

MODULE 2

Legal and procedural issues of the UNFCCC process



Introduction to the UNFCCC process

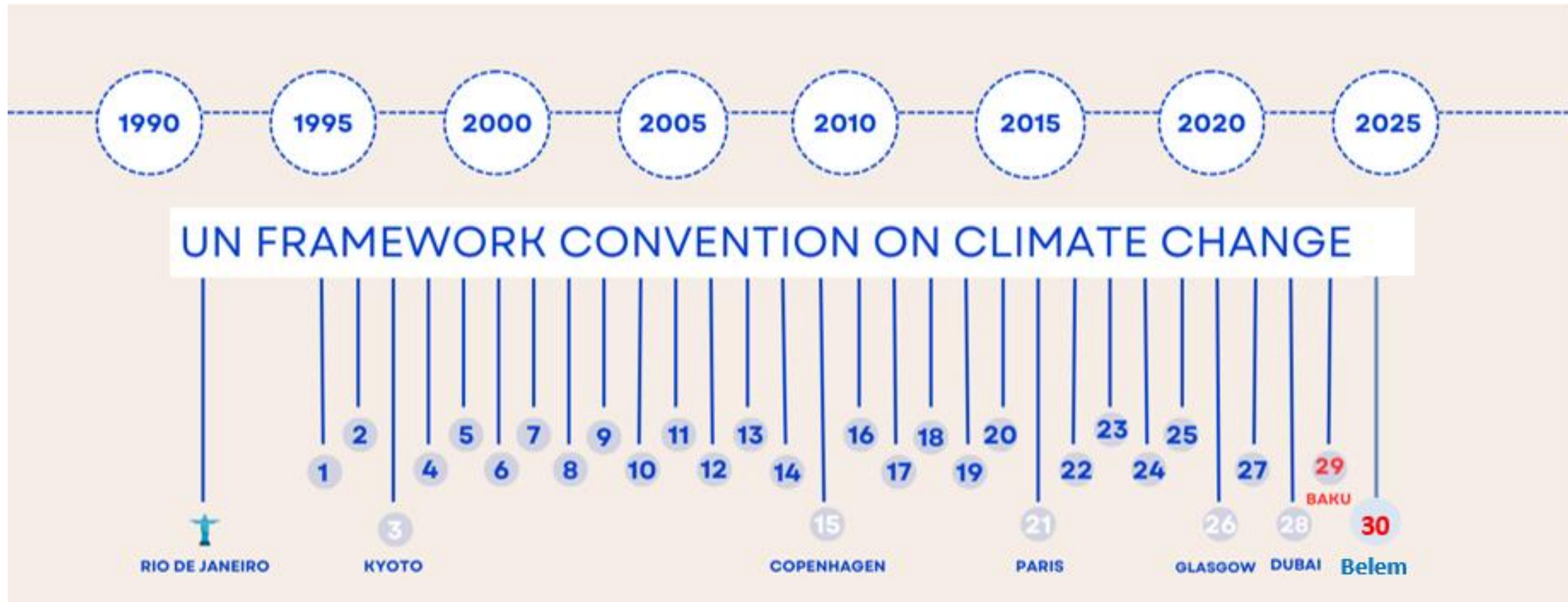


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International Climate Change Regime

30 years of intergovernmental climate change negotiations that represent the global response to climate change.



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International Climate Change Regime: The UNFCCC



The Convention

- Adopted in 1992, in force since 1994, 198 Parties
- Its goal is to stabilize greenhouse gas emissions (art. 2)
- CBDR-RC (Article 3)
- General commitments: All Parties to report GHG inventories (Article 4.1(a) and 12.1) and national communications (Article 12.5)
- Specific commitments: on Annex I Parties: mitigation commitments (Article 4.2(a) and (b) and 12.2(a)) and on Annex II Parties: financial assistance and technology transfer commitments (Articles 4.3 and 4.4)



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International Climate Change Regime: The Kyoto Protocol

- Adopted in 1997, in force since 2005, 192 Parties
- The Kyoto Protocol aims to reduce the emission of six greenhouse gases
- It set specific and legally binding emissions for "Annex I Parties"



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International Climate Change Regime: The Paris Agreement



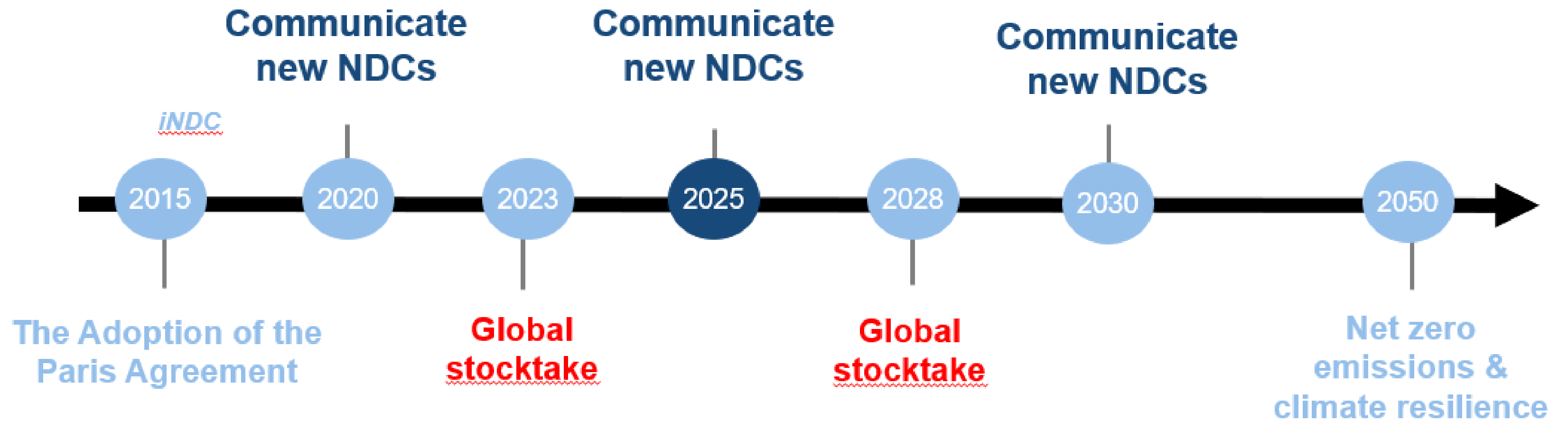
- Adopted in 2015, in force since 2016, 195 Parties
- For the first time all Parties agreed to support the common goal of cutting greenhouse gas emissions
- Based on a bottom-up approach where all parties decide their own commitments, communicated through nationally determined contributions
- The impact of the nationally determined contributions is collectively assessed every 5 years (GST)
- The outcome of the GST informs new and more ambitious NDCs.



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The ambition cycle



Thank you!



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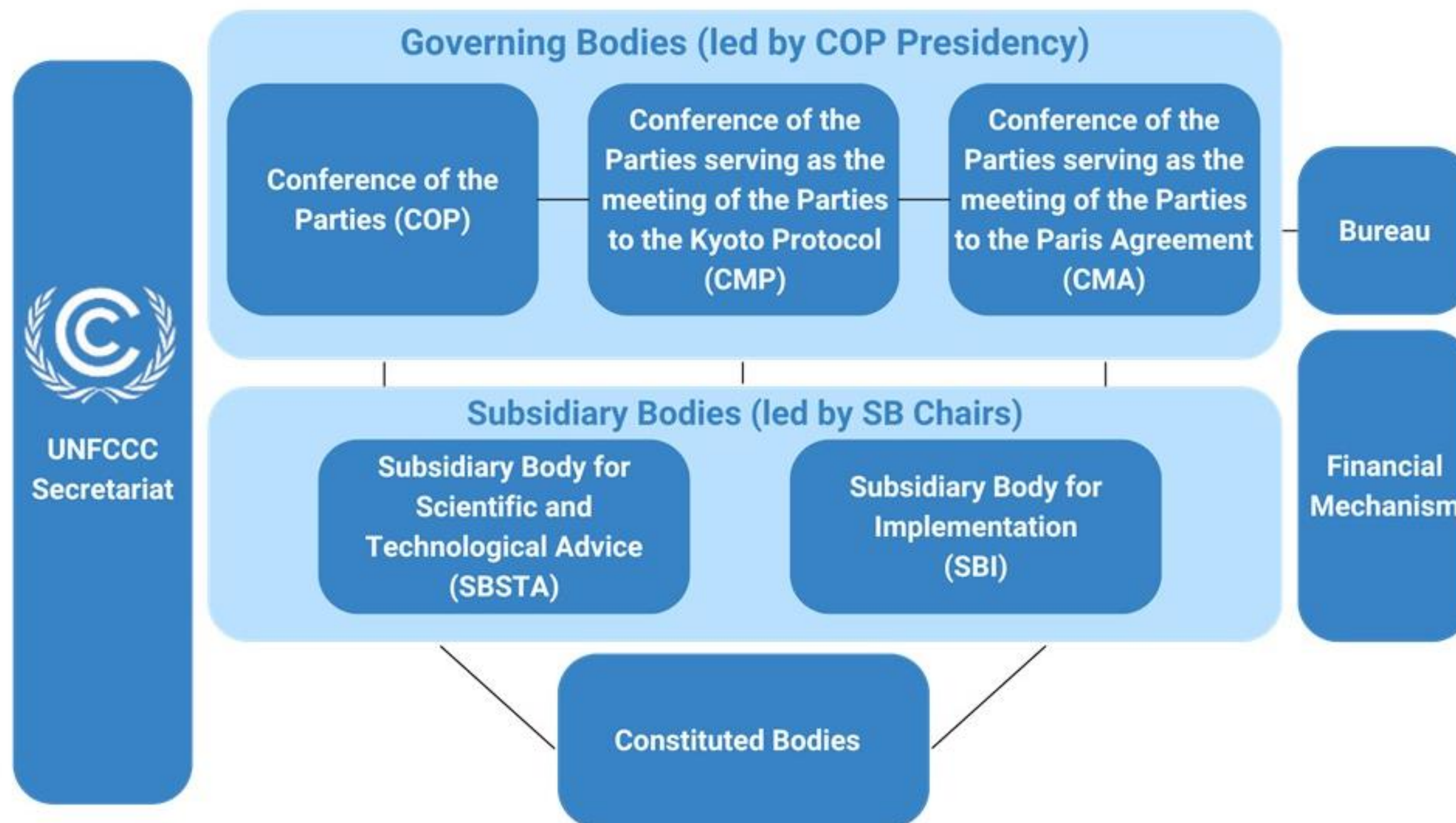
Introduction to the UNFCCC process and its institutions



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Institutional Structure of the UNFCCC Intergovernmental Process



Constituted bodies under the UNFCCC process

Constituted Bodies

Adaptation Committee	Least Developed Countries Expert Group
Adaptation fund Board	Facilitative Working Group of the LCIPP
A. 6.4 Supervisory Body	Standing Committee on Finance
CDM Executive Board	Technology Mechanism (ExCom and CTCN AB)
Kyoto Protocol Compliance Committee	Paris Agreement Implementation and Compliance Committee
Consultative Group of Experts	Paris Committee on Capacity-building
WIM (Ex Comm and Santiago network AB)	Katowice Committee of Experts



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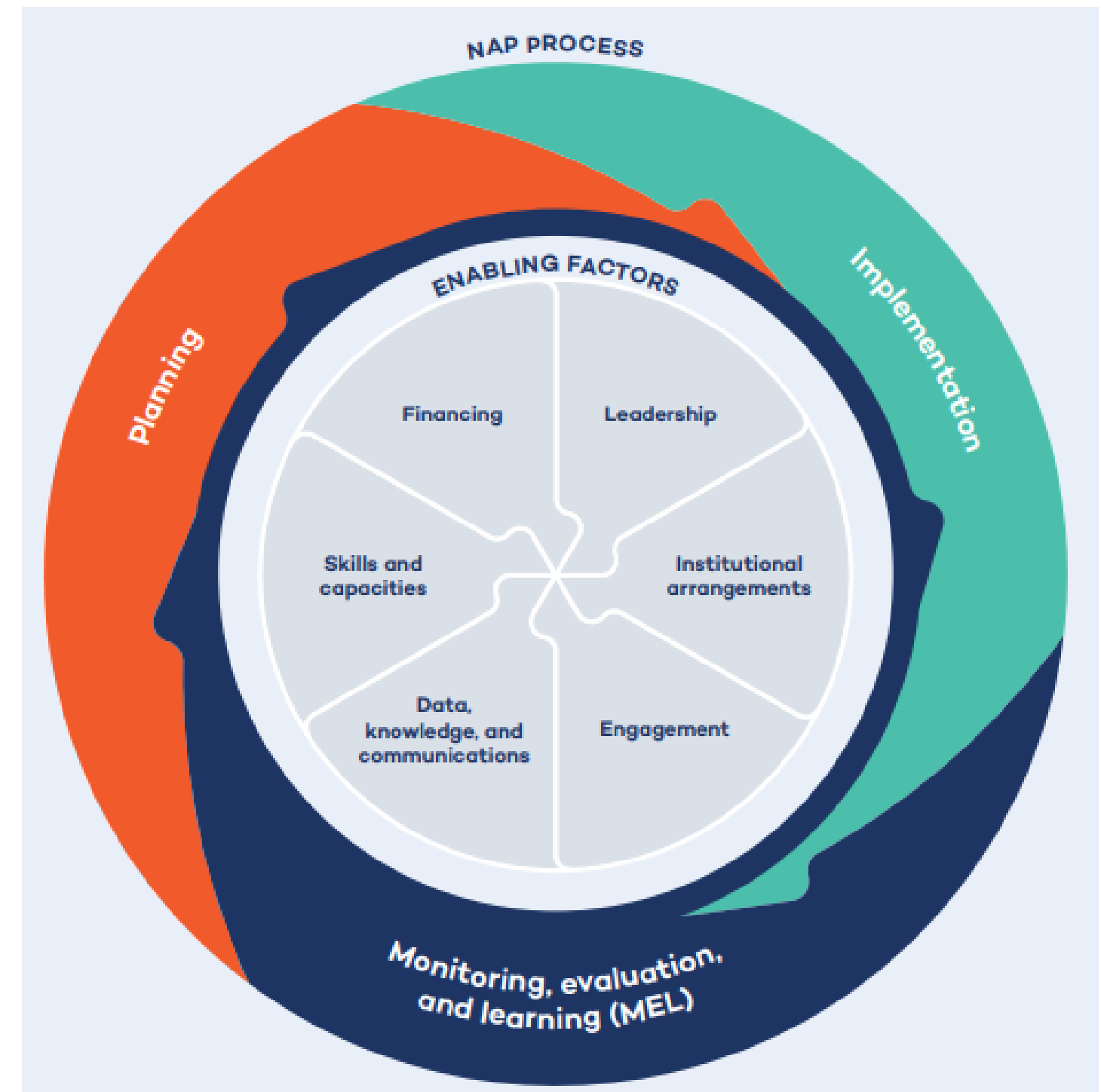
Example – Least Developed Countries Expert Group (LEG) and Eswatini

Established by the COP in 2001 to provide technical guidance and support to least developed countries:

- Supports LDCs in the process to formulate and implement national adaptation plans (NAPs)
- Develops technical guidelines for the NAP process
- Collaborate with the GCF, the LDCF and the AF on providing support to the LDCs in accessing funding for formulating and implementing NAPs
- Organizes NAP expo - a platform to exchange experiences and foster partnerships on how to advance NAPs;

Eswatini proactively engages in and avails of the support provided by the LEG:

- Regularly participates at the NAP Expo;
- produced a NAP which is now undergoing review using the NAP technical guidelines,
- Submitted its draft NAP to the secretariat for peer review. This has been channeled for review through the UN4NAPs



UN CC learn – e-learning courses



The National Implementation of the Paris Agreement

📁 Climate change

📖 Self-paced courses
📄 With certification
🕒 2 hours

🗨 English



The Paris Agreement Implementation and Compliance Committee

📁 Climate change

📖 Self-paced courses
📄 With certification
🕒 3 hours

🗨 English



A Participant Guide of the UN Climate Change Process

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📖 Self-paced courses
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E-learning courses: <https://www.uncclearn.org/>



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Module 2

Overview of the draft rules of procedure



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Overarching procedural considerations

- Main principles of the UNFCCC process:
 - **Openness**
 - **Transparency**
 - **Inclusiveness**
- In addition, the draft rules of procedure provide for **equal representation** and **procedural equity**: these apply to all participants – not just the President and Chairs
- Ensuring procedural integrity helps make sure these principles are upheld



Draft rules of procedure

- Draft rules of procedure are the **rules of the game**
 - Provide for equal treatment of all Parties
 - Ensure certainty, predictability and orderly conduct of proceedings
 - Define rights and responsibilities of Presiding Officers, Parties and the secretariat, and participation of observers
 - Apply to both the governing and subsidiary bodies (rule 27(1))
- The President has the main responsibility for ensuring adherence to RoPs.
- Supplemented by established practices



Draft rules of procedure

What do the draft rules of procedure cover? For example...

- Preparation of the provisional agenda (rules 9-11)
- Quorum for meetings and decision-making (rule 31)
- Officers of the Bureau of the COP (e.g. rule 22)
- Functions and powers of the President (e.g. rule 23)
- Decision making
- Points of order (e.g. rule 34)
- Procedural motions (e.g. rule 35)
- Credentials (rules 17-21)
- Application of the draft rules of procedure to the SBs (rule 27)
- Observers (rules 6-8)
- Languages and interpretation (e.g. rules 54-56)
- ...and other draft rules



The draft rules of procedure of the COP are not adopted, on which rule there was no agreement at COP 1?

1. On the quorum to adopt decisions
2. On the host of the COP sessions
3. On voting rules
4. On the membership of the Bureau



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1. On the quorum to adopt decisions?
2. On the host of the COP sessions.
3. On voting rules (rule 42)
4. On the membership of the Bureau

Consensus decision-making

- Decision-making is done by **consensus** in the UNFCCC process
 - “Consensus” is not formally defined
 - In UN practice, it's the adoption of decisions:
 - By general agreement;
 - Absent any formal objection
- **Consensus does not mean unanimity! It does not mean every Party must favor every element of the decision**
 - A Party can still make reservations, declarations, or statements of interpretation/position
 - **In case of uncertainty, Presiding Officers must check**



Consensus decision-making

- If consensus can't be achieved, the **Presiding Officer cannot proceed to adoption**
- The Presiding Officer should make every effort to achieve consensus, including:
 - **Appeal to the Party** to lift its objection.
 - **Suspend the meeting** for further consultations.
 - **Propose to continue consideration** at a subsequent session.
- Lack of consensus on a decision is usually apparent well before it is submitted for adoption
- Pros and cons





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PRESIDENT



Role of the Presiding Officer – rules 22 to 26

The President shall have complete control over proceedings and maintenance of order (rule 23)
- **must be impartial and not exercise the rights of the representative of a Party** (rule 22.3)

General powers of the President (Rule 23)

- The President shall:
 - Declare the opening and closing of the session
 - Preside over meetings of the session
 - Ensure observance of the rules of procedure
 - Accord the right to speak
 - Put questions to a vote
 - Announce decisions
 - Rule on points of order
- **The President remains under the authority of the COP**



Quorum – rule 31

- Meetings within the UNFCCC process should only proceed when there is quorum
- Rule 31: Two types of quorum:
 - **Opening a meeting:** Requires **one-third** of the to be present
 - **Taking decisions:** Requires **two-thirds** of the Parties to be present
- If there is no quorum after a meeting opens:
 - The Presiding Officer should suspend the meeting
 - Not resume the meeting until quorum can be established
- In contact groups and informals, the secretariat will typically:
 - Confirm that **at least one representative from each of the major negotiating groups is present**
 - Only then advise the Presiding Officer to open a meeting to allow debate to proceed or a decision to be taken









Section 3

Points of order



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- Rule 34: “During the discussion of any matter, a representative may at any time raise a point of order which shall be decided immediately by the President in accordance with these rules. [...]”
- A point of order **may only address procedural, not substantive matters**
- **What is a point of order?** It may relate to:
 - The manner in which the discussion is being conducted
 - The maintenance of order in the meeting
 - The compliance with the rules of procedure, or
 - The manner in which the Presiding Officer is exercising the powers conferred on him/her by the draft rules



Points of order

- Rule 34: Presiding Officers must rule on a point of order **immediately**
 - A representative may appeal against the ruling – must be put to a vote immediately
 - The Presiding Officer’s ruling stands unless overruled by a majority of Parties present and voting
- How Parties typically raise a point of order - either:
 - Raise their Party name plate, make a “T” sign and say “point of order”
 - Request the floor electronically and say “point of order”





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Is this a point of order?

- **Copenhagen Accord (COP 15)**
 - President proposed suspending a plenary meeting to give Parties one hour to review/consult on the text of the Copenhagen Accord.
 - Several Parties raised points of order objecting to this



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- President proposed suspending a plenary meeting to give Parties one hour to review/consult on the text of the Copenhagen Accord.
- Several Parties raised points of order objecting to this
- President had to continue the meeting and the meeting was eventually suspended five hours later

Is this a point of order?

Doha Amendment (COP 18/CMP 8)

- Points of order raised by several Parties regarding the adoption of the Doha Amendment
- Expressed disagreement with the outcome of the session



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Doha Amendment (COP 18/CMP 8)

- Points of order raised by several Parties regarding the adoption of the Doha Amendment
- Expressed disagreement with the outcome of the session

This was *not* a point of order as this is not procedural

- President confirmed that views will be reflected in the report of the session

Section 4

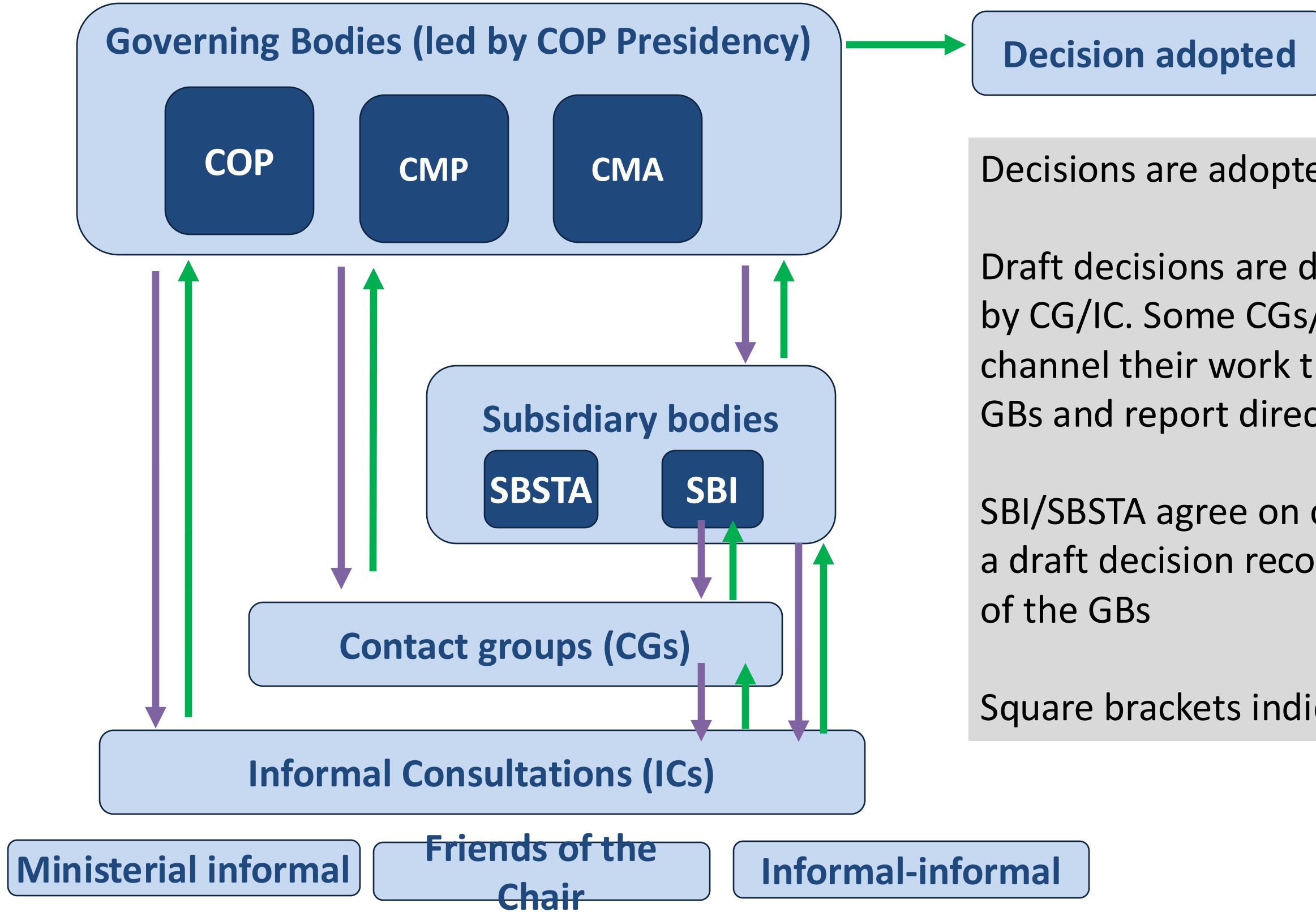
How decisions are agreed



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Reaching a COP/CMP/CMA decision



Decisions are adopted by GBs

Draft decisions are developed and recommended for adoption by CG/IC. Some CGs/ICs are established by the SBs and channel their work through the. Some are established by the GBs and report directly to the plenary of the GB.

SBI/SBSTA agree on conclusions. These can include the text of a draft decision recommended for consideration and adoption of the GBs

Square brackets indicate areas of disagreement.

What is a *substantive outcome at the SBs?*

- Parties agree on substance → ***conclusions***
- Conclusions may include:
 - Draft decision text (to be forwarded from the SB(s) to the GB(s) for consideration and adoption)

What is a *substantive outcome at the GBs?*

- Parties agree on substance → ***decision***



Non-conclusion of agenda items – Subsidiary Bodies

- **Scenario 1: SB agrees to continue work on the item at a subsequent SB session**
 - For continuing work at the next session, conclusions must include:
 - **When** – next session?
 - **On what basis** – on work already done? If so, include a link to this
- **Scenario 2: SB recommends that the COP, CMP and/or CMA further considers the item** (second SB session only)
 - Must specify in SB conclusions whether the SB is forwarding text based on work already done (and a link to this)
- **Scenario 3: SB cannot agree on conclusions → rule 16**



Non-conclusion of agenda items – Governing Bodies

- **Scenario 1: GBs agrees to continue work on the item at a subsequent GB session**
 - For continuing work at the next session, conclusions must include:
 - **When** – next session?
 - **On what basis** – on work already done? If so, include a link to this
- **Scenario 2: GB recommends that the SBs further considers the item**
 - Must specify in SB conclusions whether the SB is forwarding text based on work already done (and a link to this)
- **Scenario 3: GB cannot agree on the way forward → rule 16**



It this a procedural or a substantive outcome?

Draft conclusions proposed by the Chairs

Recommendation of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation

The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation, at their fifty-seventh sessions, recommended the following draft decision for consideration and adoption by the Conference of the Parties at its twenty-seventh session:

Draft decision -/CP.27

Joint annual report of the Technology Executive Committee and the Climate Technology Centre and Network

The Conference of the Parties,

Recalling decisions 2/CP.17, 1/CP.21, 15/CP.22, 21/CP.22, 15/CP.23, 12/CP.24, 13/CP.24, 14/CP.25 and 9/CP.26,

Is this a procedural or a substantive outcome?

Linkages between the Technology Mechanism and the Financial Mechanism of the Convention

(Agenda sub-item 17(b))

Proceedings

69. The SBI had before it document FCCC/SBI/2022/INF.6. At its 1st meeting, the SBI agreed to consider this matter in informal consultations co-facilitated by Orly Jacob (Canada) and Maia Tskhvaradze (Georgia). At its 3rd meeting, the SBI considered and adopted the conclusions below.

Conclusions

70. SBI 57 considered the progress of the Technology Executive Committee, the CTCN, the GCF and the GEF in strengthening the linkages between the Technology Mechanism and the Financial Mechanism.

71. The SBI agreed to continue consideration of this matter at SBI 58 with a view to recommending a draft decision for consideration and adoption at COP 28, taking into account the draft text on the UNFCCC website.⁶⁵

It this a procedural or a substantive outcome?

IX. Matters relating to adaptation

(Agenda item 9)

A. Global goal on adaptation

(Agenda sub-item 9(a))

54. At its 1st meeting, the CMA noted that this matter was on the agendas of the SBSTA and the SBI.³⁷

55. At the resumed 5th meeting, the President informed the CMA that the subsidiary bodies had forwarded this matter to the CMA for further consideration.³⁸ The CMA agreed to further consider the matter.

56. The President invited Lamin Dibba (Gambia) and Tina Kobilšek (Slovenia) to continue co-facilitating technical discussions on the global goal on adaptation. In addition, the President invited Eamon Ryan (Ireland) and Franz Tattenbach (Costa Rica) to conduct ministerial consultations on the global goal on adaptation.

57. At its resumed 11th meeting, on a proposal by the President, the CMA adopted decision [3/CMA.6](#), entitled “Global goal on adaptation”.



Thank you!



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