



**OPTIONS ON POSSIBLE FORMS OF THE AGREED OUTCOME
OF THE BALI ACTION PLAN NEGOTIATIONS
UNDER THE UNFCCC**

Vicente Paolo Yu III

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Introduction

This document seeks to outline the positive and constraining aspects of various options relating to the possible forms that the agreed outcome of the AWG-LCA process could result in, consistent with its mandate under the Bali Action Plan to enhance the full, sustained and effective implementation of the UNFCCC “now, up to and beyond 2012”.

In identifying the possible options as to form and their respective positive and constraining aspects, the following considerations were taken into account:

- the provisions of the UNFCCC;
- theories and practice in international law with respect to the form of intergovernmental agreements, including the codification of some aspects thereof in the 1969 Vienna Convention on the Law of Treaties;
- the need to ensure that the integrity of the UNFCCC and its Kyoto Protocol is kept intact, including the maintenance of the existing balance of obligations thereunder, consistent with the principles of equity and common but differentiated responsibilities and respective capabilities;
- reflect the integrated and coherent treatment of all elements of the Bali Action Plan in terms of the agreed outcome being able to achieve the full, sustained and effective implementation of the UNFCCC “now, up to and beyond 2012”;
- the practicality of adoption by the Parties;
- the need to ensure effectiveness and practicality with respect to triggering Party actions to implement with obligations and commitments that may be made as part of the agreed outcome;
- the need to provide for strong and effective compliance and enforcement modalities, procedures, or mechanisms to ensure the implementation of the agreed outcome

Please note that the order in which these options are taken up and discussed in this matrix do not necessarily denote preference or prioritization in favour of one option or options over others.

“Positive aspects” are those aspects that would promote and advance the considerations above, while “constraining aspects” would be those that would have

the opposite result. The identification of such positive and constraining aspects in the following tables is not meant to be exhaustive.

In determining the kinds of instruments that the COP may adopt under the UNFCCC, it is important to first look to the text of the UNFCCC. The relevant provisions include the following:

- Art. 7.2 on the functions and mandate of the COP, in particular the chapeau in relation to the COP's adoption and review of "related legal instruments" of the Convention and making, "within its mandate, the decisions necessary to promote the effective implementation of the Convention;"
- Art. 15 on amendments;
- Art. 16 on annexes; and
- Art. 17 on protocols.

In light of the provisions above, the COP may adopt the following:

- Convention-"related legal instruments", including amendments, annexes, and protocols, that have to be implemented by Parties in addition to the Convention; and
- Decisions necessary to promote the effective implementation of the Convention by the Parties.

Under the UNFCCC, in particular Art. 7.2, the legal relationship between the UNFCCC and its "related legal instruments" and COP decisions may best be described as follows: the UNFCCC and its related legal instruments (including any amendments, annexes, or protocols that the COP may have adopted) provide for substantive obligations and commitments for Parties, the implementation of which can be promoted by the COP through the adoption of COP decisions.

Options as to Form	Positive Aspects	Constraining Aspects
COP decision/s ¹	<ul style="list-style-type: none"> • can be taken by the COP pursuant to UNFCCC Art. 7.2(m)² as an authoritative interpretation or elaboration “necessary to promote the effective implementation of” existing legally binding provisions of the UNFCCC in order to ensure the achievement of the objective of the UNFCCC³ • can have operationally legally binding effects depending on phrasing used with respect to substantive actions or commitments to be undertaken and implemented – e.g. 	<ul style="list-style-type: none"> • may not be sufficient to trigger Party action or compliance since COP decisions, <u>depending on the Party’s domestic legal system and context</u>, might not be considered by a Party as “legally binding” – i.e. enforceable in the domestic context with respect to triggering or being the basis for implementing domestic statutory, policy or regulatory action – especially in cases where the Party’s legal

¹ This would include a decision with substantive content – i.e. setting out substantive commitments or obligations for Parties to implement, or a decision with procedural content – i.e. content with respect to the process of work to be undertaken by the COP. This can also refer to a single decision or a set of decisions with such content. Under UNFCCC Art. 7.2 (chapeau), the COP is authorized to make decisions “within its mandate, necessary to promote the effective implementation of the Convention.” In the context of promoting enforcement and addressing non-compliance, COP decisions can be the vehicle for establishing mechanisms or modalities that would provide positive incentives and commitments for Parties to implement and comply with their existing obligations under the UNFCCC. COP decisions, however, cannot be used to provide for binding punitive sanctions on Parties as part of UNFCCC compliance and implementation modalities because the implementation and compliance system currently established under UNFCCC Art. 13 and 14 currently does not contemplate or provide for binding punitive sanctions as a modality for addressing non-compliance.

² Art. 7.2(e) of the UNFCCC is the “residual powers” clause in the Convention that grants to the COP the authority to, inter alia, “exercise such other functions as are required for the achievement of the objective of the Convention ...”

³ For purposes of determining the legal effect and binding nature of COP decisions on Parties, especially with respect to the interpretation by Parties of the application of the provisions of the UNFCCC, such COP decisions would be considered as “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions” or “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” See e.g. Art. 31 of the 1969 Vienna Convention on the Law of Treaties with respect to the general rule of treaty interpretation. That is, COP decisions constitute formal agreements between Parties to a legally binding international treaty (the UNFCCC in this case) that creates a variety of obligations on Parties. As such, in the context of a Party’s application and implementation of its obligations under the UNFCCC, COP decisions would have operational effects with respect to various concrete implementation actions in that such decisions would be able to: (i) trigger specific implementation actions; and/or (ii) provide the policy and enforcement parameters for implementation actions that Parties with respect to their UNFCCC obligations.

Options as to Form	Positive Aspects	Constraining Aspects
COP decision/s	<p>“shall” as opposed to “may” or “should.” This could include, for example:</p> <ul style="list-style-type: none"> • a decision to establish a compliance mechanism similar to the KP with respect to the implementation of UNFCCC Art. 4 • a decision on the use by Parties of the KP Art. 18 compliance mechanism to enhance compliance by Annex 1 Parties of their congruent obligations under, inter alia, UNFCCC Arts. 4.2(a) and (b), 4.3, 4.4, 4.5 and KP Arts. 2, 3, 4, 5, 7, and 11.2⁴ • a decision on shared vision, including a long-term global goal, relating to the implementation and achievement of UNFCCC Art. 2, 3, and 4.2(a) and (b), 4.3, 4.4, 4.5, and 4.7 • a decision relating to UNFCCC Art. 4.3 and Art. 11 enhancing the UNFCCC financial mechanism by setting up a new climate fund with appropriate governance structures, sources of financing (including scale of Annex 1 Party contributions on the basis of 	<p>system might require that compliance with international obligations must be pursuant to a treaty or other international agreement⁵</p> <ul style="list-style-type: none"> • have to be agreed to by consensus, without recourse to voting⁶

⁴ This could, however, create non-Party-related legal complications with respect to the use of the KP’s Art. 18 compliance mechanism with respect to Annex 1 Parties that are not Parties to the KP. It could be argued that the use of the KP’s Art. 18 compliance mechanism is applicable only to KP Parties.

⁵ However, this consideration must be carefully qualified. While a treaty – i.e. an international agreement that has to be acceded to or ratified (depending on the State’s legal system) -- is usually the mode and expression of States’ agreement on their acceptance of international commitments and obligations, such obligations or commitments at the international may also be agreed to and/or created through other instruments that are not necessarily a treaty. These instruments would include, for example, international agreements entered into by governments on the basis of an exchange of notes, unilateral declarations capable of creating legal obligations under international law, and other means.

⁶ Rule 42 of the COP’s Rules of Procedure relating to the voting modalities with respect to COP decisions is currently not yet agreed, leaving consensus as the sole modality for decision-making with respect to COP decisions.

Options as to Form	Positive Aspects	Constraining Aspects
COP decision/s	<p>agreed full incremental costs), fund management modalities or terms of reference, positive enforcement modalities (such as an incentives-based system to promote enforcement and compliance).</p> <ul style="list-style-type: none"> • a decision relating to UNFCCC Art. 4.4 establishing an adaptation mechanism with appropriate governance structures, financing modalities (that could for example be linked to Art. 4.3), positive enforcement modalities (such as an incentives-based system to promote enforcement and compliance) • a decision relating to UNFCCC Art. 4.5 establishing a technology transfer mechanism with appropriate governance structures, financing modalities linked to Art. 4.3 financing, operational technology transfer modalities, positive enforcement modalities (such as an incentives-based system to promote enforcement and compliance) <ul style="list-style-type: none"> • can be immediately effective after adoption 	

Options as to Form	Positive Aspects	Constraining Aspects
<p>Amendments to the UNFCCC or the Kyoto Protocol</p>	<ul style="list-style-type: none"> • can be taken by the COP pursuant to procedures set forth in UNFCCC Art. 15 and KP Art. 20 • specific or targeted amendments can be used to further enhance or strengthen the provisions of UNFCCC without revising the overall architecture and balance of obligations of the UNFCCC. This could include: <ul style="list-style-type: none"> • an amendment creating a new provision to provide for a stronger compliance and enforcement mechanism directly under the UNFCCC with respect to the implementation of UNFCCC Art. 4 (Annex 1 mitigation, financing, adaptation, technology transfer) in order to address non-compliance (e.g. to establish a sanctions-oriented system to address non-compliance)⁷ • amendments to the KP can be used to provide for: <ul style="list-style-type: none"> • deeper mitigation commitments for Annex 1 Parties to the KP, pursuant to KP Art. 3.9⁸ • binding consequences in the event that a KP Party does not comply with its KP obligations⁹ • can be decided upon by voting in the event that consensus cannot be arrived at¹⁰ 	<ul style="list-style-type: none"> • specific or targeted amendments can be used to weaken existing provisions of the UNFCCC or KP, resulting in a change in the existing balance of obligations • general, non-specific, or broad spectrum amendments may have the effect of repealing or revising the existing balance of obligations in the UNFCCC • does not have immediate effect after adoption because amendments are subject to acceptance and entry into force procedures under UNFCCC Art. 15 or KP Art. 20. Without acceptance as reflected in the instrument of acceptance, a Party will not be bound by the amendment. Entry into force requires the acceptance of the amendment by at least ¾ of all Parties.

⁷ UNFCCC Art. 13 and 14 which currently do not contemplate or provide for binding punitive sanctions as a modality for addressing non-compliance could be amended in order to explicitly provide for such binding punitive sanctions. Note that even under KP Art. 18, addressing non-compliance issues by modalities that would have “binding consequences” would need to be done pursuant to an amendment to the KP.

⁸ With respect to the KP, it is clear that the mitigation commitments of Annex 1 Parties to the Kyoto Protocol for the second and subsequent commitment periods (e.g. post-2012) must, under KP Art. 3.9, be made in the form of amendments to Annex B of the KP done in accordance with KP Art. 21.7. This is the sole form of the agreed outcome that is contemplated and is within the mandate of the AWG-KP.

⁹ KP Art. 18 (last sentence)

¹⁰ UNFCCC Art. 15.3 states that adoption of a decision by the COP can be done by a vote of a ¾ majority of the Parties present and voting at the meeting.

Options as to Form	Positive Aspects	Constraining Aspects
<p>Annexes to the UNFCCC</p>	<ul style="list-style-type: none"> • forms an integral part of the Convention and can be used to further enhance or strengthen existing UNFCCC obligations or commitments by means of “lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative nature” – e.g. these could be lists or other material that would further describe and detail existing UNFCCC obligations by developed countries on mitigation (Art. 4.2), financing (Art. 4.3), adaptation support (Art. 4.4), technology transfer (Art. 4.5), reporting of implementation and compliance through national communications (Art. 12) • in the context of enhancing compliance and enforcement of obligations, annexes can be used to provide for additional procedures relating to arbitration and/or conciliation in the context of dispute settlement concerning the interpretation or application of the UNFCCC¹¹ • can be decided upon by voting in the event that consensus 	<ul style="list-style-type: none"> • cannot contain in themselves substantive commitments or obligations – i.e. they can for example set forth or list countries that are subject to mitigation commitments (the current Annex I) or financing, technology transfer, and adaptation support commitments (the current Annex II), but they cannot in themselves create the obligation to mitigate or to contribute funds¹² • amendments to the annexes have to follow the same procedure for proposal, adoption and entry into force as the annexes themselves and amendments (see UNFCCC Art. 16.4) • does not have immediate effect after adoption because annexes are, pursuant to UNFCCC Art. 16, subject to the acceptance and entry into force procedures of UNFCCC Art. 15. Without acceptance as reflected in its

¹¹ UNFCCC Art. 14.2(b) mandates the COP to adopt arbitration procedures “as soon as practicable, in an annex on arbitration” to supplement the arbitration provision in UNFCCC Art. 14.2(b). UNFCCC Art. 14.7 mandates the COP to adopt “additional procedures relating to conciliation ... as soon as practicable, in an annex on conciliation” in order to supplement the provisions on conciliation contained in UNFCCC Art. 14.5 and 14.6. However, with respect to conciliation, any conciliation commission established under UNFCCC Art. 14.6 can render only a “recommendatory award, which the parties shall consider in good faith.”

¹² For example, while the Australian proposal for mitigation schedules to be established for Parties could conceivably be reflected in the form of an annex to the UNFCCC, it will apply only to Annex 1 Parties and NOT to non-Annex 1 Parties. This is because under the UNFCCC, only Annex 1 Parties under Art. 4.2(a) and (b) have quantified mitigation commitments. Listing mitigation schedules in the form of an annex to the UNFCCC can only be with respect to implementing Art. 4.2(a) and (b), which apply only to Annex 1 Parties. Developing countries cannot, therefore, be required to submit mitigation schedules because to do so would de facto create a quantified mitigation obligation for them that currently does not exist under the UNFCCC.

Options as to Form	Positive Aspects	Constraining Aspects
	cannot be arrived at	instrument of acceptance, a Party will not be bound by the amendment. Entry into force requires the acceptance of the amendment by at least ¾ of all Parties.
Protocol to the UNFCCC ¹³	<ul style="list-style-type: none"> • can be used to provide for supplementary or complementary obligations or commitments that flow or arise from existing UNFCCC obligations or commitments – e.g. the KP is the protocol established to further enhance and strengthen the existing mitigation obligation of Annex 1 Parties under UNFCCC Art. 4.2(a) and (b) • protocols can also be used to establish a ratifiable and legally enforceable compliance and liability regime based on the UNFCCC that could provide for a reporting, verification, and sanctions-based compliance system to bolster existing reporting, verification and implementation-related provisions of the UNFCCC • entry into force requirements can be specified that would allow for immediate provisional application of the protocol’s provisions even before the requisite number of Parties have accepted and ratified the protocol¹⁴ 	<ul style="list-style-type: none"> • depending on the entry into force requirements contained in the protocol, it might not have immediate effect after adoption since it would still be subject to Party acceptance and ratification requirements. Parties are not bound until they have accepted and ratified the protocol. The protocol might also not enter into force if the requisite number of accepting or ratifying Parties is not met.¹⁵

¹³ A “protocol” is a new international legal instrument that is linked to the “mother” treaty – in this case the UNFCCC – and is generally intended to further enhance the mother treaty’s substantive obligations or commitments through the detailing of additional substantive commitments or obligations that are deemed necessary to ensure the full and effective implementation of the mother treaty’s provisions. With respect to UNFCCC protocols, UNFCCC Art. 17 (on the adoption by the COP of protocols) must be read in the context of other provisions of the UNFCCC such as Art. 7.2’s chapeau that essentially requires that the COP may adopt only those legal instruments that are “related” - i.e. connected - to the UNFCCC.

¹⁴ Immediate provision application of the protocol to the Parties that have signed it can be effected if such is agreed to by Parties and explicitly provided for in the protocol. Provisional application of a treaty instrument prior to its entry into force is an accepted practice under international law – see e.g. the provisional application of the 1947 General Agreement on Tariffs and Trade (GATT 1947) for almost 50 years despite the failure of the 1947 Havana Charter establishing

Options as to Form	Positive Aspects	Constraining Aspects
<p>New treaty instrument with provisions not consistent with the UNFCCC¹⁶</p>		<ul style="list-style-type: none"> • may result in the replacement and disappearance of the UNFCCC as the existing legal regime for global cooperative action on climate change as UNFCCC Parties withdraw from it in favour of the new treaty, which may have a balance of obligations that are not consistent with those in the UNFCCC • it might not have immediate effect after signature since it would still be subject to State acceptance and ratification requirements. States are not bound until they have accepted and ratified the new treaty. The new treaty might also not enter into force if the requisite number of accepting or ratifying States is not met • negotiation and adoption of a new treaty that is inconsistent with the UNFCCC is not within the mandate of the COP under Art. 7.2

the International Trade Organization (ITO) to enter into force. The 1947 GATT was replaced by the 1994 GATT upon the latter's entry into force together with the creation of the World Trade Organization (WTO) in 1995. Such provisional application is also recognized as a treaty law rule in Art. 25 of the 1969 Vienna Convention on the Law of Treaties.

¹⁵ UNFCCC Art. 17.3 allows the COP to establish in the protocol the requirements for the entry into force of such protocol. This means that such requirements for entry into force may differ from the entry into force requirements of the UNFCCC or other UNFCCC-related protocols (such as the KP). For example, the entry into force requirements under KP Art. 25 are different from that of the UNFCCC under Art. 23 thereof.

¹⁶ Under UNFCCC Art. 7.2 (chapeau), the COP may adopt only "any related legal instrument" to the UNFCCC. This means, applying the general rule of treaty interpretation under Art. 31.1 of the 1969 Vienna Convention on the Law of Treaties, that the COP may adopt only those "legal instruments" that belong to or are connected with the UNFCCC. See Oxford English Dictionary for the ordinary meaning of "related."

Options as to Form	Positive Aspects	Constraining Aspects
Unilateral declarations or acts that create legal obligations under international law ¹⁷	<ul style="list-style-type: none"> • can be done by virtue of a COP decision requesting Annex I Parties that are not Parties to the Kyoto Protocol, as a way for their implementation of their existing UNFCCC Art. 4.2(a) and (b) obligations, to unilaterally commit themselves to undertake and implement domestically (e.g. through domestic legislation or regulations) obligations and actions which are comparable to those undertaken by Annex I Parties which are Parties to the Kyoto Protocol. • can have immediate legal effect with respect to the declaring Party and to other Parties once the unilateral declaration has been made 	<ul style="list-style-type: none"> • can create an incentive for Annex I KP Parties to withdraw from KP or not accede or ratify amendments to KP Annex B with respect to second commitment period mitigation obligations¹⁸ • subject to the unilateral decision of the Party to make • unilateral nature of the act could make it difficult to incorporate into or render it subject to any multilateral enforcement and compliance mechanism that may be set up under the UNFCCC

¹⁷ For such a unilateral declaration to have binding legal effect on the declaratory Party and for other Parties to be able to rely on the binding nature of such a declaration with respect to its international legal effects, it should: (i) be done formally and publicly, orally or in writing; (ii) it should express the intent to be bound and produce obligations under international law; (iii) it must clearly and specifically state the obligations to which the State will be bound; (iv) it must be made by an authority vested with the authority to do so (e.g. head of State, head of Government, or foreign ministers); and (v) it must not conflict with a preemptory norm of general international law (a jus cogens norm). In this regard, the UN General Assembly's International Law Commission in 2006 adopted the "Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations." These Guiding Principles were reported by the ILC to the 61st session of the UN General Assembly (see Report of the International Law Commission, 58th Session, UN Doc. No. A/61/10 (2006)), which then took note of such Guiding Principles and commended their dissemination (see UN General Assembly Resolution No. A/RES/61/34, 18 December 2006, para. 3). For the text of these Guiding Principles, see http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_9_2006.pdf. These guidelines are based on, inter alia, the 1933 decision of the Permanent Court of International Justice in the case of Norway vs. Denmark and the 1974 Nuclear Test Cases decided by the International Court of Justice.

¹⁸ One way to avoid "leakage" of KP Parties from signing and ratifying 2nd commitment period mitigation targets is to provide for a non-KP mitigation regime under the UNFCCC, implementing UNFCCC Art. 4.2(a) and (b) in relation to meeting the UNFCCC Art. 2 objective, under which non-KP Annex 1 Parties would still be obliged to adopt and implement quantified mitigation commitments that are comparable to those of Annex 1 KP Parties. Such a regime could be set up through COP decisions implementing Art. 4.2(a) and (b) or through a new legal regime composed of related legal instruments such as amendments to the UNFCCC Art. 4.2(a) and (b) or a separate protocol for non-KP Annex 1 Parties in order to provide for such a regime.

Conclusion

Given the options as to legal forms for the agreed outcome as described above, and taking into account the legal relationship between the UNFCCC and its related legal instruments and the COP's decisions, it might be useful to consider what options might be possible for purposes of achieving developing countries' objectives in the climate negotiations. The following table gives some suggestions:

Objective	Legal Form Options ¹⁹
<p>Shared vision</p>	<p><u>Operationalization:</u></p> <p>COP decision/s on shared vision, including a long-term global goal, relating to the implementation and achievement of UNFCCC Art. 2, 3, and 4.2(a) and (b), 4.3, 4.4, 4.5, and 4.7</p> <p><u>Compliance:</u></p> <p>Amendment by putting in a new UNFCCC article, or a new Protocol, with respect to the creation of modalities to address non-compliance with Art. 4.2(a) and (b), 4.3, 4.4, 4.5, if these are to be different from Art. 13 multilateral consultative process and Art. 14 dispute settlement -- i.e. to have modalities providing for punitive sanctions in the event of non-compliance</p>
<p>Enhanced implementation of Art. 4.3 (financing), including institutional framework for fund management, modalities, sources of financing, etc.</p>	<p><u>Operationalization:</u></p> <p>COP decision/s with respect to the institutional framework for fund management, governance, implementation modalities, and scale and modalities (e.g. assessed contributions) of finance sourcing, management and disbursement in the context of Art. 4.3 and Art. 11</p> <p><u>Compliance:</u></p> <p>COP decision/s defining financing compliance modalities, including procedures and processes for promotion of enforcement (e.g. providing for positive incentives but not punitive sanctions)</p> <p>Amendment by putting in a new UNFCCC article, or a new Protocol, with respect to creation of modalities to address non-compliance with Art. 4.3, if these are to be different from Art. 13 multilateral consultative process and Art. 14 dispute settlement -- i.e. to have modalities providing for punitive sanctions in the event</p>

¹⁹ These options are “and/or” selections.

Objective	Legal Form Options ¹⁹
Enhanced implementation of Art. 4.4 (adaptation)	<p style="text-align: center;">of non-compliance</p> <p><u>Operationalization:</u></p> <p>COP decision/s (e.g. 5/CP.7, 1/CP.10, and 2/CP.11) with respect to the creation of an institutional framework, funding, governance, implementation modalities in the context of Art. 4.4</p> <p><u>Compliance:</u></p> <p>COP decision/s defining adaptation support compliance modalities, including procedures and processes for enforcement (e.g. providing for positive incentives but not punitive sanctions)</p> <p>Amendment by putting in a new UNFCCC article, or a new Protocol, with respect to creation of modalities to address non-compliance with Art. 4.4, if these are to be different from Art. 13 multilateral consultative process and Art. 14 dispute settlement settlement -- i.e. to have modalities providing for punitive sanctions in the event of non-compliance</p>
Enhanced implementation of Art. 4.5 (technology transfer)	<p><u>Operationalization:</u></p> <p>COP decision/s (e.g. 4/CP.7 and 4/CP.13) with respect to the creation of an institutional framework for technology transfer, governance, implementation modalities in the context of Art. 4.5</p> <p><u>Compliance:</u></p> <p>COP decision/s defining financing compliance modalities, including procedures and processes for enforcement (e.g. providing for positive incentives but not punitive sanctions)</p> <p>Amendment by putting in a new UNFCCC article, or a new Protocol, with respect to creation of modalities to address non-compliance with Art. 4.5, if these are to be different from Art. 13 multilateral consultative process and Art. 14 dispute settlement settlement -- i.e. to have modalities providing for punitive sanctions in the event of non-compliance</p>
Enhanced implementation of Art. 4.2(a) and (b) (mitigation by Annex 1 Parties) under BAP para	<p><u>Operationalization as to Mitigation Commitments:</u></p> <p>COP decision in the context of the implementation of UNFCCC Art. 4.2(a) and (b) that would define modalities for adoption, implementation and MRV of developed countries' mitigation commitments made</p>

Objective	Legal Form Options ¹⁹
<p>1(b)(i), in particular the issue of comparability of Annex 1 mitigation commitments</p>	<p>pursuant to BAP para 1(b)(i)</p> <p><u>Operationalization as to Comparability:</u></p> <p>COP decision requesting all Annex I Parties, including those not Parties to the KP, to submit to the COP their unilateral declarations consistent with international law parameters that establish comparable mitigation commitments over and above KP 2nd commitment period targets on the basis of UNFCCC Art. 4.2(a) and (b) as existing treaty obligations</p> <p>Amendment with respect to additional mitigation commitments over and above KP 2nd commitment period targets for all Annex I Parties by amending UNFCCC Art. 4.2(a) and (b)</p> <p>Protocol with respect to establishing KP-comparable mitigation commitments for Annex I Parties that are not Parties to the KP (which could also contain its own enforcement and compliance mechanism)</p> <p><u>Compliance:</u></p> <p>COP decision/s defining Art. 4.2(a) and (b) compliance modalities, including procedures and processes for positive enforcement (e.g. positive incentives but not punitive sanctions)</p> <p>COP decision/s establishing additional MRV modalities to enhance implementation of UNFCCC Art. 12.1 and 12.2, Art. 10.2(a) and (b), Art. 7.2(d) and (e), and Art. 4.2(b), (c) and (d) (relating to the MRV of Annex 1 Parties' mitigation actions)</p> <p>Amendment by putting in a new UNFCCC article, or a new Protocol, with respect to creation of enforcement and compliance modalities for Art. 4.2(a) and (b), if these are to be different from Art. 13 multilateral consultative process and Art. 14 dispute settlement, and to the extent that these would be different from the KP Art. 18 compliance mechanism settlement -- i.e. to have modalities providing for punitive sanctions in the event of non-compliance</p>
<p>Enhanced implementation by developing countries of BAP para 1(b)(ii) mitigation actions</p>	<p><u>Operationalization:</u></p> <p>COP decision/s in the context of the implementation of UNFCCC Art. 4.1 (in particular paras (a) to (c) and (f) to (j)), 4.3, 4.5, 4.7, that would define modalities for</p>

Objective	Legal Form Options ¹⁹
	adoption, implementation and MRV of developing country NAMAs and the MRV of the financing, technology and capacity building support needed and provided to enable such NAMAs
Enhanced mitigation for Annex 1 Parties to the KP under the 2nd and subsequent commitment periods of the KP	<u>Operationalization:</u> Amendment to Annex B of the KP pursuant to KP Art. 3.9 (to be done by the COP-MOP pursuant to AWG-KP process)