

Options for legal remedies and procedural responses to non-compliance with the Paris Agreement

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This advice is provided in response to Query 10/17

Query:

What procedural remedies are available to Parties who assert that another party does not act in line with its commitments under the Paris Agreement?

Advice:**Introduction**

Under the Paris Agreement, Parties have the procedural obligations to communicate and maintain Nationally Determined Contributions under art 4.2; submit a mandatory report or communication of information under art 13; participate in the facilitative multilateral consideration of progress and submit a mandatory communication of information under art 9.5 and participate in their review. Hence, instead of being bound by substantive legal obligations, the Paris Agreement is built around a “bottom up” architecture that relies on the good faith of Parties in formulating NDCs that are compatible with the temperature goal. For this reason, the compliance mechanism established in the Paris Agreement is facilitative rather than punitive.

February 10th, 2025 was the deadline for Parties to the Paris Agreement to submit their 3rd updated nationally determined contributions (NDCs). In addition, the Biennial Transparency Reports (BTRs) were due to be submitted by developed state parties by the end of 2024. This round of NDC submissions marks a significant decline in the number of timely submissions, with only 13 of the 195 countries meeting the deadline.¹ Hence, there is growing demand from Parties to the Paris Agreement for information in relation to compliance with the commitments of the Paris Agreement. In this advice, we have identified and considered a number of procedural responses and potential courses of action available to parties who perceive other parties as failing to comply with the Agreement.

¹ United Nations Economic Commission for Africa, ‘Only 13 of the 195 Parties to the Paris Agreement communicated their NDC 3.0 by the deadline of 10 February 2025’, available at <https://www.uneca.org/stories/only-13-of-the-195-parties-to-the-paris-agreement-communicated-their-ndc-3.0-by-the-deadline>.

1. Mechanisms under the Paris Agreement and the UNFCCC

a) Paris Agreement Implementation Compliance Committee

Article 15 of the Paris Agreement establishes a mechanism to facilitate implementation of and promote compliance with the provisions of the Paris Agreement. It provides that this mechanism “shall consist of a committee that is expert-based and facilitative in nature and function.” As such, the Paris Agreement Implementation and Compliance Committee (PAICC) was established under Article 15.

Article 15(2) provides that the Committee will “function in a manner that is transparent, non-adversarial and non-punitive.”² Decision 20/CMA.1 confirms the non-punitive nature of the mechanism, stating that it “shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions, and shall respect national sovereignty.”³ The PAICC consists of 12 experts, with two members each from the UN’s five regional groups, one member from the Small Island Developing States (SIDS), and one from the Least Developed Countries (LDCs). The composition of the panel seeks to achieve both a regional and gender balance.

Parties to the Paris Agreement must fulfil a number of procedural obligations. Failure to comply with these - including the submission of NDCs and Biennial Transparency Reports (BTRs) - may fall under the mechanism of the PAICC.

The Paris Agreement states four ways in which Parties may initiate the PAICC’s engagement in relation to compliance:

- i. Initiation by a Party on any provision of the Paris Agreement (rule 17 of the rules of procedure of the committee to facilitate implementation and promote compliance referred to in Article 15.2 of the Paris Agreement).
This amounts to a ‘self-referral’ and may be relied on by parties who wish to refer issues to PAICC regarding their own compliance or implementation of the Agreement.
- ii. Initiation by the Committee where a specified mandatory requirement of the Paris Agreement is not met (rule 18).
This would include a Party’s failure to submit or maintain their NDCs or a failure to submit a mandatory report or communication.
- iii. Initiation by the Committee, with the consent of the Party, in cases of significant and persistent inconsistencies based on the recommendations in the technical expert review report (rule 19).
- iv. Identification of issues of a systemic nature concerning the implementation of and compliance with PA provisions faced by a number of Parties and bring those issues and, as appropriate, any recommendations to the CMA for its consideration (rule 23, para 1).

² Article 15(2) Paris Agreement, available at https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf

³ Decision 20/CMA.1, Annex, Paragraph 4, available at https://unfccc.int/decisions/?f%5B0%5D=body%3A4099&f%5B1%5D=conference%3A4202&f%5B2%5D=symboldec%3A20/CMA.1&search2=&order=field_document_decision_symbol_1&sort=desc

- v. Consideration of systemic issues by the Committee or upon request of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) (Modalities and Procedures for the Effective Operation of the Committee, para 33).

It is important to note that, in engaging in a consideration of issues, the PAICC shall take into account “the respective national capabilities and circumstances of Parties, recognizing the special circumstances of the least developed countries and small island developing states”.⁴ As such, the assistance and guidance provided to Parties should accommodate the special circumstances of LDCs and SIDS and should consider the economic, social and political restraints of each Party.

Decision 20/CMA.1, paragraph 30 provides a non-exhaustive list of potential measures that the PAICC may take, including:

- Engaging in a dialogue with the Party with the aim of identifying challenges, making recommendations and sharing information;
- Assisting the Party in engaging with the appropriate finance technology and capacity-building bodies;
- Making recommendations to the Party and communicating those to the relevant bodies with consent from the Party;
- Recommending the development of an action plan and, if requested, assisting the Party in developing the plan;
- Issuing findings of fact in relation to matters of implementation and compliance.

While the PAICC has not been operating for long, it has initiated a consideration of issues in two different instances. In 2023, the Committee initiated a consideration of issues after receiving information from the Secretariat that a Party had not communicated its NDC. In addition, another Party had not communicated its mandatory biennial communication under art 9(5). In both cases, the Committee notified the Party concerned, requesting them to: ‘(1) submit information on the matter at hand on or before 30 June 2023, (2) communicate any request for flexibility on or before 30 May 2023 and (3) communicate any request for a consultation at the 10th meeting of the Committee on or before 30 June 2023.’ Following the notification, one Party submitted its NDC on 31 May 2023 and the other Party submitted the information on 30 June 2023. The Committee thus considered the issues as resolved.

Regarding the late submission by states of their updated NDCs and Biennial Transparency Reports (BTRs) by the end of 2024, at its 13th meeting on [add date], the Committee found that 171 Parties had not communicated an NDC by the due date (para 16) and initiated a consideration of issues with respect to these Parties pursuant to rule 18, paragraph 2(a) of its rules of procedure. On 19 May 2025, the Committee sent out notification letters to remind Parties of their obligation to submit updated NDCs. As it is the first time that Parties are submitting NDCs that are informed by the global stocktake, the Committee agreed to give Parties an extended period of time to respond to the notification letters. In addition, the Committee raised the possibility of identifying issues of systemic nature, given the high number of absent submissions (para 17).

Concerning the submission of mandatory reports or communication of information under arts. 13(7) and 13(9) and 9(7) of the Paris Agreement, 30 Parties did not submit a mandatory national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases under Article 13 paragraph 7(a); 33 Parties did not submit mandatory information necessary to track progress made

⁴ Decision 20/CMA.1, paragraph 19 c, available at https://unfccc.int/decisions?f%5B0%5D=body%3A4099&f%5B1%5D=conference%3A4202&f%5B2%5D=symboldec%3A20/CMA.1&search2=&order=field_document_decision_symbol_1&sort=desc

in implementing and achieving their NDCs under art. 13(7)(b); and 2 developed country Parties did not submit mandatory information on financial, technology transfer and capacity-building support provided as mobilised under art. 13(9), and art. 9(7). Hence, the Committee initiated a consideration of issues with respect to these Parties following rule 18 para 2(b) of its rules of procedure. The specific way in which the PAICC will exercise its functions is still evolving, given its recent establishment, and these initial proceedings.

b) Dispute settlement

A Party which asserts that another Party is acting in non-compliance with the Paris Agreement could seek to utilise the dispute settlement provisions in the Paris Agreement itself.

Article 24 of the Paris Agreement states that the dispute settlement clause in Article 14 of the UNFCCC is applicable *mutatis mutandis* to the Paris Agreement. This means that the options for dispute resolution contained in Article 14 of the UNFCCC apply to disputes under the Paris Agreement, namely: negotiation or any other peaceful means of dispute resolution followed by compulsory conciliation; and recourse to the International Court of Justice (ICJ) or arbitration, provided that both Parties to the dispute have made a declaration accepting either of these two methods of resolving a dispute under the UNFCCC.

i. Negotiation and conciliation

Article 14(1) of the UNFCCC and Article 24 of the Paris Agreement provide that in the event of a dispute between Parties concerning the interpretation or application of the Paris Agreement, the Parties “shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.” In this respect, a Party in dispute with another about its compliance under the Paris Agreement could approach the other Party to resolve the dispute through negotiation or other peaceful means.

If such negotiation or other peaceful means prove unsuccessful, recourse to compulsory conciliation is provided under Article 14(5) of the UNFCCC. In order to benefit from this conciliation procedure, one Party must have first notified the other Party that a dispute exists between them. If, after 12 months following the date of this notification, the Parties have not been able to resolve their dispute through negotiation or other peaceful means of dispute resolution under Article 14(1), then a Party can request for the dispute to be submitted to conciliation.

Conciliation combines fact-finding and mediation. A conciliation commission usually acts as a mediator between both sides, proposing solutions that are mutually acceptable to the Parties to the dispute. A conciliation commission usually has the power to issue a recommendatory award. Such an award carries no legally binding weight, but Parties can declare unilaterally that they will adopt the recommendation.

Article 14(6) provides that “a conciliation commission shall be created upon the request of one of the Parties to the dispute” and that the “commission shall be comprised of an equal number of members appointed by each Party and a chairman chosen jointly by the members appointed by each Party.” “Shall” in this context indicates that a Party to the dispute must appoint a commission member. However, there are no provisions on how to proceed if one of the Parties refuses to do so and to further engage with the process.

The last sentence of Article 14(6) further provides that the conciliation commission shall render a recommendatory award which the Parties are to “consider in good faith.” While it would not be legally binding, such an award could, in theory, clarify the interpretation of the relevant provisions of the Paris Agreement and apply pressure on a Party to adjust its conduct. Overall, the efficacy of the conciliation process, which has yet to be tested, will be determined to a large extent by the willingness of the allegedly non-compliant Party to participate in the process and abide voluntarily by the final outcome.

Finally, Article 14(7) of the UNFCCC envisages that additional procedures relating to conciliation shall be adopted by the COP in an annex. However, these additional procedures have never been adopted. Nevertheless, the International Council for Commercial Arbitration (ICCA) recently launched a Panel of Experts to develop such an annex, and, in September 2023, the panel finalised a draft of the Paris Agreement Conciliation Annex. In November 2023, ahead of COP 28, a briefing was held by the panel to introduce states to the draft annex. To date, the annex has yet to be finalised and its proposed procedures to be published.

ii. ICJ and arbitration

To date, only the following States have made such declarations under Article 14(2): The Netherlands accepting both the ICJ’s jurisdiction and arbitration; the Solomon Islands accepting arbitration; and Tuvalu accepting arbitration.⁵ A further obstacle to the use of this latter dispute settlement mechanism is that the procedural rules for arbitration envisaged in Article 14(2) have yet to be adopted by the COP. A working document on the matter from 1991 exists, which provided for *ad hoc* arbitration between Parties to a dispute. However, it was never adopted by the COP.⁶ As a result, there is no method for constituting an arbitral tribunal (or reference to an appointing authority who could facilitate an appointment).

Since very few States have accepted compulsory jurisdiction of the ICJ or compulsory arbitration specifically within the context of the UNFCCC,⁷ the only practically available dispute settlement option is further negotiations possibly leading to conciliation.

c) The adoption of annexes or guidelines by the COP to assist in the resolution of a dispute

In order for conciliation, arbitration or the compliance mechanism to be viable mechanisms for the resolution of a dispute over whether or not a Party is in compliance with the Paris Agreement, annexes to the Paris Agreement will need to be adopted. Article 23 of the Paris Agreement provides that the provisions of Article 16 of the UNFCCC on the adoption and amendment of annexes shall apply *mutatis mutandis* to the Paris Agreement.

d) COP decision

Another possible response to an official act or omission or declaration that other Parties perceive as not in line with the Paris Agreement would be to raise the issue in the CMA and adopt a corresponding

⁵ United Nations Framework Convention on Climate Change, ‘Declarations by Parties’ available at <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/declarations-by-parties>

⁶ Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, ‘Consolidated Working Document’ (19 December 1991, Geneva), available here: <http://unfccc.int/resource/docs/1991/a/eng/misc17a08.pdf>.

⁷ We discuss separately below the potential relevance of State declarations of consent to ICJ jurisdiction outside the specific context of the UNFCCC.

decision following Article 16(4). The decision could address a specific conduct or omission or provide general guidance on the interpretation and understanding of the Paris Agreement.

2. Mechanisms outside the UNFCCC

a) Contentious Jurisdiction of the ICJ

The International Court of Justice may offer means for resolving a dispute as to whether a Party is complying with the Paris Agreement, either by way of its contentious jurisdiction or by issuing an advisory opinion.

States may unilaterally accept the compulsory jurisdiction of the Court on condition of reciprocity at any time by filing a declaration to that effect with the UN Secretary General.⁸ This allows the Court to exercise jurisdiction over disputes between that State and any other State that has made the same declaration with respect to a legal dispute between those Parties concerning treaty interpretation or international law obligations.⁹ To date, 74 States have made such declarations recognising the compulsory jurisdiction of the Court.¹⁰

Many States have included reservations to their acceptance of the ICJ's jurisdiction. A common reservation is that the declaration does not apply to any dispute in respect of which the parties have agreed recourse to other means of dispute settlement. Thus, the Court would only have jurisdiction over a dispute where both Parties have either accepted the jurisdiction of the Court without reservation at all, or at least without reservations that would impede the matter from coming before the Court. As at [year], 21 States had accepted the ICJ's jurisdiction without reservation.¹¹

Parties to a dispute may also accept the jurisdiction of the Court on an ad hoc basis by means of a special agreement to the effect that the Parties to the dispute accept the jurisdiction of the ICJ with respect to that particular dispute.¹² The agreement would need to be submitted in writing to the Registrar of the ICJ. This would require both Parties to a dispute over the Paris Agreement to agree to submit their dispute before the Court.

b) Advisory Jurisdiction

The ICJ can issue advisory opinions on questions of international law. The Court's advisory jurisdiction derives from Article 96(1) of the UN Charter, under which the UN General Assembly (the "General Assembly") or Security Council may request the Court to give an advisory opinion on any legal question. Specialised agencies or subsidiary organs of the UN may also request advisory opinions with

⁸ See, United Nations, Statute of the International Court of Justice, 18 April 1946 (the "ICJ Statute"), Articles 36 (2) and 36(4), for parties to the ICJ Statute available here: <http://www.refworld.org/docid/3deb4b9c0.html>. States that are not parties to the ICJ Statute may also file declarations accepting the compulsory jurisdiction of the ICJ pursuant to Article 35(2) and Security Council Resolution 9.

⁹ See, United Nations, Statute of the International Court of Justice, 18 April 1946, Article 36 (2) (a) - (d), available at: <http://www.refworld.org/docid/3deb4b9c0.html>.

¹⁰ List of States that have deposited declarations recognising the Jurisdiction of the Court as compulsory available at: <http://www.icj-cij.org/en/declarations>

¹¹ These are Cameroon, Costa Rica, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Equatorial Guinea, Finland, Georgia, Guinea-Bissau, Haiti, Liechtenstein, Panama, Paraguay, The Netherlands, Sweden, Switzerland, Timor-Leste, Togo, Uganda and Uruguay.

¹² Ibid.

respect to legal questions arising within the scope of their activities if they are authorised to do so by the General Assembly.¹³ Advisory proceedings are initiated by the filing of a written request for an advisory opinion addressed to the Registrar by the United-Nations Secretary-General or the director or secretary-general of the specialised agency or subsidiary organ requesting the opinion.

Hence, a State seeking an advisory opinion on the interpretation of the provisions of the Paris Agreement would need to submit a proposal to the Security Council, General Assembly or other authorised specialised agency or subsidiary organ of the UN. This body would then need to agree to submit the request in accordance with their own internal decision-making process. While ICJ advisory opinions are non-binding, they carry significant moral and legal weight.

Although many of the specialised agencies or subsidiary organs of the UN that are permitted to request advisory opinions are not climate change focused, many do include environmental issues or address some effects of climate change in their remit.¹⁴ The activities of many, including the World Health Organisation (“WHO”), the International Maritime Organisation (“IMO”), the Food and Agriculture Organization of the United Nations (“FAO”), the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Monetary Fund (“IMF”), the International Fund for Agricultural Development (“IFAD”), the World Meteorological Organization (“WMO”) and the United Nations Industrial Development Organization (“UNIDO”) are naturally concerned with some of the impacts of climate change. In fact, all of the aforementioned organisations address climate change directly in some way on their websites and most have concrete plans to address either the causes or effects of climate change. States could seek to prevail upon international organisations such as these to make a request to the ICJ.

In summary, an advisory opinion, albeit non-legally binding, would provide an authoritative interpretation of the legal obligations states under the Paris Agreement. It would, however, require a political process of gathering support within the relevant UN organs or authorised agencies to request such an opinion from the ICJ, which could be a difficult and lengthy process.

This lengthy process has proven effective for Vanuatu, which led a global coalition urging the UN General Assembly to adopt a resolution asking the ICJ to provide clarity on states’ international legal obligations with respect to climate change, and the potential legal repercussions of a state’s failure to comply with such obligations.

Some 91 states and 11 International Organisations filed written statements,¹⁵ and following the December 2024 hearings, the advisory opinion is expected to be published in the course of 2025. Whilst it is Vanuatu that initiated the request for an advisory opinion, the scale and variety of participating states and organisations indicate that it is not simply the most climate-vulnerable or the most economically fragile states that are demanding clarity in international law in relation to climate change obligations.

The advisory opinion is particularly relevant in the context of this advice as it will address multiple questions relating to international legal obligations of states in relation to climate change “having particular regard to [...] the United Nations Framework Convention on Climate Change [and] the Paris

¹³ Article 96(2) of the UN Charter, available here: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

¹⁴ ICJ, ‘Organs and agencies authorized to request advisory opinions’, available here: <http://www.icj-cij.org/en/organs-agencies-authorized>.

¹⁵ Doughty Street Chambers, ‘Vanuatu Opens the International Court of Justice Advisory Opinion Proceedings on Climate Change and Human Rights’ available at <https://www.doughtystreet.co.uk/news/vanuatu-opens-international-court-justice-advisory-opinion-proceedings-climate-change-and>

Agreement [...]”¹⁶ Hence the Court must address the critical question of the status of the climate change treaties and particularly their relationship with general principles of international law.

Although this case does not directly concern a failure to implement a provision of the climate change treaties, it refers to the compliance of states to their international legal obligations, including under the climate change regime, to halt climate change.

c) United Nations Environment Programme (UNEP)

Parties could also seek to call on the United Nations Environment Programme (“UNEP”) to assist in the resolution of a dispute over their obligations under the Paris Agreement. The UNEP is an agency of the United Nations headed by an executive office and made up of various subdivisions specialising in, for example, ecosystems and policy. The UNEP’s purpose is to “promote cooperation and coordination among nations, recommend environmental policies and provide general policy guidelines in the international environmental arena for all nations.”¹⁷

The UNEP’s mandate does not include dispute resolution. Instead, it studies, recommends, and adopts non-binding resolutions and charters. However, the UNEP also lists environmental diplomacy and mediation as part of its activities. Upon request, the UNEP can act as an “impartial expert and trusted third party in the mediation of resource conflicts by drawing on its neutrality, technical orientation, and expertise in environmental cooperation.” In addition, the UNEP’s expertise is available to other international mediation processes.¹⁸ While the services listed on the UNEP website apply to resource disputes,¹⁹ it is arguable that, given the subject matter of the Paris Agreement, the UNEP could offer similar services in relation to a dispute over the Parties’ obligations under the Paris Agreement, particularly if all Parties concerned consent to the UNEP doing so.

While there is no precedent for the UNEP taking action in relation to a dispute over Parties’ obligations under international climate change law, the UNEP could be an appropriate mediator for a dispute over Parties’ obligations under the Paris Agreement. It could also assist any other mediator to the dispute by providing technical expertise regarding the specific issues in question. Of relevance, the UNEP produced a report guiding mediators on these issues entitled ‘Natural resources and conflict: a guide for mediation practitioners’.²⁰ While mediation through the UNEP would not produce a legally binding solution, it could bring the sides together in discussions and help to identify ways to reach agreement on the scope of Parties’ obligations under the Paris Agreement.

¹⁶ LRI, <https://legalresponse.org/news/>

¹⁷ Watson Samaan, “Enforcement of International Environmental Treaties: An Analysis” (1993) *Fordham Environmental Law Review*, Volume 5, Number 1 (2011). Pp. 261-283, at p.263.

¹⁸ UNEP, ‘Environmental diplomacy and mediation’, available here: <http://www.unep.org/disastersandconflicts/what-we-do/recovery/environmental-cooperation-peacebuilding/what-we-do/environmental-diplomacy-and>.

¹⁹ For example, in the past, UNEP has provided support to the governments of Haiti and the Dominican Republic in relation to tensions between the two countries, concerning the depletion of natural resources along their border. Its work comprised a study resulted in recommendations on opportunities for cooperation. UNEP also helped the governments of Iran and Afghanistan produce a joint project proposal on how they will deal with their dispute over a transboundary water. For further details and case studies on UNEP’s inter-state diplomacy, see UNEP, ‘Natural Resources and Conflict - A Guide for Mediation Practitioners’ (2015), available here: http://postconflict.unep.ch/publications/UNDPA_UNEP_NRC_Mediation_full.pdf. See also, UNEP, ‘Haiti-Dominican Republic: Environmental challenges in the border zone’ (2013), available here: http://postconflict.unep.ch/publications/UNEP_Haiti-DomRep_border_zone_EN.pdf.

²⁰ UNEP, ‘Natural Resources and Conflict: a Guide for Mediation Practitioners’ <https://www.unep.org/fr/node/10786>

Conclusion

The Paris Agreement lacks robust enforcement mechanisms to address non-compliance by Parties. The procedural remedies are mostly facilitative and non-punitive, relying on voluntary cooperation. The various mechanisms under the UNFCCC and the Paris Agreement, such as negotiation, conciliation and the PAICC, offer avenues for dialogues and assistance, but ultimately do not impose binding outcomes in cases of non-compliance.

Beyond the UNFCCC framework, options exist that could be used to encourage compliance, such as the ICJ's advisory opinions or mediation through the UNEP but again, these fall short of imposing binding outcomes. In addition, even where legally binding obligations could be imposed through the ICJ's contentious jurisdiction, this is limited by the relatively low number of countries that have granted the ICJ compulsory jurisdiction, let alone without reservation.

Ultimately, the effectiveness of these remedies depends on the political will of Parties to engage in good faith with their commitments.