

UNFCCC negotiations: legal & procedural aspects and general conduct

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International



Legal Architecture of the UNFCCC treaties

UNFCCC: Framework

Kyoto: Top down

Paris: Bottom up



Legal nature and bindingness of the Paris Agreement

A formal and binding international treaty: written, entry into force, ratification acceptance or approval process.

- Legal bindingness differ from justiciable, enforceable, precise.
- The PA contains both provisions that create **binding legal obligations** and provisions that create **non-binding (voluntary) commitments**
- Strong procedural obligations in the PA.
- The Implementation and Compliance Committee (PAICC) is mandated to facilitate implementation and promote compliance with the provisions of the PA (Art. 15)



Example: Article 4 PA

Each Party **shall** prepare, communicate and maintain successive NDCs that it intends to achieve (Art. 4.2, PA)

Developed countries “**should**” continue taking the lead by undertaking economy-wide absolute emission reduction targets (Art. 4.4, PA)

Example: Article 9 PA

1. Developed country Parties **shall** provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
2. Other Parties are **encouraged** to provide or continue to provide such support voluntarily.
3. (...) developed country Parties “**should** continue to *take the lead* in mobilizing climate finance ...” taking into account the needs and priorities of developing country Parties.

Legal nature of Rulebook

- **Rulebook"** = subsequent decisions of the parties for the implementation of the agreement
- CoP/CMA 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

The structure of the Agreement

- Title, definitions
- **The Preamble** (*recalling, noting, affirming, calling upon, encouraging, recognizing, taking into consideration...*)
 - Not binding/ guides interpretation/ context for operative part.
- **Operative part (Articles 1, 2, 3, etc.)**
 - Represents the actual “agreement” between Parties.
 - Prevails in direct conflict with preambular language but preambular language used to interpret Parties’ intention.
 - Describes the content of an agreement but words may be used to dilute or negate commitments, rights and obligations.

The language of legal obligations

Legal character depends on several factors incl. location in the text, subject, language, precision, normative content, etc.

Examples:

- “Support shall be provided to developing country Parties for the implementation ...” (Art.4.5, PA)
- ”Each Party, shall, *as appropriate*, engage in adaptation planning processes and the implementation of actions (...) which may include ...” (Art.7.9, PA)



Conduct of the Negotiations

Rules of Procedure:

- not agreed, but applied (except for art.42 on voting)
- Address issues such as agenda, quorum, functions of presiding officer, submission of proposals, motions, decision-making
- Decisions taken by consensus; no decision? Rule 16 is applied ie item is carried over to next session
- Adoption of provisional agenda at opening plenary, but beware 'agenda fight'

6. Matters relating to adaptation

(a) Report of the Adaptation Committee

37. *Background:* The Adaptation Committee reports annually to the COP through the subsidiary bodies.¹⁴ Accordingly, matters relating to this agenda sub-item are considered under the SBSTA and the SBI.¹⁵

38. SB 59 could not conclude consideration of the report of the Adaptation Committee for 2023.¹⁶ SB 60 recommended that COP 29 and CMA 6 take note of the report of the Adaptation Committee for 2023.¹⁷

39. *Action:* The COP will be invited to take any action it deems appropriate on the basis of the recommendations of the SBSTA and the SBI. It will also be invited to elect members of the Adaptation Committee.

FCCC/SB/2024/4

Report of the Adaptation Committee

[FCCC/SB/2023/5](#)

Report of the Adaptation Committee

Further information

<https://unfccc.int/Adaptation-Committee> and
<https://unfccc.int/process-and-meetings/bodies/election-and-membership>

(b) Review of the progress, effectiveness and performance of the Adaptation Committee

40. *Background:* COP 27 was to review the progress, effectiveness and performance of the Adaptation Committee,¹⁸ and COP 26 invited CMA 4 to participate in the review as it relates to the Paris Agreement.¹⁹ COP 27 and CMA 4 noted that consideration of the review could not be completed at those sessions and would therefore continue at SB 58.²⁰ At SB 58, Parties agreed to continue consideration at SB 59.²¹ SB 59 could not conclude consideration

Conduct of the Negotiations

Official documents

- Pre-session, in-session, post-session
- Pre- and post session (reports) documents available in 6 official UN languages
- In-session docs: some are translated, some not
- Deciphering document symbols:
e.g. FCCC/CP/2024/1, FCCC/PA/CMA/2024/2,
FCCC/SB/2024/L.1, IN.SBSTA60.i4.1,
DT.DC.SBSTA60.i4.3, 1/CP.28

Conduct of the Negotiations

Official documents

- L documents: limited distribution docs, eg. draft conclusions or decisions
- Conference Rooms Papers (CRPs): in-session working docs with new proposals or outcomes of in-session work
- /TP/: technical papers
- Non-papers: unofficial papers, released to facilitate negotiations, eg. may contain new proposals by individual Parties as way of finding compromise
- Use of options and brackets

Negotiating Forums

- Plenary: formal forum for general statements, adoption of agenda and decisions/conclusions
- Contact Groups: established to conduct negotiations on specific agenda items with aim of achieving agreed outcome
- Informal consultations: negotiations on a particular issue or if outcome is more uncertain
- Informal informals (« inf inf »): used to break deadlocks
- Friends of the Chair, bilateral meetings, etc.

Resources

LRI guide to the Paris

Agreement: <https://legalresponse.org/legaladvice/guide-to-the-paris-agreement/>

IIED Climate negotiations terminology: the pocket guide: <https://www.iied.org/10148iied>

Paris Agreement A to Z App

