

The Kyoto Protocol today

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*This advice is provided by third parties in response to **Query 46/26***

Query:

1. What have the COP, CMA and CMP mentioned with respect to the end of the Kyoto Protocol and the transfer of its governance to the Paris Agreement, adopted on 12 December 2015 (the “**Paris Agreement**”)?
2. What has been said about the current/future role of the Kyoto Protocol?
3. What has been the timeline since the second commitment period? Has there been any evolution under the Kyoto Protocol since?
4. What have three AOs (ICJ, ITLOS, IACtHR) and the request to the African Court of Human and Peoples' Rights said about the Kyoto Protocol?

Advice:

This advice draws on a review of:

- (a) Decisions since the adoption of the Paris Agreement by the following bodies (the “**Governing Bodies**”):
 - (i) the Conference of the Parties (“**COP**”);
 - (ii) Conference of the Parties serving as the meeting of the parties to the Kyoto Protocol (“**CMP**”);
 - (iii) Conference of the Parties serving as the meeting of the parties to the Paris Agreement (“**CMA**”);
- (b) The following advisory opinions (the “**Advisory Opinions**”):
 - (i) the International Court of Justice (“**ICJ**”);

- (ii) the International Tribunal for the Law of the Sea (“**ITLOS**”);
 - (iii) Inter-American Court of Human Rights (“**IACtHR**”); and
- (c) The request for an advisory opinion issued by the Pan African Lawyers Union to the African Court of Human and Peoples’ Rights.

2. Background and legal status of Kyoto Protocol

- 2.1 The UNFCCC, the Kyoto Protocol and the Paris Agreement form the three-pillar architecture of international climate law. The Kyoto Protocol and the Paris Agreement are legally autonomous regimes, both adopted "under" the UNFCCC pursuant to Article 17. Both instruments supplement the Framework Convention. Under public international law, the Kyoto Protocol remains legally binding and in force. The Kyoto Protocol has no expiry date and will continue to exist until such time as parties formally decide to terminate it. The ratification and entry into force of the Paris Agreement have not affected the validity of the Kyoto Protocol.
- 2.2 Article 59 of the Vienna Convention on the Law of Treaties (“**VCLT**”) provides that a later treaty may terminate an earlier treaty by implication where all parties to the earlier treaty intend the matter to be governed by the later one, or the treaties are so incompatible they cannot be applied simultaneously. This provision is not triggered here. Decision 1/CP.21 (Paris, 2015), which adopted the Paris Agreement, contains no provision indicating that the Paris Agreement was meant to supersede the Kyoto Protocol. The preamble to this decision expressly sets out the importance of timely implementation of the Convention and Kyoto Protocol, which indicates coexistence rather than replacement. Not all parties to the Kyoto Protocol are parties to the Paris Agreement, and the provisions of both agreements do not conflict to an extent that makes simultaneous application impossible.
- 2.3 The Kyoto Protocol established its first commitment period (being the fixed period under which the Kyoto Protocol’s binding reduction targets apply and are measured) from 2008 to 2012, and its second commitment period from 2013 to 2020 through the Doha Amendment per Decision 1/CMP.8 (Doha, 2012). Although the Doha Amendment was initiated in 2012, it did not enter into force until 31 December 2020 when the required ratifications were obtained. This was also the date of the expiration of the second commitment period.
- 2.4 As the second commitment period ended in 2020 and there has been no third commitment period negotiation, the quantified emission limitation and reduction commitments established in Annex B are not currently binding. The other parts of the Kyoto Protocol that are not specifically time bound are, however, still technically in force. Further, while there has not been recent discussion of another commitment period in the Decisions of COP or CMP, the Kyoto Protocol itself references “subsequent commitment periods”.¹

¹ Articles 3(4), 3(9) and 3(13).

QUERY 1. WHAT HAVE THE GOVERNING BODIES MENTIONED WITH RESPECT TO THE END OF KYOTO PROTOCOL AND THE TRANSFER OF GOVERNANCE TO THE PARIS AGREEMENT?

3. Although the second commitment period ended in 2020, none of the Governing Bodies have adopted a decision to formally transfer overall governance to the Paris Agreement. The CMP continues to be funded and to meet in the ordinary course and remains the supreme decision-maker on the Kyoto Protocol. There has, however, been a gradual transition of specific Kyoto Protocol mechanisms to the Paris Agreement. The two clearest examples are the Adaptation Fund and the Clean Development Mechanism.

3.1 CMP Decisions

(a) *Adaptation Fund*

The [Adaptation Fund](#) finances adaptation initiatives in developing countries which are particularly vulnerable to the impacts of climate change.

Several CMP decisions reference the transition of the Adaptation Fund from the Kyoto Protocol to the Paris Agreement: Decision 1/CMP.11 (Paris, 2015) first recommended that the CMA consider the Adaptation Fund as serving the Paris Agreement. Decision 1/CMP.13 (Bonn, 2017) set out that the fund “shall” serve the Paris Agreement and requested the CMP to consider whether this should be completely under CMA guidance. Decision 1/CMP.14 (Katowice, 2018) confirmed that the Adaptation Fund would be under CMA guidance from 1 January 2019, and it would cease to serve the Kyoto Protocol once Article 6 Paragraph 4 of the Paris Agreement on share of proceeds becomes available.

However, the move to exclusively serving the Paris Agreement has not been immediate, with Decision 3/CMP.18 (UAE, 2023) highlighting that there continues to be oversight by the CMP through annual reporting and resource mobilisation. Decision 2/CMP.19 (Baku, 2024) requested that the Subsidiary Body for Implementation (“SBI”), in 2025, consider arrangements for moving its governance. These considerations have not been finalized, with Decision 1/CMP.20 (Belém, 2025) noting that the Adaptation Fund Board’s consideration of arrangements should be prioritized. This includes the monetisation of Article 6 Paragraph 4 of the Paris Agreement (i.e. the carbon credit trading mechanism). Please see previous [LRI advice](#) on the challenges of moving the governance of the Adaptation Fund from the Kyoto Protocol to the Paris Agreement.

(b) *Clean Development Mechanism (the “CDM”)*

The [CDM](#), provided for under Article 12 of the Kyoto Protocol, allows countries with emission-reduction obligations to use emission-reduction initiatives in developing countries towards their targets. The transition of the CDM from the Kyoto Protocol to the Article 6 Paragraph 4 mechanism under the Paris Agreement has been more direct than that of the Adaptation Fund.

Decision 2/CMP.16 (Glasgow, 2021) prevents new CDM requests being placed after 31 December 2020. This decision also approved a transfer of CDM funds from the CDM Trust Fund to the Supervisory Body for Article 6 Paragraph 4 Paris Agreement. The CDM was definitively discontinued under Decision

4/CMP.20 (Belém, 2025), with firm deadlines being set for issuance requests and registry transactions (but with provision for the Supervisory Body to maintain all CDM stakeholder interactions for two years after discontinuation).

The international transaction log (“ITL”), which provides for monitoring of emissions trading under the Kyoto Protocol, has recently been discontinued. As of 31 March 2026, the CDM registry has been disconnected from the ITL. Issuance requests are discontinued as of 30 June 2026, and registry transactions are scheduled to end 31 December 2026.

3.2 COP Decisions

COP decisions build upon the CMP decisions, covering the same key issues. Decision 1/CP.21 (Paris, 2015), which adopted the Paris Agreement, contained no express statement in relation to the Paris Agreement replacing or superseding the Kyoto Protocol. Instead, it emphasised the need to expedite the implementation of the Kyoto Protocol to improve upon pre-2020 ambitions. Subsequent COP Decisions appear to endorse the continued operation of Kyoto Protocol: encouragement for adopting the Doha Amendment can be seen in Decision 1/CP.22 (Marrakech, 2016), Decision 1/CP.23 (Bonn, 2017). Decision 7/CP.24 (Katowice, 2018) confirmed that the “forum on the impact of the implementation of response measures” will also serve the Kyoto Protocol. Since then, COP/CMP/CMA decisions have consistently stated that in relation to the Rules of procedure of the Katowice Committee of Experts on the Impacts of the Implementation of Response Measures, provisions of the Kyoto Protocol, alongside the UNFCCC and the Paris Agreement, shall take precedence over any rule conflicts.²

3.3 CMA Decisions

The decisions of the CMA have complemented the CMP and COP decisions, without any express comments on the cessation of the Kyoto Protocol or the transfer of its governance. The CMA has primarily focused on the Adaptation Fund and the Article 6 Paragraph 4 carbon credit trading mechanism. The suggestion that the Adaptation Fund should serve the Paris Agreement was reiterated in Decision 1/CMA.1 (Marrakech, 2016), followed by Decision 13/CMA.1 (Katowice, 2018) above. Most recently, Decision 9/CMA.7 (Belém, 2025) noted that the Fund Board is considering, and was requested to prioritise, the completion of that transition, including the monetisation of the Article 6 Paragraph 4 share of proceeds, without addressing any broader transfer of Kyoto Protocol governance to the Paris Agreement.

On the Article 6 Paragraph 4 mechanism, Decision 3/CMA.3 (Glasgow, 2021) established the applicable rules, modalities and procedures, and created a limited pathway for the transition of CDM activities, subject to a deadline of 31 December 2023 for requests and 31 December 2025 for approval. Further transitional arrangements were elaborated in Decision 7/CMA.4 (Sharm el-Sheikh, 2022).

² See for example: Decisions 4/CP.25, 4/CMP.15, 4/CMA.2 Annex I para 52; decisions 19/CP.26, 7/CMP.16, 23/CMA.3 Annex II para 53.

3.4 Conclusion

While these decisions illustrate a transition of mechanisms from the Kyoto Protocol to the Paris Agreement, there is no mention of the end of the Kyoto Protocol. Thus, while elements of the governance have been transferred, the Kyoto Protocol continues to meet, receive funding and hold countries accountable to pre-2020 commitments.

QUERY 2. WHAT HAS BEEN SAID ABOUT THE CURRENT AND FUTURE ROLE OF THE KYOTO PROTOCOL?

4 The Kyoto Protocol's continued relevance is confirmed in the abovementioned decisions of all three bodies.

4.1 Additionally, the functions of the CMP continue: its current role includes meeting, adopting decisions and exercising oversight. There are future CMP sessions scheduled for Türkiye in November 2026 and Ethiopia in November 2027.

4.2 Compliance and review

One important remaining role of the Kyoto Protocol has been the completion of the measurement, reporting and verification cycle for the second commitment period. Under Decision 1/CMP.17 (Sharm el-Sheikh, 2022) the expert review process per Article 8 of the Kyoto Protocol for the last year of the commitment period was set to be completed by 1 June 2023.

The Compliance Committee to the CMP in its [2025 report](#) recommended that the future of the Committee be considered. The report notes that no further work was identified for the Committee's enforcement branch and its meetings had accordingly ceased (para 33). The enforcement branch recommended that the CMP consider the matter of the future of the Compliance Committee, including its possible termination, at a specific session in the future (para 34(b)). The facilitative branch also completed its analysis of the remaining annual review reports. The Committee recommended that the CMP consider the question of the future of the Committee (para 41(b)). It was decided in Decision 6/CMP.20 (Belém, 2025) that the Committee's recommendation would be considered at the next meeting in November 2026 (para 3).

4.3 Wind down of Kyoto Protocol Mechanisms

In addition to the discontinuation of the Adaptation Fund, the ITL and the CDM, as noted above, Decision 3/CMP.17 also initiated the discontinuation of the Joint Implementation Supervisory Committee. This discontinuation was finalised in Decision 2/CMP.18 (Dubai, 2023), at which residual closure arrangements were completed. These discontinuations indicate a gradual narrowing in the role of the Kyoto Protocol, and a shift towards Paris Agreement governance.

4.4 Ongoing Administrative and Capacity-Building Functions

There are ongoing administrative, financial and capacity-building functions that remain under Kyoto Protocol governance. The annual CMP sessions continue to adopt budgets and capacity-building framework reviews. The most recent CMP Decision 5/CMP.20 (Belém, 2025) requested the Subsidiary Body for Implementation to start the fifth comprehensive review of capacity-building in developing countries in June 2026 and to complete its work in November 2026 at the sixty-fifth session.

QUERY 3. WHAT HAS BEEN THE TIMELINE SINCE THE SECOND COMMITMENT PERIOD?

5. The timeline of significant decisions and actions since the end of the second commitment period in 2020 is as follows:

5.1 2021

November: CDM formally closed to post-2020 emissions; Article 6 Paragraph 4 mechanism rules adopted.

5.2 2022

November: the Joint Implementation Supervisory Committee was terminated.

5.3 2023

June: The expert review process for the second commitment period was completed on 1 June.

June–September: true-up period.

November: residual Joint Implementation closure arrangements.

5.4 2024

November: CDM and Adaptation Fund transition continued; the report on the high-level ministerial roundtable on increased ambition of Kyoto Protocol commitments did not yield agreement and Rule 16 of the Rules of Procedure applied, carrying forward the consultations to the next session.

5.5 2025

September: Kyoto Protocol Compliance Committee enforcement branch resolved its last question of implementation, and the facilitative branch completed its analysis of remaining annual review reports.

November: At CMP 20, Parties agreed to defer the consideration of the report on the high-level ministerial roundtable on increased ambition of Kyoto Protocol commitments to CMP 21; International Transaction Log shutdown; CDM discontinuation timetable. CMP 20 decided to consider the recommendations on the future of the Compliance Committee at its next session.

5.6 2026

March: CDM registry was disconnected from the ITL.

June: CDM issuance requests to close by 30 June.

November: Fifth capacity-building review due at CMP 21.

December: CDM registry transactions close by 31 December.

QUERY 4. WHAT HAVE THE THREE ADVISORY OPINIONS (ICJ, ITLOS, IACTHR) AND THE REQUEST TO THE AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS SAID ABOUT THE KYOTO PROTOCOL?

6. Summary

While the three Advisory Opinions on climate change all mention the Kyoto Protocol, the ICJ is the only body that addresses its status in detail. The ICJ recognises the continued role of the Kyoto Protocol and expressly acknowledges that State Parties must continue to comply with applicable obligations. The ITLOS and IACtHR opinions do not add substantive commentary on the Kyoto Protocol's status beyond treating it as part of the relevant legal context. The African Court of Human and Peoples' Rights has not yet finalised its Advisory Opinion on climate change.

6.1 ICJ Advisory Opinion

There has been one [ICJ Advisory Opinion on climate change](#) since the adoption of the Paris Agreement in 2015. This opinion cites the Kyoto Protocol extensively throughout the text and clarifies its status of the Kyoto Protocol.

The opinion states that the Paris Agreement and the Kyoto Protocol are complementary, both playing a role in translating the requirements under the Framework Convention. The ICJ explicitly sets out that the Kyoto Protocol has not been terminated due to the failure to agree another commitment period since the Paris Agreement has been adopted, and it remains applicable.³ This was reiterated later in the opinion, where the ICJ elaborated the role that the Kyoto Protocol can play with interpretation and the continued relevance of Annex B party commitments to reduce their emissions.⁴

The ICJ also directly addressed and rejected the argument advanced by several countries that the UNFCCC, Kyoto Protocol and Paris Agreement form a *lex specialis* self-contained system which displaces broader international law.⁵ The Court held that:

- i. Article 30(2) VCLT does not apply as the Paris Agreement and the COP decision adopting it does not specify superiority or subordination over to the Kyoto Protocol;
- ii. Article 30(3) VCLT does not apply as not all parties to the UNFCCC are parties to both the Kyoto Protocol and the Paris Agreement; and
- iii. A conflict or superseding of framework does not arise simply from the treaties regulating the same subject-matter.⁶

After reviewing the Preambles and different articles of each, the ICJ found the three documents to be "mutually supportive".⁷ In the ICJ's concluding remarks, it held unanimously that there must be compliance with the applicable sections of the Kyoto Protocol by its State Parties.⁸

³ Paragraph 120.

⁴ Paragraph 221.

⁵ Paragraph 187.

⁶ Paragraph 189.

⁷ Paragraph 195.

⁸ Paragraph 457(3)(d).

6.2 ITLOS Advisory Opinion

The relevant [Advisory Opinion](#) is on climate change and international law from 21 May 2024. This Advisory Opinion considers different external rules that are relevant for interpreting UNCLOS obligations. The Kyoto Protocol is discussed along with the Paris Agreement and the UNFCCC as “relevant external rules.” These rules were relied on to assist with the clarification of the term climate change. This Advisory Opinion did not otherwise comment on the Kyoto Protocol, but it is evident that it considered the Protocol as continuing to be an applicable external source on climate change.

6.3 IACtHR Advisory Opinion

The status of the Kyoto Protocol is not discussed in this [Advisory Opinion](#). On a more basic level, it sets out what the Kyoto Protocol governs, its ratification and the role of the Paris Agreement in taking over carbon credit mechanisms previously established under the Kyoto Protocol.

6.4 African Court of Human and Peoples’ Rights

This body has not issued a finalised opinion on climate change, but there is an outstanding request from the Pan African Lawyers Union for an [Advisory Opinion](#). Their request referenced the Kyoto Protocol as one of the “foremost climate change instruments” relied upon for state guidance on climate change. The Kyoto Protocol is also referred to in a section on environmental impact assessments, with reference to Article 12 and its requirement for environmental assessments on certain projects. The document does not otherwise deal with the status of the Kyoto Protocol. A further review is recommended once the Court issues its Advisory Opinion.

7 Conclusion

- 7.1** In conclusion, the Kyoto Protocol has not been formally terminated or superseded by the Paris Agreement and remains in force as a matter of international law. State Parties to the Kyoto Protocol should therefore continue to observe their applicable commitments under the Protocol.
- 7.2** However, the practical applicability and relevance of the Kyoto Protocol have reduced significantly since the end of the second commitment period, in the absence of current binding emission reductions targets or commitments.
- 7.3** Post-2020 Governing Body decisions demonstrate a move to a narrower and more administrative function for the Kyoto Protocol, with several Kyoto Protocol mechanisms being discontinued and others, including the Adaptation Fund and Clean Development Mechanism in the process of being transferred to the Paris Agreement governance.