

## Chapter 2

# Climate Negotiation Factors: Design, Process and Tactics

**Abstract** International climate negotiations take place in absence of an overarching authority to enforce compliance with the agreed objectives. As a consequence, negotiations need to motivate countries to join a climate coalition, both from an international climate and national socio-economic perspective. In order to arrive at an effective climate coalition, the process of negotiations needs to be flexible and focussed on win-win solutions. Tactical manoeuvres are needed to change the course of negotiations when needed. These tactics can take various forms such as new scientific insights or personalities of key negotiators.

### 2.1 Introduction

General characteristics of climate policy making have been described in Chap. 1 as an introduction to this book. It has been explained how climate negotiations were initially complicated by limited scientific knowledge of climatic impacts caused by human activities, which made it rather difficult to ‘precisely’ determine required emission reductions for meeting the precautionary principle of the United Nations Framework Convention on Climate Change (UNFCCC). While the scientific knowledge base has been growing over the past two decades, negotiations have also been complicated by game theoretical aspects such as countries’ potential incentives for free riding and lack of an overarching international disciplinary or authority.

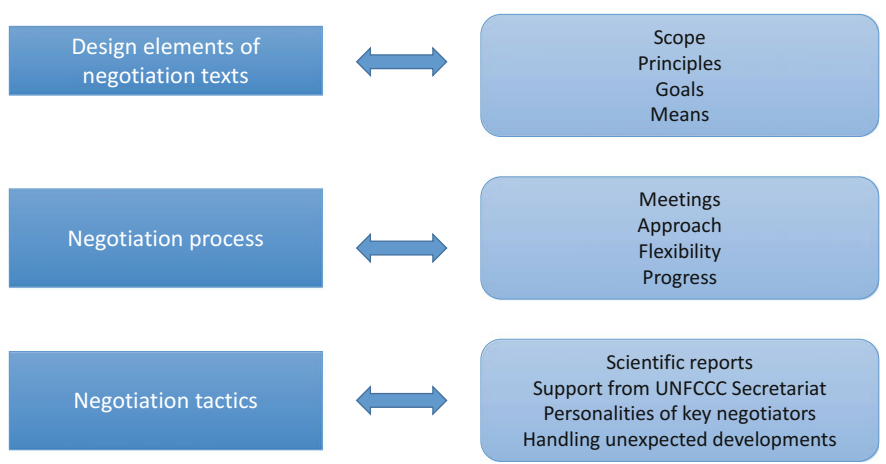
In order to deal with the above aspects, in Chap. 1 it has been argued that successful negotiation outcomes not only depend on the design of the policy package to be negotiated, but also on the extent to which the negotiation process provides sufficient flexibility and scope for dealing with country positions and interests, as well as on tactical and facilitating aspects. The identification of these three factors for successful negotiations is not meant to be exhaustive. Instead, they are considered minimally required aspects for achieving a successful international climate policy negotiation result (in terms of agreeing on globally supported low-emission and climate-resilient policy measures).

Before analysing in the next chapters how these factors have determined the course and outcomes of negotiations on the UNFCCC, the Kyoto Protocol and the Paris Agreement, in this chapter aspects of climate negotiations are analysed in further detail.

Aspects related to the *design of a global climate policy* are described in Sect. 2.2 using insights on formation of international coalitions. It is discussed how coalition building works in a situation where countries jointly aim at achieving an agreement without an overarching disciplinarian, such as an international government, and whether and how trade-off effects take place in such situations between strictness of policy measures and size of the coalition. With these insights it can be better understood how international coalition building dynamics have an impact on the design of an international climate policy.

In Sect. 2.3, aspects related to the *process of negotiations* are described in different negotiation contexts, such as in cases where clear win-win potentials exist in policy making (negotiations enable negotiators to be all better off) and negotiations taking place in so-called win-lose situations (some negotiators are worse off whereas others are better off). In addition, the process of climate negotiations under the UNFCCC is explained in further detail, by describing both the high-level negotiations process at sessions of the Conference of the Parties (COP) and the more technical negotiations on particular policy issues such as instruments and mechanisms and modalities and procedures for these.

Finally, in Sect. 2.4 it is explained how country negotiation positions and tactics emerge from domestic values, interests, institutions and experience and how these can have an impact on the result of climate negotiations. Moreover, based on climate negotiation experience, a range of *facilitating and negotiation tactics* factors are discussed, including how these have influenced the direction and scope of the agreements reached (Fig. 2.1).



**Fig. 2.1** Climate negotiation factors: design, process and tactics (author’s own elaboration)

## 2.2 Design Aspects of a Climate Policy Agreement

### 2.2.1 *Handling International Environmental Cooperation*

As explained in Chap. 1, achieving an ‘ideal’ international climate policy coalition is difficult to achieve due to a number of aspects which are well understood from literature about game theory. One aspect is the absence of an overarching international authority, such as an international government. As sovereign states, countries (or groups of countries) cannot be forced to join an international climate coalition and they may decide not to adopt a climate agreement if they consider this not in line with their domestic preferences. As a consequence, if too many countries feel that proposed greenhouse gas emission reduction measures are too strict and therefore too costly for them, negotiations may move towards softening proposed measures in order to get more countries on board of a climate coalition (Barrett 1999; Kiyono and Okuno-Fujiwara 2004). This possible trade-off between higher or lower targets and country support for an agreement results in a challenge to design an international climate policy regime which keeps emission reduction measures sufficiently strict for meeting the UNFCCC precautionary principle (as explained in Chap. 1) and stimulates a sufficient number of countries to join the coalition for achieving climate policy goals.

For the latter, compensatory measures or ways to reduce the costs of compliance could be introduced, which is not only important for making it attractive for countries to join a coalition but also to support their compliance with commitments in the agreement. After all, the absence of an overarching disciplinarian also complicates enforcement of compliance with the agreement made by the coalition. Of course, not committing to objectives in an international policy regime may cause a loss of goodwill for a country, a complaint in the framework of the International Court of Justice or a sanction, but these ‘sanctions’ could become difficult to impose and are far from a guarantee that countries will comply with multilateral treaties (Barrett 1999; Barton et al. 2006). In fact, as will be described in Chap. 3, in spite of the US agreement with the Kyoto Protocol in 1997, the country never ratified the protocol. Moreover, to give another example, Canada’s ratification of the Kyoto Protocol in 2002 was followed in 2012 by a unilateral decision by the Canadian government not to comply with its quantified greenhouse gas emission reduction commitments under the Protocol (see Chap. 5). There was little that the international climate policy regime could do to prevent these cases.

At the same time, an important reason for international cooperation on environmental issues is that it enables countries to reduce costs and achieve larger benefits than in case of unilateral country actions (Barrett 1991). Collaboration enables countries to explore options for cost reductions, such as through the use of concepts of emissions trading and international division of abatement actions (Jepma 1995). This insight is generally supported by game theory, which has been well known since the work by Von Neumann and Morgenstern (Neumann and Morgenstern 1944).

Game theory is based on games where two or more individuals choose strategies to maximise their benefits in competitive situations. The individuals are faced with clear rules and it is assumed that they behave fully rationally and that information is exchanged symmetrically among the players in the game. Particularly interesting for the discussion on climate policy negotiations are the so-called non-cooperative games,<sup>1</sup> which refer to situations in which no overarching authority exists to assure that players stick to the agreed rules. Hence, as explained above, cooperation in these games must be self-enforcing.<sup>2</sup> A well-known example of a non-cooperative game is the so-called ‘prisoners’ dilemma’, which explains how players are worse off if they do not collaborate, in comparison to a situation in which collaborate (Stanford Encyclopedia of Philosophy 2009).

Key characteristics of the prisoners’ dilemma are that both players act rationally, have the same amount and type of information and do not communicate with each other. After all, should they be able to exchange views on the situation they have been placed in, a different outcome would have been likely in order to create a larger common surplus. Another characteristic of this game is that there is no repetition. Should the game be repeated in a second round, then players may make different choices based on their behaviour in the first round.

It can be argued that decision making on climate change resembles the prisoners’ dilemma. Suppose, taking a very stylistic example, that a country has two choices regarding what policy it will undertake concerning climate change: it can take greenhouse gas emission reduction measures or it can decide not to take any action. Moreover, there is no international regime and no information exchange among countries, although all countries have access to the same information sources, so that a country will have to assume what other countries will do in terms of climate policy. For the other countries, also two options exist: carry out climate change abatement policy or no climate policy activities at all.

In case the country assumes that the other countries are all likely to carry out greenhouse gas emission reduction measures, it has an incentive to undertake no action. After all, by doing nothing the country would benefit from the activities by all other countries at zero costs. Hence, in this case the country could be a free rider, taking profit of the public good created by other countries. On the other hand, if the country assumes that none of the other countries will carry out climate policy measures, it has no incentive to undertake abatement action itself; the benefits from such action would generally be much smaller than the costs, especially when the country is small or medium-sized. This outcome resembles the prisoners’ dilemma case: whatever the policy action by other countries, without a cooperative framework, the country’s optimal policy is to refrain from climate change abatement action. A repetition of the game in a second round of negotiations could lead to a

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<sup>1</sup>Nash formulated this aspect of game theory for the first time during the early 1950s, see among other publications Nash (1996).

<sup>2</sup>Games in which players can enforce contracts through outside parties/authorities are termed cooperative games.

different outcome, for instance, if it turns out that refraining from abatement action leads to considerable environmental damage and economic costs.

Another extension of the prisoners' dilemma, and which has a high relevance for environmental issues, has become known as the 'tragedy of the commons'. The origin of this concept goes even back to Aristotle ("What is common to the greatest number has the least care bestowed upon it") (Ostrom 1990) and in more recent scientific literature its roots go back to Hardin (1968). The commons refer to any resource which is shared by a group of people, e.g., air and water, but also land, fish and wood. A general characteristic of commons is that they are not protected by property rights as everybody can freely use the commons.

A problem that could arise with using the commons, and this is where the link to the 'prisoners' dilemma' can be made, is that overuse reduces their quality. For example, the overuse of land in Britain in the fourteenth century (as in Hardin's example) due to the free use of common pastures by nearby villages to graze horses, cattle and sheep, resulted in ruining of the pastures. In order to halt this process, property rights were introduced by parcelling up the common pastures in individually owned parcels. Each household then had a responsibility for its own parcel and an incentive to prevent overgrazing.

The 'tragedy of the commons' is also often used in the context of fishing (too much fishing would deteriorate fish populations) and in the context of air pollution: considering the air as a common, people have emitted pollutants in the air, which has gradually reduced air quality. Based on these examples, the tragedy of the commons can be defined as the result of the perception of people that using a 'common' results in an individual benefit, whereas the costs of using it can be shared so that they are hardly felt by individuals. As a consequence, up to the point where the 'tragedy of the commons' is truly felt by the users themselves, there is little incentive to adjust behaviour in terms of, e.g., reduction of emissions of pollutants.

This makes the 'tragedy of the commons' helpful in describing the issue of global warming and why it is taking place and why it could become a problem (Böhringer 2002; Paavola 2011). It also offers some solutions for addressing the problem (internalising the costs of emissions in individual cost calculations, e.g., with a Pigovian tax, or translating emissions into individual property rights), but its value to the discussion of what an optimal size of a stable climate coalition would be is limited. The concept of 'public goods' is more useful for that purpose.

Although interrelated, the 'tragedy of the commons' and the 'public goods' concepts are different in the sense that the first refers to the over-use of a common good, whereas a public good is a good from which no-one can be excluded. In the example of global warming, a 'tragedy of the commons' takes place when worldwide emissions of greenhouse gases lead to climate change; the reduction of greenhouse gas emissions and the prevention of global warming would then be a public good. Especially, the public good characteristic of climate change policy has turned out to be important when designing a climate regime. This is mainly because of the free-rider incentive that countries may have when they see that others are active with abatement policies whereas no country can be excluded from the

improved circumstances. In conclusion, international climate policy aims at preventing a ‘tragedy of the commons’ situation for the global climate, but must prevent free rider behaviour due to the public good character of the results of the formulated policy.

The above discussion has shown that insights from game theory help explain why climate policy negotiation outcomes, in an attempt to reach consensus among UNFCCC Parties, often result in lower greenhouse gas emission reduction targets than in an ‘ideal’ situation (as illustrated in Chap. 1). Within the eventually achieved coalition, countries try to achieve the best outcomes for themselves individually and, depending on the negotiation case, for the ‘group’ (such as the global climate). How this game has been played so far by countries in the context of establishing a climate regime will be discussed elsewhere in this book, based on experience with negotiating the UNFCCC, the Kyoto Protocol and the Paris Agreement.

### ***2.2.2 Determining the Size of an International Policy Coalition***

Based on the above discussion, a challenge of establishing and maintaining an international climate policy is that it must have a widespread international coverage as climate change is a global issue. Similar to the example of the prisoners’ dilemma, policy cooperation between countries on climate change could generate larger benefits than unilateral actions. For example, countries with relatively high marginal greenhouse gas abatement costs could carry out emission reductions in countries where marginal costs are relatively low (as the impact of greenhouse gas emissions is independent of the location where the emissions take place). This would not only reduce overall abatement costs but also increase overall benefits as new sustainable energy technologies become available in countries where they would not have been available otherwise. Countries could also agree on differentiated targets and/or commitments based on socio-economic welfare levels. In addition, within a framework of cooperation, countries could agree on financial and technology transfers or specific support measures to reduce costs of and increase benefits from cooperation.

For example, the UNFCCC contained, as a first international climate policy step, promises by industrialised countries to bring their greenhouse gas emissions back to 1990 levels by the year 2000. This coalition was not difficult to maintain as almost all (groups of) negotiating parties were satisfied: for industrialised countries the greenhouse gas stabilisation goal was not legally binding and developing countries did not have quantitative targets at all. The Kyoto Protocol in 1997 also achieved global support, but this coalition could only be achieved by exempting developing countries from quantitative emission reduction or limitation commitments and enabling industrialised countries to partly achieve their commitments through

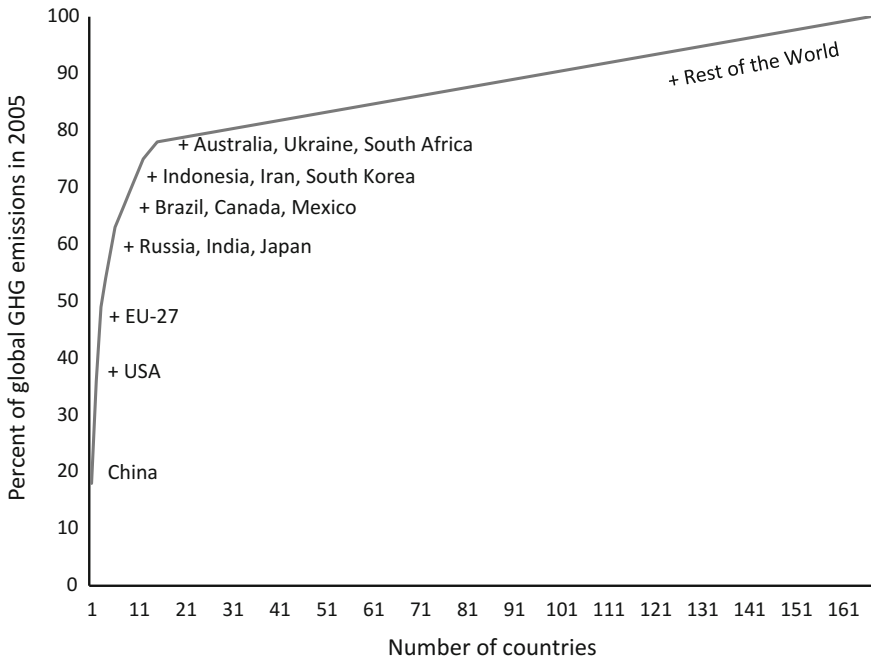
international emissions trading mechanisms (UNFCCC 1998). For example, as will be explained in detail in Chap. 3, in return for its willingness at ‘Kyoto’ to join the group of countries with quantitative commitments, the Russian Federation was allowed to adopt a relatively easy target (i.e. stabilisation of its greenhouse gas emissions at 1990 levels, when the country was still part of the USSR). US negotiators, who had been given a mandate by the Congress to only agree on a stabilisation of US emissions (Byrd and Hagel 1997), felt that the inclusion in the Kyoto Protocol of the concept of emissions trading (basically on a worldwide scale) would be enough compensation for committing the USA to a 7 % emission reduction (on which they soon turned out to be wrong, though).

As benefits from greenhouse gas emission reduction have the characteristic of a global public good, as explained above, no country can be excluded from these. By not joining or leaving a climate coalition, a country can benefit from the actions undertaken by countries in the coalition without undertaking actions itself. This could induce other countries also to withdraw from the coalition, thus threatening the overall objectives of the regime. Literature on game theory then suggests that international agreements, given the enforcement complexities, must be self-enforcing, i.e. the agreement must be designed in such a manner that the incentives for countries to stay in the coalition are larger than the incentives to leave the coalition (Neumann and Morgenstern 1944; Barrett 1991; De Zeeuw 2001; Tulkens 1998; Eyckmans and Finus 2003; Ray 2000).<sup>3</sup> In that case participating countries are compensated for their efforts (reduced costs) and receive a share of the benefits that result from the cooperation (De Zeeuw 2001; Altamirano-Cabrera and Finus 2006, p. 25). As a result, all participating countries are better off by staying a member of the coalition.

An important question that remains is how large an international climate policy coalition would need to be. In theory, since no country can be excluded from enjoying the benefits of greenhouse gas emission reduction (e.g., lower costs needed for adapting to climatic changes), a climate coalition would have to be global. This would prevent any country from taking a free ride on the greenhouse gas emission reduction efforts of other countries or that countries feeling that their efforts are offset by lack of action by others. However, whether this practically means that all countries would have to join the coalition of countries undertaking abatement actions remains to be seen. For instance, an effective and stable coalition with countries with commitments may not need to contain all countries in the world but mainly the key players: “the success of an international environmental agreement is not related to the total number of participants, but to the number of key players for tackling the problem—in the case of global warming USA, China, Russia (FSU) and India, among others” (Altamirano-Cabrera and Finus 2006, p. 27).

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<sup>3</sup>It must be noted that applying the theory of coalition building to climate change policy is complicated by the complexity of determining marginal benefits and costs of policy action. For instance, calculating costs and benefits from climate abatement actions is surrounded by several complexities and uncertainties (IPCC 2001, p. 200, Working Group I). In addition, the benefits and costs differ across countries.



**Fig. 2.2** Cumulative global greenhouse gas emissions in 2005 [author’s own elaboration, based on WRI (2009)]

What such a coalition with “key players for tackling the problem” could look like was illustrated in 2009 by the World Resources Institute (WRI 2009) in a diagram which plotted countries from left to right according to their absolute annual greenhouse gas emissions. The analysis showed that, in 2005, the fifteen UNFCCC Parties (both developed and developing countries, taking the EU as one Party) with the largest greenhouse gas emissions together accounted for approximately 80 % of global emissions.

Obviously, the above analysis (WRI 2009) was not hindered by political negotiation barriers, but, as is explained in Chap. 5, a few months after the climate negotiations at ‘Copenhagen’ 55 countries, including a number of developing countries, had submitted national pledges to the UNFCCC Secretariat to cut and limit their greenhouse gas emissions by 2020,<sup>4</sup> together accounting for 78 % of global emissions from energy use.

These examples show that while climate policy making has a global scope due to the uniform mixing of greenhouse gases in the atmosphere with climate impacts for

<sup>4</sup>Among these pledges was the EU target of 20 % emission reduction by 2020 as well as a number of individual EU Member State pledges. Therefore, the number of Parties with pledges after ‘Copenhagen’ is larger than the number of states listed in under the 80 % level in Fig. 2.2.



all countries (to a larger or lesser extent), negotiations and literature analysis up to 2009 tended to focus on international coalition building with quantitative greenhouse gas emission reduction actions for relatively small groups of countries with relatively large greenhouse gas emissions. Countries within such a coalition could then still collaborate with other (developing) countries on emission reduction projects (such as the Clean Development Mechanism, CDM), climate change adaptation support and technology transfer.

Under the Kyoto Protocol, as is described in Chap. 4, the coalition consisted only of industrialised countries with their adoption of quantified, legally binding commitments, including the possibility of emissions trading. This proved to be ineffective as rapidly growing developing countries such as Brazil, China, India and Mexico did not have such commitments. The absence of these countries was an important reason for the USA to leave the ‘Kyoto’ coalition in 2001. Attempts to establish an effective coalition under a post-Kyoto regime with the inclusion of quantified climate commitments for rapidly industrialising developing countries too failed at the Climate Conference of Copenhagen in 2009. Since then, coalition building has been focussed on a global collaboration based on mainly voluntary emission reductions or limitation measures by all countries. The adoption of the *Paris Agreement* in December 2015 (see Chap. 5) clearly illustrated this change in negotiations from legally binding commitments for a relatively small group of countries to more voluntary-based national climate action plans for basically all countries in the World.

## 2.3 Organising Climate Negotiation Processes

In Sect. 2.2 climate policy making has been described with help of game-theoretical and economic concepts such as ‘prisoners’ dilemma’, ‘tragedy of the commons’ and the ‘public good’ nature of benefiting from greenhouse emission reductions. In addition, basic characteristics of building an international climate policy coalition without an overarching disciplinarian have been discussed. Due to these factors, climate negotiation outcomes have often developed towards outcomes where a broad international coalition can only be achieved by watering down the required climate actions of individual countries (IISD 2015, p. 44). In this section, the importance of the negotiation process itself is discussed as a factor enabling negotiators to consider the above-mentioned game-theoretical aspects in their discussions.

### 2.3.1 Integrated Versus Distributive Negotiations

The literature distinguishes two main approaches to negotiations (Fisher and Ury 2011; Nierenberg 1978; Wertheim n.d.; Sprangler 2012; Meerts and Postma 2005).

The first approach is called ‘integrative’ or ‘cooperative’ and is recommended in circumstances where clear potentials for *win-win* situations exist. The second approach is called ‘distributive negotiations’ and is generally applied in so-called *win-lose* situations where parties have to compete with each other because of strongly differing interests (e.g., a customer negotiating the price of a product with the potential seller). The outcome of distributive negotiations is generally referred to as a zero-sum game—one party wins what the other one loses—although also *lose-lose* outcomes are possible if a party realises that it cannot win and cancels the negotiations.

In cases of ‘integrative’ (*win-win*) negotiation circumstances, negotiations are focussed more on striking creative deals which could result in negotiation outcomes where for each party the advantageous aspects outweigh the disadvantageous aspects. A typical characteristic of ‘integrative’ negotiation circumstances is that a party which ‘loses’ on one issue can be compensated by winning on another issue, so that both parties benefit from negotiations. Awareness of such a situation among the negotiation parties creates an incentive for both sides to strive for maximisation of the joint outcome. These circumstances also make it easier for parties to solve mutual problems, to share information, and to prevent decentralised behaviour with a focus on individual optimisation (Barrett 1999, p. 2).

Of the approaches described here, the ‘integrative/cooperative’ negotiation approach has the largest potential of offering a way out of the ‘prisoners’ dilemma’ situations described in Sect. 2.2, as it limits or prevents decentralised action (Barrett 1999, p. 3). During ‘integrative’ negotiations it is important for negotiators to consider the interests of opponents so that mutually satisfactory solutions can be found. Such an approach generally increases the flexibility of parties to find compromises that do not conflict with one’s own interests. This could even lead to ‘Pareto efficient’ outcome whereby no options remain on the table that could make at least one party better off without making the other parties worse off (Wertheim n.d., p. 12).

The Kyoto Protocol negotiations in 1997 (as discussed in Chap. 4) could be considered an example of how an initially ‘distributive’ negotiation approach turned towards an ‘integrative’ approach. During the first week of the ‘Kyoto’ negotiations countries mainly defended their own positions, but this changed during the second week when industrialised countries eventually adopted quantitative emission reduction commitments because their developing country negotiation partners agreed that these could be achieved flexibly, including via international carbon credit trading based on emission reduction projects. As a result, the ‘Kyoto’ negotiations could be completed successfully, because the protocol text reflected the national priorities of the several countries, such as “binding targets for the EU, flexibility for the U.S., success in Kyoto for Japan, no commitments for developing countries, financial pay-off for Russia, and good terms with the EU for Eastern Europe” (Wijen and Zoeteman 2004, p. 31).

Finally, Fisher and Ury (2011) and Wertheim (n.d.) conclude that the ‘integrative/cooperative’ negotiation approach is often used when negotiations take

place as a series of subsequent rather than isolated events.<sup>5</sup> Therefore, it is important that negotiators take into consideration that they will meet again and keep in mind that the negotiation atmosphere during one session may have an impact on the atmosphere in a next session, i.e. parties may harden their position if another party formerly did not want to cooperate, or show willingness to compromise if former negotiations resulted in a true win-win situation (Fisher and Ury 2011).

With a view to the climate change talks, this negotiation aspect can be illustrated by the opposition of developing countries, prior to the COP-1 (Berlin 1995), to Joint Implementation (JI) as an official instrument for helping industrialised countries stabilising their greenhouse gas emissions by the year 2000 at 1990 emission levels. This opposition was strongly motivated by developing countries' point of view that industrialised countries should invest in emission reduction measures 'at home', rather than setting up lower-cost project investments (through JI) abroad. However, simply rejecting JI as a policy instrument at COP-1 would likely have frustrated climate negotiations for the next couple of years. Therefore, at COP-1, in order to continue the climate negotiation progress, a pilot phase for JI called *activities implemented jointly* was established, as a compromise (see also Chap. 4).

With this compromise, the JI concept remained 'alive', but industrialised countries could, for the time being, not use it for compliance with their UNFCCC objectives.

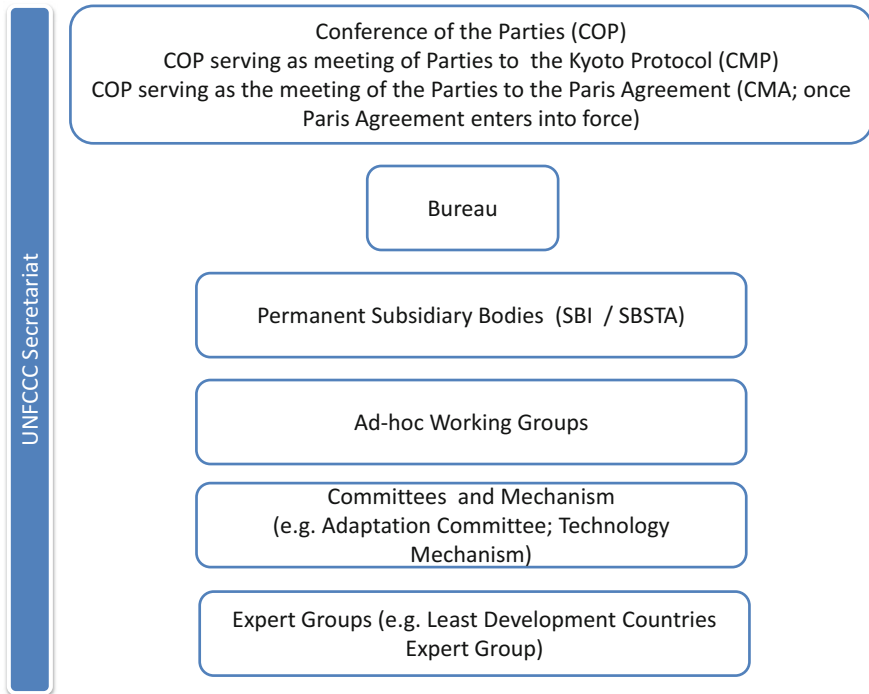
With a view to these examples and assuming on-going relationships between the negotiation parties in most of the cases, "the key to successful negotiations is to shift the situation to a 'win-win' even if it looks like a 'win-lose' situation. Almost all negotiations have at least some elements of win-win. Successful negotiations often depend on finding the win-win aspects in any situation" (Wertheim n.d., p. 2).

### 2.3.2 *Organisation of Climate Negotiations Under the UNFCCC*

Since the early 1990s, climate negotiations under the UNFCCC have taken place during multiple 'rounds' as described in Chap. 1. Initially, the Intergovernmental Negotiation Committee (INC) was the main negotiation forum which prepared the text of the UNFCCC that was adopted in 1992 (see Chap. 3) and which continued until the first Conference of the Parties (COP) in Berlin (Germany, March–April 1995). Since then, the COP, established by the UNFCCC (1992, p. 17, Art. 7), has been the central body for international climate negotiations. The COP is hosted

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<sup>5</sup>It must be noted that a strict distinction between 'integrative/cooperative' and 'distributive/competitive' may not exist in practice and parties, although aiming at a long-term cooperation and acting with an incentive to strive for a win-win outcome, could still to some extent try to introduce some elements of competitive negotiation in the talks (Wertheim n.d.; Barrett 1999, p. 2).



**Fig. 2.3** Summary of main UNFCCC Bodies (UNFCCC) (author's own elaboration)

annually during two week-sessions, usually by the end of the year, by either a developed or a developing country. Generally, countries try to apply the 'rule' that when a COP is hosted by a developed country in one year, then the next year a developing country will host the session. The ground rules for the process of negotiations within the context of the UNFCCC, as further explained in this section, have been determined by UNFCCC (1992). In the course of ongoing negotiations, additional bodies with their accompanying operational rules have been added to the UNFCCC organisational structure, such as the Subsidiary Bodies (SB, for advice and implementation, see below), the Ad Hoc Working Group on the Berlin Mandate (1995–1997, see Chap. 4), the Ad Hoc Working Group on the Durban Platform (2011–2015, see Chap. 5), the CDM Executive Board (2005–ongoing) and the Technology Mechanism (2010–ongoing) (see Fig. 2.3 for an overview of current bodies under the UNFCCC, as per January 2016, after the adoption of the Paris Agreement). These bodies receive their mandates from the COP, which also appoints their governing boards. The boards determine their operational processes and report annually to the COP.

Between 1995 and 1997, COP negotiations focussed on the Berlin Mandate to agree on a protocol with further specific (quantified) climate policy actions. After the conclusion on the Kyoto Protocol in 1997, negotiations focussed on modalities and procedures for successful implementation of protocol agreements.

An important role in this process was played by the Subsidiary Body for Scientific and Technological Advice (SBSTA) of the Subsidiary Body for Implementation (SBI). These two bodies support the COP negotiation process and negotiators meet usually twice a year for these discussions, during spring (May–June) and during the first week of the COP by the end of the year. As per June 2016, 44 SBSTA and SBI sessions have been held in total.

In 2005, when the Kyoto Protocol formally entered into force, after receipt of the Russian instrument of ratification in November 2004, a new negotiation track was established under the COP which had the objective to work on a climate agreement for the period after 2012 (to cover the period after the first commitment period of the Kyoto Protocol). This negotiation track was organised under the *Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol* (AWG-KP) (UNFCCC-CMP 2006, p. 3, para 2). In 2007, at the COP at Bali (Indonesia), a second, parallel negotiation track was established under the *Ad Hoc Working Group on Long-term Cooperative Action under the Convention* (AWG-LCA). The reason for having two working groups for negotiations on a post-2012 climate agreement was that not all UNFCCC Parties had ratified the Kyoto Protocol (yet) (among these countries was the USA). Therefore, limiting the negotiations to Parties to the Kyoto Protocol would exclude these non-ratifying Parties from post-2012 negotiation. AWG-LCA was aimed at keeping these Parties ‘in the loop’ and it was hoped that, eventually, both working group tracks would come together by 2012 (see Chap. 5 for a more detailed discussion on these parallel negotiation tracks).

As is discussed in Chap. 5, the Copenhagen COP session in 2009 (COP-15) failed at reaching a climate agreement as successor of the Kyoto Protocol’s first commitment period. As a consequence, at COP-17 in Durban (December 2011) a new negotiation track was established to conclude on a climate policy regime by 2015, which would need to become effective after 2020. At COP-18 in Doha (December 2012) work on this *Durban Platform for Enhanced Action* was started and the work on the AWG-LCA and AWG-KP formally concluded. During this overall negotiation process of over 100 meetings, several milestones were achieved, which are summarised in Table 2.1 for milestones achieved at COP sessions.

In terms of milestones, COP-1 (Berlin Mandate), COP-3 (Kyoto Protocol), COP-6bis (Bonn Agreement), COP-7 (Marrakech Accords), COP-13 (Bali Plan of Action), COP-16 (Cancun Agreements), COP-17 (Durban Platform) and COP-21 (Paris Agreement) may be considered (arbitrarily though) the most important negotiation sessions. Most of the other COPs became ‘intermediate’ sessions, which was also often a consequence of the time schedules agreed at earlier COPs. The Berlin Mandate of 1995, for example, had a deadline for 1997, which implied that COP-2 would mainly have to create the momentum to keep negotiations on track. COP-17 formalised a new negotiation process towards post-2020 climate policy making, to be concluded in Paris (2015).

The sequence of annual ‘milestone’ and ‘intermediate’ COP sessions have turned out to allow for a flexible negotiation process in the sense that topics can be placed on the agenda of a COP which have been identified at an earlier COP and/or

**Table 2.1** COP sessions held and their milestones

COP	Location	Milestones
COP-1 (March–April 1995)	Berlin, Germany	Berlin Mandate to start negotiations on a Climate Protocol
COP-2 (July 1996)	Geneva, Switzerland	USA agrees to negotiate legally-binding targets Geneva Declaration
COP-3 (December 1997)	Kyoto, Japan	Adoption of Kyoto Protocol
COP-4 (November 1998)	Buenos Aires, Argentina	Buenos Aires Plan of Action for protocol modalities and procedures
COP-5 (November 1999)	Bonn, Germany	Self-imposed deadline for Kyoto Protocol entry-into-force by the time of Rio+10 summit in 2002
COP-6 (November 2000)	The Hague, The Netherlands	President's Note based on topic-wise agreement on implementation of Kyoto Protocol instruments and mechanisms; no overall consensus reached though
COP-6-bis (June 2001)	Bonn, Germany	Bonn Agreement on, a.o., compliance issues under the Kyoto Protocol, to keep 'Kyoto' coalition in tact
COP-7 (November 2001)	Marrakech, Morocco	Marrakech Accords on modalities and procedures for implementation of Kyoto Protocol (based on Buenos Plan of Action and Bonn Agreement)
COP-8 (November 2002)	New Delhi, India	New Delhi Statement on adaptation and future climate policy regime
COP-9 (December 2003)	Milan, Italy	Role of sinks in Kyoto Protocol further defined as an option to account for carbon sequestration in forests and through land-use change under Protocol commitments
COP-10 (December 2004)	Buenos Aires, Argentina	Start of post-2012 negotiations; second commitment period of Kyoto Protocol, with protocol entry-into-force nearly there
COP-11 (December 2005)	Montreal, Canada	First meeting of Parties to Kyoto Protocol, establishment of AWG KP
COP-12 (November 2006)	Nairobi, Kenya	Nairobi Work Programme on impacts, vulnerability and adaptation to climate change
COP-13 (December 2007)	Bali, Indonesia	The Bali Action Plan, establishment of AWG LCA to also include non-ratifying Parties to Kyoto Protocol in post-2012 negotiations
COP-14 (December 2008)	Poznan, Poland	Poznan Strategic Programme on Technology Transfer
COP-15 (December 2009)	Copenhagen, Denmark	Copenhagen Accord on post-2012 climate policy regime (not adopted though by consensus decision)

(continued)

**Table 2.1** (continued)

COP	Location	Milestones
COP-16 (December 2010)	Cancun, Mexico	The Cancun Agreements with visions on climate change mitigation and adaptation, including on emission reduction pledges by developed and developing countries
COP-17 (December 2011)	Durban, South Africa	Durban Platform for Enhanced Action to negotiation on post-2020 climate policy regime
COP-18 (December 2012)	Doha, Qatar	Doha Climate Gateway and Doha Amendment to Kyoto Protocol, with new commitments for (some) developed countries during period 2012–2020
COP-19 (November 2013)	Warsaw, Poland	Introduction of the concept of Intended Nationally Determined Contributions (INDC) for developed and developing countries to pledge climate change mitigation action, considering national circumstances
COP-20 (December 2014)	Lima, Peru	Decision that countries shall submit INDCs before COP-21, with a review of these by the UNFCCC secretariat
COP-21 (December 2015)	Paris, France	Paris Agreement on a post-2020 climate policy regime, including decision that global average temperature increase be limited to 1.5 or 2 °C (see Chap. 5 for detailed discussion)

by a preparatory meeting. COP practice shows that identification of issues is usually initiated by one or more Parties at a COP discussion, which is then considered for further consideration, either by the same COP, or a next session of the COP or a subsidiary body or ad hoc working group. This generally supports addressing more flexibly the game theoretical aspects as explained elsewhere in this Chapter and handling the issue, as discussed in Chap. 1, that climate policy target setting, especially during the 1990s, but also during the negotiations towards the Paris Agreement, has often been subject of climate negotiations, rather than that negotiators have taken scientifically determined targets as a given.

Countries that have ratified the UNFCCC have access to the COP negotiations. Since the entry-into-force of the Kyoto Protocol on 16 February 2005, which was 90 days after the submission of the instrument of ratification by the Russian Federation, the COP has also served as the meeting of the Parties that have ratified the Kyoto Protocol (CMP). AWG-KP negotiations, as mentioned above, therefore took place under supervision of the CMP. The implication of this change is that countries that have ratified the UNFCCC but which had not (yet) ratified the Kyoto Protocol (e.g., USA and, until May 2009, Turkey) could only participate at CMP sessions as observers, without the right to vote, upon invitation of the CMP

President (generally the Minister for the Environment or Foreign Affairs of the hosting country).

As explained above, the sessions of the COP are prepared and supported by the so-called Subsidiary Bodies (SB) and ad hoc working groups (AWG). SB and AWG sessions take place somewhat ‘in the shadow’ with less of the pressure to achieve agreements which is often so strongly felt at COPs. It is also important to note that these more technical sessions are not pressurised with the necessity to gain political prestige from hosting the sessions, as these sessions are generally held in Bonn and organised by the UNFCCC Secretariat, mostly in May/June. SB sessions are also held in conjunction with the COP for the final preparations of the eventual COP decisions. AWG sessions were held more often throughout the year, depending on the political agenda. For example, the AWG-Durban Platform met 15 times between May 2012 and December 2015, of which five times during 2015 as preparation for the Paris COP (UNFCCC 2015).

Decision-making by the COP takes place according to a procedure that has never officially been adopted. Before the first session of the COP in 1995, the UNFCCC Secretariat had prepared a voting procedure upon which Parties could not reach agreement (UNFCCC 1996; Depledge 2004). As a consequence, “in the absence of any specified majority voting rule, there is currently a broad understanding in the climate change regime that substantive decisions should be adopted *by consensus*” (Depledge 2004, p. 5). More recent amendments to these rules state that the COP should make every effort to reach agreement by consensus, but where consensus cannot be reached, amendments to the UNFCCC and Kyoto Protocol may be adopted by a three-quarter majority vote of the Parties present and voting (Siegele 2013).

At this point, the President of the COP must ensure that two-third of the Parties are present at the meeting. However, this still requires a definition of what consensus means. In the context of the climate negotiations, consensus is generally achieved if there are no stated objections to a decision. The complication of consensus as a guiding principle for voting is that any Party can block decisions and that additional efforts are needed to adjust the decision text in such a way that it meets the concerns of the Party or Parties that have stated objections. This happened, for instance, at the ‘Copenhagen’ COP in 2009 when a few developing countries, among them Venezuela, Bolivia, Cuba and Nicaragua, rejected the *Copenhagen Accords*, so that it was not adopted. However, when a similar situation occurred at COP-16 in Cancún, a year later, during AWG-LCA negotiations, “Colombia questioned how not having any agreement could be beneficial for the environment and, supported by Gabon, noted that consensus did not mean that one country could block decisions” (IISD 2010, p. 12) (see also Chap. 5).

In order to avoid situations where decisions are blocked by a small group of Parties, COP Presidents often establish small informal working groups (or ‘joint contact groups’, or ‘negotiating groups’, or ‘drafting groups’) to prepare decisions on particular topics during the COP. These groups consist of experts that form a fair representation of the UNFCCC regions, i.e. Africa, Asia, Central and Eastern Europe, Latin America and the Caribbean, and Western Europe and others, including Australia, Canada, New Zealand and USA. They are often chaired by a



co-Chair from a developed country and a co-Chair from a developing country. Generally, when an informal working group has reached agreement on a particular issue and the decision text is presented to the COP plenary, consensus can more easily be reached.

In this process the SB sessions held in parallel with the COP play an important role (especially during the first week of the COP). The informal working group members have often already formed a similar working group at the annual SB and AWG sessions in Bonn (the May–June meetings mentioned above) where country representatives prepare first drafts of decision texts, which often have the form of consolidated texts based on proposals submitted by Parties. Then, at the COP, these consolidated texts can be further developed into COP decision texts, which become subject to the consensus ‘voting’ procedure. It should be noted that negotiations do often not take place at the plenary meetings of the COP. The working groups mentioned above, preferably with a balanced geographical division and specific competence, work on the texts and when they have completed their work and have reached agreement, these can be presented for conclusion to the Plenary of the COP.

The negotiations are furthermore supported by technical workshops organised by the UNFCCC Secretariat on issues that need further exploration by country representatives in consultation with third-party experts, who are invited to these workshops. In addition, negotiations during 2005–2015 resulted in new bodies to work on technology development and transfer (Technology Mechanism), finance (Green Climate Fund) and adaptation (Adaptation Fund Board) (see Fig. 2.3). These bodies are also populated by representatives of developed and developing countries and meet a few times a year at Bonn (van der Gaast and Begg 2012).

While preparing for the COP, its President often identifies the issues that could ‘break or make’ the COP. In order to already sort out some of the issues before the COP, the President can organise a small workshop with key players, about two months before the COP session. These key players are, for instance, the EU Presidency Trio (of incoming, present and former chairs of the EU Council), the main negotiators of important industrialised countries, the acting chair of the G-77&China, a representative of the Alliance of Small Island States (AOSIS), etc. This meeting generally offers a good opportunity for the President to show his/her “charm, cunning, humour, daring and a range of other techniques” (Depledge 2004, p. 6) that later may help to generate consensus at the COP. In addition, several COP Presidents in the past formed so-called ‘friends of the President’ groups, which are small gatherings of selected negotiators to support the President in preparing the negotiations, identifying key issues during the negotiations, and drafting compromise texts during the final stage of the COP sessions (at this stage also some ministers attending the Ministerial or high-level segment of the COP—generally the last two days of the session—could join the ‘friends’ group).

Obviously, inviting country representatives to the groups is a very delicate task for the President to perform as it requires a politically sensitive selection of key countries. One option to select negotiators is to select from each UN region one representative, so that all regions are represented. Another option, which is nowadays mostly used by COP Presidents, is to invite one representative from the

various negotiation coalitions that have been active in the course of the climate negotiations over the past 20 years (see for an overview Box 2.1).

An example of using the latter option was at COP-6*bis* in Bonn (June 2001) which was chaired by the Dutch Minister of Environment, Mr. Jan Pronk. He had already intended to establish a negotiation table system with key negotiators selected from the country groups at COP-6 in November 2000, but then it was met with too much resistance, as within the groups it was difficult to appoint a ‘leading country’. At the Bonn COP session, Mr. Pronk tried again and this time a negotiation table could be formed with one chair per group to be taken by a spokesperson who was backed by a number of colleagues from the same group sitting on chairs behind him/her. Perhaps also the changed negotiation climate facilitated this set-up of the ‘friends’ group. After all, since the decision by US President Bush, early 2001, to consider the Kyoto Protocol “fatally flawed” (see Chap. 4), the remaining countries had become engaged in an intense diplomatic carousel with representatives from negotiation groups visiting each other in order to design strategies to save the protocol at the resumed session of COP-6 in Bonn.

Since the successful application of the ‘friends of the President’ formula at COP-6*bis*, it has also been applied by other COP Presidents, although not always with similar successes. The ‘friends’ groups do not always manage to step beyond political dividing lines, so that, during the final hours of the COP sessions, the President still needs to negotiate bilaterally with particular negotiators to strike final deals (Depledge 2004, p. 22). An important condition for organising such group or ‘friends’ discussions is that they keep all other countries and their negotiators included in the process. For example, when in 2009, before COP-15 in Copenhagen, rumours were heard about a Danish ‘President’s Text’ for guiding the COP negotiations, this immediately raised concerns among several country negotiators who felt excluded from the negotiation process (see Chap. 5 for a detailed discussion on this process).

### **Box 2.1. Groupings of UNFCCC Parties During Climate Negotiations**

According to the UN tradition, Parties, while they are each represented by national delegations, are organised in five regional groups, mainly for administrative reasons:

- African States,
- Asian States,
- Eastern European States,
- Latin American and the Caribbean States, and
- Western European and Other States (e.g., including EU, Australia, Norway, Switzerland and USA).

In order to have their substantive interests better presented at negotiations, Parties usually organise themselves in ‘like-minded’ groups. According to the UNFCCC website, the main groups are:

- Group of 77 (**G-77**), which was founded in 1964 and has nowadays 134 developing country members; China generally collaborates with G-77 so that the group's inputs to the COP are usually tabled as G-77&China submissions,
- Small Island Developing States (**SIDS**), which is a coalition of 43 low-lying and small island countries,
- Least Developed Countries (**LDC**), which contains 48 countries and which share a common interest in, e.g., vulnerability and adaptation to climate change,
- European Union (**EU**), which as a regional economic integration organisation has become a Party to the UNFCCC itself,
- **Umbrella Group**, which is a loose coalition of non-EU developed countries (usually made up of Australia, Canada, Japan, New Zealand, Kazakhstan, Norway, the Russian Federation, Ukraine and the USA), and
- Environmental Integrity Group (**EIG**), which comprises Mexico, Liechtenstein, Monaco, the Republic of Korea and Switzerland.
- The Like Minded Group of Developing Countries (**LMDC**) with the following countries, who are also part of the G-77: Algeria, Argentina, Bangladesh, Bolivia, China, Cuba, Ecuador, Egypt, El Salvador, India, Jordan, Iraq, Kuwait, Indonesia, Iran, Malaysia, Mali, Nicaragua, Pakistan, Saudi Arabia, Sri Lanka, Sudan, Syria, Venezuela and Vietnam.

Several of these groups have overlaps as countries are member of more than one group. For example, most of the countries that belong to SIDS, LDC and LMDC are also part of the G-77.

In addition, there are several other groups, such as OPEC (Organisation of Petroleum Exporting Countries), CACAM (Central Asia, Caucasus and Moldova), BASIC (Brazil, South Africa, India and China), and COMIFAC (Central African Forestry Commission), which speak with common voices at climate negotiation sessions.

Source: UNFCCC (2014b).

Finally, the COP sessions acquire an extra political dimension through the participation of ministers or high-level officials from the Parties in the concluding phase of the negotiations. The influence of ministers on the final outcome differs from case to case. Sometimes, ministers or high-level officials create a breakthrough in negotiations because their political power goes beyond the mandate of the official negotiators. The speech delivered by US Vice-President Al Gore in 1997 at COP-3 is seen as a good example of this effect. However, the high-level segment's contribution to reaching an agreement is not always decisive. The outcome of the Copenhagen Climate Conference in 2009, as discussed in Chap. 5, is a clear example of how the high-level segment can lead to a negotiation process which mainly focuses on a relatively small number of 'key' countries (e.g., the countries

with the highest greenhouse gas emissions) and ‘excludes’ others. Several ‘excluded’ negotiators, who had worked for almost four years on a negotiation text, only heard about an agreement through the Internet or via the press conference of US President Barack Obama. Eventually, some of them refused to adopt the *Copenhagen Accords*.

## 2.4 The Scope for Tactics During Climate Negotiations

Earlier in this chapter it has been discussed how climate negotiations need to consider (game-theoretical) aspects of building an international climate coalition and that this requires a sufficiently flexible negotiation process to handle the different country (group) perspectives well. As illustrated by Fig. 1.1 in Chap. 1, at several points during negotiations, tactics are required to change the course of negotiations in the direction of more countries on board of the coalition, agreeing on measures for achieving a climate goal. This section first elaborates on possible (domestic) drivers for Parties’ positions and negotiation tactics, which is followed by an identification of tactical and facilitating factors which can, each in their own way, determine the course of negotiations and whether, when and how negotiation breakthroughs can be achieved.

### 2.4.1 *Reflection of National Interests in Countries’ Positions*

In Sect. 2.2 it has been concluded that countries have an incentive to join a climate policy regime if their share in the regime’s surplus is sufficiently large to outweigh the costs of participation. The term ‘share’ is rather abstract though and it generally consists of the benefits that accrue to countries when joining a climate regime. However, what is actually perceived as a benefit typically depends on the country concerned. Some countries may take into consideration all benefits to the national economy, whereas other countries only look at the benefits that accrue to powerful interest groups. Yet, other countries may take a more altruistic approach and consider a slowdown of global warming, the protection of ecosystems and the prevention of damage to vulnerable countries important benefits. Similar definition issues arise when assessing costs of joining a global climate regime, e.g., should costs be defined on a national level or only for key interest groups and assessed with a view to the short term or also the medium to longer term.

The process of determining what share a country would need from the surplus of a climate policy coalition before being willing to join is an important determinant of a country’s negotiation position. A number of theories have tried to formalise how a domestic interplay between a government and interest groups, a country’s perception of international norms and values, and domestic institutional structures add up to the negotiation position of the country (Cass 2002; Heck et al. 2004).

For instance, when determining their desired share in a coalition's surplus, countries could consider the *absolute* gains of joining an international treaty or the *relative* gains vis-à-vis other countries. In the first viewpoint, often referred to as 'neo-liberalism', a country does not necessarily look at how other countries gain or lose, as long as it gains itself. According to the second viewpoint, 'neo-realism', a focus on relative gains is justified by countries' traditional focus on the division of power between states and it identifies security, safety and prosperity as key elements for the positions that countries take at international negotiations. The most important objective of a country is to maintain its relative power vis-à-vis other countries and cooperation is generally based on defensive arguments, i.e. a country is willing to join an international policy regime if it feels that their security, safety and prosperity (or one or more of these factors) are threatened and that the coalition can improve this situation. The key actors in the neo-realism tradition are states and only little attention is paid to the behaviour and interests of individuals and private groups within countries (Cass 2002; Heck et al. 2004).

Other theoretical approaches, such as 'social constructivism', focus on how a country's national negotiation position is influenced by opinions, expectations, and perceptions in their domestic social context. An important element that constructivist theories add to the theories mentioned above is an explanation of how the behaviour of states may be influenced by ideational interests, next to material goals such as economic prosperity, safety and security. This leads to a fundamental difference with neo-realist and neo-liberal theories (Heck et al. 2004): whereas neo-realists and neo-liberals consider state behaviour as egocentric in the sense that states take international positions to protect their own well-being, social-constructivists believe that also 'soft' elements such as political culture, history, perceptions regarding identity, norms, well-being of other states and population groups play an important role in the formulation of national and international policies by countries. The *precautionary principle*, included in the UNFCCC, is an example of such a position, as it calls upon countries to take action in the short term in order to prevent environmental damage, rather than to wait until the damage occurs and to take costlier measures then (UNFCCC 1992, pp. 9–10, Art. 3.3). Therefore, as also explained in Chap. 1, the precautionary principle is both aimed at preventing damage from climatic changes and saving costs of adapting to such changes, even when the projections of future climate damage are surrounded by uncertainties.

In the view of social constructivists, collective mental constructions such as ideologies, countries' perceptions with respect to cooperative and non-cooperative international players, and countries' self-esteem are also important elements to take into consideration when explaining the positions taken by countries in international cooperation contexts, next to economic well-being, safety and security. In this respect, also the experience of a country's private and public actors with policy concepts can become a factor in formulating a country's negotiation position. For example, before greenhouse gas emissions trading schemes were introduced in climate negotiations in the 1990s (e.g., the JI concept), there had already been a decade's long tradition of emissions trading schemes in the USA whereby polluters faced emission quota (maximum amounts of allowable pollution) with the

possibility to trade quota surpluses and deficits among other polluters. At negotiation sessions on the Kyoto Protocol during 1995–1997, US negotiators repetitively argued in favour of international emissions trading as a policy tool to increase the cost-effectiveness of an international greenhouse gas abatement policy. Several EU Member States, such as Germany and the Netherlands, referring to their domestic experience, were in favour of voluntary agreements with industries, which allowed polluting companies sufficient freedom to achieve energy efficiency improvements and greenhouse gas emissions reduction targets in their own way. Only in 2002, the European Commission started to adopt emissions trading as a key tool to achieve EU Kyoto Protocol targets, which eventually resulted in the EU Emissions Trading Scheme (European Commission 2016).

Next to theoretical insights on motivations for countries to take negotiation positions (absolute vs. relative gains and whether and how a negotiation position is based on opinion, expectations, ideals and perceptions in the country context), other theories also offer insights on how a negotiation position can be formed through a country's institutional characteristics. According to 'material and institutional liberalism' theories, the central actors in society are individuals and private groups that rationally pursue their private interests, which are subsequently reflected in the policy making at the level of the state (Cass 2002).

An important aspect in this process is how micro-level interests eventually culminate into a national policy. For instance, if from a macro perspective a certain national policy position were optimal, there may still be individual interest groups that wish to prevent the position if it would be harmful for them. The extent to which these groups are able to do so depends on a number of institutional issues. For example, an election system with proportional parliamentary representation provides a larger scope for environmental parties (e.g., the *Grünen* in Germany or *Groen Links* in the Netherlands), than is the case in countries with district election systems such as in the UK and USA (Cass 2002, p. 10). The latter systems tend to provide scope for larger 'catch all' parties which consider environmental protection as one of the several items on their political agenda.

From the above discussion, it can be concluded that the position of countries in international debates and negotiations can be influenced by a range of factors, for which each country may have different weights. It is outside the scope of this book to analyse in detail how national procedures culminate in country positions at international climate negotiations, but for a good understanding of how climate negotiations develop, it is useful to take into consideration how and why domestic decision-making institutions and procedures influence the positions of countries at international negotiations.

In conclusion, some countries may let their participation in a climate coalition depend on a cost-benefit analysis in a narrow sense by balancing present and future costs and socio-economic benefits using market discount factors. Other countries may use a broader assessment by also taking into consideration the damage from climate change that may occur to other countries or to ecosystems in terms of loss of biodiversity (such as the *precautionary principle*). Countries may base their positions on what other countries do (including perceptions), or what they believe

that other countries expect them to do. Countries could also place the issue of climate change in the context of other international issues and aim at ‘package deals’ and/or realise that the position taken in the climate debate may have an impact on their benefits under other international treaties and agreements. Finally, countries could use international negotiations as an opportunity to emphasise their national identity or image, e.g., as a country with a long tradition in underlining international solidarity or, on the contrary, as a country that has the power to follow an independent course of action.

### ***2.4.2 Tactical Factors for Climate Negotiations***

In addition to the context in which negotiations take place (win-win or win-lose) and the extent to which national, domestic interests and priorities are reflected in negotiation positions, negotiations and their eventual outcomes also depend on several tactics-related factors with respect to the circumstances under which negotiations take place, the personality of the negotiators, whether the negotiation is a stand-alone process or a step in an on-going process, whether all negotiators have clear upfront targets, etc. These tactical factors are briefly described below and illustrated with anecdotes taken from past climate change negotiation sessions.

#### **Upfront negotiation target**

According to Wertheim (n.d.), “too many negotiations fail because people are so worried about being taken advantage of that they forget their needs.” This could make parties decide to break off or complicate negotiations, even if a reasonable deal is about to be closed, because they are reluctant to accept any deal due to their fear that they will be taken advantage of and lose. Such situations could be prevented if negotiators clearly explore a priori what would be a fair and reasonable deal and what would be minimally acceptable (Fisher and Ury 2011).

An example of how such reluctance by a Party to accept a deal eventually blocked an agreement, was the final stage of the negotiations at the sixth COP held in The Hague (November 2000). After two weeks of intense negotiations, COP-6 President Jan Pronk (Dutch Minister of the Environment, see earlier in this chapter) presented his so-called President’s Note which contained compromises on all the crunch issues that had remained on the agenda. This Note brought the negotiations close to an end and when US negotiator Frank Loy and UK Minister John Prescott proposed a final agreement on the hottest issue (i.e. to account for carbon sequestration investments in agricultural soils as a way to comply with Kyoto Protocol commitments, which the USA was in favour of, thereby opposed by the EU negotiators), which addressed the concerns of the EU on this issue, the COP meeting was about to be closed successfully. However, at the last minute, the EU rejected the deal in the person of its main negotiator, French Minister Dominique Voynet, because she was not convinced about the environmental integrity of the



US-UK proposal. According to Mr. Prescott, Ms. Voyner “got cold feet. She was exhausted and tired and could not understand the detail” (Oakley 2001).

### **The extent to which people/countries are separated from issues**

In the view of Fisher and Ury (2011), negotiations should be on issues and best take place in a rational, goal-oriented frame of mind. It is therefore critical to separate people or countries from the issues during negotiations. Parties that exchange person/country-oriented, emotional arguments run a considerable risk that the real issues are overlooked (Wertheim n.d.). In the context of climate negotiations, during 1991–1997, when negotiating on a UNFCCC text, and later the Kyoto Protocol (see Chaps. 3 and 4), but also during 2005–2015, when negotiating on a post-2020 climate policy (see Chap. 5), negotiations were largely focussed on distrust between developed and developing countries with respect to willingness to effectively tackle climate change.

Over the years, developing countries have repeatedly held developed industrialised countries responsible for the global warming issue, given their historic emissions of greenhouse gases, and therefore insisted that developed countries should take the lead in reducing greenhouse gas emissions and that developing countries should be exempted from such actions (at least, for the time being). This discussion at some point overshadowed the fact that some developing countries were in the process of rapid industrialisation and were becoming major emitters themselves. Only after the Copenhagen COP session in 2009, the strict dividing line between developed and developing countries was partly removed and in Paris (in 2015), also developing countries committed themselves to formulating national climate plans (Nationally Determined Contributions or NDCs, see Chap. 5).

### **Mandates for negotiators given by their governments**

Usually, negotiators receive mandates from their government which determine their scope of manoeuvre during the negotiations. While these mandates often provide a handhold to negotiators, they could also create a considerable barrier, when they ‘forbid’ negotiators to make a move that is required for a breakthrough in the discussion. In such cases, negotiators can decide to move on and try to find creative solutions to bring negotiations to an end. This often requires strong personalities and considerable experience of the negotiators. After all, if the negotiation outcome for a country differs largely from the mandate negotiators had been given, there may be little chance that the national government will approve of the negotiated outcome. At the same time, if they only focus on their own mandate and insufficiently care about the extent to which the mandates of other negotiators are taken into consideration, they may win the negotiations but eventually lose the treaty, because the other countries will not ratify the outcome.

Overstepping mandates does not always have to be a problem as long as the negotiators have valid arguments to explain ‘back home’ how this happened. A reason for overstepping is often that the mandates are generally based on estimates of what negotiations may look like. At negotiations, the position of countries can change, conflicting proposals creatively combined, and new, unexpected proposals tabled. What is important in the end is that country negotiators are able to



judge whether the proposed negotiation outcome package is acceptable for the governments they represent.

For example, the US negotiators at Kyoto (1997) believed that the Kyoto Protocol package with emissions trading among industrialised countries and cooperation with developing countries through a broader application of the concept of emissions trading (i.e. JI, the CDM and international emissions trading among developed countries, see Chap. 3) weighed sufficiently against the 7 % emission reduction target for the USA without corresponding commitments for key developing countries. This package largely deviated from the negotiation mandate given by the US Congress, e.g., Byrd-Hagel resolution of 1997 (see Chap. 4). This resolution instructed the US negotiators to accept nothing more than a target to stabilise emissions at 1990 levels. On the other hand, the Brazilian negotiators rightly concluded that the establishment of the CDM was in line with the Brazilian proposal to support sustainable development in developing countries through a clean development fund (Matsuo 2003). Therefore, the outcome of the CDM as a market mechanism under the Kyoto Protocol remained within the mandate of the Brazilian negotiators.

### **Set up of the negotiation session**

Negotiations are often more effective if they take place in smaller working groups per topic instead of in large plenary sessions with over 190 countries and their representatives (see also Sect. 2.3.2). The small groups consist of issue specialists and communication can be less formal and more direct than in a plenary. At COP sessions, negotiations largely take place in technical working groups with specialists from country delegations. The working groups are always established with a balanced representation from developed and developing countries. These groups prepare negotiation texts for presentation to and approval by the COP plenary.

However, while such a working group approach may generally be effective, it must be avoided, as the Copenhagen climate negotiations in 2009 showed, that some countries feel excluded from the process. This can create suspicion that deals are hammered out by the smaller groups based on their criteria, rather than on criteria of the wider international coalition that is aimed at. In Copenhagen, this resulted in a refusal by some countries to adopt the *Copenhagen Accords*. At next COP sessions, Presidents assured countries that negotiations would be inclusive, which was specifically illustrated by the set-up of most of the COP negotiations in Durban in 2011, in the form of the traditional *Indaba* work sessions (see Chap. 5).

### **Time pressure and exhaustion**

Regularly, international negotiations between countries (e.g., under the UN or World Trade Organisation, WTO) are characterised by negotiations around the clock during the last days of the session. In this final phase, working groups draft decision texts on particular issues, ministers or other high-level country delegates negotiate outstanding issues, ‘friends of the President’ groups are formed to facilitate more informal talks, etc. Lack of time to complete negotiations could lead to unexpected outcomes where Parties suddenly give in because they do not want to be blamed for the failure of the negotiations. Or, instead, a lack of time could make

Parties reluctant to accept a proposed deal, even it would in principle meet the criteria for a win-win case, simply because negotiators have insufficient time to carefully judge the proposal. Climate negotiations have shown examples of both effects. The negotiations in Kyoto in 1997 came under a time pressure, because several exhausted delegates had to catch their planes, especially delegates from developing countries who often had low-cost, fixed tickets (Depledge 2004, p. 24), and, although not all legal texts had been discussed in a plenary meeting, the protocol text was adopted. On the other hand, the COP-6 talks failed in November 2000 because the EU negotiator was not convinced that the last-minute proposal for a deal adequately covered the EU concerns (see earlier in this chapter).

Another problem that may arise in this phase is that exhaustion of delegates particularly affects relatively small delegations (e.g., of some developing countries) (IISD 2013, p. 29). Negotiators from small delegations must often follow the round the clock schedule, whereas delegates from the larger delegations are regularly replaced by ‘fresh’ colleagues. This unbalance could have an impact in two directions: either exhausted delegates agree on texts that they would otherwise not have agreed on, or they refuse to agree on draft decisions simply because they have lost view on the consequences of the text. One option for smaller delegations is to collaborate within larger negotiation groups, as described in Box 2.1.

### **Location of the negotiations**

Hosting a negotiation session, such as the COP, is prestigious and the host will do whatever it can to make the session a success so that the agreement can be named after the city where the session was held (e.g., Berlin Mandate, Kyoto Protocol, Buenos Aires Plan of Action, Bonn Agreement, Marrakech Accords, Bali Plan of Action, Cancun Agreement, Durban Platform, Paris Agreement). This could affect the negotiation position of the host country. For example, in order to contribute to the success of COP-3 in Kyoto, the Japanese government was willing to accept relatively strict emission reduction commitments under the Kyoto Protocol, in an effort to show the right example.

### **Availability of documents**

All official documents (i.e. reports, negotiation texts, etc. prepared by the official secretariat of the UNFCCC) to be discussed at UN negotiation sessions need to be made available at least six weeks before the session in the six official UN languages: Arabic, Chinese, English, French, Russian and Spanish. In practice, however, this rule is difficult to comply with as compiling official texts and translating these into the six languages is a time-consuming process (several tens of official documents are submitted to negotiations). Not rarely, texts become only available at the meeting itself and only in English, which makes negotiations on these texts more difficult for non-English speaking (or even non-native English speaking) negotiators. This could delay negotiations as delegates at COP negotiations could refuse to continue negotiating without the availability of a text in their own UN language (which actually happened in the past).

### **Personalities of the key negotiators**

Finally, for their success negotiations strongly rely on confidence in negotiators' intentions to come to a successful closure of the sessions. The personality of the key negotiators plays an important role in this respect. When US Vice-President Al Gore came to Kyoto (in December 1997) to address COP-3, he offered more flexibility from the side of the USA during in the remainder of the COP session. He effectively stepped over the Byrd-Hagel resolution 'mandate' and allowed the US negotiators to accept emission reduction commitments, even if key developing countries would not accept such commitments. This facilitated negotiations during the second week of the COP after a very disappointing first week.

Another example is the role of the chairperson of the COP-3 working group on a Protocol text, Mr. Raul Estrada from Argentina. He cleverly merged the US proposal to establish project-based emissions trading between industrialised and developing countries with the Brazilian idea to establish a Clean Development Fund (see earlier in this chapter). The latter fund would collect penalties from industrialised countries that would not comply with the Kyoto Protocol commitments, and use this money to invest in sustainable development projects in developing countries (Matsuo 2003). Estrada took the sustainable development objective of the Brazilian idea as a starting point but proposed that industrialised countries immediately invest in such projects for which they would receive greenhouse gas emission reduction credits in return, instead of waiting for penalties to become available after 2012. Estrada thus kept the project-based emissions trading idea (which developing countries had generally opposed) alive by ensuring that its main objective would be sustainable development for developing countries. This combination was acceptable for developed countries and difficult to be rejected by developing countries as it was mainly based on an idea put forward by a developing country, Brazil.

Finally, the role of French Minister of Foreign Affairs, Mr. Laurent Fabius, has been praised by many delegates to the Paris COP-21 (2015) for his style of leading the negotiations, based on a text that country negotiators had written before the COP (with many options and conditional language). This resulted in ownership of the text by all countries - no President's Text as was tried at COP-16 in Copenhagen - but Fabius kept a strong eye on the timeline and pressed negotiators to observe the deadlines. Inclusiveness and strictness therefore became two key characterisations of Fabius' leadership towards the successful adoption of the Paris Agreement.

### **Information availability**

Section 2.2 has shown cases where a prisoners' dilemma situation could emerge because of a lack of communication between players or the absence of an overarching authority to guide players to the aggregate optimum: the outcomes may be optimal from the viewpoint of individual players (given their options and available information), but sub-optimal from an overall, aggregate perspective. Communication among the players via an overarching authority, through bargaining concepts or through external sources, such as IPCC Assessment Reports, but also newsletter, policy briefs, books, workshops and conferences, could subsequently

help achieve a better aggregate outcome. In the context of climate change policy, such communication would for instance enhance the common knowledge of the players of the benefits and costs related to cooperation in a climate policy regime, which could create opportunities to jointly carry out greenhouse gas abatement actions that countries would not have carried out on their own.

## 2.5 Analysis of Climate Negotiation Dossiers in This Book

In this chapter, three factors for successful international climate policy negotiations have been discussed in further detail, based on a literature review and experience from past negotiation sessions, mainly on climate change. From literature on game theory, factors have been identified that determine the *design* (i.e. *size and structure*) of an international coalition, such as for climate policy making. It has been concluded that formal negotiations on international agreements, such as under the auspices of the UN, are characterised by the absence of an overarching authority to enforce compliance with the agreed objectives and targets. It has been explained how incentives for compliance should preferably come from within the agreement in the form of political goodwill from cooperation, compensating financial and technology transfers, and cost-effective mechanisms to reduce compliance costs (e.g., emissions trading).

Such incentives not only enable the creation of a sufficiently large climate policy coalition to address free riding, consider climate change as ‘tragedy of the commons’ and treat climate policy making as a public good, but also keep the coalition stable during its operationalisation. An important aspect of negotiations, in order to establish a stable coalition, is that an acceptable allocation of commitments and surpluses is sought across the participating parties and that institutional structures are adequate for monitoring the compliance with agreed commitments.

Insights on the *process of negotiations* have been generated from literature sources on ‘integrative’ versus ‘distributive’ negotiation process contexts and it has been examined to what extent climate negotiations would fall in either category, or in both with development from one process category to the other as a result of repetitive negotiation rounds. The chapter has also described what the official climate regime negotiation process looks like, with a central role for the COP.

Finally, *tactical and facilitating aspects* during negotiations have been elaborated on. It has been discussed how country tactics can be determined by preferences of the state as a whole, preferences of domestic interest groups and the role of domestic institutional structures in building up a national negotiation position. It has also been discussed how the course of negotiations (and their outcomes) can be influenced by a range of tactical and/or facilitating factors, such as whether negotiators have clear mandates from their governments, are influenced by (international) interest groups such as environmental NGOs, face time pressure to complete negotiations before a deadline, and have all necessary documents available in the right languages and at the right moment.

In the next chapters, it is examined whether and how these facts have been met during negotiations on the UNFCCC, Kyoto Protocol and the Paris Agreement (Chaps. 3–5).

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