

The Paris Agreement: Analysis, Assessment and Outlook

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Key messages

The Paris Agreement is a **landmark in international climate policy**. It is a multilateral treaty in which both developed and developing countries agree to take action - embedded in their national context and towards an agreed long-term goal, which includes holding temperature “well below” 2°C while also pursuing effort to stay below 1.5°C.

The Paris Agreement is also a **watershed in differentiating between developing and developed countries**. It moves with small but decisive steps beyond the 1992 Climate Convention’s approach which entrenches strictly separate obligations for the two groups. It breaks new ground by supplementing the principle of common but differentiated responsibilities, by its core obligations for all parties and by its range of techniques used to express differentiation between parties.

The **core legal obligations are mainly procedural**: The Paris Agreement does not prescribe specific mitigation actions or which emission levels should be achieved by when. Instead, it focuses on individual climate mitigation plans and the transparency framework. In five-year ‘cycles’, all parties have to prepare ‘nationally determined contributions’ (NDCs), report on implementation, account for their contributions and regularly enhance the plans in the light of a global stocktake. Developing countries continue to receive support for their actions and reporting.

However, **the Paris Agreement’s political narrative goes way beyond its legal text**. Despite limitations in legal detail, the Paris Agreement sets out a clear political narrative on its aims and what parties are expected to do in order to achieve them: There is an agreed direction of travel in the form of an overarching purpose and long-term goals, and all parties are obliged to take action towards them, with efforts that are transparent, assessed against the purpose and regularly enhanced. Adaptation is on political parity with mitigation, and other issues such as loss and damage are recognised.

The Paris outcome is a **long-term policy commitment that sends a signal to all relevant actors**, including business and investors that the transformation begins now. The Paris conference saw an unprecedented participation of heads of state and government. The resulting treaty provides political direction that includes the redirection of financial flows, and the cycles structure the global effort. The involvement of a broad range of non-party stakeholders indicates that the signal is being heard - provided that it is followed by implementation.

The approach taken by the Paris Agreement is an experiment that relies on the national determination of efforts combined with the persuasive impact of the transparency framework and the regular taking stock of progress. It remains to be seen whether these elements and the cycles will trigger sufficiently ambitious contributions once details to these elements are agreed.

Implementation is key to the long-term success of the Paris outcome. The following issues are crucial for implementation:

- **The political momentum that was captured in Paris needs to be maintained.**
- **The capacity has to be created** for the progressive preparation and technical implementation of NDCs.
- The Paris Agreement’s procedural approach means that further **details could be crucial for safeguarding ambition.**

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Abbreviations

ADP	Ad-hoc Working Group on the Durban Platform for Enhanced Action
AOSIS	Alliance of small island states
APA	Ad-hoc Working Group on the Paris Agreement
AR5	Fifth Assessment Report
CDM	Clean Development Mechanism
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
CMP	Conference of the Parties serving as the Meeting of the Parties (to the Kyoto Protocol)
COP	Conference of the Parties
ExCom	Executive Committee
EU	European Union
GEF	Global Environment Facility
GHG	Greenhouse gas
ICAO	International Civil Aviation Organization
IMO	International Maritime Organization
INDC	Intended Nationally Determined Contribution
IPCC	International Panel on Climate Change
KP	Kyoto Protocol
L&D	Loss and damage
LDCs	Least Developed Countries
LEG	LDC Expert Group
LMDC	Like-minded developing countries
MRV	Monitoring, reporting and verification
NAP	National Adaptation Plan
NC	National Communication
NDC	Nationally Determined Contribution
ODA	Official Development Assistance
PA	Paris Agreement
PD	Paris Decision, UNFCCC 1/CP.21
REDD+	Reducing emissions from deforestation and forest degradation in developing countries
SBSTA	Subsidiary Body for Scientific and Technological Advice
SBI	Subsidiary Body for Implementation
SCF	Special Climate Change Fund
SDM	Sustainable Development Mechanism
SIDS	Small Island Developing States
UNFCCC	United Nations Framework Convention on Climate Change

1 Introduction

On 12 December 2015, 195 countries and the EU¹ adopted the Paris Agreement. Many consider the agreement a historic milestone in the world’s endeavour to tackle climate change. At the same time it is clear that success of the Paris Agreement will depend on sustained political momentum for actual and progressively more ambitious implementation through domestic policies and actions.

The agreement is the result of **almost a decade of negotiations** under the UNFCCC². A formal mandate was adopted in Durban in 2011 to “develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties”.³ Under the ‘Ad-hoc Working Group on the Durban Platform for Enhanced Action’ (ADP), parties negotiated under two politically linked tracks: Workstream 1 related to the negotiations of the 2015 Agreement, Workstream 2 aimed at enhancing ambition until the Paris Agreement is expected to enter into force, i.e. 2020.

Over the last years, governments have also extensively used **bilateral and multilateral channels** to build agreement on key issues. This included not only traditional fora like the G7, G20 or Major Emitters Forum but also diplomatic initiatives by the Peruvian and French COP Presidencies or UN Secretary General Ban Ki Moon. These diplomatic efforts had a noticeable impact in moving forward the UNFCCC negotiations. For instance, joint declarations by the United States and China contributed to the emerging consensus on differentiation.

Short UNFCCC history

1992	UNFCCC adopted
1995	UNFCCC in force, negotiations on protocol start
1997	Kyoto Protocol adopted
2005	Kyoto Protocol in force and negotiations start for post-2012 period
2009	Copenhagen summit fails; Copenhagen Accord
2011	Durban mandate to negotiate new agreement
2015	Paris Agreement adopted

In addition, significant momentum was created when countries after COP20 in Lima started to formulate and submit **individual national climate action plans** (so-called “intended nationally determined contributions” - INDCs) during 2015. At the domestic level, for many countries this was the first time they formulated a comprehensive vision for addressing climate change, and it prepared them politically for Paris. At the international level, the INDCs served as an indication of their readiness to contribute to the global effort and to a successful outcome in Paris.

The outcome of the 21st session of the COP to the UNFCCC is a **legally binding treaty** (“**Paris Agreement**”, PA), and an accompanying COP decision (“**Paris Decision**”, PD). The PA does not replace but complements the UNFCCC. The PD addresses details and work programmes relating to the PA, as well as issues related to the pre-2020 period.

The PA will be open for signature (April 2016-April 2017) and then needs to be ratified by a sufficient number of parties before it can **enter into force**. The PA is intended to enter into

¹ For ease of reference, in this paper ‘countries’ and ‘states’ should be read as including the EU unless otherwise stated.

² For purposes of brevity and since it is directed at an audience familiar with key terminology. See the list of abbreviations.

³ UNFCCC 2011, Decision 1/CP.17

force by 2020, but this requires a threshold of 55 ratifications covering a minimum 55% of global emissions.

This paper provides a comprehensive overview of the Paris outcome along the main topics of the negotiations (section 2), and an assessment of the cross-cutting political issues (section 3). Although Workstream 2 was an important part of the overall political deal achieved in Paris, this paper focuses on the Paris Agreement and related parts of the Paris Decision. It concludes with a perspective on overarching achievements of the Paris Agreement (section 4).

2 What has been decided on key issues?

2.1 Structure of the Agreement

The PA covers the UNFCCC’s traditional thematic areas mitigation, adaptation, finance, technology, capacity building, and reporting and accounting. Loss and damage is also addressed - separately, in its own article.

The PA is structured around its general **purpose** (Article 2), which lists three specific, non-exclusive purposes: Staying “well below” 2 degrees or even 1.5 degrees, increasing the ability to adapt, and making financial flows consistent with low emission and climate-resilient development. The purpose is served by a general **obligation for all parties** to undertake “ambitious efforts” as defined in the specific articles of the PA, in order to reach that purpose (Article 3). This general obligation notably does not include loss and damage, forests or cooperation mechanisms. The global **stocktake** (Article 14) regularly assesses the collective efforts of parties towards the purpose. Parties have to submit their intended efforts and update them every five years in light of the stocktake’s outcome and the concept of “**progression**” beyond previous efforts.

The PA is adopted as an annex to a **COP decision which also specifies further details**, work programmes etc. of the PA. As a rule of thumb, the PD contains details which are deemed to be unsuitable for a durable and binding treaty, e.g. because they are too technical or subject to change.

Structure of the Paris Agreement

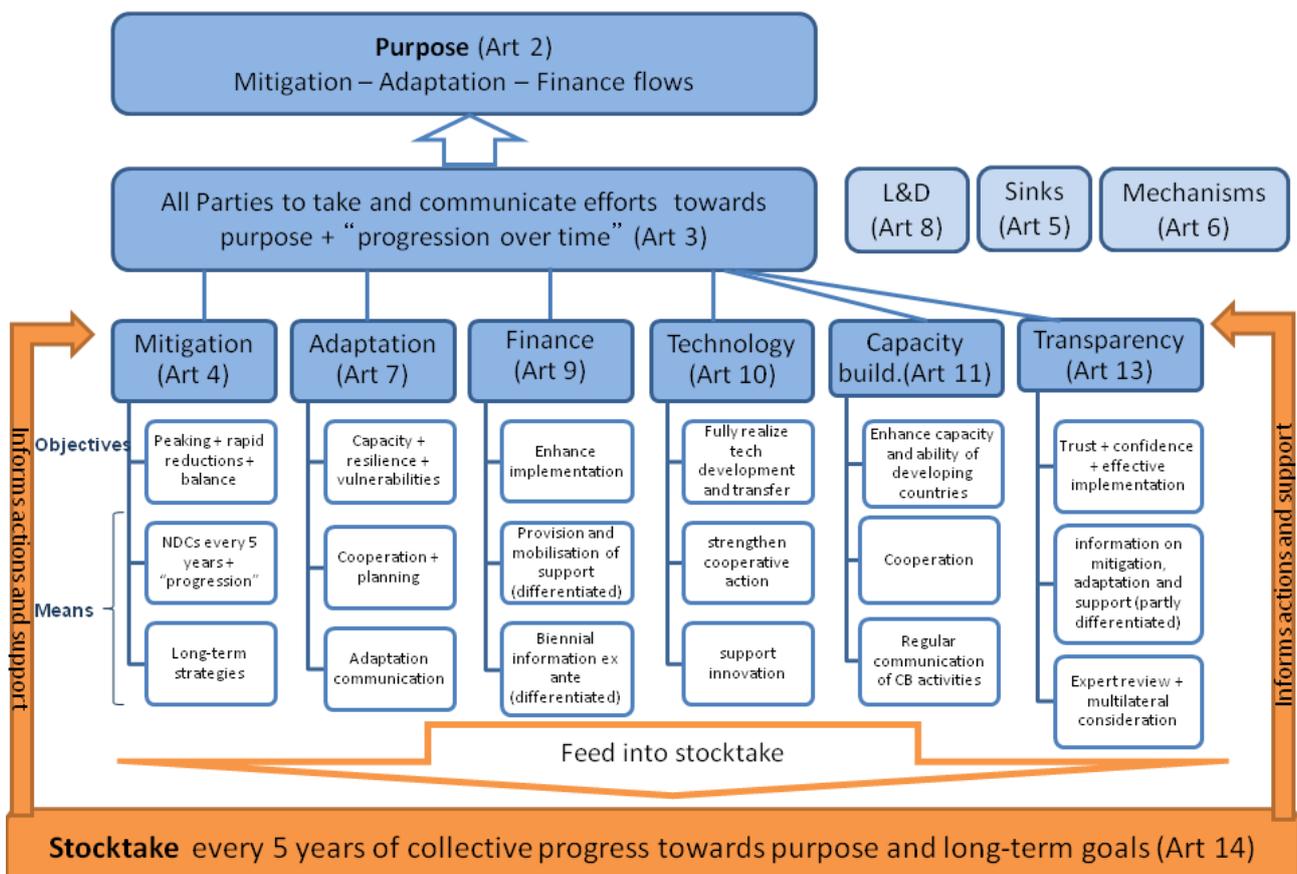


Figure 1: Structure of key issues in the Paris Agreement

Source: Authors’ own work

2.2 Mitigation

Key questions for Paris

- Temperature limit in the Agreement: yes/no? 1.5°C or 2°C? How to express?
- A long-term global emission pathway in the Agreement: yes/no? Which?
- What should individual countries do (NDCs): binding or not? Content, information and timeframes?
- How to close the ambition gap between current efforts and the temperature limit?

Temperature limit: One of the most important Paris outcomes is the PA's specific objective of holding temperature **“well below” 2°C while also pursuing efforts to stay below 1.5°C**. This represents a carefully drafted compromise between AOSIS and LDCs, who demanded a 1.5°C limit, and some other countries who argued that the temperature goal needed to be credible. While “well below 2°C” is the operational goal, the 1.5°C aspiration is now also established and needs to be addressed. Accordingly, the COP invites the IPCC to provide a special report on the impacts of 1.5°C. → Article 2.1(a); para 21 PD

Long-term global emission pathway: The PA translates the temperature goal into a long-term emission reduction objective: global emissions should **peak “as soon as possible” and then rapidly decline**. In the second half of this century, emissions should achieve **“a balance between anthropogenic emissions by sources and removals by sinks of GHG”**. While this “balance” can be interpreted as meaning an equal number on both sides and therefore “net zero GHG emissions”, it emphasises “sinks”, and it is not entirely clear whether this side of the balance is also limited to “anthropogenic” sinks. To address concerns of developing countries about the global emission objective, some qualifiers were included: peaking can take longer for developing countries, and the entire paragraph is to be seen in the context of equity, sustainable development and poverty eradication. While including a global emission pathway in the PA is an important achievement, it should be noted that it is phrased as an objective (“Parties aim to”) and not as an obligation to achieve it. → Article 4.1

Nationally determined contributions: One of the few clearly prescriptive obligations under the mitigation Article 4 is the **duty of parties to “prepare, communicate and maintain”** successive NDCs. These are basically climate action plans setting out what a party intends to do on mitigation over certain time period. The PD “invites” parties to submit their first NDCs at the latest upon ratification. Per default, the first NDC will be the INDC the party already has submitted, unless the party decides otherwise. The NDCs will be captured in a public registry by the Secretariat and not in the Agreement itself. → Article 4.2 and 4.12; para 22 and 29 PD

- **Implementing NDCs:** The PA does *not* oblige parties to actually fulfil these NDCs, hence their content is not legally binding. Parties are only required to pursue measures “with the *aim* of achieving the *objectives* of such contributions”.⁴ Parties have to account for their contributions (see section 2.5). Developing countries receive support for preparing, implementing and accounting for NDCs (see section 2.4). → Article 4.2 and 4.12; para 29 PD Article
- **Features:** The PA gives only very limited guidance on the content of NDCs (“features”): NDCs of developed countries “should” be in the form of economy-wide absolute emission reduction targets, and other countries are encouraged to move towards such targets. There was, however, no agreement on specifying other types of targets or actions.

⁴ Emphasis added

An interim negotiation body, the APA, is mandated to develop further guidance on the features of NDCs. → Article 4.4; para 26 PD

- **Timeframe:** Parties were also unable to agree on a common timeframe for NDCs, i.e. whether NDCs should all cover the same period. Most INDCs submitted in the run-up to Paris indicate an implementation timeline up to 2030 and some to 2025; some start in 2020, others in 2021; some indicate a multi-year target period and others a single year target. Harmonising the timeframe would make it easier to compare NDCs, track collective progress towards the global temperature goal and to create momentum at the time of simultaneous submission. The PA now obliges parties to submit an NDC every five years, but does not indicate whether the new NDCs should cover a 5- or 10-year period. This issue is postponed to the first conference of the parties to the PA CMA1. → Article 4.9 and 4.10; para 23-24 PD
- **Content:** To understand the ambition of individual NDCs and track progress of implementation, the quality of information provided is crucial. In this respect, the PA only obliges parties to provide the information “necessary for clarity, transparency and understanding”. The PD provides some more detail, but the listed information categories are only optional and not very specific. The APA is mandated to develop further guidance on this issue but this will not apply to the INDCs that have already been submitted. → Article 4.8; para 26-28 PD

Long-term strategies: parties are also encouraged to develop and communicate long-term low greenhouse gas emission strategies. The PD further specifies that these should point towards 2050 (“mid-century”) and invites parties to communicate the strategies by 2020. The PA is silent on whether and how the strategies are linked to the NDCs. → Article 4.19; para 36 PD

Increasing ambition over time: The assessments of INDCs handed in before Paris clearly indicate that the combined level of efforts is not sufficient to have a likely chance to stay below 2°C, less so for 1.5°C. An important yardstick of success of the PA is thus its ability to increase ambition over time. The PA seeks to address this issue via **regular updates of NDCs** in what has been labelled as “cycles”:

- Parties have to submit new NDCs every five years. Each successive update of NDCs is expected to reflect a party’s “highest possible ambition” and to be stronger than the previous one (principle of “progression”) → Article 4.9 and 4.3
- An upward adjustment of NDCs is possible at any time → Article 4.11

Next steps

- Secretariat to establish interim registry of NDCs (first half of 2016)
- Secretariat to update NDC synthesis report (by 2 May 2016)
- IPCC to provide report on 1.5°C (in 2018)
- Facilitative dialogue on collective progress (in 2018)
- APA mandated to develop further guidance on NDC information (by CMA1)
- APA mandated to develop guidance on features of NDCs (by CMA1)
- CMA mandated to consider common timeframes (at CMA1)
- SBI to develop modalities for registry (by CMA1)
- submit new (for countries with 2025 end date) /updated (for countries with 2030 end date) NDC for period 2025-2030 (in 2019/20)
- Secretariat to prepare synthesis report on NDCs (in 2020)
- 1st global stocktake (in 2023)

- Also every five years, a global stocktake compares collective efforts with the temperature and global emission goal, in light of equity and science. → Article 14, 4.9; para 100-102 PD
- The PA provides that each new NDC shall be informed by the outcome of the preceding stocktake. Therefore the stocktakes were scheduled to give parties time to include the results in the preparation of their next NDC. The first stocktake will take place in 2023 but a “facilitative dialogue” will already take stock of efforts in 2018, which is likely to be prior to entry into force of the PA. → Article 14, 4.9
- Parties have to submit their NDC 9-12 months before the relevant CMA and the Secretariat then prepares a synthesis report of NDCs. This gives parties time to understand each others’ NDCs before the meeting. However, there is no obligation or process for follow-up and it remains to be seen whether parties would e.g. revise their NDCs in the light of reactions received. → para 25 PD.

There is no assessment of the ambition of individual NDCs. **The system relies entirely on the national level determining and implementing ambitious efforts and the persuasive impact of publicity, consultations and the so far unspecified global stocktake.**

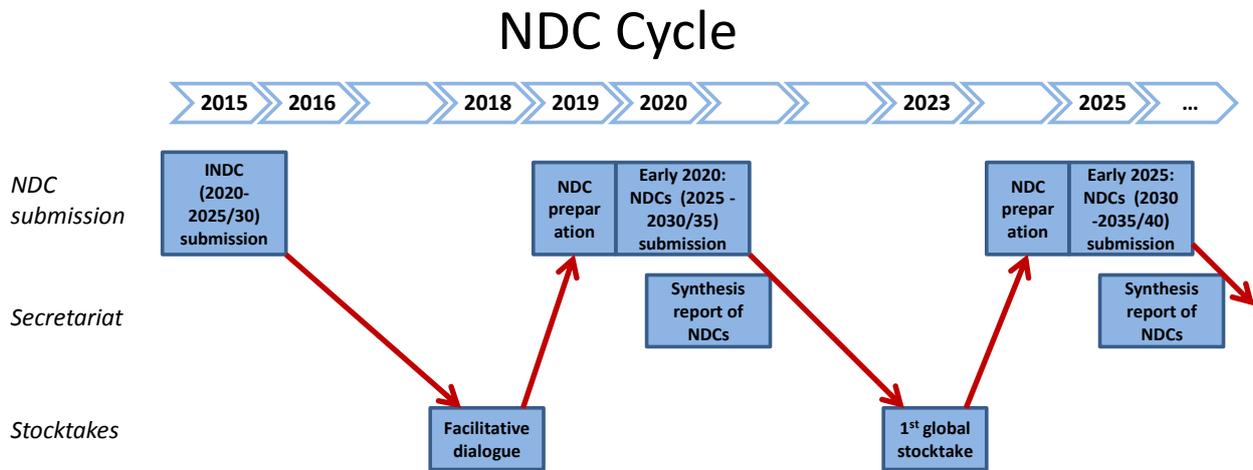


Figure 2: Timeline for the NDC cycle

Source: Authors’ own work

2.3 Adaptation and Loss and Damage

Key questions for Paris

- The weight and importance of adaptation vis-a-vis mitigation in the Agreement (“political parity”)
- Adaptation as part of NDCs and the stocktake? Obligation for parties to communicate adaptation actions?
- A global adaptation goal: whether to include and how express?
- Link mitigation ambition to financial support for meeting adaptation needs?
- Increasing the share of climate finance that goes to adaptation?
- Adaptation institutions, in particular the future of the Adaptation Fund?
- Include Loss and Damage in the Agreement and how?

Political parity: Adaptation and resilience are mentioned as one of the three overarching goals in Article 2. Adaptation may also be a component of NDCs, although parties are not obliged to include it. It is also part of the global stocktake that will take place every five years to assess progress towards the purpose of the PA. How to collectively take stock of the quite different individual adaptation efforts and needs with respect to the long-term goal is probably an issue that will require further discussion. The PA also requires that developing countries’ **adaptation efforts shall be “recognized”**, probably to give them more political visibility, but what this means and implies is not specified. Finally, the PA aims at achieving “a balance” between financial resources allocated to mitigation and to adaptation. In this respect, adaptation receives the same level of visibility in the PA as mitigation.

However, **on substance**, the individual obligations regarding adaptation are both less prescriptive and less precise than those on mitigation, and often qualified by adding wording such as “as appropriate”. Other provisions are for a large part worded in soft language (“recognize the importance of”, “acknowledge”), reflecting the difficulty of prescribing at the international level specific adaptation actions for individual countries. → Article 2.1(b), 7, 8.4 and 14

Global adaptation goal: The PA establishes a global goal on adaptation, namely to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change in the context of the temperature goal. **The goal is qualitative** and does not include a quantitative goal for adaptation finance, despite demands by e.g. the African Group and LMDCs (cf. the section on climate finance). However, the PA recognizes the link between mitigation ambition and adaptation needs, and that such needs involve costs. → Article 7.1 and 7.4

Adaptation communications: There is a soft obligation that parties “should, as appropriate” submit adaptation communications which will be recorded in a public registry. The PA allows for much flexibility: The communications can be submitted in conjunction with or as part of their NDCs, NAPs or NCs, and should not create additional burden for developing countries. Periodical updates are foreseen but the PA does not specify the timing. Also guidance for the content of such communications is vague: these may include adaptation priorities, plans and actions, and support needs. → Article 7.10 – 7.12

Adaptation finance: The PA seeks to address the relatively small share of climate finance that goes into adaptation: It states the **aim of achieving “a balance” between mitigation and adaptation**, and developing countries are entitled to “continuous and enhanced” international support for adaptation actions.

The PD establishes processes for assessing adaptation needs, for mobilizing adaptation finance and for reviewing the adequacy of support. However, most provisions are descriptive

and the PA does not establish a quantitative finance goal for adaptation. The PA also recognises the link between mitigation ambition and need for adaptation support. → Article 9.4 and 9.13; para 43, 44 and 46 PD

Adaptation institutions: The PA does not explicitly task any institution with adaptation but only sets out that cooperation on adaptation should “take into account the Cancun Adaptation Framework”. The Adaptation Committee, established by the UNFCCC’s COP, is tasked to **review the existing UNFCCC institutions on adaptation** with a view to improving coherence. The African Group and other developing countries had also proposed to anchor the Adaptation Fund in the Paris Agreement text, in order to secure its future existence. This was met by concerns mainly because the Adaptation Fund works under the Kyoto Protocol and has a special governance and funding model. The resulting compromise in the Paris decision states that the Adaptation Fund may serve the PA in the future if the UNFCCC COP and the KP’s CMP so decide. → para 43, 60 PD

Loss and Damage: There is no official definition in the UNFCCC context for L&D but it is often interpreted as damage that cannot be avoided by adaptation. An adequate reflection of this issue in the PA was one of the key demands of SIDS, and also LDCs. Whether and how L&D should feature in the PA was one of the politically most sensitive questions due to concerns by developed countries that this could entail state responsibility, liability and claims for compensation.

L&D now resides in the PA as a **distinct issue** with its own Article, suggesting that it is not treated as a subcategory to adaptation.⁵ The PA recognizes that minimizing and addressing L&D is important, and that limiting global temperature increase to 1.5°C would reduce climate change impacts and thus L&D. However, the PD explicitly excludes **liability and compensation** claims from the scope of L&D. → Article 8; para 52 PD

The question of climate **displacement** was not addressed in the PA itself, but the PD mandates the Executive Committee of the Warsaw International Mechanism to establish a task force on the subject. → Article 8.3 and 8.4; para 50 PD

A major success for small island states was also the establishment of a **permanent institution:** the Warsaw International Mechanism, established in 2013 by COP-19 to discuss questions relating to L&D, but with a limited mandate until 2016 only, is now anchored in the PA and made a permanent institution. → Article 8.2; para 48 PD

Next steps

- Adaptation Committee mandated to review institutional arrangements (in 2017)
- Adaptation Committee mandated to consider methodologies for assessing adaptation needs (by CMA1)
- Adaptation Committee and LEG mandated to develop modalities to recognize adaptation efforts of developing countries (by CMA1)
- Adaptation Committee, LEG, SCF mandated to develop methodologies on facilitating mobilization of support, and reviewing the adequacy of support and adaptation (by CMA1)
- Parties to submit adaptation communications (no date)
- Secretariat to establish registry for adaptation communications (no date)
- ExCom got the mandate to establish a clearinghouse for risk transfer (no date)
- ExCom to establish task force to recommend approaches to minimize and address climate displacement (no date)

⁵ Cf. the compromise on this issue in decision 2/CP.19, 3rd preambular para and para 1, which placed the Warsaw international mechanism for loss and damage “under” the Cancun Adaptation Framework.

2.4 Climate Finance

Key questions for Paris

- Providing a signal for transformation
- A quantified financial obligation in the Agreement, e.g. 100 bn USD as a floor?
- Broadening the range of contributors beyond Annex-II countries
- Should all parties take some form of action to help redirect financial flows?
- Transparency ex ante and ex post
- The role of the Green Climate Fund and the Adaptation Fund

Signal for transformation: There was a broad common understanding that climate finance is an enabler for action and that the global mitigation and adaptation efforts require major shifts in financial flows and private investments. The Paris Agreement is a major innovation in multilateral environmental agreements in that it includes this role of financial flows in the purpose of the Agreement, alongside the long-term goal on mitigation and adaptation. Including “**making financial flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development**” has the potential to send a strong signal to the private sector to re-assess and redirect its investments. Proposals to capture more specific issues such as fossil fuel subsidies, carbon pricing, mainstreaming and enabling environments are not included in the final text or play a marginal role. → Article 2.1 (c); para 116 and 137 PD

Quantified finance obligation: There was general agreement that the financial obligations on Annex II parties of the UNFCCC would continue to apply. One of the main political issues in Paris was whether the Agreement should, in addition, anchor and continue the political commitment made in Copenhagen to mobilise USD 100bn per year by 2020, or even specify higher amounts. The final text of the **PA does not contain quantified obligations** or a reference to the 100bn commitment. It merely restates the continuing existing obligations under the UNFCCC, by referring to developed countries instead of Annex II. **However, the PD explicitly refers to the 100bn goal**, stating that developed countries “intend to” continue it until 2025 and that a new collective quantified goal shall be set before that year, with the USD 100bn as a floor. → Article 9.1; para 54 PD

Broadening the range of contributors: The flipside of the political discussion over a quantified obligation were demands from developed countries that the Agreement should capture the notion of a broader range of contributors, i.e. that developing countries with the capacity to contribute to climate finance should do so. They argued that this would reflect today’s and future economic realities, and that in fact some developing countries were already contributing. Developing countries opposed this notion because they regarded climate finance as a core responsibility of developed countries and because they did not want to formalise their voluntary efforts and raise future expectations. The PA addresses the issue in weak terms by “encouraging” other parties to provide support voluntarily and also to communicate the respective information biennially. → Article 9.2 and 9.5

Mobilising climate finance and action for all parties: Apart from *providing* financial support, the PA establishes that developed countries should continue to take the lead in the global effort to *mobilise* climate finance from a wide variety of sources. Developed countries and in particular the EU sought to include that all developing countries should also in some, self-differentiating form take action to help mobilise climate finance. This notion is basically not captured in the Paris outcome - except that it is defined as a global effort and that developing

countries are encouraged to provide information on support provided and mobilised by them.
→ Article 9.3 and 9.7

Signal for transformation: There was a broad common understanding that climate finance is an enabler for action and that the global mitigation and adaptation efforts require major shifts in financial flows and private investments. The Paris Agreement is a major innovation in multilateral environmental agreements in that it includes this role of financial flows in the purpose of the Agreement, alongside the long-term goal on mitigation and adaptation. Including “**making financial flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development**” has the potential to send a strong signal to the private sector to reassess and redirect its investments. Proposals to capture more specific issues such as fossil fuel subsidies, carbon pricing, mainstreaming and enabling environments are not included in the final text or play a marginal role. → Article 2.1 (c); para 116 and 137 PD

Transparency ex ante and ex post: Support, including financial support, is included in the PA’s transparency framework (see also the following section). The framework defines the purpose of transparency of support as providing clarity not only in terms of support provided, but also received, and also to provide a full overview of aggregate financial support. Broadly similar to the existing system, the information provided under the transparency framework is subject to a technical expert review, but the PA also includes finance in the following multilateral consideration of progress, together with NDC implementation. In addition, there are specific obligations on developed countries to biennially communicate ex ante and ex post information on climate finance provided and mobilised. All this information also feeds into the global stocktake. Developing countries are entitled to support for implementing the transparency provisions. The PA does not address the issue of whether financial resources should be “new and additional”, which had long been a bone of contention → Article 9.5, 9.6, 9.7, 13.1, 13.6, 13.14

Generally, **the provisions on finance and transparency of support are quite bifurcated** with exclusive or stronger obligations on developed countries. Article

Future role of the Green Climate Fund and the Adaptation Fund: The PA is served by the existing financial mechanism under the UNFCCC, with the Green Climate Fund and the GEF as its operating entities. Demands by developing countries to give the Green Climate Fund a special role were not met. The PA keeps open the **possibility that the Adaptation Fund could serve the new Agreement** (see the adaptation section). → Article 9.10; para 59-64 PD

Next steps

- CMA to set new quantified goal for after 2025, from floor of 100bn USD (before 2025)
- COP to identify indicative qualitative and quantitative information to be provided biennially by parties (by CMA1)
- SBSTA to develop modalities for accounting of financial support (by COP22)
- CMA to adopt modalities, procedures and guidelines on biennial provision of information on support (at CMA1)
- CMP to consider whether Adaptation Fund may serve the PA (no date provided)

2.5 Transparency, MRV and accounting

Key questions for Paris

- Mandatory obligation to report? How often? On which subjects?
- Differentiation: a common transparency framework for all parties or for developed countries only? What flexibility could be granted to developing countries?
- Relationship with the existing system under the Convention
- External review of reported information?
- Which principles and rules can already be included on the transparency framework?

Transparency framework and obligations: The PA establishes a transparency framework for both action and support under common modalities. It includes regular reports on national greenhouse gas inventories, the implementation of NDCs, support provided and received⁶ and adaptation efforts. The PD specifies that all countries shall report at least every two years, with the exception of LDCs and SIDS. Core requirements are in principle strict obligations on all parties, such as **having to report inventories and information on the implementation of NDCs, expert review and multilateral consideration of progress**. For certain MRV elements there are less strict requirements or explicit differentiation between developed and developing countries. The obligation to report on support provided is strict for developed countries and soft for other parties. Reporting on adaptation is also not a strictly prescriptive obligation. The details of the transparency framework need to be decided and the CMA is mandated to adopt modalities, procedures and guidelines at its 1st session. → Article 13.7 – 13.10; 13.13; 13.3; para 91 PD

Flexibility: The common transparency system applies to all countries but with a long list of caveats. Recognising that not all countries currently have the capacities to comply with regular reporting obligations, parties agreed to allow for **flexibility “for those developing countries that need it in the light of their capacities”**. The system also shall be non-punitive, respectful of national sovereignty and avoid an undue burden. The PD further specifies that flexibility might be granted on scope, frequency and level of detail of reporting, and that in-country reviews (see below) might be optional. To assist developing countries in meeting their transparency obligations and improve the transparency scheme over time, the PD establishes a specific “Capacity-building Initiative for Transparency” → Article 13.1-13.3; para 85-90 PD

Transition from the existing UNFCCC system: The PA sets out that the new system shall “build on and enhance” the Convention system, which has to “form part of the experience drawn upon” for the modalities of the new system. The PD further specifies that the transparency rules developed under the PA shall eventually supersede the system of biennial reports and biennial update reports that was established at COP16 in Cancun. → Article 13.3; para 99 PD

Review: The PA establishes a technical expert review for reported information on mitigation and support, but not on adaptation. The review applies to all parties, but is slightly different for “developing countries that need it”: they may receive assistance for identifying capacity-building needs. The following “multilateral consideration of progress” for the first time specifically includes not only efforts on mitigation but also on finance. → Article 13.11 and 13.12

⁶ Cf. the section on climate finance.

Principles: While the details of the transparency framework are still to be determined by the CMA, parties were already able to agree on a set of general principles. These include the “TACCC” principles (transparent, accurate, complete, consistent and comparable), no backsliding from the frequency and quality of UNFCCC reporting, no double counting, environmental integrity, and flexibility in light of capacities → Article 13.3; para 93 PD

Accounting: The PA provides basic principles for accounting of emission reductions (TACCC principles; environmental integrity; no double counting). In accounting for their emission reductions, parties shall use the methodologies and common metrics of the IPCC, and ensure “methodological consistency” between the reference levels chosen to define their NDC and the calculations used during their implementation. Parties also “strive to include all categories” of GHG emissions or removals in their NDC but are not obliged to do so. However, they have to explain at least why any category is excluded. The CMA has the mandate to adopt respective guidance on accounting modalities. Since the accounting rules will not be adopted before CMA1, they will only apply from the second round of NDCs, but parties may voluntarily already apply them to the first round. → Article 4.13; para 31 and 32 PD

Next steps

- APA mandated to develop modalities, procedures and guidelines for transparency and timing for reviews (report to each COP and complete by COP24)
- CMA to adopt modalities, procedures and guidelines for transparency (at CMA 1)
- APA mandated to elaborate guidance for accounting for NDCs (by CMA1)
- GEF to make arrangements to support the Capacity-building Initiative (at 6th replenishment)

2.6 Legal aspects

Key questions for Paris

- Will the Paris outcome be legally binding? Legal structure and content
- Will NDCs be legally binding?
- Compliance mechanism: yes/no? For which parties? Covering which provisions?
- Entry into force: how to ensure the important players are on board?
- Should there be a minimum requirement to become a Party or participate in decision-making?
- Will all institutions established under the UNFCCC serve the PA?

Legal structure of the Paris outcome: The legal structure of the Paris outcome is straightforward: **The Paris Agreement is a treaty under international law.** This is clear from several formal indicators, notably that the Paris Agreement provides for its ‘entry into force’ and that it is subject to ratification under the usual procedure for treaties. It does not matter in this respect that the PA is not called a “Protocol”, although this might have political advantages. The PA was adopted as an annex to a COP decision, which also specifies further details. COP decisions are not binding as such but can be if the treaty so provides or implies.⁷ The INDCs submitted so far are not formally part of the PA, although it refers to them. → Article 20 and 21

Is it “legally binding”? There is some confusion over whether the whole Paris Agreement is binding or only parts of it.⁸ It is important to distinguish between the legal form of the Paris Agreement as a whole and the specific content of its individual provisions and elements. The entire text of the Paris Agreement is one treaty. As reservations are not permitted, it has to be ratified as a whole and “as is”. Therefore, formally speaking the whole Paris Agreement is binding for its parties once it enters into force. However, **not every sentence of the Paris Agreement establishes specific legal rights or obligations or is equally prescriptive or precise.** The PA uses a broad range of wordings and qualifiers, which give parties more or less flexibility or discretion regarding *whether* and *how* to implement its provisions. Generally speaking, there are prescriptive and precise obligations mainly relating to procedural aspects such as the NDC cycle and transparency, while there are hardly any on substance.⁹ → Article 20, 21, 27

Legal character of NDCs: The INDCs and NDCs **are not formally part of the PA**, although it refers to them. Their content is also not binding. Parties have an obligation to have, communicate and regularly update their NDCs, but there is no strict obligation to implement the exact content of the NDCs. Parties are only obliged to “pursue” measures “with *the aim of* achieving the *objectives*” of their NDCs. This means that they do not have to fulfil the NDCs but only to make efforts towards achieving their respective objectives. → Article 4.2

Compliance mechanism: The PA establishes a mechanism “to facilitate implementation of and promote compliance with” the PA. Importantly, the mechanism applies to all parties and covers all provisions of the PA including finance, while highlighting that attention needs to be paid to the national capabilities and circumstances of countries. However, the PA provides

⁷ Article 4.8, 4.9 and 13.11 PA arguably make the relevant content of decision 1/CP.21 part of the legal obligation in these Articles

⁸ For a comprehensive analysis see Sebastian Oberthür and Ralph Bodle. „Legal Form and Nature of the Paris Outcome“ (forthcoming Article in *Climate Law*, accepted on 8 February 2016).

⁹ IISD Reporting Services (2015). „Summary of the Paris Climate Change Conference“. Earth Negotiations Bulletin Vol 12 No 663.

only a few basic principles for its operation (transparent, non-adversarial, and non-punitive) and defines the membership of the committee. The decision on the actual modalities and procedures of the mechanism has been postponed to CMA1. Given the strong opposition against a compliance mechanism, especially one that applies to all parties, it remains to be seen whether and how the mechanism will be put into practice. Taking into account that the legal obligations on parties are mainly procedural and relating to making efforts rather than achieving specific results, it will be interesting to see how the compliance mechanism will find its facilitative role. → Article 15; para 104 and 105 PD

Entry into force: The PA establishes a double threshold for its entry into force: (1) at least 55 UNFCCC parties have to hand in their ratification instruments, and (2) these parties have to account for at least 55% of global GHG emissions. This double threshold is meant to ensure that the biggest emitters are on board, but not on their own, while making sure at the same time that entry into force can be achieved within a reasonable time-frame. The emissions threshold was a tricky issue since comparable emission data for parties do not exist under the UNFCCC: some parties have last communicated their emission data for 1990, others for 2013. To operationalise the emission threshold, the COP requested the Secretariat to publish a list with the most up-to-date emission data from each Party. According to that list on the UNFCCC website¹⁰, the second threshold would correspond to 20.4GtCO₂eq. → Article 21; para 105 PD

Institutions: The PA is served by the COP (which is called for this purpose the “Conference of the Parties serving as the meeting of the Parties to the Paris Agreement”, CMA), the UNFCCC Secretariat, SBSTA, and SBI. The PA provides that other institutions may serve the Agreement if the CMA decides so. To prepare for the entry into force of the PA, the COP has established a new body, the “Ad-hoc Working Group on the Paris Agreement” (APA). The APA will prepare draft decisions for adoption by CMA1 → Article 17, 18 and 19; para 8-11 PD

Decision-making: Only those parties that have ratified the PA will be able to take decisions with respect to the PA. Following years of political and academic debate about changing the strict consensus requirement, it was discussed until the end whether the PA should establish majority voting rules for the CMA but this proposal did not gather sufficient support. The PA now provides that the rules of procedure of the COP will apply. However, these rules have never been formally adopted and are applied only provisionally without the contested provisions on voting. In absence of agreed voting rules, the COP has been deciding by consensus. **The consensus rule would thus also apply to the CMA** – unless parties give it another try to solve the voting question. → Article 16.2

Article

Next steps

- Signature ceremony (April 2016)
- 1st session of the APA (May 2016)
- Secretariat to publish most up-to-date emission data (task already completed)
- APA mandated to develop modalities & procedures for the compliance mechanism (by CMA1)
- Expected entry into force (2020, but subject to sufficient ratifications)
- CMA1 mandated to adopt modalities & procedures for the compliance mechanism (at CMA1)

¹⁰ Available online: unfccc.int/files/ghg_data/application/pdf/table.pdf

2.7 Other issues

2.7.1 Forests

The PA recognizes the role of forests and **encourages parties to implement the REDD+ framework already established** under the Convention, but does not add to it. The REDD+ framework had been negotiated over many years and adopted in series of decisions at COP19 in Warsaw in 2013. In Paris, COP decisions adopted under the regular Convention agenda complemented the methodological guidelines. The REDD+ framework aims at reducing emissions from deforestation and forest degradation, and enhance conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries. One of the concepts behind it is that developing countries may be financially rewarded for such efforts, and the PD highlights the importance of such “results-based payments”. →Article 5; para 55 PD

2.7.2 Emissions from aviation and shipping

The **PA is silent** on emissions from international aviation and shipping, resulting from the so-called “bunker fuels”. This is not a minor omission given that these emissions account for around 3-4% of global GHG emissions – which might become almost 40% by 2050.¹¹ Text requesting parties to work through the International Maritime Organization (IMO) and International Civil Aviation Organization (ICAO) on measures to reduce these emissions, mainly supported by the EU, EIG and LDCs, disappeared in the final stages of the negotiations – inter alia due to resistance by India and China. The IMO has not been able so far to agree on emission reduction measures, and the ICAO has only established an aspirational goal.¹²

However, bunker emissions are anthropogenic emissions and therefore have to be counted in the long-term goal to balance emissions and removals. This might create some momentum in ICAO and IMO. → Article 4.1

2.7.3 Markets

The PA does not mention the term “markets” except for “non-market” approaches. But it establishes three different types of international cooperation on mitigation and notably also adaptation, with the aim of increasing ambition. They are available to all parties.

“**Cooperative approaches**” allow parties to engage bilaterally or multilaterally. What kind of cooperation could be meant here, has not been further defined, but could potentially cover the linking of emission trading schemes. If parties use the resulting mitigation outcomes for meeting their NDCs, parties shall ensure environmental integrity and transparency, apply robust accounting and avoid double counting. Further guidance on this will be developed. →Article 6.2 and 6.3; para 37 PD

The PA also establishes a **sustainable development mechanism** (SDM) involving both public and private entities, which may in some aspects be similar to the CDM of the Kyoto Protocol. In contrast to the cooperative approaches, the SDM will operate under the authority of the CMA. The SDM is meant to “deliver an overall mitigation in global emissions”, i.e. net emission reductions. But it is not clear yet how this is to be achieved. The modalities of the SDM still need to be negotiated. →Article 6.4-6.7; para 38 and 39 PD

¹¹ See European Union Directorate General for Internal Policies (2015) „Emission Reduction Targets for International Aviation and Shipping“, p. 28, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569964/IPOL_STU\(2015\)569964_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/569964/IPOL_STU(2015)569964_EN.pdf).

¹² But see the new aircraft CO2 emissions standard recommended by the ICAO’s environment committee on 8 February 2016, <http://www.icao.int/Newsroom/Pages/New-ICAO-Aircraft-CO2-Standard-One-Step-Closer-To-Final-Adoption.aspx>.

A framework for **non-market approaches** is also established by the PA, covering not only mitigation, but also adaptation, finance, technology transfer and capacity-building. Further negotiations are required to define how these approaches could work. → Article 6.8 and 6.9; para 40 and 41 PD

2.7.4 Response measures

The PA highlights in several instances the negative impacts that “response measures”, i.e. policies to reduce emission, may have on certain economies. Throughout the negotiations, Saudi Arabia has been a strong demander for such references. The PD specifies that the Forum on the Impact of the Implementation of Response Measures, an arrangement established originally in 2010 by the COP, will serve the Agreement. → Article 4.15; para 33 and 34 PD

2.7.5 Capacity building

Capacity building **features strongly in the PA**. All parties should cooperate while developed countries should enhance their support for building the capacity of developing countries. A strong push in the negotiations was achieved by agreeing to the establishment of the Paris Committee on Capacity-building that aims to address gaps and needs under the current framework for capacity building. The Committee has a limited mandate but this may be extended in a review in 2019/20. A specific Capacity building initiative for transparency was also established in the PD. → Article 11; para 72-89 PD

2.7.6 Technology Development and Transfer

The PA underlines the importance of technology development and transfer and makes the Technology Mechanism, established by the UNFCCC COP, a permanent institution of the PA. It establishes a “technology framework” for overarching guidance. The PD specifies that the framework should facilitate technology needs assessments, enhanced support and assess which technologies “are ready for transfer”. There is an obligation to strengthen cooperative action and to support innovation, as well as developing countries generally. The COP of the UNFCCC will also undertake a “periodic assessments of the effectiveness and adequacy of support” which informs the global stocktake. Developed countries are required to report on technology transfer, while developing countries are only encouraged to do so. Requests by developing countries to address intellectual property rights are not reflected in the agreement. → Article 10, 13.9 and 13.10; para 66-71 PD

2.7.7 Preamble

The PA’s preamble contains some important and sometimes innovative issues, some of which were nevertheless difficult to include in the operative text. Notably, several preambular paragraphs address fundamental issues linked to the transformation that the response to climate change requires, including: development priorities such as eradication of poverty, food security, a just transition of the workforce, human rights, gender equality, the concepts of “climate justice” and “Mother Earth”, and sustainable lifestyles and patterns of consumption and production.

3 Assessment of the Paris Agreement

Assessing the Paris Agreement requires a yardstick against which to measure it. Elements of assessment can for instance include what appeared politically feasible on 12 December 2015, what are the changes to the existing regime, or what is scientifically necessary to address climate change. In addition, it also involves expectations regarding how the Paris outcome will be implemented and to what extent it can and will in reality influence the conduct of states¹³ or other relevant actors.

The first approach involves the difficulty of supposing what was or could have been “politically feasible”. It might put too much emphasis on the mere fact that there is an agreement. Moreover, it seems problematic as it might also be argued that any outcome *per se* reflects what was politically feasible at that time.

The second perspective looks at the evolution of the existing climate regime. For the PA this requires a nuanced analysis, because it builds on and in parts restates the existing structures and requirements, while also placing them on a new footing.

The third approach would ask to what extent the PA solves the problem of climate change in terms of GHG emissions. This can put the political achievement into perspective. On the other hand, it might not be realistic to expect that the PA prescribes collective or individual actions or emission reductions that are commensurate with a science-based emission pathway. Even if it did, it would be difficult to predict to what extent States would fulfil such obligations for decades to come.

Any assessment will probably mix these and other approaches.

In assessing the PA, it is also **essential to distinguish between the PA’s political narrative and its text**. The provisions of the PA are often drafted in vague wording and leave many legal uncertainties. Few provisions establish clear and prescriptive legal obligation, most leave room for discretion and there are many caveats. Several provisions are factual statements rather than prescriptive guidance, and many use preambular or decision language with little operational content (“Parties recognize...”). However, the PA sets out a simple but clear structure and political narrative for the global effort: There is an agreed direction of travel in the form of the long-term goals, all parties are obliged to take action towards that purpose, with efforts that are transparent, assessed against the purpose and regularly enhanced. If parties take this narrative and implementation seriously, **the PA’s political and real-world impact might go well beyond what is actually written in the text**.

Against this background, the following subsections assess the PA along important themes that cut across the particular issues of mitigation, adaptation etc. that have been analysed above.

¹³ For easy of reference, in this context our use of the term „states“ includes the EU as one of the parties that adopted the PA.

3.1 Ambition and long-term objectives

The issue

Science is relatively clear about what the international community needs to do to prevent dangerous climate change: according to the IPCC AR5, least-cost emission pathways with a likely chance of keeping temperature rise below 2°C correspond to annual emissions of 44.3 (38.2–46.6) Gt CO₂ eq in 2025 and 42.7 (38.3–43.6) Gt CO₂ eq in 2030. Global GHG emissions would need to equal net zero at the latest by 2100 but this date depends on when emissions peak and how much is emitted in the meantime, i.e. how quickly the respective global carbon budget is used up. UNEP has analysed that if reductions start in 2020, global GHG emissions would have to be zero by 2080. To increase the likelihood of staying below 2°C or for reducing the temperature limit, reductions would need to be even more rapid.

From a science point of view, a “good” agreement would bring the world as close as possible to such a pathway, e.g. by establishing a shared objective in line with these scientific requirements, and by establishing individual obligations adequate to achieve such objective.

Global ambition: The PA does not establish a clear emission reduction **objective**. But it does state a temperature limit (“well below 2°C, pursuing efforts towards 1.5°C”) and elements of an emission pathway towards 2100: peaking followed by rapid reductions and an eventual balance between emissions and sinks. However, it does not specify specific years for when global emissions should peak or equal net zero. Also, in Article 4.1 the wording “balance” between emissions and removals is ambiguous and is not necessarily synonymous to “net zero”.¹⁴

The purpose of the Agreement in Article 2 is not absolute. The PA explicitly states that its purpose and implementation have to be seen in the context of several other principles and development objectives as such as sustainable development, poverty eradication, food security, equity, and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Individual ambition: In respect of how to achieve the necessary reductions and what parties promise to do, the PA is mainly procedural. It **obliges each Party** to regularly present an NDC and to make it public, and subjects them all to transparency procedures and a regular stocktake. However, the PA does not prescribe specific mitigation actions or which emission levels should be achieved by when, nor is there an obligation to actually fulfil the NDC. Article 3 only vaguely requires “ambitious” efforts, while Article 6 links market and non-market approaches to higher ambition.

The NDC approach is regarded as a **trade-off for having general obligations on all parties**, including developing countries.¹⁵ The assumption is that not prescribing specific measures or emission reductions will make it easier for countries to join the Agreement and to develop ambitious NDCs, and that the transparency system and stocktake will create sufficient public pressure on States to do their fair share and implement their NDCs. The fact that almost all parties to the UNFCCC - developed and developing - showed their commitment by submitting an INDC prior to the Paris summit can be regarded as a success in this respect. However, on aggregate the INDCs so far fall short of the ambition required globally. The estimated aggregate level of emissions in 2030 will be at around 55Gt CO₂eq in 2030 if the INDCs are imple-

¹⁴ See above in section 2.2.

¹⁵ Although it should be noted that the UNFCCC already contains obligations that apply to all parties, e.g. in Article 4.1 and 12.1 UNFCCC.

mented – but for a least-cost 2°C scenario emissions would need to go down to around 42 GtCO₂eq.¹⁶

Raising ambition over time: To incentivise more ambitious efforts over time, the PA requires parties to update their NDCs every five years. However, the only steer towards increasing ambition are the **concepts of “progression” over time and “highest possible ambition”**, and the idea that NDCs shall be informed by the stocktake. The language on “progression” is factual rather than prescriptive, and there is no guidance on how the concept of progression could be applied to the wide range of very different NDCs - except in that they have to be informed by the global stocktake. Details on how the stocktake could work need to be agreed in the future. The NDCs are complemented by a long-term perspective through long-term low greenhouse gas emission development strategies, which all parties “should strive to “formulate and communicate. Although the PA specifies no further details, developing these strategies could assist parties in enhancing their individual mitigation efforts in the long run.

The role of transparency is linked to both individual and collective ambition. Understanding what parties say they intend to do in their NDCs is important for other parties in order to compare the fair share of contributions. It is also necessary as a basis for aggregating data and assessing progress towards collective ambition. The lack of standards for the content of the NDCs makes it difficult to understand their potential impact on emissions, and to compare them between parties. The PA establishes the basis of a transparency and accounting scheme for this purpose, but much will depend on the details that have to be negotiated and adopted in the future.

The role of climate finance in raising ambition: One recurrent issue in the negotiations was finance as an enabler of ambitious action. The PA explicitly recognises that more support would allow for higher ambition. Across the PA, developing countries are entitled to receive support for preparing and implementing their NDCs as well as for other actions. The reference to financial flows in the PA’s purpose is a key achievement as it recognises that public finance alone will not be sufficient for achieving the mitigation and adaptation purposes. However, the PA does not or only in passing address specific measures that could help mobilise or redirect financial flows, such as subsidies, enabling environments or carbon pricing. There is also only very basic reference to broadening the range of contributors to willing developing countries, but this point might be symbolic as several developing countries are in fact engaged in South-South cooperation. In terms of increasing climate finance in order to raise ambition, the PA envisages a progression and requires that a new quantified goal be set prior 2025 from the 100bn “floor”.

The PA’s mainly procedural approach may be explained as an alternative to the KP which some perceived as too prescriptive and deterring. It remains to be seen **whether the procedures anchored in the PA** (cycles, transparency obligations, stocktake) **will trigger sufficiently ambitious contributions** once the details are agreed, and whether parties will also implement them.

¹⁶ UNFCCC Synthesis report- UNFCCC Doc FCCC/CP/2015/7 – available online at <http://unfccc.int/resource/docs/2015/cop21/eng/07.pdf>

3.2 Differentiation

The issue

Since its beginning in 1992, the obligations under the international climate regime have been based on distinguishing countries listed in Annex I to the UNFCCC (considered to be “developed countries”) and all other countries (“non-Annex-I countries”). The main obligations are differentiated by reference to these two categories.¹⁷ In recent years, developed countries have argued that this “bifurcation” did not reflect economic, political and emission realities anymore and that an ambitious climate deal also had to involve developing countries, in particular large emitters.

The Durban Mandate specified that the Paris Agreement should be “applicable to all Parties”. At the same time, all parties recognized that some form and degree of differentiation between countries still needed to be reflected in the Agreement - but parties were divided about how to take into account the national circumstances of countries for each specific issue.

The PA moves beyond the UNFCCC’s bifurcated divide with small but decisive steps. The PA explicitly states that *all* parties “are to” take actions towards its purpose, on mitigation, adaptation, means of implementation and transparency. The core obligations on mitigation, such as submission of NDCs, and transparency are in principle on all parties, with differentiation and flexibility to be added rather than intrinsic.

At the same time, the provisions of the PA do allow for differentiation between countries in several ways. The PA restates at the beginning the UNFCCC’s principle of “common but differentiated responsibilities and respective capabilities”, and complements it with the important addition “in the light of different national circumstances”. This addition could increase the range of factors that may serve as a basis for determining differentiation.¹⁸ Notably, the PA does not refer to the annexes of the UNFCCC. This could be seen as an “implicit abandonment of the Annexes of the UNFCCC”¹⁹, and of the division based on 1992 realities. However, it should be noted that many provisions in the PA distinguish between “developing countries” or “developed countries”, although without defining these categories. In practice this could mean that the Annexes will for some time provide an important point of reference, with room for (self-) differentiation.

Another indication for the shift beyond bifurcation is that **each section** of the Agreement takes a **slightly different approach** to differentiation.

- Preamble: Reiterates the principle of common but differentiated responsibilities and respective capabilities but adds „in the light of different national circumstances“. Recognises specific needs and circumstances of developing countries in general, especially the most vulnerable, and LDCs regarding technology transfer and funding,
- Mitigation: Obligations are mostly the same for all parties. As in the preamble, the principle of common but differentiated responsibilities and respective capabilities is supplemented with „in the light of different national circumstances“. LDCs and SIDS have more flexibility in formulating NDCs. Developed countries “should” take the lead by adopting economy-wide absolute reduction targets, while others are encouraged to move towards such targets. Recognition that that peaking will take longer for develop-

¹⁷ For financial obligations, the differentiation is between a list of countries contained in Annex II of the UNFCCC, a subset of those listed in Annex I, and everyone else, Non-Annex II countries.

¹⁸ See also Meinhard Doelle (2015). „The Paris Agreement: Historic Breakthrough or High Stakes Experiment?“. Online available: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2708148

¹⁹ Ibid

ing countries. Overarching obligation to take into account parties with economies most affected by the impacts of response measures.

- **Adaptation:** Obligations are the same for all parties. Developing countries' efforts have to be recognized (although the meaning of this has to be clarified). Specification that the adaptation communication should not create additional burden for developing countries Strong financial entitlement of developing countries Taking account of the needs of developing countries.
- **Finance:** Most of the finance provisions are almost completely different for the two groups, with obligations developed countries and soft encouragement for developing countries. Leadership by developed countries in mobilising climate finance as part of a global effort, which implies that developing countries should also make efforts. Across sections, the PA states that support shall be provided to developing countries. Explicit recognition that support "will allow" for higher mitigation ambition.
- **Technology:** Provisions apply to all parties; support for developing countries.
- **Capacity Building:** Capacity building is for developing countries. Obligation for all parties to cooperate to enhance developing countries' capacities.
- **Transparency:** In principle, the same obligations for all parties on reporting on mitigation and adaptation. Reporting on means of implementation is obligatory only for developed countries. Flexibility is mandatory for "those developing countries that need it" in the light of their capacities. Special circumstances of LDCs and SIDS are recognized. Expert review pays "particular attention to the respective national capabilities and circumstances of developing countries".
- **Compliance:** Compliance mechanism covers all provisions of the PA. It does not refer to developed or developing countries, but is to "pay particular attention to the respective national capabilities and circumstances of Parties".
- **Stocktake, loss and damage, and education:** No differentiation.

Some country groups also strongly pushed for having their **special circumstances** recognized. While there was broad agreement that the situation of LDCs required special recognition, it was more difficult, also amongst developing countries, to agree whether other country groups should also be mentioned or singled out, including Africa, SIDS, economies in transition, and small mountainous developing States. The PA recognizes the special circumstances of LDCs and SIDs in the context of NDCs, financial support, capacity building and transparency. Africa is singled out in the preamble of the PD in the context of access to sustainable energy.

The PA is a **watershed in differentiating between developing and developed countries**. Although the UNFCCC already contains some general obligations that apply to all parties, the PA breaks new ground by supplementing the principle of common but differentiated responsibilities, its core obligations for all parties and range of techniques used to express differentiation. Almost 30 years after the Montreal Protocol established a model structure for including developing countries through differentiation, the PA provides an alternative approach.

3.3 A signal for moving towards zero emissions?

The issue

The necessary reduction in global GHG emissions requires an unprecedented transformation of economies that will need to bring a multitude of relevant actors on board: different levels of government, from civil society and business. To start this transformation process, a “good” agreement would send a credible signal to non-party stakeholders²⁰ that the long-term business case for fossil fuels is coming to an end and that States will implement respective policies. This does not suggest that the interests of all actors are the same or that they look for the same signals.

International agreements do not normally oblige non-state actors. There is no obvious or agreed understanding of what would be a desirable “signal” to non-party stakeholders and how an international agreement between states can create such a signal.

The legal form of the PA as a formally binding treaty is a starting point. Although legal form does not say anything about content and does not guarantee implementation, it shows a **high degree of political commitment by governments** at the international level vis-a-vis other parties, and at the domestic level through the ratification process.

There also is the PA’s purpose with its three long-term elements. The explicit and clear temperature limit goes together with the qualitative mitigation goals peaking, rapid reduction and subsequent balance. However, these long-term objectives have shortcomings in the fine print: the wording of the “balance” of emissions and removals leaves room for interpretation. Other terms such as “zero” or “decarbonisation” might have been clearer and easier to communicate, but would also entail other difficulties. For instance, there is no agreed definition of the term „decarbonisation“.²¹ In addition, some caveats and qualifiers spread over the agreement²² could be regarded as important safeguards by some and as potential loopholes by others. But by and large the purpose and long-term mitigation objectives, together with the obligation to make efforts towards them and the principle of progression, create a **simple but robust political narrative** that adds weight to the general political commitment.

There are downsides as well: Based on the PA text alone, the procedural structure of the PA and the **absence of specific mitigation action obligations** may not seem particularly strong signals. Energy in general or renewable energy in particular is not explicitly addressed except for a small reference in the preamble to the PD. Such specific issues are left to individual NDCs. The provisions on “cooperative approaches” are unlikely to send a signal to businesses looking for markets for the time being, because there are no requirements as yet for content and accounting.

With regard to future investments, making **finance flows** consistent with low-emission pathways is one of the three overarching purposes and an important innovation of the Agreement. This has the potential of being a strong signal to investors. However, as with mitigation, the PA itself does not put much flesh to that bone. Basically none of the proposals addressing

²⁰ For instance the EU argued in 2013: “The 2015 Agreement will have to encourage, facilitate and incentivise private sector action and investment”. Submission by Lithuania and the European Commission on behalf of the European Union and its Member States of 16 September 2013, „The scope, design and structure of the 2015 agreement“, <http://unfccc.int/bodies/awg/items/6656.php#workstreamone>.

²¹ IPCC defines „decarbonisation“ as „reducing the carbon *intensity* of energy“ (emphasis added), see IPCC AR5 SYR SPM, p.5. Others understand „decarbonisation“ as the end point of an energy system or economy with no CO₂ emissions.

²² Such as national circumstances, food security, just transition of the workforce, sustainable development, poverty eradication, human rights, response measures.

means and actions towards this purpose was included in the final Agreement. This includes e.g. reducing fossil fuel subsidies, carbon pricing or improving the conditions for low-carbon investment, i.e. enabling environments. There is one weakly worded reference to the importance of carbon pricing in the PD's chapter on non-party stakeholders.

The floor of 100bn USD per year for climate finance as a basis for setting a new goal from 2025 provides some degree of predictability and could push states to mobilise and redirect finance at scale. However, this might not weigh too heavily with investors, given the much larger amounts required for the overall transformation. And for some stakeholders the more important signal might be the intended balance between mitigation and adaptation finance.

The PA has nevertheless triggered widespread reactions around the world from all kinds of actors, including business and investors. Many hold that the PA „has fundamentally shifted calculations about risk and opportunity across many industrial sectors“²³ and provides a „**clear pathway** to decarbonise the global economy“.²⁴

While some reactions might be mere rhetoric, the Paris summit has created, at least for the time being, a **political momentum** that goes beyond the adoption of the PA. In the run-up to Paris and during the conference, many investors and companies were eager or drawn to position themselves, issue statements on climate change, commit to climate targets or change their policies. In this respect, Paris crystallized and triggered many new initiatives by non-party stakeholders.

Investors in particular will have their own way of assessing the PA for their own purposes and potential strategic implications. In this respect the broad political narrative and credibility of the PA it is potentially more important than its legal details.

At the same time, the lack of content in the PA means that non-party stakeholders are now waiting for governments to show their **commitment to the PA at national level**: „The immediate implications for business haven't changed over the weekend and the Agreement is highly unlikely to move markets in the short term. For business, the sharp end of the Agreement is in the national plans or INDCs. ²⁵ It will also be important that the transparency framework is fleshed out in a manner that increases the credibility of governments' promises.

²³ Investment Week. „Which sectors could be impacted by the Paris Climate Agreement?“ 6 January 2016. Online available: <http://www.investmentweek.co.uk/investment-week/analysis/2440883/which-sectors-could-be-impacted-by-the-paris-climate-agreement>

²⁴ Unilever. „Paul Polman praises historic Paris Agreement“. 12 December 2015. Online available: <https://www.unilever.com/news/news-and-features/2015/Polman-praises-Paris-Agreement-121215.html>

²⁵ PriceWaterhouseCoopers AG. „PwC COP21 briefing: Paris Climate Summit“, 14 December 2015. Online available: <http://pwc.blogs.com/sustainability/2015/12/pwc-cop21-briefing-paris-climate-summit.html>

4 Summary and Outlook

The PA is a **landmark** - although it does not require a certain amount or range of emission cuts in a certain amount of time, based on current scientific knowledge. It is a **legally binding treaty** which does not replace but complement the UNFCCC. It needs to be ratified by a sufficient number of parties before it can enter into force. The PA is accompanied by a COP decision that addresses details, further work and issues related to the pre-2020 period.

One of the most important Paris outcomes is the **anchoring of a mitigation objective** that is to hold temperature “well below” 2°C while also pursuing effort to stay below 1.5°C. The PA breaks this temperature limit down into a long-term emission reduction objective. The mitigation objective is part of the overall purpose of the PA, which guides all parties’ efforts and also includes adaptation, and finance flows in the PA. All three are significant additions to the UNFCCC’s objective.

In respect of how to achieve mitigation, **the PA is mainly procedural**. Its core obligations are to have, communicate and regularly update an NDC - and this applies to all parties. However, the PA does not prescribe specific NDC content, mitigation actions or targets. There is no strict obligation to implement the exact content of the NDCs. For raising ambition, the only steer are the concepts of “progression” over time and “highest possible ambition”, and the idea that NDCs shall be informed by the global stocktake on progress towards the overall goals.

In order to ensure **transparency** of efforts, the requirements are in principle strict obligations on all parties, such as having to report inventories and information on the implementation of NDCs, expert review and multilateral consideration of progress. The rules allow for flexibility for developing countries according to their capacities.

The PA’s approach is an experiment that relies on the national determination of efforts and the persuasive impact of the transparency framework and the global stocktake towards progression. Details on elements that could safeguard ambition, such as on the content of NDCs, the stocktake and transparency, are left to be agreed in the coming years. Although it is normal for a complex multilateral treaty such as the PA to leave many technical details to future decisions, the PA is special: its procedural approach means that further details could be crucial for safeguarding ambition.

Adaptation was given a high level of visibility in the PA. A qualitative adaptation goal is established, developing countries’ adaptation efforts shall be “recognized” and climate finance aims to achieve a balance between mitigation and adaptation. Apart from that, there is little specific content. L&D now resides in the PA as a distinct issue with its own Article, suggesting that it is not treated only as a subcategory to adaptation. As a trade-off, the PD excludes liability and compensation claims from the scope of L&D.

On **finance**, the PA establishes the consistency of financial flows with low GHG emissions as one of its overarching purposes. This is a key achievement and might provide a signal to the private sector for adjusting investment strategies. It recognises that public finance alone will not be sufficient for achieving the mitigation and adaptation purposes. However, the PA basically does not address specific measures that could help mobilise or redirect financial flows, such as subsidies, enabling environments or carbon pricing. There are no quantified obligations, and only a hint at a broadened range of contributors or actions for all parties. The PD extends the 100bn commitment until 2025, when a new, and higher, goal has to be set.

The PA is also a landmark in **moving beyond the UNFCCC’s bifurcated differentiation with small but decisive steps**. It does so by supplementing the principle of common but differentiated responsibilities, by its core obligations for all parties and by its range of techniques used

to express differentiation. The trade-off for including all parties is the procedural approach to determining NDCs and individual action.

It is essential to distinguish between the PA's political narrative and its text. Despite shortcomings in legal detail, the PA is drafted in a way that presents a clear political narrative of what parties are expected to do towards which aims. The procedural approach is a try, setting out a simple but clear structure for the global effort. The number, and partly also the quality of the INDCs submitted so far are a sign that parties are willing to follow this approach. It remains to be seen whether the procedures anchored in the PA will trigger sufficiently ambitious contributions over time and whether parties will also implement them. In this case **the PA's political narrative** might have an **impact that goes well beyond what is actually written in the text**.

Implementation is key to the long-term success of the Paris outcome. The following issues are crucial for implementation:

- **The political momentum that was captured in Paris needs to be maintained.** The political level has to stay involved beyond the Paris conference in order to connect the Paris system with the real world and keep the relevant political and financial institutions on track to increase efforts.
- **The capacity has to be created** for the progressive preparation and technical implementation of NDCs. The 'intended' contributions (INDCs) submitted before and in Paris showed an almost universal engagement by all countries, although their content is not ambitious enough for staying well below 2°C. This political will needs to be underpinned with the capacity to define and implement actions on the ground.
- The Paris Agreement's procedural approach means that further **details could be crucial for safeguarding ambition**. The forthcoming negotiations have to determine remaining technical details, in particular with regard to the NDC features and the transparency. These details have to provide a counterbalance to the flexibility parties have in defining and implementing their actions. They can ensure public credibility of individual NDCs and actions and thus foster ambitious action by all.



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