The contribution of the Conference of the Parties to a supranational anti-corruption ecosystem

Stephen Minas[1]

Abstract

The UNFCCC Conference of Parties (COP), its equivalents under the Kyoto Protocol (the CMP) and Paris Agreement (the CMA) and its subsidiary bodies (hereinafter collectively referred to as the COP) have a crucial but little-studied role to play in safeguarding the integrity of climate finance. The functions of the COP relating to climate finance integrity can be divided into three categories: First, the adoption of frameworks and guidance to Parties concerning transparency, including reporting requirements and related activities; second, guidance to entities established or mandated by the COP to mobilise climate finance directly (namely, the Financial Mechanism operating entities and the Adaptation Fund) or indirectly through related activities such as technology transfer and carbon crediting; and third, the establishment of mechanisms to hear complaints or resolve disputes that may concern climate finance integrity, such as the Kyoto Protocol's compliance committee, its Paris Agreement equivalent and potential grievance and dispute resolution processes for the Article 6.4 mechanism. The ability of the COP to contribute to a supranational anti-corruption ecosystem concerning climate finance is challenged by long-running structural issues. Nevertheless, 2024 offers significant opportunities to strengthen the COP's contributions to climate finance integrity. Ambitious COP guidance on integrity can help to create the confidence needed to scale the provision and mobilisation of climate finance.

1: Introduction

Finance is a critical enabler of the needed transition to a net-zero and climate change-resilient economy and society. Climate finance is particularly necessary to help the poorest and most vulnerable countries respond to the threats and challenges of climate change. As necessary as it is, however, climate finance is not immune from the challenges of finance generally. The

[1] This paper is written in a personal capacity. The views expressed in this paper are personal to the author and do not necessarily represent the position of any institution or Party.

goals behind climate finance might be inherently virtuous but not everyone who transacts in it is going to be. Corrupt individuals and entities have always been drawn to large amounts of public and private money and climate finance is no exception. It is therefore vital that the integrity safeguards around climate finance be strengthened, especially as climate finance continues to grow in scale and complexity.

The Conference of Parties (COP) of the United Nations Framework Convention on Climate Change, Kyoto Protocol and Paris Agreement has an important role to play in strengthening a supranational, anti-corruption ecosystem pertaining to climate finance. This is because of the COP's central role in the development of international frameworks and programmes concerning climate change, including finance and related matters such as technology development and transfer, and transnational carbon markets. This paper will identify what the COP has already done on the integrity front and how it could do more. The paper reflects a practitioner's view of what the COP can realistically do and how it might, with difficulty, be pushed to do more. This is not a utopian perspective. The COP is not going to change its fundamentally political, consensus-driven character, which will continue to constrain its capacity to act on matters of integrity.

The remainder of the essay is structured as follows. Part 2 introduces the climate finance integrity functions of the COP as outline above. This part also situates the COP within broader integrity processes. Part 3 analyses the structural issues that challenge the COP's ability to contribute to a supranational anti-corruption ecosystem, as outlined above. Part 4 identifies current opportunities to overcome these constraints. Part 5 closes with recommendations on strengthening the COP's contribution to climate finance integrity, including within the COP negotiations and by strengthening linkages between the UNFCCC and external integrity actors and processes.

2: The climate finance integrity functions of the COP

Each of the three climate treaties has its own governing body: the Conference of the Parties to the UN Framework Convention on Climate Change (the COP); Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (the CMP); and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (the CMA). In this paper, 'COP' is used as a catch-all term for the functions and features that are common to these

three bodies, while the terms 'COP of the Convention', 'CMP' and 'CMA' are used to refer to one of the three bodies specifically.

The COP's potential to take action to safeguard the integrity of climate finance stems from its status as 'the supreme body' of the climate treaties.[2] With a broad mandate to make 'the decisions necessary to promote the effective implementation of the Convention',[3] the COP is empowered to make decisions that are internally authoritative within the UNFCCC regime.[4] Put simply, subsidiary bodies, constituted bodies and other institutions established by the climate treaties or by the COP must follow COP decisions. In the field of finance, this dynamic can be seen in the annual practice of the operating entities reporting to the COP on their progress in responding to COP guidance.

The effect of COP decisions in respect of Parties is different but still significant. While COP decisions are generally not 'binding' on Parties as a matter of public international law,[5] they can have immense practical significance in determining how Parties implement their treaty commitments. The real-world consequences to Parties of COP decisions are evidenced by the care with which Parties negotiate them, with the most consequential COP decisions – e.g. those concerning transparency, and market mechanisms – sometimes taking years of negotiation before consensus can be found.

The functions of the COP relating to climate finance integrity can be divided into three categories: first, the adoption of reporting and transparency frameworks and subsequent guidance; second, guidance to financial entities serving the COP and other entities relevant to climate finance, such as the technology and 'flexibility' mechanisms; and third, the establishment of accountability mechanisms of various kinds. This section provides a brief overview of these three functions and indicates their current limitations and future potential.

Reporting and transparency frameworks:

[2] UN Climate Convention, Art. 7.2; see also Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997), Art. 13.1, and Paris Agreement (2015), Art. 16.1.
[3] UN Climate Convention, Art. 7.2; see also Kyoto Protocol, Art. 13.4, and Paris Agreement, Art. 16.4.
[4] Simone Schiele, *Evolution of International Environmental Regimes: The Case of Climate Change* (CUP 2014) 41-42.
[5] For exceptions to this general position, see Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th ed, CUP 2018), 116-17, and Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (OUP 2017) 90-91.

Reporting requirements established in the climate treaties and elaborated by the COP provide a baseline level of transparency for activities that Parties undertake under UNFCCC mandates. Importantly, these reporting requirements are not limited to domestic emissions, mitigation and adaptation but also encompass support (including finance) provided and received. While safeguarding integrity is a key motivation behind some transparency rules (especially those concerning carbon crediting), the main concern behind Party reporting requirements is to avoid the 'free-rider problem' in responding to a collective action challenge. Nevertheless, rigorous transparency of support rules can help to deter or identify corrupt practices.

The COP has progressively strengthened rules concerning transparency of support. In 2010, the COP of the Convention decided to enhance developed Party reporting through biennial reports, including on 'the provision of financial, technological and capacity-building support to developing country Parties'.[6] In the same decision, it decided to enhance reporting by non-Annex I Parties, including on 'support received'.[7] Guidelines for biennial reporting by developed and non-Annex I Parties, respectively, were adopted the following year.[8]

The Paris Agreement established an 'enhanced transparency framework for action and support'.[9] Regarding support, the framework's purpose is to 'provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14'.[10]

Although differentiated, the reporting guidance to Parties that provide support is not limited to developed Parties: 'Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11'.[11] This provision must be read together with Article 9.7, which requires developed Parties to 'provide transparent and consistent information on support for developing country Parties provided and mobilized

[6] Decision 1/CP.16, para. 40ff.
[7] Ibid, para. 60.
[8] Decision 2/CP.17, Annexes I and III.
[9] Paris Agreement, Article 13.1.
[10] Ibid, Article 13.6.
[11] Ibid, Article 13.9.

through public interventions biennially'. In addition, developed Parties must biennially report *ex ante* information on climate finance.[12] For their part, developing Parties 'should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11'.[13] Paris therefore 'provides for double bookkeeping, since both contributors and recipients are required to report on finance'.[14]

The Paris transparency framework subjects information reported on support provided (*inter alia*) to a 'technical expert review', which is to 'identify areas of improvement for the Party' concerned.[15] The transparency framework as a whole is to 'be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties'.[16]

The modalities, procedures and guidelines (MPGs) and the common tabular formats for the transparency framework, adopted by the CMA in 2018 and 2021 respectively, require Parties to place in the public domain a significant volume of standardised and quite detailed information on climate finance provided or received. The CMA decided that developed Parties 'shall provide information' on finance provided in accordance with the MPGs, while other Parties providing support are 'encouraged' to follow the MPGs.[17] Different sets of information are required for 'bilateral, regional and other channels' and 'multilateral channels'. For the latter, the MPGs provide for reporting on the institution that the finance was channelled through (e.g. the World Bank), amount in both USD and domestic currency, inflows and outflows, the recipient (potentially down to the specific project, programme or activity) and the sector and subsector, among other details.[18] Recipient developing Parties 'should' provide information on financial support received including, in addition to financial channel, amount and other details mirroring the donor reporting, the 'recipient entity', 'implementing entity', '[s]tatus of activity (planned, ongoing or completed)' and '[u]se, impact and estimated results'.[19]

[12] Ibid, Article 9.5.
[13] Ibid, Article 13.10.
[14] Yamide Dagnet and Kelly Levin, 'Transparency (Article 13)', in Daniel Klein, *et al* (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 310.
[15] Ibid, Article 13.11-12.
[16] Ibid, Article 13.3.
[17] Decision 18/CMA.1, Annex, para. 118.
[18] Ibid, para. 124; for the common tabular format, see Decision 5/CMA.3, Annex III, Table III.2.
[19] Ibid, para. 134; common tabular format at Decision 5/CMA.3, Annex III, Table III.7.

This public 'double bookkeeping' should help to both deter and expose major financial irregularities. A particularly blatant scenario might be when the total reported financial support provided to a certain country significantly exceeds the amount that the country reports as received during a particular period. However, data analytics tools may be able to unearth more granular or localised and less obvious discrepancies as well.

COP guidance:

In addition to setting reporting requirements for Parties, the COP provides guidance to entities that it has established or mandated to mobilise climate finance directly (namely, the Financial Mechanism operating entities and the Adaptation Fund) or indirectly through related activities such as technology transfer and carbon crediting. Examples of the latter category include the Climate Technology Centre & Network (CTCN), the Clean Development Mechanism (CDM) and the Article 6.4 mechanism.

There are important differences in the relationships established between the COP and the various entities that condition the kinds of guidance that the COP can give in each case.[20] In general, there is a broad understanding that the COP should not 'micro-manage' the financial and other entities, although Parties often disagree on what this means in practice.

COP guidance encompasses both the adoption of foundational documents for the various entities (governing instruments, rules of procedure and the like) and subsequent decisions on the annual reports of entities, periodic reviews and miscellaneous matters, such as 'linkages' between the Financial Mechanism and Technology Mechanism. The now-annual 'cover' decisions and milestone outcomes such as the first global stocktake decision also provide opportunities for the COP to give guidance to the financial and related entities. These agenda items are all opportunities for the COP to express itself on integrity aspects of the matters under consideration, should there be a consensus for it to do so.

For the annual COP and CMA decisions regarding the operating entities of the Financial Mechanism (the GEF, the GCF and now the loss and damage fund), an important role is played

[20] For example, while the CMP 'shall have authority over' the CDM, with the CDM Executive Board 'fully accountable to' the CMP, the GCF has somewhat greater autonomy, being 'accountable to and function[ing] under the guidance' of the COP. Decision 3/CMP.1, Annex, para. 2, 5; GCF Governing Instrument, para. 4.

by a constituted body, the Standing Committee on Finance (SCF), which has been mandated by the COP to provide draft guidance for the operating entities. While the COP is of course free to accept, modify or ignore the draft guidance produced by the SCF, the SCF's ongoing role in this regard makes it a potentially significant actor regarding climate finance integrity issues. Its regular meetings are open to non-Party observers.

In general, integrity and anti-corruption have not been major focuses of COP guidance on financial matters. To take one not especially scientific measure: In the 700-plus pages of the 'Climate Finance Decision Booklet', which reproduces COP, CMP and CMA finance decisions from 2001 to 2022, the words 'fraud' and 'corruption' each appear only once – in the GCF governing instrument.[21] When the COP has had the opportunity to address corruption scandals directly, it has not done so. Faced with perhaps the most spectacular instance of public corruption allegations concerning multilateral climate finance in recent times,[22] the COP responded with discretion bordering on the cryptic.[23]

A major exception to the COP's general reticence on integrity matters can be found in the problem of conflicts of interest. The prohibition of conflicts of interest is one area in which COP guidance has contributed to anti-corruption norms. The COP has been making rules on this topic since at least the 2001 Marrakech conference, which resulted in foundational guidance for the Kyoto Protocol market mechanisms.[24] A common feature of the governance of climate finance, technology and market entities is a board of officers elected (usually) by the COP. No two such boards are identical in mandate or composition, but it is common for them to take decisions on budgets, project proposals, activity methodologies and other matters with financial implications, and some have a role in the appointment of senior leaders of the relevant secretariats. There is an evident risk of corruption, that is, of an officer taking decisions or otherwise acting pursuant to an undisclosed and improper interest.

[21] Adopted by the COP as an annex to Decision 3/CP.17.
[22] Edward White and Leslie Hook, 'UN agency hit with corruption allegations at climate projects', FT, 30 November 2020, https://www.ft.com/content/054a529c-e793-489b-8986-b65d01672766; Amitav Rath, 'Systems and Silos: Review of a UNDP/GEF project', Final Report, UNDP, 26 January 2021.
[23] '*Calls upon* the Global Environment Facility to continue to improve the governance framework for its agencies and the standards to which the implementing partners are accountable'. Decision 7/CP.26, para. 10.
[24] See, e.g., Decision 4/CMP.1, Annex I, Rules 9 and 10 (the 2001 decisions of the COP of the Convention having been adopted by the CMP at its first meeting in 2005).

As UNFCCC constituted bodies have proliferated, including many with authority or influence over spending and project or activity approvals, the COP has encouraged them to observe a minimum of conflict of interest standards. In 2018, the COP Bureau[25] endorsed a 'Code of Ethics for elected and appointed officers' under the three UNFCCC treaties. This code stipulates that '[o]fficers are to avoid any conflict of interests as well as situations which might reasonably be perceived as giving rise to a conflict of interest, in order to guarantee the integrity, impartiality and transparency of the climate change conferences'.[26] *Inter alia*, officers are to '[d]esist from using their role as elected or appointed Officers as a means to seek private gain or obtain private pecuniary advantages or other remuneration'.[27]

The COP most recently demonstrated its ability to impose conflict of interest requirements in the rules of procedure of the Article 6.4 mechanism Supervisory Body, adopted in 2022. The rules, which define 'conflict of interest' broadly,[28] require members and alternate members to declare 'any actual, potential or perceived conflict of interest' and refrain from participating in any Supervisory Body work which engages such an interest, *inter alia*.[29] Moreover, '[m]embers and alternate members shall have no pecuniary or financial interest in any aspect of the Article 6.4 mechanism activity, any designated operational entity or any matters considered by the Supervisory Body'.[30] If a member or alternate member fails to comply with these requirements, the Supervisory Body can suspend their membership and recommend to the CMA its termination.[31] (Such a case would probably be unprecedented and it would be difficult to predict what the CMA might do if it arose.)

In sum, the potential of COP guidance to strengthen a transnational anti-corruption ecosystem is mostly latent. This is due to some of the structural impediments to COP guidance playing a more active role, which will be discussed below. There are nevertheless opportunities (also discussed below) to bring COP guidance to bear on integrity matters in a more focused and impactful manner.

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[25] https://unfccc.int/process/bodies/supreme-bodies/bureau-of-the-cop-cmp-and-cma
[26] Code of Ethics for elected and appointed officers under the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, Endorsed by the Bureau of the Conference of the Parties to be applied provisionally, 30 November 2018, para. 14.
[27] Ibid, para. 14(b).
[28] Decision 7/CMA.4, Annex II, para. 2.
[29] Ibid, para. 26.
[30] Ibid, para. 27.
[31] Ibid, para. 21.

Establishment of accountability mechanisms and arrangements:

The establishment of mechanisms and arrangements to hear complaints, resolve disputes or investigate matters that may concern climate finance integrity is another means by which the COP has contributed and can contribute further to an anti-corruption ecosystem. As is well-known, the UNFCCC treaties do not in practice provide for binding dispute settlement as between Parties. Nevertheless, COP decisions have established or mandated a growing number of processes to promote compliance with the climate treaties and COP decisions, addressed both to Parties and other actors. These processes can be divided into processes established directly by COP decision, such as the Kyoto and Paris compliance mechanisms, and processes which were mandated by the COP but crafted by and in the first instance accountable to a constituted body or operating entity, such as the GCF independent integrity unit and the potential grievance and dispute resolution processes of the Article 6.4 mechanism.

Concerning processes established directly by COP decision: In the Kyoto Protocol, the COP of the Convention provided that the CMP 'shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance'.[32] The force of this provision was limited by the proviso that '[a]ny procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol'.[33]

At its first meeting in 2005, the CMP established a compliance committee, including facilitative and enforcement branches.[34] The enforcement branch is responsible for determining whether Annex I Parties are in compliance with their Kyoto target and eligibility requirements for the three market mechanisms, *inter alia*.[35] Importantly, the branch is empowered to impose genuine 'consequences' upon a finding of non-compliance, including suspension from participation in a market mechanism.[36] Although the enforcement branch has not (and indeed cannot) investigate corruption allegations *per se*, its examinations of 'questions of

[32] Kyoto Protocol, Art. 18.
[33] Ibid.
[34] Decision 27/CMP.1, Annex.
[35] Ibid, Part V, para. 1.4.
[36] Ibid, Part XV.

implementation' have often zeroed in on transparency deficits that can create conditions for abuses in carbon markets.[37]

Following the experience of the Kyoto enforcement branch, including multiple suspensions from the flexibility mechanisms, Parties were divided on whether to include a compliance committee in what became the Paris Agreement.[38] Ultimately, the COP did agree to establish a 'mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement', consisting of a committee (commonly known as the Paris Agreement Implementation and Compliance Committee, or PAICC) that 'shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive'.[39]

The CMA adopted the PAICC's modalities and procedures at the conclusion of its first meeting in 2018. This committee differs from its Kyoto predecessor in various important respects. Its activities apply to all Parties, not being limited to developed or Annex I Parties. It is not divided into separate facilitative or enforcement branches. Indeed, it is not an 'enforcement' body at all – its capacity to impose consequences on non-compliant Parties is limited by design: 'In carrying out its work, the Committee … shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions, and shall respect national sovereignty'.[40]

The various measures that the PAICC is empowered to take are decidedly more facilitative than targeted at compliance, with the exception of its power to '[i]ssue findings of fact in relation to matters of implementation and compliance' concerning the maintenance of an up-to-date NDC, some Party reporting commitments and other matters under the enhanced transparency framework.[41] Issuance of findings of fact might be considered a 'naming and

[37] See, e.g., its 2011 process concerning Ukraine, finding a 'lack of completeness and transparency of [emission] inventory information in the energy and industrial processes sectors' and suspending Ukraine from the three Kyoto market mechanisms. Enforcement Branch of the Compliance Committee, Final Decision, CC-2011-2-9/Ukraine/EB, 12 October 2011.
[38] 'The final draft for the Paris Outcome proposed by the President at 21:00 on 10 December still had "and promote compliance with" in square brackets'. Yamide Dagnet and Eliza Northrop, 'Facilitating Implementation and Promoting Compliance (Article 15)', in Daniel Klein, *et al* (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 342.
[39] Paris Agreement, Art. 15.
[40] Decision 20/CMA.1, Annex, para. 4.
[41] Ibid, para. 30.

shaming' measure that Parties would work to avoid. It has been noted that the 'appropriate measures' that the PAICC can take are not limited to those indicatively listed in its modalities and procedures, but that because more stringent measures were rejected due to lack of Party consensus, the 'Committee would … need to be cautious in deciding on an "appropriate" measure, considering that an application of a measure that parties were unable to agree on during the negotiations might lead to controversy'.[42] Notably, Parties rejected a role for PAICC in restricting Article 6 participation eligibility.[43] In sum, the PAICC seems less apt than the Kyoto Compliance Committee to promote adherence to integrity norms.

The COP has more directly targeted fraud and corruption concerns where it has provided for the establishment of accountability mechanisms or processes concerning specific institutions which operate under COP guidance. For instance, the COP included in the GCF Governing Instrument an independent integrity unit 'to work with the [GCF] secretariat and report to the Board, to investigate allegations of fraud and corruption in coordination with relevant counterpart authorities'.[44]

The CMP built an integrity safeguard into the CDM's project cycle by enabling its Executive Board to review a proposed issuance of carbon credits ('certified emission reductions') if 'issues of fraud, malfeasance or incompetence of the designated operational entities [DOEs]' have been raised.[45] The DOE plays a critical part in creating the economic value of a CDM project as the 'independent auditor accredited by the CDM Executive Board (CDM EB) to validate project proposals or verify whether implemented projects have achieved planned greenhouse gas emission reductions'.[46] This gatekeeper role also makes the DOE potentially key to the corrupting of a CDM project.

The COP has also incorporated the anti-corruption rules and processes of other institutions (especially host institutions of various COP-established bodies) by reference in its decisions. This is the case, for example, with the CTCN. The COP's memorandum of understanding with

[42] Gu Zihua, Christina Voigt and Jacob Werksman, 'Facilitating Implementation and Promoting Compliance With the Paris Agreement Under Article 15: Conceptual Challenges and Pragmatic Choices' (2019) 9 Climate Law 65, 80.
[43] Nevertheless, the rules for Article 6.2 technical expert review of Party reporting provides for lead reviewers to 'liaise' with the PAICC in case of 'significant and persistent inconsistencies' with reporting requirements. Decision 6/CMA.4, Annex II, para. 49.
[44] Decision 3/CP/17, Annex, para. 68.
[45] Decision 3/CMP.1, Annex, para. 65.
[46] Designated Operational Entities, https://cdm.unfccc.int/DOE/index.html

the UN Environment Programme (the CTCN's host) requires the CTCN director to 'manage the financial resources of the CTCN in accordance' with UN and UNEP financial rules, including anti-fraud and anti-corruption policies.[47]

For the new loss and damage fund, the COP has chosen a different approach. The fund's governing instrument provides that: 'Activities financed by the Fund will be subject to the implementing entity's independent integrity unit or functional equivalent, which will work with the secretariat to investigate allegations of fraud and corruption in coordination with relevant counterpart authorities and report to the Board on any such investigations.'[48] This apparently creates a hub-and-spokes model, with each relevant implementing entity's integrity function working with the 'new, dedicated and independent secretariat' (to be hosted by the World Bank, at least during an interim period of four years)[49] to investigate any pertinent allegations. The prominent role of implementing entities is especially significant given that the COP's 'conditions' for the World Bank to host the fund include that the Bank '[a]llows for the use of implementing entities other than multilateral development banks, the International Monetary Fund and United Nations agencies'.[50] It is likely that such entities will have varying processes and capacities concerning integrity investigations.

Other accountability mechanisms have either been considered but not established or only recently established but not yet imlemented. The CMP called for the establishment of an appeals process for the Clean Development Mechanism (CDM), including for cases of malpractice by CDM designated operating entities, but Party consensus proved elusive and the procedures were never adopted.[51] At the 2021 Glasgow conference, the CMA decided that '[s]takeholders, activity participants and participating Parties may appeal decisions of the Supervisory Body' of the Paris Agreement's Article 6.4 mechanism.[52] The Supervisory Body agreed on the design of the appellate and grievance processes at its April-May 2024 meeting.[53]

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[47] The drafting of the instant clause is somewhat lacking in precision, however: 'The Director shall manage the financial resources of the CTCN in accordance with the United Nations Financial Regulations and Rules and the Financial Rules of UNEP, fiduciary, anti-fraud and anti-corruption policies and environmental and social safeguards.' Decision 14/CP.18, Annex I, para. 20.
[48] Decision 1/CP.28 and Decision 5/CMA.5, Annex, Para. 69.
[49] Decision 1/CP.28 and Decision 5/CMA.5, para. 17.
[50] Ibid, para. 20(f).
[51] Stephen Minas, 'Market making for the planet: the Paris Agreement Article 6 decisions and transnational carbon markets' (2022) 13 *Transnational Legal Theory* 287, 317-318.
[52] Decision 3/CMA.3, Annex, para. 62.
[53] https://unfccc.int/news/un-body-adopts-historic-human-rights-protections-for-carbon-market-mechanism

In sum, it can be seen that the COP has addressed integrity issues only indirectly in compliance processes that it has established to apply to its members, the Parties. On the other hand, various processes established or mandated by the COP that pertain to specific financial, carbon or technology bodies are explicitly empowered to deal with allegations of fraud and corruption. This latter category suggests that the COP can make meaningful contributions to an anti-corruption ecosystem by requiring that any 'spending' institutions it creates or mandates has a robust accountability mechanism – with the COP itself appropriately keeping at arm's-length from any resulting investigations.

3: Structural factors constraining the COP

As the above indicates, the COP is already a substantial contributor to a supranational anti-corruption ecosystem concerning climate finance, through its creation of Party reporting requirements, guidance to financial and other entities and creation or mandating of accountability mechanisms. It is equally apparent that the COP has been unable to act more forcefully where issues of corruption are concerned. This is because of several structural factors that constrain the COP's ability to address corruption. As this section will demonstrate, some of these structural factors are likely permanent, while others can be reformed. All need to be taken into account by actors concerned with strengthening the COP's contribution to anti-corruption efforts in climate finance.

The first and most obvious such structural factor is the composition of the COP. The COP is a plenary body in which all of the Parties to each UNFCCC treaty meet to engage in collective decision-making. While the annually changing COP presidency can exercise great influence on outcomes, it can in no sense make decisions on the COP's behalf. The COP is in this sense a decentralised decision-maker. COP outcomes are only possible where they command the support (or at least do not meet the active opposition) of the great majority of its membership. This means that advocates of certain outcomes, e.g. integrity, need to engage well in advance of COP meetings with (at least) the Party groupings that actively participate in COP negotiations.[54]

[54] Party groupings, https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/parties/party-groupings

Closely related to the COP's composition is its practice of decision-making by consensus. The COP provisionally applies its draft rules of procedure with the significant exception of the rule on voting. As a result, the COP's invariable practice is to make decisions on the basis of consensus. Consensus does not mean unanimity. While there is no universally accepted definition of 'consensus', its definition in the UN Convention on the Law of the Sea as 'the absence of any formal objection' corresponds to UNFCCC practice.[55]

There are sound reasons for a body such as the COP to default to consensus decision-making and to eschew majority voting. As was noted in the context of the Third Law of the Sea Conference, 'it would be an exercise in futility to work on the assumption that one or more major groupings of the Conference should be occasionally or consistently outvoted with regard to the main aspects … Such an approach would result in a situation where the necessary universal adherence to the Convention was made impossible'.[56] The futility of voting would be even greater in the UNFCCC context, given its weak enforcement capacity.

As appropriate as the consensus procedure may be, it imposes serious limitations on the COP's ability to address matters of corruption. Most obviously, it makes it extremely unlikely that the COP would ever address specific instances of alleged corruption or explicitly address deficiencies in a specific Party's implementation that created opportunities for corruption. Such text would probably be blocked by the Party concerned and any negotiating groups to which they belonged. More broadly, the consensus mechanism limits the integrity measures that the COP can propose to those that the great majority of its membership are comfortable with. It is therefore most unlikely that the COP would ever apply the most forward-leaning or stringent national anti-corruption approaches to the processes under its guidance. Finally, as COP agendas are also adopted by consensus, it can be challenging even for topics which are priorities for some Parties but not others to even be considered by the COP.

A further structural factor is the inability of the UNFCCC system to enforce COP decisions. This means that any integrity standards or processes promoted by the COP must find their locus

[55] United Nations Convention on the Law of the Sea (1982), Art. 167.7(e).
[56] Jens Evensen, 'Working Methods and Procedures in the Third United Nations Conference on the Law of the Sea', 199 *RCADI* 485 (1986 IV) 483, cited in Robbie Sabel, *Rules of Procedure at the UN and at Inter-Governmental Conferences* (CUP 2018) 361.

of enforcement elsewhere, such as within the national legal systems of Parties or within the administrative systems of mandated financial institutions. The COP is therefore very much a contributor to an 'ecosystem'; positive systemic outcomes depend on productive interactions between the COP and other actors with different functions.

The factors discussed above are basically immutable. Other structural factors can be changed. An important one is the absence from the COP agenda of a negotiating item dedicated to integrity. This means that integrity issues are scattered across multiple negotiating tracks concerning climate finance, carbon markets, Party reporting and other issues. In these negotiating tracks, integrity is one consideration among many. Integrity (or broader governance) considerations are typically not the highest priority of any Party in negotiations conducted by thematic experts (e.g. concerning finance, markets or technology). Therefore, any text introduced on integrity is susceptible to deletion in the process of identifying consensus. An obvious solution would be a standing agenda item on integrity in the UNFCCC process (or in climate finance), negotiated by experts in such matters possessing relevant instructions. Such an agenda item would be difficult but not impossible to attain.

A final structural issue is the *ad hoc* and sporadic nature of the COP's interaction with external integrity actors. In further developing its guidance on integrity matters, the COP would likely benefit from structured process for inputs from practical and research bodies with expertise in combating corruption. This might be achieved through a dedicated integrity item as discussed above, but also through a more limited development, such as a time-limited integrity work programme with scope for submissions, including from non-Party stakeholders.

4: Current developments and opportunities

Within the constraints imposed by these structural factors, current developments present multiple opportunities for the COP to further contribute to anti-corruption measures in climate finance.

In the area of carbon markets, further work will be required to strengthen integrity and transparency safeguards under Article 6. For Article 6.2 (decentralised, Party-to-Party) voluntary cooperation, the CMA has regrettably declined to place any limits on a Party's ability to withhold information as 'confidential', only stating that such a Party 'should provide the

basis for protecting such information'.[57] It mandated the SBI draft modalities for reviewing 'confidential' information.[58] Given the risk that abuse of this confidentiality clause presents, the CMA should take the opportunity to approve robust review of 'confidential' information, at least consistent with existing best-practice. Another integrity issue still on the CMA's agenda relates to the 'infrastructure' of Article 6, specifically the national and international registries used to log transactions, where there is a need for standards and safeguards to prevent corrupt misuse.

In the area of Party reporting, there will soon be opportunities to observe the enhanced transparency framework in action and to consider how well it addresses matters of integrity. Parties must submit their first biennial transparency report by the end of 2024.[59] BTR submission triggers the process of technical expert review, to be followed by a 'facilitative, multilateral consideration of progress'.[60] The latter process is to address 'the Party's efforts under Article 9 of the Paris Agreement' (i.e. climate finance).[61] Based on these experiences, the Subsidiary Body for Scientific and Technology Advice is to conduct the 'first review and update, as appropriate,' of the transparency MPGs 'no later than 2028'.[62]

Also regarding Party reporting, the CMA will continue to consider the issue of support to developing countries for their implementation of the enhanced transparency framework.[63] Among other activities, the CMA has mandated a workshop at the June 2024 Bonn climate conference on support for developing countries to prepare their BTRs.[64] It has also called for Party submissions on their 'experience and challenges related to implementing Article 13', with the matter to be considered by the CMA at its 2025 session.[65] Significant support for transparency capacity-building has been mobilised via the GEF,[66] among other channels. The CMA has effectively created a two-year window of opportunity to consider the effectiveness of this support for transparency.

[57] Decision 6/CMA.4, para. 6.
[58] Ibid, para. 16.
[59] Decision 18/CMA.1, para. 3.
[60] Ibid, Annex, Parts VII and VIII.
[61] Ibid, para. 189.
[62] Decision 18/CMA.1, para. 2.
[63] As required by Paris Agreement, Art. 13.14.
[64] Decision 18/CMA.5, para. 14.
[65] Ibid, para. 17-20.
[66] https://www.thegef.org/what-we-do/topics/transparency

Regarding climate finance *per se*, the CMA has set itself the goal of concluding deliberations on a 'new collective quantified goal on climate finance' (NCQG) at its 2024 session.[67] The NCQG is to replace the target of $100 billion per annum by 2020 which originated in the Copenhagen accord. This is easily the most high-profile item on the agenda of the Baku COP29 conference. Technical work on the NCQG has and continues to be conducted through an ad hoc work programme.[68] From an integrity perspective, it is noteworthy that this work has included options for transparency arrangements for the NCQG.[69] This includes the question of whether the enhanced transparency framework can cover NCQG reporting or whether other modalities will be required, especially concerning private-sector financing. While many options are on the table, the eventual NCQG is likely to include both a higher number in dollar terms and a greater diversity of contributors than contributed to the $100 billion target. Tracking progress towards it will therefore be a complex undertaking, which should include consideration of the integrity of financial dealings pursuant to it. At the same time, the NCQG outcome may be an opportunity to secure a dedicated space on the COP agenda for climate finance integrity.

A further opportunity concerns Article 2.1(c) of the Paris Agreement, which sets the goal of '[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development'. This goal is not limited to the Party-to-Party climate finance mandated by Article 9 but rather envisions *all* finance flows globally, from whatever source, being made consistent with the Paris mitigation and adaptation goals.[70] In 2022 the CMA established a dialogue on the scope of the 2.1(c) goal and its 'complementarity' with Article 9. In 2023, this dialogue was extended until 2025.[71] There is a great need to improve the transparency and integrity of finance flows that are advertised as Paris-aligned, given rampant 'greenwashing' and other abuses. The current dialogue has the potential to result in a space under the CMA for Parties and non-Party stakeholders to share experiences with regulatory and other measures to safeguard the integrity of Paris-aligned finance.

In each of the near-term agenda items discussed in this section, there is scope for ambitious COP guidance to address integrity challenges in a practical way. If the COP takes these

[67] Decision 8/CMA.5, para. 1.
[68] https://unfccc.int/NCQG
[69] See, e.g., the 2023 report by the co-chairs of the AHWG, pp. 12-13.
[70] https://legalresponse.org/wp-content/uploads/2021/10/LRI-brief-3-2021-Art.2.1.c.pdf
[71] Decision -/CMA.5, Outcome of the first global stocktake, para. 92.

opportunities, it can help to create the confidence needed to scale the provision and mobilisation of climate finance.

5: Conclusion and recommendations

This paper has demonstrated that the COP is already a significant contributor to a decentralised, supranational anti-corruption ecosystem concerning climate finance. The COP occupies a key niche in this ecosystem by virtue of its capacity to set reporting requirements for Parties, give guidance to financial entities and other implementing bodies, and establish or mandate integrity processes to safeguard the integrity of support to developing countries, carbon markets and other relevant activities. The COP's capacity to act on integrity matters is nevertheless constrained by some important structural factors.

The paper has also identified some near-term opportunities for the COP to contribute to stronger integrity safeguards for climate finance. Realising these opportunities will rely on the stances Parties take in negotiations. The active engagement of non-Party stakeholders concerned with climate finance integrity can also be an important contributor to progressive outcomes.

To go beyond these particular opportunities, some additional steps to strengthen the COP's systemic input to integrity measures can be contemplated. One such step, as flagged above, would be the creation of an agenda item, work programme or dialogue on climate finance integrity (or integrity under the UNFCCC). This item could be pitched as an outcome of the NCQG deliberations in 2024 or the 2.1(c) dialogue in 2025, relying on the argument that the growing scale and complexity of climate finance requires a structured process under the CMA to help ensure that taxpayers' (and investors') dollars are honestly spent. Such an item would be a direct enabler of achieving the NCQG and the 2.1(c), by helping to create confidence in climate finance on the part of donors and mobilisers.

Another step, which might be tied to such an agenda item or process, could be a regular forum for engagement among integrity actors which are relevant to the integrity of climate finance under the Paris Agreement, including but not limited to the climate funds, multilateral development banks and development finance institutions. While such exchanges take place outside the auspices of the UNFCCC, the value of the proposed forum is that it could integrity

systemic issues in Paris-aligned finance for the attention of the CMA, including through key messages and recommendations, as appropriate.

A final observation: In suggesting some ways that the COP could strengthen its contribution to climate finance integrity, it is critical to also note that the COP cannot and should not do everything. In particular, it should not attempt to micro-manage the integrity processes of implementing bodies or attempt to fashion 'one-size-fits-all' approaches for them. The COP's strength is its universality, which gives it its convening power and allows it to set frameworks and targets and to give guidance. It is at that level that the COP can have a positive impact on the integrity of climate finance.