

**Legal basis of the New Collective Quantified Goal and its link to Article 9 of the Paris Agreement**

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*This advice is provided in response to **part of Query 04/24***

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**Query:**

- 1. What is the legal basis for the new collective quantified goal (it is not mentioned in the Convention or Paris Agreement, but in COP and CMA decisions)? What is the link, if any, between NCQG and Article 9 of the Paris Agreement?**

**Advice:**

The New Collective Quantified Goal (“**NCQG**”) is a replacement for the previous goal to raise \$100 billion per year by 2020 for climate finance that was first introduced during the COP 15 in Copenhagen in 2009, as part of the Copenhagen Accord. The Copenhagen Accord provided in relevant part:

In the context of meaningful mitigation actions and transparency on implementation, developed countries commit to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries. This funding will come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance.<sup>1</sup>

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<sup>1</sup> Report of the Conference of Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Decision 2/CP.15, 30 March 2010, ¶ 8, available at <https://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>.

The Copenhagen Accord was a political agreement and not a treaty, therefore not deemed legally binding.<sup>2</sup> The original collective quantified goal was formalized in a decision of the COP 16 held in Cancun, Mexico the following year, which provided in relevant part that the COP:

Recognizes that developed country Parties commit, in the context of meaningful mitigation actions and transparency on implementation, to a goal of mobilizing jointly USD 100 billion per year by 2020 to address the needs of developing countries [...]<sup>3</sup>

As to the legal status of this COP decision, Art. 7.2 of the UNFCCC provides:

The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, *the decisions necessary to promote the effective implementation of the Convention.*<sup>4</sup>

Whether a COP decision is legally binding on the parties “is dependent in large part on the enabling clause of the treaty under which it is made” as well as the text of the decision itself.<sup>5</sup> Thus, a COP decision may be legally binding on the parties when (1) the treaty under which it is made authorizes the COP to take action (either generally or specifically) with respect to that subject matter; and (2) the language of the decision itself indicates that the

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<sup>2</sup> The Copenhagen Accord: A Legal Analysis, Legal Response International, 28 January 2010, *available at* <https://legalresponse.org/legaladvice/the-copenhagen-accord-a-legal-analysis/>.

<sup>3</sup> Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, 15 March 2011, Decision 1/CP.16: The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, ¶ 98.

<sup>4</sup> UNFCCC, Art. 7.2 (“The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention.”).

<sup>5</sup> Treaties, COP Decision and Unilateral Declarations, Legal Response International, 5 February 2010, available at <https://legalresponse.org/legaladvice/treaties-cop-decisions-and-unilateral-declarations/>; Daniel Bodansky, Legally Binding vs. Non-Legally Binding Instruments, in Towards a Workable Effective Climate Change Regime (eds. S. Barrett et. al.), Center for Economic Policy Research (2015) (“[A] COP decision could be legally binding if there is a ‘hook’ in the UNFCCC that gives it legal force...otherwise, COP decisions are not legally binding.”).

parties intended it to be legally binding.<sup>6</sup> Legal commentators generally consider that absent this “hook” to a treaty obligation, COP decisions are simply soft law norms that are not legally binding.<sup>7</sup>

As mentioned above, the original goal of mobilizing 100 billion USD per year by 2020 was not established in a treaty. In addition, Article 7.2 of the Convention is framed in general terms and not sufficiently specific or explicit to authorize the COP to establish a quantified legally binding finance target. Likewise, the language used in the COP 16 decision cited above is largely identical to that used in the Copenhagen Accord and does not, in our view, provide that “hook” to indicate an intention to create a legally binding obligation. Therefore, it is likely that this commitment was never legally binding on the Parties. In any event, for now, the 100 billion USD goal (as extended to 2025) seems not to have been achieved consistently throughout the years.<sup>8</sup>

In 2015 through Decision 1/CP.21, wherein the Paris Agreement was officially adopted, the Conference of Parties decided:

[I]n accordance with Article 9, paragraph 3, of the [Paris] Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD

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<sup>6</sup> Treaties, COP Decision and Unilateral Declarations, Legal Response International, 5 February 2010, available at <https://legalresponse.org/legaladvice/treaties-cop-decisions-and-unilateral-declarations>.

<sup>7</sup> Bodansky et. al., Climate Change and International Law, Oxford Scholarly Authorities on International Law, 25 May 2017 (“Except in the rare cases where the relevant treaty invests the COP with authority to adopt a binding rule, the resulting standards are not legally binding, notwithstanding the mandatory language they may contain.”). Brunnée, COPing with Consent: Law-Making Under Multilateral Environmental Agreements, 15 Leiden Journal of International Law 21, 32 (2002) (“[COP] decisions do contain terms that make conduct mandatory, and make access to certain benefits contingent upon compliance with some of these mandatory terms. Yet, they do not appear to be binding in a formal sense.”).

<sup>8</sup> Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, 17 March 2023, Decision 13/CP.27: Long-Term Climate Finance, ¶ 3 (“[T]he goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not been met, including due to challenges in mobilizing finance from private sources...”). 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.

100 billion per year, taking into account the needs and priorities of developing countries;<sup>9</sup>

Through this decision, Parties to the Convention extended the existing goal to 2025 and decided that the Parties to the Paris Agreement would set the NCQG. The Paris Agreement does not establish, or mention, this goal. Formally, it is the decision on the NCQG due to be taken at this year's CMA 6 that will establish it. The current links between the NCQG decisions and the Paris Agreement tell us about the basis for the discussions to set the NCQG and its aim.

Regarding the “legal bindingness” of the NCQG, as stated above, the Paris Agreement does not establish, or mention, it. In addition, the Agreement does not authorize the CMA to establish a quantified legally binding finance target. However, the NCQG-related decisions link the goal to Article 9.3 and to Article 2 (the text of these articles is reproduced in the Annex to this advice).<sup>10</sup>

With regard to the first, the NCQG-related decisions tell us that the exercise of setting the NCQG, including initiating deliberations to set it, will take place “in accordance with” the (non-binding) commitment by developed countries set out in Article 9.3. Whilst this provision is not mandatory on developed countries – by contrast to Article 9.1 which requires (“shall”) developed countries to provide financial resources – the use of “should” (“should continue to take the lead in mobilizing climate finance (...)”) creates an expectation that developed countries will follow through on their commitment.

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<sup>9</sup> Report of the Conference of Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 29 January 2016, ¶ 53, available at <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=8>.

<sup>10</sup> Report of the Conference of Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 29 January 2016, ¶ 53, available at <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf#page=8>. See also Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, Decision 14/CMA.1: Setting a New Collective Quantified Goal on Finance in Accordance with Decision 1/CP.21, Paragraph 53, 19 March 2019, ¶ 1 (“Decides to initiate at its third session (November 2020), in accordance with Article 9, paragraph 3, of the Paris Agreement, deliberations on setting a new collective quantified goal from a floor of USD 100 billion per year in the context of meaningful mitigation actions and transparency of implementation and taking into account the needs and priorities of developing countries.”); [https://unfccc.int/sites/default/files/resource/CMA2018\\_03a02E.pdf](https://unfccc.int/sites/default/files/resource/CMA2018_03a02E.pdf) Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, held in Glasgow from 31 October to 13 November 2021, Decision 9/CMA.3, New Collective Quantified Goal of Climate Finance, 8 March 2022, ¶ 15 (“Decides that the new collective quantified goal aims at contributing to accelerating the achievement of Article 2 of the Paris Agreement...”), ¶ 16 (“Also decides that the consideration of the new collective quantified goal will be in line with decision 14/CMA.1”).

There are, arguably, various degrees of legal bindingness, and the wording used in this provision – together with the obligation to interpret treaty provisions in good faith, in light of the treaty’s objectives, and perform them in good faith - means that it cannot be simply ignored. The language of article 9.3 (“should”) is in any case stronger than article 9.2 that “encourages” other countries to support “voluntarily”. This does not mean, however, that countries are limited to this provision when setting the NCQG.

Of interest, we note that decisions on the NCQG so far have not linked it to Article 9.1 of the Paris Agreement, although some Parties’ submissions have. Whether in fact there should be a link to this provision is a matter of debate in the current negotiations on the NCQG. This is relevant because this paragraph contains the only “hard obligation” or “legally binding commitment” in relation to the **provision** of financial resources, while Article 9.3 contains the (non-binding) commitment for developed countries to lead the **mobilisation** of finance.<sup>11</sup>

With regard to the link to Article 2, through Decision 9/CMA.3, countries decided that the NCQG aims at contributing to accelerating the achievement of the three goals set out in that article. This points to an expansion from the mainly mitigation-centric context of the original goal. For a more technical analysis of the already established, and potential, links between the NCQG and the Paris Agreement, see [section 3](#) of Jan Kowalzig and Sandra Guzman’s *Technical Paper: Critical Links*.<sup>12</sup>

While developed countries’ financial obligations are legally binding, decisions on the NCQG have not explicitly mentioned that the finance provided by developed countries to mobilise the goal will be regarded as a delivery of their financial obligations under the UNFCCC (Art.4) or the Paris Agreement (Art.9), something that was also not explicitly mentioned in the 100 billion goal.<sup>13</sup> However, when providing this finance in practice, Parties are likely to argue that they are delivering on those obligations.

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<sup>11</sup> Interpretation of Article 9.1, Paris Agreement, Legal Response International, 2 September 2019, available at [https://legalresponse.org/legaladvice/interpretation-of-article-9-1-paris-agreement/#\\_ftnref2](https://legalresponse.org/legaladvice/interpretation-of-article-9-1-paris-agreement/#_ftnref2).

<sup>12</sup> Jan Kowalzig and Sandra Guzman, *Technical Paper: Critical Links: Connecting the New Climate Finance Goal to the Paris Agreement*, Oxfam, February 2023, p. 9, available at [https://cfanadvisors.org/wp-content/uploads/2023/03/Third-Technical-Paper\\_FINAL\\_3-1.pdf](https://cfanadvisors.org/wp-content/uploads/2023/03/Third-Technical-Paper_FINAL_3-1.pdf).

<sup>13</sup> Jan Kowalzig and Sandra Guzman, *Technical Paper: Critical Links*, see footnote 12.

## Annex

### Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

### Article 9

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. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.

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