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Text interpretation and terminology

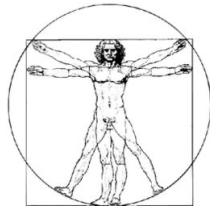
Sub-title

Pascale Bird

Legal Response International

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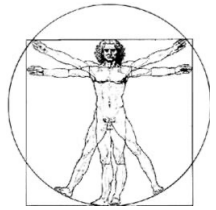
Overview



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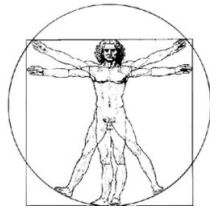
- Structure of climate treaties and decisions
- The language of legal obligations
- Drafting text
- Some examples
- Further resources

Structure of climate treaties and decisions



- **The Preamble** (*recalling, noting, affirming, calling upon, encouraging, recognizing, taking into consideration...*)
 - Not binding/ guides interpretation/ context for operative part/ may be used strategically to include preferred language without creating binding commitments
- **Operative part** (*decides that, resolves that*)
 - Represents the actual “agreement” between Parties
 - Focuses on actions to be taken by parties and other stakeholders
 - May call for creation of new institutions, launch of work programme or undertaking of studies
 - Prevails in direct conflict with preambular language but preambular language used to interpret Parties’ intention.
 - Describes the content of an agreement but words may be used to dilute or negate commitments, rights and obligations.

The language of legal obligations



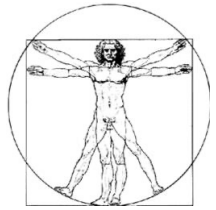
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Legal character depends on several factors incl. location in the text, subject, language, precision, normative content, etc.

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)*

Degree of commitment



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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

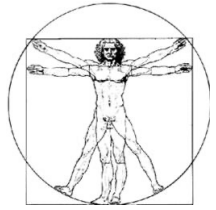
Should: advised but non-compulsory requirement

Shall/must: Compulsory requirement

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

Shall endeavour: compulsory requirement /obligation weakened

Qualifying wording



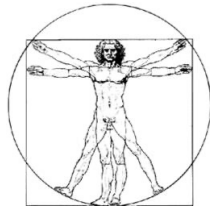
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As/if appropriate, as/if necessary, as/if applicable ...: gives discretion to decide if action is appropriate, necessary, applicable or how action is to be undertaken.

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



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Towards: 'never getting there'

Takes steps towards devising a process for the transfer of technology

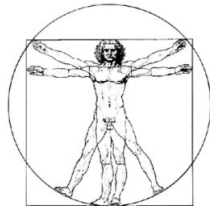
Where sufficient information is available: dependent on further studies

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

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

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

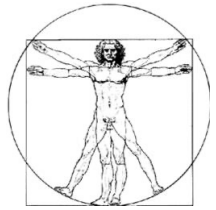
Drafting text



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- Use of square brackets [...] :wording is not yet agreed, still under negotiation
- 'Agreed language': word-for-word text from treaties or previous decisions being re-used in new text to ensure key concept or issue remains highlighted and/or to break deadlock
- 'Agreed ad ref.': some text has been agreed, but other parts of text remain under negotiation; this means that the agreed text is no longer open for negotiation. May also be implied by removal of square brackets around and within the relevant text

Examples



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Convention-PA relationship

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

‘the’ PA as an independent treaty

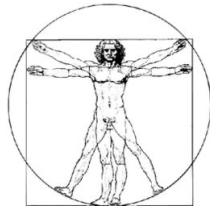
‘its’ PA under Convention

Legally: independent but connected treaties and governing bodies

See LRI advice: <https://legalresponse.org/legaladvice/relationship-between-the-convention-and-the-paris-agreement/>

Politically: G77 in finance negotiations: ‘its’ v in others, ‘the’

Examples (contd.)



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Global Goal on Adaptation: Mandating Adaptation Committee

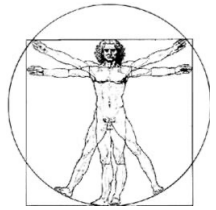
Options for Adaptation Committee role in developing indicators

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

➔ Question: No text means?

Examples (contd.)



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Means of implementation

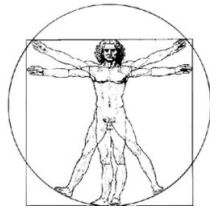
Option 1: No Text

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

Question: do any of the options create new commitments?

Further resources



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Play store Android

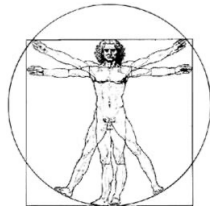


App store iPhone



Paris Agreement A to Z app

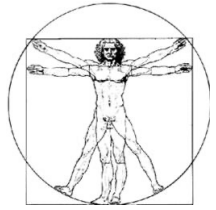
Further resources



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- Legal affairs division of the secretariat and LRI
- UNFCCC website
- LRI database bit.ly/LRIdatabase
- LRI Newsletter: [subscribe!](#)
- LRI Summary of COP 29
- LRI Explainers: [Loss and damage](#), just transition, NCQG and upcoming Article 6 and Governance
- IIED/LRI Climate Terminology Guide <https://www.iied.org/22589iied>
- IIED/LRI climate terminology: the essentials <https://www.iied.org/2255Iiied>

Slide Heading



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Thank you !

Any questions?

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