



## Moving Forward in International Negotiations: Four Innovative Examples

### *The Quaker United Nations Office*

The Quaker United Nations Office (QUNO) seeks to promote multilateral cooperation for a fair and peaceful world. We have held consultative status through our world Quaker body since 1948, and have offices in Geneva, New York, and a meeting space in Bonn. Our areas of work include the Human Impacts of Climate Change, Peacebuilding and the Prevention of Violent Conflict, Food and Sustainability, and Human Rights and Refugees.

Our work is often done behind the scenes to help facilitate a constructive outcome to negotiations such as the development of the Human Rights Council (2000s) and the Landmine Ban Treaty (1990s). Our previous work in UN environmental processes includes support for negotiations on the Convention on Desertification, the Convention on Biological Diversity and the 1992 Earth Summit preparations. QUNO also chaired the NGO Committee for the 1972 UN Conference on the Human Environment.

The international climate negotiations are among the most complex and profound in human history. Countries with different economic, political, social and environmental circumstances seek an agreement that can address present concerns and protect future generations. It is an extraordinary, and necessary, agreement to achieve.

QUNO supports the UNFCCC in reaching a fair and sufficient agreement to prevent dangerous levels of anthropogenic climate change. We offer this paper as a reflection on ways in which multilateral cooperation can be encouraged and strengthened in order to address difficult international issues.

This paper presents four examples of multilateral agreements that involved complex negotiations, some spanning several years, others several decades. The examples draw on international processes in environment, disarmament, human rights and trade, exploring some of the factors that led to the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer (1987), the Mine Ban Treaty (1997), the Cartagena Protocol on Biosafety (2000), and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

These four treaties sought to address international issues in different ways, from imposing binding bans or limits on harmful substances and weapons, to upholding collective rights and establishing global governance frameworks. Yet there are similarities between the complexities of the negotiations and the innovative approaches used to build consensus. In some cases, this included a change of format and forum, or a shift in external circumstances. In others, a change of narrative was essential to identify a shared concern. All experienced inspiring leadership from a committed and often small group of State and non-State actors, which proved critical to reaching an agreement. As this is a discussion paper, comments are very welcome and can be sent to [lfcook@quno.ch](mailto:lfcook@quno.ch).

### 1) Montreal Protocol on Substances that Deplete the Ozone Layer

*The Montreal Protocol was the first multilateral agreement to achieve universal ratification, almost completely phasing-out 97 ozone-depleting chemicals. In 1985, the Vienna Convention for the Protection of the Ozone Layer took important steps to establish international cooperation over research on ozone depletion theory. It did not, however, seek to regulate potentially harmful substances due to strong opposition from individual States and related industries. In the 1970s and early 1980s, industry groups were denying the links between chlorofluorocarbons (CFCs) and ozone depletion, while there was relatively little public awareness of the issue. CFCs were used widely in society, employing hundreds of thousands of people and involving hundreds of millions of dollars in investment<sup>1</sup>. Yet by 1987 the Montreal Protocol – a legally-binding agreement to limit CFCs and other harmful substances – had been adopted.*

When delegates met to negotiate in 1987 they were still contending with scientific uncertainty, with a range of theories explaining ozone depletion. There were scientific advances - such as the 1984 report containing

<sup>1</sup> UNEP (2007) *A Success in the Making: The Montreal Protocol on Substances that Deplete the Ozone Layer*, p. 3

the first evidence of drastic ozone depletion above Antarctica - that helped to move the international community towards a regulatory agreement. Despite these advances, the Protocol was unusual in taking preventative action in response to a scientific theory, a step made possible by a number of factors. Among these are the central role played by scientists in collaboration with policy-makers, leadership from a small group of States, facilitation by expert institutions, and support from the private sector<sup>2</sup>.

Critical leadership began in the early 1980s when the United Nations Environment Programme (UNEP) initiated dialogue between like-minded States that had indicated their readiness to regulate CFCs. At the time, these included the United States (US), Canada, Norway, Denmark, Sweden and Finland<sup>3</sup>. UNEP continued to bring delegates together for informal consultations around the Montreal negotiations, where participants were encouraged to speak frankly and to engage as individuals rather than representatives of their country. UNEP and the World Meteorological Organisation (WMO) together facilitated two meetings just before the final negotiations, focusing on increasing understanding of ozone theory among States.

Efforts to share scientific research were also central to the successful negotiation of the Protocol. In seeking greater consensus with Japan and the Soviet Union for example, the US concentrated on sharing information to build common understanding of ozone theory. Scientists were brought into the policy-making environment to engage with delegates on the implications of their findings, focusing negotiators on a science-led Protocol. This helped delegates not only to build cooperation within the talks, but also to convince their capitals to back them. During the final negotiations the US received news that its capital was considering withdrawing support in fear of strict industry and scientific research regulation. The chief US negotiator met with members of his government to brief them on the available scientific evidence, gaining several important allies among those

who had been sceptical of ozone-depletion theory<sup>4</sup>. A change in US industry position between the Vienna Convention and the Montreal negotiations helped move the process towards agreement. While industry leaders had initially focused their efforts on denying ozone research, in 1986 the DuPont Company, then responsible for around a quarter of the world's CFC production, announced support for a global limit on CFCs<sup>5</sup>. Transforming its hostile position, the chemical industry entered into a race to dominate the emerging market of alternative technologies, with DuPont investing over \$US 75 million in CFC alternatives over the two years following the Protocol's adoption<sup>6</sup>. The support of US industry became a turning point for the talks when it joined the US delegation in convincing their capital to back the Protocol.

## 2) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty)

*When the International Campaign to Ban Landmines (ICBL) was launched by a group of six NGOs in 1992, most governments opposed a ban and assumed the campaign would fail, claiming landmines to be a key part of their military activities<sup>7</sup>. Yet the Mine Ban Treaty was signed by 122 States in 1997 after just one year of formal negotiations known as the Ottawa Process.*

The end of the Cold War provided the context needed to bring the issue of landmines to the international agenda. The efforts of the ICBL and the International Committee of the Red Cross (ICRC) to draw attention to the humanitarian impact of landmines mobilised mass public support and provided a shared concern for governments. Civil society and States worked in partnership to drive the process forward together, developing new and creative approaches to disarmament negotiations.

The Ottawa Process was unconventional for disarmament negotiations at the time for a number of reasons. Many states, and certainly the ICBL, felt that the outcome of the Convention on Certain Conventional Weapons (CCW) negotiations in 1996-97, the agreed Amended Protocol II, offered little prospect of seriously addressing what was by then perceived to be a serious humanitarian problem. In October 1996, this led Canada to call a conference in Ottawa of States wishing to go further, perhaps to an actual ban. The result of this meeting was a challenge to national governments by the Canadian Foreign Minister to return in a year's time to sign a ban on anti-personnel mines. It was felt that a negotiating process outside traditional multilateral disarmament forums - and deliberately seeking to avoid the difficulties of the consensus-based approaches of either the CCW or the Conference on Disarmament - would be more likely to produce a result.

From October 1996 onwards, the negotiations were also an "opt-in" process; States could participate if they demonstrated support for the goal of a total ban. Countries not prepared to accept this goal attended meetings as observers and were not allowed to sit at the negotiating table.

States, member organisations of the ICBL and the ICRC worked in unprecedented partnership with one another<sup>8</sup>. The ICBL first initiated an informal meeting in January 1996 for States considered supportive of a mine ban. This group included Canada, Norway, Austria, Mexico, Belgium, Ireland, South Africa and Switzerland. A core group of States and civil society organisations worked informally, both before the inception of the Ottawa process and throughout the period of negotiations, developing a sense of trust and shared commitment. The ICBL also helped informally in the drafting of actual treaty text, providing expertise from the field and maintaining a focus on the humanitarian impact of landmines<sup>9</sup>.

These approaches, together with leadership, commitment and vision, enabled a group of medium-sized countries to drive the process forward<sup>10</sup>. Momentum

was carried by a small group of State representatives, many of them among those first convened by the ICBL, who worked to build international support and, in some cases, to convince their own capitals to back the ban. In the face of attempts to weaken the treaty, South Africa provided strong leadership as Chair of the final negotiations in Oslo in September 1997. The African States also led as a regional bloc, supporting the "no exceptions, no reservations, no loopholes" position advocated by the ICBL<sup>11</sup>.

Today, although a number of major States remain outside the Treaty, it has proven to be a powerful norm, with trade and production of anti-personnel mines massively reduced, very few examples of continuing use of such weapons, tens of millions of mines destroyed, and a huge reduction in the annual toll of victims.

## 3) The Cartagena Protocol on Biosafety

*The Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity (CBD) was adopted in January 2000 after four years of negotiations. The Protocol governs potential environmental and health risks associated with Living Modified Organisms (LMOs) produced by biotechnology, ensuring that countries have access to the information needed to make an informed decision before importing LMOs. Many thought such a Protocol impossible because of the diverse interests - ranging from environmental protection to international trade - that were involved<sup>12</sup>.*

The years following the first round of negotiations in 1995 saw growing divergence in State positions, particularly over a liability mechanism to address damage caused by LMOs. The agreement's relationship to World Trade Organisation (WTO) rules had also become a source of conflict. When delegates met in Cartagena, Colombia in February 1999 - where they were expected to conclude negotiations - the rejection of a compromise text contributed to a breakdown in the talks and a decision to postpone negotiations until the following year<sup>13</sup>.

2 Benedick, Richard E. (1998) *Ozone Diplomacy: New directions in safe guarding the planet*, Harvard, p. 1 - 19

3 Andersen, Stephen O. and Sarma, Madhava K. (2002) *Protecting the Ozone Layer: The United Nations History*, UNEP/Earthscan, p. 45

4 Benedick, Richard E. (1998) *Ozone Diplomacy: New directions in safe guarding the planet*, Harvard, p. 46 - 7

5 UNEP (2007) *A Success in the Making: The Montreal Protocol on Substances that Deplete the Ozone Layer*, p. 7

6 Faulkner, Robert (2005) 'The Business of Ozone Layer Protection: Corporate Power in Regime Evolution', chapter in (2005) *The Business of Global Environmental Governance*, Ed. David L. Levy and Peter J. Newell, MIT, p. 105 - 134

7 Williams, Jody and Goose, Stephen D. (2008) 'Citizen Diplomacy and the Ottawa Process: A Lasting Model?', chapter in (2008) *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security*, Ed. Jody Williams, Stephen D. Goose and Mary Wareham, Rowman & Littlefield, p. 181 - 198

8 Atwood, David C. (2006) 'Enduring Legacies of the Mine Ban Campaign Experience', chapter in (2006) *A Path is Made by Walking It: Reflections on the Australian Network to Ban Landmines 1991 - 2006*, Ed. Patricia Pak-Roy, David Lovell Publishers

9 Goose, Stephen D. (2009) 'The Campaign to Ban Antipersonnel Mines: Potential Lessons', chapter in (2009) *Democratising Global Governance: Ten Years of Case Studies and Reflections by Civil Society Activists*, Ed. Heather MacKenzie. Mosaic Books, p. 95

10 Atwood, David C. (2002) 'NGOs and Disarmament: Views from the Coal Face', *Disarmament Forum* NGOs as Partners: Assessing the Impact, *Recognising the Potential*, No. 2, UNIDIR, p. 5 - 14

11 Atwood, David C. and Walker, Susan. Interview. November 2013.

12 Kinderlerer, Julian (2008) 'The Cartagena Protocol on Biosafety', chapter in (2008) *Collection of Biosafety Reviews, International Centre for Genetic Engineering and Biotechnology*, Vol. 4, p. 12 - 65

13 Mayr, Juan (2002) 'Doing the Impossible: The Final Negotiations of the Cartagena Protocol', chapter 4 in (2002) *Cartagena Protocol on Biosafety: From Negotiation to Implementation (CBD News)*, Secretariat of the Convention on Biological Diversity, p. 10 - 12

Over the course of 1999, growing public pressure, the introduction of informal negotiation forums, and cooperation across regional blocs helped to shift the dynamics of the talks.

Following the Cartagena meeting, the Colombian Chair initiated a change in the negotiating format, convening two informal meetings in Vienna and Montreal. Aiming to build bridges between regional blocs, he asked each of the five negotiating groups to select two spokespersons for roundtable discussions. This format became known as the “Vienna setting” and was replicated when the negotiations resumed in Montreal in January 2000. In September 1999, the Ethiopian delegation also invited representatives from countries with major concerns to visit farms, homesteads and grain markets in Ethiopia. This helped to develop greater understanding of the problems faced by many of the African States<sup>14</sup>.

The impasse at Cartagena had drawn public attention to the biosafety issue. European consumers began to oppose LMOs, initiating a public campaign that pushed the European Union (EU) to strengthen its position<sup>15</sup>. This became a turning point; the EU had entered the process without internal consensus, but was now supporting a biosafety agreement.

The ability of the Like-Minded Group of Developing Countries – who had championed the Protocol throughout – and the EU to cooperate despite their remaining differences was essential to the success of the Montreal meeting. The Like-Minded Group joined the EU in pushing for labelling of LMO products, while the EU in turn backed the developing countries in calling for the inclusion of LMO commodities in the text. Together the two groups pushed for a strategic agreement, seeking a framework that would allow national governments to regulate LMOs, rather than aiming for binding international standards. The Protocol focuses on the right of the country importing LMOs to receive detailed infor-

mation and take preventative action, allowing it to govern biosafety in spite of the fact that the largest LMO-exporters remain outside of the agreement<sup>16</sup>.

While the Protocol was adopted at the close of the Montreal meeting, several contentious issues, including a liability mechanism and the Protocol’s relationship to WTO rules, remained unresolved. The final text reflects several opposing positions, with an “agreement to disagree” leaving the most antagonistic issues open to interpretation and future negotiation<sup>17</sup>.

#### 4) United Nations Declaration on the Rights of Indigenous Peoples

*The UN Declaration on the Rights of Indigenous Peoples was adopted in 2007 following more than two decades of complex negotiations among States, and among governments and representatives of Indigenous peoples*<sup>18</sup>.

A draft Declaration began in 1985 in the Working Group on Indigenous Populations, and was adopted by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994. Upon consideration by the Commission on Human Rights, this text met opposition from many States, leading to the establishment of a second Working Group with a ten-year mandate to develop consensus<sup>19</sup>. This Working Group set an important precedent in establishing Indigenous peoples’ direct participation throughout the process leading to a human rights instrument.

An impasse developed during the Working Group sessions. Indigenous peoples’ representatives – with support from some States – took a “no-change” position, calling for adoption of the Sub-Commission draft without any amendments. Many States wanted to negotiate critical issues, such as self-determination, the status of “Indigenous peoples”, and rights to land territories and resources. A number of factors helped to overcome the stalemate, including

proactive measures from Indigenous peoples’ representatives with regard to amendments that addressed State concerns, mediating roles played by several States, and Mexico’s initiative to broaden the negotiating format from formal Geneva-based sessions to an informal workshop in Pátzcuaro.

Peru was appointed Chair of the Working Group as a middle-ground country both supportive of the Declaration and open to text amendments. Broadly accepted by governments and Indigenous peoples’ representatives, the Peruvian Chairs were able to play a consensus-building role<sup>20</sup>. The first Chair opened up negotiations by re-ordering the draft text according to each issue’s degree of difficulty, allowing discussion on easier areas to move forward while contentious points such as self-determination were postponed until some common ground had been established<sup>21</sup>. The Indigenous caucus moved from “no change” to accepting and proposing amendments. Progress on consensus was furthered by smaller, informal sessions on key topics, co-chaired by Indigenous and State representatives<sup>22</sup>.

Following this progress, the Pátzcuaro workshop – convened by Mexico in coordination with the Office of the High Commissioner for Human Rights (OHCHR) in September 2005 – was an opportunity to increase understanding and good faith in the negotiations. Moving the talks from the Geneva environment to an informal setting with a smaller group facilitated more open exchange between States and Indigenous peoples’ representatives. The workshop was not designed as a parallel negotiation but rather helped parties to identify areas of common ground over particularly contentious issues such as self-determination. Delegates then met at the Working Group’s final sessions with more optimism and a deeper appreciation of the different positions.

The establishment of the Human Rights Council (HRC) in 2006 unexpectedly created a need to conclude the talks, with a change in UN human rights processes forcing the conclusion of the Working Group. The newly appointed President of the HRC, the Mexican Ambassador, included the Declaration on the agenda with strong support from the Group of Latin American and Caribbean Countries (GRU-LAC) and the EU. At the HRC’s first session, States

were calling for adoption of the Convention on Disappearances and many also saw the Declaration as a priority<sup>23</sup>. These countries combined forces to push for adoption of both, ensuring support for the Declaration from France and the United Kingdom to complete the EU bloc. One State called for a vote, preventing the Declaration from being adopted by consensus, but only that State and one other voted against.

The General Assembly’s adoption of the text was delayed due to the African Group of States requesting time for “further consultations”. From late 2006 to late 2007, Mexico, Peru and Guatemala led informal consultations with the African Group. This led to nine amendments to the HRC text, which Indigenous peoples’ representatives were willing to accept. Without their acceptance, the Declaration might have been lost completely, as many States had committed to not accepting a text without the support of Indigenous peoples. The final text was adopted by the General Assembly in September 2007.

These were one of the longest human rights negotiations, requiring States and Indigenous peoples’ representatives to overcome a lack of trust in order to reach difficult compromises. The initial “no change” position held by Indigenous peoples – while creating an impasse for many years – prevented the text from being significantly watered down. While some Indigenous groups felt the final text was not strong enough, many were satisfied with a successful conclusion.

#### Concluding Comments

These agreements, like all multilateral agreements, were reached by compromise, opening the negotiation processes and in some cases the final texts to both acclaim and criticism. Some with a stake in the outcomes of the Declaration on Indigenous Peoples and the Cartagena Protocol in particular pushed for stronger treaties, advocating further negotiation to resolve difficult issues. Yet in reaching adoption through a path fraught with political, economic, scientific and environmental tensions, these treaties demonstrate approaches that can help to move negotiations beyond an impasse.

In these examples, support from a diverse group of

14 Egziabher, Tewolde (2007) ‘The Cartagena Protocol on Biosafety: History, Content and Implementation from a Developing Country Perspective’, chapter 25 in (2007) *Biosafety First*, Ed. Traavik, T. and Lim, L.C., Tapir Academic Publishers

15 Faulkner, Robert (2002) ‘Negotiating the Biosafety Protocol: The International Process’, chapter in (2002) *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development?* Ed. Christoph Bail, Robert Faulkner, Helen Marquard, Earthscan, p. 3 - 22

16 Brack, Duncan, Faulkner, Robert and Goll, Judith (2003) *The next trade war? GM products, the Cartagena Protocol and the WTO*, The Royal Institute of International Affairs, p. 3 - 7

17 Faulkner, Robert (2009) ‘The Global Politics of Precaution: Explaining International Cooperation on Biosafety’, chapter in *Cooperating without America: Theories and Case Studies of Non-hegemonic Regimes*, Ed. Stefan Brem and Ken Stiles, Routledge, p. 105-122.

18 Charters, Claire and Stavenhagen, Rodolfo (2009) ‘The UN Declaration on the Rights of Indigenous Peoples: How it came to be and what it heralds’, introduction in (2009) *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, Ed. Claire Charters and Rodolfo Stavenhagen, IWGIA, p. 10 -12

19 Deer, Kenneth (2010) ‘Reflections on the Development, Adoption and Implementation of the UN Declaration on the Rights of Indigenous Peoples’ in 2010 *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action*, Ed. Hartley, Joffe and Preston, Purich Publishing.

20 Carmen, Andrea (2009) ‘Indian Treaty Council Report from the Battle Field: The Struggle for the Declaration on the Rights of Indigenous Peoples’ chapter 2 in Claire Charters and Rodolfo Stavenhagen (2009) p. 90

21 Chávez, Luis Enrique ‘The Declaration on the Rights of Indigenous peoples Breaking the Impasse: The Middle Ground’, chapter 2 in Claire Charters and Rodolfo Stavenhagen (2009) p. 99

22 Hartley, Joffe and Preston, Jennifer (2010) *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action*, Purich Publishing. See generally

23 Preston, Jennifer. Interview. November 2013.

State and non-State actors was critical to finding ways to reach agreement on contentious issues. States, NGOs, scientists, experts, industry representatives and public campaigns all worked together to enable a successful conclusion. Innovative approaches included changing the negotiation format and forum to open up dialogue. A shift in external circumstances sometimes created new momentum for a successful outcome, or opened the way for new diplomatic processes. Individual Chairs often kept negotiations on an ambitious track in the face of significant opposition. States and others with middle-ground positions helped to build trust and bridges between polarised stances, often using a more informal setting to increase understanding of different needs and challenges.

Above all, these examples demonstrate how committed and innovative leadership may come from a small group of States with vision and new ideas for breaking deadlock.

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