

Phoenix from the ashes: an analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change – Part II

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Summary

After 25 years of United Nations (UN) climate diplomacy, the world's governments have for the first time in history negotiated a treaty that envisages climate action by all countries. Despite all shortcomings, the Paris Agreement may therefore be labelled a success. It also demonstrates that environmental multilateralism is not dead. The Parties to the United Nations Framework Convention on Climate Change (UNFCCC) were able to conclude a treaty under international law, with an innovative legal approach in order to satisfy the constitutional peculiarities of the United States of America (US). The successful outcome of Paris has thus restored some of the confidence in international diplomacy lost over the last decade.

The Agreement's ambition of limiting global warming to 'well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels' represents a quantitative increase compared with the previous wording and a reinterpretation of the Convention's ultimate purpose: the Convention's objective is to avoid dangerous climate change; the Paris Agreement now posits that any global warming is dangerous. Furthermore, countries agreed that the temperature limit is to be reached by, first, a peaking of greenhouse gas emissions 'as soon as possible' and, secondly, 'a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century'. This is therefore the main message from Paris: the age of fossil fuels is over.

Shortcomings include the lack of legal bindingness as far as national contributions relating to mitigation, adaptation and finance are concerned. Indeed, contributions that countries have submitted fall far short of the stipulated global ambition: even if fully implemented, global mean temperature would most likely still increase in the range of 2.7°C to 3.5°C. This is a serious shortfall and action to strengthen those contributions, especially by large emitters, must start by 2018 in order to keep the world on a path that is considered safe for humanity.

However, international negotiations can rarely take decisions that have not previously been prepared nationally. The role the international climate process can play at the moment is to serve as a catalyst for national developments by keeping the issue on the agenda and forcing national policy-makers to revisit it continuously. The question is therefore not whether the Paris Agreement will deliver the emission reductions necessary, but whether the Agreement has the potential to catalyse further changes, whether it becomes a pacemaker for policy processes – at the international level and in the capitals of the world. From this perspective, the Paris Agreement is much stronger than many had expected.

Instead of legal sanctions, the Paris Agreement relies on a mechanism of 'naming and shaming' to ensure implementation: it creates a reputational risk through the establishment of mandatory transparency and review provisions. This innovative review mechanism ('ratchet') aims for the Parties to enhance their contributions every five years. Starting in 2018, these 'stocktakes' will create moments of concentrated political attention every five years that may be used for fostering the dynamic of the process.

While there is no legal obligation to strengthen the first round of contributions, they are thus not necessarily the last word, given the growing awareness of climate change impacts and the growing dynamics in renewable energy, battery technologies and other solutions, which may quickly render previous goals obsolete. To date, the climate regime has had no mechanism to confront governments with such developments – and to take up these dynamics.

It will be crucial for the success of the regular stocktakings that countries transparently report the implementation of their contributions and subject their efforts to review. In this regard, the Agreement defines a 'transparency framework', which has yet to be fleshed out. Apart from increasing the level of ambition, the details of the transparency framework will be the most relevant field of work in the coming years.

One reason the Paris Agreement won the support of developing countries was its recognition of two decade-long demands: first, it elevates the standing of adaptation in the international climate regime. Crucially, action on adaptation is to be reviewed and accelerated every five years in parallel to the contribution cycles for mitigation. However, while the need

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for substantial adaptation finance has been recognised in the Paris Agreement, it does not include a collective, quantified goal for adaptation finance.

Secondly, the Paris Agreement recognises that there are adverse climate impacts that cannot be adapted to – and that they must be dealt with. This was a crunch issue until the very end because, while developing countries wanted the concept of 'loss and damage' to be included in the final Agreement text, developed countries feared it could be used for compensation and liability claims. The final outcome gives consideration to both positions: while the Paris Agreement features an article on loss and damage, the decision text contains a clause that precludes the concept from being used as a basis for compensation and liability claims.

The finance part of the Paris Agreement is weak. It does not contain any compulsory language to scale up climate finance. Only the accompanying decision text reiterates that the goal of mobilising an annual US\$100 billion of North–South financial flows in 2020 and beyond, already promised in Copenhagen, is still valid. Furthermore, the Parties agreed to set a new, collective financing target by 2025. In this context, the US\$100 billion figure is now considered the floor of financial contributions, rather than the ceiling as was the case before Paris.

The adoption of the Paris Agreement is not the end, but the beginning of a process. Its effectiveness depends on whether the momentum of Paris can be turned into a political force. This momentum was to a large extent created by the 'high ambition coalition' of small island states, least developed countries and the European Union (EU). It ultimately even included traditional blockers such as Japan and the US and was one of the main drivers of an outcome at the upper end of what seemed politically possible. Keeping this coalition alive, at least in its core, would help to work towards a progressive implementation and evolution of global climate policy, both inside and outside of the UNFCCC regime. Global climate diplomacy requires such a driver, as numerous occasions in the past have shown. The EU should not let this opportunity slip away and should strengthen ties with those countries originally forming this group. This coalition would be in a position to push for the Agreement's early entry into force and for the speedy strengthening of national contributions.

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3 Assessment: the stage is set, waiting for more action

When the final gavel fell in the evening of 12 December 2015 and the Paris Agreement was adopted, the Plenary Hall was for a seemingly endless time filled with thunderous applause and cheers that created an atmosphere as in a rock concert. While this eruption was certainly in part a practical way of ensuring that no objections of any kind were heard until it was too late, it was also the result of a very genuine collective feeling of relief and joy. Many thousands of diplomats, NGOs and other activists had spent six years after the disaster in Copenhagen successfully to rebuild a global process for the fight against climate change. This had required endless meetings over many years in many parts of the world, absorbed enormous intellectual and emotional resources and had led to long absences from families and friends. All this prepared the collective eruption on this evening of 12 December 2015.

The relief, to be sure, concerned not only the concrete result, the Paris Agreement, but equally the fact that the international community appeared to be able to tackle global problems successfully. Saturday 12 December 2015 in this sense marked not only the rising from the ashes of climate policy, but of environmental policy and multilateral governance in general. This is no small achievement. Taken together with the fact that the Paris Agreement represented the upper end of the range of possible outcomes, Paris can be considered a success. The conditions for achieving this result and the lights and shadows of the Agreement will be explored in the final section of this article.

3.1 Assessing the Paris outcome: the benchmark for success

While the Paris Agreement may easily be criticised for setting ambitious objectives but failing actually to deliver,¹ any assessment of the Paris Agreement needs to be based on an understanding of what international processes can actually deliver.² Diplomacy does not happen in a vacuum. The positions countries take internationally are determined by their domestic political situations. International negotiations can therefore rarely take decisions that have not previously been prepared nationally. As countries are sovereign, that is, they have nobody above them to enforce rules, international agreements can only go as far as what countries are prepared to do.

The current situation is that in most key countries there is as yet no appetite to undergo the fundamental economic and ecologic transformation that is necessary. Energy provision and transport are dominated by strong incumbent industries whose business models rely on using fossil fuels, and combating climate change basically requires to end these business models. The political influence of these

groups is illustrated by the lavish amounts of fossil fuel subsidies, roughly US\$ 550 billions (in 2013), according to the International Energy Agency.³ Back in 2009, the Group of Twenty (G20) already committed to phase out 'inefficient' fossil fuel subsidies; however, little has been achieved. A recent report estimates that G20 countries collectively provide national subsidies to fossil fuel production alone through direct spending and tax breaks to the amount of US\$ 78 billion.⁴ This money is used to further explore and develop fossil fuel reserves at a time where it is clear that at least 30 per cent of oil reserves, 50 per cent of gas reserves and over 80 per cent of current coal reserves need to stay in the ground.⁵

Changes in national politics and policies will therefore be a prerequisite for, rather than a consequence of, the development of an effective international regime. The role the international climate process can play in the meantime is to serve as a key catalyst for these national discussions by keeping the issue on the agenda and forcing national policy-makers continuously to revisit it.

There is evidence that the UNFCCC does indeed fulfil this catalytic function. While Copenhagen failed to deliver the anticipated climate treaty, the summit was not without successes if seen in a broader context. The deadline imposed by the Copenhagen conference injected a significant momentum into national discussions as all countries were forced to make up their minds about what their contribution to the Agreement was going to be. Until very shortly before the conference there was little reason to expect that countries such as China and India would submit emission targets, but ultimately they did.⁶ Subsequently, the momentum generated by the Copenhagen process resulted in a substantial increase in national climate legislation.⁷ In addition there already is evidence that the Paris process is having the same result. A recent study found that the preparation of 'intended nationally determined contributions' (INDCs) has resulted in impacts such as initiating long-term planning processes, advancing climate change on political agendas, and developing in-country technical capacities.⁸

1 See eg Paris climate deal: the trouble with targetism <http://www.theguardian.com/science/political-science/2015/dec/14/the-trouble-with-targetism>.

2 Hermwille, L., W. Obergassel, H. E. Ott and C. Beuermann (2015): UNFCCC before and after Paris – what's necessary for an effective climate regime? *Climate Policy*, 1–21 <http://doi.org/10.1080/14693062.2015.1115231>.

3 IEA (2014): World Energy Outlook – Energy Subsidies <http://www.worldenergyoutlook.org/resources/energysubsidies/>.

4 Bast, E., A. Doukas, S. Pickard, L. van der Burg, S. Whitley, S. (2015): Empty Promises – G20 subsidies to oil gas and coal production. London and Washington, DC: Overseas Development Institute/Oil Change International.

5 McGlade, C., P. Ekins (2015): The geographical distribution of fossil fuels unused when limiting global warming to 2°C. *Nature*, 517(7533), 187–90 <http://doi.org/10.1038/nature14016>.

6 Sterk, W., C. Arens, N. Kreibich, F. Mersmann, T. Wehnert (2012): Sands are running out for climate protection. The Doha Climate Conference once again saves the UN climate process while Real climate action is shelved for later. Wuppertal: Wuppertal Institute for Climate, Environment and Energy <http://epub.wuppertalinst.org/frontdoor/index/index/docId/4673>.

7 Dubash, N. K., M. Hagemann, N. Höhne, P. Upadhyaya (2013): Developments in national climate change mitigation legislation and strategy. *Climate Policy* 13(6), 649–64; Fankhauser, S., C. Gennaioli and M. Collins (2015): Do international factors influence the passage of climate change legislation? *Climate Policy* 16(3) 1–14 [doi:10.1080/14693062.2014.1000814](http://doi.org/10.1080/14693062.2014.1000814).

8 Day, T., F. Röser, R. Tewari, M. Kurdziel, N. Höhne (2015): Preparation of Intended Nationally Determined Contributions (INDCs) as a catalyst for national climate action, NewClimate Institute and GIZ http://mitigation-partnership.net/sites/default/files/indc_as_catalyst.pdf.

The Paris Agreement was never going to deliver the emission reductions necessary for keeping global warming below 2°C – it never could, given the current political realities in the major emitting countries. The question is whether the Agreement has the potential to catalyse changes of these national political realities, whether it becomes a pacemaker for policy process, not only at the international level, but also in the capital cities of the world.

3.2 Differentiation: an agreement applicable to all

After 25 years of UN climate diplomacy, the world's governments have for the first time in history negotiated a treaty that envisages climate action by all nations. This concludes the decades-long struggle concerning the participation of the US and of developing countries in the climate regime and bridges the deep schism, the dichotomous division of the world into 'industrialised' and 'non-industrialised' states by the UNFCCC, cemented for nearly 20 years through the Kyoto Protocol. The world has changed since the 1990s, and some countries that were previously economically weak have since risen to become large emitters. Developing countries deserve high praise for agreeing to end this dichotomy, despite the fact that many industrialised countries have not shown a large degree of leadership in fighting climate change. By doing so, developing countries have accepted that the fight against climate change is a common global task, albeit with common but differentiated responsibilities (CBDRs). Inscribing this common endeavour in the Paris Agreement must be seen as a major success of the Paris summit.

Differentiation between the two blocks is still present in the new Agreement, but in much more attenuated form than previously. While the Agreement echoes the Convention's principles of equity and CBDRs, it adds 'in the light of different national circumstances', allowing for a 'dynamic' interpretation of the principle of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC). Most provisions establish common obligations for all countries, but require developed countries to continue taking the lead while expecting developing countries to step up over time:

- While all Parties are required to make contributions, they are nationally determined. However, the Agreement does not enshrine total self-differentiation: industrialised countries are expected to undertake absolute greenhouse gas (GHG) reductions, while developing countries are encouraged to move to economy-wide targets over time, and get support in achieving their contributions. Least Developed Countries (LDCs) and Small Island Developing States (SIDS) are given discretion to submit only policies and measures.
- While the Agreement aims to reach global peaking of emissions as soon as possible, it recognises that peaking will take longer for developing countries.
- While developed countries 'shall provide financial resources', other countries are 'encouraged' to provide support 'voluntarily'.

- While there is one common transparency framework, its detailed provisions are to account for differing national capacities and developing countries are to be provided with capacity building.

3.3 Ambitious global targets: towards decarbonisation?

The new Agreement may not ensure that each country progresses at the same speed, but it does make sure that everybody turns to the right direction. This direction is provided by the long-term goal to keep global mean temperature rise 'well below 2°C', which was inscribed prominently into Article 2 of the treaty. The temperature limit is thus not only enshrined in international law, but also strengthened compared to the previous formulation. Furthermore, the Agreement contains the aim 'to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels'. Recent climate science has increasingly underlined that the 2°C limit is not a secure guardrail, but would in all likelihood mean severe damage from climate change. Anchoring the 1.5°C limit in the Agreement is an enormous negotiating victory for the most vulnerable countries, LDCs and SIDS that until recently seemed impossible.

The 2°C threshold of the Copenhagen Accord and consequently the Cancún Agreements has been widely interpreted as a goal to be 'achieved'. This implies an economic cost-benefit calculation in which the 2°C threshold marks the point at or around which the cost of abatement of GHG emissions and the expected benefits of avoided cost through climate change impacts are deemed to break even.⁹ The sense of urgency of the 2°C goal was never beyond question to those familiar with mitigation scenario modelling exercises compiled by the Intergovernmental Panel on Climate Change (IPCC), but it may still have linguistically created a 'comfort zone' and a sense of remaining flexibility that was never justified. The ultimate objective of the Convention is to avoid dangerous climate change; the Paris Agreement now posits that any global warming is dangerous. Its Articles 2 and 4 and the related decisions require an interpretation of the 2°C threshold as a limit that must not be exceeded as opposed to a goal to be achieved. The newly formulated long-term goal is thus not only a quantitative increase in the level of ambition. It implies a qualitative shift: there really is no 'comfort zone' and 'too much' climate change mitigation is never enough.

Moreover, the Paris Agreement marks a significant step forward in further operationalising the 2°C limit. Parties agreed that, first, GHG emissions need to peak 'as soon as possible' and, secondly, that 'a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century' (Article 4). This formulation is not as well suited as a new norm to guide the behaviour of actors as compared to some of the

⁹ For a discussion of this see for example Grubb, M., J.-C. Hourcade, K. Neuhoﬀ (2014): *Trapped?* In *Planetary Economics: Energy, Climate Change and the Three Domains of Sustainable Development* (Routledge) 1–45.

alternatives that had been on the negotiating table. For example, a goal of full decarbonisation by a fixed date would have provided a much less ambiguous mandate not only to nation states, but also to the private sector. However, from a climate science point of view, the actual formulation is even more inclusive as it also encompasses GHGs other than CO₂, particularly in the land-use sector. Given that it will probably not be possible to reduce emissions from agricultural and some industrial processes to zero, the available sink capacity will be needed to compensate for emissions from these sources, which means that all emissions that can be reduced to zero need to be reduced to zero. The long-term goal as formulated in the Paris Agreement is thus synonymous with a call to global decarbonisation before the end of the century, much earlier even for developed countries. This is the main message from the Paris Agreement: the age of fossil fuels is over.

The Paris Agreement will thus provide a strong legitimising function for the growing civil society movements against coal power plants, mines, pipelines and other infrastructure damaging the global climate. Comparable with the Final Act of Helsinki, which provided dissidents in the former Soviet Bloc with a crucial reference for their work, opponents of fossil infrastructures can now point to the goals of the Paris Agreement to justify their activities.

3.4 National contributions: insufficient and non-binding

Political pressure from concerned citizens will be highly necessary as the emission reductions countries have pledged under the Paris Agreement are widely out of line with its global targets. As in Copenhagen, it was not possible to have a top-down consideration of what each country should contribute to the global goal. Instead, there was again an explicitly bottom-up process where each country 'nationally determined' the contribution it was going to submit.

There is in fact some merit to this approach apart from being the only approach that was acceptable to all Parties, as it allows a move away from the narrow-minded focus on GHG emissions the UNFCCC has so far had. It is insufficient to see climate change solely through the lens of emissions as this frames climate change as an environmental problem. However, as historically nearly all economic activity has been associated with GHG emissions, climate change is fundamentally a development problem, much more than an environmental problem. This is reflected in policy-makers' frequent statements of concern about access to 'carbon space' or 'development space'.¹⁰ The national determination of contributions opens space for policy-makers better to marry their climate change efforts with their national development discourse and planning.

However, while the national determination of contributions was key to getting any contributions, their level of ambition leaves much to be desired. Since almost all countries' INDCs had been communicated before the 21st Conference of the Parties (COP 21), the projected impact on emissions was well known before the conference started. If implemented, the contributions will notably reduce emissions. However, this will not be enough. Global mean temperature would most likely still increase in the range of 2.7°C to 3.5°C. This shortfall was explicitly highlighted in the decision adopting the Agreement, which 'notes with concern' that the contributions 'do not fall within least-cost 2°C scenarios but rather lead to a projected level of 55 gigatonnes in 2030', while also noting that for a 2°C pathway, 2030 emissions would need to be reduced to 40 gigatonnes.¹¹

Furthermore, the actual achievement of contributions is not a legally binding obligation; the Paris Agreement only commits each Party to 'prepare, communicate and maintain successive nationally determined contributions that it intends to achieve'. In addition, 'Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions'. The Paris Agreement thus establishes legally binding obligations of conduct but not obligations of result.¹² That is, it commits countries to doing certain things but not to achieving certain things. It requires countries to notify a contribution and to take domestic measures in pursuit of achieving the contribution. It also requires countries to report on the progress they are making and to undergo an international review. However, it does not establish a legally binding obligation for countries actually to achieve their contributions. Correspondingly, the mandate of the compliance mechanism is decidedly facilitative. This is the price that needed to be paid to get the United States of America (US) and the Group of Like-minded Developing Countries (LMDCs) on board.

Instead of binding commitments, the Paris Agreement relies on the instruments of 'naming and shaming' to ensure implementation: creating a reputational risk through the establishment of mandatory transparency and review provisions. And these provisions are substantially more stringent than the LMDCs in particular would have liked.

Further along these lines, the contributions are to be housed in a registry, rather than inscribed in the Agreement itself. Inscription in the Agreement could also have been an argument to require ratification by the US Senate. While inscription in the Agreement might arguably have given the contributions higher standing, on the positive side the housing in a registry makes it easier to revise them. In the Kyoto Protocol, the adoption of commitments for the second commitment period required a cumbersome negotiation and ratification process, which is currently far from being completed. Revising contributions to the Paris Agreement will be much easier and, according to its provisions, revisions may only strengthen, not weaken, contributions.

¹⁰ Hermwille, L., W. Obergassel, H.E. Ott, C. Beuermann (2015): UNFCCC before and after Paris: what's necessary for an effective climate regime? *Climate Policy* 1–21 <http://doi.org/10.1080/14693062.2015.1115231>; Moomaw, W., M. Papa (2012) Creating a mutual gains climate regime through universal clean energy services, *Climate Policy* 12(4) 505–20.

¹¹ Decision 1/CP.21, Adoption of the Paris Agreement, para 17. FCCC/CP/2015/10/Add.1 (29 January 2016).

¹² Bodansky, D. (2012): *The Durban Platform: issues and options for a 2015 agreement*. Arlington, VA: C2ES Center for Climate and Energy Solutions.

3.5 Ratchet mechanism: a political pacemaker to strengthen ambition

Given the lack of ambition of the contributions that have been notified, the effectiveness of the Paris Agreement in limiting global warming depends on the quick reinforcement of the national contributions. Arguably, the key question for the Agreement was therefore whether it would create further political moments to put pressure on countries to increase their ambition. Some countries wanted the first evaluation of the Agreement's impact to take place in the late 2020s. With such a timeframe, the Agreement's potential to catalyse further ambition would have been much reduced.

Instead, Parties ultimately agreed that a first stocktake of the global effort will take place as soon as in 2018, with subsequent communication or updating of contributions. In 2018, public attention will also be heightened by the IPCC, which is invited to submit a special report on the impacts of global warming of 1.5°C and related global emission pathways. These moments of stocktaking and subsequent submission of contributions will reoccur every five years. Analyses immediately after Paris seem to indicate that an optimal use of the ratchet mechanism would be sufficient to keep global mean temperatures below 2°C. This would imply, however, that Parties communicate strengthened contributions already before 2020 and that they commit to longer-term targets with substantial emission reductions.

Legally, however, the provisions are once again weak, in particular for the first cycle in 2018–2020, which is governed by the decision adopting the Agreement. There is no obligation for countries to strengthen their contributions. The requirement is only to 'communicate or update' contributions. Furthermore, as was the case before the Paris summit, no international review of any kind is foreseen for the individual contributions. Nonetheless, the stocktake and subsequent 'communication or updating' of contributions will mark another moment of concentrated political attention after the Paris summit that may be used for fostering the dynamic of the process.

The legal language is more stringent for the subsequent cycles post-2020, which are governed by the Agreement. Here, Parties agreed that each contribution will 'represent a progression beyond the Party's then current nationally determined contribution'.¹³ This is the core of a new and innovative mechanism: compulsory strengthening of contributions every five years.

A piece of homework is to agree on common timeframes for contributions. Current contributions have varying timeframes; many have 2030 as target years, others have 2025 and several have yet other dates. It would be highly recommendable to agree on a five-year timeframe for future contributions as a further safeguard against locking in low ambition. Moreover, short periods are more in line with most policy-makers' political horizons. In politics, contributions that need to be delivered in some distant future are quickly seen as somebody else's problem.

¹³ Paris Agreement art 4.3 FCCC/CP/2015/10/Add.1 (29 January 2016).

While there is no legal obligation to strengthen the first round of contributions, the current contributions are nonetheless not necessarily the last word, given the strengthening of the temperature limit, the growing awareness of climate change impacts and the growing dynamics in renewable energy deployment and other solutions, which quickly renders previous goals obsolete. The European Union (EU), for example, has politically not been able to strengthen its goal of 20 per cent reductions compared with 1990 levels in 2020. At the same time, projections of the European Environment Agency indicate that EU emissions will in fact have fallen by 24–25 per cent by 2020.¹⁴ Other estimates even point to a 30 per cent reduction.¹⁵ To date, the climate regime did not have a mechanism to confront states with such dynamics. The new mechanism of regular stocktakes will force countries regularly to justify the ambition level of their contributions. For the EU, this will mean heightened political pressure to strengthen its 2030 climate goals.

In this perspective, the national determination of contributions and the lack of bindingness was a step that needed to be taken in order to get moving at all. While this is certainly a drop of bitterness in the otherwise rather successful Agreement, legally binding obligations are usually only successful when accompanied by an effective enforcement system. The Kyoto Protocol's compliance mechanism foresaw that non-compliant countries must take on more ambitious obligations in subsequent commitment periods. This was not much of a threat given that one country (Canada) withdrew from the Kyoto Protocol and other countries (Russia, New Zealand, and Japan) did not take on any commitments at all in the second commitment period.

Ultimately, formal sanctions are only one means of international diplomacy to make countries comply with their obligations. The other and sometimes equally effective one is the potentially high political costs implied by non-compliance. The Paris Agreement with its five-year cycles and its transparency framework (see next section) periodically provides for political moments, moments of public scrutiny at each of which policy-makers risk high political costs, if they cannot keep up with the contributions formulated in their INDCs.

3.6 Transparency: fine print to be drafted

A crucial precondition for the success of the regular stocktakes will be that countries transparently report the implementation of their contributions, and subject themselves to review. The need for more transparency first of all relates to the contributions themselves. As in Warsaw, it was again not possible to agree on specific information requirements for the contributions that would easily allow them to be easily understood and evaluated. Further guidance is to be developed in the coming years.

¹⁴ Climate change: EU shows leadership ahead of Paris with 23% emissions cut <http://www.eea.europa.eu/media/newsreleases/climate-change-eu-shows-leadership>.

¹⁵ Inflated CO₂ forecasts hide the fact that the EU is on track for 30% cuts by 2020 https://sandbag.org.uk/site_media/pdfs/press_releases/Press_release_new_2020_forecast.pdf.

As for transparency on the implementation of contributions, the Paris Agreement for the first time establishes a universal transparency system. While there had previously had been separate reporting and review systems for Annex I countries and non-Annex I countries, there will now be only one system. Differentiation is still present, but no longer in the previous binary fashion. Instead, developing countries are to be accorded flexibilities in light of their respective national capacities. Special rules have been maintained only for LDCs and SIDS. The new system thus substantially increases the transparency requirements for mitigation actions by developing countries. At the same time, the new system meets the demands of developing countries by also including adaptation and requiring developed countries to increase transparency on their provision of support.

The price to pay for this increase in transparency has been to place a strong emphasis on facilitation rather than compliance. The system's mandate is to be 'non-intrusive' and 'non-punitive'. While the Kyoto Protocol has a compliance mechanism, the new Agreement has a 'mechanism to facilitate implementation of and promote compliance with' its provisions.

In addition, the accounting system will be mandatory only for the second round of contributions. As many countries have chosen 2030 as their target date, this potentially delays the introduction of robust accounting rather substantially. Moreover, the devil will be in the detail of the transparency framework, which has yet to be fleshed out. In particular what the flexibilities for developing countries are to look like in practice will probably be the subject of further heated debate. Apart from increasing the level of mitigation ambition, the transparency framework will be the most relevant field of work in the coming years.

This is also true for transparency of support to developing countries. Industrialised Parties will have to communicate volume and use of their financial contributions biennially, but here too the detailed modalities are still to be worked out. One genuinely new aspect in the transparency framework established by the Agreement is that developing countries should also report on support needed, and also on support received. While there is no obligation to do so, this has the potential to make the framework significantly more robust.¹⁶ In the past, there have been discussions time and again about quantities of support received not matching claims of developed countries on provision of support (see also section 2.8.1 on discussions between developed and developing country Parties on reporting of financial flows). Matching data on provision and receipt on a more continuous basis has the potential to relieve discord among countries and pave the way towards a clearer picture about support flows in the future under the Paris Agreement.

3.7 Promoting a long-term perspective: new horizons

Contrary to the Cancún Agreements, which only set one-off targets for 2020, the Paris Agreement has open-ended

durability. The prospect that efforts will be evaluated and new contributions will need to be submitted every five years for an open-ended period of time has the potential to promote taking a long-term outlook for the development of national policies and investment decisions in line with the Agreement's long-term goals.

The Paris Agreement also urges Parties to develop and communicate low GHG emission development strategies in accordance with its long-term goal and the principle of CBDR-RC. This exercise could further facilitate the anchoring of climate protection in all government decisions. However, this provision so far lacks further operationalisation. It would therefore be helpful if progressive countries went forward with the communication of such strategies as soon as possible. The Secretariat could be directed to create a public listing and repository of strategies that have been communicated so as to enhance the expectation that all countries should follow up.

3.8 Finance: vague language

The Agreement's provisions on support for developing countries are weak. For an effective support to be offered to the most vulnerable societies of this planet, notably LDCs and SIDS, it will be indispensable to massively ramp up these contributions. The Paris Agreement only contains vague language concerning concrete financing contributions for mitigation and adaptation in developing countries. Legal obligations of financing contributions in the Paris Agreement were sacrificed again to accommodate the United States' interior political constraints.

The accompanying decision text reiterates that the goal of annual US\$100 billion of North–South financial flows in 2020 and beyond, already promised in Copenhagen, is still valid, and will be ramped up before 2025. The US\$100 billion must therefore be the floor of financial contributions. To date, many industrialised countries have regarded the pledge of Copenhagen more as a ceiling. However, the coming negotiations will prove interesting, as the current decision text does not specify who will contribute to the stronger financing goal, but only speaks of setting 'a new collective goal'.

3.9 Reducing emissions from deforestation and forest degradation (REDD+): what future role?

The fact that the Paris Agreement features a separate article on REDD+ can be considered a clear political signal underscoring the future relevance of the concept. This must be seen especially in light of Article 4, which introduces the concept of GHG emissions neutrality. In this context, REDD+ activities might be used to assist countries in achieving their climate change mitigation contributions.

It remains to be seen whether this potential use and the strengthening of the concept will provide sufficient confidence to trigger new REDD+ action on the ground and provide the support needed for activities that have already begun. More specifically, with results-based payments being

¹⁶ Paris Agreement art 13.10 FCCC/CP/2015/10/Add.1 (29 January 2016).

explicitly mentioned in both the Agreement text and the COP Decision, there is a risk that readiness activities, which are a precondition for undertaking results-based activities, might be disregarded.

Furthermore, it remains to be seen which role forest activities might play under the newly established cooperative approaches. Explicit language on REDD+ was removed from the text but, in paragraph 37 of the COP Decision, which lists the principles that the mechanism established in Article 6.4 of the Paris Agreement is to be built on, the wording has been modified from 'permanent' to 'long term'.¹⁷ This allows for the implementation of forestry activities under the new mechanism, raising considerable concerns in particular among environmental NGOs, who fear that fossil fuel emissions in the future might be offset by non-permanent storage of carbon in trees.

Another concern relates to potential adverse social and environmental effects of forestry activities. In this context, it should be noted that the Paris Agreement contains several elements aimed at avoiding such impacts. These are covered in the preamble of the Agreement, where Parties 'recogniz[e] the fundamental priority of food security' and 'not[e] the importance of ensuring the integrity of all ecosystems . . . and the protection of biodiversity'.¹⁸ Parties further agreed that they 'should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights'.¹⁹ Despite the fact that these elements have been weakened owing to their placement in the preamble and their wording, they nevertheless underscore the relevance of already established safeguards and will hopefully guide any future land-use activities under the Agreement.

3.10 International cooperative approaches: what basis for market mechanisms?

Further work will also be required on the issue of market mechanisms. One fundamental question is how the transfer of mitigation outcomes is to work, given the huge variety of types of contributions and the fact that there is no formal obligation actually to achieve them. The Kyoto Protocol is at its core a cap and trade system. The Paris Agreement now also foresees trade – but no caps. Most countries do not have absolute emission targets, which makes accounting for transfers more challenging. Moreover, since the achievement of contributions is not a legally binding obligation, the new Agreement lacks the fundamental safeguard against overselling that the Kyoto Protocol has in-built at its core. The guidance that is to be developed will therefore need to include ways to ensure that mitigation outcomes that are transferred have actually been achieved. As UNFCCC oversight of the cooperative approaches is not anticipated, the only viable option seems to be to make the achievement of contributions obligatory for the Parties

that participate in cooperative approaches. The cooperative approaches could thus constitute a platform for frontrunner countries that are willing to be bound to actually achieving their contributions.

3.11 Loss and damage: a new pillar of climate policy

The Paris Agreement has not only laid a common base to strengthen mitigation, but also strengthens efforts of adaptation to, as well as loss and damage from, inevitable climate change. With a separate article on loss and damage (Article 8), dealing with these impacts has been established as a third column to climate action besides mitigation and adaptation. That this should be recognised had been a central concern of the most vulnerable countries. Owing to resistance by a number of industrialised countries, however, its establishment has only been possible by anchoring a clause in the decision text that precludes the use of these provisions as a basis for liability and compensation claims. Since the clause is not contained in the Agreement itself but in the accompanying COP Decisions, it might be changed more easily than any of the elements contained in the Agreement. The legal implications of this are, however, still to be seen and the clause can be expected nevertheless to guide any future interpretation of the concept.

3.12 Adaptation: strengthened role

The Paris Agreement has placed greater importance on national as well as global action to help people to adapt to climate change impacts than ever before. This can be considered a huge success for developing country Parties. While the Agreement furthers the participation of all countries in adaptation activities and sets the global goal to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change, it also acknowledges that global needs for adaptation depend highly on the success of mitigation activities.^{20,21} This link to the temperature goal is very important as it stresses the two issues' dependence on one another.

To provide countries with opportunities to review the overall progress made in achieving the global goal on adaptation and to spiral up adaptation action and support, action on adaptation is to be reviewed and accelerated every five years in parallel to the contribution cycles for mitigation. The main bitterness regarding adaptation in Paris was that, although the need for substantial adaptation finance is recognised in the Paris Agreement, it does not include a collective, quantified goal for adaptation finance. This had been an important demand of developing country Parties.

17 Decision 1/CP.21: Adoption of the Paris Agreement para 37 FCCC/CP/2015/10/Add.1 (29 January 2016).

18 Paris Agreement preamble FCCC/CP/2015/10/Add.1 (29 January 2016).

19 Ibid.

20 Ibid., art 7.1.

21 Ibid., art 7.4.

4 Outlook: next steps on a long journey towards decarbonisation

4.1 The return of environmental multilateralism

The Copenhagen conference was deemed a 'diplomatic disaster'²² and in the aftermath many doubted whether the multilateral process under the UNFCCC could be effective at all in leveraging international climate cooperation. The Cancún Agreements demonstrated that Parties were willing to continue meaningful negotiations. Nevertheless, progress was painstakingly slow and frustrated many observers. In his speech to the delegates the morning before the final negotiation draft was published, COP President Laurent Fabius highlighted that: 'Nobody here wants to see a repeat of Copenhagen, a Copenhagen that would no doubt be more polished, but which would ultimately be much more destructive . . . [i]f, today, we were so misfortunate as to fail, how could we rebuild hope? Confidence in the very ability of the concert of nations to make progress on climate issues would be forever shaken.'²³

In this vein, the Paris conference was probably the last chance for environmental multilateralism to demonstrate its ability to deliver meaningful results. While the Paris Agreement is far from perfect and little has been achieved in the process of transforming unsustainable socio-economic systems into sustainable ones, it has still exceeded the expectations of most observers. It demonstrated that the UNFCCC can be a transition arena in which all relevant actors can engage in developing common strategies to mitigate climate change. And that these strategies can take a legal form that satisfies both the demands of the international community and the constitutional and political peculiarities of the US – not foreseen in the Convention but nevertheless a treaty under international law. This in itself is an important achievement of the Paris talks.

4.2 Cultivating coalitions

This success was to a large extent forged by the 'High Ambition Coalition' that was formed by the European Union and a group of originally 79 developing countries from Africa, the Caribbean and Pacific countries. It was devised and brought together in summer 2015 by the charismatic Foreign Minister of the Marshall Islands, Tony deBrum. This group grew during the two weeks of the negotiations – already at the time of the announcement, the US was part of it and when Brazil declared that it would also join in the last days of the COP, it was clear that this was a winning coalition. In the final hours of COP 21, this group, with deBrum and the EU Commissioner Miguel Arias Cañete at its core, walked arm in arm into the plenary session and were greeted with loud applause – a

strong signal right before the beginning of the final plenary session that paved the way for the gavel of COP President Laurent Fabius.

Climate policy in the coming years would greatly benefit from the continuing coalition between ambitious developing nations and the EU, both inside and outside of the UNFCCC, the Kyoto Protocol and the Paris Agreement. Several times this group, formerly known as the 'Green Group', has rescued the diplomatic process and secured that the global climate regime could function.²⁴ However, this alliance has usually broken up after such rescue operations. This time, the coalition should stick together, mindful of the fact that the Paris Agreement is just the kick-off for a long strive towards a truly effective agreement.

Inside the UN climate regime, such a coalition could help drive the much-needed development of transparency rules, and ensure a quick entry into force of the Paris Agreement. There are numerous clauses in the treaty and the accompanying decision that require clarification or further specification. As the analysis of the contributions has shown, a quick sharpening would be necessary as soon as by 2018, if the endeavour to stay well below 2°C is to succeed. This will require continued pressure from a high profile group with negotiation clout, which the 'High Ambition Coalition' would represent. But the further development of the UNFCCC and the Kyoto Protocol would also greatly benefit from a strong and ambitious coalition.

Outside the UNFCCC framework, a pioneer decarbonisation alliance could sharpen the currently insufficient commitments of states, take up the Paris momentum and develop fresh dynamics for international climate policy. One of the main obstacles for a quick evolution of the regime²⁵ has not been touched upon by the negotiators in Paris: the consensus principle. Article 16.5 of the Paris Agreement stipulates that the Rules of Procedure of the Convention 'shall be applied mutatis mutandis under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement'. There is thus a chance that the first Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement adopts Rules of Procedure that deviate from the usual consensus rule. The chances are low, however, because the threshold for the entry into force means that the US and China will be part of it – and they are not known to favour majority voting rules.

As observed earlier, the consensual approach might be the most appropriate form of development for a global, universal process.²⁶ It does, however, prevent the more ambitious players from a faster common evolution of their

22 Grubb, M. (2010): Copenhagen: back to the future, *Climate Policy* 10(2) 127–30.

23 COP 21 – Plenary session for the submission of the final draft text – Speech by Laurent Fabius (12 December 2015) <http://www.diplomatie.gouv.fr/en/french-foreign-policy/climate/events/article/cop21-plenary-session-for-the-submission-of-the-final-draft-text-speech-by>.

24 Eg. at COP I in Berlin; see Oberthür, S., H. E. Ott (1999): *The Kyoto Protocol. International Climate Policy for the 21st Century*, Berlin/Heidelberg et al.: Springer-Verlag, pp.46 et seq.

25 Ott, H. E., W. Obergassel, C. Arens, L. Hermwille, F. Mersmann, H. Wang-Helmreich (2014): *Climate policy: road works and new horizons – an assessment of the UNFCCC process from Lima to Paris and beyond*. *Environmental Liability* 22(6) 223–38 http://wupperinst.org/uploads/tx_wupperinst/Post_Lima_Pre_Paris.pdf.

26 Hermwille, L., W. Obergassel, H. E. Ott, C. Beuermann (2015): *UNFCCC before and after Paris – what's necessary for an effective climate regime?* *Climate Policy*, pp. 1–21 <http://doi.org/10.1080/14693062.2015.1115231>.

climate protection efforts. This can best be done outside of the UN regime and thus might present a chance for the core of the 'High Ambition Coalition' between the EU and developing countries to cooperate in the framework of a pioneer's decarbonisation alliance. The EU might thus initiate a diplomatic effort to keep the 'High Ambition Coalition' together, as an informal negotiating group in the context of the UNFCCC, the Kyoto Protocol and the Paris Agreement and as a pressure group outside of the negotiations. It might even be successful in keeping the coalition together as it stood at the end, including the US and Brazil.

4.3 What role for non-Party actors?

As stated above, the Paris Agreement does not 'resolve' climate change as an environmental problem, but it creates periodic political moments that can be used to strengthen it. It deploys a pacemaker for a 'political heartbeat' that can bring about the required transformation. Time will tell whether the dynamic unfolded in Paris can be transferred from the international level to other levels. It is certain that this will not happen automatically. Actors from all political levels need to breathe life into the political moments that the Paris Agreement creates. Non-state actors, cities and regions can and must play an important role in leveraging climate action through the multi-level governance system.

In the slipstream of the Paris Agreement, this year's COP created a space that could provide a space to link more closely various types of transnational governance with the UNFCCC negotiation process. Under the agenda item for increasing the short-term ambition, formally known as Workstream 2 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, a strong mandate was provided to the Secretariat to organise

technical examination processes both for mitigation as well as adaptation. For mitigation, this process has already proven fruitful in the last two years. With the more focused mandate, it will likely even be improved. The mandate to produce technical reports that synthesise the work of the technical examination process and summaries for policy-makers will contribute to making good practices and lessons learned, as well as opportunities to implement successful policies and practices much more digestible for those interested in implementing similar measures. It will also increase the visibility of such initiatives beyond the international climate policy community.

Currently, this process is linked exclusively to the increase of pre-2020 ambition. Clearly, the role of non-Party actors extends beyond that. After 2020, the TEPs should therefore continue and be established permanently to complement the Paris Agreement.

4.4 The Paris Agreement is not the end but the beginning

The next years will show whether the world community is willing to seriously tackle the challenges of a global transformation. The turn-around from the fossil-based development path is still possible, but requires immediate implementation and the strengthening of national contributions already from 2018. It requires transformative policies in almost all fields – energy, transport, industrial processes, housing, agriculture and land-use in general. The decisive momentum from the Paris summit, which was felt by everyone who was present at COP 21 and which could even be felt in the electronic media, must be turned into a political force. Politics, the economic sector, civil society and science all have the responsibility to make Utopia possible: a sustainable planet for everybody.