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## Which are the international institutions ensuring global governance for implementing international climate law, ensuring that its goals and options are delivered?

COP of UNFCCC,<sup>1</sup> CMP of Kyoto Protocol,<sup>2</sup> CMA of Paris Agreement,<sup>3</sup> as the supreme bodies, shall review the laws’ implementation respectively and any related legal instruments, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. Other institutions, please see below.

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<sup>1</sup> Article 7 of UNFCCC.

<sup>2</sup> Kyoto Protocol, article 13.4.

<sup>3</sup> Article 16.4 of Paris Agreement.

## The ones which ‘legislate’, ‘administer’ even adjudicate on climate matters?

### Legislate:

At first, it is noteworthy that COP/CMP/CMA indeed has the power to adopt amendments to the treaties,<sup>4</sup> adopt annex or amendments to annexes,<sup>5</sup> adopt rule of procedures for themselves and their sub-bodies and the mechanism, such as transparency modalities for CDM under the treaties,<sup>6</sup> and make decisions for implementation.<sup>7</sup> In addition, COP has the power to adopt Protocols.<sup>8</sup>

The COP/CMP/CMA’s functions are like the ones of the European Commission. Because the Protocols, amendments, annexes to the Convention adopted by COP have no binding force unless the contracting parties accept them expressly<sup>9</sup> or implicitly through silence,<sup>10</sup> their power of adopting amendments, annexes and Protocols is similar to the Commission’s power of proposing new laws or amendments. This adoption by the COP is a proposal of law. The process of contracting parties accepting them is like the process of the Council and the Parliament adopting the proposal. The power of the COP/CMP/CMA adopting rule of procedures is like the power of the Commission adopting the rule of procedure for itself and its departments.<sup>11</sup> The power of the COP/CMP/CMA adopting rule of procedure for the mechanism under the Convention and the implementing decision is like the power of the Commission adopting non-legislative act of application and the implementing regulation under specific EU laws.<sup>12</sup>

Concerning the question whether there is any legislator in international climate law, ~~t~~The same as the controversy over the subject of international law, as we discussed in the classes of Contemporary Issues of International Law three years ago, the concept of international law or the source of international law is also controversial. The answer to the nature of treaty bodies (a legislator or executor) and their powers (legislative power or executive power) is also included. ~~Decisions of COP/CMP/CMA are categorised as Resolutions of International Organisations (IO), if they can be qualified as IOs. Therefore, I don’t think there is a consensus on the answer to the question.~~

1. supports for the idea that COP/CMP/CMA is legislator:

- a. The lines between a legislator, an executor and a judicator are blurring. The lines are unclear. The provision set in a law cannot include all the details for people’s behaviours.

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<sup>4</sup> UNFCCC article 15; Kyoto Protocol article article 20; Paris Agreement article 22.

<sup>5</sup> UNFCCC article 16; Kyoto Protocol article article 21; Paris Agreement article 23.

<sup>6</sup> UNFCCC article 7.2(k), Kyoto Protocol article 12.8, Paris Agreement article 6.7 and etc.

<sup>7</sup> Article 7 of UNFCCC; Kyoto Protocol, article 13.4; Article 16.4 of Paris Agreement.

<sup>8</sup> UNFCCC, article 17.

<sup>9</sup> UNFCCC, article 15.

<sup>10</sup> UNFCCC, article 16.

<sup>11</sup> TFEU, article 249.

<sup>12</sup> TFEU articles 290, 291.

Thus, for the executor and the judicator, discretion is inevitable needed. Like the judges of CJEU stated in the cases about proportionality, the discretion of the legislator and the executor should be respected unless it is manifestly disproportionate.

The executor exercises this discretion under specific law's framework, like the legislator exercises their discretion under the constitutional framework. In this sense, executor is legislator, and the legislator is the executor of the constitution. Like the executor cannot exercise its discretion beyond the scope of specific law, the legislator also cannot exercise its discretion beyond the scope of the constitution.

Under the situation where the COP/CMP/CMA exercise their discretion legally, the documents adopted by them have legal effects except for those relating to the amendment, annexes, protocols to the treaties. For example, "the adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session". In this case, in order to fulfil the obligation of adaptation under Paris Agreement, the developing parties should act in the light of the rules adopted by CMA. Otherwise, it is not recognised. This creates a new obligation for the contracting parties that they must conduct the adaptation according to the rules adopted by CMA. Without the rules adopted by CMA, the contracting parties can conduct adaptation freely.

b. In the work of Jutta Brunnée,<sup>13</sup> it mentioned that some scholars regard the "soft law" as sources of international law<sup>14</sup> and exemplified it with the standard setting in environmental law adopted by plenary bodies. These standards take effects for all parties without the need to be ratified. She further mentioned that these standards are treated by the states similar to the legally binding international law. Non-compliance with some of these decisions, even had specific consequences for States, notably the loss of eligibility to participate in emissions trading.<sup>15</sup>

c. In this sense, the legislator includes COP/CMP/CMA, Supervisory Body of Crediting Mechanism of the Paris Agreement which is empowered to establish the requirements for accreditation<sup>16</sup>. They have the power to develop the standards which are treated as international law and go beyond the treaties through adopting detailed rules to fill the gap of the treaties.

## 2. against the idea that COP/CMP/CMA is legislator:

a. Exactly like the Commission, COP/CMP/CMA is an implementer or executor of laws, but not legislator. None of the documents adopted by the Commission is legislative act

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<sup>13</sup> Brunnée, Jutta, 'Sources of International Environmental Law: Interactional Law', in Samantha Besson, and Jean d'Aspremont (eds), *The Oxford Handbook of the Sources of International Law*, Oxford Handbooks (2017; online edn, Oxford Academic, 5 Feb. 2018), <https://doi.org/10.1093/law/9780198745365.003.0045>, accessed 22 June 2024.

<sup>14</sup> Beyerlin and Marauhn, *International Environmental Law*, pp. 289–97; Birnie et al., *International Law and Environment*, pp. 34–7; Dupuy and Viñuales, *Modern Introduction*, pp. 34–7.

<sup>15</sup> See below, the administrative part.

<sup>16</sup> See below, the administrative part.

because legislative act may only be adopted by the Council and the Parliament. The Council and the Parliament are the true legislator.<sup>17</sup>

b. If COP/CMP/CMA is a legislator, then at least one of the already made decisions or one of the decisions to be made in the future can be qualified as law. In other words, if we can prove that none of the decisions within the competence of COP/CMP/CMA can be qualified as law, then COP/CMP/CMA is not a legislator. Then, the concept of international law plays a vital role.

i. International law is made out of the process of self-constituting and reflects the common interest of the international society.<sup>18</sup> Similar to domestic law which normally consists of two steps, the first is the conclusion of social contract (self-constituting, formal or informal)<sup>19</sup> including the empowerment of the legislative organs, the second is the legislation by the legislative organ, for a international document to be qualified as international law, it should either be the outcome of step 1 (the treaty), or the outcome of step 2 (e.g EU secondary law).

ii. First of all, the document adopted by COP/CMP/CMA cannot be qualified as the outcome of self-constituting, because the self is the legislative organ of each contracting party. COP per se is an intangible entity. It consists of the representatives from the contracting parties. While the representative also does not represent themselves, they represent the contracting parties. The self of the contracting party is their legislative organ, or the whole population of the contracting party. As a result, the document adopted by COP/CMP/CMA is not the outcome of self-constituting, thereby not international law. COP/CMP/CMA is not a legislator.

iii. Then, COP/CMP/CMA is not empowered any legislative function in the sense of step 2. The legislative organ is allowed to create new rights and obligations in traditional sense, while the executive organ is not. COP/CMP/CMA is only allowed to adopt detailed implementation rules under the treaties. So, COP/CMP/CMA is not a legislative organ in the traditional sense.

iv. In addition, a law out of a legislative procedure shall be the legal basis of judicial proceedings. The fact that the documents adopted by COP/CMP/CMA cannot be the legal bases of the judicial judgments, indicates that these documents are not out of legislative power. When a dispute concerning the interpretation or application of the treaty is filed before the ICJ, the legal basis for the judgment, pursuant to the Statute of ICJ,<sup>20</sup> does not include the decisions adopted by the COP/CMP/CMA, because they are neither treaties nor customs etc.

c. In this sense, COP/CMP/CMA has no power of law development. They are not allowed to go beyond the scope of the treaties. For: The provisions of the treaties clearly stated, "... any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of

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<sup>17</sup> TFEU articles 288-292.

<sup>18</sup> Allott, Philip. "The concept of international law." *European Journal of International Law* 10.1 (1999): 31-50.

<sup>19</sup> *Ibid.*

<sup>20</sup> Statute of ICJ, article 38.

greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>21</sup> Thus, the adoption of any legal instruments by the COP must be in accordance with the relevant provisions of the Convention. In addition, as I have checked every provision mentioning COP, no provision has empowered the COP to go beyond the scope of the Convention.

~~As mentioned above, COP/CMP/CMA can make decisions and adopt the rule of procedure for itself and its subsidiary bodies<sup>22</sup>. If COP/CMP/CMA is a legislator, then at least one of the already made decisions or one of the decisions to be made in the future can be qualified as law. In other words, if we can prove that none of the decisions within the competence of COP/CMP/CMA can be qualified as law, then COP/CMP/CMA is not a legislator. Then, the concept of international law plays a vital role.~~

~~The same as the controversy over the subject of international law, as we discussed in the classes of Contemporary Issues of International Law three years ago, the concept of international law or the source of international law is also controversial. Decisions of COP/CMP/CMA are categorised as Resolutions of International Organisations (IO), if they can be qualified as IOs. Therefore, I don't think there is a consensus on the answer to the question.~~

As for my own opinion, I do not think COP/CMP/CMA should be a legislator. The reasons are following:

International law is made out of the process of self-constituting and reflects the common interest of the international society.<sup>23</sup> Similar to domestic law which normally consists of two steps, the first is the conclusion of social contract (self-constituting, formal or informal)<sup>24</sup> including the empowerment of the legislative organs, the second is the legislation by the legislative organ, for a international document to be qualified as international law, it should either be the outcome of step 1 (the treaty), or the outcome of step 2 (e.g EU secondary law).

First of all, the document adopted by COP/CMP/CMA cannot be qualified as the outcome of self-constituting, because the self is the legislative organ of each contracting party. COP per se is an intangible entity. It consists of the representatives from the contracting parties. While the representative also does not represent themselves, they represent the contracting parties. The self of the contracting party is their legislative organ, or the whole population of the contracting party. As a result, the document adopted by COP/CMP/CMA is not the outcome of self-constituting, thereby not international law. COP/CMP/CMA is not a legislator.

Then, COP/CMP/CMA is not empowered any legislative function in the sense of step 2. According to the theory of separation of powers, there are legislative power, executive power and judicial power. As mentioned above, COP/CMP/CMA has only the power to adopt rule of procedures and make the decisions necessary to promote the effective implementation of the Convention/Protocol/Agreement. The functions of the COP/CMP/CMA and its subsidiary

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<sup>21</sup> UNFCCC, article 2.

<sup>22</sup> UNFCCC, article 7.3.

<sup>23</sup> Allott, Philip. "The concept of international law." *European Journal of International Law* 10.1 (1999): 31-50.

<sup>24</sup> *Ibid.*

bodies are fixed in the text of the treaty, namely to implement UNFCCC/Kyoto Protocol/Paris Agreement<sup>25</sup>. Therefore, the discretion on the rule procedure of the COP/CMP/CMA is also fixed. In other words, COP/CMP/CMA has no power to adopt a document which is unnecessary to promote the implementation of the treaties. COP/CMP/CMA has only executive power. In addition, the fact that the documents adopted by COP/CMP/CMA cannot be the legal bases of the judicial judgments, indicates that these documents are not out of legislative power. When a dispute concerning the interpretation or application of the treaty is filed before the ICJ, the legal basis for the judgment, pursuant to the Statute of ICJ,<sup>26</sup> does not include the decisions adopted by the COP/CMP/CMA, because they are neither treaties nor customs etc.

### **Administer:**

**Overview:** COP/CMP/CMA may adopt implementation decisions, and have other functions needed to implement the treaties, such as reviewing, assessing, advising, assisting etc. Most of its sub-bodies fulfil their functions through giving advice and providing supports. Several sub-bodies have the power to monitor, assess the implementation, such as Adaptation Fund Board. The one stepping farthest is the **enforcement branch of the compliance committee of Kyoto Protocol**, it is empowered to determine cases of non-compliance and **apply consequences** in cases where Parties are not complying with their commitments.<sup>27</sup> The consequences include a declaration of non-compliance, development of a plan encompassing non-compliance cause analysis, remedy measures and a timetable for such measure,<sup>28</sup> suspension of the eligibility of that Party in accordance with relevant provisions,<sup>29</sup> deduction from the Party's assigned emission amount<sup>30</sup> which is punitive because the amount of deduction is 1.3 times of excess emission, etc. However, the compliance mechanism of **Paris Agreement** (the Committee to facilitate implementation and promote compliance) to some degree is a **draw back**. It is clearly stated in the Paris Agreement that this mechanism is **non-punitive**.<sup>31</sup>

### **Details are below:**

#### **For UNFCCC:**

COP: like the central government, it has all the functions required for the implementation of the Convention, such as reviewing the implementation of the convention + making decisions to promote implementation.

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<sup>25</sup> UNFCCC article 7.2, article 9.1, article 10.1; Kyoto Protocol, article 13.4, article 15; Paris Agreement, article 16.4, article 18.

<sup>26</sup> Statute of ICJ, article 38.

<sup>27</sup> Decision 27/CMP.1 Annex Part V.

<sup>28</sup> Decision 27/CMP.1 Annex Part XV para 2, para 6.

<sup>29</sup> Decision 27/CMP.1 Annex Part XV para 4.

<sup>30</sup> Decision 27/CMP.1 Annex Part XV para 5.

<sup>31</sup> Paris Agreement article 15.2.

Bureau of COP;<sup>32</sup> process management, assist the COP, examine the credential of the Parties.

-Subsidiary Body for Scientific and Technological Advice (SBSTA);<sup>33</sup> provide scientific and technological information and advice

-Subsidiary Body for Implementation (SBI);<sup>34</sup> assist the COP in assessment and review of the implementation.

Adaptation Committee (AC);<sup>35</sup> Provides technical support and guidance, shares information and good practices, promotes synergy with organizations, and advises COP on incentivizing adaptation actions, considers the Parties' monitoring and support efforts.

Warsaw international mechanism for loss and damage associated with climate change impacts (Warsaw international mechanism) (Executive Committee);<sup>36</sup> enhances understanding, coordination, and support for addressing climate-related loss and damage through knowledge sharing, dialogue, and action across stakeholders globally.

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<sup>32</sup> Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies, part VII and part VIII; <https://unfccc.int/process/bodies/supreme-bodies/bureau-of-the-cop-cmp-and-cma#Functions-of-the-Bureau-of-the-COP-CMP-and-CMA>.

<sup>33</sup> UNFCCC, article 9.

<sup>34</sup> UNFCCC, article 10.

<sup>35</sup> Cancun Agreement, para 20.

<sup>36</sup> UNFCCC, Decision 2/CP.19, para 5: (a) Enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts, by facilitating and promoting:

(i) Action to address gaps in the understanding of and expertise in approaches to address loss and damage associated with the adverse effects of climate change, including, inter alia, the areas outlined in decision 3/CP.18, paragraph 7(a);

(ii) Collection, sharing, management and use of relevant data and information, including gender-disaggregated data;

(iii) Provision of overviews of best practices, challenges, experiences and lessons learned in undertaking approaches to address loss and damage;

(b) Strengthening dialogue, coordination, coherence and synergies among relevant stakeholders by:

(i) Providing leadership and coordination and, as and where appropriate, oversight under the Convention, on the assessment and implementation of approaches to address loss and damage associated with the impacts of climate change from extreme events and slow onset events associated with the adverse effects of climate change;

(ii) Fostering dialogue, coordination, coherence and synergies among all relevant stakeholders, institutions, bodies, processes and initiatives outside the Convention, with a view to promoting cooperation and collaboration across relevant work and activities at all levels;

(c) Enhancing action and support, including finance, technology and capacity- building, to address loss and damage associated with the adverse effects of climate change, so as to enable countries to undertake actions pursuant to decision 3/CP.18, paragraph 6, including by:

(i) Providing technical support and guidance on approaches to address loss and damage associated with climate change impacts, including extreme events and slow onset events;

(ii) Providing information and recommendations for consideration by the Conference of the Parties when providing guidance relevant to reducing the risks of loss and damage and, where necessary, addressing loss and damage, including to the operating entities of the financial mechanism of the Convention, as appropriate;

(iii) Facilitating the mobilization and securing of expertise, and enhancement of support, including finance, technology and capacity-building, to strengthen existing approaches and, where necessary, facilitate the development and implementation of additional approaches to address loss and damage associated with climate change impacts, including extreme weather events and slow onset events.

Long-term finance (LTF) work programme;<sup>37</sup> analyse options for the mobilization of resources from a wide variety of sources and relevant analytical work on the climate-related financing needs of developing countries

Standing Committee on Finance (SCF);<sup>38</sup> promotes coherence among climate finance bodies, advises on financial mechanism guidance, and assesses climate finance flows biennially.

Green Climate Fund (GCF) (Board);<sup>39</sup> operating entity of the financial mechanism, funds the projects under the guidance of COP

Global Environment Facility (GEF) (administering Least Developed Countries Fund and the Special Climate Change Fund, including Capacity-building Initiative for Transparency (CBIT)<sup>40</sup> Trust Fund);<sup>41</sup> interim operating entity of the financial mechanism, determine the funding decision

Technology Executive Committee (TEC);<sup>42</sup> Promotes technology development and transfer for climate mitigation and adaptation, recommends policies, fosters collaboration, and addresses barriers globally.

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<sup>37</sup> UNFCCC, Decision 2/CP.17, paras 126-132.

<sup>38</sup> Cancun Agreement, para 112; UNFCCC, Decision 2/CP.17, paras 120-125: (a) Organizing a forum for the communication and continued exchange of information among bodies and entities dealing with climate change finance in order to promote linkages and coherence;

(b) Maintaining linkages with the Subsidiary Body for Implementation and the thematic bodies of the Convention;  
(c) Providing to the Conference of the Parties draft guidance for the operating entities of the financial mechanism of the Convention, with a view to improving the consistency and practicality of such guidance, taking into account the annual reports of the operating entities as well as submissions from Parties;

(d) Making recommendations on how to improve the coherence, effectiveness and efficiency of the operating entities of the financial mechanism;

(e) Providing expert input, including through independent reviews and assessments, into the preparation and conduct of the periodic reviews of the financial mechanism by the Conference of the Parties;

(f) Preparing a biennial assessment, overview of climate finance flows, to include information on the geographical and thematic balance of such flows, drawing on available sources of information, including national communications and biennial reports of both developed and developing country Parties, information provided in the registry, information provided by Parties on assessments of their needs, reports prepared by the operating entities of the financial mechanism, and information available from other entities providing climate change finance.

<sup>39</sup> Cancun Agreement, para 102.

<sup>40</sup> UNFCCC, Decision 1/CP.21, para 84, para 86.

<sup>41</sup> UNFCCC, Decision 12/CP.2; Memorandum of Understanding is concluded between the Conference of the Parties to the United Nations Framework Convention on Climate Change and the Council of the Global Environment Facility, para 1.

<sup>42</sup> Cancun Agreement, para 117, para 121: the functions of the TEC shall be to (a) Provide an overview of technological needs and analysis of policy and technical issues related to the development and transfer of technologies for mitigation and adaptation;

(b) Consider and recommend actions to promote technology development and transfer, in order to accelerate action on mitigation and adaptation;

(c) Recommend guidance on policies and programme priorities related to technology development and transfer with special consideration given to the least developed country Parties;

(d) Promote and facilitate collaboration on the development and transfer of technologies for mitigation and adaptation between governments, the private sector, non- profit organizations and academic and research communities;

(e) Recommend actions to address the barriers to technology development and transfer in order to enable enhanced action on mitigation and adaptation;



Climate Technology Centre and Network (CTCN) (Advisory Board) (including Climate Technology Centre and a Network)<sup>43,44</sup> Supports developing countries in identifying, deploying, and maintaining environmentally sound technologies through capacity building, partnerships, and technical assistance or transfer.

forum on the impact of the implementation of response measures (Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, KCI)<sup>45</sup>

(f) Seek cooperation with relevant international technology initiatives, stakeholders and organizations, and promote coherence and cooperation across technology activities, including activities under and outside of the Convention;

(g) Catalyse the development and use of technology road maps or action plans at the international, regional and national levels through cooperation between relevant stakeholders, particularly governments and relevant organizations or bodies, including the development of best practice guidelines as facilitative tools for action on mitigation and adaptation.

<sup>43</sup> UNFCCC, Decision 2/CP. 17, Annex VII, para 3.

<sup>44</sup> Cancun Agreement, para 117, para 123: the function of CTCN (a) At the request of a developing country Party:

(i) Providing advice and support related to the identification of technology needs and the implementation of environmentally sound technologies, practices and processes;

(ii) Facilitating the provision of information, training and support for programmes to build or strengthen capacity of developing countries to identify technology options, make technology choices and operate, maintain and adapt technology;

(iii) Facilitating prompt action on the deployment of existing technology in developing country Parties based on identified needs;

(b) Stimulating and encouraging, through collaboration with the private sector, public institutions, academia and research institutions, the development and transfer of existing and emerging environmentally sound technologies, as well as opportunities for North–South, South–South and triangular technology cooperation;

(c) Facilitating a network of national, regional, sectoral and international technology centres, networks, organization and initiatives with a view to:

(i) Enhancing cooperation with national, regional and international technology centres and relevant national institutions;

(ii) Facilitating international partnerships among public and private stakeholders to accelerate the innovation and diffusion of environmentally sound technologies to developing country Parties;

(iii) Providing, at the request of a developing country Party, in-country technical assistance and training to support identified technology actions in developing country Parties;

(iv) Stimulating the establishment of twinning centre arrangements to promote North–South, South–South and triangular partnerships, with a view to encouraging cooperative research and development;

(v) Identifying, disseminating and assisting with developing analytical tools, policies and best practices for country-driven planning to support the dissemination of environmentally sound technologies;

(d) Performing other such activities as may be necessary to carry out its functions;

<sup>45</sup> UNFCCC, article 4; Paris Agreement, Decision 7/CMA.1 Annex para 1: function of KCI (a) Provide a platform allowing Parties to share, in an interactive manner, information, experiences, case studies, best practices and views, and to facilitate assessment and analysis of the impact of the implementation of response measures, including the use and development of modelling tools and methodologies, with a view to recommending specific actions;

(b) Provide recommendations to the subsidiary bodies on the actions referred to in paragraph 1(a) above for their consideration, with a view to recommending those actions, as appropriate, to the Conference of the Parties, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

(c) Provide concrete examples, case studies and practices in order to enhance the capacity of Parties, in particular developing country Parties, to deal with the impact of the implementation of response measures;

(d) Address the effects of the implementation of response measures under the Convention, the Kyoto Protocol and the Paris Agreement by enhancing cooperation among Parties, stakeholders, external organizations, experts and institutions, by enhancing the capacity and the understanding of Parties of the impacts of mitigation actions and by enabling the exchange of information, experience and best practices among Parties to raise their resilience to these impacts;

(e) Respond and take into consideration the relevant outcomes of different processes under the Paris Agreement;

(f) Promote action to minimize the adverse impacts and maximize the positive impacts of the implementation of response measures.

Facilitates interactive sharing of information, best practices, and case studies on response measures' impacts, providing recommendations and enhancing resilience globally.

Paris Committee on Capacity-building (PCCB);<sup>46</sup> Address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhancing capacity-building efforts, including with regard to coherence and coordination in capacity-building activities

Least Developed Countries Expert Group (LEG);<sup>47</sup> Advise on the preparation and implementation strategy for national adaptation programmes of action

~~Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention (CGE);~~<sup>48</sup> Provides comprehensive technical assistance and support to non-Annex I Parties for the preparation of national communications and biennial update reports, including capacity building and guidance on institutional arrangements and integration into national policies.

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<sup>46</sup> UNFCCC Decision 1/CP.21, para. 71.

<sup>47</sup> UNFCCC, Decision 29/CP.7, and Annex para 1.

<sup>48</sup> UNFCCC, Decision 11/CP.24, Decision 19/CP.19 Annex para 2: CGE shall (a) Identify and provide technical assistance regarding problems and constraints that have affected the process of and the preparation of national communications and biennial update reports by non-Annex I Parties;

(b) Provide technical assistance and support to non-Annex I Parties to facilitate the process of and preparation of their national communications and biennial update reports in accordance with the “Guidelines for the preparation of national communications from Parties not included in Annex I to the Convention” contained in the annex to decision 17/CP.8 and the “UNFCCC biennial update reporting guidelines for Parties not included in Annex I to the Convention” contained in annex III to decision 2/CP.17;

(c) Provide technical advice to non-Annex I Parties to facilitate the development and long-term sustainability of processes of the preparation of national communications and biennial update reports, including the elaboration of appropriate institutional arrangements and the establishment and maintenance of national technical teams, for the preparation of national communications and biennial update reports, including greenhouse gas inventories, on a continuous basis;

(d) Provide recommendations, as appropriate, on elements to be considered in a future revision of the guidelines for the preparation of national communications and biennial update reports from non-Annex I Parties, taking into account the difficulties encountered by non-Annex I Parties in the preparation of their national communications and biennial update reports;

(e) Provide technical advice and support to Parties, upon request, and information on existing activities and programmes, including bilateral, regional and multilateral sources of financial and technical assistance, to facilitate and support the preparation of national communications and biennial update reports by non-Annex I Parties;

(f) Provide technical advice and support to Parties, upon request, on the provision of information on steps to integrate climate change considerations into relevant social, economic and environmental policies and actions, in accordance with Article 4, paragraph 1(f), of the Convention;

(g) Provide information and technical advice based on, where possible, lessons learned and best practices in the process of and preparation of national communications and biennial update reports by non-Annex I Parties, including in relation to finance and other support available;

(h) Provide guidance and periodic advice to the secretariat to assist it in fulfilling the selection criteria for the composition of the team of technical experts, in accordance with decision 20/CP.19, annex, paragraphs 3–5, taking also into account the reports provided by the secretariat in this regard on a semi-annual basis;

(i) Develop and organize, with assistance of the secretariat, appropriate training programmes for nominated technical experts to begin no later than in 2014, based on the most updated training materials of the Consultative Group of Experts, with a view to improving the technical analysis taking into account the difficulties encountered by non-Annex I Parties in the preparation of their biennial update reports.

Facilitative Working Group (FWG) of the Local Communities and Indigenous Peoples Platform;<sup>49</sup> promotes the exchange of experience and best practices, builds the capacity for engagement, facilitate climate change policies and actions, of the Local Communities and Indigenous Peoples

Intergovernmental Panel on Climate Change (IPCC);<sup>50</sup> respond to the need for objective scientific and technical advice

**For Kyoto Protocol:**

CMP: see above COP;

Bureau of CMP,<sup>51</sup> see above

Subsidiary Body for Scientific and Technological Advice,<sup>52</sup> see above

Subsidiary Body for Implementation,<sup>53</sup> see above

Compliance Committee<sup>54</sup> (including facilitative branch and a enforcement branch)<sup>55</sup>; provide advice and assistance to Parties in implementing the Kyoto Protocol, promote compliance by Parties with their commitments and determine cases of non-compliance and apply consequences in cases where Parties are not complying with their commitments under the Kyoto Protocol

Clean Development Mechanism (CDM) (Executive Board);<sup>56</sup> certify the emission reduction which can be used to contribute to the compliance with the parties' commitment, and assist in funding of the certified projects

Joint Implementation Supervisory Committee (JISC);<sup>57</sup> Supervise the verification of emission reduction unit, reports activities to COP/MOP, accredits independent entities, reviews

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<sup>49</sup> UNFCCC, Decision 2/CP. 24; <https://lcipp.unfccc.int/about-lcipp/functions-lcipp->

<sup>50</sup> UNFCCC article 21.2, their relationship is cooperation.

<sup>51</sup> Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies, part VII and part VII.

<sup>52</sup> Kyoto Protocol, article 15.

<sup>53</sup> Kyoto Protocol, article 15.

<sup>54</sup> Kyoto Protocol, article 8.

<sup>55</sup> Kyoto Protocol, Decision 27/CMP.1 Annex Part II para 3, part IV, part V.3.

<sup>56</sup> Kyoto Protocol, article 12.

<sup>57</sup> Kyoto Protocol, article 6; Decision 16/CP.7 Annex Guidelines for the implementation of Article 6 of the Kyoto Protocol, para 3: The Article 6 supervisory committee shall supervise, inter alia, the verification of ERUs generated by Article 6 project activities, referred to in section E below, and be responsible for: (a) Reporting on its activities to each session of the COP/MOP;

(b) The accreditation of independent entities in accordance with standards and procedures contained in Appendix A below;

(c) The review of standards and procedures for the accreditation of independent entities in Appendix A below, giving consideration to relevant work of the executive board of the clean development mechanism (CDM) and, as appropriate, making recommendations to the COP/MOP on revisions to these standards and procedures;

(d) The review and revision of reporting guidelines and criteria for baselines and monitoring in Appendix B below, for consideration by the COP/MOP, giving consideration to relevant work of the executive board of the CDM, as appropriate;

(e) The elaboration of the Article 6 project design document, for consideration by the COP/MOP, taking into consideration Appendix B of the Annex on modalities and procedures for a clean development mechanism and giving consideration to relevant work of the executive board of the CDM, as appropriate;

and revises standards, reporting guidelines, criteria, project design documents, and procedural rules.

Adaptation Fund (Board),<sup>58</sup> develops policies, guidelines, and operational procedures, approves projects and funding allocations, monitors implementation, establishes expert committees, and reports to the COP/MOP.

forum on the impact of the implementation of response measures (Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, KCI),<sup>59</sup> see above

Paris Committee on Capacity-building.<sup>60</sup> See above

### **For Paris Agreement:**

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(f) The review procedures set out in paragraphs 35 and 39 below;

(g) The elaboration of any rules of procedure additional to those contained in the present annex, for consideration by the COP/MOP.

<sup>58</sup> Kyoto Protocol, article 12.8; Kyoto Protocol, Decision 1/CMP. 3, para 5: the Board (a) To develop strategic priorities, policies and guidelines, and recommend their adoption to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(b) To develop and decide on specific operational policies and guidelines, including programming guidance and administrative and financial management guidelines, in accordance with decision 5/CMP.2, and to report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(c) To develop criteria based on principles and modalities listed in decision 5/CMP.2 to ensure that the implementing and executing entities have the capacity to implement the administrative and financial management guidelines of the Adaptation Fund, and report on it to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(d) To decide on projects, including the allocation of funds, in line with the Adaptation Fund principles, criteria, modalities, policies and programmes, in accordance with decision 5/CMP.2;

(e) To develop and agree on additional rules of procedure to those included in this decision and recommend these for adoption by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(f) To monitor and review implementation of the operations of the Adaptation Fund, including its administrative arrangements and the expenditure incurred under the Adaptation Fund, and recommend decisions, as may be appropriate, for adoption by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(g) To establish committees, panels and working groups, if required, to provide, inter alia, expert advice, to assist the Adaptation Fund Board in the performance of its functions;

(h) To draw upon and make use of the expertise that the Adaptation Fund Board may require to perform its functions;

(i) To regularly review performance reports on implementation and ensure independent evaluation and auditing of activities supported by the Adaptation Fund;

(j) To develop and approve draft legal and administrative arrangements for secretariat services and the trustee for approval by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(k) To be responsible for the monetization of certified emission reductions issued by the Executive Board of the clean development mechanism and forwarded to the Adaptation Fund to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation, and to report annually to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on the monetization of certified emission reductions;

(l) To report on its activities at each session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol;

(m) To include in its work plan for the period up to the fourth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, inter alia, those functions identified in paragraph 5 (a), (b), (c), (e), (j) and (k) above in order for the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to adopt or take note thereof.

<sup>59</sup> Article 2 and Article 3, paragraph 14, of the Kyoto Protocol; Paris Agreement, Decision 7/CMA.1.

<sup>60</sup> UNFCCC Decision 1/CP.21, para. 71,

CMA, [See above](#)

Bureau of CMA,<sup>61</sup> [See above](#)

Subsidiary Body for Scientific and Technological Advice (SBSTA),<sup>62</sup> [See above](#)

Subsidiary Body for Implementation (SBI),<sup>63</sup> [See above](#)

Adaptation Committee (AC),<sup>64</sup> [See above](#)

Paris Committee on Capacity-building (PCCB),<sup>65</sup> [See above](#)

Least Developed Countries Expert Group (LEG),<sup>66</sup> [See above](#)

Warsaw international mechanism for loss and damage associated with climate change impacts (Executive Committee),<sup>67</sup> [See above](#)

Standing Committee on Finance (SCF),<sup>68</sup> [See above](#)

-Green Climate Fund (GCF),<sup>69</sup> [See above](#)

Global Environment Facility (GEF) (administering Least Developed Countries Fund and the Special Climate Change Fund, including Capacity-Building Initiative for Transparency Trust Fund<sup>70</sup>),<sup>71</sup> [See above](#)

Adaptation Fund (Board),<sup>72</sup> [See above](#)

Technology Executive Committee (TEC),<sup>73</sup> [See above](#)

Climate Technology Centre and Network (CTCN)<sup>74</sup> (including Climate Technology Centre and a Network)<sup>75</sup>, [See above](#)

forum on the impact of the implementation of response measures (Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, KCI),<sup>76</sup> [See above](#)

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<sup>61</sup> Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies, part VII and part VII.

<sup>62</sup> Paris Agreement, article 18.

<sup>63</sup> Paris Agreement, article 18.

<sup>64</sup> Cancun Agreement, para 20; Paris Agreement, Decision 11/CMA.1, para 1.

<sup>65</sup> Paris Agreement, article 11.5; UNFCCC Decision 1/CP.21, para. 71, para. 79.

<sup>66</sup> Paris Agreement, Decision 11/CMA.1, para 1.

<sup>67</sup> Paris Agreement, article 8.5.

<sup>68</sup> UNFCCC, Decision 1/CP.21, para 63.

<sup>69</sup> UNFCCC, Decision 1/CP.21, para 58.

<sup>70</sup> UNFCCC, Decision 1/CP.21, para 85.

<sup>71</sup> UNFCCC, Decision 1/CP.21, para 58.

<sup>72</sup> UNFCCC, Decision 1/CP.21, para 59.

<sup>73</sup> UNFCCC, Decision 1/CP.21, para 68.

<sup>74</sup> UNFCCC, Decision 1/CP.21, para 68.

<sup>75</sup> UNFCCC, Decision 2/CP. 17, Annex VII, para 3.

<sup>76</sup> Paris Agreement, article 4.15; Decision 7/CMA.1.

Committee to facilitate implementation and promote compliance,<sup>77</sup> supports implementation without duplication, respects sovereignty, and engages in dialogue to identify challenges, recommend solutions, and issue findings of fact when necessary.

Supervisory Body of Crediting Mechanism,<sup>78</sup> establishes requirements for accreditation, methodologies, and registration of Crediting Mechanism, promotes sustainable development

Enhanced Transparency Framework<sup>79</sup> (Technical Expert Review Team);<sup>80</sup> review the transparency report.

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<sup>77</sup> Paris Agreement, article 15; Decision 20/CMA.1, Annex para 4: “In carrying out its work, the Committee shall strive to avoid duplication of effort, **shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions**, and shall respect national sovereignty.”; Annex para 30: “With a view to facilitating implementation and promoting compliance, the Committee shall take appropriate measures. These may include the following: (a) Engage in a dialogue with the Party concerned with the purpose of identifying challenges, making recommendations and sharing information, including in relation to accessing finance, technology and capacity-building support, as appropriate; (b) Assist the Party concerned in the engagement with the appropriate finance, technology and capacity-building bodies or arrangements under or serving the Paris Agreement in order to identify possible challenges and solutions; (c) Make recommendations to the Party concerned with regard to challenges and solutions referred to in paragraph 30(b) above and communicate such recommendations, with the consent of the Party concerned, to the relevant bodies or arrangements, as appropriate; (d) Recommend the development of an action plan and, if so requested, assist the Party concerned in developing the plan; (e) Issue findings of fact in relation to matters of implementation and compliance referred to in paragraph 22(a) above.”-

<sup>78</sup> Paris Agreement, article 6; Decision 3/CMA.3, Annex para 24: “(a) Establish the requirements and processes necessary to operate the mechanism, relating to, inter alia: (i) The accreditation of operational entities as designated operational entities; (ii) The development and/or approval of methodologies (hereinafter referred to as mechanism methodologies) and standardized baselines for Article 6, paragraph 4, activities; (iii) The registration of activities as Article 6, paragraph 4, activities, the renewal of crediting periods of registered Article 6, paragraph 4, activities and the issuance of A6.4ERs; (iv) Ensuring that activities follow reasonable maximum time intervals between the steps in the activity cycle; (v) The registry for the mechanism; (vi) The share of proceeds levied to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation as set out in chapter VII below (Levy of share of proceeds for adaptation and administrative expenses); (vii) The delivery of overall mitigation in global emissions as set out in chapter VIII below (Delivering overall mitigation in global emissions); (viii) The approval and supervision of host Party national arrangements for accreditation of operational entities; development of mechanism methodologies, including applying baselines and other methodological requirements as defined in chapter V.B below (Methodologies); and application of the crediting periods and renewal of crediting periods consistent with or more stringent than as set out in chapter V.A, C and I below; (ix) The eleventh preambular paragraph of the Paris Agreement, acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity; (x) The application of robust, social and environmental safeguards; (xi) The development of tools and approaches for assessing and reporting information about how each activity is fostering sustainable development, while acknowledging that the consideration of sustainable development is a national prerogative; (xii) Ensuring that the mechanism facilitates achievement of the long-term goals of the Paris Agreement; (b) Accredite operational entities as designated operational entities; (c) Support the implementation of the mechanism by, inter alia: (i) Developing and maintaining a public website for information related to proposed and registered Article 6, paragraph 4, activities, subject to confidentiality; (ii) Taking appropriate measures to promote the regional availability of designated operational entities in all regions; (iii) Promoting public awareness of the mechanism; (iv) Facilitating dialogue with host Parties and other stakeholders in the mechanism; (v) Providing public information to the CMA on all registered Article 6, paragraph 4, activities hosted by each Party and all A6.4ERs issued for those activities; (vi) Implementing capacity-building activities; (d) Report annually to the CMA.”-

<sup>79</sup> Paris Agreement, article 13.

<sup>80</sup> Decision 18/CMA.1, part VII.

Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention (CGE),<sup>81</sup> [See above](#)

Facilitative Working Group (FWG) of the Local Communities and Indigenous Peoples Platform,<sup>82</sup> [See above](#)

Intergovernmental Panel on Climate Change (IPCC).<sup>83</sup> [See above](#)

### **Adjudicate:**

Except for the party which is a regional economic integration organisation, “in respect of any dispute concerning the interpretation or application of the Convention” (this is the original text), ICJ and/or Arbitration according to the procedure adopted by COP.<sup>84</sup> For the party which is a regional economic integration organisation, it may make declaration to the arbitration. However, COP has not yet adopted any annex on arbitration. The only existing option is the ICJ.

### **Also whether there are different levels of governance?**

Yes. Please refer to the structural map.

Please see below [the annex](#).-

### **Whether there are obligations to the states**

Yes, there are.

As I demonstrated in the writing about common but differentiated responsibilities, the word “shall” in the UNFCCC, Kyoto Protocol and Paris Agreement refers to legally binding obligation.

*“The distinguishing between “should” and “shall” by the wording of UNFCCC framework tells that the responsibility in CBDR is only moral obligation. UNFCCC framework’s text has employed both “should” and “shall”. The terms used in the text were not chosen arbitrarily. They must denote different meanings. Otherwise, contradictions appear.*

*If “should” and “shall” have the same meaning, they both are either legally binding or non-legally binding. If they both bring legally binding obligation, the text of UNFCCC framework is inconsistent. One example is in Cancun Agreement, whose preamble clearly expresses that the outcome set therein is non-legally binding.<sup>85</sup> Meanwhile, its paragraph states “...Parties should take*

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<sup>81</sup> UNFCCC, Decision 11/CP. 24 para 4.

<sup>82</sup> UNFCCC, Decision 2/CP. 24.

<sup>83</sup> UNFCCC article 21.2, their relationship is cooperation.

<sup>84</sup> UNFCCC, article 14.2; Kyoto Protocol, article 19 &; Paris Agreement, article 24: the provision of article 14 of the Convention on settlement of dispute shall apply mutatis mutandis to this protocol/agreement.

<sup>85</sup> , Cancun Agreement (2010), preamble paragraph 2.

*urgent action to meet this long-term goal...”.<sup>86</sup> For the consistency of the agreement, “should” must denote non-legally binding advice. If “should” and “shall” both are non-legally binding, then the whole UNFCCC framework becomes non-legally binding. Except for “should” and “shall”, in the texts of UNFCCC, Kyoto Protocol, Cancun Agreement and Paris Agreement, there is only “must” which can bring legally binding obligation. Nevertheless, “must” only appears three times. The first time is in the sentence “Adaptation must be addressed with the same priority as mitigation...”.<sup>87</sup> Without a legally binding obligation of mitigation, there is also no legally binding obligation of adaptation because they have the same priority. The second time is “...developed country Parties must take the lead in combating climate change...”.<sup>88</sup> In the same vein, if there is no predetermined obligation of mitigation, the leading role is also zero. The third time is “...technology needs must be nationally determined ...”.<sup>89</sup> This does not create any obligation of mitigation or adaptation. Then if the whole UNFCCC framework is non-legally binding, whether or not to implement UNFCCC is subjected to the contracting Parties’ autonomy. Then it contradicts the expression in the General Assembly Resolution,<sup>90</sup> “...United Nations Framework Convention on Climate Change and the Paris Agreement will be implemented...”, because they will not necessarily be implemented. So, UNFCCC framework must have legally binding contents. “Should” and “shall” have different meanings.*

*Excluding “must” and “should”, the only word which can bring legally binding obligations is “shall”. Besides, “shall” is used in several procedural provisions, such as the provision of entry into force and the provision of authentic text. If “shall” brings no legally binding force, these provisions are also non-legally binding, which apparently contradicts the reality. In addition, if UNFCCC has no legally binding force, how can it enter into force? As a result, the true statements include: 1) “should” has no legally binding force; 2) “shall” has legally binding force.<sup>91</sup>”*

So, the obligations of the contracting parties were set in the provisions led by a “shall”. In detail:

**Type of obligation:** For some obligations whose assessment is feasible, such as the emission reduction target under Kyoto Protocol article 3.1, the obligation should be **fulfilled**. For those

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<sup>86</sup> Ibid, paragraph 4.

<sup>87</sup> Ibid, paragraph 2(b).

<sup>88</sup> Ibid, section III A.

<sup>89</sup> Ibid, paragraph 114.

<sup>90</sup> United Nations General Assembly, *Resolution adopted by the General Assembly on 29 March 2023 Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change* (United Nations General Assembly 2023)

<sup>91</sup> Christina Voigt, 'The power of the Paris Agreement in international climate litigation' (2023) 32 *Review of European, Comparative & International Law* 237, p241.



obligations whose assessment is impossible or very difficult, such as mitigation of climate change, the obligation is **due diligence**.

### **Contents of the Obligation:**

#### **1. UNFCCC for all parties:**

**Overview:** shall develop and update national inventories of emissions and removals of greenhouse gases; mitigate and adapt and update the national relevant data; promote technology development and diffusion; manage and conserve sinks and reservoirs of greenhouse gases; prepare for climate impacts and integrate climate considerations into policies; support and cooperate in scientific research, data exchange, education, training and public awareness; public access to information; allow flexibility for economies in transition; address specific needs of vulnerable countries and least developed nations; consider vulnerabilities in implementing climate actions.

**Details in footnote.<sup>92</sup>**

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<sup>92</sup> Article 4: shall

(a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12 unfccc, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

(e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of

the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

## 2. UNFCCC differentiated obligation:

Overview: shall adopt national policies to reduce greenhouse gas emissions and enhance sinks; provide financial resources and technology to help developing countries

(k) In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

(l) In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on: (a) Small island countries; (b) Countries with low-lying coastal areas; (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest; (d) Countries with areas prone to natural disasters; (e) Countries with areas liable to drought and desertification; (f) Countries with areas of high urban atmospheric pollution; (g) Countries with areas with fragile ecosystems, including mountainous ecosystems; (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and (i) Landlocked and transit countries.

(m) The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

(n) The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

Article 5:

In carrying out their commitments under Article 4, paragraph 1 (g), the Parties shall:

(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

Article 6: In carrying out their commitments under Article 4, paragraph 1 (i), the Parties shall:

(a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

(i) the development and implementation of educational and public awareness programmes on climate change and its effects;

(ii) public access to information on climate change and its effects;

(iii) public participation in addressing climate change and its effects and developing adequate responses; and

(iv) training of scientific, technical and managerial personnel;

(b) existing bodies:

(i) the development and exchange of educational and public awareness material on climate change and its effects; and

(ii) the development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

(Annex II) meet their obligations; assist adaptation costs and technology transfer to support climate action; make available relevant data.

Details in footnote.<sup>93</sup>

3. Kyoto for all parties: shall improve the quality of emission; mitigate and adapt; make available relevant data to nationals; promote technology transfer, scientific research and

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<sup>93</sup> According to UNFCCC article 4, some parties shall:

i. The developed country Parties and other Parties included in Annex I:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(e) Each of these Parties shall:

(i) coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and

(ii) identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

ii. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

iii. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

iv. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

education, public awareness, public access to information, and cooperate in such areas.

Details in footnote.<sup>94</sup>

#### **4. Kyoto differentiated obligation:**

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<sup>94</sup> Article 10: All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

(i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications,

as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

-9-

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

For parties in Annex I: emission reduction targets, land-use change and forestry, minimise impacts on developing countries, make available relevant data, develop national system for emission estimation. Details in footnote.<sup>95</sup>

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<sup>95</sup> Kyoto protocol article 3:

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

Article 5: 1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

Article 7:

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

**For the developed country Parties and other developed Parties included in Annex II: shall provide financial support. Details in footnote.<sup>96</sup>**

5. **Paris for all parties: shall prepare, communicate and maintain, account for Nationally Determined Contributions (NDCs); make available relevant data; meet transparency requirements; consider relevant parties; adapt; cooperate in technology, education, training, public awareness, participation, and access to information. Details in footnote.<sup>97</sup>**

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3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

<sup>96</sup> Article 11: 2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall: (a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1 (a), of the Convention that are covered in Article 10, subparagraph (a); and (b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article. The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply mutatis mutandis to the provisions of this paragraph.

<sup>97</sup> Article 4:

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.

9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.

13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.

6. Paris differentiated obligation: developed country parties shall provide financial support; make available relevant data; meet transparency. Details footnote<sup>98</sup>

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16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.

Article 7: 9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include: (a) The implementation of adaptation actions, undertakings and/or efforts; (b) The process to formulate and implement national adaptation plans; (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems; (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.

Article 10: 2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.

Article 11: 4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement. Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

Article 13: 7. Each Party shall regularly provide the following information: (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.

<sup>98</sup> Article 9:

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.

7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.

Article 13: 9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.

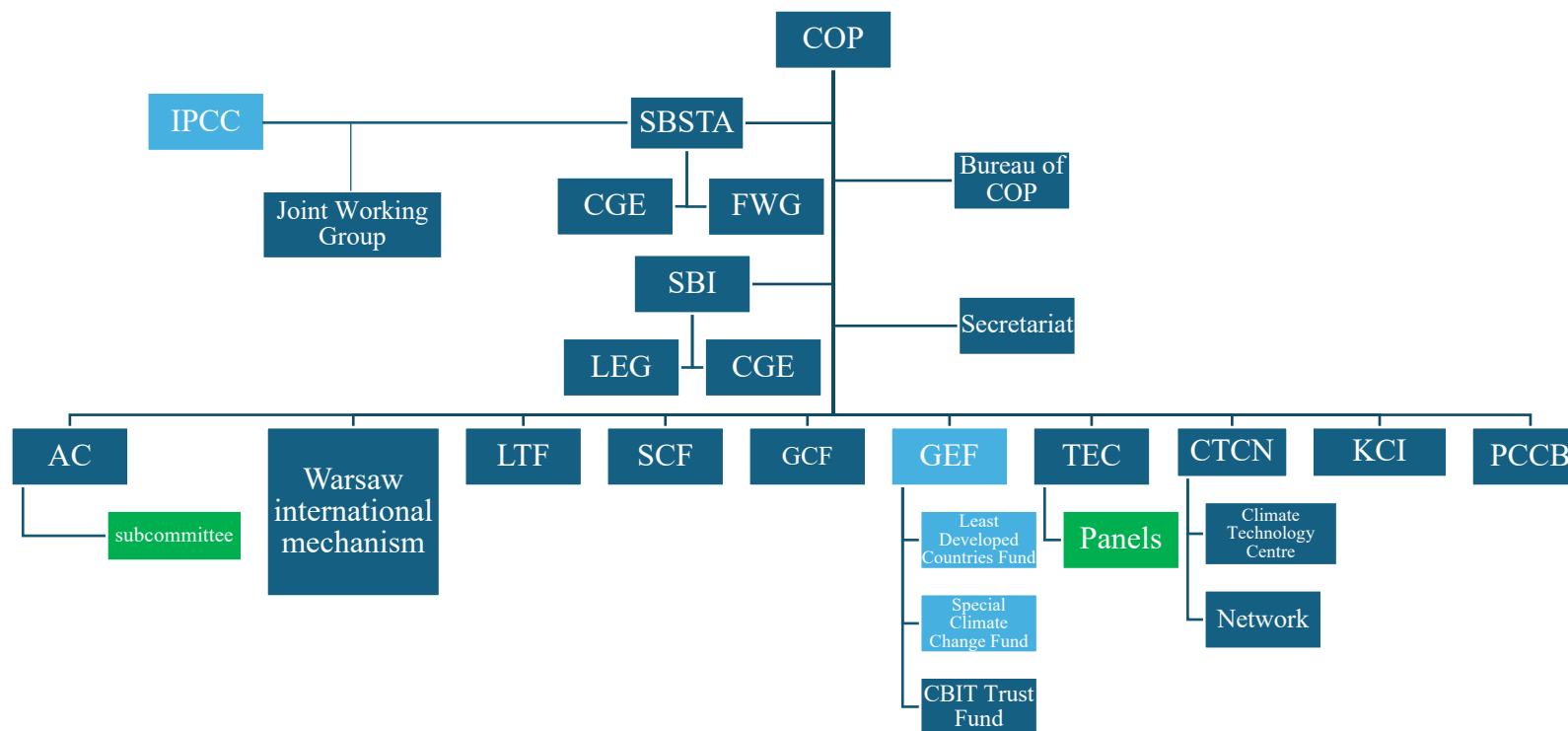
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Annex: structural mop

UNFCCC:



Note:

AC is allowed to establish subcommittees, panels, and advisory and working groups.<sup>99</sup> However, AC has not yet established any subcommittees.

<sup>99</sup> Revised rules of procedure of the Adaptation Committee, 19 March 2021, Part VI.


AC,<sup>100</sup> Warsaw international mechanism,<sup>101</sup> Technology Executive Committee and Climate Technology Centre and Network,<sup>102</sup> shall report to the Conference of the Parties through the subsidiary bodies. However, it does not mean the subsidiary bodies have the power to intervene the decisions of the above institutions. As evidenced by the annual report of 2023 of the AC, the subsidiary bodies were only invited to consider the report, but not obliged, nor empowered.<sup>103</sup>


TEC is allowed to establish panels and working groups.<sup>104</sup> However, TEC has not yet established any Panels.

Unlike other bodies which directly report to the COP, LEG reports to SBI.<sup>105</sup>

The recommendation of the CGE is considered by the subsidiary bodies.<sup>106</sup>

SBSTA reviews the report and outcomes of the FWG.<sup>107</sup>

 Blue color means cooperation with other organisations.

 Green means it is allowed to set sub-bodies, while for now no sub-body has been set.

IPCC does not report to the COP, while GEF is requested to report to COP.<sup>108</sup> In addition, COP adopts guidance to GEF.<sup>109</sup> Thus, GEF is placed under COP, while IPCC is not.

SBSTA-IPCC Joint Working Group source, refers to the footnote.<sup>110</sup>

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<sup>100</sup> UNFCCC, 2/CP. 17, para 96.

<sup>101</sup> UNFCCC, 2/CP. 19, para 3.

<sup>102</sup> Cancun Agreement, para 126.

<sup>103</sup> Report of the Adaptation Committee, FCCC/SB/2023/5, para 4.

<sup>104</sup> UNFCCC, Decision 4/CP.17, Annex II, para 56.

<sup>105</sup> UNFCCC, Decision 6/CP. 16, para 3.

<sup>106</sup> UNFCCC Decision 8/CP. 5, Annex para 6.

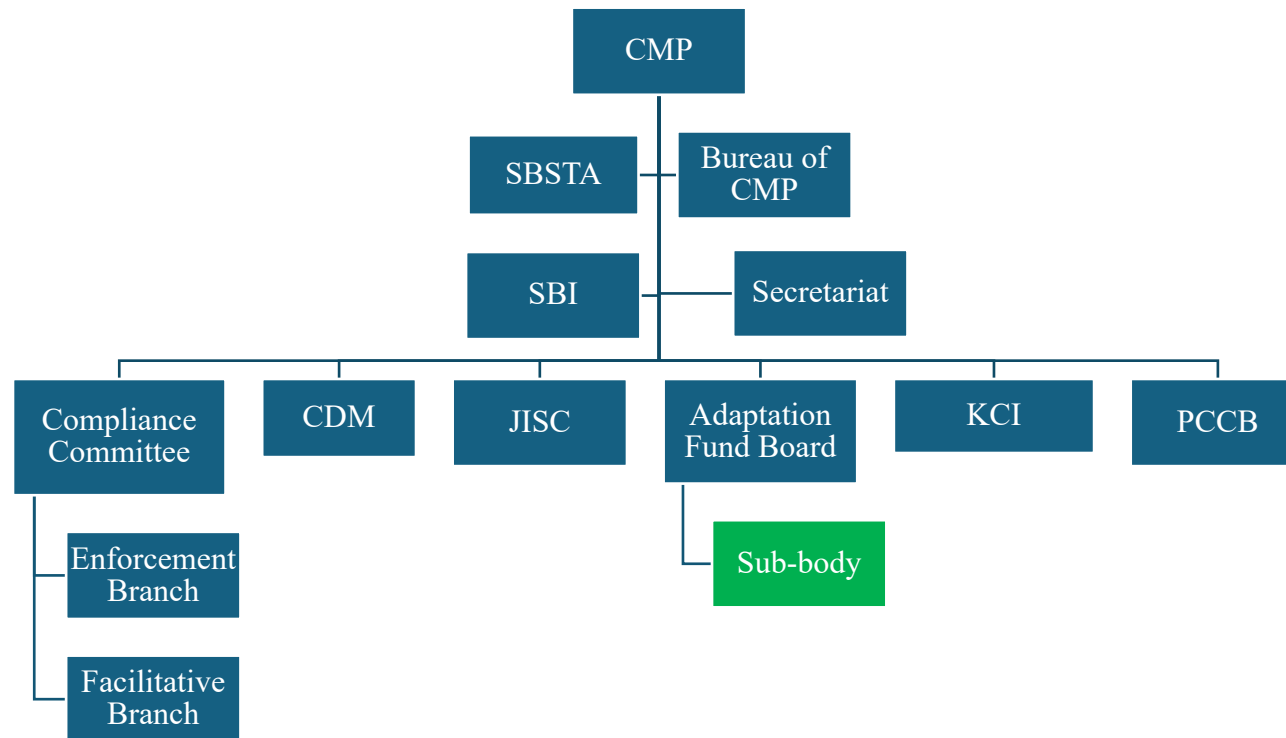
<sup>107</sup> UNFCCC Decision 2/CP. 24 para 27.

<sup>108</sup> UNFCCC Decision 11/CP.2 para 3.

<sup>109</sup> Ibid.

<sup>110</sup> <https://unfccc.int/topics/science/workstreams/cooperation-with-the-ipcc/background-cooperation-with-the-ipcc>

Kyoto Protocol:



Note: Adaptation Fund Board shall establish committees, panels and working groups, if required. However, no sub-body has been established yet.<sup>111</sup>

Paris Agreement:

<sup>111</sup> Kyoto Protocol, Decision 1/CMP.3, para 5(g).

