

CIGI Papers No. 205 – December 2018

Participation of Non-party Stakeholders under the UNFCCC Options for Future Engagement

Freedom-Kai Phillips



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About the Author

Freedom-Kai Phillips joined CIGI's International Law Research Program (ILRP) as a research associate in 2016. At CIGI, his research interests include international environmental law, with a focus on marine and terrestrial biodiversity, traditional knowledge and climate change.

Freedom-Kai provides legal research in support of the ILRP's international environmental law stream, examining law and governance innovations and tools for implementing the United Nations Sustainable Development Goals (SDGs). Specifically, Freedom-Kai is assessing law and governance innovations for realizing the SDGs, including but not limited to water, access to justice and biodiversity.

In addition to his work at CIGI, Freedom-Kai is a member of the International Union for Conservation of Nature's World Commission on Environmental Law and a legal research fellow with the Centre for International Sustainable Development Law. Freedom-Kai has served as interim executive director of the Centre for Law, Technology and Society at the University of Ottawa, Faculty of Law.

Freedom-Kai holds a master of laws from the University of Ottawa, a bachelor of laws from the Schulich School of Law at Dalhousie University, a master of arts in diplomacy and international relations from the John C. Whitehead School of Diplomacy and International Relations at Seton Hall University, and an honours bachelor of science from Eastern Michigan University.

About the International Law Research Program

The International Law Research Program (ILRP) at CIGI is an integrated multidisciplinary research program that provides leading academics, government and private sector legal experts, as well as students from Canada and abroad, with the opportunity to contribute to advancements in international law.

The ILRP strives to be the world's leading international law research program, with recognized impact on how international law is brought to bear on significant global issues. The program's mission is to connect knowledge, policy and practice to build the international law framework — the globalized rule of law — to support international governance of the future. Its founding belief is that better international governance, including a strengthened international law framework, can improve the lives of people everywhere, increase prosperity, ensure global sustainability, address inequality, safeguard human rights and promote a more secure world.

The ILRP focuses on the areas of international law that are most important to global innovation, prosperity and sustainability: international economic law, international intellectual property law and international environmental law. In its research, the ILRP is attentive to the emerging interactions among international and transnational law, Indigenous law and constitutional law.

Acronyms and Abbreviations

APA	Ad Hoc Working Group on the Paris Agreement	NAZCA	Non-state Actor Zone for Climate Action
BBF	Business and Biodiversity Forum	NDCs	nationally determined contributions
BINGOs	business and industry NGOs	NGOs	non-governmental organizations
CBD	Convention on Biological Diversity	RINGOs	research and independent NGOs
CMP	Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol	RoP	Rules of Procedure
COP	Conference of the Parties	SBI	Subsidiary Body on Implementation
CPLC	Carbon Pricing Leadership Coalition	SBSTA	Subsidiary Body for Scientific and Technological Advice
CSOs	civil society organizations	SDG	Sustainable Development Goal
CTCN	Climate Technology Centre and Network	SLM	Sustainable Landscape Management
ENGOS	environmental NGOs	TEC	Technology Executive Committee
GC	UN Environment Governing Council	TEP-A	Technical Examination Processes on Adaptation
GMGSF	Global Major Groups and Stakeholders Forum	UN Environment	UN Environment Programme
IGOs	intergovernmental organizations	UNCCD	United Nations Convention to Combat Desertification
IPCC	Intergovernmental Panel on Climate Change	UNEA	United Nations Environment Assembly
IPLCs	Indigenous peoples and local communities	UNFCCC	United Nations Framework Convention on Climate Change
IUCN	International Union for Conservation of Nature	UNGA	United Nations General Assembly
LCIP Platform	Local Communities and Indigenous Peoples	WHO	World Health Organization
LEG	Least Developed Countries Expert Group	WIM	Warsaw International Mechanism on Loss and Damage
MEAs	multilateral environmental agreements		

Executive Summary

Participation of “non-party stakeholders” in the work of the United Nations Framework Convention on Climate Change (UNFCCC) was affirmed in the decision adopting the Paris Agreement and flagged in the preamble of the agreement itself. This paper discusses the current approaches to stakeholder participation under the UNFCCC and explains concerns regarding the existing model. Existing channels for “observers” as defined under the UNFCCC are assessed in relation to approaches adopted in other near-universal international fora: the United Nations Convention to Combat Desertification (UNCCD), the Framework for Engagement of non-State Actors under the World Health Organization (WHO), the Convention on Biological Diversity (CBD) and the United Nations Environment Assembly (UNEA) under the United Nations Environment Programme (UN Environment). A critical analysis is provided to consider the value and applicability of potential mechanisms to improve stakeholder engagement in the climate context and to draw attention to practical challenges. Recommendations are suggested to inform approaches to non-party stakeholder engagement considered by the parties to the UNFCCC. Avenues exist for engagement with non-party stakeholders, which can enhance involvement in the negotiation and implementation processes and do not result in an additional burden to an already complex negotiating environment.

Introduction

Effective responses to combat climate change require the mobilization of innovation and action at all levels of government, enterprise and civil society, with participation of non-party stakeholders in the work of the UNFCCC affirmed in the decision adopting the Paris Agreement.¹ Non-party stakeholders, including civil society organizations, the private sector, financial institutions, cities and subnational authorities, local communities and Indigenous peoples,

were noted as having a specific role in sharing experiences, cooperating in the implementation of national climate efforts and catalyzing actions to strengthen adaptation and mitigation initiatives.² This language extends beyond the role of observers originally envisioned under the convention or its draft Rules of Procedure (RoP), which provides for accreditation of qualified bodies or agencies, be they national, international, governmental, or non-governmental,³ and builds upon the 2015 Lima-Paris Action Agenda, which sought to promote engagement of subnational actors and other stakeholders in local climate action, research and development, and technological innovation.⁴ The 2018 special report by the Intergovernmental Panel on Climate Change (IPCC), on holding global temperatures at 1.5°C, stressed the importance of strengthening the capacities of local and regional authorities, the private sector, civil society, and Indigenous peoples and local communities (IPLCs) to support the achievement of domestic nationally determined contributions (NDCs).⁵

Parties to the UNFCCC recently hosted an in-session workshop at the Subsidiary Body on Implementation (SBI) 46 to explore opportunities to further strengthen efforts of non-party stakeholders in supporting the goals of the Paris Agreement.⁶ A number of factors limiting the effectiveness of stakeholder participation were identified, including the fragmentation of issues within the negotiating process, limited opportunities to effectively engage,

1 UNFCCC, *Adoption of the Paris Agreement*, 12 December 2015, Dec CP.21, 21st Sess, UN Doc FCCC/CP/2015/L.9 at paras 109, 117–18, 133–36 [Paris Agreement].

2 *Ibid*, Preamble at paras 109, 117–18.

3 *United Nations Framework Convention on Climate Change*, 9 May 1992, 1771 UNTS 107, 31 ILM 849 art 7 (entered into force 21 March 1994) [UNFCCC]; UNFCCC, *Adoption of the Draft Rules of Procedure*, 22 May 1996, UN Doc FCCC/CP/1996/2, arts 6–7, online: <https://unfccc.int/sites/default/files/resource/02_0.pdf> [UNFCCC, Draft RoP]; RoP, while not adopted by the Conference of the Parties (COP) to the UNFCCC, are in practice applicable.

4 COP20, *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014*, Dec 1/CP.20, UNFCCC, 20th Sess, UN Doc FCCC/CP/2014/10/Add.1 at paras 26.1, 56.5, 57.2(b), online: <<https://unfccc.int/resource/docs/2014/cop20/eng/10a01.pdf>> [Lima-Paris Action Agenda].

5 IPCC, *Global Warming of 1.5°C* (Incheon, South Korea: IPCC, 2018) at D7, D7.1–7.2, online: <http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf>.

6 SBI 44, *Report of the Subsidiary Body for Implementation on its forty-fourth session, held in Bonn from 16 to 26 May 2016*, UNFCCC, 44th Sess, UN Doc FCCC/SBI/2016/8 at paras 163–64, online: <<https://unfccc.int/resource/docs/2016/sbi/eng/08.pdf>>; SBI 46, *In-session workshop on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the provisions of decision 1/CP.21*, UNFCCC, 46th Sess, UN Doc FCCC/SBI/2017/INF.7 [SBI 46, 2017], online: <<http://unfccc.int/resource/docs/2017/sbi/eng/inf07.pdf>>.

influence and support the negotiations, and a lack of financial resources to effectively participate.⁷

This paper will survey the current processes for non-party stakeholder participation under the UNFCCC and other international fora with a view to proposing potential refinements for enhanced stakeholder engagement under the climate framework. First, the existing modalities for observers under the UNFCCC, including the RoP of COP and other related bodies, are outlined in the context of the role identified under the Paris Agreement. Second, relevant experiences under other international processes with near-universal adoption are summarized, in particular the UNCCD, the Framework for Engagement of non-State Actors under the WHO, the CBD and the UNEA (under UN Environment). Lastly, recommendations are provided to address non-party stakeholder participation in the climate change framework.

Non-party Stakeholder Engagement under the UNFCCC

Overview

Under the UNFCCC, non-party stakeholders are able to apply for observer status and participate in the meetings of COP, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the Paris Agreement.⁸ The draft RoP, first put forward at COP2 in 1996, provides that any “body or agency, whether national or international, governmental or non-governmental” that has expertise in matters relating to the convention may apply for observer status unless one-third of the parties object.⁹ Participation of non-party stakeholders in the work of the UNFCCC is high: as of 2016, more than 2,000 non-governmental organizations (NGOs) and 100 intergovernmental organizations (IGOs)

are accredited as official observers.¹⁰ Under the UNFCCC process, non-party stakeholders are loosely organized into general constituencies that act as informal focal points to support knowledge dissemination and exchange of official information within their respective groups. Currently, a total of nine constituencies are recognized: business and industry NGOs (BINGOs); environmental NGOs (ENGOs); local governments and municipal authorities; Indigenous peoples’ organizations; research and independent NGOs (RINGOs); trade union NGOs; women and gender; youth NGOs; and farmers. Members of recognized constituencies may apply for attendance at meetings under the UNFCCC with spots allocated on a quota system.

Following COP4, the presiding officers of any body under the convention could invite the participation of observer organizations in contact groups, provided one-third of the parties did not object.¹¹ In 2003, the UNFCCC released guidelines for the participation of NGOs at open meetings of COP and its subsidiary bodies.¹² The SBI, which has under its remit issues of NGO participation, agreed at SBI 20 that observers could provide written submissions relating to official documents that were made available through a web platform.¹³ Where previously informal consultations were closed to observers, SBI 34 suggested that where there is no contact group (open negotiations on the agenda item) listed for an agenda item, at the very least the first and final

7 SBI 46, 2017, *supra* note 6 at paras 35–36.

8 UNFCCC, *supra* note 3, art 7(6).

9 UNFCCC, Draft RoP, *supra* note 3, Rule 7.

10 UNFCCC, “Admitted NGOs”, online: <<https://unfccc.int/process/parties-non-party-stakeholders/non-party-stakeholders/admitted-ngos/list-of-admitted-ngos>>; as of July 2017, a total of 2,086 NGOs were listed on the UNFCCC site; UNFCCC, “Observer Organizations”, online: <http://unfccc.int/parties_and_observers/observer_organizations/items/9524.php>.

11 COP4, *Organizational Matters: Participation in Contact Groups*, UNFCCC, UN Doc FCCC/CP/1998/L.1, online: <<http://unfccc.int/resource/docs/cop4/101.pdf>>; COP4, *Report of the Conference of the Parties on its Fourth Session, Held at Buenos Aires from 2 to 14 November 1998*, Dec 18/CP.4, UNFCCC, UN Doc FCCC/CP/1998/16/Add.1 at 66, online: <<http://unfccc.int/resource/docs/cop4/16a01.pdf>>.

12 UNFCCC, *Guidelines for the participation of representatives of non-governmental organizations at meetings of the bodies of the United Nations Framework Convention on Climate Change* (March 2003), online: <https://onlinereg.unfccc.int/onlinereg/onlinereg/new_account/step_3/public/terms_of_service.pdf>.

13 SBI 20, *Report of the Subsidiary Body for Implementation on its twentieth session, held at Bonn from 16 to 25 June 2004*, UNFCCC, UN Doc FCCC/SBI/2004/10 at para 104, online: <<http://unfccc.int/resource/docs/2004/sbi/10.pdf>>; UNFCCC, *Report of the Subsidiary Body for Implementation on its thirty-third session, held in Cancun from 30 November to 4 December 2010*, UNFCCC, UN Doc FCCC/SBI/2010/27 at para 148, online: <<http://unfccc.int/resource/docs/2010/sbi/eng/27.pdf>>.

meeting of the informal consultation (preliminary consideration of an issue or negotiation — often closed) should be open to observers.¹⁴

Additionally, the SBI indicated the need for increased opportunities for observer organizations to make interventions and supported greater use of observer materials to inform workshops and technical meetings.¹⁵ SBI 36 noted that observer organizations were making full use of opportunities for interventions to directly feed into the processes of the convention,¹⁶ and recommended the organization of a high-level segment to allow ministers, heads of delegations and representatives of non-party stakeholders to make interventions.¹⁷ Statements by observers have progressively increased, with COP18/CMP 8 having 24 interventions,¹⁸ COP20/CMP 10 having 64 interventions across all plenary bodies¹⁹ and COP21/CMP 11 having 87 interventions.²⁰ COP22 in Marrakesh provided a specific opportunity at the end of the high-level segment for observers to make short interventions not exceeding two minutes.²¹

Participation under the RoP for COP and Other Subsidiary Bodies

In some cases, representatives of non-party stakeholders are included on the national delegations of parties, allowing them to

participate in all formal and informal meetings open to parties. Otherwise, participation is governed by the RoP. Observers may participate in the meetings of COP and the subsidiary bodies under the convention upon the invitation of the president, without the right to vote, unless one-third of the parties object.²² In practice, negotiations are often open to observers without this formality, unless the issue is particularly contentious. In the latter case, the meeting could be limited to parties only or even restricted to heads of delegation, but this tends to apply only to contact groups and informal consultations.

The RoP of COP apply *mutatis mutandis* to the proceedings of all subsidiary bodies²³ and can be explicitly incorporated into the work of other bodies such as the Ad Hoc Working Group on the Paris Agreement (APA).²⁴ Some bodies, such as the Adaptation Fund Board, have adopted specialized RoP, which provide for the attendance of observers in regular meetings unless the board declares otherwise, and which allow observers to make formal presentations at the discretion of the chair.²⁵ Similarly, the Paris Committee on Capacity Building, which was established at COP21 to address current and emerging gaps in implementing capacity, provides for the admission of observers, but is also authorized to limit the physical attendance of observers in the interest of efficiency, and may close off a meeting, or part of it, to observers, should the committee decide.²⁶ In practice, open negotiation sessions — in particular under the APA — often have inadequate capacity to accommodate observers. In those cases, a limited number of tickets will be issued

14 SBI 34, *Report of the Subsidiary Body for Implementation on its thirty-fourth session, held in Bonn from 6 to 17 June 2011*, UNFCCC, UN Doc FCCC/SBI/2011/7 at para 167, online: <<http://unfccc.int/resource/docs/2011/sbi/eng/07.pdf>>.

15 SBI 34, *Arrangements for intergovernmental meetings*, UNFCCC, UN Doc FCCC/SBI/2011/L.19 at para 23, online: <<http://unfccc.int/resource/docs/2011/sbi/eng/119.pdf>>.

16 SBI 36, *Arrangements for intergovernmental meetings*, UNFCCC, UN Doc FCCC/SBI/2012/11 at para 38, online: <<http://unfccc.int/resource/docs/2012/sbi/eng/11.pdf>>.

17 SBI 36, *Report of the Subsidiary Body for Implementation on its thirty-sixth session, held in Bonn from 14 to 25 May 2012*, UNFCCC, UN Doc FCCC/SBI/2012/15 at paras 232–33, online: <<http://unfccc.int/resource/docs/2012/sbi/eng/15.pdf>>.

18 SBI 38, *Arrangements for intergovernmental meetings*, UNFCCC, UN Doc FCCC/SBI/2013/4 at para 32, online <<http://unfccc.int/resource/docs/2013/sbi/eng/04.pdf>> [SBI 38, 2013].

19 SBI 44, *Arrangements for intergovernmental meetings*, UNFCCC, UN Doc FCCC/SBI/2016/2 at 12, Table 2, A(1), online: <<http://unfccc.int/resource/docs/2016/sbi/eng/02.pdf>> [SBI 44, 2016/2].

20 *Ibid* at 12, Table 2.

21 COP22, *Provisional agenda and annotations*, UNFCCC, UN Doc FCCC/CP/2016/1, online: <<http://unfccc.int/resource/docs/2016/cop22/eng/01.pdf>>.

22 UNFCCC, Draft RoP, *supra* note 3, Rules 6.2, 7.2.

23 *Ibid*, Rule 27.1.

24 *Paris Agreement*, *supra* note 1, art 16(5).

25 *Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its fourth session, held in Poznan from 1 to 12 December 2008*, Dec 1/CMP.4, UNFCCC, UN Doc FCCC/KP/CMP/2008/11/Add.2, Annex I at paras 19–20, 31–34, online: <<http://unfccc.int/resource/docs/2008/cmp4/eng/11a02.pdf>>.

26 COP22, *Report of the Conference of the Parties on its twenty-second session, held in Marrakech from 7 to 18 November 2016*, Dec 2/CP.22, UNFCCC, UN Doc FCCC/CP/2016/10/Add.1, Annex at paras 41–44, online: <<http://unfccc.int/resource/docs/2016/cop22/eng/10a01.pdf>>; UNFCCC, *Paris Committee on Capacity-building: Rules of procedure adopted by the Paris Committee on Capacity-building*, online: <http://unfccc.int/files/cooperation_and_support/financial_mechanism/standing_committee/application/pdf/rules_of_procedure_of_the_paris_committee_on_capacity-building.pdf>.

to constituencies, thereby limiting the number of observers while allowing participation.²⁷

In contrast, the Technology Executive Committee (TEC) and associated organs, acting as the policy and operational arms for promotion of technology development, adopted a more inclusive approach to operationalizing the role of stakeholder participation. The TEC provides that meetings are open to observers, both in-person and via webcast, while allowing comparable flexibility to restrict physical attendance for efficiency, or to close the meeting as agreed by the committee.²⁸ The chair may invite presentations to be made by observers, external experts drawing upon the Climate Technology Centre and Network (CTCN), representatives of IGOs, the private sector, or non-party stakeholders more broadly, acting as expert advisers to assist in the matters of the committee.²⁹ The advisory board of the CTCN provides for the attendance of observers, along with an opportunity at each meeting for interventions.³⁰ Additionally, three members representing civil society constituencies are included on the board, and expert observers may be invited to participate in the matters under consideration.³¹

The executive committee of the Warsaw International Mechanism on Loss and Damage (WIM), tasked with guiding implementation of the functions under the WIM, is comprised of two representatives of the adaptation committee, the Least Developed Countries Expert Group (LEG), the Standing Committee on Finance, the TEC and the Consultative Group of Experts. This approach

fundamentally integrates broad stakeholder perspectives to inform the work of the body.³²

Non-party stakeholder perspectives are also integrated into the composition and operations of working groups. Established by the adaptation committee, the Working Group to advance the agenda for the Technical Examination Processes on Adaptation (TEP-A), for example, is comprised of seven members of the committee, and six members representing identified perspectives, including the TEC, the LEG, the Standing Committee on Finance, and the key constituencies of RINGOs, ENGOs and BINGOs.³³ Observers also actively participate in meetings and through preparatory submissions in the proceedings of the LEG³⁴ and the Standing Committee on Finance.³⁵ Understandably, the highest level of engagement observed occurs on the TEC and the Working Group on TEP-A, where the technical expertise of non-party stakeholders is used to inform decision making.

Key Initiatives and Events

Outside of participation in relevant fora within the UNFCCC, multiple modalities for engagement are in place during the annual meetings of COP and intersessional meetings of the SBI and the Subsidiary Body for Scientific and Technological Advice (SBSTA), including the hosting of side events, participation and presentations at workshops, and attendance at regular briefings provided by the Secretariat for civil society.³⁶ All plenary meetings (COP, CMP, SBI, SBSTA and APA), informal meetings, press briefings, selected committee meetings, and an increasing number of special and side events, are webcast. The number

27 A limited number of tickets are issued to each constituency for attendance at meetings that have a limitation on attendance. Constituencies will then allocate meeting tickets for each agenda item among members, often with notes from the meeting shared with the group.

28 TEC, *Draft rules of procedure of the Technology Executive Committee*, UNFCCC, UN Doc TEC/2011/1/4 at paras 39, 42–43, online: <http://unfccc.int/ttclear/misc_/StaticFiles/gnwoerk_static/TEM_TEC_meetings/d8024d9b950f43d594fc17fd22b5477a/e231e23fb44f37b8439395f6a22453.pdf> [TEC, RoP].

29 *Ibid* at paras 36–38, 45.

30 COP19, *Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013*, Dec 25/CP.19, UNFCCC, UN Doc FCCC/CP/2013/10/Add.3, Annex II at paras 54–59, online: <www.ctc-n.org/sites/www.ctc-n.org/files/10a03.pdf>.

31 *Ibid* at paras 3(g), 51–53.

32 COP19, *Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013*, Dec 2/CP.19, UNFCCC, UN Doc FCCC/CP/2013/10/Add.1 at para 4, online: <<http://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf>>.

33 UNFCCC, *Adaptation Committee, Progress report on the work of the Adaptation Committee's working group on the Technical examination process on adaptation*, UN Doc AC/2016/22, online: <unfccc.int/files/adaptation/groups_committees/adaptation_committee/application/pdf/ac10_8_tepa_.pdf>.

34 COP7, *Report of the Conference of the Parties on its seventh session, held at Marrakesh from 29 October to 10 November 2001*, Dec 29/CP.7, UNFCCC, UN Doc FCCC/CP/2001/13/Add.4, Annex, online: <<http://unfccc.int/resource/docs/cop7/13a04.pdf>>.

35 COP22, *Terms of reference for the review of the functions of the Standing Committee on Finance*, UNFCCC, Dec 9/CP.22, UN Doc FCCC/CP/2016/10/Add.1 at para 4(a), online: <<http://unfccc.int/resource/docs/2016/cop22/eng/10a01.pdf#page=32>>; SBI 44, 2016/2, *supra* note 19, Table 2, A(2).

36 SBI 44, 2016/2, *supra* note 19, Table 2, A(2–3).

of daily events is steadily increasing: 101 at COP18/CMP 8; 209 at COP20/CMP 10; and 302 at COP21/CMP 11.³⁷ The Doha work program on article 6 of the convention, agreed at COP18, requested the SBI to hold an annual multi-stakeholder dialogue where NGOs, IGOs, the private sector and parties discuss issues relating to international cooperation, education and training, access to information and public participation.³⁸ There have been five annual dialogues held since SBI 38 in 2013, most recently in 2017 with the Dialogue on Action for Climate Empowerment.³⁹

At COP20 in Peru, stakeholder dialogues were convened by the COP20/CMP 10 Stakeholder Engagement Team focusing on mobilizing representatives of constituencies to share perspectives on climate action and collaboration,⁴⁰ in addition to the agreement of the Lima-Paris Action Agenda that called for meaningful and regular opportunities for engagement with non-party stakeholders.⁴¹ COP22 saw the launch of the Marrakech Partnership for Global Climate Action as a tool to build climate-focused collaboration between public and private stakeholders.⁴² The partnership aims to strengthen the connections between local, national, regional and international actors, creating more opportunities for non-party stakeholder engagement and practical implementation of mitigation and adaptation efforts leading to more ambitious NDCs.⁴³ High-level champions Morocco and Fiji, holders of the

presidency for COP22 and COP23, respectively, agreed to work with the Secretariat as part of the Talanoa Dialogue process to develop events, promote knowledge transfer, facilitate connections across actors and institutions, enable transparency of progress on the Non-state Actor Zone for Climate Action (NAZCA) Climate Action Portal, and to support the aggregation of annual experiences in the Yearbook of Global Climate Action.⁴⁴

COP23 saw five days of parallel thematic sessions as part of the Marrakech Partnership aimed at sharing experiences by parties and non-party stakeholders in support of broader efforts under the Talanoa Dialogue. Building on pre-existing coalitions and initiatives, the partnership is organized through three communities:

- the Climate Action Leadership Network, a voluntary body of senior decision makers cooperating on climate action;
- the Climate Action Collaboration Forum, an established body for climate efforts around issue identification, recruitment, outreach, events and reporting; and
- the Communities of Climate Action Practice, clusters of stakeholders conducting implementation actions in designated areas.⁴⁵

Events under the Marrakech Partnership at COP23 were held over three days on a range of thematic areas (energy, oceans, land use, water, transport/industry and human settlements) in preparation for high-level round tables on Sustainable Development Goal (SDG) 11 on human settlements and SDG 2 on food security, held at the start of the second week of COP.⁴⁶ Meetings of the Talanoa Dialogue, including parties and non-party stakeholders, were held during SBI 48 and additional sessions were scheduled for COP24. Opportunities were also provided for written submissions, with a synthesis report of the outcomes to be shared at COP24.⁴⁷ Conducted in small round tables, the Talanoa Dialogue offers a unique opportunity for

37 *Ibid*, Table 2, E(2).

38 COP18, *Doha work programme on Article 6 of the Convention*, Dec 15/CP.18, UNFCCC, UN Doc FCCC/CP/2012/8/Add.2 at 17–27, online: <<http://unfccc.int/resource/docs/2012/cop18/eng/08a02.pdf#page=17>>.

39 SBI 39, *Summary report on the 1st Dialogue on Article 6 of the Convention*, UNFCCC, UN Doc FCCC/SBI/2013/13, online: <<http://unfccc.int/resource/docs/2013/sbi/eng/13.pdf>>; UNFCCC, *5th Dialogue on Action for Climate Empowerment* (15–16 May 2017), online: <unfccc.int/cooperation_and_support/education_and_outreach/dialogues/items/10123.php>.

40 COP20, *Diálogos con los Grupos de Interés Globales: Tomando acciones frente al cambio climático* (27–29 October 2014), online: <<http://cop20.minam.gob.pe/en/eventos/dialogo-con-los-grupos-de-interes-globales/>>.

41 Lima-Paris Action Agenda, *supra* note 4 at paras 19(iv), 56.5.

42 COP22, *Report of the Conference of the Parties on its twenty-second session, held in Marrakech from 7 to 18 November 2016*, UNFCCC, UN Doc FCCC/CP/2016/10 at para 153, online: <<http://unfccc.int/resource/docs/2016/cop22/eng/10.pdf>>; UNFCCC, *Marrakech Partnership for Global Climate Action*, online: <http://unfccc.int/files/paris_agreement/application/pdf/marrakech_partnership_for_global_climate_action.pdf>.

43 UNFCCC, *Note from the High-Level Champions* (18 May 2017) at paras 2–4, online: <http://unfccc.int/files/paris_agreement/application/pdf/gca_approach.pdf>.

44 *Ibid* at paras 7–8.

45 *Ibid* at paras 10–14.

46 *Ibid* at paras 17–18, 20–21.

47 UNFCCC, *Overview of Inputs to the Talanoa Dialogue* (23 April 2018), online: <https://img1.wsimg.com/blobby/go/9fc76f74-a749-4eec-9a06-5907e013dbc9/downloads/1cbos7k3c_792514.pdf> [*Talanoa Dialogue*].

parties to share and hear experiences from other jurisdictions to catalyze domestic climate action.

The decision adopting the Paris Agreement created a Local Communities and Indigenous Peoples Platform (LCIP Platform) relating to climate action, with negotiations on operationalization of the platform held in the SBSTA 47 during COP23⁴⁸ and the SBSTA 48 in May 2018, producing a draft decision for COP24.⁴⁹ Providing both procedural and technical functions, including promoting sharing of experiences, enhancing capacity and integrating diverse knowledge systems into the work of the UNFCCC,⁵⁰ a Facilitative Working Group is proposed to advance the work of the platform.⁵¹ Comprised of 14 individuals and having joint leadership, the Facilitative Working Group aims to be representative, with one member for each of the five UN regional groups, small island developing states and least developed country parties, along with seven members representing IPLCs, and holding an initial mandate to develop a program of work by 2021.⁵² Both the Talanoa Dialogue and the LCIP Platform provide recent examples of the ongoing engagement with non-party stakeholders.

Additional Initiatives

A range of parallel initiatives aims to further engage non-party stakeholders, in particular industry, subnational governments and investors. First, the NAZCA Climate Action Portal was launched in 2014 at COP20 and profiles progressive climate commitments put forward by non-party stakeholders.⁵³ As of October 2018, a total of 19,136 commitments have been made by a total

of 12,403 stakeholders (regions, cities, investors, private sector actors and civil society).⁵⁴

Second, launched in 2015 at COP21, the Carbon Pricing Leadership Coalition (CPLC) brings together national and subnational government representatives, the private sector and civil society to share experiences and evidence to support the development of effective carbon pricing policies and practices.⁵⁵ Third, launched at the onset of COP21 in Paris, Mission Innovation brings together 22 countries and the European Union — encompassing 80 percent of research and development funding for clean energy — under the commitment to double collective spending to an estimated US\$20 billion.⁵⁶ Finally, the UN Global Compact Commitment for Adaptation and Resilience calls for private sector actors to implement climate risk assessment, develop defined organizational adaptation goals, support domestic adaptation and mitigation efforts, and annually disclose all climate risk considered material to the organization's operations in public filings.⁵⁷

The wide spectrum of parallel initiatives, events and activities running simultaneously with COP places high demands on both non-party stakeholders and parties to navigate entry points.

The UNFCCC and Experiences Derived from Other International Fora

While significant progress had been made under the UNFCCC to engage civil society,

48 Paris Agreement, *supra* note 1 at para 135; UNFCCC, "New UN Platform to Boost Indigenous Peoples and Local Communities' Climate Action" (13 January 2017), online: <<https://unfccc.int/news/new-un-platform-to-boost-indigenous-peoples-and-local-communities-climate-action>>; COP23, *Report of the Conference of the Parties on its twenty-third session, held in Bonn from 6 to 18 November 2017, Dec 2/CP.23*, UNFCCC, UN Doc FCCC/CP/2017/11/Add.1 at para 7, online: <<https://unfccc.int/sites/default/files/resource/docs/2017/cop23/eng/11a01.pdf>> [COP23 Report, Dec 2/CP.23].

49 *Local Communities and Indigenous Peoples Platform* (co-facilitators' draft version 9 May 2018), UNFCCC, Draft Dec./CP.24, UN Doc SBSTA48.DT.i7.LCIP, online: <https://unfccc.int/sites/default/files/resource/SBSTA48.DT_i7.LCIP_.pdf> [LCIP Draft/CP.24].

50 COP23 Report, Dec 2/CP.23, *supra* note 48 at paras 5–6.

51 LCIP Draft/CP.24, *supra* note 49 at paras 2–3.

52 *Ibid* at para 20.

53 UNFCCC, Press Release, "New Portal Highlights City and Private Sector Climate Action" (11 December 2014), online: <<https://unfccc.int/news/new-portal-highlights-city-and-private-sector-climate-action>>.

54 UNFCCC, NAZCA, "Total actions", online: <<http://climateaction.unfccc.int/views/total-actions.html>>.

55 CPLC, *2017-2018 Carbon Pricing Leadership Report*, online: <https://static1.squarespace.com/static/54ff9c5ce4b0a53decccfb4c/1/5b0d873c575d1f57cbf694a4/1527613253000/CPLC_LeadershipReport2018_May2018Update.pdf>.

56 UNFCCC, "Mission Innovation – Clean Energy" (30 November 2015), online: <<https://unfccc.int/news/mission-innovation-clean-energy>> [UNFCCC, "Mission Innovation"]; Mission Innovation, "Global Response", online: <www.mission-innovation.net/>.

57 UN Global Compact, "The world's largest corporate sustainability initiative", online: <www.unglobalcompact.org/what-is-gc>.

identification of avenues for continued improvement is important to the process. To build upon and catalyze further momentum, SBI 46 held an in-session workshop on non-party stakeholder engagement with recommendations considered by COP23.⁵⁸ Participants raised a number of considerations, including:

- the need for increased, extended and structured opportunities for policy interventions;
- calls for broadened engagement, including the private sector and increased participation of Indigenous peoples and youth;
- an emphasis on inclusion of non-party stakeholders to assist in finding cost-effective solutions to NDCs;
- challenges to interventions being limited to two-minute comments at the end of a plenary meeting;
- the potential for technological solutions to improve accessibility; and
- identification of concerns over conflicts of interest for certain private sector participants, a review of which is not currently a requirement of accreditation.⁵⁹

Broader challenges include a lack of coordination in and across constituencies, a lack of consensus among constituencies regarding the best modes of engagement with the UNFCCC process (in particular the private sector), limited funding options to support participation in climate change activities both locally and internationally, and limited substantive consistency of domestic stakeholder consultations.⁶⁰ This results in broad divergence across stakeholder inputs (in terms of quality, practicality and depth of understanding of UNFCCC initiatives), and an ongoing risk of diluting any potential impact of non-party stakeholder expertise.

SBI 46 identified the need for additional pathways for engagement with non-party stakeholders, with lessons from other fora identified as holding potential value.⁶¹ Experiences derived from other international fora with near-universal adoption

addressing global challenges — in particular, the UNCCD, the WHO, the CBD and UN Environment — provide insight into potential additional options available under the climate regime.

Stakeholder Engagement under the UNCCD

The UNCCD, which entered into force on December 26, 1996, and currently has 197 parties,⁶² calls for cooperative efforts of governments, NGOs and local communities to combat desertification, drought and dryland degradation.⁶³ Parties to the UNCCD have, over time, taken a progressively more inclusive approach to non-party stakeholder involvement in the work of the convention. Beginning in 1997 with Decision 27/COP.1, the role of civil society organizations (CSOs) and other stakeholders were prioritized under the UNCCD. Specialized open dialogue sessions were developed under the official program of work of COP, with a minimum of two half-day NGO sessions occurring, and exploration of additional institutional mechanisms for partnership building further promoted.⁶⁴ Criteria for the participation of non-party stakeholders were established in Decision 5/COP.9,⁶⁵ with a focus on representative networks, participation

62 UNCCD, “Status of Ratification”, online: <www2.unccd.int/convention/about-convention/status-ratification>.

63 *United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, 17 June 1994, 1954 UNTS 3; 33 ILM 1328 (entered into force 26 December 1996), online: <www.un-documents.net/a-ac241-27.pdf> [UNCCD].

64 COP1, *Inclusion of activities of non-governmental organizations within the official programme of work of future sessions of the Conference of the Parties*, Dec 27/COP.1, UNCCD, UN Doc ICCD/COP(1)/11/Add.1 (1997) at 95–96 online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP1_11_Add.1/11add1eng.pdf> [UNCCD, Dec 27/COP.1].

65 COP9, *Revised procedures for the participation of civil society organizations in meetings and processes of the United Nations Convention to Combat Desertification*, Dec 5/COP.9, UNCCD, UN Doc ICCD/COP(9)/18/Add.1 (2009) at 42, online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP9_18_Add.1/18add1eng.pdf>.

58 SBI 46, 2017, *supra* note 6.

59 *Ibid* at paras 12–25, 33.

60 *Ibid* at paras 28–29, 32, 35–36.

61 *Ibid* at para 17.

turnover, and geographical, expertise and gender balance,⁶⁶ with further revision at COP10 and 11.⁶⁷

A CSO Panel, comprised of two Secretariat staff, as well as representatives from each of the five UN regional groups, and responsible for coordinating policy positions of non-party stakeholders, interventions and procedures for participation, was established to fulfill the enhanced mandate of stakeholder participation set at COP9. The CSO Panel meets twice yearly in person and once a month via teleconference, working to coordinate stakeholder input and engagement within the forum.⁶⁸

Accreditation was opened to business and industry for attendance as observers starting at COP10.⁶⁹ The strategy for enhanced implementation of the convention (2008–2018) saw calls for a business engagement strategy and the second Sustainable Landscape Management (SLM) Business Forum held at COP11 as a means to engage private sector organizations.⁷⁰ During COP12, in addition to the third SLM Business Forum, three special segments were held on land rights, investment for SLM, and environmental protection and rehabilitation.⁷¹ Similarly, COP13 in fall 2017 saw multi-stakeholder segments held on gender

and land rights, how local governments can address desertification, and private sector contributions to land degradation neutrality.⁷² Inclusion of specialized fora provided entry points for addressing important policy issues, allowing stakeholder groups to inform discourse and productively grounding the work of the convention in local and regional priorities.

Under the available channels, a total of seven private sector organizations were accredited for COP13, with a view to continued exploration of strategic initiatives and means to enhance engagement.⁷³ Experiences under the UNCCD provide examples of additional approaches for increased coordination of positions of non-party stakeholders, such as the CSO Panel, and specialized mechanisms, such as the technology-focused fora to foster private sector participation.

Stakeholder Engagement under the WHO

An early UN organ, the WHO was created in April 1948 and currently has 193 member states.⁷⁴ As the principal intergovernmental health organization, the WHO is responsible for coordinating global health efforts.⁷⁵ In 1987, the WHO put in place initial principles of engagement with non-party stakeholders.⁷⁶ In 2016, following calls for improved dialogue and collaboration with civil society, coupled with findings by the United Nations that their accreditation process was overly

66 COP9, *The 10-year strategic plan and framework to enhance the implementation of the Convention (2008–2018). Follow-up to the Joint Inspection Unit recommendations*, UNCCD, UN Doc ICCD/COP(9)/4/Add.2 (2009) at 12–13, online: <http://digitallibrary.un.org/record/668087/files/ICCD_COP%289%29_4_Add.1-EN.pdf>.

67 COP10, *Revised procedures for the participation of civil society organizations in meetings and processes of the United Nations Convention to Combat Desertification*, Dec 5/COP.10, UNCCD, UN Doc ICCD/COP(10)/5 (2011), online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP10_31_Add.1/31add1eng.pdf> [Dec 5/COP.10]; COP11, *Revised procedures for the participation of civil society organizations in meetings and processes of the United Nations Convention to Combat Desertification*, Dec 5/COP.11, UNCCD, UN Doc ICCD/COP(11)/23/Add.1 (2013), online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP11_23_Add.1/23add1eng.pdf> [Dec 5/COP.11].

68 COP13, *Participation and involvement of civil society organizations in meetings and processes of the United Nations Convention to Combat Desertification*, UNCCD, UN Doc ICCD/COP(13)/15 (2017) at paras 6, 10, 12, online: <www2.unccd.int/sites/default/files/sessions/documents/2017-07/ICCD_COP%2813%29_15-1710712E.pdf>.

69 Dec 5/COP.10, *supra* note 67 at paras 5–6.

70 Dec 5/COP.11, *supra* note 67 at para 2; COP11, *Report of the Conference of the Parties on its eleventh session, held in Windhoek from 16 to 27 September 2013*, Dec 38/COP.11, UNCCD, UN Doc ICCD/COP(11)/23/Add.1 (2013), online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP11_23_Add.1/23add1eng.pdf>.

71 COP12, *Provisional Agenda (9 July 2015)*, UNCCD, UN Doc ICCD/COP(12)/1, online: <www.unccd.int/sites/default/files/sessions/documents/ICCD_COP12_1/1eng.pdf>.

72 COP13, *Provisional Agenda (23 June 2017)*, UNCCD, UN Doc ICCD/COP(13)/1 at 13, online: <www.unccd.int/sites/default/files/sessions/documents/2017-07/cop1eng_2.pdf>.

73 *Ibid* at paras 21–22; COP13, *Accreditation of intergovernmental organizations, civil society organizations and representatives from the private sector, and admission of observers*, UNCCD, UN Doc ICCD/COP(13)/17 (2017), Annex VI, online: <www2.unccd.int/sites/default/files/sessions/documents/2017-09/ICCD_COP%2813%29_17-1714932E.pdf>.

74 WHO, “Countries”, online: <www.who.int/countries/en/>.

75 *Constitution of the World Health Organization*, 22 July 1946, 14 UNTS 185 arts 1–2 (entered into force 7 April 1948).

76 WHO, *Principles Governing Relations between the World Health Organization and Nongovernmental Organizations (1987)*, online: <www.searo.who.int/entity/partnerships/topics/principles_governing_ngos.pdf?ua=1>.

burdensome,⁷⁷ a new framework of engagement with non-state actors was agreed.⁷⁸ Non-state actors are defined to include NGOs, private sector commercial participants, international business associations, philanthropic foundations and academic institutions,⁷⁹ and are provided under the RoP paths similar to the UNFCCC to attend meetings of the WHO.⁸⁰ However, additional forms of interaction are also available, including providing financial or in-kind contributions, submission of evidence or technical materials, advocating for increased awareness of an interest critical to public health, and technical collaboration.⁸¹

A unique feature among the frameworks surveyed, under the WHO all non-state actors are required to disclose conflicts of interest, including organizational name, membership, legal status, objectives, governance structure, the composition of main decision-making bodies, assets, annual income and relevant affiliation.⁸² The WHO explicitly excludes engagement with the tobacco industry, or any non-state actors associated with advancing the interests of that sector, and provides for increased caution when conducting due diligence on non-state actors whose activities negatively impact human health.⁸³ Applications for official relations require core details of the organization, a summary of past engagements, a three-year plan for collaboration and a signed letter certifying the accuracy of submissions.⁸⁴ Collaborations are reviewed every three years, with the director-general able to propose an earlier review, and discontinuance of official relations in cases where there is a failure to fulfill the reporting, collaboration or contract requirements, or due to changing program priorities or other circumstances.⁸⁵ Engagement with non-party stakeholders must be managed to

negate a reasonable perception that an organization might have undue influence on the decision making, integrity or independence of the WHO.⁸⁶

The Secretariat conducts a risk assessment and due diligence review to identify risks to engagement.⁸⁷ Under the due diligence review, the relevant technical unit verifies information on the entity to:

- clarify the nature, purpose, interests and objectives of the organization;
- determine the legal status and structure, activities, membership, governance, sources of funding and affiliations; and
- define the main characteristics of the organization and its work relating to health, environment, human rights, labour rights, reputation and financial stability.⁸⁸

The risk assessment, which considers a specifically proposed engagement, evaluates the likelihood of potential impacts and applies a risk management approach to engagement whereby a non-state actor will only be engaged where the direct or indirect contributions to global public health outweigh residual risks associated with engagement.⁸⁹ Non-compliance with the rules under the framework of engagement with non-state actors could result in an administrative review and could lead to a rejection or termination of engagement.⁹⁰

Oversight procedures and specific policies have also been established for engagement with each category of non-state actor, to ensure engagement is conducive to the objectives of the organization.⁹¹ Private sector entities, for instance, may participate in WHO meetings, with WHO staff also able to participate in events organized by the private sector, provided the event is in line with the objectives, priorities and integrity of the WHO.⁹² Specific guidelines are also outlined, restricting the WHO from co-sponsoring private sector-led events unless coordinated by a neutral third-party

77 WHO, Executive Board, *Policy for relations with nongovernmental organizations* (2002), EB1111/22 at paras 12–13, online: <http://apps.who.int/gb/archive/pdf_files/EB1111/eeb11122.pdf>.

78 WHO, Sixty-Ninth World Health Assembly, *Framework of engagement with non-State actors*, Res WHA69.10 (2016), online: <www.who.int/about/collaborations/non-state-actors/A69_R10-FENSA-en.pdf?ua=1>.

79 *Ibid.*, Annex at paras 8–13.

80 *Ibid.*, Annex at paras 14–16.

81 *Ibid.*, Annex at paras 17–19.

82 *Ibid.*, Annex at paras 21–22, 39.

83 *Ibid.*, Annex at paras 45–46.

84 *Ibid.*, Annex at paras 58–59.

85 *Ibid.*, Annex at paras 56–66.

86 *Ibid.*, Annex at paras 25–26.

87 *Ibid.*, Annex at paras 27–29.

88 *Ibid.*, Annex at para 31.

89 *Ibid.*, Annex at paras 33–36.

90 *Ibid.*, Annex at paras 69–70.

91 *Ibid.*, Annex at paras 67–68.

92 *Ibid.*, Annex at 23–24 (“WHO Policy and Operational Procedures on Engagement with Private Sector Entities”).

organization.⁹³ Caution must be exercised when accepting any financial contributions from private sector sources.⁹⁴ Specifically, financial contributions from private sector organizations are only accepted where there exists no material interest in the normative work to be conducted and the work of the donor, and where the WHO would not become dependent upon the contribution.⁹⁵ Similar policies are developed for NGOs, philanthropic organizations and academic institutions.⁹⁶

Overall, the approach to stakeholder engagement, and private sector engagement in particular, through the use of conflict of interest disclosure provides an interesting comparison to the climate process. It is worth considering whether disclosure requirements could be usefully adapted to the climate context, or whether they might serve as a barrier to sector-wide participation.

Stakeholder Engagement under the CBD

The CBD, which entered into force on December 29, 1993, and currently has 196 parties,⁹⁷ is a framework agreement aimed at promoting conservation and sustainable use of biodiversity, and ensuring fair and equitable benefit sharing through utilization of genetic resources.⁹⁸ Stakeholder engagement has long been viewed as integral to the goals of the convention, explicitly recognized in the preamble, article 8(j) and article 10.⁹⁹ Similar to the UNFCCC, the RoP of the CBD allows for bodies, both governmental and non-governmental, that have specialist knowledge in fields related to conservation and sustainable use of biodiversity

to participate as observers in meetings of the convention, unless one-third of the parties object.¹⁰⁰ In practice, meetings including contact groups and informal meetings are often open, except in cases of limited seating or highly contentious issues. At COP7 in 2004, a voluntary fund was established to facilitate the participation of IPLCs, in particular from developing and emerging economies, in the processes of the convention, including meetings of COP and expert and technical groups.¹⁰¹

The Global Biodiversity Forum was an early mechanism for stakeholder engagement around biodiversity-related conventions from 1992 to 2006, co-financed by the Global Environment Facility/International Union for Conservation of Nature (IUCN) and other partners. That forum enhanced knowledge transfer and increased the constituency of the conventions.¹⁰² At COP10, stakeholder engagement was identified as a priority in the Strategic Plan for Biodiversity 2011–2020, in particular the enabling of civil society and private sector participation, and fostering sustainable production and consumption under Aichi Target 4.¹⁰³ The strategic plan calls for full and effective stakeholder participation at the national level, at all levels of implementation, as a means of monitoring and achieving the Aichi Targets, with a particular emphasis on inclusion of women and IPLCs.¹⁰⁴

The first meeting of the Global Partnership for Business and Biodiversity was held in 2011 at COP11, bringing together parties, industry, conservation organizations (IUCN, UN Environment-World Conservation Monitoring Centre), and civil society

93 *Ibid*, Annex at paras 8–12.

94 *Ibid*, Annex at para 13.

95 *Ibid*, Annex at paras 14, 19.

96 *Ibid*, Annex at 20–22, 30–35.

97 CBD, Secretariat, “List of Parties”, online: <www.cbd.int/information/parties.shtml>.

98 *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79, 31 ILM 822 art 1 (entered into force 29 December 1993) [CBD]; Lyle Glowka et al, “A Guide to the Convention on Biological Diversity” (1994) *Envtl Pol’y & L Paper* No 30 at 15.

99 CBD, *supra* note 98, Preamble, arts 8(j), 10.

100 CBD, *Rules of Procedure for the Meetings of the Conference of the Parties to the Convention on Biological Diversity* (1994), Dec I/1, Annex, Dec V/20, Annex, Rule 7, online: <www.cbd.int/doc/legal/cbd-rules-procedure.pdf>.

101 COP7, *Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting*, Dec VII/16, UN Environment, UN Doc UNEP/CBD/COP/DEC/VII/16 (2004), s G at para 10, online: <www.cbd.int/doc/decisions/cop-07/cop-07-dec-16-en.pdf>.

102 CBD, *Stakeholder Engagement: Note by the Executive Secretary*, UN Environment, UN Doc UNEP/CBD/WGRI/5/11 (2014) at paras 24–25, online: <www.cbd.int/doc/meetings/wgri/wgri-05/official/wgri-05-11-en.pdf>.

103 COP10, *Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting*, Dec X/2, UN Environment, UN Doc UNEP/CBD/COP/DEC/X/2 (2010), online: <www.cbd.int/doc/decisions/cop-10/cop-10-dec-02-en.pdf>.

104 *Ibid* at paras 3(a), 14.

over a two-day knowledge-sharing event.¹⁰⁵ Subsequent meetings were held in 2012 and 2013. The first Business and Biodiversity Forum (BBF-1), held prior to the opening of COP12 in 2014, brought together industry, civil society and high-level delegates to explore areas of opportunity,¹⁰⁶ with the United Nations Conference on Trade and Development hosting the first BioTrade Congress in conjunction with the forum.¹⁰⁷ COP13 in 2016 saw BBF-2, and the seventh meeting of the Global Partnership for Business and Biodiversity was held in November 2017 in preparation for BBF-3 to be held at COP14. Parties are also encouraged to hold stakeholder dialogues on biodiversity at the regional and national level, with the Secretariat regularly convening meetings of technical experts, regional initiatives and workshops to support capacity building and stakeholder engagement with the work of the convention.

Under the CBD, stakeholder engagement has been operationalized through various dedicated fora, a voluntary funding mechanism to support participation of IPLCs, prioritization in strategic planning through Aichi Target 4, and partnerships with key international organizations and initiatives to integrate private sector perspectives into the work of the convention. The longstanding experience of the CBD highlights the evolving and ongoing refinement of stakeholder engagement modalities, emphasizing the need for long-term commitment and continued calibration.

Stakeholder Engagement under the UNEA

UN Environment, created as an outcome of the 1972 United Nations Conference on the Human Environment (Stockholm Conference), is tasked with coordination of environmental action across

105 CBD, "First Meeting of the Global Partnership for Business and Biodiversity", online: <www.cbd.int/business/meetings-events/1m.shtml>.

106 CBD, "CBD COP 13 Business and Biodiversity Forum", online: <www.cbd.int/business/meetings-events/2016.shtml>; CBD, *Final Report from 2016 Business and Biodiversity Forum* (2–3 December 2016), online: <www.cbd.int/business/doc/2016-bbf-report-en.pdf>.

107 CBD, *Report on the CBD COP 12 Business and Biodiversity Forum* (12–14 October 2014), online: <[www.cbd.int/business/CBD%20COP%2012%20Business%20Forum%20\(Final%20Report\).pdf](http://www.cbd.int/business/CBD%20COP%2012%20Business%20Forum%20(Final%20Report).pdf)>.

the UN system.¹⁰⁸ Governance of UN Environment was administered by the UN Environment Governing Council (GC) up until 2013, when GC27 adopted a decision on institutional arrangements supporting the creation of the UNEA by the United Nations General Assembly (UNGA) as a fully participatory governance body with a universal mandate. Since 2000, UN Environment has hosted annually the Global Civil Society Forum, often concurrently with meetings of the GC. The first meeting of UNEA-1, held in 2014, was preceded by the two-day fifteenth Global Major Groups and Stakeholders Forum (GMGSF-15) and symposia on the rule of law and global finance. UNEA-1 saw the important role of stakeholders stressed in:

- combatting the illegal trade in wildlife;
- participating in the multi-stakeholder consultation process for the Global Environment Outlook;
- sharing data and relevant scientific information;
- managing, handling and transporting chemicals and environmentally hazardous substances in a sound manner;
- participating in strategic initiatives; and
- providing case studies on implementation.¹⁰⁹

These results were internalized in the ongoing work of UNEA and reinforced the expanded engagement of non-party stakeholders.

UNEA-2 in 2016 hosted GMGSF-16 and heard calls for enhanced multi-stakeholder partnerships in chemicals management, marine litter and microplastics, assisting in the achievement of

108 UN, *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1972) at 29–30, online: <www.un-documents.net/aconf48-14r1.pdf>; United Nations Conference on the Human Environment, *Resolution adopted by the General Assembly 2994 (XXVII)*, GA Res 2994 (XXVII), UNGA, UN Doc A/RES/27/2994 (1972), online: <www.un-documents.net/a27r2994.htm>.

109 UN Environment, *Resolutions and decisions adopted by the United Nations Environment Assembly of the United Nations Environment Programme at its first session on 27 June 2014*, Res 1/3, Preamble, Res 1/4 at paras 8, 12, Res 1/5 at paras 11, 16–17, Res 1/6 at paras 14, 18, Res 1/8, Preamble at para 1, online: <<https://wedocs.unep.org/bitstream/handle/20.500.11822/17285/K1402364.pdf?sequence=3&isAllowed=y>>.

the SDGs and support for the Paris Agreement.¹¹⁰ A stakeholder engagement policy was discussed at UNEA-2, but current rules, mechanisms and practices were seen as sufficiently flexible to allow for continued stakeholder engagement.¹¹¹ UNEA-3 in 2017 was preceded by GMGSF-17, but also saw two other notable parallel initiatives. First, the Science, Policy and Business Forum and Innovation Expo aimed to showcase green technologies, innovative private sector initiatives and the role of stakeholders in moving forward the goals of sustainable development. Second, four 90-minute leadership dialogues were held with participation from parties, non-party stakeholders, and the heads of multilateral environmental agreements (MEAs) and relevant intergovernmental organizations to discuss intersecting mandates, challenges facing the global community and available solutions.¹¹² The four thematic sessions — covering citizen awareness, regulatory frameworks, institutional approaches and the rule of law — were actively facilitated by a moderator to foster broad participation.

Non-party stakeholders have long been recognized as both stakeholders and implementers under UN Environment, with the structure of related events, initiatives and activities aiming to provide meaningful input into the decision-making process. Multiple initiatives are also underway through a memorandum of understanding partnership with private sector actors (including of note Coca-Cola, BNP Paribas and Volvo Ocean, among others) relating to climate change, resilience and disasters, environmental governance, ecosystem health, resource efficiency and chemicals, waste and air quality.¹¹³

110 UN Environment, *Report of the second session of the United Nations Environment Assembly of the United Nations Environment Programme*, Dec 2/3 at para 4, Dec 2/5 at para 12, Dec 2/6 at para 1, Dec 2/8, online: <<http://wedocs.unep.org/bitstream/handle/20.500.11822/17512/K1608503.pdf?sequence=6&isAllowed=y>>.

111 *Ibid* at para 55.

112 Organizations included the UNFCCC, CBD, Basel Convention, Rotterdam Convention, Stockholm Convention, Montreal Protocol, IUCN, World Wildlife Fund, and the UN Special Rapporteur on Human Rights and the Environment.

113 United Nations Environment Assembly of the United Nations Environment Programme, *Report by the Secretariat on UN Environment Programme's Private Sector Engagement*, UN Environment, UN Doc UNEP/CPR/142/4, online: <<http://wedocs.unep.org/bitstream/handle/20.500.11822/25384/Report%20to%20the%20CPR%20on%20Private%20Sector%20Engagement%20Revision%2004.05.pdf?sequence=42&isAllowed=y>>.

Experience under the UNEA, including a multi-stakeholder forum preceding the meeting of the Assembly, use of facilitated sessions with active participation of leadership across MEAs, parties and civil society, informal meetings with non-party stakeholders and inclusion of a multi-stakeholder dialogue on the core theme during the main week of meetings demonstrate the utility of creating various channels for stakeholder engagement. This multi-faceted approach emphasizes that a range of opportunities for engagement allows for a broadening of perspectives.

The Path Forward to Effective Engagement

The UNFCCC has achieved significant and increasing participation of CSOs. At COP18/CMP 8 in 2012, 1,719 organizations participated in the global climate process, which demonstrated a 65 percent increase from 2008 levels.¹¹⁴ With nearly 2,100 NGOs accredited for COP23, considerations for enhanced engagement with non-party stakeholders should focus on refining the effectiveness of current approaches as much as creating novel solutions.

A few general observations can be made on the progress to date. The large number of participants at COP meetings has been criticized for its environmental impact.¹¹⁵ Host governments of Denmark (COP15) and Peru (COP20) offset 25,000 and 50,000 tons of carbon dioxide (CO₂), respectively.¹¹⁶ The Secretariat worked to have COP23 certified under the Eco-Management and Audit Scheme, aiming to reduce environmental stresses, and included a commitment to offset impacts (including air travel of participants) through purchase of certified

114 SBI 38, 2013, *supra* note 18 at para 29.

115 Regina McGee, "Meetings and Climate Change", *PCMA Convene* (29 February 2016), online: <www.pcmacconvene.org/features/cmp-series/meetings-and-climate-change/>; Nick Stockton, "The Paris Climate Talks Will Emit 300,000 Tons of CO₂, by Our Math. Hope It's Worth It", *Wired* (11 November 2015), online: <www.wired.com/2015/11/the-paris-talks-could-produce-300000-tons-of-co2-hope-theyre-worth-it/>.

116 Aurelien Breeden, "Confronting the Carbon Footprint of the Paris Climate Talks", *New York Times* (11 December 2015), online: <www.nytimes.com/interactive/projects/cp/climate/2015-paris-climate-talks/what-is-the-carbon-footprint-of-the-paris-climate-talks>.

emissions reduction credits.¹¹⁷ Growth in non-party stakeholder participation numbers increases the environmental burden in terms of travel.

The large number of civil society participants results in diversity and some lack of coherence of messages to the parties. Appropriate ways for civil society to interact with negotiators must also be addressed. Increasing the channels for participation of non-party stakeholders should aim to help, not hinder, an already interest-laden negotiating environment. While differences in numbers of participants and the scope of issues exist, approaches adopted in other international fora provide additional ideas for the UNFCCC. Five approaches that could advance stakeholder engagement in the UNFCCC include: increased coordination of observer inputs; the creation of a permanent forum for engagement; transparent participation through some form of disclosure of conflicts of interest; creation of a funding mechanism to support participation; and the establishment of guidelines for domestic consultation.

Increased Coordination of Observer Inputs

As the global climate process has continued to evolve, requests for registration to attend meetings have progressively increased. Since 2009, registration numbers have exceeded 10,000, with attendance surpassing 24,500 for COP21/CMP 11 in Paris.¹¹⁸ Attendance at COP23 in 2017, which had 19,115 total participants,¹¹⁹ of which 4,660 were from NGOs, could be interpreted as the new standard. Increased participation places heightened emphasis on the role of the constituencies and the need for coordination to support harmonization of processes, positions and inputs. Under the UNCCD, the CSO Panel acts as a valuable conduit to liaise with the Secretariat and respective constituencies to support the representation of civil society voices in the work of the convention. The regionally dispersed panel identifies policy priorities for that biennium and provides publications that

summarize policy inputs. UNEA also provides an opportunity to coordinate participation in the Assembly during the multi-stakeholder high-level segments held on the days preceding the meeting, with major groups working collaboratively with UN Environment on the selection of agenda topics.

Development of a coordinating body for non-party stakeholder input, participation and integration could further advance the goals of the Paris Agreement. It could be composed of regional representatives of each constituency and members of the Secretariat, and could work to coordinate submissions, participation and inputs within the individual constituency and across non-party stakeholders more broadly to enhance the effectiveness of mechanisms such as official statements, the Marrakech Partnership, the LCIP Platform and the Talanoa Dialogue. Application of an organizational structure and knowledge-exchange platform could foster subject matter networks and collaborations and improve the effectiveness of inputs into UNFCCC work programs. Increasing participation without coordination risks encumbering an already complex set of negotiations. Better coordination of non-party stakeholder inputs, including through the use of technology for remote participation, can support constructive participation to inform the party-driven process of multilateral negotiations under the climate regime.

Creation of a Permanent Forum for Engagement

Establishment of a permanent stakeholder forum, which included high-level participation and allowed for meaningful discussions with stakeholders, would demonstrate a commitment to long-term collaborative action. While COP22 saw the hosting of the Business and Industry Day, which profiled public and private sector climate actions, and COP23 hosted the first events under the Marrakech Partnership for Global Climate Action, a permanent forum for stakeholder-driven open dialogue could complement the negotiations under the UNFCCC. The UNCCD, CBD and UNEA all use designated fora for constructive dialogue in support of policy making. The UNEA, in particular, provides the most useful model as it includes a two-day multi-stakeholder forum prior to the Assembly, as well as facilitated industry and leadership dialogues during the Assembly. Under the UNFCCC, stakeholder participation in high-level dialogues and pre-COP

117 Germany, COP23 Environmental Statement – UN Climate Change Conference (Berlin: Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, 2017) at 5–8, online: <https://unfccc.int/sites/default/files/resource/COP%2023%20EMAS%20Environmental%20Statement%20-%20initial%20version_EN.pdf>.

118 SBI 44, 2016/2, *supra* note 19 at para 40.

119 UNFCCC, COP23, *Provisional list of registered participants*, online: <<http://unfccc.int/resource/docs/2017/cop23/eng/PLOP.pdf>>.

activities could support both the negotiations and domestic implementation, and aligns with calls by civil society for a participatory pre-COP.¹²⁰

The Marrakech Partnership for Global Climate Action holds great potential to provide a permanent forum that fosters regular discourse and collaboration. The Talanoa Dialogue, with a mandate ending at COP24, could be provided with a renewed mandate to serve as a vital input into the ongoing global stocktake, allowing for continued sharing of national experiences to buttress adaptation communication as envisioned under the Paris Agreement Work Program. Additionally, the LCIP Platform holds potential for high-level discussions and the ability for parties and IPLCs to collectively craft a program of work that provides a long-term and meaningful contribution to the work of the UNFCCC. Policy making in collaboration with non-party stakeholders through these mechanisms could support coalitions of common interest among non-party stakeholders and develop the domestic support needed to further drive progressive climate change policies. Incorporation of stakeholder-driven and developed policy sessions or topical townhall-style fora as a component of the Marrakech Partnership might provide an immediate opportunity for non-party stakeholders to offer direct input into the work of the parties in an efficient and constructive manner.

Transparent Participation

Participation of key stakeholders such as the private sector could be an important catalyst for innovation and should be further promoted. Achievement of the Paris goals requires the creation of an enabling environment to foster technological shifts in high-polluting sectors (such as transport, energy generation, construction and materials production) and the engagement of subnational and local governments to fill gaps where national government action is slowing or non-existent, or where the national government does not have jurisdiction. The private sector, in particular business groups, could advance such priorities. However, the private sector itself has different approaches to climate change. Some observers have expressed their concern that certain economic sectors, for example, those in the oil and gas sector, could undermine the climate process. It has been suggested that a requirement

for disclosure of potential conflicts of interest be explored to examine the objectives of stakeholders, but with an awareness of the need for inclusivity.¹²¹

The model of the WHO provides for the development of joint programs of work and technical and/or financial project collaboration with the private sector, but also includes a requirement for disclosure of conflicts of interest, a due diligence assessment conducted by the Secretariat, and a requirement for conduct to be in accordance with the spirit, purpose and principles of the convention. Such an approach would be counterproductive in the context of the UNFCCC, where even opponents of climate action need to be included, as all sectors need to be part of the low-carbon transition. Establishing some kind of disclosure procedure might be useful.

Creation of a Funding Mechanism to Support Participation

Development of a funding mechanism to support the attendance of non-party stakeholders from the Global South to meetings under the UNFCCC would enhance the diversity of available perspectives informing policy discussions. Existing funds such as the Supplementary Fund and Special Fund of the Convention under the UNCCD or the Voluntary Fund under the CBD provide examples that could enable broader participation and build much-needed capacity. Such funding could be available to particularly vulnerable communities or constituencies, or to non-party stakeholders. The LCIP Platform provides a promising gateway for further engagement with Indigenous peoples and climate-vulnerable communities and would greatly benefit from enhanced financial and technical capacity as envisioned in the COP24 draft decision on the LCIP Platform.¹²² However, a financial and technical support system would be beneficial to a range of non-party stakeholders. Full and effective participation of non-party stakeholders in the work of the UNFCCC broadly, including the LCIP Platform, would benefit from a commitment by parties to adequate financing and capacity building.

¹²¹ *Ibid.*

¹²² LCIP Draft/CP.24, *supra* note 49 at para 32.

¹²⁰ SBI 46, 2017, *supra* note 6 at para 36.

Establishment of Guidelines for Domestic or Regional Consultations

Important factors in the success of climate measures are domestic processes of outreach, consultation and engagement. Parties may benefit from some common principles to assist in guiding the domestic consultation process. While many jurisdictions have domestic processes underway, these are variable in approach. Talanoa Dialogue principles such as “constructive, facilitative and solutions oriented” could inform domestic approaches.¹²³ Voluntary guidelines could be developed to facilitate multi-stakeholder dialogue domestically and between networks of non-party stakeholders. Subnational and local leadership non-party stakeholders could play an important role in strengthening local action, providing inputs to inform technical review and informing ongoing implementation strategies. Through domestic and organizational consultations, policy positions endorsed internationally can be adapted locally.

participation, including streaming of contact groups and online participation for workshops and dialogues could increase accessibility and assist in reducing the environmental footprint of global climate meetings. Effective integration of non-party stakeholder engagement is needed across all aspects of global society to assist countries to achieve their NDCs, spark innovation and galvanize climate action.

Conclusion

Engaging local and regional governments, the private sector and civil society is essential to transition national economies to a low-carbon future and to achieve the goals of the Paris Agreement. While the UNFCCC has high levels of civil society participation in terms of numbers, experiences under other international fora provide additional approaches to consider to further engage non-party stakeholders. Development of a coordination body for observer participation, the establishment of a permanent forum for dialogue and formulation of flexible guidelines for domestic/regional consultations could assist non-party stakeholders. Use of specialized channels to integrate key stakeholder groups — including the creation of an accreditation procedure for the private sector, possibly some kind of disclosure procedure and a funding mechanism for stakeholder participation including the LCIP Platform — could enhance the climate discourse and generate robust climate action. Use of technological solutions as an alternative to physical

¹²³ *Talanoa Dialogue*, *supra* note 47 at para 19.

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