

FIELD

Foundation for International
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Short guide to the UNFCCC process for negotiators

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Introduction

FIELD has produced this guide in response to requests for a short overview for new negotiators who do not have time to read longer guides to the UNFCCC process.

The guide may be helpful for government representatives or others who attend a UNFCCC conference for the first time. It may also provide some helpful information for others.

The guide has three parts:

- **Before the conference**
- **At the conference**
- **Legal mini glossary**

About FIELD

FIELD is an independent non-profit organisation. We believe strongly that fair and effective international environmental law is an essential part of solving global problems. FIELD is a registered UK charity.

FIELD would welcome feedback on the guide (please email field@field.org.uk).

Additional resources

Other guides available at www.field.org.uk:

- Help for MEA negotiators who encounter problems
- Guide for REDD-plus negotiators

I

Before the conference

1.1 Conference documents

Official information, including conference documents, is available at the UNFCCC secretariat website unfccc.int or www.unfccc.int.

If you have limited time the most important documents to read usually include:

- The provisional agendas with annotations. The provisional agendas with annotations provide background information for each agenda item, identify actions to be considered and list documents for each agenda item. Each UNFCCC body that meets has its own agenda with annotations.
- Scenario notes by Chairs. The Chairs of some bodies, such as the AWG-LCA and the AWG-KP (please see 2.7 about UNFCCC bodies), prepare scenario notes. They are usually short and explain how the Chair envisages that negotiations will be conducted at the session.
- For particularly important issues: decisions or drafts from earlier conferences (for example, the last COP decision on the issue) and documents listed under the agenda item in the provisional agenda with annotations. The latter might include submissions of views by Parties, for example views submitted by a country group that your country belongs to.

Please see 2.2 regarding different kinds of conference documents and 2.3 regarding unofficial reports and updates which may be helpful to read.

1.2 Other important documents

- The texts of the UNFCCC and the Kyoto Protocol (available at the UNFCCC Secretariat website).
- The draft rules of procedure. Please see 2.9 below for more information about the draft rules of procedure.

1.3 If you arrive after the start of the conference

If you arrive after the start of the conference, for example after the first week, there may have been many developments in the negotiations. Many new documents may have been issued.

Please see below regarding sources of information at the conference. Many of these are available on the web. In addition some meetings are webcast on the UNFCCC secretariat website, making it possible to follow negotiations remotely.

II

At the conference

2.1 Finding information

Conference documents and the Daily Programme are available at the Documents Desk and also at unfccc.int (some documents may not be available on the website).

The Daily Programme lists the day's meetings, including unofficial side events and media briefings. The Daily Programme also has helpful information about the status of agenda items and documents.

Meeting times and rooms often change many times during a day after the Daily Programme has been issued, so it is important to check the electronic screens for changes. Electronic screens are usually located in many places at the conference.

2.2 Different kinds of documents

Different kinds of documents have different symbols, such as "FCCC/SBSTA/2012/MISC.3", which refers to a miscellaneous SBSTA document.

For example:

- CRP: refers to conference room papers. These are produced during negotiating sessions and are usually temporary drafts.
- L documents: these are draft reports and draft outcome texts. Usually L documents are adopted at the end of a session. They are usually advanced drafts, but changes are sometimes still made to L documents at the last moment before adoption.
- MISC: miscellaneous documents. These usually contain submissions from Parties.
- Non-papers: informal in-session documents, usually of a temporary nature.

A helpful introductory guide to UNFCCC documents is available in English at http://unfccc.int/documentation/introductory_guide_to_documents/items/2644.php.

2.3 Unofficial reports and updates

Reports and updates that are usually available on the web and often in hard copy at conferences include:

- The Earth Negotiations Bulletin, which provides neutral daily meeting reports and a summary report at the end of conferences, usually in several languages. See www.iisd.ca.
- Third World Network updates and briefings, which highlight developing country perspectives. These can be found at <http://www.twinside.org.sg/climate.htm>.
- ECO, the newsletter produced by the Climate Action Network of non-governmental organisations (NGOs). Available at www.climatenetwork.org.

2.4 Country groups and UN regional groups

Country groups

Country groups usually meet a few days before UNFCCC conferences and often several times each day during conferences to coordinate negotiating positions. Times and locations are usually listed in the Daily Programme and on the electronic screens.

Countries can be members of different groups at the same time. For example a country can be a member of both the Least Developed Countries (LDC) Group and the G77 and China. Group memberships sometimes change and new groups are sometimes established.

Examples of country groups:

- The G77 and China. Developing countries.
- The Least Developed Countries (LDC) Group.
- The Alliance of Small Island States (AOSIS).
- The European Union (EU).
- The Umbrella Group. Includes for example Australia; Canada; Russia; and the US.
- ALBA (the Bolivarian Alliance for Latin America and the Caribbean). Includes for example: Cuba; Venezuela; and Bolivia.

UN regional groups

The five UN regional groups are mainly used when electing officers, such as Chairs and Vice-Chairs of UNFCCC bodies. The groups are:

- African countries.
- Asian countries.
- Eastern European countries.
- Latin American and the Caribbean countries.
- Western European and Other countries.

2.5 The Bureau

The Bureau helps the President or Chair to manage the negotiating process. The Bureau meets during conferences and sometimes between conferences.

The COP, the CMP, SBI and SBSTA (please see 2.7 below) each have their own Bureau. The Bureaux are formed mainly of elected representatives of the regional groups. For example, the COP Bureau consists of the COP President, Vice-Presidents of the COP, the Chairs of SBSTA and SBI and a Rapporteur. This includes two representatives of each UN regional group and one representative of the Alliance of Small Island States (AOSIS).

2.6 Other conference participants

Many representatives of for example NGOs, indigenous peoples' groups, trade unions and business attend conferences as observers, as do representatives of UN organisations and other inter-governmental organisations.

Media representatives also attend UNFCCC meetings. Some journalists have followed the UNFCCC negotiations for many years and are very well-informed.

2.7 UNFCCC negotiating bodies

The Conference of the Parties to the UNFCCC (COP)

The COP is the decision making body for the UNFCCC. All Parties to the UNFCCC are part of the COP.

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP)

The CMP is the decision making body for the Kyoto Protocol. Countries that are not Parties to the Kyoto Protocol can participate only as observers in the CMP.

The Subsidiary Body for Scientific and Technological Advice (SBSTA)

SBSTA is a permanent subsidiary body, established under UNFCCC Article 9. It serves both the COP and the CMP (in accordance with Kyoto Protocol Article 15).

The Subsidiary Body for Implementation (SBI)

SBI is a permanent subsidiary body, established under UNFCCC Article 10. It serves both the COP and the CMP (in accordance with Kyoto Protocol Article 15).

The Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA)

The AWG-LCA was established under the UNFCCC in 2007 in COP decision 1/CP.13, known as the Bali Action Plan. The AWG-LCA focuses on long-term cooperation to combat climate change involving both developed and developing countries, in parallel with negotiations on further commitments for developed countries under the Kyoto Protocol. In 2011 the COP in Durban decided that the AWG-LCA's mandate will end in 2012.

The Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP)

The AWG-KP was established in 2005 in accordance with Kyoto Protocol Article 3.9 to address new emission reduction commitments for Annex I Parties after 2012. In 2011 the CMP in Durban decided that the second commitment period shall begin in January 2013 and end in 2017 or 2020 (to be

decided in 2012). The CMP invited Annex I Parties to submit information about their “quantified emission limitation or reduction objectives” (QELROs) with a view to the CMP adopting these QELROs as amendments to Annex B of the Kyoto Protocol in 2012 (see Kyoto Protocol Article 21.7 regarding amendments to Annexes A or B of the Protocol).

The Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)

In Durban the COP decided to “launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the United Nations Framework Convention on Climate Change applicable to all Parties”. These negotiations will take place in the ADP.

The ADP is to complete its work as early as possible but no later than 2015 “in order to adopt this protocol, legal instrument or legal outcome” and for it to come into effect and be implemented from 2020. The COP decided that the process is to raise the level of ambition and decided to “launch a workplan on enhancing mitigation ambition” with a view to ensuring the highest possible mitigation efforts by all Parties (see decision 1/CP.17).

There are differing interpretations regarding what “an agreed outcome with legal force” under the UNFCCC means and regarding other aspects of the ADP’s mandate.

2.8 The negotiating process

The negotiating process may vary depending on the body and meeting. For example, in opening COP and CMP plenary meetings country groups and countries usually make statements that set out their general priorities for the negotiations. Detailed negotiations on text usually take place in smaller groups, for example contact groups and informal consultations. Negotiations can be led by for example a Chair, a Co-Chair or a Facilitator.

The starting point for negotiations can be for example an earlier COP decision or a draft proposal from a Chair. The Chair usually indicates to the meeting what he expects the outcome to be: for example a new draft decision to be forwarded to the COP for adoption or, if negotiations are at an earlier stage, a revised draft text on an issue, to be considered again at the next meeting and perhaps several more meetings before a final text can be agreed.

2.9 The draft rules of procedure

Rules of procedure are formal rules for negotiations, for example about the agenda and voting.

The COP has not adopted the “draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies”. This is because the Parties have not been able to agree on draft rule 42, which concerns voting. In the meanwhile the COP has decided that the draft rules of procedure will continue to be applied, with exception of draft rule 42.

Most of the disagreements center on the rules for voting on substantive issues, in particular the rule for adoption of protocols. The UNFCCC does not include a rule for the majority required to adopt a protocol (see UNFCCC Article 17). However, other parts of draft rule 42 are also the subject of disagreement and the draft rule as a whole is not being applied.

The draft rules of procedure can be found in the document Adoption of the Rules of Procedure, Note by the Secretariat, FCCC/CP/1996/2, available via unfccc.int.

2.10 Making statements

When making statements it is expected that countries speak after their country group or groups. For example, if a country belongs to the G77 and China and the Least Developed Countries (LDC) Group the representative should make a statement after the representative of the G77 and China and the representative of the LDC Group have made their statements. It is appropriate to begin the statement by mentioning that the country supports the group statements.

It is not appropriate to make a statement in a UNFCCC body that disagrees with the position of a country group that your country belongs to. Such disagreements should be raised in country group meetings.

Before making a statement it is important to check that you are speaking at the right time. Check which agenda item is under discussion and what the Chair is expecting at that moment. For example under an agenda item on technology transfer Parties may have different views on whether a contact group should be established and the Chair may want to hear views about this, not technology transfer, until a decision is reached.

It is usually good to keep statements short. The time available is limited and everyone hears many statements during the day. Many people do not listen to long statements, especially if they repeat what has already been said by others.

2.11 Changes to text

The negotiations are conducted mainly in English. It is important to be cautious with wording, especially if English is not your first language. For example, there is a big difference between “shall” and “should”. Words can also have a different meaning in the context UNFCCC negotiations than they do normally.

Changing one word can change the meaning of a whole text. It is helpful to read every word and consider the context and how sentences and paragraphs relate to each other.

2.12 Words like “bis” and “ter” in paragraph numbering

It is UN practice to use the Latin numbers below for alternative paragraph proposals in negotiating documents. This is why you may see paragraphs numbered for example “2 bis” and “2 ter”. The numbers from two to ten are:

- | | | |
|-----------------|--------------|---------------|
| ■ bis - 2 | ■ ter - 3 | ■ quater - 4 |
| ■ quinquies - 5 | ■ sexies - 6 | ■ septies - 7 |
| ■ octies - 8 | ■ novies - 9 | ■ decies - 10 |

III

Legal mini glossary

This mini glossary does not provide detailed legal information. It is only meant to give a very brief overview of the meaning of certain terms when they are used in a legal context.

For example “amendment” can refer to a change in a draft report or other text, but amendment is also a legal term for making changes to a treaty. “Adoption” can refer to adopting the report of a meeting for example, but is also a legal term for agreeing the final text of a proposed treaty.

Acceptance, accession, approval, ratification

These are ways in which a state becomes bound by a treaty, i.e. becomes a Party. Signature (please see below) is usually not sufficient to bind a state to a multilateral treaty. Additional domestic processes, such as ratification by parliament, are required. Accession usually refers to the process of a state becoming a Party after a treaty is no longer open for signature.

Adoption

Agreeing the text of a proposed new treaty at a conference. After adoption states need to go through the process of becoming Parties to become bound and for the treaty to enter into force.

Agreement, convention, treaty

International treaties can be referred to by various other terms, such as convention or agreement. They are legally binding agreements between states. Protocols such as the Kyoto Protocol are sub-agreements to existing treaties. They are also legally binding.

Amendment

Amendment means changing part or parts of an existing treaty through a formal process. For example, UNFCCC Article 15 sets out the requirements for amending the UNFCCC.

Declaration

The term declaration can refer to for example a political declaration by Ministers at a conference, a legally binding treaty or a declaration that clarifies a state’s position in relation to a treaty. The latter is usually made when the state signs or for example ratifies the treaty.

For example some small island states made declarations that signature or ratification of the UNFCCC or Kyoto Protocol did not constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change and that no provisions in the UNFCCC can be interpreted as derogating from the principles of general international law.

The term declaration can also refer to what is in effect a reservation. Please see below regarding reservations.

Entry into force

Treaties usually include conditions for entry into force. According to Article 23 the UNFCCC entered into force 90 days after gaining 50 Parties. Kyoto Protocol Article 25 has more detailed requirements,

including requiring Annex I Parties with at least 55 % of total Annex I Party carbon dioxide emissions for 1990 to become Parties before the Protocol entered into force.

Please see below regarding provisional entry into force.

Implementing Agreement

Treaties can be referred to by various terms, for example “implementing agreement”. The UN Convention on the Law of the Sea (UNCLOS) has two implementing agreements, which are similar to protocols and which are legally binding. The US proposed a new implementing agreement under the UNFCCC in 2009.

Protocol

A sub-agreement to an existing treaty, which implements the general objectives of the existing treaty. UNFCCC Article 2 sets out the objective of the UNFCCC and of any related legal instruments that the COP may adopt, such as the Kyoto Protocol.

Provisional application

Provisional application can refer to a state deciding to act as if bound by a treaty, although the state has not yet become bound (for example, ratification has not yet been completed). It can also involve a state acting as if bound by a treaty before the treaty has entered into force.

Provisional entry into force

Treaties may contain mechanisms for provisional entry into force if the criteria for entry into force have not been fulfilled by a certain time. Provisional entry into force may also involve Parties to a treaty which has not yet entered into force deciding to apply the treaty as if it had entered into force.

Reservations

A reservation is a statement by which a state aims to exclude or change the legal effect of part of a treaty in relation to the state.

The terminology is not always clear. Reservations can be referred to by other terms for example declaration (please see above regarding declarations) or understanding. It is the effect that matters: reservations aim to exclude or alter the legal effect of part or parts of a treaty, rather than clarify a state’s position or understanding.

A reservation can make it possible for a state to become bound by a treaty although it is unwilling or unable to comply with part of the treaty. However, neither the UNFCCC nor the Kyoto Protocol allow reservations (UNFCCC Article 24, Kyoto Protocol Article 26).

Signatory

Usually signing a multilateral treaty does not make it binding on the state. Ratification, acceptance or approval is required in addition. Usually treaties stay open for signature for a certain period after adoption. For example the Kyoto Protocol was open for signature from March 1998 to March 1999 (see Kyoto Protocol Article 24).

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