

International Bodies for Adaptation

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Introduction

This briefing paper sets out:

- a summary of the three types of bodies which may be involved in adaptation measures (namely, a subsidiary body, an adaptation committee and a specialised body on adaptation);
- provides discussion of the operational features of the bodies and which rules of procedure may apply to them; and
- discusses the AWG-LCA's proposed mechanism of the adaptation framework.

Background

1. Item 3 of the provisional agenda to the 11th session of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention (**AWG-LCA**) contains a draft text for the facilitation of negotiations among Parties (**Draft AWG-LCA text**).
2. Under "B. Enhanced action on adaptation and its associated means of implementation", the Draft AWG-LCA text suggests the following action:

Establishes

13. Pursuant to the provisions on enhanced action on adaptation presented in chapter II, the Adaptation Framework [for Implementation], with the objective of enhancing action on adaptation, including through international cooperation, for coherent consideration of matters relating to adaptation under the Convention, containing the following elements:

[An Adaptation Committee] [A Subsidiary Body on Adaptation] [An Advisory Body on Adaptation];

3. Each of these types of bodies is outlined below. The discussions on the various operational features of each are largely based on currently existing bodies of the same kind, including the rules of procedure which may apply.

(A) Subsidiary Body

4. Rule 2.8 of the "Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies" states that a subsidiary body means:

"those bodies established by Articles 9 and 10 of the Convention, as well as any body, including committees and working groups, established pursuant to Article 7(2)(i) of the Convention."

5. The two subsidiary bodies formed under Article 9 and 10 of the Convention are, respectively, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).

6. Under Article 7(2)(i) of the Convention, the Conference of the Parties (COP) has established a number of subsidiary bodies, including:
 1. the Ad hoc Group on the Berlin Mandate¹;
 2. the Ad hoc Group on Article 132;
 3. the Joint Working Group on compliance³; and
 4. the AWG-LCA⁴.
7. A proposed "Subsidiary Body on Adaptation" would fall under the category of subsidiary bodies established pursuant to Article 7(2)(i) of the Convention (unless included in a new treaty or amendments to the UNFCCC or the Kyoto Protocol).

Establishment under Article 7(2)(i)

8. Subsidiary bodies established under Article 7(2)(i):
 1. are often described as temporary subsidiary bodies;
 2. are established on an ad hoc basis; and
 3. have a specific mandate and timeframe.
9. For example, the Ad hoc Group on the Berlin Mandate was established at COP1 for the purpose of conducting negotiations under the Berlin Mandate, which ultimately led to the adoption of the Kyoto Protocol. It was eventually disbanded before COP3.
10. Another example is the AWG-LCA, which was only intended to be operational until 2009. Upon its establishment, it had been planned that the AWG-LCA would complete its work and present the outcome of its work at COP15. The COP at COP15 extended the mandate of the AWG-LCA to enable it to continue its work with a view to presenting the outcome of its work to the COP for adoption at COP16.

Mandates, Responsibilities and Composition

11. Generally, all subsidiary bodies have the basic function of providing assistance and advice to the COP in relation to their respective sphere of responsibility. For the SBSTA and SBI, the scope of responsibility is found in Articles 9 and 10 of the Convention respectively (and as elaborated upon in COP decisions). For subsidiary bodies established under Article 7(2)(i), this is found in the specific mandates given to them by the COP.⁵
12. Generally, the main role of subsidiary bodies is to provide recommendations for the COP, in the form of draft decisions, which the COP may then review and either agree upon or re-submit to the subsidiary body for further consideration. As such, subsidiary bodies created by the COP generally report directly to the COP. Both the SBSTA and the SBI may also adopt conclusions of their own, though these are usually procedural in nature.
13. The composition of subsidiary bodies may vary. In certain subsidiary bodies, membership is limited to "Parties". This includes governments which are signatories under the Convention and also

¹ Decision 1/CP.1, paragraph 6

² Decision 20/CP.1

³ Decision 10/CP.4

⁴ Decision 1/CP.13

⁵ For example, see Decision 1/CP.1, paragraph 6 for the scope of responsibility given to the Ad hoc Group on the Berlin Mandate - <http://unfccc.int/resource/docs/cop1/07a01.pdf>

representatives of NGOs which have registered with the Convention Secretariat.⁶ This is the case in both the SBSTA and the SBI and "[reflects] the reluctance of Parties to involve independent, non-governmental experts in formulating *guidance for the COP or examining the implementation of commitments*."⁷ The Ad hoc Group on the Berlin Mandate was likewise established on the basis that membership would be restricted to "Parties".

14. In other subsidiary bodies, where the scope of responsibility requires specific technicalities or industry knowledge, membership may consist of persons with technical expertise. For example, the Ad hoc Group on Article 13 consisted of technical and legal experts.

Miscellaneous

15. Subsidiary bodies whose membership is open to Parties (i.e. predominantly governments), such as the SBSTA, enjoy a level of credibility amongst governments. This is further bolstered by the requirement that decisions and recommendations are reached by consensus among those governments, so that all recommendations submitted to the COP have necessarily received political backing from the outset (though this does not ensure that such backing is guaranteed in the future).
16. The conclusions adopted by subsidiary bodies do not have the same legal or political significance as COP decisions. For example, the SBSTA has, in the course of developing international standards, opted to avoid making those standards binding on national governments.⁸ As such, national governments may choose not to adopt the standards adopted by the SBSTA. One instance of this is in the preparation of national inventories of greenhouse gas emissions, over which national governments have retained almost complete autonomy.

(B) Committee and Advisory Bodies

17. Committees and advisory bodies (also known as specialised bodies or constituted bodies, and hereafter referred to as committees) are not individually defined within the Rules of Procedure under the UNFCCC – instead, as mentioned above, committees (and working groups also) are also defined by Rule 2.8 as 'subsidiary bodies'. Nonetheless, committees have operational differences to subsidiary and other bodies.
18. A number of committees include:
 1. the Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention (CGE);
 2. the Expert Group on Technology Transfer (EGTT); and
 3. the Least Developed Countries Expert Group (LDCEG).

Overview of features

19. Like subsidiary bodies other than SBI and SBSTA, these committees are generally created on an ad hoc and temporary basis.
20. Other general features of committees include:

⁶ C. Millar and P. Edwards, *Changing the Atmosphere: Expert Knowledge and Environmental Governance*, Massachusetts Institute of Technology Press (2001) at p.275

⁷ F. Yamin and J. Depledge, *The International Climate Change Regime – A guide to Rules, Institutions and Procedures*, Press Syndicate of the University of Cambridge (2004) at p.415

⁸ C. Millar and P. Edwards at p.276

1. the highly specialised nature of each committee's mandate, formula for membership selection;
 2. the technical nature of the work to be undertaken by each committee;
 3. that all conclusions and recommendations decided upon by the committees must be reported to either the SBSTA or the SBI.
21. The committees meet regularly during the year – the CGE, EGTT and LDCEG all meet biannually (often in conjunction with SBSTA or SBI meetings), in addition to each committee's individual inter-sessional meetings and workshops. Due to the relatively small size of these committees, they are able to meet more frequently and, generally, matters are considered and resolved more expediently.⁹
22. At the same time, despite the benefits associated with smaller membership, there may be merit in expanding the size of some of these groups. High levels of membership would bolster representation and would ensure that recommendations adopted by those groups:
1. receive the (political) backing of a greater number of Parties; and
 2. account for and address the interests of a larger group.
23. In the case of the CGE, membership restrictions are in place which cause representation to be deliberately skewed in favour of developing countries. Of the five categorical member groupings, three groups (Africa, Asia/Pacific Region, Latin America/Caribbean Region) consist of predominantly non-Annex I Party regions and account for 15 members of the CGE, whilst Annex I Parties account for only 6 members. The membership structure has also inadvertently excluded non-Annex I Parties located in Central and Eastern Europe from membership (e.g. Albania and Armenia) since they do not fit within any of the five categorical groupings. The same exclusion occurs in respect of the EGTT, which has similar groupings. The LDCEG also suffers representation issues, albeit different to the issues faced by the CGE and EGTT.

Membership of committees

24. Due to the fact that the mandates given to these committees are usually highly technical, the membership requirements of these groups have often stipulated that members have certain specialised and technical expertise.
25. The LDCEG, for example, is expert-based and each member must have "recognised competence and appropriate expertise to assist in the development of NAPAs", including an expertise in "vulnerability and adaptation assessment". The experts are selected by the groups of Parties in the LDCEG. However, once appointed, the experts are required to act in their personal capacity (and not on behalf of Parties as government negotiators). It is a requirement that these experts have no "financial or pecuniary interest" in the work of the group.¹⁰
26. The EGTT's members are also experts and similarly elected by the Parties¹¹, but once appointed must act in their personal capacity. This seeks to ensure that the negotiations which occur during the EGTT's meetings are not representative of government interests, but are negotiations based upon technical and specialised expertise.¹² Areas of expertise include, but are not limited to:
1. greenhouse gas mitigation and adaptation technologies;

⁹ As at 2 August 2010, the CGE comprised 24 members, the EGTT comprised 20 members and the LDCEG comprised 12 members.

¹⁰ Decision 29/CP.7, Annex, paragraph 4

¹¹ Decision 4/CP.7, paragraph 2 and Appendix, paragraph 4

¹² Decision 4/CP.7, Appendix, paragraph 7

2. technology assessments;
3. information technology;
4. resource economics; and
5. social development.¹³

27. The CGE is also composed of experts, these being from Africa, Asia, Latin America and the Caribbean, Annex I Parties and a number selected by the secretariat from organisations with relevant experience. These experts are chosen by the Parties from each of the four geographical regions (or by the secretariat in the case of the organisations).¹⁴

(C) Specialised bodies under the Kyoto Protocol

28. Committees and specialised bodies under the UNFCCC (such as those contemplated under the Draft AWG-LCA text) need to be distinguished from those formed under (or to implement mechanisms of) the Kyoto Protocol.

29. Specialised bodies under the Kyoto Protocol include:

1. the Executive Board of the CDM (EB);
2. the Joint Implementation Supervisory Committee (JISC);
3. the Compliance Committee of the Kyoto Protocol (Compliance Committee); and
4. the Adaptation Fund Board (AFB).

30. These bodies have some distinct differences when compared with committees and specialised bodies established under the UNFCCC, including that all three bodies:

1. operate directly under the COP/MOP, as opposed to the SBSTA and the SBI; and
2. have authority to take decisions with which the Parties are expected to comply.

31. For completeness, we have outlined features of two of these bodies below.

(i) The Executive Board of the CDM

32. According to its Rules of Procedure, the EB comprises 10 members from Parties to the Kyoto Protocol (one from each of the five United Nations regional groups, two Parties which are Annex I Parties, two Parties which are non-Annex I Parties and one representative for the small island developing States).¹⁵ The members of the EB are nominated by the respective Parties to the Kyoto Protocol within the groupings aforementioned. Nevertheless, each member of the EB must:

1. possess appropriate technical and/or policy expertise;
2. shall act in their personal capacity; and
3. takes a written oath of service wherein the member declares, inter alia, that they do not have a financial interest in any aspect of the CDM.¹⁶

¹³ Decision 4/CP.7, Appendix, paragraph 7

¹⁴ Decision 8/CP.5, Annex I, paragraph 3

¹⁵ Decision 3/CMP.1, Annex, paragraph 7

¹⁶ Decision 3/CMP.1, Annex, paragraph 8

33. The EB's role was outlined in Decision 3 of COP/MOP1 and comprises a supervisory role of the CDM, under the authority and guidance of the COP/MOP and, at all times, being fully accountable to the COP/MOP.
34. The EB's mandated responsibilities include inter alia:
1. making recommendations to the COP/MOP on further modalities and procedures for the CDM;
 2. reporting on its activities to each session of the COP/MOP;
 3. approving new methodologies relating to baselines, monitoring plans and project boundaries;
 4. approving, rejecting or requesting more information in respect of new project registrations;
 5. adopting its own procedures;
 6. ensure proper accreditation of operational entities; and
 7. developing and maintaining the CDM registry.¹⁷

(ii) The Adaptation Fund Board

35. The AFP has the role of administering and overseeing the Adaptation Fund, which was established as a source of funding by which adaptation projects and programmes in developing country Parties to the Kyoto Protocol could be financed, especially where those Parties are vulnerable to the adverse effects of climate change.
36. The membership of the AFP is very similar to that of the EB, except that:
1. instead of one member from each of the five United Nations regional groups, there are two members from each; and
 2. a representative of the least developed countries (LDCs) Parties is also included.

AWG-LCA's Proposed Mechanism for the Adaptation Framework

37. There are certainly unique advantages and disadvantages associated with the various structures currently used under the Convention and its constituent mechanisms. These need to be weighed against each other when considering what kind of structure should be used for the entity which ultimately oversees the Adaptation Framework. The choice of structure should also take into account the intended mandate of the body (for example, whether it be an advisory body to the COP or a vehicle for practical implementation).
38. For example, the establishment of a subsidiary body has the benefit of placing that entity at the same political level as the SBSTA and the SBI, and having the political legitimacy and credibility which that entails. At the same time, however, establishing a "Subsidiary Body on Adaptation" is likely to carry similar difficulties as those experienced by the SBSTA and SBI – namely, the difficulties in taking decisions and practically implementing programmes. Further, the political nature of its membership has the potential to lead to negotiations as between governments, as opposed to in accordance with the interests and mandate of the subsidiary body.

¹⁷ Decision 3/CMP.1, Annex, paragraph 5

39. Conversely, committees, boards and advisory bodies have traditionally made it a prerequisite to membership for prospective members to have certain technical or policy expertise and, despite members being nominated by Parties, the respective rules of procedure generally require members to act in their personal capacity. These bodies have also enjoyed smaller numbers, which has facilitated more efficient and expedient decision-making and more frequent deliberations. However, as mentioned, it may be argued that these bodies fail to give due representation to all Party stakeholders – in fact, some rules of procedure unintentionally preclude certain minority Parties from membership altogether.
40. The two key considerations which must be balanced in proposing an administrative body for the purpose of overseeing an Adaptation Framework are:
 1. the need for a body which is small enough to be efficient, conducive to productive discussion and facilitative of decision-making; and
 2. ensuring sufficient representation by all Parties.
41. In the current Draft AWG-LCA text, paragraph 7 of Chapter II proposes, inter alia, to establish an "Adaptation Committee" under the Convention "*with equitable representation of the Parties, elaborate and adopt modalities at its seventeenth session in order to guide, [supervise,] support, [administer and monitor] the implementation of the Adaptation Framework...*". Footnote 3 to this paragraph states that this committee envisages a membership of 32 members nominated by the Parties (20 members of whom being from Parties not included in Annex I) and that such members shall serve in their personal capacities. It is implicit in the responsibilities of such a committee that members shall have scientific and technical expertise in regards to the assessment and implementation of adaptation actions.
42. Based on this current draft text, the proposed Adaptation Committee structure seeks to address concerns regarding the limited representation of other constituted bodies, whilst still enabling it to implement the mandate of the Adaptation Framework in a more expedient and practical manner.