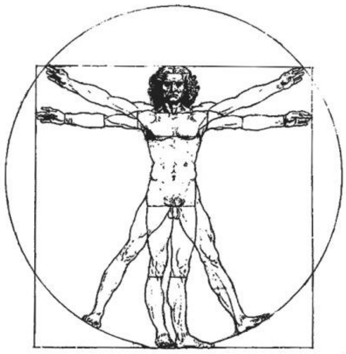

ecbi policy brief

Friends of the Chair, or the Chair's (true) friends?

The Art of Negotiation in the Rio process and climate negotiations

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Introduction

In the preparations for the Copenhagen COP-15 and in the aftermath of the confusing negotiations in Bella Centre there have been many references to the concept of Friends of the Chair. It sounds nice: one gets the image of the Chairperson in a negotiation having a cosy tea-party with some good friends, all devoted to the idea of helping the Chair to find her or his way out of tricky situations.

The reality is of course very different. The 'institutionalized' group of Friends of the Chair is composed of delegates trying to influence the Chairman and each other about the way forward, reflecting national positions, and trying to hammer out compromises. If smoking would not be prohibited and if gender balance had not at least made some progress in the UN premises, it would still be the image of tough men in smoky rooms that for a long time symbolized wheelings and dealings in the US Congress.

The Chairperson is of course keen to have friends to consult about the best course to pursue in a negotiation. There is a time for consultation with colleagues whose judgement one respects and with constructive negotiators representing key countries. But this is a long-haul effort which is different from the idea of appointing Friends of the Chair as part of the end game of a negotiation. In this latter case it is ideally a method for the Chairman to get the most important actors to agree and clinch a deal that will lead to final agreement in the plenary.

The need for groups that really represent a constituency

However, there is a very important caveat to consider: will the advice given to the Chairman lead to an agreement that will not be challenged in the larger group? How representative are the Friends? Will they be able to get *their* friends to agree to a negotiated deal in a smaller group?

In the early 1990s, when negotiations took place simultaneously in the Preparatory Committee for the Rio Conference and the FCCC, the Chairmen of these processes (Tommy Koh of Singapore for the former and Jean Ripert of France for the latter) adopted a successful structure of really representative groups, which in the Prepcom went by the label 'Chairmen of Regional and Interest Groups'.

I believe that the system in the Prepcom had its origin in the inability of the General Assembly to provide that committee with a workable Bureau. Too many countries wanted to have a place as vice-chairs, so that the Bureau became a group of about fifty people unable to meet for anything but ceremonial purposes. To fill this gap, Koh had a meeting every morning with the Chairmen of the three plenary working groups, the coordinators for special tasks appointed by him, leading officials of the Secretariat, and the Rapporteur of the Prepcom, Ahmed Djoghlaf, at present Executive Director of CBD. This 'Collegium' helped the Chairman to run the negotiation effectively, but it could not give detailed advice on substantive issues.

The regional groups in the UN are uneven: the African and Latin American/Caribbean groups deal with substance, whereas the Asian Group has no such ambitions, and what is known as the WEOG (Western Europe and Others Group) only manages election issues.

In order to create a forum for substantive discussions, Koh opted for the notion of 'Chairmen of Regional and Interest Groups'. This meant the addition of the Chairmen of G 77, EU, the Nordic Group, the LDC group, the AOSIS group, among others. . The purpose was to have all groups that required representation in attendance. In order to strengthen the legitimacy of the meetings, a few big countries were always invited, in particular China, India, the United States of America, Russia, and Japan. The invited groups were also free to include countries with special interests in specific issues.

The arrangement was not a magic method, or a panacea, but it generally proved quite satisfactory. The key to its success was the way in which the consultations were perceived: they included a majority of the central players in the negotiations, yet provided for representation of various interests. The representatives of groups in the meetings also knew that they were expected to speak for their constituencies and to defend positions taken in the consultations. At the same time, the relative informality of the discussions ensured a sense of flexibility. The talks gave the Chairman clear options: he had to judge whether he could rely on an agreement in the meeting or whether he needed further consultations with certain countries.

When I chaired the negotiations for the Convention to Combat Desertification (1993-94), I used the same method, which worked quite satisfactorily. It provided a regular and generally accepted method of keeping in touch with groups, not only for shaping general views, but also for effecting crucial agreements. In my view, it was more efficient in the early stages of negotiating meetings, as a way of removing all sorts of procedural obstacles and clarifying positions before group coordination had sharpened divergences of view. At later stages, specific consultations with countries or group representatives became more common, although the Meetings of Chairmen, as they were generally called, could take place at several points in the process.

These meetings also provided better opportunities to get to know key negotiators and establish personal contact. They also created a logical group to invite for informal out-of-session consultations. In the case of desertification, I organized a meeting in Stockholm a couple of months before the final negotiating session, which helped to facilitate the work at this session, held in Paris in June 1994. (However, it must be recognized that this became very difficult meeting.)

I recognize that climate negotiations today are more complicated, and since more is at stake, positions are more entrenched. But I still believe that a systematic approach, built on a generally agreed process where countries feel represented by group leaders, would be a helpful tool in efforts to build consensus. The more institutionalized form of meetings described here belong to the structure of negotiating sessions. But as just mentioned, other out-of-session meetings are sometimes very helpful in the process. They have a different character: a more informal atmosphere, less demands on group positions, and more leeway for the convener to choose the participants. In the climate negotiations, the Chairman of the Negotiating Committee, Jean Ripert, used this method with success during the negotiations for the FCCC 1991-92. In particular, he called meetings of the Extended Bureau, which permitted a manageable group of key negotiators to get together in crucial moments of the negotiations. It was in this group that the decisive negotiations took place at the final negotiating meeting in May 1992; and the main preparations for that final stage took place at a special meeting in Paris a few weeks earlier, when the Chairman was asked to exercise sole responsibility in preparing a clean text, which replaced a heavily bracketed document and was the only draft to be negotiated at the last session of the Negotiating Committee.[1]

Later on, in the preparation for the first session of the Conference of Parties (COP 1), held in Berlin in 1995, a similar group of high-level officials was established on the initiative of the German Chief Negotiator. This Group met three or four times between April 1994 and March 1995 in order to clarify key negotiating issues. In particular, it came to the conclusion that it would not be possible for the meeting to agree on a new Protocol for making more precise commitments on the basis of the Convention; but that the main emphasis would be put on negotiating a mandate for the preparation of a draft protocol to be agreed by COP 3. This was the basis for the elaboration of the Berlin Mandate that ultimately led to the Kyoto Protocol.

[1] For a detailed account on these negotiations, see I. Mintzer and J.A Leonard (eds); *Negotiating Climate Change*, Cambridge University Press and Stockholm Environment Institute, 1994. In this volume, a number of key negotiators give their views on the process. The end game as described here was treated, among others, by C. Dasgupta (pp.142-144), B. Kjellen (pp. 161-165) and T.O. Hyder (210-216), who were all engaged in the final negotiations.

Meetings of Negotiators outside Sessions

Subsequently, Chairmen and other officers of the sessions have used similar methods to move negotiations forward. However, I would limit myself to these examples, based on my own experience from the early stages of the climate negotiations. However, it may be worthwhile to comment on similar meetings organized by groups outside the negotiations, which on certain occasions have had very favourable effects on the process. Different groups have been involved: in particular the early negotiations benefited from the convening capacity by the Quakers in New York, who organized a number of sessions in preparation for further negotiations, with the participation of negotiators, stakeholders, and academics. Great effort was made to attract both effective keynote speakers and experts to support the talks.

This method is an essential contribution to negotiations at the present time, with ecbi, and in particular, at the annual Seminars with high officials (the ecbi Fellows) as one of the most important efforts to clarify issues and build trust.

The role of the Chair and the advantages of a single Chairperson

In all this, the issue of choosing a limited group of people without inviting too much criticism from those who are excluded, is of central importance. There are no easy answers to this question beyond the obvious: you need a smaller group to have real negotiations; and you need to find people who are clearly representative of the larger community. Ultimately, it is the responsibility of the Chair. Against this background, the role of the Chair becomes essential; and here I believe that the present practice in the climate negotiations of having Co-Chairs may have negative effects. In the early stages of the Rio process, or at the Rio conventions, there was only limited use of the Co-Chair system. The main method was to have one Chairperson, who would be acceptable to all groups, and would therefore be considered as an impartial referee with a wide personal mandate. The balancing between groups could then be made through the appointments of other members of the Bureau, or in the specialized working groups, and in the nominations made by the Chair for coordinators and other officials who would lead specific negotiations on behalf of the Chair.

The use of Co-Chairs may have become unavoidable, but I believe that it introduces an element of balancing between interests that can limit the capacity of the Chair to carry the responsibility of representing the whole process and the interests of all parties. One good Chairperson with the full responsibility on her or his shoulders can operate with more authority and speed than Co-Chairs, for instance, in taking initiatives for the establishment of smaller groups, or for cooperating with the Secretariat. I hasten to add, however, that my own experience of working with Co-Chairs has been excellent, and that it tends to lighten the burden of a single Chairperson considerably. But this is not the central point. It is the question of the authority of the Chair as the leader of the negotiating process.

I know that all COP sessions in fact have one Chair at the political level, and that this system generally works satisfactorily. But in my experience, crucial negotiations about major decisions have been better run when the political Chair has not been responsible for the heavy negotiation of texts, which has been delegated by the Plenary to a Main Committee or a Negotiating Committee, chaired by an official with deep knowledge of the process leading to this final negotiation. A case in point was Rául Estrada, who had chaired the Ad Hoc Group on the Berlin Mandate, and also chaired the Main Committee in Kyoto.

The relationship between the level of high officials and the political level is often delicate. But I believe that it is important to understand that in difficult negotiations their roles are different. This applies not least in the perspective of informal consultations in smaller groups before a major session: we have seen that these have increasingly been held at the ministerial level. But since Ministers are to take the final decisions, understandably they wish to avoid involvement in more speculative discussions beforehand. Therefore, such consultations tend to be less fruitful than the meetings of high officials, who can test different solutions and ideas, while at the same time managing to avoid committing their countries to a specific policy line; 'to think aloud' and to engage in debates on different alternatives and solutions.

On the other hand, it is quite clear that nothing can replace the Ministers (or even the level of Heads of State or Government) in the end game of a negotiation. But I believe that the confusion in Copenhagen clearly demonstrated that you need very careful preparation for such final negotiations, with clear options elaborated for the final decision-makers.

The point of departure for this paper was some reflections on the notion of Friends of the Chair. It has led me into comments on various methods and processes of consultation in the context of the climate negotiations; the role of the Chairman; and how best to use the different levels – High Officials, Ministers – in various stages of a major negotiation. I would hope that this paper will trigger comments and questions, since I believe that practical arrangements to facilitate decision-making is of considerable importance in the present very complex phase of climate negotiations