

FIELD

Foundation for International
Environmental Law and Development

Help for MEA negotiators who encounter problems

A FIELD Guide

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FIELD is a team of international environmental lawyers based in London. More information about FIELD can be found at www.field.org.uk.

Introduction

This guide aims to help negotiators who work with multilateral environmental agreements (MEAs) to deal with difficult situations that can arise in international negotiations.

The guide suggests practical approaches that may be helpful in some difficult situations and covers some legal questions.

Many international environmental negotiations are pioneering processes. The rules of these processes evolve constantly. This is a challenge for negotiators.

Understanding the basics of international negotiations, the rules of procedure of different MEAs and being aware of possible practical approaches to difficult situations is helpful.

Chapter I of the guide provides a summary of basic information about MEA negotiations.

Chapter II is the main chapter. It describes what could be a typical - but particularly problematic - week of MEA negotiations. It focuses on problems that a negotiator might encounter and suggests approaches for solving them.

Chapter III provides brief concluding notes.

I: Multilateral Environmental Agreement (MEA) negotiations: the basics

There are many well-established MEAs, for example the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol and the UN Convention on Biological Diversity (CBD). Some new negotiations are under way, for example negotiations on a global legally binding instrument on mercury.

New negotiations usually take place under an intergovernmental negotiating committee (INC) while the Conference of the Parties (COP) is usually the main body for negotiations related to existing MEAs.

Negotiations tend to have similar phases. These are described below.

1. Development of national negotiating positions

The lead ministry in a country will usually coordinate with other ministries to agree on the national negotiating position. Many governments have consultation processes that involve different ministries and stakeholders, such as civil society organisations, in defining national priorities and formulating positions on issues.

Countries usually define overall priorities at an early stage. Detailed negotiating instructions can then evolve over the course of a negotiating process.

2. The Chair and the Bureau

The Chair and the Bureau play an important role in directing negotiations. The Bureau includes elected representatives of each UN regional group, the Chair, and a rapporteur. It may also include for example Chairs of subsidiary bodies.

The Bureau usually meets daily during negotiating sessions and manages issues such as scheduling, best use of negotiating time and issues related to the agenda. The Bureau also takes decisions on issues that may arise during the negotiations, for example whether additional working groups need to be established.

3. Country groups

Countries negotiate as part of groups, such as the G-77 and China, the Least Developed Countries (LDC) Group and the European Union (EU). Large negotiating groups such as the G-77 and China include small groups such as the African Group and the Alliance of Small Island States (AOSIS). It can be very challenging to find common positions in large groups.

Sometimes new groups can form and group memberships change. Different negotiating processes can have different combinations of country groups. For example, in negotiations related to the Convention on Biological Diversity the Group of Like-Minded Megadiverse Countries brings together certain biodiversity-rich developing countries, but its member countries work through other groups in the UNFCCC negotiations.

Negotiating groups have important benefits. A position supported by a group is stronger than a position supported by a single country. Groups can make negotiations simpler by replacing many country positions with a group position. However, it is not always easy or possible to achieve a common position in a large group. In such cases individual countries or sub-groupings of countries negotiate separately.

Country groups that are formed for negotiating purposes are different from the UN regional groups. The UN regional groups (e.g. Western European and other states group, Asian group) are used mainly for electing officers, such as Chairs and Vice Chairs.

4. Opening plenary

An MEA negotiating session usually begins with a plenary that involves all government delegations. Representatives of civil society, indigenous peoples, international organisations and others can be present as observers.

Once procedural matters have been addressed the plenary begins considering the items on the agenda. The agenda is usually based on the outcomes of previous meetings and is circulated in draft prior to the negotiating session. The initial opening statements by countries and country groups assist the Chair in identifying areas of potential agreement and areas where there may be disagreement.

5. Working groups and other groups for negotiations

At negotiating sessions issues are often tackled in groups, for example working groups.

Working groups may have been established at previous sessions. They are usually open to all Parties and observers.

Issues may be referred to permanent subsidiary bodies, for example the Subsidiary Body on Implementation (SBI) under the UN Framework Convention on Climate Change (UNFCCC) or the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) under the Convention on Biological Diversity.

Contact groups are established to negotiate on specific issues. They are usually open to observers and the meeting times and locations of contact group meetings are usually listed in the daily programme of the meeting.

Informal negotiations sometimes take place to try to reach agreement on difficult issues. They might involve just a few countries, but are usually open to all Parties. Informal groups are usually closed to observers. The time and place of meetings are not always publicised. As the schedule is usually communicated directly to the Parties it is important to note the establishment of any informal groups on issues which your country may be interested in.

Drafting groups are established specifically to agree text on a particular issue. They are usually closed to observers.

The Chair of a contact group or informal negotiating group can invite some Parties to form a “Friends of the Chair” group to try to resolve difficult issues. The invited Parties usually include those that cannot reach agreement.

Contact groups and informal meetings are often held within the official meeting times. However, meetings of Friends of the Chair or drafting groups can be held at any time, including very late at night.

The groups above forward the outcomes of their work to a larger group, such as a working group or a plenary, for approval.

The Conference of the Parties (COP) is the highest decision-making body of an MEA. The rules of procedure of the COP do not automatically apply to contact groups, informal groups and drafting groups. These groups may be able to agree on their own rules. (Please see below regarding rules of procedure.)

6. High-level segment

Important negotiating meetings such as COPs often include a high-level segment which is attended by Ministers, Heads of State or Heads of Government.

The high-level segment usually includes speeches by Ministers and others, bilateral meetings and sometimes major policy or funding announcements.

Difficult political issues that have not been resolved in the negotiations are sometimes forwarded to the high-level segment for resolution.

The high-level segment usually concludes with a declaration or statement agreed by the Ministers and others. It is important to note that this is usually a political statement, not a formal outcome under the MEA. Such declarations or statements do not have the same status as COP decisions or other outcomes agreed under the MEA, but they can carry significant political weight.

7. Closing plenary

The closing plenary adopts the report of the meeting and any outcomes that have been agreed, for example COP decisions. Unresolved issues may be forwarded to subsidiary bodies for consideration, prior to being reconsidered at the next COP or other meeting. The importance of the closing plenary depends on whether it marks the end of a long negotiating process or just the end of one negotiating session.

A day at an MEA negotiating session

A day at a negotiating session might look like this:

7:00 – 10:00	Country delegation meetings Country group coordination meetings
10:00 – 13:00	Official UN meeting time, for example: <ul style="list-style-type: none"> • Plenaries • Working group meetings • Contact group meetings
13:00 – 15:00	Country group coordination meetings Informal consultations with other Parties Lunch Side events organised by the secretariat, Parties or observers Press conferences by the secretariat, Parties or observers
15:00 – 18:00	Official UN meeting time
18:00 – 20:00	Country group coordination meetings
18:00 onwards	Extended formal meeting time Side events Press conferences

Rules of Procedure

The rules of procedure are usually adopted in a decision by the first COP. The rules of procedure usually apply to main subsidiary bodies, for example the Subsidiary Body on Implementation (SBI) under the UN Framework Convention on Climate Change. They do not automatically apply to contact groups, informal negotiations and drafting groups.

Most MEA rules of procedure address similar issues. For example: the election of officers, such as Chair and rapporteur; the role of the secretariat; the role of observers; and the agenda.

An important part of rules of procedure relates to the conduct of business or ways of working. This includes for example rules for: making statements; raising points of order (issues related to procedure) and rules for voting. These rules can become very important, especially at the end of a negotiating session when final outcomes are being adopted.

Negotiation theory basics

Parties involved in negotiations may have aspirational positions (the preferred outcome) and bottom line positions (the minimum that could be accepted in a compromise). Negotiators may need to consider a range of positions between these two.

One well-known approach to negotiating is called integrative negotiation. It is often contrasted with distributive negotiation.

Distributive negotiation (competitive, zero sum, win-lose or claiming value)	Integrative negotiation (collaborative, win-win or creating value)
One side “wins” and the other “loses”.	There is a variable amount of resources to be divided and both sides can “win”.
Fixed resources are divided so that the more one side gets, the less the other side gets.	Resources can be shared equitably.
One side’s interests oppose the others.	The goal is to identify mutually beneficial interests.
The dominant concern is to maximise one’s own outcome.	The dominant concern is to maximise joint outcomes.
Dominant strategies include manipulation, forcing and withholding information.	Dominant strategies include cooperation, sharing information and mutual problem solving.
The goal is to increase your own value and decrease your opponent’s.	The goal is to have both sides leave the negotiation feeling they have greater value than before.

II: A week of MEA negotiations: problems and possible approaches to solving them

This chapter describes what could be a typical - but particularly problematic - week of MEA negotiations. It goes through problems that a negotiator might encounter and suggests possible approaches to solving them.

Many of the suggested approaches could work in several different situations. For example, in a preparatory country group meeting or in a contact group meeting.

The handbook does not aim to be comprehensive. Circumstances in negotiations vary considerably. What might be a good approach in one situation may be counter-productive in another.

Overview of the week

- **Saturday and Sunday: preparatory country group meetings**
- **Monday: opening plenary**
- **Tuesday: contact groups, working groups, informal groups**
- **Wednesday: in the corridors**
- **Thursday: Friends of the Chair group**
- **Friday: closing plenary**

Saturday and Sunday: preparatory country group meetings

This could be a typical scenario for a negotiator: after a long flight and only a few hours of sleep you arrive tired and jet-lagged at the preparatory country group meetings for an important COP.

The meetings do not go well. A few countries dominate the meetings and nobody seems willing to take your national concerns into account. The group disagrees on most issues. The Chair of the group misunderstands many of the issues and is not able to bring the group to agreement.

Problems and possible approaches to solving them

If you are attending a meeting for the first time and feel like an outsider who does not understand the rules or the issues that are under negotiation

Preparation is essential for effective participation in international negotiations. For example reading the meeting documents and planning negotiating strategy. If it has not been possible to prepare properly free guides for MEA negotiators can be found on the web.

Speaking to more experienced negotiators is likely to be helpful and staff from the secretariat are usually very knowledgeable. Many non-governmental organisations (NGOs) have expert staff who are happy to share their knowledge.

One or a few countries dominate the preparatory country group meetings

Sometimes certain countries can dominate discussions simply because their representatives are very experienced experts. They may not even be aware that this is happening.

Some of these representatives might react well if asked to explain issues to less experienced negotiators. They may be open to giving others more opportunities to contribute. Ideally the group Chair should ensure that everyone has an equal opportunity to speak.

If some countries dominate discussions deliberately to promote their own priorities it may be helpful to understand the reasons behind their positions fully. For example speaking to individual delegates privately before meetings may help clarify issues. This could help identify areas for compromise or help you understand how to strengthen your country's arguments.

One approach is to identify an area where these countries - or some of them - need your country's support. This will put you in a stronger position to bargain.

Other ways to avoid being pushed into supporting a position that your country does not agree with include asking the Chair or group if the issue can be discussed later. This could give time to speak to other countries with similar priorities as yours.

The most helpful approach may be to cooperate with other delegates to form a group that speaks out in support of each other and does not allow other groups to take over.

It is valuable to explore any possibilities for reaching a common position, as that can strengthen the negotiating position of the group as a whole.

No other country in the group supports your country's position

It is helpful to have a clear understanding of the strengths and weaknesses of your government's position. It may be possible to minimise weaknesses and build on areas where there is agreement with other countries.

If it is not possible to gain support for your country's position it may be possible to agree on a process for moving forward to reach agreement later, for example at the next meeting.

Sometimes it may be necessary to accept that your country's priorities have no support in the group. It may be possible to block agreement in the group, but this may not be helpful in the long term.

The Chair of the country group does not understand the issues or how to manage the discussions effectively

If the group has elected a Chair that person will usually serve until the end of his or her term, if a term has been set. This can vary. For example the G-77 elects a new country as Chair each year. The European Union is Chaired by the country that holds its Presidency, which rotates every six months.

If the majority of the country group seems to agree that the Chair is ineffective approaches to dealing with the situation could include the following:

If the group has Vice-Chairs or other officers they may be able to help. Also, country groups often nominate individuals to coordinate group positions on specific issues. If the group Chair is not effective it may be possible to rely on individual issue coordinators.

Group Chairs have many tasks and often have assistants, for example junior delegates. It may be possible to nominate additional individuals with technical or other expertise to assist the Chair.

If the Chair does not understand an issue a tactful way of explaining it to him or her could be for you or another delegate to say that you are unsure if you understand the issue and to ask for an explanation from other delegates in a meeting or other situation where the Chair is present.

Monday: opening plenary

The troubled atmosphere of the preparatory country group meetings spreads to the opening plenary. The Chair of the plenary is ineffective and does not seem to have read the rules of procedure.

The Chair takes up an issue that is not on the agenda. He does not allow some Parties to speak although they have requested the floor. Some Parties deliberately try to hold back negotiations. The atmosphere is very bad.

Problems and possible approaches to solving them

The Chair takes up an issue that is not on the agenda

If the Chair takes up an issue that is not included on the agenda two questions arise: the rules for adopting the agenda and how to raise a point of order.

The rules of procedure might for example state that the secretariat drafts a provisional agenda in agreement with the COP President, that the provisional agenda is circulated by a certain date prior to the COP and that additional items raised before the opening of the session are to be added to a supplementary provisional agenda. The COP can decide to add or remove items when adopting the agenda, but the rules may state that only items that are urgent or important can be added.

If the Chair takes up an issue that is not on the agenda a Party can raise a point of order. A point of order is used to challenge if the Chair has followed the rules of procedure. A Party cannot speak about issues of substance when raising a point of order: a point of order can only concern process. Usually the Chair must rule immediately on a point of order. A Party may appeal the ruling and have it put to a vote. A majority of the Parties present and voting may overrule the Chair's decision.

The rules of procedure are usually available on the website of the MEA.

The Chair does not allow Parties who have requested the floor to speak

At many if not most MEA negotiating sessions there is not enough time for in-depth consideration of all the issues on the agenda. Often there is far too little time and the Chair needs to limit the time allowed for statements.

The rules of procedure usually include rules about speakers, for example rules for limiting the time for statements and rules about the order of speakers.

Parties are not allowed to speak without the Chair's permission. If the Chair closes the debate before Parties who have requested to speak have been able to do so the Party can raise a point of order to challenge the Chair and demand to be allowed to speak.

A Party deliberately tries to hold back negotiations

Sometimes Parties, in particular ones with experienced negotiators who know all the rules and tricks, deliberately delay negotiations.

This could for example involve questioning all the Chair's decisions. It could include raising points of order that are clearly not well founded or making proposals for how to organise the week's negotiations in such a way that there will not be enough time to resolve the most important issues.

It may be possible to suggest to the Chair that she or he undertakes consultations directly with the concerned Party. An experienced and strong Chair might be able to manage this situation, which can be very difficult to tackle.

Other possible approaches include speaking directly to the Party representative, perhaps together with other Party representatives who want to advance negotiations. Respected senior negotiators may be able to persuade the blocking Party.

As in other situations it may be helpful to consider areas where the blocking Party needs your country's support, as that places you in a stronger bargaining position.

Many countries speaking against the blocking Party's proposals in the plenary can help. It might be possible to block the blocking Party's proposals by not agreeing to them, but that risks giving the blocking Party exactly what it wants: negotiations that do not progress.

Tuesday: working groups, contact groups, informal groups

As Party representatives settle into detailed negotiations in small groups it is clear that this will be a difficult week. It seems that everyone is conspiring to make the negotiations as difficult and fruitless as possible.

Representatives of other Parties appear uninformed and claim that they lack the authority to negotiate. Contact group Chairs are as ineffective as the plenary Chair.

Some members of your country group deliberately undermine the agreed negotiating position on an important issue.

A drafting group agrees a text, word by word, on one of the most difficult issues. Parties leave the drafting group room in a warm and happy atmosphere - finally there has been progress. When the drafting group reports back to the plenary one Party representative suddenly states that his country does not agree with the text. There are gasps around the room.

Problems and possible approaches to solving them

Party representatives are uninformed and do not understand the issues, which makes it very difficult to negotiate

The representatives who are badly informed should be provided with the information that they need. More experienced negotiators can explain issues to them or refer them to sources of information.

Secretariat staff are very knowledgeable and can be very helpful. NGOs can often provide very helpful information. For example at large meetings NGOs, Parties and others often have booths or hold side events. These can be good opportunities for learning about issues.

A Party representative does not have the authority to agree to a compromise

Other Parties could suggest that the representative contacts his or her capital to obtain new negotiating instructions.

If it is not possible for the representative to obtain new instructions the negotiations could focus on other areas where everyone has authority. Another option is to agree on a process for moving forward. This could prepare for quick agreement at the next meeting, when it can be hoped that everyone will have the authority to agree.

Sometimes a Party may claim to lack the authority to agree, but in reality this might be an excuse for delaying negotiations.

The Chair of an important contact group is not managing the negotiations effectively

If many Parties believe that the Chair's inability to manage the negotiations is standing in the way of progress the Bureau may be able to resolve the situation. A Friends of the Chair group could help the Chair. The secretariat could provide increased support to the Chair.

Another option is dividing the contact group negotiations. The Chair could be asked to focus on one particular issue, perhaps with the help of a Friends of the Chair group, and a Co-Chair or other person could take forward contact group negotiations on other important issues.

Parties could also discuss issues informally and come to an agreement that they present to the contact group.

A few group members try to undermine the agreed position of the country group that your country belongs to

For example the group might have reached a compromise position on a difficult issue at the preparatory country group meetings, but some Parties fail to support it fully and even spread rumours.

It may be helpful to begin by listening to the trouble-making countries: do they have valid concerns that need to be addressed?

It is important to ensure that the Chair of your group is aware of the situation. The Chair could speak directly to the trouble-makers or the issue could be taken up in a group meeting.

If there are rumours, for example that your group will change its position, it is important to ensure that the group makes a clear, unambiguous statement that sets out the agreed common position.

A drafting group has reached agreement on a text on a very difficult issue, but a Party representative who had agreed suddenly changes his mind

When the drafting group Chair reports on success a Party representative unexpectedly asks for the floor and states that he does not support the agreed text.

During MEA negotiations many meetings take place at the same time, which is very difficult for small delegations. Sometimes it is not possible for countries with small delegations to be represented the whole time (or at all) in drafting group meetings that are important to them. In these situations it can be understandable if Parties raise issues later.

In other situations a Party representative may have agreed to a particular text or compromise, but then changes his or her mind. In this situation the Chair's options include opening the floor for debate on the text, referring the text back to the drafting group or if a small number of Parties are involved asking them to consult with each other.

If this situation arises in the final plenary the Chair could suspend the meeting to allow time to resolve the issue. Alternatively consideration of the issue could be postponed to the next session.

When such approaches do not resolve the situation at a COP the Chair could refer the issue to the high level segment, if such a segment is taking place. Another option could be for the Chair to consult with the COP President and to convene a meeting of heads of delegations to try to resolve the issue before it is referred to the high level segment.

Wednesday: in the corridors

You escape from the tension of the meeting rooms to get some fresh air, only to be confronted by hostile journalists. They are writing negative reports about your country's position in the negotiations without understanding the situation in your country.

You return inside. A very experienced negotiator from another Party approaches you in the corridor to explain that he cannot agree to a proposal by your country, but he proposes a compromise. You believe that the compromise is acceptable in the circumstances and you agree to report back to the meeting that the issue has been resolved. Later you start feeling uneasy about the compromise, although you are not sure why.

Before you have a chance to go back into the meeting room a well-known negotiator from your region confronts you. She is a highly respected expert and has participated in the negotiations for several years. She is on first name terms with the entire Bureau and other leading negotiators.

Her country's position on an important issue is the opposite of your country's. She tells you bluntly that you are standing in the way of an agreement, that you are inexperienced and incompetent and that you need to agree to a compromise.

Problems and possible approaches to solving them

Negative media reports about your country

Journalists are a route to very large audiences and an opportunity to influence both hostile and friendly audiences through media coverage.

It takes only a little advance preparation to build up an email list of journalists from the major international news agencies. You can also find journalists at the media centre or press conference rooms at a major MEA negotiating meeting.

It is usually best to keep it simple. Explain your negotiating position in human terms - not MEA jargon. People understand issues framed in human terms like

money, health, justice, or morality. It is better if you - and not the journalist - simplify the language so you have more control over what they quote.

Even if you speak to a journalist for 30 minutes, they might quote only one sentence of what you say. So have one key message and one only. Repeat it as much as you need to. Your key message should vary depending on whether you are speaking to journalists from your country or from another country. Ideally you would speak to journalists one at a time to tailor your key message.

If an issue is very complicated you can tell journalists that you will issue a press statement very soon to clarify it. Act fast. Collect email addresses from all journalists and as soon as possible email them a statement you would be happy for them to quote.

If a journalist's questions become hostile or turn to areas where you are not confident, you could for example turn the focus away from what your country is doing and instead focus on what the journalist's country should be doing.

An experienced negotiator tricks you into a compromise that is not good for your country

A very experienced negotiator from another Party approaches you in a friendly manner in the corridor to explain that he cannot agree to a proposal by your country. He proposes a compromise.

He explains that it is impossible for him to agree to your proposal X because of his instructions. He is very sympathetic to your country's concerns. He is willing to stretch his negotiating mandate as far as possible.

He has argued with his colleagues and his country is willing to compromise by agreeing to Y, because he sympathises with your country's concerns. Appreciative of his effort you reach agreement with little discussion.

What really happened here? It may have been a straightforward situation, but it may also have been a clever negotiator at work. The discussions between the two of you started from an agenda set by him and pre-empted discussion of your priority X. What would have happened if you had insisted on X? Was it really impossible for him to agree to X?

Options for approaching a situation such as this include listening carefully and agreeing if a genuinely good compromise is being offered. If the motives behind the compromise proposal seem suspicious it may be better to insist on your

proposal, at least for some time, if you believe that your bargaining position is strong enough.

One approach could be to indicate that you have listened to the person who approached you and explain that you need to consult with your capital before making any compromises and that you will respond as soon as possible. Such an approach can help to avoid decisions that might be unhelpful to your country while maintaining good negotiating relations.

A more experienced negotiator bullies you

Later a much less friendly but very experienced and well-known negotiator approaches you. She tells you that your position is blocking agreement and accuses you of being deliberately obstructionist, in addition to being inexperienced and incompetent.

She tells you that you must support the negotiating position that her country and some others are supporting.

In this situation it can be helpful to listen carefully. It is possible that you are receiving good advice from the more experienced negotiator, even though it is not being delivered in the most tactful way.

Otherwise, every Party has an equal right to a point of view.

If you are concerned about the possible consequences of declining to support the other negotiator's position it is likely to be helpful to ensure that other Parties understand your position and the reasons behind it clearly. A statement in the meeting or a written statement that is circulated might help clarify this. It might avoid rumours and further misunderstandings.

Contacting your capital might also help develop a counter proposal, which could help achieve a compromise. Other friendly senior negotiators may also be able to support you in this situation.

Thursday: Friends of the Chair group

The week is not getting better. Unable to resolve several contentious issues the Chair has established a Friends of the Chair group to address an issue of great concern to your country. Your country is not invited to join.

With great difficulty you manage to join the Friends of the Chair group. You discover that the Chair is proposing an agreement that is unacceptable to your country.

In addition several Parties who have disagreed with you previously have become openly hostile. This makes it very difficult for you to make your concerns heard and to try to find a compromise.

Problems and possible approaches to solving them

Your country is not included in the Friends of the Chair group

The Chair decides which Parties he or she chooses to consult with in a Friends of the Chair group. The Chair should be expected to include a Party with strong views on an issue or at least a representative of the country group that the Party belongs to.

If the Chair does not agree to include your country in the Friends of the Chair group another Party representative (usually one belonging to your country group) might be able to raise your concerns.

The Chair is proposing an agreement that is unacceptable to your country

This can be a difficult situation, but if several Parties object the Chair should change his or her approach. It is important to consult with other Parties in this situation.

The Chair may not change his or her approach, even after many objections. The result will probably be failure to resolve the issue in the Friends of the Chair group. This means that the issue is usually then discussed - potentially even resolved - in the contact group or other larger group meeting that the Chair reports back to.

In the larger group Parties can object to anything that has been agreed. It may be more difficult to influence the outcome at this stage as other Parties may be reluctant to reopen a compromise that the Friends of the Chair have reached on a difficult issue.

Situations such as these can have significant political consequences if trust in the Chair and the negotiating process is eroded. This was evident at the UN Copenhagen Climate Change Conference in 2009.

Parties also have the option of consulting bilaterally in parallel with the Friends of the Chair negotiations.

Several other Parties are openly hostile towards you in the Friends of the Chair meetings

It can be difficult to handle a situation where some Parties are taking a very aggressive approach towards one Party. For example they might belittle proposals made by a Party or criticise the Party representative personally.

A good Chair should manage the negotiations in a way that minimises tensions. Not all Chairs are able to do this.

Approaching the hostile Parties bilaterally may be helpful. Friendly senior negotiators may be able to help mediate.

If the situation becomes increasingly difficult other Parties should support you in requesting the Chair to intervene.

Friday: closing plenary

After days of negotiations and consultations with little sleep you arrive at the final plenary exhausted. You hope for a quick conclusion to the gruelling week.

Things start going wrong immediately. Some Parties raise issues that were resolved in working groups and contact groups. The Chair attempts to force approval of a decision although there is no consensus and some Parties object.

Parties become increasingly divided. Agreements that had already been reached unravel. Negotiations continue through the night. You start worrying that you will miss your flight home the next day.

As everyone becomes increasingly exhausted tensions flare and more problems emerge. In the end it becomes clear that agreement is not possible.

Problems and possible approaches to solving them

Party representatives reopen negotiations on issues that had been resolved in working groups and contact groups

This is similar to the situation where a Party representative that has agreed to a compromise in a drafting group suddenly states that he or she does not support the compromise.

In the closing plenary this may be particularly challenging, as there is usually little time left to conclude negotiations. Parties sometimes use this to their advantage, for example to try to obtain an improved compromise on another issue that they are concerned about.

The Chair can suspend the plenary to allow negotiations to take place in an informal group. A Party can request the Chair to do this. The Chair could also open the floor for debate in the plenary, but this may be less helpful.

The Chair tries to force approval of a decision although there is no consensus and some Parties object

Decision making in MEA negotiations usually takes place on the basis of consensus.

Consensus is not the same as unanimity. A decision can be reached even if it does not have the explicit positive support of all Parties. Consensus is usually considered to exist if there are no objections.

Current UN practice suggests that when a Party is not satisfied by placing its concerns on record, formally protests and actively opposes adoption of a decision - before and after it is taken - this may prevent consensus.

Blocking consensus can be a serious matter. The perception that blocking Parties are obstructing progress can have political consequences.

If a very important issue is at stake and if a COP President or Chair states that there is consensus and proposes adopting a decision, while a Party disagrees strongly, one approach could be for the Party to raise a point of order regarding the COP President or Chair's finding. The point of order would then need to be addressed according to the rules of procedure.

The Parties become increasingly divided

The Chair should lead the negotiations towards agreement, but this is not always possible.

Ways for Party representatives to avoid divisions include making concessions on small issues that matter less than others. This can send a positive message that helps to increase trust and might encourage other Party representatives to make similar concessions.

If the atmosphere is very negative it may be best if the Chair concludes the plenary quickly, without allowing time for lengthy negative statements that might make it even more difficult to reach agreement later.

It is impossible to reach agreement

Sometimes it is not possible to reach agreement. As noted previously it may be possible to agree on a process for taking the negotiations forward if the disagreement is about substance.

If the disagreement includes the process for moving forward (for example, should the COP establish a new body to negotiate a new protocol?) informal intersessional negotiations could make it easier to reach agreement at the next COP.

The Chair might be given a mandate by the COP to undertake such negotiations. Parties could also consult regionally and bilaterally.

III: Concluding notes

FIELD hopes that these suggestions may be helpful to MEA negotiators who tackle challenging issues in situations that are often very stressful.

Circumstances in different MEA negotiations vary considerably and the same solutions may not necessarily work in different situations.

As noted in the introduction the rules of MEA negotiations evolve continuously. For example the Cancun Climate Conference in 2010 triggered debate and suggestions that a new interpretation of the consensus rule may be evolving.

FIELD would welcome feedback on this guide.

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