CONDUCTING GLOBAL CLIMATE CHANGE NEGOTIATIONS HARNESSING THE POWER OF PROCESS

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Key Points

- The collective success of dozens of negotiation groups facilitated by chairs below the top level at a climate summit contributes significantly to the success of high-level negotiations. For this reason, the quality of negotiation management at these lower levels is of vital importance, beyond the issues being negotiated.

- Process itself is a key determinant of negotiation success across all levels of negotiation groups.

- The latest research in this field, along with the experiences of numerous negotiators of the United Nations Framework Convention on Climate Change (UNFCCC), indicate that certain approaches, habits and actions are more conducive than others to reaching agreements and avoiding deadlock.

- Successful chairs will use tactics that include the following: brokering compromise while remaining as transparent and inclusive as possible; enhancing influence by acting impartially and recognizing cultural differences; managing the agenda to create momentum while clustering, prioritizing and linking issues; focusing debate using the chair's information advantage; steering individual negotiation sessions in a time-efficient way; and building trust by creating sheltered negotiation spaces that allow for frank and constructive dialogue.

Introduction

"Good negotiation management is absolutely critical."

— Yvo de Boer, former UNFCCC executive secretary[1]

The management of multilateral negotiations has become a crucial factor in fostering international cooperation, as demonstrated by the collapse of climate summits under the Dutch and Danish presidencies in The Hague (2000) and in Copenhagen (2009), and also by advances — albeit modest — of the Bonn (2001) and Cancún (2010) summits. The overall management of negotiations by the president of the Conference of the Parties (COP) of a UNFCCC summit and the UNFCCC executive secretary is the highest organizational level of negotiation management.

This brief outlines six key instruments available for the chairs of lower-level negotiation groups — that is, not the overall summit presidency, but the dozens of negotiation groups facilitated by chairs below the top level at a summit. In addition to the forums of the plenary (by the COP, the Parties to the Kyoto Protocol [CMP] and subsidiary bodies), numerous issue-specific groups

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1   Quoted in Monheim (2014, 263).

About the Fixing Climate Governance Project

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Climate scientists agree that human activity has been changing our planet's climate over the long term. Without serious policy changes, scientists expect devastating consequences in many regions: inundation of coastal cities; greater risks to food production and, hence, malnutrition; unprecedented heat waves; greater risk of high-intensity cyclones; many climate refugees; and irreversible loss of biodiversity. Some international relations scholars expect increased risk of violent conflicts over scarce resources due to state breakdown.

Environmentalists have been campaigning for effective policy changes for more than two decades. The world's governments have been negotiating since 1995 as parties to the United Nations Framework Convention on Climate Change (UNFCCC). These talks have not yet produced agreements that are sufficiently effective in curbing greenhouse gas emissions or helping the world adapt to climate impacts. Some effort has shifted to partial measures by national governments, provinces, cities and private companies, which together, also fall far short of the need identified by science so far.

The Fixing Climate Governance project is designed to generate some fresh ideas. First, a public forum was held in November 2013. High-level workshops then developed a set of policy briefs and short papers written by experts. Several of these publications offer original concrete recommendations for making the UNFCCC more effective. Others make new proposals on such topics as how to reach agreements among smaller sets of countries, how to address the problems of delayed benefits from mitigation and concentrated political opposition, ways that China can exercise leadership in this arena and how world financial institutions can help mobilize climate finance from the private sector. These publications will all be published by CIGI in 2015.

contribute to negotiating the final package, such as contact groups and several formats of informal consultations. The six axioms for chairs of UNFCCC negotiating groups are as follows:

- Broker compromise using your information advantage from confidential meetings and external input — but remain as transparent and inclusive as possible.

- Enhance your influence by acting impartially, recognize the cultural differences in leadership and communication, and be aware of a few helpful personal characteristics.

- Carefully manage the agenda to create momentum, cluster and prioritize issues, and point out possible trade-offs by linking issues.

- Focus debate by proposing a chair's negotiation text using your information advantage from confidential meetings.

- Steer individual negotiation sessions in a time-efficient way and uphold momentum for agreement.

- Build trust and create sheltered negotiation spaces to open up parties for a frank and constructive dialogue, rather than only defending their state's offensive and defensive claims.

This brief derives insights from key scholarship on negotiation management (Monheim 2014, 12). In addition, interviews with former chairs of climate negotiations provided the first-hand perspective of practitioners.

The Six Axioms for Chairing

» **Axiom One: Broker compromise using your information advantage from confidential meetings and external input — but remain as transparent and inclusive as possible.**

Acquiring information advantage and controlling information is one central way to manage uncertainty and complexity for a chair (Kanitz 2011, 67), and thereby enlarge one's power base (Tallberg 2010, 245). Chairs acquire a superior level of information from bilateral meetings and from other chairs, from outside expert advice on substance and from process expertise provided by the UNFCCC Secretariat.

Confidential bilateral (in which the chair speaks privately with a delegation) and small group consultations are crucial information management instruments. They are also known as shuttle diplomacy or "confessionals" (ibid.). The greater openness of negotiators in these meetings helps the chair to "sort and filter" the most relevant information (Kanitz 2011, 69). As one long-time chair put it, they are "absolutely critical to know what parties really mean" and to have a "grown-up conversation."

One additional instrument can be a "question list" addressed to all delegations. It entails the same themes and helps the

chair to better understand where parties stand and what they need in order to find a joint solution (ibid., 70). The chair uses this collected information to determine potential areas of compromise and to eventually draft a proposal, if the parties do not draft a proposal (Blavoukos and Bourantonis 2011, 659). For this task, chairs must carefully diagnose parties' positions (Odell 2005, 431). They eventually communicate these insights back to parties to indicate reactions to their original demands and possibly find middle ground (ibid.).

Moreover, chairs can also inject information and ideas into the process collected from outside the negotiation group (Kanitz 2011, 69). They can thereby offer answers to open questions, which are often technical in nature. It can also serve to bring all negotiators to a comparable level of expertise. Additional ideas can thus contribute to the crafting of compromise (Odell 2005, 432). External information stems from the secretariat or civil society groups, such as academia, non-governmental organizations or business.

Chairs therefore need to ask and listen very carefully to be able to detect an opening (ibid.; Harbinson 2011, 275). Parties reveal more information to a chair they deem capable and trust highly (see Axiom Two) (Monheim 2014, 113).

Regarding the creation of small group negotiations, chairs should handle them with great care, as they exclude many parties of their regular negotiation group and thereby reduce transparency and inclusion (ibid., 8–10; Kanitz 2011, 87; Vihma 2014, 14):

- Chairs should provide sufficient information about small group negotiations to the larger group. They should diligently inform on their progress and schedule, to reach a minimum level of transparency.

- Chairs should design an inclusive nomination process for a truly representative small group and leave the door open as much as possible. The "Vienna format" in biosafety negotiations is one example of such a process (Monheim 2014, 116). In the Vienna format, only the major coalitions have a seat at the table, but all other parties are at least allowed inside the room as observers. Chairs should also reach out broadly to parties when facilitating compromise. Both instruments have substantially enhanced inclusiveness in the past.

- Finally, chairs may augment the perception of transparency and inclusiveness by announcing repeatedly that the talks in their negotiation group are meant to be transparent and inclusive.

A legitimate process can build the political capital eventually needed to overcome resistance on substance, as shown by the Mexican presidency in the 2010 climate negotiations (Vihma 2014, 13).

» **Axiom Two: Enhance your influence by acting impartially, recognize the cultural differences in leadership and communication, and be aware of a few helpful personal characteristics.**

Negotiation outcomes also depend on the level of respect and trust a chair enjoys (Monheim 2014, 4; Falkner 2002, 17). Chairs can thereby increase their influence to steer the process in a certain direction. The importance of this early trust building "should not be underestimated," stressed a seasoned chair.

The following tactics have proven helpful in this regard, independent of each chair's individual default (see also Monheim 2014, 10–12):

- Chairs should remain impartial (the facilitator's primary trait). Only impartiality will allow bridges to be built properly (see also Depledge 2005, 4; Kanitz 2011, 95–98). Chairs from developed countries may apply special care not to appear biased (Vihma 2014, 13). Some European countries have been perceived as pushing too hard toward their own agenda (for example, the COP presidency of Denmark in 2010), a stance that critically undermines the political capital of a chair.

- As for cultural differences in leadership and communication, chairs should not communicate in a manner that is perceived as too direct or too dominant — a delicate challenge, given the variety of culturally normative modes of communication. Creating an inviting, unthreatening atmosphere forms the basis for good personal relationships. Finally, the chair needs to keep a moderate level of activism by balancing steering and a party-driven process.

- Regarding personal characteristics, successful chairs have frequently been described as empathic, approachable, good listeners, modest and humorous, while still being strong. They were often seen as flexible, with the ability to adapt to quickly changing situations, reasonable, tolerant, patient and motivating (see also Kanitz 2011, 86).

In addition to personality per se, a high level of expertise in the dynamics of negotiations with a facilitation "tool kit" from lengthy experience in multilateral negotiations has also proven helpful (Monheim 2014, 10–12). Chairs should ensure that they master the process of the particular regime to be able to skillfully interpret and apply process rules (Depledge 2005, 53).

In the case of insufficient process or substance expertise, chairs can benefit from the resources of the secretariat for assistance. It is vital to arrange for a cooperative working mode and non-competitive interaction early on (ibid., 232), especially on the level of the overall presidency.

» **Axiom Three: Carefully manage the agenda to create momentum, cluster and prioritize issues, and point out possible trade-offs by linking issues.**

Chairs play an important role in managing the agenda of their negotiation groups (see also Tallberg 2010, 244; Kanitz 2011, 76):

- The chair builds the agenda jointly with parties. Chairs can introduce topics, prioritize them and may also exclude some. All three aspects can be crucial and must be handled with great care.

- Given the plethora of issues, their complexity and the tight schedule of multilateral negotiations, the chair needs to limit the number of issues taken up onto the agenda so they can be handled in the available time given.

- Topics regularly vary in their level of controversy, so it must be carefully decided whether to first build momentum by agreement on an uncontested issue, or by reaching a breakthrough on a difficult point.

- Topics may be prioritized differently by parties. Linking related issues can therefore be helpful so trade-offs become more obvious and no party is set back. The chair can then suggest a sequencing that balances the diverging positions while remaining impartial.

Once chairs introduce an initial draft proposal, they exercise major influence on the ensuing agenda: the proposal then serves as a natural focal point for the remaining negotiation. Overall, the right scope and sequencing of topics must be decided case by case to create a working agenda — with a keen awareness of the impact this may have on the ensuing negotiation dynamic.

» **Axiom Four: Focus debate by proposing a chair's negotiation text using your information advantage from confidential meetings.**

The "active management of a negotiation text" can be critical to move negotiations forward by focusing the debate (Depledge 2005, 165).

The lightest form of the chair's guidance is a "checklist" of topics, developed early in the negotiations, that all need to be included in the final proposal (Kanitz 2011, 71). The chair proposes only the headings while parties concentrate on testing positions and formulating the building blocks of the text. The checklist approach thus focuses the negotiation of parties while adhering to the principle of a party-driven process.

The next level of text management is when text elements emerge after the first few rounds of negotiations without resulting in a comprehensive draft by parties (Odell 2005, 436). In this case, chairs can draft a single negotiation text, as a compromise proposal under their responsibility, that parties can then use as a base for further negotiation. Chairs have two options when advancing such a single negotiation text (see also Odell 2005, 436):

- First, they can formulate cautiously with multiple options for issues. This way, a joint text can at least be created, with parts that need to be resolved later on. Those unresolved questions are indicated by text "in brackets." This approach can still attribute options to specific parties, which may, however, harden positions as parties find it harder to yield on points clearly related to them (Odell 2005, 440). And there is one more caveat: chairs must avoid an overly long and complex text that can no longer be managed by parties, as happened in the run-up to Copenhagen. Overall, this approach helps parties to better see the areas of convergence but also the unresolved issues (Depledge 2005, 165).

- The bolder strategy would be a single text meant to balance all positions, which is fully streamlined without different options. This can be helpful for providing a clear orienting point for parties, showing what is possible and what is not. It serves as an anchor for all ensuing negotiations. The text can accelerate parties' consensus-finding among themselves before chairs take the next step of tabling a revised compromise proposal under their responsibility (Odell 2005, 436). Yet, it risks alienating parties when the chair's proposal appears one-sided.

Independent of the chosen strategy, the regular production of a new text helps to document the progress of a negotiation group (Depledge 2005, 165), which can encourage parties or increase a sense of urgency by showing a stalemate.

The final "escalation" level within the subgroups is a revised single negotiation text that the chair claims is the best available option for all parties, based on his confidential information (Odell 2005, 436). Given the information asymmetry in favour of the chair, it becomes increasingly difficult for parties to reject.

At the end of talks in dozens of different negotiation groups, the separate outcomes are merged into one overarching draft text by the chair of the *overall* conference. At this point in the negotiations, the overall summit chair needs to ensure that the output of the "higher" and "lower" negotiation levels (i.e., by officials as expert negotiators and by ministers as political negotiators) is used with minimal losses — an enormous coordination challenge, given the vast number of negotiation groups (Monheim 2014).

Then, the general principle of complex multilateral negotiation of the "single undertaking" applies, which stipulates that all issues are agreed or rejected as a whole ("nothing is agreed until everything is agreed") (Kanitz 2011, 83). The need to ultimately balance all issues provides the summit chair with the possibility of tabling a "take-it-or-leave-it" text. Usually coming late during

the summit, parties therefore often hesitate to forego this last opportunity for reaching agreement.

Chairs need to keep a few critical overall points in mind when managing the textual development:

- Depending on the level of the chair's familiarity with text drafting, a constructive relationship with the UNFCCC Secretariat is often crucial. Secretariat officials can provide core input for the drafting.

- When formulating their compromise, chairs have to identify the zone where parties' positions overlap. For this task, chairs benefit from a critical asset, laid out earlier — their privileged information provided by parties in confidential conversations (Tallberg 2010, 245). Chairs must judge carefully whether a claim made is a bluff (Odell 2005, 441), and thus whether parties "really have different positions and views," explained an experienced chair. This is a vital step in determining a possible overlap of parties' interests. The challenge remains that not respecting a true "red line" can strongly offend parties.

- Chairs must take into account the power of the party or coalition proposing a solution when they craft the compromise to reflect the political power structure (ibid., 441; Kanitz 2011, 72). At the same time, they must also respect the core concerns of smaller countries. These can otherwise block agreements in the consensus-based system of UN climate negotiations, such as at the Copenhagen summit (Monheim 2014, 164).

- Once the text is formulated, the timing of introducing it is a challenging question. Advancing a single negotiation text too early removes the pressure for parties to develop their own compromise text, undermines parties' prerogative to produce their own text and risks being one-sided, in case there is insufficient confidential information for the chair (see also Depledge 2005, 165). It is thus usually introduced toward the end of the negotiations to ensure thorough knowledge of countries' proposals on the multiple issues, and the appropriate weighing of positions and interests (Kanitz 2011, 72). Nonetheless, proposing it too late can cost crucial time needed to agree on issues that may then still be contested in the chair's text.

- Cutting through all phases of text management, chairs must carefully design a process that is largely accepted in terms of transparency and inclusiveness by all parties (see Axiom One). Regarding the compromise text specifically, they should inform broadly about its origin, evolution and conclusion (Monheim 2014, 8–10).

» Axiom Five: Steer individual negotiation sessions in a time-efficient way and uphold momentum for agreement.

Presiding over single meetings is the task most inherent to chairmanship and largely laid down in the rules of procedure (UNFCCC Secretariat 2011). Chairs open meetings, structure the agenda (see Axiom Three), determine the speaking order and time, guide through the decision-making process, summarize the outcome, close or adjourn meetings and may even fully terminate a negotiation (Tallberg 2010, 246; Kanitz 2011, 66-67). In this regard, chairs should keep in mind the following points:

- The speaking order can often affect the dynamic of a meeting (ibid., 77). Chairs have made conscious use of speaking order in the past, for example, by calling on factions that approve of a proposal first to create momentum in favour of a deal. Limiting speaking time is another tool to maintain momentum and prohibit parties from undermining the process by an endless reiteration of often well-known positions.

- Chairs must continuously counter the tendency by parties to backload negotiations and postpone a frank exchange and concession making (Depledge 2005, 193). They can move negotiations forward by using multiple instruments, for example, setting and keeping clear deadlines, tabling a chair's texts (see Axiom Four), or calling for informal negotiations in a smaller group (see Axiom One).

- When facing a deadlock in a particular session, chairs may escape stalemate on specific text elements by calling for a break and designating one delegate to broker a compromise informally. This break and change in facilitator can create a new dynamic to resolve at least this issue.

- Toward the end of a negotiation process, chairs possess one tool to be handled with great caution. They can threaten to terminate the talks to incentivize parties toward compromise, suggested a long-time chair ("I'm not spending my life in this process."). If parties fail, delegates of this group would forego the possibility to influence the text directly, as it is then forwarded to higher levels of a summit (for example, ministers and the overall summit chairs).

Obviously, *thorough* preparation for the chairing of individual meetings has proven highly useful, especially regarding the procedural tweaks (Harbinson 2011, 275). Mexican Foreign Minister Patricia Espinosa, for instance, was briefed diligently before her final decision on consensus at the Cancún summit in 2010 (Monheim 2014, 117). This preparation helped her to navigate the difficult and key moment of the summit's last night and thereby reach agreement among parties. Again, the secretariat can be of invaluable help with process advice, especially for less experienced chairs.

» **Axiom Six: Build trust and create sheltered negotiation spaces to open up parties for a frank and constructive dialogue, rather than only defending their state's offensive and defensive claims.**

The negotiation style of delegates determines how their positions and underlying interests can be shaped by convincing ideas (Monheim 2014, 15).

Finding solutions has been easier when parties are open to a change of mind based on facts and logical insight, and when they truly search for a joint solution and reveal at least some interests underlying their positions (arguing or integrative bargaining). Often, though, parties bargain for the distribution of what they consider to be a fixed set of gains and burdens (a zero-sum situation). They merely state their positions, without a willingness to engage in open-ended solution finding and often claim a restrictive negotiation mandate (positional bargaining).

Chairs can encourage delegates to open up for a frank and constructive dialogue in two ways:

- They can contribute to a sense of trust built toward them (see Axiom Two) and among the parties of the negotiation group, for example, by a transparent and inclusive process. As a consequence, parties become less anxious about hidden agendas and secretive negotiations, and open up for a frank exchange.

- They can provide informal space for negotiators outside the official process. This applies largely to chairs of the *overall* negotiations, but to some extent also to chairs of contact and other subgroups. In general, informal settings need to be handled carefully as any exclusiveness can destroy the trust of non-participating parties.

Trust, and the appropriate use of informal space, will open up parties for a more constructive and frank exchange (see also Depledge 2005, 233). Negotiators from different parties can mutually reveal information about the interests that underlie their positions and provide a rationale for possible solutions. This makes it possible to consider underlying interests more comprehensively and to craft a deal that is acceptable to all. It can also make parties more amenable to new solutions and compromises.

Conclusion

Experience in negotiations has demonstrated that process, and in particular the manner in which the chair engages and manages party participation, has a critical role to play in the outcome of negotiations. With respect to UNFCCC negotiation groups, lessons from the management of former negotiations — together with advice from scholars of political science, negotiation and mediation theory — led to the development of six axioms for

chairing these groups. Employing these axioms can make a crucial difference in finding common ground and breaking deadlocks. It is hoped that future chairs of negotiation working groups will find this advice helpful in their work.

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