

## **DAAD FD6 Workshop**

### **Seminar "The Role of Forests in Climate Change Research and Policy"**

Tuesday, 6th November, 2012

Aula am Waldweg (Waldweg 26, Göttingen)

**Presentation: „Forest and climate: the international framework for a regulation“**

**Prof. Dr. iur. Peter-Tobias Stoll, Georg-August University Göttingen, Institute of Public International and European Law, Department of International Economic and Environmental Law**

Seminar Minutes

## 1 Introduction:

In his presentation „Forest and climate: the international framework for a regulation“, Professor Dr. Peter-Tobias Stoll firstly gave an introduction into the structure and working method of the United Nations climate change regime and secondly, commented on the status that forests take up within this regime.

The contents of the presentation entailed:

- General definitions, which are useful for the discussion of international regulation (2.);
- An introduction to the United Nations climate change regime (3.);
- An introduction to International Relations using the example of the UNFCCC institutions (4.);
- An introduction to International Organizations using the example of the UNFCCC bodies (5);
- An introduction to the working method of international treaties using the example of the UNFCCC COP decisions (6);
- An introduction to forests in the UNFCCC, the CBD and the WTO (7.).

## 2 Basic definitions

### 2.1 Definition “regulation”

According to a systemic view “regulation” means: rules, procedures and institutions at national or international level, which govern a function or address a problem.

According to a normative view “regulation” is something requiring and representing a commitment; not necessarily hard law only, some “soft law” elements are possible.

These definitions are important as they clarify firstly, that regulation means more than just one “system” (regime) and secondly, that regulation takes place between political discourse and legal commitment.

### 2.2 Definition “international”

The definition of “international” requires that rules, procedures and institutions are – at least partly – on the international level.

This notion is important, as international rules, procedures and institutions work fundamentally different on the international level than on the national level.

## 3 The United Nations Climate Change Regime

### 3.1 The United Nations Framework Convention on Climate Change (UNFCCC)

Underlying data:

- adopted 1992
- in force: 1994
- 194 parties + EU
- Kyoto protocol of 1997
- entry into force 2005
- 192 parties (US: only signature)

- 18th session of the Conference of the Parties to the UNFCCC and the 8th session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol will take place from Monday, 26 November to Friday, 7 December 2012

Main contents:

The UNFCCC is a so-called "framework convention". This means that the convention itself solely provides for major principles and objectives but no strict commitments. The framework convention is the cornerstone, forming the basic consensus of states, from which on more specialized commitments can be developed within protocols to the Convention (framework-protocol approach).

The major foundations of the UNFCCC are:

- the notion that climate change is a "common concern of humankind";
- responsibilities of industrialized and developing countries are different (principle of common but differentiated responsibilities);
- mitigation of climate change is key;
- adaptation to such change is also important; and
- the use of „economic instruments“.

### 3.2 The Kyoto Protocol

Entails:

- definite GHG emission reduction targets for industrialized countries, enumerated in Annex I to the UNFCCC (so-called "Annex I countries");
- market mechanisms (joint implementation, emission trading and clean development mechanism);
- expiry date: 2012 (commitment period 2008-2012).

Note that the USA is not member to the Kyoto Protocol.

## 4 International Relations

Looking at international regulation, one has to take into account international relations. International relations are very different from national regulation methods. There is no hierarchy of norms and institutions, no supreme authority or sovereign, but a horizontal structure. This is because all states are equally sovereign. Therefore, all decisions require a consensus by all states. This also leads to the consequence that an international treaty can only bind those states that agree to it.

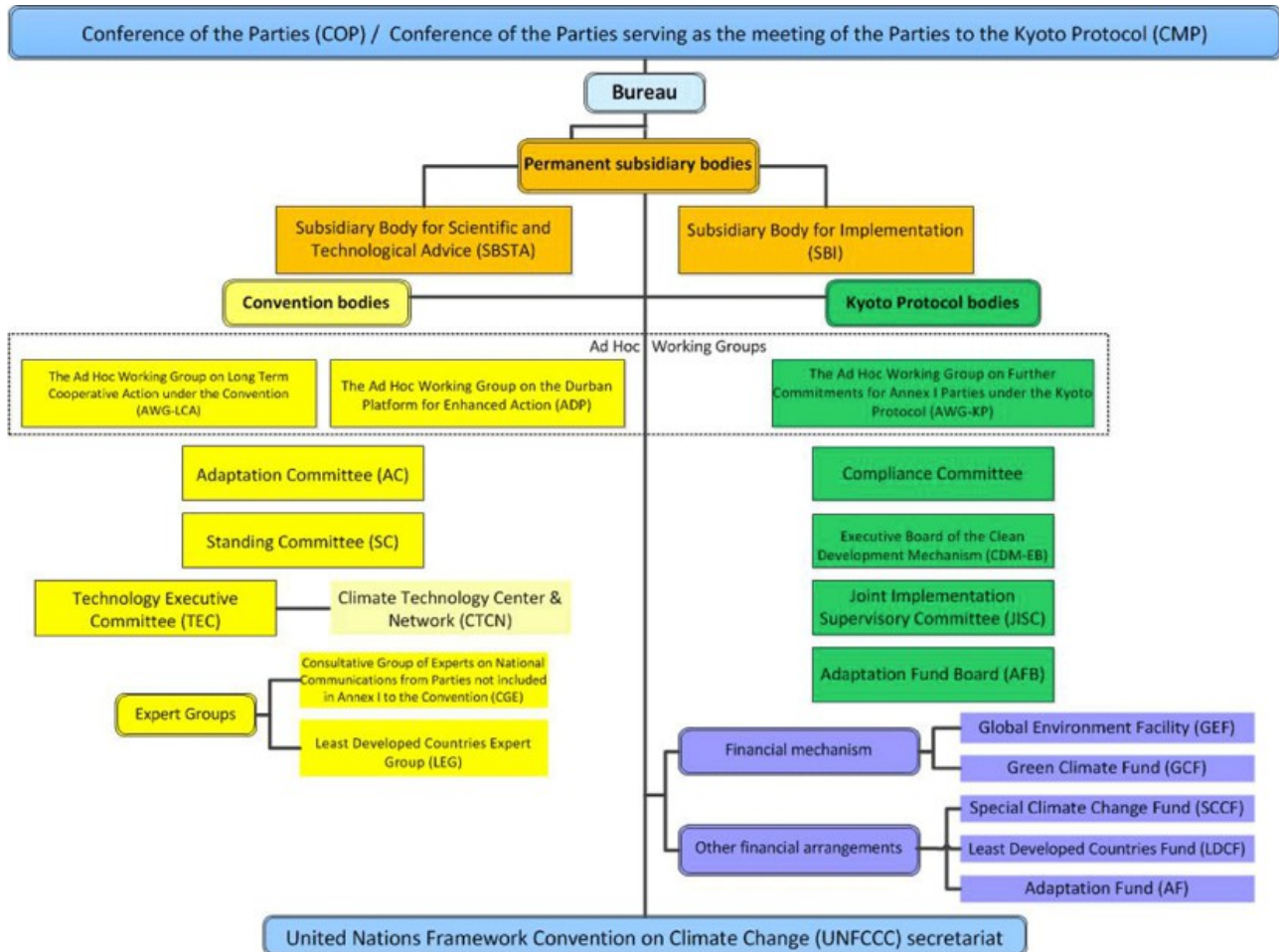
However, the treaties themselves, often develop their own "governance-" or "regulation structure".

## 5 International Law and International Organizations

In this regard one also has to consider international organizations and how they work. They are established by states on the basis of agreement for the coordination and administration of particular matters. Therefore, they only have a limited mandate and no legislative power – they cannot adopt binding rules. But they serve as a forum for the negotiations of new regimes.

Thus, with regards to the UNFCCC, it established the Conference of the Parties (COP) as its su-

preme organ.



## 6 Working Method

In a nutshell, the UNFCCC COP uses the following work processes:

- agenda drafting;
- preparing documents for meeting;
- negotiating on these documents;
- deciding by consensus on the contents of these documents;

Result: COP decisions (non-legally binding)

Excursion on the consensus procedure:

Consensus means that a decision can only be made if no state objects (no objection rule). This rule is based on diplomatic procedures and habits. A diplomate can only make a decision with the agreement of his home government. Therefore, to say "yes" a diplomate needs so-called "instructions" from his home government. The consensus procedure thus facilitates the decision making as states do not have to do anything, in case they agree. This also means delegates who want to object meet the obstacle that they need instructions by their home government.

The UNFCCC negotiations furthermore follow a group procedure. That means that states that more or less have the same interests are organized in one group with one speaker (*e.g.* the EU, the G77 or the AOSIS).

## 7 Forests in Law

Forests are not under comprehensive international regulation. Forests are regulated by an issue-by-issue array of fairly independent institutions.

Forests are covered for example by:

- the UNFCCC with regards to REDD or LULUCF;
- the CBD which is basically concerned with forests with regards to the detrimental effects of climate change;
- the WTO which is concerned with free trade in forest products.