

COP 21 and the Paris Agreement: A Force Awakened

Lili FUHR

*Ecology and Sustainable Development Department
Heinrich-Böll-Stiftung, Schumannstraße 8, D-10117 Berlin, Germany
fuhr@boell.de*

Liane SCHALATEK

*Heinrich Böll Foundation North America
1432 K Street, NW, Suite 500, Washington DC 20035-5994, America
Liane.Schalatek@us.boell.org*

Hans VEROLME

*Climate Advisors Network
Diestelmeyerstraße 3a, 10249 Berlin, Germany
climate@hansverolme.net*

1. Preventing Dangerous Climate Change or Turning It into a Huge Economic Opportunity for Big Business?

Judged against low expectations and the collective trauma of Copenhagen 2009, the acceptance of the global and legally binding Paris Agreement on Saturday, 12th of December, at 19:26, is a historical moment. It achieves a goal long believed unattainable on the long road from Bali (2007) via Durban (2011). It sends a powerful signal that global agreement on such a painful structural transformation is possible. Yet, no government seemed to be willing or able to agree on the specifics. Judged against the enormity of the challenge and the needs and pressure from people on the ground demanding a global deal anchored in climate justice, the Paris Agreement can only be called a disappointment. The gavel in Paris has fallen to seal the deal. But citizens around the world have yet to find out whether the Paris Agreement can be the springboard for lasting policy changes on the ground or whether it will wrap a glorified green veil around the continued inaction of our political leaders.

The anchoring of an ambitious aim to “pursue efforts to limit temperature increase to 1.5°C above pre-industrial levels” (Art. 2, para. 1 of the Paris Agreement) is widely celebrated as a major achievement. The explicit reference to this temperature goal is a significant improvement over what was achievable in Copenhagen and deserves to be celebrated. The contribution of civil society pressure to get there should be acknowledged. The “High Ambition Coalition”, led by the EU and the ACP countries,¹ was very important in calling for an ambitious and legally binding agreement. Interestingly, by the end

¹ African, Caribbean, and Pacific Group of States.

of COP 21, the Coalition counted more than 100 members, including the USA, Canada, Brazil and Australia.

This ambition is, however, not anchored by adequate actions in the rest of the agreement. The 186 intended nationally determined contributions (INDCs), pledged by the end of COP 21 lead us on a 3°C of warming pathway. The Paris Agreement does not contain firm obligations (emission reduction targets and their review or the means of implementation, especially finance) that give any confidence of limiting warming to 1.5°C. The second piece of the ambition package for Paris (contained in Art. 4 and referred to as the “long-term goal”) was one of those sections that were heavily bracketed until the very last day. It outlined options such as climate neutrality, net-zero emissions or decarbonization, which have significantly different meanings. The compromise was to resort to IPCC language, with the final text calling for a peaking of greenhouse gas emissions as soon as possible “so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century”, which many observers understand to be the definition of a “net-zero” approach. It is already clear that different parties will interpret this, as well as many other compromise formulations elsewhere in the Agreement, according to their national needs and preferences. Here, it should be noted that a political “balance” differs fundamentally from a scientific “balance” that would adequately account for the rapidly decreasing absorptive capacity of oceans and other sinks (e.g. tropical forests) in a warming world.

All of the scientific scenarios reviewed by the IPCC that limit warming to 1.5° contain assumptions on the use of negative emissions technologies (see Box 1) such as Carbon Capture and Storage (CCS) and Bioenergy with Carbon Capture and Storage (BECCS). Given that the international climate community depends upon IPCC advice to make its decisions, this leaves a bitter aftertaste to the “high ambition” anchored in the Paris Agreement. We expect that next year’s UN CBD COP in Cancun will see a big push to end the current moratorium on geoengineering and we will need all of civil society and the public’s attention to prevent that from happening.

Box 1. BECCS and other negative emission technologies are dangerous pie-in-the-sky technologies!

The idea of “net-zero emissions” implies that the world can continue to produce emissions, as long as there is a way to “offset” them. Instead of embarking on a radical emissions-reduction trajectory immediately, we continue to emit massive amounts of CO₂ — and even establish new coal-fired power plants. By “supporting” the development of CCS technology, we can claim to be taking climate action. It is apparently irrelevant that such technology might not work, is riddled with practical challenges, costs a lot of money better spent elsewhere, and carries the risk of future leakage, which in turn would have major social and environmental consequences.

BECCS is the poster child for this new “overshoot approach” of net-zero emissions. BECCS entails planting a huge amount of grass and trees, burning the biomass

to generate electricity, capturing the CO₂ that is emitted, and pumping it into geological reservoirs underground. BECCS would have enormous development implications, provoking large-scale land grabs,² most likely from relatively poor people. This is not some farfetched scenario; rising demand for biofuels has spurred devastating land grabs in developing countries for many years. It would take a lot more land to offset a substantial share of CO₂ emissions. Indeed, an estimated 218–990 million hectares³ would have to be converted to switchgrass to sequester one billion tons of carbon using BECCS. That is, 14–65 times the amount of land the United States uses to grow corn for ethanol. Nitrous-oxide emissions from the vast amount of fertilizer that would be required to grow the switchgrass could be enough to exacerbate climate change. Then, there are the CO₂ emissions from producing synthetic fertilizers; clearing trees, shrubs, and grass from hundreds of millions of hectares of land; destroying large reservoirs of soil carbon; and transporting and processing the switchgrass. Even more problematic is the revelation that CCS and BECCS would most likely be used for “enhanced oil recovery” with compressed CO₂ pumped into old oil wells for storage, thereby creating a financial incentive to recover more oil.⁴ The US Department of Energy estimates that such methods could make 67 billion barrels of oil — three times the volume of proven US oil reserves — economically recoverable. Indeed, given the money at stake, enhanced oil recovery could actually be one of the motives behind the push for CCS. In any case, no form of CCS advances the goal of a structural shift toward full decarbonization, which is what social movements, academics, ordinary citizens, and even some politicians are increasingly demanding. They are prepared to accept the inconveniences and sacrifices that will arise during the transition; indeed, they view the challenge of creating a zero-carbon economy as an opportunity to renew and improve their societies and communities. Dangerous, elusive, and pie-in-the-sky technologies have no place in such an effort.

The call on all Parties by 2020 “formulate and communicate long-term (mid-century says the Decision text) low greenhouse gas emission development strategies” (Art. 4 of the Paris Agreement) will only be able to deliver a true social–ecological transformation if the technology provisions, mechanisms and institutions created under the UNFCCC framework can point towards a structural transformation, using socially and environmentally sound technologies, while preventing false solutions and quick techno-fixes.

²See “Ethics and Agriculture” by Peter Singer at <https://www.project-syndicate.org/commentary/agricultural-investment-or-third-world-land-grab-by-peter-singer> accessed 24 April 2016.

³See “Uncertainties is an understatement, when it comes to BECCS” by Rachel Smolker at <http://dgeo-consortium.org/2014/11/10/uncertainties-is-an-understatement-when-it-comes-to-beccs/> accessed 24 April 2016.

⁴Ibidem.

2. A FAB — Fair, Ambitious and Binding — Deal?

The architecture of the Paris Agreement has several characteristics that make it very different from what was once envisaged when the world called for a fair, ambitious and legally binding climate agreement to be agreed at COP 15 in Copenhagen. The biggest change in the rules of the game is that, rather than aiming for a collective global goal, shared (top-down) equitably amongst parties with clear rules of reporting, verification and compliance, COP 21 put 186 INDCs into a bouquet of pledges and agreed upon a transparency framework that tried to balance national sovereignty needs and international comparability and accountability. These contributions, many conditional on international support, are inadequate is acknowledged. Clearly, the approach of requesting nationally determined contributions (NDCs), which has succeeded in mobilizing 186 countries to prepare climate strategies, did come at the expense of ambition. Even with the pledges of late-comers (Venezuela announced it would hand in its INDC during the closing plenary) the gap between the global goal (well below 2°C, pursuing 1.5°C) and actions is for now only growing.

The notion of “fairness” is hard to operationalize in the absence of an agreed formula. The Paris Agreement essentially serves as a basket for NDCs to be reviewed every five years (at least that!). Differentiation between developing and developed countries (the firewall established in the 1997 Kyoto Protocol) was one of the toughest political issues to deal with. The compromise reached permeates the whole structure of the Paris Agreement. Developed countries are expected to take the lead, but have no new legal obligations. All others are encouraged to do more and are invited to contribute to the global effort of mobilizing public climate finance. A fairly weak transparency framework leaves many details to be spelled out in the near future, including the exact timeframes for the requested reports and the methods and procedures for verification of national reports. A first global stocktake of the implementation of the agreement and the collective progress on all issues will take place in 2023 and every five years thereafter (Art. 14). At least the NDCs will be reviewed through a “facilitative dialogue” in 2018 — coinciding with the release of an IPCC special report on the impacts of 1.5°C warming and related greenhouse gas emission pathways.

3. Shades of Grey: Thou Shalt

Many lawyers roaming the hallways of Le Bourget were struggling with the meaning of the verb “To Be”. Within a bottom-up framework, where countries freely choose how ambitious their NDCs are and how much support they provide others, the review of adequacy, the capacity of the country in question to do more, the fairness in light of historical responsibilities, the global temperature goal and the long-term pathways, all that is facilitative. Legal bindingness was the stepchild of the Paris Agreement, it was dealt with by a small working group of legal experts that never reported to the plenary about the issues of contention. But what became clear is that China did not want meaningful international scrutiny and nobody really disagreed. The USA, in the final hours, almost choked on the

word “shall”, fearing it would require the Obama Administration to have the treaty ratified by a hostile Senate. So, after a “technical correction”, the Paris Agreement now reverts to the 1992 Convention text: The developed world “should” but how much that binds governments is heavily debated. Transparency and accountability will remain a major weakness of the climate regime. More civil society scrutiny is called for.

4. Lost and Damaged

The undeniable links among livelihood loss, forced migration, and loss and damage was a very hot topic in Paris. In 2015, we witnessed not one big single typhoon (like Haiyan in 2013 and Hagupit in 2014), but devastating floods in India, Ghana and Myanmar, prolonged droughts in East Africa, Brazil and California, heat waves claiming hundreds of deaths around the world and, yet another, hottest year on record. Article 8 of the Paris Agreement anchors the issue and the Warsaw International Mechanism (WIM) firmly and separately from adaptation (Art. 7). What is of concern is that there is no agreed timeline for a process to identify innovative or alternative sources of finance for loss and damage. This despite civil society groups strongly calling for such a process.⁵ This process could, for example, look at a fossil fuel extraction levy to implement the polluter pays principle in accordance with international law and legal precedence. Some, furthermore, wonder what the final price will be for G77 and China championing loss and damage. It seems Saudi Arabia obtained in return broad recognition for the concept of response measures (read: The Saudis seeking compensation for loss in oil revenues in a fossil-free world economy).

One sentence in the Decision text of the Paris Package — placed there by the USA and heavily debated by civil society observers and developing countries — reads as follows: “Agrees that Article 8 of the Agreement, which is the one on “Loss and Damage”, does not involve or provide a basis for any liability or compensation.” Lawyers have yet to make their final judgement on the legal implications of the Paris Agreement. But many were quick in pointing out that there are still many potential implications that may well give rise to legal action and litigation, including for loss and damages, in various jurisdictions around the world. From the Peruvian farmer and mountain guide suing RWE and the petition at the national Human Rights Commission in the Philippines to the investigations into Exxon’s deception strategies and the successful lawsuit against the Dutch government: in light of weak ambition and lacking political will to pursue voluntary actions, many experts predict that some of the most important climate fights in the years to come will happen in the courtrooms.

It might still turn out to be very significant that the preamble of the Paris Agreement introduces the concept of “climate justice” into a legally binding global treaty: “Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change. . .”

⁵ See <http://climatejustice.org.au/issue/carbon-majors/> accessed 24 April 2016.

5. Human Rights

While markets, and thus the profits of many corporations, were secured in a new Paris agreement, a clear commitment to human rights, the rights of indigenous peoples, gender equality and women's empowerment, inter-generational equity, a just transition to decent work, food security, and ecosystem integrity were not included in the operative text of the Paris Agreement. In the end, only two explicit references to "gender-responsive" approaches made it into the agreement sections on adaptation and capacity-building. While critically important, this reinforces the notion of women as victims of climate change in need of capacity building support to strengthen their resilience but does not acknowledge their capabilities to mitigate and provide just and community-driven solutions to address climate change as local leaders given appropriate financial and technological support.

The Climate Vulnerable Forum (CVF), a coalition of 20 countries led by the Philippines who pushed hard for the 1.5° goal had explicitly linked ambition in the Paris Agreement to the protection of human rights.⁶ The Paris COP would indeed have been the right time and place to affirm and protect human rights. After all, the Universal Declaration of Human Rights was adopted in Paris in 1948. The Paris Agreement now references human rights only in its preamble, stating that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity." While a preambular reference is better than none, it is weak ("should" instead of "shall" and "consider" instead of "protect") and does not convey a legally binding obligation under the Paris Agreement for countries to place their climate actions in a rights-based framework.

6. Finance: Whose POTODOSO are We Talking About?

Finance, as in previous COPs, was considered the linchpin for a successful agreement, the more so as many developing countries made the ambition of their INDCs conditional on receiving international support. They wanted a review of the provision of scaled-up finance, from the 100 billion US dollar per year by 2020 as a floor, linked to the review process for emission reductions. Differentiation was the main sticking point of a finance agreement, with developing countries insisting on preserving the responsibility of historical polluters under the Convention and developed countries seeking to expand the contributor base for financial support to include developing countries in "a position to do so" (the toxic acronym of COP 21, POTODOSO). The latter referred in particular to the economic strength of China and Brazil. Others were willing to settle on "willing to contribute", as several developing countries already made voluntary pledges to the Green Climate Fund (GCF), including South Korea, Chile and Mexico. Furthermore, the role of public finance

⁶See "COP21 Ministerial Dialogue Statement on the Long-Term Goal" at <http://www.thecvf.org/cop21-ministerial-dialogue-statement-on-the-long-term-goal/accessed 24 April 2016>.

and the quality of its provision in a predictable way, additional to and distinct from official development assistance (ODA), was highly contentious. Developed countries sought instead to highlight the potential of leveraged private sector finance flows to support the developing countries' climate action.

In the end, the Paris Agreement stripped the obligation for developed countries to provide financial resources to developing countries (Art. 9, para. 1) of any qualifiers. Developed countries are asked "to take the lead in mobilizing climate finance", but developing countries are now also "encouraged to provide or continue to provide such support voluntarily". While a significant role of public funds is mentioned, a reference to finance via highly concessional terms (in form of public grants or subsidized loans) is only made in the context of "grant-based resources for adaptation". Non-concessional, non-public finance flows thus assume a larger role in the provision of climate finance acceptable under the Paris Agreement. This trend is further reinforced by a failure in the agreement to specify that the developed countries should primarily channel their public contributions through the UNFCCC financial mechanism with the Global Environment Facility (GEF) and the GCF as its operating entities.

A clear roadmap with collective quantified targets for the scaling up of finance post-2020, including for adaptation, as well as a reference to alternative sources of financing, such as a carbon tax on marine and air transport or a financial transaction tax, are missing from the agreement. So is the mandate to all governments to reduce their support for international fossil fuel investments, contained in an earlier draft. Article 9 does, however, mandate developed countries to report every two years how much public money they provide to developing countries. The process for such an accounting of public finance provision, with developing countries asked to communicate voluntarily, is to be set up at COP 22 in Marrakesh. The Convention's technical advisory body, SBSTA is to develop the modalities by 2018. The accounting of public finance provided will be linked to the global stocktake on emissions ambition in 2023. This, unfortunately, means that the efforts to scale-up financing beyond 2020 by setting a new collective quantified finance goal above the current floor of 100 billion US dollar per year will have to wait until 2025. As of yet, there is no clear process to scale-up financing after 2025, in line with the results of the 2023 ambition stocktake. This must be a disappointing outcome for developing countries who compromised by assuming increased mitigation responsibilities under the Paris Agreement.

7. A Hole in the Bucket

And just in case anybody wonders: There is a future for market-based approaches in the new climate regime post-2020. With a lot of criticism voiced loudly inside and outside Le Bourget regarding how business invade the negotiations and decisions of the UNFCCC, the negotiators — guided by the French presidency — did a very good job in hiding the word "market". It did not appear in the repeated iterations of the Paris text, unless one counts the "non-market approaches". Nevertheless, market-based approaches are found throughout the text in the form of multiple synonyms. Expressions such as "cooperative approaches", "internationally transferred mitigation outcomes", "enhanced" this and that appear no less

than 50 times throughout the Paris Agreement. All refer implicitly to market-based approaches. Another euphemism liberally used to convey the idea of markets, without mentioning them outright, is the word “opportunity(ies)” which appears around 13 times. From its contextual placement, it makes clear that the Paris Agreement creates a big “opportunity” for companies to come in.

COP 21 did establish a new market mechanism for “sustainable development”. Despite the clear failure of existing emission trading schemes to bring about a transformation away from fossil fuels, it was clear that some governments and many companies were not willing to let go of these flexibility mechanisms. But how does a new market instrument fit into a bottom-up climate regime with no global cap on emissions? By the middle of the second week in Paris, the EU and Brazil came up with a joint proposal of which the bare essentials made it into the Paris Agreement. It avoids double counting and calls for strict accounting, but was stripped of language to ensure environmental and social integrity. The emissions reductions need to be “real, measurable and long-term”, opening the door to forest offsets which are not “permanent” as an earlier draft stated. The new mechanism is likely to operate much like the existing Joint Implementation scheme but may seek to go beyond crediting single projects.

8. Conclusion

Many countries have gone beyond expectations to contribute to achieving the global consensus, and it was clear that all of them had marching orders to make Paris a success. Changes of governments (recent or expected — including in Argentina, Venezuela, or possibly Brazil) gave way to a lot of rumors but did not, in the end, change the negotiation dynamics dramatically. The intense climate diplomacy efforts of France, the EU and its partners in the last 12 months did pay off.

Activists from around the world gathering in Paris on the occasion of COP 21 were creative and inspiring in the face of difficult circumstances. While civil society observers were largely excluded from the negotiations, outside of the Le Bourget conference halls thousands of people were on the streets protesting, organizing workshops, actions, conducting civil disobedience trainings, and demonstrating that another way of life is possible. These powerful actions “outside” strengthened the voice of those fighting “inside” for a good outcome. This combined pressure was clearly felt and positively acknowledged in the speeches by French COP President Fabius and UN Executive Secretary Figueres. And so the gavel fell faster than anyone expected and tension gave way to collective ecstasy, wild clapping and cheering and many tears of joy.

Science tells us that early peaking of emissions is imperative. The next five years matter tremendously. Now that countries have submitted their INDCs and agreed to a global deal, they cannot rest on their laurels and must increase their efforts to address the pre-2020 ambition gap. The gigatonne gap, so gracefully acknowledged in Cancun but never in fact closed, has now been placed in the hands of two “champions” who must have magical powers. The official signing of the Paris Agreement by over 170 countries at the United

Nations in New York on Earth Day April 22, 2016, aimed at keeping the momentum going. Now, the entry into force of the Paris Agreement prior to 2020 becomes possible.

“This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 percent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.”

There is much work to be done on the road to COP 22 in Marrakesh, Morocco, in November 2016. And even more work to be done all around the world to translate the weak Paris pledges into meaningful actions that work for people and the planet by holding governments and corporations accountable.