

ISSUES FOR A 2015 CLIMATE AGREEMENT



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In 2011, parties to the U.N. Framework Convention on Climate Change (UNFCCC) opened a new round of negotiations aimed at delivering a global climate agreement in late 2015 in Paris. The decision launching the Durban Platform talks spelled out some broad parameters: the new agreement is to have “legal force,” be “applicable to all Parties,” and take effect from 2020. This brief outlines a wide range of issues before the Ad Hoc Working Group on the Durban Platform (ADP) regarding both the design of a 2015 climate agreement and the process for negotiating it.

PRE-PARIS PROCESS

At the Nineteenth Conference of the Parties to the UNFCCC (COP 19) in Warsaw in 2013, the COP invited parties to communicate their “intended nationally determined contributions” to a 2015 agreement well in advance of COP 21—and for those “ready to do so,” by the first quarter of 2015. These are to be communicated “in a manner that facilitates the clarity, transparency and understanding of the intended contributions,” without prejudice to their legal nature. The COP also requested the ADP to identify by COP 20 in Lima “the information that Parties will provide when putting forward their contributions.”

Potential issues for the ADP include:

- Whether to define the scope of parties’ nationally determined contributions (mitigation, adaptation, finance, etc.).
- Whether to establish an *ex ante* process to clarify parties’ intended contributions, or to assess their adequacy (individual and/or collective) or equity.
- Whether contributions are to be finalized at COP 21 or subject to further revision.
- Whether, and if so how, to expressly differentiate the nature of parties’ contributions, the information they are to provide, or any *ex ante* process.

STRUCTURE OF THE PARIS OUTCOME

The outcomes of negotiations can be structured in many ways. For example, the UNFCCC regime consists of (1) the core agreement; (2) two annexes; and (3) subsequent decisions by the Intergovernmental Negotiating Committee and the COP, establishing the rules for particular elements of the agreement. Similarly, the Kyoto Protocol regime consists of (1) the core agreement; (2) two annexes; (3) a concurrent COP decision addressing methodological issues; and (4) the Marrakesh Accords, establishing the rules for particular Protocol provisions.

This use of varied elements in structuring an outcome can serve several purposes:

- **Timing**—It can allow some issues to be addressed subsequently, through additional agreements or COP decisions.
- **Legal form**—It can assign different legal character to different parts of the regime.
- **Revision/amendment**—It can make different parts of the outcome easier or harder to revise. (For example, rules set forth in a COP decision can be revised through a subsequent COP decision, rather than requiring an amendment.)

- **Optionality**—It can allow some elements to be mandatory and others optional (through either opt-out or opt-in procedures).
- **Levels**—It can allow some elements to be addressed internationally and others at the national/domestic level.

Potential issues for the ADP include:

- What to include in the 2015 outcome and what to put off for subsequent elaboration.
- What to include in the core agreement and what to include in annexes, schedules, or COP decisions, and the particular legal character of each.
- Whether to include optional elements and, if so, which ones and how.

LEGAL FORM

The Durban Platform provides that the ADP outcome shall take the form of “a treaty, another legal instrument, or agreed outcome with legal force.” Options include a UNFCCC amendment pursuant to Article 15, a protocol, an implementing agreement, or some other type of instrument with legal force. Ordinarily, COP decisions have the legal status of recommendations. However, the COP’s decisions can have legal force if the UNFCCC expressly authorizes it to adopt rules on a particular subject. For example, articles 4.1(a), 4.2(c), and 7.2(d) authorize the COP to adopt methodologies for the preparation of national inventories. Similarly, several UNFCCC provisions give the COP authority to establish rules for UNFCCC institutions—for example, Article 9.3 authorizes the COP to elaborate the functions and terms of reference of the Subsidiary Body for Scientific and Technological Advice (SBSTA).

Potential issues for the ADP include:

- Whether to incorporate the entire 2015 outcome in a legally-binding agreement, or only parts (with the other parts in non-legally-binding instruments such as COP decisions).
- Which parts of the outcome to frame as legal commitments.
- Whether to provide for evolution of the outcome’s legal form.
- Entry into force requirements.

LONG-TERM GOAL

The agreed outcome to the Bali Action Plan adopted by COP 18 called on parties to work towards deep reductions in global GHG emissions to achieve the 2° C temperature goal and to attain a global peaking of emissions as soon as possible. The outcome also reaffirmed that the time frame for peaking will be longer in developing countries.

Potential issues for the ADP include:

- Whether to establish a new mitigation-focused goal such as a GHG concentration objective, a long-term emissions goal, a peaking year(s), or a revised temperature goal.
- Whether to establish long-term goals on adaptation or finance.

NATURE OF COMMITMENTS

The UNFCCC and the Kyoto Protocol establish both procedural and substantive commitments. Some are legally binding, and others are not. Article 4.1 of the UNFCCC includes legally-binding commitments of both a procedural and substantive character, including procedural commitments on reporting, and substantive commitments to implement national policies and measures to mitigate and adapt to climate change. Similarly, the Kyoto Protocol prescribes substantive, legally-binding commitments to limit emissions by targeted amounts. In contrast, Article 4.2 of the UNFCCC contains a substantive aim that is not legally-binding.

Potential issues for the ADP include:

- Whether to prescribe new procedural commitments—for instance, to list a national contribution in a schedule or annex, or to undergo review—and whether to make these commitments legally binding.
- Whether to prescribe new substantive commitments, and whether to make these legally binding.
- Whether nationally-determined contributions:
 - Are legally binding under either national or international law;
 - Must address a specific time period (for example, 2020–2025, 2020–2030).
- Whether and how to provide for differentiation in the type, stringency, timing, or legal character of commitments or national contributions.

UPDATING OF CONTRIBUTIONS/ COMMITMENTS

The Kyoto Protocol requires a treaty amendment to update the targets set forth in Annex B. By contrast, the Cancún Agreements do not provide any process to update the contributions listed in the INF (“information”) documents maintained by the UNFCCC Secretariat.

Potential issues for the ADP include:

- Whether to allow or require parties to update their national contributions at regular intervals.
- Whether to allow parties to update their contributions/commitments unilaterally, or whether to establish an international process for revisions.
- Whether to allow only upwards revisions (i.e., revisions that increase ambition).

TRANSPARENCY/ACCOUNTABILITY

The COP has taken a series of decisions over the years establishing and elaborating mechanisms for the reporting of information by parties, and for its consideration by the COP. These include the submission (and, in the case of developed countries, review) of the emissions inventories and national communications required by the UNFCCC. In the Cancún Agreements, the COP established new mechanisms for the measurement, reporting and verification (MRV) of mitigation efforts and support. These include biennial reports and two peer review processes—international consultations and assessment (ICA) for developing countries, and international assessment and review (IAR) for developed countries. Developed countries that are parties to the Kyoto Protocol are also subject to additional reporting and review requirements in connection with national inventories and accounting of emission units.

In addition to its provisions on reporting and review, the UNFCCC called for the development of a multilateral consultative process (MCP) to address issues of implementation and compliance. A working group developed rules for the MCP, but the COP never adopted them. The Kyoto Protocol established a compliance mechanism with a facilitative and an enforcement branch.

Potential issues for the ADP include:

- Which of the existing transparency/MRV mechanisms to incorporate or further elaborate in the new agreement.
- Whether new mechanisms are needed to address gaps in the transparency/MRV of mitigation or finance.
- Whether to establish common rules for the accounting of, for instance, land use/sinks or the use of market mechanisms.
- Whether to establish a compliance mechanism, and if so, what type.
- Whether, and if so how, to differentiate MRV or compliance provisions.

EQUITY/DIFFERENTIATION

The UNFCCC and the Kyoto Protocol differentiate parties based on lists set forth in Annexes I and II, as well as in terms of specialized categories such as least developed countries (LDCs), small island countries, countries highly dependent on income from fossil fuels, etc. Parties included in Annexes I and II have additional commitments, while other categories of countries are given special consideration.

Although the Durban Platform decision does not include any reference to differentiation, it provides that the Paris agreement shall be “under the Convention.” Parties differ as to the implications of this phrase for differentiation under the 2015 agreement, but agree on the importance of differentiating in some manner between the contributions/commitments of different countries.

Potential issues for the ADP include:

- Whether to provide only for self-differentiation among countries based on their nationally-determined contributions, or whether to expressly differentiate among parties with respect to legal form, commitment type, stringency, timing, MRV and/or compliance.
- If the latter, how to effectuate differentiation—e.g., through lists such as Annexes I and II, or on the basis of agreed criteria such as per capita income or emissions.
- Whether, and if so how, to provide for evolution in the differentiation of commitments.

ADAPTATION

The COP has adopted a series of decisions facilitating adaptation efforts in developing countries. A work programme adopted at COP 7 provided for the preparation by LDCs of National Adaptation Programmes of Action (NAPAs), and created two new funds focusing on adaptation (the Least Developed Countries Fund and the Special Climate Change Fund). The Nairobi work programme focused on helping developing countries make better-informed decisions about adaptation options. Most recently, the Cancún Adaptation Framework, adopted by COP 16, established an Adaptation Committee and provided for the formulation and implementation by LDCs of National Adaptation Plans. In addition to these Convention activities, the Kyoto Protocol created an Adaptation Fund, financed by a share of the proceeds from Clean Development Mechanism (CDM) projects.

Potential issues for the ADP include:

- Whether to adopt some form of global goal for adaptation.
- Whether and how to incorporate or build upon existing institutions and mechanisms, and whether new ones are needed.
- Whether to establish new commitments relating to adaptation—for example, a collective commitment to enhance adaptation action, or individual commitments to formulate national adaptation plans.
- Whether and how to increase adaptation support for developing countries.
- Whether to establish a registry of national adaptation actions.

LOSS AND DAMAGE

COP 19 established the Warsaw international mechanism for loss and damage associated with climate change impacts, under the existing Cancún Adaptation Framework. Its functions include: sharing information and best practices, exploring strategies to address loss and damage, and providing technical support to vulnerable countries. The parties agreed to revisit the mechanism and its structure at COP 22 in 2016.

Potential issues for the ADP include:

- Whether to include provisions relating to the Warsaw institutional mechanism.

- Whether to address the issue of financial assistance or insurance for loss and damage.

SUPPORT FOR DEVELOPING COUNTRIES

Developed countries agreed in the UNFCCC to assist developing countries in their mitigation and adaptation efforts with financial resources, technology transfer, and capacity-building. In the Cancún Agreements, developed countries committed, “in the context of meaningful mitigation actions and transparency on implementation,” to mobilize \$100 billion per year by 2020 from public and private sources to address developing country needs. The Cancún Agreements also established the Green Climate Fund as an operating entity of the Convention’s financial mechanism, and a new Climate Technology Centre and Network.

Potential issues for the ADP include:

- Whether to establish a collective finance goal, or interim goals with specified timeframes.
- Whether to include provisions to promote predictability of finance—for example, by quantifying levels of support that should/must be provided either on an individual or collective basis.
- Whether to provide for a periodic pledging/replenishment process.
- Whether to include provisions to promote innovative sources of funding and/or the mobilization of private investment.
- Whether to include provisions to strengthen the enabling environment for climate investment in developing countries, and to build their capacity to prioritize investment needs and effectively deploy available resources.

CARBON MARKET

Market mechanisms can take two forms: allowance mechanisms or crediting mechanisms. The Kyoto Protocol includes both types. It gives parties a quantity of emission allowances (assigned amount units), which they can then trade. And it allows parties to generate emission reduction credits through the Clean Development Mechanism (CDM), which Annex I parties can use to comply with their targets.

COP 17 called for the establishment of a new market-based mechanism under the UNFCCC as well as for consideration of a “framework for various approaches,” which would encompass both market and non-market approaches.

Potential issues for the ADP include:

- Whether to incorporate any of the Kyoto mechanisms in the new agreement, or establish a new market mechanism—and if so, how to determine eligibility for their use.
- Whether to include provisions regulating or facilitating the carbon market, for instance by establishing or encouraging linkages between regional, national and sub-national market mechanisms.

LAND USE

The UNFCCC addresses all sources and sinks of greenhouse gases, including those from land-use, and the Marrakesh Accords include detailed rules for accounting under the Kyoto Protocol of emissions and removals from land-use, land-use change, and forestry (LULUCF).

The 2007 Bali Roadmap called for consideration of policy approaches and positive incentives to reduce emissions from deforestation and forest degradation in developing countries (REDD). COP 16 converted REDD into REDD+ by (1) adding components addressing the conservation and expansion of forest carbon stocks, and (2) expanding the scope to protection of forests in all countries. The Warsaw Framework for REDD+ adopted at COP 19 completed methodological work on forest monitoring, safeguards, reference emissions levels, MRV, and finance. The Framework recognizes that REDD+ financing can come from multiple sources, including public and private, bilateral and multilateral, and market and non-market sources.

Parties have also considered issues related to agriculture. COP 17 requested SBSTA to consider mitigation-related issues, but no work programme has been adopted. At COP 19, SBSTA held a workshop on ways to enhance the adaptation of agriculture to climate change impacts while promoting rural and sustainable development, agricultural productivity and food security, particularly in developing countries.

Potential issues for the ADP include:

- Whether to include provisions to mobilize and enable access to REDD+ financing.
- Whether to include provisions addressing the agricultural sector.

INSTITUTIONAL ARRANGEMENTS

The UNFCCC established the COP, SBSTA, the Subsidiary Body on Implementation (SBI), Secretariat, and financial mechanism. A number of additional institutions have been established subsequently, through decisions of the parties, including the Technology Mechanism and Green Climate Fund. The Kyoto Protocol generally utilizes the institutions established by the UNFCCC, but creates several additional ones, including the CDM Executive Committee.

Potential issues for the ADP include:

- As referenced in specific contexts in previous sections, whether and how to incorporate or build upon existing UNFCCC institutions, and whether to create new ones.
- Whether to include decision-making rules in the agreement, to avoid subsequent disputes about the rules of procedure.

LINKAGES

In addition to activities under the UNFCCC, states are addressing the climate change issue in other international regimes, including the International Maritime Organization (IMO), International Civil Aviation Organization (ICAO), and the Montreal Protocol. States, subnational entities and private actors are also addressing the issue through a wide variety of other measures, initiatives and forums.

Issues for the ADP include:

- Whether to provide for formal or informal linkages to other regimes that address climate change, such as IMO or ICAO.
- Whether to provide a means of reflecting plurilateral, subnational and/or non-state efforts in the agreement.
- Whether to account for such efforts in any accounting or review of collective effort.

PERIODIC REVIEW

The UNFCCC provides for periodic reviews of the adequacy of Article 4.2 commitments, the first of which took place at COP 1 in 1995. More recently, COP 16 agreed to review the adequacy of the 2° C temperature goal adopted by COP 16, as well as the overall progress towards achieving that goal. This review began in 2013 and is scheduled to conclude in 2015.

Potential issues for the ADP include whether to provide for regular reviews of:

- The adequacy of the temperature or any new long-term goal;
- The adequacy and/or equity of parties' efforts in achieving the agreed goal;
- The need for new substantive and/or procedural commitments;
- The legal form of the agreement or the legal character of commitments.

Other C2ES Resources:

Evolution of the International Climate Effort, May 2014

The Durban Platform: Issues and Options for a 2015 Agreement, December 2012

Multilateral Climate Efforts Beyond the UNFCCC, November 2011

The Evolution of Multilateral Regimes: Implications for Climate Change, December 2010

Available at www.C2ES.org



The Center for Climate and Energy Solutions (C2ES) is an independent nonprofit organization working to promote practical, effective policies and actions to address the twin challenges of energy and climate change.