

# POCKET GUIDE TO ARCHITECTURE AND PROCESSES

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AND PROCESSES  
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## FOREWORD

For over a decade, the European Capacity Building Initiative (ecbi) has adopted a two-pronged strategy to create a more level playing field for developing countries in the UN Framework Convention on Climate Change (UNFCCC): training negotiators from developing countries; and providing opportunities for senior negotiators from developing countries and Europe to interact, and build mutual trust.

The first part of the strategy focuses on providing training and support to new developing country negotiators, particularly from Least Developed Countries. The climate change negotiations are often technical and complex, and difficult for new negotiators (who are most often not climate specialists) to fully grasp even over a period of two or three years. We hold regional training workshops to bring them up to speed on the negotiations. We also organise training workshops before each Conference of Parties (COPs) to the UNFCCC, covering topics specific to that COP. To ensure continuity in our capacity building efforts, we offer bursaries to a few women negotiators to attend the negotiations and represent their country and region/grouping. Finally, we help negotiators build their analytical capacity through our publications, by teaming them up with global experts to author policy briefs and background papers.

This strategy has proven effective over time. “New” negotiators that trained in our early regional and pre-COP workshops have risen not only to become senior negotiators in the process, but also leaders of regional groups and of UNFCCC bodies and committees, and ministers and envoys of their countries. These individuals remain part of our growing alumni, and are now capacity builders themselves, aiding our efforts to

train and mentor the next generation. Their insights from once being new to the process themselves have helped us improve our training efforts.

The second ecbi strategy relies on bringing senior negotiators from developing countries and from Europe together, at the annual Oxford Seminars and the Bonn Seminars. These meetings provide an informal space for negotiators to try to understand the concerns that drive their specific national positions, and come up with solutions to drive the process forward. They have played a **vital role** in resolving some difficult issues in the negotiations.

Following the adoption of the Paris Agreement in 2015, ecbi produced Guides to the Agreement in English and in French. Since they proved popular with both new and senior negotiators, we developed this series of thematic Pocket Guides, to provide negotiators with a brief history of the negotiations on the topic; a ready reference to the key decisions that have already been adopted; and a brief analysis of the outstanding issues from a developing country perspective. These Guides are mainly **web-based** and updated frequently. Although we have printed copies of the English version of the Guides due to popular demand (please **write to us** if you would like copies), the online versions have the added advantage of hyperlinks to access referred material quickly.

As the threat of climate change grows rather than diminishes, developing countries will need capable negotiators to defend their threatened populations. The Pocket Guides are a small contribution to the armoury of information that they will need to be successful. We hope they will prove useful, and that we will continue to receive your feedback.

**Anju Sharma**

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## GLOSSARY

ADP	Ad Hoc Working Group on the Durban Platform for Enhanced Action
AGBM	Ad Hoc Working Group on the Berlin Mandate
AOSIS	Alliance of small island developing States
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action
BINGOs	Business and industry non-governmental organisations
BTR	Biennial transparency report
CBDR RC	Common but differentiated responsibilities and respective capabilities
CDM	Clean Development Mechanism
CGE	Consultative Group of Experts
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
CMP	Conference of Parties serving as the meeting of Parties to the Kyoto Protocol
COP	Conference of the Parties
CTCN	Climate Technology Centre and Network
DSB	Dispute settlement body (of the WTO)
EIG	Environmental Integrity Group
ENGOs	Environmental non-governmental organisations
ERTs	Expert Review Teams
ET	Emissions Trading
GCF	Green Climate Fund
GEF	Global Environment Facility
GHGs	Greenhouse gases
GRULAC	Group of Latin American and Caribbean States
HLS	High-level segment
INC	Intergovernmental Negotiating Committee
IPCC	Intergovernmental Panel on Climate Change
JJ	Joint Implementation

JISC	Joint Implementation Supervisory Committee
KCI	Katowice Committee of Experts on the Impacts of Response Measures
LCIPP	Local Communities and Indigenous Peoples Platform
LDCs	Least developed countries
LEG	LDC Expert Group
LDCF	LDC Fund
LMDCs	Like-minded group of developing countries
MRV	Measuring, reporting, and verification
NAMAs	Nationally Appropriate Mitigation Actions
NAPs	National Adaptation Plans
NAPAs	National Adaptation Programmes of Action
NAZCA	Non-State Actor Zone for Climate Action
NCP	Non-compliance procedure
NDCs	Nationally Determined Contributions
PCCB	Paris Committee on Capacity-building
QELROs	Quantified emission limitation and reduction objectives
RINGOs	Research and independent non-governmental organisations
SCF	Standing Committee on Finance
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SCCF	Special Climate Change Fund
SIDS	Small island developing States
TEC	Technology Executive Committee
UNCED	UN Conference on Environment and Development
UNFCCC	UN Framework Convention on Climate Change
UNEP	UN Environment Programme
UNGA	UN General Assembly
WEOG	Group of Western European and other States
WIM	Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts
WMO	World Meteorological Organization
WTO	World Trade Organization

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## INTRODUCTION

Climate change, characterised as one of the greatest challenges of our times, emerged as a scientific concern in the 1970s.<sup>1</sup> International policy responses, however, did not begin until the late 1980s and early 1990s.

In 1988, the [World Meteorological Organization \(WMO\)](#) and the [UN Environment Programme \(UNEP\)](#) established the [Intergovernmental Panel on Climate Change \(IPCC\)](#) to provide scientific assessments of the magnitude, timing, and potential environmental and socioeconomic impacts of climate change, and to formulate options for realistic response strategies. Later that year, the [UN General Assembly \(UNGA\)](#) recognised climate change as a “*common concern of mankind*”, and called for timely action to deal with it “*within a global framework*”.<sup>2</sup>

In 1990, the IPCC’s *First Assessment Report* affirmed that human activities were substantially increasing atmospheric concentrations of greenhouse gases (GHGs) and resulting in global warming, while also acknowledging scientific uncertainties.<sup>3</sup> Ministers and other representatives from 137 countries met at the [Second World Climate Conference](#) in Geneva in November that year, and adopted a [Declaration](#) that called for a global response to be decided and implemented “*without further delay*”. In December 1990, [UNGA resolution 45/212](#) established an Intergovernmental Negotiating Committee (INC) under the auspices of the General Assembly.<sup>4</sup> The INC was mandated to “*negotiate an effective framework convention on climate change, containing appropriate commitments*” in time for the UN Conference on Environment and Development (UNCED) in June 1992, in Rio de Janeiro.

The UN Framework Convention on Climate Change (UNFCCC) was adopted by UNGA in New York in May 1992, and formally opened for signature in June 1992 at UNCED. It entered into force in March 1994.

With near-universal membership (197 Parties), the UNFCCC represents the foundation for the primary global response to climate change. This Guide provides an overview of its architecture, institutional infrastructure, and the organisation and conduct of its intergovernmental process.

## WHAT IS THE OVERALL ARCHITECTURE OF THE INTERNATIONAL CLIMATE CHANGE REGIME?

Currently, the international climate change regime consists of the UNFCCC, the *Kyoto Protocol*, and the *Paris Agreement* as well as the decisions and conclusions adopted by their respective governing bodies. The regime is constantly under review, and is adjusted or developed further in response to new or changed circumstances and scientific information.

The *Kyoto Protocol* and the *Paris Agreement* were negotiated and adopted under the UNFCCC and build on its framework. However, they are distinct and separate international treaties with their own governing bodies and membership, although closely related. Decisions containing the rules, procedures, modalities, and implementation guidelines taken by the governing body of one instrument are binding only on Parties to that instrument. Although the UNFCCC mandates the Conference of the Parties (COP) to keep under regular review the implementation of the Convention “*and any related instruments the Conference of the Parties may adopt*”, the COP can only make recommendations to the governing bodies of such instruments regarding their implementation – it is up to those governing bodies to consider and act on the recommendations.<sup>5</sup>

## ► UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

The UNFCCC is a framework legal instrument. It establishes general principles, general obligations, an institutional infrastructure, and an intergovernmental process for the negotiation and adoption of supplementary legal instruments and for agreeing to specific action by Parties.<sup>6</sup> The generality of its provisions are intended to be reinforced and strengthened over time, and in light of evolving scientific knowledge and information, through the adoption of “*associated protocols containing concrete commitments*”.

The Convention is not prescriptive and, to a large extent, establishes only procedural obligations,<sup>7</sup> and provides broad latitude to Parties on the choice of national policies and measures to combat and adapt to climate change. The UNFCCC:

- Defines the ultimate objective of the international climate change regime as the “*stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system...*” (Article 2). Such stabilisation is to be achieved within a timeframe sufficient to allow ecosystems to adapt naturally to climate change, to ensure food production is not threatened, and to enable economic development to proceed in a sustainable manner.
- Establishes the regime’s core principles: precaution, equity, the right to sustainable development, and common but differentiated responsibilities and respective capabilities (CBDR RC) in Article 3.
- Creates a differentiated system of commitments by delineating the commitments of **all Parties** (Articles 4.1 and 12); the commitments of **Annex I Parties** (Article

4.2); and the commitments of **Annex II Parties** (Articles 4.3, 4.4, and 4.5):

- **All Parties** are required, among other things, to: develop national inventories of GHG emissions by sources and removals by sinks; formulate and implement measures to mitigate and adapt to climate change; and communicate information relating to the implementation of their commitments to the COP.
- **Annex I Parties** (industrialised countries that were members of the Organisation for Economic Co-operation and Development, or OECD, in 1992, and countries with economies in transition) are required to adopt policies and measures to mitigate climate change by limiting their GHG emissions and demonstrate that they are taking the lead in combating climate change. The UNFCCC also establishes an aspirational goal for Annex I Parties to return, individually or jointly, their GHG emissions to 1990 levels by the year 2000.
- **Annex II Parties** (industrialised countries as in Annex I, without the countries with economies in transition) are required to provide financial resources and to promote, facilitate, and finance technology transfer to developing countries in order to enable them to implement the Convention.
- Puts in place an institutional infrastructure for its implementation and the further development of its normative content through the negotiation and adoption of supplementary legal instruments, and of decisions providing guidance on specific actions by Parties.

The UNFCCC called for a periodic review of the adequacy of the commitments contained in Articles 4.2(a) and (b) “in

*light of the best available scientific information and assessment on climate change and its impacts...*” and directed that the first review be undertaken by the COP at its first session (COP1).<sup>8</sup> For more information on the Convention, see the *Pocket Guide to the UNFCCC*.

## ► KYOTO PROTOCOL

At COP1, held in Berlin from 28 March to 7 April 1995, Parties agreed that the commitments in the Convention were inadequate to meet its objective. They established the Ad Hoc Working Group on the Berlin Mandate (AGBM) to enable the COP “to take appropriate action for the period beyond 2000, including the strengthening of commitments of Parties included in Annex I, through the adoption of a protocol or another legal instrument”<sup>9</sup>.

The AGBM was mandated to set “quantified emission limitation and reduction objectives” (QELROs) within specified timeframes for Annex I Parties, but to contain no new commitments for non-Annex I Parties. Following two years of negotiations under the AGBM, the *Kyoto Protocol* to the UNFCCC was adopted on 11 December 1997.

The *Marrakesh Accords*, agreed to by COP7 in November 2001, established the rules, modalities, procedures, and guidelines (“the rulebook”) for the implementation of the Protocol and paved the way for its entry into force on 16 February 2005. The Protocol currently has 192 Parties. The US did not become a Party to the Protocol; Canada withdrew from it on 15 December 2012.

The Kyoto Protocol has the following key elements and characteristics:

- It is prescriptive and “top-down” in its approach and is based on a system of targets and timetables.

- It reinforces the differentiation between Annex I and “non-Annex I” (developing country) Parties by imposing internationally legally binding QELROs for the former over successive commitment periods without corresponding additional commitments for the latter.<sup>10</sup> The first commitment period was from 2008-2012, and the second commitment period from 2013-2020.
- It establishes three “flexibility mechanisms” that allow Annex I Parties to meet their targets in a cost-effective manner: the **Clean Development Mechanism (CDM)**, **Joint Implementation (JI)**, and **Emissions Trading (ET)**.<sup>11</sup> In addition, Annex I Parties can receive credit for the removal of carbon dioxide from the atmosphere through human-induced land-use change and forestry activities (“sink activities”) to meet their commitments.<sup>12</sup>
- It establishes an elaborate and robust monitoring, review, and verification process of national implementation of Annex I Parties commitments. National reports and communications submitted by Parties are subject independent third-party review undertaken by Expert Review Teams (ERTs).<sup>13</sup> The review process is to provide a thorough and comprehensive assessment of all aspects of implementation of the Protocol by each Party and ERTs are mandated to identify any potential problems influencing the fulfillment of commitments. There are three types of reviews: initial reviews, annual reviews, and in-country reviews.
- The Protocol establishes an elaborate non-compliance procedure (NCP) “to promote, facilitate and enforce compliance with commitments under the Protocol”<sup>14</sup>. (See page 26 for more details).

In 2005, the first Conference of Parties serving as the meeting of Parties to the Kyoto Protocol (CMP1), held in Montreal, launched negotiations under the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), pursuant to Article 3.9, for its second commitment period. The [Doha Amendment to the Kyoto Protocol](#) was adopted on 8 December 2012, with commitments for the 2013-2020 period.<sup>15</sup> However, Japan, New Zealand, and the Russian Federation declined to assume second commitment period obligations established under the Amendment. Moreover, the Doha Amendment has not entered into force to date.

A third commitment period under the Protocol is unlikely, given that the Paris Agreement will come into effect in 2020. If there are no further commitment periods, the Kyoto Protocol will continue to exist as a treaty but most of its institutions, including the constituted bodies, will become functionally non-operational. On the other hand, Parties to the Protocol could take an express decision to terminate it in accordance with Article 54 of the [1969 Vienna Convention on the Law of Treaties](#).<sup>16</sup>

The progressively diminishing coverage of the Kyoto Protocol in terms of total global GHG emissions,<sup>17</sup> and the fact that some major emitters<sup>18</sup> and emerging economies were outside its framework led to the realisation that a more broad-based approach that would include all countries, particularly all major emitters and economies, in the global efforts to combat climate change was needed.<sup>19</sup>



## ► PARIS AGREEMENT

In 2007, COP13 in Bali established a process under the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) “to enable the full, effective and sustained implementation of the Convention through long-term cooperative action now, up to and beyond 2012”.<sup>20</sup> The AWG-LCA was mandated to address, *inter alia*, QELROs by all developed country Parties and “nationally appropriate mitigation actions” (NAMAs) by developing country Parties. But the mandate was not limited to mitigation and encompassed adaptation and means of implementation (finance, technology, and capacity building).

Although Parties failed to reach “an agreed outcome” at COP15 in 2009 in Copenhagen, the resultant **Copenhagen Accord**,<sup>21</sup> taken note of by the COP, provided the substantive basis for the **Cancun Agreements**<sup>22</sup> (2010) and the **Durban decisions** (2011).<sup>23</sup> Both contained an important body of guidance to Parties relating to implementation, including new institutional arrangements such as the **Technology Mechanism** and **Green Climate Fund**.

Effectively, the Cancun and Durban Conferences laid the foundation for the negotiations that led to the adoption of the Paris Agreement. The Cancun Agreements established a long-term goal of holding the increase in global average temperature below 2°C above pre-industrial levels. The Durban Conference considered the outcome of the AWG-LCA and, noting the significant gap between that goal and the aggregate effect of the Cancun mitigation pledges, launched “a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the convention applicable to all Parties” in order to strengthen the multilateral rules-based regime under the Convention.<sup>24</sup> The negotiations which took place under the **Ad Hoc Working**

Group on the Durban Platform for Enhanced Action (ADP) led to the adoption of the Paris Agreement on 12 December 2015, at COP21.<sup>25</sup> The Agreement entered into force on 4 November 2016 and currently has 189 Parties.<sup>26</sup>

The Paris Agreement settled, by consensus, the need for contributions and action by all Parties in order to achieve temperature stabilisation. The Agreement is innovative and incorporates, in its preamble, new concepts such as the respect and promotion of human rights in addressing climate change; climate justice; the integrity of Mother Earth; and the engagement of all sectors of society. The goals of the Agreement are as follows:

- It establishes a global goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the increase to 1.5°C (Article 2). It also calls for global peaking of GHG emissions as soon as possible to achieve a balance between anthropogenic emissions by sources and removals by sinks in the second half of this century (Article 4.1).
- It aims to increase the ability of countries to adapt to climate change and to make financial flows consistent with a pathway towards low GHG emissions and climate resilient development (Article 2).

The Agreement enjoins Parties to formulate, communicate and implement long-term low GHG emissions development strategies (Article 4.19). The core obligation of each Party is to “*prepare, communicate and maintain*” successive nationally determined contributions (NDCs) that it intends to achieve (Article 4.2). This commitment is a “procedural obligation” – that is, an obligation of conduct rather than of result.<sup>27</sup> In effect, the Paris Agreement NDC does not have the same legal status as the Kyoto Protocol’s emission target; there is no

legal obligation for a Party to achieve its NDC. It is, however, bounded by significant safeguards:

- Successive NDCs are to represent progression beyond a Party's current NDCs (the “no backsliding rule”).
- Parties are required to pursue domestic mitigation measures with the aim of achieving the objectives of their NDCs.
- Parties are required to provide information to track progress in implementing and achieving their NDCs.<sup>28</sup>
- Developed countries are to continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing countries are to continue enhancing their mitigation efforts, but move over time to economy-wide absolute emission reduction or limitation targets “*in light of different national circumstances*” (Article 4.4). (For more information, see the *Pocket Guide to NDCs*).

Also, whereas the Kyoto Protocol institutes a rigid Annex I/ non-Annex I dichotomy, the Paris Agreement establishes a multifaceted approach to differentiation. In this regard, it constitutes a universal system applicable to all Parties but with built-in flexibilities to take account of different national circumstances. Thus:

- The Agreement will be implemented to reflect equity and CBDR “*in light of different national circumstances*” (Article 2.2).
- Parties self-differentiate through their NDCs. Least developed countries (LDCs) and small island developing States (SIDS) may prepare and communicate strategies, plans, and actions for low GHG emissions development reflecting their special circumstances (Article 4.7).
- The enhanced transparency framework takes into account Parties' different capacities (Article 13.1).

The Agreement establishes an enhanced and robust transparency framework applicable to all Parties comprising an independent third-party expert review process and a peer review process.<sup>29</sup> The information provided by Parties in their biennial transparency reports (BTRs) is reviewed by a technical expert review team. The framework also puts in place a political, peer review process known as “*facilitative multilateral consideration of progress*” – an interactive dialogue with the Party under review open to all Parties. (For more information on the enhanced transparency framework, see the *Pocket Guide to Transparency*).

The mechanism to facilitate implementation and promote compliance established under Article 15 consists of an expert-based Committee. It is characterised as facilitative in nature, functioning in a manner that is transparent, non-adversarial and non-punitive. The **modalities and procedures** adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) are markedly less robust than the compliance regime under the Kyoto Protocol – there is no Party-to-Party trigger; no technical expert review team trigger; and the Committee cannot impose sanctions or penalties for non-compliance.<sup>30</sup> The consequences flowing out of Committee’s work are largely facilitative.<sup>31</sup>

The Agreement has elevated the profile of adaptation in the international climate change regime (Article 7). It establishes a global adaptation goal of enhancing adaptive capacity, strengthening resilience, and reducing vulnerability. This is to be achieved through:

- Significantly strengthening national adaptation efforts, including through support and international cooperation.
- National adaptation planning and the submission and periodic updating by Parties of “adaptation

- communications” containing priorities, support needs, plans, and actions.
- Enhancing support to developing countries.
  - Assessment of impacts and vulnerabilities; and information sharing.

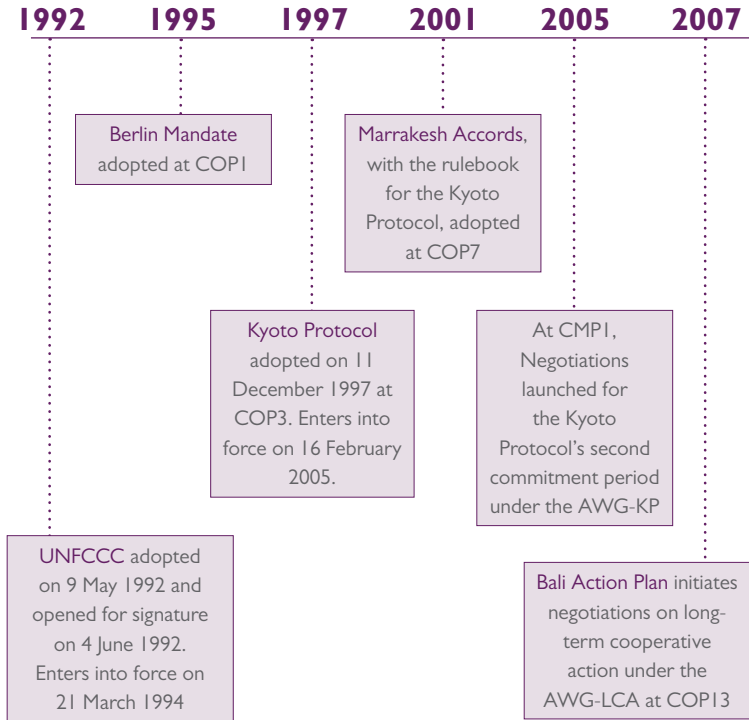
(For more information, see the *Pocket Guide to Adaptation*).

The Paris Agreement reinforces the existing framework relating to means of implementation – finance (Article 9), technology (Article 10), and capacity building (Article 11). It reaffirms the obligations of developed countries under the Convention with respect to the provision of financial resources to developing countries and provides that the financial mechanism, including the Green Climate Fund, shall serve the Agreement.

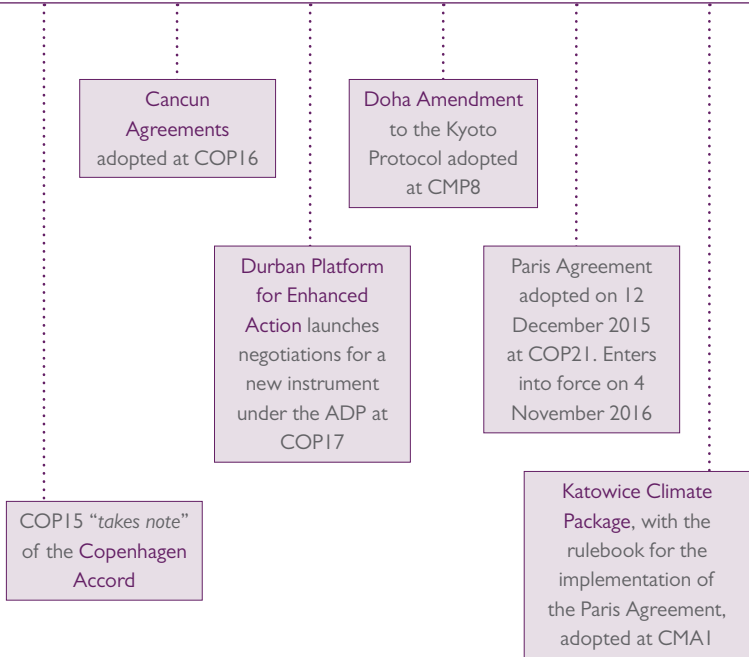
More importantly, it strengthens the reporting and verification aspects by requiring developed countries to submit biennial reports containing information on support provided and projected levels of public financial resources to be provided. It innovates by encouraging voluntary contributions from other Parties. International cooperation on technology development and transfer and capacity building is markedly strengthened: a technology framework is established to provide guidance to the Technology Mechanism in promoting and facilitating enhanced action in this area; and capacity building activities are to be promoted through enhanced support and new institutional arrangements.

For the first time, the climate change legal regime addresses the issue of loss and damage associated with the adverse effects of climate change in treaty text (Article 8). The Agreement provides for international cooperation and facilitation to enhance action and support in a number of areas including

## TIMELINE



2009      2010      2011      2012      2015      2018



early warning systems, emergency preparedness, slow onset events, risk insurance, and risk assessment and management. Further, it incorporates the [Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts](#) (WIM) within its regime and subject to the authority and guidance of the CMA. Nevertheless, in the decision that adopted the Paris Agreement, Parties expressly “*agreed*” that Article 8 of the Agreement “*does not involve or provide a basis for any liability or compensation*”.<sup>32</sup>

The Agreement provides for periodic “global stocktake” of its implementation to assess the collective progress towards achieving its purpose and long term goals (Article 14). The global stocktake is to be comprehensive, covering mitigation, adaptation, and means of implementation. Its outcome is meant to inform individual efforts by each Party in updating their future NDCs, and enhance international cooperation for climate change. The first global stocktake is scheduled to take place in 2023 and every five years thereafter.

(For more information on the Paris Agreement, see the [Guide to the Paris Agreement](#).)



## WHAT IS THE INSTITUTIONAL STRUCTURE OF THE UNFCCC PROCESS?

The UNFCCC, the Kyoto Protocol, and the Paris Agreement establish an elaborate institutional framework to facilitate their effective implementation and to further the climate change intergovernmental process. It consists of governing/supreme decision-making bodies open to all Parties; open-ended permanent subsidiary bodies; specialised limited-membership subsidiary bodies known as “constituted bodies”; and as other institutional arrangements to support Parties in the implementation of their climate change actions.

The institutional structure is hierarchical. The governing bodies of the respective treaties – COP, CMP, and CMA – are the supreme decision-making organs. The permanent subsidiary bodies, the constituted bodies, and other institutional arrangements function under the authority and guidance of the COP, CMP, and CMA as the case may be. They report to, and develop recommendations, including draft decisions, for consideration by the supreme decision-making organs.

This section also discusses the role of the IPCC, which is not an UNFCCC institution, but plays a crucial role in the UNFCCC process through its scientific and technical inputs.

### ► GOVERNING/SUPREME DECISION-MAKING BODIES

The UNFCCC establishes a Conference of the Parties (COP) as the supreme decision-making body of the Convention.<sup>33</sup> All States that are Party to the Convention are represented in the

COP, and non-Party States participate in its sessions as observers. The mandate of the COP is to review the implementation of the Convention and any related legal instruments the COP may adopt; and to take decisions necessary to promote its effective implementation, including decisions concerning institutional and administrative arrangements, and the operations of the secretariat.

Both the Kyoto Protocol and the Paris Agreement provide that the COP to the Convention shall serve as the meeting of the Parties to the Protocol and the meeting of the Parties to the Paris Agreement, respectively.<sup>34</sup> When the COP serves as the meeting of the Parties to the Protocol or the meeting of the Parties to the Paris Agreement it becomes a distinct meeting body, the CMP for the Protocol and the CMA for the Paris Agreement.

However, when the COP serves as the meeting of the Parties to the Protocol or the Agreement, decisions are taken only by Parties to these instruments and non-Parties participate in sessions of the CMP or the CMA as observers.<sup>35</sup>

The decision to utilise the COP to serve supplementary instruments adopted under the Convention was informed by the need to avoid the proliferation of institutions, minimise operational costs, and promote synergies between them.<sup>36</sup> The fact that no new entity is created is underlined by the use of the lower-case “m” in the phrase “*Conference of the Parties serving as the meeting of the Parties to...*” Thus, no separate “Meeting of the Parties” is established, as is the case under the Montreal Protocol on Substances that Deplete the Ozone Layer or the Basel Protocol on Liability and Compensation. It also followed that the subsidiary bodies – the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) – and other

institutional arrangements established under the Convention serve the Kyoto Protocol and the Paris Agreement. Their respective identities, names, or mandates are not changed – the only marker is the relevant agenda item under the Subsidiary Body.

## ► THE COP BUREAU

The COP has a **Bureau** composed of representatives of Parties nominated by each of the five UN regional groups and SIDS, and elected by the COP. A representative from the LDCs is allowed to attend as an observer. The Bureau has 11 members: a President, seven Vice-Presidents, the Chairs of SBSTA and SBI, and a Rapporteur.<sup>37</sup>

When the COP serves as the meeting of the Parties to either the Protocol or the Agreement, any member of the Bureau from a non-Party to either instrument is replaced by an additional member elected from amongst the Parties to the Protocol or the Agreement.<sup>38</sup>

Between sessions, the Bureau supports the work of the COP, CMP, and CMA through the provision of advice and guidance regarding on-going work, the organisation of sessions, and the operations of the secretariat.

During sessions, the Bureau deals with process management issues and supports the President in her/his task of facilitating the work of the Conferences and promoting agreement during negotiations. Bureau members regularly consult with their regional groups and provide useful intelligence regarding their concerns with respect to both process and substantive issues. The Bureau is not, however, a forum for negotiations.

The annual climate change conferences consisting of the sessions of the COP, CMP, CMA, and subsidiary bodies constitute the primary global forums for multilateral

discussions on climate change issues. It is at these sessions that progress in the implementation of the climate change instruments is reviewed; guidelines, procedures, rules and modalities are adopted to promote and facilitate their effective implementation; and decisions are taken regarding their further development.

The conferences also sometimes invite other international organisations and institutions such as [International Civil Aviation Organization](#), the [International Maritime Organization](#), and the [Convention on Biological Diversity](#) to consider relevant issues falling within their respective mandates.

## ► PERMANENT SUBSIDIARY BODIES

The Convention establishes two open-ended permanent subsidiary bodies: the [Subsidiary Body for Scientific and Technological Advice](#) (SBSTA) is established in Article 9; and the [Subsidiary Body for Implementation](#) (SBI) is established in Article 10. These subsidiary bodies also serve the Kyoto Protocol and the Paris Agreement.<sup>39</sup> They are the main working bodies of the Convention, the Kyoto Protocol, and the Paris Agreement and meet twice a year – normally mid-year and at the end of the year in conjunction with sessions of the COP, CMP, and CMA

The SBSTA provides the COP, CMP, CMA and other subsidiary bodies with timely information and advice on scientific and technological matters. It addresses, *inter alia*, methodological issues; impacts, vulnerability, and adaptation to climate change; development and transfer of environmentally-sound technologies; and guidelines for preparing and reviewing GHG inventories.

The SBSTA also plays an important role of linking scientific information from outside expert sources such as

the IPCC and other international scientific organisations to the policy discourse under the climate change regime. The SBSTA may also be invited to consider relevant scientific and technical issues that may arise in other subsidiary bodies.

The SBI is mandated to assist the COP, CMP, and CMA in the assessment and review of the effective implementation of the Convention, the Kyoto Protocol, and the Paris Agreement. It is at the centre of implementation issues and addresses, among other things, transparency, mitigation, adaptation, finance, technology, and capacity building. It also considers national reports submitted by Parties; considers the biennial work programmes of the secretariat; and assists the governing bodies in the preparation and implementation of their decisions. The SBI may also be invited to consider relevant implementation issues that arise in other subsidiary bodies.

The SBSTA and SBI therefore collaborate in addressing crosscutting issues within the competence of both bodies. These include vulnerability and adaptation to climate change by developing countries; response measures; and issues concerning the Technology Mechanism, the Adaptation Committee, and the WIM.

## ► **FINANCIAL MECHANISM, OPERATING ENTITIES, AND FUNDS**

The UNFCCC defines a financial mechanism for the provision of financial resources to developing countries, including for the transfer of technology, in order to facilitate the implementation of their obligations under the Convention (Article 11.1). The financial resources are provided by developed countries Parties. The mechanism functions under the guidance of, and is accountable to, the COP which also decides on its policies, programme priorities, and eligibility

criteria for access. Its operation is entrusted to one or more existing international entities.

In 1998, the COP designated the Global Environment Facility (GEF) as an operating entity of the financial mechanism.<sup>40</sup> A memorandum of understanding between the COP and the GEF Council underpins the operations of the GEF in this regard.<sup>41</sup> The GEF also administers the Special Climate Change Fund (SCCF) and the LDC Fund (LDCF).

In 2010, the COP also established the Green Climate Fund (GCF) as an operating entity of the financial mechanism.<sup>42</sup> The Fund is governed by a Board and is administered under the GCF Governing Instrument that was approved by the COP.<sup>43</sup> The GCF is accountable to, and functions under, the guidance of the COP to support projects, programmes, and other activities in developing countries. It is funded through contributions from developed countries Parties as well as other public and non-public sources.

The financial mechanism of the Convention, including its operating entities, serves as the financial mechanism of the Kyoto Protocol and the Paris Agreement in accordance with their provisions.<sup>44</sup> In accordance with COP Decision 1/CP.21, the GCF and the GEF shall serve the Paris Agreement. Guidance agreed to by the CMP or the CMA regarding policies, programme priorities, and eligibility criteria under either instrument is transmitted by the COP to the GEF and GCF.<sup>45</sup>

## ► CONSTITUTED BODIES AND AD HOC WORKING GROUPS

The COP, CMP, and CMA are mandated to create other subsidiary bodies that are necessary for the implementation of their respective instruments – including committees and working groups.<sup>46</sup>

Limited-membership, specialised technical subsidiary bodies, in practice known as “constituted bodies”, have been established by decisions of the COP, the CMP, and the CMA to support Parties implementation in specific areas. They are described in more detail below. In recent times, the constituted bodies and institutional arrangements established by the COP include:

- The Special Climate Change Fund.
- The Least Developed Countries Fund.
- The Adaptation Committee.
- The Technology Mechanism, consisting of the Technology Executive Committee and the Climate Technology Centre and Network.
- The Standing Committee on Finance.
- The Facilitative Working Group of the Local Communities and Indigenous Peoples Platform.
- The Executive Committee of the WIM.
- The Paris Committee on Capacity-building.

The CMP has established, *inter alia*:

- The CDM Executive Board.
- The Compliance Committee.
- The Adaptation Fund Board.
- The Joint Implementation Supervisory Committee (JISC).

The Paris Agreement not only explicitly provides that certain subsidiary bodies established under the Convention, such as the Technology Mechanism, shall serve the Paris Agreement (Article 10.3), but also authorises the CMA to take a decision in the future that specific subsidiary bodies or other institutional arrangements under the Convention shall serve the Agreement (Article 19).

It should be noted that when the subsidiary and constituted bodies established under the Convention are serving the Kyoto Protocol or the Paris Agreement, they report directly to the CMP or the CMA, as the case may be.

The COP and the CMP have also, from time to time, established *ad hoc* open-ended working groups to undertake specific tasks. Such tasks have so far been limited to negotiating mandates. Notable examples include:

- The AGBM that negotiated the Kyoto Protocol.
- The AWG-KP that negotiated the Doha Amendment, regarding the Protocol's second commitment period.
- The AWG-LCA that was mandated to negotiate “*an agreed outcome*” and led to the adoption of the Cancun Agreements.
- The ADP that negotiated the Paris Agreement.

## ► INSTITUTIONAL ARRANGEMENTS TO ADDRESS IMPLEMENTATION IN SPECIFIC THEMATIC AREAS

A number of institutions have been established to support implementation and work programmes in specific thematic areas such as mitigation, adaptation, technology transfer, finance, and capacity building. Some of these institutions have cross-over functions to meet the various interlinked roles.

### MITIGATION

#### CDM Executive Board

The **CDM Executive Board** supervises the Kyoto Protocol's Clean Development Mechanism (CDM).<sup>47</sup> The Board comprises of 10 members and 10 alternate members nominated by Parties to the Kyoto Protocol and elected by the CMP. The



role of the CDM Executive Board is to develop procedures for the CDM.<sup>48</sup> Its functions include approving methodologies for new CDM projects, registering projects, issuing Certified Emissions Reductions, and maintaining a public database of CDM project activities. The Executive Board may establish committees, panels, or working groups to assist it in the performance of its functions.

At the time of publication, the CDM Executive Board was still meeting even though the second commitment period of the Kyoto Protocol did not enter into force. It is unclear whether the CDM Executive Board with its current mandate and constitution will have a future, in light of decisions being taken under the Paris Agreement on similar market mechanisms under Article 6.

### **Joint Implementation Supervisory Committee**

The JISC supervises the operation of the cooperative mechanism for Annex I Parties (developed country Parties) established under Article 6 of the Kyoto Protocol. The JISC comprises of 10 members and 10 alternate members nominated by Parties to the Kyoto Protocol and elected by the CMP. The Supervisory Committee's primary purpose is to verify the emission reduction units generated by Article 6 (Joint Implementation) projects under the Kyoto Protocol.<sup>49</sup> Among its functions, the JISC accredits independent entities that develop and accredit project designs; reviews and revises reporting guidelines and criteria for baselines and monitoring of JI projects; and may suspend or withdraw the accreditation of an independent entity.

At the time of publication, the JISC was still meeting even though the second commitment period of the Kyoto Protocol did not enter into force. It is unclear whether the JISC will have a future.

## Compliance Committee

The **Compliance Committee** of the Kyoto Protocol was established to implement the procedures and mechanisms to address cases of non-compliance with the Kyoto Protocol.<sup>50</sup> The Committee's objective is to facilitate, promote, and enforce compliance with the commitments under the Protocol.<sup>51</sup> It has two branches: a facilitative branch and an enforcement branch. The facilitative branch aims to provide advice and assistance to Parties in order to promote compliance under the Kyoto Protocol, whereas the enforcement branch determines consequences for Parties not meeting their commitments under the Kyoto Protocol.

Through its branches, the Committee considers questions of implementation which can be raised by expert review teams under Article 8 of the Protocol, any Party with respect to itself, or a Party with respect to another Party (supported by corroborating information). The Committee receives what are termed “questions of implementation” from expert review team reports and “submissions” from Parties, and takes final decisions and imposes consequences regarding cases of non-compliance. The Committee has the power to require the development of a compliance action plan. Consequences include penalties with respect to a Party's emissions budget and suspension of eligibility to participate in the flexibility mechanisms imposed by the enforcement Branch, as well as advice and technical and financial assistance facilitated by the facilitative Branch.

At the time of publication, the Compliance Committee was still meeting even though the second commitment period of the Kyoto Protocol did not enter into force. It is unclear whether the Committee will have a future.

## **Paris Agreement Article 15 Implementation and Compliance Committee**

The Paris Agreement Article 15 Implementation and Compliance Committee has been established to facilitate the implementation of and promote compliance with the provisions of the Agreement.<sup>52</sup> The Committee is to be expert-based, facilitative in nature, and function in a manner that is transparent, non-adversarial, and non-punitive. It aims to assist countries in implementing their commitments by considering systemic issues impacting multiple countries.<sup>53</sup> It will also address countries' failures to fulfil obligations relating to communication of NDCs and submission of reports.

The Article 15 Committee comprises of 12 members and alternates nominated by Parties to the Paris Agreement and elected by the CMA. While the members and alternates of the Committee have been elected, at the time of publication, the Committee has yet to meet.

## **Forum on the Impact of the Implementation of Response Measures**

The **Forum on the Impact of the Implementation of Response Measures** (Forum) aims to provide a platform allowing Parties to share, among other things, information, case studies, best practices and views to facilitate an analysis of the impact of the implementation of response measures.<sup>54</sup> The concept of “response measures” is derived from the Convention, which provides that Parties shall consider what actions are necessary under the Convention to meet the needs and concerns of developing country Parties arising from the impact of the implementation of response measures.<sup>55</sup>

A workplan for the Forum was adopted jointly by Parties to the Paris Agreement, UNFCCC, and the Kyoto Protocol.<sup>56</sup> It has eleven elements and includes exploring approaches to

inform the development of climate change mitigation strategies that maximise the positive, and minimise the negative, impacts of response measures.

### **Katowice Committee of Experts on the Impacts of Implementation of Response Measures**

The Katowice Committee of Experts on the Impacts of Response Measures (KCI) was established to support the work of the Forum on the Impact of the Implementation of Response Measures.<sup>57</sup> The KCI aims to, *inter alia*, build awareness, prepare technical papers and case studies, receive inputs from experts, and organise workshops.<sup>58</sup>

The KCI comprises of 14 members including two members from each of the five UN regional groups, one from a LDC, one from SIDS, and two from relevant intergovernmental organisations.

## **ADAPTATION**

### **Adaptation Committee**

The Adaptation Committee was established to promote the implementation of enhanced action on adaptation through:

- Providing technical support and guidance to Parties.
- Sharing information, knowledge, experience and good practices.
- Providing guidance on means to incentivise adaptation actions.
- Considering information on monitoring and review of adaptation actions.<sup>59</sup>

The Adaptation Committee works closely with the LDC Expert Group (see page 32). The Committee adopted a new workplan in 2019 which includes new work derived from Article 8 of

the Paris Agreement to address displacement related to the adverse impacts of climate change.<sup>60</sup> It established a **National Adaptation Plans Task Force** to support developing countries formulate and implement National Adaptation Plans (NAPs).<sup>61</sup> It comprises of members of the **Adaptation Committee** and nominees from the **LDC Expert Group**, the **Standing Committee on Finance**, the **Technology Executive Committee**, the **Adaptation Fund**, the **Global Environment Facility**, and the **Green Climate Fund**.

## **BODIES LINKED TO MITIGATION AND ADAPTATION**

### **Consultative Group of Experts**

The objective of the **Consultative Group of Experts (CGE)** (formerly called the **Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention**) is to assist developing country Parties improve their capacities to implement the existing measuring, reporting, and verification (MRV) arrangements under the Convention and the enhanced transparency framework under Article 13 of the Paris Agreement.<sup>62</sup> This includes facilitating the provision of technical advice and support to developing country Parties to prepare their BTRs, and providing technical advice to the secretariat on the implementation of the training of technical expert review teams.

The CGE has developed a **toolbox** for experts and practitioners on the ground to improve their national institutional arrangements to implement the existing MRV arrangements under the Convention, and prepare for the enhanced transparency framework under the Paris Agreement.<sup>63</sup> It has also produced a **technical handbook** for developing country Parties on preparing

for implementation of the enhanced transparency framework under the Paris Agreement.<sup>64</sup>

The CGE comprises of 24 experts from developed and developing Parties and from international organisations with relevant experience in providing technical assistance to non-Annex I Parties in the preparation of national communications. The CGE may establish committees, panels, and working groups to undertake specific tasks.

### **Technology Mechanism**

The Cancun Agreements established the **Technology Mechanism** with the primary objective of enhancing and accelerating technology development and transfer. The Mechanism consists of the **Technology Executive Committee (TEC)** and the **Climate Technology Centre and Network (CTCN)**. The Technology Mechanism also serves the Paris Agreement.

The TEC is the policy arm of the Technology Mechanism and focuses on identifying policies that can accelerate the development and transfer of low-emission and climate resilient technologies.<sup>65</sup> It consists of 20 technology experts representing developed and developing countries. It meets at least twice a year and holds climate technology events to support efforts to address technology-related policy issues.

The TEC undertakes a number of functions, including:

- providing an overview of countries' climate technology needs.
- Recommending actions to promote climate technology development and transfer.
- Recommending actions to address barriers to climate technology development and transfer and promotes.
- Facilitating collaboration between climate technology

stakeholders.

It is supporting countries to identify climate technology policies that support the objectives of the Paris Agreement. The TEC has established five Task Forces based around key themes: innovation; implementation; enabling environment and capacity building; collaboration and stakeholder engagement; and support.

The CTCN is the cooperative arm of the Technology Mechanism and aims to stimulate technology cooperation and enhance the development and transfer of technologies to developing country Parties at their request.<sup>66</sup> It provides technical assistance to developing countries; provides and shares information and knowledge on climate technologies; and fosters collaboration and networking of stakeholders on climate technologies. The Centre is based in Denmark, and co-managed by the UN Environment Programme and the UN Industrial Development Organization.

The network element of the CTCN is a collaboration with a number of institutions. The CTCN has an Advisory Board which provides strategic guidance to ensure that its activities respond to Party needs.<sup>67</sup> The CTCN Advisory Board comprises of 16 government representatives with equal representation from developed and developing Parties; and three representatives, with one each from environmental non-governmental organisations (NGOs), business and industry NGOs, and research and independent NGOs.

### **Local Communities and Indigenous Peoples Platform**

The Local Communities and Indigenous Peoples Platform (LCIPP) aims to strengthen the knowledge, technologies, practices, and efforts of local communities and Indigenous Peoples relating to responses to climate change and its impacts.<sup>68</sup> It also aims to facilitate the sharing of experiences, best practices, and lessons learned on mitigation and adaptation, and to enhance the engagement of local communities and Indigenous Peoples in the UNFCCC process.

A Facilitative Working Group of the Local Communities and Indigenous Peoples Platform was established by COP Decision 2/CP.24 to operationalise and implement the functions of the Platform.<sup>69</sup> The Facilitative Working Group comprises seven representatives of Parties, nominated by their respective regional group or constituency, and seven representatives of Indigenous Peoples' organisations, nominated by the Indigenous Peoples through their focal points. It has developed a workplan which includes:

- Compiling information on existing rights of Indigenous Peoples related to the exchange and safeguarding traditional knowledge.
- Organising regional gatherings.
- Identifying and disseminating information about the development of Indigenous Peoples' curricula and materials that incorporate traditional knowledge.
- Compiling good practices for developing national and regional platforms on climate change policies and action.

### **Least Developed Countries Expert Group**

The LDC Expert Group's (LEG) original mandate was to provide advice to LDCs on the preparation and implementation of National Adaptation Programmes of Action (NAPAs).<sup>70</sup> The mandate has been expanded to include providing technical



guidance and support to LDCs to formulate and implement NAPs; implementing the LDC work programme; and providing technical guidance and advice to LDCs on accessing funding from the GCF.

The LEG, in collaboration with the Adaptation Committee, has also been requested by the COP to undertake inter-related tasks to assist in the implementation of the Paris Agreement. These include facilitating the mobilisation of support for adaptation in developing countries, and reviewing the adequacy and effectiveness of adaptation and support being provided under the Paris Agreement.<sup>71</sup>

The LEG is composed of 12 experts with five experts from African LDC Parties, two experts from Asian LDC Parties, two experts from SIDS which are LDCs, and three experts from Annex II Parties. At least one selected LDC expert and at least one selected expert from Annex II Parties shall also be a member of the CGE.

## LOSS AND DAMAGE

### **Warsaw International Mechanism on Loss and Damage associated with Climate Change Impacts**

The WIM aims to address loss and damage associated with impacts of climate change, including extreme weather events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.<sup>72</sup> The WIM's mandate includes:

- Enhancing knowledge and understanding of comprehensive risk management approaches.
- Strengthening dialogue, coordination, coherence, and synergies among relevant stakeholders.
- Enhancing action and support, including finance, technology, and capacity building.

The work of the WIM is facilitated by an **Executive Committee** composed of 20 members: 10 members from developed country Parties; and 10 members from developing country Parties. Of the 10 members from developing country Parties, two members each are from African States, the Asia-Pacific States, and the Latin American and Caribbean States; and one member each is from SIDS and LDCs.<sup>73</sup>

As part of its work, the Executive Committee has created four thematic expert groups working respectively on slow onset events, non-economic losses, displacement related to the adverse impacts of climate change, and comprehensive risk management approaches.

## FINANCE

### Standing Committee on Finance

The **Standing Committee on Finance** (SCF) is charged with assisting and supporting the COP in a number of areas:

- Improving coherence and coordination in the delivery of climate change financing.
- The rationalisation of the financial mechanism of the Convention.
- The mobilisation of financial resources.
- The measurement, reporting, and verification of support provided to developing country Parties.<sup>74</sup>

Specific tasks include preparing draft guidance to the operating entities of the financial mechanism; preparing biennial assessments and overviews of climate finance flows; and providing expert inputs into the COP's periodic reviews of the financial mechanism.

The SCF also organises forums on various themes associated with its mandate such as climate finance and sustainable cities; mobilising finance for climate-resilient infrastructure; financial instruments that address the risks of loss and damage; and enhancing coherence and coordination of forest financing.

The SCF is composed of 20 members who include 10 members from developed country Parties and 10 members from developing country Parties, including two members each from the African, Asia-Pacific, and the Latin America and Caribbean States; and one member each from SIDS and LDCs.

### **Green Climate Fund Board**

The **GCF Board** oversees the governance of the GCF, and has full responsibility for GCF funding decisions.<sup>75</sup> Its specific functions include:

- Overseeing the operation of all relevant components of the Fund.
- Approving operational modalities, access modalities and funding structures.
- Developing environmental and social safeguards and fiduciary principles and standards that are internationally accepted.
- Developing criteria and application processes for the accreditation of implementing entities of the Fund, accrediting implementing entities, and withdrawing such accreditation.
- Establishing a framework for the monitoring and evaluation of performance and the financial accountability of activities supported by the Fund and any necessary external audits.

The GCF Board is required to balance the allocation of resources between adaptation and mitigation activities. It comprises 24 members and 24 alternate members with an equal number of members from developing and developed country Parties. The composition of the GCF Board includes: three members and alternate members from the Asia-Pacific States; three members and alternate members from the African States; three members and alternate members from the Latin American and the Caribbean States; one member and alternate member from SIDS; one member and alternate member from LDCs; one member from developing country Parties not included in the regional groups and constituencies; and one alternate member to rotate between developing country Parties.

### **Adaptation Fund Board**

The **Adaptation Fund Board** was established as the operating entity to supervise and manage the Adaptation Fund, which was initially created under the Kyoto Protocol.<sup>76</sup> The functions of the Adaptation Fund Board include:

- Developing strategic priorities, policies, and guidelines.
- Deciding on projects to be funded.
- Monitoring and reviewing the implementation of operations.
- Monetisation of the Certified Emission Reductions issued by the CDM Executive Board.

Parties to the Paris Agreement have decided that the Adaptation Fund will serve the Paris Agreement and will be financed from a share of proceeds from the mechanism established under Article 6.4 (and potentially Article 6.2) of the Paris Agreement.<sup>77</sup>

The Adaptation Fund Board originally comprised of 16 members and 16 alternates elected as follows: two representatives from each of the five UN regional groups; one representative from SIDS; one representative from LDCs; two other representatives from Annex I Parties; and two other representatives from the Parties not included in Annex I to the Convention. This is now being revised to allow for representation from Parties to the Paris Agreement.

## CAPACITY BUILDING

### Paris Committee on Capacity-building

The Paris Committee on Capacity-building (PCCB) addresses current and emerging gaps and needs in implementing and further enhancing capacity building in developing countries. The PCCB aims to foster collaboration between actors at all levels (local, national, regional, and global) and strengthening networks and partnerships to enhance synergies and promote knowledge- and experience-sharing. The PCCB has been tasked with managing and overseeing the capacity building workplan for the 2016-2020 period.<sup>78</sup>

The PCCB is composed of twelve members comprising two members from each of the five UN regional groups, and one member each from LDCs and SIDS.

### ► SECRETARIAT

The UNFCCC establishes a secretariat to discharge specific functions.<sup>79</sup> Both the Kyoto Protocol and the Paris Agreement provide that the Convention secretariat shall also serve as the secretariat of the Protocol and the Agreement.<sup>80</sup> Its mandate includes making arrangements for sessions and meetings of the treaty bodies; supporting Parties in their implementation of the

treaties; coordinating with other relevant intergovernmental organisations; compiling and transmitting reports submitted by Parties; and performing such other functions as the COP, the CMP, or the CMA may determine.

The secretariat provides organisational support and technical expertise to the climate change intergovernmental process; supports Parties and climate change institutions on implementation matters; and facilitates the flow of relevant information required by Parties and the process. The secretariat is institutionally linked to the UN without being integrated into any of its programmes or departments and operates under the UN administrative and personnel rules and regulations.<sup>81</sup>

## ► INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE

The IPCC was established in 1988 by UNEP and WMO to provide the international community, and in particular policymakers, with regular scientific assessment on climate change, its implications and potential future risks, as well as options regarding policy responses. It provides comprehensive scientific, technical, and socioeconomic assessment reports which are considered the most authoritative sources of information on climate change and its impacts. The assessment reports include summaries for policymakers. IPCC reports are neutral, policy-relevant but not policy-prescriptive.

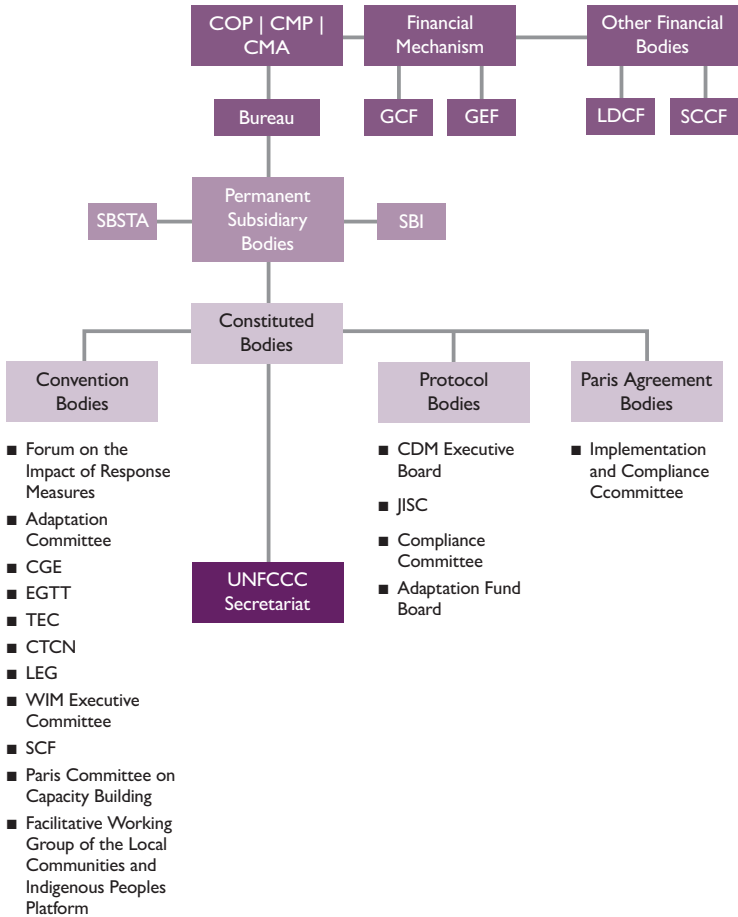
The latest assessment report, the *Fifth Assessment Report* (AR5), was released in 2014 and the *Sixth Assessment Report* (AR6) is scheduled to be released in 2022. The IPCC, through its *Task Force on National Greenhouse Gas Inventories*, also produces *Methodology Reports* that provide guidelines for the preparation of GHG inventories. The *2006 Guidelines for*

*National Greenhouse Gas Inventories* provides guidance to Parties to prepare their annual emissions inventories.<sup>82</sup>

The IPCC reports are a key scientific input into the international climate change regime and its intergovernmental process. The regime utilises IPCC data and information in order to arrive at science-based decisions regarding the strengthening of the global response to climate change. Thus, Article 21.1 of the Convention mandates the secretariat to cooperate closely with the IPCC to ensure that the Panel can respond effectively to the regime's need for objective scientific and technical advice.

A number of COP decisions have further strengthened the role of the IPCC in the process.<sup>83</sup> The IPCC also produces special reports and technical papers on specific issues upon invitation by the COP. For example, COP [Decision 1/CP.21](#) invited the IPCC to provide a special report in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global GHG emission pathways.<sup>84</sup> The IPCC reports are normally presented to the COP plenary by an IPCC representative and referred by the COP to the SBSTA for consideration and the preparation of draft decisions, for consideration and adoption by the COP.

**Figure 1:** Institutions under the UNFCCC





## HOW ARE NEGOTIATIONS ORGANISED AND CONDUCTED UNDER THE UNFCCC?

The annual climate change conferences provide the forums for all Parties to review implementation of the climate change treaties, and to negotiate and agree on diverse issues regarding their implementation and further development. The conferences rotate annually amongst the five UN regional groups and comprise the sessions of the COP, the CMP, and the CMA as well as the sessions of the permanent SBs – SBSTA and SBI – and any ad hoc open-ended working groups established by the governing bodies.

Although multilateral negotiations are about substantive matters, the manner in which negotiations are organised, managed, and conducted is a key variable in the success of the negotiations and the legitimacy of its outcomes. Thus, like all intergovernmental conferences and negotiating processes, the UNFCCC process is underpinned by rules of procedure that regulate the conduct and management of the process – the *Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies* (see Annex).<sup>85</sup>

Whereas in theory negotiations are between individual States Parties, in practice States Parties form groups and coalitions to leverage advantage and secure mutual benefits.<sup>86</sup> Negotiations are organised and undertaken in formal and informal settings and the presiding officers as lead organisers play a critical role in managing, facilitating, and directing the negotiation process. Issues of transparency and inclusiveness of the process, as well as procedural integrity, are

key determinants of any successful negotiations. Moreover, creating space and latitude for non-state actors to provide inputs into the process enriches the intergovernmental process and its outcomes.

## ► RULES OF PROCEDURE

Rules of procedure ensure the orderly conduct of business; delineate and protect the exercise of individual rights; guarantee a level playing field and equal treatment; and provide certainty and predictability to participating States.

Whereas the Convention provides that the “*Conference of the Parties shall, at its first session, adopt its own rules of procedure...*” (Article 7.3), the COP has failed to do so to date, due to disagreements on Rule 42 of the **Draft Rules of Procedure** presented to COP1.<sup>87</sup> Rule 42 defines the voting majorities for both procedural and substantive matters. The Parties to UNFCCC agreed, however, to apply the Draft Rules of Procedure, with the exception of Rule 42, in meetings held under the climate change intergovernmental process.

The Draft Rules of Procedure address a host of issues critical for the orderly conduct of the business of the intergovernmental process, including:

- Dates and place of sessions and notification thereof to all Parties and observers.
- Participation of observers.
- Representation and credentials.
- The preparation and adoption of the agenda.
- The quorums for meetings and for decision-making.
- Officers and Bureau of the conference.
- The functions and powers of the President.
- The right of a Party to raise points of order and how these are to be handled.

- The types of procedural motions and how they are to be addressed.
- The submission of proposals by Parties.
- The reconsideration of proposals once adopted or rejected.
- How to deal with motions regarding the competence of the conference/meeting.
- Decision-making by the conference/meeting.
- Application of the Rules of Procedure to subsidiary bodies.
- Secretariat of the conference and its functions.

The procedural integrity of the process – that is, the full observance of, and respect for, the Rules of Procedure – contributes to the legitimacy of its outcome. Parties and other participants have legitimate expectations that the rules of the game will be observed and respected. While the presiding officer has the formal obligation to ensure the observance of the rules under the Draft Rules of Procedure (Rule 23.1), two areas have often proved problematic: the handling of points of order; and decision-making by consensus.

### ► POINTS OF ORDER

A point of order is an intervention by a representative directed to the presiding officer requesting that he/she exercises some power(s) vested in him by the Rules of Procedure or inherent in his/her office. Points of order are usually raised on procedural issues rather than substantive matters, and the presiding officer must make a determination on the nature of the issue in order to make a ruling. The point of order may relate to:

- The manner in which the proceedings or debate is being conducted.
- The manner in which the presiding officer is exercising the powers conferred on him/her by the rules of procedure.

- The maintenance of order at the meeting.
- Compliance with the rules of procedure.<sup>88</sup>

According to Rule 34, a representative may raise a point of order at any time during the debate and the presiding officer is obliged to decide on the point of order immediately. The representative normally raises his/her country's name-plate, makes a "T" sign with his/her hand, and says "point of order"; or electronically requests the floor and says the words "point of order". The presiding officer must then suspend the debate/proceedings, give the representative the floor to make the point, and then rule on the point of order. If the representative appeals the ruling, the matter is put to a vote immediately. Unless a simple majority of Parties present and voting overturns the presiding officer's ruling, it will stand.

In practice, points of order are used by Parties for a variety of reasons, some unrelated to the elements above, including to ensure that a particular point of view is heard. The best approach is for the presiding officer to give the Party the floor, and to respond in a way that facilitates uneventful resumption of the proceedings.

However, at the Doha Conference (2012) the President gavelled the decision adopting the Doha Amendment to the Kyoto Protocol despite the Russian Federation's raised flag on a point of order.<sup>89</sup> At the Paris Conference (2015), during the final plenary meeting of the *Comite de Paris*, the representative of Nicaragua requested the floor on a point of order. The President declined to give the floor to Nicaragua, but gave assurances that any delegation wishing to intervene would be given the floor once the text of the Paris Agreement was tabled for adoption at the COP plenary to be convened immediately after the closure of the *Comite de Paris*. At the COP plenary,

Nicaragua was again not given the floor before the adoption of the text of the Agreement.

The failure of the President to give the floor to the Russian Federation and Nicaragua on points of order before adoption of the Doha Amendment and the Paris Agreement, respectively, were clear breaches of procedure. In both instances there was apprehension that giving the floor to the requesting Parties before adoption could result in a formal objection to the adoption of the decisions. However, as Dapo Akande affirms “...to deny States the right to take the floor, in order to prevent them from expressing opposition to a text...seems to be an abuse of office by the presiding officers”.<sup>90</sup>

## ► DECISION-MAKING BY CONSENSUS

The second issue concerns the concept and practice of decision-making by consensus. Due to the continuing lack of agreement on Draft Rule 42 relating to voting majorities, decision-making in the climate change intergovernmental process is by “consensus”, except in those specific instances where the Convention, the Kyoto Protocol, the Paris Agreement, or the Draft Rules of Procedure establish applicable voting majorities. Whilst the term “consensus” is not defined in the Convention or the Draft Rules of Procedure, it has been defined in other international instruments:

Article 161.7(e) of the [UN Convention on the Law of the Sea](#) (UNCLOS) states that consensus means “*the absence of any formal objection*”.<sup>91</sup>

Article 2.4 of the [Dispute Settlement Understanding](#) of the World Trade Organization (WTO) provides that the Dispute Settlement Body (DSB) shall take decisions by consensus and a note to the provision states that the DSB “*shall be deemed to have decided by consensus on a matter*

*submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision”.*<sup>92</sup>

Rule 69.4 of the Rules of Procedure of the [Conference on Security and Cooperation in Europe](#) states that consensus means “...*the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question*”.<sup>93</sup>

These definitions do not, however, tell the whole story as is evidenced in the memorandum of the Legal Counsel of the UN to the Executive Secretary of the Convention on Biological Diversity dated 17 June 2002.<sup>94</sup> The memorandum states that “*In the United Nations practice, the concept of ‘consensus’ is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner*”. It continues:

- Adoption by consensus “*does not mean that every State participating in the meeting or conference is in favour of every element of the resolution or decision*”.
- “*States have an opportunity before or after adoption to make reservations, declarations, statements of interpretation and/or statements of position*”.
- “*Provided that the State concerned does not formally object to or challenge the existence of consensus... it is understood that consensus or general agreement is preserved*”.

The practice in the climate change intergovernmental process on this matter has been inconsistent.<sup>95</sup> Since a formal objection is both a question of fact and a question of law, the presiding officer would need to give the Parties raising the point of order

the floor to determine whether the expression of disagreement amounted to a formal objection in the legal sense.

A clear case of formal objection occurred at the Copenhagen Conference (2009) – when the President proposed the Copenhagen Accord for adoption, at least six countries (Tuvalu, Venezuela, Bolivia, Cuba, Nicaragua, and Sudan) formally objected, in very clear terms, to the adoption on both procedural and substantive grounds, and the Accord was not adopted by the COP.<sup>96</sup>

In sharp contrast, at the Cancun Conference (2010) the President adopted the Cancun Agreements over the very public formal objection of Bolivia expressed before the adoption of the texts and maintained after their adoption. In the view of the President, “*consensus did not mean unanimity or the possibility of one delegation aspiring to impose a right of veto upon the collective will that had been fashioned and achieved*”. Therefore she ruled that the adoption of the decisions was valid, and the position of Bolivia would be reflected in the records of the proceedings of the Conference.

This “Mexican understanding of consensus” was subsequently advanced at the Final UN Diplomatic Conference on Arms Trade Treaty in 2013, but was emphatically rejected by the President of the Conference who affirmed that one State could block consensus and he “*took it that the Russian Federation was blocking consensus*”.<sup>97</sup> The Arms Trade Treaty was not adopted at the Conference as a result – it was referred to the UN General Assembly where it was adopted by vote.<sup>98</sup>

## ► NEGOTIATING GROUPS AND COALITIONS

The climate change intergovernmental process is characterised by a number of groupings and coalitions. There are, on the one hand, UN regional groups that are typical in other multilateral processes and, on the other, groups and coalitions that are unique to the UNFCCC process.<sup>99</sup> The latter include groups and coalitions that are now a permanent feature in the process as well as coalitions created for specific negotiation mandates. Alliances and coalitions are therefore dynamic and may be formed to respond to specific negotiation issues.

The five UN regional groups of Member States are:

- The Group of African States.
- The Group of Asia and Pacific States.
- The Group of Eastern European States.
- The Group of Latin American and Caribbean States (GRULAC).
- The Group of Western European and Other States (WEOG).

In the climate change intergovernmental process these groups, apart from the African Group, do not participate in substantive negotiations and are mainly used for representation purposes in key treaty bodies. The long-established negotiating groups in the process are:

- The G77 and China, established in 1964 on the margins of the first session of UN Conference on Trade and Development, and currently composed of 134 developing countries.
- The European Union (EU), composed of 27 Member States and the EU.
- The Umbrella Group, established upon the adoption of the Kyoto Protocol in 1997 and composed of non-EU developed countries (Australia, Canada, Japan, Kazakhstan,



New Zealand, Norway, Russian Federation, Ukraine, and the US).

- The Environmental Integrity Group (EIG), established in 2000 and composed of Lichtenstein, Mexico, Republic of Korea, and Switzerland.
- The Alliance of Small Island Developing States (AOSIS), composed of 43 highly vulnerable low-lying or small island States.
- The LDCs, composed of 49 States mostly in Africa and Asia, and operating throughout the UN system.

More recently, the following negotiating groups have emerged:

- BASIC countries (Brazil, South Africa, India, and China).
- ALBA (Bolivia, Cuba, Ecuador, Nicaragua, and Venezuela).
- AILAC (Chile, Colombia, Costa Rica, Guatemala, Panama, and Peru).
- Arab Group (22 States in North Africa and West Asia).
- Coalition of Rainforest Nations (a large grouping of forested tropical countries in Africa, Asia, and Latin America and the Caribbean).
- Like-Minded Group of Developing Countries (LMDCs), which was one of the negotiating group for developing countries in Africa, Asia, and Latin America and the Caribbean during the ADP negotiations.

In several instances there are overlaps in membership of the negotiating groups and coalitions. For example, some members of the African Group (as a negotiating group) are also members of LDCs and AOSIS. This overlap, however, is not the case between G77 and China, the EU, the Umbrella Group, and the EIG.

There are also differences in the practice of groups/coalitions. In some, unity of purpose is demonstrated through coordination and the articulation of common negotiating positions. In others, solidarity is expressed only through information sharing. But even in the former, group/coalition cohesion is not always guaranteed – individual Party positions may be presented either because of lack of agreement in the group/coalition on a common position, or in spite of such agreement. A notable example is the Copenhagen Conference where there was a remarkable fragmentation in the G77 and China with clear differences between the big emitters (China and India) and the most vulnerable countries (African Group, LDCs, and SIDS).<sup>100</sup> This also continued under the ADP with other splinter groups becoming more vocal.

## ► NEGOTIATING FORUMS

Formal negotiations take place in the plenary meetings of the governing and subsidiary bodies, and the contact groups established by the plenaries to conduct negotiations on specific agenda items. Plenary meetings of the COP, CMP, and CMA are the decision-making forums and are open to participation by all Parties, observer States and organisations, and the media. The plenary meetings of the SBSTA, SBI, and AWGs are open to all Parties and observers. Plenary meetings are also used by Parties to make general statements, to review progress in the negotiations, and to raise process related issues.

Contact groups are established by a decision of the plenaries of the COP, CMP, CMA, SBSTA, SBI, or AWG to undertake negotiations on specific agenda items and report back to the establishing body. Although contact groups are open to participation by all Parties, participation by observers may be restricted.<sup>101</sup> The application of the formal rules of

procedure is more flexible in contact groups with a view to facilitating efficiency in the negotiation process.

Negotiations also take place in smaller informal settings. These informal groups are not established by the plenaries, as is the case with contact groups, but by the presiding officers (President of COP, Chair of a subsidiary body, or Chair of a contact group) with the agreement of the group (COP/subsidiary body/contact group) or under his/her own responsibility. They take a variety of forms: informal consultations, ‘informal informals’, Friends of the President/Chair, drafting groups, spin-off groups, and *indabas*.<sup>102</sup> Such groups are used, among other things, to advance negotiations on difficult or politically sensitive issues; to find compromises on outstanding issues; to resolve technical issues through drafting; to trouble-shoot specific problematic issues; or to break political deadlocks.

In order to ensure efficiency and success in small group negotiations, a number of imperatives must be met:

- There has to be clarity on the mandate.
- The timeframe for concluding work must be determined.
- There has to be clarity on the participants and how they are selected.
- There has to be regular reporting to the mandating body on progress of work, as appropriate.

In practice the adoption of the agenda of each body, the organisation of work of their sessions, and the initial consideration of agenda items before them begins at the formal plenary meetings of the COP, CMP, CMA, and the subsidiary bodies. The COP, CMP, and CMA invariably refer most of their agenda items to the subsidiary bodies – SBSTA, SBI, or AWGs – for consideration and recommendation in accordance with their respective mandates. Agenda items

which are not referred to the subsidiary bodies are considered by Parties within the COP, CMP, or CMA. The subsidiary bodies may establish contact groups and informal groups such as “informal consultations” to address specific agenda items. Similarly, the COP, CMP, or CMA may establish contact groups and informal groups to consider agenda items which had not been referred to the subsidiary bodies.

The relationship between these bodies is hierarchical and successful negotiations depend on respecting the “chain of authority”. Thus, regular reports on progress of work are made and final recommendations submitted to the body under which the negotiating forum is established (SBSTA/SBI/AWG/contact group). Such recommendations take the form of draft decisions or conclusions. Draft decision texts coming from contact groups and informal consultations are briefly considered or further negotiated, as necessary, by the SBSTA, SBI, or AWG before transmission to the plenary of the COP, CMP, or CMA for adoption. Contact groups and informal consultations established under the COP, CMP, or CMA report and submit the outcomes of their work directly to these governing bodies. The subsidiary bodies (SBI/SBSTA/AWGs) adopt conclusions.

Where consensus cannot be achieved either in the small group settings or in the SBSTA, SBI, or AWG plenaries, the draft text is forwarded to the COP, CMP, or CMA with square brackets indicating areas of disagreement. Sometimes the whole draft decision text is in square brackets signifying lack of consensus on the outcome, while in other instances only certain elements are in square brackets. Further negotiations may take place in the COP, CMP, or CMA plenaries or the President may hold further informal consultations to secure final agreement.

In addition, the COP, CMP, and CMA hold regular joint informal stocktaking plenary meetings to review progress in

the negotiations, to listen to Parties and to address any process related issues.

The first week of the two-week UN Climate Change Conferences is dominated by intense technical work in the subsidiary bodies and informal groups focused on negotiating and agreeing on texts of draft decisions and conclusions.

The second week includes a “high-level segment” (HLS) traditionally attended by ministers and other heads of delegations. More recently, the HLS have been frequented by Heads of States/governments, especially in the case of high-profile conferences such as COP15 in Copenhagen and COP21 in Paris. During the HLS, the COP, CMP, and CMA meet in joint plenaries to hear national statements from ministers and other heads of delegations, as well as statements from representatives of negotiating groups and observer organisations.<sup>103</sup> There is only one list of speakers for Parties to the Convention, the Kyoto Protocol, and the Paris Agreement. The HLS is a forum for high-level political engagement, but is not a forum for decision-making.<sup>104</sup>

The HLS sometimes includes ministerial dialogues on pressing and topical issues. For example, the COP by its [Decision 1/CP.18](#), mandated that a high-level ministerial dialogue be convened at COP19 on efforts to scale-up climate finance. Such dialogues underline the priority issues in the process and inject much needed political momentum. Ministers have often been engaged in the negotiations to facilitate agreement on the major politically sensitive issues before a conference. Notable examples are the ministerial outreach processes during the negotiations of the Cancun Agreements and the Paris Agreement.

## WHAT IS THE PROCESS FOR REACHING A COP/CMP/CMA DECISION?

There are many steps towards reaching a COP/CMP/CMA decision. These become more complicated when Parties negotiate a new legally binding agreement like the Paris Agreement. The following are some typical cascading steps that take place to reach a COP/CMP/CMA decision.

### ► INFORMAL INTER-SESSIONAL CONSULTATIONS

The out-going President or the President-designate of an upcoming COP often hold informal inter-sessional consultations on key issues before the Conference. These meetings are usually attended by representatives from regional groups but are open to attendance by any Party that wishes to participate. These consultations have no formal legal standing in the process but facilitate dialogue and exchange of views with the intent to build common understanding on the specific issues.

In addition, some longer-running high-level dialogues have been (or are) convened by countries with particular interest on evolving issues of concern in the negotiations. Notable examples include the on-going Petersburg Dialogue convened by Germany, but others have been the Danish Greenland Dialogue in the lead-up to COP15 in Copenhagen, and the US-led Major Economies Forum.

It is now also standard practice for incoming COP Presidencies to convene “Pre-COPs” involving ministers and heads of delegations, to get an understanding of the key issues for the upcoming COP and the expectations of Parties with

regard to the organisation of the Conference. The Pre-COPs also provide an opportunity for the incoming Presidencies to build trust and confidence with Parties. These meetings are not negotiation forums and have no formal status in the process.

### ► INTERSESSIONAL WORKSHOPS

Some technical issues under negotiation may be discussed in intersessional workshops mandated by the COP, CMP, or CMA. These workshops generally do not work on negotiating text as not all Parties are represented, but they help Parties to discuss and clarify issues and articulate their views and positions. Mandated workshops generally have a meeting report, but no text proposals.

### ► REGIONAL GROUP CONSULTATIONS

Prior to each formal meeting of the governing or subsidiary bodies, regional/negotiating groups convene for a day or two to exchange views on upcoming agenda items and build consensus around a common position of the group. Regional and other groupings of developing countries – the African Group, GRULAC, Group of Asia and Pacific States, and AOSIS – normally convene their consultative meetings first before they then meet as the G77 and China (for those that are members of the G77 and China).

### ► GOVERNING BODIES PLENARIES

The first plenary meeting of the COP elects the President of the COP/CMP/CMA. This is the first formal gathering of Parties. Plenaries of the CMP and CMA are convened thereafter. As stated above, it is at the plenaries of the governing bodies that Parties agree on the agenda and the organisation of work of the session. They are open to observers and the media. The

plenaries have simultaneous interpretation and all documents to be adopted are translated into the five UN official languages: Chinese, English, French, Russian, and Spanish.

### ► **SUBSIDIARY BODIES PLENARIES**

The permanent subsidiary bodies – SBSTA and SBI – are the sessional working bodies and consider agenda items referred to them by COP/CMP/CMA plenaries. They may prepare and recommend draft decisions to the COP/CMP/CMA for consideration and adoption. The subsidiary bodies may also adopt conclusions regarding the issues before them.

### ► **AD HOC WORKING GROUPS**

As previously discussed, the COP and CMP have often established AWGs with time-specific mandates. Such ad hoc working groups have developed supplementary treaty texts or amendments for consideration and adoption by the COP or the CMP. The final outcome of their work is usually in the form of a draft COP/CMP decision, containing in the annex, a draft treaty or treaty amendment text, as the case may be.

### ► **CONTACT GROUPS**

For each agenda item of the COP/CMP/CMA or the SBSTA/SBI that requires a substantive outcome, the relevant body may establish a contact group to undertake the negotiations. The COP/CMP/CMA President or SBSTA/SBI Chair usually proposes two co-facilitators to oversee the negotiations – one from a developing country Party, and another from a developed country Party. The contact group is conducted in English only and is generally open to observers. The co-facilitators generally try to limit general statements on the issue under negotiation to an initial round of views.



If there is draft text that is accepted as a basis for negotiation, negotiators may, after the initial round of views, go directly into textual negotiations with the final (usually 3<sup>rd</sup>) reading of the text projected on a screen. If no draft text is available or accepted as a basis, the co-facilitators may be mandated to develop a draft as a basis for negotiation, taking into account the initial round of views. In this instance, the co-facilitators textual proposal may go through a number of iterations to incorporate further Party views before entering textual negotiations (as outlined above). Alternatively, they may set up an informal group to draft text, as outlined below. At any time in the negotiations the co-facilitators may also employ informal group settings for particular issues.

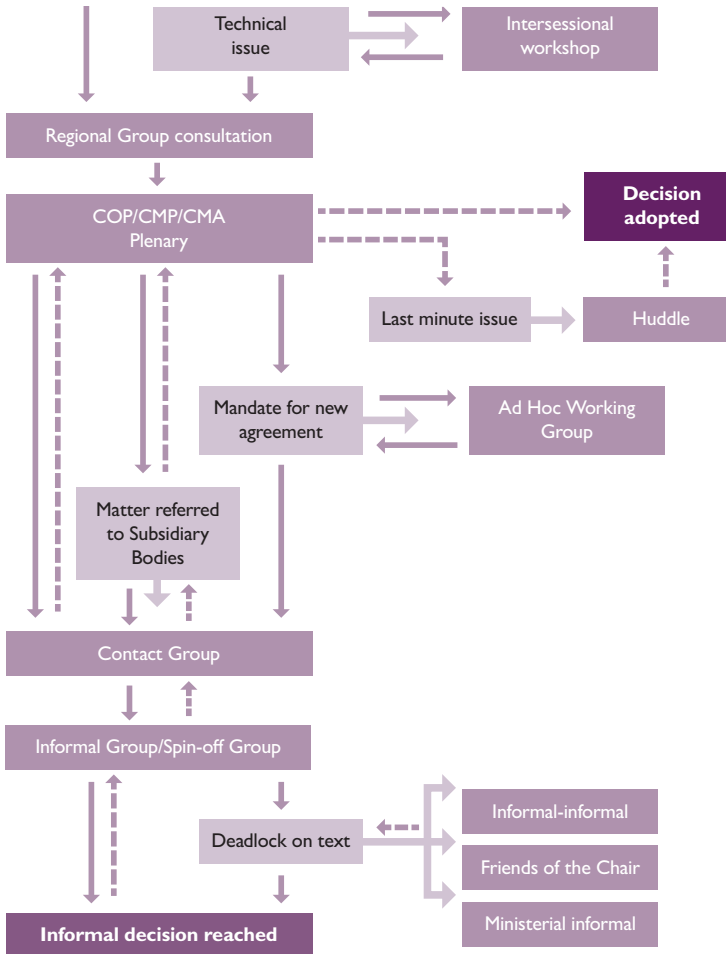
### ► INFORMAL CONSULTATIONS

Sometimes the President of the COP/CMP/CMA or the Chair of the SBSTA/SBI/AWG may determine and propose to the plenary that an agenda item would be best considered by means of informal consultations rather than through a contact group. This may be due to a number of reasons:

- The issue is not controversial and can be easily resolved by informal consultations.
- The issue has been discussed in the past and has not reached a conclusion (for instance, the adoption of the Draft Rules of Procedure).
- The matter is more of a political issue and may be best resolved by direct consultations between the President or Chair, or their nominees and a few interested Parties.

Informal consultations are also increasingly used to circumvent the unwritten rule that no more than two contact groups can meet at the same time. This rule was ostensibly established to allow smaller delegations to follow all negotiations.

**Figure 2:** Reaching a COP/CMP/CMA decision



Observers are allowed to attend at least the first and the last meetings of informal consultations in cases where no contact group has been established for the item, unless Parties object to their participation. Recommendations from these informal consultations are forwarded to the COP/CMP/CMA plenary if the consultations were established by the President, as proposals from the President, for consideration and adoption; or to the SBSTA/SBI/AWG plenary if the consultations were established by the SBSTA/SBI/AWG Chair, for consideration and transmission to the COP/CMP/CMA.

## ARE COP DECISIONS LEGALLY BINDING?

The 1969 Vienna Convention on the Law of Treaties establishes the legal framework for the creation of legally binding obligations under international agreements. It includes formal procedures of ratification, accession, approval, or acceptance that ensure that States are legally bound on the international plane only with their explicit consent (Article 26). These safeguards are absent in the adoption and implementation of decisions of treaty bodies such as the COP. Therefore, as a general matter, decisions of treaty bodies such as the COP are not legally binding unless the constituent instruments so provide.<sup>105</sup> This conclusion is supported by State practice:

- The second Meeting of Parties (MOP) of the Montreal Protocol on Substances that Deplete the Ozone Layer Parties established an interim multilateral fund through a decision of the MOP (Decision II/8). Out of concern as to the legal effect of the Decision, the MOP also adopted a formal amendment to the Protocol establishing the financial mechanism.
- At its second meeting, the COP of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal adopted a decision banning the export of hazardous waste to non-OECD countries from OECD countries (Decision II/12). Due to concerns regarding legal-bindingness of the Decision, COP3 adopted a formal amendment to the Convention in order to give effect to the ban.

- Article 18 of the [Kyoto Protocol](#), on compliance, explicitly provides that any procedures and mechanisms entailing legally-binding consequences shall be adopted through amendments to the Protocol, hence implying that a CMP decision would not be legally-binding.

Nevertheless, it may be noted that some provisions in treaties do provide authority or “hooks” for the adoption of legally-binding decisions on specific matters:

- Article 2.9 of the [Montreal Protocol](#) provides that the MOP may decide on adjustments to the ozone depleting potentials specified in the annexes to the Protocol based on assessments, and that such decisions shall be binding on all Parties.
- Article 23.4 of the [Convention on Biological Diversity](#) provides that the COP shall adopt financial rules governing the funding of the secretariat; determine the scale of assessments of contributions of Parties based on the UN scale of assessments; and the scale shall apply unless amended by the COP. When Argentina challenged its scale of assessment in COP [Decision VI/29](#) in 2004, the Legal Counsel of the UN determined that the assessment was legally binding pursuant to the authority granted to the COP under Article 23.4.

## HOW ARE DEADLOCKS RESOLVED DURING NEGOTIATIONS?

When there is a deadlock in the negotiations, three process options may be used to try and resolve the deadlock. At times, all options may be tried.

### ► INFORMAL-INFORMALS

A group of Parties may agree to hold consultations amongst themselves to consider textual proposals. The Parties themselves agree on one or two Party representatives to facilitate the “informal-informals”. Any text developed from an informal-informal has no formal status, and is usually transmitted to the contact group. A Party may object to the transmission of any text up the chain and because it has no status, it may disappear altogether. Informal-informal groups may also be suggested by the contact group co-facilitators to consider a specific issue on the understanding that the purpose is to clarify issues and foster agreement, that such groups have no formal status in the negotiations, and that they are open to any Party wishing to be part of the discussion in order to ensure transparency.

### ► FRIENDS OF THE PRESIDENT/CHAIR/CO-FACILITATORS

A ‘Friends of the President/Chair/co-facilitators’ group may be established to help break a deadlock, or to advance negotiations on a politically contentious issue. The President of the COP/CMP/CMA, the Chair of SBSTA/SBI/AWG, or the co-facilitators of a contact group may create a ‘Friends of the

President/Chair/Co-facilitators' group to facilitate a focussed negotiation on a paragraph or even a sentence of text which is exceptionally challenging. Usually the President/Chair/Co-facilitators will hand pick their 'friends', representing the range of interests at play, to help in this process. They are often attended by a single representative from each negotiating group/coalition, although exceptions to this "rule" often occur where individual Parties have strong interests.

### ► MINISTERIAL INFORMAL CONSULTATIONS

Where some issues are not resolved towards the end of the second week of the COP/CMP/CMA, the President may refer the negotiations to ministerial informal consultations. The President may select two ministers to facilitate these consultations, one from a developed country Party and one from a developing country Party. The format for these consultations may vary. The selected ministers may hold negotiations with other ministers and/or heads of delegations in a similar format to the contact group or he/she may hold bilateral negotiations with negotiating groups/coalitions to try and find common ground.

Another approach is to hold "café style" negotiations where a small group of negotiators sit around a table, and through the facilitation of the ministers, try to reach an acceptable compromise. Other Parties may be invited to sit behind the café style negotiations and observe the proceedings. Occasionally, the ministers may appoint senior negotiators or heads of delegations, one each from developed and developing countries, to act on their behalf if they believe that the negotiations can benefit from more time for technical discussions. Usually these delegates would not be the same ones facilitating or chairing the contact group or informal

consultations, and these meetings are usually an intermediary step between the normal contact group negotiations and ministerial consultations.

If the ministers feel they have reached some common ground they may present, at the invitation of the President, the outcomes of their deliberations to the plenary or contact group as the case may be. If the common ground has been reached by ministers, this may provide the necessary impetus to move the negotiations forward.

**Table 1:** Recognising UNFCCC documents by their symbols

DOCUMENT TYPE	TYPICAL CONTENT	SYMBOL WITH EXAMPLE	LANGUAGE
Regular	Provisional agendas; secretariat background documents; session reports	<b>No symbol.</b> FCCC/KP/ CMP/2017/1	All official UN languages
Information	Practical data (eg. list of participants at a session); workshop reports; reports on secretariat studies	<b>INF.</b> FCCC/ SBSTA/2011/INF.3	English only
Miscellaneous	Proposals or views submitted by Parties or observer organisations. Distributed with no formal editing	<b>MISC.</b> FCCC/SBI/2006/ MISC.17	Language of submission (usually English)
Technical Papers	Background papers on technical issues prepared by the secretariat	<b>TP.</b> FCCC/TP/2012/1	English only



DOCUMENT TYPE	TYPICAL CONTENT	SYMBOL WITH EXAMPLE	LANGUAGE
Limited Distribution	Draft decisions/ conclusions presented to COP/ CMP/CMA for adoption, and draft conclusions presented to a subsidiary body for adoption	<b>L.</b> FCCC/CP/2017/L.12	All official UN languages
Conference Room Paper	Text prepared during a session to reflect status of negotiations on a particular matter or proposals submitted by Parties during the negotiations	<b>CRP.</b> CRP.COP25.i8-CMA2.i7b.1	English only
Addendum	Any addition to any document	<b>Add.</b> Eg: FCCC/CP/2018/10/Add. 2	According to the original document
Revision	Replacing documents or texts previously issued	<b>Rev.</b> Eg: FCCC/CP/2011/4/Rev. 1	According to the original document
Corrigendum	Corrections to any document previously issued	<b>Corr.</b> Eg. FCCC/CP/2019/3/Corr.1	According to the original document

## ► STOCKTAKES

During the COP/CMP/CMA, the President may call for a stocktake plenary to hear progress on negotiations. The outcomes of these stocktakes have no standing as far as texts are concerned.

**▶ FINAL COP/CMP/CMA PLENARY**

During the final Plenary, the COP/CMP/CMA President presents the draft decision and proposes its adoption by Parties. The draft decision is made available to Parties in the five UN official languages. The decision is adopted in the absence of a formal objection by any Party.

**▶ LAST MINUTE HUDDLE**

During the final COP/CMP/CMA plenary, some Parties may still have problems with the draft decision text transmitted from the subsidiary body/contact group/informal consultations. A “huddle” of Party negotiators may gather on the floor of the plenary to find textual compromises to accommodate the last-minute concerns. These “huddles” have no formal status, but provide a mechanism to agree appropriate wording to resolve outstanding concerns and facilitate smooth adoption. These huddles also take place during contact group, informal consultations, or even in subsidiary bodies plenaries as a modality to arrive at consensus.

**▶ NO AGREEMENT**

If no agreement can be reached on a decision, the issue is automatically included in the agenda of the next COP/CMP/CMA on the basis of Rule 16 of the Draft Rules of Procedure.<sup>106</sup>

There is no strict hierarchy of, or rule as to when, any of the foregoing modalities is employed to facilitate consensus and agreement. They are usually employed depending on the state of negotiations and nature of the issue under negotiation.

## HOW IS TRANSPARENCY AND INCLUSIVENESS MAINTAINED IN THE UNFCCC PROCESS?

Parties have legitimate expectations that negotiations will be organised, managed, and conducted in a manner that ensures their effective representation and participation in the process. Transparency and inclusiveness of the process, together with fair and equal treatment of Parties, are imperative in any negotiation process. They are key variables in reaching agreement and ensuring the legitimacy of the outcome. Indeed, COP19 in Warsaw (2013) adopted a specific agenda item on this matter following process and procedural issues raised by some Parties with regard to the manner in which the 2012 Doha Conference (COP 18) was managed.<sup>107</sup> Subsequent discussions under this agenda item focused on “Party-drivenness” of the process; transparency and openness; inclusiveness; fairness and equal treatment; and the role of the President and presiding officers.

Issues of transparency and inclusiveness have often arisen in cases of informal negotiation forums not open to participation by all Parties (informal consultations, ministerial consultations, or Heads of State/government led negotiations as in Copenhagen). Determining who participates in such forums and how they are selected are important considerations and ultimately influence the general acceptability and legitimacy of the outcome. Thus:

- All negotiating groups should be represented in such forums.
- Negotiating groups should select their own representatives to such forums.

- There should be regular reporting to the larger group (formal/informal plenaries) to enhance transparency by providing information on progress of work and promote trust and a sense of ownership by the general membership.

Regular reporting has become a matter of course since the Cancun Conference in 2010, following the 2009 Copenhagen Conference meltdown. The meltdown was partly due to the fact that out of the 122 Heads of State/government in attendance, the final text of the Copenhagen Accord was negotiated by a small group of 26 countries which was neither representative of the membership, nor selected by the negotiating groups/coalitions.<sup>108</sup> Further, there was no information flow to the regular plenaries on the on-going Heads of State/government negotiations.

Similarly, at the Doha Conference (2012) some Parties (Belarus, Russian Federation and Ukraine) felt they were not accorded space and opportunity to effectively present their views and proposals.<sup>109</sup> In contrast, the success of the Paris Conference was partly due to the fact that all negotiating groups/coalitions were involved in the ministerial *groupes de travail informels* and the *Indaba of Solutions* processes, and they selected their own spokespersons in those final negotiations.

## WHAT IS THE ROLE OF THE PRESIDENT OF THE COP AND OTHER PRESIDING OFFICERS?

The President of the COP and other presiding officers play a critical role in the management and conduct of the intergovernmental negotiations. As Bailey points out, “*an incompetent presiding officer can, single-handedly, create procedural chaos if he does not understand the rules, or does not enforce them or acts in a dictatorial or partisan manner*”.<sup>110</sup>

The Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies set out the powers and functions of the President.<sup>111</sup> The Rules apply also to the Chairs of subsidiary bodies<sup>112</sup> and to other presiding officers. A number of practices have emerged that are a particularly important guide for the President, the Chairs, and other presiding officers in the discharge of their functions.

An important principle set out in Rule 22 of the Rules of Procedure is that the presiding officer must be impartial in the discharge of his/her functions. Thus he/she participates in the session in the capacity of President and not as a representative of a Party. In accordance with Rule 23, the presiding officer exercises the following general powers:

- Declare the opening and closing of the session.
- Preside at meetings of the session.
- Ensure the observance of the rules of procedure.
- Accord the right to speak.
- Put questions to the vote.
- Announce decisions.
- Rule on points of order.

- Control the proceedings and maintain order thereat.

Also, the presiding officer may propose to a meeting:<sup>113</sup>

- The closure of the list of speakers.
- The length of time for individual interventions.
- The number of times a representative may speak on a question.
- The adjournment or closure of debate.
- The adjournment or suspension of a meeting.

In the discharge of the functions of his/her office, and in the exercise of the powers inherent therein, the presiding officer remains under the authority of the meeting. In effect, any decision or ruling of the presiding officer can be appealed and overruled by a simple majority of the Parties present and voting at a meeting.<sup>114</sup>

The core mandate of the presiding officer is to provide leadership and facilitate the negotiation process. In this regard, she/he must ensure that the process is open, inclusive, and Party-driven. There may be opportunities for the presiding officer to “steer” or “direct” the process but that depends on the level of trust and the political capital he/she has gained with Parties. For the President of the COP, the building of trust and support starts during the Pre-COPs organised by the host country in the lead up to the COP. This provides an opportunity to listen to Parties’ views and concerns regarding the organisation of the Conference and the major substantive issues under negotiation and create goodwill by providing reassurances that the Presidency is an honest broker. Thus, due to their significance in the development of the international climate change regime, the Copenhagen, Cancun, and Paris Conferences were preceded by broad and

intensive pre-conference consultations and engagements with Parties and negotiating groups/coalitions.<sup>115</sup>

During the Conference itself, the presiding officer needs to maintain the policy of openness and inclusiveness, consulting with and listening to all Parties and negotiating groups/coalitions. The trust and goodwill built with key political constituencies and individual Parties through such an approach allows the presiding officer to take difficult decisions at crucial moments during the negotiations. Thus, the President of COP16 gavelled the adoption of the Cancun Agreements to standing ovation notwithstanding Bolivia's protests; and the President of COP21 postponed giving the floor to Nicaragua at the final session of the *Comite de Paris* without any procedural challenge.<sup>116</sup>

Lastly, negotiations are Party-driven and their outcomes are products of transparent and inclusive processes. In sharp contrast to the Danish COP15 Presidency, the French COP21 Presidency consistently assured Parties that there was no French text and that the Conference outcomes would emerge from the work of Parties. This is not to say that a presiding officer cannot table a compromise text to bridge differences and forge consensus. However, the presiding officer must carefully evaluate the political opportunity for such an intervention. As Kumarsingh affirms: "*While the Chairs must retain the right to offer avenues for consensus building, their suggestions can be resoundingly rejected by Parties. To say that Chairs cannot propose such avenues or can only do so at the behest of Parties is untenable, in my view*".<sup>117</sup>

Also, the presiding officer's initiative should build on existing negotiating texts before the Parties in order to ensure favourable consideration. Examples of perceived failure to do so include the Copenhagen Conference, where the

President was accused of introducing “a text from the sky” by apparently ignoring what was on the table in the parallel AWG-LCA negotiations. The ADP Co-Chairs’ text was also rejected by developing countries in October 2015, as not reflecting the proposals they had put on the table during the negotiations.<sup>118</sup>



## WHAT IS THE ROLE OF NON-PARTY STAKEHOLDERS IN THE PROCESS?

Principle 10 of the [Rio Declaration on Environment and Development](#),<sup>119</sup> [Agenda 21](#),<sup>120</sup> and the Rio + 20 outcome document *The Future We Want*<sup>121</sup> have all underlined the important role of non-State actors in the development and implementation of sustainable development policies and actions. These actors include major groups such as women, children and youth, Indigenous Peoples and local communities, NGOs, local authorities, workers and trade unions, business and industry, the scientific and technological community, and farmers. Since 2015, they are collectively known in the UNFCCC process as non-Party stakeholders.

The achievement of the global goals set out in the Paris Agreement depends largely on behaviour change by citizens and action at the local level driven by citizens. It is through their consumer choices and pressure that business will change; and it is through their votes that the direction of public policy and related public investment decisions will shift. The importance of the role of non-Party stakeholders in the climate change intergovernmental process cannot therefore be denied.

The texts of the UNFCCC, the Kyoto Protocol, and the Paris Agreement as well as the Rules of Procedure provide for the admission and participation of “observers” in the climate change intergovernmental process. Article 7.6 of the UNFCCC provides that “*Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention...*” may be admitted as an observer at the COP, “*...unless at least one third of the Parties present*

*object*”. It further provides that the admission and participation of observers shall be subject to the Rules of Procedure of the COP. These provisions are replicated in Article 13.8 of the Kyoto Protocol and Article 16.8 of the Paris Agreement.

Although Article 7.6 of the UNFCCC seems to have contemplated the further elaboration of detailed procedures for the admission and participation of observers in the Rules of Procedure, Draft Rule 7 simply reproduced the text of that Article with the only new element being the provision that *“admitted observers may, upon the invitation of the President, participate without the right to vote in the proceedings of any session...unless at least one third of the Parties present object”*.

The secretariat has established procedures for the screening, review, and consideration of applications for observer status by eligible organisations which are published on its web-site as the *“Standard admission process”*.<sup>122</sup> These procedures have been endorsed by the SBI.<sup>123</sup>

Non-Party stakeholders in the process represent a broad spectrum of interests and are grouped into nine recognised constituencies:

- Business and industry non-governmental organisations (BINGOs).
- Environmental non-governmental organisations (ENGOs).
- Local governments and local authorities.
- Indigenous Peoples’ organisations.
- Research and independent non-governmental organisations (RINGOs).
- Trade union organisations.
- Women and gender organisations.
- Youth organisations.
- Farmers’ organisations.

Each constituency has a “focal point” as a channel for communication and dialogue between the secretariat and the observer organisations. As of 2018, over 2200 NGOs and 130 intergovernmental organisations were admitted as observers to the UNFCCC process.<sup>124</sup>

The scope, space, and opportunities for participation of observers in the process have been progressively expanded and strengthened through the years, beyond the narrow and limited conceptualisation of “*participation in proceedings*”, to encompass inputs into the process and recognition of non-Party stakeholders’ climate actions. Initially, the only mode of participation was through interventions in the formal plenary meetings of the COP, SBI, and SBSTA in conformity with Rule 7.2 of the Rules of Procedure. Subsequent developments have enhanced opportunities for observers by allowing attendance in contact groups and some informal consultations; inputs into technical meetings and processes; and participation in the high-level segment of the COP.

At COP4 in 1998, Parties agreed that observer organisations could attend open-ended contact groups unless at least a third of the Parties present object, with the understanding that the presiding officer may determine at any time that the contact group is closed to observers.<sup>125</sup> Upon the establishment of a contact group, a presiding officer is required to establish whether there are any objections to the attendance of observers.

At SBI20 in 2004, the SBI recognised the value of NGO contributions to deliberations on substantive issues, and welcomed the practice of presiding officers in permitting their interventions when appropriate.<sup>126</sup> NGOs are normally given the floor after observer States and IGOs. Importantly, the SBI agreed that requests for submission of information

and views be extended to NGOs, and their submissions be made available on the secretariat website.

At SBI34 in 2011, Parties **recommended** that where there is no contact group for an agenda item, the first and final meetings of the informal consultations should be open to observers.<sup>127</sup>

At SBI36 in 2012, Parties **recommended** that representatives of observer organisations be allowed to make interventions at the high-level segment of the COP.<sup>128</sup> Since then, observer organisations active participation in the high-level segment has become settled practice.

In 2017, SBI46 held an in-session workshop on opportunities to enhance the effective engagement of non-Party stakeholders to strengthen the implementation of COP Decision 1/CP.21.<sup>129</sup> A number of opportunities were identified, including:

- Presiding officers increasing opportunities for interventions, providing regular briefings to non-Party stakeholders on progress of work, and making greater use of non-Party stakeholders inputs in workshops, technical meetings, and through submissions.
- Future COP Presidencies exploring ways for open dialogue between Parties and admitted NGO constituencies.
- The secretariat enhancing practices for facilitation of non-Party stakeholders participation; and enhancing Parties' access to submissions from non-Party stakeholders.

COP21 **welcomed** the efforts of non-Party stakeholders to address and respond to climate change, and encouraged Parties to work closely with non-Party stakeholders to catalyse efforts to strengthen mitigation and adaptation action.<sup>130</sup> A number of initiatives and processes were launched under the UNFCCC:

- The **Non-State Actor Zone for Climate Action (NAZCA)** Portal profiles climate commitments and actions put forward by non-Party stakeholders. Decision 1/CP.21 welcomed the efforts of non-Party stakeholders to scale up their climate actions and encouraged their registration in the NAZCA Platform.<sup>131</sup>
- The **Marrakech Partnership for Global Climate Action**, under the leadership of the high-level climate champions, seeks to strengthen collaboration between governments and non-Party stakeholders to implement the Paris Agreement.<sup>132</sup>
- Non-Party stakeholders were robustly engaged in the preparation and conduct of the **Talanoa Dialogue**, launched at COP23 in 2018 to take stock of the collective effort of Parties in relation to progress towards the long-term global goal referred to in Article 4.1 of the Paris Agreement.<sup>133</sup>
- The **Local Communities and Indigenous Peoples Platform** was established by Decision 1/CP.21 to strengthen the efforts of local communities and Indigenous Peoples related to addressing climate change and its impacts. The Facilitative Working Group to operationalise the Platform includes representatives of local communities and Indigenous Peoples' organisations.
- The eight-year **Doha Work Programme on Article 6 of the UNFCCC** adopted at COP18 in 2012 seeks to promote the implementation of activities relating to education, training, public awareness, access to information, public participation, and international cooperation.<sup>134</sup> Under the Work Programme, the SBI is required to organise an annual multistakeholder dialogue where IGOs, NGOs, the private sector, and Parties discuss issues relating to

implementation in the six thematic areas.<sup>135</sup> Subsequently, COP22 and CMA1 decided that efforts related to the implementation of Article 6 of the Convention and Article 12 of the Paris Agreement should be referred to as Action for Climate Empowerment.<sup>136</sup>

Many Parties now include non-Party stakeholders in their delegations. This allows these stakeholders to participate in the full negotiation process, subject to meeting the requirements of the Party concerned. As such, many stakeholder organisations have fully integrated themselves into the negotiation process and play a pivotal role in directing outcomes.

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## ANNEX

### Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies

#### I. SCOPE

##### **Rule 1**

These rules of procedure shall apply to any session of the Conference of the Parties to the Convention convened in accordance with Article 7 of the Convention.

#### II. DEFINITIONS

##### **Rule 2**

For the purposes of these rules:

1. “Convention” means the United Nations Framework Convention on Climate Change, adopted at New York on 9 May 1992 and opened for signature in Rio de Janeiro on 4 June 1992;
2. “Parties” means Parties to the Convention;
3. “Conference of the Parties” means the Conference of the Parties established by Article 7 of the Convention;
4. “Session” means any ordinary or extraordinary session of the Conference of the Parties convened in accordance with Article 7 of the Convention;
5. “Regional economic integration organization” means an organization defined in Article 1, paragraph 6 of the Convention;
6. “President” means the President of the Conference of the Parties elected in accordance with Rule 22, paragraph 1 of these rules;
7. “Secretariat” means the permanent secretariat designated by the Conference of the Parties in accordance with Article 8, paragraph 3 of the Convention.
8. “Subsidiary body” means those bodies established by Articles 9 and 10 of the Convention, as well as any body, including committees and working groups, established pursuant to Article 7(2)(i) of the Convention.

#### III. PLACE OF SESSIONS

##### **Rule 3**

The sessions of the Conference of the Parties shall take place at the seat of the secretariat, unless the Conference of the Parties decides otherwise or other appropriate arrangements are made by the secretariat in consultation with the Parties.

#### IV. DATES OF SESSIONS

##### **Rule 4**

1. Ordinary sessions of the Conference of the Parties shall be held once every year, unless the Conference of the Parties decides otherwise.
2. At each ordinary session, the Conference of the Parties shall decide on the date and duration of the next ordinary session. The Conference of the Parties should endeavour not to hold such a session at a time which would make the attendance of a significant number of delegations difficult.
3. Extraordinary sessions of the Conference of the Parties shall be held at such times as may be deemed necessary by the Conference of the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to them, in a timely manner, by the secretariat, it is supported by at least one third of the Parties.
4. In the case of an extraordinary session held at the written request of a Party, it shall be held not more than ninety days after the date at which the request is supported by at least one third of the Parties in accordance with paragraph 3 of this rule.

##### **Rule 5**

The secretariat shall notify all Parties of the dates and venue of a session at least two months before the session is held.

#### V. OBSERVERS

##### **Rule 6**

1. The United Nations, its specialized agencies, any international entity or entities entrusted by the Conference of the Parties pursuant to Article 11 of the Convention with the operation of the financial mechanism, and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers.
2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session, unless at least one third of the Parties present at the session object.

##### **Rule 7**

1. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer may be so admitted unless at least one third of the Parties present at the session object.
2. Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object.

**Rule 8**

The secretariat shall notify those entitled to be observers pursuant to Rules 6 and 7 above of the date and venue of any session scheduled by the Conference of the Parties so that they may be represented by observers.

VI. AGENDA

**Rule 9**

In agreement with the President, the secretariat shall draft the provisional agenda of each session.

**Rule 10**

The provisional agenda for each ordinary session shall include, as appropriate:

- (a) Items arising from the articles of the Convention, including those specified in Article 7 therein;
- (b) Items the inclusion of which has been decided at a previous session;
- (c) Items referred to in Rule 16 of the present rules of procedure;
- (d) Any item proposed by a Party and received by the secretariat before the provisional agenda is circulated;
- (e) The proposed budget as well as all questions pertaining to the accounts and financial arrangements.

**Rule 11**

For each ordinary session, the provisional agenda, together with supporting documents, shall be distributed in the official languages by the secretariat to the Parties at least six weeks before the opening of the session.

**Rule 12**

The secretariat shall, in agreement with the President, include any item which is proposed by a Party and has been received by the secretariat after the provisional agenda has been produced, but before the opening of the session, in a supplementary provisional agenda.

**Rule 13**

The Conference of the Parties when adopting the agenda may decide to add, delete, defer or amend items. Only items which are considered by the Conference of the Parties to be urgent and important may be added to the agenda.

**Rule 14**

The provisional agenda for an extraordinary session shall consist only of those items proposed for consideration in the request for the holding of the extraordinary session. It shall be distributed to the Parties at the same time as the invitation to the extraordinary session.

**Rule 15**

The secretariat shall report to the Conference of the Parties on the administrative and budgetary implications of all substantive agenda items submitted to the session, before they are considered by it. Unless the Conference of the Parties decides otherwise, no such substantive agenda item shall be considered until at

least forty-eight hours after the Conference of the Parties has received the report of the secretariat on the administrative and budgetary implications.

**Rule 16**

Any item of the agenda of an ordinary session, consideration of which has not been completed at the session, shall be included automatically in the agenda of the next ordinary session, unless otherwise decided by the Conference of the Parties.

## VII. REPRESENTATION AND CREDENTIALS

**Rule 17**

Each Party participating in a session shall be represented by a delegation consisting of a head of delegation and such other accredited representatives, alternate representatives and advisers as it may require.

**Rule 18**

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

**Rule 19**

The credentials of representatives as well as the names of alternate representatives and advisers shall be submitted to the secretariat if possible not later than twenty-four hours after the opening of the session. Any later change in the composition of the delegation shall also be submitted to the secretariat. The credentials shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs or, in the case of a regional economic integration organization, by the competent authority of that organization.

**Rule 20**

The Bureau of any session shall examine the credentials and submit its report to the Conference of the Parties.

**Rule 21**

Representatives shall be entitled to participate provisionally in the session, pending a decision by the Conference of the Parties to accept their credentials.

## VIII. OFFICERS

**Rule 22**

1. At the commencement of the first meeting of each ordinary session, a President, seven Vice-Presidents, the Chairmen of the subsidiary bodies established by Articles 9 and 10 of the Convention, and a Rapporteur shall be elected from among the representatives of the Parties present at the session. They will serve as the Bureau of the session. Each of the five regional groups shall be represented by two Bureau members and one Bureau member shall represent the small island developing states. The

offices of President and Rapporteur shall normally be subject to rotation among the five regional groups.

2. The officers referred to in paragraph 1 above, shall remain in office until their successors are elected at the next ordinary session and shall serve in that capacity at any intervening extraordinary sessions. No officer may serve on the Bureau for more than two consecutive terms of one year.
3. The President shall participate in the session in that capacity and shall not at the same time exercise the rights of a representative of a Party. The Party concerned shall designate another representative who shall be entitled to represent the Party in the session and to exercise the right to vote.

#### **Rule 23**

1. In addition to exercising the powers conferred upon the President elsewhere by these rules, the President shall declare the opening and closing of the session, preside at the meetings of the session, ensure the observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat.
2. The President may propose to the Conference of the Parties the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.
3. The President, in the exercise of the functions of that office, remains under the authority of the Conference of the Parties.

#### **Rule 24**

The President, if temporarily absent from a meeting or any part thereof, shall designate a Vice-President to act as President. The President so designated shall not at the same time exercise the rights of a representative of a Party.

#### **Rule 25**

If an officer of the Bureau resigns or is otherwise unable to complete the assigned term of office or to perform the functions of that office, a representative of the same Party shall be named by the Party concerned to replace the said officer for the remainder of that officer's mandate.

#### **Rule 26**

At the first meeting of each ordinary session, the President of the previous ordinary session, or in the absence of the President, a Vice-President, shall preside until the meeting has elected a President for the session.

### **IX. SUBSIDIARY BODIES**

#### **Rule 27**

1. These rules shall apply *mutatis mutandis* to the proceedings of the subsidiary bodies.

2. The Conference of the Parties may establish, in accordance with Article 7.2(i), such subsidiary bodies as are deemed necessary for the implementation of the Convention.
3. In the case of a subsidiary body that is not open-ended, a majority of the Parties designated by the Conference of the Parties to participate therein shall constitute a quorum.
4. The Conference of the Parties shall decide on the dates of the sessions of the subsidiary bodies, taking note of the desirability of holding such sessions in conjunction with the sessions of the Conference of the Parties.
5. Unless the Conference of the Parties decides otherwise, the Chairman of any subsidiary body other than those established by Articles 9 and 10 of the Convention, shall be elected by that subsidiary body from among the representatives of the Parties present at the session. The Chairmen, Vice-Chairmen and Rapporteurs of such subsidiary bodies shall be elected with due regard to the principle of equitable geographical representation and shall not serve for more than two consecutive terms of one year.
6. Each subsidiary body shall elect its own Vice-Chairman and Rapporteur.
7. Subject to Articles 9 and 10 of the Convention, the Conference of the Parties shall determine the matters to be considered by each subsidiary body and may authorize the President, upon the request of the Chairman of a subsidiary body, to adjust the allocation of work.

## X. SECRETARIAT

### Rule 28

1. The head of the secretariat of the Convention, or the representative of the head of the secretariat, shall act in that capacity in all sessions of the Conference of the Parties and of its subsidiary bodies.
2. The head of the secretariat of the Convention shall arrange for the provision of staff and services required by the Conference of the Parties and its subsidiary bodies, within available resources. The head of the secretariat of the Convention shall manage and direct such staff and services and provide appropriate support and advice to the presiding and other officers of the Conference of the Parties and of its subsidiary bodies.

### Rule 29

In addition to the functions specified in Article 8 of the Convention, the secretariat shall in accordance with these rules:

- (a) Arrange for interpretation at the session;
- (b) Receive, translate, reproduce and distribute the documents of the session;
- (c) Publish and distribute the official documents of the session;
- (d) Make and arrange for keeping of sound recordings of the session;
- (e) Arrange for the custody and preservation of the documents of the session;  
and
- (f) Perform all other work that the Conference of the Parties may require.

## XI. CONDUCT OF BUSINESS

### Rule 30<sup>1</sup>

1. Meetings of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise.
2. Meetings of the subsidiary bodies shall be held in private unless the Conference of the Parties decides otherwise.

### Rule 31

The President shall not declare a meeting of the Conference of the Parties open or permit the debate to proceed unless at least one third of the Parties to the Convention are present. The presence of two thirds of the Parties to the Convention shall be required for any decision to be taken.

### Rule 32

1. No one may speak at a meeting of the Conference of the Parties without having previously obtained the permission of the President. Subject to Rules 33, 34, 35 and 38, the President shall call upon speakers in the order in which they signify their desire to speak. The secretariat shall maintain a list of speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.
2. The Conference of the Parties may, on a proposal from the President or from any Party, limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of and two against a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call the speaker to order without delay.

### Rule 33

The Chairman or Rapporteur of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary body.

### Rule 34

During the discussion of any matter, a representative may at any time raise a point of order which shall be decided immediately by the President in accordance with these rules.

A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately and the ruling shall stand unless overruled by a majority of the Parties present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

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1 Paragraph 106 (c) of the Report of the Committee on its eighth session (A/AC.237/41) states: "Consistent with the Rules of Procedure of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, upon which the draft rules were largely based, Rule 30 of the draft rules of procedure would be interpreted as permitting duly accredited observers to participate in 'private' meetings."



**Rule 35**

Any motion calling for a decision on the competence of the Conference of the Parties to discuss any matter or to adopt a proposal or an amendment to a proposal submitted to it shall be put to the vote before the matter is discussed or a vote taken on the proposal or amendment in question.

**Rule 36**

Proposals and amendments to proposals shall normally be introduced in writing by the Parties and handed to the secretariat, which shall circulate copies to delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting unless copies of it have been circulated to delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments to proposals or of procedural motions even though these amendments or motions have not been circulated or have been circulated only the same day.

**Rule 37**

The text of any proposed amendment, annex or protocol to the Convention and of any proposed amendment to an annex, shall be communicated to the Parties by the secretariat at least six months before the session at which it is proposed for adoption.

**Rule 38**

1. Subject to Rule 34, the following motions shall have precedence in the order indicated below over all other proposals or motions:
  - (a) To suspend the meeting;
  - (b) To adjourn the meeting;
  - (c) To adjourn the debate on the question under discussion;
  - (d) To close the debate on the question under discussion.
2. Permission to speak on a motion falling within (a) to (d) above shall be granted only to the proposer and, in addition, to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

**Rule 39**

A proposal or motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the proposal or motion has not been amended. A proposal or motion withdrawn may be reintroduced by any other Party.

**Rule 40**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session, unless the Conference of the Parties, by a two-thirds majority of the Parties present and voting, decides in favour of reconsideration. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter, after which it shall be put immediately to the vote.

## XII. VOTING

**Rule 41**

1. Each Party shall have one vote, except as provided for in paragraph 2 of this rule.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

**Rule 42**

## [1. Alternative A

The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, except:

(a) as otherwise provided by the Convention, the financial rules referred to in Article 7, paragraph 2 (k) of the Convention or the present rules of procedure[.] [;]

[(b) for a decision to adopt a proposed protocol, which shall be taken by [consensus] [a three-fourths majority of the Parties present and voting][.] [;]

[(c) for decisions under paragraph 3 of Article 4 and paragraphs 1, 3 or 4 of Article 11 of the Convention, which shall be taken by consensus.]

## 1. Alternative B

Decisions on matters of substance shall be taken by consensus, except that decisions on financial matters shall be taken by a two-thirds majority vote.

2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting [, except that adoption of a motion or proposal to close or limit debate or the list of speakers shall require a two-thirds majority vote of the Parties present and voting].
3. If the question arises as to whether a matter is one of a procedural or substantive nature, the President shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the Parties present and voting.
4. If, on matters other than elections, a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.
5. For the purposes of this rule, the phrase "Parties present and voting" means Parties present at the meeting at which voting takes place and casting

an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.]

**Rule 43**

If two or more proposals relate to the same question, the Conference of the Parties, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted. The Conference of the Parties may, after each vote on a proposal, decide whether to vote on the next proposal.

**Rule 44**

Any representative may request that any part of a proposal or of an amendment to a proposal be voted on separately. The President shall allow the request unless a Party objects. If an objection is made to the request for division, the President shall permit two representatives to speak, one in favour of and the other against the request, after which it shall be put immediately to the vote.

**Rule 45**

If the request referred to in Rule 44 is allowed or adopted, those parts of a proposal or of an amendment to a proposal which are approved shall then be put to the vote as a whole. If all the operative parts of a proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

**Rule 46**

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from, or revises parts of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

**Rule 47**

If two or more amendments are moved to a proposal, the Conference of the Parties shall first vote on the amendment furthest removed in substance from the original proposal, then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. The President shall determine the order of voting on the amendments under this rule.

**Rule 48**

Voting, except for elections, shall normally be by show of hands. A roll-call vote shall be taken if one is requested by any Party. It shall be taken in the English alphabetical order of the names of the Parties participating in the session, beginning with the Party whose name is drawn by lot by the President. However, if at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question.

**Rule 49**

The vote of each Party participating in a roll-call vote shall be recorded in the relevant documents of the session.

**Rule 50**

After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President may permit the Parties to explain their votes, either before or after the voting. The President may limit the time to be allowed for such explanations. The President shall not permit the proposer of a proposal or of an amendment to a proposal to explain his vote on his own proposal or amendment, except if it has been amended.

**Rule 51**

All elections shall be held by secret ballot, unless otherwise decided by the Conference of the Parties.

**Rule 52**

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the votes cast by the Parties present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.
2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the procedure set forth in paragraph 1 of this rule.

**Rule 53**

1. When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot the largest number of votes and a majority of the votes cast by the Parties present and voting shall be deemed elected.
2. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled, provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation.
3. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

### XIII. LANGUAGES

#### **Rule 54**

The official languages of the Conference of the Parties shall be Arabic, Chinese, English, French, Russian and Spanish.

#### **Rule 55**

1. Statements made in an official language shall be interpreted into the other official languages.
2. A representative of a Party may speak in a language other than an official language if the Party provides for interpretation into one such official language.

#### **Rule 56**

Official documents of the sessions shall be drawn up in one of the official languages and translated into the other official languages.

### XIV. SOUND RECORDS OF THE SESSIONS OF THE CONFERENCE OF THE PARTIES

#### **Rule 57**

Sound records of the sessions of the Conference of the Parties, and whenever possible of the subsidiary bodies, shall be kept by the secretariat in accordance with the practice of the United Nations.

### XV. AMENDMENTS TO RULES OF PROCEDURE

#### **Rule 58**

1. These rules of procedure may be amended by consensus by the Conference of the Parties.
2. Paragraph 1 of this rule shall likewise apply in case the Conference of the Parties deletes an existing rule of procedure or adopts a new rule of procedure.

### XVI. OVERRIDING AUTHORITY OF THE CONVENTION

#### **Rule 59**

In the event of any conflict between any provision of these rules and any provision of the Convention, the Convention shall prevail.

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