

COP21: building an unprecedented and sustainable agreement

Michel Colombier (IDDRI)

PRE-COPENHAGEN: THE NORTH-SOUTH DIVIDE

Rio (1992) and Kyoto (1997) were built on rules and categories: responsibilities and objectives were collectively and generically established, but only applied to the so called “Annex I” countries, historically responsible for emissions. Copenhagen’s preparation was still coloured by this vision of the world, which came up against a series of major hurdles. A new approach was therefore needed, to imagine the post-Kyoto Protocol.

COPENHAGEN: A CREATIVE FAILURE?

Copenhagen (2009) was a painful step, but brought an important new turn in climate negotiations. It showed that an agreement cannot bear fruit if not universally validated, transparent and assessable. This led to a major change in climate negotiations, built on a bottom-up—rather than top-down and “effort-sharing”—approach: at the Conference of the Parties in Warsaw (2013), it was agreed that each country would prepare and submit its “intended nationally determined contribution” (INDC) to the process.

TOWARDS PARIS: A PARADIGM SHIFT

As early as 2012, the Durban climate discussions had set the agenda for the Paris conference preparation, including two components: the setting-up of a new international post-2020 climate regime involving all countries and meeting the internationally agreed 2°C target, and an action plan to launch additional short-term initiatives to narrow the gap between the Parties’ pledges for emissions reduction by 2020 and their maximum allowable carbon budget for the same period, in line with the IPCC’s work. From countries’ point of view, the fight against climate change is no longer simply a matter of emissions and distribution of efforts, but also of technology, economic and social choices, a vision of the future.

PARIS: A TRANSFORMATIONAL AGENDA?

The December 2015 Paris meeting aims at setting up a new binding and universal regime to replace the Kyoto agreement. The task awaiting the negotiators is not a simple one: they will need to reach an agreement on a new model that is more procedure-based than demonstrative. Their vision is now focused on: establishing a new universal regime both binding and durable; strengthening the benefits of cooperation under a renewed framework of rules and instruments, thus encouraging collective learning and support; and creating a cyclical dynamic of regular renegotiations so as to keep up the political pressure.

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1. INTRODUCTION

In the run-up to the 2009 Copenhagen Summit, political and media pressure reached a climax: this was to be the very last chance to save our planet. The world's future lay in the hands of Heads of State convening to hammer out an unlikely agreement. After months of dramatization, the fact that the summit failed paradoxically led the media and political spheres to take a relativist perspective on the climate issue. Other priorities came to occupy the limelight. While a negationist discourse is no longer strong, the official discourse is now imbued with a hypocritical pragmatism that unabashedly combines far-off climate concerns and a fascination for the unconventional hydrocarbon revolution.

Yet the climate issue is making a resolute comeback: the last IPCC report revealed alarming new data. A number of extreme events over recent years have now given us a yardstick to measure just how vulnerable our societies are to “natural” hazards (those mostly hitting the poorest economies in the South, of course, but also the industrial world). So much so, in fact, that major reinsurers are beginning to factor this parameter into their prudential analyses. Since 2010, following the failure of Copenhagen, negotiators at the United Nations have been trying to rebuild a political momentum. Yet, outside of the climate community, scepticism is the rule. Against this rather gloomy backdrop, preparations are now in progress for the December 2015 Paris meeting, which aims for nothing less than setting up a new binding and universal regime to replace the Kyoto Protocol. The press coverage of these preparations contrasts starkly with their Copenhagen coverage: this time round, mentions are somewhat more sparse, more cautious, more distanced. In particular, politicians and experts are painting a confusing picture: while there is confidence that Paris will be a success, it is

not heralded as the grand finale, but rather as the “beginning of a process”!

Although we talk about “negotiations”, each country is expected to submit its own commitment to the climate issue ahead of the conference, in an entirely free format with no restrictions on scope or content. An ambitious agreement is needed, but already it is recognised that the quantified commitments will fall short of what is required to attain the international community's target of limiting global warming to 2°C. The meeting is being prepared at the highest levels of the planet's governments, but emphasis is being laid on the importance of private and local initiatives to supplement States' faltering ambitions.

Does this mean that the priority of COP21 is to avoid a repeat of Copenhagen and favour diplomatic success over climate success? Or, behind this somewhat obscure and laborious process, is there real vision and ambition that could lead to a useful, effective agreement? If so, where are the fault lines and potential sticking points of such an agreement, which could indirectly reveal what is at stake in this debate?

2. CLIMATE NEGOTIATIONS AND CHANGES IN THE INTERNATIONAL LANDSCAPE SINCE RIO

2.1. Multilateralism as the backbone of global climate governance

Despite the increasing number of warnings about the evident disconnect between the Kyoto Protocol model and the state of multilateralism in the late 2000s, Copenhagen had been prepared in line with the Protocol and given a triple objective: to renew the post-2012 commitments for developed

(“Annex 1”) countries (the Kyoto commitments covered the 2008–2012 period); to get the United States back on board (it had signed but not ratified the Protocol); and to “broaden participation” to include emerging countries (a rather awkward euphemism to indicate that quantified emission commitments were expected from these countries, to which they happily responded by pointing out that they were already Parties to the Protocol). These discussions were still coloured by the division of the world established at the 1992 Rio Summit (developed/developing countries) and by the system of commitments imposed at Kyoto... by the United States. The Kyoto system comprised two important and complementary features. First, a collectively negotiated emissions cap for the coming commitment period was to ensure fair “burden-sharing”, while ultimately targeting politically significant global emissions levels. Secondly, cooperation instruments were introduced, the foremost being carbon markets, which developed countries saw as their main argument for persuading the emerging economies to enter the game, through the promise of substantial North-South transfers.

Yet, this approach came up against a series of major hurdles. Although most of the negotiators were more or less aware of such hurdles, the Copenhagen work process was unable to internalise this (admittedly recent) understanding into a renewed political economy of the negotiation.

2.2. Transforming the rules-and-categories approach

To begin with, the heyday of multilateralism that had marked the end of the twentieth century was clearly over and the year 2001 somewhat dramatically brought about change in the world of international relations. The idea of collective governance of major global issues or the alignment of domestic policy with binding internationally negotiated rules no longer seemed fitting. We should of course avoid oversimplifying knowing full well, for example, that the United States’ buy-in to the Kyoto round of play was fragile and enjoyed little internal consensus. But even so, Madeleine Albright (President Clinton’s Secretary of State)’s mantra was “multilateral when we can, unilateral when we must”, reserving the use of unilateral intervention for situations of *force majeure*. At the same time, new economic and political powers that had belonged to the “developing countries” group at Rio were beginning to show a strong attachment to national sovereignty. They were unwilling to allow any dilution of their newly acquired power on the international scene, or to have the international

community (be it States or NGOs) delve too deeply into their internal political arrangements. From this perspective, their leaders’ opening speeches at the high-level week in Copenhagen (as well as Obama’s speech) were revealing: in essence, they mostly affirmed both to other countries and their own electorates that they were taking unilateral and voluntary actions, as if to send out an implicit reminder that they would not have their domestic policies dictated by the UNFCCC.

This development required an immediate reassessment of the difficult balance between constraint and ambition that had been achieved at Kyoto. Certainly, the notion of sanctions for non-compliance (a penalty on future quotas) was little more than theoretical and mainly served to “name and shame”. It allowed the finger of blame to be pointed at a country on the basis of an objective and quasi-judicial review of its situation. And, certainly, this threat was not without effect. For instance, Australia and particularly Canada encountered problems when they first tried to sidestep their commitments. They were only able to disengage with Kyoto after Copenhagen, when the symbolic value of breaching a dying protocol had become politically manageable. Yet an overemphasis on constraints today would run the risk of seeing some countries lower their ambitions and only submit commitments that are strictly aligned with current trends and already sealed domestic policy deals, as was the case in Copenhagen. Nonetheless, given the climate emergency and the difficulty of imposing this issue on political and economic agendas, it would be ill-advised to argue against the need for collective discipline or to aim for an agreement that boils down to no more than a declaration of intent with no future.

The shifts in the international landscape opened up a new question about the modalities framing country commitments. Rio and Kyoto were built on rules and categories: a country belonged to a given category and therefore took on (or was relieved of) a specific responsibility, committed (or not) to a specific goal, and was constrained (or not) by a specific procedural rule. Responsibilities, objectives and rules were collectively and generically established, creating a double challenge. First, these objectives and rules had to be revised so that they could be extended or made more ambitious or effective—which is a classic dilemma for an assembly of Nations seeking to define constraints that each of them then have to comply with. But secondly, and more importantly, came the challenge of having to adapt these categories to a radically different world from the one in which they had been designed (1970s and 1980s) and to re-define countries’ respective responsibilities under

such an evolved setting. In other words, while it was becoming no longer acceptable to treat Burkina Faso, China, Vietnam and Mexico as being subject to the same set of responsibilities and rules, emerging countries were still easily able to deploy a paternalistic discourse, protective of developing countries and hostile to any reform, thus ensuring a comfortable status quo. Moreover, any attempt, even academic, to define new rules immediately came up against two difficulties. First was the very real impossibility of establishing universal rules of fairness *ex ante* (as opposed to the possibility of reaching a fair agreement through negotiation), which meant that any proposal to that effect was disqualified even before reaching the negotiator's tool box. Second, the question immediately sprang up of how new categories and new rules could evolve in response to the ineluctable evolutions in countries' individual circumstances. While to some developing countries, the idea of China, India and Brazil actively increasing their commitments might have seemed reasonable, even appealing, the fear of opening Pandora's box and being called on to follow suit five, ten or fifteen years down the line stifled any inclination for reform.

2.3. The challenge of marrying environmental and economic objectives

Meanwhile, the rather normative and systematic concept of environmental governance was shaken by accelerating globalisation, the unprecedented and widespread opening up of trade, the growing role of international finance, as well as the very specific nature of the relationship between greenhouse gas emissions and the economy. This relationship was conceived as follows: once a State had pledged internationally to respect a virtuous code of conduct, it could then take the necessary steps through its administration and economic agents to ensure compliance with the rules. At the outset, climate negotiations were basically a matter of “reducing greenhouse gas emissions”—an environmental problem akin to those countries had already tackled and resolved relatively well on at least two occasions. At regional level, sulphur pollution, which had reached unacceptable limits in the late seventies, was drastically reduced in North America and Western Europe through various approaches. At international level, the Montreal Protocol had kick-started a promising momentum to protect the ozone layer, adapting actions for developing countries by introducing deferred schedules, technology transfer and financial support.

For the most part, greenhouse gases involve two major economic sectors: energy and agriculture.

What is at stake, therefore, is the very metabolism of our societies. Although the economic benefits associated with a low-carbon transition seem to argue in its favour, the redistributive effects of any significant action in this direction bear no comparison with the effects of the previous questions: namely, giving a value to carbon (through economic instruments, or regulations and political action) immediately destroys value in entire swathes of the economy—even if this then creates new opportunities! In increasingly open economies, especially during an international crisis, the risks—whether real or overstated by lobbyists—easily crowd out any environmental ambition. The prudential rules brought in after the 2008 financial crisis have drastically shrunk capacities for long-term commitments and led banks to give preference to liquidity and short-term bonds. This is the exact opposite of what is needed to finance an energy transition that basically relies on investment (in renewables, energy efficiency, infrastructure). In brief, regulatory bodies such as the World Trade Organisation (WTO) or the Financial Stability Board (FSB) play a major and currently rather negative role in climate issues. For some, the objective is to assert the primacy of environmental commitments over others or, on a more modest scale, to harmonise the actions of such institutions with environmental objectives. For others, this is proof enough of the futility of discussions within the UNFCCC framework and a sign of its failure. They argue that the climate issue needs be supported by regional or sectoral agreements that are pragmatic and limited in scope.

The last spanner in the works, and one that is struggling to deliver, is the flagship mechanism for coordinating the current climate regime—carbon markets. At the time of the Copenhagen summit, the European carbon market was in the early throes of decreasing price trends (it has since stabilized at less than €10 per tonne, an amount too low to render gas more attractive than coal in the electricity sector). A few markets have sprung up here and there (Australia, some US states) but are lacking ambition. More importantly, the global market has not really proved convincing. Although the Clean Development Mechanism has generated a large flow of certificates, NGOs remain sceptical as to the environmental value of these certificates (notably on their additionality). As for developing countries, they are perplexed by the effective contributions of these operations to their “clean development” (indeed, there have been many opportunistic deals involving low-cost industrial gases, investments concentrated in some of the emerging countries, etc.). Moreover, the withdrawal from Kyoto of the United States (which should have

accounted for a large share of the demand) left the market entirely unbalanced, further accentuating the downward price trend. In Copenhagen, developing countries voiced their distrust of this instrument, demanding a more conventional financial approach and that better account be taken of their financing needs in the area of adaptation.

3. COPENHAGEN, A CREATIVE FAILURE?

3.1. The roadmap to Paris 2015

Copenhagen was not a victim of circumstance. Its failure was not simply due to an unfavourable global economic climate or a poorly conducted meeting. Rather, it was a painful step, but one that has carried a steep learning curve and brought fresh momentum, which the current negotiations are attempting to mobilise by taking a risky gamble on pragmatism and the recognition of real constraints.

As we know, the outcome of the Copenhagen summit was seen as a double failure: not only did it fail to produce the much-desired global agreement, but it has also ended up with a “club agreement” deemed to have no legitimacy as it was negotiated by a limited group of countries and was not initially acknowledged by the COP, which merely “took note” of the fact that some countries had made a corridor agreement. The following year’s negotiations were guided by the wish to re-integrate the Copenhagen outcome into the UNFCCC process.

The Durban climate discussions in 2011 then set the agenda for the Paris conference preparations, composed of two work streams: the setting-up of a new, universally-inclusive international post-2020 climate regime to meet the internationally agreed 2°C target; and an action plan to launch additional short-term initiatives to narrow the gap between the Parties’ pledges for emissions reduction by 2020 and their maximum allowable carbon budget for the same period, in line with the IPCC’s work. Here, our focus is primarily on the first element—the mandate for the Paris negotiations. That being said, in addition to the classic negotiation process, an “agenda for solutions”—whose status is still unclear—has been announced for COP21. This aims to encourage, non-state actors to bring their initiatives either singly or in partnership to supplement the hoped for agreement between States. If, as some have claimed, the purpose of this agenda is to have voluntary actions compensate for the lack of ambition within

the official state framework, this would be at best useless and at worst dangerous as it could create the illusion of independence and of a possible additionality between the different stakeholders’ actions (e.g. a firm developing more efficient solar panels, a local community fitting out public buildings, a State implementing feed-in tariffs or financing facilities, etc.). However, if the purpose is to show that political will exists at different levels of society and that some economic sectors are truly motivated to engage in the transition, if it aims to create a climate of trust conducive to a political agreement and then leverage the Paris dynamic to conclude concrete implementation agreements (technological collaboration, cooperation between local authorities, etc.), then the idea is an interesting one, even though its future implementation remains unclear.

3.2. Redefining the multilateral framework

To return to Copenhagen’s legacy, the first salient lesson that can be drawn from its failure is the importance of a multilateral framework as a cornerstone for a legitimate global agreement. Led by the US, countries hostile to the UN process had gradually tried to delegitimise the UNFCCC on account of its sluggishness and the difficulty of making headway with 195 countries on board. They advocated for more limited *ad hoc* discussion frameworks such as the MEF (Major Economies Forum) on the grounds that it was easier to reach agreement among a smaller number of countries and who in any case represent the bulk of emissions and global economic activity. Yet Copenhagen showed that an agreement cannot bear fruit if it is not universally validated, transparent and assessable, since an arrangement between powerful States immediately aroused suspicions of hidden economic interests and new trade and technology protectionism under the guise of environmental progress.

Above all, Copenhagen brought about an important new turn in climate negotiations. For the very first time, countries outside of the original Annex 1 group (e.g. China, Brazil, India) made quantified commitments to curb their emissions. A major obstacle in this negotiation, namely the historical division of the world into two groups, was suddenly weakened by the unprecedented configuration which regrouped the handful of countries that concluded the “final-hour stretch” in private, and by their leaders’ need not to return home empty-handed, even if this meant breaking with multilateral discipline. Since then, although carefully worded verbal and written statements continue

to abound in defence of this historic cleavage, the taboo of addressing the subject head on has been lifted and, in many respects, the options in the Paris negotiating text provide for other approaches to differentiating between countries.

Copenhagen also introduced another fundamental breakaway. The negotiated outcome was an agreement that provided a framework without quantified commitments. It was not until later that countries “communicated” their commitments which, when aggregated, shed light on the gap between their envisaged actions for 2020 and the declared 2 degree goal. This unilateral and bottom-up approach has now become the entry model for the Paris negotiations. At the 2013 Conference of the Parties in Warsaw, it was agreed that each country would make its “intended nationally determined contribution” (INDC) to the process. Although countries were invited to produce a first draft for early 2015, the Lima conference (December 2014) made clear there would be no formal collective discussion process before or during the Paris meeting, and that the contributions submitted in Paris will essentially be those that are gradually being currently published on the UNFCCC website. This dynamic is thus far-removed from the discussions at the Kyoto summit, where countries compared and discussed their respective offers at length until their entry positions shifted significantly, or even from the pre-Copenhagen debates on comparability of action. From the perspective of conventional “effort-sharing” where each country observes how far the others are willing to go before agreeing to make “comparable” efforts, this approach obviously raises fears that collective ambition will be wanting. It also runs the risk that Paris will see a new gap opening up between the stated objective and the action proposed.

4. REBUILDING THE BENEFITS OF COOPERATION

4.1. The wider challenges and opportunities of climate policy

Yet there is another movement afoot upon which the Paris agreement can and must build on if it is to avoid the aforementioned traps. For the last few years, industrialized countries, and particularly Europe, are no longer alone on the mitigation policy front. Many countries are now taking action in this direction with varying degrees of ambition and resources, sometimes surpassing what their international commitments might lead us to expect. It is one thing to make commitments to the

international community (and adhere to them). But testing the possibility of gradually phasing out fossil fuels in one’s own country, in one’s own way and at one’s own pace is another thing entirely, and driven by different reasons: climate change, of course, but also economic considerations, energy independence, natural resource management, competitiveness, social policy, urban development, etc. The policies pursued clearly leave much to be desired given what is at stake, but they have profoundly changed the way that countries, their politicians, economic agents and civil society view the question. It is no longer simply a matter of emissions, carbon budgets and the distribution of efforts, but also of technology, economic and social choices, a vision of the future for the societies concerned. And all of this is sparking debate. Little by little, countries are exploring what actions are practically possible and discovering the challenges and benefits of implementing them. In response to fears about the phasing-out of fossil fuels and the associated economic or employment risks, visions have emerged of opportunities to be seized, and have vested the transition with positive values. This trend is visible in Europe (cf. the French “debate on energy transition”, or the *Energiewende* debate in Germany) and in some states in the US, but it is equally present in many developing countries—which signals a new development. In Latin America, people are mobilising to link up social and environmental agendas and are demanding more public services (especially transport) for their expanding cities. Some countries are even already exploring the conditions for long-term deep decarbonisation (for more on this subject, see the Deep Decarbonisation Pathways Project). It is against this wider backdrop that countries’ contributions are currently being prepared and this change in perspective is an extremely positive omen for the development of the negotiations.

This will obviously not be enough to seal an agreement that can meet the ambitious 2°C target adopted in Durban four years ago and, foreseeably, country contributions will continue to fall short of the collective goal. The submitted INDCs, which cover a significant proportion of emissions (90% of global emissions in 2010),¹ do not allay this fear. Studies have shown that in aggregate, INDCs submitted to date put us on a path of 2.7,² or even 3.5 degrees.³

1. <http://climateactiontracker.org/indcs.html>
2. <http://climateactiontracker.org/news/224/INDCs-lower-projected-warming-to-2.7C-significant-progress-but-still-above-2C-.html>
3. <https://www.climateinteractive.org/tools/scoreboard/>

This lack of ambition can of course be viewed as a reflection of an unfavourable conjuncture in which international tensions (Russia, Syria, Africa, etc.) and economic difficulties are prevailing over the environmental agenda. One could also view a wariness of the climate issue, a refusal to act and a clear lack of ambition. But there are also some quite objective reasons why collective action, as measured by the sum of quantified commitments that countries are now submitting, cannot meet the collectively expressed objectives.

4.2. Quantified commitments and collective objectives: hiatus or common dynamics?

Each country's desire for change is already linked to a global dynamic. Comparing levels of ambition across countries remains important, but has now taken on a broader significance. It is no longer a question of knowing whether other countries are also making an effort or, on the contrary, behaving as free riders. More important is whether or not the energy or agricultural transition envisaged by countries at a national scale will be simultaneously undertaken elsewhere. If this is the case, these new emerging business models will become a more credible alternative, and then little by little come to provide a reference for economic actors. More tangible technological prospects, more attractive potential markets for innovators, convergence on placing value on carbon, fewer issues about sectoral competitiveness, and more homogeneous economic and financial rules are all parameters that have a positive influence on a country's capacity to transition to a low-carbon economy. These signals can facilitate political discussion at the national level and bolster the forces who want change; the more conservative players, on the other hand, will gradually see their decisions challenged, especially in financial circles. Beyond this, a comprehensive Paris Agreement must help put in place or develop cooperation tools that enable countries—especially developing countries—to put their political ambition into practice and not remain on the sidelines of this new economy.

Secondly, a country's will to commit to a programme of action is also related to uncertainty about its capacity to effectively implement the plan. This has clearly been the case in the French debate: there may be agreement on the relevance of a given action, but divergence reigns on how the sectors concerned can concretely respond to the policies envisaged. In most countries, public sector intervention still depends on innovative policies based on emerging technologies that can potentially mobilise actors that are not yet organised...

In short, some policies are justifiable judged as risky in the eyes of decision-makers. This inherent uncertainty will gradually decrease, public and private actors will little by little gain a better understanding of possible actions and expected costs and benefits. In the meantime, it is hardly surprising that countries are reluctant to take on overly ambitious international commitments, even as they simultaneously undertake domestic policy changes. It is worth noting, for example, that most experts viewed China's Copenhagen commitment—as difficult as it may be to assess—as less ambitious than the domestic goals the country had set itself in its Five-Year Plan (which it has almost achieved).

It is thus difficult for the time being, in the absence of an agreement (and hence a multilateral framework), to entertain hopes of any real progress on quantitative targets that are negotiated through wrangling. The European Union's attempts in Lima to obtain a discussion at Paris on the ambition of INDCs ended in failure. Yet, the value of a global agreement is precisely that it helps to overcome barriers and restructure the benefits of collective action, in other words: avoid freeriding behaviour, have one country's facilitated by other countries' actions, and establish incentivising procedures for cooperation and support that enable the poorest countries to find their place in the global dynamic. Why then ask countries to submit their INDCs before any such framework has been negotiated? There may be two reasons behind this, though it is still a little early to judge the merits of such an approach.

The first reason was to create a positive dynamic that could bring countries together in Paris with the feeling that everybody is in the same boat, and all are willing, in various ways, to engage in meaningful climate action. The trust thus created could in turn give the negotiation of a new climate regime some chance of success. Seen from this angle, it is useful to not only compare INDCs with the final negotiation objective and measure the very real gap that still separates from a 2°C emissions pathway, but rather to also analyse INDCs in light of each country's recent history and assess whether its contribution simply reflects a continuation of past trends, or signals instead a definite move in the right direction with greater ambition and a real programme of action. On this count, it seems that signs are mainly positive. For example, the US objective announced for 2025, which is aligned on the agenda that President Obama is pushing through the EPA despite opposition from Congress, contrasts with previous federal inaction. In China, the 2025-2030 emissions peak goal has lifted a taboo, even as the actual emissions level

that will be reached is still unclear. Mexico's double threshold is an interesting contribution, in that it presents an unconditional set of measures and a more ambitious one with specific conditions that depend on whether or not certain objectives are reached in the Paris agreement. And even in Europe, the target of "a domestic reduction of at least 40%" is rather ambitious, knowing that it has been agreed upon in a difficult internal context. Only some countries, such as Russia, have advanced unambitious targets, with evident bad faith.

The second reason was to confirm the paradigm shift that marked a change in the negotiating approach, and implicitly validate the Durban vision of universal action in which all countries make a contribution and arrive in Paris to search together for implementation solutions. This differs from previous negotiation rounds in which the game basically involved avoiding any coercion while trying to obtain maximum efforts from the other Parties. In terms of format, the INDCs already submitted respond quite well to this challenge, as they provide elements of policy or sectoral objectives, sometimes associating mitigation and adaptation. In other words, they offer a framework for action rather than simple quantified targets. However, this movement has still not reached a point where it can be said that a majority of countries have actually changed their perspective.

5. WHAT ISSUES WILL BE NEGOTIATED IN PARIS?

In this setting, what is at stake for the Paris meeting? How can the announced objective of reaching an "ambitious and universal agreement" be attained if it is already clear that countries' contributions will not be subject to further negotiation in December? The vision held by the negotiating teams is now focused on three main aspects: establish a new universal regime that is both binding and sustainable; rebuild the benefits of cooperation under a renewed framework of rules and instruments; and finally create a cyclical negotiating dynamic of short-term renegotiations so as to keep up the "tension of emergency" and the political pressure while capitalising on the dynamic of collective learning.

5.1. A new universal, sustainable and binding regime

Even though a second commitment period (2012–2020) was officially renegotiated for the Kyoto Protocol, it is now generally accepted that this protocol cannot serve as the bedrock—or even

as a stepping stone—for the future agreement, contrary to what was still envisaged at Copenhagen. The only climate regime that is effectively in force today is the Rio Convention (UNFCCC), which the Paris agreement must therefore implement. Two lessons can be drawn from the difficulty in negotiating the continuation of Kyoto.

First, to modify a protocol, there is no option but to use a new ratification process, which is a lengthy and risky matter. This was the case for the Kyoto Protocol given that the quantified commitments were an integral part of the text (Annex B) and that the negotiation of a new commitment period triggered a new round of ratification. As we have already seen, in a context in which the assertion of sovereignty exacerbates the tension between constraint (related to ratification) and ambition, returning to the Kyoto model seems even less appropriate. The preference today is for setting up a binding framework focused on rules of collective discipline (submission and validation of contributions, accounting rules, transparency, implementation reviews, cooperation instruments, measuring commitment compliance, etc.), under the legal form of a treaty to be ratified under the Vienna Convention on the Law of Treaties. Alongside this, validation of country contributions (commitments for action) could be held in a Decision by the Conference of the Parties. This approach facilitates the revision of contributions over time without any great risk of the agreement's architecture being called into question, yet would nevertheless evidently render the contributions more fragile from a legal point of view. At the same time, we have seen that the strength of the Kyoto commitments, or of any other multilateral environmental agreement, lies more in its capacity to activate a rigorous, legitimate "naming and shaming" procedure, and to exclude offenders from the community of Parties, than in its eminently virtual threat of deploying sanctions. Such an approach will be possible under the new climate regime instituted at Paris, as all of the procedural requirements for assessing compliance (or lack thereof) with commitments will be covered by the binding regime. Moreover, as we will see below, it now becomes much more important to monitor in real time countries' actions in order to influence the regular renegotiation process, rather than to impose sanctions on any breach of rules at the end of the current period (thus, after 2030).

The second lesson is of course linked to the difficulty of designing a regime that is sustainable over time and, thus, universal enough to avoid having to grapple with progressively anachronistic architectures, particularly those concerning country categories, as was the case in Kyoto. The issue of

universality reaches far past this legal constraint and, as seen above, also raises the need to propose a framework that does not systematically fall foul of moral hazard inciting countries into inaction. Since it is not a question of repealing the sacrosanct and legitimate principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC), what is needed is a universal approach to collective rules that recognises the need for differentiating the implementation of these rules. The only feasible solution is thus to have countries determine this differentiation themselves, possibly on the basis of a portfolio of predefined options. In fact, recent negotiations have given reason to advocates of this approach. Decisions made at the Lima COP last year may have been criticised on the grounds that they did not precisely specify what INDCs should include or how the information was to be organised: the most that was achieved was a proposal for an indicative, non-exhaustive list of elements to report and methodologies to follow. Certainly, this approach has already translated into a first wave of INDCs that are rather heterogeneous in terms of coverage, types of commitment and criteria for evaluating their relevance and credibility. However, the negotiation of a rigid and binding list would undoubtedly have ended in failure—or in a list of criteria even more restrictive than the indicative ones adopted in Lima—as nobody would have risked stepping out of line. During the Lima COP, a lively discussion took place between the developed countries (including the EU) and developing countries on the merits of including adaptation measures in the INDCs: today, the EU's contribution is limited to mitigation actions, but many developing countries are keen to present a framework for adaptation, and this has certainly encouraged them to enter the process.

5.2. Rebuilding the benefits of cooperation

The Paris agreement will then have to establish a set of rules with a twofold objective: ensure the collective discipline of the agreement and, at the same time, propose an incentivising implementation framework. This will make it easier for countries to implement their commitments and create an enabling environment for stepping up the collective ambition on a regular and sustained basis. Financing is a vital plinth of this system and, in the new configuration, it takes on a whole new dimension. Previously, the finance issue was strictly a North-South affair, in line with the Rio approach, which placed the responsibility for

action on the industrialised countries (the question of how this action should be funded was an issue for those countries and was not subject to collective discussion), and envisioned the possibility for developing countries to act, with industrialised countries to bear any additional costs linked to climate benefits. This commitment resulted in the creation of a multitude of funds, often with scant resources and poor governance, as well as in the implementation of the Clean Development Mechanism—the purpose of both of these mechanisms being to facilitate North-South financial transfers. In the wake of Copenhagen, Northern countries pledged to set up a \$100-billion fund, which they are now struggling to honour and which the Paris agreement will have to reiterate so as to not damage the credibility of the process. Yet, if the commitment to a universal process for engaging action is to show real ambition, it is imperative to propel the question of financing beyond the traditional approach and open up new horizons. Certainly, the question of financing the transition (energy, agriculture...), which implies a substantial stepping-up of funds, is a critical issue for all countries. However, what we are concerned with here is not public funding but, above all, the need for private investment. This is not a simply a need for additional investment, but more importantly, for the reallocation of financial flows away from the traditional energy sectors towards those of a low-carbon economy. The UNFCCC is evidently not in a position to directly influence the prudential rules and macroeconomic regulations that currently channel these flows. But it can—and must—deliver the political signals and relevant information flows to promote this development, to heighten the risk of conventional investment and to weigh the balance of expectations in favour of investing in the transition. At the same time, explicit support to Southern countries is still an issue. Some countries such as Mexico explicitly propose in their INDCs additional measure portfolios to be deployed under the condition of funding. In the catalogue of collective actions, we can also mention the much needed technological development initiatives that require better coordination, as evidenced by the recent problems between China and the EU on the photovoltaic market; the gradual convergence of some economies regarding carbon or energy taxation; and more effective cooperation on standardisation.

A particularly difficult but crucial dossier concerns the rules for transparency and monitoring the agreement's implementation. Until now, the main aim of the MRV (monitoring, reporting and verification) systems has been to measure the

results of country actions and compare them *ex post* with their commitments, although interim reviews are supposed to enable a more constructive dialogue in view of solving any problems encountered. In short, many negotiators consider MRV procedures to be a necessary interference, a kind of international tax audit where efforts are made to limit its scope while also hoping that cheaters will be unmasked and punished... Moreover, there are clear differences between the monitoring rules for industrialised countries and those for developing countries—not only in terms of the accuracy and rigour expected of deliverables (which is reasonable), but also in the monitoring frequency, deadlines and the way deliverables are processed. If the transparency rules are to prove useful in the very near future for reinforcing collective trust, for enhancing knowledge on implementation and for regularly renegotiating the ambitions of the policies pursued, then a radical change of approach is needed. Most importantly, what is required is real-time monitoring of policy implementation rather than *ex post* assessment—in twenty years' time—of emission levels.

5.3. Defining regular renegotiation rounds

The final brick in the construction of the Paris conference should be the inclusion of a clause ensuring regular high-level rendezvous (e.g. every five years) to validate a new portfolio of country contributions and, at the same time, to extend commitment horizons by five years. Concretely, this would mean that in 2020, countries who committed to a 2030 horizon in Paris, would commit to a 2035 horizon. In what does this approach represent a shift from current practice? The first Kyoto commitment period, for example, was negotiated for the period running from 2008 to 2012. Due to the lack of a predefined negotiating framework for the second commitment period, this commitment period concluded at Copenhagen in late 2009... three years before its envisaged end-point. The consequences are plainly visible: on the one hand, this three-year timeframe gave countries little effective margin of manoeuvre to act on their emissions (a sure way of avoiding ambitious targets) and, on the other hand, at the national level, provided economic actors, citizens and politicians with very poor visibility for their own decision processes. Yet, it is precisely such visibility, and the light it shines on the coordination of expected contributions, that guarantees effective public policy implementation.

In the current framework, emphasis is placed on “implementing the commitment”, without any

possibility of reconsidering it. Agreeing to meet in five years' time to validate new commitments will automatically create an almost permanent debate on the adequacy of collective commitments with regard to the long-term objective. This will mean that, alongside the implementation of action plans, ongoing political work can be carried out on each country's level of ambition, including for initial period to be covered by the Paris Agreement. In this regard, it is interesting to study the example of the United States, a country that made very modest 2020-horizon commitments at Copenhagen (-17% compared to 2005 levels) and announced an INDC commitment of -28% by 2025. According to analysts, this represents a “doubling of action after 2020”. Thus, the declared target for 2025 implies accelerating action starting today (which may allow the 2020 commitment to be met...), although this would still be inadequate in line with the 2°C target. In the post-Paris years, the renegotiation of a new commitment for the 2030 horizon could, if the US ambition further increased, reinforce US policy as early as 2020.

The hope is therefore that the clause for regular meetings will enable us to capitalise on the implementation learning curve, on renewed political trust and on the effectiveness of collective action mechanisms that facilitate public policy implementation. But the reference quite clearly remains the scientifically calculated global carbon budget. Under this new framework, how can each country be made to assume responsibility for increasing its ambition, without the need to return to the previous ineffective “burden-sharing” approach? The dilemma of this budgetary approach stems chiefly from the difficulty of defining an incontestable rule for emission allocation for the period ahead. One country will base its arguments on its level of poverty and need for development, while another will justifiably emphasise the exorbitant costs incurred by decommissioning installed capacity too swiftly... And should a country try to compare its ongoing action to that of its neighbours and partners, it will find every reason under the sun to believe that the others are furnishing inadequate efforts. Some countries, however, have recently begun to gauge their actions against the yardstick of the necessary decarbonisation of their economies by 2050—a collective obligation if we aspire to achieve the 2°C target. This new approach is highly promising insofar as it imposes a self-regulated and much more restrictive discipline, the idea being to gradually establish it as the benchmark reference when a country explains its reasons for viewing its contribution as “ambitious and fair”.

CONCLUSION: WHAT POSSIBLE AGREEMENT IN PARIS?

The task that awaits the negotiators in Paris is not a simple one: they will need to reach an agreement on a new model that is more procedure-based than demonstrative. Moreover, if they are successful, the most challenging task may be how to “sell” this agreement to the general public. It may indeed be hard to appreciate at first glance the worth of an agreement in which the figures will unequivocally belie the negotiators’ positive discourse on the new dynamic that the agreement should trigger. Yet, a positive public response (from the media, private sector, citizens and NGOs) is key to materialise the agreement’s long-run usefulness and to anchor a political dynamic.

Yet many points are still far from certain and, today, it is not easy to judge which ones will be crucial to affording this wager a chance of success.

More particularly, the universality of rules and the cyclical renegotiating approach still prompt a great deal of reservation from countries that view the risk of a carry-over effect as a very real danger. What is more, many diplomats are keen to obtain a successful outcome in what is proving to be a difficult period. They could well be content with a much downgraded version of the delicate edifice that others are working hard to build.

Ideally, Paris will lead to a threefold agenda for the years to come:

1. Finalise and put into practice the different rules and tools that will certainly only reach the drafting stage at COP21.
2. Initiate the implementation of action plans, taking into account the short-term agenda (2020) and INDCs’ programmatic orientations.
3. Commence, very soon, the activities that will inform the review of national contributions before 2020. ■

COP21: building an unprecedented and sustainable agreement

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