

Report Part Title: Analysis of the Paris Agreement

Report Title: Paris Agreement: how it happened and what next

Report Subtitle: With a special focus on the role of non-state actors

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Chapter 1

Analysis of the Paris Agreement

Over the past few years, the remaining global budget for greenhouse gas emissions has become clearer. More prudential calculations of the pathway to a maximum of 2 degrees above pre-industrial levels have made the budget smaller, and the time needed to generate massive changes to energy and other systems longer.⁴ And time keeps ticking away.

Hence the huge amount of expectations placed on the Paris COP21 in November/December 2015. The binding emissions reduction targets of 37 industrialized countries under the Kyoto Protocol had expired at the end of 2012. A second commitment period – the Doha Amendment agreed at COP18 in 2012 – had failed to enter into force due to a lack of ratifications. Up until Paris, it was difficult to imagine that Parties would be able to conclude an effective global multilateral agreement to deal with climate change.

The absence of effective operation targets and failures to meet national commitments by countries involved showed the Kyoto enforcement system to be lacking.

A new agreement with legal force was needed, but defining its form and avoiding the Kyoto pitfalls would be extremely delicate.

Without such an agreement providing a major new step forward, confidence from public and private sectors alike in the ability of the UN system to address climate change could have entered a terminal decline. And the last time the cycle of negotiations brought up a COP where a radical step forward was needed was Copenhagen, which has gone down in history as a serious setback.

In fact, that history was too simplistic. For all the disagreements and ill-tempered exchanges, Copenhagen produced an outcome in which the outline of a very major shift could be seen: from top-down internationally-enforced mitigation targets to a system of ‘variable geometry’, where each Party made the efforts and contributions they considered appropriate to their circumstances, and where developed country financial contributions became targets equal in importance to their domestic reductions.

The subsequent COPs – Cancun, Durban, Doha, Warsaw, Lima – gave the world time to get used to the idea that a top-down architecture was not feasible, leading to the gradual emergence of a groundswell of efforts from non-state

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actors and seeding of a bottom-up architecture to facilitate implementation of pledges rather than prescribing them. The idea that there were many different pathways to contribute to mitigation and adaptation, and that Parties must choose those which they considered nationally appropriate, began to be seen as a necessary part of the foundation of a new system.

This encroached on the traditional division in the UNFCCC system between developed and developing countries. It is unfair to see the Kyoto regime as one under which developed countries had obligations to cut current emissions and make amends for past ones, while developing countries could continue development and do nothing else. Yet Kyoto had split the world into two simple categories which made less and less sense as economies grew. Over the COPs, starting with Copenhagen, the touchstone phrase of “Common But Differentiated Responsibilities” (CBDR)⁵ began to appear less frequently in the texts and to be regarded as less of a fundamental requirement, even though of course this is still controversial with some countries.

This was not a straightforward process, and the movement occurred in fits and starts, with steps forward and backward. But it became clear that there was broad sympathy for some sort of change: developed and developing countries needed to be differentiated, but in a graduated system, not a single divide.

However it was one thing to recognise this need, and quite another to find words politically acceptable to all sides in order to incorporate it into a new legal agreement.

It was also clear that one of the key concepts of the Kyoto system – the mechanisms allowing trading of emissions reductions to achieve national targets at lower cost – was reaching the end of the line. Few countries were interested in purchasing, or letting their businesses purchase, emissions reductions that were not under their control and did not happen on their territory. The Clean Development Mechanism, like Joint Implementation and the trading of Assigned Amounts Units, had become less attractive to the private sector for simple lack of demand and unfavourable economic circumstances. Attempts within the negotiations to develop and evolve those Kyoto concepts or create new approaches, were stuck.

Over the period since Copenhagen, new issues had arisen which had been partially assimilated into the UNFCCC system but were of sufficient importance to justify specific coverage in a new document encapsulating the post-Kyoto approach.

Among the most difficult was “Loss and Damage”, bringing a hint of the notion – controversial for some countries – of obligatory compensation for impacts of past emissions. Another was the encouragement to non-state actors. The main focus for the latter was the groups or international coalitions of cities and regions that had formed over the last few years, often wishing to be more proactive than their national governments. But non-State actors also included businesses and others who wanted to make public their concern about climate change and their willingness to support action.

As confidence in the ability of the UNFCCC system to come up with an effective continuation or successor to Kyoto declined, these non-State actors, often crossing international borders, began to be spoken of as ‘clubs’, ‘networks’ or like-minded organisations. These ‘clubs’ or ‘networks’ would be prepared to make commitments without waiting for the UN. And the bottom-up approach that many remained convinced was the only practical way forward seemed likely to find some sort of outlet outside the UNFCCC.

The Negotiations

An immense amount of effort was put into the preparation of the Paris COP by the incoming French Presidency, acting in close concert with the Peruvian Presidency of the COP20. The process of largely bilateral inter-sessional diplomacy had perhaps never been so intense. Within the negotiations, much responsibility fell on the shoulders of the Co-Chairs of the Ad Hoc Working Group on the Durban Platform (ADP), and the group of legal and linguistic experts. These had the hard task of formulating draft provisions accurately and consistently, while ensuring coherence between various articles of draft agreement text, across articles and also among all the six official language versions of the final text.

⁵ A definition of CBDR is available here: <http://www.britannica.com/topic/common-but-differentiated-responsibilities>

The slow progress of ADP texts over 2015 made some commentators doubt that the gaps between the Parties could be bridged in the time remaining before and at Paris. The fact that a 37-page text from the Lima COP had become 86 pages long (for a variety of reasons) at the end of the Geneva inter-sessionals, reduced optimism. But the draft documents available by the start of Paris were sufficiently developed to allow hope that a skilful Presidency could get a good outcome.

In fact the main task of creating a post-Kyoto system was not intrinsically hard, given the work of the previous COPs. It also helped that there was growing acceptance – more reluctant in some Parties than others – that the task now was to find a framework for pre-existing but very diverse national contributions rather than create another global target and enforcement regime.

The main problem was to find a broad structure for inevitably highly detailed later work on assessing national contributions and increasing their ambition. But the system had to avoid infringements of national sovereignty while offering a focus for assistance to, and peer pressure on, Parties who were seen to be doing less than they could.

However, there were many potential traps along the way, created by issues that could not be ignored but had the potential to raise the temperature, reduce trust, and increase the distance between the Parties. The highly contested issue of Loss and Damage appeared to have been temporarily neutered, as the Warsaw International Mechanism created to take it forward was not scheduled to produce a report until the year after Paris.

Many observers felt that finance would be the stumbling block of the negotiations, with different views being expressed about the chances of achieving the US\$100 billion per year promise made originally in Copenhagen. Next, it was accepted that the degree of focus on adaptation should match that on mitigation, a long-standing concern of developing countries. Finding the right approach without raising hard questions on losses, finance and response measures would not be easy.

It was also clear that the UNFCCC was expected to state the overall global target for emissions reduction more precisely, and that the desires of many vulnerable island and other states for a temperature target of +1.5 degrees Celsius had to be respected, even if that target looked extremely challenging at this stage.

Finally, the roles of carbon pricing and the private sector were very important to some, but red flags to others.

Ever since the Durban COP17 Decision that the aim of the next series of COPs would be an “outcome with legal force”, careful attention had been given to the question of how to make the required legally binding elements compatible with the United States’ unique difficulties in bringing an international agreement round, rather than through, Congress. As on previous occasions, the wording of the obligations was key and highly delicate.

This made the discovery during the final hours in Paris of an un-agreed “shall” instead of a “should”, the reason for which is still not clear, highly embarrassing. That the matter was corrected and apologies accepted is a testament to the degree of confidence in the COP Presidency that the Parties had by that time developed, and in their collective political will to emerge from Paris with an agreement.

Slow but important changes over the years to UNFCCC negotiating groups and alliances meant that the key dynamics at COP21 in Paris were considerably more fluid and unpredictable than the blocs of several years ago.

The developing countries still acted together as G77/China. But within that group, the positions of the highly-vulnerable Alliance of Small Island States (AOSIS), the African Group, the Like-Minded Developing Countries (LMDC) and the hard-line Alianza Bolivariana para los Pueblos de Nuestra América (ALBA)⁶ were highly vocal and influential on many topics. Unexpected alliances also developed, such as the joint European Union/Brazilian proposal on new mechanisms. The French Presidency, UNFCCC Secretariat and other key facilitators had to find the right format for the negotiations that acknowledged the importance of these and many other groups of Parties.

They had to avoid the perception – largely responsible for a breakdown in trust at Copenhagen – of exclusive inner circles and hidden texts, and yet find realistic channels for communication and progress.

⁶ A description of negotiating groups can be found on the COP21 website: <http://www.cop21.gouv.fr/en/whats-the-use-of-the-country-coalitions/>

The French Presidency and the Secretariat managed the process with great skill, convening ministers as “Comité de Paris”, making particular use of the “Indaba” format for later-stage private but trusted Ministerial discussions, and mastering the use of quick electronic communication of texts to all, including NGOs and other observers.

But none of this would have worked if it had not been built on a foundation of painstaking diplomatic contacts during the 12 months leading up to the COP’s start.⁷

The Outcome

The final text of the Paris Agreement is a document that, at least in form and comprehensiveness, is a worthy successor to the Kyoto Protocol. It starts with new and challenging aims not just in terms of limits to temperature rise to 2 or even 1.5 degrees, but also in the peaking of emissions. It bases the achievement of that aim on Nationally Determined Contributions (NDCs), sets up a framework for collective examination and to increase ambition for such contributions, and emphasises the special circumstances and derogations of developing countries without re-establishing the old Annex I/Non-Annex I division.

The Agreement also recognises the importance of Adaptation, Technological development and Capacity-Building, with new machinery established or sketched out for each. It offers interestingly-worded encouragement to cooperation between Parties, including by a new mechanism.

Many Parties would have been disappointed by the comparatively weak outcomes on Forests, Loss and Damage, Finance and Compliance, and by the absence of references to international transport and agriculture. But enough was done to avoid major rifts.

The Agreement is accompanied by a long but clear set of Decisions that are logically constructed to start the process of putting the agreed outcomes into effect.

⁷ For one country’s prospective as a key negotiator, a developing country leader and a city in its own right, see Box 1 - a contribution by Melissa Low from the Singapore delegation.

Those Decisions include many references to the important inputs that can be made by non-Parties, thus reflecting the huge upsurge of interest by cities, regions, businesses and other stakeholders wanting to see progress on climate change and ready to do what they can. Of course, the actual weight of non state actors in the negotiation process remained very limited.

Many negotiators, such as China, did not show much openness towards them. Certainly more traditional state-to-state diplomatic initiatives, such as the joint plans for climate protection presented jointly by the US and China a year before Paris, had more impact for most stakeholders.

Yet the demonstrable enthusiasm and eagerness to participate shown by non state actors is going to be necessary to make national contributions both ambitious and deliverable.

The amount of work that now has to be done by the UNFCCC bodies is extremely daunting, particularly with the change in Executive Secretary during 2016. There are very many clever ambiguities in the text that could unravel hard-won political will when detailed negotiations starts in earnest.

But the principal task of Paris was always to take the understanding – first achieved at Copenhagen – that the next phase of global action on climate would be built on voluntary national contributions, and turn that into an architecture for a new system. And to launch that system on its way with maximum momentum and goodwill. The French Presidency, the UNFCCC secretariat, and the efforts of all the Parties have achieved that.

Challenges and Next Steps

The problem of global climate change has generally been seen by economists and political theorists as an enormously daunting example of a combination of the ‘tragedy of the commons’, the ‘prisoner’s dilemma’, and conventional time-discounting.

In a world without effective international compliance and enforcement regimes, why should national governments take costly action now that would produce outcomes only far in the future, and benefit others, particularly free-riders?

Recent climate economics has put the emphasis on demonstrating that the necessary action would be less costly than supposed, and even that there could be conventional competitiveness and other economic benefits for countries that take the lead. It is however clear that there are many political and business stakeholders who are not yet fully convinced.

Kyoto tried to create a durable international regime of targets and enforcement, but for all the achievements of the first commitment period, it failed in its larger purpose. Many stakeholders, particularly but not exclusively in the US, had said that a top-down system could not work, and the world would have to revert to a bottom-up system of peer-reviewed voluntary contributions, managed by specific clubs or groupings of countries or managed by a very different UN system.

Part of the concern about the architecture coming out of Paris comes from the recollection that voluntarism was the essence of the UN Climate Change Convention in 1992. The recognition that this was not producing necessary results led to the targets and formal regimes of the Kyoto Protocol. Global concerns about climate change have certainly increased since 1992, though it is not clear whether that will be enough to overcome the difficulties with voluntarism.

Countries whose will to take action was sapped by the Convention and Protocol's differentiation between the obligations of developed and developing countries can now see in the Paris Agreement a much more graduated set of differences, though much still depends on direct transfers of substantial sums of money from developed to developing countries.

In addition, almost all NDCs from significant emitting countries need to be made more ambitious in order to bridge the gap. This is recognised in the Paris Decision text itself. Making the transparency and stocktaking provisions of the Paris Agreement work, in the sense of providing the basis for peer review and revisions, is therefore essential. It also has to work comparatively quickly: the 2018-2020 start of the Agreement, the current absence of agreement on common NDC timeframes, and the five-year periodicity of its Global Stocktakes, all against the background of the current rate of consumption of the remaining carbon budget for a 2 degree target, mean that there is no time for slow progress in the NDCs.

The Facilitative Dialogue of 2018, the arrangements for technical expert review of information necessary to track Parties' progress, and perhaps the operation of the facilitative compliance mechanism of the Agreement, will be among the most important parts of the transparency regime. The way that the regime will work in practice, and how it will avoid a host of obvious pitfalls is currently far from clear.

A major part of the transparency regime is devoted to identifying, measuring and reporting (biennially) on the amount of financial and other support that developed countries are obliged to provide to developing countries. In addition many developing country NDCs specify mitigation actions or levels of ambition that would be possible if – and only if – financial support from other Parties is made available to them. No additional global financial targets or benchmarks for developed country contributions were added to the Copenhagen \$100bn per annum by 2020, progress towards which currently appears to be slow.

The admissibility of private investment in the totals, long a source of dispute, has been strengthened by text references to a “wide variety of sources” for developed country finance.

However the common-sense expectation must be that to achieve increased levels of ambition many developing countries will need substantial help in the form of direct transfers. This will not be easy against a background of growing pressure on public finances in most parts of the world. It also increases the need to maximise the contribution of private sector funding for low-carbon investment, particularly in the developing world.

Importantly, there are many encouraging signs of greater penetration of renewable energy technologies, and ambitious plans to boost these technologies globally, including in key developing countries. And the Paris COP21 was marked by an unprecedented level of interest, formal statements and apparent commitment to low carbon investment from a variety of businesses and investors.

However the nature of the trigger for further action was vague in many of these statements and contributions. And while a clear but by no means universal call for a global carbon price was a common feature, it was much less clear what that meant and how it would be delivered.

The final Paris text featured only the lightest of references to pricing, and it concentrates them on national pricing schemes as a possible mitigation tool for NDCs rather than a global system relevant to a globalised economy.

There needs to be a firm and widespread belief among company and investor strategists that increasing costs of, and constraints on, greenhouse gas emissions will come soon enough to legitimately affect commercial decisions; and these costs will occur widely enough to be unavoidable.

The international agreement and the feel-good factor in the Paris outcome will certainly have helped that process, but the voluntarism of the system and continuing vagueness about targets and timetables has left some in the private sector sceptical.

In the immediate aftermath of the Paris Agreement fossil fuel stocks were dented, while renewable energy company stocks were lifted.⁸ However, slower-moving investment decisions will only be genuinely be altered with stronger signals on the implementation of the Paris Agreement.

What Happens Next?

This major new Agreement will have to be followed by substantial quantities of detailed work. This will involve negotiations where the scope for ambiguous outcomes is less than in the main document. However the extent and number of pieces of work that the UNFCCC secretariat will now have to manage is enormous. It has been calculated that progress is expected by the Marrakesh COP22 at the end of this year on more than 50 tracks.

And it has become part of the normal expectations of UNFCCC negotiations that steps forward tend to be followed by partial retreats, as some of the outcomes that were disappointing for Parties or negotiating groups are tested, interpreted and fought over again, even resulting in changes deviating from the original spirit of the agreement.

These complex and detailed negotiation tracks, with many technical inputs, procedural issues and meetings across the globe, are much more difficult for non-Parties to follow and concentrate on than the spotlight drama of a Ministerial COP.

It will be a particular problem for non-state organisations such as groups of cities, regions and businesses to find a means of sustaining their vital input before and during the Paris COP, despite the warm words and references in the Decision text.

But perhaps their focus, like that of other observers, should now shift to the Parties themselves. Paris has created a bottom-up system focused on contributions made by Parties, resting on the premise that their initial contributions (INDCs) were a good start, but need to go much further. The multilateral assessment of revised contributions and inputs to global stocktakes will be an extremely important part of the new system. But it all starts with the Parties themselves, their ability to assess domestic political will and business opinion, and their willingness to develop, quantify and go further than their first efforts.

For international groups of non-state organisations, the specific references in the Paris text to inter-Party cooperation in achieving emissions reductions should offer a channel for absorbing cross-border actions into what remains a primarily Party-led system. Exactly how this can be done and accounted for is still not clear. But the expectation is that means will have to be found, and revised NDCs should take account of what non-Parties can contribute. Cities, regions, businesses and other non-Party groupings will have to play a major part in ensuring that their contributions can be properly measured and reflected in the system.

National governments may be sceptical about what sub-national tiers of government and associations of private companies can achieve towards the achievement of international objectives, and indeed about their authority to act internationally. However the increasingly loud voices from the groups that have formed across the world, and the need for all possible sources of ideas and commitment to be harnessed if mitigation ambition is to be raised, mean that Parties should listen, cooperate and assimilate.

⁸ <http://www.reuters.com/article/us-climatechange-summit-stocks-idUSKBN0TX22A20151214>



PATHWAYS FROM PARIS: VIEWPOINT FROM SINGAPORE

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As a small low-lying city-state with an open economy, Singapore is particularly vulnerable to the consequence of climate change. Singapore has been an active player in the international climate change negotiations since ratifying the UNFCCC in 1997 and acceded to the Kyoto Protocol in 2006. In 2014, Singapore ratified the Doha Amendment to the Kyoto Protocol. In February 2016, officials announced that Singapore would sign the Paris Agreement at the high-level signing ceremony in New York on 22 April 2016.

SINGAPORE'S ROLE IN COP21

In the lead up to Paris and at COP21, Singapore's officials were given leadership roles. Widely seen as a constructive player in the global negotiations on climate change, Singapore has never taken this role for granted but has always strived to stay ahead of the curve in meeting its obligations under the UNFCCC.

As a non-Annex I country, Singapore is one of the first few countries to be undergoing to International Consultation and Analysis (ICA) process, having been third to submit its Biennial Update Report in December 2014. In this way, Singapore is doing its part to enhance the transparency of reported information such as those on domestic measuring, reporting and verification (MRV) arrangements. In its NDC, Singapore pledged to reduce its emissions intensity by 36% from 2005 levels by 2030, and stabilise its emissions with the aim of peaking around 2030.

Singapore's role in COP21 was one focused on facilitating outcomes and bridging differences in opinions. Ambassador Kwok Fook Seng, Singapore's Chief Negotiator for Climate Change from the Ministry of Foreign Affairs was enlisted alongside ten other leading negotiators to chair facilitative groups by the ADP Co-Chairs.

He co-facilitated both Mitigation and Transparency of Action and Support groups with Ambassador Franz Perrez from Switzerland and they were tasked with streamlining the text and steering difficult negotiations so as to achieve clarity in the options that would be taken forward from June 2015 to the Paris COP21 that December. In Paris during COP21, Ambassador Kwok concentrated on Transparency of Action and Support and conducted several spin-off groups and informal informals to find solutions and clean the Article 13 text on Transparency of Action and Support.

Dr. Vivian Balakrishnan, Singapore's first Foreign Minister to have held the Environment and Water Resources portfolio, also played a key role in the Paris COP21 negotiations and worked closely with the COP Presidency as one of the ministers in the Comité de Paris. Together with H.E. Ms. Izabella Monica Vieira Teixeira, Minister of the Environment of Brazil, Dr Balakrishnan led negotiations on the cross-cutting issue of differentiation, in particular with regard to mitigation, finance, transparency.

This was no small feat as one of just 20 selected ministers chosen to bridge differences on issues that require resolution. Furthermore, ministers were tasked to do so in an open, transparent and inclusive manner and asked to present to the Comité de Paris an outcome each day in order to show incremental progress. Many of these meetings went into overnight marathon negotiations and included various formats of meeting with Parties, including bilateral meetings with Parties or groups of Parties to find solutions to provide initial drafting guidance to the Comité de Paris.

THE NEW TRANSPARENCY REGIME: IMPLICATIONS FOR SINGAPORE

On transparency, there is to be a first collective and global stocktake of INDCs in 2023 and every five years henceforth unless decided otherwise. The global stocktake shall inform countries in updating and enhancing their actions and support and international cooperation.

The submission of INDCs 9-12 months in advance indicates some form of review to facilitate clarity, transparency and understanding of INDCs. However, paragraph 25 in the Decision text (1/CP.22) continues to use ambiguous language around what countries should communicate as part of their INDCs. Thus, further clarity is needed on how such a review would take place if countries are allowed to submit information as they wish, leading to comparability issues between countries' NDCs.

COP22 convening in Marrakech, Morocco from 7-18 November 2016 will be important as it aims to adopt various common modalities, procedures and guidelines on NDCs, as well as transparency of action and support.

MEETING OUR CLIMATE TARGETS

While most people are looking at INDCs for achievement by 2030, many forget that Singapore also has a Copenhagen/Cancun pledge for 2020. With a legally binding agreement achieved in Paris, Singapore will have to achieve its conditional pledge of reducing our emissions by 16% below business-as-usual levels by 2020 (declared in 2009). Indeed, Singapore will have to ramp up efforts if it is to achieve its 2030 target and to peak emissions around 2030, including introducing new and more efficient technologies to reduce energy consumption.

The government will also need to further regulate industry by reviewing existing legislation such as the Energy Conservation Act (2013) to incorporate more companies, enhance their reporting requirements or require them to fulfil their energy-efficiency improvement plans that they submit to the National Environment Agency (NEA). This will be needed to meet 2020 and 2030 targets.

LOOKING TO MARRAKESH

The Paris Agreement has catered for many things being sought by countries in recent years. Now comes the time to put that stage behind us, and focus squarely on the implementation phase. There is still work to be done in developing and fine-tuning some technical and procedural steps. Singapore will work with all partners to complete these tasks expeditiously. The Agreement must be ratified, and the successive cycles of climate action can only get underway when it enters into force. Singapore will continue to support the global effort to make this happen.