

Article 7.2(c): A Possible Pathway to Facilitate Cooperation of Measures

Considerations for Oceans, Coastal Communities, and COP25

A Second 2nd Memo to Facilitate Coordination of Measures on Oceans and Climate Change¹

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¹ We thank our colleagues who co-wrote the first memo and colleagues who shared their views, experiences, and encouragement for this new briefing.

² Although we both are affiliated with The Carbon Institute, the views expressed in this paper are our own, and do not necessarily reflect those of The Carbon Institute. We welcome feedback, input, and questions at john.niles@carboninstitute.org. This memo is a draft and as such has not gone through careful editing or peer-review, though we hope to do so in the near future.

INTRODUCTION

As the supreme body, the Conference of the Parties is defined by relatively few words. One of the most powerful paragraphs of the Convention is Article 7.2(c). This memo discusses this relatively unknown paragraph of the Convention in the context of coastal communities and oceans. Our research suggests that consideration of Article 7.2(c) extends well beyond efforts to elevate ocean actions into the Paris Agreement.

A prior memo covered a range of scientific, political, and legal circumstances related to elevating oceans in the UNFCCC. That memo outlines two interrelated options for elevating oceans and coastal communities in the UNFCCC process: 1) an agenda item, and 2) use of Article 7.2(c) under the Convention. While appetite among Parties for an agenda item on oceans is low for now, there was interest expressed from stakeholders at SB50 on Article 7.2(c).³ As Parties discuss how to structure a durable and action-oriented process for oceans, Article 7.2(c) and related Convention language could create “coalitions of the willing” to facilitate (with COP) and coordinate (among themselves) key issues under the Convention. Done properly, Article 7.2(c) and other UNFCCC language have benefits to consider. The benefits and risks to these “coalitions of the willing” should be compared to other processes for enhancing ambition, accelerating action, and increasing finance including SBSTA workshops, work programs, and constituted bodies.

BACKGROUND

The architecture of the Paris Agreement has largely been negotiated, and the detailed Katowice Rulebook will guide implementation. In short, most of the necessary elements of a durable Paris Agreement have been put in place, and the UNFCCC has advanced as far as is likely on addressing key remaining needs and gaps through these bodies of text. We know that significantly more finance and strategic capacity building, among other things, is still needed to accelerate action. There is a palpable sense that the UNFCCC process itself must adapt. Can the Paris Agreement evolve from inward-facing negotiations to real world implementation, and from framing conditions to enhanced action? How can the powerful convening abilities of the Convention affect more ambitious change? This may require positively disrupting the UNFCCC.

We imagine a changed future UNFCCC organized substantially around groups of Parties and non-Parties⁴ that come together to coordinate measures that can achieve more collectively than the sum of individual (non-coordinated) Party measures. Any group of Parties may, based on such facilitation, make a joint commitment in fulfillment of their obligations, as a way of reporting back on their work to the COP⁵. Future COPs will continue to have some procedural agenda items, but the future is in action, raised ambition from willing Parties on particular themes, and new innovative strategies under the Convention to support this.

³ Amerasinghe, Niranjali M. and Kristen Hite “Exceptionalism United?: Unpacking UNFCCC Article 7.2(c)” Sustainable Development Law & Policy, Spring 2010, 17-23, 58-59. We only make one remark on this excellent work. On page 22, we believe the COP has broad legal leeway to facilitate the coordination of measures *without* a COP decision. COP can simply facilitate the coordination between those countries that have voluntarily agreed to be facilitated, not by consensus of the whole COP. This distinction is critical since future climate-adjacent issues could involve a range of Parties asking COP to facilitate various adopted measures. Facilitation should aim to improve the coordination of measures, and as such should be based on the request by those Parties seeking facilitation. Ultimately, this may be the most consequential legal tussle. Legal arguments can be built to either allow or to block voluntarily ascending Parties to set their own “rules” of facilitation.

⁴ See for example UNFCCC Article 7.2 (l) and (m), Article 8.2 (e) (f), (g), and

⁵ UNFCCC Article 12

THE NEED

The ultimate goal of ocean-motivated Parties should not be a “Blue COP25” but rather a “Blue Paris Agreement”—a long-term facilitative roadmap for multilateral action. An elevated COP process is needed for oceans and coastal communities that is:

- 1) **action-focused**
- 2) **sustained**
- 3) **embedded** throughout elements of the Paris Agreement and rulebook
- 4) **financed** by funds run and signaled by the UNFCCC
- 5) **built** into NDCs (including their evolution)
- 6) **coordinated** with other conventions and non-Party actors
- 7) **reviewed** in the ETF
- 8) **assessed** for progress in the GST
- 9) **included** as part of the regular review of the Paris Agreement to promote its effective implementation.

We do *not* encourage Parties to elevate oceans in the UNFCCC to debate and negotiate. We *do* encourage Parties to elevate oceans in the UNFCCC to act. The trust given by the transparency within the UNFCCC and Paris Agreement (hard as it was to achieve) and the methodological nature of the systems (complex as they are) are our most promising collective pathways to stave off a highly likely set of negative anthropogenic consequences. One way to raise ambition now is to help countries facilitate measures together on specific areas of common interest. Terrestrial and marine nature-based solutions will play a vital role in achieving countries’ contributions and meetings the objectives of the Paris Agreement.

Article 7.2(c) can allow a process through which a subset of interested Parties may voluntarily coordinate measures they have adopted on oceans and climate change with the support of the COP and its power to spur and sustain transparent action. One novel way to do this—and novelty is needed to raise ambition and to drive the UNFCCC towards action—is for two or more Parties to ask the COP to facilitate the coordination of measures on oceans and climate change. They are entitled to do so under Article 7.2(c) and COP is required to facilitate.

The key legal and policy innovation to Article 7.2(c) is that the COP must only facilitate the coordination of measures adopted by Parties. It is *not* given the mandate to facilitate negotiations.

What is meant by measures adopted by Parties? For the purposes of this memo, we view these as falling into two categories: 1) measures taken at national or local levels (e.g. financing the restoration of coastal ecosystems or helping communities implement adaptation responses), and 2) measures taken by Parties under their responsibilities to the Convention (e.g. a country adopting and submitting ocean/climate measures in its NDC). This is not to say both types of measures adopted *should* be facilitated by an Article 7.2(c) process. For the rest of this memo, we focus on measures adopted by Parties on oceans under the Convention.

How might a facilitation of coordination of measures under the UNFCCC work in practice?

We envision a process where COP facilitates measures on oceans and climate to operate as such:

1. Some Parties voluntarily seek facilitations on ocean and climate issues formally in advance of COP25. These should be real measures “adopted by Parties to address climate change and its effects” in relation to the ocean and coastal communities. As noted above, we feel they will fall into the two categories of the real world and measures under the UNFCCC. Please see the earlier memo on how Parties should submit such a request.

Parties cannot request facilitation on negotiations since (by definition) these are not actions taken by Parties. Parties should use precise language from Article 7.2(c) and ideally use the same title of the issues to be facilitated: “climate change and oceans” or “climate change, oceans, and coastal communities.” In their communications, they should also request the secretariat to share their requests and invite other Parties to voluntarily also request facilitation on the same measure(s)⁶.

2. Concurrently, Parties can make formal submissions to the UNFCCC about their request for facilitation and other Party views. Please see earlier memo on what could be contained in such submissions.

3. COP, via the secretariat, communicates the request to other Parties, with the goal of widening coordination for other Parties on oceans, coastal communities, and climate measures.

4. At COP25, the COP establishes a process to facilitate coordination for those Parties making the request on oceans and climate change. From our read of the Convention, the COP has some latitude in terms of how it facilitates cooperation. There are no rules that say facilitation must be done in this way or that way. Two observations are worth noting.

- 1) There is substantial legal flexibility in the Convention and the Paris Agreement to innovate around this overarching philosophy.
- 2) COP must facilitate and the Parties being facilitated should request *how*. This may change for different Article 7.2(c) requests.

5. During this process, requesting Parties should explain what types of adopted measures need coordination. This can take various forms:

- 1) Parties can request facilitation of coordination of measures *at large* on oceans and climate change.
- 2) Parties can request facilitation of coordination on *specific* measures they’ve adopted (e.g., a bilateral coastal mangrove restoration program or an international ocean research platform).
- 3) Countries can request facilitation of coordination of measures taken under the Convention (e.g. submission of NDCs, NAPs, etc.).

6. Only those Parties that have requested coordination of measures on oceans would then be entitled to facilitation by COP. This is the power of Article 7.2(c). Now that the Convention process is built primarily on consensus, Article 7.2(c) can help willing groups of Parties get more done more quickly around common themes. For certain measures, countries no longer need to wait for permission from the entire UNFCCC.

7. Parties can then report back to the COP on lessons learned about the most promising elements and processes for the further facilitation of measures they have adopted and coordinated on oceans and climate change⁷. COP can then engage other agencies, funding bodies, non-Party stakeholders, outside processes, etc., and this engagement could spur political action. However, if this were to happen, Parties could simply state their needs for non-COP actors (banks, conventions, etc.) and then simply report to the COP as they are legally allowed to do. Parties could then take it upon themselves to use the report to advance their own requests given the COP but using their own collective efforts.

Additional legal thinking is needed, as well as an assessment of risks and benefits. To provide input or receive further versions of this memo, please contact the authors.

⁶ For example, see UNFCCC Article 12.1(c) and 12.6.

⁷ See again Article 12.1(c), and Article 12.8