

Understanding the legal basis of COP26:

The UNFCCC

The legal basis of COP26 is the legal system that the United Nations have set up to tackle climate change. Signed in 1993, the United Nations Framework Convention on Climate Change (UNFCCC) was the first global treaty to recognize climate change as a major challenge for humanity and set the goal to stabilise greenhouse gas concentrations “*at a level that would prevent dangerous anthropogenic interference with the climate system*”.

To achieve this, all states that are bound to the UNFCCC (which is almost all the states in the world) have to publish inventories of their domestic carbon emissions.

Tasks and powers of the COP:

To keep the process made under the UNFCCC under regular review, the treaty set up the Conference of Parties (COP) as “*the supreme body of this Convention*”.

The UNFCCC outlined that the COP should meet regularly, assist states in coordinating their measures to mitigate climate change, assess the effects of those measures and take any further action that is necessary to achieve the main objective: to prevent dangerous climate change.

The COP is organised, prepared, supported and informed by a number of other bodies. For example, the UN Secretariat provides organisational support and technical expertise to all the other bodies and is a forum for exchange of information and development of strategies for mitigating climate change.

The UNFCCC also grants the COP the competence to adopt “related legal instruments”, so it is not merely a political body but can **negotiate legally binding treaties**.

COP21 and the Paris Agreement:

To overcome certain setbacks, COPs began to negotiate the Paris Agreement (or Paris Climate Accord), which was signed in 2015 at the COP21 in Paris. Currently 191 states have ratified the Paris Agreement, which means that they have agreed to be legally bound to its provisions.

The Paris Agreement states that the COP, which was set up by the UNFCCC, will also serve as the meeting of the State Parties to the Paris Agreement. Consequently, the legal basis of COP26 are both the UNFCCC & the Paris Agreement.

But, what are the main points of the Paris Agreement?

- **Temperature Goal**

The central goal of the Paris Agreement is to hold the global temperature rise “*to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*”.

This means that global greenhouse gas emissions should peak as soon as possible and then fall sharply in order to prevent the worst consequences of climate change.

This temperature goal was chosen on the basis of reports by the Intergovernmental Panel on Climate Change (IPCC), an independent, scientific organisation that is regarded as the most reliable source of scientific information connected to climate change.

- **Nationally Determined Contributions (NDCs)**

To reach the temperature goal, countries must undertake “ambitious efforts” to mitigate climate change. Each state has to document their strategy to reduce carbon emissions and communicate it to the secretariat. These reports are called Nationally Determined Contributions (NDCs).

In their NDCs, states typically set themselves a goal for a certain amount of emissions reductions until a specific year e.g. reaching Net Zero by 2050. The NDCs of all countries can be viewed at the [website of the NDC registry](#).

So, is the Paris Agreement legally binding?

It is important to understand that, while the Paris Agreement as a whole is a binding international treaty and its states parties are legally bound to comply with it, not every provision of the Agreement establishes a legal obligation.

Some are legally binding, while others are expectations. So, states are not legally obliged to engage in specific actions to mitigate climate change, nor to set specific NDCs or reduction targets.

This means there is also no legal obligation to actually succeed in keeping global warming to 1.5°C or 2°C...Instead, what states are legally obliged to do is to prepare and communicate clear and transparent NDCs every five years.

There is an expectation that the NDCs of developed countries should be more ambitious than those of less developed (or ‘developing’) countries. It is also expected that each new NDC a state outlines should be more ambitious than the previous one.

Will decisions reached at COP26 be legally binding?

Progress in international climate change regulation has mainly taken place at COPs. However, whether decisions made at COPs, and specifically at COP26, are legally binding is still not fully clear and heavily debated in the legal literature and practice.

One of the most fundamental principles in international law is state sovereignty, and it stems from that principle that states cannot be bound to international law against their will. That is why, when a COP negotiates binding instruments like the Paris Agreement, states still need to agree to be bound to that instrument, like with any other treaty.

In some cases, COP decisions are not strictly binding, they are so-called ‘soft law’ – a category somewhere between ‘real’ law and mere politics, not formally binding on states but still raising expectations and exerting some pressure on governments.

Something else to keep in mind is that, even if a decision is legally binding on a state, states cannot really be forced to comply with it. If they don't stick to a decision, the most effective tool to make them comply is political pressure from other states and parties to the UNFCCC

There are other possible sanctions, such as economic sanctions, but they are extremely unlikely to be imposed.

So whether COP decisions are legally binding or not, in the end what matters is to create public and political pressure and convince states that it is in their best interest to comply with them.”

We would like to thank Louisa Raitbaur for her fantastic contribution to this section on law and the legality of COPs.