Options for the Legal Form of the Paris Outcome

Climate Change Negotiation Skills: Training for LDC Negotiators
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The Durban Decision

“a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties.”
Options are...

1. “a protocol”...

2. “another legal instrument”

3. “an agreed outcome with legal force”
Option 1: “A Protocol”

- A protocol is a treaty
- In MEAs, they usually assume the form of a new “treaty within the treaty”
- Autonomous legal instruments, though aimed at furthering into detail the implementation of the Mother Convention
- A protocol is usually legally binding
Key provisions of a Protocol

- Preamble
- Objectives: “In pursuit of the ultimate objective of the Convention as stated in its Article 2…” (KP)
- Core Commitments
- Institutional arrangements
- Decision-making bodies and process
- Compliance
- Procedural provisions: entry into force, withdrawal, reservations, etc
Protocols in the UNFCCC

Article 17:

“1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.

2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.

3. The requirements for the entry into force of any protocol shall be established by that instrument.

4. Only Parties to the Convention may be Parties to a protocol.

5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.”
Option 2: “Another Legal Instrument”

“another”: another legally binding instrument other than a Protocol

Other legal instruments provided in the UNFCCC: amendment and annex to the Convention
An Annex

- Article 16 UNFCCC
- An integral part of the Convention
- Limited to “lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character
- Annex I and Annex II to the Convention
- Six-month rule
- \( \frac{3}{4} \) majority adoption and ratification

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Annex I

Australia
Australia
Belarus
Belgium
Bulgaria
Canada
Czecho-Slovakia
Denmark
European Economic Community
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Lithuania
Luxembourg
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Russian Federation
Spain
Sweden
Switzerland
Turkey
Ukraine
United Kingdom of Great Britain and Northern Ireland
United States of America

\( ^{\Delta} \) Countries that are undergoing the process of transition to a market economy.
An Amendment

• Article 15 UNFCCC
• Legally binding
• Can introduce new obligations, principles and objectives to the FCCC
• Six-month rule
• \( \frac{3}{4} \) majority for adoption and ratification
Option 3: “An agreed outcome with legal force”

- Compromised in Durban
- Not necessarily a legally binding outcome
- Legally binding at the domestic level
Options for the Legal Form of the Paris Outcome

- Art. 7 of the UNFCCC
- Legally binding?
- The “necessary to promote the effective implementation of the Convention”
- COP can’t create new obligations, such as in finance
- Decisions taken by consensus

Decision 1/CP.17

Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action

The Conference of the Parties,

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties, and acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

Noting with grave concern the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 °C or 1.5 °C above pre-industrial levels,

Recognizing that fulfilling the ultimate objective of the Convention will require strengthening of the multilateral, rule-based regime under the Convention,

Noting decision 1/CP.7,

Also noting decision 2/CP.17,

1. Decides to extend the Ad Hoc Working Group on Long-term Cooperative Action under the Convention for one year in order for it to continue its work and reach the agreed outcome pursuant to decisions 1/CP.11 (Ad Hoc Plano) through decisions adopted by the seventeen meetings and eight preparatory sessions of the Conference of the Parties, or which time the Ad Hoc Working Group on Long-term Cooperative Action under the Convention shall be terminated;

2. Also decides to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, through a subsidiary body under the Convention thereby established and to be known as the Ad Hoc Working Group on the Durban Platform for Enhanced Action;

3. Further decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall start its work as a matter of urgency in the first half of 2012 and shall report to future sessions of the Conference of the Parties on the progress of its work;

4. Decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall prepare its work so as to be finalized no later than 2013 in order to adopt a protocol, another legal instrument or an agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020;

5. Also decides that the Ad Hoc Working Group on the Durban Platform for Enhanced Action shall plan its work in the first half of 2012, including, inter alia, on mitigation, adaptation, finance, technology development and transfer, transparency of action and support, and capacity-building, drawing upon submissions from Parties and relevant technical, social and economic information and expertise.
A political agreement

- Lacks legal enforceability
- Non-prescriptive soft-worded provisions
- Measures are voluntary but may be ambitious
- The Copenhagen Accord
Option 4: An implementing agreement

- Aimed exclusively at implementing the Convention (a protocol can create new obligations)
- Reinstatement of the Convention
- Can be legally binding
Option 5: A mixed outcome

- A combination of legally binding and non-legally binding instruments

- Protocol (on mitigation and adaptation) + set of COP decisions (means of implementation) + Annex for INDCs
Options on the legal form

1. Protocol
2. Annex
3. Amendment
4. Set of COP decisions
5. Political Agreement
6. Implementing Agreement
7. Mix outcome
Key References

- **UNFCCC** English
  French: [http:// unfccc.int/files/cooperation_and_support/cooperation_with_international_organizations/application/pdf/convfr.pdf](http:// unfccc.int/files/cooperation_and_support/cooperation_with_international_organizations/application/pdf/convfr.pdf)

  French: [http:// unfccc.int/resource/docs/convkp/kpfrench.pdf](http:// unfccc.int/resource/docs/convkp/kpfrench.pdf)

- **Durban decision** English

- **Paris Agreement**- Formal negotiating text English: [http:// unfccc.int/resource/docs/2015/adp2/eng/01.pdf](http:// unfccc.int/resource/docs/2015/adp2/eng/01.pdf)

- **Vienna Convention on the Law of Treaties**
Thank you!

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