

# Legal issues when negotiating text

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# COP outcomes and legal nature of COP decisions

- COP decisions (rulebook, cover decisions, COP/CMA/CMP decisions). Not legally binding but have a normative content.
- Declarations
- Technical annexes
- No outcome

LRI legal advice: [Possible outcomes of a COP.](#)

# Degree of commitment

**Consider:** think about further .... Not necessarily make a decision

*Decides [to consider], at its eighth session, the implementation of an insurance related mechanism*

**May:** Optional requirement at discretion of Party concerned

**Should:** advised but non-compulsory requirement

**Shall/must:** Compulsory requirement

*The developed country Parties [shall] [should] [may] provide financial resources....*

**Shall endeavour:** weakens obligation

# Qualifying wording

**As/if appropriate, as/if necessary, as/if applicable ...:** gives discretion to decide if action is appropriate, necessary, applicable

**Shall endeavour, shall strive to:** weakens obligation

Urges Parties **in a position to do so:** expected and having the capacity to take action

# (No) future

**Towards:** 'never getting there'

*Takes steps towards devising a process for the transfer of technology*

**Where sufficient information is available:** dependent on further studies

*Starting to implement activities when there is sufficient information available to warrant such activities*

**With a view to:** hopefully to do something at some time in the future

*Within 2 years, on the basis of the report of SBSTA, consider, with a view to, recommending a work programme*

# Legal character of obligations

Legal character depends on several factors incl. location in the text, subject, language, precision, normative content, etc.

Examples:

- “Support shall be provided to developing country Parties for the implementation ...” (Art.4.5, PA)
- “Each Party, shall, *as appropriate*, engage in adaptation planning processes and the implementation of actions (...) which may include ...” (Art.7.9, PA)

**GGA text**

# Preamble v/s operative part

## Preamble:

- Context
- Interpretation
- Acknowledgements.
- Concepts that are not yet 'mature' for being in the operative part.

## Operative:

- Actions and commitments.
- Backward looking/forward looking.
- Mandates.
- Precision is key.

Reemember all COP functions?



# Convention-PA relationship

Option 1: Also *recalling* relevant provisions and principles of the Convention and [the] [its] Paris Agreement

‘the’ PA as an independent treaty.

‘its’ PA under Convention

**Legally:** independent but connected treaties and governing bodies. LRI legal advice.

**Politically:** G77 in finance negotiations ‘its’ and in others ‘the’.

Brazil and LMDC: solid ‘its’

# Principles

Principles are a source of international law.

They can be directly applied by International Courts.

Climate treaties contain principles: equity, CBDRRC.

# Inviting/requesting/mandating bodies

## A. Modalities of the UAE-Belem Work Programme

1. **Requests** the Chairs of the subsidiary bodies to prepare, with the support of the secretariat, in collaboration with relevant United Nations organizations and specialized agencies , and with contributions from relevant constituted bodies, a compilation and mapping of existing indicators relevant to measuring progress towards the targets referred to in paragraphs 9–10 of decision 2/CMA.5, including information on areas potentially not covered by existing indicators, in advance of the workshop referred to in paragraph 7 below

CMA can mandate SBs, the Secretariat and constituted bodies.

Requests the Chairs of the SBs=Request the SBs

# Mandating AC

## *Options for Adaptation Committee role in developing indicators*

Option 1: Requests the Adaptation Committee to prepare a contribution to the compilation and mapping referred to in paragraph 4 above by identifying information on indicators reported by Parties in their national reports and communications in the context of the work referred to in paragraph 45 of decision 2/CMA.5

Option 2: No text

No text means no role. Either another body or the CMA itself.

# External experts

Option 1: **Establish** seven expert working groups for the thematic targets referred to in paragraph 9 of decision 2/CMA.5, as well as one group for the targets related to the dimensions of the iterative adaptation cycle referred to in paragraph 10 of decision 2/CMA.5.

Option 2: **Requests** the Chairs of the subsidiary bodies to **Convene** technical experts to assist (...)

Option 3: **Establish** an ad hoc expert group on the United Arab Emirates–Belém work programme (...)

Option 4: **Invites** the Adaptation Committee to review, refine and identify gaps, if any, in the indicators identified in the mapping referred to in paragraph 4 above, with the voluntary engagement of experts (...)

Bodies to be created by CMA, no SBs (unless asked to do so by CMA)  
Ensure representation in expert's bodies.

# Means of implementation

## 1.Option 1: No Text

Option 2: **Recognizes** that means of implementation for adaptation, such as finance, technology transfer and capacity-building, are crucial to the implementation of the United Arab Emirates Framework for Global Climate Resilience

Option 3: **Reaffirms** that adequate, predictable, and accessible finance, technology transfer, and capacity-building are critical to achieving the GGA.

Language used here does not create commitments.

# References to finance in GGA decision

Option 1: Notes with concern that the adaptation finance gap is widening;

Option 2: Commit to closing the adaptation finance gap

Option 3: No text

Some negotiators oppose these references in the room.

From a legal perspective, the COP/CMA is a single body, and therefore there is no objection to an adaptation/technology/L&D decision to include commitments or guidance in relation to finance.