

The background is black with various green decorative elements. On the left side, there are several stylized floral motifs, including a large flower with a circular center and leaves, and a smaller one with a triangular top. On the right side, there is a large stylized tree with a rounded canopy and a smaller one with a circular top. At the bottom, there are two stylized evergreen trees and a floral motif with a circular center and leaves.

The 'UNFCCC' Model as a model for the Multilateral Instrument on ISDS Reform

Tomoko Ishikawa
Nagoya University, Japan

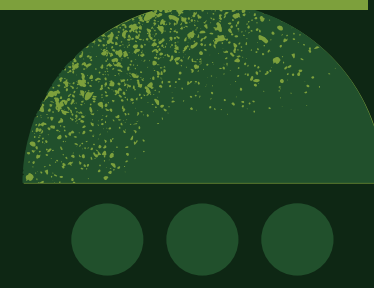
Framework Convention

General norms
Broad commitments
System of governance

Procedures on decision-
making, finance, etc.



Subsequent agreements
National legislation



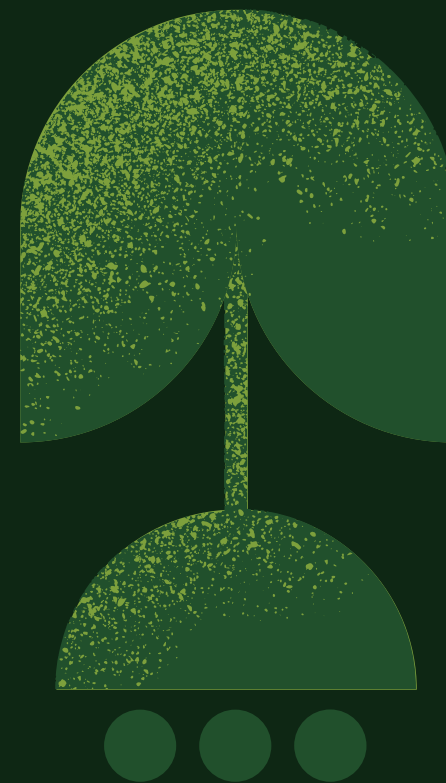
Rationale

Issues:

- with diverse interests
- dependent on scientific or technical knowledge
- subject to change



It may be more effective to create a coherent regime, allowing flexibility in its design



Functions

The parties may proceed incrementally, step by step



Enabling progress without waiting for consensus on all specific issues



The effectiveness depends on the parties' continuing efforts to develop the regime



Establishing an ongoing forum for discussion and negotiation



A momentum for the international law-making process can be created



UNFCCC: Multilateral climate activities leading to the Convention

1960s

UNGA Resolution 1721 (XVI) (1961)
WMO World Weather Watch Programme
WMO Global Atmospheric Research Programme

1985 Vienna Convention for the Protection of the Ozone Layer
1987 Montreal Protocol on Substances that Deplete the Ozone Layer

1972

United Nations Conference on the Human Environment (UNCHE)
Creation of the United Nations Environment Programme (UNEP)

1979

First World Climate Conference
Convention on Long-Range Transboundary Air Pollution (CLRTAP)

1987

Brundtland report 'Our Common Future'
• References to climate change and renewable energy

1988

Creation of the Intergovernmental Panel on Climate Change (IPCC) at the initiative of WMO and UNEP
UNGA Resolution 43/53 'Protection of Global Climate for Present and Future Generations of Mankind'

1989

Noordwijk Ministerial Conference on Atmospheric Pollution and Climate Change
• Noordwijk Declaration

1990

IPCC first report
Second World Climate Conference
UNGA Resolution 45/212

Preparation of a framework convention on climate change





UNFCCC: Aim and structure

Structure

- Introductory provisions
- Commitments
- Institutional and procedural mechanisms
- Final clauses



Protocols (adopted at the international level)

Aim

To achieve..the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (Article 2)



UNFCCC: Obligations under the treaty

The UNFCCC 'lies somewhere between a framework and a substantive convention' (Daniel Bodansky, 'The United Nations Framework Convention on Climate Change: A Commentary' (1993))

- General commitments that apply to all parties (Articles 4(1), 5, 6, 12(1))
- Specific commitments relating to mitigation and reporting for Annex I parties (Articles 4(2), 12(2))
- Specific commitments on financial resources and technology transfer for Annex II parties (Articles 4(3)-4(5))



UNFCCC: What kind of flexibility is provided in the treaty?

Conference of the Parties (COP) has an open-ended mandate to regularly review the implementation/to adopt decisions to further develop and implement the Convention and implementing agreements

Protocols:

- No timetable for negotiation
- it is left to each protocol to set its own rules regarding ratification, entry into force, and amendment (Article 17)



UNFCCC: Annexes, Protocols, Financial Provisions

Annexes

Article 16: more flexible procedure for the adoption and amendment of annexes than the Convention itself

Protocols

Article 17: Only UNFCCC Parties can be Parties to a protocol; little guidance on the content of each protocol

Financial Provisions

- Article 11 does not establish a new financial institution but entrust with one or more existing entities the operation of the financial mechanism: Global Environment Facility (GEF)
- Green Climate Fund (GCF)
- Special funds: Adaptation Fund; Loss and Damage Fund





UNFCCC: Governance system and Secretariat

- (a) COP (meeting annually)
- (b) Secretariat
- (c) Subsidiary body for scientific and technological advice
- (d) Subsidiary body for implementation
- (e) Financial mechanism

Role of the Secretariat (Article 8)

- limited to administrative tasks
- does not include a compliance function

UNFCCC as a model in delivering ISDS reform?

- Flexibility: no fixed model for a framework convention
- Protocols can be concluded together with the convention or later
- Creating an ongoing forum for discussion and negotiation for step-by-step norm development



- A framework approach gains only inasmuch as the parties are willing to advance the regime
- Fragmentation?