

Work of the Spin-off group on Article 11 and Articles 12 to 26 on final clauses and related decision paragraphs

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Article 11 (FACILITATING IMPLEMENTATION AND COMPLIANCE)

Option I:¹

1. (Establishment) [A] [Implementation] [and] [Compliance] [mechanism][process][Committee] [, including a Committee [as a standing subsidiary body under the CMA]] is hereby established.
2. (Objective) To facilitate [effective] implementation of [the applicable provisions][Articles [3][, 4, 6, 7, 8] and [9]] of this Agreement and to assess and address questions of implementation arising from each Party's performance in accordance with these provisions [and] promote [and enforce] compliance with [the provisions of][commitments under] this Agreement
3. (Nature) [The [Committee][mechanism][process][, including the Committee,] shall be [expert based,] [facilitative] [in nature] [and shall act in a manner that is transparent], [non-punitive], [non-adversarial] and [non-judicial]
4. (Structure)
 - (a) One-branch option
 - (b) Two separate branches

2bis. The Compliance Mechanism shall consist of two separate branches – an enforcement branch for developed country Parties and a facilitative branch for developing country Parties. The Compliance Mechanism may establish technical panels to assist them in their task.

2ter. The role of the enforcement branch is to review compliance with commitments made by developed country Parties and [the role of the facilitative branch is to facilitate the implementation by developing countries of enhanced action on mitigation, adaptation, and transparency of action in such a way that it shall be facilitative, non-punitive and non-adversarial] [those developing country Parties that have made economy wide quantified emission reduction commitments, with respect to their commitments on mitigation and support as established under this Agreement].

2quater. The enforcement branch may recommend actions that a developed country Party should take to ensure it fulfills its commitments under this Agreement.

2quinquies. The role of the facilitative branch is to review the implementation of the national determined mitigation commitment made by developing country Parties and to assist them in finding ways to incentivise their efforts to meet these commitments.

3bis. The Committee shall function through a plenary and two branches, namely a compliance and an implementation forum [, each with equitable and balanced representation of Parties]. The members of the Committee shall have competence in a field relevant to this Agreement and reflect an appropriate balance of expertise.
5. (Functions) [To address cases of non-compliance of the commitments of developed country Parties on mitigation, adaptation, provision of finance, technology development and transfer and, capacity-building, and transparency of action and support,] to facilitate implementation by developing country Parties for enhanced action on mitigation, adaptation and transparency of action].
6. (Triggers)

¹ A fully developed version of Option I will be presented as an input for the second meeting of the spin-off group.

2bis. The Committee may consider issues on the basis of:

(a) Written submissions from any Party [or group of Parties] with respect to [itself][its own or other Parties' compliance with or implementation of the provisions of the Agreement];

(b) Reports [by Parties in accordance with Article X of this Agreement][and questions of implementation arising from the transparency and accountability system under Article [9]][reports from Technical Expert (Review) teams];
or

(c) Information derived from Annex [X] with regard to a situation where a Party fails to communicate and inscribe its NDMC[; and

(d) Requests from the CMA].

7. (Consequences)

(a) Declaration of non-compliance; and

(b) Request of the development of a compliance action plan.

Option II:

1. **Option 1:** A [process] [[compliance] mechanism][Committee][, including a Committee [as a standing subsidiary body under the CMA] is hereby established to [promote compliance by developed countries Parties and facilitate implementation by developing country Parties through provision of adequate financial resource and transfer of technology][promote and] facilitate [effective] implementation of [Articles [3] and [9] of this Agreement and to assess and address questions of implementation arising from each Party's performance in accordance with these provisions.][[and] promote [and enforce] compliance with] [the provisions of][commitments under] this Agreement. The [Committee][process][mechanism] [,including the committee,] shall be [expert based,] [facilitative] [in nature] [and shall act in a manner that is transparent], [non-punitive], [non-adversarial[and [non-judicial] [and shall pay particular attention to the respective national capabilities and circumstances of Parties]. [The members of the Committee shall serve in their individual capacity.]

Option 2: [An International Tribunal of Climate Justice as][A] [compliance mechanism] is hereby established to address cases of non-compliance of the commitments of developed country Parties on mitigation, adaptation, [provision of] finance, technology development and transfer [and][,] capacity-building[,], and transparency of action and support, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance.

A facilitative mechanism is hereby established to facilitate implementation by developing country Parties for enhanced action on mitigation, adaptation and transparency of action. The mechanism shall be facilitative, non-punitive, non-adversarial and non-judicial.]

Option 1I (paragraphs 2 to 2ter):

2. The Committee shall consist of [X] members, nominated by Parties and elected by the CMA, with due consideration to equitable geographical representation based on the five regions of the United Nations; ensuring representation of SIDS. The first members shall be elected at the first meeting of the CMA.

2bis. The Committee may consider issues on the basis of:

(a) Written submissions from any Party [or group of Parties] with respect to [itself][its own or other Parties' compliance with or implementation of the provisions of the Agreement];

(b) [Reports [by Parties in accordance with Article x of this Agreement][and questions of implementation arising from the transparency and accountability system under Article [9]][reports from Technical Expert (Review) teams];

or
(c) Information derived from Annex [X] with regard to a situation where a Party fails to communicate and inscribe its NDMC[; and

(d) Requests from the CMA].

2ter The Committee shall make every effort to adopt its decisions by consensus. If all efforts at consensus have been exhausted and no consensus is reached, the decisions shall as a last resort be adopted by a [X] majority vote of the members present and voting, based on a quorum of two-thirds of the members.]

Option 2II (paragraphs 2 to 2quinquies):

2. The composition of the Compliance Mechanism shall be based on equitable geographical representation, and to include representation of least developed countries and small island developing States. The body shall comprise 12 members. Decisions of the Compliance Committee shall be made by consensus where possible and, as a last resort, by a two-thirds majority;

- 2bis. The Compliance Mechanism shall consist of two separate branches – an enforcement branch for developed country Parties and a facilitative branch for developing country Parties. The Compliance Mechanism may establish technical panels to assist them in their task;
- 2ter. The role of the enforcement branch is to review compliance with commitments made by developed country Parties and those developing country Parties that have made economy wide quantified emission reduction commitments, with respect to their commitments on mitigation and support as established under this Agreement.
- [2quater. The enforcement branch may recommend actions that a developed country Party should take to ensure it fulfills its commitments under this Agreement.
- 2 quinquies. The role of the facilitative branch is to review the implementation of the national determined mitigation commitment made by developing country Parties and to assist them in finding ways to incentivise their efforts to meet these commitments.
- 2 sexies. The Compliance Mechanism shall report annually to the CMA and shall operate under modalities and procedures agreed by the CMA at its first session.]
3. The [Committee][process][mechanism] [, including the committee] shall be under [the authority of the CMA]. The [Compliance Committee][body referred to in paragraph 2] shall consider matters relating to the [implementation] of [and compliance with] the [[all] provisions of][commitments under] this Agreement and] shall report annually to the CMA. [It shall elaborate its rules of procedure which shall be subject to approval by the second session of the CMA.]
- [3bis. The Committee shall function through a plenary and two branches, namely a compliance and an implementation forum [, each with equitable and balanced representation of Parties]. The members of the Committee shall have competence in a field relevant to this Agreement and reflect an appropriate balance of expertise.
- 3ter. The Compliance Branch shall examine, determine and address issues of non-compliance. Where it has determined that a Party is not in compliance, it shall apply the following consequences, taking into account the cause, type, degree and frequency of the non-compliance of that Party and pay attention to the respective national capabilities and circumstances of Parties as appropriate:
- (a) Declaration of non-compliance; and
 - (b) Request of the development of a compliance action plan.]
4. Pursuant to this Article [and decision 1/CP.21], the CMA shall, at its first session, adopt [additional] modalities and procedures for the [process][mechanism][effective operation of the committee] referred to in paragraph 1 of this Article. Those modalities and procedures shall[, inter alia,] [define the [functions][and triggers] of the [process][mechanism], [establish the body that will carry out those functions,][its composition, and decision-making processes,] and] set out the measures [available to the committee in performing their functions under paragraph 1 of this Article, taking into account the cause, type and frequency of the matter of concern.] [These measures shall range from offering advice and assistance to the issuance of a statement of concern][to [be applied or actions to be taken to] [facilitate implementation][and [address cases of non-compliance][promote compliance]].

Option III: No reference to facilitating implementation and compliance (no Article 11)

Article 12 *(CMA)*

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from among Parties to this Agreement.
4. The CMA shall keep under regular review the implementation of this Agreement and shall make within its mandate the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:
 - (a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement;
 - (b) **Option 1:** Adopt its own rules of procedure at its first session;
Option 2: The rules of procedure of the Conference of the Parties shall be applied mutatis mutandis under this Agreement, except as may be otherwise decided by consensus by the CMA;
 - (c) **Option 1:** Exercise such other functions as may be required for the implementation of this Agreement.
Option 2: Exercise the following functions:
[Periodical examination of obligation of Parties to the agreement;]
[Promote and facilitate exchange of information;]
[Facilitate the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments].
5. The financial procedures applied under the Convention shall be applied mutatis mutandis under this Agreement, except as may be otherwise decided by consensus by the CMA.
6. The first session of the CMA shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the CMA shall be held in conjunction with ordinary sessions of the COP, unless otherwise decided by the CMA.
7. Extraordinary sessions of the CMA shall be held at such other times as may be deemed necessary by the CMA or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
8. The United Nations, its specialized agencies 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 CMA as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the CMA as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 4(b) of this Article.

Article 13 *(SECRETARIAT)*

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat shall apply mutatis mutandis to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the CMA.

Article 14 *(SBSTA AND SBI)*

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation (SBI) established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific

and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bodies shall apply mutatis mutandis to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from among the Parties to this Agreement.

Article 15 *(BODIES AND INSTITUTIONAL ARRANGEMENTS TO SERVE AGREEMENT)*

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, in addition to those subsidiary bodies and institutional arrangements explicitly referred to in this Agreement, [\[shall\]](#) [\[may\]](#) serve this Agreement [\[upon a decision of the CMA. Such decision shall specify the functions to be exercised by such bodies or arrangements\].](#)
2. The CMA may provide further guidance to those subsidiary bodies and institutional arrangements.

Article 16 *(SIGNATURE AND INSTRUMENTS OF RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION)*

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York, the United States of America, from [21 March 2016] to [20 March 2017]. Thereafter, the Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary;
2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 17 *(FURTHER REQUIREMENTS AND DECISION-MAKING RIGHTS)*

[Further discussion needed on whether there should be preconditions to join the Agreement and to exercise decision-making rights.]

Article 18 *(ENTRY INTO FORCE)*

1. This Agreement shall enter into force on the thirtieth day after the date on which at least [X] number of Parties to the Convention have deposited their instruments of ratification, acceptance, approval or accession[.], with such Parties to the Convention accounting for X per cent of total global greenhouse gas emissions [\[in \[1990\]\[2000\]\[2010\]\].\]](#)
2. [\[For the purposes of paragraph 1 of this Article, “total global greenhouse gas emissions” \[\\[of such Parties\\]\]\(#\) means the \[\\[total global greenhouse gas emissions as estimated by the Intergovernmental Panel on Climate Change in its Fifth Assessment Report\\]\]\(#\) \[\\[most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention either in their national communications submitted in accordance with Article 12 of the Convention or in their biennial reports or biennial update reports submitted in accordance with decision 1/CP.16 of the Conference of the Parties to the Convention at its sixteenth session\\].\\]\]\(#\)](#)

3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after its entry into force in accordance with paragraph 1 of this Article, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

Article 19 (AMENDMENTS)

1. The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply mutatis mutandis to this Agreement.
2. Notwithstanding Article 19, paragraph 1, above a Party may propose an adjustment to enhance the efforts expressed by its mitigation commitment inscribed in Annex A or B to this Agreement. A proposal for such an adjustment shall be communicated to the Parties by the secretariat at least three months before the CMA at which it is proposed for adoption.
3. An adjustment proposed by a Party to enhance the efforts expressed by its mitigation commitment inscribed in Annex A or B to this Agreement shall be considered adopted by the CMA unless more than three fourths of the Parties present and voting object to its adoption. The adopted adjustment shall be communicated by the secretariat to the Depository, who shall circulate it to all Parties, and shall enter into force on 1 January of the year following the communication by the Depository. Such adjustments shall be binding upon Parties.

Article 20 (ANNEXES)

1. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply mutatis mutandis to this Agreement, except in respect of the annex containing national determined mitigation commitments.

Article 21 (SETTLEMENT OF DISPUTES)

The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Agreement.

Article 22 (VOTING)

1. Each Party shall have one vote, except as provided in paragraph 2 of this Article.
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 this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.
3. Without prejudice to the provisions of paragraph 3 of Article 15 of the Convention, the Parties shall make every effort to reach agreement on all matters by consensus. If such efforts to reach consensus have been exhausted and no agreement has been reached, a decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting.
4. For the purpose of this Article, 'Parties present and voting' means Parties present and casting an affirmative or negative vote.

Article 23 (DEPOSITARY)

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

Article 24 *(RESERVATIONS)*

No reservations may be made to this Agreement.

Article 25 *(WITHDRAWAL)*

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of [one year from the date of receipt by the Depositary of the notification of withdrawal][[the then current mitigation commitment of that Party, the Party having discharged itself from all duties connected to this commitment](#)], or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

Article 26 *(LANGUAGES)*

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.]
