

Completing the Paris Agreement: Legal Dimensions

Realizing the Potential of the Paris Agreement

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Legal Character of Paris Agreement

Legal character of Paris Agreement: Is it a treaty?

Yes: Paris Agreement is a “treaty” on the international plane, within the meaning of the Vienna Convention on the Law of Treaties.

Legal character of particular provisions: Are they legally-binding?

Some yes, others not: Paris Agreement includes a mix of legally-binding and non-legally binding provisions

Legal Character: Mitigation Provisions

Legally-binding elements: Commitments by all parties to:

- Prepare, communicate and maintain NDC
- Pursue domestic mitigation measures
- Provide information necessary for clarity, transparency and understanding
- Communicate successive NDC every 5 years
- Provide information necessary to track progress in implementing NDC

Some provisions are non-binding:

- Developed country parties *should* take the lead by communicating economy-wide absolute emission reduction targets
- Successive NDCs *will* represent a progression and reflect highest possible ambition
- All parties *should* strive to formulate and communicate long-term low emission strategies

NDCs not legally-binding: No obligation to implement/achieve

Legal Character: Finance Provisions

Most provisions non-binding

Developed country parties *should* continue to take the lead in mobilizing climate finance

Other parties *encouraged* to provide financial resources voluntarily

Relatively few legally-binding obligations

Developed country parties shall provide financial resources “in continuation of their existing obligations” under the UNFCCC, and shall report biennially

Taking Paris Forward: Rules to Be Elaborated

NDCs	<ul style="list-style-type: none"> • Up-front information: possible CMA decision (art. 4.8) • Features: guidance by CMA (para. 26) • Communication of NDCs: possible CMA decision (art. 4.9) • Common time frames: CMA shall consider (art. 4.10) • Adjustments: guidance by CMA (art. 4.11) • Accounting: guidance by CMA(-1) (art. 4.13, para. 31)
Market mechanisms	<ul style="list-style-type: none"> • Avoidance of double-counting: guidance by CMA (art. 6.2) • Ensure share of proceeds for adaptation (art. 6.6) • SDM: rules, procedures and modalities by CMA (art. 6.7)
Adaptation	<ul style="list-style-type: none"> • Recognition of efforts of DCs: modalities by CMA-1 (art. 7.3)
Financial support	<ul style="list-style-type: none"> • Accounting: modalities, procedures and guidelines adopted by CMA-1 (art. 9.7)
Capacity building	<ul style="list-style-type: none"> • Institutional arrangements: decision by CMA-1 (art. 11.5)
Transparency	<ul style="list-style-type: none"> • Emissions inventories methodologies (art. 13.7(a)) • Modalities, procedures and guidelines adopted by CMA-1 (art. 13.13)
Global stocktake	<ul style="list-style-type: none"> • Sources of input identified and modalities adopted by CMA-1 (paras. 100, 102)
Impl./compliance	<ul style="list-style-type: none"> • Modalities and procedures adopted at CMA-1 (art. 15.3)

Key Variables/Issues

What type of rules?

- Decisions, modalities, procedures, guidelines

To whom do rules apply?

- Parties
- Paris Agreement institutions

Must CMA act?

- Required
- Optional

Default if CMA fails to adopt rules?

- Nothing goes
- Parties self-apply PA provisions

“Bindingness” of rules

Must CMA act?

- **Paris Agreement tasks CMA with adopting rules: CMA shall...**
 - CMA-1 shall adopt MPGs for the transparency of action and support (Art. 13.13)
- **Paris Agreement authorizes CMA to adopt rules: Parties shall do x in accordance with *any* rules CMA adopts**
 - Information necessary for clarity, transparency and understanding (Art. 4.8)
 - Features of NDCs (Art. 4.9)
- **Unclear: Parties shall do x in accordance with CMA guidance**

Default If CMA Fails to Adopt Rule

- **Institutional rules: nothing goes**
 - Rules, modalities and procedures for SDM (article 6.7)
 - Modalities and procedures for implementation and compliance mechanism (article 15.3)
- **Rules governing parties: parties self-apply PA**
 - Up-front information
 - Features of NDCs
 - Common time frames
 - Accounting of NDCs
 - Adjustment of NDCs
 - Accounting of ITMOs

“Bindingness of rules”

- **Authorization in Paris Agreement**
 - Parties *shall* do [x] *in accordance with / consistent with* decision of CMA
- **Type of rule**
 - Decision
 - Guidance/guidelines
- **Language of rule**
 - May / shall

Rules Governing the Parties

	Type of Rule	CMA Action Required or Optional	Default If CMA Doesn't Adopt Rules	Bindingness of Rules
Up-front info	Decision	Optional	Parties decide UFI	Binding
Features of future NDCs	Decision	Optional	Party decides features	Binding
Common time frames for NDCs	Unspecified	Optional	Party decides time frame	No
Adjustments of NDCs	Guidance	Required?	Party decides	Binding?
Accounting for NDCs	Guidance	Required?	Party decides how to account	Binding?
Accounting of ITMOS	Guidance	Required?	ITMOs possible	Binding?
Transparency of action and support	MPGs	Required	Party determines info to provide	Unclear
Inventories	Methodologies	Required	Party decides on inventory	Binding

Options for US Withdrawal from Paris Agreement

- **Pursuant to the Paris Agreement**

- Article 28.1: Beginning 3 years after entry into force (November 4, 2019), parties may withdraw by giving 1 year's notice
- US law: President can withdraw from executive agreements on own authority

- **Pursuant to the UNFCCC**

- Article 25.1: Party may withdraw by giving 1 year's notice
 - Paris Agreement, Article 28.3: A party that withdraws from UNFCCC shall be considered as also having withdrawn from the Paris Agreement
- US law: In practice, Presidential withdrawal unlikely to be overruled by courts, even though UNFCCC unanimously approved by Senate

- **Outside the terms of the Paris Agreement and UNFCCC**

- Withdrawal would violate international law
- US law: Question whether President has authority to violate international law, but Congress can do so

Implications of US Withdrawal

- **For the UN climate regime**

- US participation seen as key by many countries. So withdrawal could prompt others to withdraw.
- Or US withdrawal could make others more determined to proceed.

- **For climate mitigation more generally**

- Efforts to address climate change by state and local governments and by business would gain added importance

- **For US credibility**

- Paris Agreement drafted in order to make it possible for US to join. So US withdrawal would be bitter pill for others to swallow.

- **How US withdraws matter**

- Withdrawal from the UNFCCC would be more negative than withdrawal from Paris Agreement
- Withdrawal in violation of international law would undermine US credibility more

