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SIX WAYS TO MAKE CLIMATE NEGOTIATIONS MORE EFFECTIVE

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Key Points

- Frustration and anger are growing at the lack of progress and consensus in climate negotiations at the United Nations Framework Convention on Climate Change (UNFCCC). If governments are going to take on meaningful commitments to reduce their greenhouse gas emissions within the context of a new, legally binding climate agreement, it may be necessary to change the working methodology of the UNFCCC negotiations themselves.
- This policy brief proposes a different process in which all parties can be heard, while fair and effective agreements in the common interest also have a greater chance of adoption.
- This proposed process includes six ways to make these negotiations more effective: using a single negotiating text; discontinuing "on-screen" negotiations; eliminating the norm that "nothing is agreed until everything is agreed" and dividing the climate change problem into pieces that may be more readily acceptable; giving negotiating roles to ministries besides foreign affairs; establishing a group of states to play the "regime-builder" role; and employing the leadership skills necessary to make this all happen.

The Challenge of Consensus

The inability of the Conference of the Parties (COP) to the UNFCCC for well over two decades to produce a new, legally binding climate agreement has generated increasing concern over the use of multilateral negotiations to respond to the challenge of climate change in a timely and effective manner. Critics of the UNFCCC negotiations have argued that the COP has become "fatally cumbersome" because it requires the impossible: consensus decision making by 196 parties on every word of a document (Eckersley 2012).[1] Consensus is an onerous requirement. Although it is a decision rule in which, essentially, abstention is an affirmative rather than a negative vote (Zartman 1994, 5), it is one that enables a single country to block the adoption of a decision, or threaten to do so. As a result, negotiations continue in an endeavour to reach a compromise that will be reasonably acceptable to all and end up at the lowest common denominator, if at all. The Copenhagen Climate Change Conference in 2009 represented a particularly salient example of the shortcomings of consensus-based multilateral environmental decision making (Meilstrup 2010), as the two-year negotiating process concluded with acrimony and no outcome with legal standing. We propose six changes that could improve the negotiating process and facilitate consensual outcomes.

1 The COP has never agreed on its Rules of Procedure, as their adoption was blocked by Saudi Arabia at the last Intergovernmental Negotiating Committee meeting in 1991 before the first COP. The Rules of Procedure include rule 42, with several options for voting. The COP has, during its 20-year history, operated with draft Rules of Procedure (FCCC/CP/1996/2) without the voting rules, under a general agreement that decisions are taken by "consensus" (Vihma 2011).

About the Fixing Climate Governance Project

Project Leaders: **John Odell**, CIGI Senior Fellow and **David Runnalls**, CIGI Distinguished Fellow

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

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

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

Single Negotiating Text

The first proposal is to use a tactic that is often employed in complex multi-party negotiations — the single negotiating text (SNT). The SNT is a document that rests drafting responsibilities with the chair or co-chairs and is presented to all parties for comments and successive revisions. It is designed to signal what is politically feasible on each of the issues under negotiation and create the focal point for subsequent negotiations. This can simplify the process of decision making among the 196 UNFCCC parties, who cannot constructively discuss separate proposals from each country or coalition. The SNT can serve that purpose by concentrating the attention of all sides on the same composite text (see Raiffa 1982, 211; Fisher, Ury and Patton 1991, 112–16).

The UNFCCC has usually resorted to the use of compilation texts. These texts often originate as a proposal or draft text introduced by the co-chairs, which is then subject to amendments proposed by delegations. The resulting compilation text usually includes these proposals listed one after the other. For example, in the lead up to the 2009 Copenhagen Climate Conference, the chair of the Ad Hoc Working Group on Long-term Cooperative Action under the UNFCCC (AWG-LCA), Michael Zammit Cutajar, presented a 53-page draft text (FCCC/AWGLCA/2009/8) as the starting point for negotiations.[2] During the June 2009 session, parties clarified and developed their proposals and the main outcome was nearly 200 pages of revised negotiating text (FCCC/AWGLCA/2009/INF.1)[3] (International Institute for Sustainable Development [IISD] 2009).

Similarly, at the February 2015 meeting of the UNFCCC Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), parties based their work on the elements for a draft negotiating text annexed to Decision 1/CP.20 (Lima Call for Climate Action). The ADP contact group worked through the elements text section-by-section, with parties proposing additions in places where they felt their views were not adequately reflected. The revised text grew in length from 39 to 86 pages (IISD 2015). These compilation texts, with sometimes as many as seven to 15 options for a single paragraph or clause, make consensus even more difficult as delegations have to wade their way through the options, holding fast to their own proposals, fearing that if they give in it will be seen as a sign of concession and weakness. As a result, negotiations become a zero-sum game, in which any gain achieved by the one side is perceived to be a loss to the other side. Thus, the very idea of a mutually

2 See http://unfccc.int/resource/docs/2009/awglca6/eng/08.pdf for the full draft text.

3 The revised negotiating text can be found at http://unfccc.int/resource/docs/2009/awglca6/eng/inf01.pdf.

advantageous trade of concessions becomes almost impossible (see Pruitt and Rubin 1986).

The negotiations could be simplified if, instead, the co-chairs earn trust by consulting privately with delegates, and the delegates request the co-chairs to put together an SNT that comes as close as is feasible to advancing the negotiations, while representing the positions of all parties. This SNT process was successfully used during the Open Working Group (OWG) on Sustainable Development Goals (SDGs) in 2014, as the co-chairs issued an SNT text in advance of the negotiating session and took note of delegates' proposals and incorporated them into a new text for the next session. To ensure delegations that their ideas had been heard, the co-chairs compiled all proposals into a document called "Encyclopedia Groupinica: A Compilation of Goals and Targets Suggestions from OWG-10." Each proposal was attributed to the country or group that submitted it and provided a history of all responses to the co-chairs' Focus Area Document of March 19, 2014 (see OWG 2014). This allowed the co-chairs to avoid the use of the compilation text and contributed to the OWG's ability to reach consensus on the SDGs at its final meeting in July 2014 (Chasek and Wagner 2015). The SNT was also used to great effect in the Law of the Sea negotiations (Sebenius 1984). However, when UNFCCC COP 6 President Jan Pronk (the Netherlands) tried to present his own SNT, his failure to consult adequately with the parties to build trust, the fact that the text was viewed as biased toward one group of countries and the timing of the SNT during the final stages of the negotiations led to the failure of COP 6 talks (Blavoukos and Bourantonis 2011).

The Double-edged Sword of Technology

The widespread use of the Internet and smart phones has profoundly impacted the conduct of negotiations. In essence, these technological advances have sped up and intensified exchanges between all those involved in the negotiations, making the submission and exchange of proposals and ideas infinitely easier. During negotiations in the early 1990s, most proposals from delegations were submitted to the secretariat in hard copy and had to be re-typed before they could be published in an official compilation document (Depledge and Chasek 2012). Now, the negotiating text is often projected onto big screens in the front of the room. As each delegation makes a textual proposal, a secretariat member puts the proposal, often with attribution, onto the screen, in an attempt to provide transparency. As a result, all delegations know whether or not their proposals have been incorporated into the draft and feel honour-bound to defend their precise formulation. Each time a country's name is removed from the screen it is seen as a concession. This also reduces the co-chairs' crucial manoeuvring room, in the privacy of their own offices, to "tweak" submitted proposals in the interest of producing a more consensual draft text. Furthermore, the ease of submitting proposals — orally, by email or by text message — has discouraged restraint among delegates, resulting in an ever-greater volume of proposed texts reaching secretariats and chairs (ibid.).

On-screen negotiations become difficult and politically charged. While the screen gives the illusion of transparency to the negotiations, it also leads the parties to defend their own proposals rather than strive for an agreement. In the end, it is often the host country that has to take over the negotiations and present delegates with a "take-it-or-change-it" text that includes all of the text negotiators had agreed upon to that point as well as the host country's proposed text (Wagner 2013). The fact is that the COP is unable to reach an agreement using this technology and has to resort to the usual end-game with a small group of self-selected delegations meeting behind closed doors and emerging with a "take-it-or-leave it" text at the eleventh hour. While this process does usually result in an agreement, it is not always viewed as legitimate or democratic. This was the case at the Cancun Climate Conference in 2010, where Bolivia dubbed the meeting a betrayal of the democratic principles and core values of the United Nations. Bolivia and many non-governmental organizations accused the meeting of setting aside "open and participatory methods normal in the UN," and claimed that senior negotiators' work was "overtaken" by ministerial-level guidance (Khor 2010; Vihma 2011). The use of "open and participatory" on-screen negotiations led to closed and non-transparent negotiations both before and since Cancun. We propose a different process in which all parties can be heard, while fair and effective agreements in the common interest also have a greater chance of adoption.

Nothing Is Agreed until Everything Is Agreed

The UNFCCC COP is only one of many UN forums where delegates often approach complex negotiations as a comprehensive package where "nothing is agreed until everything is agreed." This approach is modelled after the "single undertaking" approach of the World Trade Organization. In many cases, developing countries want to ensure there are certain provisions regarding means of implementation (finance, technology transfer and capacity building, for example) or the principle of common but differentiated responsibilities before they agree to the entire package.

However, given the number and complexity of the issues in climate change negotiations, the single undertaking approach may be making it impossible to get a good comprehensive agreement. For example, how can we expect to get a new agreement on science-related issues if the state of the science in many of the issues under negotiation is not at the same level

(La Vina 2010)? Or why should one issue where there is near agreement be held hostage to a complete agreement on financial arrangements that has been elusive? In other words, maybe the search for universal acceptance of a comprehensive agreement should be abandoned in favour of universal acceptance of incremental agreements or a "building blocks" approach that can be adopted as governments are ready and willing.

A more disaggregated approach could enable parties to secure "low-hanging fruit" and thereby avoid early and ambitious action in some areas from being held hostage to failure to resolve other areas of contention (Faulkner, Hannes and Vogler 2010). It would also separate the controversial question of the legal status of any agreement on climate from the need to secure a political consensus on a range of mitigation and adaptation strategies (see also Parson, forthcoming).

Although this approach could deter parties from making the concessions in one area without securing the trade-offs in others and ultimately prevent a grand bargain, it would set up a process of building blocks in which pieces of an agreement could then be used to add in more contentious pieces later on. By considering such piecemeal agreements as an ongoing process and a more realistic way of bringing about universal agreement, there is an increased probability that issues of fairness, economic competitiveness and free-riding could be met. Whether it produces the desired results depends "on the creation of an international political framework, built around the UNFCCC, which ensures that partial agreements and regime elements are connected and add up to a complete climate governance architecture" (Faulkner, Hannes and Vogler 2010, 261).

The Need for Broader Ministerial Competence

Negotiations are now carried out mainly by the foreign ministries, tasked with representing each country's position. However, positions are only the tip of the iceberg of interests, and there may be more than one way of achieving interest-based goals than by valiantly defending a set position (Fisher, Ury and Patton 1991). As Graham Allison (1971) noted, "where you stand depends on where you sit," and other ministries have their own interest-based points of view. Finally, for example from the Iran nuclear talks or from the Law of the Sea negotiations (Raiffa 1982), technical specialists can have a grasp of issues that political representatives simply do not have the knowledge or experience to understand.

Putting negotiating responsibility into the hands of other ministries, such as finance, trade and energy, for example, can convey these advantages. It can bring in a deeper and wider appreciation of interests for the home team; it can fold in the participation and support of a broader array of agencies within the government when the time comes to defend the results, either within the government or in broader public debate; and it can bring a deeper expertise into the talks, exposing possibilities and different ways of achieving goals. For example, so much of the climate change negotiations hinge on the cost and availability of low-carbon energy alternatives, which energy ministries understand more than foreign ministries. Similarly, without a commitment to the provision of financial resources or the transfer of technology, many developing countries will refrain from accepting a proposed outcome. If representatives from finance, development cooperation or trade ministries were present, they would be in a better position to articulate their respective national interests and elaborate what could and could not be feasible.

Creating Space for "Regime-builders"

In many multilateral negotiations, in addition to groups of parties sharing positions and interests, there are often parties or small groups of parties that focus their interest on obtaining an agreement, irrespective of the substantive details, and are variously called brokers, entrepreneurs or conductors (Melamud, Meerts and Zartman 2014; Sjöstedt 1993; Young 1989; Spector and Zartman 2003). These countries adopt a facilitating role more complex than that often played by the co-chairs; they tend to come from various parts of the world with ties to substantive interest groups. Some countries, such as Switzerland, Norway and Australia, have adopted the role often enough to make it almost a national position.

Obviously, it is not that the substance of an agreement does not matter to such role players. Rather, they see an acceptable agreement as the likely outcome of a process that brings existing positions and interests together, and they focus on facilitating that process rather than on promoting particular positions. They work to improve communication, overcome blockages, propose ideas and develop information — in other words, they act as mediators, communicators and formulators. They do not occupy the driver's role, which is reserved for a party that pushes a particular direction for an agreement; and as parties or a group of parties, these role players have a different position from that of the co-chairs, although they may complement each other.

In the UNFCCC negotiations, this role could be played possibly by one or more members of the Environmental Integrity Group (EIG). The EIG was formally announced in 2000 and is made up of Switzerland, the Republic of Korea, Mexico, Liechtenstein and Monaco — five countries that do not belong to any of the other regional and interest groups. This group, which does not always have a common negotiating position and whose members often negotiate individually, could be the source of the regime builders if they focused their role on facilitating an agreement rather than pushing their own interests.

Leadership and Trust

According to P. Terrence Hopmann (1996, 265), without effective personal leadership, negotiations may get bogged down in the complexity of the issues and the multiplicity of interests that must be reconciled. Oran Young (1989, 355) argues that leadership in multilateral environmental negotiations is a matter of entrepreneurship involving a combination of imagination in inventing institutional options and skill in brokering the interests of numerous actors to line up support for such actions. A leader, in this context, is an actor who, desiring to see the successful conclusion of the negotiations, undertakes to craft attractive proposals and persuade others to come on board as supporters of such proposals (Chasek 2001, 34). In fact, without the presence of a skilled leader or chair who understands the importance of timing, when to propose compromises and when to resort to innovative working methodologies (see Wagner, Davenport and Spence 2012), it is unlikely that trust can be built or consensus can be found.

Negotiation outcomes also depend on the level of respect and trust a chair enjoys (see Monheim 2015). If a chair demonstrates strong and creative leadership, is able to put forth compromise proposals and has the trust of the parties, there is a better chance for a successful outcome to the negotiations. Ambassador Tommy Koh, Singapore, who chaired a key negotiating committee of the overall Law of the Sea conference, had to deal with the financial terms of contracts to mine the resources of the deep seabed and ocean floor. He carefully introduced outside experts while balancing formal meetings with non-binding gatherings and incrementally built both momentum and consensus for a remarkably creative agreement on seabed mining (Sebenius and Green 2014, 3).

Ambassador Juan Mayr, former Colombian minister of the environment who chaired the negotiations on the Cartagena Protocol on Biosafety, recognized that the traditional ways of seating and calling on groups — usually centred on the Group of 77 developing countries, the European Union and the other advanced Western economies — were not facilitating the discussions. He recognized that the countries' positions were not aligned with the traditional coalitions, and he created what came to be called the "Vienna Setting," where two representatives from each negotiating group sat at a round table. Each spokesperson could have two advisers, which increased the representation of countries at the table while still controlling the number of participants. At the same time, although only 10 spokespeople sat at the table, flanked by their advisers, the room was open to observers, creating greater trust and transparency (Wagner, Davenport and Spence 2012).

To build the required levels of trust to create the necessary innovations and opportunities to lead parties to a successful outcome, the co-chairs must create a common space, based on scientific evidence, and allow everyone to have the same terms of reference. A shared knowledge base can help delegates achieve a substantive rather than a political outcome. Sometimes it is helpful for the co-chairs to set the agenda in such a way that they discuss the easier issues first, and then propose moving to the more difficult and contested issues (in line with the building blocks approach described above). This could ease some of the anxiety and mistrust that delegations may have. It is also important to keep the process open to everyone who wishes to attend. If the co-chairs create an inclusive, open and transparent process, this will not only build trust, but also strengthen the legitimacy of the process and the eventual outcome (Chasek and Wagner 2015).

The co-chairs have to be willing to take risks, but they must also make sure that the timing is right to take those risks. If compromise proposals are put forth too soon, or if changes to the negotiating process are introduced too suddenly, delegates will lose trust in the co-chairs and any progress may be lost.

Moving Forward

If governments are going to take on meaningful commitments to reduce their greenhouse gas emissions within the context of a new, legally binding climate agreement, it may also be necessary to change the working methodology of the UNFCCC negotiations themselves. The COP and any ad hoc negotiating groups must work with the co-chairs to rethink and possibly limit the use of technology, develop an SNT and propose potential compromises that could result in an agreement. It may also be necessary to take on smaller pieces of the climate puzzle, where agreement may be possible, in order to build the necessary foundation to take the next steps towards a more comprehensive agreement. With these changes to the process, it may be possible to reboot the UNFCCC negotiations and enter a new phase of global cooperation to respond to the challenge of climate change.

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About CIGI

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CIGI was founded in 2001 by Jim Balsillie, then co-CEO of Research In Motion (BlackBerry), and collaborates with and gratefully acknowledges support from a number of strategic partners, in particular the Government of Canada and the Government of Ontario.

Le CIGI a été fondé en 2001 par Jim Balsillie, qui était alors co-chef de la direction de Research In Motion (BlackBerry). Il collabore avec de nombreux partenaires stratégiques et exprime sa reconnaissance du soutien reçu de ceux-ci, notamment de l'appui reçu du gouvernement du Canada et de celui du gouvernement de l'Ontario.

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