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Turning Point Glasgow?

An Assessment of the Climate Conference
COP26

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An Assessment of the Climate Conference COP26

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Abstract

The Glasgow climate conference marked a symbolic juncture, lying half-way between the adoption of the UNFCCC in 1992 and the year 2050 in which according to the IPCC special report on the 1.5°C limit net zero CO₂ emissions need to be reached, globally, in order to maintain a good chance of achieving the 1.5°C limit. This article undertakes an assessment of what the UNFCCC and in particular the Paris Agreement and its implementation process have actually achieved so far up to and including the results of the Glasgow conference. The article discusses efforts at ambition raising both within and outside the formal diplomatic process, the finalization of the implementation rules of the Paris Agreement, as well as progress on gender responsiveness, climate finance, adaptation and loss and damage. In summary, the Paris Agreement and its implementation can be considered a success as it is having a discernible impact on the behavior of parties as well as on non-party actors. However, significant further efforts will be required to actually achieve the objectives of the Agreement.

I. Introduction

The 26th session of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) took place from 31 October to 13 November 2021. Despite the ongoing COVID-19 pandemic, the number of registered participants virtually doubled compared to the last COP. It closed nearly at midnight, more than one day behind schedule, marking the sixth-longest COP on record.

While the UK had pledged in summer 2021 to make the Glasgow climate conference the most inclusive COP ever, there was considerable criticism. Given the postponement of the COP the year before due to COVID-19, ensuring a safe event was a key priority in the run up to the conference. Despite the COP presidency's considerable efforts prior to the COP, there was criticism, especially at the beginning of the conference. Attendees of the conference were reported to face difficulties before the conference (regarding COVID-19 travel restrictions, visas and lack of affordable accommodation), during the stay (long lines and restricted access to the venue and negotiations, difficult access for people with disabilities) and some even faced problems when connecting virtually. According to an estimation of a spokesperson for the COP26 coalition, only one-third of the usual number of participants representing the Global South had been able to attend COP26.¹

The Glasgow conference was symbolic in a way, lying half-way between the adoption of the UNFCCC in 1992 and the year 2050 in which according to the IPCC special report on the 1.5°C limit net zero CO₂ emissions need to be reached, globally, in order to maintain a good chance of achieving the 1.5°C limit.² While the world resolved to combat climate change in 1992, it arguably at first did not take the right direction, global GHG emissions have increased nearly constantly since. The Paris Agreement as the first international agreement requiring ambitious climate action by all countries was supposed to finally turn the helm and steer the world in the right direction.³ The following will undertake an assessment of what the Paris Agreement and its implementation process have actually achieved so far up to and including the results of the Glasgow conference.

1 Matthew Taylor, 'Cop26 Will Be Whitest and Most Privileged Ever, Warn Campaigners' The Guardian (30 October 2021) <<https://www.theguardian.com/environment/2021/oct/30/cop26-will-be-whitest-and-most-privileged-ever-warn-campaigners>> accessed 18 November 2021.

2 IPCC, Global Warming of 1.5°C – An IPCC Special Report (Intergovernmental Panel on Climate Change (IPCC) 2018) <<https://www.ipcc.ch/sr15/>>.

3 Wolfgang Obergassel and others, 'Phoenix from the Ashes: An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change. Part I' (2015) 27 Environmental Law & Management 243; Wolfgang Obergassel and others, 'Phoenix from the Ashes: An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change. Part II' (2016) 28 Environmental Law & Management 3.

II. Ambition raising

1. Incorporating the latest science

In Article 2 of the Paris Agreement, the international community resolved to keep global average temperature increase well below 2°C compared to pre-industrial levels, and preferably even to below 1.5°C. The Agreement thereby further specified the ultimate objective of Article 2 UNFCCC, to prevent dangerous anthropogenic climate change. However, there had so far been no specification of where the danger threshold was. The temperature objective of the Paris Agreement provided this specification and also translated it into emission pathways by stipulating in Article 4.1 that global emissions were supposed to peak as soon as possible and that a balance between emissions and sinks was supposed to be achieved in the second half of the century.

Scientific and political discussions since Paris have further strengthened the target. Up to Paris, the international target had been 2°C, in Paris, the 1.5°C limit was included only due to strong pressure by the most vulnerable countries and only at the last second.⁴ But since Paris, 1.5°C has increasingly become the benchmark for action, in particular due to the 2018 IPCC special report.⁵ The Glasgow conference finally adopted the findings of this report into the diplomatic process. COP24 in Katowice had not even been able to “welcome” the IPCC special report due to resistance by Saudi Arabia and the US under the Trump Administration.⁶ In stark contrast, the Glasgow Climate Pact puts the IPCC’s assessment into the spotlight and recognizes that the impacts of climate change will be “much lower” at 1.5°C compared with 2°C and “resolves to pursue efforts” to stay below 1.5°C. Even more notably, the decision makes the link between long-term and short-term ambition. It highlights the finding from the IPCC special report that maintaining a good chance of achieving the 1.5°C limit requires a reduction of CO₂ emissions by 45% below 2010 levels by 2030 and to net-zero by around mid-century, in addition to deep reductions in other GHGs.⁷ The Glasgow decision therefore substantially strengthens the objectives laid down in the Paris Agreement and provides clear guidance on the level of ambition that is required for this decade.

In addition, the Glasgow conference marked a first in UNFCCC history by calling on parties to reduce the use of coal. The UK presidency had early on staked out their ambition that the Glasgow conference should “consign coal to history” by urging Parties to end both domestic use of coal and international financial support for coal use.⁸ Given the high dependence of many parties on coal for their energy supply, the

⁴ Obergassel and others, ‘Phoenix from the Ashes: An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change. Part I’ (n 3); Obergassel and others, ‘Phoenix from the Ashes: An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change. Part II’ (n 3).

⁵ IPCC (n 2).

⁶ Wolfgang Obergassel and others, ‘Paris Agreement: Ship Moves Out of the Drydock’ (2019) 13 Carbon & Climate Law Review 3.

⁷ ‘Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version’, paras 21f.

⁸ Farand, Chloé. 2021. ‘UK calls on countries to “consign coal to history” at Cop26’, 14/05/2021. <https://www.climatechangenews.com/2021/05/14/uk-calls-countries-consign-coal-history-cop26/> (last accessed 18 December 2021).

negotiations on whether to include this item in the Glasgow Climate Pact were extremely controversial. Nonetheless, the conference ultimately agreed to call on parties to “phase down” unabated coal power and “phase out” inefficient fossil fuel subsidies.⁹ At the last minute the wording on coal was changed from “phase-out” to “phase-down”. Nonetheless, the fact that it was possible to include any kind of language on this issue in the Glasgow Climate Pact may be an indication that the world has reached a turning point in its use of coal.

2. The ambition mechanism is working – to some extent

In addition to lying halfway between 1992 and 2050, the Glasgow conference also marked a major milestone in the so-called ambition mechanism of the Paris Agreement. 2020 was the first time Parties to the Paris Agreement were supposed to submit new or updated climate action pledges, the so-called nationally determined contributions (NDCs). Going into the Paris conference it was clear that countries’ initial pledges were far too weak to keep global temperature increase below 2°C, let alone 1.5°C. The Agreement therefore established a five-year cycle for strengthening ambition and implementation. According to Article 4.9, Parties are supposed to submit new or revised NDCs every five years. On that basis, every five years a Global Stocktake will assess what progress parties have made collectively towards achieving the goals of the Paris Agreement. The results of the GST are supposed to inform the development of the subsequent NDCs.

It can be observed that the ambition mechanism has worked to some extent. A large number of parties submitted new or updated NDCs over the course of 2020/21¹⁰, of which about half are more ambitious¹¹. However, there are also many Parties that so far have not submitted new NDCs, and those submitted are overall too weak to achieve the temperature limit of the Paris Agreement. According to the 2021 UNEP Emissions Gap Report, implementation of the NDCs submitted before the conference would reduce projected 2030 emissions only by 7.5%, while a 55% reduction would be needed to meet the 1.5°C Paris goal. Taken together, the updated NDCs were projected to result in a temperature rise of 2.7°C.¹² COP26 was therefore a critical moment for increasing ambition and implementation. The UK presidency had announced that the overall goal of the conference was to “keep 1.5 alive”, i.e., to keep the possibility of achieving the 1.5 limit within reach.

The Glasgow Climate Pact “notes with serious concern” that current pledges will lead to emissions 13.7 per cent above the 2010 level in 2030, and starts a work programme on faster reductions “in this critical decade”, with a report due at COP27 next year. It also introduces an annual ministerial meeting on “pre-2030 ambition”,

⁹ ‘Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version’, para 36.

¹⁰ 116 new or updated NDCs were communicated by 143 Parties until 12 October according to the UNFCCC NDC synthesis report (published on 25 October 2021). UNFCCC Secretariat, ‘Nationally Determined Contributions under the Paris Agreement. Revised Synthesis Report by the Secretariat’ (2021) <<https://unfccc.int/documents/268571>> accessed 4 March 2021.

¹¹ Climate Watch, ‘NDC Enhancement Tracker’ (2021) <<https://www.climatewatchdata.org/2020-ndc-tracker?showEnhancedAmbition=true>> accessed 7 December 2021.

¹² United Nations Environment Programme, ‘Emissions Gap Report 2021: The Heat Is On – A World of Climate Promises Not Yet Delivered’ (2021) <<https://www.unep.org/emissions-gap-report-2021>> accessed 17 November 2021.

with the first at COP27. The pact then “requests” that parties “revisit and strengthen” their NDCs by the end of 2022 “as necessary to align with the Paris Agreement temperature goal...taking into account different national circumstances”.¹³ This request is a notable achievement since it represents a substantial strengthening of the provisions of the Paris Agreement, which according to Article 4.9 requires submissions of new or strengthened NDCs only every five years.

3. Sectoral Initiatives, frontrunner alliances and non-party actors

The implementation of transformative climate action is inevitably sectoral in that it requires the fundamental transformation of key socio-technical systems that underpin global economies – energy systems, transport systems, industrial systems, as well as agricultural and land-use systems. While already in the run-up to the Paris conference the Peruvian and French COP Presidencies tried to orchestrate and showcase climate initiatives by all kinds of non-state and subnational actors, the UK COP Presidency for the first time did this in a distinctively sectoral approach. The UK Presidency orchestrated a host of sectoral initiatives alongside the formal negotiations with a particular focus on “coal, cash, cars, and trees.” Press coverage of the first week of the COP was dominated by a carefully choreographed sequence of major announcements. And all of the focus areas listed above were addressed by at least one important initiative.

The major highlights are¹⁴:

- the Global Methane Pledge to cut methane emissions by 30% below 2020 levels in the next decade. The initiative, led by the US and the EU, now has 110 participants. More than 20 philanthropic funders committed USD 328 million to fund action; for monitoring purposes, a new observatory was launched just before the climate conference by the UN Environment Programme (UNEP), with support from the European Union. The independent International Methane Emissions Observatory (IMEO) will produce a global public dataset of empirically verified methane emissions, initially focusing on methane emissions from the fossil fuel sector. Annual ministerial level meetings will be held to review progress¹⁵.
- the Glasgow Breakthrough Agenda announced goals to make clean power the default option by 2030, to make zero-emission vehicles the default option by 2030, to make green steel the preferred choice in global markets by 2030, to make “renewable and low-carbon hydrogen” affordable and available by 2030. Notably, all these breakthroughs are intended as initiatives in partnership with various international organizations including the International Energy Agency (IEA) and the International Renewable Energy Agency (IRENA) which will prepare regular progress reports on a predefined set of indicators;

13 ‘Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version, paras’ 25ff.

14 COP26 Website, ‘COP26 Outcomes’ (UN Climate Change Conference (COP26) at the SEC – Glasgow 2021) <<https://ukcop26.org/the-conference/cop26-outcomes/>> accessed 7 December 2021.

15 Global Methane Pledge ‘About the Global Methane Pledge’ <<https://www.globalmethanepledge.org/>> accessed 13 December 2021

- the Glasgow leaders' declaration on forests and land use builds on the 2014 New York Declaration to halt deforestation by 2030 and backs this target with a commitment to provide USD 12bn in public and USD 7.2bn in private funding to support the goal. The biggest new signatories are Brazil, Russia and China;
- the COP26 initiative to accelerate the transition to 100% zero emission cars and vans was signed by 38 countries (but none of the major car producers United States, Germany, France, Italy, Japan, South Korea or China) and some major car manufacturers including Mercedes-Benz, General Motors, Ford, Volvo and Chinese BYD;
- two announcements with significant impacts on the financial markets: the Glasgow Financial Alliance for Net Zero of 450 companies with cumulative assets to the tune of USD 130 trillion have pledged to align their business models with the Paris Agreement's objectives. And perhaps even more importantly, 30 countries including the UK, US, Canada and Germany and financial institutions committed to stop financing overseas fossil fuel investments by 2022. A recent analysis by Bloomberg demonstrates that this is already having an effect with soaring cost of capital for fossil fuel energy projects while interest rates are falling for renewable energy projects;¹⁶
- and finally, a flurry of commitments to phase-out coal including some unexpected parties such as Ukraine, Indonesia, Viet Nam and South Korea. India was not on the list of countries to announce the end of coal, but its commitment to achieve 50% renewable energy by 2030 will significantly impact the prospects of coal in the country. In a recent analysis, the Centre for Research on Energy and Clean Air calculated that after the end of the Glasgow ambition cycle a total of 750 coal power plants are covered by phase-out dates, another 1600 plants are covered by a neutrality pledge and only 170 plants or 5% of the global coal fleet are not covered by either type of commitment. Just one year previously this number still stood at 2100 power plants - clearly an achievement testifying the catalytic role of the COP process.¹⁷

An initial assessment by the Climate Action Tracker concludes that these initiatives have a significant potential to close the ambition gap towards the 1.5°C target.¹⁸

Of course, mere announcements do not yet necessarily lead to action. It remains to be seen whether these initiatives will be followed up on and whether they leave the intended marks. History has shown that such partnerships can also quickly wane. At the 2002 World Summit on Sustainable Development 2002 in Johannesburg the establishment of a series of “public-private partnerships for sustainable

16 Tim Quinson, 'Cost of Capital Spikes for Fossil-Fuel Producers' (BloombergQuint) <<https://www.bloombergquint.com/business/cost-of-capital-widens-for-fossil-fuel-producers-green-insight>> accessed 7 December 2021.

17 CREA, 'Powering Down Coal – COP26's Impact on the Global Coal Power Fleet' (Centre for Research on Energy and Clean Air 2021) <<https://energyandcleanair.org/wp/wp-content/uploads/2021/11/Glasgow-impact-on-coal.pdf>> accessed 16 November 2021.

18 Climate Action Tracker, 'Glasgow Sectoral Initiatives Currently Close the 2030 Emissions Gap by 9%' (Climate Analytics and NewClimate Institute 2021) <https://climateactiontracker.org/documents/1002/CAT_2021-11-11_Briefing_GlasgowSectoralInitiatives.pdf>.

development” was the major outcome. Yet, many of those partnerships did not have the intended lasting effects.¹⁹ Still, these announcements signify major momentum and in the case of coal perhaps a global turning point. Ultimately, this momentum will have to be picked up and reflected in enhanced NDCs to realize their full potential. A preliminary analysis of the transport-related announcements concludes that overall the NDCs of the signatory countries are not in line with the initiatives they have signed.²⁰

19 Philipp H Pattberg and others (eds), *Public-Private Partnerships for Sustainable Development: Emergence, Influence and Legitimacy* (Edward Elgar 2012).

20 SLOCAT, 'COP26 Outcomes for Sustainable, Low Carbon Transport' (SLOCAT Partnership on Sustainable, Low Carbon Transport 2021) <www.slocat.net/cop26> accessed 7 December 2021.

III. Finalising the Paris Rulebook

The Glasgow conference was also tasked with agreeing on some outstanding issues in order to finalize the Paris rulebook, in particular rules for the voluntary cooperation among Parties under Article 6 of the Paris Agreement and common timeframes for NDCs.

1. Robust Accounting for Article 6

Article 6 of the Paris Agreement allows parties to voluntarily cooperate in the implementation of their NDCs. Parties can either establish direct bilateral or multilateral cooperation (under Art. 6.2) or make use of the new Article 6.4 mechanism, which is a successor of the Kyoto Protocol's Clean Development Mechanism (CDM) and will be overseen by the newly established Supervisory Body. In addition to these two market-based approaches, Art. 6.8 of the Paris Agreement envisages the development of so-called "non-market" approaches.

The adoption of the Article 6 rulebook is a key achievement of COP26. In particular the agreement on rules for avoiding double counting of emission reductions is a crucial success. The accounting rules included in the Article 6.2 guidance²¹ require Parties to account for all emission reductions authorized and used by applying so-called "corresponding adjustments": The seller adds the quantity of emission reductions transferred to its emissions balance while the buyer subtracts the respective emissions from its emissions balance. With this approach, double counting of emission reductions is effectively avoided. Robust accounting is required for transfers under Art. 6.2 as well as for those under the 6.4 mechanism and irrespective of whether the underlying mitigation activity is covered by the scope of the NDC or not (inside vs. outside NDC). The accounting framework further provides the basis to implement corresponding adjustments for emission reductions used for "other purposes" such as the achievement of corporate carbon neutrality targets.

One aspect that is problematic pertains to the application of corresponding adjustment by countries that have adopted a single-year target in their NDC. Since corresponding adjustments cannot be directly applied to such single-year targets, an alternative method must be applied. The Article 6 rulebook allows countries to freely choose between two methods. One of them, called 'averaging', has been criticized for its potential to lead to double counting of emissions and undermine the environmental integrity of the Paris Agreement.²² While the application of this method is possible in principle, the Conference of the Parties serving as Meeting of the Parties to the Paris Agreement has requested the SBSTA to elaborate further guidance on averaging in order to ensure the avoidance of double counting.²³

21 Decision -/CMA.3, Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement, Advance Unedited Version.

22 Schneider L and Siemons A, 'Averaging or Multi-Year Accounting? Implications for Environmental Integrity of Carbon Markets under Article 6 of the Paris Agreement' (Öko-Institut 2021) <https://www.carbon-mechanisms.de/fileadmin/media/dokumente/Publikationen/Bericht/Schneider__Siemons__2021_-_Averaging_or_multi-year_accounting.pdf.

23 Decision -/CMA.3, Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement, Advance Unedited Version, para 3b.

The transition of the Kyoto Protocol's Clean Development Mechanism (CDM) to the Paris Agreement has been another contentious issue in the negotiations. Allowing CDM credits to be used for the achievement of NDCs under the Paris Agreement and transitioning CDM activities to the new Article 6.4 mechanism has for a long time been a key demand from large developing countries, in particular Brazil and India. In Glasgow, Parties adopted rules that allow for the transition of both activities and units, a concession made to ensure support for the adoption of the comprehensive accounting rules described above. Parties in Glasgow agreed on limiting transfer of CDM credits to those activities that were registered from 2013 onwards. The exact impact of this compromise is challenging to predict as it will be largely dependent on whether units will find a buyer. Similarly, it remains to be seen whether countries will actually be willing to approve the transition of existing activities to the Article 6.4 mechanism as this would trigger the implementation of corresponding adjustments.

Other contentious issues included, among other things, possible levies on the transfer of emission reductions in order to generate income for adaptation measures, as was the case with the Clean Development Mechanism. The Paris Agreement only foresees this "share of proceeds" being applied to Art. 6.4.²⁴ The Glasgow decision maintains this differentiation by "strongly encouraging Parties" under Article 6.2 to commit resources for adaptation, while the share of proceeds for Art. 6.4 measures is set at 5% of Article 6.4 emissions reductions at issuance, complemented by a monetary contribution, to be set by the Art. 6.4 Supervisory Body. Moreover, any administrative surplus of the mechanism is to be donated periodically to the Adaptation Fund.

Decisions relating to the framework for non-market approaches (NMA) under Article 6.8 were also adopted.²⁵ The negotiations resulted in the establishment of the Glasgow Committee on Non-market Approaches to implement the work programme of Article 6.8 until 2027. The Committee will identify and take measures to promote NMAs in specific "focus areas". The initial focus areas of the work programme activities include: "adaptation, resilience and sustainability", "mitigation measures to address climate change and contribute to sustainable development" and "development of clean energy sources". In the future, more focus areas can be added. In 2027, the institutional arrangements regarding the governance of NMA will be re-assessed.

Article 6 also has an overall objective to promote sustainable development (SD). The Glasgow decision makes SD reporting under Article 6.2 mandatory. Participating parties have to provide information on how each cooperative approach is consistent with the sustainable development objectives of the host Party, how negative impacts are minimised and avoided as well as how human rights and other rights are respected. The agreed text on Article 6.4 includes similar requirements for host

²⁴ Decision -/CMA.3, Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement, Advance Unedited Version.

²⁵ Decision -/CMA.3, Work programme under the framework for non-market approaches referred to in Article 6, paragraph 8, of the Paris Agreement, Advance Unedited Version.

Parties of Article 6.4 activities. Furthermore, the information is to be made publicly available, which is an improvement compared to the CDM. Another positive aspect is the introduction of an independent grievance process. SD contributions are also relevant in the context of non-market approaches, with the Art. 6.8 rules requiring non-market approaches to assist participating Parties in implementing their NDCs in a holistic and integrated manner, including by contributing to sustainable development and poverty eradication.

All in all, the Article 6 rulebook must be considered a success. It provides a robust accounting framework - yet some uncertainties remain, such as the actual impact of the CDM transition rules and the rules on the application of corresponding adjustment by countries that have adopted a single year target in their NDC. A major challenge will be getting the Art. 6.4 mechanism up and running, given the late start of the work. The incoming Supervisory Body was tasked with a large number of assignments and the body will need to strike a fine balance between high-integrity rulings and a timely development of the basic governance decisions for the mechanism. Finally, with implementation of voluntary cooperation under Article 6 now gaining momentum, a comprehensive capacity building effort will be needed in order to ensure equal access by all parties to these mechanisms for international cooperation.

2. Common Timeframes for NDCs

COP26 also managed to resolve the issue of common timeframes for the NDCs. So far there had been no requirements in this regard and current NDCs differ strongly in the time periods they cover. The 2018 Katowice conference had agreed that all NDCs should cover a “common time frame” from 2031, but without specifying the length. Options raised in Katowice and subsequently included time frames of 5 years, 10 years, giving parties the choice of either, or hybrids of the two.²⁶

This item was important since shorter timeframes generate more pressure for countries to immediately increase climate action. In addition, five-year time frames provide for better alignment with the 5-yearly Global Stocktake and subsequent NDC submissions. However, a number of parties called for flexibility and all options were still on the table in Glasgow.

In the end, parties managed to achieve agreement and settled for five-year time frames. Parties are “encouraged” to in 2025 submit an NDC with 2035 as end date, in 2030 to submit an NDC with 2040 as end date, and so on.²⁷ However, “encourage” is not a legally binding requirement and the decision also “reaffirms the nationally determined nature” of NDCs. So while parties managed to agree on common timeframes, they are not strictly bound to abide by them. But one may hope that normative pressure will still be strong enough to make parties comply with the agreed timelines.

²⁶ Wolfgang Obergassel and others, ‘Paris Agreement: Ship Moves Out of the Drydock’ (2019) 13 Carbon & Climate Law Review 3.

²⁷ ‘Decision -/CMA.3, Common Time Frames for Nationally Determined Contributions Referred to in Article 4, Paragraph 10, of the Paris Agreement, Advance Unedited Version’.

IV. Gender Responsiveness

After decades of global efforts and despite the long-standing existence of UN gender mainstreaming imperatives, the commitment to systematically and actively revise the gender bias of international climate policy only made it into the preamble of the Paris Agreement. Now at COP 26, an Enhanced Gender Action Plan is in force under the UNFCCC, which calls for corresponding national institutions such as national Gender and Climate Change Focal Points (GCCFP) for climate negotiations, implementation and monitoring and which has defined effort requirements in 5 priority areas.²⁸ Nonetheless, orientation of international climate policy in the direction of structural transformation towards sustainable livelihoods and corresponding negotiation strands is still almost completely lacking.

Moreover, even the work of the UNFCCC's constituted bodies still fails to meet the requirements of the Gender Action Plan for gender-responsiveness. The UNFCCC's own synthesis report (FCCC/CP/2021/5) concludes that more than half of the constituted bodies reviewed did not make any progress towards integrating a gender perspective into their processes and substantive work beyond improving simply their sex-based gender balance. In preparation for COP26, at least, a technical meeting discussed the content-related, rather than merely sex-based, gender impact assessment methodology as an alternative to conventional methods of impact assessment.²⁹

Last but not least, gender experts have criticized some of the solutions promoted under the Paris Agreement, particularly the “market-based” approaches according to Art. 6, may become “false solutions” for two reasons: first, they may exacerbate intersectional gender inequality, despite the provisions made with respect to social and environmental safeguards and an independent grievance mechanism now adopted in Glasgow. And second, they may constrain more fundamental transformations towards sustainable society-nature relationships.

28 UNFCCC, 'Enhanced Lima Work Programme on Gender and Its Gender Action Plan' (2020) Decision 3/CP.25 <https://unfccc.int/sites/default/files/resource/cp2019_13a01E.pdf> accessed 18 November 2021.

29 Spitzner, Meike, Gender Impact Assessment (GIA) as a qualitative impact assessment method. In: UNFCCC-Climat Secretary (2021): Informal Technical Meeting on tools and methodologies for assessing the impacts of the implementation of response measures. UNFCCC-SB, May 18th 2021. <<https://unfccc.int/event/TEM-SBSTA-chair-assessing-impacts-RM>>, directly <https://unfccc.int/sites/default/files/resource/presentation_Meike.pdf> > accessed 8. December 2021.

V. Climate Finance remains a weak spot

The provision of financial support from developed to developing countries has consistently been a weak spot of the UNFCCC and has not improved much since Paris. At its very first assessment of the pledge of providing at least USD 100bn annually starting in 2020, Glasgow marked a particularly low point since developed countries did not keep their promise, which the Glasgow Climate Pact acknowledges “with deep regret”³⁰. At least, their collective failure forced developed countries to come up with a plan to achieve this objective, which they had so far refused to do. But they aim to achieve the objective only with a delay of three years, while developing countries had demanded immediate remedial measures. There is now also a detailed process for determining the next finance goal for the post-2025 period.

Interestingly, two new areas of climate finance came into the limelight in Glasgow: first, providing financing for Loss and Damage was a key demand of many developing countries. The proposed Loss and Damage facility to provide this funding was ultimately not part of the Glasgow Pact due to resistance from the US, EU and other developed countries. Yet, a dialogue will be started at the next COP and several observers have opined that this discussion will not go away but grow to become even more prominent in the next few years.

Secondly, providing financial support for just transition is coming up on the horizon. The highly disputed paragraph that is now calling for the “phase down” of unabated coal also recognizes “the need for support towards a just transition.”³¹ The “Just Energy Transition Partnership” between South Africa and France, Germany, UK, US and EU providing USD 8.5bn to accelerate the decarbonization of South Africa's economy is another case in point.

30 Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version', para 44.

31 Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version', para 36.

VI. Adaptation strengthened further

The Paris Agreement raised the profile of adaptation by including it as an overall objective in Art 2.1 (b) and by describing a global goal on adaptation in Art. 7.1. Glasgow has further strengthened adaptation in two important aspects: First, parties agreed to double the amount of climate finance dedicated to adaptation³² to USD 40 bn by 2025.³³ Currently only 25% of the total funding is going into adaptation while developing countries have always asked for an even split of the USD 100 bn pledged by developed countries between mitigation and adaptation.

Parties also strengthened the adaptation fund. Established in 2001 under the Kyoto Protocol, the fund was originally to be fed by two sources: revenues from the trading of certified emission reductions (CERs) and voluntary contributions. But in the past, the fund was primarily dependent on contributions from parties due to lacking revenues from CER sales. Agreeing on a new financial base for the adaptation Fund at COP 26 was part of the discussions on the finalisation of the Paris rulebook. Earmarking a share of proceeds for the adaptation fund under Art. 6 (see section on Art. 6) revitalised the second source of funding. In addition, Parties announced new pledges amounting to USD 800 Mio during COP26.³⁴ This would increase the adaptation fund by +40 %.

Furthermore, a technical work programme, the two-year “Glasgow-Sharm el-Sheikh work programme on the global goal on adaptation” was finally launched to define and operationalize the “global goal for adaptation” established in the Paris Agreement.³⁵ In its current form, the Global Goal on Adaptation (GGA) essentially raises the visibility of the issue without providing specific guidance comparable to the 1.5° temperature goal.

Developing countries, which already spend a large share of their GDP on climate change adaptation, pushed for an operationalisation of the adaptation goal. While developing countries saw this operationalisation as a step towards giving adaptation equal priority within the UNFCCC agenda, developed countries argued that this was not necessary.³⁶ The US, among others, stated that any work on the GGA should be limited to the Adaptation Committee. NGO representatives saw this as an example of adaptation being pushed down the agenda as a technical issue³⁷.

The two-year work programme that was now established aims to reduce the imbalance between climate protection and adaptation in the UNFCCC process. Four workshops will be held annually, with the first two in 2022 expected to be hosted by

32 'Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version', para 18.

33 UNEP, 'What does COP26 mean for adaptation' (United Nations Environment Programme 2021) <<https://www.unep.org/news-and-stories/story/what-does-cop26-mean-adaptation>> accessed 6 December 2021.

34 Helen Mountford and others, 'COP26:Key Outcomes From The UN Climate Talks In Glasgow' (World Resources Institute) <<https://www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow>> accessed 6 December 2021.

35 'Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version', para 11.

36 Carbon Brief 'COP26: Key outcomes agreed at the UN climate talks in Glasgow' (Carbon Brief) <<https://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow>> accessed 2 December 2021.

37 Carbon Brief 'COP26: Key outcomes agreed at the UN climate talks in Glasgow' (Carbon Brief) <<https://www.carbonbrief.org/cop26-key-outcomes-agreed-at-the-un-climate-talks-in-glasgow>> accessed 2 December 2021. (n 33).

the Maldives and Egypt. The work programme will be taken up during the interim negotiations in June 2022. A first report on the GGA work programme will be presented at COP27, and a second at COP28 in the United Arab Emirates.³⁸ The Egyptian COP27 Presidency has already signaled that it will make adaptation and resilience a priority of its presidency as it is of particular priority for the African continent.³⁹ But it remains to be seen whether adaptation will become a real negotiation priority in the coming years.

38 Draft 'Decision -/CMA.3, Agenda Item 4 Matters relating to Adaptation 'Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation' , paras 10ff.

39 Climate Home News 'Egypt to host next climate summit, putting a spotlight on resilience' (Climate Home News) <<https://www.climatechangenews.com/2021/11/12/egypt-host-next-climate-summit-putting-spotlight-resilience/>> accessed 2. December 2021.

VII. Loss and Damage entering centre stage

Loss and Damage relates to the unavoidable climate impacts to which adaptation is not possible, such as land loss resulting from sea-level rise. One of the key battlegrounds of the Paris negotiations was whether or not the issue of Loss and Damage would receive a standalone article in the Agreement. This was achieved, but as a concession to concerns of developed countries the decisions adopting the Paris Agreement declared that the corresponding “Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.” Despite this restriction, Loss and Damage entered the agenda at COP26 with heated debates on funding. And for the first time, the Glasgow Climate Pact included a subheading and entire section of text to Loss and Damage.⁴⁰ It is very likely that the issue will remain on the agendas of future COPs as a priority issue and developed countries will have to make concessions. With Scotland and Wallonia together pledging USD 3.7 million funding specifically earmarked for Loss and Damage reparations⁴¹, two subnational governments from developed countries were the first to break this taboo. Despite the setback of not including a more potent Loss and Damage facility in the Glasgow Climate Pact (see finance section), the issue is now on the agenda of COP 27.

Already at COP19 in 2013, the Warsaw International Mechanism (WIM) for Loss and Damage was set up as the main vehicle under the UNFCCC process to avert, minimize and address Loss and Damage. This was reaffirmed by the Paris Agreement and completed at COP25 in Madrid by the establishment of the Santiago Network. COP26 reviewed the WIM. A priority for developing countries in particular was that the WIM and Santiago Network should be further operationalized to strengthen their functions, for example regarding the functions “exchange and dialogue” but also “action and support”. Although technical work was concluded early, the Glasgow Climate Pact only “welcomed” the approaches for operationalization and decided that the Santiago Network would receive funds to support technical assistance for the implementation of its functions.⁴² A follow up process was set up to discuss further modalities of operationalization and the issue was delegated to COP27.

40 UNEP, ‘What does COP26 mean for adaptation’ (United Nations Environment Programme 2021) <<https://www.unep.org/news-and-stories/story/what-does-cop26-mean-adaptation>> accessed 6 December 2021.

41 Helen Mountford and others, ‘COP26:Key Outcomes From The UN Climate Talks In Glasgow’ (World Resources Institute) <<https://www.wri.org/insights/cop26-key-outcomes-un-climate-talks-glasgow>> accessed 6 December 2021.

42 ‘Decision -/CMA.3, Glasgow Climate Pact, Advance Unedited Version’, paras 67ff.

VIII. Turning point or not? Assessing overall progress

To assess whether or not COP26 was a success, specifying the benchmark for success is crucial. When assessing the effectiveness of international environmental regimes, the academic literature differentiates three approaches.⁴³ The most natural one is problem-solving effectiveness. In other words: to what extent do the Paris Agreement and the Glasgow Climate Pact limit global warming to 1.5°C. Several analyses inter alia by the Climate Action Tracker⁴⁴ and the International Energy Agency (IEA)⁴⁵ point out that the world is clearly not on track, especially not in the short term. When problem-solving effectiveness is the benchmark for success, COP26 is also the 26th consecutive failure. This coincides with other assessments⁴⁶ that the UNFCCC process is very valuable in many respects, but so far fails to deliver when it comes to the management of scarce resources.

Secondly, regime effectiveness can be evaluated by the impact it has had on actually creating outputs (related policies & measures at the national level) and outcomes in terms of changes in the behaviour of the climate regime actors. In this regard we are clearly seeing substantial progress. A recent analysis by the Climate Action Tracker shows how far we have come. Before the adoption of the Paris Agreement the CAT estimated,⁴⁷ that with current policies and measures, the world was on a pathway towards global warming of between 3.5 and 4°C. After Paris significant progress was made, current policies are now on track towards 2.7°C. With all pledges and long-term targets being achieved, 2.1°C is within reach and for the first time the most optimistic scenarios are actually indicating that global warming could be halted at 1.8°C. The IEA comes to similar results.⁴⁸ So this clearly indicates that the Paris Agreement is having an impact. Significant progress is being made, even if the pace of change falls short of meeting the overall objectives.

The third approach of assessing regime effectiveness takes into account the limitations of what international regimes can actually achieve, a plausible conception of what an ideal outcome would be. Our above analysis should be read in relation to this last approach. Glasgow was not supposed to negotiate a new international climate agreement from scratch. It clearly follows the itinerary of the Paris Agreement. In that sense, the benchmark for success should be whether and to what extent the mechanisms of the Paris Agreement have been implemented, strengthened and proven effective. Drawing on our analysis we can conclude, again, that the Paris Agreement is a valuable process to lift the awareness of the climate

43 Oran R Young, 'Effectiveness of International Environmental Regimes: Existing Knowledge, Cutting-Edge Themes, and Research Strategies' (2011) 108 *Proceedings of the National Academy of Sciences* 19853.

44 Climate Action Tracker, 'Glasgow's 2030 Credibility Gap: Net Zero's Lip Service to Climate Action' (2021) <https://climateactiontracker.org/documents/997/CAT_2021-11-09_Briefing_Global-Update_Glasgow2030CredibilityGap.pdf> accessed 18 November 2021.

45 Fatih Birol, 'COP26 Climate Pledges Could Help Limit Global Warming to 1.8 °C, but Implementing Them Will Be the Key – Analysis' (IEA, 2021) <<https://www.iea.org/commentaries/cop26-climate-pledges-could-help-limit-global-warming-to-1-8-c-but-implementing-them-will-be-the-key>> accessed 7 December 2021.

46 Lukas Hermwille and others, 'UNFCCC before and after Paris – What's Necessary for an Effective Climate Regime?' (2017) 17 *Climate Policy* 150.

47 Climate Action Tracker (n 42).

48 Birol (n 43).

crisis worldwide and for spurring action by international, national, subnational and non-governmental actors around the planet. In this sense COP26 in Glasgow must be called successful.

There are certain caveats, though. Like the Paris Agreement, the achievements of the Glasgow conference in terms of higher ambition are largely promises. Only time will tell, therefore, whether it will mark a turning point towards fast and steep emission reductions, leading to emissions reductions in the range of minus 45 percent by 2030. On the finance side as well, COP26 marked some progress, but not yet real action. COP27 in Sharm el-Sheikh will provide more indication whether the course has indeed been reset.

Taking into account the limitations of this global climate regime that relies on consensus prompts us to think about ways to overcome these limitations with additional and complementary international arrangements. The strong and successful focus on sectoral initiatives alongside the intergovernmental negotiations on the part of the UK COP Presidency suggests that sectoral approaches might be a particularly fruitful way forward. However, voluntary initiatives alone in all likelihood will not suffice. It should be explored how such initiatives could be further solidified and institutionalized, for example in the form of sector-specific climate clubs based on a legally binding international agreement.

One might also consider that regional treaties could provide a more ambitious and more dynamic forum for international cooperation, like for example the Pacific Climate Treaty that has been contemplated in parts of the AOSIS group. Multilateral agreements⁴⁹ could also include a number of ambitious countries that include larger emitting countries as well as countries with low emissions in an effort to form a strong alliance on a “fast track”, that is not bound by the slowest boat rule. Large parts of civil society are advocating for a legally binding “Fossil Fuel Non-Proliferation Treaty”, with phase-out schedules, restrictions on financing fossil projects and provisions for a just transition for all those sectors that are affected by a phase-out of fossil fuels.⁵⁰

So was Glasgow a turning point? It may indeed have marked the beginning of the end for coal, but overall path dependencies towards a Paris-incompatible trajectory are still strong. The fact that several Parties had been opposed to calling for another round of NDC revision in 2022 makes clear that further strengthening of ambition and implementation will not happen by itself. So does the weakening of the wording with regard to coal in the Glasgow Climate Pact – ‘phase down’ instead of ‘phase out’ of unabated coal – at the very end of the conference. Further political pressure at all levels will be required to achieve the necessary progress. With its decisions on the required short-term level of ambition, the Glasgow conference has provided pro-Paris actors with new tools to hold politicians to account.

49 Wolfgang Obergassel, Christof Arens, Christiane Beuermann, Lukas Hermwille, Nicolas Kreibich, Hermann E Ott, Meike Spitzner: COP25 in Search of Lost Time for Action. An Assessment of COP25 in Madrid; in: *Carbon & Climate Law Review*, 14 (2020), 1, pp. 3-17 DOI: 10.21552/cclr/2020/1/4

50 Peter Newell and Andrew Simms, ‘Towards a Fossil Fuel Non-Proliferation Treaty’ (2019) 0 *Climate Policy* 1.

Otherwise, it might be left for international law courts to request adequate climate policies from Parties: in Glasgow, the prime ministers of the two small island states Antigua & Barbuda and Tuvalu signed an agreement to establish a new commission. The purpose of this commission is to request an advisory opinion from the International Tribunal on the Law of the Sea (ITLOS) on the legal responsibility of States for carbon emissions, marine pollution, and rising sea levels.⁵¹ In quite a number of countries worldwide, law courts have pushed governments and companies to adopt stronger climate targets. It remains to be seen whether also at the international level, the law may be called upon to safeguard people and the planet from the disastrous effects of the climate crisis.

⁵¹https://islandinnovation.co/antigua-barbuda-tuvalu-to-seek-justice-for-climate-change-damage-before-international-courts/?utm_source=rss&utm_medium=rss&utm_campaign=antigua-barbuda-tuvalu-to-seek-justice-for-climate-change-damage-before-international-courts