

The ASEAN logo is a stylized yellow flower with ten petals, set against a red circular background. It is positioned in the upper center of the slide, partially overlapping the title text.

Paris Agreement & ASEAN Charter: Climate Change Obligations of ASEAN Member States

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Member States of the Association of Southeast Asian Nations:

Brunei Darussalam, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Viet Nam

Southeast Asia: Seat of Diversity

- Combined GDP of over USD 2.2 trillion, **fastest economic growth in the last decade**
- Over 620 million population, 4.5 million km land area
- Third largest exporter of migrant labor, after China and India
- Approximately 1000 languages, 9 major language families, and (colonial) languages English, Francaise, Espanol, Dutch, Mandarin, Portuguese, Japanese
- Religious pluralism: Buddhism, Islam, Hinduism, Christianity, Judaism, among others
- World's busiest ports, shipping routes, and maritime lanes
- World's richest biodiversity sites



ASEAN Legal Frameworks

ASEAN CHARTER AND ASEAN LAW

ASEAN Charter

Article 2(9): Purposes of ASEAN

“...promote sustainable development so as to ensure the protection of the region’s environment, the sustainability of its natural resources, the preservation of its cultural heritage, and the high quality of life of its peoples..”

ASEAN Charter

Article 5(2): Rights and obligations

“Member States **shall take all necessary measures**, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all the obligations of membership.”

ASEAN Charter

Article 52 (1): Legal Continuity

“All treaties, conventions, agreements, concords, declarations, protocols, and other ASEAN instruments which have been in effect before the entry into force of this Charter **shall continue to be valid.**”

Key ASEAN Instruments on Environmental Cooperation and/or Climate Change

1. Bangkok Resolution on ASEAN Environmental Cooperation
2. **ASEAN Action Plan on Joint Response to Climate Change (2012)**
 - 2.1. Mitigation (addressing climate change and targeting reduced emissions)
 - 2.2. Adaptation (measures addressing prevention of climate change impacts)
 - 2.3. Loss and Damage (responses to environmental disasters, among others)
 - 2.4. Technology Transfer and Capacity Building

Key ASEAN Instruments on Environmental Cooperation and/or Climate Change

3. ASEAN Agreement on Disaster Management and Emergency Response (2005)
4. ASEAN Joint Statements on Climate Change (2016 and 2014)
5. ASEAN Agreement on Transboundary Haze Pollution (2002)
6. Singapore Declaration on Climate Change, Energy, and Environment

ASEAN Sociocultural Blueprint 2025

C.3. Sustainable Climate

- i. Strengthen human and institutional capacity in implementing climate change adaptation and mitigation, especially on vulnerable and marginalised communities
- ii. Facilitate the development of comprehensive and coherent responses to climate change challenges, such as but not limited to multi-stakeholder and multi-sectoral approaches

ASEAN Sociocultural Blueprint 2025

C.3. Sustainable Climate

- iii. Leverage on private sector and community to have access to new and innovative financing mechanisms to address climate change;
- iv. Strengthen the capacity of sectoral institutions and local governments in conducting Greenhouse Gas inventory, and vulnerability assessments and adaptation needs
- v. Strengthen the effort of government, private sector and community in reducing GHG emission from main activities of development

ASEAN Sociocultural Blueprint 2025

D.3. A climate adaptive ASEAN with enhanced institutional and human capacities to adapt to the impacts of climate change

- i. Expand regional cross-sectoral platforms and establish shared strategies to respond to the impacts of climate change
- ii. Promote sound scientific and evidence-based policies on climate change adaptation
- iii. Promote and consider indigenous and traditional knowledge and practices in responding and adapting to the impacts of climate change.

Summary of Key Obligations

PARIS AGREEMENT

ASEAN Member States

Status of Ratifications

Those who ratified:

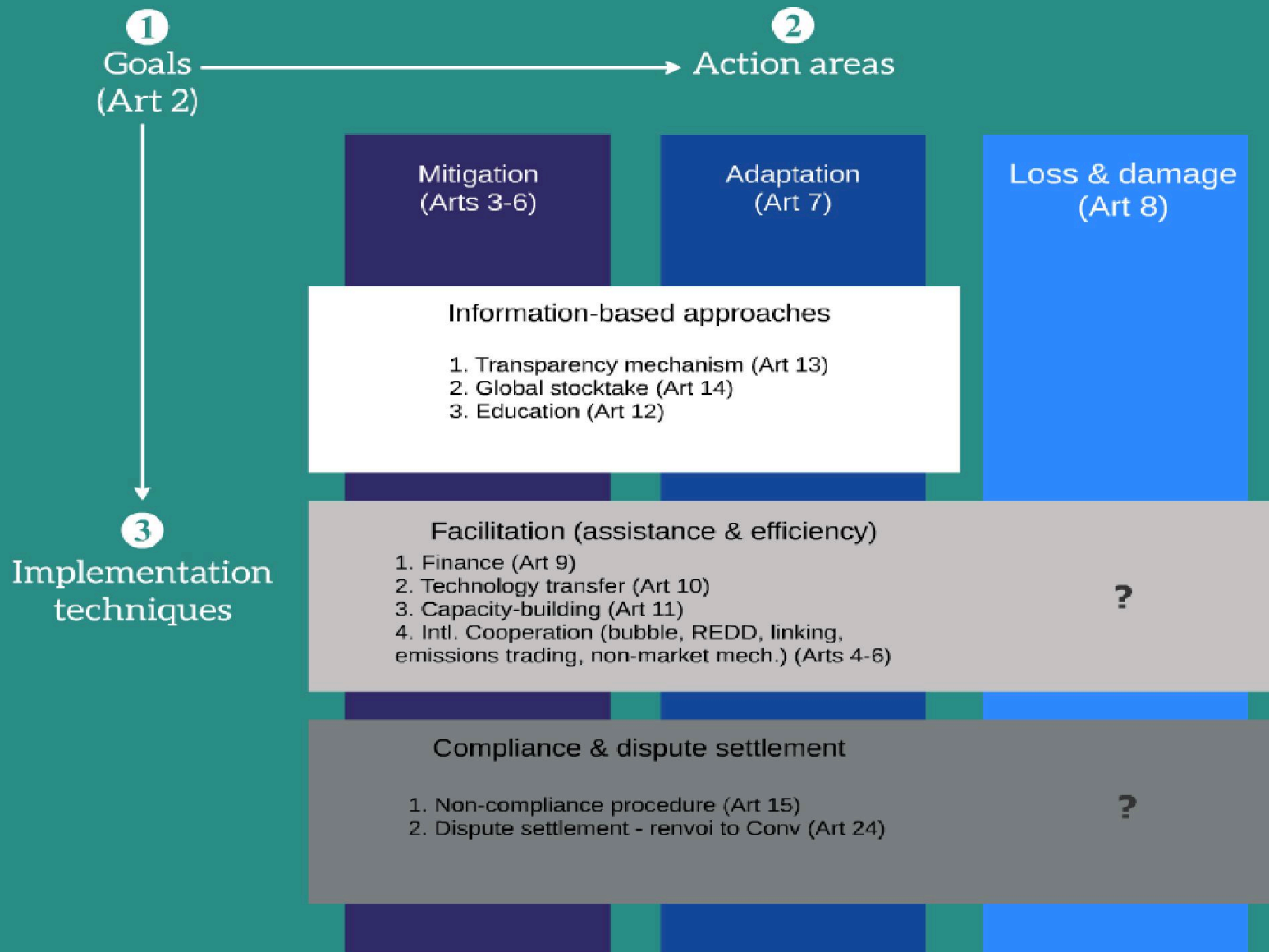
Brunei Darussalam (21 Sept 2016), Indonesia (31 October 2016), Laos (7 Sept 2016), Singapore (21 Sept 2016), Thailand (21 Sept 2016), Vietnam (3 Nov 2016)

Those who signed but have not yet ratified:

Cambodia (22 Apr 2016), Malaysia (22 Apr 2016)
Myanmar (22 Apr 2016), Philippines (22 Apr 2016)

The Paris Climate Agreement

Prof. Jorge E. Vinuales, University of Cambridge



Key Principles

1. Common target: cap rise in temperature to 1.5 – 2 degree Celsius
2. Principle of Equity and Common but Differentiated Responsibilities and Respective Capabilities (CDRs), in light of different national circumstances [Article 2(2)]
3. Non-retrogression and Progression in Intended Nationally Determined Contributions (INDCs) and Nationally Determined Contributions (NDCs) [Article 4 et seq.]
4. Single package agreement (no reservations permitted) [Article 27]

Key obligations

Art. 4(4) and 4(6):

Developed countries assume economy-wide absolute emission reduction targets.

Developing countries enhance mitigation efforts, encouraged to 'move over time towards economy-wide emission reduction or limitation targets in light of different national circumstances'.

LDCs and small island developing States prepare strategies, plans, actions for low greenhouse gas emissions development reflecting special circumstances.

Cooperation on Mitigation, Adaptation, Loss & Damage

- Conservation and enhancement of sinks and reservoirs of greenhouse gases [Art. 5(1)]
- Voluntary cooperation in the implementation of NDCs to allow for **higher ambition** in mitigation and adaptation actions and to promote sustainable development and environmental integrity [Art 6(1)]
- Cooperation on loss and damage associated with the adverse effects of climate change [Art. 8(4)]

Climate Financing

Developed country parties to provide financial resources to assist developing country parties with respect to both mitigation and adaptation. [Article 9(1)] *thus far: USD\$100 billion

Technology development and transfer to improve resilience to climate change and to reduce greenhouse gas emissions [Article 10]

Capacity building activities [Article 11]

Litigation challenges

1. February 2016 SCOTUS decision (*National Mining Association v. US Environmental Protection Agency*) halting implementation of Obama's Clean Power Plan
2. Poland and other coal-reliant countries resisting EU commitment to move more stringently reduce emissions (possible challenges at the European Court of Justice)
3. Expect environmentalists' resort to litigation to hold their countries to comply with NDCs.
 - 3.1. Urgenda (Dutch environmental foundation) won June 2015 suit against the Netherlands, proving that the State's climate policy was deficient to protect citizens
 - 3.2. Similar cases in Belgium, New Zealand, and the Philippines

Identified challenges and proposals

ASEAN JUDICIAL COOPERATION ON ENVIRONMENT

Melaka MOU for Cooperation Amongst the ASEAN Judiciaries

1. **Legal and evidentiary challenges:** standing, burden of proof, application of the precautionary principle, damages, expert and scientific evidence, sanctions and penalties, enforcement, alternative environmental dispute resolution
2. **Capacity and governance challenges:** access to environmental justice, judicial capacity, judicial education, threats to integrity

Boracay Accord of 2015

1. Reaffirms commitment to strengthen international partnerships and regional solidarity among the Judiciaries of the ASEAN Member States
2. Formation of Working Groups on training needs and capacities, ASEAN Judiciary Portal, case management, court technology, child-cross border disputes, civil processes

Issues to consider for CACJ on Paris Agreement Implementation

- Interpretation and evidentiary treatment of adaptation measures
- Training and scientific expertise in appreciating disputes that involve putting forward climate science as the basis for State policies
- Interpretation of growing ASEAN law as additional sources of State obligations on climate change

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