

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

Alexandra Deprez, Thomas Spencer (IDDRI)

In November 2015, IDDRI set out success criteria for COP21 across ten elements: (1) universal participation, (2) a legally binding agreement, (3) differentiation, (4) the 2°C goal, (5) cycles of action to keep the 2°C target in reach, (6) adaptation, (7) loss and damage, (8) finance, (9) transparency and accountability, and (10) non-state actors.¹ The aim was to propose criteria that would significantly move forward global climate governance from the previous *status quo* while still being politically feasible.

This note compares the Paris Agreement adopted at COP21—praised as an undeniable historic landmark of international efforts to address climate change—against these criteria. Doing so helps to show how the Agreement can indeed be qualified as a success.

1. <http://www.blog-iddri.org/2015/11/17/what-to-look-out-for-in-the-paris-agreement-10-key-points/>

KEY MESSAGES

- **The Paris Agreement is universal, legally binding and differentiated.** (1) It was adopted by consensus by 195 countries, implying a very strong level of global buy-in. (2) It meets the requirements for a treaty under international law, and imposes obligations upon countries regarding NDCs (submission, implementation, transparency). (3) It does not establish new Annexes (cf. Kyoto Protocol) but rather nuances countries' obligations across each of Agreement's elements (i.e. mitigation, adaptation, support), at times specifying differing obligations in line with countries' different national circumstances.
- **The Paris Agreement is ambitious.** (4) It reaffirms the goal of maintaining global temperature rise to below 2°C, and operationalizes this target by establishing a goal to achieve net-zero global emissions between 2050 and 2100. It also calls for an aspirational goal of maintaining temperature under 1.5°C. (5) It includes the concept of cycles, whereby countries will regularly revise their national climate ambition upward in a coordinated manner, (8) and an overarching financial objective, strongly signaling to business and investors countries' commitment toward a low-carbon future. (9) Finally, it establishes a single, unified but flexible transparency system for all countries.
- **The Paris Agreement sets up a framework for action beyond mitigation and the UNFCCC.** (6) It establishes an overarching goal on adaptation, which can help create a more 'balanced' climate regime in which mitigation and adaptation share equal footing. (7) Even though the very scientifically, legally and politically complex issues of 'liability' have not yet been fully fleshed out, the inclusion in the Paris outcome of a full article on loss and damage is more than many expected. (10) The maintaining of Non-State Actor Zone for Climate (NAZCA) platform created at COP20 to track non-state actors' initiatives shows that the UNFCCC, while remaining the center for state action, aims to help to provide an overall direction and coherence to the multitude of actions taken in other contexts.

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Institut du développement durable
et des relations internationales
27, rue Saint-Guillaume
75337 Paris cedex 07 France

1. UNIVERSAL PARTICIPATION

The Paris Agreement is the first universal climate change agreement to spell out precise, substantive, legally binding obligations on all countries. The submission by the October 1st UNFCCC deadline of 147 Intended Nationally Determined Contributions (INDCs) covering 90% of global GHG emissions, demonstrated strong positive momentum toward a universal agreement. Indeed, it far exceeded experts' estimates that less than 100 countries would submit INDCs in 2015. This global buy-in and political will to collectively tackle climate change political was confirmed during the summit, notably through (1) the largest ever gathering of heads of state (150), (2) INDCs submission rising to 188 and 98% emissions covered, and (3) a smooth adoption of the Agreement with no procedural difficulties. By establishing entry into force of the Agreement once 55 Parties covering 55% of GHG emissions ratify it (Article 21.1), the final text adopted on December 12, 2015 fulfills another element we had underscored prior to COP21 as critical for ensuring the Agreement's universality: provisions high enough that the major emitters (i.e. China, United States) are needed for the Agreement to become effectual, yet not too high so as to impede rapid entry into force. Widespread participation in the April 2016 high-level UN signing event will help confirm positive commitment; the Agreement's domestic adoption may take longer depending on countries' legal and political schedules. Nonetheless, it is plausible (and desirable) that the Agreement enter into force before 2020.

2. A LEGALLY BINDING AGREEMENT

The Paris Agreement meets the requirements to be considered as a treaty under international law, thereby fulfilling countries' 2011 negotiation mandate to adopt an international legally binding climate change agreement by 2015. The text adopted on December 12 imposes obligations regarding nationally determined contributions (NDCs) in three areas we identified prior to COP21 as essential for driving national implementation (which itself will be the most important measure of the Agreement's ultimate success). Countries are first obligated to submit successive NDCs and pursue "domestic mitigation measures with the aim of achieving the objective of such contributions" (Art 4.2). Being essential to ensure the United States' ability to ratify the Agreement, this formulation of an obligation of 'conduct' rather of result (i.e. achieving NDCs) was expected. The Agreement also establishes a regular revision of NDCs every five years (Art 4.9), upward in ambition (Art 4.3), and informed by a global stocktake

(Art 4.9). It finally obligates all countries to regularly report on progress toward implementation and achievement of NDCs (Art 13.7), and undergo a technical and peer-to-peer review process (Art 13.11).

3. DIFFERENTIATION

In our November note we identified the challenge of creating an agreement that would move beyond the UNFCCC Annexes (which strictly separate developed and developing countries), while still accounting for the wide spectrum of national circumstances and differentiating among countries accordingly. Our prognosis that the tricky question of differentiation would be resolved not in an overarching manner proved correct: the Agreement does not establish new Annexes but nuances countries' obligations across each element (e.g. mitigation, adaptation, finance), in line with their specific national circumstances. Prior to COP21 we assessed that this element-by-element differentiation would likely result in a combination of 'self-differentiation' provisions within a common but flexible framework. This approach to differentiation made its way into several areas of the Agreement, notably the transparency system, which for the first time under the UNFCCC goes beyond separate reporting and review processes for developed and developing countries, to establish a unified system with in-built flexibilities for countries that need it (see point 9). We had also argued that combined with common principles, political scrutiny was necessary for ensuring countries that are alike take on similar responsibilities in a flexible differentiation framework. The revision of NDCs every five years at a high-level political moment establishes a basis for this.

4. THE 2°C/1.5°C GOAL

As widely expected, the Paris Agreement reaffirms the goal of maintaining global temperature rise to below 2°C (Art 2.1). Prior to COP21 we remarked that many called for this temperature goal to be operationalized in the Paris Agreement. We argued that for this operationalized target to be truly impactful, it had to be precise. Out of the several formulations proposed in previous draft texts (including a mid-century emissions level and a long-term objective to transition to low-emissions and resilient economies throughout the 21st century), the final text retains a goal "to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century," which can be interpreted as reaching net-zero global emissions between 2050 and 2100 (Art 4.1). Leaving no ambiguity as to the necessary direction

of travel for GHG emissions, this precise target provides a much needed strong signal to businesses and investors. Throughout COP21 a number of developed and developing countries also gathered around a 'high-ambition coalition' led by the Marshall Islands, ultimately succeeding in including an aspirational 1.5°C limit in the Agreement (Art 2.1). This strongly anchored target—for years championed by small island states as vital to their survival—may help pressure the system to raise mitigation ambition.

5. CYCLES OF ACTION TO KEEP THE 2°C/1.5°C TARGET IN REACH

Although the widespread political will demonstrated by the 188 INDCs is to be celebrated, taken together these commitments are not sufficiently ambitious to reach the 2°C goal. Anticipating this gap, many in the run-up to COP21 called for the Paris Agreement to obligate countries to regularly revise their national climate ambition upward in a coordinated manner. The inclusion of the 'cycles' concept in the final text of the Agreement is not anodyne, as it faced a strong opposition from certain countries until the last days of the negotiations. Furthermore, the Agreement fulfills well four of the five elements we had highlighted prior to COP21 as essential for ensuring the ability of cycles to raise ambition over time: (1) it establishes an early first revision date (2020) (para 23 and 24) which will help avoid low ambition lock-in, (2) it obligates countries to submit an NDC every five years thereafter, (3) informed by the five-yearly global stocktake on collective progress (Art 4.9), and (4) it invites countries to "formulate and communicate long-term low greenhouse gas emission development strategies" (Art 4.19), helping them situate their successive NDCs within the necessary transition toward a very low-carbon future. In our view, the link between cycles and the 2°C target could have been made more explicit—the final text only states that countries are to peak and then reach global net-zero emissions after 2050 (Art 4.1), and that each successive NDC should rise in ambition and represent the country's highest possible ambition (Art 4.3).

6. ADAPTATION

With the impacts of climate change becoming ever more visible, calls for an increased focus on adaptation in the UNFCCC have become increasingly vocal. The Paris Agreement takes up the three elements we advanced prior to COP21 would help the Paris Agreement place mitigation and adaptation on a more equal footing, thus constructing a more 'balanced' climate regime. Firstly, the Agreement establishes an overarching goal on adaptation

(Art 2.1). Its aim, specified as "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), is close to the one we had suggested of having all countries commit to making their economies resilient to 2°C warming. Secondly, it requires each Party to periodically submit adaptation communications (Art 7.10 and 7.11) outlining their adaptation planning processes and actions (Art 7.9). Thirdly, it strengthens the tracking of adaptation progress by including adaptation under the transparency system for the first time (Art 13.5), and by establishing the global stocktake review the adequacy and effectiveness of adaptation actions and support, and overall progress toward achieving the adaptation goal (Art 7.14).

7. LOSS AND DAMAGE

Prior to COP21 we highlighted that some societies may face significant climate impacts beyond their capacity to adapt even if strong mitigation and adaptation action is taken globally. We noted this was leading to calls for 'loss and damage' to be included in the Paris Agreement, despite the fact that very complex scientific, legal and political issues of 'liability' have not yet been fully fleshed out. In this context, we assessed that countries might agree to recognise the risk of loss and damage if insufficient adaptation and mitigation action is taken, as well as the need for solidarity, expressed for example through disaster response, early warning systems, and measures to deal with climate-related migration. The inclusion in the Paris Agreement of a full Article on loss and damage is more than many expected, and its contents go beyond our prognosis. Not only does it recognise the potentiality of loss and damage, but underscores the importance of averting, minimizing and addressing it, notably through preventive sustainable development (Art 8.1). It also urges countries to cooperate and facilitate on loss and damage understanding, action and support (Art 8.3), including through early warning systems, emergency preparedness, better community resilience, etc. (Art 8.4). The Agreement nevertheless clarifies that Article 8 does not establish a basis for any liability or compensation (Para 52)—this was the price to pay to ensure developed countries' acceptance of this Article.

8. FINANCE

Climate finance is a crucial lever for facilitating the transition toward low-emission and resilient economies. The Paris Agreement mostly addresses the

four elements we viewed as critical to be resolved during the Paris Summit for an agreement to be reached. Firstly, the many financial declarations by developed countries prior to and during COP21, and the Agreement's inclusion of a USD 100 billion floor for developed countries' post-2020 financial mobilisation efforts, helped reassure developing countries of the commitment of developed countries to raising USD 100 billion by 2020. Secondly, the Agreement sets out key principles for the post-2020 finance regime, notably scheduling for 2025 the development of a new collective climate finance mobilisation target. Thirdly, it clarifies countries' responsibilities on post-2020 climate finance, reaffirming developed countries' leadership on provision and mobilisation, and encouraging developing countries with the capacity to do so to contribute to the global mobilisation effort. Finally, the Agreement recognises that shifting to low-emissions, resilient societies ultimately necessitates not just investing several hundred billions USD of new climate finance, but rather shifting trillions of USD from high-carbon investments to low-carbon alternatives. By establishing early on an overarching financial objective to "[make] finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development" (Art 2.1), the Agreement strongly signals to businesses and investors the international community's commitment to move the world toward a low-carbon future.

9. TRANSPARENCY AND ACCOUNTABILITY

Prior to COP21 we highlighted how essential establishing a robust and fair transparency regime would be for the Paris Agreement's success. At stake was the creation of a system to keep countries accountable to their commitments and provide a picture of global progress toward a low-emission future, with the ultimate aim of building trust in collective action and raising ambition. In line with our prognosis, 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 reporting and review processes. The consensus countries found to establish a unified transparency system "with in-built flexibility, which takes into account Parties' different capacities"

(Art 13.1) is significant in this context, as in our view it will help ensure equitable accountability across very diverse countries much better than would a bifurcated system which separates developed and developing countries in two tracks and asks the same requirements across all developing countries, despite the fact that they form a heterogeneous group. The Agreement also takes up the other elements we highlighted as important. It obligates countries to track progress toward their NDC (Art 13.7), with methodological consistency across NDCs and reporting requirements (Para 95), thus helping ensure equitable accountability across different types of NDCs (e.g. economy-wide, deviation from business-as-usual scenarios, sectoral, etc.). It is also facilitative rather than punitive (Art 13.3), acting as an 'early warning' system for the international community to track in a forward-looking manner countries' progress towards their contributions.

10. NON-STATE ACTORS

Many significant and ambitious voluntary pledges and initiatives were announced prior to and during COP21. The rise of climate action by non-state actors (NSA) (e.g. businesses, cities, subnational jurisdictions) to an unprecedented level is a welcome development in light of the challenge's enormity and the consequent need for action at multiple scales. In our November note we argued that the Paris Agreement should reaffirm the UNFCCC as the main locus for state action, all while welcoming voluntary action and helping to provide overall direction and coherence to the many NSA actions. The three points we had highlighted as important are partially taken up by the Agreement. Firstly, it recognises NSAs' efforts to increase climate action, inviting them to continue to register actions on the Non-State Actor Zone for Climate (NAZCA) tracking platform created at COP20 (Para 118). While it maintains the NAZCA platform, it does not clarify its governance moving forward. Finally, it partially improves transparency and accountability of NSA action—it establishes a high-level convening prior to 2020 for NSAs to report on existing initiatives and announce new ones (Para 121), providing civil society with an opportunity to exert further pressure and demand accountability. ■