

“The most critical question for the 2015 agreement is how to incentivise countries to strengthen emission reductions over time. Strong monitoring arrangements that help build trust among countries could contribute to achieving this.”

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B R I E F

2015 climate change agreement: strengthening future emission reductions and treaty review and monitoring processes

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“Agreement on how to strengthen action to combat climate change prior to 2020 is likely to form [an] important part of the outcomes of the Paris conference.”

1. UNFCCC COP decision 1/CP.16, para.4.

2. See for example the UN Environment Programme (UNEP) Emissions Gap report 2014 at <http://www.unep.org/publications/ebooks/emission-gapreport2014/>.

3. See for example Lisa Friedman, ‘Negotiations: The pending Paris climate deal may not keep the world under 2C—does that mean failure?’, *ClimateWire*, 21 August 2014.

1. Introduction

At the UN Paris Climate Change Conference, to be held in December this year, governments are expected to adopt a new climate change agreement currently under negotiation: the ‘2015 climate agreement’. The new agreement is meant to come into effect and be implemented from 2020. Agreement on how to strengthen action to combat climate change prior to 2020 is likely to form another important part of the outcomes of the Paris conference.

Parties to the UN Framework Convention on Climate Change (UNFCCC), the first climate change treaty, agreed in 2010 on a long-term goal of keeping the global average temperature increase below 2°C above pre-industrial levels.¹ Many vulnerable countries consider this goal to be inadequate. A review of the adequacy of the goal and of progress in implementation toward it is currently under way. However, the world is, in any case, not on course to achieve the 2°C goal,² nor is the Paris conference expected to result in new mitigation commitments that would be sufficient to achieve the goal.³

Instead, there is now a focus on constructing a flexible new climate agreement, which can be adopted in Paris and which will enable and encourage countries to make stronger mitigation efforts over time, while also addressing issues such as adaptation to climate change.

This paper focuses on how the Nationally Determined Contributions (NDCs) that countries are expected to make to the 2015 climate agreement will be reviewed and the mechanism for strengthening such contributions in the future. The paper has the following goals: to provide a brief background to the international climate change negotiations; to consider expectations for the Paris climate con-

ference; to highlight some examples of existing processes under the UNFCCC that may offer lessons for the 2015 agreement; and to look ahead, highlighting the importance of effective review and monitoring processes to the 2015 agreement.

2. Background

The UNFCCC, the Kyoto Protocol and the 2015 climate agreement

The existing climate treaties are the UNFCCC and the Kyoto Protocol. The UNFCCC was adopted in 1992 and entered into force in 1994. The Kyoto Protocol was adopted three years later in 1997 and entered into force in 2005. The latter set quantified emission limitation or reduction targets for developed countries, in recognition of developed countries’ historical responsibility for climate change. The targets were to be achieved in the first ‘commitment period’, which ran from 2008 to 2012. Not all countries that are parties to the UNFCCC are parties to the Kyoto Protocol, consequently these countries cannot participate in the protocol’s decision-making activities.

In 2012, UNFCCC parties agreed on a second commitment period, from 2013 to 2020, expressed in the ‘Doha Amendment’ to the Kyoto Protocol. However, at the time of writing only 41 countries, mainly developing countries, have ratified the Doha Amendment, of the 144 required for entry into force.

Paris meetings

At the UN Paris Climate Change Conference the decision-making bodies of the UNFCCC and the Kyoto Protocol will both meet. These are, for the UNFCCC, the Conference of the Parties (COP), and for the Kyoto Protocol, the Conference of the Parties serving as the meeting of the Parties

to the Kyoto Protocol (CMP). The Subsidiary Body on Implementation and the Subsidiary Body for Scientific and Technological Advice, which serve both the COP and the CMP, and which both consider a variety of technical issues related to monitoring and review, will also meet.

The main focus will be on the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), which the COP established at the Durban climate conference in 2011. The COP gave this working group the task of taking forward negotiations on the new climate agreement which is to be concluded no later than 2015 and is then meant to come into effect and be implemented from 2020 onwards.⁴ The group also took up the task of strengthening mitigation efforts before 2020. Negotiations have been taking place in two work streams: work stream 1 focused on the 2015 agreement, with work stream 2 addressing the pre-2020 'ambition gap'.

Negotiations since 2011 and shifting expectations

The 2009 Copenhagen climate conference, widely viewed as a failure,⁵ was followed by cautious renewed negotiations. The first commitment period under the Kyoto Protocol was due to end in 2012, making it urgent to find a successor. Developing countries were strongly in favour of agreeing a second commitment period under the Kyoto Protocol, with legally-binding commitments for developed countries. Developed countries argued for greater contributions by developing countries to a future climate agreement, in particular by large developing countries with rapidly growing emissions, such as China and India.

At the Durban conference in 2011 the parties reached a compromise. First, they agreed on a second commitment

period under the Kyoto Protocol, to start in 2013. Second, the UNFCCC Conference of Parties decided to 'launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties' through the Durban Platform working group.⁶ The parties had different views about what this wording means and it is not yet clear what legal nature the outcomes of the Paris conference will have.

There have been two significant shifts in expectations. On one level, since entry into force of the Kyoto Protocol, interest has waned in another 'top-down' climate agreement which defines emission reduction targets for parties. Instead, a 'bottom-up' agreement where parties determine their own contributions is emerging. Expectations, though, have at the same time shifted downwards from achieving an agreement in Paris that would make it possible to keep warming under 2°C to adopting a flexible new agreement that can be adjusted in coming years to strengthen emission reductions.⁷

3. Expectations for the Paris conference

The format of the Paris 'package'

Many expect the Paris conference outcomes to include a legally-binding core agreement, complemented by decisions by the UNFCCC Conference of Parties. As a general rule, the latter are not legally-binding. Additional outcomes could include a political declaration, or declarations by states and initiatives by non-state actors such as businesses, subnational authorities and civil society organisations.

It is not clear which outcomes may be placed in the legal core agreement (if one is adopted in Paris) and which in COP decisions or other non-legally-binding formats. For example, the

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4. Decision 1/CP.17.

5. See for example BBC 'Why did Copenhagen fail to deliver a climate deal?' at <http://news.bbc.co.uk/1/hi/8426835.stm>.

6. Note 4, para. 2.

7. See for example Ed King, Don't judge Paris on level of carbon cuts, say top emitters, RTCC at: <http://www.rtcc.org/2015/04/23/dont-judge-paris-on-level-of-carbon-cuts-say-top-emitters/>

“A clear willingness from developed countries to take stronger action prior to 2020—to demonstrate that they are taking the lead in combating climate change—is likely to be important in bringing developing countries on board in Paris.”

8. US submission to the ADP, September 2014.

9. Note 6.

10. EU submission to the ADP, 16 September 2013.

11. UNFCCC Article 4.2 (a).

12. See for example World Bank President Jim Yong Kim at <http://www.worldbank.org/en/news/feature/2012/11/18/Climate-change-report-warns-dramatically-warmer-world-this-century>.

United States believes that the core agreement ‘should be built to last’, providing for regular updating of mitigation contributions. It has argued that: ‘Detailed provisions, provisions that will likely require modification/refinement over time, and contributions for specific time periods should be part of the larger agreement but not the core.’⁸

In addition, the legal nature of the contributions that parties will make remains to be resolved. They could be listed in a COP decision, other non-legally-binding form or – though much less likely – be included in a document such as a legally-binding annex to a core agreement.

What form a legally-binding core agreement might take is another question. The decision in Durban in 2011 to start negotiations on ‘a protocol, another legal instrument or an agreed outcome with legal force’⁹ lacks legal clarity, but leaves several options open. The European Union, for example, has stated that it favours a protocol.¹⁰ But at the Durban negotiations, that resulted in the wording above, there were strongly differing views.

4. Challenging issues in the negotiations

The negotiations of the Ad-Hoc Durban Platform Working Group revolve to a great extent around the question of differentiation of effort between developing and developed countries, in particular how to address rapidly growing emissions in developing countries, while taking into account the historical responsibility of developed countries for climate change.

Under the UNFCCC developed countries committed to taking the lead in combating climate change.¹¹ This is also reflected in the Kyoto Protocol, which contains quantified targets only

for developed countries. UNFCCC principles, in particular the principle of so-called Common but Differentiated Responsibilities and Respective Capabilities, are at the core of these debates. This principle implies that countries have a common responsibility to combat climate change, but how they should do this depends on their capabilities. Financing, technology development and transfer, and capacity-building for developing countries are closely linked challenging issues.

The outcome of ADP work stream 2 on strengthened mitigation efforts before 2020 is likely to be a critical part of the Paris conference outcome. There is a widely recognised, growing urgency to achieve deep emission reductions before it is too late to avoid warming above 2°C.¹² In addition, a clear willingness from developed countries to take stronger action prior to 2020—to demonstrate that they are taking the lead in combating climate change—is likely to be important in bringing developing countries on board in Paris.

Intended Nationally Determined Contributions (INDCs)

What is currently referred to as Nationally Determined Contributions (NDCs) are expected to form a central component of the 2015 agreement. The nature of NDCs under international law remains to be clarified - whether they will be legally-binding and where they will ‘sit’ in the overall Paris deal - but they are essentially self-defined commitments or plans by countries, indicating what the country will contribute to the 2015 agreement. They are not restricted to mitigation activities, but can include, among other issues, adaptation to climate change. Countries are in the process of submitting Intended Nationally Determined Contributions (INDCs), which are expected to be finalised as NDCs at the

Paris conference. In 2014 the Conference of Parties provided the following, somewhat loose, guidance for INDCs, stating that they:

*'may include, as appropriate, inter alia, quantifiable information on the reference point (including, as appropriate, a base year), time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas emissions and, as appropriate, removals, and how the Party considers that its intended nationally determined contribution is fair and ambitious, in light of its national circumstances, and how it contributes towards achieving the objective of the Convention as set out in its Article 2'*¹³

This gives countries considerable leeway when it comes to the content of their INDCs. It may however create challenges when it comes to transparency: to build the trust that will be essential for the 2015 climate agreement to function well, countries need to be able to understand each other's stated contributions and subsequently be able to observe one another's level of progress in implementing these plans. The UNFCCC Conference of Parties has agreed that INDCs 'will represent a progression beyond the current undertaking' of the party.¹⁴ However, it is not clear how or if that will be assessed.

In 2013 the COP invited all parties to communicate their intended contributions well in advance of the Paris conference—by the first quarter of 2015 'by those Parties ready to do so'. And, showing an appreciation of the need to build trust, the COP added that the contributions should be prepared in a manner that facilitates clarity, transparency and understanding of the intended contributions.¹⁵ At

the time of writing 29 countries have communicated their INDCs.¹⁶ They provide brief overviews of countries' intentions.

There is an expectation that, under the 2015 agreement, future intended contributions by countries, made at regular intervals, will undergo some type of review before being finalised and that the reviews and related public scrutiny will encourage countries to strengthen their contributions. Any review of intended contributions at the Paris climate conference itself is likely to be extremely limited: the Conference of Parties has requested the UNFCCC secretariat to publish INDCs on the UNFCCC website and to prepare, by 1 November 2015, a synthesis report on the aggregate effect of all those intended nationally-determined contributions that parties have communicated by 1 October 2015.¹⁷

Design, reviews and monitoring

The expectation that countries will choose to 'ratchet up' their contributions under the 2015 climate agreement in the future, at intervals of perhaps five years, makes the design of the agreement very important—in particular its review and monitoring provisions. Design-related questions include the extent of prior review of INDCs, review of implementation by individual countries and review of global progress towards slowing the advance of climate change to a safer level.

How (and if) rules for review and monitoring should differ between developing and developed countries is one of the many questions in the negotiations. Questions related to review and monitoring also cut across several other topics under negotiation, for example adaptation, land use-related issues and tracking of financial and other support to developing countries.

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13. COP decision 1/CP.20, para.14.

14. Above, para. 10.

15. Decision 1/CP.19 para. 2(b).

16. Available at <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx>.

17. Note 13, para. 16.

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18. Article 4.2 (d).

These issues may require different approaches to review and monitoring from those designed for NDCs.

‘Transparency’ and ‘accountability’ are terms often mentioned in the current negotiations, but how these concepts and related issues may be reflected in the 2015 agreement and related COP decisions is far from clear, even though only a few months remain before the start of the Paris conference.

The design of the rules and processes for review and monitoring related to the 2015 agreement can build on existing rules and experience under the UNFCCC and the Kyoto Protocol, but, in the shape currently envisaged, the 2015 agreement raises new challenges. The most critical question for the 2015 agreement is how to incentivise countries to strengthen emission reductions over time. Strong monitoring arrangements that help build trust among countries could contribute to achieving this.

5. Experience with existing UNFCCC processes

Development of review processes and monitoring of the 2015 climate agreement can build on, and be informed by, existing processes and experience. This section highlights some examples under the UNFCCC, which may offer lessons for the 2015 agreement. They include: past efforts to review the adequacy of commitments in the UNFCCC; an ongoing assessment of the adequacy of the currently agreed 2°C goal and progress towards it; and the first ‘Multilateral Assessments’ under the convention.

The second review of adequacy under UNFCCC

The 1992 UNFCCC envisages that the COP will review the adequacy of provisions that set out certain commitments for developed countries.¹⁸ The

first such review, which took place at the first session of the COP in 1995 subsequently led to the adoption of the Kyoto Protocol.

According to the text of the UNFCCC a second review of adequacy was to take place no later than 31 December 1998 and thereafter at regular intervals determined by the COP. However, since attempts began in 1998 the parties have been unable to reach agreement on the second review of adequacy, in particular about whether it should include consideration of new commitments for developing countries. Despite the unambiguous wording (‘shall take place not later than’) in the relevant article the item remains in abeyance on the COP’s agenda.

The review of adequacy, and the possibility of adjusting commitments it envisages, has similarities with the current negotiations about how the 2015 agreement can be structured to encourage upward-adjustment of commitments over time. However, the inability of the parties to undertake the second review of adequacy or agree on intervals for future reviews highlights the challenges this issue raises. The reviews of adequacy may have been overtaken by subsequent developments, in particular the UNFCCC 2013-2015 review considered below. However, similar questions about the contribution that developing countries will be expected to make, and about whether developed countries have demonstrated that they are taking the lead in combating climate change, now arise in the discussions about how the 2015 agreement can be strengthened in the future. These could prove to be difficult issues to resolve in Paris.

The UNFCCC 2013-2015 review At the UN Cancun Climate Change Conference in 2010 UNFCCC parties

decided to initiate a process of assessing:

- The adequacy of the long-term global goal of holding the global average temperature increase to 2 °C; and
- Overall progress towards achieving the global goal, including consideration of implementation of the commitments under the convention.¹⁹

The review began in 2013 and is to conclude this year. The review is meant to take into account: ‘best available scientific knowledge’; ‘observed impacts of climate change’; ‘the overall effect of steps taken by parties’; and ‘consideration of strengthening the long-term global goal, including consideration of 1.5°C’.²⁰ Countries most at risk from climate change have argued strongly for a lower limit than the current 2°C goal. Future reviews of the 2015 climate agreement are likely to address similar questions.

A ‘structured expert dialogue’ (SED) under the UNFCCC’s Subsidiary Body for Implementation and Subsidiary Body for Scientific and Technological Advice—the two bodies charged with organising the review—has been part of the process. The key messages in the SED co-facilitators’ final report released in May 2015 state that under a business-as-usual approach the world is heading for 4°C warming. The report stresses that the ‘guardrail’ concept, in which up to 2 °C of warming is considered safe, is inadequate and should be seen as an upper limit, while less warming would be preferable.²¹

Another key point from the SED report is that, while there is a generally accepted metric for aggregating and measuring overall progress on mitigation, no single metric exists to quantify and aggregate the overall progress on adaptation.²² This is one of the issues that architects of the monitoring

system of the 2015 agreement need to consider. Adaptation is recognised as a priority in the negotiations and will become increasingly urgent the less progress there is on mitigation.

The COP has agreed that it will take ‘appropriate action’ based on the 2013-2015 review²³ and that the outcomes of the review will inform the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action.²⁴ What this will mean in practice is not clear. For example, in Paris the COP could adopt a decision on the 2013-2015 review, or the outcomes of the review could be implicitly reflected in the result of the ADP negotiations.

The 2013-2015 review is envisaged as the first of regular reviews. The COP has decided that subsequent reviews will take place either following adoption of new assessment reports by the Intergovernmental Panel on Climate Change, or at least every seven years.²⁵ This implies that the next review should take place at the latest in 2022, two years after the 2015 agreement is meant to come into effect. How any such future reviews will relate to reviews under the 2015 agreement is not clear. This is one of the design issues that parties need to consider in Paris. It is particularly important because of the role that reviews under the 2015 climate agreement will be expected to play in driving the strengthening of mitigation efforts.

6. Multilateral assessment

Following the Cancun climate conference in 2010 two new processes were introduced under the UNFCCC: International Consultation and Analysis (ICA) for developing countries and International Assessment and Review (IAR) for developed countries.²⁶ The choice of different titles and approaches is another reflection of the

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19. For background about the UNFCCC 2013- 2015 review see http://unfccc.int/science/workstreams/the_2013-2015_review/items/6998.php.

20. Note 1, para. 139.

21. FCCC/SB2015/INF.1.

22. Note 22, p. 23.

23. Note 1, para. 139 (c).

24. Note 4, para. 6.

25. Note 4, para. 167.

26. For more information see http://unfccc.int/national_reports/items/1408.php.

“Few will want Paris to be ‘another Copenhagen’ that is unable to adopt an agreement, but there is still a risk that it could happen.”

ongoing need to find different ways of treating these two types of country in the climate negotiations. ICA assesses mitigation actions by developing countries.²⁷ IAR is based on a new requirement to submit biennial reports and has a broader remit than ICA; in addition to assessing progress on emission reduction pledges submitted by UNFCCC Annex I countries in the wake of the Copenhagen climate conference, IAR also assesses the provision of financial, technological and capacity-building support to developing countries.²⁸

Multilateral Assessment of progress on emission reductions is a key part of IAR. The first round of Multilateral Assessment started in 2014 in connection with the Lima climate conference, with Multilateral Assessment working group sessions under the Subsidiary Body for Implementation. Prior to this a web-based questions-and-answers phase allowed any party to submit questions to parties under assessment. The outcome is a published party record, which contains reports, questions and answers for the party and an observation by the party, with comments on the process.

Some parties may be envisaging a similar ‘soft’ process for reviewing intended contributions and future contributions. For example, the United States does not see a need for a highly structured process for what it has referred to as a ‘consultative period’, also suggesting that the UNFCCC secretariat could be requested to set aside time during an ADP session to give parties an opportunity to present their Intended Nationally Determined Contributions and answer clarifying questions.²⁹

Others have a different view: the Independent Association of Latin America and the Caribbean, for example, has

proposed an advance assessment process of INDCs. It would include assessing if a party’s intended contributions are equitable and if the aggregate mitigation level of INDCs is adequate to achieve global goals on mitigation. Equity would be assessed by the Subsidiary Body for Scientific and Technological Advice while a group of technical experts would assess the adequacy of INDCs and make facilitative recommendations to parties.³⁰

7. Looking ahead

Many difficult issues still need to be worked out in the negotiations before the 2015 climate agreement can be finalised. Few will want Paris to be ‘another Copenhagen’ that is unable to adopt an agreement, but there is still a risk that it could happen. Reaching agreement on differentiation between developing and developed countries, on financial and other support to developing countries, and on strengthened action to reduce emissions pre-2020 are among the critical issues to be resolved.

The review and monitoring mechanisms of the 2015 climate agreement, including the ‘ratcheting-up’ mechanism, which would drive strengthened emission reductions by countries over time, should be a high priority in the remaining months before Paris. As currently envisaged there is little to encourage the parties to the 2015 agreement to strengthen their mitigation efforts in the future, despite the recognition that the expected Intended Nationally Determined Contributions are extremely unlikely to add up to sufficient emission reductions to keep the world on a path towards staying under 2°C. There is still time to improve the design of the emerging ratcheting mechanism, although reaching political agreement may be challenging. Meaningful advance consideration of future INDCs, prior

27. Note 1, paras. 48-67.

28. Note 1 1/CP.16 paras. 36 – 47.

29. Note 8.

30. AILAC ADP submission, 24 September 2014.

to their finalisation as Nationally Determined Contributions, is a critical design element for the 2015 climate agreement.

Questions related to monitoring and reviewing implementation of NDCs, essential for trust-building, should also be high on the list of priorities in the lead-up to Paris.³¹ However, there are differing views among parties on this and many complex issues related to monitoring and review of implementation still need to be addressed. If there is a low degree of agreement by the time of the Paris conference, it may be desirable to defer discussions on at least some of the rules related to monitoring and review of implementation to subsequent negotiations.³²

One way of enhancing the transparency of the 2015 agreement and potentially generating public pressure to strengthen emission reductions would be to incorporate rules that enable active engagement by non-state actors, such as civil society organisations. The United States, for example, envisages that parties, civil society, and independent analytic entities would analyse and publicly comment on intended contributions.³³

However, relying excessively on actors outside the formal framework of the 2015 agreement would not be desirable. Ensuring effective review and monitoring should be the responsibility of the parties to the 2015 agreement themselves. Shifting this effort out of the formal treaty framework could also raise fairness and transparency issues, as for example independent organisations could choose to scrutinise some countries in detail, but not others, or use different or opaque metrics and assessment methodologies, leading to their results being contested. However, enabling and encouraging non-state actor involvement in review and

monitoring could nonetheless make a significant contribution to strengthening the 2015 climate agreement. Parties should at least ensure that rules to make it possible are put in place.

The expected character of the 2015 climate agreement—‘bottom-up’ and to a great extent reliant on the willingness of states to take increasingly stronger action to reduce greenhouse gas emissions—throws issues related to trust and confidence into sharp relief. Addressing this as part of the Paris outcomes will be essential, especially by establishing effective and fair monitoring processes.

“If there is a low degree of agreement by the time of the Paris conference, it may be desirable to defer discussions on at least some of the rules related to monitoring and review of implementation to subsequent negotiations.”

31. See for example Alexandra Deprez, Through the looking glass: transparency in a UN climate deal, at <http://www.rtcc.org/2015/06/05/through-the-looking-glass-transparency-in-a-un-climate-deal/>.

32. See for example Alexandra Deprez, Through the looking glass: transparency in a UN climate deal, at <http://www.rtcc.org/2015/06/05/through-the-looking-glass-transparency-in-a-un-climate-deal/>.

33. Note 8.

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About this paper

This brief considers the implications for climate review and monitoring processes as states edge closer to the 2015 Paris climate change conference, where a new treaty is expected to be agreed. It focuses on how states' Nationally Determined Contributions will be reviewed and the mechanism for strengthening such contributions in the future.

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