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# UNFCCC – THE FUTURE OF THE PROCESS

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## REMEDIAL ACTION ON PROCESS OWNERSHIP AND POLITICAL GUIDANCE

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# UNFCCC – The Future of the Process

## Remedial Action on Process Ownership and Political Guidance

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## Executive Summary

### Cancun

A senior diplomat – being British not prone to emotional exaggerations – described the final night of the recent Cancun climate change conference as ‘cathartic’, a healing experience for the multilateral climate change process. Indeed, even in the formalistic language of the negotiations, it was remarkable how practically all speakers in the final plenary felt the need to open their intervention with a note of appreciation for the inclusive and transparent manner in which the Mexican Presidency had handled not only the process at the COP, but also the consultations in the year leading up to it. Similar sentiments were expressed by civil society stakeholders, during and after the conference: ‘After the debacle of COP 15 a year ago in December 2009 in Copenhagen many were losing faith in the UNFCCC as being too difficult to achieve results amongst so many countries negotiating together and arguing for a smaller group of countries taking the decisions. The Cancun agreement will do much to restore faith in the UNFCCC process which is the only forum where the poorer countries are able to participate.’<sup>1</sup>

The process may be out of intensive care, but it is not yet out of hospital, and it clearly does need some safeguards to prevent a relapse. The following Report suggests a number of near-term measures that could be adopted immediately for this purpose, primarily to strengthen the process ownership and to enhance political guidance.<sup>2</sup>

### Diagnosis

Over the last few years, the UNFCCC Process has become more and more problematic, not to say dysfunctional, in that certain elements that have been crucial to its functioning – such as the use of small negotiating groups (e.g. ‘friends of the chair,’), or ‘chairs’ texts’ – became so tainted that they were no longer deemed admissible. Many climate negotiators will not be familiar with other UN processes, or indeed will have joined only recently, and may think that this permeates the whole of the UN system, or that it is the norm for the UNFCCC. Nothing could be further from the truth!

A Chair/President’s text, for example, can catalyse an outcome, but only if it is properly introduced – if the Parties have had the time to digest and comment on it. Take the text put together by the Dutch Presidency under Jan Pronk in 2000. There were extensive bilateral consultations on this text in the run up to COP 6 in The Hague. Obviously, it was not possible to consult each and every one of the 190 or so Parties in that manner, yet the other Parties and the negotiating groups needed to be given time to consider the text during the COP. Unfortunately it was only submitted late in the evening of the day before the Conference was to close, which was too late. As a result, the Conference had to be suspended and reconvened in Bonn in July as ‘COP 6 bis’, where the text was duly adopted. According to a private communication by one of the key protagonists at the time, what made the difference were extensive consultations with small informal groups, the use of the Vienna setting, and, in the final phase of the conference, a small group – the members of which were designated by the different negotiating groups.

As to the use of ‘friends of the chair’, one of the most respected senior negotiators and founding father of the Rio Conventions, Swedish Ambassador Bo Kjellén,<sup>3</sup> has recently written an ecbi Policy Brief detailing their usefulness.<sup>4</sup> He not only describes the practice in the context of the Convention to Combat Desertification but, more importantly, in the UNFCCC under ‘normal’ circumstances, such as the negotiations in the Preparatory Committees for the Rio Conference and the UNFCCC, where the respective chairs convened small groups known as ‘Chairmen of Regional and Interest Groups’.

In short, the rejection of the use of small (negotiating) groups and chair’s texts is by no means the norm, but an abnormality created by the mismanagement of the Process in the run up to and at Copenhagen. Cancun managed to make good some of the damage done, but to get the Process back to normality, further remedial action will be required.

<sup>1</sup> Saleemul Huq, ‘Cancun climate talks end in success’, *New Age Op Ed*, Dhaka, Bangladesh, 17 December 2010, [www.newagebd.com/2010/dec/17/oped.html](http://www.newagebd.com/2010/dec/17/oped.html).

<sup>2</sup> It is hoped that this will be followed by a sequel on longer-term systemic enhancements of the Process.

<sup>3</sup> **Ambassador Bo Kjellén** worked in the Ministry for Foreign Affairs of Sweden between 1957 and 1990, mainly with multilateral questions. He was ambassador to Hanoi 1974–7 and to OECD/UNESCO in Paris 1985–90. In 1990 he joined the Ministry of Environment as Chief Negotiator, heading Swedish delegations in the Rio process and climate negotiations until 2001. He chaired the Negotiating Committee for the UN Convention to Combat Desertification 1993–7.

<sup>4</sup> Bo Kjellén, *Friends of the Chair, or the Chair’s (true) friends? The Art of Negotiation in the Rio process and climate negotiations*, ecbi Policy Brief, April 2010. [www.eurocapacity.org/downloads/ecbiFOCPolicyBrieffinal.pdf](http://www.eurocapacity.org/downloads/ecbiFOCPolicyBrieffinal.pdf).

## Remedial Safeguards

### *Process Ownership*

#### Small Negotiating Groups – Inclusiveness through Legitimate Representation

In order to restore trust in the use of small groups or bodies that perform a 'political' function – i.e. a function such as the drafting of language that requires sanctioning by the COP/CMP – the process of convening must ensure legitimate representation and inclusiveness. An analysis of the modalities used in electing members of small UNFCCC bodies such as the COP Bureau suggests that negotiating groups be invited by the convener to nominate representatives according to the following 'politically balanced' key:

• G77+China	9
• European Union	3
• Umbrella Group	3
• Alliance of Small Island States	2
• Least Developed Countries	2
• Environmental Integrity Group	1
• Non-Aligned ('Others')	1

This is not to say that conveners should not have the flexibility to invite certain Parties on their own initiative, but merely that the core of the convened small group should be self-selected by UNFCCC negotiating groups according to the proposed politically balanced key.

#### Informal Meetings –Inclusiveness through Transparency

Informal meetings convened under the Process with the purpose of facilitating informal exchanges of views between Parties –and other stakeholders– also need to avoid being (perceived as) non-inclusive. There are two complementary ways in which this can be achieved, concerning physical participation on the one hand, and virtual participation on the other.

*Enhancing Physical Participation.* One way of enhancing the inclusiveness with respect to physical participation is to **set aside a number of places** at the meeting to be allocated by way of a call for expressions of interests to all Parties (and relevant recognized stakeholder groups), as currently practised in the context of Workshops organized by the UNFCCC Secretariat.

*Enhancing Virtual Participation I: Proceedings.* One option here is simply to have the (main) sessions of the meeting publicly webcast. If that is seen to inhibit frankness, an alternative would be a 'Virtual Vienna Setting', where the webcast is made available only to those Parties (eligible stakeholders) who have expressed interest but are unable to participate physically.

*Enhancing Virtual Participation II: Documentation.* The most basic step towards enhancing the transparency of informal meetings is to make available all relevant documents (list of invitees, agenda, background documents) via a dedicated webpage (with a hyperlinked announcement) on the UNFCCC website.

#### Political Guidance

High-level segments need to be structured flexibly so as to accommodate both the needs of the political participants and of the negotiating Process. High-level attendees at sessions should only be engaged in negotiations as a last resort.

To accommodate the needs of the political participants, the HLS should provide them with a number of optional **'extracurricular' activities**, such as the opportunity (i) to **address their domestic constituencies** by giving the traditional short statements, and (ii) to engage in **informal exchanges on domestic experiences** in the format of, say, thematic round tables.

Any direct high-level engagement in the negotiating process should be at the ministerial level, and should involve choices between options presented by the technical negotiators in a **very small number of 'crunch issues'**. Ministers themselves should not be involved in drafting language, a task that should be left to their technical negotiators.

Negotiations at the ministerial level should follow the same practices as used at the technical level, including legitimate small groups. Key to the two-level negotiations is that they alter sequentially, with prescribed briefing and debriefing sessions between the technical and the political negotiators.



## Process Ownership

### Legitimate representation and virtual participation as answers to the questions of inclusiveness and transparency

#### 1. Small Negotiating Groups – Legitimate Representation

##### 1.1. Choosing Representatives: The Copenhagen Experience

The Copenhagen Accord was disowned by the COP not least because of the opacity and exclusiveness of the way in which it was put together by a group of leaders ('Friends of the Chair') chosen by the Danish prime minister. Forming a small group of leaders during a summit meeting was, per se, a high risk endeavour, but the manner in which it was done ensured that it backfired. The consequence is a level of distrust in 'small groups' that threatens all progress in the current negotiations.

'If you're not at the table, you're on the menu'<sup>5</sup>

It is extremely difficult to draft or negotiate in plenary, particularly if the majority of the people involved are not full-time negotiators. The alternative, that is small groups – which used to be commonplace in the negotiations (including 'friends of the chair') – have become problematic, not to say unacceptable. Many Parties have been, and are still, feeling that the only way they can avoid 'being on the menu' is by literally sitting at the table. There is, in other words, a widespread sentiment that the only way to safeguard one's interest is to conduct the Process in plenary.

How did we get to this? As indicated above, separating out a small group of leaders *during a summit* probably would not have worked however it was done,<sup>6</sup> but the main problem was that many of those who were not invited did not just feel slighted, but genuinely excluded from the process. Why? After all, did not the Copenhagen Friends of the Chair (FOC) group contain representatives from most of the formal and informal groupings?<sup>7</sup> The problem was that while some of them were invited to represent these groupings, they generally did not have the mandate to speak/negotiate on behalf of these constituencies. In other words, the FOC lacked legitimacy, because legitimate representation cannot be ensured through self- or third-party selection of the representatives. Legitimate representation requires **the mandate from the represented** and not from the convener.

A key to reducing the detrimental impacts of Copenhagen on the Process is therefore to ensure that **all representation is legitimate**, that those who are being represented **choose their own representatives**, and no one else.

##### 1.2. Who should be represented?

Apart from the question of who should **choose representatives**, the issue of legitimate representation also covers the question of who should **be represented** in the first place. To be more precise, who **should form the constituencies** that are allowed to send representatives?

Traditionally, there are two models that have been used (often in parallel) to define such constituencies, namely with reference to geographical contiguity ('regions') or to certain pertinent interests ('interest

<sup>5</sup> Quote attributed to US diplomat Charles W. Freeman, *The Week*, 19 June 2010, p. 21.

<sup>6</sup> Break-out groups (in larger meetings) can work with negotiators, even with ministers, but not with heads of state or government, who are very likely see a failure to be invited as a slight on their countries. Another reason why leaders should not be directly involved in negotiations (see below).

<sup>7</sup> Unfortunately not from the ALBA group.

groups<sup>8</sup>). Indeed, the UNFCCC Process has used both models, in the form of the UN Regions, as well as in recognized interest groupings, such as the Alliance of Small Island States (AOSIS), the Least Developed Countries (LDC) Group, the Environmental Integrity Group (EIG), the Umbrella Group, OPEC, and most recently the Arab Group.

### 1.2.1. Regionally Balanced Models

Following general UN practice, **elections of office holders** and members of bodies such as committees and expert groups under the UNFCCC (and its subsidiary bodies) are based on geographical constituencies, namely the five UN regions: **Africa, Asia, GRULAC** (Latin America and the Caribbean), **Eastern Europe** (EE), and **WEOG** (Western Europe and Others Group).

Although defined largely in geographical terms,<sup>8</sup> these regions can also roughly be divided along economic lines into developing country (Africa, Asia, GRULAC) and developed country (EE, WEOG) constituencies. In the context of the Convention, the former are also sometimes identified as 'non-Annex I regions',<sup>9</sup> because they contain (almost<sup>10</sup>) only and the vast majority<sup>11</sup> of non-Annex I Parties.

However, there have been certain idiosyncrasies in the UNFCCC elections from the very outset, when compared with, say, the modalities of elections to the UN Economic and Social Council (ECOSOC), often seen as the UN role model in this context. Unlike the ECOSOC elections, which involve **only** regional constituencies, UNFCCC elections generally involve what might be called '**political**' and '**inclusion**' **constituencies**.

The constituencies and the number of seats allocated to them in the ECOSOC and in the UNFCCC COP **Bureau** (Bureau), the CDM **Executive Board** (CDM EB), the **Expert Group on Technology Transfer** (EGTT), and the **Adaptation Fund Board** (AFB), as well as two bodies to be established according to the Cancun Agreements, namely the **Transitional Committee** (TC) for establishing the Green Climate Fund and the **Technology Executive Committee** (TEC) are listed in the Appendix (Table 1). There has been a political negotiating group constituency – namely the Alliance of Small Island States (AOSIS) – in UNFCCC elections from the very beginning of the process. The creation of the Adaptation Fund witnessed the addition of a second such negotiating group constituency, the Least Developed Country (LDC) Group, with the same number of seats as AOSIS (see Table 1).

The fact that there are some small Annex I and non-Annex I enclaves in the different regions in need of some 'minority protection'<sup>12</sup> may have been the reason why, also from the outset, 'Annex I' and 'non-Annex I' were added as 'inclusion constituencies', or rather inclusion seats, both of which in parity.<sup>13</sup> Apart from having these additional constituencies, UNFCCC elections differ from the ECOSOC model also by generally allocating the same number of seats to each of the five regions.

The general advantage of (properly structured) 'regional' representation models is that they cover everybody once (and only once), and that they have a manageable predetermined number of constituencies (namely the regions). Their general drawback is that they are usually not homogeneous in their interests. In the

<sup>8</sup> The 'Others' in WEOG – Australia, Canada, Israel, New Zealand, Turkey, United States – are clearly not a geographical, but a political and economic construct.

<sup>9</sup> For example: 'Three members from each of the three regions of the Parties not included in Annex I to the Convention (non-annex I Parties) namely Africa, Asia and the Pacific, and Latin America and the Caribbean' [FCCC/AWGLCA/2010/L.7, *Annex IV: Composition and mandate of the Technology Executive Committee*, Paragraph 1.b.]

<sup>10</sup> The only exception is Japan which is part of the Asian region and Annex I.

<sup>11</sup> Only 11 (7 per cent of) non-Annex I Parties are not in these three regions.

<sup>12</sup> The fact that Japan was nominated by the Asia region to host COP 3 (Kyoto) shows that it is possible for a 'minority' member to be selected by the region. However, given the demographics, there clearly is a need for some protection.

<sup>13</sup> The cases listed in Table 1 where there is no parity between the stated numbers of Annex I and non-Annex I seats (i.e. EGTT and TC) are those where no specific allocation for the Annex I regions (EE and WEOG) is given.

context of small negotiating groups, this drawback is compounded by the fact that, since they are not negotiating groups, the majority of the regional groups do not have negotiating positions to be represented in the small group negotiations, and they do not have regular meetings during the negotiations (see Appendix Table 2.a). Their chief purpose is electoral.<sup>14</sup> In order to achieve the necessary transparency, small negotiating groups need to be able to report back to their constituencies on a regular basis during the negotiations. Therefore, unless they actually function as negotiating groups which develop internal positions (such as Africa), regional groups are ill-suited to serve as constituencies for selecting small negotiating groups.

### 1.2.2. UNFCCC 'Groups other than Convention Bodies'

In addition to the regional groups, the UNFCCC Process knows a number of 'interest groups' of varying character, ranging from the 27 member **European Union** (a Party in its own right),<sup>15</sup> to the loose coalition<sup>16</sup> of the **Umbrella Group**, which has no formal membership list.

The Daily Programme at Cancun, for example, contained a listing of (closed) meetings of *Groups other than the Convention and Protocol Bodies*. Apart from the Regional Groups, daily meetings were listed (see Appendix, Table 2.b) for the **Group of 77 and China** (G77+Ch), the **Alliance of Small Island States** (AOSIS), the **Group of Least Developed Countries** (LDC), the **Environmental Integrity Group** (EIG),<sup>17</sup> the **Coalition for Rainforest Nations** (CRN), the **Commission des Forêts d'Afrique Centrale** (COMIFAC),<sup>18</sup> the **Sistema de la Integración Centroamericana** (SICA),<sup>19</sup> the (Latin American Countries of) the **Cartagena Dialogue** (CD).<sup>20</sup> There were also less regular meetings by the **Alianza Bolivariana para los Pueblos de Nuestra América** (ALBA), and a group of **Highly Vulnerable Countries** (HVC, convened by Colombia).

At least one of these groups, namely the Cartagena Dialogue, was explicitly not intended to be a negotiating group.<sup>21</sup> Other groups which are negotiating groups, insofar as they have a long-standing tradition of regularly putting forward positions – namely the European Union, the Umbrella Group, or the Organization of Oil Exporting Countries (OPEC) – were not listed in the Cancun Daily Programme.

Fortunately, for the present purposes, the picture is actually less complicated than one might deduce from this listing. Apart from the EIG (and the non-negotiating Cartagena Dialogue), (most) of the members in all the other the groupings listed in the Daily Programme are developing country Parties, indeed G77+China members.<sup>22</sup> This is fortuitous for any conveners of small UNFCCC negotiating groups, because it opens up

<sup>14</sup> Indeed, the two meetings of the 'Annex I' constituency in Cancun were actually even labelled as 'Nominations'. Non-Annex I nominations are generally handled by the three non-Annex I regions.

<sup>15</sup> *The 27 members of the European Union meet in private to agree on common negotiating positions. The country that holds the EU Presidency – a position that rotates every six months – then speaks for the European Union and its 27 member states. As a regional economic integration organization, the European Union itself can be, and is, a Party to the Convention. However, it does not have a separate vote from its members.*

([http://unfccc.int/parties\\_and\\_observers/parties/negotiating\\_groups/items/2714.php](http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php).)

<sup>16</sup> **Umbrella group:** *A loose coalition of non-European Union developed countries formed following the adoption of the Kyoto Protocol. Although there is no formal membership list, the group usually includes Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine, and the United States.*

([http://unfccc.int/essential\\_background/glossary/items/3666.php#U](http://unfccc.int/essential_background/glossary/items/3666.php#U).)

<sup>17</sup> Republic of Korea, Lichtenstein, Mexico, Monaco, and Switzerland.

<sup>18</sup> Convened as 'Congo Basin countries'.

<sup>19</sup> [www.sica.int](http://www.sica.int)

<sup>20</sup> This category actually covers two distinct meetings, namely of the Cartagena Dialogue as a whole, on the one hand, and of its Latin American members, on the other. The Cartagena Dialogue is loose collectives of approximately 30 countries with common interests that found great value in co-ordinating closely throughout Cancun.

<sup>21</sup> **What the dialogue is not:** *The Dialogue is a forum for discussion and the exchange of views, and for exploring texts and options that might command widespread support. The Dialogue is not intended to challenge existing negotiating blocs.* [The Cartagena Dialogue For Progressive Action (Oct 2010)]

<sup>22</sup> The same is true for OPEC and the Arab Group. To be quite clear, however, there are exceptions. For example, AOSIS is not a proper sub-group of G77: Cook Islands, Kiribati, Nauru, Niue, and Tuvalu are in AOSIS but not G77. But the rest of AOSIS members (85 per cent) are.



the option of delegating the Herculean task of trying to find a mutually-acceptable representation among these groupings to the 'parent group', i.e. the G77+China. Concerning developed country representations, there are really only three contenders as relevant political constituencies ('negotiating groups'), namely the EU, the Umbrella Group, and the Environmental Integrity Group.<sup>23</sup> Is it possible to create a mutually-acceptable model for small negotiating bodies on the basis of these negotiating groups? This largely depends on the degree of inclusiveness one can achieve, and whether it is possible to come up with an acceptable allocation of seats between them. In both cases there are lessons to be drawn from the above-mentioned regionally balanced electoral models.

### 1.2.3. A 'Politically Balanced' Model

The first lesson from the UNFCCC electoral models is that the ratio of the seats allocated to the 'political representatives' of the regions – namely the EU and the Umbrella Group, on the one hand, and G77+China, on the other – should roughly be in proportion to the regions they represent, i.e. 2 : 3, and that there should be inter-regional parity, implying that the EU and the Umbrella Group should have roughly the same number of seats/representatives.<sup>24</sup>

The second is that there are certain groupings within G77+China which need to be explicitly included, namely AOSIS and the LDC Group, both with an equal number of representatives, but less than a full blown 'region'.

Thirdly, the regionally balanced models also suggest that it is important not to exclude anyone from being represented as a matter of design. While the five negotiating groups referred to in the previous two paragraphs cover most (89 per cent) of the Parties, they leave out the five member Environmental Integrity Group, and 16 Parties that do not belong to any negotiating group: three from Annex I,<sup>25</sup> and 13 from non-Annex I.<sup>26</sup> This is why the EIG, and a 'Non-Aligned' constituency to cover these 16 Parties, should also be included in a 'politically balanced' convening model, but with fewer seats than AOSIS and the LDCs (and not more than 10 per cent of the total number).

#### The minimal 'Politically Balanced' Model

G77+China*	9		
European Union**	3		
Umbrella Group**	3		
Alliance of Small Island States*	2		
Least Developed Countries*	2		
Environmental Integrity Group**	1		
Non-Aligned ('Others')	1		
	<b>Total</b>	<b>21</b>	
	* = <i>Developing</i>	65%	[62%]
	** = <i>Developed</i>	35%	[33%]
	<i>Non-Aligned</i>		[5%]

<sup>23</sup> The EIG does contain two non-Annex I members (South Korea and Mexico), but since both of them are also members of the OECD, it seems safe to categorize the EIG as a developed country grouping.

<sup>24</sup> It might be argued that because the EU represents more countries than the Umbrella Group it should have more representatives. However, that would fail to take into account that the EU is actually a negotiating bloc, meant to speak with one voice, whereas the Umbrella Group is likely to have a number of different, yet important, views that need to be represented. This is why there needs to be a balance between the two groups.

<sup>25</sup> Belarus, Croatia, and Turkey.

<sup>26</sup> Albania, Armenia, Azerbaijan, Georgia, Israel, Kazakhstan, Kyrgyzstan, Montenegro, Moldova, San Marino, Serbia, FYR Macedonia, and Uzbekistan.

The table above describes one such 'politically balanced' convening model for a group of 21 representatives. As a matter of fact it describes the smallest group for which the above-mentioned three lessons can be implemented.<sup>27</sup> While containing an equal number of developing and developed country negotiating groups, it preserves the key proportion of seats of the regionally balanced model, reflecting the overall ratio between developed and developing country Parties.<sup>28</sup> Note also that it allows the both the EU and the Umbrella Group to select all their key members – the Troika in the case of the EU, and Japan, Russia, and the US, in the case of the Umbrella Group – should they wish to do so.

To be quite clear, the model for convening small negotiating groups presented here is merely meant to be a rule of thumb and not a law to be slavishly adhered to. Conveners of small negotiating groups should, in particular, always have the flexibility to **invite groupings or Parties that reflect relevant interests to send (additional) representatives.**

## *2. Informal Consultations*

There is a tradition of COP Presidencies convening informal, often high-level (i.e. ministerial) consultations, such as the Geneva Dialogue on Climate Finance (2–3 September 2010).<sup>29</sup> They are not to be confused with formal high-level consultations, which will be the subject of the next section. The purpose of informal consultation meetings convened by the Presidency is to exchange ideas and information. It is **not** to negotiate.<sup>30</sup> The key issue is therefore not so much (political) representation as **transparency**. This is not to say that these consultations are not susceptible to being seen as non-inclusive. After all, financial and logistical constraints often mean that there is a limit to how many Parties can be invited. The problem is that they often fail to inform all Parties who wish to be informed, which has indeed led to a perception of opacity and exclusion that needs to be overcome.

### *2.1. Improved Inclusiveness through Expressions of Interest*

Current practice appears to be for the COP Presidency to convene such meetings and to decide more or less unilaterally on the list of invitees (although there is some recent indication of change<sup>31</sup>). The solution in this case is relatively straightforward. While the convener of such a meeting should retain the right to invite certain Parties as key to the deliberations, it should be straightforward to reserve a certain number of seats to be allocated through a call for expressions of interest to all Parties.<sup>32</sup> Finally, as these meetings are about the sharing of information and ideas, it would add to their transparency (and possibly quality) if they followed the Secretariat workshop practice of inviting the NGO constituencies to nominate a certain number of participants.

### *2.2. Virtual Participation*

The key problem of the current setting is a (perceived) exclusion due to a lack of transparency. It should, therefore, also be possible to reduce this problem considerably through virtual access. In a first instance, it

<sup>27</sup> For two further models, see Appendix, Table 3.

<sup>28</sup> The fact that G77+China ([www.g77.org/doc/members.html](http://www.g77.org/doc/members.html)) alone makes up 67.5 per cent of Parties, means that developing countries are actually under represented even in the regionally balanced models, where they have an average 60 per cent share of seats. But given the general acceptance of these models in the context of elections, a share of 63 per cent should also be acceptable for the present purposes, particularly since the 'grain' of the model is roughly 5 per cent (1/21).

<sup>29</sup> The reason for highlighting that particular event is that it is actually documented on the internet [www.bafu.admin.ch/gdcf](http://www.bafu.admin.ch/gdcf), which appears to be a very laudable exception (see Appendix, Table 4 for a list of the informal consultations organized by the Mexican Presidency elect in the run-up to Cancun). Indeed the lack of publicly accessible information is one of the issues that will be considered in this section.

<sup>30</sup> The crucial point here is that these meetings are convened by the COP Presidency. Negotiating groups are free to convene consultations meetings exclusive to their membership. The COP Presidency must be inclusive.

<sup>31</sup> In the context of a recent ministerial meeting, the convener made clear that Parties who were not invited would not be turned away if they were to turn up.

<sup>32</sup> Should there be more expressions than seats, then one could either allocate on a first come first served basis, or ask the regional coordinators to make the necessary selection.

should become common practice that all the documents that are sent to invited Parties (e.g. list of invited Parties, meeting agenda, commissioned background papers) are also made available on a dedicated website (accessible via the UNFCCC website).

This material should generally be publicly accessible, particularly in the case of background papers, which should actually be posted for public feedback/review. However, if some material is deemed not to be for public access, then it must be made available to all Parties (and eligible stakeholders) that have expressed their interest in participation.

As to the proceedings of the meeting, there is no reason why those Parties and eligible stakeholders who are interested but unable to attend should not participate virtually. While it may be technically too complicated to arrange for proper video conferencing facilities, it should be sufficient to have a webcast of the proceedings. If it is felt that a public webcast would somehow hamper the frankness of the meeting, it would be possible to opt instead for a closed '*Virtual Vienna Setting*' by making the webcast **available only to those Parties** (and eligible stakeholders) **who have expressed an interest in participating** but were unable to do so physically.<sup>33</sup> Whatever the rationale for excluding the general public from the proceedings, there is no justification to exclude Parties from participation at least virtually.

In sum, all relevant **documentation should be made available on a dedicated website**, either publicly, or at least to all Parties (and eligible stakeholders) that have expressed their interest in participating. In addition, the **proceedings should be webcast** and made available in the same fashion.

## Political Guidance

### – The need for flexibility and structure

There can be no doubt about the importance of political guidance for the Process. At the same time, it is clear that this guidance should ideally flow through the 'normal channels': leaders to ministers to negotiators. Indeed, it is unlikely that a lack of political guidance through these normal channels can be compensated for by direct political involvement in the negotiations at whatever level. Nonetheless, the prevailing idea that there can be situations where such direct political guidance during the negotiations is needed to 'unblock' the Process during a 'High-Level Segment' (HLS) may not be altogether wrong. Given this, the issue to be addressed here is: how to organize such HLSs in order to engage the political level (ministers, leaders) most productively during negotiations?

#### *3. Set speeches and round tables as 'extracurricular' activities*

While it is almost universally acknowledged that the traditional format of set speeches – either to plenary or in the context of 'round tables' – is of little, if any, use to the negotiating Process, there are good reasons not to dismiss this format out of hand.

Politicians need to communicate to their domestic constituencies, and the three minute speech format gives them a good platform to do so. This is why it should be kept, as an 'extracurricular' option, mainly for their own benefit. Another option that should be provided is a format for politicians to interact informally, to talk about domestic experiences. Copenhagen has been an eye opener to many of the attending politicians – particularly from the smaller developing countries – as to the importance accorded to climate change in other countries. This sort of awareness-raising activity should be encouraged.

<sup>33</sup> This could be done through a password protected web page on the UNFCCC website. Indeed, it would be possible to restrict access to certain pre-registered computers, thus making unauthorized access even less likely.

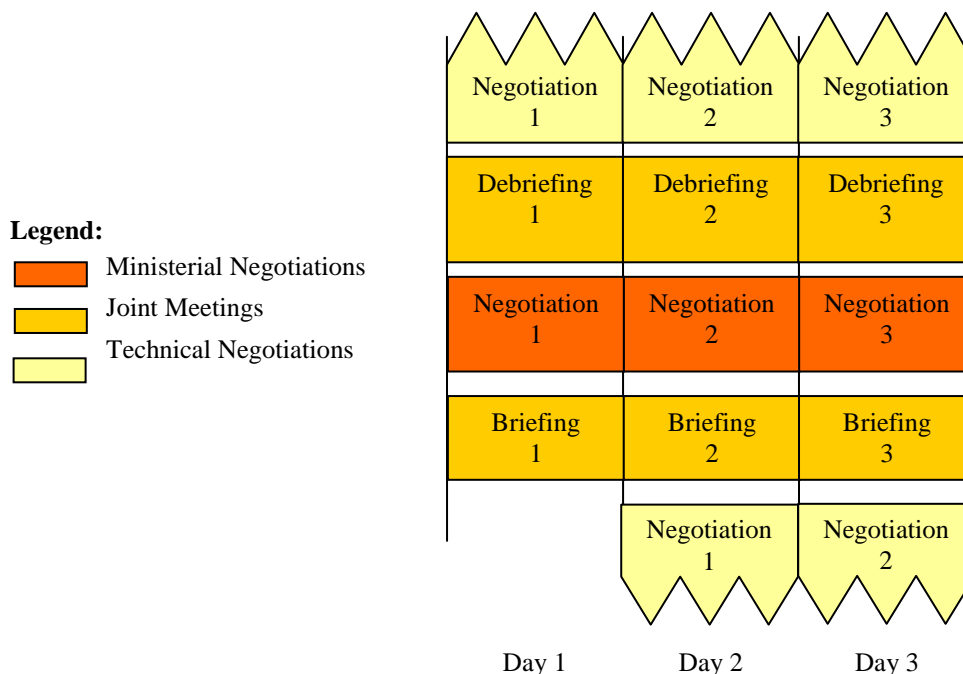
The round-table format – suitably adapted to reflect the intended informality – might be useful in this context, provided it is understood that the purpose is not to contribute to the negotiations. Like the three minute speeches, this would be an extracurricular activity – nothing less but also nothing more.

As indicated in the opening paragraph, there may be situations when an engagement of politicians in the negotiating Process could be useful. However, such an engagement should only be sought under certain conditions. For one, there is a need to differentiate between leaders (heads of state or government) and ministers. The former really should not be directly engaged in the negotiations, certainly not in language drafting exercises. There is absolutely no need to provide political guidance to the Process through anyone other than the relevant ministers. Leaders’ engagement is most fruitful in the above-mentioned extracurricular context, or in ceremonially signing a deal, once it has been struck by negotiators (and, possibly, ministers). **There is, in short, no need to provide political guidance through more than one level, and the right level is that of ministers.**

#### 4. High-level negotiations

Ministers themselves should also not be directly involved in technical negotiations, not only because they are unlikely to know the history and compromises that were struck at the technical level, but also because many of them are simply not used to engaging in this sort of activity, which puts them at a disadvantage vis à vis their more accomplished colleagues. Ministers should only be involved if there is a genuine need to unblock an in-session deadlock at the technical level, and only if that involves a very small number (one or two) of such ‘crunch issues’. In such a case, the technical negotiators should provide them with a number of political options to choose between. The exact wording of an outcome should be left to the technical negotiators.

**Figure 1. High-Level Segment: Sequential Negotiating Schedule**



The ‘mechanics’ of engaging ministers intra-sessionally in the Process should follow the tried and tested practice of the technical level, with plenaries, contact groups, informal small groups etc. It might be advisable – circumstances permitting – to skip the first two and directly move to the third. In any case, there are three key preconditions for a successful engagement of ministers in this context:

1. It is essential that the process of involving ministers is transparent and inclusive.
2. There should be no parallel negotiations (on the same issues) on the technical and the political level.
3. The Process must ensure a proper interface between the technical and the political negotiations.

The first of these points can be achieved through the type of legitimate representation discussed in Section 1. The second is simply a matter of scheduling. The third requires the introduction of a sequencing of the negotiations at the technical and the political level. The proposal here is to divide the HLS into sequentially alternating ministerial and technical engagement periods, with joint briefing and debriefing sessions. As illustrated in Figure 1, the working section of an HLS should start with a briefing of the ministers by their technical experts, be that at the level of individual delegations or at the group level. Should the decision have been taken to convene small ministerial groups, then this briefing period should also be used to select who is going to represent the invited groupings. The briefing is then followed by a high-level negotiating meeting with (selected) ministers and one or two technical advisors each, which in turn has to be followed with a debriefing of the technical level by the participants of the preceding high-level meeting. This then is followed by a session of technical negotiations, either putting an agreed high-level outcome into negotiating language or, if there was no agreed high-level outcome, to hammer out some new options for the ministers to deliberate in a second round of high-level negotiations.

There needs to be a certain degree of flexibility in the timing of these segments. All that needs to be ensured is that the sequencing of the segments is observed, and that there is sufficient time for the roles of these different segments to be properly performed. Particular care needs to be given to the briefing and debriefing segments, which must not be unduly rushed.



## Appendix. Data on 'Who should be represented?'

## (Section 1.2)

**Table 1. Electoral Constituencies and Seat Allocation**

	<i>Africa</i>	<i>Asia</i>	<i>G'LAC</i>	<i>EE</i>	<i>WEOG</i>	<i>AI</i>	<i>NAI</i>	<i>AOSIS</i>	<i>LDC</i>	<i>Total</i>	<i>D'ed</i>	<i>D'ing</i>
<b>Bureau</b>	2	2	2	2	2			1		11	36%	64%
<b>CDM EB</b>	1	1	1	1	1	2	2	1		10	40%	60%
<b>EGTT</b>	3	3	3	8			1	1		19	42%	58%
<b>AFB</b>	2	2	2	2	2	2	2	1	1	16	38%	63%
<b>TC</b>	7	7	7	15			0	2	2	40	38%	63%
<b>TEC</b>	(3)	(3)	(3)			9	9	1	1	20	45%	55%
										<b>Av.</b>	<b>40%</b>	<b>60%</b>
<b>ECOSOC</b>	14	11	10	6	13					54	35%	65%

**Sources**

Bureau:

[http://unfccc.int/essential\\_background/convention/convention\\_bodies/bureau/items/3431.php](http://unfccc.int/essential_background/convention/convention_bodies/bureau/items/3431.php)

CDM EB: <http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf#page=6>EGTT: <http://unfccc.int/ttclear/jsp/EGTTMember.jsp>AFB: [www.adaptation-fund.org/node/2](http://www.adaptation-fund.org/node/2)TC: [http://unfccc.int/files/meetings/cop\\_16/application/pdf/cop16\\_lca.pdf](http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf)TEC: [http://unfccc.int/files/meetings/cop\\_16/application/pdf/cop16\\_lca.pdf](http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf)ECOSOC: [www.un.org/en/ecosoc/about/members.shtml](http://www.un.org/en/ecosoc/about/members.shtml)**Legend***G'LAC*: GRULAC*AI*: Annex I*NAI*: non-Annex I*D'ed*: Developed country constituencies (EE, WEOG, Annex I)*D'ing*: Developing country constituencies

**Table 2. Cancun: Meetings of Groups other than the Convention and Protocol Bodies**

Source: Cancun Daily Programmes

**(a) Regional Groups**

Group	Africa	GRULAC	Asia	E-Europe	WEOG	Annex I
29 Nov	2					
30 Nov	2					
01 Dec	2	1				
02 Dec	2	1				
03 Dec	2	1		1	1	
04 Dec	3	1				1
06 Dec	3	1	1	1		
07 Dec	3	1				
08 Dec	4	1	1		1	1
09 Dec	4		2			
10 Dec	3					

**(b) Other Groups**

Group	G77+Ch	AOSIS	LDC	EIG	RFN	C'FAC	SICA	CD	ALBA	HVC
29 Nov	2	2	2	1	1	1	1	1		
30 Nov	2	2	2	1	1	1	1	1		
01 Dec	2	2	2	1	1	1	1	1	1	
02 Dec	2	2	2	1	1	1	1	2		
03 Dec	2	2	2	1	1	1	1	2		
04 Dec	2	2	2	1	1	1	1	2		
06 Dec	2	2	2	1	1	1	1	2	1	1
07 Dec	2	2	2	1	1	1	1	2	1	1
08 Dec	1	3	2	1	1	1	1	2	1	1
09 Dec	2	2	2	2	2	2	2	2		
10 Dec	2	2	2	1	1	1	1	2	1	1

**Legend**

G77+Ch:	Group of 77 and China
AOSIS:	Alliance of Small Island States
LDC:	Group of Least Developed Countries
EIG:	Environmental Integrity Group
CRN:	Coalition for Rainforest Nations
C'FAC:	Commission des Forêts d'Afrique Centrale (convened by DRC)
SICA:	Sistema de la Integración Centroamericana (convened by Belize)
CD:	Cartagena Dialogue (convened by Costa Rica)
ALBA:	Alianza Bolivariana para los Pueblos de Nuestra América (convened by Venezuela)
HVC:	Highly Vulnerable Countries HVC (convened by Colombia)

**Table 3. 'Politically Balanced' Models****(a) The model constraints**

G77+China*	$x_1$
Umbrella Group**	$x_2$
European Union**	$x_3$
Least Developed Countries*	$x_4$
Alliance of Small Island States*	$x_5$
Environmental Integrity Group**	$x_6$
Non-Aligned	$x_7$

(1)  $x_1 = 3x_2$ ; (2)  $x_2 = x_3$ ; (3)  $x_4 = x_5$ ; (4)  $x_6 = x_7$ ; (5)  $x_1 > x_2 > x_4 > x_6 > 0$

**(b) Alternatives**

G77+China*	12	12
Umbrella Group**	4	4
European Union**	4	4
Least Developed Countries*	2	3
Alliance of Small Island States*	2	3
Environmental Integrity Group**	1	1
Non-Aligned	1	1
<b>Total</b>	<b>26</b>	<b>28</b>
* = Developing	62%	64%
** = Developed	35%	32%
Non-Aligned	4%	4%

**Table 4. Informal Consultation Meetings 2010**

<b>Date</b>	<b>Meeting</b>	<b>Location</b>	<b>Website</b>
18–19 March	Informal consultation meeting on methodology of work towards the COP 16/MOP 6.	Mexico City	
2–4 May,	Meeting of environmental ministers –The Petersberg Climate Dialogue. With Germany	Bonn	
20–21 May	Informal consultation meeting on climate change finance. Mexico City,,	Mexico City	
22–23 July	Informal consultation meeting on mitigation.	Mexico City	
1 - 2 Sept.	Public-Private dialogue on climate change. - Financing green growth.	Geneva	
15–16 July	Public–Private dialogue on climate change. - Enhancing our readiness for green growth	Mexico City	
2–3 Sept.	Geneva Dialogue on Climate Finance. With Switzerland	Geneva	<a href="http://www.bafu.admin.ch/gdcf">www.bafu.admin.ch/gdcf</a>
25 Sept.	Informal ministerial meeting on climate change.	New York	
27 – 29 Sept.	International Indigenous Peoples Technical Workshop with UNFCCC States Parties	Xcaret, Mexico	
16 Oct.	Public-Private dialogue on climate change. – Markets and green growth.	Bonn	
18–19 Oct.	Informal consultation meeting on monitoring, reporting, and verification (MRV) and International Consultation and Analysis (ICA).	Mexico City	
1 – 2 Nov.	Ministerial meeting of the Alliance of Small Island States (AOSIS).	St. George, Grenada	
4–5 Nov.	Pre COP Ministerial Meeting.	Mexico City	
9 –10 Nov.	Informal Ministerial Dialogue “Climate Change: Technology Mechanism”.	New Delhi	
11 Nov.	Public-Private dialogue on climate change. – Technology for green growth.	New Delhi	



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