Legal Response International

GOVERNANCE AND PROCESS EXPLAINER SERIES ◆ 1

# UNFCCC Governance: Understanding Climate Decision-Making

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The intergovernmental response to climate change operates through one of international law's most complex governance systems. This system comprises the three climate change treaties along with their shared institutional architecture. Understanding how decision-making takes place in this system is essential for effective engagement in climate negotiations.

**Key terms**

Here "UNFCCC system" or "UNFCCC governance system" is used as shorthand to refer to the governance system created by the three climate change treaties along with their shared institutional architecture.

The three treaties are

- the United Nations Framework Convention on Climate Change (1992, the Convention);
- the Kyoto Protocol (1997); and
- the Paris Agreement (2015).

We use "COP" in this document as shorthand for the three Conference of the Parties of the UNFCCC system, unless explicitly stated otherwise.

## The institutional setup

The UNFCCC governance system has evolved from a single-track structure under the Convention to a three-track system following the adoption of the Kyoto Protocol and the Paris Agreement. While each track maintains its own governing body with authority over its respective legal instrument, the three tracks created by each treaty are interconnected. As a result, some infrastructure is shared and some mandates overlap.

### The decision-making bodies

Each treaty has its own governing/decision-making body, a "Conference of the Parties" which is made up of the specific Parties to that treaty.

- The Convention's **Conference of the Parties (COP)** comprises 198 Parties. The COP oversees institutions created under the Convention, and can establish subsidiary bodies (SBs);
- The **Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP)** is the Kyoto Protocol's governing body. It comprises 192 Parties. While it mainly relies on the same bodies created under the Convention, it can also establish new ones; and
- The Paris Agreement's governing body is the **Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).** It comprises 194 Parties. Most bodies created under the Convention now also "serve" the Paris Agreement, reporting to both the COP and the CMA. This makes coordination between these two processes central to decision-making. The CMA can also establish new bodies.

The COP, CMP and CMA each meet annually to review the implementation of their founding treaty and make decisions to promote its objectives.

The practice of "mirror decisions" has emerged whereby very similar text is adopted by the COP and CMA (sometimes also the CMP) to ensure coherence on cross-cutting issues. For instance, the COP and CMA make parallel decisions on finance, technology transfer, and capacity-building among others.

While each treaty is of equal standing under international law, in practice, they have differing operational roles:

- The Paris Agreement has become the primary vehicle for international climate action, with the CMA handling the vast majority of substantive negotiations on mitigation, adaptation, finance, and implementation;
- The COP maintains its foundational role under the Convention, addressing matters that predate or sit outside the Paris Agreement framework. Many of its functions now operate in coordination with, or have been absorbed by, CMA processes; and
- The CMP's work has narrowed mainly to legacy issues since the Kyoto Protocol's second commitment period ended in 2020. This includes winding down the Clean Development Mechanism and the Adaptation Fund's transition to the Paris Agreement.

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## The permanent subsidiary bodies

Two permanent SBs are created by the Convention – the Subsidiary Body for Scientific and Technological Advice (SBSTA) under Article 9 and the Subsidiary Body for Implementation (SBI) under Article 10. Both report back to all three governing bodies simultaneously. The SBSTA and SBI (SBs) meet twice yearly— at mid-year in Bonn, Germany and during the end-of-year climate conferences. They share common functions and practices while maintaining distinct mandates.

- The **SBSTA** provides scientific and technological guidance to the governing bodies. Its work directly feeds into political decision-making, for instance by coordinating with the Intergovernmental Panel on Climate Change to provide scientific input to the negotiations and special reports, and to organise joint workshops; and
- The **SBI** assists the governing bodies in assessing and reviewing Parties' implementation of the climate treaties. It examines countries' reporting and coordinates the work of capacity-building bodies.

In practice, the SBs remain forums where countries negotiate, but with a more technical focus and often through issue-experts. Negotiations in the SBs reflect national positions and political considerations, though typically with less high-level political attention than in the COP. They undertake the ground work for the governing bodies and manage the technical complexity that would otherwise overwhelm those more political forums. Both bodies prepare draft decisions for consideration by the governing bodies, which may adopt, modify or further negotiate these texts (see the diagram below for further information on the process to reach a decision).

In addition to the permanent SBs, the COP can establish ad hoc bodies to conduct specific negotiating rounds on particular issues. These allow for focused negotiations on complex issues (e.g. the Transitional Committee set up to help operationalise a new fund for loss and damage). However, the COP always retains the ultimate decision-making power.

## The Presidency

The coordination of these complex multi-track negotiations falls primarily to the COP President, who plays a pivotal role in guiding the annual climate conferences. The President's authority stems from Article 7 of the Convention as well as rules 22 and 23 of the draft rules of procedure. When exercising the functions of the office, the President remains directly under the authority of the Conference of the Parties.

The Presidency rotates yearly among the five UN regional groups.

The President, typically a senior government official from the country hosting the COP, is responsible for leading negotiations and representing the collective voice of all Parties. The role includes working closely with the UNFCCC secretariat and Bureau to shape provisional agendas, facilitating discussions and consensus-building among Parties, convening ministerial consultations and "Friends of the Chair" groups when negotiations stall, and ultimately wielding the gavel to declare decisions adopted.

## The Bureau

The Bureau derives its authority from the draft rules of procedure (**FCCC/CP/1996/2**) but neither the Convention nor the draft rules define its specific functions. Instead, the Bureau's operative role has evolved through practice and COP decisions. In essence, it is responsible for process management and to assist the President in the exercise of their functions.

The COP Bureau's 11 elected officers comprise the President, Vice-Presidents, a Rapporteur, and the Chairs of the SBs.

Each of the five UN regional groups is represented by two members, with one place reserved for small island developing states. The same individuals serve as the Bureau for the Paris Agreement and Kyoto Protocol, with participation in specific workstreams limited to representatives from Parties to the relevant instrument.

The SBs have their own Bureaux, maintain their own leadership structures with a Chair, a Vice-Chair and a Rapporteur and coordinate with the COP Bureau to ensure coherence.

## The secretariat

The UNFCCC secretariat, established under Article 8 of the Convention and headquartered in Bonn, Germany, serves all three governing bodies and their subsidiary institutions. It operates under the guidance of the COP, CMP, and CMA, implementing their decisions while maintaining neutrality in negotiations. Led by an Executive Secretary appointed by the UN Secretary-General following consultations with the COP through the Bureau, the secretariat performs multiple critical functions:

- providing logistical and technical support for sessions (including some legal support);
- preparing documentation, technical papers and synthesis reports;
- facilitating communication between Parties;
- maintaining the roster of experts for technical reviews; and
- administering financial and institutional arrangements (over 100 institutional bodies).

## Agenda development and adoption

The agenda is a starting point to reach a COP decision, and it is shaped by the draft rules of procedure. They have never been adopted because Parties could not agree on voting (draft rule 42). In practice, the COP applies them except for the voting rule, which is why almost all decisions are adopted by consensus.

The governing bodies and the SBs each have their own agendas. Those of the COP and CMA include several common items (notably core cross-cutting issues such as finance, technology transfer, capacity-building, response measures), but also feature items specific to the mandate of each body (e.g. the New Collective Quantified Goal on climate finance, Article 6 mechanisms and global stocktake are part of the work of the CMA only).

Provisional agendas are prepared by the secretariat in agreement with the President in advance of a session (in line with rules 9–16 of the draft rules of procedure). The provisional agenda includes standing items mandated by the relevant body, items from previous sessions that were not concluded, proposals from Parties, and items held in abeyance (those included on a past agenda that are now suspended, as there is no agreement to either discuss or delete them). It has become commonplace for Parties to introduce new agenda items after the provisional agenda has been circulated (at least six weeks before the session), and these are included in a supplementary document. Parties then develop their national positions on the basis of the agenda on issues that are of particular importance to them. Parties also coordinate with other countries in their negotiating groupings (e.g. African Group of Negotiators) about their group position and strategy.

The agenda for each governing and subsidiary body must be adopted by consensus (due to lack of agreement on voting). This has often led to "agenda fights" at the start of negotiation sessions, delaying the start of proceedings. Disputes over the agenda are typically brokered by the Presidency (or SB Chairs in the case of SB sessions) through adjustments to an item's wording or placement within the agenda, or through assurances that the issue will be considered informally, even if it is not on the agenda.

## Towards a COP decision: a non-linear process

Negotiations do not progress in a straight line. Issues may move between various negotiation settings and the Presidency; they may be deferred to a subsequent session, elevated to the COP for further negotiations or they may reach agreement and proceed to adoption. An overview of possible stages on the road to a COP decision is presented after the diagram.

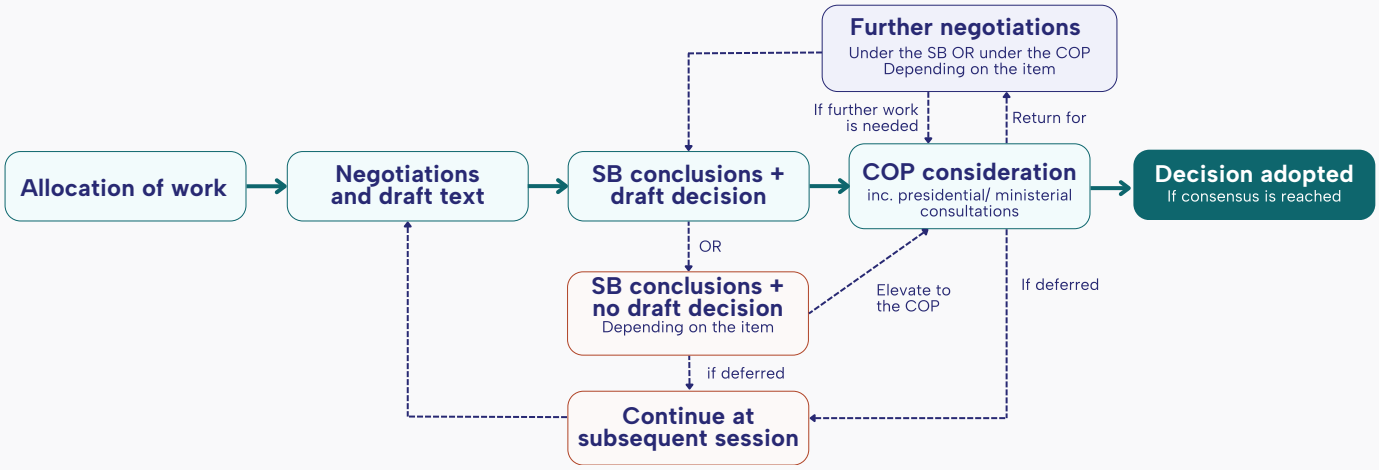


*Diagram 1: Towards a COP decision*

### Allocation of work

Following the agenda's adoption, the COP President, the SB Chair, or the Chair of another ad hoc body creates a contact group on an agenda item, sub-item or thematic issue. Contact groups are smaller settings that provide a forum for Parties to discuss the issue, develop draft text and seek agreement.

### Negotiations and development of draft text

Contact groups are settings generally open to observers. The objective of these negotiations is to develop text that Parties can agree on and that can be forwarded for consideration and/or adoption by the relevant governing body. All Parties interested in the item can participate, and interventions are formally recorded. Negotiations draw on a range of inputs, including:

- Position papers and submissions provided by Parties before the session;
- Reports and other materials prepared by the secretariat, normally at the request of the COP or SBs; and
- New proposals and amendments introduced by Parties during sessions.

It is usual practice for the co-facilitators or co-chairs to prepare a draft text based on the various inputs and introduce it to the contact group. Although no mandate is required, they are advised to seek it, or at least secure the agreement of a majority of those present. This helps avoid a situation in which Parties are unwilling to engage with the text.
**Negotiations may take place in several formats.** When positions remain far apart, or technical details require further work, the contact group's co-facilitators or co-chairs may convene informal consultations. These typically involve a smaller group of interested delegations and provide greater flexibility to explore possible compromises. They may be scheduled closed meetings in side rooms or more ad hoc discussions.

Other formats may also be used, including informal informals, drafting groups, bilateral meetings and one-to-one discussions. Informal notes may be used to capture evolving positions and outstanding issues and are prepared under the co-facilitators' or co-chairs' own responsibility.

## Outcome of negotiations in a subsidiary body

Where negotiations take place under a SB, the co-facilitators or co-chairs bring the outcome back to the relevant body in plenary. The draft text is generally presented as draft conclusions, which may include a draft decision for consideration by the COP. The SB adopts its draft conclusions in plenary. Two main outcomes are possible:

- **Agreement is reached:** the draft decision contained in the conclusions is forwarded to the relevant governing body for consideration; or
- **Agreement is not reached:** the SB may continue negotiations on the matter at a subsequent session, or forward it to the COP for consideration, often on the basis of draft text prepared during negotiations.

## COP consideration

### Where a draft decision is ready for adoption

The Presidency proposes the draft decision for consideration in plenary. The President seeks to establish whether there is consensus among Parties. Where consensus is established, the President announces the adoption of the decision and strikes the gavel. Adopted decisions are assigned permanent numbers in the session report, for example, Decision 1/CMA.5.

### Where negotiations remain unresolved or politically sensitive

Where technical negotiations have stalled, or where issues have reached a politically sensitive stage, the matter may be taken up through consultations led by the Presidency or designated ministers. These consultations typically involve key Parties or negotiating groups, with participants often identified by the Bureau in consultation with regional coordinators.

The consultations may lead the Presidency to prepare a draft decision intended to reflect a possible compromise. Before presenting such a text, Presidencies typically consult relevant Party groups, the Bureau and the secretariat. The draft remains subject to consideration by Parties: the Presidency may revise or withdraw it in response to feedback, or bring it to plenary for consideration if there appears to be sufficient support. The President then seeks to establish whether consensus exists. If consensus is reached, the decision is adopted. If not, the item is further negotiated (if time allows) or deferred.

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### Observer Participation and Transparency

The UNFCCC allows for the admission of UN organisations, UN specialised agencies, intergovernmental organisations (IGOs), and non-governmental organisations (NGOs) as observers provided they are "qualified in matters covered by the Convention" (Article 7.6). NGOs usually join a constituency, coordinated through focal points.
Observers can access plenary meetings, contact groups (unless one third of the Parties present object) and some informal consultations. They can also submit written statements and proposals, and make interventions when invited by the Chair or President. However, they do not formally participate in decision-making, which remains the exclusive prerogative of Parties.

*Scan or click here for our explainer on COP reform.*

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