Multilateral Environmental Agreement

Negotiator's Handbook

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Foreword

The number of multilateral environmental institutions and agreements has grown steadily over the last several years. More and more, officials from governments all over the world participate in international negotiations, whether in a bilateral, trilateral or multilateral context. We have, in partnership, developed this *MEA Negotiator's Handbook* principally to respond to the need for a practical reference tool to assist to address the many complex challenges in such negotiations.

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

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

This handbook for negotiators is intended to be a useful tool that will contribute to more efficient and effective preparation, participation and representation in international environmental negotiations and meetings. We very much hope that it will help Parties achieve better results, sooner.

Nicole Ladouceur
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Message from Maurice Strong

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

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

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

If you are reading this book, you may have some idea of the immense challenges in front of you, and the vital importance of the work. Sometimes it may seem that the challenges are insurmountable. Certainly, when I was contemplating the offer to lead the Stockholm Conference, many colleagues warned me that it was doomed to fail. Of course we did

not 'save the world' in Stockholm - or Rio, or Johannesburg. No single conference can solve all of the problems that such meetings are inevitably asked to address.

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

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

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

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

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

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

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

Introduction

This document was prepared as a solid introduction to negotiating or working on Multilateral Environmental Agreements (MEAs) for those with little or no background, as well as a key reference tool for experienced negotiators. The handbook is intended to provide technical information in an accessible format, without assumptions about technical knowledge or familiarity with multilateral process. In addition, much of the content may be useful for negotiators working in other contexts, for example on non legally-binding instruments such as ministerial declarations. Overall, the purpose of this document is to provide a reference tool that will enhance the capacity of those working on MEAs and involved in international negotiations.

Increasingly, the work in the international environmental field is focused on implementation, rather than on the development of landmark agreements. Indeed, our current decade has been called the "decade of doing". This, however, does not mean that the need for effective environmental negotiations has diminished – far from it. In order to deliver environmental results for the world, we need to continue to negotiate practical issues and technical rules for implementation of existing agreements, as well as to address gaps and promote synergies. Thus, the work of international environmental negotiation not only continues to be very demanding, but its complexity has increased dramatically as well.

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

The handbook includes a number of examples and references to particular cases, all of which are specific to the experience and expertise of the Canadian contributors. Contributions from the perspective of other Parties and participants may be considered for future editions.

The handbook has been constructed with a modular approach that can be easily kept in a three-ring binder, so that additions and changes are easily made. It is intended to be a living document, with periodic additions and updates. This is only the beginning. You are invited to read with a critical perspective, and to make suggestions for further improvements, based on your reading and experience. Comments and suggestions are welcome. Please contact the International Relations Directorate of Environment Canada; the Division of Environmental Conventions, United Nations Environment Program; or, the Department of Law, University of Joensuu. See the section on electronic resources to find current coordinates.

Acknowledgements

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Key individual contributions came from Cam Carruthers, editor and contributing author; Yves Le Bouthillier, lead author; Anne Daniel, contributing author; Johannah Bernstein and Désirée McGraw, contributing authors. In addition, Elizabeth Maruma Mrema, the Division of Environmental Conventions, UNEP; Tuomas Kuokkanen and Marko Berglund, University of Joensuu, have provided comments to the draft manuscript. The photographs on the cover of the Handbook are courtesy of International Institutute for Sustainable Development.

For further information or a copy of the latest edition of the handbook, please contact the International Relations Directorate of Environment Canada; the Division of Environmental Conventions, United Nations Environment Program; or, the Department of Law, University of Joensuu (see Annex D).

Twelve Essentials

1. Representing your country in a multilateral negotiation is a serious undertaking and a major responsibility, not to be entered into lightly.
2. You should prepare as much as possible to understand the subject of the negotiations, your country's interests, and the interests of other countries. You should also learn about the forum and its rules of procedure, both formal and informal.
3. Support the process and participate constructively even in difficult situations. Unwarranted obstructionism can undermine the whole system.
4. Look for the win-win situations, and look for opportunities to support countries with different interests where possible. You may need their support in the future.
5. Treat other participants courteously and honestly. Good relationships and trust are invaluable assets, particularly when thinking about the long term. Humour and diplomacy can be very persuasive.
6. Focus on substantive objectives and be flexible on wording when your instructions allow. Focusing on interests of your country and other countries, rather than positions, is often the key to progress.
7. In a session, when in doubt, you can request square brackets around the text in question, and allow discussion to move on.
8. A workshop or informal group may help to resolve an impasse. More information and deeper understanding of the issues are sometimes the only way to move forward.
9. Responsible judgment is essential. Think twice before deciding to act or not to act.
10. Listen carefully to what is said and, just as importantly, to what is not said.

11. Prepare carefully for your interventions, with a clear focus on your objectives. Prioritize your interests, and focus the number and length of your interventions accordingly. Brevity and restraint are effective and persuasive.

12. Be prepared for practical necessities, including alternative transportation, alternative meals, and local currency (small denominations!). Carrying simple food and a bottle of water is a good idea. Eat when you can – a negotiator's life is unpredictable, and meals do not always happen when planned!

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

From *Where on Earth are We Going?* By Maurice Strong[1]

1. Context

1.1. History and Context of MEAs

1.1.1. Key international conferences

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

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

1.1.1.1. The Stockholm Conference of 1972

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

The Stockholm Conference also gave birth to:

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

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

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

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

  (Principles 24 and 25)

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

Principle 21:

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

In a recent decision, the International Court of Justice confirmed that this Principle has attained the status of customary international law[2].

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

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

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

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

1.1.1.2. The Rio Conference of 1992

The twin UN goals of environmental protection/conservation and economic development evolved into the concept of sustainable development through the work of the World Commission on Environment and Development (WCED) and its 1987 report entitled "Our Common Future" (known as the Brundtland Report for the President of the Commission, Gro Harlem Brundtland, former Prime Minister of Norway). In this report, the concept of sustainable development was defined as follows: "[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs." At the United

Nations Conference on Environment and Development (UNCED) held in Rio in 1992, this concept was to gain broad international support as the key element to consider in developing international environmental policy.

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

- the adoption of the *United Nations Framework Convention on Climate Change* (known as UNFCCC)
- the adoption of the *Convention on Biological Diversity* (known as CBD)
- the decision to negotiate the *Convention to Combat Desertification*
- an Action plan called "Agenda 21" (in reference to the 21st century)
- the decision to establish the Commission on Sustainable Development (CSD – see Annex on International Bodies)
- The Rio Declaration (see Annex on Reference Texts) composed of 27 Principles, many of which have, as in the case of the Stockholm Declaration – and possibly to an even greater extent – influenced the subsequent development of international and national environmental law and policy. While many of these Principles deal with issues already touched upon in the Stockholm Declaration, the Rio Declaration gave prominence not only to the concept of sustainable development but also to a number of other issues:
- common but differentiated responsibilities (Principle 7)
- public information and participation (Principle 10)
- precaution (Principle 15)

- polluter pays principle (Principle 16)
- environmental impact assessment (Principle 17)
- States to cooperate in the further development of international law in the field of sustainable development (Principle 27).

Since Rio, international environmental law has indeed played a key role in providing concrete content to key aspects of sustainable development.

This focus on sustainable development helps to bridge the gap between developed and developing countries. Even prior to the Stockholm Conference and since,[3] developing countries have made it clear that environmental protection and conservation should not come at the expense of their development. They hold the view that much of the pollution and destruction manifested today is a result of the industrial activities of developed countries. If developed countries want developing countries to forego the use of certain polluting technologies, then to avoid thwarting developing country growth, developed countries need to provide the financial and technological support this requires. While the origins of these expressions of a North-South dichotomy are complex, they are rooted in colonialism, the post-World War II institutions and the global economic order which have affected the development of the South.[4] This perspective needs to be fully understood in order to anticipate and appropriately address certain issues – capacity-building, financial mechanisms, liability provisions and differential obligations – that arise in MEA negotiations. The Rio

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

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

Declaration and its Agenda 21 provide key tools to understand this perspective.

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

- The *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa* (know as the Desertification Convention – adopted in 1994)
- the Protocol to the *London Dumping Convention* (adopted in 1996)
- the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (known as the Kyoto Protocol – adopted in 1997)
- the *Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (known as the Rotterdam Convention – adopted in 1998)
- the *Protocol to the Basel Convention on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes* (adopted in 1999)
- the *Cartagena Protocol on Biosafety to the Convention on Biological Diversity* (known as the Biosafety Protocol – adopted in 2000)
- the *Stockholm Convention on Persistent Organic Pollutants* (known as the Stockholm Convention – adopted in 2001)

1.1.1.3. The World Summit on Sustainable Development of 2002

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

The World Summit on Sustainable Development convened in Johannesburg, South Africa from 26 August to 4 September 2002. As the largest intergovernmental event ever held, the Summit focused on implementing sustainable development and poverty alleviation as its key themes. It resulted in the adoption of a Political Declaration that, in paragraph 5, clearly reaffirms the three pillars of sustainable development: economic development, social development and environmental protection. States also adopted the Johannesburg Plan of Implementation that sets priorities and targets in a number of areas of concern.

1.1.1.4. Growth of Law-making in International Environmental Matters

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

The establishment of treaties has been used to promote and establish management frameworks through which to structure practical international activity with respect to environmental protection and conservation. MEAs are living instruments, featuring annual or biennial meetings of the Parties, intersessional meetings of technical and

expert groups and intersessional written submissions. These various activities are intended to move the environmental agenda forward and keep pace with scientific developments. Because of this, the number of international meetings has proliferated, with more public servants than ever taking part in negotiations on a wide range of environmental issues.

While intensified treaty-making is a sign that governments have recognized that many environmental issues cross national boundaries and require international cooperation for their resolution, it has also been recognized that some areas of the planet are not the sovereign domain of any state, such as Antarctica or the global atmosphere. Indeed, it has been recognized that these components of our global environment merit collective protection. In fact, some conventions have recognized certain environmental issues as the common concern of humankind.[5]

As international environmental regulation becomes increasingly complex, other areas of international law are becoming ever more intertwined with it—trade law, maritime law, intellectual property law and human rights are some examples.[6] At the international level, there is a need for better coordination among environmental agreements, but also among various areas of international law.

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

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

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

typically open to civil society organizations, including environmental and industry NGOs ; meeting documents are placed on the internet prior to meetings and are accessible to the global public; the results of the meetings are published in official meeting records on the web, and are also intensively reported by the Earth Negotiations Bulletin (ENB).[7]

This fast pace of treaty-making may have obscured the fundamental question about whether environmental agreements are actually effective. In the last 10 years, there has been a positive focus on compliance with treaty obligations, along with methods of improving domestic implementation.[8] In international environmental governance discussions, issues of capacity-building, coherence, coordination and compliance have been recognized as important in the context of the overall effectiveness of environmental agreements. An effectiveness evaluation provision has been introduced into the two most recent global treaties.[9]

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

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

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

2. Forms, Nature, Principles and Elements of MEAs

2.1. Forms of MEAs

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

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

Obligations in an MEA are clearly considered to be legally binding for the Parties to the agreement. However, **decisions** taken under

an MEA will not be legally binding unless that MEA explicitly provides the authority for legally binding decisions. For instance, the *Montreal Protocol* also provides for the Meeting of the Parties to decide to make adjustments that expand the coverage of the agreement. Parties may also decide to amend an agreement (see below). However, these amendments generally enter into force only after they are ratified by a certain number of Parties, or in some cases, in the absence of a certain number of objections (Parties have different views on these issues, and it is often important to seek legal advice on them.).

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

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

2.2. Soft Law and Hard Law

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

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

There are various other forms of agreement, including memoranda of understanding and political declarations, which may use stronger language, but which are not legally binding. These are also considered by some to be "soft law". All forms of "soft law" carry the weight of good faith obligation, and are important in terms of the progressive development of the law. There is a concern held by many that "soft law" is a slippery slope, and that it could result in the development of "hard law" obligations without the clear consent of states, through the operation of customary law principles.

2.3. Treaty-making principles

Multilateral environmental agreements (MEAs) are treaties whose geographic scope varies widely. While UN MEAs are generally open to all States to become Parties, other MEAs are regional (e.g. most of the UNECE MEAs) while yet others are sub-regional.

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

In 1980, the Convention entered into force. Currently 94 States are Parties to it. Some key States (USA, for example) are not. Generally, rules in a treaty apply only to States that are Parties to it.

However, in the case of the VCLT, most of its rules are considered to apply to all States.[10]

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

2.3.1. Effect of an MEA

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

2.3.2. Parties

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

2.3.3. Signature

After the adoption of an MEA at a Diplomatic Conference, the treaty is opened for signature and States are invited to sign it. States usually have a limited period of time to become a signatory. This is specified in the agreement (e.g. the Desertification Convention was open for signature for one year after adoption—art. 33; exceptionally, some conventions, such as the *Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat* (known as the Ramsar Convention – adopted in 1971), are open for signature indefinitely).

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

The signing of an MEA is largely symbolic, and does not mean that a State becomes a Party to it unless the MEA provides that signature creates binding obligations. However, though a signatory does not have to comply with specific obligations in the MEA, it must nevertheless refrain from acts that would defeat the object and purpose of the MEA (see art. 18 of the VCLT). The provision with respect to signature is found among the last provisions of an MEA.

2.3.4. Ratification or accession

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

The key point for ratification or accession is that, for MEAs, this is typically the step that binds a Party to the obligations in international law.

Each State has its own internal procedure (normally through the legislative or the executive branch) that allows it to proceed to ratification or accession. In order for ratification or accession to take effect, the relevant instrument must be forwarded to the depositary of the treaty. Once this is done and a period of time specified in the treaty has elapsed, the MEA becomes binding on the ratifying State (if at the time of ratification by that State the MEA has already entered into force).

Many countries have specific and often technical legal processes in place to manage ratification. In Canada for example, ratification is considered to be part of the royal prerogative and is exercised by the Executive, expressed by means of an Order in Council issued by the Governor General in Council, which authorizes the Minister of Foreign Affairs to sign an instrument

of ratification. Ratification is then effected in the case of a global MEA, by deposit of the instrument of ratification with the Depositary for the treaty, usually the UN Secretary General.

2.3.5. Full powers

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

2.3.6. Entry into force

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

2.3.7. Reservations

A reservation is a unilateral statement by a State that, however phrased, purports to exclude or modify the legal effect of specific provisions of a treaty on that State. Sometimes States use the term "interpretive statement" to make what could nevertheless be construed as a reservation. Upon becoming Party to an MEA, a State may formulate reservations to it unless the MEA expressly prohibits reservations (e.g. CBD, UNFCCC). An MEA may also only allow reservations to specific provisions (e.g. *International Convention on the Regulation on Whaling*; CITES). If there is no provision on reservations in an MEA, Parties may make reservations that are not contrary to the object and purpose of the MEA (e.g. the UNECE *Convention on Environmental Impact Assessment in a Transboundary Context*, known as the Espoo Convention – adopted in 1991, to which Canada, for example, has made a reservation). Other States may object to a reservation

(see art. 19 to 23 of VCLT for the effect of such objections). Most, if not all, MEAs do not permit reservations.

2.3.8. Territorial application

Unless otherwise provided, a treaty is binding on a Party in respect of its whole territory (see art. 28 of VCLT).

2.3.9. Interpretation of treaties

In interpreting a term of a treaty, one has to consider the ordinary meaning of that term in the overall context of the treaty as well as its object and purpose. This means that context is important, and consideration of all provisions of a treaty is required, including its preamble and annexes. In addition, subsequent practices in the treaty's application and subsequent agreements on its interpretation between the Parties have to be considered, as well as any relevant rules of international law. With regard to the object and purpose, one needs to consider how a given interpretation impacts on the effectiveness of the treaty (see art. 31 of VCLT).

One may also use other references for interpretation, such as preparatory work (e.g. statements made by negotiators—or State representatives— during negotiations) and circumstances in which the treaty was adopted (see art. 32 of VCLT). Even if most MEAs are negotiated in one language (current practice favours the use of English), each authentic version of the treaty will, in principle, be given equal weight when it comes to interpretation, unless provided otherwise in the treaty (see art. 33 of VCLT). This means that it is important to examine all authentic versions, as issues often arise with respect to consistency. As a practical matter, translations often reflect the terminology used by the language group in question, and such terminology may reflect differing views on substance.

2.3.10. Amendments

The procedure to amend the core provisions of the treaty or its annexes, if any, is normally found among the final provisions of

an MEA. There are at least four steps: 1) proposal; 2) adoption; 3) ratification; and 4) entry into force.

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

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

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

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

2.3.11. Withdrawal

A provision in an MEA may authorize a Party to withdraw from it (e.g. the *Basel Convention* allows for withdrawal three years after the entry into force of the convention). In the absence of such a provision, a Party may not withdraw unless the Party establishes that the intention of the Parties was to allow for this possibility or that it may be inferred from the nature of the treaty (see art. 56 of VCLT).

2.4. Key elements of MEAs

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

2.4.1. Preamble

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

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

2.4.2. Definitions or use of terms

The first article in most MEAs is a definition section, which provides some key definitions, often for terms which are of cross-cutting importance throughout the convention. But in many cases very important definitions on specific terms are elaborated in the operative provisions of the agreement.

2.4.3. Objective and Principles

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

Therefore, many parties generally seek to avoid agreeing to principles, since they could give rise to ambiguity and uncertainty in interpretation.

2.4.4. General Provisions / Scope

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

2.4.5. Substantive Commitments

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

2.4.6. Financing and Technical Assistance

There are often provisions for mechanisms to support developing and transitional countries with financial or technical assistance, including multilateral funding mechanisms, funds dedicated to certain purposes, as well as clearinghouse mechanisms or other arrangements to organize technology transfer. Related bilateral activities may be encouraged, but are rarely elaborated upon.

2.4.7. Education, Training and Public Awareness

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

2.4.8. Research, Monitoring

There is often a provision for information gathering and sharing about Party activities or environmental science related to the agreement. In fact, this is generally a key function performed by framework conventions, linked to communication and reporting provisions.

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

There will usually be a provision which sets up a governing body for the Parties, and sets out its decision making authority as the "supreme" body for the agreement. For most MEAs this body is a COP, while a Protocol will have a MOP, the latter of which may sit as a subset of a COP in a COP/MOP. There will usually be stipulations about participation of Parties and possibly observers, as well as authority to draft more elaborate rules of procedure. Often there will be a delegation of general and residual authority, to take decisions on actions required to meet the objective of the agreement. This kind of provision generally provides the COP with a broad scope of action.

2.4.10. Subsidiary Bodies

In some cases, a separate delegation of decision making authority is also made to bodies which report to the COP or MOP, and which have the authority to make recommendations to the COP on subjects within their mandate. Mandates often relate to technical/scientific or implementation issues.

2.4.11. Secretariat, Focal Points and Authorities

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

2.4.12. Compliance, Communication and Reporting

Some MEAs include provision for the development of procedures and mechanisms to determine and address non-compliance

by Parties. These procedures and mechanisms often involve some form of compliance committee, and are often facilitative, but may address due process, the role of experts, standing, triggers, application, and in some cases (e.g., *Kyoto Protocol*), consequences. However, it should be recognized that to date there is generally no binding means of international enforcement in MEAs, with the possible exception of trade measures in the *Montreal Protocol* or the CITES.

Compliance, as well as reviews of effectiveness and environmental monitoring functions carried out under MEAs, are often largely based on obligations on Parties to submit national communications and to report on key indicators.

2.4.13. Review of Effectiveness

Often there will be a provision for the Parties to periodically examine how effective the agreement has been in accomplishing its objectives, and to consider whether further action is required.

2.4.14. Dispute Settlement

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

2.4.15. Treaty Mechanisms

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

2.4.16. Annexes

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

3. Machinery

3.1. Conduct of business in MEA meetings

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

Many of the rules of procedure and financial rules are the same for all MEAs. However, a negotiator should be familiar with the particular rules of the MEA, he or she is working on, since there are invariably rules specific to each MEA.

The comments below are meant to highlight some of the most important elements commonly found in rules of procedure and financial rules adopted by COPs. However, there are variations in different treaties, and the relevant texts should be consulted in specific cases.

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

3.1.1. Rules of procedure

3.1.1.1. Frequency of meetings

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

3.1.1.2. Observers

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

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

3.1.1.3. Agenda

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

3.1.1.4. Budgetary implications

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

3.1.1.5. Credentials

Credentials are documentary evidence of a person's authority. Usually, each Party must submit to the Secretariat, "if possible" not later than 24 hours after the opening of a meeting, the credentials of

its representatives (head of delegation, alternate representatives, advisers). Credentials have to be issued by the Head of State or Government or by the Minister of Foreign Affairs (for Canada, for example, the Minister of Foreign Affairs has this responsibility). Examination of the credentials is made by the Bureau which submits its report to the COP. Representatives are provisionally entitled to participate in a meeting, pending a decision by the COP on whether to accept their credentials.

3.1.1.6. Bureau

Rules provide for the election of the Bureau's officers by the COP. Specified in the rules are, for example, the officers (President or Chair, Vice-presidents, Chair's of subsidiary bodies, and Rapporteur), their number, the duration of their respective terms, the number of terms they may serve (usually two), the need to represent all five United Nations regions and the ex-officio members of the Bureau (normally the Chair's of subsidiary bodies). In case an officer of the Bureau resigns or is otherwise unable to complete his or her term, a representative of the same Party is usually appointed by that Party to complete the term.

3.1.1.7. Subsidiary bodies

Most of the rules for the COP also apply mutatis mutandis (with such changes as are necessary on points of detail) to subsidiary bodies. Some MEAs lay out rules specific to particular subsidiary bodies or provide that the COP may decide to modify rules for subsidiary bodies based on proposals to that effect from the various subsidiary bodies. In addition, and more commonly, rules of procedure for MEAs contain rules specific to subsidiary bodies. **One should not assume that these rules will apply to ad hoc working groups or committees established by the COP or by subsidiary bodies. Therefore, when establishing such groups or committees, it is important to determine**

the key rules (e.g. the voting rule) under which they will operate.

One particularly important rule for subsidiary bodies is whether meetings shall usually be held in public or in private (e.g. the rules of procedure for the *Rotterdam Convention* provide that meetings of standing subsidiary bodies are public and those of ad hoc subsidiary bodies are private). However, whether the rules specify public or private meetings, the COP always retains the authority to decide otherwise. Some rules also confer the power on a subsidiary body to decide. The rules also normally provide that the COP is to determine the dates of meetings of such bodies as well as the matters to be considered by each of them. The COP also elects the Chair for subsidiary bodies unless it decides to leave this decision to the members of the body in question. Other officers are subsequently elected by the body itself on the basis of regional representation.

3.1.1.8. Openness of the meetings

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

3.1.1.9. Quorum

There are different types of quorums. In order for a session of the COP to proceed, the rule is normally to require the presence of at least one third of the Parties. Normally, two thirds must be present for the taking of a decision. Rules proposed for more recent MEAs provide that for decisions within the competence of a regional economic integration organization (such as the EU), that organization shall have the number of votes equivalent to the number of its members to determine if there is quorum. Rules usually also provide for specific quorum for meetings of non-open-ended subsidiary bodies (normally a majority of the Parties participating in the body-see proposed rules of procedure for the *Stockholm Convention*).

3.1.1.10. Interventions

To address a meeting, a delegate must have the permission of the Chair. A delegate raises his or her country's name card (called "the flag") to get permission to speak and the rules provide that the Chair shall call upon speakers in the order in which they signify their desire to speak. Based on a proposal from a Party or the Chair the COP may decide to limit the time allowed for each speaker as well as the number of times a representative may speak (In practice the Chair usually makes such decisions, without much discussion, though in theory a Chair could be over-ruled. If there are major or repetitive issues, they will often be worked out in the Bureau.).

3.1.1.11. Points of order and motions

A delegate may raise a point of order at any time and the Chair must rule immediately on it (e.g. on how a vote is being conducted). A representative may appeal a ruling and the ruling will stand unless a majority of Parties present and voting (abstentions do not count) decides

otherwise. Motions may be made for decisions on the competence of the COP to address issues or to adopt a proposal or an amendment to a proposal. The COP will dispose of such motions by vote. Other motions, which have precedence over all other motions and proposals but not over points of order, are motions to (in order of priority):

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

A delegate may, at any time before the vote, withdraw a motion he or she has introduced, unless the motion has been amended.

3.1.1.12. Proposals and amendments

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

Any proposals as well as amendments to them should normally be introduced in writing, in one of the six official UN languages, and circulated to delegations by the Secretariat. As a general rule there are no discussions or votes unless the proposals or amendments have been distributed a day in advance. However, the Chair may decide otherwise with regard to amendments to proposals or procedural motions. A delegate may withdraw a proposal at any time before the vote, unless the proposal has been amended.

Any delegate may request that any part of a proposal or amendment be voted on separately. If another

representative objects, a vote must be taken on whether to have a separate vote on part of a proposal or amendment. Delegates first vote on the amendment and, if adopted, on the amended proposal.

3.1.1.13. Decision-making, Voting and Explanation of Vote (EOV)

Decision-making is generally accomplished by consensus in MEA fora. Normally, after discussion if it appears that consensus is emerging, the Chair will ask if there is consensus. If no Party makes an objection, he or she will declare that the issue is decided (often using the phrase, 'It is so decided.'). In the absence of consensus, voting may take place by a show of hands (in practice a delegation would raise its flag) or a recorded vote. In a recorded vote, the way each delegation voted is noted in the report of the meeting. A delegation may also request a secret vote. Voting is not to be interrupted unless a point of order is raised. A delegation may provide a formal explanation of vote (EOV) prior to or after voting (depending on the Chair's decision).

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

3.1.1.14. Voting majority

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

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

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

Consensus and Blocking Consensus

In many meetings, matters are decided by consensus, even though the rules provide for decisions based on a voting majority. While MEA rules do not define "consensus," it is widely accepted that there is no requirement for a formal vote as long as there are no

known objections.[11] Once consensus appears to emerge, the Chair can put the question to the COP and, absent any expressed dissent, declare the proposal adopted.

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

For matters of procedure, a majority rule applies. Whether a matter is substantive or procedural in nature is determined by the Chair. Any of the Chair's decisions may be appealed. A majority is required to overrule the decision. If a Chair attempts to force an important and contentious issue as a procedural matter, a delegation can challenge his or her ruling.

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

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

3.1.1.15. Elections

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

3.1.1.16. Languages

- **Interventions**: In the meeting of the COP, delegates may intervene in any one of the treaty official languages (usually the six UN languages, i.e. Arabic, Chinese, English, French, Russian or Spanish). All interventions are interpreted in the other official languages. If a representative wishes to intervene in a language other than an official language, he or she may do so only if an interpretation in one of the official languages is provided by that representative. To continue a meeting after translation services have been discontinued, agreement of the Parties is required (it is generally accepted that consensus is required, although procedural voting rules may apply).
- **Documents:** Official documents are drawn up in one of the official languages and translated into the other official languages. Subsidiary bodies often designate a "working language".

3.1.1.17. Amendments to the rules of procedure

As the rules are adopted by consensus, any modifications to the rules also require consensus.

3.1.2. Financial rules

In many instances, an MEA will provide that the COP shall establish its own financial rules, though they are often based on UN rules, and may refer to them.These rules are meant to govern the financial administration of the COP, its subsidiary bodies and the MEA secretariat. They cover financial matters essential to

MEAs and usually provide that, for other matters, the Financial Rules and Regulations of the United Nations will apply. For example, the *Desertification Convention* provides as follows:

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

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

3.1.2.1. Trust funds

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

3.1.2.1.1. General trust fund

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

3.1.2.1.2. Special trust fund

This fund is used to pay for the cost of participation in meetings of the COP and subsidiary bodies of representatives of specific categories of countries (e.g. in the Financial Rules for the *Desertification Convention* for representatives of developing, and in particular least-developed country Parties affected

by desertification and/or drought, particularly those in Africa; in the financial rules of the UNFCCC for representatives of developing country Parties, in particular those that are least-developed countries or small island developing countries; in the draft financial rules for the *Stockholm Convention* for representatives of developing countries and countries with economies in transition). It is composed of contributions specifically earmarked for that purpose by Parties and by other sources and additional to those required to be paid by Parties to the general trust fund.

3.1.2.1.3. Other trust funds

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

3.1.2.2. Contributions

Contributions of Parties are due annually, normally by January 1, to the general trust fund on the basis of an indicative scale determined by the COP. MEAs do not contain binding obligations on Parties to make contributions, although they are generally treated as obligatory. Typically, the basis for the scale itself is the provision that proves the most difficult to negotiate, some Parties favouring the United Nations General Assembly's (UNGA) scale as a model while others prefer other formulae. Generally, the former is ultimately adopted. The provision also specifies minimum and maximum

contributions. In addition, Parties may make other contributions, including some earmarked for the special trust fund. Parties should give notice of the intended amount and timing of their contributions sufficiently in advance. Non-Party States as well as governmental, intergovernmental and non-governmental organizations may also contribute to any of the funds. The Secretariat must inform all Parties of the status of pledges and payment of contributions (depending on the rules this is done at each COP, annually or more often during a year).

3.1.2.3. Financial period of the budget

The rules normally provide for a two-year period.

3.1.2.4. Budget estimates

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

3.1.2.5. Budget lines

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

3.1.2.6. Budget voting rules

The rules normally provide that the COP must adopt the following by consensus: the scale of contributions by Parties (each Party has a set contribution level); the

budget for a financial period; the level of capital reserve; and any amendments to the rules.

3.1.2.7. Accounts and audit

During the second year of the financial period, an interim statement of accounts for the first year is provided to the COP. A final audited statement of accounts for the full period is provided to the COP as soon as possible after the closing of the accounts.

3.2. Structure

3.2.1. Institutional structure provided for in the Convention

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

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

3.2.1.1. Conference of the Parties

Most modern MEAs provide for the establishment of a governing body called the Conference of the Parties (COP). Most Protocols to MEAs have a Meeting of the Parties which performs the same functions set out for the COP below. Both bodies are composed of all Parties to the agreement. States not Parties to the agreement,

the United Nations and its specialized agencies as well as other intergovernmental and non-governmental organizations may attend as observers.

The term COP/MOP is used when the Conference of the Parties also serves as the Meeting of the Parties to a Protocol, as is the case for the *Kyoto Protocol*. Of course only Parties to the Protocol may make decisions on matters concerning the Protocol.

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

Depending on the MEA, these tasks may include:

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

- deciding whether to adopt proposed amendments to the MEA

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

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

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

3.2.1.2. Subsidiary bodies

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

- purpose and functions: For instance, the UNFCCC provides that the task of the Subsidiary Body for Scientific and Technological Advice (SBSTA) is to provide "timely information and advice on scientific and technological matters relating to the Convention." It goes on to list various tasks to be performed by this body.

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

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

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

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

Some subsidiary bodies are, by the very nature of their tasks, meant to be temporary. For instance, COP1 of the *Basel Convention* created an ad hoc working group of legal and technical experts to consider and develop a draft protocol on liability and compensation. The work of this group came to an end with the adoption of the Protocol. Likewise, COP1 of the UNFCCC set up the Ad hoc Group on the Berlin Mandate (AGBM), which led to the *Kyoto Protocol*.

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

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

The COP decides how often these bodies will meet. In general, much of the work of subsidiary bodies takes place intersessionally and is considered at the following COP. For instance, the Legal Working Group of the *Basel Convention* met a number of times between COP5 and COP6. The work of the group allowed COP6 to adopt a number of decisions on subjects such as a compliance mechanism and an emergency fund mechanism.

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

3.2.1.3. Secretariat

MEAs normally make provisions for a secretariat. The functions of a secretariat may vary but generally it will have responsibility for managing the various activities required to meet the objectives of the Convention, and plays an essential role in ensuring the effective functioning of the COP and its subsidiary bodies. The Secretariat's primary role is to provide administrative support to the COP.

The COP may, and normally does, assign extra tasks to the secretariat. Some of the functions are set out in the rules of procedure.

Some MEAs list in great detail the tasks of the secretariat. For instance, paragraph 16(1) of the *Basel Convention* lists, in 10 subparagraphs, numerous tasks for the secretariat, adding in an eleventh subparagraph that it shall "perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties."

Some of the most common tasks are as follows:

- arrange and provide logistical support for meetings of the Conference of the Parties and its subsidiary bodies. This includes giving notice of dates and venue of meetings, preparing the provisional agenda with the Chair and circulating it along with any pre-sessional documents. Many of these documents are prepared by the secretariat, while others are forwarded to it by Parties or observers. The secretariat arranges for all these documents to be available in the official languages of the MEA.
- support meetings by arranging for interpretation, distribution of documents during the meeting as well as the subsequent publishing and distribution of official documents such as the report of the meeting

- report at meetings on the activities it has carried out between meetings and on administrative and budgetary matters
- coordinate as required with other relevant international bodies
- receive the information required from Parties by the MEA or requested from Parties or other sources by the COP or a subsidiary body and compile it in time for the next meeting
- communicate all relevant information received from one Party to all other Parties to the MEA
- arrange for the implementation of decisions taken at the meetings

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

3.2.1.4. Institutional practice – other bodies

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

Some of the most common groups to which the COP and subsidiary bodies have recourse are laid out below.

3.2.1.4.1. Working groups

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

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

One has to be careful that not too many working groups are in existence at the same time since it could become difficult for many delegations to cover simultaneously any more than one or two groups. One option often retained is to create a number of groups but to arrange that they meet at different times of the day.

> COPs and subsidiary bodies can both create working groups when needed. For instance, at the 2nd Meeting of the Ad hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related

Provisions of the CBD, the delegates met in two sub-working groups for most of the meeting to discuss substantive agenda items.

3.2.1.4.2. Contact groups

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

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

3.2.1.4.3. Informal group

In order to resolve some difficult issues, a number of Parties may meet in private, often with the participation, depending on the issue, of a Chair person, in order to reach an agreement. For instance, at COP6 of the *Basel Convention*, work on

a compliance mechanism started in a working group but later continued in an informal group which then proposed a revised text to the plenary.

3.2.1.4.4. Friends of the Chair

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

3.2.1.4.5. Committee of the Whole

In order to coherently address related issues, a COP can create a Committee of the Whole (COW) that runs parallel sessions with the COP and is open-ended. For instance, at COP 3 of the *Desertification Convention* the delegates agreed to establish a COW to consider various issues such as a proposal for an additional annex, outstanding rules of procedure, and annexes on arbitration and conciliation procedures. A Chair was designated and invited to attend meetings of the Bureau.

3.2.1.4.6. Drafting group

The Chair may set up a drafting group to develop text on very specific issues. These groups normally meet in private. For instance, at INC 6 of the POPs

Convention an informal drafting group was set up to prepare a draft decision on methodology standards for effectiveness evaluation. The text was later presented to the INC which adopted it with only minor changes.

3.2.1.4.7. Legal Drafting Group

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

3.2.2. State groupings

3.2.2.1. UN Regional Groups

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

The regional groups are as follows:

- African group
- Asian group

- Latin American and Caribbean group (known as GRULAC)
- Central and Eastern Europe group (known as CEE)
- Western European and other States (known as WEOG—this group includes Western European countries as well as Australia, Canada and New Zealand. Although the USA only has observer status, it does attend the meetings and is considered as a member of WEOG for election purposes. In 2000, Israel was admitted to the WEOG electoral group in New York on the understanding that this decision would be reviewed in four years. Since then, Israel has been admitted to WEOG meetings in other fora – e.g. the Governing Council of UNEP and in climate change negotiations. As decisions are made on a case-by-case basis and by consensus within WEOG, MEA negotiators should contact FAC when this issue comes up. In the case of some MEAs, such as the *Montreal Protocol*, the WEOG regional grouping is referred to as the Like-Minded Group which includes WEOG members but also the Central and Eastern Europe Group, and some member States of the Asia group, e.g. Japan.).

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

Examples of regional representation

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

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

3.2.2.2. UN Negotiating bloc

In order to have more leverage in negotiations within the UN system, countries with shared interests have, over the years, constituted negotiating blocs. These groups have become a permanent feature of the system and are very active in MEA negotiations. The main groups are as follows:

Group of Seventy-Seven (G-77): First constituted in 1964 when seventy-seven developing countries adopted a common declaration at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD). Today it is composed of 134 developing countries.[13] Meetings of sub-groups are also often held (essentially UN regional groups, e.g. the African Group, the Asian Group, GRULAC as well as the "Arab group"). The G-77 has successfully advocated for the inclusion in MEAs of specific provisions "for developing States" (usually concerning technical and financial assistance)

13 Some lists contain 135 countries, including Yugoslavia, which has since been dissolved.

in order to meet the needs of its members. Provisions concerning the most impoverished among these States refer to them as "the least developed among them."

See www.g77.org/

G-77 State members

Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Micronesia (Federated States of), Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Arab Emirates, United Republic of Tanzania,

Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

- European Union (composed of the States that are members of the European Union): Currently, there are 25 member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia).
- JUSCANZ/JUSSCANNZ: Included in this group are Japan (J), United States (US), sometimes Switzerland (S), Canada (C), Australia (A), sometimes Norway (N), New Zealand (NZ). On occasion, Iceland, Mexico and the Republic of Korea are also invited to participate in this group.
- Central/Eastern Europe: Included are the Central and Eastern European countries that are not members of the EU. Russia as well as States that were former Soviet Republics are in this group. Some MEAs contain specific provisions, usually regarding technical and financial assistance, that refer to these States as "countries with economies in transition."

The presidency of each of these groups is assumed on a rotating basis. While the G-77 positions will always be expressed by the formal spokesperson (the presidency rotates annually), individual G-77 members will often take the floor to add emphasis to the official position tabled. The groups often meet just prior to the beginning of a session and at various times during the session itself in order to determine priorities, common positions, disagreements and, more generally, to share information and discuss and review together their respective positions as negotiations progress (EU meetings are generally mandatory). Meetings are also held between negotiating

groups, e.g. between JUSCANZ and the EU, which comprise WEOG.

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

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

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

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

See www.sidsnet.org/aosis/

AOSIS State members

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

3.3. Roles

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

3.3.1. States

States have traditionally been, and still remain, the main actors in MEAs. MEAs, as treaties, are about State to State agreements. The importance of the role of States is obvious. First, only States have the power to collectively adopt an MEA and an MEA may only enter into force through State acts of ratification or accession. Second, once the MEA is in force, decisions on how to implement it may only be taken collectively by State Parties as members of the COP. Observers participate in the COP, but have no right to vote. Only States Parties may add to the agenda prepared by the Chair and the Secretariat. In addition, States determine which items, within the agenda, will be treated as priorities.

- Once the MEA is in force, States that have consented to be bound by it are called "Parties" while others are termed non-Parties.

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

See Annex of Case Studies. Case Study IV looks at Canada's role in the adoption of the *Stockholm Convention* and its contribution to the work of the INC prior to its coming into force illustrate the constructive role that a State can play in an MEA.

3.3.2. Observers

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

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

- A **State not Party to the Convention**, while having no right to vote, may nevertheless participate actively in the plenary as well as in the working groups, contact groups and all other groupings. This is, for example, the case of the United States which, although not a Party to the *Basel Convention*, is actively engaged in the work of the various bodies of the Convention.

- **Specialized agencies** will report on the aspect of their work that is relevant to the MEA and may take part in the debates on issues that touch directly or indirectly on their mandate (e.g. in the context of the *Basel Convention*, the IMO and the ILO closely followed discussions on ship dismantling). The same is true for **international organizations** (e.g. the OECD takes an interest in the work of the *Basel Convention* in part because OECD members have adopted a binding decision on wastes which it recently amended to be consistent with the *Basel Convention*). Likewise, the **secretariats of other MEAs** will inform the Parties of their relevant activities (e.g. the Secretariat of the *Basel Convention* participates in the INC of the *Stockholm Convention* since the latter Convention expressly notes the need for cooperation between the two conventions.)
- **Environmental NGOs, representatives of indigenous communities and industry** will each represent the interests of their particular constituency and will attempt to have these interests reflected in the decisions taken by the bodies of an MEA. They will be able to intervene in plenary on the various issues, usually after the Parties, the States not Parties and the specialized agencies have had a chance to intervene. They may also participate in working groups and general contact groups but will usually be excluded from drafting and informal groups. However, in some cases, for reasons of transparency, they may be invited to participate as observers in the initial phases of discussion by these groups, with no right to speak except at the invitation of the Chair. Obviously, these observers can also play a key role by lobbying delegations in the corridors, informally suggesting text, holding information sessions on their activities, talking to the media, etc. Frequently, they also play a key role in providing information on the extent of domestic implementation and in alerting the international community to new problems not sufficiently addressed by existing MEAs.

3.3.3. Chair

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

3.3.3.1.1. General

Elected to preside over the work either of an INC (when an MEA is being developed or is not yet in force) or a COP (once the MEA is in force), the President, commonly and elsewhere in this document referred to as the Chair, is a key actor in MEA negotiations. He or she also Chairs the Bureau. While in theory many of the formal and informal functions of a Chair allow him or her to exercise a great deal of influence on the outcome of meetings, in practice the extent of a Chair's authority depends very much on his or her own personal and diplomatic skills. Ultimately, however, the Chair remains under the authority of the COP and therefore, while in practice a decision of a Chair is not often challenged, it is always subject to being overruled by a COP.

3.3.3.1.2. Election of the Chair

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

3.3.3.1.3. Functions and powers

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

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

- to designate the Chairs or co-Chairs of working groups, contact groups, etc – however, with regard to the Chairs of subsidiary bodies, their election is normally a responsibility of the COP; and,
- to review the draft report of the meeting prior to its adoption.

The Chair may propose to the plenary:

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

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

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

3.3.3.1.4. Functions during negotiations of a draft MEA

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

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

3.3.3.2. Chairs of other groups

Any formal or informal group created in the context of an MEA requires a Chair. In the case of a subsidiary body, the Chair is normally elected by the COP, unless the latter decides otherwise. For other groups, Chairs are chosen at the suggestion of the Chair of the INC or

COP, often after informal discussions with interested Parties. In some cases co-Chairs may be chosen (usually one from the North and one from the South). The Chair's main objective should be to facilitate a resolution of differences. Whatever the outcome of a particular group, it is for the Chair of that group to report to plenary on the results of the meeting.

3.3.4. Bureau

3.3.4.1. Composition and election

The Bureau is composed of at least one representative of each UN regional group. The size of the Bureau varies. For instance, the Bureau of the *Rotterdam Convention* on PIC has 5 members, the Bureau of the Stockholm Convention on POPs has 10 members while the *Basel Convention* has a Bureau of 5 members but also an Expanded Bureau of 13 members. The officers of the Bureau are as follows: a Chair, a rapporteur and Vice-Chairs. The first two positions rotate among regional groups. In addition, members of subsidiary bodies are, in some MEAs, members ex officio of the Bureau. In the case of the Expanded Bureau of the *Basel Convention*, the two co-Chairs of the Open-ended Working Group and the Chair of the Committee administering the mechanism for promoting implementation and compliance with the *Basel Convention* are full members of the Bureau. The members of the Bureau are elected by the COP (see section on Bureau, under Machinery). In practice, discussions are held prior to the meeting between the various regional groups to arrive to an agreement on the members that will serve on the Bureau. Members do not usually serve more than two terms.

3.3.4.2. Functions of the Bureau

Between sessions, the Bureau will work closely with the Secretariat to provide administrative and

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

During meeting, the Bureau normally meets daily to discuss how the meeting is proceeding and what to anticipate for the next day. As there is at least one member per region on the Bureau, each of them usually consults regularly with his or her own regional group in order to keep the Bureau abreast of particular concerns raised in the respective groups.

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

3.3.5. Secretariat

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

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

3.4. Drafting issues

3.4.1. General

Drafting issues arise in a number of MEA contexts, such as treaty negotiation, decisions at Conferences of the Parties, recommendations from subsidiary bodies to Conferences of the Parties and meetings of organizations such as UNEP Governing Council.

3.4.1.1. Strategic flexibility

All proposals which are to be the subject of discussion should be made available prior to the meeting. The mandate should be developed so that it is flexible enough to allow negotiators to respond to the text as it evolves during a meeting. Still, preparation should be done with reference to the annotated agenda for the meeting and with specific regard to the draft proposals under discussion, with a view to minimizing the number of interventions required to achieve the your negotiating position.

At the negotiations, Parties will have varying views about

negotiating texts. In making a drafting suggestion one should be careful without being pedantic. Nothing loses more negotiating capital with other Parties than repeated stubbornness about insignificant points. In fact, drafting flexibility on unimportant points can help a negotiator build influence and ultimately achieve important points. Negotiators should avoid proposing meaningless changes for stylistic or grammatical reasons.

Negotiators should always understand their negotiating position well enough so that they can maintain their substantive points as required by the negotiating mandate, yet be flexible enough with language to accommodate proposals by other countries. Interventions on other Parties' proposed text or on bracketed text (see below) must be diplomatic, and preferably should provide precise language to resolve the negotiator's concern, directing the Chair and the room to the precise paragraph and line. Alternatively, if major structural revisions are required, then providing a compelling conceptual framework is important.

When another Party's position is compatible with yours, an ideal intervention allows the other language to stand while proposing precise language that meets your negotiating mandate. Where another Party's intervention is directly opposed to your delegation's interests, it is important to ensure that disagreement is politely expressed in the form of square brackets around the language. Providing a clear, concise rationale for the disagreement may help sway those delegations which have no firm position and enable the room to come to a compromise solution.

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

3.4.1.2. Drafting Terminology

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

3.4.1.2.1. Square brackets

Square brackets connote a lack of agreement about the text in brackets, including when a text has simply not been discussed. Where a proposed text is offered for international discussion for the first time, such as when it is drafted by the secretariat at the request of countries, the Chair will invite Parties to insert square brackets in the first round of discussions to indicate those areas with which they have difficulty. Once those areas of difficulty have been identified, the brackets around the whole text can be dropped.

If there is any doubt about the acceptability of any text, insert square brackets.

Brackets help to focus discussion on points of concern and allow for inclusion of alternatives in brackets for negotiators to choose from at subsequent sessions or meetings.

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

Article 6 – Notification[14]

1. The Party of [import][export][may][shall][notify] [or] require the [importer] [or] [the exporter] to

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

> 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.

3.4.1.2.2. Chapeau, Article, Paragraph and Sub-paragraph

The word "chapeau" is used in both decisions and treaties to refer to the phrase at the beginning of an article or paragraph before subdivisions in the immediately following text (article into paragraphs; paragraphs into sub paragraphs). Whatever falls under the chapeau is to be interpreted by reference to it and to be given equal treatment.

3.4.1.2.3. Preambular Paragraphs

The preamble to an MEA, a decision or a recommendation, is composed of a series of statements called 'recitals'. As they are part of the document, they can serve to help interpret the document. Often a key part of phrases in a recital is contained in the first word or two (words such as *mindful, aware, recognizing, fully recognizing, noting*). See also section on Preambles, in Drafting Issues.

3.4.1.2.4. Mutatis Mutandis

Mutatis mutandis is a Latin phrase which is used to mean 'with such changes as are necessary on points of detail.' It is often used where a principle or rule applies in more than one context. For example, the rules of procedure for the COP generally apply *mutatis mutandis* to its subsidiary bodies. This

term should be used with care, however, as in some cases it is put forward when there is a need for more specificity.

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

Measures to reduce or eliminate releases from unintentional production

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

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

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

Article 4

General Obligations

1….

2. Each Party shall take the appropriate measures to:

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

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

Some recitals on precaution:

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

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

Preamble to the *Biosafety Protocol :*

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development…"

Recital in the preamble of the *Stockholm Convention*:

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

3.4.1.3. Amendments and Interim Numbering

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

- Language to be deleted should be put in square brackets with the bolded word "Delete" at the beginning of the square brackets, e.g. [**Delete**: All governments should consider the importance of the global transition to sustainability]
- New language to be added to the text should be put in

square brackets, preceded by the bolded word "New" with the new text written in italics, e.g. [**New**: *The new generation of global sustainability challenges require new forms of partnership and solidarity between nations*]

- Existing language to be changed in the text should be put in square brackets, preceded by the bolded word "Revised" with the revised language to be underlined, e.g. [**Revised**: It is particularly important that developed country governments consider the importance of the global transition to sustainability]

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

3.4.1.4. Elaboration and editing of text

In general, MEA processes have secretariat support for editing of documents before the adoption of final texts. For UN bodies, there is a standard approach to editing for spelling, grammar and style, including dates, numbers, capitalization, punctuation, quotations, as well as the structure of recitals and operative provisions. Some secretariats will pre-edit, proof read or provide informal advice on drafting. This can help avoid difficulty in adopting final texts. There are a number of simple rules of thumb to keep in mind. In a report or other document it is preferable to use simple sentences. A decision is technically one long sentence, often with many clauses and sub-clauses. There should generally be only one operative verb in each paragraph. Avoid acronyms, the use of the word 'and' to link paragraphs. Refer to other

documents with footnotes rather than in the body of the text. With respect to English, standard UN spelling usually (but not always) takes UK forms particularly for nouns, and often takes US forms for verbs that end in 'ize'. Numbers 10 and higher are written in numerals. Note also that the US definition of 'billion' is used, i.e. a thousand million. In most cases, existing model text can be used.

3.4.2. Treaties

3.4.2.1. Initial negotiating text

Treaty texts are created in a number of ways. For example, the *Stockholm Convention* on POPs evolved from a request by INC-1 to the secretariat to provide a basic text that could be considered by the INC at the next meeting as the negotiating text. Given its quality, INC-2 did indeed adopt it as its negotiating text. In other contexts, such as the *Biosafety Protocol*, the secretariat was requested to draft less controversial provisions while countries made submissions on key issues which eventually were turned into a negotiating text by the Chair. The latter process which included several rounds of Party draft text resulted in a very cluttered "final" negotiating text heading into what was planned as the last session in Colombia.

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

delegation inserted a proposal into the negotiating text of the *Stockholm Convention*, laying the groundwork beginning at INC-3.

3.4.2.2. Clarity versus ambiguity

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

3.4.2.3. Preamble

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

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

3.4.2.4. Objectives

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

Objective in the *Stockholm Convention*

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

Objective in the CBD

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

Objective in the *Biosafety Protocol*

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

3.4.2.5. Control provisions

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

It is generally important to avoid the word "ensure" whenever possible as it is generally used inappropriately, as in most cases governments cannot fully implement such obligations. An obligation should be constructed clearly enough so that it will be fairly obvious as to whether a party has complied or not with its obligations. Consideration should be given to whether obligations should be crafted as obligations of result, or obligations of method. Emission reductions are obligations of result and unless the means of reduction are specified in a treaty, each party will have the option of achieving that target in a number of ways. Alternatively, if the

obligation is to implement a prior informed consent system for hazardous wastes, this is an obligation of method. Again, negotiators will have to consider which type of language is appropriate in the context.

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

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

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

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

3.4.2.6. Final Provisions

Final provisions texts tend to be very similar from treaty to treaty, and legal negotiators are advised to refer to precedents in other MEAs as these are heavily referenced by secretariats and legal drafting groups in drafting and reviewing treaty texts. Nevertheless, there is some variety, particularly in texts regarding amendment of annexes, so that precedents should be considered very carefully and deviations from precedent appropriately explained.

3.4.3. Decision texts

Conferences or meetings of the Parties to MEAs utilize decisions to transact their business. Decisions are not legally binding unless the treaty text provides that they are.

Example of provisions in MEAs providing for binding decisions:

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

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

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

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

Nevertheless, even non-binding decisions should be carefully negotiated for several reasons. First, they create political expectations including that Parties will comply with the decision. Second, some treaty bodies use decisions to provide effective interpretations of the treaty that were not made explicit in the treaty. Third, some decisions may contain or approve guidelines

on a particular subject that may become the subject of an international treaty on the subject at a later date.[15]

Decisions that are not binding should be drafted in language that is not mandatory through the use of "may" or "should," rather than "shall."

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

Decision VI/5 of COP VI of the CBD, on Agricultural biological diversity: … Moreover, funding for the implementation of the programme of work should be reviewed…. Identify and promote the dissemination of information on cost-effective practices and technologies, and related policy and incentive measures that enhance the positive and mitigate the negative impacts of agriculture on pollinator diversity, productivity and capacity to sustain livelihoods, through:… Identification, at international and national levels, in close collaboration with relevant international organizations, of appropriate marketing and trade policies, legal and economic measures which may support beneficial practices. This may include certification practices, possibly within existing certification programmes, and the development of codes of conduct.

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

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

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

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

- if action is considered urgent, Parties can be "urged"[16] to take action, if less urgent, Parties can be "invited"

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

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

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

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

16 Such as to ratify a treaty amendment

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

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

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

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

3.4.4. Recommendations

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

3.5. Documents

3.5.1. General

Negotiating MEAs gives rise to diverse documents. Many of them are official meeting documents prepared either in advance of a meeting (pre-sessional documents) or shortly after it has ended (meeting report). These documents are normally posted on the official web site of the MEA in question. Other documents will be drafted and distributed for the first time at the meeting itself (in-session documents) with the immediate and short-lived aim of influencing negotiations. This type of document dies with the end of the meeting and is not posted on the MEA web site.

3.5.2. Pre-sessional documents

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

As a rule, these documents should be available in the official languages of the MEA. In practice, they are often first issued in one language and later translated. Moreover, while these documents should be circulated at least six weeks in advance, many may only be ready on the eve of the meeting. This is often the case for pre-sessional documents of a budgetary nature.

3.5.3. In-session documents

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

3.5.3.1. Conference room paper (CRP):

These documents serve a number of purposes: to explain in detail the position of a Party or negotiating bloc on a complex issue; to put forward new negotiating text; to report to the plenary on the results of the deliberations of a group. They are officially numbered (CRP.1, CRP.2 etc.) and their origin is clearly identified (from

a group of countries, from a working group etc.). As mentioned above, these papers die at the end of the meeting. However, a Party may ask that part or all of a CRP be included in the final report of the meeting. CRP documents are often used when there is not enough time for translation the official languages, as would be required for an L document.

3.5.3.2. L. document

These documents contain conclusions and decisions, and are central to the process, and must be translated into all six official languages before they are adopted. The "L" stands for "limited distribution" as these documents are distributed only to meeting participants for the limited purpose of adopting their content. For instance, at the end of a COP, the Secretariat will distribute to the Parties a draft final report identified as an L.doc. and the Chair will then ask Parties to approve it. It will then go through a formal secretariat editing process. Often, a pre-editing service is available, which can help avoid difficulties related to the final approval by Parties. Likewise, a draft decision will be circulated as an L. doc. In some cases, the Chair may propose adoption of items without the text having been circulated. If so, you should ask that an L version of the text in question be made available. Reports of sessions often provide an overview and contain addenda which may contain a number of specific decisions which, in turn, may contain annexes. These texts are very important. It should be noted that annexes and addenda are considered to be part of the document to which they are annexed or added. The legal effect of such texts is determined by reading a decision as a whole, with reference to the underlying authority for the decision.

3.5.3.3. Informal document

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

3.5.4. Chair's text

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

3.5.5. Report of the meeting

The report of the meeting is a key document as it records all the substance of the discussions and the main results of the meeting and, most importantly, will include in its annexes the adopted decisions. In addition, other important documents resulting from the meeting may also be included in the annexes. For example,

if during the meeting the provisions of a compliance mechanism or the terms of reference of a particular subsidiary body were negotiated in detail, the most recent draft text on these items may be included in the annexes.

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

At INC 6 of the Stockholm Convention, countries had divergent views with regard to the extent of the work that should be done on compliance for INC 7. Some countries would have liked the Secretariat to prepare, based on written comments from governments, a draft model for a compliance mechanism. Other countries proposed that the secretariat only prepare a synthesis based on the comments. A third group of countries wanted the secretariat to limit itself to compiling the written comments received from governments. At the time of the adoption of the report of the meeting, a number of countries stated that the report did not properly reflect the debate and, therefore, proposed modifications to the text. Further debate ensued and, in the end, the work to be accomplished on the compliance issue prior to INC 7 was laid out in some detail in the final report.

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

In some cases, when a meeting finishes late in the day, only parts of the draft report are available. As a result, the participants have

no other choice but to rely on the Secretariat to finalize the report in question. If a key issue was outstanding and not included in the draft report, you should review the complete report as soon as it is posted on the web (usually a few weeks after the meeting) to verify its accuracy. If some parts of it do not accurately reflect the meeting, you should immediately communicate suggested changes to the Secretariat.

3.5.6. Identifiers on documents

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

3.5.6.1. Identifiers for each MEA

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

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

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

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

3.5.6.2. Identifiers for the nature of the meeting

Following the name of the MEA, an acronym will indicate which body of the MEA is meeting. The list

below is far from exhaustive. While it highlights some of the most common acronyms (e.g. COP), it more than anything else, illustrates the multiplication of bodies, many of which are of a temporary nature.

COP – meetings of the Conference of the Parties are indicated by COP followed by a number which indicates which meeting of the COP the document was prepared for or was issued from. For instance, UNEP/CBD/COP/6/20 is the report of the sixth COP of CBD. In some cases, there is no direct reference to the COP but simply a number after the acronym of the MEA. For instance, pre-sessional document UNEP/CHW.6/1 refers to the agenda for COP 6 of the *Basel Convention*. For UNFCCC, the documents refer to the CP for the Conference of the Parties and to the year of the meeting instead of the number of the meeting (e.g. UNFCCC/CP/2002/1 is the provisional agenda of the 8th meeting of the CP).

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

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

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

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

Further examples of documents:

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

3.5.6.3. Identifiers to indicate modifications

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

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

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

Rev. – this means that this text replaces the one previously issued. For instance, UNEP/CHW.6/INF/2/Rev.1 is an updated list of pre-session documents for COP 6 of the *Basel Convention*. UNEP/CBD/COP/5/1/

Add.1/Rev.1 is a revision of the annotations to the provisional agenda of COP 5. It supersedes and replaces document UNEP/CBD/COP/5/1/Add.1 and Corr.1.

3.5.6.4. Other identifiers

Pre-sessional documents prepared either by Parties, observers or the Secretariat for information purposes are known as **INF** documents. For instance,UNEP/CHW.6/INF/10 is a submission by Canada to the COP 6 of the *Basel Convention* providing comments on the "Analysis of issues related to Annex VII". However, comments received from Parties and circulated without any formal editing may be classified as miscellaneous documents with the identifier **MISC.** Document FCCC/SBSTA/2003/MISC.3 for example contains individual submissions from nine Parties to the Subsidiary Body for Scientific and Technological Advice of the UNFCCC on needs for specific methodological activities and on a strategic approach to future methodological work. Each of the submissions is reproduced in the language in which they were received and without formal editing.

3.6. Strategic issues

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

3.6.1. Common strategic issues

3.6.1.1. Meeting preparation

Always be prepared. Know your brief thoroughly, including all of your fallback positions, and be ready to respond to questions from other delegations, both formal

and informal. Always carry your negotiating instructions and briefing book with you.

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

3.6.1.2. Venues to build support

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

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

3.6.1.3. At the microphone

If you are responsible at the microphone for an issue on behalf of your delegation, you should never leave the chair/microphone unattended. When numbers permit, you should ideally have another member of the delegation with whom you can consult, and who can

carry notes and drafting proposals to other delegations on your behalf, while you engage in debate.

At the beginning of the meeting, you should ascertain the method of being recognized by the Chair: this can be by raising your Party's name card (called the "flag"), by pressing a button or both[17] and in any meeting, but particularly in smaller groups, by getting the attention of the secretariat member supporting the Chair.

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

A good intervention:

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

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

It is critical to listen carefully to the interventions of others and, to the greatest extent possible, support interventions that are generally consistent to your own position in order to generate support for your delegation's proposals. In your intervention, it is strategic to indicate support for particular countries that have a common position and, in doing so, to name countries from different regions where possible. As noted in section on Drafting, where you cannot agree with a proposal, you need to clearly say so, identify the concern, ensure that the proposal is bracketed, and if possible, insert your own into the text (in brackets when there are other points of view).

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

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

is important to jot down your key points before you intervene.

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

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

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

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

3.6.1.4. Note-taking

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

3.6.2. Strategic issues in a plenary/large meetings

3.6.2.1. Interventions

As noted in 3.4.1.1 on drafting strategy, it is important in a meeting to intervene only as often as necessary

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

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

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

3.6.2.2. Written proposals

If a position is particularly complex, or a completely new negotiating text is desired, a new proposal could be more easily accepted, or at least understood, if presented as a Conference Room Paper ("CRP"), a formal numbered paper distributed only in the language(s) in which it

was prepared. CRPs die after the meeting at which they are presented and are not found on the UNEP treaty websites.

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

3.6.2.3. Unsatisfactory text at the end of the day

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

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

- seek to have an issue mentioned in a resolution at the diplomatic conference formally adopting the treaty. This is often done when an issue has not been addressed directly in the treaty itself. Mention of it in the resolution may keep this issue alive for the future.
- seek to have the issue included in the interim work programme.
- formulate, in cases where there are serious concerns about the text, an interpretive statement upon signature or file it with an instrument of ratification. Since most MEAs preclude the filing of reservations to the treaty (see section 2.3.7.), these interpretive statements should be prepared in consultation with legal and policy advice.

- **block**, if the concern is of paramount importance, **adoption of a treaty text** where the decision making rule is by consensus. This is done only in rare and very serious cases, and would have to be done by the head of delegation, probably in consultation with capital.

3.6.3. In smaller groupings

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

Meetings of smaller groupings are held in various places. While often they are around hollow square tables, in some cases the Chair sits facing the room. **Choosing where to sit is often key in small groups**, so arrive early and deposit your papers on your preferred seat. Make sure to be located so that the Chair can see you clearly. This will prevent the Chair from "conveniently" not recognizing you for whatever reasons, including when you are about to express a controversial position. On occasion it may be important to sit beside the delegation of another Party with a similar position to facilitate consultations. However, if too many like-minded countries sit together, be aware that this may be perceived negatively. For instance, if some of the like-minded are seen as intransigent, while you want to be perceived as more flexible, this seating arrangement could hurt your position. If you wish to intervene after others have done so, it is useful to sit at the back of a room where you can see all of the flags raised. In other situations, such as in a very small drafting group, you may wish to sit in the middle to have more influence and eye contact with the entire group.

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

3.6.4. Expert Meetings

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

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

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

It is important to understand at the outset the nature of the outcome to be generated by the meeting. In other words, you

should be careful to ensure that the meeting report reflects what the mandate required. If the COP did not ask for recommendations on an issue, no such recommendations should be included in the meeting report; it should only contain a summary of the different perspectives raised.

3.6.5. Secretariat

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

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

3.6.6. In the Chair

If you are approached to Chair an ad hoc meeting, you should speak/consult with your head of delegation to consider whether this is in your delegation's best interests. There are a number of considerations to be taken into account. If your delegation is small, it may deplete your numbers too much to be able to allow it to function effectively in that and later sessions. At times, you may be asked to act as Chair because you are clearly one of the most qualified persons to do so; alternatively, it can be because you are a compromise candidate or your delegation's strong position is known and the offer to Chair is intended to neutralize us.

When your delegation is chairing a session, it may make it more difficult for the your delegation to take strong positions – without putting the Chair in a difficult position. Therefore, if you are making interventions with your delegation in the Chair, you should

generally take as low key an approach as possible in achieving the your negotiating position. Further, there may be times when your colleague will rightfully rely on you to facilitate his or her role as Chair, by proposing compromises or supporting procedural approaches and decisions. However, there are times when your mandate will require you to intervene forcefully. If you can foresee such a situation, it is a good idea to warn your colleague in the Chair ahead of time.

3.6.7. Shaping Overall Negotiation Outcomes

3.6.7.1. General

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

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

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

3.6.7.2. Timing

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

Strategic thinking about shaping the final package is important from the outset, but there are certain critical points of particular importance, such as when the agenda is being set, or when negotiations are at the point of moving from one body to another.

3.6.7.3. Venue

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

who are more familiar with the key players and the process have a distinct advantage.

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

3.6.7.4. Setting up High-level decision-making

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

Setting up higher level decision making in order to achieve desired outcomes requires a broad perspective not only of the specific issues under negotiation in any given session, but also of related, current, past and

future negotiations, as well as relationships among key players. At this level, the art of the deal involves setting up the trade-offs in such as way as to allow for balanced outcomes, aggregating issues and constructing options so as to produce desired outcomes. If emerging outcomes are unexpected or undesirable, it becomes necessary to focus on how the most important issues are treated, and how they could quickly be realigned in a new strategy.

It is particularly important to keep in mind that high-level officials and Ministers will generally not be able to deal with more than a very few issues (usually a half a dozen or less) with clear options. If they are overloaded, they will generally opt for simple solutions. This dynamic can be and is used strategically, and is of particular concern to those Parties whose proposals are complex. If you are supporting such a position, you need to make progress at the working level, and be concerned about delay tactics. Another consideration to keep in mind is that high-level decision making is relatively final. Whereas technical issues may be re-considered as a matter of course in relation to new developments, high-level decisions are rarely reconsidered, and once an issue is set up for a high-level decision it is very difficult to stop or change the direction of the decision making process. So it needs to be set up well in the first place.

3.6.7.5. Communications

It is important to keep in mind that communications can often be used as an effective tool to put pressure on other delegations in negotiations, particularly during high-level negotiation segments, where ministers are involved as they are more politically sensitive. Communications tactics are also generally advantageous for those Parties or stakeholders whose positions are or can be made to appear simple and straightforward. Many Parties regularly integrate communications into their overall

negotiation strategy. When communications are at issue, it may be particularly useful and important to consult and coordinate with stakeholders inside and outside the delegation.

3.6.7.6. Leadership and Vision

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

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

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

One of the most powerful tactics that can be employed

by a Chair is to present a 'take it or leave it' package near the end of a session. In some cases they may indicate that they will consider a limited number of changes only. In such situations, one or a few Parties may be isolated. If you can foresee a likelihood of your delegation being isolated in such a way, it is important to consider whether or not your delegation is in a position to block consensus. It is far preferable to seek solutions before a public ultimatum comes from the Chair. If your delegation is in a position to block consensus, it is important to be able to convince the Chair that your delegation's position is firm, and that if negotiations are to have a successful outcome, other options must be found. Similarly, if another Party is likely to block consensus, it is important to seek solutions, and consider how this may affect general and specific outcomes.

3.6.8. The Practicalities

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

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

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

3.7. Process Issues and Violations

3.7.1. Management of Meetings

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

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

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

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

informal approaches to the Chair can be effective, but obviously the strategy varies. Such approaches, if necessary, usually need to be taken from a senior or head of delegation level.

Examples of specific violations:

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

Examples of violations of the spirit of the rules:

- When a Chair becomes a clearly partisan participant in negotiations;
- When the Chair of a Conference makes "take it or leave it" proposals;
- When a Chair attempts to isolate, exclude or undermine a Party, or privileges or colludes with a Party;
- When a host or other influential Party abuses its position and influence (by, for example, announcing or attempting to impose agreements unilaterally or prematurely);
- When new texts are presented at the last minute and accepted as the basis of negotiation, without a rationale for urgency or other justification;

- When informal negotiations disadvantage a Party because of language ability;
- In general, nothing prevents a Chair from making any kind of proposal, but when they purport to impose text or decisions, this should be seen as a process violation.

3.7.2. Participation in meetings

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

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

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

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

3.7.3. Other Issues

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

3.8. Funding

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

3.8.1. Global Environment Facility (GEF)

3.8.1.1. General

The GEF is the designated financial mechanism for some MEAs (CBD and UNFCCC) and the interim mechanism for others (*Stockholm Convention and the Desertification Convention*).

The GEF has a 32 member Governing Council as well as an assembly. Since 1991, GEF has distributed over $4.2 billion in grants, supplemented by an additional $12 billion in co-financing, for more than a thousand projects in 140 developing countries and countries with economies in transition. Its most recent replenishment included commitments for over 3 billion dollars.

Consistent with the GEF's 13 operational programmes, projects are supported in six interlinked focal areas:

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

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

Funding is administered by the GEF Secretariat, while projects are developed and undertaken by the three Implementing Agencies (IAs) – World Bank, UNDP and UNEP – and six Executing Agencies – FAO, UNIDO, Asian Development Bank (ADB), Islamic Development Bank (IDB), African Development Bank Group (AfDB) and EBRD – in collaboration with recipient countries.

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

3.8.1.2. Project Funding

3.8.1.2.1. Principles

GEF funds activities based on the following principles:

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

3.8.1.2.2. Eligibility

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

3.8.1.2.3. Development streams and project types

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

- Project Preparation and Development Facility (PDF)
    - Block A (<$25,000): fund early stages of project identification, approval by IAs

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

3.8.1.3. Relationship to MEAs

- The MEAs provide guidance to the GEF through their text and through decisions by their respective COPs.
- The GEF Secretariat is responsible for coordinating with MEAs Secretariats and for representing the GEF at meetings of the MEAs. The GEF Council is responsible for ensuring that GEF-financed activities conform to convention guidance.
- Parties to MEAs should keep in mind that the GEF provides incremental costs; therefore, guidance provided to the GEF should address incremental costs only.

- The MEAs providing guidance should address policies, programme priorities and eligibility criteria, but should avoid micromanaging the GEF with too much guidance.
- The GEF Secretariat proposes to the Council how guidance from the MEAs may best be incorporated into GEF policies, programmes and strategies. The Secretariat consults with the IAs, the Scientific and Technical Advice Panel (STAP), and the appropriate MEA Secretariat in preparing proposals.
- MEA guidance is operationalized by translating it into guidelines and criteria that, with the GEF's OPs, are used to develop operational activities.
- GEF's OPs correspond to Focal Areas and directly reflect MEA objectives and priorities. They provide a conceptual and planning framework for the design, implementation, and coordination of a set of projects within a focal area. There are currently 13 OPs (five biodiversity, four climate change, three international waters, one multi-focal area); two new OPs are being drafted to address POPs and Land Degradation Conventions.
- The GEF Instrument is amended when new focal areas are introduced. At the October 2002 Council meeting, the Instrument was amended to allow POPs and Land Degradation as focal areas.
- Representatives of the GEF and IAs attend COPs as observers but do not actually participate in negotiations. GEF organizes workshops at these meetings to communicate current activities and to informally solicit input on further guidance. Where appropriate, negotiators should undertake consultation with GEF staff to ensure guidance is realistic and practical.

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

3.8.1.4. Responsibilities of MEAs Focal points

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

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

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

3.8.1.5. Issues related to Relationship with MEAs

- GEF can have difficulties in translating broad MEA guidance into practical operational activities. As a result, clarity in the decisions of the COPs to the MEAs is essential. MEAs should consistently provide clear guidance that can be translated into meaningful action in support of MEA objectives.
- GEF is limited in its ability to respond to guidance. MEAs must ensure that new language factors in previous guidance to the GEF. New activities inserted by delegates without appreciating that the GEF has a limited amount of funds earmarked for each focal area

necessarily reduce funding of previously approved areas.

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

4. Cross-Cutting Issues

4.1. Governance Principles and Objectives

4.1.1. Governance Principles and Objectives

4.1.1.1. Overview

The World Summit on Sustainable Summit sent a clear message that strengthened international institutional frameworks are essential for the full implementation of MEAs, and more broadly, the realisation of sustainable development. Agreement was reached on approaches to governance, which should therefore be applicable in the elaboration of MEA implementation decisions and tools.

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

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

Many of the challenges and problems of governance that were addressed in the WSSD Leaders' Declaration reflect an emerging international consensus that was also confirmed by the UNEP International Environmental Governance process.

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

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

4.2. International Cooperation and related issues

4.2.1. Official Development Assistance

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

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

Many states, including e.g. Canada, remain committed to improving aid effectiveness and to making progress towards the ODA target of 0.7% of GNP. The target was recommended in the 1974 UN Resolution on the New International Economic Order to which donor countries have recommitted themselves to this target

at several UN conferences (only 5 donor countries have met the target – Denmark, Luxembourg, Netherlands, Norway, Sweden).

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

4.2.2. New and Additional Financial Resources

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

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

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

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

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

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

Negotiation of the meaning of this term is usually unproductive.

4.2.3. Recipient Countries

4.2.3.1. Developing countries

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

4.2.3.2. Least Developed Countries

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

4.2.3.3. Countries with Economies in Transition

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

4.2.4. Capacity Development

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

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

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

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

Effective capacity development should involve or take into account:

- a locally-driven agenda and broad-based participation

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

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

4.2.5. Technology Transfer

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

and its adaptation for use in their own cultural and development environment. This definition implies a locally-driven, endogenous process that can only be successful using a capacity-building approach.

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

4.3. Trends in MEA Negotiations

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

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

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

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

4.3.1. Substantive Trends in MEA Negotiations

Substantive Trends in Multilateral Environmental Negotiations

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

4.3.2. Three Pillars of Sustainable Development

One of the more prominent trends in the new generation MEAs is the extent to which key environmental concerns are being increasingly addressed in a broader sustainability framework. Related to this is the increasing importance placed on the

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

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

4.3.3. Focus on Targets and Regulatory Mechanisms

There is an increasing use of time-bound targets and regulatory mechanisms to place substantive controls on activities of the Parties to MEAs. The trend toward targets is reflected in the Montreal and Kyoto Protocols, with their time-bound emissions limitation targets, and as a result of the Millennium Development Goals, and more recently, the Johannesburg Plan of Implementation, which contains over 30 quantitative environment and development targets. Some of the WSSD targets include: to "halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water and the proportion of people who do not have access to basic sanitation (paragraph 8); restoring the world's depleted fish stocks to commercial health by 2015; and reversing the processes that lead to biodiversity loss by 2010." Regulatory mechanisms are also being used, for example

20 See Art. 4 *Desertification Convention*

in the context of the *Basel Convention*, the *Rotterdam Convention* and the *Biosafety Protocol*. These examples of regulatory mechanisms focus on import and export controls, which are also reflected in other MEAs, including the *Montreal Protocol*.

4.3.4. Common but Differentiated Responsibilities

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

4.3.5. Common Heritage

The principle of the common heritage of mankind (which affirms that no State may assert national sovereignty over global commons resources) has undergone considerable evolution since its first articulation during the UNCLOS negotiations. During the Biodiversity Convention negotiations, the principle of the common heritage of mankind was rejected by developing countries on the assumption that it would subject their biological resources to international control. This debate led to the articulation of the principle of common concern of humankind, which provides a conceptual framework for natural resources that are located within national borders but which have global significance. In this regard, the Biodiversity Convention not only generated a substantive innovation in terms of the new concept of common concern, but it was also the first MEA to expressly

21 See Art. 1 of the UNFCCC

affirm the sovereign right of developing countries over their biological and genetic resources.

4.3.6. Precaution

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

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

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

4.3.7. Community Resource Interests

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

4.3.8. Flexibility Mechanisms

Another *Kyoto Protocol*-generated innovation is the development of flexibility mechanisms. The Protocol contains several

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

4.3.9. Compliance Regimes

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

Process Trends in MEAs

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

4.3.10. Proliferation of Post-Agreement Negotiations

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

4.3.11. Increased Pace of Negotiations

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

4.3.12. Fragmentation

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

key focus of the UNEP International Environmental Governance process.

4.3.13. Innovations in Negotiation Formats

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

4.3.14. Formation of Like-Minded Coalitions

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

An illustration of this trend is the AOSIS (Alliance of Small Island States) bloc that formed during the first Conference of the Parties to the UNFCCC. Recognizing the difficulties inherent in reaching consensus within the G-77 on key contentious and politically sensitive issues related to climate change, the pre-existing group of Small Island Developing States (SIDS) maintained that they would have greater success in promoting their unique concerns outside of the confines of the G-77. The *Kyoto Protocol* also spawned another issue-based coalition, in the form of the Umbrella Group, which consists of major CO_2 emitters such as Canada, Japan and the Russia.

4.3.15. Improved Rapport among Individual Negotiators

The increased number and pace of MEA negotiations has contributed to increased opportunities for interaction among individual delegates. The international circuit of MEA negotiations has fostered a breed of specialist diplomats, both

from developing and industrialized countries, who may spend their entire working year participating in various MEA-related meetings. The above-noted problem of fragmentation has in part been mitigated by the contribution of these so-called 'super-delegates' who have helped to ensure increased consistency in language and approach between agreements by highlighting potential conflicts and cross pollinating ideas.

4.3.16. Multi-Stakeholder Engagement and Influence

Multi-stakeholder participation in MEA negotiations has increased considerably since the Stockholm Conference in 1972. Increased participation has been coupled with the increased influence of major groups in the actual substantive development of the MEA negotiations. It also reflects one of the most important trends in recent years, namely the so-called New Diplomacy Model, which is characterized by a broad range of non-state actors in the formal negotiation process. An interesting example is the role that the IUCN played in preparing the original draft of the CBD. Similarly, NGOs played an important role in ensuring that the *Desertification Convention* included an important requirement for governments to ensure the participation of NGOs and local communities in the policy planning, decision making and implementation and review of national desertification programmes.

5. Synthesis

5.1. Typical day in UN negotiations

5.1.1. Delegation Meetings

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

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

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

5.1.2. Negotiation Group Meetings

In most cases, there will also be regional or like-minded group meetings in the morning, prior to the beginning of formal sessions. The Head of Delegation or their alternate will usually attend these meetings, along with a limited number of negotiators. Discussions in these meetings generally focus on

high level strategy and strategic problem solving. These groups will also often meet the day prior to the beginning of formal negotiations for more in depth discussions. Lead negotiators in various areas also often participate in subject specific meetings with like-minded colleagues throughout negotiations, on either a regular or ad hoc basis.

5.1.3. Formal Sessions

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

5.1.4. Flexibility

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

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

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

5.1.5. Side Events

Side events, hosted by Parties, NGOs, IGOs and business, are often scheduled throughout the day, and these can provide useful opportunities to gather intelligence or to influence discussions in an informal way. Bilateral or small group meetings may also be scheduled with like-minded Parties, or with Parties in a position to lead compromise. Receptions provide similar opportunities for informal advocacy and information gathering. Sometimes a delegation will hold a reception, as may a Convention Secretary, local officials, business organizations or NGOs.

5.2. Products of MEA Negotiation Phases

This section provides an overview of the overarching phases that characterize the overall multi-year intergovernmental negotiation process for MEAs. It also outlines the concrete deliverable products that emanate from each of these phases and the specific steps to be followed. The description below aims to provide a thorough overview of these phases and steps, while recognizing that they often overlap. Indeed, the following sequence described is often modified in the course of negotiations.

5.2.1. Pre-Negotiations

Phases and Products of MEA Negotiations

No.	Phase	Product
	Pre-Negotiations	
Phase 1	Problem-identification	Statement of the Problem and announcement to launch a negotiating process
Phase 2	Fact-finding	Expert report
Phase 3	Rule-setting and organization of work	Agreed rules of procedures, programme of work and agenda
Phase 4	Issue-definition and issue-framing	Compendium of Party views and secretariat papers

	Formal Negotiations	
Phase 5	Commencement	Opening statements
Phase 6	Consolidation of views	Negotiating text
Phase 7	Expression of initial positions	General comments on negotiating text and synthesis of general comments
Phase 8	Drafting	Detailed amendments and bracketed negotiating text
Phase 9	Formula-building	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 final plenary
Phase 12	Agreement and adoption	Agreed text and formal reservations
	Post-Agreement Negotiations and Activities	
	Signature	
	Ratification	
	Implementation	

5.2.1.1. Phase 1: Problem Identification

The problem-identification phase is normally preceded by the actual precipitation of key events which bring the environmental problem to the attention of the international community. This phase may well extend over several years before the actual decision to proceed with an intergovernmental negotiation process is formally announced. It will be an acknowledgement by the international community of the problem in question (as articulated by the scientific or some other expert community) together with an announcement to formally launch a process of intergovernmental negotiations.

The time it takes for the intergovernmental process to develop varies according to various factors, such as the urgency of the problem and those who champion it as well as political, social, and economic considerations.

The precipitating events typically include a particular incident of human-induced pollution (e.g. the Chernobyl crisis), or the presentation of new scientific evidence (e.g. the growing ozone hole), or perhaps recognition of the economic repercussions from the exploitation of natural resources (e.g. the consequences of global warming).

Environmental NGOs play a pivotal role in highlighting environmental problems for the general public, raising awareness and helping to galvanize the political pressure that must be brought to bear on political leaders before any decision is taken to subject the issue in question to a process of intergovernmental negotiation.

In many other cases, the scientific community can play a decisive role in the determination of whether or not to proceed by way of an international negotiation process. Once the issue is sufficiently brought to the fore, political leaders will be faced with the decision of how to proceed, if at all, and the type of instrument to be negotiated.

In most cases, the decision to develop a new negotiating process for an issue is made at existing UN fora. For instance, in decision 19/13 C of February 1997 the Governing Council of UNEP concluded that a global legally binding instrument on POPs was required. This decision eventually led to the adoption of the *Stockholm Convention*.

The time the process takes to develop varies. The urgency of the problem as well as political, social and economic considerations will be among the determinant factors.

Very little time elapsed between the end of the Earth Summit and the commencement of the *Desertification Convention* negotiations. On the other hand, negotiations are ongoing on how to proceed with regard to an instrument on forest. At the 1992 Earth Summit, governments agreed to a non-binding statement of principles to promote sustainable forest management. This was the subject of further discussions at the CSD, which, years later, agreed to establish an intergovernmental panel of forest experts to decide on whether or not to commence the process for a legally binding instrument on forests. That Panel was later transformed into the Intergovernmental Forum on Forests and subsequently into the United Nations Forum on Forests where discussions are ongoing.

5.2.1.2. Phase 2: Fact-Finding

In many cases, the fact-finding phase will bring together a multi-disciplinary group of experts from UN organisations, scientific research institutes and other bodies to work towards finding fact and further definition of the problem. The role of science in this phase is to articulate a common language that can facilitate discussion at the policy level. The fact-finding phase will typically involve framing the scientific debate and providing consolidated scientifically- projected outcomes.

The IAEA draft conventions on nuclear safety developed by technical experts served a similar purpose of enhancing communication among negotiators once the formal negotiations were commenced. Moreover, the Intergovernmental Panel on Climate Change (IPCC) is one of the most important examples of the positive influence that a well-organized scientific expert body can have in driving substantive negotiations forward. The IPCC's second Assessment Report was instrumental in

convincing the diplomatic community to consider the role of anthropocentric sources in contributing to global warming.

5.2.1.3. Phase 3: Rule-Setting and Organisation of Work

Once the international community has agreed to embark on an intergovernmental negotiating process and has established a formal negotiating body (INC), the next phase will focus on the overall organization of the INC's work. The organizational work will typically take place over a period of one week, usually at the first meeting of the INC. The products of this phase are the key procedural decisions, which are concluded at this point. These include decisions on:

- Formal rules of procedure to govern the process of negotiation
- Composition of the Bureau, including election of the Chair and officers
- Time schedule for formal sessions of the INC
- Participation of observers and non-state actors
- Substantive programme of work
- Agreement on funding of the meetings
- Role of the secretariat in supporting the negotiating process

In certain difficult negotiations, debates on procedural matters such as voting rules can become politically charged. In other cases, debates regarding procedure may be used to delay the commencement of substantive discussions.

5.2.1.4. Phase 4: Issue-Definition and Issue-Framing

The issue-definition and issue-framing phase takes place once procedural matters are finalized, usually at the end of the first week of the first INC meeting.

This phase will involve an informal exchange of Party views in the form of presentation of Party statements, as well as statements by major groups and international organisations. It is during this phase that multiple ideas are presented and debated. A few become the basis for further discussion, often with a call for more research by the secretariat.

The product of this phase is a compendium of Party views, as prepared by the secretariat to the INC. As well, the secretariat might prepare or commission additional background reports, which address the problem in more detail and set out a range of possible policy options. These documents have no official status. Rather, the compendium and synthesis of views provide delegations with an overall sense of areas of both convergence and divergence, as well as highlight those issues that may underpin the substantive negotiations.

5.2.2. Formal Negotiations

5.2.2.1. Phase 5: Commencement

The commencement of the INC is marked by an official opening plenary session, which is attended by all the government delegations, most of which negotiate through distinct negotiation blocs[22] (e.g. EU, G-77 + China, AOSIS, JUSCANZ and, CEIT).

The product of this phase consists of the opening statements by State and non-state actors. These statements will rarely address the specifics of the negotiation text. Instead, they outline the overarching priorities of the key blocs and participants as well as provide a general indication of the general parameters within which substantive debate will be carried out.

22 See Section 3.2.3.2 of this Handbook on UN Negotiating Blocs

5.2.2.2. Phase 6: Consolidation of Views

The preparation of the actual negotiating text is an iterative process of refining and reframing bloc and country views. It is a process that is repeated in other phases throughout the negotiations. The preparation of the text is preceded by the consolidation of views, based on efforts by the INC Chair together with Bureau members and secretariat officials. In some cases, the actual consolidation of Party views takes the form of a Chair's informal summary. In other cases, where views and positions have been sufficiently crystallized, the Chair may well be in a position to commence drafting a text that will serve as the basis for formal negotiations.

At this early phase, the actual draft negotiating text will not include all of the standard elements of a typical MEA (i.e. preamble, definitions, control measures, reporting, compliance, assessment and review, reservations and amendments, Conference of the Parties, secretariat, subsidiary bodies etc). Rather, it is limited to the key substantive elements. In some cases, it is not uncommon for certain blocs to table their own version of the draft negotiating text to be used as a substitute for the Chair's text. New texts may be presented in later phases, by a Party or Parties, or by the Chair, but later the stage, the more unlikely and more difficult it would be to have such a text accepted, unless the existing text has proven to be incapable of supporting agreement, and a new approach needs to be tried.

5.2.2.3. Phase 7: Expression of Initial Positions

The next phase in the negotiations consists of the articulation of initial positions regarding the draft negotiating text. The Chair and secretariat officials will first present the draft text to the INC plenary session and provide further explanation for its orientation, scope and substance. The floor is then opened for general

comments, which comprise the main product at this phase. The comments typically outline overarching concerns vis-à-vis the negotiating text, including whether or not the text is an acceptable basis for negotiation, while foreshadowing the thrust of amendments that will be proposed at a later stage.

5.2.2.4. Phase 8: Drafting

In this phase, participants elaborate their specific positions in the form of detailed amendments, which constitute the first product at this phase. The detailed amendments will typically address: text language that is unacceptable; new language to be included in the draft text; and problematic language to be changed.

The second product is the resulting bracketed negotiating text. This consists of the original draft text with square brackets indicating key areas of disagreement. This bracketed text will be refined and transformed into a revised negotiation text at a later stage by the Chair and secretariat officials. They will attempt to consolidate many of the detailed amendments put forward by the participants. This revised negotiation text is often tabled during the formula-building or coalition-building phases, which themselves might overlap.

5.2.2.5. Phase 9: Formula-Building

The formula-building phase, which can often extend over several negotiation sessions, marks the shift in focus from the articulation of positions to the actual work of forging consensus on the substance of the negotiation text.

There are two key products at this phase. The first product is a set of counter-proposals, which are prepared by the blocs and participants in response to the various amendments and proposals already formally tabled. These counter-proposals will identify: proposed

amendments that are acceptable; amendments that are unacceptable; and proposed amendments that can be agreed to in principle, but only on the condition of substantive changes. The second product consists of the alternative texts that various participants might have prepared in smaller working or drafting groups, chaired by a designated coordinator. A possible third product could also include the newly revised negotiation text.

5.2.2.6. Phase 10: Coalition-building

In some cases, distinct new alliances might be formed over and above the constellation of the permanent negotiation blocs. While this phase may occur earlier in some negotiations, it is more likely to occur once the counter-proposals have been presented and the critical issues identified (e.g. Miami Group in the *Biosafety Protocol* negotiations).

There are two main products at this phase. The first product consists of the new concrete proposals that will have been prepared by the new issue-based coalitions. One proposal might even be an entire new text (e.g. text presented by AOSIS as a proposed basis for continued negotiation in the first meeting of the Conference of the Parties to the UNFCCC).

The second product is the revised negotiating text, which is prepared by the Chair, together with Bureau members and secretariat officials, based on the proposed amendments, additional proposals and informal consultations. Once presented to the INC plenary, certain delegations may argue that their views have not been accurately reflected in the revised text. At this point, participants will typically call for an adjournment to provide them with the time needed to review the revised text and to prepare their next round of amendments and proposals.

5.2.2.7. Phase 11: Bargaining

The bargaining phase is characterized by a continued process of trade-offs until final agreement is reached on the entire negotiating text. This phase will extend over a wide range of negotiating formats, including formal working groups, contact groups, informal consultations and Friends of the Chair consultations. Some or all of these negotiating formats may also have been employed in previous phases.

The products typically generated during the bargaining phase include: new detailed amendments to the revised negotiation text; new coalition-generated proposals; and bracketed text based on the discussion and debate of the amendments and new proposals.

5.2.2.8. Phase 12: Agreement and Adoption

This final phase includes two distinct but related components:

First, there is a closing plenary session in which the agreed text is approved. Normally, the final text (i.e. the main product at this phase) will be approved by consensus. (However, at the time of signature or ratification, a State could table a formal reservation as long as the agreement does not prohibit reservations) Once the text has been agreed, formal closing statements will be made by negotiating blocs, individual delegations and observers. The Chair will be the last to speak, summarizing the main points of the agreement and addressing the next required steps for formal adoption.

Second, there is a diplomatic conference, which formally adopts the text. The meeting may be held either immediately following the closing plenary (as in the case of the adoption ceremony of the CBD) or several weeks or months following approval of the agreed text by the final negotiation session. The diplomatic conference will

formally adopt the text of the MEA. In addition, it will agree on the programme of work to be undertaken by an interim body (e.g. an intergovernmental committee for a given convention) prior to the entry into force of the MEA and the ensuing establishment of the Conference of the Parties (COP).[23] The adoption of the text of a treaty takes place with the agreement of all states participating in the negotiation.

5.2.3. Ratification and Post-Agreement Negotiations

Once the agreement has been adopted, it is open for signature by all the negotiating Parties for a limited period of time. The next step is ratification or some other measure of accession by which national governments formally agree to be bound by the MEA in question. The treaty will always specify the requisite number of ratifications/accessions and time-frame for its entry into force.[24] Once the agreement enters into force, the negotiations are likely to continue on matters left unresolved in the original negotiation process. These post-agreement negotiations will also address key issues regarding the implementation of the MEA.

5.3. Checklists

The following is a list of key matters to address during negotiations, without detailed elaboration, but with an indicator of timelines. Subjects covered here are detailed in other sections of this handbook.

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

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

Item	Timeframe
Confirm local logistics arrangements	Days
Hold initial delegation meeting, review logistics arrangements and contacts; review session schedule and assign responsibilities; review negotiation group meetings	Day(s) before official sessions
Consult key negotiation partners, including secretariat; hold regional or like-minded group meetings	Days before official sessions
Hold first general delegation, introductions, review logistics and contacts, general approach, roles, highlights of first day and full session; arrange subsequent meetings; delegation reception	First day
Regularly constantly consult key negotiation partners (like-minded and regional groups, bureau contacts, secretariat)	Throughout
Manage specific issue and overall negotiations, ensuring that priorities are on track for resolution in final package; identify items for high level decision making	Throughout
Ensure appropriate information flow in delegation and with capital contacts, including consultation on overall and issue specific developments, tactics, and interventions	Throughout
Provide for additional/periodic provincial, territorial and NGO consultations as required	Throughout
Ensure proper consultation with contacts in capital	Throughout
Prepare for High-level segment, as required	As scheduled
Prepare delegation reports; gather important negotiation documents and relevant material from negotiation partners and side events	Throughout – drafts before departure
Confirm logistics and travel arrangements for departure	Days before departure
Ensure proper conclusion of agenda items, adoption of items in meeting report (e.g. continuation on agenda is not a given); consider input into draft meeting reports; make arrangements for follow-up and subsequent matters with secretariat, negotiation partners; election of officers for subsequent sessions.	Final days of session
If an agreement is to be concluded or documents to be adopted, consider need for final legal review, communications, formalities (plan Ministerial formalities in advance)	Final days*

6. Annexes and Reference

6.1. ANNEX A – International Bodies

6.1.1. United Nations General Assembly

The United Nations General Assembly (UNGA) is the main political body of the UN organization. As part of its general functions and powers, provided for under articles 10 and 13 of the UN Charter, the UNGA can discuss any question or matter within the scope of the Charter and initiate studies and adopt resolutions on any of these. Each UN member State has one vote at the UNGA. It meets annually for regular sessions from September to December and at other times for special sessions.

Its resolutions are not binding, although it is awkward for countries if their positions at UNGA are inconsistent with positions in MEA fora. One of the UNGA's main contributions in environmental matters has been the convening of key conferences (e.g. *UN Conference on Human Environment – Stockholm 1972; UN Conference on Environment and Development – UNCED 1992*). Every year it also adopts a number of resolutions that pertain to the environment. For instance, some of the resolutions it adopted at its 2002 session concerned MEAs (e.g. the resolution on the CBD; the resolution on the protection of the global climate for present and future generations of mankind). In addition, it also influences the codification and progressive development of international law through subsidiary bodies such as the International Law Commission. In 2001, the Commission adopted draft articles on the prevention of transboundary harm from hazardous activities.

6.1.2. Economic and Social Council

The Economic and Social Council (ECOSOC) is composed of 54 member States elected by the UNGA. It may make recommendations to the UNGA in economic, social, cultural, educational, health and other related matters such as the

environment. With regard to the latter, its key role is to promote the implementation of the plan of action for sustainable development adopted at UNCED 1992 (Agenda 21). This is done through coordination of the work of specialized agencies, commissions and programmes. Commissions such as the Commission on Sustainable Development and programmes such as UNEP report to ECOSOC. It has also established five regional economic commissions, one of which, the United Nations Economic Commission for Europe—see below), has competence in matters of environment.

6.1.3. United Nations Commission on Sustainable Development

Established following the 1992 Rio Earth Summit, the United Nations Commission on Sustainable Development (CSD) is composed of 53 States elected by ECOSOC for three-year terms. It is the key forum for the consideration of issues related to the integration of the three dimensions of sustainable development. As such, its mandate is not limited to environmental issues. Its main role is to review and monitor progress in the implementation of Agenda 21. CSD also acted as the preparatory body for the World Summit on Sustainable Development.

6.1.4. United Nations Environment Programme

The United Nations Environment Programme (UNEP) was established by the UNGA following the 1972 Stockholm Conference on the Human Environment. It is the leading UN body in environmental matters. Its headquarters are located in Nairobi, Kenya. As part of its mandate, UNEP:

- provides general policy guidance for the coordination of environmental issues throughout the UN system
- furthers the development of international environmental law, in particular through MEAs and guidelines
- strives for coherence among MEAs given their ever-increasing numbers

- advances the implementation of agreed international norms and policies
- monitors and fosters compliance with MEAs
- assesses and reports on the state of the global environment and attempts to identify emerging issues
- promotes greater awareness and facilitates effective cooperation among all sectors of society and actors involved in the implementation of the international environmental agenda
- provides policy and advisory services in key areas of institution building to governments and other relevant institutions

The primary decision making body of UNEP is the Governing Council (GC), composed of 58 member States elected for four-year terms by the General Assembly. Half of the membership is elected every two years. The composition of the GC is based on the following regional allocation:

- Africa – 16
- Asia – 13
- Latin America – 10
- Eastern Europe – 6
- Western Europe, North America and South Pacific countries – 13

The GC meets every two years and at special sessions in between. Part of each Council meeting is reserved for discussions of important environmental matters at the ministerial or equivalent level in the "Global Ministerial Environment Forum" (GMEF). The rules of procedure provide that decisions are taken by a simple majority of members present and voting.

UNEP's contribution to the development of MEAs is significant. It has initiated and promoted the negotiation of conventions such as the *Vienna Convention on the Protection of the Ozone Layer*, the *Basel Convention* and the *Stockholm Convention* (see, for instance, the UNEP Governing Council decision 19/13 C of February 7, 1997, listing the elements to be included in the

Stockholm Convention). It acts as the Secretariat for a number of MEAs such as the *Basel Convention* and on an interim basis for other ones such as the *Stockholm Convention* and the *Rotterdam Convention*, as these two conventions are not yet in force. In the case of the *Rotterdam Convention*, it performs this function jointly with the FAO.

Every 10 years since 1982, the UNEP Governing Council adopts a plan for the development of public international environmental law on the recommendation of legal experts. This is known as the Montevideo Programme (see Montevideo Programme III adopted by the UNEP Governing Council in February 2003).

6.1.5. Global Environment Facility

Created by the World Bank, UNEP and UNDP in 1991 in anticipation of the Rio Summit, the primary role of the Global Environment Facility (GEF) is as co-financier. It supports international cooperation by providing developing countries with new, and additional, grants and concessional funding to meet the enabling and incremental costs of measures to achieve agreed-upon global environmental benefits (on funding by the GEF, see section 3.8.1). The GEF does not disburse funds directly but through its implementing agencies (i.e. UNDP, UNEP, World Bank) and executing agencies (the regional development banks as well as FAO and UNIDO). Each of the implementing agencies has a particular strength and focus: UNEP supports technical and scientific inputs; UNDP focuses on capacity building to improve the livelihoods of the poor while encouraging economic growth and the World Bank does larger scale investments. Donor countries also provide funding to these institutions directly to carry out their mandates.

GEF is the designated financial mechanism for the:

- CBD; and
- UNFCCC.

It is the interim mechanism for the:

- *Stockholm Convention*; and
- *Desertification Convention*

The GEF also supports initiatives consistent with international waters treaties and activities in Central and Eastern European countries to meet the objectives of the *Montreal Protocol*.

Its main governing body is the GEF Council which develops, adopts, and monitors policies, programmes, operational strategies and projects. It is composed of 32 members, 16 of which are from developing countries, 14 from developed countries and two from economies in transition. It meets twice a year. Decisions are adopted by consensus. However, if no consensus can be reached, a member may ask for a formal vote. In these cases, a decision may only be adopted if it is supported by both a 60 percent majority of the total number of Participants and a 60 percent majority of the total contributions. The GEF Assembly, in which all 174 participating countries are represented, meets every three years.

6.1.6. Other relevant UN agencies, commissions and programmes

6.1.6.1. Food and Agriculture Organization

Founded in 1945, the Food and Agriculture Organization (FAO) is the lead agency for agriculture, forestry, fisheries and rural development. It plays a major role in some MEAs. For instance, it provides, jointly with UNEP Chemical Section, the interim secretariat for the *Rotterdam Convention* and will perform with UNEP the Secretariat functions once this MEA is in force. In 2001, the FAO Conference, comprised of all 184 FAO members, adopted the *International Treaty on Plant Genetic Resources for Food and Agriculture*.

6.1.6.2. International Fund for Agricultural Development

The International Fund for Agricultural Development (IFAD) is a specialized agency of the United Nations, was established as an international financial institution in 1977. IFAD was created to mobilize resources on concessional terms for programmes thatalleviate rural poverty and improve nutrition. Unlike other international financial institutions, which have a broad range of objectives, the Fund has a very specific mandate: to combat hunger and rural poverty in developing countries. At the First Conference of the Parties to the *Desertification Convention* in 1997, IFAD was designated to house the Global Mechanism. The Global Mechanism was established by the UNCCD to promote actions leading to the mobilization and channelling of substantial financial resources to affected developing countries (Article 21, UNCCD).

6.1.6.3. International Maritime Organization

Created in 1948, the International Maritime Organization (IMO) is competent to address shipping issues. Many of the conventions adopted under its auspices have as their purpose the protection of the marine environment from shipping activities. Among the most notable are the *London Dumping Convention*, the *MARPOL Convention* and the *International Convention on Oil Pollution Preparedness, Response and Cooperation*. In 2001 it adopted the *International Convention on the Control of Harmful Anti-Fouling Systems on Ships*. Its main environmental body is the open-ended Marine Environment Protection Committee (MEPC). The IMO cooperates with the Secretariat of MEAs on issues of common concern (e.g. with the Secretariat of the *Basel Convention* on the issue of ship dismantling).

6.1.6.4. United Nations Economic, Scientific and Cultural Organization

Created in 1945, the United Nations Economic, Scientific and Cultural Organization's (UNESCO) key contribution with regard to MEAs is the adoption of the *Convention concerning the Protection of the World Cultural and Natural Heritage* in 1972.

6.1.6.5. United Nations Economic Commission for Europe

Founded in 1947, the United Nations Economic Commission for Europe (UNECE) is one of five regional economic commissions of the UN (the other commissions are for Africa, Latin America and the Caribbean, Asia and the Pacific, and Western Asia). It is composed of 55 member States including European countries and Countries in Transition former Soviet Republics as well as Canada, Israel and the USA. While the main aim of the UNECE is to maintain and strengthen economic cooperation among member States as well as with other States, its mandate also includes environmental matters. In the last 25 years, the UNECE has produced the following environmental conventions and protocols:

- LRTAP and its eight protocols
- *Espoo Convention*. A *Protocol on Strategic Environmental Assessment* (known as the SEA Protocol) was adopted in May, 2003
- *Convention on the Protection and Use of Transboundary Watercourses and International Lakes* and its *Protocol on Water and Health.*
- Convention on the Transboundary Effects of Industrial Accidents
- *Convention on Access to Information, Public Participation in Decision Making and Access to*

Justice in Environmental Matters (known as the Aarhus Convention). A *Protocol on Pollutant Release and Transfer Registers* (known as the PRTR Protocol) was adopted in 2003

Members of the UNECE

Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, United Kingdom, United States, Uzbekistan

6.1.6.6. United Nations Development Programme

The UN Development Programme (UNDP) was created by the UNGA in 1965. In matters of sustainable development, it was given the task, in Agenda 21, to promote the strengthening of capacity building in developing countries (an initiative known as Capacity 21). UNDP works closely with UNEP.

6.1.6.7. Others

Below is a non-exhaustive list of other agencies and bodies that regularly attend MEA meetings:

1. International Labour Organization (ILO)
2. United Nations Industrial Development Organization (UNIDO)

3. United Nations Institute for Training and Research (UNITAR)
4. World Trade Organization (WTO)
5. World Bank
6. World Health Organization (WHO)
7. World Meteorological Organization (WMO)

6.1.6.8. Organization for Economic Cooperation and Development

Composed of 30 member States, the Organization for Economic Cooperation and Development (OECD) promotes democratic forms of government and a market economy. It provides a discussion forum and an integrated framework for the broadest economic, social and environmental policy concerns of governments. Its main body is the Council, composed of all member States. Environmental matters are discussed mainly in the OECD Environment Policy Committee (EPOC) whose task is to implement the environmental dimensions of the work programme adopted by the Council. Decisions of the Council, as opposed to recommendations, are legally binding on members (e.g. C(2001) 107/FINAL on the Control of transboundary movements of wastes destined for recovery operations).

OECD Members

Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States

6.1.6.9. International fora and panels

Some environmental issues are addressed through the creation of *fora* and panels which typically draw on the participation of a wide variety of interested actors. Some of the more notable ones are as follows:

6.1.6.9.1. Intergovernmental Forum on Chemical Safety

Called for in Chapter 19 of Agenda 21, the Intergovernmental Forum on Chemical Safety (IFCS) was created by the ILO, WHO and UNEP in 1994 to promote the environmentally sound management of chemicals. It does so through advice and recommendations adopted at meetings where representatives of governments meet with intergovernmental and non-governmental organizations. Participants aim to reach consensus on the best way to implement Chapter 19. In addition, the Forum is an opportunity for any participant to bring emerging and contentious issues to the international agenda. For instance, Canada used the Forum to raise the need to address POPs at the international level. The work of the Forum is taken into account in meetings of relevant MEA bodies. The Forum meets every three years. Canada hosted Forum II in 1997 and presided over Forum III in Brazil in 2000. The last Forum took place in Thailand in November 2003. The World Health Organization serves as its secretariat.

6.1.6.9.2. United Nations Forum on Forests

The United Nations Forum on Forests (UNFF), created for five years in 2000 by ECOSOC, was preceded by the Intergovernmental Panel on Forests (IPF – 1995 to 1997) and the Intergovernmental

Forum on Forests (IFF – 1997 to 2000). Composed of all members of the United Nations as well as specialized agencies, it encourages the participation of other actors such as NGOs, industries and aboriginal groups. It fosters common understanding on sustainable forest management, identification of emerging issues, policy development and dialogue, and cooperation among the various actors. Given the current lack of a comprehensive international binding instrument for forests, one of the stated aims of the UNFF is to consider a mandate to develop a legal framework on all types of forests.

6.1.6.9.3. Intergovernmental Panel on Climate Change

Created in 1988 by the World Meteorological Organization (WMO) and UNEP, the purpose of the Intergovernmental Panel on Climate Change (IPCC) is to assess, on a continuing basis, the scientific, technical and socio-economic information on climate change. Since 1990 the IPCC has published three Assessment Reports (TARs). These reports are the result of the collective work of thousands of experts around the world channeled through three working groups. Reports are based on information from sources such as peer-reviewed literature, journals, books, etc, and then reviewed by other experts and governments. They are ultimately presented for adoption by the plenary session which is composed of States' representatives and which meets once a year. International organizations and NGOs may attend plenary sessions as observers. Their presence at other meetings is by invitation only. The publication of the first report in 1990 was one of the catalysts for the *United Nations Framework Convention on Climate Change*, while the second one facilitated the negotiations that

culminated in the adoption of the *Kyoto Protocol*. The IPCC also provides reports, technical papers and guidelines, on its own initiative or on request of the Parties to the UNFCCC or another MEA (guidelines only on request).

6.2. ANNEX B – Case studies

6.2.1. Case Study I – Adding a substantive element to a draft MEA

Canada was successful in having Article 16, Evaluation of Effectiveness, included in the *Stockholm Convention*. This article was included as a result of informal discussions to generate support, coupled with a formal draft text circulated first as a room document.

Between INC-2 and INC-3, the Canadian delegation concluded that the draft convention text was missing two critical elements: a monitoring provision, and a review of effectiveness provision. We were also mindful of the concern of northern indigenous people that Parties comply with the convention.

At INC-3, Canada raised the issue through a Conference room paper (CRP) which it presented and then consulted on informally with other countries. Our proposal was to add text to Article I on Research, Development and Monitoring. However, as this Article was not discussed at the meeting, no real opportunity arose to address Canada's proposal in detail. Nevertheless, Canada requested that the meeting report include a reference to its intervention describing the proposal. We also indicated that we would appreciate comments on it as we would take these comments into account when re-introducing the proposal at INC-4.

At INC-4, Canada again circulated a CRP and was quick off the mark to get CRP.1 as its number (initial CRPs tend to get more attention than later ones). We introduced it in plenary as an amendment to Article I, involving monitoring, and the INC

agreed to include it in the negotiating text. The Legal Drafting Group later made a recommendation to establish it as a separate article. Intersessionally, Canada promoted the new article with other countries, and in particular within WEOG.

At INC-5, Canada worked on the margins to generate support on a definitive article, based on consultations with other delegations. As Article 16, the final text retains the Canadian idea. However, in order to gain support for the provision, the language ultimately adopted is somewhat less precise than the original Canadian proposal.

As part of the interim work programme, the Secretariat is undertaking studies to develop the global monitoring system required by Article 16.

6.2.2. Case Study II – Allowing for flexibility: amendments and adjustments

MEAs are somewhat unique in that they attempt to address matters for which the underlying knowledge base is often incomplete and continually evolving. This is why they establish specific mechanisms to add new knowledge and information about the very issues they are designed to address as well as other mechanisms to modify the scope and implementation of their provisions. The 1985 *Vienna Convention for the Protection of Ozone Layer* and the 1987 *Montreal Protocol* provide a good example. Together, these two agreements include procedures for both amendments and adjustments to treaty obligations. The usefulness of these mechanisms is demonstrated by the fact that, to date, there have been four amendments (London, Copenhagen, Montreal and Beijing), as well as twelve adjustments (at five Meetings of the Parties) to the *Montreal Protocol*.

The 1985 Convention was specifically designed to allow for investigation and flexibility. At the time of the negotiations, knowledge was deemed insufficient to support agreement on control actions and yet, the problem of ozone layer depletion and

the urgent need to take global action was accepted. Accordingly, the *Vienna Convention* itself was designed to provide a "framework" and constitute a first step in what was envisaged as a multi-step process. It includes procedural (provisions for amendment: Article 9), enabling (Article 6) and investigative (Articles 3 and 4) mechanisms. This strategy allowed early and "catalyzing" action to be taken based on a precautionary approach.

The 1987 *Montreal Protocol* reflected a growing body of scientific and technical knowledge that justified taking action. It included a first suite of control measures for specific substances (Article 2) and a requirement for their systematic and regular review in light of new information (Article 6) . The need for additional flexibility was made explicit in Article 2, para. 9 which allows a simple "Adjustment" process in response to Article 6 reviews. This process requires a decision adopted by a two-thirds majority vote at the Meeting of the Parties. This decision is binding on all Parties and enters into force, unless provided otherwise in the decision, six months after the decision in question has been communicated to all Parties.

Based on Article 6 assessments, the Parties may decide;

i) to adjust Ozone-Depleting Potentials in the annexes, and

ii) on further adjustments in the scope, amount and timing of reductions of production and consumption of controlled substances.

On the other hand, Article 2 , para. 10 of the Protocol, which concerns removal or addition of substances, and the mechanism, timing and scope of control measures for these substances requires an amendment to be adopted by a three-fourth majority (by referring to Article 9 of the Convention).

Changes by amendments are cumbersome. They require formal accession by Parties, a time and energy-consuming process for governments. They invariably lead to a "patchwork" of obligations as some but not all Parties accede to them. On the

other hand, the main advantage of the amendment process is that it preserves the sovereign authority of Parties, enabling each of them to accede to an MEA with the assurance that they remain "in the driver's seat".

The approach of having both an amendment and adjustment procedure strikes a balance between the need for protecting the rights of Parties not be bound against their wishes by the decisions of others, and the need for Parties to be able to make needed adjustments and "fine tune" existing obligations in light of new scientific technical and economic findings.

6.3. ANNEX C – Overview of Selected MEAs – Features and Innovations

What follows is a brief overview of selected MEAs, highlighting key mechanisms, innovations and implementation challenges.

Overview of MEA Innovations and Implementation Challenges

- Biodiversity Convention
- Desertification Convention
- Kyoto Protocol
- CITES
- Montreal Protocol

6.3.1. Convention on Biological Diversity

Substantive Innovations	Implementation Challenges
• Integration of conservation, sustainable use and benefit-sharing objectives. • Compromise between rights of developing countries for benefit-sharing with the rights to access by technology-rich countries of biodiversity resources in biodiversity-rich countries. • Recognition of the knowledge, practice and innovations of indigenous peoples and local communities (Article 8(j)). • Framework for prior informed consent for any public or private enterprises seeking to gain access to biodiversity resources. • Organization of work programmes based on both sectoral and cross-sectoral issues.	• Increasing WTO challenges to national biodiversity laws as disguised trade barriers. • Increasing human impacts exacerbating biodiversity loss combined with limited scientific understanding of the pace and volume of loss. • Accelerating demand for genetic resources and increased pressures by TNCs to relax national laws regulating access. • Concerns about the *Trade Related Aspects of Intellectual Property Rights agreement* (TRIPs) and the patenting of life forms.

6.3.2. United Nations Convention to Combat Desertification

Substantive Innovations	Implementation Challenges
• Requirement of participation of affected communities and civil society in the preparation of national desertification action programmes.	• Lack of sufficient funding from the donor community, in part because the problem of desertification is not perceived as a global concern.
• Adoption of integrated approach in addressing the physical, biological and socio-economic aspects of the processes of desertification and drought.	• Growing need for new and better methodologies for promoting local participation and community-based capacity building.
• Integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought.	• Limited scientific attention to the problem of desertification as compared with other MEAs such as the Climate Change and Biodiversity Conventions.

6.3.3. Kyoto Protocol

Substantive Innovations	Implementation Challenges
• Legally binding targets and timetables for cutting developed country emissions and countries with economies in transition. • Emissions trading regime that allows industrialized Parties to buy and sell emission credits among themselves. • Joint implementation projects offering emission reduction units for financing projects in other developed countries. • Clean Development Mechanism providing credit for financing emissions-reducing or emissions-avoiding projects in developing countries.	• Perceived short-term economic costs of meeting targets in the first commitment period, especially for those Parties who ratified at a later stage (i.e. they will have less time to meet their commitments); • Implementation of the flexibility mechanisms; • Bringing on board the large CO_2 emitting developing countries in subsequent commitment periods.

6.3.4. CITES

Substantive Innovations	Implementation Challenges
• Development of a licensing system for the import, export, and re-export of species threatened with or potentially vulnerable to extinction. • Authority of the CITES Secretariat to communicate problems of implementation.	• 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. • Greater research efforts needed to enhance understanding and interpretation of baseline data to set out targeted procedures and actions. • The lack of funding, insufficient administrative capacity and corruption remain critical implementation problems. • Developing countries often have large land masses which are not always adequately surveyed. • In some countries where the seizures of CITES species have increased in value and volume, it is not clear whether these trends reflect better enforcement or more sophisticated smuggling techniques. More analytical tools are needed to evaluate the underlying factors in increased seizure trends.

6.3.5. Montreal Protocol

Substantive Innovations	Implementation Challenges
• First MEA to recognize the need for phased commitments for developing countries. • Binding time schedule for freeze and reduction of ODS or "controlled substances". • Important catalyst for the development of alternatives to ozone depleting substances. • Requirement for country reporting of production, consumption and trade of ODS, to enable the secretariat to monitor compliance and evaluate ozone depletion trends.	• Developing country perception of air pollution and ozone depletion as problems of the industrialized world. • 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. • Reduced capacity on the part of developing countries to assimilate and absorb new technologies. • While developing countries do have a ten-year grace period to conform to the *Montreal Protocol*, implementation has in many cases presented undue economic burdens on those developing countries who have invested heavily in capital equipment using CFCs (which have a normal life of 30 to 40 years). • Difficulties in terms of information gathering and reporting for developing countries in light of limited capacity and resources to report production, consumption and trade in ozone depleting substances.

6.4. ANNEX D – Reference Texts and Electronic Resources

6.4.1. Principles of the Stockholm Declaration

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future

exhaustion and to ensure that benefits from such employment are shared by all mankind.

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 9

Environmental deficiencies generated by the conditions of under-development and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate- from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Principle 15

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits

for all. In this respect projects which arc designed for colonialist and racist domination must be abandoned.

Principle 16

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

Principle 17

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the 9 environmental resources of States with a view to enhancing environmental quality.

Principle 18

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and improve the environment in order to enable man to develop in every respect.

Principle 20

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

Principle 21

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

Principle 22

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each Party, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Principle 25

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

Principle 26

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

6.4.2. Principles of the Rio Declaration

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

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

to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their

societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing Party should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

6.4.3. Electronic Resources

CANADIAN GOVERNMENT

Government of Canada
canada.gc.ca/

Environment Canada
www.ec.gc.ca

Environment Canada's Calendar of Major International Environmental Events
www.ec.gc.ca/int_cal_e.html

Environment Canada, International Relations Directorate
www.ec.gc.ca/international/index_e.htm

Canada Treaty Information
www.treaty-accord.gc.ca/treaties_clf/Main.asp?Language=0

INTERNATIONAL CONVENTIONS

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
www.unep.ch/basel/index.html

Cartagena Protocol on Biosafety
www.biodiv.org/biosafety/

Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)
www.cms.int

Convention on International Trade in Endangered Species of Wild Fauna and Flora
www.cites.org/

Convention on Long-range Transboundary Air Pollution
www.unece.org/env/lrtap

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention)
www.imo.org

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)
iucn.org/themes/ramsar/

International Convention for the Prevention of Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)
www.imo.org

Kyoto Protocol to the United Nations Framework Convention on Climate Changes
www.unfccc.int

Montreal Protocol on Substances that Deplete the Ozone Layer
www.ozone.unep.org/unep/

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
www.pic.int

Stockholm Convention on Persistent Organic Pollutants (POPs)
www.pops.int

United Nations Convention to Combat Desertification
www.unccd.int/main.php

United Nations Framework Convention on Biological Diversity
www.biodiv.org

United Nations Framework Convention on Climate Change
www.unfccc.int

Vienna Convention for the Protection of the Ozone Layer
www.ozone.unep.org

GLOBAL AND REGIONAL ORGANIZATIONS AND BODIES

Asia Pacific Economic Cooperation
www.apecsec.org.sg/

Commission for Environmental Cooperation
www.cec.org/

European Commission
www.europa.eu

European Environment Agency
www.eea.eu.int

European Union
www.europa.eu/index_en.htm

Food and Agricultural Organization of the United Nations
www.fao.org/

Global Environment Facility
www.gefweb.org

Inter-American Institute for Global Change Research
www.iai.int

Intergovernmental Forum on Chemical Safety
www.who.int/ifcs/

Intergovernmental Panel on Climate Change
www.ipcc.ch/

International Council for Science
www.icsu.com

International Institute for Sustainable Development
www.iisd.ca/

International Joint Commission
www.ijc.org

International Maritime Organization
www.imo.org

International Organization for Standardization
www.iso.ch

OECD's Environment Directorate
www.oecd.org/env

The World Bank Group
www.worldbank.org/

United Nations
www.un.org/

United Nations Commission on Sustainable Development
www.un.org/esa/sustdev

United Nations Economic Commission for Europe
www.unece.org/welcome.html

United Nations Economic and Social Council
www.un.org/esa/coordination/ecosoc/

United Nations Environment Programme
www.unep.org/
www.unep.org/dpdl/
www.unep.org/dec/

United Nations Economic, Scientific and Cultural Organization
www.unesco.org

United Nations Forum on Forests
www.un.org/esa/forests/index.html

United Nations General Assembly
www.un.org/ga/57
(the last number refers to the session number i.e. 57th session in 2002)

World Conservation Union
www.iucn.org/

World Meteorological Organization
www.wmo.ch/

World Wildlife Fund
www.panda.org/home.cfm

OTHER

University of Joensuu – UNEP Course on International Environmental Law-making and Diplomacy
www.joensuu.fi/unep/envlaw

6.4.4. List of Most Commonly Used Acronyms

A

ADB	Asian Development Bank
ADM	Assistant Deputy Minister
AfDB	African Development Bank Group
AGBM	Ad Hoc Group on the Berlin Mandate
AOSIS	Alliance of Small Island States

C

CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CEO	Chief Executive Officer
CIDA	Canadian International Development Agency
CIET	Community Information, Empowerment and Transparency
CIT	Countries in Transition
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
COW	Committee of the Whole
CRC	Chemical Review Committee
CRP	Conference Room Paper
CSD	Commission on Sustainable Development
CTESS	Committee on Trade and Environment in Special Session

D

DAC	Development Assistance Committee/OECD

E

EBRD	European Bank for Reconstruction and Development
EC	Environment Canada
ECOSOC	Economic and Social Council of the United Nations
EIT	Countries with economies in transition

ENB	Earth Negotiations Bulletin
EOV	Explanation of Vote
EU	European Union

F

FAC	Foreign Affairs Canada
FAO	Food and Agriculture Organization of the United Nations

G

GEF	Global Environmental Facility
GNP	Gross National Product
GRULAC	Group of Latin American and Caribbean Countries

H

HOD	Head of Delegation

I

IA	Implementation Agency
IDB	Islamic Development Bank
IET	International Emissions Trading
IGO	Intergovernmental Organization
IJC	International Joint Commission/Canada-US
ILO	International Labour Organization
IMO	International Maritime Organization
INC	Intergovernmental Negotiating Committee
IPCC	Intergovernmental Panel on Climate Change
IRD	International Relations Directorate/Environment Canada
IUCN	World Conservation Union

J

JI	Joint Implementation
JUSCANZ	Japan, US, Canada, Australia, and New Zealand

L

LDG	Legal Drafting Group
LRTAP	Long Range Transboundary Air Pollution

M

MARPOL	*International Convention for the Prevention of Pollution by Ships*
MC	Memorandum to Cabinet
MEAs	Multilateral Environmental Agreements
MOP	Meeting of the Parties

N

NGO	Non-governmental Organization

O

ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OGDs	Other Government Departments
OiC	Order in Council
OPs	Operational Programmes

P

P&C	Policy and Communications/Environment Canada
PCO	Privy Council Office
PIC	Prior Informed Consent
POPRC	Persistent Organic Pollutants Review Committee
POPs	Persistent Organic Pollutants

R

REIO	Regional Economic Integration Organizations

S

SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body on Scientific, Technical and Technological Advice
SD	Sustainable Development

SIDS	Small Island Developing States
STAP	Scientific and Technical Advice Panel
T	
TRIPS	Trade-Related Aspects of Intellectual Property Rights
U	
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on the Human Environment
UNCHR	United Nations Commission on Human Rights
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	Untied Nations General Assembly
UNIDO	United Nations Industrial Development Organization
V	
VCLT	Vienna Convention on the Law of Treaties
VOCs	Volatile Organic Compounds
W	
WCED	World Commission on Environment and Development
WEOG	Western European and Others Group
WSSD	World Summit on Sustainable Development

7. INDEX

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