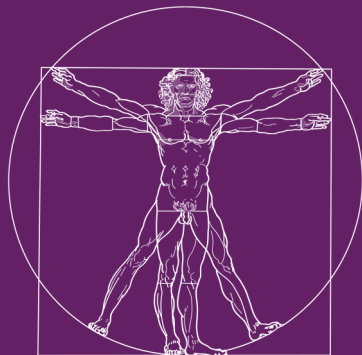


POCKET GUIDE TO THE PARIS AGREEMENT

POCKET
GUIDE
TO THE
PARIS
AGREEMENT
AGREEMENT
PARIS
TO THE
GUIDE
POCKET



ecbi

POCKET GUIDE TO THE PARIS AGREEMENT

POCKET
GUIDE
TO THE
PARIS
AGREEMENT

AGREEMENT
PARIS
TO THE
GUIDE
POCKET

The contents of this report do not necessarily represent the views of the European Capacity Building Initiative (ecbi), any of its members, or its supporting partners.

Copyright © ecbi 2016

Published April 2016

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior permission of the ecbi.

Authors

Anju Sharma is Director, Oxford Climate Policy (OCP), and Head of the Publications and Policy Analysis Unit of the European Capacity Building Initiatives (ecbi). Anju.Sharma@oxfordclimatepolicy.org

Christoph Schwarte is Executive Director of the Legal Response Initiative (LRI). cschwarte.lri@gmail.com

Benito Müller is Managing Director, OCP and Convener International Climate Policy Research, Environmental Change Institute, Oxford University. benito.mueller@philosophy.ox.ac.uk

Achala Abeyasinghe is Principal Researcher, Climate Change Group; team leader, global climate change governance at the International Institute for Environment and Development. Achala.Abeyasinghe@iied.org

Subhi Barakat is a lawyer and independent consultant who works with LRI. Subhi.barakat@gmail.com

The authors are very grateful to Linda Siegele, University College of London; Silke Goldberg, Herbert Smith Freehills; and Lavanya Rajamani, Centre for Policy Research for their very constructive and detailed comments.

Designed by DamageControl

This project is part of the International Climate Initiative (IKI). The German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) supports this initiative on the basis of a decision adopted by the German Bundestag. For more information on IKI, see www.international-climate-initiative.com
It is also supported by SIDA.

Funding Partners



Federal Ministry for the
Environment, Nature Conservation,
Building and Nuclear Safety



based on a decision of the German Bundestag

Member Organisations

oxford
climate
policy



iied

FOREWORD

The adoption of the Paris Agreement on 12 December 2015 was greeted with cheering, applause, even tears – but above all, relief. The Agreement was the product of nine years of difficult negotiations, starting in Bali in 2007, and including a failed attempt in Copenhagen in 2009. Most of those present that evening in the plenary hall at Le Bourget, in the suburbs of Paris, had spent many years, months, days and nights negotiating every word and every comma, until (almost) everyone was satisfied.

As the impacts of climate change became increasingly tangible with each passing year over the last decade, the urgency and pressure on governments to conclude a meaningful and effective climate agreement intensified. But the political hurdles often seemed insurmountable. Countries and country groupings often appeared to move further away from consensus instead of closer. It often seemed like the only choice was between a strong and ambitious treaty that key emitters would find unratifiable; or a weak treaty which more countries could sign up to, but which would not be ambitious enough to avert dangerous climate change.

In the end, overall ambition, differentiation between countries, and equal weighting of elements dealing not only with mitigation, but also with the impacts of climate change (adaptation and loss and damage) and with means of

implementation (finance, technology and capacity building) proved to be the key stumbling blocks. However, a strong desire not to repeat the failure of Copenhagen, diplomatic efforts outside the UN negotiations, French diplomacy, and last-minute coalitions helped in overcoming these hurdles in Paris.

“History will remember this day,” UN Secretary-General Ban Ki-moon said, after the Agreement was adopted. “The Paris agreement on climate change is a monumental success for the planet and its people.”

The truth is, it is probably too early to call the Paris Agreement either a success or a failure. It is a starting point more than a finale. Much more work lies ahead, in negotiating the rules for implementing the Agreement, and in negotiating the perils of ratification. The time between now and 2020, when the Agreement will hopefully take effect, is crucial. “We’ve agreed to what we ought to be doing, but no one yet has agreed to go and do it,” Dennis Clare, a negotiator for the Federated States of Micronesia, astutely noted amid the cheering. No one has agreed quite how to do it either.

This Guide is meant as a companion for government and non-government participants in the negotiations under the Ad Hoc Group on the Paris Agreement (APA), and also for national-level stakeholders who wish to understand what the Paris Agreement means for national-level implementation. The language has been streamlined and simplified, and some initial analysis is included.

The European Capacity Building Initiative (ecbi), a network initiative between Oxford Climate Policy, the International Institute for Environment and Development, and the Legal Response Initiative (LRI), has over a decade’s experience in building trust and capacity in the context of the

UN Framework Convention on Climate Change. The Initiative made several important contributions to the Paris Agreement, and will continue to contribute in the APA process. Other publications are already in the pipeline, providing more in-depth analysis on elements such as ambition and finance under the Agreement, with concrete proposals for future action. We will also continue to engage with negotiators to understand their policy analysis needs as the APA negotiations progress.

Meanwhile, for any further legal analysis or advice on specific elements of the Agreement, please contact our legal partners at LRI at enquiries@legalresponseinitiative.org. You can also arrange to meet a member of the team during a climate meeting by emailing liaisonofficers@legalresponseinitiative.org.

ecbi Executive Committee

GLOSSARY

APA	Ad Hoc Working Group on the Paris Agreement
CBDRRRC	Common but differentiated responsibilities and respective capabilities
CMA	Conference of the Parties serving as Meeting of the Parties to the Paris Agreement
CMP	Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol
COP	Conference of Parties to the UN Framework Convention on Climate Change
CTCN	Climate Technology Centre and Network
GCF	Green Climate Fund
GEF	Global Environment Facility
INDCs	Intended Nationally Determined Contributions
IPCC	Intergovernmental Panel on Climate Change
ITMOs	Internationally Transferred Mitigation Outcomes
LDCs	Least Developed Countries
LEDS	Low Emission Development Strategies
LEG	LDC Expert Group
NAPs	National Adaptation Plans
NDCs	Nationally Determined Contributions
NMAs	Non-Market Approaches
REDD+	Reduce emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SDM	Sustainable Development Mechanism
SIDS	Small island developing States
TEC	Technology Executive Committee
UNFCCC	UN Framework Convention on Climate Change
WIM	Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts

INTRODUCTION

The Paris Agreement was adopted by consensus on 12 December 2015, at the 21st Conference of the Parties (COP 21) of the UN Framework Convention on Climate Change (UNFCCC) in Paris. This Guide summarizes its key provisions. Relevant provisions of the decision adopting the Paris Agreement (Decision 1/CP.21, also called the “adopting decision” in this Guide) are also included. Paragraph numbers from the adopting decision text are indicated with a § symbol.¹

For purposes of clarity, this Guide divides the Articles of the Paris Agreement (also referred to as “the Agreement”) into five main sub-sections: general articles; main and substantive elements and commitments; reporting review and compliance; institutional arrangements; and final articles. Also for clarity, each article has been given a title in this Guide, although titles are not included in the Paris Agreement.

IN BRIEF: THE PARIS AGREEMENT AND ADOPTING DECISION

- The **goals** of the Agreement are to keep global temperature rise well below 2°C above pre-industrial temperatures while pursuing efforts to limit it to 1.5°C; increase the ability to adapt; and make finance flows consistent with a pathway towards low emissions and climate-resilient development. These goals are to be achieved in a manner that reflects

equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

- A **global stocktake** will take place every five years from 2023 onwards, to assess collective progress towards achieving the purpose of the Agreement and its long-term goals. A facilitative dialogue among countries in 2018 is also included in the adopting decision, to take stock of collective progress.
- On **mitigation**, the Agreement aims to reach global peaking of greenhouse gas emissions as soon as possible, to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century. In order to achieve this goal:
 - All countries are encouraged to formulate and communicate Low Emission Development Strategies in 2020, and to strengthen these plans over time, based on their national abilities.
 - Countries are expected to communicate Nationally Determined Contributions (NDCs) detailing actions towards meeting the goal of the Agreement every five years. All countries are requested to submit a new NDC by 2020. Each new NDC should represent an increase in ambition.
 - Conservation and enhancement of biomass, forest, oceanic and other greenhouse gas sinks and reservoirs as part of mitigation is encouraged, through activities such as results-based payments, the sustainable management, joint mitigation and adaptation approaches.
 - A market-based mechanism and a non-market based mechanism is established to allow parties to voluntarily cooperate in implementing their NDCs (both mitigation and adaptation).

- A global goal on **adaptation** is established, to ensure an adequate adaptation response in the context of the 2°C temperature goal. All countries should submit adaptation communications, detailing adaptation priorities, support needs, plans and actions, which should be updated periodically. Collective adaptation efforts will also be subject to review under the global stocktaking process.
- The Agreement recognizes the need to address **loss and damage** from climate change impacts – it incorporates the Warsaw International Mechanism for Loss and Damage, and calls for its strengthening.
- Developed countries will provide **finance** to developing countries to assist them with their mitigation and adaptation efforts, and will report their public financial contributions to developing countries in a detailed manner every two years. Developing countries may also voluntarily provide support. The collective mobilization goal of US\$100 billion annually by 2020, made in Copenhagen, has been extended – a higher goal will be set by the Conference of the Parties serving as Meeting of the Parties to the Paris Agreement (CMA) sometime before 2025. The adopting decision states that clear methods for the accounting of climate finance will be developed by 2018. Finance will be part of the global stocktaking.
- The Agreement incorporates the existing Technology Mechanism and strengthens it by creating a **technology framework** to provide strategic guidance. It stipulates that financial support will be provided to developing countries to address technology development and transfer. The global stocktaking process will assess the provision of this support.
- The Agreement emphasizes the **capacity building** needs of countries with the least capacity, such as least developed

countries (LDCs), and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States (SIDS), to help them take effective climate change action including on mitigation, adaptation, technology development and transfer and to access climate finance. Countries will report capacity building assistance by developed countries, as well as capacity building activities undertaken. The adopting decision establishes a Paris Committee on Capacity-building.

- A **transparency framework** is established, to enhance the transparency of action and support. It is facilitative and non-punitive. Developing countries will receive support to implement transparency measures. The adopting decision establishes a Capacity-building Initiative for Transparency to meet the enhanced transparency requirements of the Agreement.
- A **compliance mechanism** is established, consisting of a committee of experts, to facilitate implementation in a transparent and non-punitive manner, and promote compliance with the Paris Agreement.
- The UNFCCC COP will continue to serve formally as the Meeting of Parties to the Paris Agreement (called the **CMA**) at the UN climate change conferences. The existing subsidiary bodies on implementation and scientific and technical advice will continue to serve the Paris Agreement, and the CMA can establish additional subsidiary bodies for the implementation of the Agreement, if needed.
- The adopting decision establishes an **Ad Hoc Working Group on the Paris Agreement** to prepare the entry into force of the agreement.

STRUCTURE OF THE GUIDE

GENERAL ARTICLES	1
Preamble	1
Article 1 Definitions	2
Article 2 Purpose	3
Article 3 Nationally Determined Contributions	4
MAIN SUBSTANTIVE ELEMENTS AND COMMITMENTS	6
Article 4 Mitigation	6
Article 5 Greenhouse gas sinks and reservoirs and REDD+	10
Article 6 Cooperative approaches	11
Article 7 Adaptation	14
Article 8 Loss and damage	16
Article 9 Finance	19
Article 10 Technology development and transfer	22
Article 11 Capacity building	23
Article 12 Climate change awareness and education	24
REPORTING, REVIEW AND COMPLIANCE	25
Article 13 Transparency of action and support	25
Article 14 Global stocktake	28
Article 15 Facilitating implementation and compliance	29
INSTITUTIONAL ARRANGEMENTS	31
Article 16 Conference of the Parties serving as the meeting of the Parties to the Paris Agreement	31
Article 17 Secretariat	32
Article 18 SBI and SBSTA	33
Article 19 Other bodies and institutional arrangements to serve the Agreement	33
FINAL ARTICLES	34
Article 20 Signature and ratification	34
Article 21 Entry into force	35
Article 22 Amendments	36
Article 23 Annexes	37
Article 24 Dispute settlement	37
Article 25 Voting	38
Article 26 Depository	38
Article 27 Reservations	39
Article 28 Withdrawal	39
Article 29 Languages	40
REFERENCES	41

GENERAL

PREAMBLE

While the preamble of an international treaty does not create rights and obligations between Parties, it normally sets the wider context for the agreement and could be used to help interpret the provisions in its operative parts.

The preamble of the Paris Agreement captures a number of familiar and new notions in 15 sentences. It broadly reflects the objective and principles of the UNFCCC, albeit “*in the light of different national circumstances*”. This framing occurs throughout the Agreement and signals a shift in the way equity and common but differentiated responsibilities and respective capabilities (CBDRRC) are interpreted and operationalized.

The preamble further refers to the need for an effective response “*on the basis of the best available scientific knowledge*”. It recognizes the specific needs and special circumstances of developing country Parties, particularly the most vulnerable, and the “*specific needs and special situations of the least developed countries with regard to funding and transfer of technology*”.

The second half of the preamble incorporates new themes that are not found in the UNFCCC. These include

the priorities of safeguarding food security and ending hunger, the need for a just transition of the workforce, and engagement with all levels of government and various actors. The diversity of issues in the latter provisions of the preamble underlines that climate change is no longer perceived as solely an environmental problem – it cuts across and affects all areas of society.

Moreover, it calls on Parties to respect and promote: human rights; the right to health; the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations; the right to development; gender equality; the empowerment of women; and intergenerational equity.

The need for sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, is also recognized.

ARTICLE DEFINITIONS

Article 1 states that the definitions contained in the UNFCCC (climate change, greenhouse gases, sinks, etc.) will apply to the Paris Agreement. In addition, it defines “Convention”, “Conference of the Parties” (COP), and “Party” in the context of the Agreement. Article 21 of the Agreement includes another definition – “total global greenhouse gas emissions” for the limited purpose of determining the Agreement’s entry into force.

Earlier drafts of Article 1 included additional definitions – in particular of the terms “developed” and “developing” country Parties. While these terms are not defined, they are still used in several provisions of the new Agreement. Whether, and to what extent, the existing binary differentiation between

Annex I and non-Annex 1 countries under the UNFCCC will influence the understanding of “developed” and “developing” country Parties under the Agreement (for instance, which Parties belong to each category or how they might move between them) is likely to be a contentious issue in future negotiations.

ARTICLE PURPOSE

2

Article 2 outlines the purpose of the Agreement. Article 2.1 seeks to enhance the implementation of UNFCCC Article 2, to prevent dangerous anthropogenic interference with the climate system. It aims to do so by strengthening the global response to climate change in general, including by: committing to a long-term temperature goal; enhancing adaptive capacity and climate resilience; and making finance flows consistent with low-emission development pathways.

LONG-TERM TEMPERATURE GOAL

The long-term temperature goal includes two targets for maximum global warming. Parties to the Agreement will commit to “[hold] the increase in the global average temperature to well below 2°C above pre-industrial levels”, and “to pursue efforts” to limit the temperature increase to 1.5°C. To date, the 2°C target has been the working assumption for most nations in their mitigation efforts, including the planning and preparation of intended nationally determined contributions (INDCs) before Paris. The 1.5°C target was included as the result of a concerted push by an alliance of vulnerable States, including the LDCs, SIDS and the Independent Association of Latin America and the Caribbean, but is still considered an aspirational goal by some States.

DIFFERENTIATION

Article 2.2 states that the Agreement will be implemented to reflect equity and CBDRRC, in the light of different national circumstances. This language underlines the shift away from the formal differentiation between developed and developing country Parties (under the UNFCCC and the Kyoto Protocol) towards a more nuanced self-differentiated model. As a result of this new approach under the Paris Agreement, there is no longer a “firewall” (in terms of obligations) between developed and developing countries. Some legal commentators even argue that the established formal grouping of developed and developing country Parties has been completely abandoned.² Others, however, disagree.³

While the Agreement still uses the existing terminology of “developed” and “developing” countries, it does not offer any clarifying definitions. The annexes and provisions of the UNFCCC also remain in place and will, therefore, have some influence over the interpretation of the Agreement. It is worth noting that “national circumstances” is also not defined, thus creating a wide-open field for different national concerns. Nevertheless, it is likely to become increasingly more relevant than “historical responsibility” when Parties decide on and submit their contributions under the Agreement.

ARTICLE **NATIONALLY DETERMINED CONTRIBUTIONS**

3

The foundation of the Agreement’s structure is that all Parties will determine at the national level what actions they are able and willing to take in achieving the purpose of the Agreement. Article 3 provides an overarching outline of this approach. In this context, Parties can undertake and communicate their efforts on mitigation, adaptation, finance, technology transfer

and capacity building as well as on transparency as part of their Nationally Determined Contributions (NDCs). These efforts should become progressively more ambitious over time.

While Article 3 recognizes the need to support developing country Parties in implementing the new Agreement, developing country efforts are not contingent on the upfront provision of support (as envisaged in previous drafts of the Paris Agreement, and generally under the UNFCCC).

However, Article 3 only provides an overarching outline of the Agreement's underlying approach, and uses "nationally determined contributions" in a wider sense than the nationally determined mitigation contributions in Article 4. The particular measures expected of Parties with regard to the different components of the Agreement (mitigation, adaptation, etc.) and relevant arrangements are addressed in the Articles 4-12.

SUBSTANTATIVE PROVISIONS

ARTICLE **4** MITIGATION

The mitigation aim of the Agreement is for Parties “*to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter [...] so as to achieve a balance between anthropogenic emissions by sources and removals by sinks [...] in the second half of this century [...]*” (Article 4.1).

This is a much weaker language than what was proposed in earlier drafts. For instance, earlier drafts included language calling on Parties to collectively reduce their emissions by 70-95% by 2050 compared to 2010 levels, or 60-90% compared to 1990 levels, to encourage the peaking of emissions in the near future and steep reductions thereafter.

The language on “balance” between sources and removals by sinks was used as a proxy for “carbon neutrality” or a “net

zero” goal, both of which also proved to be too politically controversial to be included.

Although developing countries managed to insert that the aim is to be achieved “*on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty*” (Article 4.1), it is not clear what it entails or how this provision will be implemented in practice.

NATIONALLY DETERMINED CONTRIBUTIONS

All Parties are expected to communicate NDCs (Article 4.2) every five years (Article 4.9) and put in place domestic mitigation measures to achieve them, taking into account the global stocktake (Article 4.9) and reflecting CDBRRRC in light of different national circumstances (Article 4.3).

The main obligation of Parties under the Agreement, therefore, is procedural in nature (file and update mitigation NDCs). There are no substantive criteria for NDCs at this stage, and they do not create firm legally binding obligations between States. The phrase “*pursue domestic mitigation measures*” (Article 4.2) could be interpreted as an additional substantive obligation. However, without further specifications it hardly goes beyond the general requirement under international law that Parties have to execute a treaty in good faith (for instance, by not obstructing its purpose and meeting reasonable expectations of other Parties). Moreover, whether NDCs encapsulate commitments that are binding on government entities under domestic law is a matter of national and (in the case of the EU) supranational law.

While developed countries are expected to continue to apply economy-wide emission caps, developing countries are encouraged to move towards them over time (Article 4.4),

and are entitled to receive support for their mitigation actions (Article 4.5).

NDCs should be clear and transparent (Article 4.8), in accordance with guidance from the CMA (Article 4.13), while taking into account existing methods and guidance under the UNFCCC (Article 4.14). They will be recorded in a public registry maintained by the UNFCCC Secretariat (Article 4.12), which will also serve as the Secretariat to the Agreement.

The CMA will consider the issue of common time frames for NDCs at its first session (Article 4.10). However, a Party can adjust its existing NDC at any time to enhance its level of ambition (Article 4.11). Successive NDCs have to reflect a Party's highest possible ambition and be progressively more ambitious over time (Article 4.3).

Parties, including regional economic integration organizations and their member States, can act jointly but must notify the Secretariat of the emission levels allocated to each Party within the relevant time period, when they communicate their NDCs (Article 4.16), with each Party ultimately responsible for its allocated emission levels (Article 4.17). In the case of joint action taken by the EU member States, each member State individually and the EU as a whole, as a Party to the Agreement, will be responsible for the allocated emission level (Article 4.18).

DECISION ON NDCs

The decision adopting the Paris Agreement provides further guidance on the NDCs. It invites Parties to communicate their first NDCs when they join the Agreement. Parties that have already submitted an INDC are considered to have satisfied this requirement (§22). Parties with a five-year INDC are urged to submit a new NDC by 2020 (§23). Parties with a ten-

year INDC timeframe are requested to submit a new NDC or update their existing one by 2020 and every five years thereafter (§24). Parties are to submit their NDCs to the Secretariat 9 to 12 months ahead of the “*relevant*” CMA meeting for each contribution cycle (§25).

When communicating NDCs, Parties may include quantifiable information on the reference point (such as a base year), time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches, as well as information regarding the fairness and ambitiousness of the NDCs (§27).

The Ad Hoc Working Group on the Paris Agreement (APA) is requested to develop further guidance, for consideration and adoption by the CMA at its first session (CMA 1), on: NDC features (§26); clarifying information to be provided by Parties regarding NDCs (§28); and accounting for NDCs (§31). Parties will apply this accounting guidance from the second NDC onwards (but may choose to do so for their first NDC also) (§32).

The potential diversity of NDCs could make it very difficult to take stock of progress. The work of the APA under §§26, 28, and 31 will be critical in this regard.

In addition, the Subsidiary Body for Implementation (SBI) is requested to develop procedures for the NDC registry for adoption at CMA 1 (§29). In the meantime, an interim public registry will be made available by the Secretariat by June 2016 (§30).

LOW EMISSION DEVELOPMENT STRATEGIES

Article 4.19 calls on all Parties, including LDCs and SIDS (Article 4.6), to strive to formulate and communicate Low Emission Development Strategies (LEDS). The adopting

decision calls for these LEDS to be submitted by 2020, and to include mid-century, long-term strategies, which will be published on the UNFCCC website (§35).

Mitigation co-benefits resulting from adaptation actions or economic diversification efforts can count towards mitigation contributions (Article 4.7).

IMPACTS OF RESPONSE MEASURES

The concerns of Parties most affected by the impacts of response measures have to be taken into consideration by other Parties (Article 4.15). A decision was also taken to continue the existing Forum on the Impact of the Implementation of Response Measures, which was established in 2010 at the sixteenth UNFCCC Conference of Parties (COP 16) in Cancun. The Forum will serve the Agreement under the Subsidiary Bodies (§33), which will recommend modalities and a work programme for the Forum, for adoption at CMA 1 (§34).

ARTICLE **5** GREENHOUSE GAS SINKS AND RESERVOIRS AND REDD+

Article 5.1 calls on Parties to take action to conserve and enhance biomass, forest, oceanic and other greenhouse gas sinks and reservoirs.

They are encouraged to implement and support the framework already set out in existing UNFCCC guidance and decisions for: policy approaches and positive incentives to reduce emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest stocks in developing countries (REDD+); and alternate policy approaches,

such as joint mitigation and adaptation, while incentivizing non-carbon benefits associated with such approaches (Article 5.2).

Parties that promoted the creation of a new mechanism on forests did not succeed in Paris. As a result, the provision does not contain an express reference to the Warsaw Framework on REDD+, and it seems unlikely that any other institutional arrangements on forests will be established in the near future.

ARTICLE COOPERATIVE APPROACHES

6

The Agreement recognizes that Parties can choose “*voluntary cooperation*” to implement their NDCs, to allow for higher ambition both in mitigation and adaptation (Article 6.1), and could include market-based and non-market based approaches.

MARKET-BASED APPROACHES

Two different, but not mutually exclusive market-based approaches are included in the Agreement:

- **Internationally Transferred Mitigation Outcomes** (ITMOs) between two or more Parties, similar to Joint Implementation under the Kyoto Protocol used for project-based trading between developed (Annex I) countries; and
- A centralized global **Sustainable Development Mechanism** (SDM), likely to mirror the Kyoto Protocol’s Clean Development Mechanism most closely.

ITMO cooperation is voluntary and must be authorized by the participating Parties (Article 6.3). Article 6.2 allows Parties to use ITMOs as long as they promote sustainable development; ensure environmental integrity and

transparency (including in governance); and apply robust accounting procedures consistent with CMA guidance. The adopting decision requests the Subsidiary Body for Scientific and Technological Advice (SBSTA) to develop guidance for ITMOs, for adoption at CMA 1 (§36). The need to avoid double-counting and transparent reporting is also emphasized in the adopting decision under Enhanced Action Prior to 2020 (§§106 and 107).

Article 6 does not restrict the kinds of mitigation outcomes that could be transferred. ITMOs could involve linked networks of carbon pricing mechanisms, such as regionally linked emission trading schemes (for instance, the linkage between the California and Quebec emission trading schemes), but also other linkages, possibly involving the transfer of technology or even finance.

Article 6.4, meanwhile, establishes an SDM to contribute to mitigation and support sustainable development, provided there is no double counting (Article 6.5). CMA 1 will adopt rules for the SDM (Article 6.7). The adopting decision provides some guidance to the CMA, recommending that the SDM: reflects voluntary participation and Party authorization; ensures measurable long-term mitigation benefits which are additional; is based on specific scopes of activities, with verification and certification of emission reductions; and takes into account experiences from existing mechanisms under the UNFCCC, which would include the CDM (§37). The decision also requests the SBSTA to develop these rules, modalities and procedures for the SDM, for adoption at CMA 1 (§38).

However, implementing this in practice and ensuring that a reduction is not “double counted” in both the country

of origin and the recipient country will be a major issue for both ITMOs and SDM. It will also be difficult to ensure that reductions in emissions under SDM are additional to any that would otherwise occur (§37) or that the mitigation outcomes actually foster sustainable development (Article 6.4). Finally, it is difficult to see how offsetting under the SDM can deliver “overall mitigation” (Article 6.4(d)), as offsets, unless they are cancelled, will not lead to overall mitigation.

A share of proceeds from SDM activities will be used to cover administrative expenses and for adaptation in particularly vulnerable developing countries (Article 6.6). What this share will be, and how it will be used, will probably be decided as part of the SDM rules, modalities and procedures to be adopted at CMA 1.

NON-MARKET APPROACHES (NMAs)

The Agreement also defines a framework for Non-Market Approaches or NMAs (Article 6.9) to assist Parties in implementing NDCs. These NMAs should aim to: promote mitigation and adaptation ambition; enhance public and private sector participation in implementing NDCs; and enable coordination across instruments and institutional arrangements (Article 6.8).

The adopting decision calls on SBSTA to undertake a work programme under the NMAs framework with the objective of considering: how to enhance linkages and create synergies between, *inter alia*, mitigation, adaptation, finance, technology transfer and capacity building; and how to facilitate the implementation and coordination of NMAs (§39). SBSTA is requested to draft a decision on the work programme for adoption at CMA 1 (§40).

ARTICLE ADAPTATION

7

The Agreement establishes a notional and aspirational “*global goal on adaptation*” to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change (Article 7.1). Adaptation is recognized as a key component of the long-term global response to climate change and an urgent need of developing country Parties (Article 7.2). The importance of continuous and enhanced support for their adaptation efforts is also recognized (Articles 7.6 and 7.13) – especially for Parties that are particularly vulnerable to the adverse effects of climate change (Articles 7.2 and 7.6).

Adaptation action should follow a country-driven, gender-responsive, participatory and transparent approach that takes into account the interests of vulnerable groups, communities and ecosystems (Article 7.5). Adaptation action should be based on and guided by “*the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate*” (Article 7.5). Parties should also collectively strengthen cooperation on adaptation action, taking into account the Cancun Adaptation Framework, including through information sharing, strengthening institutional arrangements, assisting developing country Parties in assessing needs and improving the effectiveness and durability of actions (Article 7.7).

Individually, each Party is required, as appropriate, to engage in adaptation planning processes and the implementation of actions, plans and policies such as, for example, formulating national adaptation plans (NAPs),

assessing climate change impacts and vulnerability, and building resilience (Article 7.9).

ADAPTATION COMMUNICATION

Parties should submit an adaptation communication on adaptation priorities, needs, plans and actions (Article 7.10). This communication must be submitted and updated periodically, as appropriate, as a component of, or in conjunction with, other communications such as NAPs, NDCs or national communications (Article 7.11). Similar to mitigation NDCs, adaptation communications will be housed in a public registry maintained by the UNFCCC Secretariat (Article 7.12).

Articles 7.9 to 7.12 reflect formal, procedural commitments by Parties on adaptation (to engage in adaptation planning, and to submit and update adaptation communications). However, these commitments are qualified by “*shall, as appropriate*” and “*should*” and are, therefore, of limited binding nature. The Agreement further emphasizes that these communications should not create any additional burden for developing country Parties (Article 7.10). Modalities on how adaptation efforts by developing country Parties will be recognized will be adopted at CMA 1 (Article 7.3).

ADAPTATION AND THE GLOBAL STOCKTAKE

Adaptation is part of the Article 14 global stocktake, which will: recognize adaptation efforts of developing countries; enhance the implementation of adaptation action; review the adequacy and effectiveness of adaptation and support provided; and review overall progress in achieving the global adaptation goal (Article 7.14).

ADAPTATION SUPPORT

To prepare for the application of the Agreement, the adopting decision tasks the Adaptation Committee and the Least Developed Countries Expert Group (LEG) with jointly developing methodologies and making recommendations on facilitating the mobilization of support; and reviewing the adequacy and effectiveness of adaptation and support, in connection with the global stocktake (§45). In addition, the Adaptation Committee will review the work of adaptation-related institutional arrangements under the UNFCCC to identify ways to enhance coherence, and consider methodologies to assess adaptation needs (§42).

The Green Climate Fund (GCF) is asked to expedite support for LDCs and other developing country Parties for formulating NAPs and their subsequent implementation (§46). Relevant UN agencies and other financial institutions are also invited to provide information on how their development assistance and climate finance programmes incorporate climate-proofing and climate resilience measures (§43). Elements related to adaptation finance are also included in Article 9, on finance, and discussed later in this Guide.

The adopting decision further requests Parties to strengthen regional cooperation on adaptation and to establish regional centers and networks (§44).

ARTICLE LOSS AND DAMAGE

8

Whether to include a provision on loss and damage due to climate change in the Agreement, either in a separate Article or in the Article on adaptation, or leave it out of the Agreement altogether was a very contentious issue up to the end of the Paris negotiations. The compromise reached was

to have a separate Article on loss and damage with a reference to the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM), and to reflect key divergences in the decision text.⁴

WARSAW INTERNATIONAL MECHANISM FOR LOSS AND DAMAGE

Some developing country Parties and non-governmental organizations (NGOs) were concerned that the review of the WIM previously agreed for 2016 could lead to a fundamental questioning of the mechanism's existence.⁵ In Paris, however, Parties ultimately decided to continue the WIM following the 2016 review (§47).

When the Agreement enters into force, the WIM will be subject to the authority and guidance of the CMA, which can also enhance and strengthen it (Article 8.2). Parties are expected to enhance understanding, action and support with respect to loss and damage associated with the adverse effects of climate change, including through the WIM (Article 8.3). In this regard, the Agreement provides a non-exhaustive, indicative list of areas for cooperation and facilitation: for instance, early warning systems, slow onset events and other events that may involve irreversible and permanent loss and damage, and risk-related actions (Article 8.4).

In addition, the adopting decision tasks the Executive Committee of the WIM with establishing a clearinghouse for information on risk transfer and insurance (§48), creating a task force to develop recommendations for approaches to climate change induced displacement (§49)⁶, and reporting on progress in its annual report (§50).

Conceptually, the placement of loss and damage in a separate Article in the Agreement further distances it from

adaptation. But despite the contentious nature of the loss and damage discussions in Paris, Article 8 contains no specific mandatory consequences. Loss and damage remains outside the scope of the support, transparency, global stocktake, review and compliance provisions. Guidance for further work on loss and damage in the near term is, however, contained in the relevant part of the adopting decision.

NO BASIS FOR LIABILITY OR COMPENSATION

Finally, the adopting decision text on loss and damage contains the cryptic statement that Article 8 “*does not involve or provide a basis for any liability or compensation*” (§51). This reflects the concern by some developed country Parties, in particular the US, that an Article on loss and damage could be construed as an admission of liability for climate change-related damage and could potentially result in claims for compensation. Any such reference has therefore been excluded from the text of Article 8, and §51 of the decision could be merely interpreted as an additional clarification (or safeguard) – which may not necessarily limit the future work of the WIM.

Despite the concerns raised by some NGOs in the immediate aftermath of the Paris Conference,⁷ the COP decision as such cannot exclude the application of the general rules on liability and compensation between States. Another question is whether the UNFCCC and the Paris Agreement may be considered *lex specialis* (i.e. law governing a specific subject matter) to the general rules on State responsibility under public international law. Article 8 merely confirms the main tasks of the WIM and does not create a special regime to deal with an internationally wrongful act or address the international responsibility of a State.⁸

ARTICLE FINANCE

9

The issue of differentiation in the finance context was a controversial topic in the negotiations: should only developed countries be required to provide financial support, or should developing countries and emerging economies also contribute?

DIFFERENTIATION

This question was eventually resolved by stating that developed countries “*shall*” provide climate finance for developing countries (Article 9.1) while other Parties (developing countries) are “*encouraged*” to provide support voluntarily (Article 9.2). Developed countries “*should*” also take the lead in mobilizing climate finance “*from a wide variety of sources, instruments and channels*”, progressing beyond previous efforts (Article 9.3).

PUBLIC OR PRIVATE FINANCE

The idea that public funds, distinct from official development assistance, will be the main source of financing was dropped from the Agreement during the final days of negotiation. Instead, Article 9.3 simply notes “*the significant role of public funds*”.

Unlike the Cancun Agreements, which contained a collective public sector (‘fast-start’) finance target, the Paris Agreement has no reference to such a target. The adopting decision states that the existing collective mobilization goal (US\$100 billion per annum by 2020, first announced at the 2009 Copenhagen COP) will continue until 2025. The CMA will set a new collective quantified goal with US\$100 billion as a floor prior to 2025 (§53). The reference to US\$100 billion as a floor is considered a win by developing countries – although

a small one, given that the setting of a new quantified goal has been postponed to 2025.

BALANCE BETWEEN MITIGATION AND ADAPTATION FINANCE

The Agreement includes the provision that financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, the priorities and needs of developing countries, in particular LDCs and SIDS (Article 9.4). This provision has featured in several climate agreements, including in the 2009 Copenhagen Accord and in the 2010 Cancun Agreements, but actual implementation has proven to be a challenge to date.

REPORTING ON FINANCE

Developed countries have to biennially communicate indicative information on: the provision of climate finance to developing countries, including “*as available*”, projected levels of public financial resources to be provided in the future to developing countries (Article 9.5); and support for developing countries mobilized through public interventions (Article 9.7). Developing countries are “*encouraged*” to do so voluntarily.

At COP 22, a process will be launched to identify the biennial information about future financial support required from developed countries (§55). Information about past support is to be submitted in accordance with the procedures for transparency of action and support to be developed by the APA by CMA 1 (§§56 and 91). SBSTA has also been requested to develop accounting modalities for support provided by developed countries (§57).

The global stocktake will consider information on climate finance efforts provided by developed countries and Agreement bodies (Article 9.6).

INSTITUTIONAL ARRANGEMENTS

The UNFCCC's Financial Mechanism, including its operating entities, will serve as the financial mechanism of the Agreement (Article 9.8). The adopting decision also states that the GCF, the Global Environment Facility (GEF), the Least Developed Countries Fund and the Special Climate Change Fund will serve the Agreement (§58). It is recommended that CMA guidance to the GEF and the GCF relating to the Agreement be provided to the COP for transmission (§61). Existing and future COP guidance on the operation of the Financial Mechanism will apply to the Agreement as appropriate, with the necessary changes made (§62).

The Adaptation Fund *may* serve the Agreement, subject to relevant decisions by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the CMA (§59). The CMP is invited to make a recommendation to the CMA by its first session (§60).

The Standing Committee on Finance will serve the CMA in the same way that it serves the COP (§63).

The institutions serving the Agreement have to aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support, in particular for LDCs and SIDS (Article 9.9). The adopting decision text also urges these institutions to enhance coordination and delivery of resources (§64).

In the final days of COP 21, a number of ideas important to developing countries were dropped from the text – including

a process to consider new innovative international sources, and a provision that a significant share of new multilateral funding for climate change actions should flow through the Financial Mechanism.

ARTICLE **10** TECHNOLOGY DEVELOPMENT AND TRANSFER

Parties are required to “*strengthen cooperative action on technology development and transfer*” (Article 10.2). The Agreement establishes a technology framework (Article 10.4) to provide overarching guidance to the work of the Technology Mechanism established under the UNFCCC, which will serve the Agreement (Article 10.3).

The Technology Mechanism, created in 2010, already includes a Technology Executive Committee (TEC), tasked with policy analysis, recommending actions and facilitating cooperation for technology development and transfer; and a Climate Technology Centre and Network (CTCN), to facilitate a network of organizations in order to provide technical assistance to developing countries.

SBSTA will initiate the elaboration of the technology framework at its 44th session in May 2016, and report on its findings to the COP (§67).

The Technology and Financial Mechanisms of the UNFCCC, along with other actors or institutions, are required to support efforts to accelerate, encourage and enable innovation “*for collaborative approaches to research and development, and facilitating access to technology [...] to developing country Parties*” (Article 10.5).

Support, including financial support, will also be provided to developing countries for strengthening cooperative action on technology development and transfer at different stages

of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake will take information related to such support into account (Article 10.6).

ARTICLE **CAPACITY BUILDING**

11

The Agreement emphasizes the capacity building needs of developing country Parties, in particular those with the least capacity and those that are particularly vulnerable to the adverse effects of climate change, such as LDCs and SIDS (Article 11.1). It also underlines capacity to: implement adaptation and mitigation actions; facilitate technology development, dissemination and deployment; access climate finance; educate, train and raise public awareness; and enable transparent, timely and accurate communication of information (Article 11.1).

The adopting decision also establishes a Paris Committee on Capacity-Building to address capacity gaps and needs, both current and emerging, in developing countries and to enhance capacity building efforts (§71). The Committee will annually focus on an area or theme related to enhanced technical exchange on capacity building. It will prepare annual technical progress reports on its work (§80). The decision also launches a workplan for 2016-2020 (§73), which will be managed by the Committee (§72).

Sub-national and local level capacity building is highlighted in the Agreement, in addition to national-level capacity building, through “*an effective, iterative process that is participatory, cross-cutting and gender-responsive*” (Article 11.2).

While all Parties should cooperate to enhance the

capacity of developing countries, developed countries should also enhance support for capacity building actions in developing countries (Article 11.3). All Parties that enhance the capacity of developing country Parties have to regularly communicate on capacity building actions or measures, while developing countries should regularly communicate progress made on implementing capacity building plans, policies, actions or measures (Article 11.4).

CMA 1 will consider and adopt a decision on the initial institutional arrangements for capacity building (Article 11.5).

ARTICLE **12** CLIMATE CHANGE AWARENESS AND EDUCATION

This short Article simply states that Parties have to cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under the Agreement.

REPORTING, REVIEW & COMPLIANCE

ARTICLE **TRANSPARENCY**

13

The Agreement establishes “*an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties’ different capacities and builds upon collective experience*” (Article 13.1). Common modalities, procedures and guidelines for the transparency of action and support will reflect this flexibility, and be adopted by CMA 1 (Articles 13.2 and 13.13).

The enhanced framework will recognize the special circumstances of LDCs and SIDS, and be implemented in a “*facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties*” (Article 13.3).

It will build on the transparency arrangements under the UNFCCC, drawing on the experience of national

communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis (Article 13.4).

TRANSPARENCY OF ACTION, AND OF SUPPORT

The purpose of the **framework for transparency of action** is to provide a clear understanding of climate change action, including clarity and tracking of progress towards achieving the mitigation NDCs and adaptation actions, to inform the global stocktake (Article 13.5).

The purpose of the **framework for transparency of support** is to provide clarity on support provided and received by “*relevant individual Parties*” for mitigation, adaptation, finance, technology development and transfer, and capacity building (Articles 4, 7, 9, 10 and 11); and, “*to the extent possible*”, provide a full overview of aggregate financial support provided to inform the global stocktake (Article 13.6).

Under the framework for transparency of action, each Party has to regularly provide: a national greenhouse gas inventory, prepared using methodologies approved by the Intergovernmental Panel on Climate Change (IPCC) and agreed by the CMA; and information necessary to track progress made in implementing and achieving its mitigation NDC (Article 13.7).

Each Party should also provide information related to climate change impacts and adaptation, as appropriate (Article 13.8).

Developed countries and others providing support should provide information on support provided on finance, technology and capacity building (Article 13.9). Developing countries, meanwhile, should provide information on support needed and received (Article 13.10).

All Parties, except LDCs and SIDS, will have to submit the information set out in Articles 13.7 to 13.9, as appropriate, no less frequently than on a biennial basis (§90). LDCs and SIDS may submit this information at their discretion (§90).

The adopting decision agrees to establish a Capacity-building Initiative for Transparency to build institutional and technical capacity, and support developing country Parties, upon request, in meeting enhanced transparency requirements (§84).

TECHNICAL REVIEW

The information provided under Articles 13.7 and 13.9 will undergo a technical expert review (Article 13.11). Developing countries that lack capacity will be provided assistance to identify capacity building needs. The review will consider any support provided by the Party, as relevant, and the implementation and achievement of its NDC (Article 13.12). It will identify areas of improvement, and include a review of the consistency of the information with the modalities, procedures and guidelines; and pay particular attention to respective national capabilities and circumstances of developing countries (Article 13.12).

MULTILATERAL CONSIDERATION

Countries will also participate in a facilitative, multilateral consideration of progress with respect to efforts on finance, and the implementation and achievement of their respective NDCs (Article 13.11).

Support will be provided to developing countries for implementing their obligations related to transparency (Article 13.14), and also for the building of their transparency-related capacity on a continuous basis (Article 13.15).

ARTICLE **GLOBAL STOCKTAKE****14**

The CMA will periodically take stock of the implementation of the Paris Agreement, to assess collective progress towards achieving the purpose of the Agreement and its long-term goals – a process called the global stocktake (also referred to in this Guide as the stocktake).

The stocktake will be carried out in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.

The first stocktake will take place in 2023 and then every five years thereafter, unless otherwise decided by the CMA (Article 14.2). The adopting decision also decides to convene a facilitative dialogue among countries in 2018, to take stock of collective progress and inform the preparation of NDCs (§20).

PURPOSE OF THE STOCKTAKE

The outcome of the stocktake will inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of the Agreement, as well as in enhancing international cooperation for climate action.

The stocktake is meant to assess “*collective progress*” not the activities of individual Parties. However, the review of individual national implementation efforts should also “*inform the global stocktake*” (Articles 13.5 and 13.6). As a result, the precise scope of the stocktake – for instance, to what extent it focuses on the promised NDCs (in different areas) or a subsequent assessment of their actual achievements – is not yet clear and will have to be further defined by the CMA.

ARTICLE **15** **FACILITATING IMPLEMENTATION AND COMPLIANCE**

Article 15.1 establishes a mechanism to facilitate implementation of, and promote compliance with, the provisions of the Paris Agreement.

The mechanism will consist of an expert-based, facilitative committee that will function in a transparent, non-adversarial and non-punitive manner, and will pay particular attention to the respective national capabilities and circumstances of Parties (Article 15.2).

FACILITATIVE AND NON-PUNITIVE

The Kyoto Protocol required Parties to address cases of non-compliance (Article 18 of the Protocol). As a result, Parties subsequently established a compliance mechanism with a facilitative and an enforcement branch, to facilitate, promote and enforce compliance. In comparison, compliance under the Paris Agreement is non-punitive and focuses solely on facilitating implementation and promoting compliance through a facilitative committee. Unlike earlier drafts of the Agreement, there is no reference to circumstances that would automatically trigger the involvement of this committee.

The facilitative committee will report annually to the CMA, and the modalities and procedures for the functioning of this committee will be adopted by CMA 1 (Article 15.3). The questions of “if” and “to what extent” the mechanism may in the future respond to cases of non-compliance are therefore still unsettled. However, since the Agreement emphasizes the facilitative and non-punitive nature of the mechanism, it is unlikely to be particularly robust and stringent.

COMPOSITION OF THE COMMITTEE

The adopting decision further states that the committee will consist of 12 members with recognized competence in relevant scientific, technical, socioeconomic or legal fields, and will be elected by the CMA on the basis of equitable geographical representation. Two members will be chosen from each from the five regional groups of the United Nations, and one member each will be chosen from the LDCs and SIDS, while taking gender balance into account (§102).

The APA has been requested to develop modalities and procedures for the effective operation of the committee for consideration and adoption by CMA 1 (§103).

Going forward, it is important to monitor how the global stocktake and the transparency and compliance provisions can work together for the effective implementation of the Paris Agreement.

INSTITUTIONAL ARRANGEMENTS (ARTICLES 16-19)

Articles 16-19 address the institutional arrangements for the Agreement, essentially using the existing framework of the UNFCCC.

ARTICLE **CMA** **16**

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) will be the governing body of the Agreement (Article 16.1). The CMA is mandated to keep the effective implementation of the Agreement under review and take the decisions necessary to promote its effective implementation. For that purpose, it can establish subsidiary bodies and exercise other functions deemed necessary for the implementation of the Agreement (Article 16.4).

The rules of procedure of the COP and the financial procedures applied under the UNFCCC will apply to the

Agreement with necessary changes, unless the CMA decides otherwise (Article 16.5). Thus, the draft rules of procedure of the COP and its subsidiary bodies⁹, which have never been adopted but are applied (with the exception of Rule 42 on voting), will govern the proceedings of the CMA, except as may be decided by the CMA.

While COP decisions can have a normative character for institutions and bodies of the UNFCCC process (for instance, the Secretariat or mechanisms under its guidance such as the GCF) it is generally recognized that they are not binding on the Parties in the absence of an express mandate (to take legally binding decisions).¹⁰ This also applies to the powers of the CMA. In other words, it will operate in the same manner as the CMP and meetings will be convened in conjunction with the COP (Article 16.6). An extraordinary session of the CMA requires the support of at least one third of the Parties (Article 16.7).

ARTICLE **SECRETARIAT**

17

The UNFCCC Secretariat will serve as the Secretariat of the Agreement (Article 17.1). The Secretariat's functions, and the arrangements made for its functioning, shall be those assigned to it under Article 8 of the UNFCCC, under this Agreement, and by CMA (Article 17.2). This includes the preparation of meetings and reports, providing assistance to Parties and coordinating work with other international institutions. Under the Agreement, the Secretariat is also required, among others things, to maintain the public registries for NDCs and adaptation communications, and to receive certain notifications (for instance, on collaborations and on the convening of CMA sessions).

ARTICLE SUBSIDIARY BODIES**18**

The two permanent subsidiary bodies of the UNFCCC, the SBSTA and the SBI, will also serve the Paris Agreement. The Agreement itself does not assign any specific tasks to the subsidiary bodies, and only states that their functioning will be governed by the application of the relevant UNFCCC provisions (Articles 9 and 10), with the necessary changes applied. Article 18 repeats the language of the Kyoto Protocol almost verbatim.

**ARTICLE OTHER SUBSIDIARY BODIES AND
19 INSTITUTIONAL ARRANGEMENTS**

Other subsidiary bodies or institutional arrangements of the UNFCCC will also serve the Agreement, should the CMA so decide. The Agreement specifically identifies institutional arrangements under the UNFCCC (e.g. the WIM, the Financial Mechanism and the Technology Mechanism) that will in future operate under the new Agreement.

However, the operation of other institutions under the Agreement have not been as explicitly defined. For example, the integration into the Agreement of the Adaptation Fund, established under the Kyoto Protocol, would require formal agreement by both the CMP and the CMA (§§59 and 60). Should the CMA decide to bring other bodies and institutions into the fold of the Agreement, it can (within the general scope of the Agreement) specify their functions and guide their activities (Articles 19.1 and 19.2).

FINAL ARTICLES

The Agreement concludes with a set of standard articles in international treaties that deal with procedural requirements, including among other things, rules for its entry into force, operation and subsequent amendments.

ARTICLE SIGNATURE

20

The Paris Agreement will be open for signature at the UN Headquarters in New York from 22 April 2016 to 21 April 2017. The COP invites the UN Secretary-General to convene a high-level signature ceremony on 22 April 2016 (§3). It also invites all Parties to sign the Agreement at this ceremony, or at their earliest opportunity (§4).

Signing the Paris Agreement will indicate a Party's intention to take further steps towards ratification, acceptance,

approval or accession (expressing its consent to be bound by the Agreement) at a later stage. Following its signature of a treaty, a State is obliged to refrain from acts which would defeat the object and purpose of a treaty, unless it has clearly stated its intention to no longer be a Party to the treaty.¹¹ Articles 20.2 and 20.3 contain specific rules for the EU or other regional economic integration organizations to join the Agreement.

ARTICLE ENTRY INTO FORCE

21

The Agreement will enter into force on the 30th day after the date on which at least 55 Parties to the UNFCCC accounting for at least an estimated 55% of total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession with the Depositary.

The Agreement does not include a deadline for entry into force, although the mandate for negotiating the agreement from COP 17 in Durban originally envisaged it *“to come into effect and be implemented from 2020”*.¹²

Analysts suggests that the 55% threshold could be achieved if one of the top four emitting Parties (China, the US, the EU, or Russia) were to ratify the Agreement, together with others to fill the gap.¹³ Theoretically, this means that entry into force could be triggered before 2020. Conversely, should entry into force not be triggered by 2020, implementation could not begin from 2020. Both scenarios have implications on the work to prepare for the Agreement’s application and/or its implementation.

Throughout the Agreement and adopting decision, CMA 1, which can only take place after the Agreement enters into force, is requested to adopt a number of rules and modalities necessary to implement the Agreement, based on guidance

and recommendations from the APA and other UNFCCC bodies. These include procedures, rules and modalities for future NDCs, the SDM, the mobilization of support, the adequacy of adaptation support, the transparency framework, the global stocktake, and the implementation and compliance committee. With early ratification of the Paris Agreement, there is a risk that these recommendations may not be ready. There are also implications for the first round of NDCs, which are proposed to be implemented from 2020, and around the workplan to enhance pre-2020 action. While this eventuality proposes challenges, these problems are not insurmountable.

Provisional application is not addressed in the Agreement itself, but the adopting decision recognizes that Parties may apply the Agreement provisionally with the request that they notify the Depositary of this fact (§5). To monitor the 55% emission threshold required for entry into force of the Agreement, the adopting decision tasks the UNFCCC Secretariat with making information on the most up-to-date total and percentage of greenhouse gas emissions communicated by Parties available on its website (§104).

ARTICLE **AMENDMENTS TO THE AGREEMENT**

22

With regard to treaty amendments, the corresponding Article of the UNFCCC (Article 15) applies to the Agreement with the necessary changes. Consequently, the text of any proposed amendment to the Agreement will have to be communicated to Parties at least six months before the CMA session proposed for its adoption (Article 15.2 of the UNFCCC). An amendment to the Agreement will enter into force for those Parties that have accepted it 90 days after at least three-fourths of all Parties have deposited their instruments of acceptance.

The Agreement does not provide for a simplified amendment process.

ARTICLE ANNEXES

23

Provisions of the UNFCCC on the adoption and amendment of annexes (Article 16) apply to the Agreement with necessary changes incorporated.

The Agreement does not currently have an annex, but if the Parties subsequently decide to adopt one (or more), it would form part of the Agreement and have the same legal standing as its Articles (unless explicitly decided otherwise). The adoption of annexes is subject to the same procedural rules as treaty amendments (Article 22). Annexes should contain only materials of a descriptive nature with a scientific, technical, procedural or administrative character such as lists or forms (Article 16.1 of the UNFCCC). Parties could, for example, use annexes to define groups of States and their differentiated responsibilities, or common templates for the submission of NDCs.

ARTICLE SETTLEMENT OF DISPUTES

24

Article 14 of the UNFCCC on dispute settlement applies to the Agreement as appropriate, and with necessary changes. Upon ratification, acceptance, approval or accessions, a Party may declare in writing whether it accepts either the jurisdiction of the International Court of Justice and/or arbitration procedures to be adopted in a future annex, in order to settle disputes concerning the interpretation or application of the Agreement in relation to any other Party that has done the same.

To date, only the Netherlands (accepting both means) and the Solomon Islands (accepting future arbitration procedures) have made such a declaration with regard to the UNFCCC.¹⁴

UNFCCC Articles 14.2 and 14.7 allow for Parties to adopt annexes on arbitration and conciliation, although such annexes have never been adopted. Article 14.6 of the UNFCCC also provides for the creation of a conciliation commission at the request of a Party to a dispute. The commission is meant to render a recommendatory award that the Parties must consider in good faith.

ARTICLE **ONE VOTE**

25

Article 25 repeats the language of Article 18 of the UNFCCC and reflects the general UN principle “one country one vote”, regardless of population size or political clout (Article 18.1 of the UN Charter).

However, UN members actually vote in the General Assembly (where a two-third majority is required on important questions). The UN in comparison takes decisions by consensus only. As a result, pending a future agreement on voting and corresponding rules of procedure, Article 25.1 of the Agreement is mainly symbolic. Formally, all Parties have equal rights to make their voices heard (but not to vote). Article 25.2 clarifies that regional economic integration organizations, such as the EU, have one vote per member State.

ARTICLE **DEPOSITARY**

26

The UN Secretary-General will be the Depositary of the Agreement. The Depositary will be responsible for ensuring the

proper execution of all treaty actions related to the Agreement (for instance, preparation of final treaty text, certifying copies, filing instrument of ratification and declarations, or notifications to Parties, etc.).

A list of Parties, declarations and other official procedural information related to the Agreement will be available through the website of the UN treaty collection (<https://treaties.un.org/>).

ARTICLE RESERVATIONS

27

In general, when joining an international treaty, States can declare that they want to exclude or to modify the legal effect of certain provisions of that treaty when applied to them.¹⁵ However, this is explicitly prohibited by Article 27. As a result, countries that ratify the Agreement must accept its provisions without reservations.

ARTICLE WITHDRAWAL

28

A Party may withdraw from the new Agreement at any time three years from the date on which the Agreement has entered into force for that Party.

It may have been possible to draft a more robust provision to prevent a withdrawal from the Paris Agreement alone, following the experience with the Kyoto Protocol. However, since the UNFCCC explicitly allows for withdrawal (Article 25 of the UNFCCC), this has always been a tricky issue. In view of the Agreement's flexibility and self-assessment approach, though, it seems rather unlikely that any Party will have to make use of this provision in the future.

Written notification of withdrawal must be lodged with the Depositary (Article 28.1). Withdrawal will be effective one

year from receipt by the Depositary of the notification (Article 28.2). Both the UNFCCC (Article 25) and the Kyoto Protocol (Article 27) have withdrawal provisions. A withdrawal from the UNFCCC will be considered a withdrawal from the Agreement (Article 28.3).

ARTICLE **LANGUAGES**

29

The texts of the Agreement in Arabic, Chinese, English, French, Russian and Spanish are equally authentic. The general rules of treaty interpretation apply if there is a difference in meaning between texts. If that does not resolve the issue, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, will be adopted.¹⁶

REFERENCES

¹ UNFCCC (2016). Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum. Part two: Action taken by the Conference of the Parties at its twenty-first session. FCCC/CP/2015/10/Add.1.

<http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>.

² Bodansky, D. (2015). Reflections on the Paris Conference. 15 December. *<http://opiniojuris.org/2015/12/15/reflections-on-the-paris-conference>*.

³ Rajamani, L (2016). Ambition and differentiation in the 2015 Paris Agreement: Interpretative possibilities and underlying politics. *International and Comparative Law Quarterly*. *<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=10238740&fileId=S0020589316000130>*

⁴ On the establishment of the WIM see Decision 2/CP.19 in UNFCCC (2013). Warsaw international mechanism for loss and damage associated with climate change impacts. FCCC/CP/2013/10/Add.1. *<http://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf>*.

⁵ Decision 2/CP.19. Paragraph 15.

⁶ The original proposal (predominately from LDCs) was to create a climate change displacement coordination facility under the Agreement.

⁷ See, for example, Pashley, A. (2015). Did the Paris deal rule out climate compensation? Climate Home. <http://www.climatechangenews.com/2015/12/18/did-the-paris-deal-rule-out-climate-compensation/>.

⁸ International Law Commission (2001). Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentary, Report on the work of its fifty-third session (23 April - 1 June and 2 July - 10 August 2001), Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10, UN Doc. A/56/210, Article 55.

⁹ Contained in UNFCCC (1996). Adoption of the Rules of Procedure. FCCC/CP/1996/2. 22 May. <http://unfccc.int/resource/docs/cop2/02.pdf>. It is important to note that the COP's Rules of Procedure were never adopted due to a failure to agree to the rules on voting (Rule 42). As a result, all decisions made by the COP are on the basis of consensus.

¹⁰ This is confirmed by Article 18 of the Kyoto Protocol, which states that binding consequences would need to be adopted through an amendment of the Protocol.

¹¹ United Nations (1969). Vienna Convention on the Law of Treaties. Article 18 a.

¹² UNFCCC (2011). Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action. Decision 1/CP.17. FCCC/CP/2011/9/Add.1. <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=2>.

¹³ See UNFCCC's table with emissions reported by Parties, created solely for the purposes of the entry into force of the agreement. http://unfccc.int/ghg_data/items/9354.php.

¹⁴ In addition, Cuba declared that any disputes should be settled by negotiation through diplomatic channels.

¹⁵ United Nations (1969). Vienna Convention on the Law of Treaties. Articles 2d and 19.

¹⁶ United Nations (1969). Vienna Convention on the Law of Treaties. Articles 31-33.

oxford
climate
policy

iiED



Supported by:



Federal Ministry for the
Environment, Nature Conservation,
Building and Nuclear Safety

based on a decision of the German Bundestag

