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**GUIDE ON CLIMATE CHANGE NEGOTIATIONS
FOR REPRESENTATIVES AND NEGOTIATORS
FROM ARAB COUNTRIES**



New York, 2013

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A draft version of the guide was presented and discussed with participants at the regional training workshop on Capacity Development for Climate Change Negotiations for the Arab Countries, jointly organized by the League of Arab States and ESCWA (Amman, 22-24 October 2013).

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Executive summary

The Guide on Climate Change Negotiations for Representatives and Negotiators from Arab Countries was prepared by the Sustainable Development and Productivity Division of the United Nations Economic Commission for Western Asia (ESCWA), in the framework of its programmed activities for 2012-2013.

The main objectives of the guide are to strengthen the capacities of national negotiators and negotiation teams from Arab countries in negotiations about future climate change, with a view to enhancing regional cooperation, developing common positions and achieving common goals.

Representatives of the parties to the United Nations Framework Convention on Climate Change (UNFCCC) concluded the eighteenth session of their conference (COP 18) in Doha, Qatar (26 November – 7 December 2012). Arab countries participated actively in the negotiations and in a number of side events.

Climate change and its impacts have been recognized as a major challenge to sustainable socioeconomic development in the Arab region. Global negotiations on climate change are thus highly relevant to the future livelihoods of the people. These negotiations aim to reach meaningful international agreements to limit or reduce the root causes of climate change (mitigation); and to develop adaptation mechanisms to deal with the unavoidable impacts of climate change (adaptation). Governments of Arab countries have shown a keen interest to actively participate in the preparatory processes of COP 18 at regional and global levels, and in the negotiation processes. While each Arab country has slightly different needs and interests, it has been recognized that many of the challenges faced in the region are similar. Hence, national interests and approaches to the negotiations tended to show significant similarity.

To improve the chances of achieving meaningful results in future negotiations, communications and exchanges between countries of the region could be further enhanced. A better understanding of common interests and a strengthening of common positions could be achieved. It is indeed important to formulate a common vision and to further develop national capacities for climate change-related negotiations.

In other parts of the world, at regional and national levels, with support from various international organizations or through bilateral development cooperation between individual countries, documents and tools were developed to enhance negotiation skills in discussions related to climate change. There were so far no similar measures taken in the Arab region or countries.

In this context and building on existing global guidance documents, ESCWA prepared this guide as a technical document or manual to build the technical capacity of national teams for future climate change negotiations. The guide consists of five sections. Section I provides a summary of the international processes related to climate change negotiations, with particular emphasis on issues of relevance to Arab countries. Section II focuses on guidance for national negotiation teams regarding methods of negotiations and the process of drafting agreement texts. Section III features guidelines for negotiators and a summary checklist intended for them; and Section IV provides a glossary of negotiation language. The guide concludes with a list of relevant references in Section V.

The Guide offers a ready to use and well-structured guidance on the history of climate change negotiations, tools, mechanisms and applied practices by representatives of parties to UNFCCC to successfully launch and introduce new proposals, amend proposals by others and avoid unfavourable outcomes of negotiations. The guide - although addressed primarily to representatives and negotiators from government institutions of Arab countries - can also provide information for a wider public, such as non-governmental organizations, civil society, private sector and other stakeholders, to enhance their understanding of the negotiation processes and ways in which outcomes could be influenced. ESCWA recommends that the guide be used as a reference for developing further training material in a modular way.

The detailed contents of the guide are as follows:

- Review:
 - Of the international climate change policy framework;
 - Of the history of the policymaking process towards and within UNFCCC;
 - Of the timeline for key events in relation to the latest and future development.
- Overview and guidance on the available tools, mechanisms and practices applied in international negotiations, particularly in negotiations on environmental and climate changes issues and recommendations, such as the following:
 - Procedures to table new proposals and to introduce changes to proposals presented by others;
 - Procedures adopted within COPs, and mechanisms used in preparatory meetings and outside of the direct negotiating context;
 - Negotiation language and its use in drafting negotiation texts;
 - Methods applied to solicit support from other parties;
 - Formal, informal, procedural and content-linked mechanisms to avoid negotiation situations with unfavorable outcomes;
 - Influence of political positions and groupings on the negotiation processes and their success.

Under the review of the international climate change policy framework, the guide addresses all relevant processes developed in the context of UNFCCC over the last years, including:

- The Subsidiary Body for Scientific and Technological Advice (SBSTA);
- The Subsidiary Body for Implementation (SBI);
- The Ad hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP);
- The Ad hoc Working Group on Long-term Cooperative Action under UNFCCC (AWG-LCA), which ended its work in Doha during COP 18;
- The Ad hoc Working Group on the Durban Platform for Enhanced Action (AWG-ADP);
- The Kyoto Protocol and amendments, including the Kyoto Protocol's Market Mechanisms, such as the Clean Development Mechanism (CDM), the Joint Implementation (JI), and the International Emissions Trading (IET);
- The Global climate change agreement to be finalized in 2015 and endorsed by 2020 (Durban Platform);
- The Climate finance and technology and completion of the related infrastructure, including the Green Climate Fund and the Climate Technology Center (CTC);
- Long-term climate finance;
- Adaptation/increased focus on loss and damage, including the Adaptation Fund and the implementation of National Adaptation Plans;
- Support to developing country action;
- Scientific review;
- The "Doha Climate Gateway" package.

A draft version of the guide was presented and discussed in a training workshop for potential future members of negotiation teams, namely junior staff of government institutions, in October 2013. The workshop was undertaken as part of a wider assistance plan and upon the request of the League of Arab States. Participants reconfirmed the usefulness of the document and contributed some additional information that further enriched this version of the guide.

ABBREVIATIONS, ACRONYMS AND SYMBOLS

°C	Degree Celsius
AOSIS	Alliance of small island states
AWG-ADP	Ad Hoc Working Group on the Durban Platform for Enhanced Action
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-Term Cooperative Action under the Convention
BAP	Bali Action Plan
BATNA	Best Alternative to Negotiated Agreement
CBD	Convention on Biological Diversity
CBDRRC	Common but differentiated responsibilities and respective capabilities
CDM	Clean Development Mechanism
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
cm	Centimetre
CMP	Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol
CSN	Climatological standard normals
CTCN	Climate Technology Centre and Network
ESCWA	Economic and Social Commission for Western Asia
G8	Group of 8
G77	Group of 77
GEF	Global Environment Facility
GDP	Gross domestic product
GHG	Greenhouse gases
GRULAC	Group of Latin American and Caribbean Countries
IPCC	Intergovernmental Panel on Climate Change
IISD	International Institute for Sustainable Development
JI	Joint implementation
km	Kilometre
LDCs	Least developed countries
LULUCF	Land use, land-use change and forestry
m	Metre
MARPOL	International Convention for the Prevention of Pollution from Ships
MEA	Multilateral environment agreement
MOP	Meeting of the Parties to the Kyoto Protocol
NAPA	National Adaptation Programmes of Action
OPEC	Organization of the Petroleum Exporting Countries
QELROs	Quantified emissions limitation and reduction objectives
REDD	Reducing emissions from deforestation and forest degradation

ABBREVIATIONS, ACRONYMS AND SYMBOLS *(continued)*

SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SIDS	Small Island Developing States
TEC	Technology Executive Committee
UNCCD	United Nations Convention to Combat Desertification
UNFCCC	United Nations Framework Convention on Climate Change
US\$	United States dollar
WEOG	Western Europe and Others Group

I. THE CONTEXT: THE ROAD TO DURBAN

In December 2011, parties to UNFCCC adopted the Durban Platform for Enhanced Action, which launched a new round of negotiations aimed at developing “a protocol, another legal instrument or an agreed outcome with legal force”¹ for the post-2020 period.

A. TECHNICAL BACKGROUND

The Arab region faces one of its greatest challenges in the current climate change. Because of its prevailing aridity and growing population, Governments are confronted to a two-fold problem: (a) they should **adapt** to growing environmental challenges by protecting the region’s scarce natural resources and its overtaxed ecosystems, while addressing the needs of a growing population; (b) they also have to devote some of their scarce resources to dealing with a problem that they did not cause, since they are not among direct contributors to climate change. This change is indeed primarily caused by human activities, and its **mitigation** can best be achieved by developed countries.²

No single country or group of countries can deal with such a dual challenge alone. The scale of climate change is such that it has become a cross-cutting global issue, which could drastically alter the conditions of life on earth. Moreover, any discussion of effective mitigation measures requires that policymakers have an understanding of how human activities are affecting climate, and of the resulting social and environmental implications. Such an understanding would allow them to respond to the challenges posed by climate change by developing a long-term strategy for mitigation and adaptation.³

In this manner, the countries of the Arab region would be able to use the current climate crisis as an **opportunity** for enhancing their sustainable development. This is especially the case since, under current agreements such as the Kyoto Protocol, Arab countries are not required to make any commitments to contribute to the global mitigation efforts. As a result, any resources devoted to climate change adaptation would serve to promote their own sustainable development.

1. *Climatic trends*

Climate is a cycle that essentially results from the natural interaction between the sun, the atmosphere and the oceans, as well as increasingly important human factors. In more technical terms, the climate cycle is described by atmospheric statistics such as temperature, precipitation and wind velocity. Since the dawn of civilization and until the industrial age, those parameters generally varied in a relatively cyclical manner, and climatic patterns followed a 30-year cycle that defines climatological standard normals (CSN). The current CSN are computed over 1901-1930, 1931-1960 and 1961-1990.

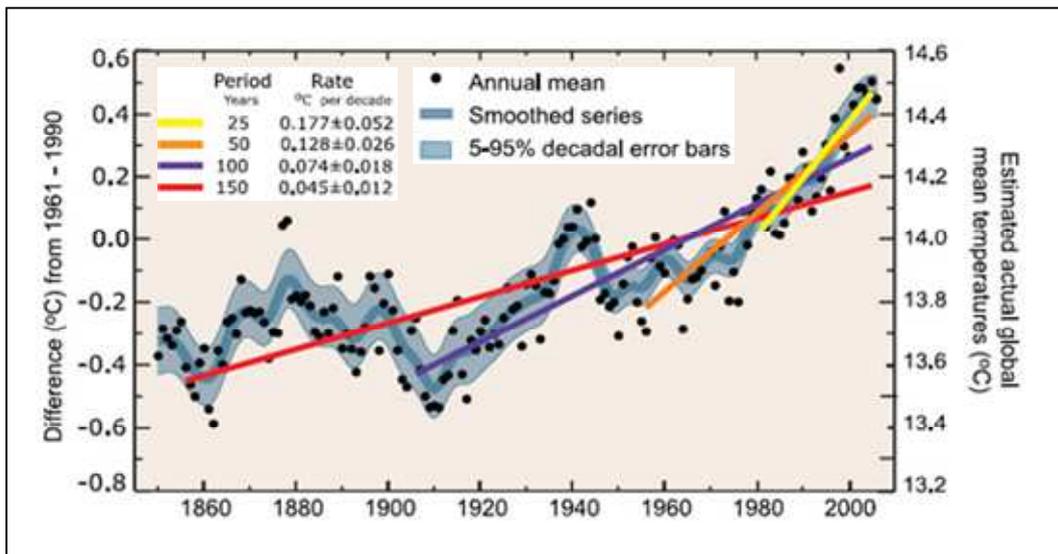
Before the middle of the twentieth century, CSN show that climate appeared to ‘oscillate’ in a relatively stable manner, with little variation from cycle to cycle. However, since the industrial revolution, humans started pumping increasing amounts of Greenhouse Gases (GHGs) into the atmosphere. The cumulative amount of GHGs appears to have “shifted the average” and CSNs are now taking an upward trend. As the climate appears to be warming from oscillation to oscillation, there is a marked difference since 1990.

¹ United Nations, Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, Addendum (FCCC/CP/2011/9/Add.1).

² IPCC, 2007a.

³ Richardson and others, 2009.

Figure I. Global mean temperature increasing as a result of climate change



Source: IPCC 2007b, figure TS.6.

2. Implications of climate change for the Arab region

The Arab region comprises 22 countries. The region is generally poor in water resources and arable land, but remains very diverse both geographically and socioeconomically. It extends from the Atlantic coast to the Gulf, and has a great diversity of geographic and climactic regions.

There are large socioeconomic variations among those countries; with the GDP per capita at constant prices (base year 2000) ranging from 569 United States dollars (US\$) in Yemen to over US\$16,000 in the United Arab Emirates in 2012, and with generally large income disparities within any given country.⁴ The region is also characterized with high urbanization, and the size of its population, currently at 314 million, is expected to double by 2050.⁵

However, despite those large differences, the countries of the Arab region do share some similarities, most notably their overall arid to semi-arid climate and their water scarcity. Indeed, the key environmental problems of the region are water scarcity, land degradation and desertification, and the resulting environmental degradation. Those problems will likely be exacerbated by a changing climate and increased climatic variability.

Hence, in the water scarce countries of the Arab region, the fact that changes in climate will cause local changes in the water cycle is very critical. Even if other regions may be able to withstand temperature increases, it is highly unlikely that the arid Arab region may be able to cope with even marginal temperature changes. The continuing changing climate is therefore likely to “cause major societal and environmental disruptions through the rest of the century and beyond, by exacerbating risks and vulnerability to ... poverty-related health threats, ... compounded by hunger, malnutrition and environmental threats, especially the lack of clean drinking water and sanitation”.⁶

⁴ ESCWA, 2013a.

⁵ ESCWA, 2013b.

⁶ Alley and others, 2002.

TABLE 1. IMPLICATIONS OF CLIMATE CHANGE FOR THE ARAB REGION

Category	Description
Temperature	By 2100, increases of 3°C to 5°C in mean temperatures.
Precipitation	By 2100, a 20 per cent decline in precipitation, with water run-off projected to drop by 20 per cent to 30 per cent by 2050. Reduced stream flow and groundwater recharge might lead to significant reduction in water supply by 2050, by 10 per cent or greater, as in the case of the Nile Basin (40 per cent to 60 per cent reduction in flow).
Climatic variability	Greater seasonal temperature variability, leading to more severe weather events, such as droughts and floods. An increase in storms is also expected, particularly in the Indian Ocean and the Gulf.
Environmental degradation	A 1.5°C warming would cause Mediterranean biomes to shift 300-500 km northward. A warmer climate may also expand the range of carriers of vector-borne diseases such as malaria, yellow fever, dengue fever, and may help increase agricultural and household pests.
Sea level rise	The Mediterranean and the Gulf is predicted to rise between 30 cm and 1 m by 2100.
Land degradation and desertification	As climate models predict warmer temperatures and more variable rainfall, desertification and loss of productive land is expected to accelerate. As higher temperatures lead to increased soil erosion, it may also result in increased dust storms.

Source: IPCC, 2007; Milly and others, 2005; and Strzepek and others, 2001.

3. Long-term strategy: global targets and timetables

Research to date has established the fact that most of the current change in CSN is due to past increases in GHGs. In the short term, regardless of mitigation actions, the ongoing climate change is set to continue. Even if mitigation actions led to levels of atmospheric GHGs as low as those of the nineteenth century, the current climate change would continue for at least part of the twenty-first century.

Moreover, the Arab region is likely to be deeply affected by climate change, even if its past GHG emissions are negligible. Indeed, its prevailing aridity makes it vulnerable to any significant changes to the water cycle.

Any successful climate policy must therefore “consist of a dual approach focusing on both short-term targets and long-term goals”.⁷ There are two important implications in terms of policymaking for adaptation and mitigation.

(a) Policy implications for mitigation

- (i) It is in the interest of the Governments of Arab countries to call for “rapid, sustained, and effective mitigation based on coordinated global and regional action”,⁸ especially since any mitigation action will take some time to have an effect because of the inherent inertia of climate. The Arab region should particularly ensure that priority is given to mitigation measures undertaken by the greatest emitters of GHGs. Agreeing on weaker targets for the limitation of emissions is not only of little benefit to the region, but it also increases deferred costs, namely all future costs of adaptation and mitigation, especially since “the overall costs and risks of climate change will be equivalent to losing at least 5 per cent of global GDP each year, now and forever”.⁹ This fact is recognized implicitly by UNFCCC, as its article 2 defines the ultimate

⁷ Hasselmann and others, 2003.

⁸ Ibid.

⁹ Richardson and others, 2009.

objective of the Convention and any related legal instruments, such as the Kyoto Protocol, to be “the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”;¹⁰

- (ii) It should be noted that, under the Kyoto Protocol, Arab countries are not required to make any commitments to contribute to global mitigation efforts. Consequently they are free to devote resources and elaborate policies with a primary focus on sustainable development, such as the promotion of energy efficiency, or the development of economically viable renewable energy solutions.

(b) *Policy implications for adaptation*

- (i) The task ahead is to ensure that the Arab region adapts to climate change, and obtains the adequate assistance and support for that purpose. The idea of assistance is supported by the UNFCCC principle of equity through common but differentiated responsibilities and respective capabilities (CBDRRC). The Arab countries should ensure that this principle is honoured, as industrialized countries owe an “adaptation debt” to the developing world;
- (ii) COP negotiations should lead to securing that not only adverse impacts of climate change are mitigated, but also that the economic development of the Arab region continues in a sustainable manner.

TABLE 2. VARIOUS MECHANISMS IN SUPPORT OF ADAPTATION EFFORTS

Mechanism	Description
The Clean Development Mechanism (CDM)	CDM allows countries to meet part of their commitments by investing in GHGs emissions reduction projects, to be evaluated and operated by national authorities in the host countries
National Adaptation Programme of Action (NAPA)	NAPA is a framework to prioritize adaptation needs, often supported by GEF.
Global Environment Facility (GEF)	Article 10 of UNFCCC provides for financial support to developing countries and economies in transition in implementing the Convention, through GEF.
Other financial resources	Special Climate Change Fund; Least Developed Countries Fund; the Adaptation Fund.

B. UNFCCC IN THE INTERNATIONAL CONTEXT

UNFCCC is a type of multilateral environmental agreement (MEAs). As such, it has a specific structure and evolves through a specific process.

1. *Types of international agreements*

MEAs are a type of international agreements, distinguished by their focus on environmental issues, their creation of binding international laws and their inclusion of multiple countries. They can be classified in three general forms:

- (a) Agreements that are geographically defined. They can be global, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); or regional, such as the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa (Bamako Convention);

¹⁰ United Nations, 1992.

(b) Appendix-driven or annex-driven conventions that list specific items, subject to different degrees of regulation. An example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that lists animal and plant species in different categories of endangerment; or the International Convention for the Prevention of Pollution from Ships (MARPOL) that addresses specific types of pollutants;

(c) Framework conventions, which are often “all-inclusive” agreements, or agreements that are designed in view of the adoption of further protocols or agreements. This is the case of the 1985 Vienna Convention for the Protection of the Ozone Layer, which set the stage for the 1987 Montreal Protocol, which in turn sets timetables for the phasing-out of ozone-depleting substances. Similarly, the 1992 UNFCCC was designed to be completed by later agreements, such as the 1997 Kyoto Protocol.

2. *Agreement structure*

In general, MEAs have evolved from having a narrow focus, being use-oriented and targeting specific economic sectors to a more holistic focus on sustainable development, including a sustainable use of natural resources, as in the case of UNFCCC.

Narrowly-focused agreements were primarily concerned with the preservation and use of specific natural resources, such as the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention); the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Dumping Convention); and the 1973 MARPOL. By focusing specifically on wildlife, air and the marine environment, the early MEAs set out principles for dealing with specific threats.

Recently, more holistic MEAs were concluded, particularly following the United Nations Conference on Environment and Development, also known as the Earth Summit (Rio de Janeiro, June 1992). The Conference was attended by government representatives from about 180 States, and led to the three Rio Conventions: UNFCCC; the United Nations Convention to Combat Desertification (UNCCD) and the Convention on Biological Diversity (CBD). UNFCCC itself starts with a focus on the single sector of climate and the atmosphere, but it takes on a more holistic aspect as it recognizes the broader impacts of climate change on ecosystems, food production and sustainable development.

3. *Agreement formulation*

The formulation of any protocol to UNFCCC generally follows a specific process with recognizable stages from pre-negotiation to entry into force. As the implementation moves forward, the UNFCCC institutions and mechanisms do not remain static. They constantly adapt to changes in science and knowledge, or to progress in the negotiation of new decisions, amendments, annexes, appendices or protocols.

(a) *Agreement “life cycle”*

Each one of the above-mentioned stages has specific characteristics and leads to distinct outcomes. While approaching a specific session for a protocol negotiation, negotiators should thus determine which phase of the agreement’s “life cycle” they are in.

- Is this the pre-negotiation stage or the negotiation stage?
- Has the agreement or protocol entered into force? If so, is the negotiation focused on:
 - Decisions that will take the work forward?
 - Ways to adapt the agreement or protocol?
 - Addressing new concerns?
- Will the negotiating session be negotiating an entirely new protocol or annex?

(b) *From pre-negotiation to entry into force*

Below is a brief description of the different stages of the “life cycle” of an agreement:

- (i) Pre-negotiation. As a first step, a decision is made at this stage, as to whether there is a need for action, and whether joint action is feasible. This decision is made after informal or formal consultations at various levels, based on the results of scientific analysis. In the context of UNFCCC, independent scientific analysis concerning the rising threat of climate change is provided by the Intergovernmental Panel on Climate Change (IPCC). The findings of IPCC, set out in assessment reports, provide the scientific basis for the negotiation of the UNFCCC protocols;
- (ii) Negotiation. This process may be initiated by establishing preparatory committees to address specific logistical and procedural issues. After these committees conclude their work, an intergovernmental negotiating committee is convened by an international body such as the United Nations. This committee may then organize an ad hoc conference for the purpose of negotiating a specific agreement or protocol. Both “formal” and “informal” negotiations take place at the ad hoc conference:
 - a. Formal negotiations take place primarily in the “plenary” body, in the presence of all the parties and with their participation;
 - b. Informal negotiations have a more limited focus and audience, they take place within smaller groups of key players, and are generally not public.
- (iii) Adoption and signature. The formal adoption and signing of a UNFCCC protocol may take place at either a diplomatic conference of the parties, or a conference of plenipotentiaries. First, an “enabling decision” is adopted by the convening body and details the purpose, date and venue of the adoption and signature conference. In practice, such a conference takes place some time after the conclusion of negotiations, both to give some time for the preparation of the needed documents and to allow negotiators to report the negotiation results to their respective governments.
- (iv) Ratification and accession. Under UNFCCC, protocols can be signed by countries “subject to ratification”. This formal measure is intended to ensure that country representatives have not overstepped their authority in negotiating the agreement.
 - a. In practice, this measure allows governments to take further time and consider all relevant internal factors. A country then “ratifies” the agreement by depositing an “instrument of ratification”, in which it formally declares its consent to be bound by the terms of the agreement. The details of the actual ratification process may vary from country to country, as each one has its own specific internal process for ratifying international agreements;
 - b. Accession is similar to ratification. This process is used when there is a formal time period during which an agreement remains “open for ratification” by governments. After the end of this period, a country can still “accede” to the agreed protocol if it makes a formal commitment after the expiration of the allotted time frame.
- (v) Entry into force. This part will be implemented based on rules agreed upon by the parties during the pre-negotiation or negotiation phases. In the case of UNFCCC, the entry into force of protocols has increasingly been linked with the mandatory participation of certain specific parties. For example, the Kyoto Protocol was linked with the mandatory participation of certain parties. Indeed, for its entry into force, it required ratification by at least 55 parties to UNFCCC; and ratification by developed countries, identified as “Annex I” parties.

4. Implementation: institutional arrangements and mechanisms

Once a UNFCCC protocol enters into force, the focus of the Parties shifts towards implementation. While the Parties carry out much of the implementation at the national level, the protocol may require that institutional bodies or mechanisms provide help or technical assistance.

(a) COP is UNFCCC's main institution for implementation, its primary decision-making body. Within the framework of UNFCCC, COP is a formal climate change conferences held yearly to assess progress made in dealing with climate change;

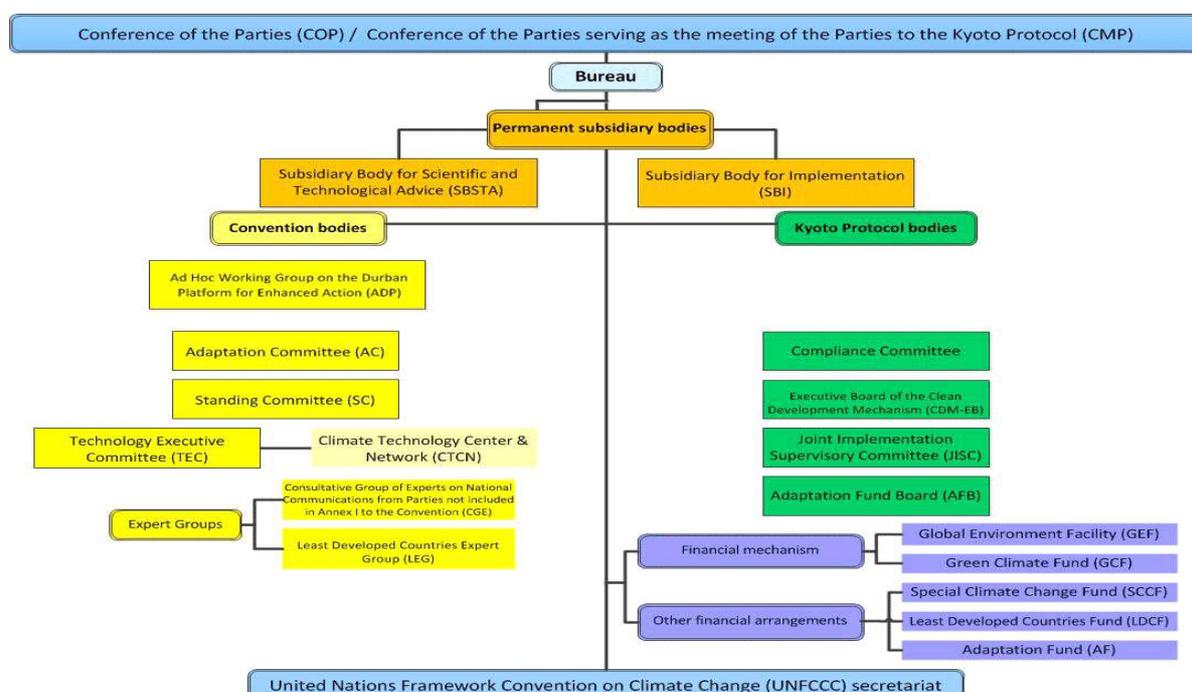
(b) UNFCCC relies on various mechanisms for implementation:

- (i) Reporting mechanisms to assess progress towards the goals of UNFCCC, which rely on periodic reporting from Parties to the Convention;
- (ii) Verification mechanisms may also exist to verify and validate the information reported by Parties. Verification could be carried out by individual parties, as they address the UNFCCC secretariat about their concerns regarding another party's implementation of the agreement. However, a more consensual approach is to create an independent monitoring body, for example the Kyoto Protocol's Expert Review Team, which was granted the power and responsibility to conduct technical assessments of implementation and to report findings to the secretariat;

(c) Compliance is a key issue that can be ensured by the creation of a specific compliance body, with the needed authority to play the following two roles:

- (i) In dealing with non-compliance issues, it may assess instances of non-compliance and assess the reasons for the breach of an agreement;
- (ii) It may serve to facilitate or support parties that lack the needed capacity to become or remain in compliance with the relevant protocol they ratified or acceded.

Figure II. UNFCCC bodies



Source: <https://unfccc.int/bodies/items/6241.php>.

C. UNFCCC AND COP

UNFCCC sets out a framework for action aimed at stabilizing atmospheric concentrations of GHGs. The Convention entered into force on 21 March 1994 and had 195 parties by 2012. Parties to UNFCCC are classified in three groups:

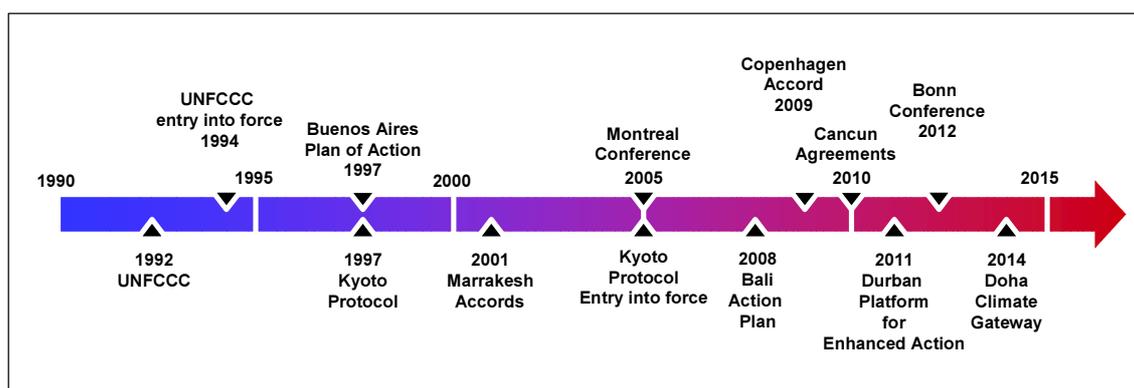
- Countries of Annex I are developed countries and those in transition to a market economy, such as Russia and Eastern European countries;
- Annex II countries are the members of the Organisation for Economic Co-operation and Development;
- Non-Annex I countries are parties to UNFCCC that are not listed in Annex I. Those are mostly low-income and developing countries.

As originally framed, UNFCCC is legally non-binding and sets no mandatory limits on GHGs and no enforcement provisions. It only calls parties to act to protect the climate system on the basis of equality and in accordance with CBDRRC. The CBDRRC issue is addressed by subsequent updates, or “protocols”, through COP.

1. The Conference of the Parties

COP meetings have been taking place yearly since COP 1 in 1995; and from 2005 onwards, COP conferences have also been serving as the Meeting of the Parties to the Kyoto Protocol (MOP or CMP).

Figure III. Some major events of UNFCCC negotiations



Source: http://www.cop18.qa/Portals/0/PDFs/014_COP18%20GUIDE%20TO%20CLIMATE%20CHANGE%20%281%29.pdf.

Below are tables that describe the progress achieved through COPs and the current status of negotiations.

TABLE 3. PROGRESS ACHIEVED IN COPs

COP/CMP session	Year	Place	Progress achieved
COP 1	1995	Berlin	- Expression of concerns about the ability of countries to meet their commitments through the Berlin Mandate; - Characterization of the roles of SBSTA and SBI .
COP 2	1996	Geneva	- Adoption of the IPCC second assessment report; - Rejection of uniform harmonized policies in favour of flexibility; - Call for legally-binding mid-term targets.

TABLE 3 (continued)

COP/CMP session	Year	Place	Progress achieved
COP 3	1997	Kyoto	<ul style="list-style-type: none"> - Adoption of the Kyoto Protocol, which defines Annex I countries as those with GHG emission targets that apply from 2008 to 2012 (first-round targets), which included the reduction of the overall emissions of 6 GHGs by an average of 5 per cent below the 1990 levels. It also defines non-Annex I countries, including Arab countries, as those with the sole obligation of reporting on their GHG emissions through inventories; - Defining CDM (in Article 12) as one of the flexibility mechanisms, providing for the trading of certified emission reduction units generated from emissions reduction projects, with a view to assisting developing countries in achieving sustainable development and preventing dangerous climate change, by providing Annex I countries with a way to achieve compliance. <p>(Initial weaknesses of CDM were identified and tackled through Programmes of Activities (PoAs), however the continuation of CDM remains uncertain).</p>
COP 4	1998	Buenos Aires	Adoption of a 2-year plan of action to devise mechanisms for the implementation of the Kyoto Protocol.
COP 5	1999	Bonn	Focus on technical issues.
COP 6-1	2000	The Hague	No consensus on issues such as credits for carbon sinks such as forests, cropland and re-vegetation projects; consequences of non-compliance; and financial assistance for mitigation and adaptation. Negotiations were thus carried out the following year in COP 6-2.
COP 6-2	2001	Bonn	Consensus was reached on major issues, including flexible mechanisms for emission reduction (such as JI); CDM; granting credits for carbon sinks; provision of outlines for dealing with compliance issues; and establishing new assistance funds for adaptation and mitigation such as NAPAs for least developed countries (LDCs).
COP 7	2001	Marrakech	Operational details and implementation of COP 6 decisions notably: <ul style="list-style-type: none"> - Operational rules for international emissions trading, CDM and JI; - A non-legally binding compliance regime for emissions targets; - A counting procedures for the flexibility mechanisms.
COP 8	2002	New Delhi	<ul style="list-style-type: none"> - Call upon developed countries to transfer technology to developing countries; - Approval of the New Delhi work programme on Article 6 of UNFCCC.
COP 9	2003	Milan	- Agreement on using the adaptation fund to support efforts of developing countries and build their capacity through technology transfer.
COP 10	2004	Buenos Aires	Plan of Action to promote adaptation to climate change in developing countries.
COP 11/ CMP 1	2005	Montreal	<ul style="list-style-type: none"> - Creation of the Convention Dialogue (series of workshops); - First CMP after entry into force of the Kyoto Protocol.
COP 12/ CMP 2	2006	Nairobi	<ul style="list-style-type: none"> - 5-year work plan to support climate change adaptation in developing countries; - Agreement on adaptation fund procedures and on improvements to CDM projects.
COP 13/ CMP 3	2007	Bali	<ul style="list-style-type: none"> - Bali Action Plan (BAP); - Consensus on the specifics developed by AWG-LCA, that was mandated to focus on mitigation, adaptation, finance and technology.

TABLE 3 (continued)

COP/CMP session	Year	Place	Progress achieved
COP 14/ CMP 4	2008	Poznań	- Progress towards establishing a fund to help the adaptation efforts of the poorest nations; - Progress towards a mechanism to incorporate forest protection into mitigation efforts.
COP 15/ CMP 5	2009	Copenhagen	- Adoption of the Copenhagen Accord, supported by 140 countries; - Extension of the mandates of AWG-LCA and AWG-KP until COP 16; - Note: general lack of consensus over transparency and processes.
COP 16/ CMP 6	2010	Cancún	- Recognition of the need for deep cuts in global emissions to limit the global average temperature rise to 2°C; - Agreement on keeping the global long-term goal under regular review until 2015, including consideration for a proposed 1.5°C target; - Establishment of the Cancún Adaptation Framework; and the Adaptation Committee and the Technology Mechanism, which includes the Technology Executive Committee (TEC) and the Climate Technology Centre and Network (CTCN); - Creation of a Green Climate Fund as a new operating entity of the Convention's financial mechanism, governed by a 24-member board; setting up a Transitional Committee tasked with the Fund's design and a Standing Committee to assist COP with the financial mechanism; - Commitment by developed countries to provide US\$30 billion of fast-start finance in 2010-2012, and to jointly mobilize US\$100 billion per year by 2020.
COP 17/ CMP 7	2011	Durban	- Establishment of a second commitment period under the Kyoto Protocol; - Launch of the new AWG-ADP, scheduled to complete negotiations by 2015
COP 18/ CMP 8	2012	Doha	- Adoption of the Doha Climate Gateway, a set of documents that included an amendment of the Kyoto Protocol, to be ratified before entering into force, featuring a second commitment period (2012-2020) but only covering 15 per cent of global GHG emissions due to the lack of commitment of Belarus, Japan, New Zealand, Russia and Ukraine; of Brazil, China and India (not committed to the Kyoto Protocol); and of Canada and the United States (not parties to the Protocol in the period considered).

TABLE 4. CURRENT STATUS OF THE COP NEGOTIATIONS: THE DOHA CLIMATE GATEWAY

Item	Description
Amendments to the Kyoto Protocol	<ul style="list-style-type: none"> • Setting the length of the second commitment period to 8 years, so as to continue as of 1 January 2013 and avoid any legal gap after the end of the first commitment period; • Countries that are taking on further commitments under the Kyoto Protocol have agreed to review their emission reduction commitments at the latest by 2014, with a view to increasing their respective levels of ambition; • A continuation of the Kyoto Protocol's Market Mechanisms: CDM, JI and IET;
Durban Platform: Global agreement to be finalized in 2015 and endorsed by 2020	<ul style="list-style-type: none"> • Meetings and workshops were to be held in 2013 to prepare the new agreement and to explore further ways to raise ambition and close the pre-2020 ambition gap; • Elements of a negotiating text to be available no later than the end of 2014, so that a draft negotiating text would be available before May 2015.

TABLE 4 (continued)

Item	Description
Climate finance and technology, and completion of related infrastructure	<ul style="list-style-type: none"> • Endorsing the selection of the Republic of Korea as the location of the Green Climate Fund and the work plan of the Standing Committee on Finance. The Green Climate Fund was expected to start its work in Songdo in the second half of 2013, and to launch activities in 2014; • Confirming a UNEP-led consortium as host of CTCN, the implementing arm of the UNFCCC's Technology Mechanism, for an initial term of five years. The board of CTCN has also been agreed upon.
Long-term climate finance	<ul style="list-style-type: none"> • A reiterated commitment to deliver on promises to continue long-term climate finance support to developing nations, with a view to mobilizing US\$100 billion both for adaptation and mitigation by 2020; • Continuing a work programme on long-term finance during 2013 under two co-chairs to contribute to the ongoing efforts to scale up the mobilization of climate finance and report to the next COP on pathways to reach that target; • Concrete financial pledges by Germany, the United Kingdom of Great Britain and Northern Ireland, France, Denmark, Sweden and the European Union (EU) Commission for the period up to 2015, totaling approximately US\$6 billion.
Adaptation	<ul style="list-style-type: none"> • A pathway towards concrete institutional arrangements to provide the most vulnerable populations with better protection against loss and damage caused by slow onset events such as rising sea levels; • Ways to implement National Adaptation Plans for LDCs, including linking funding and other support.
Support of developing country action	<ul style="list-style-type: none"> • A registry to record developing country mitigation actions that seek recognition or financial support. The registry will be elaborated on a flexible, dynamic and web-based platform; • A new work programme to build capacity through climate change education and training, create public awareness and enable the public to participate in climate change decision-making has been agreed upon in Doha.
Scientific review	<ul style="list-style-type: none"> • A robust process to review the long-term temperature goal that will start in 2013 and conclude by 2015. It will serve as a reality check on the advance of the climate change threat and the possible need to mobilize further action.

2. Views of the Arab countries on the outcomes of the Doha COP 18/CMP 8

Following the conclusion of the Doha COP 18/CMP 8, the Arab Group and the developing countries considered that decisions taken in Doha represented hope for the future of multilateral action on climate change; they noted the success achieved on the start of the second commitment period and looked forward to full and continuous implementation of the decisions. However, they also noted the following:

(a) Disappointment with the lack of ambition in the outcomes of Annex I countries. Nevertheless, there was an expressed hope that the conference paved the way for a new important phase to advance negotiations on the 2015 climate change agreement that will be legally binding to both the developed and developing countries when endorsed by 2020;

(b) A hope that the implementation of the decisions reached at COP 18 would begin immediately, with fewer theoretical workshops and discussion meetings. This would help ensure full and immediate operationalization of the mechanisms agreed upon since COP-16 and COP-17, such as the Green Climate Fund, CTCN and other capacity-building related instruments;

(c) The need to adhere to a clear implementation timetable, and develop effective and practical means of implementation of these decisions.

3. *The United Nations Framework Convention on Climate Change*

UNFCCC and related texts discuss of seven key topics: a shared vision for long-term cooperative action;¹¹ adaptation and its means of implementation; mitigation; provision of financial resources and investment; development and technology transfer; capacity-building; and cross-cutting proposals related to structure and placement.¹²

(a) *Adaptation and means of implementation*

“Adaptation”, in the context of UNFCCC, may not merely be the “only action to respond to the adverse effects of climate change”,¹³ but also a set of actions made necessary by “the impact of the implementation of response measures”.¹⁴ As part of BAP, AWG-LCA has defined adaptation as an action to reduce the vulnerability and build the resilience of ecological and social systems and economic sectors to present and future adverse effects of climate change. However, there is no consensus yet as to whether “the impact of the implementation of response measures” would also be part of adaptation. A definition of “particularly vulnerable developing countries” was also agreed upon. However, three key issues remained:

- (i) While there is agreement that the industrialized world should provide financial support “to the most vulnerable developing countries”,¹⁵ there is no agreement that it be mandatory;
- (ii) The distinction between adaptation in developed and developing countries is not clear enough;
- (iii) No clear “metrics” or means to measure adaptation needs were agreed upon.

Analysis

It appears that tacit acknowledgment was made that some “adaptation actions” will have transboundary implications. This acknowledgement, in itself, appears to be a progress over the proposed UNFCCC, but the Group of 77 (G77)/China and the African group consider this progress to be insufficient. The discussions also made some progress on “type of adaptation activities and support, institutional arrangements, a mechanism to address loss and damage [but it still] cannot serve as basis for further discussions as it does not fully reflect ... the commitment of developed countries to provide support for adaptation in developing countries and does not provide a sufficiently clear distinction between adaptation in developed and developing countries”.*

* ISSD, 2009, p. 10.

(b) *Mitigation*

The key aspects of mitigation are related to commitments by industrialized countries; the need for clear and unbiased data; the choice of a base year; and the length of the commitment period. The Barcelona discussions covered all four issues.

¹¹ FCCC/AWGLCA/2009/INF.2.

¹² Ibid.

¹³ FCCC/AWGLCA/2009/8, Annex II, Article 7, Option 1, p. 11.

¹⁴ Ibid., Option 2, p. 11.

¹⁵ IISD, 2009.

The commitment level of industrialized countries is defined as “ambition”. In Barcelona, both the African Group and the G77/China group agreed that the level of ambition was “unacceptable”. They underlined their preference for measurable, reportable and verifiable nationally appropriate mitigation commitments in the form of quantified emission limitation and reduction objectives (QELROs) expressed as a reduction in 2020 compared to total reported emissions falling within limits set by the Kyoto Protocol.

Any agreement so far appears confined to the need to adopt nationally appropriate mitigation commitments or action, without the obligation of them being legally binding.¹⁶ However, Japan highlighted the recent increase of its target to a 25 per cent reduction from the 1990 levels by 2020 and the European Union suggested that they could increase their emission reduction target from 20 per cent to 30 per cent below the 1990 levels by 2020, provided that other countries undertake similar measures. As a result, there was agreement on quantified emissions limitation/reduction commitments, as evidenced by the various proposed changes and additions to Annex B of the Kyoto Protocol.¹⁷ The proposed mitigation options had two key aspects, baseline year and commitment period:

- (i) Option 1: there is no commitment beyond an agreed-upon period, which has yet to be determined (2013-2017 or 2013-2020);
- (ii) Option 2: target reductions during the agreed-upon period (2008-2012) are defined, and another two subsequent periods are defined that do not extend beyond 2028;
- (iii) Options 3 and 4: clearly define assigned amounts in absolute terms and identify different baseline years per country.

Analysis

There is a strong demand from the African Group and the G77/China group for real progress on numbers, particularly concerning “hard commitments” by industrialized countries. Aside from the actual commitments by individual countries, it appears that the need for reliable data still remains to be addressed in a satisfactory manner. There appears to be general agreement for the need to “promote and cooperate in [...] systematic observation and development of data archives related to the climate system”.^{*} The definition of a clear baseline year on which to base further emissions targets is yet to be finalized, as it will greatly affect how emission reduction targets can be achieved in practice. At Barcelona, it appears that there was widespread preference for 1990 as the base year.

^{*} UNFCCC, Article 4, p. 143.

(c) *Financial resources and investment*

The allocation of financial resources needs to focus on two areas: adaptation and mitigation costs, and technology investments. There appears to be still little agreement on clear mechanisms for funding adaptation and mitigation costs, which the European Union estimates to “amount to 100 billion Euros by 2020”.¹⁸ However, one of the outlines of the funding mechanism could be based on three types of funds, as proposed by Japan:¹⁹

¹⁶ AWG-LCA, 2009, non-paper No. 50, Contact Group on Enhanced Action on Mitigation and its Associated Means of Implementation, pp.1 and 9.

¹⁷ Proposed amendments to the Kyoto Protocol pursuant to its article 3, paragraph 9 (FCCC/KP/AWG/2009/10/Add.1/Rev.1).

¹⁸ European Union estimation, see for example <http://www.cfr.org/climate-change/global-climate-change-regime/p21831>.

¹⁹ <http://www.mofa.go.jp/policy/environment/warm/cop/initiative0905.pdf>.

- (i) A climate change fund to finance the implementation of mitigation and adaptation activities, programmes and measures;
- (ii) An adaptation fund to finance adaptation projects and programmes in the most vulnerable developing countries;
- (iii) A green enabling environmental fund to finance an enabling environment and capacity-building activities.

Analysis

The mechanisms for transfers of financial resources may be potentially affected by support towards forestry initiatives. Proposals on reducing emissions from deforestation and forest degradation (REDD) in developing countries may share similarities with a financial support programme, but they have much more in common with an offset mechanism. However, there are concerns from the African Group and Algeria, who called for strict limits to land-use/land-use change and forestry (LULUCF) and offsets during the Barcelona meeting. Proposals on REDD are currently put forward by the United Kingdom, but there is a strong possibility that they garner the support of countries such as Russia, who “is strongly opposed to the use of caps and/or discounts in the LULUCF sector”, and whose “position on forest sinks accounting would lead to more loopholes, and thus, further windfall emission allowances”, according to experts.*

* Korppoo and Spencer, 2009, pp. 5 and 2.

(d) *Transfer of technology*

An essential element of technology transfer is information, which defines the types of technologies that are best adapted to the goal of climate change mitigation. This can be done partly by creating a global database on technologies and best practices for mitigation and adaptation. The following are some aspects of technology transfer:

- (i) G77/China and several other developing countries called for focus on actions that would lead to the development and transfer of adaptation technologies. This was reflected in the AWG-LCA non-paper No. 47 on development and transfer of technology;
- (ii) It is not clear why the country delegates considered that the option of implementing REDD may affect mechanisms for technology transfer whose provisions are included in the alternative option, possibly by weakening them, as appears in the non-paper No. 39. In addition, it is not clear how this will affect some of the provisions proposed in non-paper No. 47;
- (iii) Specific provisions for technology transfer in agriculture were agreed upon. They cover the establishment of a work programme on the agriculture sector under SBSTA, described by non-paper No. 49.

Analysis

A database would require a clear and unambiguous definition of what constitutes “green technologies”, especially considering the fact that energy sources such as corn-based ethanol are mislabelled as “green”, in spite of being simply a “fossil fuel which is later converted into another fossil fuel”.*

* Patzek, 2004.

D. BEYOND DURBAN: GOALS AND OPTIONS

The Durban Platform for Enhanced Action launched a new round of negotiations on UNFCCC, aimed at developing a protocol for the post-2020 period, after the end of the second commitment period set by the Kyoto Protocol. The platform represents a balanced compromise among the main negotiating groups and is set to supersede BAP and the Kyoto Protocol. The Durban Platform for Enhanced Action is significant in one key respect, not by what it states, but by what it does not formulate.

1. *The balanced compromises of the Durban Platform for Enhanced Action*

The platform represents a balanced compromise among the main negotiating groups:

(a) A “fast-start” mandate requested by EU, SIDS and LDCs. It was a condition for the agreement to a second commitment period under the Kyoto Protocol, and was meant to negotiate a new legally-binding instrument engaging all countries. Specifically, the European Union had adopted the following positions:

- (i) It had conditioned its openness to a second commitment period under the Kyoto Protocol on the adoption of a roadmap for the development of a multilateral, rules-based legal framework engaging all parties;
- (ii) It had stressed that the duration of a second commitment period “should ... be compatible with the timeline for the development and entry into force of a future global and comprehensive legally-binding framework engaging all parties”.²⁰

(b) The United States had insisted for a “symmetrical” mandate, applying to developing and developed countries alike;

(c) The demands of the Brazil, South Africa, India, and China group were not monolithic, with China willing to accept legal commitments only for the post-2020 period, while India was unwilling to agree to a new legally-binding instrument;

(d) IDA and LDCs raised concern about the ambition gap between the aggregate emissions pathways necessary to hold global warming below 2°C and the pledges made under the Copenhagen/Cancún frameworks. They therefore insisted that the Durban Platform launch a work plan to enhance the level of ambition of mitigation efforts.

The Durban Platform variously addressed those demands by the following provisions:

(a) Establishing a process to negotiate “a treaty, another legal instrument or an agreed outcome with legal force” that begins in 2012 and concludes in 2015;²¹

(b) Calling for “the widest possible cooperation by all countries and their participation in an effective and appropriate international response”;²²

(c) Providing that the outcome of the negotiations will be “applicable to all Parties”;²³

²⁰ Council of the European Union, 2011.

²¹ Durban Platform, paras. 2-4.

²² Durban Platform, p. 1.

²³ Ibid., para. 2.

(d) Calling for an “agreed outcome with legal force” that will “come into effect and be implemented from 2020”;

(e) Calling for measures to ensure “the highest possible mitigation effort by all Parties”.²⁴

Those balanced compromises met the needs of various parties. For example, the European Union agreed to the adoption of an amendment at COP 18 that provides for a second commitment period. However, the Durban Platform provided for the negotiations to take place under a new mandate, and may supersede the Kyoto Protocol or BAP. This has implications for developing countries:

(a) The Durban Platform departs from the Kyoto Protocol mandate’s exclusion of any new commitments for developing countries, as it calls for “the widest possible cooperation” and “participation” in commitments “applicable to all parties”;

(b) Some developing countries had considered that BAP had established a “firewall” between the mandatory commitments of developed countries and the voluntary actions of developing countries.

Furthermore, questions remain on many issues. For example, concerning the “ambition gap”; while the new instrument negotiated under the Durban Platform is to cover the period from 2020 onward, there is no discussion about actions covering the years prior to 2020, since the pre-2020 period would be covered by the Copenhagen/Cancún pledges.²⁵

2. *Questions raised by the Durban Platform*

The Durban Platform for Enhanced Action remains a very significant document, not least because it makes allowances for a treaty, another legal instrument or an agreed outcome with legal force. However, its silence on various other topics gives it even more significance. Aside from process issues, the Durban Platform is not very specific and makes little mention of key substantive issues that previous agreements had previously discussed.

(a) The Durban Platform makes no reference to the Principle of Equity, nor to the CBDRRC principle:

(i) The principles of Equity and CBDRRC are only implicitly incorporated in the Durban Platform, in the statement that the outcome will be “under the Convention”,²⁶ but no explicit reference to these principles is made. This, in itself, may signal a significant shift;²⁷

(ii) It does not reiterate the UNFCCC call upon developed countries to “take the lead” in combating climate change;²⁸

(iii) Furthermore, the Durban Platform makes no reference to the UNFCCC classification of Annex I or non-Annex I parties, neither to “developing” nor “developed” countries in the context of the climate change regime. In this aspect, it may well be the first COP decision in the history of the climate change regime not to refer to these categories.²⁹

²⁴ Ibid., para. 7.

²⁵ Bodansky, 2012.

²⁶ Durban Platform, para. 2.

²⁷ Rajamani, 2012.

²⁸ UNFCCC, art. 3.1.

²⁹ Rajamani, 2012.

(b) It makes no reference to the 2007 BAP and its dual negotiation tracks that differentiated between developed and developing countries. It provided for the termination, at the end of 2012, of the existing AWG-LCA, which was established at COP 13. It established AWG-ADP to succeed it.³⁰ This may signify a “reset” rather than a continuation of the COP 13 BAP process.³¹

In general, while it addresses process issues, the Durban Platform “is almost completely silent about the substantive content of what is to be negotiated”, and there are concerns among legal experts that it risks becoming “an empty vessel that can be filled with whatever content the parties choose”.³²

3. *The Way forward from Durban*

The platform does reiterate the need to include various issues related to “mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building, and may thus allow for deeper, further reaching negotiations in the run up to 2015. The future negotiations would therefore cover the key areas of regulatory approach, level of ambition, legal form, process, differentiation, the final status of the Kyoto Protocol and the application of BAP in the following ways:

- ☑ The **regulatory approach** would determine the approach to emissions reductions in the post-2020 regime:
 - It is not yet clear if it will be based on absolute emissions reduction targets as in the Kyoto Protocol;
 - In this respect, the relation of the Durban Outcome to the Kyoto Protocol should be clarified in the post-2020 period. It remains to be seen if the Kyoto Protocol will be subsumed by the new instrument and terminate, or if it will continue to exist in some other manner.
- ☑ The **level of ambition** that the Durban Platform negotiations would seek to achieve depends on whether the target of limiting warming to 2 °C is still considered technically and economically attainable:
 - At present, the Goup of Eight (G8) countries have maintained their 2009 agreement to a global emissions reduction target of 50 per cent by 2050;³³
 - However, the parties to UNFCCC have yet to agree on either a long-term emissions target or the date when global emissions should peak. This apparent lack of consensus is reflected in the Durban Platform, which does not refer to a “shared vision” for those key issues in the AWG-ADP work plan.
- ☑ The final **legal form** of the Durban Platform outcome agreement has yet to be defined. Concerning the nature of the final agreement, the Durban Platform has a vague formulation, as already underlined, it only calls for an “agreed outcome with legal force” as a third alternative to a “treaty” or “another legal instrument” that is “applicable to all Parties”:
 - On one hand, it is not clear whether the Durban Platform outcome will be legally binding under domestic laws of countries or under international law. This possibility for the Durban

³⁰ Durban Platform, para. 1.

³¹ BAP, UNFCCC Decision 1/CP.13, FCCC/CP/2007/6/Add.1.

³² Bodansky, 2012.

³³ The Group of Eight, 2009.

outcome to derive its “legal force” from the domestic law of countries is suggested in the Indian submission on the AWG-ADP work plan;³⁴

- On the other hand, the language in the preamble of the Durban Platform calls for the need to strengthen “the multilateral, rules-based regime under the Convention”.
- ☑ The **process** that defines commitments by parties to the convention has yet to be established. It could take the form of either an international agreement, as the Kyoto Protocol, or unilateral national decision-making, as in the Copenhagen Accord.
- ☑ The manner in which the Durban outcome would **differentiate** among countries, commitments and provision has yet to be addressed.³⁵
 - The **differentiation** among countries is particularly important if the principles of Equity and CDDRRC will be reaffirmed; however the Durban Platform appears to make no distinction between developed and developing countries;
 - It also remains necessary to differentiate among commitments, which could vary by their nature, stringency, etc.;
 - It is not clear whether other provisions may be differentiated based on the “type of commitment” or “type of party”.

II. GENERAL GUIDELINES FOR CLIMATE CHANGE NEGOTIATIONS

The task of a negotiator is divided in three phases around the negotiating process: before, during and after negotiations. Each of these stages is critical to the success of the negotiation, yet negotiations often fail before they even start. Indeed, it is a fact that successful negotiators are those who “prepare thoroughly in-country long before the actual negotiations take place”.³⁶ Otherwise, it would be easy to get lost in the arcane details of the process itself, particularly when time comes to negotiate the details of a draft text. Finally, because the COP process is an ongoing one, negotiators have to report back and ensure proper documentation for successors or successor teams.

A. PREPARING FOR NEGOTIATIONS

The initial preparation for negotiations may be the most critical phase of the negotiation process. It begins before the negotiation itself, as negotiators develop a negotiating position based both on their country’s instructions and on its core interests.

This requires that that they first familiarize themselves with the relevant convention text, rules of procedure, COP decisions and other relevant documents. In addition, they should also be knowledgeable about their country’s needs with regards to related cross-cutting issues. As this is done, other preparations also need to be made.

The negotiating team should then be identified and mobilized well in advance. The complexity of the COP negotiations requires that negotiating teams take sufficient time to become familiar with the arcane details of the process.

³⁴ Indian Submission on ADP Work Plan, para. 7 (FCCC/ADP/2012/Misc.3).

³⁵ Bodansky, 2012.

³⁶ UNEP, 2009, p. 20.

Finally, a set of briefing papers and statements can be prepared to help initiate the negotiation process and pre-empt any positions from other parties that run counter to the home country's core interests. The preparation will also help identify a checklist of items and basic materials to bring along to the negotiations.

1. Identifying national needs and developing a national position

A detailed analysis should be prepared to develop a list of the issues most relevant to the home country's interests. For each critical issue on that list, a national position should be developed, inspired both from the instructions provided by the Government and driven by the specific national interest involved. The detailed development of a national position is a two step process:

(a) It requires a detailed identification of needs and may involve a wide range of activities and consultations with a range of government agencies, administrative departments and stakeholders in the various socioeconomic sectors of activity. This preparation could be supported by:

- (i) Specifically commissioned scientific studies or, at least, consultation with relevant researchers;
- (ii) A clear and detailed understanding of the outcomes of the previous negotiating session. Those outcomes can be COP decisions, Subsidiary Body recommendations or other conclusions. This is essential as negotiations often build directly upon previous outcomes;
- (iii) Familiarization with the COP process and its rules of procedure.

(b) The formulated final position will require wide political endorsement. Such a support is critical for two reasons: it will not only afford the delegation the needed confidence during the negotiating process, but it will also facilitate the post-negotiation process of reporting back, leading to ratification or accession.

This comprehensive planning has particular relevance in the case of UNFCCC, because of the holistic nature of the convention. Indeed, while UNFCCC is founded on a focus on the single sector of climate and the atmosphere, it also affects cross-cutting issues related to the broader impacts of climate change on ecosystems, food production and sustainable development, and on development-related issues such as financial aid, technology transfer and capacity-building.

2. Mobilizing a negotiation team

Ideally, team mobilization should proceed after the identification of national needs and the development of a national position. Prior identification of the key needs and positions would help identify the country's main focus within the far-reaching context of UNFCCC, and thus allow the optimal identification of the persons with the most appropriate qualifications.

However, in practice, the team is often already selected before the preparations take place. In that case, the head of the delegation may consider topic familiarity as a criterion to choose the delegate deputies who will attend specific sessions. In any case, there should be a clearly established division of labour well in advance of the negotiations:

- Team members should be focused on specific tasks such as coalition-building, monitoring and coordinating the national position across different issues.
- It is also critical that specific team members be clearly focused on documentation: they should gather all the needed documents from the Secretariat, take notes, draft texts in support of the development of new positions and streamlining communications with relevant government officials.

- In addition, negotiators may need to mobilize further support through a “support team”, a group of national socioeconomic and scientific actors that would act in support of the delegation. This is often needed because of the complexity of the COP negotiations, and would help identify the home country’s specific needs in certain cross-cutting issues such as capacity-building.

It remains important, however, to ensure that all decisions are formally carried out by the head of the delegation, and that public statements are vetted by them.

3. *Briefing papers and introductory statements*

Ideally, briefing notes and statements should be prepared prior to negotiations, especially on the most significant issues that are to be addressed in the upcoming negotiation. The preparation of such documents is a “two-way street”, in the sense that it is both informed by the national position, and it helps developing it further or refining it.

In general, briefing notes and statements should identify the following, for each specific issue related to the national goals:

- The relevant agenda item number and title;
- The relevant documents for discussion;
- The relevant articles and provisions of UNFCCC and/or the relevant protocol;
- The relevant previous decisions, conclusions or recommendations, with a focus on the immediately preceding session;
- If known, the positions of other parties or interest groups, especially relative to the national goals;
- The national outcome that is sought.

This will support the formulation of a series of brief written statements that would be presented orally by the head of delegation or their deputy, as appropriate, at either the opening plenary or the opening sessions of relevant subsidiary bodies.

B. THE NEGOTIATING PROCESS

1. *The UNFCCC negotiating process*

The COP negotiations begin with a plenary session and opening remarks. After this, the session’s President or Chairperson will introduce the proposed agenda for formal adoption. Once the agenda has been formally adopted, the plenary session will then proceed to work through the agenda. In general, the agenda is structured in a way that ensures the following:

- (a) Issues that can be easily resolved will be addressed and resolved first;
- (b) Issues that are more complex or difficult are referred to subsidiary bodies, contact groups or working groups.
 - (i) These bodies may either be existing bodies, or they may be established at the session. Their task is to meet and carry out their mission, and then report back to the plenary on their results;
 - (ii) Usually, all interested parties are invited to participate in these bodies and groups, and their chairpersons/coordinators will be named or acknowledged.

In general, the format of the plenary session is also adopted for subsidiary bodies, contact group or working group meetings. Following statements made by countries and/or country blocs on the specific issue under consideration, the session proceeds under the auspices of the Chair or Co-Chairs. Their role is to assist the development of a consensus on and find common ground between parties on the issues at stake.

During this process, negotiators may make oral “interventions” as the negotiations move towards various “expected outcomes”. It should be noted that the language of those outcomes will be negotiated at least as much the substantive issues.

(a) *Making oral interventions*

It should be noted that oral statements, or “interventions”, are expected to follow an accepted etiquette.

- First, in order to speak, a representative must be recognized and granted permission by the President or Chairperson of the negotiating session. To obtain that, the representative either raises their country’s name placard, or “country flag” in the air, or sets it on its end in its card holder. The representative is placed on a speaking list and will be called to speak when it is his/her turn.
- Once a representative has been granted permission to speak, they have the option to put forward their country’s position; raise a point of order; or table a motion.
 - It is possible for a representative to raise a point of order when they are concerned that the proper rules of procedure were not followed. This is done by making a “T” sign with country placard and hands;
 - It should be noted that motions can deflect the discussion from substantive issues under discussion, and are thus used as potential delaying tactics.

(b) *Addressing the plenary session*

During the plenary session, most interventions present country or coalition positions. Before they speak on behalf of their delegation, representatives should make sure:

- That they have been granted permission by the head of delegation to speak on their country’s behalf;
- That coalition representatives have first taken the floor. This will allow them to lend support to the expressed position of the representatives of the coalitions of which their countries are members.

An intervention in the plenary session is generally made up of seven components: (a) a brief acknowledgement of the President/Chairperson; (b) a statement about whether the motion is associated with the position of a larger group or is made on behalf of a larger group; (c) the importance of the issue at hand for the country or coalition; (d) a positive attitude and remarks on positive aspects of the negotiation; (e) a clear and concise statement; (f) alternative viewpoints to interventions previously made on behalf of other States or coalitions if needed; (g) concluding remarks that highlight the reasonableness of the expressed position.

It should be noted that, while it is important that members of a coalition do not contradict their coalition’s representative, it does not necessarily follow that they should provide full support at all times.

(c) *Expected outcomes*

Negotiations, in general, result in expected outcomes. Such outcomes should be accounted for during the preparation of any country’s negotiation position. In general, a statement of the Chairperson usually summarizes issues remaining on the table for negotiation, and represents an attempt to instruct negotiators by

capturing the opinions of the majority of participants. Negotiations would still be ongoing and parties may freely accept or reject the content of statements. Such resolutions are non-compulsory, and can take the form of declarations or conclusions/recommendations:

- “Declarations” merely reflect a form of consensus or majority opinion;
- “Conclusions” or “recommendations” represent the outcomes of subsidiary body negotiations.

Those resolutions remain instructive instruments that are non-mandatory. Generally, they either contain agreement on the future work of a subsidiary body, or offer suggestions for the wording of subsequent COPs.

The only legally binding conclusions entered into by the parties are termed “decisions”.

2. Coalitions and their role in the UNFCCC context

Coalitions play an important role in UNFCCC, mostly because of the large number of parties, the complexity of issues at stake and their far-reaching consequences. By consolidating many parties into fewer negotiating groups, they help make the negotiations more manageable. Membership in one regional or interest-based negotiation coalition does not preclude membership in others.

- Coalition membership can have some disadvantages, mostly related to the fact that parties within a larger coalition may find that consensus can be difficult to achieve, or to shift once it has been reached.
 - In addition, while membership in one regional or interest-based negotiation coalition does not preclude membership in others, there is risk of conflicting interests;
 - Furthermore, there is a risk of “lock in”, whereby parties may find it difficult to move between coalitions.
- However, coalitions play a valuable role for smaller developing countries. The major advantage is that coalitions help both increase their negotiating leverage and avoid duplication of efforts through the synergies that reduce costs. A further advantage is that coalitions can help highlight points of views that might otherwise be overshadowed, and thus advance agendas that could have been neglected.

(a) *Types of coalitions*

Coalitions can be power-based or political, issue-specific, or institutionalised.³⁷

- The focus of power-based or political coalitions is to consolidate many smaller parties into a larger group, and thus give them more leverage in negotiations. However, because they often lack formal institutions, those coalitions often struggle to muster the necessary resources or level of organization needed for international negotiations. Examples of such coalitions are the following:
 - **G77 and China**, the largest coalition in the United Nations, initiated in 1964, when 77 developing countries made a Joint Declaration of the Seventy–Seven Countries. The coalition later grew to include China, and now totals 132 member countries, representing 3.5 billion people.
 - **Small Island Developing States (SIDS)**, consisting of small island and low-lying coastal States with small populations. Its members share similar developmental challenges, mostly

³⁷ Ibid., p. 23.

lack of resources, remoteness from trade routes, and relatively greater susceptibility to natural disasters and other negative impacts of climate change. In 1990, the **Alliance of Small Island States (AOSIS)** was established to serve as an ad hoc lobbying and negotiating group for SIDS member States on climate change issues. While AOSIS lacks a formal charter, it makes major policy decisions at ambassadorial-level plenary sessions. It has chairmanship and vice-chairmanship positions, but it lacks a budget and a secretariat, and therefore remains structurally and financially limited;

- Groups such as **JUSSCANNZ** were formed for negotiating purposes by developed countries that are not members of EU. JUSSCANNZ usually represents Andorra, Australia, Canada, Iceland, Japan, Korea, Liechtenstein, Mexico, Norway, New Zealand, San Marino, Switzerland, Turkey and the United States. The State of Israel is sometimes represented;
- Groupings also exist, based on the United Nations definitions. There are five regional groupings based on established United Nations practice: Africa; Asia and the Pacific; Central and Eastern Europe, the Group of Latin American and Caribbean Countries (**GRULAC**); and the Western Europe and Others Group (WEOG) comprising Australia, Canada, New Zealand and the United States;
- The **African Group** is made up of about 53 member States all located within the African continent, and pursuing specific interests on issues that may differ from those of the wider **G-77 and China**. Its members are very diverse in terms of interests, economic development and languages.
- Issue-specific coalitions exist within UNFCCC:
 - An example is the **Organization of the Petroleum Exporting Countries (OPEC)** focuses on protecting the interest of petroleum exporting countries. While OPEC itself does not speak as a bloc in climate negotiations, its member States frequently take the floor to support each other's negotiating positions;
 - Another example is the economic grouping of **LDCs**, made up of countries with less than 75 million inhabitants, low income and weak human resources. This group currently includes 50 countries, half of them are located in the African continent. LDCs have recently been negotiating more cohesively as a unit, to ensure that their development interests are not overshadowed by those of other groups to which they may belong;
 - Other groups intervene episodically as a separate negotiating bloc in last-minute negotiations, such as the **Environmental Integrity Group**, made up of Mexico, the Republic of Korea and Switzerland.
- An example of institutionalised coalitions is the **European Union**. It was established in 1992 following the Maastricht Treaty that transformed the European Community into a political and economic union that has common trade policy and requires the harmonization of budgetary, environmental and other domestic policies. As a recognized regional economic integration organization, the European Union negotiates in multilateral negotiations alongside its member States, and frequently speaks on their behalf. Furthermore, ratification of international agreements is the responsibility of the European Union Council, made up of member countries' Heads of State.

TABLE 5. UNFCCC PARTY GROUPINGS AND THE ARAB REGION

Coalition	Arab countries
G-77	Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates, Yemen
LDCs	Yemen
OPEC	Algeria, Iraq, Kuwait, Libya, Qatar, Saudi Arabia, the United Arab Emirates

(b) *Key questions related to coalitions*

In their preparations, negotiators should identify key issues related to coalitions, including:

- (i) The coalition(s) or regional group(s) that their country belongs to;
- (ii) The spokesperson or relevant focal points;
- (iii) The meeting schedules and protocols, if any

Then, they should investigate the actual value that the coalition offers to their home country. This is done through taking the following actions:

- (i) Investigating whether their country's concerns are properly reflected in the coalition's positions;
- (ii) Verifying any inconsistencies between the positions of various coalitions, in case the home country is part of more than one group;
- (iii) Determining how to express the home country's national needs and concerns, and how to make sure the coalition's consensus addresses them.

3. *Negotiating language*

The negotiating language of the UNFCCC and COP agreements is often, by necessity, a highly technical language. Representatives should be mindful of the subtleties of such a language, not merely for linguistic reasons, but mostly because of the following reasons:

- Phrases that appear innocuous at first reading actually have a “long history” and often “mean more than they seem to mean at a first reading”.³⁸
- Grammatical formulations that appear to differ only slightly at first reading can entail a significant difference in country commitments. For example, verb tenses (“should” and “shall” or “may” and “must”) can convey vastly differing levels of commitment.
- The insertion of “qualifying language” can enable, lessen or even undermine the mandatory nature of actions to be undertaken. For example; while “as appropriate” lessens the obligation, “as necessary” may minimize it, and “to the extent practicable” would allow it to be entirely avoided.

The evolution of such formulations across the various draft texts can be a valuable tool to ascertain the extent of progress in the negotiations. It is therefore essential that representatives be sensitive to the specific words used, as well as to the context in which they are present. Only through an understanding of the basic language of negotiations can one ensure the country's interest is well protected.

C. NEGOTIATING A DRAFT TEXT

The success of a COP negotiation ultimately depends on the agreements that are eventually negotiated and become listed as “decision” texts. The process of negotiating texts is therefore at the centre of the entire negotiation process. For a document to move from “preambular language” to become an agreed-upon “decision” text, it should be shepherded through grammar and “brackets”.

1. *The distinction between preambular language and decision text*

In general, resolutions and decisions consist of three main components: (a) a title; (b) a preamble; (c) an operative part, referred to as “decision text”.

³⁸ Ibid., p. 36.

The title is a simple statement that reflects the content and purpose of the resolution or decision. The preamble introduces the operative part of the decision, by offering a “background” to justify the need for the resolution or decision text.

(a) The preamble has no binding legal value, and may therefore discuss controversial issues on which there is no formal consensus;

(b) In general, terms such as “recalling” or “noting” are often used in preambular paragraphs as they describe the context that led to the resolution or decision. This is because they are used to guide the interpretation of the binding clauses in the following decision text. They may expand to include clarifications on various issues relevant to the resolution or decision;

(c) The core of the resolution or decision is the operative part or “decision text”. It represents the actual “agreement” between parties. It is legally binding and focuses on the action that ought to be undertaken by the parties to the convention.

(i) The paragraphs of decision text often begin with “action” words such as “decides to” or “decides that”;

(ii) The paragraphs of the decision text are binding clauses, and they prevail over the preamble in case there is a direct conflict between those two parts of the resolution or decision.

It should be noted that, in cases where knowledge is still incomplete, the resolution or decision may include binding provisions for the undertaking of the specific scientific studies needed to inform a certain course of action.

2. The origins of texts

Resolutions and decisions all start off as draft text produced by a country delegation or a coalition, and submitted for discussion. It is also possible for draft text to be produced by the Chairperson of a contact group, or by the Secretariat. However, this is generally done at the request of parties, after they had an opportunity to express their views on the key elements of the text. To secure adoption, the text should be brought back to the plenary session. This is done in either of two ways:

(a) Formally, a text is brought back to the plenary session for formal adoption after having been presented at contact group deliberations. Once the text has been agreed upon, it may be brought back to the plenary session for formal adoption by the wider group of Parties;

(b) Alternatively, in current practice, a draft text is usually first circulated informally to a range of delegations or coalitions.

(i) As the draft text gathers the needed support, it is then tabled for broader discussion, at which point it may be circulated by the Secretariat to all delegations as official conference documents;

(ii) It is at this point that the initiating party delegation or entity would formally introduce the proposed text for consideration before the plenary body or the relevant contact group.

This second alternative generally ensures that, by the time a draft text is brought forward, it has already substantial support and is therefore more likely to be adopted. Otherwise, a text introduced without preparation risks being bogged down in protracted negotiations within the contact groups.

In general, during the negotiation of a text, it is important for a negotiator to properly understand their own country's position on a particular issue. Prior to evaluating the text, the negotiator should understand the home country's "Best Alternative to Negotiated Agreement" (BATNA); the "walk-away" position, or what the home country can absolutely not accept. Then, as they approach the text, they go through a checklist of items for verification:

- What are the home country strategic objectives with respect to this text?
- Does the draft text align with the home country's national interests?
 - If no, should it be modified or improved? How?
 - What part of the text is non-negotiable for the home country?
 - What should ideally be accomplished through negotiation?
- What are its chances of being adopted with the proposed modifications, if applicable?
- Is there any influence with other parties that would help further the home country's interests?

It should be noted that negotiators have a number of ways to influence the drafting process without having to resort to "walking-away". Those methods are:

- Formulating an alternative vision by drafting alternative text and circulating it informally among colleagues and other party negotiators with the objective of gathering support.
- Amending the existing documents, either by "bracketing" text, proposing new text or tabling new proposals.

3. Disagreeing over a text

Generally, COP negotiations start with a text that evolves into a modified version, to become the agreed-upon document. During this process, there are usually many disagreements over portions of the text, which are dealt with in a step-by-step, iterative approach.

(a) This disagreement is usually expressed by putting contentious words, sentences or paragraphs in "square brackets". This is done to clearly reflect those portions of the text that have yet to be agreed upon by all parties;

(b) The document will then keep growing, as parties request that new text be included and others request that other sections of the document be bracketed;

(c) After a document has incorporated most views, the text can be "unbracketed" as negotiators make convincing arguments for various positions or offer compromises.

In practice, the result of a negotiation often depends upon the degree of success or failure of individual negotiators in bracketing text; then in proposing alternatives to bracketed text. In this "bracketing" and "unbracketing" process, the focus is far more on substance rather than specific language. Otherwise, an excessive focus on words could lead to attempts to change the context in which a specific word sits. As a result, while the actual wording is preserved, the substance may be lost.

Throughout this process, negotiators should be mindful of some of the following "tips":

- Clearly identify all the text related to the home country's negotiating position, and ensure that its integrity is maintained. Alternatively, prepare substitute drafts or brackets to ensure that the general meaning is maintained.

- Watch the brackets, ensuring that it is clear why [shall] has morphed into [should] or [may]. In addition, be mindful that one negotiating strategy is to bracket multiple paragraphs within a single set of brackets.
- Do not agree to the removal of text in any given part without ensuring that the text is still inserted in another portion of the document, thereby ensuring that the general sense is maintained.
- Avoid an excessive focus on “words”, to ensure that the substance of a sentence or paragraph is not “traded away”.
- Monitor the addition of any weakening language such as “if appropriate” or “if necessary”.
- Monitor the addition of new concepts.

D. REPORTING BACK TO THE HOME COUNTRY

Representatives returning from a negotiation session should submit a mission report.

This report should highlight the overall negotiation outcomes, with a focus on those with the most effect on the home country’s concerns, such as specific conclusions, recommendations, or decisions. In addition, the report should include a description of the issues that were followed, any positions taken on these issues, any interventions made by the negotiating team, as well as the broad positions of other parties on these issues.

In general, the report includes:

- The date, location, title and purpose of the negotiating session;
- A copy of the agenda;
- A list and description of the issues that were closely followed;
- Copies of decisions reached, highlighting those most significant ones for the home country;
- Copies of draft documents on issues where final decisions or conclusions could not be reached, including:
 - All the bracketed text;
 - Session papers;
 - Position papers;
- Documentation of oral interventions made by the delegation, be it written copies or summaries;
- List of issues on which comments may still be sought from various parties before the next negotiation round, as well as their agreed submission dates;
- List of workshops that were scheduled to occur prior to the next negotiation round;
- Important contacts made with other governmental representatives;
- Open issues that have yet to be resolved.

The report may also highlight those issues that proved controversial or unresolved, if any, and then provide an outline of next steps to be undertaken in an attempt to resolve them. It is important that the mission report be written in such a way as to be understandable to those who were not present at the session, and to serve as a good overview for those teams preparing for the next negotiating session.

III. GENERAL GUIDELINES FOR NEGOTIATORS

A. THE NEGOTIATOR

1. *Key characteristics*

Effective negotiators tend to share some common key characteristics, which can be broken down into three categories: “Technical skills or knowledge, personal conduct, and learned skills”.³⁹

(a) Technical skills and knowledge:

- (i) Strong language skills;
- (ii) Strong analytical skills;
- (iii) A detailed understanding of the home country’s interests and positions;
- (iv) Knowledge of the interests and positions of other state and non-state actors and coalitions;
- (v) Knowledge of prior negotiations and their outcomes;
- (vi) Familiarity with the rules of procedure and their legal effect;
- (vii) An understanding of the scientific, financial, and economic implications of the environmental issues under discussion;
- (viii) An understanding of national priorities, as well as an understanding that other countries’ different priorities may have equal legitimacy;
- (ix) An understanding of other parties’ points and objectives.

(b) Personal conduct:

- (i) Attentive and active listeners, and good communication;
- (ii) A sense of respect and diplomacy, essential when presenting their delegations’ position or when commenting on the position of another delegation;
- (iii) Patience, which affords the ability to remain calm and keep their emotions in check when interacting with other negotiators, whether in informal meetings, working groups, or the plenary body. This is ever more necessary in the context of COP, which may require long working hours;
- (iv) Effective time management, to afford the time to use informal meetings to build good will with other delegates, build coalitions and remain present “on the scene” at the time of important discussions;
- (v) Credibility, which is key to making concessions and respecting previously-granted ones.

(c) Learned skills:

- (i) Ability to articulate complex issues in an intelligible manner, in a way to highlight similarities and differences in outstanding proposals;
- (ii) Ability to present initial positions both orally and in writing;

³⁹ This section draws from UNEP, 2009, pp. 41-43.

- (iii) Ability to request an appropriate amount of time for further conferencing with delegation, coalition or the home Government if needed;
- (iv) Willingness to embrace difficult issues, and ability to prioritize and identify those parts or aspects of any specific issue that should be avoided or postponed;
- (v) Flexibility and an acute awareness of various cultural differences and practices;
- (vi) Ability to effectively highlight issues, in order to assist the development of effective solutions to complex problems.

In the context of UNFCCC and the COP process, technical skills are most critical. The complexity of the topics indeed requires a good understanding of the various problems at hand and the interrelated processes and issues. As much as human qualities, it is such a preparedness that uniquely affords negotiators the needed ability maintain a global outlook that allows to do the following:

- (a) Focus first on the problem, in order to later help grow the consensus towards the solution;
- (b) Breakdown bigger issues down into smaller, more manageable ones;
- (c) Identify interest-based decisions and reject weak solutions.

2. Additional roles of individual negotiators in the UNFCCC context

The context of UNFCCC and COP places additional burdens on negotiators. Indeed, Negotiators need to be versatile enough as they may be called upon to play a variety of roles. This versatility has two key aspects:

(a) At the very least, negotiators may be required to serve under various roles within their own delegations, or within the wider coalitions, informal groups and working groups. In this capacity, while some may be able to closely follow a single complex issue, it is more likely that they would need to follow a variety of issues. Their role may often extend beyond merely advocating for their country's interests, to serving as facilitators and working towards reaching a compromise or consensus on a variety of issues;

(b) It is also possible that negotiators' roles extend beyond their mission to their home country to potentially include the wider context of coalitions or the negotiations themselves. There is a possibility that they be called upon to serve either as Chairs of Subsidiary Bodies or contact groups, or as the spokesperson for a coalition. It is usually the case that more senior negotiators will be called upon to fill these positions of greater responsibility, due to their greater familiarity with the issues under negotiation.

While these roles require that they serve the constituency with impartiality, they still provide valuable opportunities for negotiators and their home country to be at the centre of the negotiating process, and thus provide significant input into the final outcome. However, negotiators from smaller delegations may find themselves unable to pass on responsibilities to other members of an already overstretched team.

B. NEGOTIATING STRATEGIES

The UNFCCC and COP negotiations are "holistic" by nature, in the sense that they tend to involve several related and cross-cutting issues. In this context, agreement is often reached through a series of tradeoffs and compromises on complex issues. Such an agreement is reached through a negotiation, a dialogue between the various parties to the Convention as they strive to reach a common understanding, both by gaining an advantage for themselves and by achieving a compromise.

In their search for favourable outcomes, negotiators can employ either of two tactics:

1. **Distributive negotiation.** This approach is based on the model of haggling in a market, and is therefore also known as "hard-bargaining" negotiation. In this model, each side often adopts extreme

“starting positions”, both knowing that they cannot be accepted, and then tries to “climb down” from this position and cede as little as possible before reaching a deal. This approach assumes a “zero-sum” game with either winners or losers. In practice, it often used on “one shot” deals.

2. **Integrative negotiation.** In this approach, rather than assuming a “fixed pie”, attempts are made to “expand the pie” by striving to create value in the course of the negotiation. To do so, this approach focuses the underlying interests of the parties, and approaches problems as a shared issue that it strives to solve by focusing on criteria that are objective and/or principled.

It is the second approach that is applicable to the context of UNFCCC and COP, because of the need to reach consensus by bridging any gap between negotiating parties, and the need to link a range of cross-cutting and related issues. It allows parties to make concessions, secure in the knowledge that they are striving together to a commonly satisfying overall result.

The key to the success of this strategy, and to the COP process, is therefore an understanding of the relationship between issues, and of the way they are linked, be it through scientific evidence, policy choices, or development needs.

IV. SUMMARY CHECKLIST

A. CHECKLIST FOR NEGOTIATORS

1. *Before negotiations*

Before heading out to the negotiation itself, a negotiator should work to develop a negotiating position. In order to do so, she/he should do the following:

- Make sure that they have familiarized themselves with both the relevant documents, including the Convention text, rules of procedure, COP decisions, and their country’s needs with regard to related cross-cutting issues of development and technology transfer. This is done in order to identify the texts relevant for the country position on key issues, allowing the negotiator to easily cite the relevant texts during negotiations;
- Produce a clear brief outlining the deliverables expected by the negotiator’s Government;
- Explore opportunities domestically to include a “support team”. This would be a group of business leaders and academic researchers that would act in support of the delegation, either “on site” or in remote contact.

2. *During negotiations*

During the negotiation, the negotiator should do the following:

- Ensure thorough preparation for each negotiating session:
 - Smaller delegations are be limited in the amount of topics they can address, and so should focus on one or two critical issues for the home country, in order to choose the most appropriate plenary session;
 - It may be useful to rely on some relevant non-governmental organizations for additional support, especially since they may well be “sitting in the back of the room”.
- Focus on identifying potential coalition partners, as this is an imperative for the long term and to share participation in the informal processes:
 - For this reason, it would be helpful to identify relevant regional groups, to attend their strategy meetings and to be active within them;

- Identify the key interests of relevant regional groups that the home country belongs to. The negotiator should ensure that they are compatible with the national interest;
 - Identify the position of other parties in the group. This can be done through the plethora of miscellaneous documents that outline their position on specific issues, and this is one area where a support team of business leaders and academic researchers can help;
 - If necessary, voicing appropriate objection may be sufficient to stop a consensus. However, the right to object is generally used with caution;
 - In regional group discussions, some delegates tend to dominate verbal discussions. However, written submissions may have more effect on the agenda and the internal process. The “support team” can help provide substantive backing to specific submissions;
- It should be noted that some regional groups centralize “public statements”. For example, all G77 and China members speak through G77 and China. For this reason, it is important for a negotiator from member countries to discuss their position with them before making public statements.
- ☑ Identify areas in which other parties may welcome concessions, and areas where they may concede;
- ☑ Focus on substance rather than form. However, one should be mindful of the importance of form in some key respects. For this reason, the negotiator should adopt the following attitude:
 - Be aware of “language traps” and unwelcome policy implications that could stem from an unclear text;
 - Be mindful of “brackets”; unless it is in one’s country’s interest, do not allow [shall] to become [should] or [may];
 - Ensure that new concepts are not introduced without proper verification and validation, and that they are not misplaced within the text.
- ☑ During the entire process, it is important for the negotiator to ensure traceability. To do this, the negotiator should do the following:
 - Document the process by keeping copies of various group positions and submissions, from past and ongoing negotiations, in their different drafts;
 - Keep a diary during the negotiations, with a record of the proceedings, and a detailed record of how one has negotiated.

3. After negotiations

The work of the negotiator is not completed after COP, as he should follow up in the following ways:

- ☑ Rely on the documentation and negotiation diary to prepare an information brief for an eventual successor on future negotiation rounds;
- ☑ Prepare a feedback for national policymakers.

B. NEGOTIATION LANGUAGE

The negotiation language includes clear qualifying language; a well defined key terminology and very well-spread common terminologies.

1. *Qualifying language*

'And' versus 'Or'	How sentences or phrases are connected often determines their meaning. When 'and' is used, all of the clauses or provisions connected must be satisfied; when 'or' is used, only any one of the clauses or requirements must be satisfied.
Amongst them	A subset of the group being discussed (e.g., "least developed countries, and in particular, small island States amongst them").
As appropriate; if appropriate; as necessary; if necessary	Conditional words allowing States discretion in determining whether the action is appropriate or not.
Any future elaboration	The issue is not closed and can be reconsidered in the future.
Common but differentiated responsibilities	Usually referring to lesser requirements for developing countries on account of their economic status.
Consider	To hold off on a decision so as to allow for further consideration.
To the extent feasible; to the extent practicable	To take action within limitations established by the party taking action.
In particular	Emphasizing a topic of special interest.
Inter alia	Literally means among other things. Used to highlight, but not limit, certain issues.
Mutatis mutandis	To accept due alteration of details.
Notwithstanding	Used to sidestep a previously agreed upon provision.
Organize a workshop	An often used fallback when agreement on action cannot be reached. Usually used as a delay mechanism.
Promote	To highlight certain activities without committing to required action.
Shall endeavour	A requirement to at least attempt to take certain action.
Subject to	A pre-condition for action.
Towards	Allowing for only the approximation of certain goals.
Urges	Strong encouragement to take action.
Where necessary, where relevant	Requiring action only when necessary or relevant.
With a view to	An intention to take action in the future.

2. *Key terminology*

May	Under no obligation. 'May' is permissive and discretionary on the part of the party carrying out the action. A clause that says: "a country may take into consideration..." creates no obligation for a country to do so.
Must	Is required to. 'Must' is almost always binding.
Shall	An action that is required. A clause that uses the verb 'shall' is almost always binding, unless the 'shall' is used with another word that undermines its strength.
Endeavour to	Here, the binding commitment is only to try to do something, not to actually do it.
Should	An action that is not required, but is advised.

3. *Common terminology*

Affirming	Agreeing on this.
Agrees upon	Everyone supports the decision.
Bearing in mind	Giving thought to.

Calling for	Asking for state action.
Calling upon	Asking another entity to do something.
Concurring	Agreeing with another decision.
Considering	To reflect on an issue, without necessarily taking action.
Consensus	Agreement from all, or at least most countries; where there is no explicit objection, a decision can be adopted by consensus.
Decides	A legally binding conclusion.
Declares	Announces a resolution to do something.
Developing	Something that will happen in the future.
Endorsing	To provide further support for a previous decision.
Encouraging	To express hope that another entity will take action.
Enhancing	To develop further.
Establishing	To create something.
Expressing concern	Strong diplomatic language to express displeasure.
Maintaining	Supporting a current system or position.
Noting	Acknowledging something, but taking no further action.
Promoting	To publicize.
Reaffirming	Agreeing on a decision already made.
Recalling	Highlighting a previous decision or action.
Recognizing	To acknowledge something.
Requests	Asks another entity to do something.
Stressing	To give significance to a particular issue.
Taking into consideration	Acknowledging something with little intention to take further action.
Urges	To strongly request action without the authority to enforce such action.
Welcomes	To provide non-legally binding support for something.

4. *Basic terms*

Ad hoc group	A group of technical experts that may be created to address very specific issues of concern requiring specific expert attention. An example is the Kyoto Protocol's Ad Hoc Working Group on Article 3.9 that was created to consider future greenhouse gas reduction and limitation commitments (Kyoto Protocol decision 1/CMP.1).
Contact group	Formed to resolve a specific issue on which there is no consensus. It is possible to convene a Joint Contact Group, bringing together two Contact Groups previously convened separately.
Contracting party	A phrase used to refer to a State that has ratified a treaty.
Conference of the parties	Meeting of negotiators from parties to UNFCCC, convened once a year to review the implementation of the Convention and to decide on any necessary improvements to the implementation process.
Friends of the Chair/President	Specific negotiators invited to form a group to assist the Chair or President in informally developing consensus on certain issues.
Informal body	A subsidiary body established by the President of COP to carry out "informal consultations" either on technical matters, or to help the search for consensus among various parties without the pressure of having to negotiate.
Plenary	The main meeting of COP where each delegation is represented, with all delegations sitting together in the same room, and state representatives have an opportunity to address the Convention. All votes take place in the plenary meeting.

Plenipotentiary	Person entrusted with full authority to act on behalf of their Government (an ambassador, for example).
Meeting of the Parties	A CMP is similar to a COP, except that it focuses on the parties that have acceded to the UNFCCC specific protocols. It is generally held in conjunction with COP.
Non-group	An informal working group convened in case of extreme reluctance to enter into formal negotiation or discussion. It serves to encourage communication without the pressure of having to negotiate.
Non-Party	A State that has not ratified a treaty.
Observer	Non-state actor invited to participate in a limited manner in the negotiations, or States that are not parties to a treaty but nevertheless may participate in a limited manner.
Party	A State that has ratified a treaty.
State	A country (in this specific context).
Subsidiary body	This group is constituted to advise COP about scientific and technical developments. For example, UNFCCC has Subsidiary Bodies for Scientific and Technological Advice (SBSTA) and Implementation (SBI).
Working group	A group convened by COP or a subsidiary body that works on large scale issues. It is possible to convene a Joint Working Group in which two working groups are brought together to collaborate on cross-cutting issues.

موجز تنفيذي

أعدت شعبة التنمية المستدامة والإنتاجية في اللجنة الاقتصادية والاجتماعية لغربي آسيا (الإسكوا) دليل المفاوضات في قضايا تغيير المناخ لممثلي البلدان العربية والجهات المفاوضة، وذلك في إطار أنشطة البرنامج للفترة ٢٠١٢-٢٠١٣.

والغرض الرئيسي من الدليل هو بناء قدرات المفاوضين وفرق التفاوض من البلدان العربية للتفاوض بشأن قضايا تغيير المناخ في المستقبل، وذلك من أجل تحسين التعاون الإقليمي، والتوصل إلى مواقف مشتركة وتحقيق الأهداف المتوافق عليها.

وقد اختتم ممثلو الجهات الأطراف في اتفاقية الأمم المتحدة الإطارية بشأن تغيير المناخ الجلسة الثامنة عشرة للمؤتمر (مؤتمر الأطراف ١٨) في الدوحة، قطر في كانون الأول/ديسمبر ٢٠١٢، وكان للبلدان العربية مشاركة فاعلة في المفاوضات التي تخللتها وفي عدد من الاجتماعات الجانبية.

وتوافقت جميع الجهات المعنية على أنّ تغيير المناخ وآثاره صارت تشكل تحدياً رئيسياً يعوق التنمية الاقتصادية والاجتماعية المستدامة في المنطقة العربية. ولذلك ازدادت أهمية المفاوضات العالمية بشأن تغيير المناخ نظراً إلى أثره على سبل عيش السكان في المستقبل. وهدف هذه المفاوضات التوصل إلى اتفاقيات دولية حول كيفية الحد من الأسباب الجذرية لتغيير المناخ؛ وتطوير آليات للتكيف مع الآثار التي لا يمكن تجنبها. وأعربت حكومات البلدان العربية عن اهتمامها الشديد بالمشاركة الفاعلة في العمليات التحضيرية لمؤتمر الأطراف ١٨ على المستويين العالمي والإقليمي، وفي عمليات التفاوض ذات الصلة. ومع أنه لكل بلد عربي احتياجاته واهتماماته الخاصة، تتشابه التحديات التي تواجهها المنطقة، ولذلك التقت المصالح وتقاربت النهج الوطنية في المفاوضات إلى حد كبير.

ومن خلال تعزيز التواصل والتبادل بين بلدان المنطقة يمكن زيادة فرص تحقيق نتائج إيجابية في المفاوضات المستقبلية، والتوصل إلى فهم أعمق للمصالح المتماثلة وتعزيز المواقف المشتركة. ومن الأهمية بالفعل صياغة رؤية متوافق عليها وتطوير القدرات الوطنية في المفاوضات الخاصة بقضايا تغيير المناخ.

وقد وضعت مناطق أخرى من العالم وثائق وطوّرت أدوات خاصة على المستويين الإقليمي والوطني، بدعم من مختلف المنظمات الدولية أو من خلال تعاون ثنائي لغرض حفز التنمية، وذلك بهدف شحذ مهارات التفاوض في المناقشات حول تغيير المناخ. ولم يسبق للمنطقة العربية أو لأي بلد عربي حتى الآن اتخاذ تدابير مماثلة.

وفي هذا الإطار، وبالاستناد إلى الوثائق التوجيهية العالمية، أعدت الإسكوا هذا الدليل وهو عبارة عن وثيقة فنية أو كتيّب يساهم في بناء القدرات الفنية للفرق الوطنية من أجل المفاوضات المتعلقة بتغيير المناخ في المستقبل. ويتكوّن الدليل من خمسة أقسام، يتضمّن القسم الأول موجزاً عن الإجراءات الدولية الخاصة بالمفاوضات المتعلقة بتغيير المناخ، مع التركيز بشكل خاص على القضايا التي تهم البلدان العربية؛ والقسم الثاني توجيهات لفرق التفاوض الوطنية في ما يتعلق بأساليب التفاوض وعملية صياغة نصوص الاتفاقيات، والقسم الثالث المبادئ التوجيهية للمفاوضين وقائمة مرجعية لتسهيل مهمتهم؛ والقسم الرابع مسرداً للمصطلحات الخاصة بالتفاوض؛ والقسم الخامس قائمة بالمراجع ذات الصلة.

ويقدّم الدليل توجيهات منظمة وجاهزة للاستخدام تستند إلى تاريخ المفاوضات بشأن تغيّر المناخ، وأدوات التفاوض، وأساليبه، والممارسات المعتمدة من قبل ممثلي الجهات الأطراف في اتفاقية الأمم المتحدة الإطارية بشأن تغيّر المناخ من أجل التقدّم بمقترحات مبتكرة، وتعديل مقترحات الجهات الأخرى وتجنب أي نتائج غير مؤاتية قد تتأتى عن المفاوضات. ومع أن الدليل موجّه بشكل رئيسي إلى ممثلي الجهات الحكومية والمفاوضين من حكومات البلدان العربية، غير أنّ المعلومات التي يتضمّنونها تهم جمهوراً أوسع يضمّ المنظمات غير الحكومية، والمجتمع المدني، والقطاع الخاص وغيرها من الجهات المعنية، من خلال تعميق فهمها لعمليات التفاوض وسبل التأثير على النتائج النهائية. وتوصي الإسكوا باستخدام الدليل كمرجع لتطوير وحدات تدريبية.

وفيما يلي المحتويات المفصلة للدليل:

● استعراض:

- الإطار الدولي للسياسات العامة المتعلقة بتغيّر المناخ؛
- تاريخ عمليات صنع السياسات وصولاً إلى اتفاقية الأمم المتحدة الإطارية بشأن تغيّر المناخ والسياسات المصاغة في إطارها؛
- الجدول الزمني للأحداث الرئيسية الأخيرة والقادمة المتعلقة بالتنمية؛
- التوجيهات بشأن الأدوات والآليات المتاحة والممارسات المعتمدة في المفاوضات الدولية، لا سيما بشأن قضايا بيئية ومرتبطة بتغيّر المناخ والتوصيات ذات الصلة، ومنها:
 - إجراءات تقديم مقترحات جديدة وتعديل المقترحات المقدّمة من جهات أخرى؛
 - إجراءات مؤتمرات الأطراف، والآليات المستخدمة في الاجتماعات التحضيرية وضمن إطار التفاوض المباشر؛
 - لغة التفاوض واستخدامها في صياغة نصوص التفاوض؛
 - أساليب حشد دعم الأطراف الأخرى؛
 - الآليات الرسمية وغير الرسمية والإجرائية والمتعلقة بالمضمون لتجنب النتائج السلبية للمفاوضات؛
 - تأثير المواقف والمجموعات السياسية على عمليات التفاوض ونجاحها.

وفي إطار استعراض الإطار الدولي للسياسات العامة المتعلقة بتغيّر المناخ، يتناول الدليل جميع العمليات ذات الصلة في اتفاقية الأمم المتحدة الإطارية بشأن تغيّر المناخ على مدى السنوات الأخيرة، بما في ذلك:

- الهيئة الفرعية للمشورة العلمية والتكنولوجية؛
- الهيئة الفرعية للتنفيذ؛
- الفريق العامل المخصص المعني بالنظر في الإلتزامات الإضافية للأطراف المدرجة في المرفق الأول بموجب بروتوكول كيوتو؛

- الفريق العامل المخصص المعني بالعمل التعاوني الطويل الأجل بموجب اتفاقية الأمم المتحدة الإطارية بشأن تغيّر المناخ الذي أنهى عمله في المؤتمر الثامن عشر للأطراف في الدوحة؛
- الفريق العامل المخصص المعني بمنهاج ديربان للعمل المعزّز؛
- بروتوكول كيوتو وتعديلاته، بما في ذلك آليات السوق في إطار البروتوكول، مثل آلية التنمية النظيفة، والتنفيذ المشترك، والتداول الدولي برخص الانبعاثات؛
- الاتفاقية الدولية لتغيّر المناخ التي يفترض استكمالها في عام ٢٠١٥ وإقرارها بحلول عام ٢٠٢٠ (منهاج عمل ديربان)؛
- تمويل أنشطة الحد من تغيّر المناخ والتكنولوجيا اللازمة لذلك واستكمال البنى الأساسية ذات الصلة، بما في ذلك الصندوق الأخضر للمناخ، ومركز التكنولوجيا من أجل المناخ؛
- التمويل الطويل الأجل لأنشطة مكافحة تغيّر المناخ؛
- التكيف مع/زيادة التركيز على الخسائر والأضرار، بما في ذلك صندوق التكيف وتنفيذ خطط التكيف الوطنية؛
- دعم تطوير أنشطة البلدان؛
- الاستعراض العلمي؛
- مجموعة "بوابة الدوحة للمناخ".

وقد قدمت نسخة عن مشروع الدليل في حلقة عمل تدريبية في تشرين الأول/أكتوبر ٢٠١٣ وناقشها المشاركون ومعظمهم من موظفي المؤسسات الحكومية الذين يحتمل أن يشاركوا في فرق المفاوضات في المستقبل. ونظّم هذا التدريب بناء على طلب من جامعة الدول العربية ليشكل حلقة في خطة أوسع نطاقاً تهدف إلى تقديم الدعم إلى الجهات المعنية. وأكد المشاركون فيه على فعالية الوثيقة وساهموا في إثرائها بمعلومات إضافية قيّمة.

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