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# **COP 25 in Search of Lost Time for Action**

An Assessment of the  
Madrid Climate Conference

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## **COP25 in Search of Lost Time for Action**

### **An Assessment of the Madrid Climate Conference**

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# COP25 in Search of Lost Time for Action

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## An Assessment of COP25 in Madrid

Wolfgang Obergassel, Christof Arens, Lukas Hermwille, Nicolas Kreibich, Hermann E. Ott, Meike Spitzner\*

### Abstract

Last year's conference of the global climate change regime took place from 2 until 15 December 2019 in Madrid, Spain. Despite marking a new record for overtime in the history of the UNFCCC, the conference did not only fail to meet the increasing public demand for swift and strong climate action. It also failed on its formal mandate to finalise the Paris rulebook. A record number of issues were left unresolved and shelved for the next session. COP25 thereby highlighted how much work still lies ahead both domestically and internationally if 2020 is to see a step-up in climate action that is consistent with the long-term goal of the Paris Agreement.

## I. Introduction

Setting a new record for overtime, the 25<sup>th</sup> Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) came to a close at 1:55PM on Sunday, 15 December, 44 hours later than its scheduled end. During its two weeks of duration, the conference once again highlighted the limitations of a consensus-based regime, which provides ample opportunity to blockers to hold up the entire process.

The COP presidency had run the conference on the theme “time for action”. The most important topics of the conference included raising climate ambition, finishing the implementing rules of the Paris Agreement, and supporting developing countries in dealing with loss and damage due to the impacts of climate change.

In practice, as at most previous COPs, much of the conference was dominated by deliberate foot dragging and re-stating of old positions. However, while in previous years the overtime had been due to ambitious countries wanting more than recalcitrant countries were willing to concede, this year overtime was needed to fend off attempts to undermine the integrity of the entire Paris Agreement, particularly in the areas of calling for increased ambition as well as ensuring the integrity of international carbon trading under Article 6 of the Paris Agreement. In the end, the COP was once more not able to send a strong signal on the need for enhancing ambition. And again, Parties could not agree on the remaining implementation rules for the Paris Agreement, in particular common timeframes for Parties' nationally determined contributions (NDCs) and rules for cooperative action under Article 6 of the agreement.

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The amount of foot-dragging was epitomised by a record number of applications of Rule 16 of the draft rules of procedure. Rule 16 applies when Parties cannot come to any agreement on an agenda item, not even a procedural . Rule 16 stipulates that if an agenda item remains unresolved, it is automatically included in the agenda of the next session.<sup>1</sup>

COP25 thereby highlighted how much work still lies ahead both domestically and internationally if 2020 is to see a step-up in climate action that is consistent with the long-term goal of the Paris Agreement. COP26 is by many seen as a crucial litmus test whether the Paris approach works or not. If the process in 2020 fails to substantially strengthen national contributions, civil society and the most ambitious countries should initiate negotiations on a “fast track” – a parallel regime to the UNFCCC and Paris Agreement.

## **II. Raising Ambition**

### **1. Ambition Pre- and Post-2020**

The Paris outcome requires the Parties to the Paris Agreement whose initial NDC covers the time period up to 2025 to communicate a new NDC by 2020, while Parties whose NDCs cover the period up to 2030 are required “to communicate or update” these contributions by 2020.<sup>2</sup> Given the lack of climate ambition most countries have so far exhibited, the question in Madrid was whether the conference would send a strong signal on the need for all countries to strengthen their contributions. While the Paris Agreement in Article 4.3 mandates that NDCs should reflect a Party’s “highest possible ambition”, in previous sessions many Parties had disputed that the 2020 round of re-submitting NDCs entailed a requirement to increase ambition.<sup>3</sup>

In the run-up to the conference, 68 Parties had signalled that they intended to strengthen their contributions. However, most of these Parties were small island states and less developed countries. Collectively, they account for only about 8% of global emissions. At the end of the conference, the number of Parties had risen to 80, covering 10% of global emissions.<sup>4</sup> Of the major emitters, none has so far clearly signalled their intention to increase their ambition. And while on 13 December the European Council agreed that the EU will aim to become climate-neutral by 2050, what this will mean for near-term ambition still needs to be worked out.

As at previous COPs, the negotiations in Madrid were burdened by the legacy of decades of insufficient climate policy. The contributions under the Paris Agreement apply only from 2020 onwards. Climate action up until 2020 has been governed by the decisions adopted under the UNFCCC and the Kyoto Protocol at the conferences in Cancún, Durban and Doha in 2010-2012. The Paris Agreement has taken a nuanced approach to differentiating what is expected from Parties according to their national circumstances. By contrast, the rules covering the period up to 2020 have been strongly based on the “bifurcation” established by the UNFCCC, requiring developed countries to take the lead on climate action while expecting only voluntary actions from developing countries. Developing countries have for years voiced dissatisfaction with the level of action of developed countries, both relating to the level of emission reductions as well as to the provision of financial, technological and capacity building support

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<sup>1</sup> UNFCCC ‘Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies’ UN Doc FCCC/CP/1996/2, 22 May 1996.

<sup>2</sup> UNFCCC ‘Decision 1/CP.21, Adoption of the Paris Agreement’ UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016), para 23f.

<sup>3</sup> See e.g. Wolfgang Obergassel, Christof Arens, Lukas Hermwille, Nicolas Kreibich, Hermann Ott, and Hanna Wang-Helmreich. ‘Paris Agreement: Ship Moves Out of the Drydock’. *Carbon and Climate Law Review* 13, no. 01 (2019): 3–18. <https://doi.org/10.21552/cclr/2019/1/4>.

<sup>4</sup> 2020 NDC Tracker, <<https://www.climatewatchdata.org/2020-ndc-tracker>> accessed 11 Februar 2020

to developing countries. According to reports presented at the conference there is indeed a severe risk that the pledge by developed countries to mobilise USD 100 billion annually from 2020 will be missed.

In Madrid, the G-77 once again pointed out that pre-2020 action was the basis for post-2020 action. The Group of Like-Minded Developing Countries (LMDCs)<sup>5</sup> took a particularly hard line, outlining that in their view the “pre-2020 period” was not about timescales, but about ambition. In their view, the pre-2020 period would only be finished when commitments had been delivered. The lack of effort developed countries had so far shown must in their view not be redistributed across all Parties. The LMDCs therefore demanded that a 2-year work programme should be undertaken under the Subsidiary Body for Implementation to take detailed stock of the efforts made so far, and to discuss a way forward for how developed country Parties could make good on their commitments. However, most other developing countries did not support this hard line. While they regretted the lack of ambition exhibited by developed countries, in their view future ambition from all countries should not be conditional on the treatment of the pre-2020 period.

The final outcome of the conference ties ambition pre- and post-2020 together as had been demanded by the LMDCs. Both the COP and the CMA (Parties to the Paris Agreement) re-emphasize “with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation efforts in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.<sup>6</sup> In addition, the COP decision also recalls the USD 100 billion commitment and emphasises that developing countries still face challenges in accessing support. COP26 will feature a round table on pre-2020 implementation and ambition including Parties and non-Party stakeholders.

On the question of NDC revision, the penultimate version of the text proposed by the Chilean presidency on 14 December merely reiterated the invitation to Parties to communicate their NDCs. This draft provoked strong reactions from many Parties who demanded to adopt a clear requirement to raise ambition. However, in the end it was not possible to include such clear language in the decision. Instead, the final decision recalls the request to re-submit existing NDCs or submit new or updated NDCs and surrounds it with general statements on the need to raise ambition. Furthermore, the decision recalls that the Secretariat is requested to prepare a synthesis report of the NDC submissions, and requests the Secretariat to make this report available to COP26.<sup>7</sup>

Finally, a decision by the Parties to the Kyoto Protocol “strongly urges Parties to the Kyoto Protocol that have yet to ratify the Doha Amendment” to do so as soon as possible.<sup>8</sup> The Doha Amendment contains commitments for industrialised countries for the period 2013-2020 but has not yet entered into force due to an insufficient number of ratifications.

On adaptation, the CMA encourages Parties to submit their first adaptation communication as soon as possible and to engage in adaptation planning processes and implementation of ac-

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<sup>5</sup> The group of like-minded developing countries includes China, India, and other Asian countries such as Malaysia, countries in the Organization of Petroleum Exporting Countries such as Saudi Arabia, and some Latin American countries such as Venezuela.

<sup>6</sup> UNFCCC ‘Decision 1/CP.25, Chile Madrid Time for Action’ Advance unedited version para 3; UNFCCC ‘Decision 1/CMA.2, Chile Madrid Time for Action’ Advance unedited version paras 8 and 5 respectively.

<sup>7</sup> UNFCCC ‘Decision 1/CMA.2, Chile Madrid Time for Action’ Advance unedited version.

<sup>8</sup> UNFCCC ‘Decision 1/CMP.15, Chile Madrid Time for Action’ Advance unedited version, para 4.

tions. The decision requests the Adaptation Committee to work on approaches for reviewing overall progress in achieving the Paris Agreement's global goal on adaptation and to include the outcome of this work in its 2021 annual report.<sup>9</sup>

In summary, the decision essentially only reiterates the provisions that had already been agreed in Paris. The conference was not able to send a clear signal that all Parties will need to strengthen their contributions if achievement of the objectives of the Paris Agreement is to be kept within reach.

## **2. Non-Party Actors**

The annual COP has become an event that holds importance for a far wider range of actors than national governments. It has become an annual fair for climate action. This is partly due to the fact that since 2014, the UNFCCC Secretariat and the subsequent COP Presidencies have sought ways to “orchestrate” non-state and subnational actors and initiatives to contribute to climate action. Inter alia the Secretariat has established the Nonstate Actor Zone for Climate Action (NAZCA), an online database/registry in which in the meantime a whopping 17,000 actors have registered their climate change mitigation and/or adaptation commitments. An annual Yearbook of Global Climate Action provides a more detailed analysis of the activities.<sup>10</sup>

Furthermore, the Marrakech Partnership for Global Climate Action (GCA) was established to coordinate activities. Two “high-level champions” nominated by consecutive COP Presidencies are working with the Secretariat to advance activities. Among other things an impressive set of sectoral Climate Action Pathways has been developed for various thematic areas (energy, human settlements, industry, land use, oceans and coastal zones, transport, water) as well as resilience as a cross-cutting area. Each of these pathways consists of an executive summary as well as an “action table” containing good practices collated from participating non-state and subnational actors. These climate action pathways hold significant potential and could also inform national governments. Yet, the series of sectoral action events took place only at the margins of COP25 and did not attract much attention from international media nor from negotiators and national governments. As in previous years, they have been perceived largely as a side note of the intergovernmental negotiations.

While these activities have been largely perceived as a success, their continuation was somewhat uncertain. The GCA originated from a stream of negotiations targetting the enhancement of pre 2020 climate action and hence had only a mandate until 2020. At COP25, Parties decided to extend this mandate until 2025 including the mandate for consecutive COP Presidencies to nominate high-level champions.<sup>11</sup>

## **3. Periodic Review of the Long-Term Goal**

As part of the Cancún Agreements, parties agreed to “periodically review the adequacy of the long-term global goal referred to in paragraph 4 above, in the light of the ultimate objective of the Convention, and overall progress towards achieving it”.<sup>12</sup> A first such review was conduct-

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<sup>9</sup> UNFCCC ‘Decision 1/CMA.2, Chile Madrid Time for Action’ Advance unedited version, paras 12-14.

<sup>10</sup> United Nations Climate Change Secretariat, *Yearbook of Global Climate Action 2019* (2019) <[https://unfccc.int/sites/default/files/resource/GCA\\_Yearbook2019.pdf](https://unfccc.int/sites/default/files/resource/GCA_Yearbook2019.pdf)> accessed 11 Februar 2020

<sup>11</sup> UNFCCC ‘Decision 1/CP.25, Chile Madrid Time for Action’ Advance unedited version, para 27-29.

<sup>12</sup> UNFCCC ‘Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’ UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011), paras 138-140.

ed in the 2013-2015 period and was instrumental in inserting the 1.5°C target into the negotiations. Specifically, in a series of structured expert dialogues, the consulted experts concluded that 2°C of global warming cannot be considered a safe level in accordance with the objectives of the Convention to avoid *dangerous* climate change. After some resistance, the conclusions were adopted paving the way for the inclusion of the 1.5°C target in the Paris Agreement.<sup>13</sup>

Defining the scope of the second periodic review was in order already at COP24, but was intentionally postponed in order to first adopt the modalities of the Global Stocktake as part of the Paris Agreement rulebook. After all, the mandate of the Global Stocktake is very similar to the one of the periodic review. Consequently, many developed countries initially proposed to permanently close the periodic review to avoid duplication.<sup>14</sup> This was opposed by developing countries highlighting the complementarity to the GST. Particularly important was that the periodic review would take place under the Convention, not under the Paris Agreement, and would hence include Parties that are not part of the PA, particularly the United States.

Ultimately, Parties decided to go ahead with the second periodic review beginning in the second half of 2020 and holding three structured expert dialogues following the example of the successful pre-Paris dialogues in parallel with the 53rd-55th session of the Subsidiary Bodies. Specifically, the periodic review shall review the long-term global goal and scenarios towards achieving it, progress made in relation to addressing information and knowledge gaps since the previous review, and review challenges and opportunities for achieving the long-term global goal with a view to ensuring the effective implementation of the Convention.<sup>15</sup> This latter mandate is particularly interesting as it goes beyond what has been considered for the Global Stocktake. Assessing systematically economic, technological, political/institutional as well as capacity/awareness-related transformation challenges is to date not considered for the Global Stocktake, but could provide valuable insights in how to advance both domestic implementation as well as the enabling international governance.<sup>16</sup>

### III. The Paris Rulebook

#### 1. Cooperative Approaches under Article 6

Article 6 of the Paris Agreement establishes three approaches for countries to cooperate with each other:

First, Parties may directly engage in ‘cooperative approaches’ and transfer ‘internationally transferred mitigation outcomes’ (ITMOs) under Articles 6.2 of the agreement. Second, a new mechanism ‘to contribute to the mitigation of greenhouse gas emissions and support sustainable development’ is established under Articles 6.4. Third, Article 6.8 provides for non-market approaches to be used.

The rules for all three forms of cooperation under Article 6 were the last chapter of the Paris rulebook that could not be finalized in Katowice. Pressure to come to an agreement in Madrid was thus high, as were Parties’ stakes involved in the negotiations: while a number of countries are advocating rules that would allow them to achieve individual short-term benefits, oth-

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<sup>13</sup> Obergassel et al.: Phoenix from the Ashes – Analysis of the Paris Agreement to the UNFCCC, 28 ELM 2016

<sup>14</sup> IISD Reporting Services. ‘Summary of the Chile/Madrid Climate Change Conference: 2-15 December 2019’. *Earth Negotiations Bulletin* 12, no. 775 (2019). <https://enb.iisd.org/download/pdf/enb12775e.pdf>.

<sup>15</sup> Decision -/CP.25, Scope of the next periodic review of the long-term global goal under the Convention and of overall progress towards achieving it, Advance unedited version.

<sup>16</sup> Hermwille, Lukas, Anne Siemons, Hannah Förster, and Louise Jeffery. 2019. ‘Catalyzing Mitigation Ambition under the Paris Agreement: Elements for an Effective Global Stocktake’. *Climate Policy* 19 (8): 988–1001. <https://doi.org/10.1080/14693062.2019.1624494>.

ers strive to maintain the environmental integrity of the Paris Agreement by opposing a system that to the fear of many would allow carbon markets to become a large loophole in the architecture of the regime.

After the Katowice failure, Parties had continued to negotiate at SBSTA 50 in Bonn, albeit without much progress. In Madrid, Parties continued discussing different text versions under SBSTA, again finding no solutions for the crunch issues, see below. When ministerial-level negotiations in the second week brought no change to the deadlock, the COP Presidency tabled three different proposals for each of the three approaches for voluntary cooperation of varying quality in the final days of the conference, yet none of them succeeded.<sup>17</sup> In the end, the issue was once again postponed, the presidency texts will be the basis for a restart of the negotiations in 2020.<sup>18</sup>

## Accounting (double counting)

One particularly contentious issue of the Article 6 negotiations relates to the rules on how to account for ITMOs and emission reductions transferred under Article 6.2 and Article 6.4, respectively through so-called “corresponding adjustments”. Robust accounting rules are a necessary precondition to ensure that emission reductions are not used more than once (double counting), preventing the environmental integrity of the Paris Agreement being undermined. Countries made considerable progress in finding technical solutions, for instance for dealing with the diversity of Parties’ NDC targets. The final iteration of the Presidency text proposes solutions in dealing with different timeframes of Parties’ NDCs (single-year vs. multi-year targets) as well as for accounting for ITMOs generated outside the scope of NDCs. However, in the negotiations on the accounting rules of the Article 6.4 mechanism one key political issue could not be solved: the question on whether countries will have to fully account for the transfer of emission reductions under the Article 6.4 mechanism.

In Madrid, Brazil continued pushing for Article 6.4 emission reductions exports being partially exempt from corresponding adjustments, while most other Parties rejected this approach, highlighting that it would lead to double counting of emission reductions and thereby under-

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<sup>17</sup> Presidency proposals on the Article 6.2 guidance:

UNFCCC ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Guidance on Cooperative Approaches Referred to in Article 6, Paragraph 2, of the Paris Agreement Version 3 of 15 December 00:50 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Guidance on Cooperative Approaches Referred to in Article 6, Paragraph 2, of the Paris Agreement Version 1 of 13 December 11:15 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Guidance on Cooperative Approaches Referred to in Article 6, Paragraph 2, of the Paris Agreement Version 2 of 14 December 09:15 Hrs’

Presidency proposals for the rules, modalities and procedures of the Article 6.4 mechanism:

UNFCCC ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Rules, Modalities and Procedures for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement Version 1 of 13 December 11:45 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Rules, Modalities and Procedures for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement Version 2 of 14 December 9:00 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Rules, Modalities and Procedures for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement Version 3 of 15 December 1:10 Hrs’

Presidency proposals for the work programme under the framework for non-market approaches:

UNFCCC, ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Work Programme under the Framework for Non-Market Approaches Referred to in Article 6, Paragraph 8, of the Paris Agreement Version 1 of 13 December 11:15 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Work Programme under the Framework for Non-Market Approaches Referred to in Article 6, Paragraph 8, of the Paris Agreement Version 2 of 14 December 08:30 Hrs’

— ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Work Programme under the Framework for Non-Market Approaches Referred to in Article 6, Paragraph 8, of the Paris Agreement Version 3 of 15 December 00:20 Hrs’

<sup>18</sup> UNFCCC ‘Decision -/CMA.2, Matters relating to Article 6 of the Paris Agreement’, Advance unedited version.



mine the environmental integrity of the Paris Agreement. In the course of the two weeks of negotiations, Parties were unable to find a solution to the Brazilian position, which was still reflected in the draft text tabled by the Presidency during the last hours of the negotiations. Thanks to the strong stance of the other countries to defend the environmental integrity of the Paris Agreement, the text was not adopted.

## **Kyoto Transition**

Another contentious question was how to deal with certificates from the Kyoto Protocol and whether countries should be allowed to use these under the Paris Agreement. China, India and Brazil, all three countries hosting thousands of Clean Development Mechanism (CDM) activities and holding a large amount of CDM units, pushed for these credits to be transitioned into the Article 6.4 mechanism. And the negotiations experienced another unprecedented move from one of the Parties holding large amounts of Assigned Amount Units (AAUs) from the Kyoto Protocol: Australia strongly advocated for the possibility to use these emission permits for the achievement of NDCs.

Parties tried to find common ground by limiting the environmental impact of the transition of Kyoto units: The draft text tabled by the Presidency during the last hours of the negotiations would have allowed the use of CERs if the underlying project was registered after a specific point in time. However, the specific date would still have to be determined by the CMA in the future.<sup>19</sup> If adopted, there would be uncertainty regarding Australia's approach to use AAUs for NDC attainment: A paragraph that would have excluded the use of Kyoto Protocol units and which was contained in previous drafts of the Article 6.2 text was not included in the last draft proposed by the Presidency.<sup>20</sup>

By not adopting the text proposal made by the CMA presidency, Parties impeded a full transition of CERs and AAUs that would have led to an oversupply of credits in a yet to emerge carbon market. Parties further avoided rules that would have allowed Parties to fulfil their already unambitious NDC targets with certificates from the past.

## **Other crunch issues**

Further contentious issues comprised, inter alia, the question of “overall mitigation in global emissions (OMGE)”, i.e. making sure that Article 6 activities go beyond mere offsetting in that they actively reduce emissions. According to the Paris Agreement, Art. 6.4 activities are to include such a component, while Art. 6.2 is silent on this. Thus, one of the contentious issues in this regard is whether or not Art. 6.2 should apply this concept as well in order to establish a level playing field. The other question is how to operationalize OMGE. The latest text proposals from the presidency suggests for Art. 6.4 to cancel at least 2% of traded mitigation outcomes for overall mitigation,<sup>21</sup> while in the case of Art. 6.2, Parties are just “strongly encouraged” to set aside a portion of their traded mitigation outcomes.<sup>22</sup>

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<sup>19</sup> UNFCCC ‘Draft Text on Matters relating to Article 6 of the Paris Agreement: Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement Version 3 of 15 December 1:10 hrs’ Annex, para 75.

<sup>20</sup> See para 51 in the Annex of the first proposal by the Presidency for the Article 6.2 guidance which is missing in the second and third iteration.

<sup>21</sup> UNFCCC ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Rules, Modalities and Procedures for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement Version 3 of 15 December 1:10 Hrs, Annex, para 67 b).

<sup>22</sup> UNFCCC ‘Draft Text on Matters Relating to Article 6 of the Paris Agreement: Guidance on Cooperative Approaches Referred to in Article 6, Paragraph 2, of the Paris Agreement Version 3 of 15 December 00:50 Hrs’, Annex, para 39.

Parties also have diverging views about environmental and social safeguards in order to prevent that Art. 6 mitigation actions cause harm on the ground, for example when large hydro dams comprise possible resettlements. However, even language suggesting that Art. 6 actions are to respect human rights and rights of indigenous peoples was contentious in Madrid.

Parties also wrangle about possible levies that could be introduced for mitigation activities in order to generate income for adaptation measures, as was the case with the Clean Development Mechanism. Again, there is a case for equal treatment here, as the Paris Agreement only foresees this “share of proceeds” being applied to Art. 6.4. The African Group as well as G77 and China demand the share of proceeds covers both Art. 6.2 and 6.4 in order to create a reliable revenue stream for Adaptation Fund, while the US as well as the EU fear that such a taxation of bilateral activities under Art. 6.2 conflicts with their respective domestic legal systems.

All in all, postponing decisions on Article 6 prevented creating potential loopholes with regard to accounting and carry-over of Kyoto units and therefore this move was certainly the preferential option. However, it remains unclear how Parties intend to solve the prevailing conflicts given that numerous attempts and years of negotiations have failed to produce consensus. On the positive side, a group of countries led by Costa Rica and Switzerland on the penultimate day of the COP launched the ‘San José declaration’ establishing high quality standards for integrity of the Art.6 transactions, which quickly gained the support of 31 countries<sup>23</sup>. Switzerland stated in final plenary it would apply these rules to the Art. 6.2 pilot activities it will keep conducting. Whether or not this will create best practice examples eventually becoming the norm remains to be seen.

While some of the key political issues remain unresolved, it should be highlighted that Parties made considerable progress on several technical issues. Since the upcoming negotiations will continue on the basis of all text proposals of the Presidency, there is a risk that some of the progress made could be reversed. Article 6 is at a decisive crossroads with a solution that satisfies all is nowhere to be seen. The only thing clear at the moment is that another year of exchanging views and discussing pros and cons of well-known options is certainly not the way forward.

## **2. Common Timeframes for Nationally Determined Contributions**

In the run-up to the Paris conference, Parties had not been able to agree on any mandatory requirements for the content of NDCs. As consequence, the NDCs currently vary strongly in many respects, including in the timelines they cover. While some Parties’ NDCs have 2025 as target date, most have 2030 and some have even longer timeframes.

COP21 had therefore mandated the CMA to “consider common time frames at its first session”.<sup>24</sup> Consequently, the conference in Katowice had agreed that NDCs for the period post-2030 should adhere to common timeframes, but Parties had not been able to agree on any specific proposal. COP24 had therefore mandated the SBI to further consider the issue.<sup>25</sup>

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<sup>23</sup> Ministerio del Ambiente y Energía, Leading countries set benchmark for carbon markets with San Jose Principles. Press release <<https://cambioclimatico.go.cr/press-release-leading-countries-set-benchmark-for-carbon-markets-with-san-jose-principles/>> accessed 11 February 2020.

<sup>24</sup> UNFCCC ‘Decision 1/CP.21, Adoption of the Paris Agreement’ UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016) paras 23–25.

<sup>25</sup> UNFCCC ‘Decision 6/CMA.1, Common time frames for nationally determined contributions referred to in Article 4, paragraph 10, of the Paris Agreement’ UN Doc FCCC/PA/CMA/2018/3/Add.1 (19 March 2019).

The absence of consensus continued in Madrid. In particular, small island states, least developed countries (LDCs) and the Environmental Integrity Group (EIG) argued for having five-year cycles as longer timeframes would carry a high risk of locking in insufficient ambition. By contrast, the like-minded developing countries suggested that timeframes could be up to 2030, 2035, 2040, or as decided by the Party. Later in the first week the LMDCs proposed differentiated timeframes for mitigation, adaptation, and finance as well as differentiation for developing and developed country Parties. Developed country Parties by and large apparently did not assign high priority to the question, suggesting that the issue could also be resolved at a later COP.

Agreement was arguably made impossible from the start by the limited amount of time that was allocated to the topic. While the Presidency had earlier indicated that they considered the issue a critical element for an “ambition COP”, in Madrid, initially only two hours of negotiations were scheduled, and subsequently only a small amount of additional time was provided.<sup>26</sup> In the end, Parties were not able to come to a conclusion and the item will be included in the agenda of the next session.

### **3. Transparency Framework**

At COP24 in Katowice, Parties had agreed on the modalities, procedures and guidelines for the Transparency Framework. These rules do not only contain provisions on how Parties are to report on their GHG emissions and progress towards implementing their NDCs but they also establish international processes to review and assess the reports.<sup>27</sup>

In Madrid, Parties were mandated to further specify these provisions by agreeing on outlines of reports and reporting tables. In doing so, they had to strike a balance between the objective of ensuring that reporting is complete and transparent while at the same time making sure that templates can also be used by developing countries with limited capacities.

Despite significant efforts during the first week of the negotiations, Parties were unable to reach consensus on how to continue working on this matter, in particular on whether to undertake inter-sessional work and give a mandate to the secretariat to make a proposal for common reporting tables. While some countries (US, EU, AILAC, LDCs, AOSIS, Australia, Canada and Japan) wanted to continue discussing this issue, others (China, LMDC, African Group) opposed this and the text was not forwarded to the COP.<sup>28</sup> The agenda item will therefore be included in the agenda of the next SBSTA session in June 2020.

## **IV. Support for the Global South**

### **1. Adaptation**

Adaptation was a priority issue for many of the developing country Parties. In the opening statements of COP25<sup>29</sup>, a number of Parties highlighted the importance of the adaptation fund (Australia for the umbrella group), stressed that adaptation and mitigation should be balanced

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<sup>26</sup> Sharma, Anju, Axel Michaelowa, Aglaja Espelage, Jennifer Allan, Benito Müller (2020): COP25 Key Outcomes. Oxford: European Capacity Building Initiative <[https://ecbi.org/sites/default/files/COP25%20Key%20Outcomes\\_0.pdf](https://ecbi.org/sites/default/files/COP25%20Key%20Outcomes_0.pdf)> accessed 11 February 2020.

<sup>27</sup> see: Wolfgang Obergassel, Christof Arens, Lukas Hermwille, Nicolas Kreibich, Hermann Ott, and Hanna Wang-Helmreich. ‘Paris Agreement: Ship Moves Out of the Drydock’. *Carbon and Climate Law Review* 13, no. 01 (2019): 3–18. <https://doi.org/10.21552/cclr/2019/1/4>.

<sup>28</sup> IISD Reporting Services. ‘Chile/Madrid Climate Change Conference: Monday, 9 December 2019’. *Earth Negotiations Bulletin* 12, no. 771 (2019). <https://enb.iisd.org/download/pdf/enb12771e.pdf>.

<sup>29</sup> Earth Negotiation Bulletin, Vol. 12, pp. 775, Summary of the Chile/Madrid Climate Change Conference: 2-15 December 2019, Wednesday 18 December, <http://enb.iisd.org/download/pdf/enb12775e.pdf>.

(Egypt for the African Group), that Article 6 should provide resources for adaptation through a share of proceeds (Bhutan for the LDCs) or an Art. 6 „adaptation credit“ (Papua New Guinea for the Coalition for Rainforest Nations). Brazil (for Argentina, Brazil, Uruguay - ABU), called on developed countries to scale up ambition on finance with regard to the GCF and the Adaptation Fund. Finally, Venezuela (for ALBA) emphasised its general priority of adaptation over mitigation. Compared to the emphasis placed, the discussion was controversial with few results.

In Madrid, the report of the Adaptation Committee was discussed in joint SBI/SBSTA informal consultations.<sup>30</sup> At COP24 in Katowice, the adaptation Committee had been requested to consider gaps and needs and how to address them.<sup>31</sup> Discussion were from the beginning controversial, focusing on the prominence given to the private sector in the Adaptation Committee's recommendations.<sup>32</sup> Developing countries underscored that adaptation finance should be public funds from developed countries. There was also disagreement on how to reference the Committee's recommendations, with some countries objecting reference in any form. Controversies remained unresolved with some developing countries calling for inviting submissions from Parties by March 2020 and for the Secretariat to compile these into a synthesis report whereas several other developed countries opposed to this. As a result, no agreement was found and the item was included in the provisional agenda for SBI 52.

Issues regarding the membership of the Adaptation Fund board were controversially discussed. As there were diverging opinions of developing and developed countries on the necessity to act on this item as well as a controversy on the role of the CMA, Parties were unable to find agreement. Some developing countries stated the Fund was still under the authority of and accountable to the CMP until a share of proceeds from the Paris Agreement Article 6 (cooperative approaches) was available.<sup>33</sup> The item was also deferred and included in the provisional agenda for the next meeting. Regarding finance, the CMP decision welcomed additional financial pledges and contributions and highlighted the multi-annual pledge by Germany. Additional funds and voluntary support were again encouraged.

Discussions on National Adaptation Plans (NAP) were taken up in plenary and informal consultations. Discussions focused on challenges in accessing financial resources for NAP formulation and implementation. In its decision<sup>34</sup>, the COP takes note of the Adaptation Committee's work on gaps and needs and invites Parties to share information on activities to address gaps and needs. Developed countries were urged to mobilise support for adaptation activities in developing countries. The decision also notes challenges to access funding from the GCF Readiness and Preparatory Support Programme for the formulation of NAPs. SBI is requested to work further on gaps and needs and the implementation of NAPs.

## **2. Loss and Damage**

The issue of supporting developing countries in dealing with climate impacts that cannot be adapted to, known under the term of “loss and damage”, has been subject to contentious debates for several years now. With the Warsaw International Mechanism (WIM) for Loss and

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<sup>30</sup> UNFCCC ‘Report of the Adaptation Committee’ UN Doc FCCC/SB/2019/3 (10 October 2019).

<sup>31</sup> UNFCCC ‘Decision 11/CMA.1, Matters referred to in paragraphs 41, 42 and 45 of decision 1/CP.21’ UN Doc FCCC/PA/CMA/2018/3/Add.1 (19 March 2019), paras 15–17.

<sup>32</sup> Earth Negotiation Bulletin, Vol. 12, pp. 775, Summary of the Chile/Madrid Climate Change Conference: 2-15 December 2019, Wednesday 18 December, <http://enb.iisd.org/download/pdf/enb12775e.pdf>.

<sup>33</sup> Ibid.

<sup>34</sup> UNFCCC ‘Decision -/CP.25, National adaptation plans’ Advance unedited version.

Damage, an institution dedicated to deal with climate induced impacts was established by the COP in 2013. At COP25 in Madrid, the review of the WIM was one of the key agenda items.

A key priority for developing countries in Madrid was to strengthen the WIM, so that the mechanism could fulfil its hitherto largely neglected mandate to support vulnerable countries through the provision of finance, technology and capacity building.

On finance for loss and damage, one priority for developing countries was to improve vulnerable countries' access to new and additional finance for dealing with climate change induced loss and damage. This key ask of developing countries was not only discussed in the context of the review of the WIM but also subject of discussions on climate finance taking place in other negotiation fora. This position of developing countries, that was supported by a large number of non-governmental organisations<sup>35</sup>, encountered fierce opposition of some developed nations. In particular, the US and Australia opposed the idea of providing new and additional finance as well as the creation of specific funding windows for loss and damage under financial bodies such as the GCF, referring to existing financial support being provided.

The final decision text<sup>36</sup> recognizes the need to provide finance for loss and damage by urging the "scaling-up of action and support, as appropriate, including finance, technology and capacity-building" (para 32). This decision is an important step forward in establishing loss and damage under the financial architecture of the UNFCCC. The text, however, does not specify who is to scale-up action and support. This omission was criticised by developing countries during the final plenary who underscored that they understood this paragraph as clearly referring to developed countries. Another weak point from the developing country perspective is that the decision does not specify that finance for loss and damage must be new and additional. This can be seen as a risk that the funding needed to finance loss and damage will be taken from climate finance streams intended to fund mitigation and adaptation actions in developing countries, thereby effectively reducing these already insufficient financing streams.

The generic call to scale-up action and support was complemented by a decision to install a new expert group at the operational level. One of the expert group's tasks is to find ways on how to enhance the provision of support for dealing with loss and damage and facilitate developing country's access to it by inter alia engaging with existing financial institutions under the UNFCCC.<sup>37</sup> The expert group was however not vested with a mandate to mobilise new finance for loss and damage.

To support the implementation of activities on loss and damage, Parties further agreed on establishing the 'Santiago Network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change'.<sup>38</sup> The network is to provide technical assistance to key actors involved in the implementation of approaches to address loss and damage in particularly vulnerable developing countries. With the installation of the Santiago Network the WIM will now be vested with an 'implementation arm' that complements the existing political arm of the WIM, the Executive Committee.

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<sup>35</sup> Action Aid (2019): More than 150 NGOs sign open letter calling for loss and damage fund with debt relief. <https://actionaid.org/news/2019/more-150-ngos-sign-open-letter-calling-loss-and-damage-fund-debt-relief>

<sup>36</sup> UNFCCC Decision -/CMA.2, Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review' Advance unedited version.

<sup>37</sup> ibid paras 40-41.

<sup>38</sup> Ibid para 43.

An issue that proved particularly contentious and which could not be resolved was the future governance of the WIM. While the mechanism was established by the COP in 2013, it was put under the authority and guidance of the CMA with the adoption of the Paris Agreement in 2015. In an attempt to ensure they would not be subject to any future liability and compensation claims, the US pushed for the WIM to be operational exclusively under the Paris Agreement. Under such a structure and with the US presumably no longer being a Party to the Paris Agreement by the end of 2020, any future obligations for the US under the WIM to support developing countries in their efforts to deal with climate induced loss and damage would become obsolete. Developing countries successfully objected the US proposal of the WIM being pushed under the CMA and they were also successful in opposing the expansion of a clause that would have limited liability and compensation. However, the question of whether the WIM will continue being operational under both the COP and the CMA could not be resolved and will be taken up at COP26 in Glasgow.

### 3. Climate Finance

In addition to finance for loss and damage, there were also – as always – several other controversial negotiation strands on the provision of financial support from developed to developed countries. Developed and developing countries once again clashed on the implementation of the long-term finance pledge made by developed countries in 2009 to mobilise annually USD 100 billion by 2020. At COP21 in Paris, the pledge was extended to 2025 and a new collective finance goal for the period after 2025 is to be discussed in the next years. COP17 in Durban had established a work programme on the implementation of the long-term finance pledge, which COP19 in Warsaw had extended until 2020. In Madrid, the G77&China proposed to establish a permanent forum on long-term finance, arguing that the issue required regular discussions from a strategic perspective. Developed countries, however, were opposed and Parties were not even able to come to a consensus that discussions should continue at COP26. In the end, Rule 16 was applied, which means that the agenda item will automatically be included in the agenda of the next session in Glasgow.<sup>39</sup>

Further controversies surrounded the work to be requested from the Standing Committee on Finance (SCF), which was established in 2010 to assist the COP on financial matters. Developing countries demanded that the SCF should be mandated to develop a “common” definition of climate finance that all Parties agree on. As in the past, developed countries opposed to elaboration of such a common definition, which makes it difficult to assess implementation of the USD 100 billion pledge. Developed countries also rejected demands by developing countries to have the SCF assess the achievement of the pledge. Furthermore, developed countries rejected calls by developing countries to include loss and damage in the SCF’s upcoming quadrennial assessment of implementation needs of developing countries.<sup>40</sup>

The work plan finally agreed on only underscores the SCF’s contribution to the operational definitions of climate finance. In addition, it invites submissions on this issue by 30 April 2020, to assist the SCF in preparing its 2020 Biennial Assessment and Overview of Climate Finance Flows. Furthermore, the Decision encourages the SCF to present, “to the extent possible”, disaggregated information on climate finance flows and needs of developing countries, including information on data availability and gaps by sector. On loss and damage, the Decision

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<sup>39</sup> IISD Reporting Services. ‘Summary of the Chile/Madrid Climate Change Conference: 2-15 December 2019’. *Earth Negotiations Bulletin* 12, no. 775 (2019). <https://enb.iisd.org/download/pdf/enb12775e.pdf>; Sharma, Anju, Axel Michaelowa, Aglaja Espelage, Jennifer Allan, Benito Müller (2020): COP25 Key Outcomes. Oxford: European Capacity Building Initiative. [https://ecbi.org/sites/default/files/COP25%20Key%20Outcomes\\_0.pdf..](https://ecbi.org/sites/default/files/COP25%20Key%20Outcomes_0.pdf..)

<sup>40</sup> Ibid.

notes the inputs the SCF provided to the technical paper on sources of and modalities for accessing financial support for addressing loss and damage; and looks forward to future input from the WIM to the SCF on its work to develop draft guidance for the Green Climate Fund and the Global Environment Facility.<sup>41</sup>

## V. Gender Action Plan

One of the strongest outcomes of COP25 was the adoption of the 5-year Enhanced Gender Action Plan (GAP) under the UNFCCC by Parties.<sup>42</sup> The COP confirmed the GAP adopted in 2017 as part of the agreed review of the Lima Work Programme on Gender. Despite a dramatic negotiation process on these cross-cutting dimensions of UNFCCC policies, in the end there was no backlash on the differentiated UNFCCC efforts on reducing the gender bias of international climate policy. On the contrary, Parties strengthened the GAP with two new activities: targeted capacity building for the advancement of gender-responsive climate solutions at all levels, and strengthening and accelerating implementation. The COP decision reiterates language from the preamble of the Paris Agreement, according to which parties should, when taking action to address climate change, “respect, promote, and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations [...] as well as gender equality, empowerment of women, and intergenerational equity”.<sup>43</sup>

The enhanced GAP “sets out objectives and activities under five priority areas that aim to advance knowledge and understanding of gender-responsive climate action and its coherent mainstreaming in the implementation of the UNFCCC and the work of Parties, the secretariat, United Nations entities and all stakeholders at all levels, as well as women’s full, equal and meaningful participation in the UNFCCC process”.<sup>44</sup> The enhanced GAP defines 2-7 activities for each of the objectives in the five priority areas, for which clear provisions are made with regard to a) Responsibilities: leading responsibility in each case, and contributing responsibilities (e.g. Parties, UNFCCC Secretariat, chairs of constituted bodies, “relevant organisations”, national gender and climate change focal points, “relevant national financial and budgeting institutions”, “research community” etc.), b) Timeline (e.g. until COP28 in 2022 or a fixed date within the next 5 years), c) Deliverables/outputs (guidelines, implementation of capacity building, etc.), d) Level(s) of implementation (e.g. at international, regional and/or national level). However, clearly defined indicators for measuring progress are lacking. And two fundamental gender and climate transformation dimensions in particular are missing: Agreements on climate and sufficiency rights of households, care givers and the population to infrastructure systems, services and sustainable livelihoods, which are essential for meeting climate targets, on the one hand, and on the other hand agreements on goals and responsibilities for actively

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<sup>41</sup> UNFCCC ‘Decision -/CP.25, Matters relating to the Standing Committee on Finance’ Advance unedited version.

<sup>42</sup> UNFCCC ‘Decision -/CP.25, Enhanced Lima work programme on gender and its gender action plan’ Advance unedited version.

<sup>43</sup> Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016)

<sup>44</sup> Ibid, Annex, Gender Action Plan, para 1.

limiting the structural production of energy and transport burdens and needs<sup>45</sup>, at the expense of women, care giving and inclusive societies as well as of climate and sustainability.<sup>46</sup>

The NGO Life e.V. criticises the GAP for recognising the intersectional identities of women, including indigenous women and women with disabilities, but “more work needs to be done to understand the multidimensional and non-binary social intersections that impact the ways in which people mitigate to and build resilience to climate impacts.”<sup>47</sup>

And the NGOs also criticise the overall outcome of the COP25 with regard to gender: “No real action on gender equality can be achieved without progress from Parties to fully implement the Paris Agreement, including to limiting warming to 1.5 degrees”.<sup>48</sup>

The COP25 decision includes to undertake a review of the implementation of the enhanced Lima Work Programme and its GAP at SBI 61 (2024) and to conduct an intermediate review of the progress of implementation of the activities contained in the GAP at SBI 56 (June 2022). Parties are encouraged to appoint and provide support for a national gender and climate change focal point for climate negotiations, implementation, and monitoring.<sup>49</sup>

## VI. Conclusions and Outlook

### 1. A Matter of Overblown Expectations?

Public reactions to the COP outcome were mostly harsh. Even UN Secretary-General António Guterres expressed disappointment: “The international community lost an important opportunity to show increased ambition on mitigation, adaptation, and nance to tackle the climate crisis.”<sup>50</sup>

As some have pointed out, this prevailing sense of disappointment was at least partly due to the large gap between the increasing public demand for swift and strong climate action, exemplified by the strong presence of climate activists in Madrid, and the actual mandate of the conference. Its main objective was to finalise the Paris rulebook and thereby prepare for the start of the implementation of the Paris Agreement.<sup>51</sup>

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<sup>45</sup> see Spitzner, Meike (2009): How Global Warming is Gendered. In: Salleh, Ariel (Ed.): Eco-Sufficiency and Global Justice. Gender & Ecological Economics. Sidney/ London: Pluto Press, S. 218-229, and Spitzner, Meike; Hummel, Diana; Stieß, Immanuel; Röhr, Ulrike; Alber, Gotelind (2020): Interdependente Genderaspekte der Klimapolitik. Gendergerechtigkeit als Beitrag zu einer erfolgreichen Klimapolitik: Wirkungsanalyse, Interdependenzen mit anderen sozialen Kategorien, methodische Aspekte und Gestaltungsoptionen. Endbericht zum Forschungsprojekt UBA 371 641 119 0. UBA-Texte. Berlin: Umweltbundesamt/ German Environment Agency, <https://www.umweltbundesamt.de/publikationen/interdependente-genderaspekte-der-klimapolitik> (last access 12.02.2020) (Intersectional gender aspects of climate policy. Gender justice as contribution to a successful climate policy: Impact analysis, Interdependencies with other social categories, methodological aspects and political action options. Final report on the research project by the German Environment Agency.)

<sup>46</sup> see Spitzner, Meike (2008): Sustainability and Societal Gender Relations – Problems of and Alternatives to androcentric Concepts of Sustainability and the Dimensioning of Economy, Ecology, Institutions and Sociality. In: Joachim Spangenberg (Ed.): Sustainable Development – Past Conflicts and Future Challenges. Taking Stock of the Sustainable Discourse. Münster: Westfälisches Dampfboot, p. 198-221.

<sup>47</sup> Advances for Gender Equality at COP25, 12/13/2019, <https://wedo.org/advances-for-gender-equality-at-cop25/>.

<sup>48</sup> Ibid.

<sup>49</sup> See footnote 42.

<sup>50</sup> Secretary-General's statement on the results of the UN Climate Change Conference COP25, 15 December 2019, <https://www.un.org/sg/en/content/sg/statement/2019-12-15/secretary-generals-statement-the-results-of-the-un-climate-change-conference-cop25>

<sup>51</sup> ENB final



However, COP25 failed even on these relatively modest tasks. A record number of issues were left unresolved and shelved for the next session, including not only Article 6 but also common time frames, long-term finance, transparency issues for the Paris Agreement, the report of the Adaptation Committee, and the report of the Consultative Group of Experts. Many observers could tally only the outcomes on the two issues of realising gender responsiveness and human rights, and loss and damage as substantive wins.<sup>52</sup> So even if measured by the modest standard of what was officially on the agenda, COP25 must be considered a failure.

## 2. The Last Stand of Fossil Interests?

Some commentators have argued that the conflicts at COP25 show that the time of cosmetic climate policy has come to an end. In their view, countries that are strongly tied to fossil fuels are now feeling the bite of the Paris Agreement and trying to organise massive resistance, but the majority of countries wants to lift climate policy to a new level.<sup>53</sup>

However, the countries blocking progress at COP25 are merely the tip of the iceberg. While adhering to the Paris Agreement in their rhetoric, in practice none of the major emitters are yet ready to seriously embark on a trajectory that is consistent with the objectives of the agreement. Even the efforts of countries such as Germany and the UK that are or used to be widely seen as frontrunners have been rated as “highly insufficient” and “insufficient” by the Climate Action Tracker.<sup>54</sup> Even within the confines of the UNFCCC’s consensus system, blockers would have a much harder time if there was a counterweight of other major emitters actually committed to the cause.

The outcome of COP25 is thus a true reflection of the current state of climate policy. The conference was not able to complete the Paris rulebook and sent only a muted signal on the need for more action. It was not even able to agree on milestones for the process in 2020. In order to facilitate an initial global evaluation before the next conference in Glasgow in November 2020, all contributions should be on the table by the middle of next year at the latest.

Whether 2020 will become the year of ambition raising will to a large extent depend on the EU. Ursula von der Leyen, the new President of the European Commission, tried to regain the position of climate leader for the EU with her intervention at COP25. She declared that the EU wanted to be “the first climate neutral continent by 2050” and that to achieve this objective action had to be taken now.<sup>55</sup> The EU and China have scheduled a summit for September to help prepare the next COP in Glasgow. This summit will only be a success if the EU does not come empty-handed. The EU should take a decision before the summit with China to strengthen its emission reduction target for 2030. To make this possible, the European Commission should publish its proposal for the target revision within the first 100 days of the new Commission, as von der Leyen had initially announced. If the Commission publishes its pro-

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<sup>52</sup> *ibid.*

<sup>53</sup> Klimagipfel zeigt Stärken und Schwächen des Pariser Abkommens: Staaten können tiefe Gräben bei Schlüsselthemen nicht überwinden, <https://germanwatch.org/de/17465>, also see Hermwille, Lukas, and Lisa Sanderink. 2019. ‘Make Fossil Fuels Great Again? The Paris Agreement, Trump, and the US Fossil Fuel Industry’. *Global Environmental Politics* 19 (4): 45–62. [https://doi.org/10.1162/glep\\_a\\_00526](https://doi.org/10.1162/glep_a_00526).

<sup>54</sup> <https://climateactiontracker.org/countries/germany/>, <https://climateactiontracker.org/countries/uk/>.

<sup>55</sup> European Commission Website, UN Climate Conference in Madrid: President von der Leyen presents climate ambitions to world leaders, 02/12/2019, [https://ec.europa.eu/clima/news/un-climate-conference-madrid-president-von-der-leyen-presents-climate-ambitions-world-leaders\\_en](https://ec.europa.eu/clima/news/un-climate-conference-madrid-president-von-der-leyen-presents-climate-ambitions-world-leaders_en)

posal later, this will likely not leave enough time for the EU to come to an agreement before September.

Given its high historical emissions and high economic capability, the EU has the responsibility to take the lead and not wait for moves from others before taking its decision. The EU as a whole should therefore follow the example of Denmark, which recently adopted binding legislation to reduce its emissions by at least 70% below 1990 levels by 2030.

Holding the EU Council presidency in the second half of 2020, Germany will have a key role in the positioning of the EU. The German government therefore needs to reclaim a frontrunner position and end its current blockade of ambitious measures at national and European level, for the benefit of the climate – but also of the German economy, which has significant potential on the growing international climate protection markets. Given that Germany is set to miss its 2020 climate targets by a wide margin, forces now need to be joined to increase the targets for 2030 and securely achieve them. The climate protection programme that has so far been developed and enacted by the German government falls far short in this regard.

### **3. From Negotiation to Action**

Another development in climate diplomacy concerns the increasingly important role of non-state and subnational actors. While those actors and their actions cannot and should not replace action at the national level, their activities can support NDC implementation and facilitate ambition by influencing policy formulation at the domestic level. Civil society involvement and gender responsiveness increases legitimacy and authority of NDC decision making through stakeholder participation and by acting as a watchdog supporting transparency and accountability of national governments.<sup>56</sup>

With the process of regime building coming closer to its completion, it is high time to shift away the focus of “negotiation COPs” to events that highlight and put center stage the action developed by non-state and subnational actors and to seek ways to more formally interlink the Global Climate Action Agenda with the intergovernmental process.<sup>57</sup> For example, the COP could formally take note of the climate action pathways developed by the Global Climate Action Agenda and/or even endorse them so that they receive some form of legitimation and authority. This, in turn, might help to raise their prominence and increase the likelihood that this stream of work is actually picked up by national governments in a constructive manner.

### **4. Fast Track Needed**

While the results of COP25 are sobering, to say the least, it is worth mentioning that the multi-lateral process under the UNFCCC is and remains a crucial element to advance climate ac-

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<sup>56</sup> see for example Chan, Sander, Idil Boran, Harro van Asselt, Gabriela Iacobuta, Navam Niles, Katharine Rietig, Michelle Scobie, et al. 2019. ‘Promises and Risks of Nonstate Action in Climate and Sustainability Governance’. *Wiley Interdisciplinary Reviews: Climate Change* 10 (e572): 1–8. <https://doi.org/10.1002/wcc.572>. and Hermwille, Lukas. 2018. ‘Making Initiatives Resonate: How Can Non-State Initiatives Advance National Contributions under the UNFCCC?’ *International Environmental Agreements: Politics, Law and Economics* 18 (3): 447–66. <https://doi.org/10.1007/s10784-018-9398-9>.

<sup>57</sup> also see Biniarz, Susan. 2020. ‘After Madrid, W[h]ither the COP?’ New York: Sabin Center for Climate Change Law, Columbia Law School. [https://climate.law.columbia.edu/sites/default/files/content/docs/Biniarz%202020-%20After%20Madrid%2C%20W%5Bh%5Dither%20the%20COP\\_FINAL.pdf](https://climate.law.columbia.edu/sites/default/files/content/docs/Biniarz%202020-%20After%20Madrid%2C%20W%5Bh%5Dither%20the%20COP_FINAL.pdf).

tion across the globe.<sup>58</sup> First and foremost, it is the only universal forum in which all Countries including the least powerful have a say.<sup>59</sup> Moreover, the adoption of the Paris Agreement has achieved major paradigm shifts. It shifted the global climate discourse towards the 1.5 °C target, it provides a reference point for civil society including the Fridays for Future movement, and the adoption of the “finance objective” (Art. 2.1c of the Paris Agreement) initiated a paradigm shift in the global financial system with more and more (development) banks figuring out ways to redirect financial flows into climate-compatible investments.<sup>60</sup> Moreover, that Paris Agreement and its implementation process are advancing the integration of human rights and the UN gender mainstreaming imperatives<sup>61</sup> into climate policy, notably by the adoption of the UNFCCC Gender Action Plan in 2017 and now the adoption of the Enhanced GAP in Madrid.

Still, the talks in Madrid illustrated once more that substantial progress within the limits of the multilateral consensus-based climate regime remains extremely difficult. Arguably, it will never allow for a sufficient pace of progress. Should the alliance between the EU, China and other countries not evolve and pull the process out of the current limbo, civil society and ambitious countries must seriously consider establishing an international process parallel to the current regime of UNFCCC, Kyoto Protocol and Paris Agreement.<sup>62</sup> COP25 has demonstrated that the obstructive power of a handful of countries is able not only to hold the process but to turn the Paris Agreement into the opposite direction. The next conference might thus see the worst possible outcome – weak ambition with no substantial improvement of most Parties’ NDCs, very weak implementation of the Enhanced Transparency Framework and yawning loopholes. The ultimate objective of the UNFCCC and the legally binding target of the Paris Agreement to keep warming well below two degrees would be thwarted and impossible to reach. Worst nightmares would become true and multilateral approaches as such seriously damaged – much to the liking of the new nationalist sentiments in various parts of the world.

There are, however, multilateral approaches that are not necessarily global or universal in character. In its original meaning, “multi-lateral” means affairs between more than two countries. In the past two decades, this term has come to denote “global” affairs between the almost 200 nation states and the EU. In order to distinguish those approaches from less-than-universal coverage, one might call them “minilateral”.<sup>63</sup> In any case, it is important to remember that also the most successful international environmental treaty, the now universal Montreal Protocol, started between 24 committed countries. There are some aspects – speed, ambition, participation and equity – that are frequently mentioned as to why groups with a limited membership of governments may be an effective mechanism for change.<sup>64</sup>

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<sup>58</sup> For an elaboration see Hermwille, Lukas / Obergassel, Wolfgang / Ott, Hermann E. / Beuermann, Christiane: UNFCCC Before and After Paris – What’s Necessary for an Effective Climate Regime? in: *Climate Policy* 2015, 1-21: <http://dx.doi.org/10.1080/14693062.2015.1115231>.

<sup>59</sup> It is worth noting that in the final hours of negotiations apparently negotiators from smaller countries were no longer included and in fact left out of the room when the more powerful actors struck the final deals. See tweets from the lead negotiators of the Least Developed Countries Group (<https://twitter.com/ldcchairunfccc/status/1205952448105455617?s=12>) and Alliance of Small Island States (<https://twitter.com/aosischair/status/1205949355762565120>)

<sup>60</sup> Chenet, Hugues, Luis Zamarioli, Bianka Kretschmer, and Rodrigo Narvaez. 2019. ‘From Transformational Climate Finance to Transforming the Financial System for Climate’. Deliverable D4.3a. COP21 RIPPLES Project (Horizon2020). <https://www.cop21ripples.eu/resources/deliverable-4-3/>.

<sup>61</sup> Resolution, Declaration and Platform for Action of UN Fourth World Women Conference in Beijing 1995, UN document A/CONF.177/20, 17.10.1995: [https://www.un.org/en/events/pastevents/pdfs/Beijing\\_Declaration\\_and\\_Platform\\_for\\_Action.pdf](https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf) (last access 10.02.2020).

<sup>62</sup> See e.g. Obergassel et al.: *Phoenix from the Ashes – Analysis of the Paris Agreement to the UNFCCC*, 28 ELM 2016, p.3 at p.12 et seq.

<sup>63</sup> See Falkner, Robert (2016). ‘A minilateral Solution for Global Climate Change? On Bargaining Efficiency, Club Benefits, and International Legitimacy’. *Perspectives on Politics*, vol. 14, no 1, pp.87-101.

<sup>64</sup> See Biermann, Frank, P. Pattberg, H. van Asselt and F. Zelli (2009). ‘The Fragmentation of Global Governance Architectures: A Framework for Analysis’, 9:1 *Global Environmental Politics*, 14 et seq.

Ideally, such a group of forerunners would form under the umbrella of the UNFCCC by negotiating and adopting a new protocol containing ambitious rules for those who sign up to it.<sup>65</sup> But unfortunately, such a protocol would have to be negotiated by all Parties and thus – even if allowed to go ahead - would not have any chance of containing binding rules or even effective decision-making procedures. The situation reminds of heroin addicts who vow solemnly to become clean – but also stipulate that all measures must be agreed by everyone. This “de-tox by consensus” would not get very far, especially since the dealers are part of the group, who will lose economically if the structural production of energy, transport, material and other climate relevant needs (see section V) and “consumption” is effectively reduced (and emancipative sufficiency rights of care givers and the population take effect).

Any such attempt to establish a more effective regime must therefore start as a parallel process independent from the UNFCCC, but respecting human rights and intersectional gender equality imperatives. It is politically not easy to forge a new agreement on a subject matter that is already regulated, but it is not legally prohibited since the current climate regime is not exclusive. It is also important to note that this fast track must be built on a solid legal foundation. There are, of course, good reasons in some situations to revert to more flexible “soft law” approaches, but if the agreement contains legally binding obligations (and it should) and especially if there are trade implications this must be done by hard law in order to comply with the international trade regime. This fast track Decarbonization treaty should contain legally binding reduction targets, a market regime with border tax adjustments for raw materials and products, gender responsiveness (not least in order to be able to follow pathways that are adequate to real-life adequate conditions) and a fund to make it attractive for the financially weaker members of the club. In addition, care needs to be taken that treaties developed outside the UN framework also adhere to all sustainable development, human rights and gender equality and mainstreaming obligations that have been adopted within the UN. A constructive and pragmatic way forward would be to consider transnational decarbonization clubs that address specific sectoral transformation challenges, for instance in the iron and steel industry.<sup>66</sup>

Preparations for such a diplomatic process should start immediately in order to be able to commence after COP26 in Glasgow 2020. The issue could already be part of the EU-China negotiations, with all Parties expressing the firm intention to aim at a separate agreement should next year’s conference have unsatisfactory results. The mere threat of such a fast track process might already induce some much-needed urgency into the preparations for COP26. Civil society engagement and gender responsiveness will be vital for such an endeavour. There are many examples that a coalition of committed NGOs and of gender and climate justice representation are able to instigate and ultimately drive a diplomatic process – examples are the coalitions that pushed for the International Criminal Court or the International Treaty to Ban Land-Mines.

Needless to say, all diplomatic efforts in the coming months must go towards making COP26 a success. The challenge is enormous, similar to the conferences in Kyoto 1997, The Hague 2000, Copenhagen 2009 or Paris 2015. The record is a draw with two conferences successful and two a failure. Much depends on the Presidency – a successful conference requires a dili-

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<sup>65</sup> Ott, Hermann (2014). ‘Why We Need Climate Clubs – A Second Track Climate Strategy’- Guest article, IISD SDG Knowledge Hub, 21 October 2014 <http://sdg.iisd.org/commentary/guest-articles/why-we-need-climate-clubs-a-second-track-climate-strategy/>.

<sup>66</sup> see Obergassel, Wolfgang, Hanna Wang-Helmreich, and Lukas Hermwille. 2019. ‘A Sectoral Perspective on Climate Clubs’. Deliverable D4.3c. COP21 RIPPLES Project (Horizon2020). <https://www.cop21ripples.eu/resources/deliverable-4-3/> and Hermwille, Lukas. 2019. ‘Exploring the Prospects for a Sectoral Decarbonization Club in the Steel Industry’. Deliverable D4.3d. COP21 RIPPLES Project (Horizon2020). <https://www.cop21ripples.eu/resources/deliverable-4-3/>.

gent, participatory, creative and trustworthy pre-COP diplomacy. The UK has a proven track record as conference host and might, despite the turbulences caused by the Brexit process, be capable of delivering. The other ingredient for a successful COP is also given – a manageable, practical work programme that is not overloaded with ambition. COP21 in Paris has laid the foundation for a process that is built on consensus, aims for saving our civilization from climate catastrophe and establishes procedures for each country to determine its own share to reach this goal. It's absolutely doable, nothing utopian. What is needed now is the political will by the major emitters to live up to the promises they made some five years ago and to substantially increase their national contributions. If they fail, history will judge them harshly.