

Value of cover decisions

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*This advice is provided in response to **Query 61/23***

Query:

1. **What precedents, trends or examples have been set by past COP, CMA, etc., decisions that can support having more general and potentially wide-ranging cover decisions from 1/CP.28 and 1/CMA.5?**
2. **Following from the response to Question 1, can it be said that cover decisions serve a unique, useful, and/or indispensable role in terms of process, as they bring an overarching view of what was discussed in the session and set the tone for the process onwards?**
3. **What, if any, are the legal implications (incl advantages and disadvantages) of introducing new issues or initiating new processes through cover decisions vs. by starting with new agenda items, including through outcomes of other agreed items like the GST, etc. – by new issues we mean topics like, e.g., a fossil fuel phaseout, energy efficiency and RE goals, etc.?**
4. **In the event the 1/CMA.5 decision is devoted to the GST, what are the implications for the 1/CP.28 decision, and its potential to serve the exploratory and ground-breaking role that the recent cover texts have provided?**

Advice:

1. **What precedents, trends or examples have been set by past COP, CMA, etc., decisions that can support having more general and potentially wide-ranging cover decisions from 1/CP.28 and 1/CMA.5?**

We observe the following trends from previous 1/CP.x and 1/CMA.x decisions (**Cover Decisions**), which may support broad and wide-ranging 1/CP.28 and 1/CMA.5 decisions:

- a. Cover Decisions have addressed a broad range of topics and themes, including the following non-exhaustive examples:
 - Adoption of treaties (Kyoto Protocol (1/CP.3), Paris Agreement (1/CP.21))
 - Adoption of various plans of action (Buenos Aires Plan of Action (1/CP.4), Bali Plan of Action (1/CP.13))
 - Documenting other agreements (Cancun Agreements (1/CP.16) which brought the main Copenhagen outcomes formally under the UNFCCC)¹

¹ The Copenhagen Accord was never formally adopted, with parties agreeing instead to “take note” of it.

- Outlining draft negotiating texts for legal instruments (1/CP.20)
 - Political statements, including ministerial declarations (Marrakech Ministerial Declaration (1/CP.7), Delhi Ministerial Declaration (1/CP.8))
 - Progress and implementation of various plans of action (1/CP.5, 1/CP.6, 1/CP.14, 1/CP.27)
 - Stocktakes and further related action (Annex I Parties' national communications (1/CP.9), 1/CMA.2)
 - Guidance on the scope, mandate or governing body of specific funds (Special Climate Change Fund (1/CP.12), Adaptation Fund 1/CMA.1)
 - Acknowledging IPCC reports (1/CMA.3, 1/CMA.4, 1/CP.26, 1/CP.27)
 - Acknowledging UN Human Rights Council resolutions (1/CP.16)
 - Mandates of Ad Hoc Working Groups (1/CP.15, 1/CP.17)
 - Deciding to engage in further dialogue and other action (1/CP.11, Talanoa Dialogue (1/CP.23))
 - Deciding the next date and venue of the COP (1/CP.2)
- b. Cover Decisions have referred to parallel contemporary matters beyond the UNFCCC regime and connected those matters to topics and themes of negotiation. For example:
- Decision 1/CP.7 references *“the World Summit on Sustainable Development provides an important opportunity for addressing the linkages between climate change and sustainable development”*
 - Decision 1/CP.26 references the *“devastating impacts of the coronavirus disease 2019 pandemic and the importance of ensuring a sustainable, resilient and inclusive global recovery, showing solidarity particularly with developing country Parties”*
- c. Cover Decisions are frequently referred to in other decisions – whether within the same ‘package’ of decisions or in subsequent decisions (e.g. 1/CP.14 to 1/CP.27, 1/CMA.1 to 1/CMA.4).
- d. Cover Decisions frequently reference future discussions and activities, such as requesting that various bodies provide technical, procedural or policy advice to inform future sessions and processes. For example:
- Requesting *“the Ad Hoc Working Group on the Paris Agreement to develop further guidance on features of the nationally determined contributions for consideration and adoption by the [CMP] at its first session”* (1/CP.21, para 26)
 - Requesting the Secretariat to *“prepare a synthesis report on long-term low greenhouse gas emission development strategies referred to in Article 4, paragraph 19, of the Paris Agreement for consideration by the [COP]”* (1/CMA.4, para 26)
- e. The length of COP Cover Decisions has varied from ½ page – 43 pages (including annexes where relevant), whereas the length of CMA Cover Decisions has varied from 1.5 pages – 10.5 pages (there are no annexes to CMA Cover Decisions to date)
- f. Recent Cover Decisions have adopted a particularly comprehensive approach to addressing workstreams addressed in COP/CMA sessions, e.g. 1/CP.26, 1/CP.27, 1/CMA.3, 1/CMA.4.
- g. Cover Decisions across COP and CMA sessions do not always correlate with each other. For example:

- The 1/CP.26 and 1/CMA.3 decisions are both titled “*Glasgow Climate Pact*” and contain considerable overlapping content
- The 1/CP.25 and 1/CMA.2 decisions are titled “*Chile Madrid Time for Action*” and the content of these decisions differs considerably. For example:

Decision 1/CP.25:

- Is a 2.5 page decision
- Merely notes decision 1/CMA.2
- Opens with a high-level acknowledgment of the particular efforts of youth and indigenous peoples in calling for urgent and ambitious climate action
- Addresses gender equality to the extent that it welcomes the adoption of decision 3/CP.25 (Enhanced Lima work programme on gender and its gender action plan)
- Specifically recognises the role of the IPCC, expresses appreciation to the IPCC for providing the 2019 Special Reports, encourages Parties to support the work of the IPCC and use the information contained in the Special Reports in their discussions under all relevant agenda items of the UNFCCC governing and subsidiary bodies
- Recalls the goal for developed country Parties to mobilise USD 100 billion
- Does not refer to nationally determined contributions (NDCs)
- Does however duplicate language concerning the state of the climate, the need for urgent action, and the provision of scaled-up financial resources from 1/CMA.2, e.g. “*notes with concern the state of the global climate system*”, “*re-emphasises with serious concern the urgent need to address the significant gap [between Parties’ mitigation efforts and holding global average temperature increases to Paris Agreement commitments]*”

Decision 1/CMA.2:

- Is a shorter decision of 1.5 pages
- Welcomes decision 1/CP.25
- Opens with a comprehensive acknowledgment of Parties’ human rights obligations when taking action to address climate change, with specific references to the right to health and development, rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and gender equality
- Does not reference IPCC reports, but does recognise that action to address climate change is “*most effective if it is based on best available science and continually re-evaluated in light of new findings*”
- Does not reference the USD 100 billion funding goal, but does urge developed country Parties to provide financial resources to assist developing country Parties with mitigation and adaptation
- Reminds Parties to communicate their NDCs and to submit their adaptation communications
- Does however duplicate some language concerning the state of the climate, the need for urgent action, and the provision of scaled-up financial resources from 1/CP.25, e.g. “*notes with concern the state of the global climate system*”, “*re-emphasises with serious concern the urgent need to address the significant gap [between Parties’ mitigation efforts and holding global average temperature increases to Paris Agreement commitments]*”

2. **Following from the response to Question 1, can it be said that cover decisions serve a unique, useful, and/or indispensable role in terms of process, as they bring an overarching view of what was discussed in the session and set the tone for the process onwards?**

Cover Decisions do not consistently provide an ‘overarching view’ of what was discussed in the COP/CMA session. Some Cover Decisions have been very concise and targeted to specific topics (see 1a above), although the last two COP/CMA Cover Decisions have notably adopted a more comprehensive approach by reflecting core COP/CMA workstreams.

Cover Decisions do appear to have some capacity to ‘set the tone’ for subsequent processes, especially where they provide direction in respect of future activities, including requests to other bodies (see 1d above). Cover Decisions are also referenced in subsequent COP/CMA decisions, which indicates that they can influence and reinforce future processes.

The uniqueness of Cover Decisions appears to be their flexibility. Cover Decisions can contain political messages that are not necessarily associated with a specific issue on the agenda and topics that are not addressed elsewhere, including progress made in the negotiations and other parallel events (see [here](#), p.5). As mentioned in 1 above, the length, breadth and topic of Cover Decisions (especially COP Cover Decisions) has varied considerably over the years. This is particularly the case as compared to the rest of the ‘package’ of COP and CMA decisions, which are generally narrower in scope.

3. What, if any, are the legal implications (incl advantages and disadvantages) of introducing new issues or initiating new processes through cover decisions vs. by starting with new agenda items, including through outcomes of other agreed items like the GST, etc. – by new issues we mean topics like, e.g., a fossil fuel phaseout, energy efficiency and RE goals, etc.?

Cover Decisions may be legally binding in certain circumstances. Agenda items are generally procedural in nature and do not require the Parties to commence or complete specific work at a particular session (for example, Rule 16 of the UNFCCC Draft Rules of Procedure permits agenda items that have not been completed at a session to be automatically added to the agenda of the next session, unless otherwise decided by the COP/CMA).

Whether a Cover Decision is legally binding on Parties largely depends on the enabling clause of the treaty under which it is made and the intention of the Parties. For example, where the treaty authorises the COP to take action, if the subject matter of the COP Cover Decision falls within the grant of authority to the COP by the treaty, and it is intended to be legally binding, then the COP decision will typically be legally binding on the Parties (see further details [here](#)).

Accordingly, where Cover Decisions refer to aspirational or political goals that do not fall within the grant of authority to the COP/CMA, they are less likely to lead to legally binding obligations.

We note that the agendas for the COP and CMA have now been adopted, such that there is limited ability to influence the agenda items. However, it remains possible to influence the outcomes of the COP/CMA Cover Decisions.

4. In the event the 1/CMA.5 decision is devoted to the GST, what are the implications for the 1/CP.28 decision, and its potential to serve the exploratory and ground-breaking role that the recent cover decisions have provided?

We consider that it should still be possible to focus on topics beyond the GST in a 1/CP.28 decision, for the following reasons:

- a. Importantly, the GST is not an item on the COP28 agenda. Accordingly, COP Parties are not required to consider the GST during the session;

- b. There is precedent for diverging content across corresponding COP and CMA decisions (see 1g above);
- c. Precedent indicates that COP Cover Decisions are not tied to particular content requirements - they are not tied to agenda issues, can contain political messaging, reference contemporary parallel events (see 1 above);
- d. Where the CMA Cover Decision focuses exclusively on the GST, there may be greater recognition by Parties of the need to utilise the COP Cover Decision to express a collective position on other topics.