



Legal Response Initiative

Briefing paper 3/15

Possible declarations in connection with the 2015 climate agreement¹

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A new international treaty on climate agreed in Paris could modify existing rights and obligations under the UN Framework Convention on Climate Change, the Kyoto Protocol, and other rules of public international law². On signing the UNFCCC in 1992, Nauru made the following declaration: "The Government of Nauru declares its understanding that signature of the Convention shall in no way constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provisions in the Convention can be interpreted as derogating from the principles of general international law." Similar declarations were made by Fiji, Kiribati, Tuvalu (upon signature) and New Guinea (on ratification).

Declarations are statements made by a State when signing, ratifying or accepting an international treaty to clarify the scope of the treaty or certain of its provisions. They are essentially of a political nature and - unlike reservations - do not directly exclude or limit the legal effects of certain provisions of the treaty. However, declarations made in connection with the signing, ratification or acceptance of a new treaty could help to strengthen arguments and negotiation positions in the future. For this purpose the following table offers possible draft declaration text with regard to different objectives (as specified in the header of the table). It contains a slightly stronger worded statement in the 2nd, and a slightly 'softer' approach in the 1st row of the table.

¹ This briefing is based on the advice of different LRI experts. We thank in particular Natasha Harrington of Eversheds.

² See for example: Article 30 Vienna Convention on the Law of Treaties.

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Protect existing rights and obligations under the UNFCCC and Kyoto Protocol in general	Maintain existing commitments to provide financial resources and technology transfer	Clarify the scope of new commitments on adaptation in relation to other Parties	Safeguard interests related to loss and damage from the adverse impacts of climate change	Maintain the special positions of least developed countries under the UNFCCC
<p>The Government of XY declares its understanding that signature of the Paris Agreement shall in no way constitute a renunciation of any rights recognised under general international law, the Convention and the Kyoto Protocol.</p>	<p>The Government of XY declares its understanding that nothing in the Paris Agreement should be interpreted as limiting the commitments of developed country Parties and other Parties listed in Annex II to the Convention to provide financial resources, including for the transfer of technology, envisaged under Article 4 of the Convention.</p>	<p>The Government of XY considers that the obligations of developing country Parties in respect of adaptation to climate change are limited to what is reasonable in the light of their national circumstances, and taking into account that economic and social development and poverty eradication are the first and overriding priorities of developing country Parties.</p>	<p>The Government of XY declares that no provisions in the Paris Agreement shall be interpreted as derogating from the principles of general international law, including but not limited to, the rights and obligations concerning state responsibility for the adverse effects of climate change.</p>	<p>The Government of XY declares that the Paris Agreement should be interpreted in the light of the common but differentiated responsibilities and respective capabilities of all Parties, and with the need to take full account of the specific needs and special situations of the least developed countries, as recognised in the Convention and the subsequent practice of the Parties thereto.</p>
<p>The Government of XY declares that no provisions in the Paris Agreement can be interpreted as derogating from the principles of general international law and the provisions of the Convention as interpreted through the subsequent practice of its Parties.</p>	<p>The Government of XY declares that compliance with its commitments under the Paris Agreement will depend on the effective provision of adequate financial resources, including for the transfer of technology, in accordance with Article 4 of the Convention.</p>	<p>The Government of XY declares that climate change adaptation is a national priority, whose effective implementation depends, inter alia, on the provision of adequate financial support and technology transfer by developed country Parties; but does not represent a new international obligation vis-à-vis other Parties to the Paris Agreement.</p>	<p>The Government of XY declares its understanding that the general rules of international law shall continue to apply between the Parties to the Agreement; and that Parties which have failed to control and reduce greenhouse gas emissions under their jurisdiction or control with due diligence shall remain responsible for the damage caused by climate change as a result of these emissions.</p>	<p>The Government of XY declares its understanding that no provision in the Paris Agreement can be interpreted as affecting the status and rights of least developed countries recognised in the Convention and the subsequent practice of the Parties thereto.</p>

The Legal Response Initiative (LRI) is a UK based charity that provides legal assistance free of charge to delegates from poor and climate vulnerable developing countries as well as civil society observer organisations. LRI does this with the support of a global network of lawyers from law firms, barrister chambers and universities who produce legal opinions in response to specific queries raised in connection with the climate negotiations.

The opinions and legal briefing papers are available through LRI's database at <http://legalresponseinitiative.org/legal-assistance>. Using the database is free of charge but you need to register using a valid e-mail address.

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