

### **Possible outcomes from a COP**

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*This advice is provided in response to **Query 55/23***

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#### **Query:**

**What types of outcomes can emerge from a COP and what legal value do they hold?**

#### **Advice:**

##### **1. Legal bindingness in international law**

The creation of binding international obligations typically occurs through treaties, the result of extensive negotiations among nations. These treaties contain meticulously negotiated provisions, often developed over years of discussion and consensus-building. Whilst the treaties themselves are binding on those countries that become parties to them, not all provisions within the treaties will create legally binding obligations. The legal character of provisions will depend on various factors, including language used, normative content, placement in the treaty, assessment or compliance mechanisms, etc. After ratification and depending on the country's constitutional law, a State might need to take measures to bring treaty provisions into its legal framework and ensure they are fully applicable.

In the UNFCCC regime, the Conference of the Parties (COP), as the supreme or primary treaty body, is responsible for keeping under review the implementation of the treaty and to make, within its mandate, the decisions necessary to promote its implementation. The COP can thus make decisions, and it can also issue a range of other outcomes too. The legal value of decisions and other outcomes depends on the specific treaty in question. By 'legal value', here, we understand that the requester of this advice is interested to know whether the outcome is binding or not. Unless specified otherwise, references to "COP" in this advice are to the COPs in the international climate change regime and include COPs of the Parties to the Paris Agreement (CMA) and of the Parties to the Kyoto Protocol (CMP). In preparing this advice we have considered [previous LRI advice on the legal status of the Paris Rulebook](#).

A treaty may grant authority to the COP to implement certain of its provisions, including those that establish binding obligations on some or all of its Parties. This authority can be either implicit or explicit. In some instances, treaties have granted explicit authority to their supreme bodies to create binding obligations beyond those of the original instruments. However, apart from COP decisions that sometimes can be legally binding, as we will further elaborate, other COP outcomes, such as political declarations or reports are not generally considered legally binding.

Additionally, it is important to note that meetings of the Subsidiary Bodies (SBs) are distinct from COP meetings. Their role is essentially to assist the governing bodies. Unlike COPs, SBs do not generate decisions or similar outcomes. Instead, they adopt 'conclusions,' which, while not legally binding, hold normative value. These conclusions serve to inform and guide the governing bodies and actions within the framework of the international treaty.

Looking specifically at the UNFCCC COP (whether of the Convention, Kyoto Protocol, or Paris Agreement, termed COP, CMP, and CMA respectively), here are possible outcomes that can emerge, along with their legal value:

## 2. COP outcomes and their legal value

### a) COP decisions

COP decisions are adopted by consensus by the Conference of the Parties (see this [previous LRI advice](#) on COP Rules of Procedure as to what 'consensus' means in this context). In terms of scope, COP decisions can set out anything that the parties agree to include.

In the past, COP decisions have, for example:

- Interpreted treaty obligations and developed rules, modalities and procedures to implement treaty provisions;
- provided guidance to the parties about implementation;
- reviewed the adequacy of existing obligations;
- launched processes to develop new legal instruments;
- established subsidiary organs and institutions, as well as addressed financial and organisational aspects of the treaty.

The legal character of a COP decision under international law depends on the specifics of each treaty and its enabling clause. Generally, COP decisions do not set legally binding commitments on parties unless explicitly authorised in the treaty, where the treaty expressly confers on its organs (i.e. COP, CMA, etc.) the power to implement its provisions, including those which create binding obligations. An example of an enabling clause is Article 4.8, Paris Agreement:

“In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.”

An example outside the climate regime where there is an explicit authorisation for a COP to adopt, in a decision, measures that are legally binding on parties, is Article 2(9) Montreal Protocol.<sup>1</sup>

There are a limited range of situations where a COP decision in the climate regime may be binding. The Kyoto Protocol, for instance, grants such authority in some limited instances related to a specific set of reporting and accounting obligations.<sup>2</sup> However, in other cases it limits it: Article 18 of the Kyoto Protocol mandates that compliance procedures and mechanisms entailing binding consequences shall

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<sup>1</sup> The Montreal Protocol on Substances that Deplete the Ozone Layer specifically authorises the COP to adopt adjustments and reductions of production or consumption of ozone-depleting substances covered by the Protocol through consensus-based procedure (art 2(9)). Failing consensus, these adjustments can be made by a two-thirds majority vote of the parties present and voting at the COP (art 2(9)(c)). The adjustments are binding on all parties, regardless of whether or not they voted in favour of them (art 2(9)(d)).

<sup>2</sup> Kyoto Protocol, Art. 7(1) read with Art. 7(4).

be adopted by means of an amendment to the Protocol.<sup>3</sup> Meanwhile, the Paris Agreement includes some provisions that require Parties to act “in accordance” with (future) relevant decisions made by the CMA. These are, for example, decisions to specify the content of and manner in which<sup>4</sup> parties are to communicate their nationally determined contributions (NDCs), to provide guidance on the accounting of NDCs, and to adopt the ‘modalities and procedures’ for the agreement’s implementation and compliance mechanism. In such cases, the CMA has the power to adopt legally binding decisions related to those provisions.

Irrespective of their legal bindingness, COP decisions indicate a political commitment and can have a normative effect.<sup>5</sup> They hold operational significance and reach; they can develop norms for internal institutions, such as the secretariat or the subsidiary bodies, and create new institutions, processes, or mechanisms for the implementation of the governing treaty. They can also mandate bodies or parties to do certain things: e.g. secretariat to prepare a report, urge developed country parties to provide additional support for loss and damage, etc. In legal terminology, we say that this provides a “soft law character” – i.e. the instrument has a normative force but is not legally binding as such.

The legal effect of a particular COP/CMA decision is therefore assessed on a case-by-case basis. The content, precision and prescriptiveness of the decision’s provisions as well as the existence of mechanisms or procedures to scrutinize subsequent implementation will be important considerations.

As mentioned before, COP decisions are varied, and their legal character will depend on the explicit grant of authority by the treaty. Some examples of types of COP decisions are as follows:

- Rulebook, guidance, rules, modalities, procedures, guidelines (MPGs), etc

In essence, these are all short names/pseudonyms for COP decisions that have been adopted to allow further implementation of the treaty. The content can be more or less detailed on how a specific treaty provision is to be implemented. Like other COP decisions, they are generally not legally binding, however, there are some instances where they can be (see examples above and below in relation to “guidance”).

In the Paris Agreement context, the ‘Rulebook’ is a suite of CMA decisions adopted mainly in 2018 further to requests found in Decision 1/CP.21. It is also referred to as the “Katowice Rulebook” at times because the climate conference in 2018 took place in that city. The Rulebook encompasses detailed provisions and methodologies aimed at guiding the implementation of various aspects of the treaty, such as transparency, accounting methodologies, and the global stocktake—a comprehensive assessment of collective progress towards the Agreement’s goals. The Rulebook significantly shaped the implementation of the Agreement. The legal effect of each of the CMA decisions that make up the Rulebook has to be analysed on a case-by-case basis in conjunction with the relevant provisions in the Paris Agreement.

Some provisions of the Paris Agreement refer to “guidance”. For instance, Article 4(13) states:

Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting,

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<sup>3</sup> Article 18 of the Kyoto Protocol mandates that compliance procedures and mechanisms entailing binding consequences shall be adopted by means of an amendment to the Protocol.

<sup>4</sup> Paris Agreement, Articles 3, 4.8, 4.9, and 15.3.

<sup>5</sup> Lavanya Rajamani, *Innovation and Experimentation in the Climate Change Regime* (BRILL 2020) 127.

*in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.*

The word 'guidance' here, can create ambiguity about whether it is binding or not. However, again, the specific wording of both the clause, and the relevant CMA decision will be determinative. The use of terms like "guidance" and the way decisions are phrased—whether in mandatory or discretionary terms—holds significance in determining their binding nature. In this case, Article 4(13) stipulates that Parties "shall account" for their NDCs "in accordance with" specific guidance. The relevant CMA decision provides that Parties "shall" account for their NDCs "in accordance with the guidance" contained in an annex, thus ensuring that the guidance (provided via the annex to the CMA decision) is binding.<sup>6</sup>

- Cover decisions

At its final plenary, each treaty body – the COP, the CMA and the CMP – adopts a number of decisions. The first of these decisions (1/CP.x and 1/CMA.x) has, in recent years, become known as the "cover" decision. Despite this label, the cover decision does not hold a distinct status compared to other COP decisions.

The cover decision can contain political messages that are not necessarily associated with a specific issue on the agenda – such as addressing the ambition gap – and topics that are not addressed elsewhere. Over time, it has increasingly documented progress in negotiations and parallel events. Parties have, at times, launched new work programmes, dialogues, and processes in it.

Given that cover decisions tend to cover a range of topics, some not even on the agenda of the meetings, it is unlikely that there will be an enabling clause granting parties binding decision-making in such situations.

b. Political declaration/ministerial declaration/political agreement

Political declarations, often termed ministerial declarations or political agreements, constitute formal statements made by a group of states participating in conferences, negotiations, or specific international meetings. Unlike treaties or legally binding agreements, these declarations **do not bind states in their sovereign capacity and are not legally enforceable unless a state makes a unilateral declaration to that effect**. They serve as expressions of political will, consensus, or intent among participating states, outlining shared objectives, principles, or commitments on specific issues. It is important to note that these declarations do not require formal ratification or signature by individual states.

Notable examples of political declarations include the Delhi Ministerial Declaration and the Copenhagen Accord. The Copenhagen Accord 2009 was reached among 28 heads of States and Governments to the UNFCCC, including all major emitters and economies, as well as those representing the most vulnerable and least developed. However, the fractured nature of its negotiation meant its original form was rejected as a COP decision, and the UNFCCC Executive Secretary made the point to clarify it had "no formal legal status".<sup>7</sup>

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<sup>6</sup> Lavanya Rajamani, *Innovation and Experimentation in the Climate Change Regime* (BRILL 2020) 127.

<sup>7</sup> UNFCCC Executive Secretary, Notification to the Parties, Clarifications relating to the Notification of 18 January 2010, 25 January 2010, available at: [https://unfccc.int/files/parties\\_and\\_observers/notifications/application/pdf/100125\\_noti\\_clarification.pdf](https://unfccc.int/files/parties_and_observers/notifications/application/pdf/100125_noti_clarification.pdf)

Recent instances have seen ‘coalitions of the willing’ reach political agreements on the margins of negotiation sessions as a means to compensate for the asymmetries in the interest and capacity of different states to commit to new climate obligations. Among these, the Methane Reduction Initiative and the Just Energy Transition Partnership (JETP) to name just two. These declarations often outline intentions and goals without establishing legally binding obligations.

c. Technical annexes and appendices to a COP decision

Technical annexes or appendices to a COP decision serve as supplementary documents that provide detailed guidance, methodologies, or specific technical details supporting the implementation of the decision. These annexes are often crafted to offer additional clarity, procedures, or technical frameworks necessary for the practical execution of the decision's objectives. While they are integral parts of a COP decision, they are not treated as outcomes of the COP. Instead, they contribute to the understanding and application of the decision but do not independently establish binding legal obligations among the parties involved.

Annexes to a treaty are different. Their status, as well as procedures for their adoption and amendment, are usually established in the final clauses of the treaty.

d. Reports

Reports emerging from a COP are usually divided in two parts; the first summarises the proceedings, the second sets out the action taken by the COP, namely the decisions it adopted. While the report itself is not legally binding, it records COP decisions which might or might not be legally binding depending on each case. There are other reports produced in the UNFCCC governance, for example, the IPCC (Intergovernmental Panel on Climate Change) produces scientific assessments for consideration of the COPs. The COP might also request the IPCC to prepare a specific report and/or acknowledge another IPCC report in its decisions. Constituted bodies, for example the Adaptation Committee, might also produce technical reports, that could also be welcomed, noted, or recognised in some form by the COP.

e. No outcome

In some instances, consensus on adopting a specific decision is not reached. In such cases, instead of a formal decision, the COP can opt to issue a session report that summarises the discussions, positions, and outcomes without constituting a formal decision. An alternative in at least one previous COP, was that parties agreed to “take note” of a political agreement rather than adopting it.<sup>8</sup> However, and in any case, these outcomes would not be legally binding.<sup>9</sup>

### 3. Conclusion

The outcomes from a COP within the climate change regime can be captured in a diverse range of approaches. Nonetheless, apart from limited exceptions in relation to specific decisions, COP outcomes are not generally considered legally binding. Finally, it is important to remember that COP outcomes influence actions and policies, regardless of their strict legal status. The legal bindingness of a COP outcome is therefore one but by no means the only way its impact should be measured by.

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<sup>8</sup> A political agreement, the “Copenhagen Accord” was never formally adopted, with parties agreeing instead to “take note” of it.

<sup>9</sup> With regard to the Copenhagen Accord, its legal status would not have changed had it been adopted by the COP as it was always intended to be politically binding only. The difference between ‘taking note of’ and ‘adopting’ is that the former merely acknowledges that the Accord exists (leaving the individual countries to decide to associate themselves with it) whereas the latter endorses it and brings it formally within the UNFCCC framework.

## Further reading

LRI advice on COP Rules of Procedure <https://legalresponse.org/legaladvice/cop-rules-of-procedure-adopted-or-applied-meaning-of-consensus/>

LRI advice on the legal form of the 2015 Agreement <https://legalresponse.org/legaladvice/legal-form-of-the-2015-agreement/>

LRI advice on gentlemen's agreements and COP decisions <https://legalresponse.org/legaladvice/gentlemens-agreements-and-cop-decisions/>

LRI advice on the legal status of UNFCCC documents <https://legalresponse.org/legaladvice/legal-status-of-unfccc-documents/>

LRI advice on the definition of a treaty <https://legalresponse.org/legaladvice/definition-of-a-treaty/>

LRI advice on the value of cover decisions <https://legalresponse.org/legaladvice/value-of-cover-decisions/>