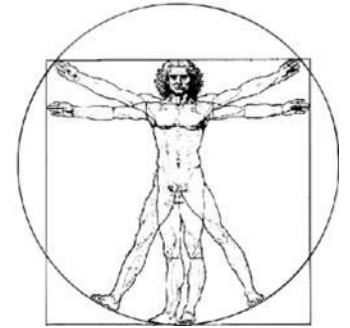


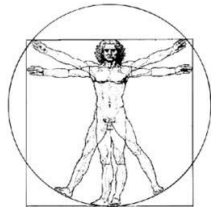
ecbi



Legal language

Christoph Schwarte
Legal Response International (LRI)

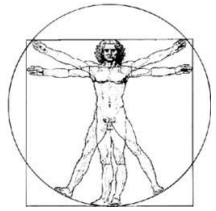
for sustained capacity building in support of international climate change negotiations
pour un renforcement durable des capacités en appui aux négociations internationales
sur les changements climatiques



Spot the difference

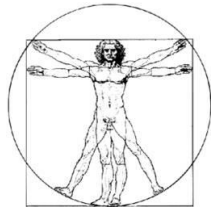
America, without her, humanity is helpless.

America, without her humanity, is helpless.



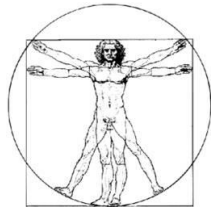
Word games

- Conditional/qualifying wording - give discretion to decide whether the action is appropriate or not: *as appropriate, if appropriate, as necessary, if necessary, the extent feasible/practical*
Developing and implementing [as appropriate] prioritized projects identified in their national communication.
- *Inter alia* (among other things) and *mutatis mutandis* (with due alteration of details)
- *And* (all connected clauses or provisions must be satisfied) and/or *Or* (only one of the connected clauses or provisions must be satisfied)
- *Organize a workshop/request a report:* can be used as a fallback when agreement cannot be reached or a delay mechanism



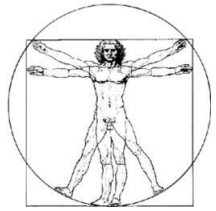
Degree of commitment

- **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



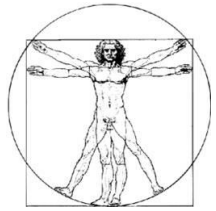
Commitment?

- Each Party's successive NDC shall represent a progression beyond the previous one
- Each Party's successive NDC will represent a progression beyond the previous one
- Each Party's successive NDC may represent a progression beyond the previous one



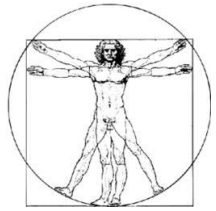
(No) future

- **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



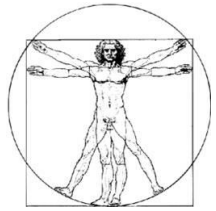
Techniques

- Proposals submitted by parties for consideration put in [square brackets] - removed when text agreed
- Use of Alternatives (Alt)
- Latin numbering for paragraph insertions into existing negotiating text: bis, ter, quat, quin ...



Legal bindingness criteria

- **Form:** e.g. law or policy instrument
- **Language:** are the provisions expressed in mandatory language, e.g. ‘shall’ or ‘must’ as opposed to ‘should’ or ‘aim’ and is the expected behaviour clearly specified (in sufficient detail to assess compliance)?
- The potential **enforceability** of obligations: i.e. whether the treaty contains compliance procedures, mechanisms, or event sanctions.



Legal obligation?

- In their actions to achieve the objective of the Convention the Parties shall be guided by the following: The Parties should take precautionary measures to prevent the causes of climate change. (based on Art.3 para.3 UNFCCC)
- The Parties included in Annex I shall,..., ensure that their aggregate anthropogenic CO₂ emissions gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments. (Art.3 para.1 Kyoto Protocol)
- Parties shall pursue domestic mitigation measures, with the aim to achieve their nationally determined contribution. (Art.4 para.2 Paris Agreement)