

**International Climate Change Law
Prato 2010
Instructor: Stepan Wood**

Negotiation Exercise Instructions

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Introduction

The purpose of this document is to provide instructions and guidance for the in-person phase of the negotiation exercise, which will take place over three class meetings, each lasting three hours. For general information about the exercise, please see the written assignment instructions.

Below you will find a draft agenda for the meeting, the Chair's tentative plan for each day, and some general instruction and guidance on how to prepare for and participate in the in-person phase of the negotiation.

1. Draft Agenda

The draft agenda is presented on the next page. Hard copies will be distributed on site.

Informal Meeting on Ways Forward for the Cancun COP 16/CMP 6
Prato, Italy
14-16 June, 2010

Draft Agenda

- 1. Opening of the Session**
- 2. Adoption of the Agenda**
- 3. Appointment of Drafting Committee**
- 4. Opening Statements**
- 5. Discussion of Possible Ways Forward on Key Issues**
 - 5.1 Negotiation procedures**
 - 5.1.1 Should the key negotiations at the COP/CMP be restricted to a small invitation-only “Friends of the Chair” group or be conducted in plenary?
 - 5.1.2 Should the normal rule of decision by consensus be relaxed to allow majority decision-making?
 - 5.1.3 Should the negotiations proceed on multiple tracks (one involving all Parties to the Convention, a second restricted to Parties to the Kyoto Protocol, and possibly a third focused on the Copenhagen Accord), or should they be consolidated on a single track?
 - 5.2 Commitments and MRV**
 - 5.2.1 Should developing country Parties assume economy-wide GHG emission limitation commitments?
 - 5.2.2 What should developed and developing country Parties’ GHG emission limitation commitments be?
 - 5.2.3 Which commitments (including those related to emissions limitation, financing and technology transfer) should be subject to measurement, reporting and verification (MRV), and should MRV be domestic or international?
 - 5.2.4 Should the outcome of the negotiations be a legally binding agreement?
 - 5.2.5 Should an agreement set a quantified long-term global goal for GHG concentrations or emission reductions, and if so what should it be?
 - 5.3 Adaptation and Financing**
 - 5.3.1 How should the category of particularly vulnerable developing countries be defined?
 - 5.3.2 How should adaptation funding be channeled to recipient countries?
- 6. Other business**
- 7. Report of the Session**
- 8. Adjournment**

2. Chair's Plan for the Meeting

In the following plan you will see that each delegation is expected to appoint individual members to fulfill specific roles. These are indicated in bold font. You should assign and prepare for these roles in advance.

Day 1

Objective:

- Establish meeting procedures, accept the agenda, and gather information about parties' positions and interests (Agenda items 1-5)

Plan:

- 1:30: Welcome, introduction (rules to be followed), acceptance of agenda, **appointment of drafting committee (1 member from each party, who will appoint a chair and vice-chair from among themselves)** (15 minutes)
- 1:45 **Opening statements from parties** (45 minutes: **1 speaker per party**, 4 minutes each x 9 parties = 36 minutes plus time for transitions)
- 2:30 Break (stay in character, feel out alliances with like-minded parties)
- 2:45 "Wearing Their Shoes" exercise (45 minutes)
 - Parties are paired up with others with potentially conflicting interests, listen to other's interests, state them back to other party then switch and do same in reverse
 - Party A (multiple speakers OK but **an individual other than person who delivered opening statement should take the lead**) explains interests (not positions) to party B uninterrupted while Party B takes notes (5 minutes);
 - Party B (multiple speakers OK but **an individual other than person who delivered opening statement should take the lead**) reiterates to A uninterrupted (5 minutes);
 - Joint discussion solely to clarify Party A's interests (**a third person from Party A** should take the lead) (5 minutes);
 - Switch and do same in reverse (**B explains interest, A reiterates, B clarifies**) (15 minutes)
 - Then break until end of 45 minute time period (stay in character, consult informally with potential opponents)
 - Pairings:
 1. USA-China
 2. India-EU
 3. Brazil-Tuvalu
 4. Russia-SA and Lesotho (SA and Lesotho should participate as a unit for purposes of this exercise)
- 3:30 "Speed Dating" exercise (45 minutes)
 - Each party is assigned two or three pairings at random. Each party meets in caucus to decide what questions to ask each of its paired parties, designed to clarify the paired

parties' positions or interests (8 minutes). They then go to their first round. In each round, the **first party asks the second party questions** and the **second party responds** (5 minutes; multiple speakers OK); **the two parties reverse roles** and repeat the process (5 minutes; multiple speakers OK). The parties then switch to their next round and repeat the process. Each round takes ten minutes. Because we have an odd number of parties, one party will sit out each round.

- Pairings, round 1:
 1. Tuvalu-India
 2. US-Lesotho
 3. Russia-Brazil
 4. South Africa-China
 - EU sits out
- Pairings, round 2:
 1. Tuvalu-EU
 2. US-India
 3. Russia-Lesotho
 4. South Africa-Brazil
 - China sits out
- Pairings, round 3:
 1. Tuvalu-China
 2. US-EU
 3. Russia-India
 4. South Africa-Lesotho
 - Brazil sits out
- 4:15: Chair's concluding remarks
- 4:30 Adjournment

Day 2

Objective:

- Pursue consensus on way forward (Agenda item 5)

Plan:

- 1:30: Chair's opening remarks (5 minutes)
- 1:35: **Opening statements by parties on Commitments and MRV** (30 minutes: **1 speaker per party**, 2 minutes each x 9 parties = 18 minutes plus time for transitions; a fourth person from each party must take the lead)
- 2:05 Plenary discussion of Mitigation Commitments and MRV, moderated by chair
 - Note: Chair may suspend meeting at any time, on his own motion or on the motion of a party, to allow for informal consultations or health break
- 4:15: Chair's concluding remarks, including delimitation of issues for discussion on Day 3
- 4:30 adjournment

Day 3

Objective:

- Pursue consensus on remaining issues; agree on report of session (Agenda items 5-8)

Plan:

- 4:45: Chair's opening remarks (5 minutes)
- 4:50: **Opening statements on remaining issues** as delimited by chair the previous day (30 minutes: **1 speaker per party**, 2 minutes each x 9 parties = 18 minutes plus time for transitions)
- 5:20: Plenary discussion of remaining issues, moderated by chair
 - Note: Chair may suspend meeting at any time, on his own motion or on the motion of a party, to allow for informal consultations or health break
- 6:45 Adoption of Draft Report of the Session, moderated by chair of Drafting Committee with assistance of Chair
- 7:15 Other business
- 7:30 Chair's concluding remarks
- 7:45 Adjournment

3. General Instructions and Guidance

Information-gathering

Before the in-person phase begins, you should start to assess where your party's interests lie with respect to other parties'. It is important not to ignore, minimize or suppress interests or positions that diverge from your party's, since they will not stay "buried" and must be dealt with to ensure a successful and lasting agreement. It is equally important to identify and monitor positions or interests that are in harmony with yours. You should ask not only "what information do I have?" but also "what information am I missing?"

You should continue to **gather information about other parties' interests and positions** throughout the negotiation. Like other aspects of negotiation, assessment of other parties' interests is fluid, requiring continual attention to and application of new information. There are various sources of such information: your own research; parties' statements during the meeting; and informal consultations with other parties. The Chair will employ certain techniques designed to help you identify and understand other parties' interests, including the "Wearing Their Shoes" and "Speed Dating" exercises.

The information-gathering portion of the negotiation is termed the "integrative" phase of bargaining. This phase allows parties to investigate whether and how the resources available to be bargained over are related to each other, and whether and how certain resources may be made available that otherwise would not be.

The main questions you should ask yourselves in this phase are: what are other parties' positions, and more importantly, their interests behind these positions? This is not simply a matter of asking the other party, "is this your position?" and "what are your interests behind that position?" Although at times these questions may be called for, you will usually benefit from asking more revealing questions.

You should prepare questions in advance for the parties with whom you are paired in the "Speed Dating" exercise, although you should be prepared to modify these questions in light of information gathered during the negotiation itself. Preparing questions for other parties beforehand can increase your chances of eliciting all the information you need, and enhance your clarity, confidence and credibility in the negotiations. This type of questioning is not a cross-examination. Your questions should be precise enough to prevent evasion, but should be exploratory rather than leading.

You should answer other parties' questions fairly and accurately while being careful not to reveal information that would impair your party's prospects for success in the distributive phase of bargaining. You should not intentionally mislead or misinform other parties.

Coalition-building

One objective of information-gathering is to forge alliances that might help to advance your interests in the negotiation. **You should explore ways to formulate common positions with other parties.** Three of the parties to this exercise are present in a representative capacity: Belgium (European Union), Lesotho (Least Developed Countries) and Tuvalu (Small Island Developing States). They have a mandate to represent the collective interests and positions of their respective groups.

Aside from these specific mandates, you should be alert to the following real-world groups in the international climate change negotiations and the possibilities they present for forging common fronts (the relevant parties are listed in parentheses after each group):

- The African Group (Lesotho, South Africa)
- The BASIC group (Brazil, South Africa, India, China)
- The G-77 group of developing countries (Brazil, China, India, Lesotho, South Africa, Tuvalu)
- LDCs (Lesotho, Tuvalu)
- The Umbrella Group (Russia, US)

Initial offer(s)

Another task to undertake before the in-person phase begins is to **determine what your initial offer will be.** The opening statements on the first day provide one avenue for communicating this. In determining your initial offer, you should ask yourselves:

1. Do you want to make an initial offer within or outside the pre-identified zone of potential agreement (ZOPA)?

2. Do you want to attempt to “anchor” the negotiation?
3. Do you want to make separate offers on all your positions or make a consolidated offer?

1. *The ZOPA.* This point speaks to the gamesmanship involved in a negotiation: what kind of statement do you want your offer to make? How will other parties react to such an offer?

2. *Anchoring.* To anchor a negotiation means to be the first to put forward an offer regarding a specific position. The advantage and disadvantage to this is that the result of most negotiations has been shown to be close to where the anchor was “dropped”. If a party feels that it has enough information, and is confident enough in the validity of that information, then choosing to anchor could work in its favour. If a party anchors without enough information, though, it could expose them to a loss compared with what was potentially available through the negotiation. Opportunities to anchor the present negotiation are limited by the fact that each party will make an opening statement in a fixed order.

3. *Consolidation.* Positions may be dealt with on their own or negotiated in conjunction with other positions. You may wish to make a consolidated offer if your positions on two or more questions are near opposite ends of the ZOPA, or if you are willing to make concessions on certain positions so long as certain of your other positions prevail.

Dress

No particular dress is expected or required.

Protocol and procedure

The meeting will be conducted in an informal manner and the usual rules of diplomatic protocol will not be observed. Nevertheless, you should observe a degree of formality and decorum one would normally expect in an intergovernmental meeting. You should be polite and respectful at all times. You should address other participants by their party name, e.g., “China,” “the delegate from China” or “Mr./Ms. X from China”. You may refer to other members of your own delegation by their last names, e.g. “my colleague Mr./Ms. X”. You should address the chair as “the Chair” or “Mr. Chair”. In private discussions within your own delegation, you may of course call each other by your first names. In private discussions with members of other delegations, you may use whatever form of address seems appropriate, keeping in mind the diplomatic setting. “Listen, mate,” is probably inappropriate.

No specific rules of procedure will apply. The Chair will apply and participants are expected to observe common-sense norms for meetings, including waiting to be recognized by the Chair, speaking only to the current agenda item, and refraining from interrupting or speaking over each other. Points of order will be recognized in priority to other points, but should be raised sparingly. The chair may impose time limits on speakers.

To indicate a desire to speak, you should place your name card vertically on the table or raise it. Each delegation will be supplied with a single name card, which should be returned to the Chair at the end of each session. Only one person from each delegation should speak when a delegation is given the floor. Other members of the same delegation should await their own turns.

The Chair may make procedural rulings as needed. Once made, participants are expected to respect such rulings.

Staying in character

From the moment the Chair opens the meeting each day until the close of that day's session, you must stay in character. Observing the formalities described above helps you to avoid slipping out of character. You are also encouraged to stay in character during relevant communications with members of other delegations outside class time, although this is not required.

Assessment criteria

Your performance in the in-person phase of the negotiation exercise will be evaluated on an individual basis, against the following criteria:

- **Knowledge:** demonstrated knowledge of relevant issues, interests, positions and developments in the real world of international climate change negotiations, including but not limited to knowledge of your own party.
- **Realism:** fidelity to your party's real world interests and positions, and sensitivity to relevant political constraints and opportunities in the real world. The positions you take in the negotiation exercise should reflect your party's views and interests reasonably accurately. While you need not follow its previous positions slavishly, you should only take positions that are believable.
- **Creativity:** ability to think "outside the box," discover room for agreement where none was thought to exist, propose innovative solutions, and generate new insights.
- **Constructiveness:** demonstrated willingness to engage in dialogue with a view to achieving mutually acceptable outcomes; respect for all participants' views, interests, and right to express themselves. Because this is a simulation, you are expected to demonstrate respect for your classmates at all times and observe the decorum one would expect in international diplomacy.
- **Participation:** effective, active participation in all aspects of the exercise.
- **Conformity to the exercise rules:** observance of the rules and expectations set out in the preceding sections (e.g. completing assigned tasks; staying in character; observing decorum).

Some of these criteria may be in tension with each other. They are not assessed separately. Rather, you will be assessed in a holistic manner against all criteria.

Relation to written assignment

The written assignment is intended to help each group prepare to participate effectively in the in-person phase of the negotiation exercise. It is your plan for how to approach the negotiation. It should inform the positions you take and tactics you employ in the negotiation. You are not, however, bound by anything contained in the negotiation plan, including the negotiating positions outlined therein.

4. Advance Planning Checklist

Have you (as a delegation):

- Assigned your domestic governmental roles to all members (see written assignment instructions)?
- Selected someone to serve on the drafting committee?
- Selected someone to deliver the opening statement on Day 1?
- Selected **someone else** to take the lead in presenting your interests in the Wearing Their Shoes exercise?
- Selected **someone else again** to clarify your interests in the Wearing Their Shoes exercise?
- Selected someone to reiterate the other party's interests in the Wearing Their Shoes exercise?
- Prepared questions in advance for each party you are paired with in the Speed Dating exercise?
- Prepared questions in advance for other parties (recommended)?
- Decided who will ask the questions of which parties in the Speed Dating exercise (multiple speakers OK)?
- Decided who will answer the questions from which parties in the Speed Dating exercise (multiple speakers OK)?
- Selected someone to deliver opening statement on Day 2 (Commitments and MRV)?
- Selected someone to deliver opening statement on Day 3 (remaining issues)?
- Gathered information about other parties' positions and interests?
- Selected someone with responsibility to investigate the other parties' interests and positions (see written assignment instructions)?
- Explored ways to formulate common positions with other parties?
- Determined what your initial offer will be?

Note: multiple roles may be assigned to the same person unless specified otherwise.