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## 4 The state of climate negotiations

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*Today, with little time remaining before the 21st meeting of the Conference of Parties to the UNFCCC in Paris, negotiators confront a disorganised text that is far too long and replete with conflicting proposals that cross red lines for major players. Nonetheless, political leaders express confidence that a deal is achievable. Unlike the task of Kyoto – producing politically feasible mitigation targets for developed nations – the post-2020 agreement covers (at least) six themes: mitigation for all nations, adaptation, finance, technology transfer, capacity building and transparency. Residual acrimony and distrust from Copenhagen hamper the process which must resolve many complex, contentious issues, such as legal form and compliance, the role (or not) for greenhouse gas markets and offset projects, intellectual property rights, compensation for loss and damage, transparency and associated measurement, and reporting and verification and review procedures. Overshadowing all remains the question of how the principle of common but differentiated responsibilities will manifest throughout the agreement, e.g. from mitigation to reporting and review to finance.*

*Some aspects are solidifying. Mitigation efforts will not be negotiated; rather, they are being submitted (as Intended Nationally Determined Contributions) and, ultimately, recorded, perhaps dropping the ‘I’ to become NDCs. Total financial aid appears set by the Copenhagen pledge of developed nations to mobilise US\$100 billion per year by 2020. Also, negotiators appear resolved to create a durable framework based on cycles of review and renewal over intervals of, perhaps, five or ten years.*

<sup>1</sup> The views in this chapter are based on personal observations and conversations with colleagues from national delegations, business, academia, intergovernmental organisations, think tanks and other observers.

*However, the Paris Agreement appears unlikely to fulfil the long-established narrative to be 'on track' to limit warming to less than 2°C (or 1.5°C). Only recently have political leaders begun to temper expectations. They will need to manage expectations thoughtfully to avoid a backlash from a range of nations, stakeholders and media, and to restore the credibility of the United Nations Framework Convention on Climate Change as an effective process.*

## **1 Introduction**

With only months remaining before the 21st meeting of the Conference of Parties to the UNFCCC in Paris (COP21), negotiators find themselves in a familiar spot: at loggerheads, with an unstructured, disorganised text that is far too long and replete with conflicting proposals that cross red lines for various nations. Nonetheless, most delegations appear confident that political will exists to reach an agreement.

The agreement faces challenges to achieve consensus and public acceptance. Little time remains to resolve contentious issues, including ambition in mitigation and finance, legal form, how to reflect the principle of common but differentiated responsibilities (CBDR), the future of markets and offsets, and treatment of intellectual property rights (IPR). The clock may simply run out, especially if reluctant factions use procedural tools to delay progress. Recent COP meetings ended with controversy as disgruntled nations strenuously objected to declarations of consensus. Some have banded together, so objections may be more visible and difficult to ignore in Paris. The greatest challenge will be to restore confidence that the UNFCCC can be a credible and effective vehicle to manage the global response to climate change.

The feasible deal in Paris looks to be modest, not consistent with the long-established narrative to avoid climate catastrophe by putting the world 'on track' to limit warming to less than 2°C (or 1.5°C) (Jacoby and Chen 2014). Only recently have political leaders sought to lower expectations. It may be too late. Forces that created powerful external pressure that led to the painfully visible, far-reaching failure in Copenhagen only six years ago are rallying again, calling for a far more ambitious deal. Consequently, the achievable deal may prove to be unsatisfactory to many nations, advocacy groups, the media and the public.

In this chapter, Section 2 provides a scene set on developments since milestone meetings marking success in Kyoto (1997) and failure in Copenhagen (2009); Section 3 describes major issues in the negotiation; and Section 4 discusses steps after Paris.<sup>2</sup>

## 2 Scene set

The dynamic and discussions for the post-2020 agreement bear little resemblance to those at the time of Kyoto or Copenhagen. Those focused on national mitigation targets; Paris will not. Mitigation efforts will be set in advance through domestic deliberations, and submitted before Paris as Intended Nationally Determined Contributions (INDCs) that contain voluntary, self-defined proposals for mitigation (and other efforts).

Kyoto sought agreement on politically feasible, legally binding mitigation targets for developed nations and the establishment of market mechanisms based on emissions trading and credits from offset projects. As with the UNFCCC, Kyoto fully embraced CBDR. Developed countries (listed in Annex 1) took on mitigation obligations and those in Annex 2 agreed to provide aid; developing countries (non-Annex 1 Parties) were promised financial support and exempted from mitigation commitments.

The Bali Mandate (2007) provided a broader remit for two negotiations to be completed in Copenhagen. Bali set 2009 as the deadline for the Ad Hoc Working Group on Further Commitments for Annex 1 Parties (AWG-KP) to prepare a second Kyoto commitment period (KP CP2). Bali also launched negotiations under the Ad Hoc Working Group on Long term Cooperation (AWG-LCA) for a comprehensive, new agreement involving all Parties. In an important (potential) breakthrough, Bali signalled the possibility for the evolution of CBDR: AWG-LCA refers to *developed* and *developing* nations and to *all Parties*, rather than to nations grouped as Annex 1 and non-Annex 1. However, this will require contentious change from the writ of the 1992 UNFCCC.

2 For a more detailed discussion of the negotiations, see Flannery (2015).

## 2.1 Copenhagen and the demise of the top-down approach

Ahead of Copenhagen, a number of actors – including European nations, the Alliance of Small Island States (AOSIS), Least Developed Countries (LDCs), the UNFCCC Secretariat, advocacy groups, foundations and others desiring strong action – encouraged public pressure and media attention to galvanise political momentum. However, even before COP15, at the Asia Pacific Economic Cooperation summit in Singapore leaders of many nations (including the US and China) announced that they would agree only to a political deal based on voluntary national pledges, rather than the legally binding outcome specified in Bali.<sup>3</sup> In the resulting Copenhagen Accord, developed nations also agreed by 2020 *to mobilise* US\$100 billion per year in financial aid to developing nations.

Outside UNFCCC procedures, Heads of State from a handful of nations created the Copenhagen Accord. Many nations excluded from those deliberations voiced profound objections to what they regarded as a betrayal of the UNFCCC process. Distrust continues not only over unmet expectations for mitigation and financial aid, but also from concerns over transparency, inclusiveness and commitment to the multilateral process.

Copenhagen dealt a deathblow to the top-down approach in which nations negotiated terms for one another's actions as the basis for agreement. Going forward, national pledges will be based on voluntary submissions that reflect national circumstances and priorities – a situation that I describe as a mosaic world (Flannery 2014). In the mosaic world, this bottom-up approach encourages participation by all nations that will be essential for long-term effort. However, just as the top-down approach cannot force effort on unwilling nations, so too voluntary contributions appear unlikely to deliver aggregate outcomes aligned with ambitious long-term goals.

<sup>3</sup> See "APEC leaders drop climate target", BBC News, 15 November 2009; and "APEC Concedes Copenhagen Climate Treaty Out of Reach", Bloomberg News, 16 November 2009.

## 2.2 Developments shaping negotiation of the post-2020 agreement

After Copenhagen, Parties spent years seeking to restore confidence in the multilateral process. As well, the negotiating landscape became more complex as COP 17 established the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) with efforts in two workstreams: 1) negotiating by 2015 a comprehensive, global agreement to take effect in 2020; and 2) enhancing ambition of mitigation (and finance) in the period before 2020. Finally, in Doha in 2012 COP18 adopted a 2nd Kyoto commitment period (2013-2020), bringing AWG-KP to a close, and terminated AWG-LCA, leaving ADP as the sole ongoing negotiation.

Many essential aspects in the Bali Mandate remained unresolved. These orphans found homes in the permanent Subsidiary Bodies or ADP. Mechanisms for mitigation moved from LCA to the Subsidiary Body for Scientific and Technological Advice (SBSTA). Reform and extension of the Clean Development Mechanism (CDM) landed in the Subsidiary Body for Implementation (SBI).

Several new national groups now play important roles in the negotiations. Before Copenhagen, positions were characterised largely by the views of the EU, the Umbrella Group (comprising most of the non-EU developed nations), and the Group of 77 and China (G77 & China) representing developing nations. At and after Copenhagen, other groups emerged. In particular, significant differences divide G77 & China. BASIC nations (Brazil, China, India and South Africa) understand that demands by AOSIS and LDCs – to limit warming to less than 2°C (or 1.5°C) – would require major efforts by them, and soon, that could threaten their rapidly growing economies. Important divisions also exist on matters such as treatment of IPR, deployment of Carbon Capture and Storage (CCS), markets and efforts to protect and expand forests. The Like Minded Developing Countries (LMDCs) – including Bolivia, China, Cuba, Egypt, India, Iraq, Iran, Malaysia, Nicaragua, Philippines, Saudi Arabia, Thailand, Venezuela and others, but not Brazil or South Africa – strongly oppose the evolution of CBDR; more generally, they oppose the introduction of new concepts or terms that change or reinterpret the Convention.

Changes outside the UNFCCC have had even greater impact. These include: the dramatic shift in emissions growth to major developing nations; the recession and

ongoing financial crises; the impact of the Fukushima disaster on Japanese nuclear policy (followed shortly afterwards by Germany's reaction); and the technology revolution in North American production of gas and oil. They have altered the political, economic and technological landscape and shifted priorities in many nations.

### **3 Issues under negotiation in the post-2020 agreement**

ADP has many consequential, contentious matters to resolve. The agreement will incorporate six themes: mitigation, adaptation, transparency, finance, technology transfer and capacity building – the latter three jointly referred to as ‘means of implementation’. Developing nations are pushing to add a seventh: compensation for loss and damage. Parties must also address framing issues including: long-term objectives, legal form and compliance, establishing the framework to update commitments, and how to reflect crosscutting principles (especially CBDR).

#### 3.1 Mitigation: INDCs, mechanisms, offsets and carbon pricing

Nothing more strongly signals the UNFCCC's transition to a bottom-up process than the decision to convey proposed actions in advance through INDCs. INDCs alter the dynamic of the negotiation by essentially removing bargaining over mitigation from the immediate negotiation – though perhaps ongoing discussions, even after Paris, may affect final proposals. Also, they shift the burden of defining CBDR – for mitigation – to nations themselves, asking them to self-declare why their INDC is appropriate and ambitious, according to their national circumstances.

Developed nations contended that INDCs should focus solely on mitigation. Developing countries insisted that they should detail contributions for all six elements, especially means of implementation. By late July, 20 nations and the EU (covering 28 member states) had submitted INDCs. Submissions vary in scope, content and timing, making comparisons difficult (see the chapter by Aldy and Pizer in this book, and also Aldy and Pizer 2015b).

Many nations wanted ADP to conduct an ex ante review of INDCs, but others (notably LMDCs) objected. Nonetheless, many governments, academics and think tanks will

review and analyse INDCs. These have several purposes, such as to understand each national proposal, to assess comparability and to evaluate aggregate global outcomes.<sup>4</sup> Apparently, *intended* proposals will become *final* only when nations submit them with their instrument of accession. If so, ex ante review could extend for several years before 2020.

Parties (and business) hold a range of views regarding international markets. Developing nations argued that, with the low levels of mitigation ambition in KP CP2, there is no need for new approaches at this time. Some developing nations oppose any future role for markets and some developed nations contend that they need no permission from the UNFCCC to create and utilise international markets. Neither the US nor the EU called for international markets at this time.

International carbon, actually GHG, markets have two aspects: emissions trading and offsets (see the chapters in this book by Stavins and by Wang and Murisic for perspectives on carbon markets). It remains unclear whether offsets administered under the UNFCCC will exist post 2020. Activities conducted through bilateral agreements may be more effective (both less bureaucratic and open to a wider range of projects) than CDM-like approaches. For example, Japan has proposed a Joint Crediting Mechanism<sup>5</sup> conducted through bilateral agreements to facilitate the diffusion of low-carbon technologies, and has signed agreements with 13 developing nations to do so.

Broadly, the ADP market debate includes three possibilities: 1) no markets; 2) an expanded role for the UNFCCC with authorized offsets as an extension of the CDM; or 3) nations may create and use markets without any enabling decision by the UNFCCC, though encouragement would be welcome.

Carbon pricing is not an integral part of ADP discussions. Domestic political institutions are unlikely to cede pricing authority to an international process. Virtues assigned to a global carbon price are not relevant to the real world where nations will implement a variety of policies, including no price at all. Business support (or not) for domestic programmes will depend on design – e.g. covered emissions, cap and trade or tax,

4 See Aldy and Pizer (2015b) for a discussion of comparability, metrics and review.

5 For more details, see <https://www.jcm.go.jp>

exemptions, revenue use, compensation, border adjustments, and so on – as well as interactions with other nations, many without carbon pricing or markets.

Unequal pricing raises questions regarding carbon leakage, competitiveness and border adjustments. The G77 & China firmly oppose border adjustments. Many developed nations support them to protect energy-intensive, trade-exposed industries and labour. Lately, the use of carbon clubs (Nordhaus 2015) has emerged for countries with pricing to induce others to join. They encourage participation by penalising free riders. Some in business welcome such approaches; others fear further complicating international trade. They prefer to use trade as a carrot, as in the environmental goods negotiations, rather than a stick (or club).

### 3.2 Adaptation, and loss and damage

Previous UNFCCC decisions place adaptation on an equal footing with mitigation. They call for nations to develop adaptation plans and for aid to apply equally to mitigation and adaptation. However, process and procedures remain unclear both to raise and to disburse funds.

Compensation for loss and damage has become a major stumbling block, with strong support from developing nations and resistance from developed nations. COP17 agreed to address loss and damage as an element of adaptation. Nevertheless, developing countries have raised compensation an issue in ADP. Discussions have not at all addressed the thorny issue of ‘attribution’ of specific natural events or incremental damages to human-induced climate change.

### 3.3 Transparency, MRV, and ex post review of effort

Transparency requires clear commitments, and methodologies for MRV and review of actual performance (see the chapter by Wiener in this book). While nations have long experience with GHG inventories, much work remains to characterise contributions of developing countries that may apply only to specific sectors of their economy, or be based on improvements over *business as usual* (see the chapter by Aldy and Pizer in this book, and Aldy and Pizer 2015b). Similarly, it may be challenging to design MRV

for finance based on concepts to mobilize \$100 billion per year by 2020 from public and private sources. Differences exist on how CBDR will apply to MRV and review processes.

Recently, recessions, financial crises, natural disasters, and unanticipated technology revolutions have caused national emissions to be lower or higher than anticipated. Ex post analyses, especially over short periods, will need to account for such unexpected developments.

### 3.4 Means of implementation: Finance, technology and building capacity

Negotiations include four areas where developing nations seek assistance. They request financial aid to support their actions to mitigate and adapt to climate risks, and compensation both for the impacts on them from mitigation measures in developed countries and for damages from climate change. Arguments have been made that claims in each of these areas already amount to hundreds of billions of dollars per year, and that they will grow in the future.<sup>6</sup>

In general, climate finance poses significant challenges (see the chapter by Buchner and Wilkinson in this book). Moreover, while the public is aware of the debate surrounding finance for domestic action, they are largely unaware of the scale of aid under discussion. The pledge of \$100 billion per year seems both difficult to meet and far too little.

IPR has become a matter of great controversy. Developed nations stress their position that the UNFCCC should not address IPR – competent bodies (the WIPO and the WTO) already exist for such discussions. Private-sector representatives (at least those from developed nations) argue that IPR is essential to motivate R&D and to enable technology dissemination. Developing countries, led by India, argue that climate-friendly technologies should be a public good.

<sup>6</sup> For mitigation alone, Jacoby et al. (2010) found that achieving the G8 goal of halving emissions by 2050 could require wealth transfers to developing nations of over \$400 billion per year by 2020, rising to \$3,000 billion per year by 2050.

### 3.5 Legal form and compliance

ADP is working to *develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties*. Parties hold very different views on legal form. Many, perhaps most, call for an agreement that is legally binding in all aspects and with strong compliance provisions. For others, notably the US, legal form and obligations could pose an insurmountable barrier to participation. In the US view, nations have an obligation to submit proposals and report progress, but not to achieve outcomes. Starkly, the critical choice is between: commit and comply, or pledge and report. In either case, layering on of durable cycles (see Section 3.7) adds components to review and renew.

### 3.6 Objectives and long-term goals

The UNFCCC contains the well-known objective of stabilising GHG concentrations at levels that prevent dangerous human interference with the climate system. Additional mitigation proposals include: limiting warming to 2°C (or 1.5°C), a year for global emissions to peak, a reduction in annual emissions by a given year, and net zero emissions by 2100. It is unclear what status a goal would have – would it be aspirational, or would it have implications for action if the goal were not met?

### 3.7 A durable framework based on periodic cycles

Negotiators are discussing a durable framework for future commitments based on periodic cycles, perhaps at intervals of five or ten years. A tension exists between providing credibility to plan and implement investments and other actions, favouring a longer cycle, or creating flexibility to ratchet up commitments more rapidly, which may favour shorter periods. Cycles will pose challenges for institutional linkages and timely availability of information (Flannery 2015), for example, several nations call for the Intergovernmental Panel on Climate Change (IPCC) to provide assessments to inform periodic updates.

### 3.8 Workstream 2: Enhancing pre-2020 ambition

Workstream 2 has a prominent place, especially for developing nations. As a demonstration of good faith, they sought tangible evidence that developed countries would increase ambition in mitigation and finance before 2020. Developed countries have not done so. Instead, consideration has shifted to technical expert meetings (TEMs) that focus on opportunities in areas such as CCS, renewable energy and energy efficiency, rather than establishing new commitments that actually increase pre-2020 ambition.<sup>7</sup>

## 4 COP 21, Paris and next steps

In the few remaining days of formal negotiations, the ADP must complete the text of the agreement and produce mandates for follow on work.

### 4.1 Expectations for COP21

In June, current and future COP Presidents Manuel Pulgar-Vidal and Laurent Fabius provided their perspectives on COP21. They requested negotiators by October to develop a concise text with clear options for ministerial decisions in Paris. Minister Fabius proposed that Heads of State might attend at the start to lend political support, with ministers taking decisions in week two. They portrayed an outcome based on four pillars: 1) adopting the universal, legally binding, durable agreement; 2) incorporating INDCs for the first period; 3) delivering on support to developing nations through finance, technology and capacity building, including mobilising \$100 billion per year by 2020; and 4) recognising actions by non-state actors, notably cities and local authorities and business.

<sup>7</sup> For reviews of these areas, see the chapters by Biogo, Bosetti and Tavoni in this book.

## 4.2 Preparation of text

To date, Parties have basically assembled proposed input; they have not begun to negotiate text. The “Geneva negotiating text” (GNT) 8 – 90 pages with 224 paragraphs in 11 sections agreed in February this year – satisfied the obligation to circulate any proposed agreement to all Parties at least six months before the COP. Until now the process of developing and refining text has respected Parties’ deep concerns that the negotiation must be Party-driven and based on text submitted by Parties. This insistence flows from experience and suspicion in the aftermath of Copenhagen. Unfortunately, progress has been far too slow.

In June, Parties requested the co-chairs to produce a streamlined text. This was released on 24 July as a *tool* to aid discussions. At 76 pages,<sup>9</sup> it is only marginally shorter than the GNT. It is reorganised into language to be part of the agreement (19 pages, 59 paragraphs), accompanying decisions (21 pages, 98 paragraphs), or still to be determined (36 pages, 102 paragraphs). Parties face significant substantive and procedural challenges to commence negotiation of text.

## 4.3 Next steps and long-term goals

The path forward appears to provide a process to examine progress and increase ambition periodically. An academic and political debate has continued for years concerning the credibility and desirability of the 2°C goal (Victor and Kennel 2014). Note that the concentration of well-mixed GHGs today already exceeds the level conventionally associated that goal.<sup>10</sup> This raises a central question going forward concerning how to motivate credible public policy over many decades: is it better to have ambitious

8 Available at <http://unfccc.int/resource/docs/2015/adp2/eng/01.pdf>

9 Available at <http://unfccc.int/meetings/session/9056.php>

10 Expressed as CO<sub>2</sub> equivalent concentrations; the conventional estimate for the 2°C goal requires stabilisation at 450 parts per million (ppm). In 2014 well-mixed GHG concentrations were 485 ppm and rising (MIT Joint Program on the Science and Policy of Global Change 2014). Also, see Huang et al. (2009) for methods and trends relevant to CO<sub>2</sub> equivalence.

aspirational goals (that will be questioned because they appear not to be credible) or to pursue strong but feasible policies?

The package of results in Paris will set the stage for future steps. It will provide a new beginning for efforts before and after 2020. Hopefully, the Paris agreement will make the UNFCCC a more respected and effective institution for action on climate change.

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