



Options for legally binding form for the 2015 climate agreement

FIELD – Foundation for International Environmental Law and Development

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This summary table shows examples of options for legally binding form for the 2015 climate change agreement. Some options could be combined with each other and/or with options that are not legally binding.

The table does not consider “small scale” legal design issues, such as reservations clauses and legal design options for formulating specific provisions. These could play an important role in constructing a strong 2015 agreement that is acceptable to as many states as possible.

Option	Comment
A protocol	Protocols can vary considerably in shape and content. A protocol could contain detailed legally binding obligations or general, less specific ones.
Two or more protocols	For example protocols could cover different topics or potentially different groups of Parties for certain purposes.
An optional protocol or protocols	<p>Optional protocols are common in the area of human rights. They can for example cover a specific topic, such as the optional protocol to protect children in armed conflict under the Convention on the Rights of the Child (CRC).</p> <p>They can also for example contain a complaints procedure, as in an optional protocol under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).</p>

	<p>Research on human rights treaties (by Jean Galbraith) suggests that more states accept complaints mechanisms when they are contained in an optional protocol than when they are contained in the main treaty.</p> <p>Choices that states make in these situations depend on the context and many factors, but the findings, especially regarding the reasons why states may prefer optional protocols, has implications for the 2015 agreement.</p>
An implementing agreement	<p>There are two implementing agreements under the UN Convention on the Law of the Sea (UNCLOS). They are similar to protocols, although one of the agreements (the Part XI Agreement) made changes to part of its parent convention.</p> <p>The United States proposed an implementing agreement to the UNFCCC in 2009, but it may not be intended to have the same legal nature as the Implementing Agreements under UNCLOS. It remains on the COP agenda together with proposals for protocols by other Parties.</p>
A new type of legally binding or partly legally binding climate agreement	<p>For example an agreement without legally binding national emission reduction commitments, but a legally binding procedure for review.</p>

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