



Regional Training Workshop

South and South East Asia



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ecbi

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INTRODUCTION

The European Capacity Building Initiative's 2017 South and South East Asia Regional Training Workshop was held on 6 & 7 September in Negombo, Sri Lanka. It was attended by 26 government representatives from 11 countries in the region. The workshop was organised by Janathakshan, in partnership with the International Institute for Environment and Development (IIED), Oxford Climate Policy (OCP), and the Legal Response Initiative (LRI).

B.M.U.D Basanayake, Board Member, Janathakshan, opened the workshop and welcomed the participants. He noted that climate change is becoming critical to both domestic and foreign policy of Sri Lanka due to the rising frequency and intensity of climate events.

Ruwan Weerasooriya, Assistant Director of Sri Lanka's Climate Change Secretariat, standing in for the Director, Sunimal Jayathunga, noted the importance of the negotiations under the UN Framework Convention on Climate Change (UNFCCC) for countries like Sri Lanka, and the growing importance of climate adaptation finance. He described the national secretariat's role in successfully presenting Sri Lanka's National Adaptation Plan (NAP) the Nationally Determined Contributions (NDCs). Moreover, he pointed out the importance of moving ahead with inter-ministerial cooperation and praised the participation of representatives from the various national and international agencies.

Vishaka Hidallage, Assistant Country Director, representing the UN Development Programme (UNDP), spoke on the vital role that the UNDP and other UN-affiliated organisations were playing in Sri Lanka. She noted that while climate change impacts are already taking a greater toll on the most vulnerable communities – the recent drought and floods in the country being prime examples – there have been positive efforts to move the discussion forward. Hidallage said efforts by the Sri Lankan government to implement its NAP and access international adaptation finance are positive signs.

Achala Abeysinghe, head of the ecbi Training and Support Programme, outlined the purpose and objectives of the training workshop. She said the goal is to help negotiators understand the Convention, and more importantly, each other. The workshop were also aimed at helping negotiators work together to deal with these challenges, and build lasting partnerships based on trust, she said.

Anju Sharma, head of the ecbi Publications and Policy Analysis, concluded the introductory session by elaborating on the origins of the ecbi, and its three main components: the Fellowship Programme, Training and Support Programme (TSP); and Publications and Policy Analysis Unit (PPAU). She said ecbi's Fellowship Programme seeks to bring together negotiators from Europe and developing country at the annual [Oxford Seminar](#), to help improve their understanding of each other, and nurture trust. The ecbi Training and Support Programme, meanwhile, is aimed at building the capacity of junior and new developing country negotiators, to level the playing field in the UN negotiations. The PPAU produces policy briefs, aimed mostly at senior negotiators; and background papers and guides for the TSP programme. Sharma introduced the participants to the various ecbi publications that were available for negotiators trying to navigate the international climate change negotiations, including, for instance, [Becoming a UNFCCC delegate: What you need to know](#); a [Pocket Guide to the Paris Agreement](#); a [Pocket Guide to Capacity Building for Climate Change](#); and a [Pocket Guide to Transparency Under the UNFCCC](#).

SESSION I: BECOMING A UNFCCC DELEGATE - WHAT YOU NEED TO KNOW

This session was addressed by Gebru Jember Endalew, Chair of the Least Developed Country (LDC) Group.

Endalew noted that negotiators are often poorly coordinated, even within delegations, let alone between different delegations. This can lead to deadlock and unproductive sessions at the global level, and poorly informed governments at home, with little political support for action. He then addressed four issues:

- Understanding the UNFCCC
- Governance structure
- Who is who and what to expect from different meetings
- Practical tips

Participants were provided with a brief introduction to the UNFCCC negotiations, including the Rio Declaration on the Environment and Development (1992); Kyoto Protocol (1997); and the Paris Agreement (2015). While the Kyoto Protocol adopted a selective top-down approach, Endalew said, the Paris Agreement adopts a more inclusive bottom-up approach.

Endalew explained that international negotiations are built on key principles including common but differentiated responsibilities, precaution, no harm (due diligence and a duty to cooperate), and sustainable development. The general principles guide the specific treaty bodies that act as the supreme decision-making bodies of the UNFCCC, the Kyoto Protocol, and the Paris Agreement respectively: the Conference of Parties (COP), the Conference of the Parties serving as the Meeting of Parties to the Kyoto Protocol (CMP), and the Conference of Parties Serving as Meeting of the Parties to the Paris Agreement (CMA). These bodies, in turn, are supported by two permanent subsidiary bodies: the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA).

Within such formal mechanisms, Endalew noted that coalitions of like-minded states form negotiating groups to seek leverage and balance against larger states or groups. Such groups include the Group of 77 and China (G77 and China), the LDCs, and the Small Island Developing States (SIDS). States, separately and as part of larger negotiating groups, engage with each in both formal and informal meetings. Formal meetings involve plenaries and contact groups. Informal meetings include consultations, coordination groups or bilateral negotiations.

Endalew also briefed the participants on practical procedures, such as asking for and taking the floor, making interventions, and practical tips to take into consideration when engaging in long negotiations.

During the ensuing discussion, participants mostly posed technical questions on the composition and functioning of the UNFCCC. One participant requested an explanation for the various terminologies used to describe international legal instruments; for instance, the difference between a treaty and an accord. In response, it was clarified that any international agreement, whatever its designation, may be understood as a “treaty” if it entails creating rights and obligations in international law for the parties. Meanwhile, any other form of multilateral international agreement, which does not enumerate such rights and duties, may be understood as “soft law”. Multiple questions were raised on the precise differences between the UNFCCC, the Kyoto Protocol, and the Paris Agreement. It was noted that while all parties belonged to the UNFCCC’s Conference of Parties, only states that ratified the Kyoto Protocol and the Paris Accord could take part in CMP and CMA respectively. The resource team also clarified the role of the supplementary groups and their relationship with the administrative and decision-making bodies of the various agreements.

SESSION 2: LEGAL LANGUAGE AND TERMINOLOGY

This session was addressed by Christoph Schwarte, from Legal Response Initiative. Schwarte addressed four broad issues:

- International law and treaties
- UNFCCC & Paris Agreement
- Legal language and drafting
- Procedural rules

He began by briefly introducing the various sources of international law as elaborated in Article 38(1) of the International Court of Justice (ICJ) statute. This includes primary sources such as treaties and customs; secondary sources such as judgements and general principles; and soft law such international political declarations.

Schwarte noted six key legal principles.

- Sovereignty and sustainable development
- Precaution and prevention
- Polluter pays
- Common but differentiated responsibilities
- Cooperation
- Science based approach

He explained that such legal principles inform both treaties – those which elaborate rights and obligations under international law – and political agreements (also known as Memorandums of Understanding or soft law) that do not entail such legal rights and obligations. The differences between the two could be highlighted in the form and substance of the text. The framework treaty – the UNFCCC – involves a variety of important articles that guide the development of more detailed protocols and agreements.

Schwarte also reminded participants of UNFCCC governance structure and the various relevant layers of governance including COPs, the subsidiary bodies, and the UNFCCC Secretariat. He briefly explained why semantics and syntax play such important roles in developing treaties: the organisation of the words and the syntax can alter intended rights and obligations. Thus, it is very important for negotiators to educate themselves on the various technical and legal terms associated with the negotiations. Accordingly, he urged participants to read and review ecbi negotiators guidebook (see above) and other supplementary documents including the ecbi [Climate Negotiations Terminology: the Pocket Guide](#) and LRI's [Definitions of verbs used in COP decisions](#).

In the following discussion, participants posed several questions on procedures associated with international agreements such as the Paris Agreement. In response, the resource team explained that several procedures, such as parliamentary approval (ratification), set it apart from political declarations. Other questions explored the possibility of customary international law, binding states such as the US despite their refusal to ratify international agreements (or in the case of the Paris Agreement, their decision to withdraw). In response, Schwarte explained that while this is theoretically possible, it is difficult to achieve.

SESSION 3: THEMATIC AREAS OF THE NEGOTIATIONS

Saleemul Huq, International Centre for Climate Change and Development (ICCCAD), began his presentation by noting the importance of three different and overlapping groups that are involved in climate change negotiations: those who attend negotiations at the COP; those who are keen to follow the negotiations; and those responsible for implementing the agreement.

Huq's presentation involved an introduction to the key themes associated with negotiations.

- Mitigation
- Adaptation
- Loss and damage
- Gender and climate
- Loss and damage

After defining the key terms, Huq briefly explained the politics associated with the negotiations. The upcoming negotiations, while chaired by Fiji (which holds the Presidency) will still be hosted in Bonn, which shows the capability gap but also the scope for cooperation. Yet, he said, these differences do not preclude the space for cooperation if there is political capital to spend on securing an agreement. Accordingly, he briefed participants about the intense negotiations that marked the earlier COP, where states had to agree on an appropriate global climate change target. Even at the last moment, however, after spending precious diplomatic capital to secure consensus amongst developing states, it was only a French intervention (via the French President to the Saudi Monarch) that led to a change in the Saudi position. This demonstrates both the fragility and the possibility of achieving progress in climate negotiations, Huq said.

After the Paris Agreement, the emphasis now falls on the NDCs. This instrument allows states to make pledges amongst themselves in a flexible and coherent manner. Huq noted that the negotiations themselves have evolved with changing perceptions amongst both scientists and policymakers; adaptation is a good example of this evolving perception. Yet, some contentious issues remain. A good example is the “loss and damage,” issue which is a politically correct term for “liability and compensation”. Yet, US pressure to avoid any mention of liability and compensation meant the politically correct version was the only workable version (refer Article 8 in the Paris Agreement). Huq concluded on an optimistic note: like adaptation, it is possible to imagine movement on loss and damage.

In the following discussion, participants focused on a variety of issues. Most questions revolved around the NDCs and the procedures put in place to ensure compliance. It was explained that NDCs vary between states and all of them are subject to the measurement, review and verification (MRV) measures in place. Another question focused on the role of responsibility and compensation. In response, Huq pointed out that many states already have national compensation mechanisms (e.g. the State of Texas will receive compensation from the US federal government to rebuild in the aftermath of Hurricane Harvey). The LDCs are advocating similar compensation mechanisms at the global level. Finally, in response to a participant's question on gender, Huq argued that it is important to move beyond the standard conversation of increasing participation of women; instead, the focus ought to be on the barriers preventing women from taking part in the first place.

SESSION 4: MOCK NEGOTIATION, PART I

In this session, the resource team, also taking part as negotiators sought to demonstrate some of the formal and informal procedures in place during COP deliberations. The mock negotiation sought to replicate many of the political stances, tactics, and relationships that exist between and amongst various coalitions.

In the discussion that followed, the resource team clarified the differences in the interventions. For instance, shifting a flag card indicates the desire to pose a question. Meanwhile, putting a hand on the flag card or raising it high in the air indicates the desire to raise a point of order.

Informal mechanisms also received attention. The value of huddles with coalition partners and other advisers received attention. Such mechanisms allow participants to speak coherently and consistently with a unified voice.

Finally, participants were briefed on the history and shifting positions within and amongst coalition groups, especially those between “developed” and “developing” states (or Annex 1 and non-Annex 1 states). These shifts were contextualised within the three major themes – mitigation, adaptation, and loss and damage. Mitigation involves many contentious issues such as historical responsibility and liability, in the recent years (as with the Paris Agreement) both developed and developing states have been taking a more proactive role through their (I)NDCs. This shift also reflects the fact that developing states – especially India and China – are now amongst the largest greenhouse gas emitters (in absolute terms, not adjusted for differences in consumption and trade). Adaptation involves more consensus as every state in the world recognises the need to adapt to changes in the climate. This also reflect the reality that the recent increase in greenhouse gas emissions in the atmosphere will continue to change the climate; this effect will persist despite efforts to mitigate in the near future. The only problem, however, remains the issue of finance and how adaptation ought to be funded. Loss and damage involves growing consensus, albeit mostly getting attention amongst developing states. There is a need to build on existing compensation and insurance mechanisms. These mechanisms need to be scaled up to an international level.

Participants also made additional requests for strategic approaches to negotiations.

SESSION 5: FORMING GROUP POSITIONS

In this session, participants were asked to imagine a hypothetical development during one of the COP sessions.

Following diplomatic pushback for withdrawing the US from the Paris Agreement, Donald Trump is making good on his promise to renegotiate. He has invited a handful of leaders to Washington D.C. To negotiate a new deal. He has also invited the leaders of countries who chair the major negotiating groups, such as the G77.

Trump tweeted: *“Invited Presidents to negotiate new climate deal. Could mean huge results, jobs and \$. Awaiting response”*.

Following a debate between two broad groups – one that were opposed to any sort of negotiations and one that suggested a cautious talking but not changing the agreement – the chair concluded that the group will go ahead and meet with President Trump. However, this move would only involve listening to the US position and not renegotiating the Paris Agreement. Moreover, the group decided to present a unified message of sympathy for the recent hurricanes ravaging the eastern coast of the US, but also urge the US to increase its participation.

In the ensuing discussion, the resource team emphasised the importance of evaluating political costs and benefits before making a decision. Moreover, it was noted that even though the US itself had withdrawn from the Paris Agreement, there was a lot of potential for US sub-national actors – states such as California and cities such as New York – to contribute to the agreement. It was also noted that if no consensus could be found, each group would take its own position.

SESSION 6: THEMATIC AREAS OF THE NEGOTIATIONS

Anju Sharma, Oxford Climate Policy, outlined three themes: finance, capacity building, and technology development and transfer.

She began by briefly elaborating the evolution of finance from the Rio Earth Summit (1991) to the Cancun Agreement (2011). She said the Global Environmental Facility (GEF) became operational in 1994 and open to all developing countries that were party to the UNFCCC. The Marrakech Accords led to two newer funds, which are also part of GEF: the Special Climate Change Fund (SCCF) and the Least Developed Countries Fund (LDCF). Sharma also briefly explained the emergence of the Adaptation Fund, which became operational in 2009 to all developing countries that are parties to the Kyoto Protocol. The most recent fund, the Green Climate Fund (GCF), became operational in 2015 and is open to all developing countries that are parties to the UNFCCC.

Sharma noted while each of the funds have their own governance structure, the governance structures of the Adaptation Fund and GCF are more balanced regarding developing country representation. Moreover, she explained that the Adaptation Fund allows for direct access by national implementing entities, and GCF has “enhanced” direct access to facilitate access by sub-national, national, and regional implementing agencies.

Sharma also highlighted key challenges associated with accessing climate finance, including difficulties with accrediting national implementing entities to the Adaptation Fund and the GCF. She noted the importance to rethink quantifiable goals and develop more innovative sources of finance.

Sharma, together with Huq and other members of the resource team, explained the importance of capacity development and technology transfer in developing countries. They argued the need to develop national and local-level capacities through universities and think-tanks. Sharma also directed participants seeking more information to a ecbi background paper [Capacity building under the Paris Agreement](#) and the [Pocket Guide to Capacity Building](#).

In terms of technology transfer, they noted that technology is key to both developed and developing states but it is particularly important to get the private sector important since companies are the largest producers of intellectual property. Moreover, they noted that there needs to be a stronger institutional cooperation – for instance, between the Climate Technology Centre and Network (CTCN) and Technology Executive Committee (TEC). States also need to expand their focus to move beyond hard technology and include more emphasis on soft technology.

In the discussion that followed, most of the questions focused on the mechanisms of accessing finance. The resource team noted that best way to get access to finance, and avoid unnecessary administrative costs, governments should work to quickly set up national implementing entities. Moreover, it was noted that maintaining accountability of such funds is important. This could be accomplished by planning ahead, considering the sub-national levels of government (where most of the implementation work gets done), and engage in inclusive discussions. Such planning could help prepare institutions for the infusion of climate

finance. Participants were also urged to speak to their regional representatives to get a better understanding of GCF, and raise any concerns.

SESSION 7: MOCK NEGOTIATION, PART 2

In the second part of the mock session, the resource team refrained from taking direct part; instead, the team functioned as advisors. Thus, participants were primarily responsible for proposing amendments, raising points of order, formulating interventions, etc.

In the discussion that followed, participants mostly agreed that while it was helpful to simulate a realistic negotiation, it also demonstrated their own capacity gaps. There was a general consensus that more work needs to be done to prepare country positions, and prepare negotiating teams in advance.

SESSION 8: PARIS AGREEMENT RULE BOOK

Abeyasinghe's presentation focused on the rulebook of the Paris Agreement, which is designed to help states implement the Paris Agreement and guide national level activities.

She began by introducing the Paris Agreement and explaining its three long term goals.

- Long-term reduction in global temperatures
- Increasing the ability of states to adapt to climate impacts
- Creating and sustaining consistent financial flows

She also explained the key provisions of the rule set, which includes four inter-related components.

- Submission of the Nationally Determined Contributions (NDCs)
- Reporting on NDC implementation by responsible states
- Review of the obligations outlined in the NDCs
- A review of compliance on individual responsibilities, which are robust but flexible to induce voluntary uptake
- A global stocktake to decide timelines, responsibilities, outputs, etc.

Abeyasinghe noted that to ensure the effectiveness of the Paris Agreement, some important rules need to be ready. First, rules on clarity and transparency for the NDC. Second, a robust and flexible accounting methodology and tools; specially to avoid the error of double-counting. Third, further guidance on adaptation communication. In the case of adaptation communication, she reminded the participants that states can use a separate voluntary mechanism or use existing mechanisms such as the National Adaptation Plans.

She concluded on a positive note: there are multiple hurdles towards each of the critical Paris Agreement components, but more inclusive participation and determined engagement could lead to an increasingly robust set of instruments centred on the NDCs.

In the discussion that followed, most of the questions focused on the role of legally binding nature of Paris Agreement. The resource team clarified that the lack of enforceable compliance mechanisms does not mean that states will automatically violate their international agreements. This is because the political costs – both international and domestic – is often very high when states renege their international agreements. Moreover, these agreements are made with regard to institutions at home, which are often difficult to set up and

harder to dismantle. Other questions focused on the idea role of adaptation and how such adaptation ought to be measured. One response was that good adaptation is adaptation that improves the adaptive capacity of a relevant community. In such cases, the measurement of adaptation depends on the local community's perception.

SESSION 9: THEMATIC GROUP WORK

In this session, participants were organised into thematic teams based on their policy preferences. With guidance from the resource team, teams were asked to provide a short briefing of the current status quo, challenges, and opportunities associated in each team. The themes involve adaptation, capacity building, finance, gender, mitigation, and technology transfer.

Technology transfer

The team discovered that while some states – such as Sri Lanka – had completed their technology-needs assessments, other states – such as Palestine – had yet to begin any such processes. Some general challenges involve funding constraints for environmentally sustainable technologies, the space for indigenous knowledge, and the lack of soft-infrastructure interest. For developing countries there is a tension between cheap imported technology and locally-produced (and hence more sustainable) but more expensive technology. In addition, the team noted the importance for transparency and communication.

Gender

The team noted the importance of gender in the recent COP decisions. Moreover, there was an urgent need for mainstreaming gender in national policy and enhancing the role of women in climate action. The team also highlighted the fact that gender issues need more awareness and must be contextualised to local and indigenous communities. It is important to reiterate the need to not just increase participation but actively seek out, understand, and dismantle barriers that prevent women from engaging climate governance.

Mitigation

The team began with a brief introduction of different goals of different participants. For instance, while Myanmar focused on forestry, India emphasised the role of energy. The team noted the more usual challenges involving technology transfer, capacity-building, and finance. In response, participants were informed of various responses at home and abroad. At home, instruments like the NDC readiness plans and technology-needs assessments could help states mitigate. Internationally, setting up a permanent (and rotating) delegations, together with common positions, could help developing countries raise their profile.

Adaptation

The team gave a brief description of different country priorities: Myanmar (flooding and cyclones), Sri Lanka (droughts and landslides), Bangladesh (sea-level rise), etc. The team discussed both hard infrastructure and soft-infrastructure responses. Thus, everything from climate resilient systems to alternative livelihoods ought to be studied for their adaptation potential. Moreover, the team raised the need to study the impact of migration and the proper responses.

Finance

The team first highlighted some of the existing sources of finance that countries like Sri Lanka and Tuvalu were considering. However, most states lack the ability to access such funds because of the lack of national implementing agencies, the necessary government bureaucratic ability, or the lack of coherent strategic plans. The team noted that each country faced severe adaptation finance gaps, often exceeding many million dollars each. The team also explained that there is a growing need to examine the potential for domestic sources of finance and the possibility of collaborating with large International Financial Institutions to access a wider diversity of climate finance.

Capacity building

The team noted that many developing countries often lack the technical knowledge necessary for effective adaptation and financial support. Some states such as Sri Lanka have tried to discuss these shortcomings by setting up the NAP and various NDCs. It was noted, however, that states should continue to build the necessary institutions – amongst the public, the private sector, and civil society – across various levels of government.

SESSION 10: NEXT STEPS AND FEEDBACK

During this session, participants were presented certificates to mark their participation in the training workshop, and final remarks, including a vote of thanks, were delivered by the organisers.