



Reflections on the Berlin Mandate

PROCESS AND SUBSTANCE

Discussion Note

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The Berlin Mandate, adopted during the early hours of 7 April 1995, marked the end of the first Conference of Parties (COP 1) to the UN Framework Convention on Climate Change (UNFCCC) in Berlin, Germany.¹ The Mandate was one of the most important decisions of the COP, paving the way for the negotiation of the Kyoto Protocol.²

As Chief Negotiator for Sweden, I participated actively in high-level informal consultations before the Berlin COP. During the COP, I chaired a high-level working group on the Berlin Mandate, which was established at the very beginning of the conference and worked all through, with meetings practically every day. My reflections in this paper seek to provide an insider's view of the Berlin Mandate process, and draw lessons for the ongoing negotiations for a post-2020 climate regime.

Background

COP 1 was tasked with reviewing the adequacy of commitments for Annex I Parties, and taking appropriate action.³ It was expected that the review would conclude that the commitments were inadequate, and the Alliance of Small Island States (AOSIS) had already presented a proposal for a Protocol that would require Annex I Parties to limit their emissions by 20 per cent by 2005.

In preparation for the Berlin COP, the German government established an informal, limited group of high-level officials from key countries, known as the "Berlin Group". This group had three or four meetings before the COP to deal with a number of issues on the COP agenda, including consideration of the AOSIS proposal. After lengthy discussions, it was clear that it would be impossible to agree on a Protocol at COP 1. The informal group concluded that COP 1 should concentrate on "agreement on a process to enable it to take appropriate action for the period beyond 2000, including strengthening the commitments by Annex I Parties".⁴

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Negotiating the Berlin Mandate at COP 1

I was asked if I could chair the high-level special working group on the Berlin Mandate, and after some hesitation I accepted. As far as I can recall, there was no formal mandate for the group beyond the language of the UNFCCC itself with its reference to “adequacy of sub-paragraphs 4.2 a) and b)”, also known as “adequacy of commitments”.

The first meeting of the working group was quite chaotic. All countries wanted to participate, and the meeting room was overflowing. It was obvious that the negotiations would not work in this setting, and the group had to be smaller. Angela Merkel, who was then German Minister of Environment and hence Chair of the Conference, used great skill to get agreement for a smaller negotiating group with limited but balanced participation from all regions, consisting of 25 to 30 countries and the EU.

The group held several long meetings with very open discussions. Many countries took the floor, but initially the G77 (with Philippines as chair), China, Samoa for AOSIS, the US and EU took centre stage. It was a difficult negotiation, with relatively frequent crisis situations. After about a week the G77 split, presumably because of the widely diverging views of AOSIS and the oil-producing countries – a rare occasion when G77 cohesion would break. A new “Green Group” appeared, with India, Brazil and China as main representatives. The Philippines continued to attend, but did not participate very actively thereafter. The Green Group represented about 35 countries in the beginning, but grew to more than 70 towards the end.

The discussions in the working group were generally constructive, and the working group was able to reach satisfactory solutions on all except two issues, which were clearly of a political nature: the question of “targets and timetables”, and the continued exemption of new commitments for non-Annex I countries. It was decided that I should report these problems to the Ministers. Upon this report, Minister Merkel took over and conducted a successful negotiation during the last night of the COP by acting as a go-between for Annex I and non-Annex I Parties, which were assembled in different rooms.

Further preparations for the Kyoto Protocol and its implementation

COP 1 established an Ad hoc Group on the Berlin Mandate (AGBM) under the Chairmanship of Ambassador Raúl Estrada of Argentina, and this group started negotiations without delay. I did not participate in that negotiation myself, since I had become involved in a number of other negotiations at the time, particularly related to environmental questions in the Baltic Sea region. Nor did I participate in COP 2 in Geneva in July 1996. I came back to the climate negotiations in early 1997, leading the Swedish climate team for COP 3 in Kyoto, and stayed on until COP 6 bis in July 2001 (the year that Sweden held the EU Presidency). This phase of negotiations was not easy, but it paved the way for filling in the details of the Kyoto Protocol through the 2001 Marrakech Accords, and for the final entry into force of the Protocol.

Lessons from the Berlin Mandate: A personal assessment

The Berlin Mandate was successful in establishing a process that resulted in the preparation of, and agreement on, a legally binding Protocol in the short period of two and a half years. To a great degree, this was due to the skills of Ambassador Estrada as Chair. But as the UNFCCC prepares for the decisive COP in Paris in late 2015, it is worth considering the current process through the prism of the Berlin Mandate.

1 The role of the Ministerial level, and the political importance of the Berlin Mandate

It was understood that the Berlin Mandate would be negotiated along the lines of the AOSIS proposal. Against the background of UNFCCC Article 4.2 (d) and recognition of the lack of adequacy of commitments under the UNFCCC, it was agreed that a Protocol would be the outcome of COP 3 in Kyoto, in 1997. The example of the Montreal Protocol and its relation to the Vienna Convention was clearly present in the minds of negotiators.

In the previous section on the negotiation of the Berlin Mandate, I have shown that the active role of Minister Merkel and her ministerial colleagues was decisive in achieving agreement on the Berlin Mandate. But the efficiency of the ministerial negotiations was enhanced by the thoroughness of the negotiations at the official level, which had already settled major parts of the text and defined the major issues that needed political solutions. These included, in particular, “targets and timetables” and the issue of commitments for non-Annex I Parties.

The status of the Berlin Mandate was most probably enhanced by the symbolic fact that this was the first COP, and that the Mandate was effectively Decision 1/CP.1. It underlined the importance of the agreement by Ministers on central sensitive points, which were not to be reopened in Kyoto.⁵ These elements gave the Berlin Mandate a political impact well beyond that of a roadmap or a list of issues to be considered at later meetings of a negotiation process.

2 The Chair as mediator

In a multilateral setting, I think a non-partisan Chair who shares the trust of all Parties is the most effective mediator. Therefore, I am not enthusiastic about the prevailing rule of appointing co-chairs, one from a developed country and another from a developing country. However, I recognize that the present system is now well established and that a change is unlikely.

Nevertheless, I think the co-chairs have a common responsibility as non-partisan mediators. Furthermore, I believe that the role of mediator is strengthened if the Chair/Co-Chairs stay in place over a longer period. In this respect, the Kyoto experience was particularly interesting: Ambassador Estrada was chairing the AGBM, and then became chair of the negotiations in Kyoto. (The Japanese Minister of Environment was the formal “political” Chair, but did not participate in negotiations on substance). The examples of Ambassador Estrada, and also of Tommy Koh who chaired the main negotiating committee of the 1992 UN Conference on Environment and Development, show the efficiency in continuity with the same Chairs during preparations and the decisive multilateral Conference.

3 Negotiating in limited groups

In the early UNFCCC negotiations, there was general acceptance of the need for the establishment of limited negotiating groups, not only for specific technical issues but also for politically sensitive problems. The final negotiation of the UNFCCC is an example – it was conducted in a limited group

that was skillfully chaired by Jean Ripert of France, and the outcome of the small group led to an agreement in the full Intergovernmental Negotiating Committee. The problem of transparency was raised, but frequently chairpersons used the method of calling special meetings of “regional and interest groups”⁶ to receive information and give advice.⁷

I recognize that some of these lessons of the past may be difficult to apply today. The scope of the negotiations has expanded, the number of negotiators has increased, and the group system is changing. But I do believe that consultations in a manageable setting, offering a certain amount of confidentiality and testing of ideas, continue to be necessary, not least as an instrument for the chair/co-chairs.

4 Could a Berlin Mandate-type method be applied to the negotiations for a post-2020 climate regime?

Preparations for COP 20 are already well underway. It may seem difficult to apply the lessons of the Berlin Mandate in the short time available – unless negotiators agree to isolate certain issues in advance, and agree that they will not be reopened in Paris. It may then become possible to negotiate a “Lima Mandate” that indicates fundamental agreement on some issues, and includes procedural recommendations for the conduct of business at COP 21.⁸ Other commentators have endorsed the benefits of such a “staged approach”.⁹

The UNFCCC opened a window of flexibility by introducing the notion of adequacy of commitments, stating that adequacy should be reviewed “*at regular intervals determined by the Conference of Parties until the objective of the Convention is met*”. The Berlin Mandate made the notion of “adequacy” operational in the negotiations. A simple reference to the Berlin Mandate might, therefore, open new dimensions. Adequacy in the sense of the objective in UNFCCC Article 2 is no longer an abstract concept, but an urgent reality.

Furthermore, UNFCCC Article 4.2 (d) does not only introduce the notion of periodic reviews, but stipulates that “*such reviews shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information*”. The Fifth Assessment Report of the Intergovernmental Panel on Climate Change will be completed in the autumn of 2014, and there is no doubt that its findings will bear heavily on COP 21.

Reference to the Berlin Mandate and the notion of adequacy may also open new avenues of reflection on international law and in particular the notion of “legally binding”. The discussion today deals with the distinction between “national commitments” and “international commitments”, at present using the word “contributions”. This seems to indicate certain flexibility, linked to the concept of measurement, reporting and verification established in the Bali Action Plan of 2007.

A final note

I have taken the Berlin Mandate as a point of departure for opening a broader discussion in the perspective of the post-2020 climate regime. It is based on my conviction that we are faced with an exceptional problem, which requires exceptional efforts of negotiation and evolution of international law. The main purpose of the paper is to stimulate ideas, objections, and thoughts, which might be helpful in the process of crafting a long-term climate agreement.

Endnotes

¹ UNFCCC (1995). *Report of the Conference of Parties on its First Session held at Berlin, from 28 March to 7 April 1995*. Decision 1/CP.1. <http://unfccc.int/resource/docs/cop1/07a01.pdf>

² For more details of the process and contents of the Protocol, see for example Grubb, M *et al.* (1999). *The Kyoto Protocol, A Guide and Assessment*. Royal Institute of International Affairs, London.

³ UNFCCC Article 4.2 (d), which states: *The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met.*

⁴ UNFCCC (1995). *Report of the Conference of Parties on its First Session held at Berlin, from 28 March to 7 April 1995*. <http://unfccc.int/resource/docs/cop1/07a01.pdf>

⁵ It is worth mentioning the precedent of the final meeting of the Preparatory Committee for the 1992 UN Conference on Environment and Development (UNCED), when Chair Tommy Koh managed to get an agreement on the Rio Declaration on Environment and Development with the purpose of not reopening the negotiation in Rio. His effort was successful, and UNCED adopted the Declaration without changes.

⁷ Regional groups were those already established in the UN, whereas interest groups included the G77, AOSIS, the Organization of the Petroleum Exporting Countries, Least Developed Countries, the EU, OECD, Nordic group, etc. Major countries, such as US, Russia, Japan, China, India, Brazil, as well as countries that were particularly interested in a particular item to be discussed, were also invited. I also used the method extensively when chairing the negotiation of the UN Convention to Combat Desertification.

⁸ One interesting feature of the Berlin Mandate was that it included both substantive and procedural points.

⁹ For instance, see Müller, B. & Höhne, N. (2013). *A Staged Approach: The sequencing of mitigation commitments in the post-2020 ADP negotiations*. <http://jusharma.wordpress.com/2013/11/06/a-staged-approach-the-sequencing-of-mitigation-commitments-in-the-post-2020-adp-negotiations-2/>