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UNPACKING THE PARIS AGREEMENT

By **Elisa Calliari**¹, **Aurora D'Aprile**² and **Marinella Davide**³

The recently adopted global climate deal is expected to enter into force in 2020, at the end of the second commitment period of the Kyoto Protocol. It has been hailed as a turning point in climate negotiations, after the failed attempt at Copenhagen climate conference in 2009 and four years of groundwork started in 2011 with the Durban Platform for Enhanced Action, whose mandate was to involve all countries, both developed and developing, in adopting “a protocol, another legal instrument or an agreed outcome with legal force” applicable to all Parties to the UNFCCC. The paper examines the main features of the new global climate agreement, paying particular attention on mitigation, cooperative approaches, adaptation and loss & damage, climate finance, compliance and review mechanisms.

Keywords: Paris Agreement, COP21, Mitigation, Adaptation, Loss & damage, Climate finance

JEL Classification: K33, Q54

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Introduction

The 21st session of the UNFCCC Conference (COP21), hosted in Paris, closed on December 12th 2015, with the adoption of the Paris Agreement, the long-awaited global deal aimed at strengthening the international response to the threat of

climate change (UNFCCC, 2015).

As established in Durban in 2011, the aim of the conference was to “develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties” starting from 2020. After two weeks of intense negotiations, led by an impeccable French Presidency, the conference managed to close more than 4 years of negotiations characterized by a tough debate on, among the others, four major thorny issues: i) new mitigation commitments for the post-2020 period, ii) adaptation and Loss & Damage (L&D), iii) financial support to developing countries and iv) the legal form of the outcome.

Expectations were high. After the failure of the Copenhagen Conference in 2009, Paris was considered as the last chance for the UNFCCC to deliver a coordinated climate action. This was also confirmed by the wide participation that the Conference gathered at le Bourget, Paris: nearly 23,100 government delegates, 9,400 representatives from UN agencies, inter- and non-governmental organizations and civil society and 3,700 members of the media attended the conference, for a total of over 36,000 people (IISD, 2015).

Soon after President Fabius gavelled its adoption, the Paris Agreement was welcomed as a landmark and historical step from both the Secretary General Ban Ki-moon and UNFCCC Secretary Christiana Figueres, as well as from the majority of Ministries and government leaders, with the exception of Nicaragua, who complained for the lack of differentiation and the incoherence between long-term objectives and current proposed actions.

The final document is composed of 32 pages, organized into two parts: the *Paris Agreement*, which outlines main legally-binding provisions, and the *Decision adopted by the COP*, that sets conditions and provides more details for the adoption of the Agreement even if with weaker legal force.

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Purpose

The Agreement aims at strengthening the global response to climate change through three sets of action. First, it calls for limiting the increase in the global average temperature *to well below 2 °C above pre-industrial levels* with aspirational efforts to stay below 1.5 °C, recognizing that “this would significantly reduce the risks and impacts of climate change”.

The second pillar is identified in “increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience”. Whereas the third calls for mobilizing consistent “finance flows” to achieve these objectives.

Leaving outside the text any reference to the 1992 Convention’s Annex I–non-Annex I differentiation, the Agreement states that efforts from all countries will be under the same framework, composed of “nationally determined contributions” (NDCs), that will set progressive ambitions in time, granting more flexibility to developing country Parties.

Mitigation

The deal calls for a global peaking of greenhouse gas (GHG) emissions *as soon as possible*, recognizing that peaking will *take longer for developing countries*. Rapid reductions would then be undertaken, in accordance with best available science, in order to reach, after 2050, a balance between emissions from anthropogenic sources and removals by sinks (Article 4).

The NDC each country *intends* to achieve shall be prepared, communicated and maintained by all Parties, “reflecting the highest possible ambition”, but also the common but differentiated responsibilities and respective capabilities. As requested by developing countries over the whole two weeks of negotiations, a certain level of differentiation remains: developed countries, indeed, “should continue taking the lead by undertaking economy-wide absolute emission reduction targets” whereas developing nations should “continue

enhancing their mitigation efforts” with the encouragement to move towards economy-wide emission reduction targets. Further flexibility is allowed to the least developed countries and small islands, that “may prepare and communicate strategies, plans and actions for low GHG emissions development reflecting their special circumstances”.

Contributions will be communicated *every five years* and recorded in a public registry maintained by the UNFCCC. They shall aim at a progressive increase of the ambition.

Opening to both market and non-market cooperative approaches, the document also recognizes the possibility to embark on voluntary cooperation, including “the use of internationally transferred mitigation outcomes”. It also establishes a new mechanism, which aims to contribute to the mitigation of GHG emissions and support sustainable development. Learning from the past experience with flexible mechanisms launched with the Kyoto Protocol, the new mechanism will allow for participation of both public and private entities, and shall aim at delivering an overall reduction in global emissions.

Adaptation

Article 7 sets a global qualitative goal of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change”. It also explicitly recognizes the synergy with mitigation strategies by calling for an “adequate adaptation response in the context of the *temperature goal*” (emphasis added) and by emphasizing that “greater levels of mitigation can reduce the need for additional adaptation” and the associated costs. The article also highlights key adaptation principles, indicating what the targets should be (“vulnerable groups, communities, ecosystems”), the kind of approach to be followed (“country-driven, gender-responsive, participatory and fully transparent”) and the need for recurring to “best available science and (...) traditional, indigenous and local knowledge systems”. These principles are not new, and had already been outlined by the Cancun

Adaptation Framework (1/CP.16). Nevertheless, their mention in the Agreement importantly provides a benchmark against which good adaptation practice will be judged.

By outlining a cycle of action similar to that of mitigation, all Parties are called to submit and periodically update an *adaptation communication (AC)*, which should include “priorities, implementation and support needs, plans and actions” and should be then recorded in a public registry maintained by the secretariat. In order not to create additional burdens for developing country Parties, the process is designed to be flexible both in terms of form and timing: no specific format is indicated (the AC can be “a component of or in conjunction with other communications or documents”) and no deadlines for the submission are included.

Loss & Damage

While negotiations on adaptation were largely characterized by a constructive and collaborative spirit, the same did not apply to the related issue of L&D. L&D refers to the negative impacts materializing in vulnerable developing countries when both mitigation and adaptation fall short. It has been among the hottest topics to be dealt with by the UNFCCC in recent years because of its connection to the contested discourses on historical responsibility, liability and compensation.

Small islands states eventually managed to obtain a stand-alone article on L&D (Article 8), consistently with their repeated claims for it to be something *beyond* adaptation and thus to be treated with separate tools. Article 8 recognizes the importance of “averting, minimizing and addressing” L&D, and the role of sustainable development in reducing the associated risk. The article sanctions the permanence of the Warsaw International Mechanism (WIM), created in 2013 to advance knowledge gathering, coordination and support on the topic, leaving however the door open for it to be “enhanced and strengthened” through

future COP decisions. It also calls Parties to work “on a cooperative and facilitative basis” to “enhance understanding, action and support” in areas including early warning systems, comprehensive risk assessment and management, risk insurance facilities, climate risk pooling, and non-economic losses.

The deal on L&D came after two weeks of heated debate, involving especially the US and small island representatives. A compromise was eventually reached by referring to the ambitious temperature goal of 1.5°C requested by insular states and by inserting a clause campaigned by the US (paragraph 52 of the Decision) stating that Article 8 should not “involve or provide a basis for any liability or compensation” claim. The solution, however, caused a divide among developing countries. The Philippines expressed deep concern and Bolivia stated that “no clause can deny people and countries’ rights to ask for compensation” and that “all the necessary institutional means will be used so that [climate] justice can be made” (Ministerio de Planificación de Bolivia, 2015).

Finance

Climate finance was also one of the most debated issues before and during COP21. Through Article 9, developed countries confirmed their existing financial obligations towards developing countries and committed to “continue to take the lead” in mobilizing financial resources from different sources (both public and private) at a pace that should increase over time. This comes with the binding commitment to report every two years the financial support disbursed and planned. The Agreement states that “the provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation”, implicitly recognizing that current financial flows are mostly directed to mitigation actions and that adaptation finance should receive specific attention in the coming years. In the accompanying COP decision, Parties agreed that the current goal of mobilizing 100 billion per year by 2020

from developed to developing countries will be maintained for an additional five-year period and prior to 2025 a new collective goal will be agreed keeping the 100 billion figure as a floor. The Article for the first time encourages contributions also by other countries on a *voluntary* basis.

The Agreement (under Article 13.10) also calls for developing countries to provide “information on financial, technology transfer and capacity-building support needed and received” to implement their mitigation and adaptation plans.

Means of Implementation

On technology and capacity building the Agreement called for a stronger approach and introduced some novelties, leaving however upon the next UNFCCC meetings details and procedures. As for technology, Article 10 creates a new framework under the current UNFCCC *Technology Mechanism* to foster cooperative action on technology development and transfer and to support developing countries.

The important role of capacity building was stressed in the Agreement as a key precondition for reaching the Paris goals. Article 11 sets the commitment to “enhance the capacity and ability of developing country Parties (...) to implement adaptation and mitigation actions” and to assist them in meeting the transparency criteria required to communicate mitigation and financial information. Two specific initiatives were launched to this aim. The first one is the *Paris Committee on Capacity-building* (PCCB) tasked to evaluate capacity gaps and needs and to provide recommendations to overcome them. The second is the *Capacity-building Initiative for Transparency*. Before and after the Paris Agreement comes into force, it should help developing countries in preparing and communicating their NDCs according to the agreed transparency requirements.

The Global Stocktake

The key mechanism that will guide countries towards the achievement of the Paris objectives is the “global stocktake”, a

periodical review of progress established under Art. 14. Every five years it will assess the collective effort and compare it with the long term goals in terms of mitigation, adaptation and finance. Information will concern all the areas covered by the Paris Agreement, including the aggregated effect of NDCs, the adaptation efforts, the mobilization and provision of financial, technology and capacity building support, the latest available reports by the IPCC. The submission of new contributions by countries is directly linked to this review, as it should be “informed by the outcomes of the global stocktake” in order to ensure emission reductions will become more stringent over time. The first global stocktake is planned to take place in 2023 (providing the Paris Agreement enters into force on time) but a “facilitative dialogue” will convene earlier in 2018 to start informing the preparation of national contributions before 2020.

The two linked processes (the global stocktake and the recurring submission of NDCs) are the only instruments envisioned to commit countries to undertake mitigation and adaptation efforts, as the compliance mechanism established under Article 15 to monitor the implementation of climate pledges is explicitly “facilitative” and “non-punitive”.

Discussion and Conclusion

Overall, the Paris Agreement represents a crucial step in the history of global climate action. After two decades of negotiations, the deal features the shared vision needed to have both developed and developing countries on board. Building on the experience of the Kyoto Protocol, the Paris Agreement puts far greater attention on building a solid, transparent and flexible process to engage countries in the long-term rather than focussing on targets.

Provisions on mitigation somehow formalize the bottom-up approach that already emerged before the conference and that was launched in Cancun in 2010. 188 countries, covering more than 90% of global emissions,

have already presented an Intended Nationally Determined Contribution (INDC), with most of developed countries proposing quantified mitigation targets while developing countries choosing a more flexible approach. However, it is recognized that, although not negligible, emission reductions under the INDCs are not enough to limit global temperature increase below 2°C (UNFCCC, 2015b). The Paris Agreement itself recognises that additional efforts are needed. To this end, the five-year review process, to be consolidated in the next years, will be key to ensure fulfilment of commitments and reach progressive ambition in time.

The submitted INDCs have also made very clear the need for placing mitigation and adaptation on an equal footing, with 141 of them explicitly including climate resilience objectives beside mitigation ones. The Paris agreement eventually fixes the intrinsic disequilibrium characterizing the 1992 Convention by mentioning the ability to adapt among the three fundamental pillars of the global response to climate change. Moreover, it explicitly recognises possible limits and constraints to adaptation, by devoting a stand-alone article to L&D. On the implementation side, the Agreement also recognises the need for scaled-up financial resources to support adaptation, aiming to reach a balance with those devoted to mitigation actions.

In this regard, COP21 delivered substantial progress in clarifying other thorny issues concerning the climate finance landscape. In the light of the significant financial effort needed to implement mitigation and adaptation actions (for the period 2015-2030 around USD 3500 billion have been indicated to implement all submitted INDCs, of which over USD400 billion explicitly requested as international support (UNFCCC, 2015c)) the deal reassured developing countries about developed countries' commitment to provide support. At the same time, it allows for future adjustments in bestowing rights and duties according to changes in the balance of

global economy. It distinctly broadened the donors' base, recognizing that emerging and developing countries are already contributing to climate-friendly measures and that "non-party stakeholders" (the private sector, sub-national governments, civil society) have a crucial role to play. Above all, the Paris Agreement lays the foundation for a consistent framework to track, assess and provide predictability of climate financial flows according to transparency criteria and common procedures. Although most of the details have to be worked out, the arrangements agreed in Paris paved the way for further developments that are essential to match financial commitments with actual needs and plans.

As for the legal status, the Paris Agreement features a hybrid architecture mixing legally binding elements, such as the framework and procedures setting the future process, and aspirational provisions. In order to allow the maximum participation possible, the Agreement does not include binding emission targets or new binding financial commitments but let national governments decide about concrete actions to be implemented. No sanctions are considered in case of non-compliance, and the system is based on shared awareness and peer pressure. This is a new, voluntary approach in the history of climate negotiations that brings the global effort to address climate change closer to the international regime of human rights and can be effective provided that the attention on the issue remains high.

The next months and years will be crucial to shape the structure of all the mechanisms introduced at COP21 and to see if actions will follow up on the promises. The first test will be in April 2016 when the Paris text will be opened for signature in New York on the 22nd. However, to enter into force the Agreement needs to be ratified by at least 55 countries accounting for at least 55% of global GHG emissions.

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Links

Policy Seminar on "Unpacking the Paris Agreement" by Elisa Calliari, Aurora D'Aprile and Marinella Davide: [slides](#) and [video](#)