

WORK OF THE CONTACT GROUP ON ITEM 3

Section M

10 February 2015@ 22:30h

M. *[[Procedural and institutional provisions^{1,2]}*

[Institutional arrangements]

89. *[Provisions relating to the governing body of the agreement (based on Article 13(1) of the Kyoto Protocol):* The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this agreement.]
- 89bis. [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.]
- 89ter. [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.]
- 89quater. [The governing body 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 are deemed necessary for the implementation of this agreement; (b) adopt its own rules of procedure at its first session; (c) [placeholder for any other functions deemed necessary].]
- 89quinquies. [The first meeting of the governing body shall be convened by the secretariat no later than one year after the date of entry into force of this agreement. Thereafter, ordinary meetings of the governing body shall be held at regular intervals to be decided by the governing body.]
- 89sexies. [Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this agreement, 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.]
- 89septies. [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 Conference of the Parties serving as the meeting of the Parties to this agreement 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 Conference of the Parties serving as the meeting of the Parties to this agreement 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, as referred to in paragraph [x] above.]
90. *[Provisions relating to the secretariat (based on Article 14 of the Kyoto Protocol):* The secretariat established by Article 8 of the Convention shall serve as the secretariat of this agreement. 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 the governing body.]
91. *[Provisions on the SBSTA and the SBI (based on Article 15 of the Kyoto Protocol):* The SBSTA and the SBI established by Articles 9 and 10 of the Convention shall serve as, respectively, the SBSTA and the SBI of this

¹ Headings and subheadings used throughout these elements for a draft negotiating text are provisional and only intended to orientate the reader.

² Some Parties consider that it is premature to discuss this section.

agreement. The provisions relating to the functioning of these two bodies under the Convention shall apply mutatis mutandis to this agreement. Sessions of the meetings of the SBSTA and the SBI of this agreement shall be held in conjunction with the meetings of, respectively, the SBSTA and the SBI of the Convention. 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. 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.]

91bis. [This agreement to build on the subsidiary bodies / institutional arrangements and mechanisms established by or under the Convention. All subsidiary bodies / institutional arrangements established by or under the Convention shall serve this agreement, unless otherwise decided by the governing body. The governing body may provide further guidance as appropriate.]

92. [The governing body shall establish, building on the work conducted under the SBSTA regarding the framework for various approaches, means for cooperative arrangements to be defined and accounted for under the agreement, that strengthen and create synergies between mechanisms under the Convention and its related legal instruments and mechanisms established or to be established, jointly or individually, by Parties, and avoid the double counting of efforts, including:

- The Financial Mechanism;
- The Technology Mechanism;
- The flexibility mechanisms established by Articles 6 and 12 of the Kyoto Protocol;
- The new market-based mechanism defined in decision 2/CP.17, paragraph 83;
- Alternative policy approaches, such as joint mitigation and adaptation;
- A REDD-plus mechanism / The Warsaw Framework for REDD-plus;
- A mechanism for climate resilience and sustainable development;
- A joint mitigation and adaptation mechanism for the integral and sustainable management of forests;
- Subnational, national and regional emissions trading schemes.]

93. [Immunities:

Option 1: Each Party to this agreement shall accord to the persons exercising their functions on any board, panel, group or other institution established by this agreement, during their journey to and from the place of meeting, immunity from legal process. The governing body shall determine the modalities for the operation of immunities;

Option 2: No provision on immunities.]

[Procedural provisions / Final clauses]

94. [Signature, ratification, acceptance, approval and accession (based on Article 24(1) of the Kyoto Protocol):

94.1 This agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations (REIOs) which are Parties to the Convention at a specified place and time. Thereafter, the agreement would be open for accession by such States and REIOs;

94.2 *Provisions on REIOs (based on Article 22(2) and (3) of the Convention):* Any REIO which becomes a Party to the agreement without any of its member States being a Party shall be bound by all the obligations under the agreement. In the case of REIOs with one or more member States that are Parties to the agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under the agreement concurrently. In their instruments of ratification, acceptance, approval or accession, REIOs shall declare the extent of their competence with respect to the matters governed by the 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;

94.2bis. REIOs and their member States may agree to prepare, communicate and fulfil their mitigation commitments jointly. When the common mitigation commitment is fulfilled jointly, each Party participating

in a joint fulfillment agreement will be considered to be in compliance with achieving its mitigation commitment.

94.2ter Actions taken pursuant to the agreement by REIOs, or by any group of Parties acting jointly, to be in accordance with paragraph/decision X (to be adopted at COP 21).

94.3 Additional requirements on deposit of instruments of ratification, acceptance, approval or accession:

Option 1: Requirements relating to the submission of national schedules at the same time as deposit of instruments of ratification, acceptance, approval or accession;

Option 2: No additional requirements.

Option 3: A Party to the Convention to have a legally binding mitigation commitment in order to become a Party to this agreement.]

95. [Entry into force:

95.1 **Option 1:** All entry into force provisions set out in paragraph 95.2 to preclude entry into force before 2020;

Option 2: Entry into force provisions to allow for possibility of entry into force by 2020.

95.2 **Option 1:** This agreement shall enter into force on the thirtieth / ninetieth day after the date on which not less than 10/50/[X] (a number that is not over- or under-inclusive) Parties to the Convention have deposited their instruments of ratification, acceptance, approval or accession;

Option 2: The agreement will come into effect on and be implemented from 2020, subject to the deposit of [X] number of instruments of ratification, acceptance, approval, or accession;

Option 3: A double threshold that includes both a number of Parties ratifying and a percentage of global emission reductions covered by the ratifying Parties / a minimum of global emissions from Parties;

Option 4: The agreement will enter into force on [X] date (“from 2020”), provided that [X] number of Parties have deposited their instruments and that the total of emissions of such Parties constitutes [X] per cent of the global total of emissions in year [X]. If such thresholds have not been met by [X] date, the agreement will enter into force [X] days after the thresholds have been met;

Option 5: Entry into force upon either a sufficiently high number ([X]) of Parties or a percentage ([X]) of global GHG emissions covered, whichever occurs first, but not earlier than on 1 January 2020;

Option 6: The agreement shall enter into force on 1 January 2020 at the latest provided that [Z] Parties covering in total [X] Gt of CO₂ eq have ratified it;

Option 7: This agreement shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession;

Option 8: The agreement shall enter into force on the ninetieth day after the date on which not less than half of the number of Parties to the Convention, incorporating all Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.

95.3 For each State or REIO that ratifies, accepts or approves the agreement or accedes thereto after the entry into force according to paragraph 95.1, the agreement shall enter into force on the ninetieth / [X] day after the date of deposit by such State or REIO of its instrument of ratification, acceptance, approval or accession (*based on Article 23(2) of the Convention*);

95.4 Provisions on REIOs (*based on Article 23 (3) of the Convention*): For the purposes of paragraph 95, any instrument deposited by a REIO shall not be counted as additional to those deposited by States members of the organization;

95.5 Provisional application:

Option 1: A Party to the Convention that intends to ratify, approve, accept or accede to this agreement, may at any time notify the Depositary that it will apply this agreement provisionally for a period not extending beyond the time of entry into force of the agreement;

Option 2: No specific provision on provisional application.]

96. [Amendments to the agreement (*based on Article 15 of the Convention*):

- 96.1 Any Party may propose amendments to the agreement;
- 96.2 Amendments to the agreement shall be adopted at an ordinary session of the governing body. The text of any proposed amendment to the agreement shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the agreement and, for information, to the Depositary;
- 96.3 The Parties shall make every effort to reach agreement on any proposed amendment to the agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance;
- 96.4 Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the agreement;
- 96.5 The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment;
- 96.6 For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.]

97. *[Amendments to any annexes to the agreement:*

Option 1: Amendments to the Annexes to this agreement, which are an integral part of the agreement, shall be adopted by the governing body and shall apply forthwith, without the requirement of a ratification process;

Option 2:

- 97.1 Annexes to the agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to the agreement constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article X, paragraphs x and x, 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;
- 97.2 Annexes to the agreement shall be proposed and adopted in accordance with the procedure set forth in Article X, paragraphs x and x;
- 97.3 An annex that has been adopted in accordance with paragraph 97.2 above shall enter into force for all Parties to the agreement six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary;
- 97.4 The proposal, adoption and entry into force of amendments to annexes to the agreement shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the agreement in accordance with paragraphs 97.2 and 97.3 above;
- 97.5 If the adoption of an annex or an amendment to an annex involves an amendment to the agreement, that annex or amendment to an annex shall not enter into force until such time as the amendment to the agreement enters into force.

Option 3: Opt-in (ratification procedure).

Option 4: Simplified procedure for the mitigation commitments.

[Any Party may propose an adjustment to enhance the efforts expressed by its mitigation commitment inscribed in Annex [...] to this agreement. A proposal for such an adjustment shall be communicated to the Parties by the secretariat at least three months before the meeting of the governing body of this agreement at which it is proposed for adoption.

An adjustment proposed by a Party to enhance the efforts expressed by its mitigation commitment inscribed in Annex [...] to this agreement shall be considered adopted by the governing body 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 Depositary, 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.]

Option 5:

- 97.1. At the first Conference of the Parties to the Convention serving as the meeting of the Parties to this agreement and at time intervals that are seen as fit, the Conference of the Parties to the Convention serving as the meeting of the Parties to this agreement may request the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation to review both the per capita greenhouse gas emissions and per capita gross domestic products of Parties and present to it draft decisions on the revisions of Annex I and/or Annex II to the Convention;
- 97.2 In reviewing and revising Annex I to the Convention, the total amount of greenhouse gases, expressed in carbon dioxide equivalent, emitted by a Party to the Convention since 1750 A.D. shall be added and divided by the current population of that Party. Based on the thus obtained per capita greenhouse gas emissions and population size of each Party to the Convention, the average global per capita emissions of greenhouse gases shall be used to evaluate the status of the greenhouse gas emissions of a Party to the Convention. Each Party to the Convention whose per capita greenhouse gas emissions exceed the global average per capita greenhouse gas emissions shall be proposed to be inscribed in Annex I to the Convention, and the remaining Parties shall not be proposed to be inscribed in Annex I to the Convention;
- 97.3 In reviewing and revising Annex II to the Convention, the current per capita gross domestic product of each Party to the Convention shall be compared with the global average per capita gross domestic product. Each Party to the Convention whose per capita gross domestic product is above the global average per capita gross domestic product and whose population size is above half a million shall be proposed to be inscribed in Annex II to the Convention. The remaining Parties shall not be proposed to be inscribed in Annex II to the Convention;
- 97.4 The Conference of the Parties to the Convention serving as the meeting of the Parties to this agreement will, as it sees appropriate, review, revise and endorse the draft decision on any revision to either or both Annex I and Annex II to the Convention and present the draft decision that it has endorsed to the President of the Conference of the Parties to the Convention with a request for the Conference of the Parties to the Convention to review, amend as it sees appropriate and approve the proposed amendment or amendments to Annex I or Annex II to the Convention according to Articles 15 and 16 of the Convention;
- 97.5 Based on the decision of the Conference of the Parties, the President of the Conference of the Parties shall inform in writing the Depository of the Convention, the Depository of this agreement and each Party to the Convention which is to be inscribed in or removed from either Annex I or Annex II to the Convention. The President of the Conference of the Parties shall also report on the outcome to the Conference of the Parties serving as the meeting of the Parties to this agreement;
- 97.6 A Party which has been informed in writing by the President of the Conference of the Parties that it is to be removed from Annex I or Annex II to the Convention shall be deleted from the said Annex as of the date of its written notification. A Party which has been informed in writing by the President of the Conference of the Parties that it is to be inscribed in Annex I or Annex II to the Convention shall accordingly be inscribed immediately after two years have passed since it received the written notice.]
98. [Settlement of disputes (*based on Article 19 of the Kyoto Protocol*): The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this agreement.]
99. [Voting / Right to vote (*based on Article 18 of the Convention*):
- 99.1 Each Party shall have one vote, except as follows: REIOs, 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;
- 99.1bis The Parties shall make every effort to reach agreement by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, except:
- a. For decisions on financial issues, in which case decisions shall be taken by consensus;
 - b. For decisions on procedure, which shall be taken by a majority vote of the Parties present and voting.

99.1ter If the question arises as to whether a matter is one of a procedural or substantive nature, the President shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the Parties present and voting;

99.2 Placeholder for provisions with respect to Parties who put forward a joint contribution.]]

100. [Depositary (based on Article 19 of the Convention): The Secretary-General of the United Nations shall be the Depositary of this agreement:

Option 1: In addition to the normal functions of the Depositary, the Depositary should also hold and manage a repository of country contribution documents;

Option 2: No additional functions for the Depositary.]]

101. [Reservations (based on Article 24 of the Convention):

Option 1: No reservations may be made to this agreement;

Option 2: Provide for reservations.]]

102. [Withdrawal (based on Article 25 of the Convention):

Option 1: At any time after [X] 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. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this agreement.

Option 2: At any time after [X] 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. Any such withdrawal shall take effect upon expiry of the current mitigation commitment of that 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. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this agreement.]]

103. [Authentic text (based on Article 26 of the Convention): 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.]]

Structural suggestions

All institutional issues should be addressed in one place.

Include specific institutional arrangements under the respective elements of the agreement. Consider the relationship between the various mechanisms once there is clarity on the content of new mechanisms.

Paragraph 92 – should be removed from section M because it deals with elements that are already addressed in other parts of the text such as finance (section G), technology (in section H) and carbon markets and land (in section D).

Annex / Annex A / Annex B / Attachments (for paragraph 77, options 1, 2 and 3)

[...]
