

Working document

[Section L – Procedural and institutional provisions]

Version of 4 September 2015 at 18:00¹

Parties agreed to engage on the questions prepared by the Co-Facilitators and posted on the UNFCCC website on 31 August 2015,² as well as other questions posed by the Co-Facilitators during the meeting.

Articles 43–45, Part I of the Co-Chairs’ Tool:³

Main observation:

- Parties generally agreed that paragraphs 43–45 serve as a sufficient basis for the Agreement, as many of the provisions are standard in other international agreements.
- A number of Parties indicated that language of paragraph 43-45 can build on the language of the Kyoto Protocol, and some Parties requested to identify what language in the Kyoto Protocol can be used for further clarity such the provision of Article 13 of Kyoto Protocol, *mutatis mutandis*.

Specific observations:

- Parties generally agreed that the Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to the Agreement, with Parties to the Convention that are not Parties to the Agreement participating as observers and not taking part in decision-making concerning the Agreement (drawing on the CMP model of Article 13 of the Kyoto Protocol). Parties were of the view that the term “governing body” could be changed throughout the text to reflect this approach.
- Parties indicated that further consideration is required with respect to the rules of procedure of the governing body, the application of the financial procedures under the Convention, and additional functions of the governing body.
- A Party made specific proposal to add the provision: “The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement 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 the entry into force of the Agreement”.

Article 46, Part I of the Co-Chairs’ Tool:

Main observation:

- Parties were generally of the view that it would be useful for existing institutions under the Convention to support the Agreement but that this Article may require further consideration.

Specific observations:

- Some Parties felt that this blanket provision was too broad and not usually found in international agreements (as reflected in footnote 35 to this provision), and suggested that institutions that would serve the Agreement be identified on a case-by-case basis. It was further noted that the current institutions were developed in a specific context with specific mandates that may not be relevant for the Agreement. Some

¹ Re-issued due to technical correction.

² <http://unfccc.int/meetings/bonn_aug_2015/in-session/items/9167.php>.

³ Numbering of provisions reflects the numbering in the Co-Chairs’ Tool of 24 July (ADP.2015.4.Informal Note, annex I, available at <<http://unfccc.int/6911.php?preref=600008595>>).

Parties were also concerned to avoid misinterpretations with respect to the use of Kyoto Protocol institutions over which the COP does not have authority to decide upon;

- Some Parties felt that this provision allows for the implementation of the Agreement to benefit from the experience and expertise of the Convention institutions and noted that this is linked to the objective of the Agreement (section C). Some Parties also noted that this enabling provision was required so that the Convention institutions may serve the Agreement, in particular those institutions relevant for means of implementation. Some Parties also suggested that the provision could be revised so that only bodies and institutional arrangements necessary for the implementation of the Agreement serve it. It was also noted that “mechanisms” are not institutional arrangements and would therefore not be included.

Article 47, Part I of the Co-Chairs’ Tool:

Main observation:

- Parties were of the view that the issue of immunity could be justifiable but needs to be addressed on a case-by-case basis, and they raised concerns about whether it should be addressed in the Agreement.

Specific observations:

- Many Parties were of the view that this provision should not be retained. It was noted that the provision raises constitutional concerns for some Parties. Some Parties questioned the need for this provision.
- One Party, speaking on behalf of the group of Parties that proposed this provision, noted that it will convey the comments of the facilitated group to its group and report back at the next meeting of the facilitated group.

Article 48.3, Part I of the Co-Chairs’ Tool:

Main observation:

- Parties noted that this matter was closely linked to the discussions on commitments/contributions/actions in other sections, particularly sections C, D and J. Some Parties were concerned about the lack of clarity on the appropriate forum for discussing the matter of ‘housing’ of commitments/contributions/actions.

Specific observations:

- Some Parties emphasized that the option of “no further requirements” should be kept on the table, as they are of the view that there is no need for this provision in view of the basic obligations of Parties in the Agreement, in addition to awaiting the results of discussions on other sections. Others emphasized that it is important that Parties submit their INDCs at the time of ratification, thus clarifying their commitments under the Agreement.
- Regarding the specific context of this section, several Parties shared their ideas of how they envision the INDCs will be housed in the Agreement and what that would mean for the options for this provision. The issue of housing of commitments/contributions/actions generated a long discussion with diverging views about whether they should be legally binding.
- Some Parties noted that the concept of “national schedules” was new and unclear, and that it was too late for it to be properly discussed in the negotiations.
- Some Parties expressed the view that if any commitments/contributions/actions were to be agreed as additional requirements to become Party to the Agreement, such commitments/contributions/actions would have to be related to the corresponding elements of the Durban mandate such as adaptation.
- There was a general understanding that the next step could include a joint spin-off meeting between respective sections, as proposed by the Co-Facilitators, where Parties could discuss the substantive issues as well as the topics related to the context of individual sections.

Article 49.1, Part I of the Co-Chairs’ Tool:

Main observation:

- There was common understanding that broad and meaningful participation in the Agreement should be ensured.

- Parties were generally of the view that a double threshold for the entry into force would be the preferred option, but questions remains as to how this double threshold should be defined.
- Parties felt that further consideration of this issue would need to take into account the outcome of the discussions on other sections of the Co-Chairs' Tool.

Specific observations:

- With respect to the double threshold, some Parties voiced support for a cumulative double threshold (number of Parties and a percentage or gigatonnes of global greenhouse gas emissions), some Parties for an alternative threshold (number of Parties or percentage of greenhouse gas emissions), and some Parties for Article 49.1 option 5, which includes a specific requirement for Annex I Parties.
- Parties recognized that the source of the greenhouse gas emission data needs further consideration.
- Some Parties felt that the reference to a specific date (i.e. not before 2020) was to reflect the Durban mandate, and was intended to avoid an overlap with the second commitment period of the Kyoto Protocol and the start of the 2015 Agreement.
- Parties also noted that the use of the term “coming into effect” was intended to reflect the option of adoption by the COP of decisions as the agreed outcome of the work of the ADP, but that this term may no longer be relevant in view of the Co-Chairs' Tool.

Article 49.4, Part I of the Co-Chairs' Tool:

Main observation:

- All Parties were of the view that this provision is not required in the Agreement since this issue is addressed by the Vienna Convention on the Law of Treaties, which would apply to the Agreement.

Specific observation:

- Some Parties noted that this issue could be addressed in a COP decision, while other Parties questioned the necessity of its inclusion in the Agreement.

Article 50, Part I of the Co-Chairs' Tool:

Main observation:

- A number of Parties were of the view that this provision should be deleted (in view of the durable character of the Agreement, the fact that the start date is covered by the entry into force provision and that Parties may terminate the Agreement).
- Other Parties expressed the view that this provision should be retained at this moment because an end date may be required depending on the final content of the Agreement, and a start date may be required in order to avoid a gap between the second commitment period of the Kyoto Protocol and the start of the Agreement.

Article 51, Part I of the Co-Chairs' Tool:

Main observation:

- There was a general understanding by Parties that this provision was sufficient basis for the Agreement.

Article 52, Part I of the Co-Chairs' Tool:

Main observation:

- Parties felt that further consideration of this issue would need to take into account the outcome of the discussions on commitments/contributions/actions and decisions on other sections of the Co-Chairs' Tool.

Article 53, Part I of the Co-Chairs' Tool:

Main observation:

- There was a general understanding that this provision was a sufficient basis for the Agreement.

Article 54, Part I of the Co-Chairs' Tool:*Specific observation:*

- There was a common understanding among Parties that Article 54.1 should be retained as sufficient basis for the Agreement as this is a standard provision in international agreements.
- Some Parties were of the view that Article 54.2 should be deleted as it is unlikely that Parties will reach agreement on this matter in time for the adoption of the Agreement, and that this issue could be addressed by the governing body.
- Other Parties were of the view that this issue should be covered by the Agreement in order to avoid lengthy discussions by the governing body on this matter.

Article 55, Part I of the Co-Chairs' Tool:*Specific observations:*

- Some Parties were of the view that conditioning participation in decision-making on a mitigation commitment would create an incentive for Parties to have a mitigation commitment and to maintain it.
- Other Parties expressed concerns about this requirement as they felt that any obligation should include all elements (e.g. adaptation) and not be mitigation-centric, or it could be seen as a disincentive to ratify the Agreement).
- Some Parties acknowledged that the wording of this Article could be revised (one proposal was made to refer to INDCs instead of “mitigation commitments”). There was also a proposal to change the provision to the following: “Annex I Parties should have mitigation and finance commitments in order to participate in decision-making under this Agreement”.

Article 56, Part I of the Co-Chairs' Tool:*Main observation:*

- Some Parties indicated that there is a lack of clarity on the meaning of the term “country contribution documents”.
- After the Head of the Treaty Section of the United Nations Office of Legal Affairs clarified that the proposal for the Depositary to hold and manage a repository of country contribution documents was not a Depositary function but is usually dealt with by the substantive secretariat of the treaty concerned, the proponent of this requirement indicated that the proposal would be withdrawn.

Article 57, Part I of the Co-Chairs' Tool:*Main observation:*

- Several Parties supported the ‘no reservation’ clause.

Article 58, Part I of the Co-Chairs' Tool:*Main observation:*

- Some Parties supported the idea that Parties having discharged their current mitigation commitment should be a condition for withdrawing from the Agreement, while other Parties supported a standard withdrawal provision found in international agreements.

Article 59, Part I of the Co-Chairs' Tool:*Main observation:*

- There was a general understanding that this provision was sufficient basis for the Agreement.