

# Is Soft Law Really Soft? The Value of Treaty-Body Decisions in Global Climate Governance

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*This post, authored by [Maria Alejandra Anaya-Torres](#), is part of a [series](#) of external posts building on the 2025 BIICL-SLS Workshop which this year focused on soft law in international law. Between December 2025 and February 2026, we will be publishing posts addressing different aspects of soft law, including its conceptualisation and role, its application in different areas of law, and its influence in particular domestic contexts. The posts in this series are by external authors, and whilst BIICL has undertaken a review, they do not necessarily reflect the views of BIICL or its team members.*

Efforts to govern the global climate have been underway for over thirty years. While the complexity and sophistication of those efforts have grown exponentially over the last few years, with the creation of several institutions and mechanisms and the participation of a wide range of stakeholders, advocates and academics alike question its efficacy. Given that greenhouse gas ('GHG') emissions have skyrocketed, [making 2024 the hottest year on record](#), a flood of news outlets have steadily labelled UN climate change conferences and their subsequent treaty-body decisions from the Conference of the Parties ('COP'), the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ('CMA'), and the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol ('CMP') as failures (see [here](#), [here](#), [here](#), [here](#)).

Deeming COP/CMA/CMP decisions (hereinafter 'treaty body decisions') redundant and useless international instruments, however, warrants closer scrutiny. Treaty body decisions are considered soft law. Unlike the United Nations Framework Convention on Climate Change ('UNFCCC'), the Kyoto Protocol or the Paris Agreement, which are legally binding treaties and thus hard law, these treaty body decisions are, in principle, non-legally binding political instruments with aspirational value. This character, however, does not make them futile.

Not only may these decisions prompt domestic legal systems to create the infrastructure and mechanisms to carry out the tasks and mandates, but they are also frequently cited as a secondary source of law or as a means of interpretation in climate legal proceedings. There is also widespread recognition that soft law instruments may serve as an ["interim step"](#) in the formation of hard law and even create legally binding obligations. More importantly, these decisions seem to have a "delayed" effect: a slow-burning enhancement of narratives and a source of momentum for adopting more ambitious goals over time. Since news outlets often overlook this latter contribution, this short piece seeks to foster a more holistic and nuanced understanding of the role of treaty body decisions as soft law in climate decision-making and the critical role they play in global climate governance.

## States observe soft law-embedded commitments

While treaty body decisions are not incorporated into domestic legal systems in the same way as hard law instruments are, some of these decisions prompt State parties to mobilize resources or take specific, concrete actions. Although complying with these decisions may be costly, States often observe and follow such commitments without requiring a hard law instrument. This means that the political and aspirational nature of these decisions is not an absolute obstacle to State compliance. States' voluntary submissions on a particular topic are good examples of these commitments. For instance, COP decision [16/CP.26](#) on Local Communities and Indigenous Peoples Platform invited submissions from State parties on the implementation of the second three-year workplan. Canada attended to the request and submitted a [brief](#) on indigenous peoples' engagement in climate policy. As in this example, other voluntary submissions on a wide range of topics, such as education or gender, are welcomed, and it is often the case that State parties respond to these non-binding commitments by making timely submissions. These observations are tracked in the [Submission Portal](#). The fact that States respond to these soft law duties demonstrates the value of treaty body decisions, despite their aspirational and open-ended nature.

## Treaty body decisions might be considered as secondary sources of law and means of interpretation

## in climate litigation

Given that the COP is the UNFCCC's supreme decision-making body, COP decisions are critical to global climate decision-making. They are also often cited as a source of law and a secondary means of interpretation in climate litigation. For example, in [Pirá Paraná Indigenous Council v Ministry of Environment and Sustainable Development and others](#) (Colombia), the Colombian Constitutional Court had to determine whether the operationalization of projects aimed at reducing emissions from deforestation (REDD+ projects) in indigenous peoples' lands violated their human rights. In deciding this matter, the Court referred to decisions from COP13 (Bali), COP16 (Cancún), COP19 (Warsaw), and COP26 (Glasgow) - including [2/CP.13](#), [9/CP.19](#), [10/CP.19](#), [11/CP.19](#) and [12/CP.19](#) - to determine standards surrounding REDD+ projects for the purpose of mitigating GHG emissions. While the Court acknowledged the importance of these projects based on these decisions, it nonetheless recognized that an "ethnic view" must be incorporated into such plans to prevent violations of indigenous peoples' rights to self-determination, cultural integrity, autonomy, and territory.

The recent advisory opinions on climate change from the [Inter-American Court of Human Rights \('ICtHR'\)](#), [the International Tribunal for the Law of the Sea \('ITLOS'\)](#), and [the International Court of Justice \('ICJ'\)](#) also referenced some of these decisions. The ICtHR referred to several decisions from different UN climate summits, including COP22 (Marrakech), COP24 (Katowice), and COP26 (Glasgow). By doing so, the Court was able to determine the state of the climate and distill the standards States need to observe when developing action plans to mitigate and adapt to climate change impacts. Likewise, ITLOS referred to critical treaty body decisions, such as [1/CMA.4](#) and [1/CP.27](#), addressing the connection between climate change and oceans. Similarly, the ICJ recognized some treaty body decisions as sources of law, even acknowledging that 'some may create legally binding obligations' (para 184) or 'be relevant for the identification of customary international law' (para 288). The ICJ expressly recognized that some treaty body decisions are critical to the implementation, clarification, and specification of obligations under the UNFCCC. Accordingly, these decisions play a critical role in determining, for example, the scope and extent of the duty to cooperate, regarding financial and technology transfers (para 218). These references demonstrate that these decisions, however "soft", have value beyond aspiration.

## Treaty body decisions as an "interim step" in the consolidation of hard law

A value traditionally ascribed to soft law instruments lies in their role in paving the way for the progressive adoption of hard law. In these cases, treaty body decisions serve as an "interim step" in the consolidation of hard law. COP decisions preceding the adoption of the Kyoto Protocol or the Paris Agreement paved the way for their adoption by stakeholders. From COP17 to COP21 (2011-2015), for example, States negotiated a new legally binding agreement that would set specific global temperature thresholds deemed safe for humanity. Some treaty body decisions over this period included language highlighting the importance of tackling climate change due to its life-threatening character and the need "to adopt a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties" (see [2/CP.18](#), [1/CP.19](#), and [1/CP.20](#)). These decisions essentially created momentum for the actual adoption of binding instruments over time. This momentum toward the adoption of hard law differs from another type of momentum these decisions may generate - namely, the momentum involved in shifting and shaping narratives, which I elaborate on below.

## Treaty body decisions strengthen institutionalism

Another evident value of treaty body decisions is that they create mechanisms, institutions, or bodies to implement binding instruments, including UNFCCC, the Kyoto Protocol, and the Paris Agreement. For example, [1/CP.16](#) and [3/CP.17](#) created the Green Climate Fund, while [2/CP.27](#) and [2/CMA.4](#) created the Loss and Damage Fund. While much can be said about the (in)sufficiency of the funds allocated to these mechanisms (see [here](#), [here](#), and [here](#)), the "softness" of these decisions did not constitute a major obstacle to creating such critical funding mechanisms, thereby contributing to the sophistication and complexity of global climate governance.

## The slow-burning power of treaty body decisions: Shaping narratives and building momentum

Another important value of treaty body decisions, albeit sometimes overlooked, is their increasing role in incorporating more ambitious language for future legally binding endorsement. For example, [1/CP.16](#) established global temperature thresholds - 2°C, and preferably 1.5°C - well before the adoption of the Paris Agreement at COP21. This hard law instrument incorporated such targets, but several UN climate change conferences had to pass before this treaty, along with this commitment, was finally adopted in 2015.

In a similar manner, several treaty body decisions preceded the general recognition that limiting global temperature to 1.5°C should be the primary goal, rather than the 2°C limit originally set out in the Paris Agreement. In [1/CMA.3](#) and [1/CMA.5](#), for example, State

parties acknowledged that extreme weather events would be substantially lower in a 1.5°C world than in a 2°C world, and thus acknowledged the importance of pursuing and prevailing efforts to limit temperature increase to 1.5°C. The ICJ's recent advisory opinion explicitly recognized that these treaty body decisions have contributed to reinterpreting the goals of the Paris Agreement in accordance with the best available science, and thus that limiting global temperature to 1.5°C "has become the scientifically based consensus target" over the 2°C global temperature goal (para 224).

Similarly, the inclusion of the language "transition away from fossil fuels" endorsed in [1/CMA.5](#) should not be underestimated. While decisions from COP29 and COP30 seem to have fallen short in building on this language, the endorsement of this wording has been substantially maintained in other global and transnational efforts in global climate governance. [The Fossil Fuel Non-Proliferation Treaty initiative](#) appears to have gained momentum, while at COP30, Colombia and the Netherlands announced the launch of the first-ever [conference on the "just transition away from fossil fuels"](#) to be held in Santa Marta, Colombia, in April 2026. While shaping narratives and adopting more ambitious language might take time, such endorsement is not without impact. It seems to have built momentum for other initiatives to move forward, with the expectation of returning to the next summit and pushing for a decision that builds on this previous language.

## **Conclusion: Treaty body decisions are critical but not a panacea**

While this short piece has sought to present treaty body decisions in a positive light, this does not mean they are a panacea for governing climate change. Of course, these decisions come with their own set of challenges, including questions about the adequacy of such decisions to address a fast-paced problem that requires speedy solutions. What is true, however, is that the simplistic view that endorses a hard law/soft law binary is no longer sustainable in global climate governance. While some treaty body decisions may have immediate application, such as those that create institutions or mechanisms, others require more time to shape and build more ambitious narratives to address climate change. This "delayed" effect, however, does not mean that treaty body decisions, as soft law, are useless. On the contrary, in a governance model based on consensus - a qualified form of consent - where stakeholders hold quite different and sometimes opposing standpoints, even in the face of unanimous scientific evidence, shaping the narrative is a critical step towards the adoption and implementation of more effective climate action.

In addition, as mentioned earlier, from a traditional perspective, soft law - such as treaty-body decisions - has mainly been viewed as an "interim step" toward hard law. While soft law is still perceived as having this value in global climate governance today, its contributions are no longer limited to this. Domestic judiciaries are also giving some "teeth" to certain treaty body decisions - and thus "hardening" soft law - when referencing them as a source of law or secondary means of interpretation in their judgments. These two identifiable patterns underscore the importance of soft law relative to hard law. However, the truth is that these treaty body decisions, as soft law, are valuable in their own right. Not only can they strengthen institutionalism in a complex governance system, but they can also shape and build a sustained, more ambitious narrative in a context of highly asymmetric power.

In this respect, global climate governance, as it stands today, demonstrates that deeming hard law and soft law as legally binding and non-legally binding, respectively, is no longer as straightforward as it once appeared. Indeed, while treaty body decisions - although characterized as soft law - managed to "harden" the 1.5°C global temperature limit recognized by the ICJ, Article 6 of the Paris Agreement, which enables international cooperation to tackle climate change, has encountered substantial obstacles in practice despite its status as hard law. Judging global climate instruments as merely soft or hard law is thus an imperfect, overly simplistic view of the power of decision-making in global climate governance. The extent to which treaty body decisions can truly be considered "soft" is, therefore, questionable under the current global climate change legal regime.

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