

**BLOG POST** January 29th 2016

# Judging the Paris Agreement: A comparison with IDDRI's 10 criteria for success

 Reading time: 17 min

*The **Paris Agreement** adopted by 195 countries on December 12, 2015 has been rightly praised as an undeniable historic landmark in international efforts to address climate change. Indeed, it sets an ambitious target to combat climate change, and establishes a universal, fair, and durable framework for effective global cooperative action on this topic. Governments, civil society, and companies must now seize this framework to maintain the political momentum on climate action and operationalize the principles of action.*

In November 2015, IDDRI set out **10 criteria for success for COP21**. This note compares the outcome of the Conference against these criteria. Doing so helps to show how the Agreement can be qualified as a success.

It is important to qualify that our previous note set the bar at the level of what we thought would be the most ambitious agreement, significantly moving forward global climate governance from the previous status quo while still being politically feasible. More work and research need to continue to be done on ways in which the Agreement could be strengthened over time and on how the climate regime as a whole (comprising but not limited to the UNFCCC) can be strengthened to accelerate climate action.

## 1. Universal Participation

The Paris Agreement became the first universal climate change agreement to spell out precise, substantive, legally binding obligations on countries. This is in contrast with the UNFCCC which only sets up procedural, not substantive obligations for countries (e.g. reporting), and the Kyoto Protocol which only established emission reduction obligations for developed countries. Our November note observed that in the run-up to COP21 there was strong positive momentum toward building a universal agreement. This was manifested in the large number of Intended Nationally Determined Contributions (INDCs) submitted by the UNFCCC before the October 1<sup>st</sup> deadline (147, representing almost 90% of global GHG emissions). This positive momentum was confirmed at COP21. By the end of the Conference, the number of INDCs had risen to 188 (of 195 countries Party to the UNFCCC), covering 98% of global GHG emissions, with INDCs missing from only six countries. The Paris Agreement was also adopted by consensus by 195 countries with no procedural difficulties implying a very strong level of global buy-in into the terms of the Agreement.<sup>[1]</sup> The final text of the Paris Agreement also fulfills another element we had underscored as critical for the Agreement's universality, namely entry into force provisions that met two criteria. Firstly, a sufficient mass of countries should be needed for the Agreement to enter into force. Secondly, the bar should be set so as to facilitate a rapid entry into force of the Agreement. Article 21.1 establishes entry into force as occurring when 55 Parties accounting for over 55 % of global GHG emissions ratify the Agreement. Such a threshold is high enough that the major emitters (i.e. China, United States, and EU) are needed for the Agreement to become effectual, yet at the same time not too high so as to impede rapid entry into force. Widespread participation in the high-level signing event organised by the UN Secretary General in New York on April 22, 2016 would thus send a positive signal in this direction. Adoption of the Agreement into national legal systems (which passes through ratification, acceptance, approval or accession) may take longer depending on the legal and political schedules in each country. Nonetheless, it is possible (and desirable) that the Agreement would enter into force before 2020.

## 2. A legal Agreement, with some binding elements and some non-binding elements

In 2011, countries set themselves the mandate to negotiate and adopt in 2015 an international legally binding agreement on climate change. The Paris Agreement, with its accompanying COP decisions fulfills this mandate, as it meets the requirements stated under the Vienna Convention on the Law of Treaties for a treaty under international law. Our November note had singled out three appropriate areas in the Paris Agreement for binding obligations: (1) on the submission of nationally determined contributions (NDCs) and the pursuit of domestic measures with the aim of achieving their NDCs; (2) on regular revision of NDCs, and (3) on transparency regarding their implementation and achievement. By obligating countries to take on successive commitments and be held accountable to implementing them, binding provisions in these three areas will help drive national implementation.

The text adopted by countries on December 12 imposes obligations upon countries in these three areas, thus allowing us to qualify the Paris Agreement as a success in this respect. On NDCs, Art 4.2 obligates countries “to prepare, communicate, and maintain successive NDCs [...] and pursue domestic mitigation measures with the aim of achieving the objective of such contributions.” As predicted in our previous note, the Agreement establishes an obligation of ‘conduct’ rather than result regarding NDCs—in other words countries are obliged to implement NDCs rather than achieve them exactly—and does so in strong language. On regular revision, Art 4.9 establishes the submission by countries of an NDC every five years, to be informed by a regular global stock-take. On transparency, Art 13.7 establishes all countries' obligation to report regularly on progress toward implementation and achievement of NDCs, while Art 13.11 spells out their obligation to undergo a technical and peer-to-peer review process. It is also important to note that Art 4.3 establishes that subsequent INDCs will represent progress in ambition and reflect the country's highest possible ambition.

## 3. Differentiation: an Agreement applicable to all, yet accounting for the diversity of national circumstances

Our previous paper identified the challenge of creating an agreement that moves beyond the UNFCCC Annexes, yet still accounts for the wide spectrum of different national circumstances, and allows for the consequent necessary differentiation. Our prognosis that this tricky question of differentiation would be resolved not in an overarching manner but element by element proved correct. Indeed, the Agreement does not establish new Annexes but rather nuances the obligations of countries across each of the elements of the Agreement (e.g. mitigation, adaptation, finance), at times specifying differing obligations in line with countries' different national circumstances.

Our November note argued that element-by-element differentiation would likely result in a combination of 'self-differentiation' provisions within a common but flexible framework. This approach to differentiation has made its way into several areas of the Agreement. Notably, the transparency system established by the Agreement is unified (in contrast with the approach to date which was strictly bifurcated between developed and developing countries), yet also provides space for countries to self-differentiate (see point 9 below). We had also argued common principles and political scrutiny would be necessary so as to ensure that similar countries take on similar responsibilities in a flexible differentiation framework. As part of a broader accountability framework, the system of five yearly revisions of NDCs can establish the basis for reciprocity and progressions as countries take on ever higher responsibilities in line with their national circumstances.

#### **4. The 2°C goal**

As it was widely expected, the Paris Agreement reaffirms the goal established at Cancun in 2010 of maintaining global temperature rise to below 2°C (Art 2.1). Our November note remarked that many calls had been made in the run-up to COP21 for an operationalization of this temperature goal, with formulations including a mid-century emissions level and a long-term objective to transition to low-emission and resilient economies during the course of the 21<sup>st</sup> century. The final text operationalizes the temperature goal by establishing a goal to achieve net-zero global emissions between 2050 and 2100 (Art 4.1). Our previous note argued that to be truly impactful and concrete, the operationalized goal should be precise. By allowing no ambiguity as to the necessary direction of travel for GHG emissions, the Paris Agreement's net-zero goal fits this characteristic. This precision in turn serves as a much needed strong signal to the business and financial world.

The Paris Agreement also further specifies the global mitigation goal of Art 2.1 by calling for efforts to limit temperature well below 2°C, with an aspirational goal of maintaining temperature under 1.5°C. This stringent temperature goal has for years been championed by Small Island States, for which it is vital for the survival of their low-lying territories. Its inclusion in the Paris Agreement resulted from the efforts of a 'high-ambition coalition' led by the Marshall Islands, which throughout COP21 garnered support from numerous developed and developing countries across the world. The strong anchoring of the 1.5°C target will keep pressure in the system to raise mitigation ambition.

#### **5. Cycles of action to keep the 2°C target in reach**

As noted in point 2, 188 countries have so far presented an INDC, signaling strong and wide-spread political will. This is especially significant as in early 2015 many expected less than 100 countries to present INDCs that year. As mentioned in our previous note though, while these INDCs undoubtedly accelerate and consolidate climate action, they are insufficiently ambitious for reaching the 2°C goal. Anticipating this gap, many in the run-up to COP21 had called for the establishment in the Paris Agreement of a mechanism whereby which countries regularly revise their national climate ambition upward in a coordinated manner. Our previous note had highlighted five specific elements important for the Agreement to establish if it was to ensure these 'cycles' fulfill the objective of raising ambition over time: (1) an early date for the first revision (ideally in 2020 to not lock in ambition), (2) a periodicity of 5 rather than 10 years, (3) a regular global stocktaking of progress toward global goals, to inform the revision, (4) a clear link

between cycles and the 2°C target, and (5) an invitation for each country to develop a mid-century low-emission strategy, to situate successive NDCs in the context of the long-term transition countries need to undertake.

The inclusion of the concept of cycles in the final text of the Paris Agreement is not anodyne, as it faced much opposition from certain countries until very late on in the negotiations. Furthermore, the Agreement fulfills well four of the five aforementioned elements critical for the credibility of the cycles mechanism. Paragraphs 23 and 24 establish 2020 as the first date at which countries will submit new NDCs. Art 4.9 obligates countries to submit an NDC every five years thereafter, and notes that these subsequent NDCs will be informed by the fiveyearly global stock-take on collective progress developed in Art 14. Art 4.19 invites countries to “formulate and communicate long-term low greenhouse gas emission development strategies”. The one element that could have been strengthened is the link between cycles and the 2°C target. It is only implicit: Art 4.1 notes that countries are to peak and reduce their emissions to reach global net-zero emissions after 2050, and Art 4.3 establishes that each successive NDC is to increase in ambition and represent the country’s highest possible ambition, with high ambition being evidently necessary to reach the 2°C target.

## 6. Adaptation

As the impacts of climate change become ever more visible, there have been increasing calls for the UNFCCC to place a greater focus on adaptation. Our November note outlined three elements that could be included in the Paris Agreement to help it create a more ‘balanced’ climate regime in which mitigation and adaptation share equal footing: (1) define a global adaptation goal in which all countries transition toward resilient economies in line with the warming that can be expected in light of the 2°C goal, (2) invite all countries to develop national adaptation strategies and submit them to the international community, and (3) strengthen the transparency of adaptation progress. The final text adopted on December 12 takes up each of these three elements. Art 2.1 establishes an overarching goal on adaptation, which Art 7.1 develops, noting it has the aim of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal” (Art 7.1). Art 7.9 requires each Party undertake adaptation planning processes and the implementation of adaptation actions, with Art 7.10 and 7.11 requesting countries to periodically submit and update an adaptation communication outlining their actions. This adaptation planning and reporting in turn establishes a basis for the strengthening of adaptation information sharing and tracking, which is complemented by the institution of a periodic global stock-take to review the adequacy and effectiveness of adaptation, as well as overall progress toward achieving the adaptation goal (Art 7.14).

## 7. Loss and damage

Our pre-COP21 note remarked that despite strong mitigation and adaptation action being taken, there is a likelihood that some societies will face significant climate impacts potentially beyond their capacity to adapt. This had led to calls for ‘loss and damage’ to be included in the Paris Agreement, even though the very scientifically, legally and politically complex issues of ‘liability’ have not yet been fully fleshed out. In this context, we had noted that countries might agree to include in the Paris Agreement a recognition of the reality of ‘loss and damage’ if insufficient adaptation and mitigation action is taken, and solidarity to be expressed in terms notably of disaster response, establishment of early warning systems, and measures to deal with climate related migration. The inclusion in the Paris outcome of a full article on loss and damage is more than many expected, and its contents go beyond what we had suggested in our November note. Art 8 not only recognises the potentiality, but the importance of averting, minimising and addressing loss and damage, highlighting sustainable development’s role in reducing loss and damage (Art 8.1). It also keeps alive the Warsaw International Mechanism for Loss and Damage established at COP19 (paragraph 48 of the Decision), noting that it may be enhanced and strengthened in the future (Art 8.2). It urges countries to cooperate and facilitate on loss and damage understanding, action and support (Art 8.3), listing

eight different potential areas including early warning systems, emergency preparedness, addressing slow onset events, improving the resilience of communities, and risk management, etc. (Art 8.4), and establishing a clearinghouse for risk transfer (Decision paragraph 49). The Paris Agreement nevertheless makes clear that Art 8 does not establish a basis for any liability or compensation (Decision paragraph 52).

## 8. Finance

Climate finance is a crucial lever for facilitating the transition toward low-emission and resilient economies. Our November note had highlighted four elements whose resolution at COP21 would be important for the success of the Agreement on this issue: (1) demonstrating sufficient progress and clarity on developed countries' commitment of raising 100 billion USD by 2020, (2) defining a post-2020 climate finance framework, (3) determining the distribution of countries' responsibility in post-2020 climate finance mobilisation, and (4) initiating a broad transition within the financial sector from high-carbon toward low-carbon investments.

The Paris Agreement takes up and mostly resolves each of these elements. The \$100 billion goal is addressed in several ways. Outside the formal negotiations, the many financial declarations prior to and during COP21 have helped to create assurances that the goal would be met. The Paris Agreement also anchors the 100 \$billion goal establishing it as a continued floor for developed countries' efforts on financial mobilisation from 2020. The Paris Agreement also sets out the key principles for the post-2020. It establishes that a new target for collective mobilisation of climate finance will be decided in 2025, as part of a global effort. It reaffirms the leadership of developed countries in providing and mobilising climate finance, and establishes that post-2020 mobilisation of climate finance will be part of a global effort to which developed countries able to do so are encouraged to contribute. Finally and most importantly, the Paris Agreement recognises that the shift to low-emission, resilient societies will necessitate not just several \$100 billion USD in new climate finance, but rather a displacement of trillions of current high-carbon investments around the world toward low-carbon alternatives. The Paris Agreement includes an overarching financial objective to "[make] finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development" (Art 2.1), and thus strongly signals to the business and financial sector the commitment of countries to move the world toward a low-carbon future.

## 9. Transparency and accountability

Our November 2015 note highlighted the issue of transparency and accountability as critical in the negotiations. At stake is the creation of a system that fairly and effectively tracks countries' progress toward their commitments, thus keeping them accountable to their promises and providing a picture of global progress toward a low-emission future. In light of this, three inclusions on transparency in the Paris Agreement are particularly significant: (1) the establishment of a single, unified but flexible transparency system for all countries; (2) a legal obligation on all countries to report on progress towards the implementation and achievement of their NDC; (3) the recognition of the importance of a sound transparency system in terms of building confidence in collective action.

In line with our pre-COP21 analysis, transparency remained a complicated, unresolved topic until the very end of the Paris Summit, with the difficulty centering on whether to merge (or not) the previously bifurcated reporting and review processes. Such a shift would concretise a transition away from the strict and un-nuanced division of responsibility between developed and developing countries. In our view, a unified system which nevertheless acknowledges countries' different starting points by allowing them flexibility is the most equitable way to keep all countries accountable. Indeed, in this system each country could report and be reviewed against the type of commitment it took instead of having only one level accountability for all developed countries, and one for all developing countries, indiscriminate of their commitment or level of development. Against this background, it is very significant that the Paris Agreement establishes a unified transparency system "with in-built flexibility, which takes into account Parties'

different capacities and builds upon collective experience” (Art 13.1).

The Paris Agreement also fulfills the two other elements we had highlighted as important on transparency. It obligates countries to track progress toward their NDC (Art 13.7), with methodological consistency across NDCs and reporting requirements (Decision paragraph 95). This will help ensure equitable accountability across different types of NDCs (e.g. economy-wide, deviation from Business-As-Usual scenarios, sectoral, etc.). It will also be facilitative rather than punitive (Art 13.3), which enables it to act as a system of ‘early warning’ to ensure that the international community can track in a forward-looking way countries’ progress towards their contributions.

## 10. Non-state actors

In the run-up to Paris, a range of non-state actors (NSA), notably businesses and local governments, have been developing their own initiatives to tackle climate change. This welcome development reflects the enormity of the problem, and the multiple scales on which action is required, and at which it is starting to happen. The run-up to COP21 and the summit itself saw a large number of significant and ambitious voluntary pledges and initiatives announced. A few of these initiatives include: the Breakthrough Energy Coalition, the largest ever multibillion dollar clean energy fund, an announcement of 53 major international companies to shift to 100% renewable energy, and 114 major companies to take on “science based” targets aligned with the 2°C goal, 90 cities which adopted at least a 80% percent by 2050 greenhouse gas reduction goal, and 436 mayors joined a global Compact of Cities, launched at the 2014 United Nations Climate Summit, to support worldwide municipal ambition on climate. A more comprehensive list of initiatives can be found [here](#).

Our November note remarked the Paris Agreement should affirm that the UNFCCC would remain the centre for state action, all while welcoming voluntary action and helping to provide an overall direction and coherence to the multitude of actions taken in other contexts. Concretely, we noted that it could recognise the action that has been taken and pledged by NSAs, and establish the basis for a system for making sure that the effort to mobilise NSAs persists after Paris, including through better transparency and accountability. The Paris Agreement fulfills some of these points. It welcomes NSA efforts to increase climate action and invites them to register actions on the Non-State Actor Zone for Climate (NAZCA) platform created at COP20 to track these initiatives (Decision paragraph 118). The maintaining of the NAZCA platform is a good start for the UNFCCC’s efforts to help continue mobilise voluntary climate action after COP21, yet further specifics about how the platform will be governed and evolve over time remain to be developed. In turn, Paragraph 121 of the Decision agrees to convene before 2020 a high-level event to notably serve as an occasion for NSAs (as well as public-private partnerships) to report back on implementation of recent initiatives and coalitions, and to announce new ones. While this does not explicitly resolve the question of transparency and accountability of NSA actions, it is a moment civil-society can seize on to keep track of how NSAs are doing regarding the initiatives announced around COP21, and more generally concerning NSAs’ voluntary climate action.

**[1]** Only Nicaragua asked to have its discontent formally recognised in a *note verbale*, subsequent to the adoption of the Agreement.