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.

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. 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

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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.

Critical leadership began in the early 1980s when the United Nations Environment Programme (UNEP) initiated dialogue between like-minded States that was responsible for around a quarter of the world's CFC production, announced support for a global limit on CFCs. 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. 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. 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 outcomes andindicated disarmament - 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.

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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. 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.

These approaches, together with leadership, commitment and vision, enabled a group of medium-sized countries to drive the process forward. 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 loopholes” position advocated by the ICBL.

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 and anti-tank mines (ATMs) banned. The continued 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.

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 – there were extensive talks in Vienna - the rejection of a compromise text contributed to a breakdown in the talks and a decision to postpone negotiations until the following year.

10 Atwood, David C. (2002) NGOs and Disarmament: Views from the Civil Face, Disarmament Forum/NGOs as Partners: Assessing the Impact, Recognising the Potential, No. 2, UNIDIR, p. 5 - 14
Over the course of 1999, growing public pressure, the introduction of informal negotiation formats, 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 Declaration 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.

The impasse at Cartagena had drawn public attention to the biosafety issue. European consumers began to oppose GMOs, initiating a public campaign that pushed the European Union (EU) to strengthen its position. To break the impasse, 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 GMO products, while the EU in turn backed the developing countries in calling for the inclusion of GMO commodities in the text. Together the two groups pushed for a strategic agreement, seeking a framework that would allow national governments to regulate GMOs, rather than aiming for binding international processes forcing the conclusion of the Working Group's final sessions to an informal workshop in Pátzcuaro. 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 acclamation 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 agreement, through a process that at times was 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
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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