

**Challenges of negotiating multilateral agreements in times of COVID-19**

I would like to thank UNCTAD for the opportunity to participate once again in this conference, which has proved to be a valuable platform to share perspectives and experiences among all the relevant stakeholders. This is even more important now when we are facing the impact of the COVID-19 pandemic, which also affected negotiations of international agreements.

As an example, on 6 November 2019, the Energy Charter Conference approved the mandate to start negotiations on the modernisation of the Energy Charter Treaty expecting to conclude them expeditiously ([CCDEC2019 10](#)). Some months later, the global outbreak of the COVID-19 struck just before the first negotiation round.

Some multilateral discussions were postponed or replaced by written procedures, using virtual meetings only for information exchange but not for negotiations and formal decision-making. However, when time is paramount negotiations will go ahead online. Two examples: the last rounds in 2020 to conclude eight years of negotiations for the Regional Comprehensive Economic Partnership, and the start of negotiations on the modernisation of the ECT with three virtual rounds of negotiations in 2020 with the support of the Energy Charter Secretariat.

It has not been easy, but it helped the fact that the Rules of Procedure of the Energy Charter Conference already provide since 2015 for participation via videoconference. Furthermore, the negotiation mandate expressly requested the steering group to meet informally by any possible form, including videoconference, to prepare the upcoming negotiation rounds.

As it is publicly available in the suggested policy options published in 2019 ([CCDEC2019 08](#)) and in the public communications available at the Secretariat’s website at the end of each negotiation round,<sup>1</sup> the negotiations on the modernisation of the ECT consider all the provisions and several of the options included in the useful overview of UNCTAD’s Reform Accelerator. In fact, they go beyond. Already in 2017, UNCTAD and its mapping of policy options for reform were part of the discussions on the potential modernising of the ECT.

It is now the right time to take stock of the problems faced and lessons learned on the use of new technologies in multilateral negotiations on international agreements. By new technologies, I refer not only to the use of virtual meetings and webinars but also to electronic document sharing and other digital innovations. All those tools will be useful in the future both for international negotiations and for internal coordination/preparation within states.

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<sup>1</sup> All public communications can be found at <https://www.energychartertreaty.org/modernisation-of-the-treaty/>

Online multilateral negotiations save the time and expense of travelling, as well as its environmental impact, while still allowing negotiators to see each other and jointly discuss documents (by way of document sharing platforms). Online negotiations can also foster inclusiveness by (i) facilitating the participation of countries that otherwise would have difficulties for travelling for the rounds of negotiations, or (ii) increasing the number of experts of a delegation that can follow the discussions directly.

However, while technological capacity and reliable internet connections are more generally available in many countries, there is still a digital divide. Pandemic is compelling states to accelerate their digital transformation, but this is easier said than done, and not all states can move at the same pace. Therefore, it would be helpful to share experiences and compile best practices to facilitate future online negotiations and ensure that all negotiating parties are on an equal footing. Another critical challenge posed by COVID-19 is the limited ability for members of the same delegation to work closely together due to social distancing, which could be addressed by using virtual break out rooms allowed by the videoconference systems to facilitate and coordinate discussion also among a small group of delegations.

Of course, there are risks and disruptions in the absence of appropriate measures (or their adequate implementation), but so too there are in traditional negotiations. Also using simultaneous interpretation and finding the right timing for the videoconference can be a challenge in the case of online multilateral negotiations involving different time zones and working languages as is the case of the negotiations for the modernisation of the ECT or the discussions at Working Group III of UNCITRAL. So, careful preparation and coordination become even more critical, and the support of a secretariat is particularly relevant to facilitate a smooth running of the online negotiations.

Videoconferencing may not be as ideal as discussing in person and reaching a compromise seems to be easier when the other delegations are in the same room. Still, with the appropriate safeguards, it is a useful additional tool and helps to keep the momentum. Hybrid meetings, with some participants in the room and others connected remotely, pose an extra challenge to ensure equal footing for remote participants. Nevertheless, online multilateral negotiations should not try to replicate the traditional negotiating conferences. Technological developments allow new and more flexible forms of interaction among negotiators, as well as better interaction between them and other stakeholders such as civil society.

Apart from affecting the way we negotiate, digital transformation can also facilitate cross agency-ministerial cooperation and the way to interact with investors. As suggested in the 2018 [Model Instrument](#) of the International Energy Charter on Investment Dispute Management, an online digital platform easily accessible to all relevant public entities could work both (i) as an early-alert mechanism of potential conflicts with foreign investors, as well as (ii) an information-sharing tool for government agencies on all binding obligations entered into by the state as well

as previous problems, conflicts, and disputes together with the circumstances in which they happened, the reaction to them, and which solutions worked.

I look forward to hearing from other participants about their own experiences.

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