



**Foundation for International Environmental Law and Development (FIELD)  
Workshop on international decision making following Copenhagen  
24 - 25 March 2010, London  
Summary Report**

The Foundation for International Environmental Law and Development (FIELD) convened this workshop to consider how decision making in international environmental negotiating processes could be strengthened following the Copenhagen Summit.

The workshop, which brought together representatives of governments, research institutes, non-governmental organisations, academia and media, was held under the Chatham House Rule<sup>1</sup>.

As described below, participants identified approaches used in other UN negotiations that might be of assistance in the current climate change negotiations and considered a range of other issues, such as the role of COP decisions.

Participants focused on the preparations for the Sixteenth Conference of the Parties to the UNFCCC (COP16) and the Sixth Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP 6) in Mexico at the end of the year, noting the importance of building trust and the flexible approach and informal consultations being undertaken by the government of Mexico.

Participants discussed how the consensus requirement has worked and the potential consequences of majority voting. Some participants noted that even the best process cannot overcome some differences in political positions. Difficult issues include MRV ('measurable, reportable and verifiable') and mitigation commitments for the second commitment period.

Issues raised in the discussions included: the importance of maintaining a two-track approach based on the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP); strengths and weaknesses of the Copenhagen Accord; and how decisions taken outside the UN process – for example in meetings of the G8 and the Major Economies Forum (MEF) – could inform or be linked with the UNFCCC negotiations.

One presentation reviewed experience with the Non-Proliferation Treaty (NPT), where nuclear weapons states play the key role. The group noted similarities between the UNFCCC negotiations and the NPT negotiations.

It was suggested that lessons from the NPT negotiations include that 'bigger may not be better'. The large number of NPT Parties create a logistical strain. 'Bridge building' countries, that have the trust of other groups of countries, can pull others along with them. This has proved viable in NPT negotiations in the past.

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<sup>1</sup> 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'. The Chatham House Rule, which originated at the Royal Institute of International Affairs, is often used in international meetings.

The NPT agenda suffers from overload, as do the climate change negotiations. Participants discussed the overload in the climate change negotiations due to an increasing number of increasingly complex issues, a broadening agenda and potential risk of 'mission creep'. Various approaches could be available for handling overload, for example the adoption of several protocols on different issues, although this option would have weaknesses.

It was noted that high expectations can lead to spectacular failures, such as the outcome – or the perception of the outcome - of the Copenhagen Summit. Managing expectations and avoiding a perceived make-or-break moment can be very important.

When discussing MRV the Kimberley Process for conflict diamonds was mentioned as an example of a 'soft' approach. Experience with the Sino-British Liaison Group, set up in follow up of the Sino-British Joint Declaration relating to Hong Kong, was mentioned as another example.

One participant noted that voluntary pledges without MRV make it difficult to build an emissions market. It was noted that cultural differences can be reflected in different perceptions about MRV. One suggestion to help enhance understanding could be strengthened networking among lawyers from developed and developing countries.

Several participants highlighted the importance of MRV of financial support. In practice developed countries do not address their financial contributions adequately in national communications. Participants discussed whether calls for more frequent reporting by developing countries should be matched by strengthened MRV of financial support by donor countries.

It was noted that some countries are taking forward elements of the Copenhagen Accord, for example initiatives related to REDD-plus, which raises questions about the broader context – could such initiatives have the effect of undermining the negotiations as a whole? On the other hand it was pointed out that early action and implementation of financial commitments are ways of building trust.

One speaker highlighted that there is a need for regional groups to function effectively in the negotiations. It was suggested that the EU needs to show greater leadership. A speaker suggested that the Lisbon Treaty may provide opportunities for the EU to speak with a more unified voice and that the EU should upgrade its emissions reduction target from 20 to 30 per cent, as an economic strategy signal.

A tendency for the EU to develop its positions and strategy as a response to US positions was discussed. Participants also highlighted the strengths of the EU's cooperative multilateral approach, its willingness to contribute funds and its market power and clean energy commitments.

One speaker referred to the Copenhagen Summit as a 'tragedy, not a crime'. Another speaker emphasised the difficulties faced by vulnerable countries and argued that the failure of the negotiations to achieve deeper emissions cuts is not 'a victimless crime'.

It was suggested that the inability of the US administration to secure 67 votes for a climate treaty in the Senate undermines US leadership aspirations. A speaker noted that China's traditional role has been conservative support for multilateral action and that it is aware of its own vulnerability to climate change. China is focused on becoming a low carbon market leader.

In relation to funding, China's increasing role in Africa was noted. One speaker suggested that conditionalities and distrust related to assistance from developed countries is strengthening the trend towards closer links between Africa and China.

One speaker noted that science has driven the climate change negotiations, but may not remain the driver.

Participants discussed how the US might be included in a global climate regime given how unlikely it is to ratify a treaty. Participants noted that there is considerable experience of the US remaining outside environmental treaties.

The Bali Action Plan (paragraph 1(b)(i)) provides scope for an arrangement where 'comparability of effort' could be ensured in the case of special arrangements for one country. Participants discussed the possibility of a 'cat-flap' treaty, with legally binding provisions for most countries and a means for the US to be linked to the treaty without legally binding commitments.

Participants discussed the suggestion that pledges under the Copenhagen Accord could result in an overall temperature increase of 3.9°C, which could include a rise of up to 6°C in Africa, with devastating consequences. A speaker pointed out that the objective of the UNFCCC and the Kyoto Protocol (in UNFCCC Article 2) is to avoid dangerous climate change, but that the poor and vulnerable will be seriously affected by the climate change that is already unavoidable.

One speaker noted that vulnerable countries such as Small Island Developing States (SIDS), Least Developed Countries (LDCs) and African countries have a voice through the UNFCCC. At a meeting of some vulnerable countries, held in the Maldives prior to the Copenhagen Summit, the attending countries committed themselves to a low carbon development pathway to set an example.

In discussing the Copenhagen Accord and the call by vulnerable countries for a temperature rise limit of 1.5°C participants noted that paragraph 12 of the Copenhagen Accord could provide the basis for a review of the adequacy (as distinct from review of implementation) of the commitments in the Copenhagen Accord.

Funding for adaptation is a key issue. Concerns of vulnerable countries include potential double counting and access to funding. Donor countries do not seem willing to channel much funding through the Adaptation Fund or the Least Developed Countries Fund (LDCF), but seem to prefer bodies such as the World Bank. A participant suggested that making funding available through the Adaptation Fund and the LDCF could generate significant good will.

The importance of basing negotiating approaches on UN rules was highlighted and participants discussed constraints and potential opportunities for innovation within the framework of UN rules. The importance of small changes, which may trigger larger changes, was mentioned. In relation to a discussion about trust in the negotiating process one participant raised the question what trust relates to in this context– trust in what?

Participants discussed the current atmosphere of scepticism around climate change. A speaker argued that there is little political commitment to action on climate change, noting that the current sceptical debate in the UK may spread to other countries and has been picked up in the US. Another participant noted scepticism about climate change in the media in China.

One speaker argued that Copenhagen was not a failure of the UN process, but a failure to *abide* by the UN process. UN processes can work well, but at Copenhagen Denmark attempted to impose a World Trade Organization (WTO) -style 'green room' process, which excluded Parties.

Other UN treaty negotiations have used approaches that could be very helpful in the UNFCCC context. For example, the 'Cartagena/Vienna setting' was introduced by former Environment

Minister Juan Mayr Maldonado of Colombia in response to difficulties in the negotiations of the Cartagena Protocol on Biosafety. Regional and interest groups were allocated a number of representatives depending on the size of the group and the groups then selected their representatives. All other Parties were also present in the room, seated behind the elected spokespersons who sat at a round table. Observers and media were also present.

Another successful example are the 'Friends of the Co-Chairs' in the negotiations on liability and redress under the Cartagena Protocol. A number of 'Friends of the Co-Chairs', who represent regions and individual countries with strong positions, have been identified. In the negotiations the 'Friend of the Co-Chairs' are seated at a round table, with advisers from Parties selected by the 'Friends' seated behind them. Frequently Parties take turns to sit at the table.

In the on-going negotiations on access and benefit-sharing under the Convention on Biological Diversity (CBD) Friends of the Co-Chairs are also playing an important role.

One participant recalled that the Cartagena/Vienna setting had been used in the UNFCCC context some years ago.

Another participant suggested that the lack of familiarity of the Danish Prime Minister's office with international negotiations and the removal of the chief Danish negotiator may have contributed to a failure to abide by the UN process. The group also discussed the important role that the UNFCCC Secretariat can play and the question of Yvo de Boer's replacement.

It was suggested that if prospects for a legally binding treaty or treaties are limited the role of COP decisions should be explored. Participants discussed the nature of COP decisions and if COP decisions could form the basis for the next steps in developing part of the international climate regime. Could there be scope to expand the legal reach of COP decisions?

The importance of engaging people beyond the 'climate community' was emphasised, as was the need to tap into self-interest as a strong motivator.

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