



Strengthening capacity for inclusive negotiations



Legal Response International

Supporting climate negotiations through legal expertise

Montserrat Madariaga Gomez de Cuenca

Plan for this session

1. Introduction to international climate change law: the UNFCCC regime
2. COPs and non-state actors participation.
3. The role of lawyers in the climate negotiations
4. Legal Response International: what we do and pro bono work
5. Q&A

1. Introduction to the UNFCCC Regime

The climate issue is:

- A problem of concentration of GHGs in the atmosphere (i.e. diffuse pollution)
- Of global character
- Unequal in its causes and consequences

Therefore, multilateralism is needed

Inspiration: Montreal Protocol for the Ozone layer (1987)



UN climate negotiations – key milestones

2015

Paris Agreement - Bottom up

Aims to strengthen the global response to the threat of climate change, 3 goals (temperature, adaptation and finance flows), all Parties must submit nationally determined contributions (NDCs)

Kyoto Protocol - Top down

established legally binding obligations for developed countries to reduce GHG emissions

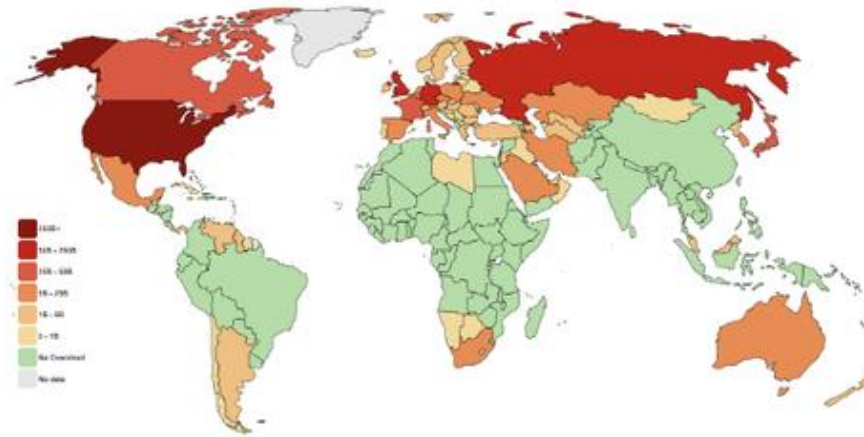
UNFCCC - Framework

objective: stabilise GHG concentrations at a level that prevents dangerous anthropogenic interference with the climate system

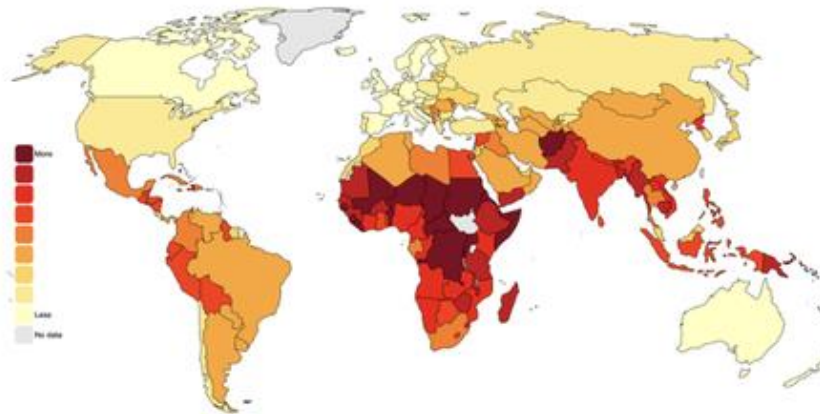


Common but differentiated responsibilities and respective capabilities

Overshoot emissions
(Lancet Planetary Health)



Multi-dimensional climate
vulnerability
(ND-GAIN)





2. COPs: negotiations and non-state actors engagement

2.1 UNFCCC Governance

- **COP**, **CMP** and **CMA** - governing and supreme decision-making bodies of UNFCCC, KP and PA
- **Secretariat**
- **Parties**: States
- **Negotiating groups**: G77+China, African Group of Negotiators, Least Developed Countries, Alliance of Small Island States, EU, etc.
- **Other bodies to support the “COP”**:
 - Permanent subsidiary bodies (SBSTA, SBI)
 - Constituted bodies (e.g. Adaptation Committee)
 - Ad-hoc working groups (e.g. APA)
- **Non state actors and constituencies**



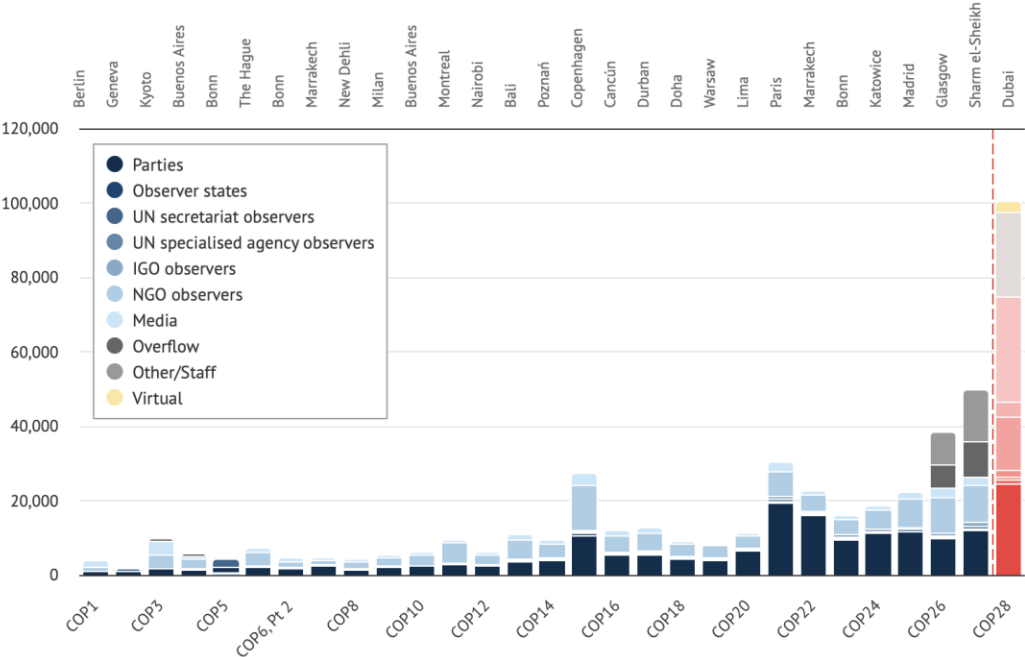
2.2 COP attendance: Who goes to a COP?

- Parties:
 - Delegations, including head of states
 - Delegation sizes and expertise vary
- Observers: aggrouped in constituencies
 - ENGO, BINGO, LGMA, IPO, RINGO, TUNGO, Women and Gender, YOUNGO, Farmers
- Media



Evolution in attendance and the issue of representation

Total attendance at COPs through the years

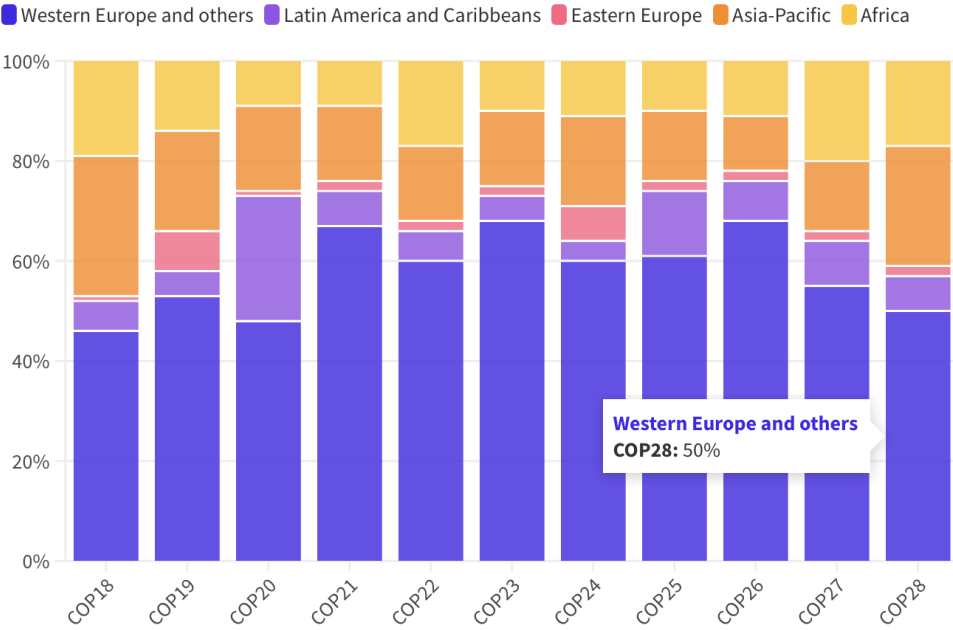


Source: UNFCCC and Carbon Brief analysis.

CarbonBrief
CLEAR ON CLIMATE

Global North observers have an historically dominant presence at COPs

Regional distribution of participants from NGOs and intergovernmental groups



Source: UNFCCC



The Plenary





Informal (“corridor”) negotiations

3. The role of Lawyers: negotiating treaties and COP decisions

The Paris Agreement: key elements

- Mitigation
 - 5-yearly submission of increasingly more ambitious nationally determined contributions (**NDCs**, i.e. climate mitigation plans)
 - cooperation to achieve NDCs (e.g. **carbon markets**)
- Adaptation
- Loss and damage
- “Means of implementation”
- Ambition cycle
- Reporting (“transparency”), review (“global stocktake”) and compliance



The role of COP decisions

- Negotiated language, open to interpretation
- Role of subsidiary bodies meetings and intersessional work
- CoP decisions in the UNFCCC are generally not considered legally binding on the parties.
- They indicate a political commitment
- They have a normative aspect all the same



Role of lawyers and LRI

- By now it should be obvious that lawyers have a role in this process!
- LRI seeks to address climate injustice at the core of the process: the issue of representation affects delegations, often lacking legal expertise.
- Ultimately, international agreement and COP decisions can be well drafted, but a greater role exists for lawyers in the domestic sphere/accountability



Explainer: New Collective Quantified Goal on Climate Finance

By Brandon Chau and Monserrat Madariaga

Introduction

Developed countries have financial obligations towards developing countries to support the implementation of their obligations under the Convention and the Paris Agreement. The New Collective Quantified Goal (NCQG) is a new global financial goal that takes as a starting point the current \$100 billion annual target for climate finance. The NCQG aims to contribute to achieving Article 2 of the Paris Agreement in terms of supporting the mitigation and adaptation goals and making finance flows consistent with a pathway towards low greenhouse gas emissions. Negotiations on the NCQG began at COP26 and will end at COP29 in 2024. This briefing provides an overview of the NCQG discussions and its core elements: the quantum and quality of finance, the structure of the NCQG, the sources of finance and its contributor base, the timeframe for the NCQG, and the transparency arrangements.

Background

At COP 15 (2009), developed countries committed to jointly mobilising \$100 billion per year by 2020 to address developing countries' needs. Subsequently, at COP 21 (2015), Parties decided to extend the \$100 billion goal through to 2025 and that, before 2025, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) would set a new collective quantified goal (NCQG) from a floor of \$100 billion per year, which ensures it will be higher than the current financial commitment. Whilst there have been suggestions that the goal might have been met at least once, the CMA during the first global stocktake (2023) noted with deep regret that at least in 2021 developed countries failed to do so. At COP 26 (2021), the process for deliberating on the NCQG was agreed: it would include an ad hoc work programme with yearly Technical Expert Dialogues (TEDs), submissions by Parties and non-Party stakeholders, high-level ministerial dialogues, stock-takes and guidance by the CMA. Parties must, however, still agree on the actual elements of the NCQG, and discussions are set to end at COP 29 (2024).

Discussions have largely focussed on the following key elements:

- **What we do: we work with negotiators, government officials and NGOs**
- Produce legal material
- Train negotiators
- Provide legal advice during COPs, SBs and between sessions.
- Support with domestic implementation: climate laws, NDC.



How we do it

- Staff
- Network of experts collaborating pro bono to produce legal advice.
- Volunteers:
 - Situation room volunteers/ ad hoc volunteers supporting with research to produce advice or materials.
 - Liaison officers during the negotiations.

