

Climate Basics 2#: The International Regime

Jack Parker – Monserrat Madariaga – Olivia Tattarletti

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The international climate change regime

Montserrat Madariaga and Olivia Tattarletti
Legal Response International

PLAN

- Intro to the international climate regime, Paris Agreement
- Negotiations in practice
- Some legal considerations
- Language / terminology
- Links between the int'l regime and national action
- Q&A

International treaty / agreement / convention

- Vienna Convention on the Law of Treaties 1969: regulates treaties among sovereign states (aka “treaty on treaties”)
- Rules and procedures to draft, define, amend, and interpret treaties
- **Preamble** (*recalling, noting, affirming, calling upon, encouraging, recognising, taking into consideration...*)
 - Not binding
 - Provides context to the operative part and guides its interpretation
- **Operative part**
 - The actual “agreement” between Parties
 - Words may be used to dilute or negate rights and obligations
 - Prevails if direct conflict with the preamble

UN climate negotiations – key milestones

2015

Paris Agreement - Bottom up

Aims to strengthen the global response to the threat of climate change, 3 goals (temperature, adaptation and finance flows), all Parties must submit nationally determined contributions (NDCs)

Kyoto Protocol - Top down

established legally binding obligations for developed countries to reduce GHG emissions

UNFCCC - Framework

objective: stabilise GHG concentrations at a level that prevents dangerous anthropogenic interference with the climate system

1992



UNFCCC governance

- **COP**, **CMP** and **CMA** - governing and supreme decision-making bodies of UNFCCC, KP and PA
- **Secretariat**
- **Parties**: States
- **Negotiating groups**: G77+China, African Group of Negotiators, Least Developed Countries, Alliance of Small Island States, EU, etc.
- Other bodies to support the “COP”:
 - Permanent subsidiary bodies (SBSTA, SBI)
 - Constituted bodies (e.g. Adaptation Committee)
 - Ad-hoc working groups (e.g. APA)

The Paris Agreement

- Adopted in 2015, entry into force (i.e. binding) in 2016
- Near universal participation: ratified by 195 countries
- Since then, countries negotiate its implementation (“rulebook”)

The Paris Agreement: key elements

- Mitigation
 - 5-yearly submission of increasingly more ambitious nationally determined contributions (**NDCs**, i.e. climate mitigation plans)
 - cooperation to achieve NDCs (e.g. **carbon markets**)
 - Ambition cycle
- Adaptation
- Loss and damage
- “Means of implementation”
- Reporting (“transparency”), review (“global stocktake”) and compliance



Negotiations in practice



The Plenary





Informal
("corridor")
negotiations



The last minute huddles

Legal nature of the PA

- A formal and binding international treaty to which the VCLT applies
- BUT it contains provisions that create **binding legal obligations** and provisions that create **non-binding (voluntary) commitments**
- Most legally-binding obligations are **obligations of conduct** (procedural), not of result
- Implications for compliance

Example

Each Party shall prepare, communicate and maintain successive NDCs that it intends to achieve (Art. 4.2)

All Parties should strive to formulate and communicate long-term low GHG emission development strategies (Art. 4.19)

Language

The legal character of a provision depends on several factors incl. location in the text, language/terminology, precision, normative content, etc.

To consider

- Degree of commitment – *may, should, shall/must, shall endeavour...*
- Conditional/qualifying wording – *as/if appropriate, as/if necessary...*
- Future actions – *towards, with a view to, where sufficient information is available...*

Legal nature of the “Rulebook”

- “**Rulebook**” = subsequent decisions of the parties for the implementation of the agreement
- CoP decisions in the UNFCCC are generally not considered legally binding on the parties. They indicate a political commitment
- They have a normative aspect all the same

Far from perfect

- No obligation to fulfil NDC targets
- No individual review of NDCs' adequacy or fairness
- No burden sharing agreement or other binding arrangements on finance
- Existing \$100b climate finance target unmet -> distrust
- Toothless compliance mechanism



domestic implementation
assessments outside the UNFCCC
climate litigation

Role of lawyers

- By now it should be obvious that lawyers have a role in this process!
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How the int'l regime shapes national action: process

- Enables accountability at the national level: political control, citizen's scrutiny, involvement of the judiciary (climate litigation)
- Enables for political momentum to have deliberation and a climate policy agenda at the national level: around important COPs the development of climate change (in the host country?) acts grows
- Enables for civil society action in alignment with COPs (e.g. calls for closing of coal plants)

How the int'l regime shapes national action: content

- Climate change acts with a Net Zero target by 2050
- NDCs as part of the domestic policy instruments or their commitments reflected in those
- Carbon markets and climate finance: facilitative normative environment for projects
- Mitigation focus in 'first generation' climate change acts in response to the Kyoto Protocol or to mitigation commitments
- Difficulties in legislating adaptation also relate to less development in the international negotiations (soft limits to addressing adaptation)

Play store **Android**



App store
iPhone



Paris Agreement A to Z app



Strengthening capacity for inclusive negotiations

THANK YOU !



Cornerstone Climate Month

Recorded Sessions

1. Climate Change and the Law: The Basics #1
2. Policy Making: How to Plan for Net Zero
3. Real estate and ESG
4. Climate as a material planning consideration
5. Ecocide and Greenwashing
6. The Energy Transition: Renewables
7. An Update on the UK's Progress towards Net Zero
8. Power to the People: renewable energy from source to use
9. Carbon Capture and Storage
10. From Old to Gold: challenges in retrofitting
11. Climate Basics #2: The International Regime

Upcoming Sessions

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|-----------------|--|
| 1. 28-5-24 (am) | Financing the Green Transition |
| 2. 29-5-24 (am) | Climate and the right to protest |
| 3. 29-5-24 (pm) | Climate litigation in the civil courts |
| 4. 30-5-24 (pm) | Climate Change and Human Rights |