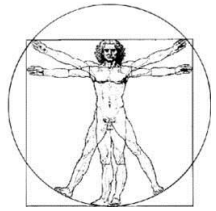


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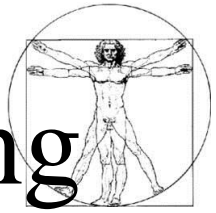
Legal issues in the Paris Agreement

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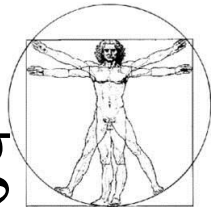
- Why do we call for the 2015 Climate Agreement to be legally binding?
- What elements should be there in an international legally binding agreement?



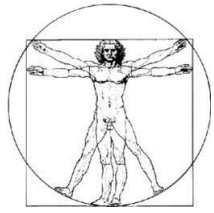
Why do we call for a legally binding agreement?

- May set forth mutual principles, objectives, rules and commitments that are binding between the concerned parties.
- The binding force of agreements is represented by the principle of *pacta sunt servanda*, ("agreements must be kept")
- Relationship between the Rule of Law and State behaviour
- Ratified Agreements are effective on states irrespective of changes in the governments

Key elements of a legally binding Agreement



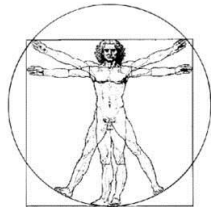
- In an international agreement, the legally rigour is reflected in a combination of key elements.
 1. The legal form
 2. The obligations
 3. Provisions for compliance and enforcement
 4. Final clauses
- The name of the agreement may not matter...as long as it falls within the parameters of international law.
- Crucial to have legally-binding obligations and provisions for compliance and enforcement within an international agreement that must be ratified by countries.



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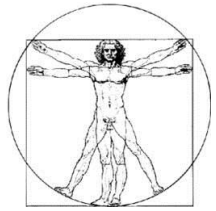
1. The Legal form of the Agreement

The Durban Platform Decision (Decision 1/CP.17)



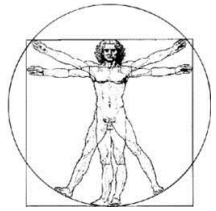
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- *Three options for the Legal form of the Agreement*
 - *Protocol*
 - *Another legal instrument*
 - *An outcome with legal force*



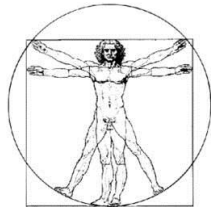
A Protocol

- A treaty between parties (according to the Vienna Convention of Law of Treaties)
- Has the highest legal rigour among the three options listed in the Durban Platform
- Article 17 of the UNFCCC: *‘The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.’*



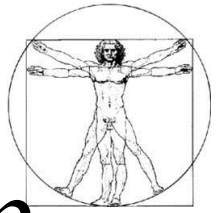
Another legal instrument

- Another legally binding instrument other than a Protocol
- Other legal instruments provided in the UNFCCC:
 - Amendments (article 15 of the UNFCCC)
 - Annex to the Convention (Article 16 of the UNFCCC)



“An outcome with legal force”

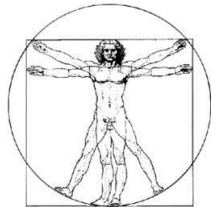
- Compromised language in Durban
- Not necessarily a legally binding outcome
- May be legally binding at the domestic level
- Could be a set of COP decisions or an implementing Agreement under Article 7 of the UNFCCC



Other options: political declaration

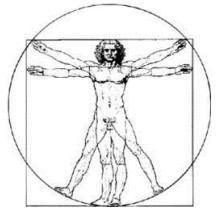
- Lacks legal enforceability
- Non-prescriptive soft-worded provisions
- Measures are voluntary but may be ambitious
- The Copenhagen Accord

LDC position and the current negotiating text



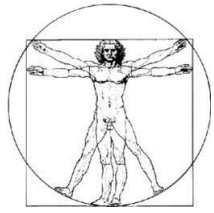
- LDC ask: **A legally binding agreement (a Protocol) under the Article 17 of the Convention.**

- The current draft agreement text is drafted as a **legally binding treaty instrument with a combination of**
 - Preamble, definitions
 - Objectives (purpose)
 - Core commitments/ operative paragraphs
 - Institutional arrangements
 - Decision-making bodies and process
 - Compliance
 - Procedural provisions: entry into force, withdrawal, reservations, etc

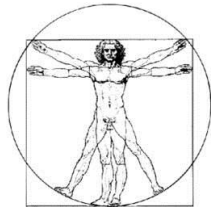


In Paris...

- It is possible to adopt a combination of legally binding and non-legally binding instruments
- An agreement+ annexes+ set of COP decisions+ political declarations

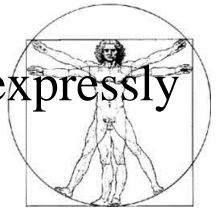


2. Obligations in the Agreement

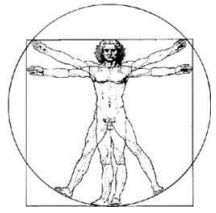


Obligations in the current text

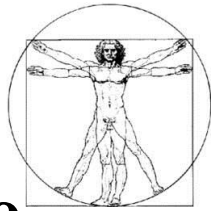
- Embedded in each section of the Agreement.
- Implementation of the Agreement is expressed in terms of either *commitments* or *contributions*, or even a placeholder for “other” term.
- Key mitigation obligation concerns the submission of each party’s nationally determined mitigation *commitment* or *contribution*



- On Adaptation, Finance, Technology and Capacity Building, obligations are not expressly phrased as commitments or contributions.
- Many provisions have weak non-obligatory language.
- But the choice of words in the provision may indicate the obligational degree of each measure, such as in:
 - “[Developed country Parties should take the lead] and **[shall] provide support** to assist developing country Parties with respect to both mitigation and adaptation”. -> **Clear commitment, though lacks quantification and details on the means for implementation.**
 - “Parties **should strive to balance** adaptation support relative to mitigation support... Encourages parties for taking meaningful efforts to balance the support between mitigation and adaptation, **no commitments**

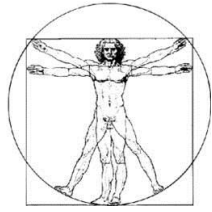


3. Provisions for compliance and enforcement



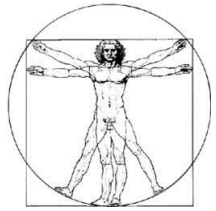
Facilitating implementation and compliance

- LDC ask: The Agreement shall establish a robust compliance mechanism The Agreement must define the scope, structure and nature of the compliance mechanism.
- It must have two branches: enforcement and facilitative.
- Agreement text: The Agreement sets forth the establishment of either a process or a mechanism to facilitate implementation (and possibly also to promote compliance with the provisions of the Agreement).
- Nature, objective and structure defined in the agreement
- Provisions on consequences as well
- Option for establishing an international climate justice tribunal



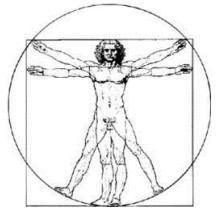
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4. Final clauses



Decision making process

- Article 17: further requirements and decision making rights
- Two additional requirements:
 - Communicate a mitigation commitment/ contribution, with its instrument of ratification, in order to become Party to the Agreement
 - Shall have a current mitigation contribution/ commitment in order to participate in decision making under the Agreement

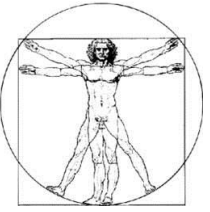


Ratification and Entry Into Force

- Article 18 of the Draft Agreement provides that it shall enter into force in 30 days after a condition on ratification applies.

- Such condition is triggered as a
 - number [x] of Parties,
 - X number of parties also accounting for [x] per cent of total emissions in a given year [xxxx], deposit their ratification instruments.
 - For those States that ratify the Agreement, it may enter into force on the 30th day of deposit of such ratification.

LDC position: x number of Parties



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Thank you!

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