption.</li> <li>▪ Developing countries often have large land masses which are inadequately surveyed.</li> <li>▪ In some countries where the seizures of CITES species have increased in value and volume, it is unclear whether these trends reflect better enforcement or more sophisticated smuggling techniques. More analytical tools are needed to evaluate the underlying factors in increased seizure trends.</li> </ul>

## 6.7.6. United Nations Convention to Combat Desertification

SUBSTANTIVE INNOVATIONS	IMPLEMENTATION CHALLENGES
<ul style="list-style-type: none"> <li>▪ Requirement for the participation of affected communities and civil society in the preparation of national desertification action programmes.</li> <li>▪ Adoption of an integrated approach in addressing the physical, biological, and socio-economic aspects of the processes of desertification and drought.</li> <li>▪ Integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lack of sufficient funding from the donor community, in part because desertification is not seen as a global concern.</li> <li>▪ Growing need for new and better methodologies for promoting local participation and community-based capacity building.</li> <li>▪ Limited scientific attention to desertification compared with other MEAs, such as the Climate Change and Biodiversity Conventions.</li> </ul>

## 6.7.7. Key multilateral and regional treaties for the Pacific region

This section lists and surveys the ratification of key international environmental agreements in the Pacific Island context that are clustered into the thematic areas of biological diversity and natural resource management; and pollution control, waste management and carbon emissions. A selection of regional treaties are also listed and displayed in Table 3. This material is replicated and updated from the IUCN publication *Capacity Building for Environmental Law in the South Pacific: Scoping Report* (2008).<sup>194</sup>

1) International agreements on the conservation of biodiversity and natural resource management:

- International Convention for the Regulation of Whaling (IWC/International Whaling Convention, 1946);
- Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention, 1971);
- Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC, 1972);
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973);
- Convention on the Conservation of Migratory Species of Wild Animals (CMS/Bonn Convention, 1979);
- United Nations Convention on the Law of the Sea (UNCLOS, 1982);<sup>195</sup>
- Convention on Biological Diversity (CBD, 1992);<sup>196</sup> and
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR, 2001).

<sup>194</sup> In particular, information and tables are replicated from pages 11-12; 17-18; 23-24 of the report. See Clarke, P., Millar, I. and Sollberger, K. (2008). South Pacific Regional Environmental Law Capacity Building Project. Scoping Report. Gland, CH: IUCN. Most of the global and regional treaties listed in this section of the Handbook are summarized in the referenced IUCN publication.

<sup>195</sup> As noted earlier, Parts VII, XI and XII of the Convention govern the management and conservation of the high seas and seabed resources as well as the control of marine pollution. It is also important to reference the 1994 Implementing Agreement pertaining to Part XI of the Convention and the 1995 UN Fish Stocks Agreement.

<sup>196</sup> Also see the 2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity and the 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.

Table 1

COUNTRY	IWC	RAMSAR	WHC	CITES	CMS	UNCLOS	CBD	ITPGR
Australia	✓	✓	✓	✓	✓	✓	✓	✓
Cook Islands			✓		✓	✓	✓	✓
FSM			✓			✓	✓	
Fiji		✓	✓	✓		✓	✓	✓
Kiribati	✓		✓			✓	✓	✓
Marshall Islands	✓	✓	✓			✓	✓	s
Nauru	✓					✓	✓	
New Zealand	✓	✓	✓	✓	✓	✓	✓	
Niue			✓			✓	✓	
Palau	✓	✓	✓	✓	✓	✓	✓	✓
Papua New Guinea		✓	✓	✓		✓	✓	
Samoa		✓	✓	✓	✓	✓	✓	✓
Solomon Islands	✓		✓	✓		✓	✓	
Tonga			✓			✓	✓	
Tuvalu	✓					✓	✓	
Vanuatu			✓	✓		✓	✓	

Symbols: FSM = Federated States of Micronesia; ✓ = ratified, acceded or accepted; s = signed, but not ratified

## 2) International agreements on pollution, wastes and emissions:

- London Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention/LC '72, 1972);<sup>197</sup>
- International Convention for the Prevention of Pollution from Ships (MARPOL, 1973/1978);
- Convention on Long-Range Transboundary Air Pollution (LRTAP, 1979);
- Vienna Convention for the Protection of the Ozone Layer (Vienna Convention, 1985);
- Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol, 1987);
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention, 1989);
- International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC, 1990);
- United Nations Framework Convention on Climate Change (UNFCCC, 1992);
- Kyoto Protocol to the UNFCCC (Kyoto Protocol, 1997);
- Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, 1998);

<sup>197</sup> See also the guidelines for the identification and designation of Particularly Sensitive Sea Areas (PSSAs, revised by Resolution A.982(24) in 2004). The International Maritime Organization defines a PSSA as “an area that needs special protection through action by IMO because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage by international maritime activities” (extracted from their website at <http://www.imo.org>). The list of adopted PSSAs embraces The Great Barrier Reef, Australia (designated a PSSA in 1990); and Extension of the existing Great Barrier Reef PSSA to include the Torres Strait (proposed by Papua New Guinea and Australia, adopted in 2005). See Pacific Regional Environment Programme (SPREP)/ UNEP. (2000). Pacific Islands Handbook of International Marine Pollution Conventions: Consolidated Texts of the Main Marine Pollution Conventions of the World and the Region. Apia, WS: SPREP. Online at [http://www.sprep.org/att/IRC/eCOPIES/pacific\\_region/89.pdf](http://www.sprep.org/att/IRC/eCOPIES/pacific_region/89.pdf)



- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC/Rotterdam Convention, 1998);
- Stockholm Convention on Persistent Organic Pollutants (POPs/Stockholm Convention, 2001);
- International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM/Ballast Water Convention, 2004).

Table 2

COUNTRY	LONDON	MARPOL	OPRC	BALLAST	BASEL	VIENNA	MONTREAL	UNFCCC	KYOTO
Australia	✓	✓	✓		✓	✓	✓	✓	✓
Cook Islands		✓		✓	✓	✓	✓	✓	✓
FSM					✓	✓	✓	✓	✓
Fiji						✓	✓	✓	✓
Kiribati	✓	✓		✓	✓	✓	✓	✓	✓
Marshall Islands		✓	✓	✓	✓	✓	✓	✓	✓
Nauru	✓				✓	✓	✓	✓	✓
New Zealand	✓	✓	✓		✓	✓	✓	✓	✓
Niue		✓		✓		✓	✓	✓	✓
Palau		✓	✓	✓	✓	✓	✓	✓	✓
Papua New Guinea	✓	✓			✓	✓	✓	✓	✓
Samoa		✓	✓		✓	✓	✓	✓	✓
Solomon Islands	✓	✓				✓	✓	✓	✓
Tonga	✓	✓	✓		✓	✓	✓	✓	✓
Tuvalu		✓		✓		✓	✓	✓	✓
Vanuatu	✓	✓	✓			✓	✓	✓	✓

Symbols: FSM = Federated States of Micronesia; ✓ = ratified, acceded or accepted; s = signed, but not ratified

### 3) A selection of key regional agreements in the Pacific:

- Plant Protection Agreement for the South East Asia and Pacific Region (1956);
- Convention on Fishing and Conservation of the Living Resources of the High Seas (1958);
- Convention on Conservation of Nature in the South Pacific (Apia Convention, 1976);
- South Pacific Forum Fisheries Agency Convention (SPFF Convention, 1979);
- Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest (1982);
- South Pacific Nuclear Free Zone Treaty (1985),
- Convention for the Protection of the Natural Resources and the Environment of the South Pacific Region (Noumea/SPREP Convention, 1986);
- Protocol for the Prevention of Pollution of the South Pacific Region by Dumping ('Protocol 1' in the table below, 1986);
- Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region ('Protocol 2' in the table below, 1986);

- Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (SPTT/South Pacific Tuna Treaty, 1987);
- Agreement on Implementation of US-South Pacific Treaty on Fisheries (1987);
- Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (1989);
- Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (1992);
- Agreement Establishing the South Pacific Regional Environment Program (1993);
- Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (Waigani Convention, 1995);
- Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention, 2000);
- Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO, 2009).

Many of these agreements may be accessed from the websites for the Pacific Islands Treaty Series (PITS) and The Pacific Regional Environment Programme (SPREP).<sup>198</sup> As noted earlier, SPREP is the designated Pacific regional clearinghouse mechanism for MEAs.

**Table 3**

COUNTRY	APIA CONVENTION	SPFF CONVENTION	NOUMEA CONVENTION	PROTOCOL 1	PROTOCOL 2	WAIGANI CONVENTION
Australia	✓	✓	✓	s	✓	✓
Cook Islands	✓	✓	✓	✓	✓	✓
FSM		✓	✓	✓	✓	✓
Fiji	✓	✓	✓	✓	✓	✓
Kiribati		✓				✓
Marshall Islands		✓	✓	✓	✓	
Nauru		✓	✓	✓	✓	s
New Zealand		✓	✓	✓	✓	✓
Niue		✓				✓
Palau		✓	s	s	s	s
Papua New Guinea	✓	✓	✓	✓	✓	✓
Samoa	✓	✓	✓	✓	✓	✓
Solomon Islands		✓	✓	✓	✓	✓
Tonga		✓				✓
Tuvalu		✓	s	s	s	✓
Vanuatu		✓				✓

Symbols: FSM = Federated States of Micronesia; ✓ = ratified, acceded or accepted; s = signed, but not ratified

198 The PITS was last updated in April 2009 at <http://www.pacilii.org/pits/>. This innovative PacLII facility is managed jointly by the School of Law at the University of the South Pacific and The Pacific Islands Legal Information Institute. SPREP provides comprehensive materials and links to relevant environmental databases, <http://www.sprep.org>

## 6.8. Annex H – Reference Texts and Electronic Resources

### 6.8.1. Principles of the Stockholm Declaration (1972)

#### 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 all countries against pollution should be supported.

#### Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

#### Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

#### Principle 9

Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

#### Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account.

### **Principle 11**

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

### **Principle 12**

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

### **Principle 13**

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

### **Principle 14**

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

### **Principle 15**

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.

### **Principle 16**

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

### **Principle 17**

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the 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 protect and improve the environment in order to enable man to develop in every respect.

### **Principle 20**

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

### **Principle 21**

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

### **Principle 22**

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

### **Principle 23**

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

### **Principle 24**

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

### **Principle 25**

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

### **Principle 26**

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

## **6.8.2. Principles of the Rio Declaration (1992)**

### **Principle 1**

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

### **Principle 2**

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

### **Principle 3**

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

### **Principle 4**

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

### **Principle 5**

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

### **Principle 6**

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

### **Principle 7**

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

### **Principle 8**

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

### **Principle 9**

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

### **Principle 10**

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

### **Principle 11**

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

### **Principle 12**

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

### **Principle 13**

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

### **Principle 14**

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

### **Principle 15**

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

### **Principle 16**

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

### **Principle 17**

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

### **Principle 18**

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

### **Principle 19**

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

### **Principle 20**

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

### **Principle 21**

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

### **Principle 22**

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

### **Principle 23**

The environment and natural resources of people under oppression, domination and occupation shall be protected.

### **Principle 24**

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

### **Principle 25**

Peace, development and environmental protection are interdependent and indivisible.

### **Principle 26**

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

### **Principle 27**

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

## 6.8.3. Annex I – Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies to the United Nations Framework Convention on Climate Change<sup>199</sup>

### I. Scope

#### Rule 1

These rules of procedure shall apply to any session of the Conference of the Parties to the Convention convened in accordance with Article 7 of the Convention.

### II. Definitions

#### Rule 2

For the purposes of these rules:

1. “Convention” means the United Nations Framework Convention on Climate Change, adopted at New York on 9 May 1992 and opened for signature in Rio de Janeiro on 4 June 1992;
2. “Parties” means Parties to the Convention;
3. “Conference of the Parties” means the Conference of the Parties established by Article 7 of the Convention;
4. “Session” means any ordinary or extraordinary session of the Conference of the Parties convened in accordance with Article 7 of the Convention;
5. “Regional economic integration organization” means an organization defined in Article 1, paragraph 6 of the Convention;
6. “President” means the President of the Conference of the Parties elected in accordance with Rule 22, paragraph 1 of these rules;
7. “Secretariat” means the permanent secretariat designated by the Conference of the Parties in accordance with Article 8, paragraph 3 of the Convention.
8. “Subsidiary body” means those bodies established by Articles 9 and 10 of the Convention, as well as any body, including committees and working groups, established pursuant to Article 7(2)(i) of the Convention.

<sup>199</sup> COP15 decided that, as at previous sessions, the draft rules of procedure contained in document FCCC/CP/1996/2 should continue to be applied, with the exception of draft rule 42.

### III. Place of Sessions

#### Rule 3

The sessions of the Conference of the Parties shall take place at the seat of the secretariat, unless the Conference of the Parties decides otherwise or other appropriate arrangements are made by the secretariat in consultation with the Parties.

### IV. Dates of Sessions

#### Rule 4

1. Ordinary sessions of the Conference of the Parties shall be held once every year, unless the Conference of the Parties decides otherwise.
2. At each ordinary session, the Conference of the Parties shall decide on the date and duration of the next ordinary session. The Conference of the Parties should endeavour not to hold such a session at a time which would make the attendance of a significant number of delegations difficult.
3. Extraordinary sessions of the Conference of the Parties shall be held at such times as may be deemed necessary by the Conference of the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to them, in a timely manner, by the secretariat, it is supported by at least one third of the Parties.
4. In the case of an extraordinary session held at the written request of a Party, it shall be held not more than ninety days after the date at which the request is supported by at least one third of the Parties in accordance with paragraph 3 of this rule.

#### Rule 5

The secretariat shall notify all Parties of the dates and venue of a session at least two months before the session is held.



## V. Observers

### Rule 6

1. The United Nations, its specialized agencies, any international entity or entities entrusted by the Conference of the Parties pursuant to Article 11 of the Convention with the operation of the financial mechanism, and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers.
2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session, unless at least one third of the Parties present at the session object.

### Rule 7

1. Any body or agency, whether national or international, governmental or nongovernmental, which is qualified in matters covered by the Convention and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer may be so admitted unless at least one third of the Parties present at the session object.
2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object.

### Rule 8

The secretariat shall notify those entitled to be observers pursuant to Rules 6 and 7 above of the date and venue of any session scheduled by the Conference of the Parties so that they may be represented by observers.

## VI. Agenda

### Rule 9

In agreement with the President, the secretariat shall draft the provisional agenda of each session.

### Rule 10

The provisional agenda for each ordinary session shall include, as appropriate:

- (a) Items arising from the articles of the Convention, including those specified in Article 7 therein;
- (b) Items the inclusion of which has been decided at a previous session;
- (c) Items referred to in Rule 16 of the present rules of procedure;
- (d) Any item proposed by a Party and received by the secretariat before the provisional agenda is circulated;
- (e) The proposed budget as well as all questions pertaining to the accounts and financial arrangements.

### Rule 11

For each ordinary session, the provisional agenda, together with supporting documents, shall be distributed in the official languages by the secretariat to the Parties at least six weeks before the opening of the session.

### Rule 12

The secretariat shall, in agreement with the President, include any item which is proposed by a Party and has been received by the secretariat after the provisional agenda has been produced, but before the opening of the session, in a supplementary provisional agenda.

### Rule 13

The Conference of the Parties when adopting the agenda may decide to add, delete, defer or amend items. Only items which are considered by the Conference of the Parties to be urgent and important may be added to the agenda.

### Rule 14

The provisional agenda for an extraordinary session shall consist only of those items proposed for consideration in the request for the holding of the extraordinary session. It shall be distributed to the Parties at the same time as the invitation to the extraordinary session.

### **Rule 15**

The secretariat shall report to the Conference of the Parties on the administrative and budgetary implications of all substantive agenda items submitted to the session, before they are considered by it. Unless the Conference of the Parties decides otherwise, no such substantive agenda item shall be considered until at least forty-eight hours after the Conference of the Parties has received the report of the secretariat on the administrative and budgetary implications.

### **Rule 16**

Any item of the agenda of an ordinary session, consideration of which has not been completed at the session, shall be included automatically in the agenda of the next ordinary session, unless otherwise decided by the Conference of the Parties.

## **VII. Representation and Credentials**

### **Rule 17**

Each Party participating in a session 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.

### **Rule 18**

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

### **Rule 19**

The credentials of representatives as well as the names of alternate representatives and advisers shall be submitted to the secretariat if possible not later than twenty-four hours after the opening of the session. Any later change in the composition of the delegation shall also be submitted to the secretariat. The credentials shall be issued either 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.

### **Rule 20**

The Bureau of any session shall examine the credentials and submit its report to the Conference of the Parties.

### **Rule 21**

Representatives shall be entitled to participate provisionally in the session, pending a decision by the Conference of the Parties to accept their credentials.

## **VIII. Officers**

### **Rule 22**

1. At the commencement of the first meeting of each ordinary session, a President, seven Vice-Presidents, the Chairmen of the subsidiary bodies established by Articles 9 and 10 of the Convention, and a Rapporteur shall be elected from among the representatives of the Parties present at the session. They will serve as the Bureau of the session. Each of the five regional groups shall be represented by two Bureau members and one Bureau member shall represent the small island developing states. The offices of President and Rapporteur shall normally be subject to rotation among the five regional groups.
2. The officers referred to in paragraph 1 above, shall remain in office until their successors are elected at the next ordinary session and shall serve in that capacity at any intervening extraordinary sessions. No officer may serve on the Bureau for more than two consecutive terms of one year.
3. The President shall participate in the session in that capacity and shall not at the same time exercise the rights of a representative of a Party. The Party concerned shall designate another representative who shall be entitled to represent the Party in the session and to exercise the right to vote.

### **Rule 23**

1. In addition to exercising the powers conferred upon the President elsewhere by these rules, the President shall declare the opening and closing of the session, preside at the meetings of the session, ensure the observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall Rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat.
2. The President may propose to the Conference of the Parties the closure of the list of speakers, a limitation on the time to be allowed to speakers

and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

3. The President, in the exercise of the functions of that office, remains under the authority of the Conference of the Parties.

#### **Rule 24**

The President, if temporarily absent from a meeting or any part thereof, shall designate a Vice-President to act as President. The President so designated shall not at the same time exercise the rights of a representative of a Party.

#### **Rule 25**

If an officer of the Bureau resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, a representative of the same Party shall be named by the Party concerned to replace the said officer for the remainder of that officer's mandate.

#### **Rule 26**

At the first meeting of each ordinary session, the President of the previous ordinary session, or in the absence of the President, a Vice-President, shall preside until the meeting has elected a President for the session.

### **IX. Subsidiary Bodies**

#### **Rule 27**

1. These rules shall apply mutatis mutandis to the proceedings of the subsidiary bodies.
2. The Conference of the Parties may establish, in accordance with Article 7.2(i), such subsidiary bodies as are deemed necessary for the implementation of the Convention.
3. In the case of a subsidiary body that is not open-ended, a majority of the Parties designated by the Conference of the Parties to participate therein shall constitute a quorum.
4. The Conference of the Parties shall decide on the dates of the sessions of the subsidiary bodies, taking note of the desirability of holding such sessions in conjunction with the sessions of the Conference of the Parties.

5. Unless the Conference of the Parties decides otherwise, the Chairman of any subsidiary body other than those established by Articles 9 and 10 of the Convention, shall be elected by that subsidiary body from among the representatives of the Parties present at the session. The Chairmen, Vice-Chairmen and Rapporteurs of such subsidiary bodies shall be elected with due regard to the principle of equitable geographical representation and shall not serve for more than two consecutive terms of one year.

6. Each subsidiary body shall elect its own Vice-Chairman and Rapporteur.

7. Subject to Articles 9 and 10 of the Convention, the Conference of the Parties shall determine the matters to be considered by each subsidiary body and may authorize the President, upon the request of the Chairman of a subsidiary body, to adjust the allocation of work.

### **X. Secretariat**

#### **Rule 28**

1. The head of the secretariat of the Convention, or the representative of the head of the secretariat, shall act in that capacity in all sessions of the Conference of the Parties and of its subsidiary bodies.
2. The head of the secretariat of the Convention shall arrange for the provision of staff and services required by the Conference of the Parties and its subsidiary bodies, within available resources. The head of the secretariat of the Convention shall manage and direct such staff and services and provide appropriate support and advice to the presiding and other officers of the Conference of the Parties and of its subsidiary bodies.

#### **Rule 29**

In addition to the functions specified in Article 8 of the Convention, the secretariat shall in accordance with these rules:

- (a) Arrange for interpretation at the session;
- (b) Receive, translate, reproduce and distribute the documents of the session;
- (c) Publish and distribute the official documents of the session;

- (d) Make and arrange for keeping of sound recordings of the session;
- (e) Arrange for the custody and preservation of the documents of the session; and
- (f) Perform all other work that the Conference of the Parties may require.

## XI. Conduct of Business

### Rule 30<sup>200</sup>

1. Meetings of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise.
2. Meetings of the subsidiary bodies shall be held in private unless the Conference of the Parties decides otherwise.

### Rule 31

The President shall not declare a meeting of the Conference of the Parties open or permit the debate to proceed unless at least one third of the Parties to the Convention are present. The presence of two thirds of the Parties to the Convention shall be required for any decision to be taken.

### Rule 32

1. No one may speak at a meeting of the Conference of the Parties without having previously obtained the permission of the President. Subject to Rules 33, 34, 35 and 38, the President shall call upon speakers in the order in which they signify their desire to speak. The secretariat shall maintain a list of speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.
2. The Conference of the Parties may, on a proposal from the President or from any Party, limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of and two against a proposal to set such limits.

When the debate is limited and a speaker exceeds the allotted time, the President shall call the speaker to order without delay.

### Rule 33

The Chairman or Rapporteur of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary body.

### Rule 34

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. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

### Rule 35

Any motion calling for a decision on the competence of the Conference of the Parties to discuss any matter or to adopt a proposal or an amendment to a proposal submitted to it shall be put to the vote before the matter is discussed or a vote taken on the proposal or amendment in question.

### Rule 36

Proposals and amendments to proposals shall normally be introduced in writing by the Parties and handed to the secretariat, which shall circulate copies to delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting unless copies of it have been circulated to delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments to proposals or of procedural motions even though these amendments or motions have not been circulated or have been circulated only the same day.

### Rule 37

The text of any proposed amendment, annex or protocol to the Convention and of any proposed amendment to an annex, shall be communicated to the Parties by the secretariat at least six months before the session at which it is proposed for adoption.

200 Paragraph 106 (c) of the Report of the Committee on its eighth session (A/AC.237/41) states: "Consistent with the Rules of Procedure of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, upon which the draft rules were largely based, Rule 30 of the draft rules of procedure would be interpreted as permitting duly accredited observers to participate in 'private' meetings."

### Rule 38

1. Subject to Rule 34, the following motions shall have precedence in the order indicated below over all other proposals or motions:
  - (a) To suspend the meeting;
  - (b) To adjourn the meeting;
  - (c) To adjourn the debate on the question under discussion;
  - (d) To close the debate on the question under discussion.
2. Permission to speak on a motion falling within (a) to (d) above shall be granted only to the proposer and, in addition, to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

### Rule 39

A proposal or motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the proposal or motion has not been amended. A proposal or motion withdrawn may be reintroduced by any other Party.

### Rule 40

When a proposal has been adopted or rejected, it may not be reconsidered at the same session, unless the Conference of the Parties, by a two-thirds majority of the Parties present and voting, decides in favour of reconsideration. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter, after which it shall be put immediately to the vote.

## XII. Voting

### Rule 41

1. Each Party shall have one vote, except as provided for in paragraph 2 of this rule.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

### Rule 42

#### [1. Alternative A

The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, except:

- (a) as otherwise provided by the Convention, the financial rules referred to in Article 7, paragraph 2 (k) of the Convention or the present rules of procedure[.] [;]
- [(b) for a decision to adopt a proposed protocol, which shall be taken by [consensus] [a three-fourths majority of the Parties present and voting][.] [;]
- [(c) for decisions under paragraph 3 of Article 4 and paragraphs 1, 3 or 4 of Article 11 of the Convention, which shall be taken by consensus.]

#### 1. Alternative B

1. Decisions on matters of substance shall be taken by consensus, except that decisions on financial matters shall be taken by a two-thirds majority vote.
2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting [except that adoption of a motion or proposal to close or limit debate or the list of speakers shall require a two-thirds majority vote of the Parties present and voting].
3. If the question arises as to whether a matter is one of a procedural or substantive nature, the President shall Rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the Parties present and voting.
4. If, on matters other than elections, a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.
5. For the purposes of this rule, the phrase "Parties present and voting" means Parties present at the meeting at which voting takes place and casting an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.]

### **Rule 43**

If two or more proposals relate to the same question, the Conference of the Parties, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted. The Conference of the Parties may, after each vote on a proposal, decide whether to vote on the next proposal.

### **Rule 44**

Any representative may request that any part of a proposal or of an amendment to a proposal be voted on separately. The President shall allow the request unless a Party objects. If an objection is made to the request for division, the President shall permit two representatives to speak, one in favour of and the other against the request, after which it shall be put immediately to the vote.

### **Rule 45**

If the request referred to in Rule 44 is allowed or adopted, those parts of a proposal or of an amendment to a proposal which are approved shall then be put to the vote as a whole. If all the operative parts of a proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

### **Rule 46**

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from, or revises parts of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

### **Rule 47**

If two or more amendments are moved to a proposal, the Conference of the Parties shall first vote on the amendment furthest removed in substance from the original proposal, then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. The President shall determine the order of voting on the amendments under this rule.

### **Rule 48**

Voting, except for elections, shall normally be by show of hands. A roll-call vote shall be taken if one is requested by any Party. It shall be taken in the English alphabetical order of the names of the Parties participating in the session, beginning with the Party whose name is drawn by lot by the President. However, if at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question.

### **Rule 49**

The vote of each Party participating in a roll-call vote shall be recorded in the relevant documents of the session.

### **Rule 50**

After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President may permit the Parties to explain their votes, either before or after the voting. The President may limit the time to be allowed for such explanations. The President shall not permit the proposer of a proposal or of an amendment to a proposal to explain his vote on his own proposal or amendment, except if it has been amended.

### **Rule 51**

All elections shall be held by secret ballot, unless otherwise decided by the Conference of the Parties.

### **Rule 52**

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the votes cast by the Parties present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.
2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the procedure set forth in paragraph 1 of this rule.

### **Rule 53**

1. When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot the largest number of votes and a majority of the votes cast by the Parties present and voting shall be deemed elected.
2. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled, provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation.
3. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

## XIII. Languages

### **Rule 54**

The official languages of the Conference of the Parties shall be Arabic, Chinese, English, French, Russian and Spanish.

### **Rule 55**

1. Statements made in an official language shall be interpreted into the other official languages.
2. A representative of a Party may speak in a language other than an official language if the Party provides for interpretation into one such official language.

### **Rule 56**

Official documents of the sessions shall be drawn up in one of the official languages and translated into the other official languages.

## XIV. Sound Records of the Sessions of the Conference of the Parties

### **Rule 57**

Sound records of the sessions of the Conference of the Parties, and whenever possible of the subsidiary bodies, shall be kept by the secretariat in accordance with the practice of the United Nations.

## XV. Amendments to Rules of Procedure

### **Rule 58**

1. These rules of procedure may be amended by consensus by the Conference of the Parties.
2. Paragraph 1 of this rule shall likewise apply in case the Conference of the Parties deletes an existing rule of procedure or adopts a new rule of procedure.

## XVI. Overriding Authority of the Convention

### **Rule 59**

In the event of any conflict between any provision of these rules and any provision of the Convention, the Convention shall prevail.

## 6.8.4. Select bibliography

This bibliography of selected texts is designed as a springboard for further research on international environmental negotiations. The section is sliced into categories:

1. Multilateral Environmental Negotiations
2. Climate Change Negotiations
3. General Negotiations
4. The Formation, Features and Interpretation of Treaty Law
5. International and Regional Environmental Law
6. Rules of Procedure
7. Pacific Small Island Developing States (Pacific SIDS)

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## **7. Pacific Small Island Developing States (Pacific SIDS)**

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## 6.8.5. Global and regional organizations

Alliance of Small Island States (AOSIS)

<http://aosis.info/>

Asia Pacific Economic Cooperation (APEC)

<http://www.apec.org/>

BirdLife International

[www.birdlife.org/](http://www.birdlife.org/)

Commission for Environmental Cooperation

<http://www.cec.org/>

Conservation International (CI)

[www.conservation.org](http://www.conservation.org)

Environmental Defender's Offices (EDO)

[www.edo.org.au/](http://www.edo.org.au/)

Environmental Defender's Office NSW

[www.edo.org.au/edonsw/](http://www.edo.org.au/edonsw/)

European Commission

<http://www.europa.eu>

European Environment Agency (EEA)

<http://www.eea.europa.eu/>

Food and Agriculture Organization of the United Nations (FAO)

<http://www.fao.org/>

Forests and Forestry in Small Island Developing States

<http://www.fao.org/forestry/sids/en/>

Small Island Developing States

[http://www.fao.org/sids/index\\_en.asp](http://www.fao.org/sids/index_en.asp)

Foundation for International Environmental Law and Development (FIELD)

<http://www.field.org.uk/>

G-77

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

Global Environment Facility (GEF)

<http://www.thegef.org>

GEF Project Database

[http://www.thegef.org/gef/project\\_list](http://www.thegef.org/gef/project_list)

Global Forum on Oceans, Coasts and Islands

<http://www.globaloceans.org>

Greenpeace International

<http://www.greenpeace.org/>

Greenpeace Australia-Pacific

<http://www.greenpeace.org/australia/en/>

Intergovernmental Forum on Chemical Safety (IFCS)

<http://www.who.int/ifcs/en>

International Council for Science (ICSU)

<http://www.icsu.org/>

International Fund for Agricultural Development (IFAD)

<http://www.ifad.org/>

International Labour Organization (ILO)

<http://www.ilo.org>

International Maritime Organization (IMO)

<http://www.imo.org>

International Organization for Standardization (ISO)

<http://www.iso.org/iso/home.html>

International Panel on Climate Change (IPCC)

<http://www.ipcc.ch/>

International Seabed Authority (ISA)

<http://www.isa.org.jm/>

International Union for the Conservation of Nature (IUCN)

[www.iucn.org](http://www.iucn.org)

IUCN – Oceania

<http://www.iucn.org/oceania>

New Zealand Centre for Environmental Law (NZCEL)

[www.nzcel.auckland.ac.nz](http://www.nzcel.auckland.ac.nz)

Organization for Economic Cooperation and Development (OECD)

<http://www.oecd.org>

Pacific Islands Development Programme (PIDP)

<http://www.eastwestcenter.org/pacific-islands-development-program/about-pidp>

Pacific Islands Report

<http://pipd.org/pireport/index.htm>

Pacific Islands Forum Fisheries Agency (FFA)

<http://www.ffa.int/>

Pacific Islands Forum Secretariat (PIFS)

[www.forumsec.org.fj](http://www.forumsec.org.fj)

Pacific Islands Law Officers' Network (PILON)

<http://www.pilonsec.org/>

Pacific Small Island Developing States (Pacific SIDS):

<http://pacificsids.org/>

Secretariat of the Pacific Community (SPC)

<http://www.spc.int>

SPC Applied Geoscience and Technology Division  
(SPC-SOPAC)

<http://www.sopac.org/>

Secretariat of the Pacific Regional Environment  
Programme (SPREP)

<http://www.sprep.org>

Multilateral Environmental Agreements:  
Pacific Regional Clearinghouse Mechanism  
<http://www.sprep.org/Multilateral-Environmental-Agreements/pacific-regional-clearinghouse-mechanism>

Stakeholder Forum

<http://www.stakeholderforum.org>

Earth Summit 2012

<http://www.earthsummit2012.org/>

The World Bank Group

<http://www.worldbank.org>

United Nations

<http://www.un.org/>

Dag Hammarskjöld Library

<http://www.un.org/Depts/dhl/index.html>

Research Guide prepared by the Dag  
Hammarskjöld Library

<http://www.un.org/Depts/dhl/resguide/specenv.htm>

Databases

<http://www.un.org/en/databases/>

Delegates website – deleGATE:

<http://www.un.int/wcm/content/site/portal>

Delegates' Handbook

<http://www.un.int/wcm/content/site/portal/cache/offonce/home/pid/6404>

Editorial Manual Online

<http://69.94.137.26/editorialcontrol/>

General Assembly

<http://www.un.org/en/ga>

International Law

<http://www.un.org/en/law/index.shtml>

Legal Publications

<http://www.un.org/law/UNlegalpublications/index.html>

Office of Legal Affairs (OLA)

<http://untreaty.un.org/ola/>

Official Documents System (ODS)

<http://ods.un.org/>

News Centre

<http://www.un.org/news/>

United Nations Conference on Trade and  
Development (UNCTAD)

<http://www.unctad.org/>

United Nations Department of Economic and Social  
Affairs (UN DESA)

<http://www.un.org/en/development/desa/index.html>

Division for Sustainable Development (DSD)

<http://sustainabledevelopment.un.org/>

Commission on Sustainable Development (CSD)

<http://sustainabledevelopment.un.org/csd.html>

Rio+20, 2012

<http://sustainabledevelopment.un.org/rio20.html>

Major Agreements and Conventions

<http://sustainabledevelopment.un.org/index.php?menu=122>

Small Island Developing States

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

United Nations Development Programme (UNDP)

<http://www.undp.org>

Fiji Multi-Country Office

<http://www.undp.org.fj/>

Pacific Centre

<http://www.undppc.org.fj/>

United Nations Economic and Social Commission for  
Asia and the Pacific (ESCAP)

<http://www.unescap.org/>

Pacific Operations Centre (EPOC)

<http://www.unescap.org/EPOC/index.asp>

Small Island Developing States

<http://www.unescap.org/LDCCU/SIDS.asp>

United Nations Economic and Social Council  
(ECOSOC)

<http://www.un.org/en/ecosoc/>

United Nations Economic Commission for Europe (UNECE)

<http://www.unece.org/>

United Nations Educational, Scientific and Cultural Organization (UNESCO)

<http://www.unesco.org/>

Sustainable Living in Small Island Developing States

<http://www.unesco.org/new/en/natural-sciences/priority-areas/small-island-developing-states>

United Nations Environment Programme (UNEP)

<http://www.unep.org/>

Division of Environmental Law and Conventions

<http://www.unep.org/delc>

Regional Office for Asia and the Pacific (ROAP)

<http://www.unep.org/roap/>

Regional Resource Centre for Asia and the Pacific (RRC.AP)

<http://www.rrcap.unep.org/>

UNEP in the GEF

<http://www.unep.org/dgef/>

United Nations Forum on Forests (UNFF)

<http://www.un.org/esa/forests>

United Nations Industrial Development Organization (UNIDO)

<http://www.unido.org/>

United Nations Institute for Training and Research (UNITAR)

<http://www.unitar.org/>

Glossary of Terms for UN Delegates

[http://www.unitar.org/mdp/sites/unitar.org/mdp/files/Glossary\\_E.pdf](http://www.unitar.org/mdp/sites/unitar.org/mdp/files/Glossary_E.pdf)

United Nations University (UNU)

<http://unu.edu/>

United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS)

<http://www.unohrlls.org/>

University of the South Pacific (USP)

<http://www.usp.ac.fj/>

Western and Central Pacific Fisheries Commission (WCPFC)

<http://www.wcpfc.int/>

Wildlife Conservation Society (WCS)

<http://www.wcs.org/>

World Health Organization (WHO)

<http://www.who.int/>

World Meteorological Organization

<http://www.wmo.int/>

World Trade Organization (WTO)

<http://www.wto.org/>

World Wildlife Fund South Pacific (WWF SPP0)

<http://www.wwfpacific.org.fj/>

## 6.8.6. Electronic resources for international conventions

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention, 1989)

<http://basel.int>

Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC, 1972)

<http://whc.unesco.org>

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, 1998)

<http://www.unece.org/env/pp/introduction.html>

Convention on the Conservation of Migratory Species of Wild Animals (CMS/Bonn Convention, 1979)

<http://www.cms.int>

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973)

<http://www.cites.org>

Convention on Long-Range Transboundary Air Pollution (LRTAP, 1979)

<http://www.unece.org/env/lrtap>

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention/LC '72, 1972)

<http://www.imo.org>

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention, 1971)

<http://www.ramsar.org>

International Convention for the Prevention of Pollution from Ships (MARPOL, 1973 as modified by the Protocols of 1978 and 1997 relating thereto).

<http://www.imo.org>

International Convention for the Regulation of Whaling (IWC/Whaling Convention, 1946)

<http://www.iwcoffice.org/convention.htm>

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR, 2001)

<http://www.planttreaty.org>

International Tropical Timber Agreement (2006)

<http://www.itto.int/itta/>

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC/Rotterdam Convention, 1998)

<http://www.pic.int>

Stockholm Convention on Persistent Organic Pollutants (POPs/Stockholm Convention, 2001)

<http://chm.pops.int/>

Rules of Procedure

<http://chm.pops.int/Convention/COP/RulesofProcedure/tabid/2411/Default.aspx>

United Nations Framework Convention on Biological Diversity (CBD/Biodiversity Convention, 1992)

<http://www.cbd.int>

Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2000)

<http://bch.cbd.int/protocol/>

Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (2010)

<http://bch.cbd.int/protocol/supplementary/>

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 (2010)

<http://www.cbd.int/abs/>

Rules of Procedure

<http://www.cbd.int/convention/rules.shtml>

United Nations Framework Convention on Climate Change (UNFCCC, 1992)

<http://www.unfccc.int>

Glossary of Climate Change Acronyms

[http://unfccc.int/essential\\_background/glossary/items/3666.php](http://unfccc.int/essential_background/glossary/items/3666.php)

Kyoto Protocol to the UNFCCC (Kyoto Protocol, 1997)

[http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php)

Rules of Procedure (FCCC/CP/1996/2)

<http://unfccc.int/resource/docs/cop2/02.pdf>

United Nations Convention on the Law of the Sea (UNCLOS, 1982)

<http://www.un.org/Depts/los>

Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994)

[http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_part\\_xi.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_part_xi.htm)

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 (FSA/Fish Stock Agreement, 1995)

[http://www.un.org/depts/los/fish\\_stocks\\_conference/fish\\_stocks\\_conference.htm](http://www.un.org/depts/los/fish_stocks_conference/fish_stocks_conference.htm)

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD/Desertification Convention, 1994)

<http://www.unccd.int/>

Vienna Convention for the Protection of the Ozone Layer (1985)

[http://ozone.unep.org/new\\_site/en/index.php](http://ozone.unep.org/new_site/en/index.php)

Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

[http://ozone.unep.org/new\\_site/en/Treaties](http://ozone.unep.org/new_site/en/Treaties)

The Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol

<http://www.multilateralfund.org>

Vienna Convention on the Law of Treaties (VCLT, 1969)  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (VCLT-SIO, 1986)  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_2\\_1986.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf)

## Other sources for accessing MEA texts

ECOLEX: The Gateway to Environmental Law (FAO/IUCN/UNEP)  
<http://www.ecolex.org>

Electronic Information System for International Law (EISIL, American Society of International Law)  
<http://www.eisil.org/>

FAOLEX (FAO)  
<http://faolex.fao.org/faolex/>

International Environmental Agreements (IEA) Database Project (University of Oregon)  
<http://iea.uoregon.edu/>

Multilateral Environmental Agreements: Pacific Regional Clearinghouse Mechanism (SPREP)  
<http://www.sprep.org/Multilateral-Environmental-Agreements/pacific-regional-clearinghouse-mechanism>

Multilaterals Project (The Fletcher School, Tufts University)  
<http://fletcher.tufts.edu/Multilaterals/Conventions>

Pacific Islands Treaty Series (PITS)  
<http://www.paclii.org/pits/>

United Nations Environment Programme  
Division of Environmental Law and Conventions  
<http://www.unep.org/delc>

United Nations Information Portal on Multilateral Environmental Agreements (InforMEA)  
<http://www.informe.org>

United Nations Treaty Series Online Collection and Status Information  
<http://treaties.un.org/>

Treaty Handbook  
<http://treaties.un.org/doc/source/publications/THB/English.pdf>

## MEA reporting services

International Institute for Sustainable Development (IISD)  
<http://www.iisd.ca/>

Earth Negotiations Bulletin  
<http://www.iisd.ca/voltoc.html>

MEA Information Linkages and MEA Bulletin  
<http://www.iisd.ca/email/mea-l.htm>

SIDS Policy & Practice  
<http://sids-l.iisd.org/>

UNCSD Rio+20 Subregional Preparatory Committee for Pacific Countries  
<http://www.iisd.ca/uncsd/prepp/>

# Glossary

## User notes

This glossary briefly lists the definitions for the most common terms and acronyms used in negotiations and decisions pursuant to diverse multilateral environmental agreements.<sup>201</sup> When an acronym, word, or phrase in a definition is underlined, the acronym, word, or phrase has its own separate definition in the glossary. When a definition is the definition provided under an MEA, the source has been provided in parenthesis (e.g. “CBD”).

## A

### Aarhus Convention

Shorthand for the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Adopted in 1998, entered into force in 2001.

### ABS

Access to genetic resources and benefit-sharing. Acronym used to refer to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization as set out in the CBD.

### ACAP

Agreement on the Conservation of Albatrosses and Petrels. Adopted in 2001, entered into force in 2004.

### Acceptance

In practice acceptance is used instead of ratification when, at a national level, constitutional law does not require an agreement to be ratified by the Head of State. Acceptance has the same legal effect as ratification.

### Accession

Act whereby a State becomes a Party to an international agreement already negotiated and closed for signature. Accession has the same legal effect as ratification, although an acceding State has not signed the agreement.

### Acclamation

A mode of adoption of decisions without voting. The decision is considered adopted when all delegations have indicated their support by applause.

### Accreditation

Approval and assertion of the fact that credentials submitted by delegates to a particular meeting are in order.

### Ad hoc

Latin word meaning “for this purpose.” An *ad hoc* committee, for example, is created with a unique and specific purpose or task and once it has studied and reported on a matter, it is discontinued.

### Adaptation

- 1) Actions taken to help communities and ecosystems cope with changing climate conditions (UNFCCC).
- 2) Genetically determined characteristic that enhances the ability of an organism to cope with its environment (CBD).

### Adaptation Fund

Fund established under the Kyoto Protocol to provide support for adaptation projects.

### ADB

Asian Development Bank. Can also stand for the African Development Bank (ADB or AfDB).

### Add.

Stands for “addendum”. Used to reference additions to existing documents.

<sup>201</sup> This glossary is a modified version of a glossary prepared by the Division of Environmental Law and Conventions of UNEP on the basis of publicly available information, including the United Nations Treaty Collection Treaty Reference Guide, websites of the global MEAs, the UNITAR Glossary of Terms for UN Delegates, and literature on international negotiations and international law.

## **Additionality**

- 1) Funding principle envisaged to ensure that the Global Environment Facility funds do not substitute for existing development finance but provide new and additional funding to produce agreed global environmental benefits.
- 2) Approval test for projects under the CDM of the Kyoto Protocol. A CDM project activity is additional if anthropogenic GHG emissions are reduced below the level of emissions that would have occurred in the absence of that project activity. Accordingly, additionality forms the basis for issuing CERs.

## **Adoption**

- 1) Adoption by a country of an international agreement refers to the process of its incorporation into the domestic legal system, through signature, ratification or any other process required under national law.
- 2) Adoption by the international community of an international agreement is the formal act by which the form and content of a proposed treaty text are established.
- 3) Adoption of a decision, resolution, or recommendation is the formal act (e.g. strike of gavel) by which the form and content of a proposed decision, resolution or recommendation are approved by delegations.

## **Ad referendum**

A Latin term meaning “subject to reference.” When a delegate is asked for agreement on a topic he or she is not authorized to give, he or she may agree *ad referendum* (or ad ref.). When a decision is adopted in this manner, the practice is that any Party may re-open debate on the question at the next meeting of the body in question, and if the question is not reopened, it is thereafter considered to be adopted.

## **Advanced Informed Agreement (AIA)**

Principle or procedure whereby the international exchange of resources or products that could have adverse effects on the environment should not proceed without the informed agreement of, or contrary to the decision of, the competent authority in the recipient country.

## **AEWA**

Agreement on the Conservation of African-Eurasian Migratory Waterbirds. Adopted in 1995, entered into force in 1999.

## **AfDB**

African Development Bank Group (sometimes also abbreviated as ADB).

## **Afforestation**

The direct human-induced conversion of land that has not been forested for a period of at least 50 years to forested land through planting, seeding and/or the human induced promotion of natural seed sources (UNFCCC). Should be distinguished from “reforestation”.

## **AGBM**

Ad Hoc Group on the Berlin Mandate.

## **Agenda**

Programme of work during a meeting.

## **Agenda 21**

Programme of action on sustainable development adopted at the UN Conference on Environment and Development in 1992, often referred to as the “Blueprint for Sustainable Development.” Agenda 21 has 40 chapters dealing with all aspects of sustainable development, including social and economic dimensions (combating poverty and promoting human health), conservation and resource management, major groups (e.g. women, indigenous people, business and unions), and means of implementation (e.g. financial resources, transfer of technology, public awareness and education).

## **Agreement**

- 1) Generic term for an international legally binding instrument. In this sense, encompasses several instruments, such as treaties, conventions, protocols or oral agreements.
- 2) Specific term used to designate international instruments that are *sic* “less formal”, thus corresponding to soft law and deal with a narrower range of subject-matter than treaties.

## **AIA**

Advanced Informed Agreement.



### **Alien species**

Species occurring in an area outside of its historically known natural range as a result of intentional or accidental dispersal by human activities. Alien species are not necessarily invasive species.

### **AMCEN**

African Ministerial Conference on the Environment. Established in 1985 to strengthen cooperation between African governments on economic, technical and scientific activities to halt the degradation of Africa's environment. AMCEN plays an important role in providing political guidance to Africa's positions on many MEAs.

### **Amendment**

- 1) A modification or addition to an existing legal instrument (e.g., treaty, convention, or protocol).
- 2) A modification to a proposal under negotiation (e.g., draft decision, draft recommendation, or draft resolution).

### **Anthropogenic emissions**

Greenhouse-gas emissions resulting from human activities and regulated by agreements such as the UNFCCC.

### **AOSIS**

Alliance of Small Island States. A negotiating group and ad hoc coalition of 43 small island and low-lying coastal States in the UNFCCC process. These nations are particularly vulnerable to rising sea levels and thus share common positions on climate change.

### **Approval**

In practice, approval has been used instead of ratification when, at a national level, constitutional law does not require an international agreement to be ratified by the Head of State. Approval has the same legal effect as ratification.

### **ASCOBANS**

Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas. One of the agreements under the CMS. Adopted in 1991, entered into force in 1994.

### **ASEAN**

Association of Southeast Asian Nations. A regional community of 10 States with the aim of accelerating

economic growth and social progress as well as 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 1961.

### **Awké Kon Guidelines**

Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Related to CBD.

## **B**

### **Ballast Water Convention**

Shorthand for the International Convention for the Control and Management of Ships' Ballast Water and Sediments. Adopted in 2004, not yet entered into force.

### **Basel Convention**

Shorthand for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Adopted in 1989, entered into force in 1992.

### **Basel Protocol**

Shorthand for the Basel Protocol on Liability and Compensation to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Adopted in 1999, not yet entered into force.

### **Baseline**

A projected level of future emissions of a pollutant that reasonably represents the emissions that would occur in the absence of a proposed project activity. In the context of the CDM of the Kyoto Protocol, the baseline, together with adjustment for leakage, determines the (extent of) additionality a CDM project and thus also the amount of CERs generated by it.

## **BAT**

Best available technique or best available technology.

## **BCH**

Biosafety clearing-house (in the context of the Biosafety Protocol)

## **BCRCs**

Basel Convention Regional Centres. Centres established under the Basel Convention to assist developing countries and countries with economies in transition (CEITs), within their own region, to achieve the objectives of the Convention, through capacity building for environmentally sound management.

## **Berlin Mandate**

A decision adopted at the first Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) and which led to the adoption of the Kyoto Protocol.

## **Bern Convention**

Shorthand for the Convention on the Conservation of European Wildlife and Natural Habitats. Adopted in 1979, entered into force in 1982.

## **Best available technique**

Most effective and advanced technique, the environmental impacts of which are limited.

## **Binding**

Adjective that means an instrument entails an obligation (usually for States) under international law.

## **Biodiversity**

Shorthand for biological diversity. Variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (CBD, CITES, CMS, Ramsar, WHC).

## **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 2003. 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 564 sites worldwide in over 109 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 Convention

Shorthand for the Convention on the Conservation of Migratory Species of Wild Animals ([CMS](#)). Adopted in 1979, entered into force in 1983.

## 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 report published in 1987 was an outcome of the [Brundtland Commission](#).

## Bureau

A formal structure that oversees the running of [meetings](#). The Bureau is usually composed of representatives of each regional group and a [secretariat](#) representative. In some instances, such as the International Conference on Chemicals Management, an extended bureau may be created that includes intergovernmental organizations and [non-governmental](#) organizations.

## C

### CACAM

Negotiating coalition of countries of Central Asia and the Caucasus, Albania, and the Republic of Moldova.

### Capacity building

Process of developing the technical skills, institutional capability, and personnel to facilitate, for example, the implementation of [MEAs](#).

### Cap and trade

See [Emissions trading](#).

### Carbon Market

A popular term for a trading system through which countries may buy or sell units of [greenhouse-gas](#) emissions in an effort to meet their national limits on emissions, either under the [Kyoto Protocol](#) or under other [agreements](#), such as that among [member States](#) of the [European Union \(EU\)](#).

### 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 in 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](#).

### **Cast**

The action of voting. The term is used in the phrase “to cast a vote”.

### **Caucus**

A group of [like-minded delegations](#), which meet both during and outside negotiations to develop common positions and negotiation strategies.

### **CBD**

Convention on Biological Diversity. Adopted in 1992, entered into force in 1993. One of the [Rio Conventions](#).

### **CCAMLR**

Convention for the Conservation of Antarctic Marine Living Resources (part of the [ATS](#), adopted in 1980 and entered into force in 1982). Acronym also used to reference the Commission that administers the Convention.

### **CCAS**

Convention for the Conservation of Antarctic Seals (part of the [ATS](#), adopted in 1972 and entered into force in 1978).

### **CDM**

[Clean Development Mechanism](#).

### **CEE**

Central and Eastern Europe.

### **CEIT**

Country with Economy in Transition (also [EIT](#)). Designates a country that was formerly a centrally-planned economy and is in transition to a market-oriented economy.

### **CEO**

Chief Executive Officer.

### **CERs**

[Certified Emissions Reductions](#).

### **Certified Emissions Reductions (CERs)**

Unit equal to one metric tonne 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. These substances are 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](#).

### **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) and the Kyoto Protocol.

## Closed-door meeting

Meeting to which access is restricted. Usually restricted to Parties and excludes observers.

## CMS

Convention on the Conservation of 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

A Latin term that usually references a code of law. Also used as shorthand for Codex Alimentarius ("food code") which is 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 United Nations (FAO).

## COFO

Committee on Forestry of the Food and Agriculture Organization of the United Nations (FAO).

## Committee

Subset of a Plenary, open to all Parties, established to perform particular tasks (e.g., drafting committee), address a particular issue (e.g., credentials committee) or a particular set of agenda items (then equivalent to a working group). Committees make recommendations to the Plenary.

## Committee of the Whole (CoW / COW)

Often created by a COP to aid in negotiating text. It consists of the same membership as a COP and is usually intended to operate like a subsidiary body, but covering the full scope of issues of the COP. When the Committee has finished its work, it turns the text over to the COP, which finalizes and then adopts the text during a plenary session.

## Community Forestry

Forestry management that includes local people in planning and implementing forestry activities.

## Complementarity

Funding principle according to which funded activities must be coherent with national programmes and policies to maximize global environmental benefits.

## Compliance

Fulfillment by a Party of its obligations under an international agreement.

### **Compliance Committee**

Committee mandated to review compliance with the provisions of an international agreement. The powers of compliance committees vary according to each agreement.

### **Conference of the Parties (COP)**

One of the designations for the main negotiating body under an international agreement. The COP is a policy-making body that meets periodically to take stock of implementation of the agreement and adopt decisions, resolutions, or recommendations for the future implementation of the agreement.

### **Conference Room Paper (CRP)**

A category of in-session document containing new proposals or outcomes of in-session work and is for use only during the sessions concerned.

### **Consensus**

A mode of adoption of decisions, resolutions, or recommendations without voting. A decision is adopted by consensus if there is no formal explicit objection made. Whether there is consensus on an issue or not is determined by the presiding officer on the basis of the views expressed by delegates and his/her subjective assessment of the sense of the meeting.

### **Contact Group**

A group formed during negotiations to reach consensus on an issue proving particularly contentious. May be established by the COP or a Committee of the Whole (CoW/COW) and is open to all Parties and sometimes to observers.

### **Contracting State**

A State which has consented to be bound by an international agreement, whether or not the international agreement has entered into force (Vienna Convention on the Law of Treaties).

### **Contribution**

Amount that a Party owes annually to the general trust fund of an agreement or an international organization. Determined on the basis of an indicative scale adopted by the governing body of the agreement or the international organization.

### **Convention**

A binding agreement between States. Generally used for formal multilateral instruments with a broad number of Parties.

### **COP**

Conference of the Parties.

### **COP/MOP**

Conference of the Parties to a Convention serving as the 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 organization 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.

### **Council of the European Union**

The Council of the European Union and the European Parliament form the legislative arm of the EU. The Council is composed of Ministers from all the EU Member States and presided by the representative of the country currently holding the Presidency of the EU. Should be distinguished from the Council of Europe and the European Council.

### **COW / CoW**

See Committee of the Whole.

### **CPF**

Collaborative Partnership on Forests. A partnership of 14 international organizations engaged in work with relevance to the management, conservation and sustainable development of forests.

### **CRAMRA**

Convention for the Regulation of Antarctic Mineral Resource Activities (see ATS). Adopted in 1988 and has not entered into force.

### **CRC**

Chemical Review Committee.

## Credentials

A document evidencing a person's authority. Signed by the Head of State or Government or other high authority. Without credentials in order, a person is not considered a delegate and cannot legally act on behalf of his/her State and participate in decision-making.

## Credentials Committee

A committee established by the Plenary of a meeting to review the credentials submitted by delegations.

## CRIC

Committee for the Review of Implementation of the Convention. Within the context of the UNCCD, CRIC is 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 United Nations on sustainable development. Mandated to monitor the implementation of Agenda 21 and the JPOI.

## CST

Committee on Science and Technology. Subsidiary body established under the UN Convention to Combat Desertification (UNCCD) to provide advice to the COP on scientific and technical matters.

## CTE

WTO Committee on Trade and Environment.

## CTESS

WTO Committee on Trade and Environment in Special Session.

## D

## DAC

Development Assistance Committee of the OECD.

## DCPI

Division of Communications and Public Information of UNEP.

## Decision

Formal expression of the will of the governing body of an international organization or international agreement. Usually binding but may also correspond to soft law.

## Declaration

A formal statement of aspirations issued by a meeting. Usually issued by high-level representatives. A declaration is not binding.

## Declaratory

Refers to something that declares an intention, opinion or reserve, rather than expressing an agreed commitment.

## Declaratory interpretation

Statement made at the time of signature or ratification of an international agreement. Specifies a State's interpretation of one or more of the provisions of the agreement.

## Deforestation

The direct human-induced conversion of forested land to non-forested land (UNFCCC).

## DELIC

Division of Environmental Law and Conventions of UNEP.

## Delegate

Representative of a State or organization who has been authorized to act on its behalf and whose credentials are in order.

## Delegation

Team of delegates to a meeting from the same country or organization.

## DEPI

UNEP Division of Environmental Policy Implementation.

## Desertification

Degradation of land in arid, semi-arid and dry sub-humid areas, resulting from various factors, including climatic variations and human activities (UNCCD).

## Designated National Authority

The national agency responsible for addressing specific issues or acting as the focal point for an MEA.

## DEWA

[UNEP](#) Division of Early Warning and Assessment.

## DGEFC

[UNEP](#) Division of Global Environment Facility Cooperation.

## Diplomatic Conference

Conference of [plenipotentiaries](#) held to adopt and sign an international [agreement](#). The text of the agreement has usually been negotiated before the Conference convenes.

## Dispute

Disagreement on a point of law (e.g., the interpretation of an international [agreement](#)) or fact (e.g., an action taken by a State).

## DNA

Designated National Authority.

## Drafting group

Informal group established by the presiding officer of a [meeting](#), [committee](#), or [working group](#) to draft consensus text. [Observers](#) generally may not attend drafting group [meetings](#).

## DRC

[UNEP](#) Division of Regional Cooperation.

## DSA

Daily Subsistence Allowance. Allowance paid to UN staff or [delegates](#) to a UN [meeting](#), which is intended to account for lodging, meals, gratuities and other business-related expenses during the period of the [meeting](#).

## DTIE

[UNEP](#) Division of Trade, Industry and Economics.

## E

### Earmarked

Dedicated to a particular purpose. Usually used to refer to funds or [contributions](#).

### Earth Negotiations Bulletin (ENB)

An independent, impartial reporting service published by the International Institute for Sustainable Development (IISD), providing daily summaries of major international environmental [meetings](#) and [Conferences of the Parties](#) to various [MEAs](#).

## EBRD

European Bank for Reconstruction and Development.

## EC

1) [European Community](#)

2) Environment Canada

## Economic Instruments

A tool for environmental protection that makes use of fiscal incentives (subsidies) and deterrents (taxes), as well as market measures such as tradable emissions permits, rather than regulating specific outcomes.

## ECOSOC

United Nations 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 exist 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

Countries of Eastern Europe, the Caucasus and Central Asia: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.



## EGTT

Expert Group on Technology Transfer, a subsidiary body under the UNFCCC.

## EIA

Environmental Impact Assessment.

## EIT

Countries with economies in transition (see also CEIT). Designates a country that was formerly a centrally planned economy and is undergoing transition to a market-oriented economy.

## EMG

Environmental Management Group created in 1999 by the UN General Assembly to enhance cooperation in the field of environment and human settlements within and beyond the UN system. Chaired by the Executive Director of UNEP, the EMG meets periodically. Members are the specialized agencies, funds and programmes of the United Nations system and the secretariats of multilateral environmental agreements, as well as the Bretton Woods Institutions and the World Trade Organization (WTO).

## Emission-reduction Unit (ERU)

A unit equal to one metric tonne of carbon dioxide equivalent, applicable to binding emissions-reductions targets under the Kyoto Protocol, and generated through Joint Implementation projects.

## Emissions trading

1) General notion: Mechanism in which an authority sets a limit or 'cap' on the amount of a pollutant that can be emitted within a given timeframe by entities participating in the emissions trading scheme (this 'cap' could 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 assigned to them must buy additional credits to cover their actual emissions from those entities that have emitted less than their assigned amount, and thus have spare emission credits. This transaction is known as emissions trading. By allowing participants the flexibility to trade credits, the overall emissions reductions are achieved in the most cost-effective way possible (also referred to as 'cap and trade').

2) For emissions trading as a mechanism under the Kyoto Protocol, see 'international emissions trading'.

## ENB

Earth Negotiations Bulletin.

## Endemic

Native and restricted to a specific geographic area, usually referring to plants or animals.

## Enforcement

Range of procedures and actions taken by a State and its competent authorities to ensure that persons or organizations failing to comply with laws or regulations are brought back into compliance or punished through appropriate action.

## Entry into force

Coming into legal effect of an international agreement, i.e. time at which an international agreement becomes legally binding for the States that have ratified it or acceded to it or otherwise expressed their consent to be bound by the agreement.

## 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

In terms of the Basel Convention, the phrase is 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.

#### **EOV**

Explanation of Vote.

#### **ERU**

Emission-Reduction Unit.

#### **EU**

European Union.

#### **EUROBATS**

Agreement on the Conservation of Populations of European Bats. Adopted in 1991, entered into force in 1994.

#### **European Commission**

The executive body of the European Union. Alongside the European Parliament and the Council of the European Union, it is one of the three main institutions governing the Union. Its primary roles are to propose and implement legislation, and to act as “guardian of the treaties” which provides the legal basis for the EU. The Commission negotiates international trade agreements (in the WTO) and other international agreements on behalf of the EU in close cooperation with the Council of the European Union.

#### **European Community (EC)**

Most important one of the three European Communities. Originally European Economic Community. That name changed with the Maastricht Treaty in 1992, which at the same time effectively made the European Community the first of three pillars of the European Union, called the Community (or Communities) Pillar. Member in its own right of several international organizations and a Party to various international agreements, sometimes alongside its Member States.

#### **European Union (EU)**

The European Union is an intergovernmental and supranational union of 27 democratic member States. The EU was established under that name in 1992 by the Treaty on European Union (the Maastricht Treaty).

#### **Ex officio**

Latin phrase meaning “by virtue of one’s position or function.”

#### **Ex situ**

Latin phrase meaning “not the original or natural environment.”

#### **ExCOP / Ex-COP**

Extraordinary Conference of the Parties. Conference of the Parties held outside the normal scheduled cycle of meetings of the Conference of the Parties.

#### **Executive Director**

Title of the head of some international organizations (e.g., the Executive Director of UNEP).

#### **Executive Secretary**

Title of the head of some international organizations or secretariats of MEAs (e.g., Executive Secretary of the Convention on Biological Diversity).

#### **Extraterritorial**

Set of measures or laws that apply beyond a State’s jurisdiction.

## **F**

#### **FAO**

Food and Agriculture Organization of the United Nations established in 1945. The UN specialized organization for agriculture, forestry, fisheries and rural development.

#### **Final clauses/provisions**

Clauses/provisions of an international agreement that set the rules for the functioning of the agreement.

#### **Financial rules**

Rules governing the financial administration of an international organization, a COP, subsidiary bodies, and the secretariat.

#### **Floor**

- 1) Term used as in “to give the floor” which means permission is granted by the presiding officer of a meeting for a delegate to make a statement.
- 2) Term used as in “to seek the floor” which means a delegate requests permission from the presiding officer of a meeting to make a statement.
- 3) Term used as in “to take the floor” which means a delegate makes a statement during a meeting.

#### **FoC**

Friends of the Chair.

### Focal point

An official or agency designated by a government to serve as the focus or channel of communications for a particular issue or agreement.

### Framework convention

Convention that provides a decision-making and organizational framework for the adoption of subsequent complementary agreements (e.g., Protocol). Usually contains substantial provisions of a general nature, the details of which can be provided in the subsequent agreements.

### Friends of the Chair (FoC)

An informal group of a few prominent negotiators invited to assist the Chair of a meeting, working group, or contact group to develop a consensus proposal on a specific issue.

### Full powers

A document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of an international agreement, for expressing the consent of the State to be bound by an international agreement, or for accomplishing any other act with respect to an international agreement.

## G

### G8

Group of eight industrialized countries comprising Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States of America.

### G77

Originally a group of 77 developing countries established in 1964 at the first session of UNCTAD. Currently composed of 131 developing States. The Group seeks to harmonize the positions of developing countries prior to and during negotiations. China sometimes also associates itself with the G77, in which case the group is referred to as “G77/China” or “G77 plus China.”

### GATT

General Agreement on Tariffs and Trade. One of the agreements annexed to the Marrakesh Agreement establishing the World Trade Organization (WTO).

### Gavel

1) Hammer used by the presiding officer of a meeting to recall delegations to order and/or signal the adoption of decisions, resolutions, or recommendations.

2) Also used as a 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 United Nations General Assembly, which is the main political body of the UN. It is composed of representatives of all Member States, each of which has one vote.

### General clauses/provisions

Clauses/provisions of an international agreement or decision that create the context, principle and directions helping the understanding and application of the rest of the agreement or decision.

### Genetic Use Restriction Technologies (GURTs)

Genetic engineering of plants to produce sterile seeds.

### GEO

Global Environment Outlook.

### GHGs

Greenhouse gases.

## **GHS**

Globally Harmonized System of Classification and Labeling of Chemicals. Managed by an [ECOSOC](#) sub-committee of experts.

## **Global Biodiversity Forum (GBF)**

Open and independent mechanism, founded in 1993, to encourage analysis, dialogue and partnership on key ecological, economic, social and institutional issues related to [biodiversity](#).

## **Global Biodiversity Outlook (GBO)**

Periodic report prepared by the [secretariat](#) of the [CBD](#) on the status and trends of biological diversity at the global and national level. The report also elaborates the steps taken to conserve and sustainably use the [biodiversity](#), and to share equitably the benefits arising out of the utilization of genetic resources.

## **Global Compact**

A UN initiative launched in 1999 to bring the private sector together with UN agencies and civil society to support ten principles related to human rights, labour, anti-corruption and the environment.

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

Launched in 1991, the Global Environment Facility provides grant and concessional funds to developing countries and [EITs](#) for projects and programmes targeting global environmental issues: [climate change](#), biological diversity, international waters, ozone layer depletion, land degradation and [persistent organic pollutants](#). Its implementing agencies are [UNEP](#), [UNDP](#), and the [World Bank](#). Designated as the operating entity of the financial mechanism for some [MEAs](#) (e.g., the [CBD](#) and the [UNFCCC](#)).

## **Global Environment Outlook (GEO)**

A periodic report that provides a comprehensive overview of the state of the global environment. Published every five years by [UNEP](#). Completed by the GEO Yearbooks, published annually.

## **Global Taxonomy Initiative (GTI)**

Initiative established by the [Conference of the Parties \(COP\)](#) 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 a 'living modified organism' ([LMO](#)), which is the term used by the [Biosafety Protocol](#).

## **GNP**

Gross National Product.

## **Governing Council (GC)**

The decision-making body of the UN Agencies, Programmes and Funds, e.g. Environment Programme ([UNEP](#)). Meets annually through regular and special sessions.

## **GPA**

Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. Adopted in 1995 and administered by [UNEP](#).

## **Greenhouse gas (GHG)**

Atmospheric gas that traps the heat and is responsible for warming the earth and climate change. The major greenhouse gases are: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O). Less prevalent – but very powerful – greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>). Those gases are regulated under the [UNFCCC](#) and the [Kyoto Protocol](#). Some greenhouse gases are also regulated under the [Montreal Protocol](#) for their effects on the ozone layer.

## **GRID**

Global Resources Information Database. The basis for [UNEP](#)'s environmental assessment programme.

## **GRULAC**

Group of Latin American and Caribbean Countries. A regional negotiating group.

## **GTI**

[Global Taxonomy Initiative](#).

## **GURTs**

[Genetic Use Restriction Technologies](#).

## H

### Habitat

- 1) Place or type of site where an organism or population naturally occurs ([CBD](#)).
- 2) Shorthand for [UN-Habitat](#).

### Hard law

Term used to describe the legally [binding](#) nature of various [agreements](#) or provisions, which leave no or little room for discretion. Often opposed to [soft law](#).

### Hazardous wastes

[Wastes](#) that exhibit one or more hazardous characteristics, such as being flammable, oxidizing, poisonous, infectious, corrosive, or ecotoxic ([Basel Convention](#)).

### Haze Agreement

Shorthand for the [ASEAN](#) Agreement on Transboundary Haze Pollution. Adopted in 2002, entered into force in 2003.

### HCFCs

Hydrochlorofluorocarbons. Regulated under the [Montreal Protocol](#).

### HFCs

Hydrofluorocarbons. Regulated under the [Kyoto Protocol](#) and the [Montreal Protocol](#).

### High-level segment

Segment of a [meeting](#) composed of the highest-level representatives of State Parties attending the meeting.

### HNS Convention

Shorthand for the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea. Adopted in 1996, not yet entered into force.

### HOD

Head of [Delegation](#).

### Hotspot

- 1) Area particularly rich in total numbers of species (as in "[biodiversity hotspot](#)").
- 2) Area of especially high concentrations of pollutants.

## I

### IA

Implementation Agency.

### IBM

Issue-Based Modules for the Coherent Implementation of Biodiversity-related [Conventions](#). [UNEP](#) web-based analytical tool to facilitate the coherent [implementation](#) of [biodiversity](#)-related [conventions](#). Aimed to be replicated for the other clusters of [MEAs](#) (e.g., chemicals).

### IBRD

International Bank for Reconstruction and Development, one of the two development institutions (together with [IDA](#)) of the [World Bank](#). One of the [Bretton Woods Institutions](#).

### ICJ

International Court of Justice. The principal judicial organ of the UN. The ICJ has established a special chamber for environmental disputes.

### ICRAN

International Coral Reef Action Network.

### ICRI

International Coral Reef Initiative established in 1994. A partnership of governments, international organizations, and [non-governmental organizations](#) to preserve coral reefs and related [ecosystems](#).

### 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 (also designated the IADB).

### 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 – United States of America.

**ILO**

International Labour Organization founded in 1919. This UN specialized agency seeks the promotion of social justice and internationally recognized human and labour rights.

**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. This UN organization was created in 1948 to address shipping activities.

**Implementation**

For a Party to an international agreement, implementation refers to the process of adopting relevant policies, laws and regulations, and undertaking necessary actions to meet its obligations under the agreement.

**In situ**

Latin phrase meaning “within the original place.” In situ condition is the condition of genetic resources in their ecosystems and natural habitats and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (CBD).

**INC**

Intergovernmental Negotiating Committee. Forum established to negotiate an international agreement.

**Incrementality**

Funding principle according to which funded activities produce global environmental benefits.

**Indigenous people/s**

No universal, standard definition. Usually considered to include cultural groups and their descendants who have a historical continuity or association with a given region, or parts of a region, and who currently inhabit or have formerly inhabited the region either before its subsequent colonization or annexation, or alongside other cultural groups during the formation of a nation-State, or independently or largely isolated from the influence of the claimed governance by a nation-State, and who furthermore have maintained, at least in part, their distinct linguistic, cultural and social / organizational characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the nation-State. Also includes people who are self-identified as indigenous, and those recognized as such by other groups.

**INF.**

Information document. Usually provided during meetings to provide background information to draft decisions, resolutions, and recommendations. These documents are not subject to negotiation.

**Informal consultations**

Exchange of views among delegations which take place outside the formal setting of negotiations. Usually undertaken with the aim of identifying a compromise position.

**In-session documents**

Documents distributed during a meeting, such as conference room papers (CRP), limited distribution documents (L. docs), informal documents and such like.

**Institutional clauses/provisions**

Clauses/provisions of an international agreement that relate to the institutions established under the agreement.

### **Inter alia**

Latin term meaning “among other things.” The term is often used in legal documents to compress lists of Parties and such like.

### **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 (QELROs) 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 UN Convention on the Law of the Sea (UNCLOS) to address matters related to the regime for the seabed and ocean floor, and subsoil thereof located outside the limits of national jurisdiction (i.e. “The Area” as designated pursuant to Part XI of UNCLOS).

### **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. Provides compensation for oil pollution damage resulting from spills of persistent oil from tankers.

### **IPCC**

Intergovernmental Panel on Climate Change. Established jointly by the WMO and UNEP in 1998 to assess the scientific, technical and socio-economic impacts of climate change.

### **IPPC**

- 1) International Plant Protection Convention. Adopted in 1952. Revised in 1997, entered into force in 2005.
- 2) Integrated Pollution Prevention and Control.

### **IPRs**

Intellectual property rights.

### **ISA**

International Seabed Authority.

### **ISO**

International Organization for Standardization. Non-governmental organization, the members of which are national standards institutes of 163 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, which meets annually.

### **ITTO**

International Tropical Timber Organization. Established under the ITTA to administer the agreement.

### **IUCN**

International Union for Conservation of Nature and Natural Resources (formerly also known as the World Conservation Union). A hybrid international organization with a membership composed of governments and non-governmental organizations.

## IUU

Illegal, Unregulated, and Unreported (i.e. in relation to fishing activities).

## IWC

International Whaling Commission. The governing body of the [ICRW](#).

## J

### Jakarta Mandate

Shorthand for Jakarta Mandate on Marine and Coastal Biological Diversity. Global [consensus](#) on the importance of marine and coastal biological diversity, adopted in 1995 by the second [COP](#) to the [CBD](#). Includes the programme of work on marine and coastal [biodiversity](#) under the CBD.

## JI

[Joint Implementation](#).

## JLG

[Joint Liaison Group](#).

### Johannesburg Plan of Implementation (JPOI)

One of the outcomes of the 2002 World Summit on Sustainable Development ([WSSD](#)). Outlines a framework for action to implement the commitments undertaken at the 1992 UN Conference on Environment and Development ([UNCED](#)), including goals and time-bound targets.

### Joint Implementation (JI)

A mechanism under the [Kyoto Protocol](#) through which a developed country can receive emission reduction units when it helps to finance projects that reduce net [greenhouse-gas](#) emissions in another developed country (in practice, the recipient State is likely to be an [EIT](#)).

### Joint Liaison Group (JLG)

Group of representatives of the [secretariats](#) of the [UNFCCC](#), the [CBD](#), and the [UNCCD](#). Established 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 United States of America, Switzerland, Canada, Australia, Norway and New Zealand. Other [delegations](#) sometimes associate with this group.

## K

### Kyoto Protocol

Protocol to the UN Framework [Convention](#) on Climate Change ([UNFCCC](#)). Provides for [binding](#) emission reductions for Annex I [Parties](#) to the [UNFCCC](#). Adopted in 1997, entered into force in 2005.

## L

### Land degradation

In arid, semi-arid and dry sub-humid areas, land degradation is the reduction or loss of the biological or economic productivity and complexity of rain-fed cropland, irrigated cropland, or range, pasture, forest and woodlands. This reduction or loss results from land use or from a process or combination of processes, including processes arising from human activity and habitation patterns.

### L. docs

Limited distribution documents.

### LDC Expert Group

Panel of experts providing advice to [Least Developed Countries](#) (LDCs) on the preparation and implementation of National Adaptation Programme of Action ([NAPAs](#)) under the [UNFCCC](#).

### LDC Fund

Fund established by the [UNFCCC COP](#) to assist [Least Developed Countries](#) to undertake activities to adapt to the adverse effects of [climate change](#).

### LDCs

[Least Developed Countries](#).

### LDG

Legal Drafting Group.

### Leakage

In the context of the [CDM](#) and [JI](#) of the [Kyoto Protocol](#), leakage refers to the net change in [GHG](#) emissions that occurs outside the boundary of a project and this measurable leakage is 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 the majority of the world's biodiversity and associated traditional knowledge: Bolivia, Brazil, China, Colombia, Costa Rica, Democratic Republic of Congo, Ecuador, India, Indonesia, Kenya, Madagascar, Malaysia, Mexico, Peru, Philippines, South Africa and Venezuela. Mainly operates during negotiations on access to genetic resources and benefit sharing under the CBD.

### **Listing**

Inclusion of a product or species in a list of regulated products or species.

### **LMG**

Like-Minded Group.

### **LMMC**

Like-Minded Megadiverse Countries.

### **LMO**

Living Modified Organism. Any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology (Biosafety Protocol). The Biosafety Protocol uses this term, but the abbreviation "GMO" is also commonly engaged.

### **London Convention**

Shorthand for the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter. Adopted in 1972, entered into force in 1975. This instrument will be replaced by the Protocol to the London Convention that was adopted in 1996 and entered into force in 2006.

### **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, the term 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**

Refers to the action or activity 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 in 2001 at the seventh Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC), related to the Kyoto Protocol.

### **MAT**

Mutually Agreed Terms, within the context of the Convention on Biological Diversity (CBD).

### **May**

As negotiating language, "may" entails discretionary action and creates no obligation for the addressee i.e. it is not binding.

### **MC**

Memorandum to Cabinet.

### **MDGs**

Millennium Development Goals.

### **MEA**

Multilateral Environmental Agreement.

## Meeting

Generic term used for conferences, [summits](#), [sessions](#), and such like.

### 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 that collectively harbor the majority of the world’s [biodiversity](#) and associated traditional knowledge. The World Conservation Monitoring Centre (WCMC) has identified 17 megadiverse countries: Australia, Brazil, China, Colombia, Democratic Republic of the Congo, Ecuador, India, Indonesia, Madagascar, Malaysia, Mexico, Papua New Guinea, Peru, Philippines, South Africa, United States of America and Venezuela.

### Member State

A 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. This category of organisms includes 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 that derived from 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 wrongly used for the MA.

### Millennium Summit

Meeting of high-level government representatives convened in 2000. The Summit adopted an agenda for the elimination of poverty through the implementation of target-oriented goals ([MDGs](#)).

### Mitigation

In the context of the [UNFCCC](#) and the [Kyoto Protocol](#), mitigation refers to 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 2002 at Monterrey, Mexico.

### 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 have occurred, are occurring, or are likely to occur.

### MOP

[Meeting of the Parties](#).

### MOS

Meeting of the Signatories.

### Motion

Formal oral proposal on a matter of procedure.

### MoU or MOU

[Memorandum of Understanding](#).

### **Multilateral Environmental Agreement (MEA)**

A generic term for treaties, conventions, protocols, and other binding instruments related to the environment. Usually applied to instruments of a geographic scope wider than that of a bilateral agreement (i.e., between two States).

### **Multilateral Fund**

Shorthand for the Multilateral Fund for the Implementation of the Montreal Protocol. Assists developing countries to implement the Montreal Protocol.

### **Must**

As negotiating language, “must” creates an obligation to act for the addressee. It is binding.

### **Mutatis Mutandis**

Latin phrase meaning “with such changes as are necessary on the points of detail” (e.g., “the dispute settlement provisions of the Convention apply *mutatis mutandis* to the Protocol”).

### **MYPOW**

Multi-Year Programme of Work.

## **N**

### **NAFTA**

North American Free Trade Agreement.

### **NAP**

National Action Plan. Required under the UNCCD for the implementation of the Convention.

### **NAPA**

National Adaptation Programme of Action. Prepared by least developed countries under the UNFCCC for urgent activities to cope with adaptation to climate change.

### **National Communication (NC)**

Under the UNFCCC, an NC is a document by which a Party informs other Parties of activities undertaken under the Convention.

### **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 CBD adopted in late 2010.

### **Nagoya – Kuala Lumpur Protocol**

Shorthand for the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (adopted in late 2010).

### **NBSAP**

National Biodiversity Strategy and Action Plan. Required under the CBD for the implementation of the Convention.

### **NC**

National Communication.

### **NCSA**

National Capacity Self-Assessment for Global Environmental Management. Initiative by the Global Environment Facility that aims to assist countries to assess their capacity needs to implement the Rio Conventions on the basis of synergies between these conventions.

### **NEPAD**

New Partnership for Africa’s Development. A framework for action towards the socio-economic development of Africa. Adopted in 2001 by the Organization of African Unity (now the African Union).

### **New and additional financial resources**

- 1) Financial resources that are provided in addition to the UN target level of 0.7% of Gross National Product (GNP) for Official Development Assistance (ODA).
- 2) Financial resources that are new and additional to annual general ODA funding which has remained constant or increased, in absolute terms or in ODA/GNP terms.

### **NGO(s)**

Non-governmental organization(s).

### **NIP**

National Implementation Plan, required under the Stockholm Convention on Persistent Organic Pollutants.

**Non-Governmental Organization(s) (NGO(s))**

Refers to community groups and not-for-profit organizations. In the UN system, it also includes business associations. The term gathers organizations with different mandates (e.g., research, education and awareness building, lobbying, technical assistance, field projects, etc.).

**Non-Paper**

Informal text aimed at facilitating negotiations. It is not a formal proposal.

**Non-Party**

Refers to a State that has not ratified, acceded, or otherwise become a Party to an international agreement. As a Non-Party, a State may have limited rights to participate in negotiations or deliberations under the agreement, or to invoke provisions of the agreement.

**Non-recorded vote**

Vote where the way in which each delegation voted is not reported in the official records or the report of the meeting.

**NOO**

National Ozone Officer (under the Montreal Protocol).

**Notification**

Formal communication that bears legal consequences (e.g. start of a time-bound period).

**NOU**

National Ozone Unit (under the Montreal Protocol).

**Noumea Convention**

Shorthand for the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. Adopted in 1986, entered into force in 1990.

**NR**

National Report.

**O****Objection**

Oral or written statement by which a delegation informs a meeting that it objects to the adoption of a proposed decision, resolution, recommendation, or measure.

**Obligation clauses/provisions**

Clauses/provisions of an international agreement or decision that provide for the actions to be taken, individually or jointly, by the Parties to achieve the objectives of the agreement or decision.

**Observer**

Non-State or State actor invited to participate in a limited capacity in discussions during negotiations. Observers are not allowed to negotiate text and have no voting powers. In practice, some observer States do engage in negotiations but 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 Organization for Economic Co-operation and Development is an organization composed of 34 member countries from North America, Europe, and the Pacific region that share a commitment to democratic government and a market economy. Originated in 1948 as the Organization for European Economic Co-operation (OEEC) to help administer the Marshall Plan for the re-construction of Europe after the Second World War.

**OECS**

Organization of Eastern Caribbean States. Regional cooperation organization created in 1981.

**OEWG**

Open-ended Working Group.

**Official Development Assistance (ODA)**

Also known as “foreign aid”. Consists of loans, grants, technical assistance and other forms of cooperation from developed to developing countries.

## OP 5, 13, XX...

Operational Programme 5, 13, XX...

### OPEC

Organization of the Petroleum Exporting Countries comprised of 12 developing countries whose economies rely on oil export revenues. Created in 1960 to, inter alia, achieve stable oil prices that are fair and reasonable for both producers and consumers.

### Open-ended

Term refers to 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

International Convention on Oil Pollution Preparedness, Response and Co-operation. Adopted in 1990, entered into force in 1995.

### Order

- 1) "Call to order": direction by the presiding officer of a meeting that a delegate or group of delegates should be silent to allow the meeting's proceedings to take place in an orderly manner.
- 2) "Out of order": the status of something that is not in accordance with the rules of procedure.

### Out of order

Not behaving in accordance with the rules of procedure.

## Ozone secretariat

Secretariat administered by UNEP. Services the Vienna Convention and the Montreal Protocol.

## P

### Package deal

Proposal that includes several issues, not necessarily related, which has to be accepted or rejected as a whole.

### PADELIA

UNEP Partnership for Development of Environmental Law and Institutions in Africa.

### PAMs

Policies and Measures.

### Party/Parties

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.

### Permanent Representative (PR)

The head of a permanent mission.

### Persistent Organic Pollutants (POPs)

Chemicals that remain intact in the environment for long periods of time. Regulated under the Stockholm Convention.

### PFCs

Perfluorocarbons. Regulated under the UNFCCC.

## **PFI**

Permanent Forum on Indigenous Issues.

## **PGRFA**

Plant Genetic Resources for Food and Agriculture. Any genetic material of plant origin with actual or potential value for food and agriculture.

## **PIC**

1) Prior informed consent. Used in the context of negotiations on access to genetic resources and benefit-sharing, as well as on traditional knowledge of local and indigenous communities (see indigenous people). Also used in the context of the PIC Convention.

2) Pacific Island Country.

## **PIC Convention**

Shorthand for the Convention on the Prior Informed Consent Procedure For Certain Hazardous Chemicals and Pesticides in International Trade adopted in 1998 by a Conference of Plenipotentiaries in Rotterdam (the Netherlands) and entered into force in 2004. 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 full powers to represent their State or government in negotiations.

## **Point of order**

Formal question raised by a delegation as to whether the proceedings are in order or a particular action by a delegate or a presiding officer follows the rules of procedure.

## **Policies and Measures (PAMs)**

Steps taken or to be taken by countries to achieve greenhouse-gas emissions targets under the UNFCCC and the Kyoto Protocol.

## **POPRC**

Persistent Organic Pollutant Review Committee, a subsidiary body under the Stockholm Convention.

## **POPs**

Persistent Organic Pollutants.

## **POPs Convention**

Shorthand for the Stockholm Convention on Persistent Organic Pollutants.

## **Poverty Reduction Strategy Paper (PRSP)**

Country-led, country-written document that provides the basis for assistance from the World Bank and the International Monetary Fund (IMF), as well as debt relief under the Heavily Indebted Poor Country Initiative. A PRSP describes a country's macroeconomic, structural, and social policies and programs to promote growth as well as the country's objectives, policies, and measures for poverty reduction.

## **PPP**

Public-Private Partnership.

## **Preamble**

Set of opening statements, called "recitals," of an international agreement, decision, resolution, or recommendation that guides the interpretation of the document. Often contrasted with the operative paragraphs.

## **Preambular paragraphs**

The paragraphs found in the Preamble to an international agreement, decision, resolution, or recommendation and that help interpreting the document. Also called "recitals".

## **Precautionary approach/principle**

Approach/principle according to which the absence of full scientific certainty shall not be used as a reason for postponing action where there is a risk of serious or irreversible harm to the environment or human health. The approach/principle is embedded in several instruments, including Principle 15 of the 1992 Rio Declaration on Environment and Development. The phrase "precautionary approach" is often used in negotiations to infer a less definite meaning than the precautionary principle.

## **Prep Com / PrepCom**

Preparatory Committee. A committee mandated to prepare a meeting. It can be mandated to address substantive issues or not. The phrase is often used to refer to the meetings of the preparatory committee.

### Pre-session documents

Documents prepared by the [secretariat](#) for distribution before a [meeting](#). These include draft [decisions](#), [resolutions](#), [recommendations](#), [non-papers](#), information documents ([INF. docs](#)), and such like.

### Presiding Officer

[Delegate](#) elected by a [meeting](#) to preside over the proceedings, maintain order and lead the work of the meeting.

### Primary forest

Forest largely undisturbed by human activities. Also called “natural forest.”

### Prior informed consent (PIC)

Consent to be acquired prior to accessing genetic resources or shipping internationally regulated chemicals, substances or products. Granted by competent authorities on the basis of the information provided by the partners to a prior informed consent [agreement](#). The notion is linked to the principle of the [Advanced Informed Agreement](#).

### Procès verbal

Record of all [statements](#) made during a [meeting](#).

### Protocol

- 1) International legal instrument appended or closely related to another [agreement](#), which constitutes a separate and additional agreement and which must be signed and ratified by the [Parties](#) to the [convention](#) concerned. Protocols typically strengthen a [convention](#) by adding new, more detailed commitments.
- 2) Rules of diplomatic procedure, ceremony and etiquette.
- 3) Department within a government or organization that deals with relations with other missions.

### Provisional agenda

Draft agenda of a [meeting](#) that has yet to be adopted.

### PRSP

[Poverty Reduction Strategy Paper](#).

### PRTR

Pollutant Release and Transfer Register.

### Public-Private Partnership (PPP)

A cooperative initiative between public (i.e., governmental) and private entities (including businesses, [NGOs](#), and such like) 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 Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Adopted in the Iranian city of Ramsar in 1971, entered into force in 1975.

### Ramsar List

List of Wetlands of International Importance. List of wetlands which have been designated by the [Parties](#) to the [Ramsar Convention](#) as internationally important according to one or more of the criteria that have been adopted by the Ramsar [COP](#).

### Rapporteur

1. [Delegate](#) (more specifically, a member of the [Bureau](#)) elected/nominated to prepare or oversee the preparation of the [report of a meeting](#).
2. Person appointed by a body to investigate an issue, situation or function and report to that body.

### **Ratification**

Formal process by which a Head of State or appropriate governmental official or authority signs a document that 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 the “preamble” or “preambular paragraphs.”

### **Recommendation**

Formal expression of an advisory nature of the will of the governing body of an international organization or international agreement. It is not binding.

### **Recorded vote**

Vote where the way in which each delegation voted is reported in the official records or report of the meeting.

### **Reforestation**

The direct human-induced conversion of non-forested land to forested land through planting, seeding and/or the human-induced promotion of natural seed sources on land that was forested but that has been converted to non-forest land (UNFCCC). Should be distinguished from the notion of afforestation.

### **Regional groups**

Alliances of countries generally formed on the basis of geographic location and common interests. These alliances meet privately to discuss issues and nominate bureau members and other officials for activities under particular agreements or conventions. The UN system recognizes five regional groups: 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 European Community/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 requires such approval.

### **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 CITES, and subject to levels of trade that are significant in relation to the population of the species, in order to identify problems concerning the implementation of the Convention.

### **RFMO**

Regional Fisheries Management Organization.



## Rio Conference

Shorthand for the United Nations Conference on Environment and Development ([UNCED](#)), held in Rio de Janeiro, Brazil, in 1992. The outcomes of the Conference include:

- The UN Framework Convention on Climate Change ([UNFCCC](#))
- The Convention on Biological Diversity ([CBD](#))
- [Agenda 21](#)
- The establishment of the Commission on Sustainable Development ([CSD](#))
- The [Rio Declaration](#) on Environment and Development
- The Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and [Sustainable Development](#) of all Types of Forests (also known as “the Forest Principles”).
- Led to the 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](#)). The UN Convention to Combat Desertification ([UNCCD](#)), adopted in 1994, is added to this collection of treaties.

## Rio Declaration

Shorthand for the Rio Declaration on Environment and Development adopted at the 1992 [Rio Conference](#). Set of 27 Principles on [sustainable development](#).

## Roster of experts

Experts nominated to perform certain tasks as defined by the governing body of an international [agreement](#) or international organization.

## Rotterdam Convention

Shorthand for the Rotterdam Convention on the [Prior Informed Consent](#) Procedure For Certain Hazardous Chemicals and Pesticides in International Trade. Also referred to as the “[PIC Convention](#)”.

## RSPB

Royal Society for the Protection of Birds, a [non-governmental organization](#).

## RST

[Review of Significant Trade](#).

## Rules of Procedure

Set of rules adopted by a [meeting](#) to govern the work and decision making of its formal settings (i.e., for [Plenary](#) or [working groups](#)).

## S

### SACEP

South Asia Co-operative Environment Programme.

### SADC

Southern African Development Community.

### SAICM

Strategic Approach to International Chemicals Management. Approach developed on the basis of an [open-ended](#) consultative process involving representatives of all [stakeholder](#) groups, jointly convened by the Inter-Organization Programme for the Sound Management of Chemicals ([IOMC](#)), the Intergovernmental Forum on Chemical Safety ([IFCS](#)) and [UNEP](#). Adopted in 2006.

### SBI

In the context of the [UNFCCC](#), the Subsidiary Body for Implementation. Advises the [Conference of the Parties](#) to the Convention and/or the [Meeting of the Parties](#) to the [Kyoto Protocol](#) in the form of [recommendations](#) and draft [decisions](#).

### SBSTA

In the context of the [UNFCCC](#), the Subsidiary Body for Scientific and Technological Advice. Advises the [Conference of the Parties](#) to the Convention and/or the [Meeting of the Parties](#) to the [Kyoto Protocol](#) in the form of [recommendations](#) and draft [decisions](#).

### SBSTTA

In the context of the [CBD](#), the Subsidiary Body for Scientific, Technical and Technological Advice. Provides advice to the [Conference of the Parties](#) to the Convention and/or the [Meeting of the Parties](#) to the [Biosafety Protocol](#) in the form of [recommendations](#).

### Scale of assessment

Agreed formula for determining the scale of [contribution](#) of each [Member State](#) of an international organization.

**SCCF**

Special Climate Change Fund.

**SD**

Sustainable Development.

**SEA**

Strategic Environmental Assessment.

**SEE**

South Eastern Europe.

**Secret ballot/vote**

Type of vote. Organized to ensure that each delegation's vote remains secret.

**Secretariat**

The body established under an international agreement to arrange and service meetings of the governing body of that agreement, and assist Parties in coordinating implementation of the agreement. Also performs other functions as assigned to it by the agreement and the decisions of the governing body.

**Secretary-General**

Normally references the Head of the United Nations secretariat.

**Session**

Meeting or series of meetings of a particular body (e.g., Eighth Special Session of UNEP Governing Council; "working group II met in four sessions").

**SFM**

Sustainable Forest Management.

**Shall**

As negotiating language, "shall" creates an obligation for action from the addressee. It is binding.

**Should**

As negotiating language, "should" entails 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, and such like 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 51 SIDS are included in the list used by United Nations Department of Economic and Social Affairs (UN DESA).

**Signatory**

A State that has negotiated and signed an international agreement.

**Signature**

Act by which the Head of State or government, the foreign minister, or another designated official indicates the authenticity of an international agreement and, where ratification is not necessary, it may also indicate the consent of the State to be bound by the agreement.

**Single negotiated text**

Draft text compiling all the delegations proposals into a coherent whole.

**Sinks**

In the context of the UNFCCC and the Kyoto Protocol, any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere. The major sinks are forests and other vegetation which remove carbon dioxide through photosynthesis.

**Soft law**

The term used for quasi-legal instruments that either do not have any binding force or whose binding force is somewhat "weaker" than the binding nature of traditional law that is often referred to as "hard law". In the field of the international law, soft law consists of non-treaty obligations that are therefore non-enforceable and may include certain types of declarations, guidelines, communications and resolutions of international bodies (e.g.

resolutions of the UN [General Assembly](#)). Soft-law may be used to encourage broader 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](#) that is maintained by the presiding officer in the order in which delegations have made the request.

#### **Special Climate Change Fund (SCCF)**

A fund established under the [UNFCCC](#) to finance projects relating to adaptation; [technology transfer](#) and [capacity building](#); energy, transport, industry, agriculture, forestry and waste management; and economic diversification.

#### **Special session**

A [session](#) of a body outside and additional to its regularly scheduled sessions. Focused on a particular issue.

#### **Specialized agency**

Autonomous international organization linked to the United Nations through special [agreement](#).

#### **Spokesman/spokesperson**

A [delegate](#) speaking on behalf of a group of countries or organizations.

#### **Sponsor**

[Delegation](#) which proposes a [decision](#), [resolution](#), [recommendation](#), or amendment for [adoption](#) by a [meeting](#).

#### **SPREP**

Secretariat of the 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 are not progressing and no possible solution is in sight.

#### **Stalled**

Said of negotiations which are making no progress. Usually a 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:

- Establishment of the UN Environment Programme ([UNEP](#))
- Creation of an Environment Fund
- Creation of an Action Plan
- The [Stockholm Declaration](#)

### **Stockholm Convention**

Shorthand for the [Stockholm Convention on Persistent Organic Pollutants](#). Adopted in 2001, entered into force in 2004. Also referred to as the “[POPs Convention](#).”

### **Stockholm Declaration**

One of the outcomes of the 1972 [Stockholm Conference](#). A set of Principles on environmental protection.

### **Strategic environmental assessment (SEA)**

Procedure for incorporating environmental considerations into national policies, plans and programmes. Sometimes referred to as “strategic environmental impact assessment.”

### **STRP**

Scientific and Technical Review Panel, a [subsidiary body](#) under the [Ramsar Convention](#).

### **Sub-committee**

[Committee](#) created by another committee to address a specific issue.

### **Subsidiary body**

A body, usually created by the governing body of an international [agreement](#) or international organization, with a specific mandate (e.g., Subsidiary Body for Scientific, Technical and Technological Advice under the [CBD](#)). Different from a [working group](#) in that it is usually permanently established to assist the governing body.

### **Sui generis**

A Latin term meaning “being the only example of its kind; constituting a class of its own; unique”. Often used to describe a unique (legal) system.

### **Summit**

[Meeting](#) at which the participants are high-level officials, such as Heads of State or Government.

### **Sustainable development (SD)**

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

### **Sustainable forest management (SFM)**

Concept according to which the full range of social, economic and environmental values inherent to forests are managed and sustained.

### **Sustainable use**

Use in a way and at a rate that does not lead to the long-term degradation of the environment, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

### **Synergies**

Result of joint activities that goes beyond the sum of individual activities, making efforts more effective and efficient.

## **T**

### **Table**

Term used as in the expression “to table a proposal”, which means 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 for the use of ozone-depleting substances.

### **Technology Transfer**

Transmission of know-how, equipment and products to governments, organizations or other [stakeholders](#). Usually also implies adaptation for use in a specific cultural, social, economic and environmental context.

### **Tehran Convention**

Shorthand for the Framework Convention for the Protection of the Marine Environment of the Caspian Sea. Adopted in the Iranian city of Tehran in 2003 and entered into force in 2006.

### **TEK**

Traditional Ecological Knowledge.

### **Terms of Reference (ToRs / TORs)**

The [mandate](#) and scope for work of a body or individual.

## TK

Traditional Knowledge.

### ToRs / TORs

Terms of Reference.

### Traditional knowledge

The knowledge, innovations and practices of indigenous people and local communities.

Traditional knowledge is the object of various MEA provisions, including Article 8(j) of the CBD.

### Transboundary movement

Movement from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State.

### Travaux préparatoires

French phrase meaning preparatory works. Record of negotiations and other documents that may have evidentiary value in establishing the meaning of an international agreement.

### Treaty

International agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (Vienna Convention on the Law of Treaties).

### TRIPS Agreement

Agreement on Trade-Related Aspects of Intellectual Property Rights. One of the agreements under the World Trade Organization (WTO).

### Trust fund

Fund to which the income of an international organization is added and from which the expenditures are drawn. There are two main types of trust funds:

- general trust fund, composed of contributions from Parties and non-earmarked contributions from other sources;
- special trust fund, comprised 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 coalition is usually comprised of Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine and the United States of America.

### UN GA / UNGA

UN General Assembly.

### UN SG

UN Secretary-General.

### UN/ECA or UNECA

UN Economic Commission for Africa. One of the regional commissions of ECOSOC.

### UN/ECE or UNECE

UN Economic Commission for Europe. One of the regional commissions of ECOSOC.

### UN/ECLAC or UNECLAC

UN Economic Commission for Latin America and the Caribbean. One of the regional commissions of ECOSOC.

### UN/ESCAP or UNESCAP

UN Economic and Social Commission for Asia and the Pacific. One of the regional commissions of ECOSOC.

### UN/ESCWA or ESCWA

UN 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**

United Nations 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**

United Nations 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 forging 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 to coordinate UN development-related work.

### **UNEP**

United Nations Environment Programme. Established in 1972 to lead and coordinate UN environment-related work.

### **UNEP – WCMC**

UNEP World Conservation Monitoring Centre. The biodiversity assessment and policy implementation arm of UNEP.

### **UNESCO**

United Nations Educational, Scientific and Cultural Organization created in 1945.

### **UNFCCC**

United Nations Framework Convention on Climate Change. Adopted in 1992, entered into force in 1994. One of the Rio Conventions.

### **UNFF**

United Nations Forum on Forests created in 2000. Provides a forum for policy development and cooperation on matters related to sustainable forest management.

### **UN-Habitat**

United Nations Human Settlements Programme. Established in 1978 to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all people.

### **UNIDO**

United Nations Industrial Development Organization. Created in 1966 and evolved as a specialized agency of the UN in 1985. Assigned responsibility for promoting industrialization 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 the provision of training programmes in multilateral diplomacy and international cooperation and training programmes in the field of social and economic development.

### **UNOG**

United Nations Offices at Geneva in Switzerland.

### **UNON**

United Nations Offices at Nairobi in Kenya, Africa.

### **UNOV**

United Nations Offices at Vienna in Austria.

## 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. This UN [specialized agency](#) 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

### VCLT

Vienna Convention on the Law of Treaties (see [Vienna Convention](#))

### Verbatim

Latin phrase meaning “word-for-word,” “in full.” Way of recording a [meeting](#)’s discussions.

### Vienna Convention

- 1) Vienna Convention for the Protection of the Ozone Layer. Adopted in 1985, entered into force in 1988.
- 2) Vienna Convention on the Law of Treaties ([VCLT](#)). Adopted in 1969, entered into force in 1980. See also Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations ([VCLT/SIO](#), adopted in 1986 and not yet in force).
- 3) Vienna Convention on Succession of States in respect of Treaties. Adopted in 1978, entered into force in 1996.

### Vienna Setting or Vienna Process

The ‘Vienna Setting’ is an informal negotiating format established to help [delegates](#) reach [agreement](#) during the final stages of a [meeting](#). It involves a relatively small group of delegates, with each major negotiating group (such as the [EU](#) or the [G-77](#)) represented by only one or two people mandated to make a deal on behalf of their group.

It was a format modeled 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 is unlike [assessed contributions](#) as it is not assessed under a [binding international agreement](#). It includes 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 Organization. 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**

United Nations World Food Programme established in 1962.

**WG**

Working Group. An abbreviation also used for referencing documents from Working Groups.

**Whaling Convention**

Shorthand for the International Convention for the Regulation of Whaling (ICRW). Adopted in 1946, 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 established in 1948 to address issues related to health.

**WIPO**

World Intellectual Property Organization. A UN specialized agency, established in 1970 to administer all matters related to intellectual property. WIPO has established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, which meets periodically.

**Wise use**

Sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of ecosystems within the context of sustainable development.

**WMO**

World Meteorological Organization. One of the UN specialized agencies, established in 1950 to address matters related to meteorology (weather and climate), operational hydrology and related geophysical sciences.

**Working Group (WG)**

- 1) During a meeting, a sub-division of the Plenary mandated to negotiate specific issues of the agenda, usually arranged by clusters. Open to all Parties.
- 2) Between meetings, a subsidiary body established by the governing body of an international agreement to provide it with advice on specific issues. These working groups can be open-ended and meet periodically, or be time-bound and meet once only. Open to all Parties. Example: the Ad Hoc Open-Ended Working Group on Access to Genetic Resources and Benefit Sharing under the CBD.

**Working languages**

Languages in which texts are circulated and considered, and statements may be made during meetings. The official languages of the United Nations 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:

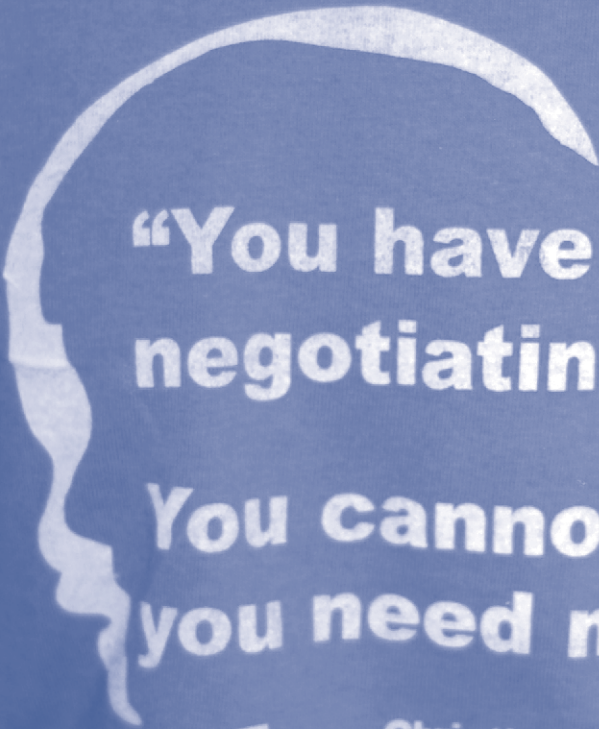
- The Johannesburg Declaration on Sustainable Development
- The Johannesburg Plan of Implementation
- Type II Partnerships.

### **WTMU**

Wildlife Trade Monitoring Unit of the International Criminal Police Organization (INTERPOL).

### **WTO**

World Trade Organization. An international organization established in 1995 to provide a forum for, inter alia, trade negotiations, address trade disputes, monitor national trade policies, provide technical assistance and training for developing countries.



**“You have been  
negotiating all my life.**

**You cannot tell me  
you need more time.”**

**Christina Ora**  
**Youth Delegate from the Solomon Islands**  
**addressing the plenary at COP15, 2009**



