

COP 21 and the Paris Agreement: A Force Awakened

A policy analysis by Lili Fuhr & Liane Schalatek with
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HEINRICH BÖLL FOUNDATION
PUBLICATION SERIES ECOLOGY

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Layout: Gratzner Graphics LLC

Cover photo: A decorated Eifel tower model at the COP 21 conference venue. [Liane Schalatek – Heinrich-Böll-Stiftung North America]

This publication can be ordered from: Heinrich-Böll-Stiftung North America, 1432 K Street NW, Suite 500, Washington, DC 20005, United States

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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 h, 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.

Preventing Dangerous Climate Change or Turning It Into a Huge Economic Opportunity for Big Business?

The anchoring of an ambitious aim to “pursue efforts to limit temperature increase to 1.5°C above pre-industrial levels” (Article 2, para. 1 (a)) is widely celebrated as a major achievement and the contribution of civil society pressure to get there well acknowledged. The explicit reference to this temperature goal is a significant improvement over what was achievable in Copenhagen and deserves to be celebrated. The “High Ambition Coalition,” led by the EU and the ACP countries, was very important in calling for an ambitious and legally binding agreement. Interestingly, by the end 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 degrees. The second piece of the ambition package for Paris (contained in Article 4 and referred to as the “long-term goal”) was one of those sections that was 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 of 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 (see box below). 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 degrees contain assumptions on the use of negative emissions technologies (see box) such as 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.

The call on all parties to by 2020 “formulate and communicate long-term

BECCS and other negative emission to create “net zero” emissions are dangerous pie-in-the-sky technologies!

See: [The myth of net-zero emissions](#) by Lili Fuhr & Niclas Hallstrom on Project Syndicate

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. So, instead of embarking immediately on a radical emissions-reduction trajectory, we can continue to emit massive amounts of CO₂ — and even establish new coal plants — while claiming to be taking climate action by “supporting” the development of CCS technology. It is apparently irrelevant that such technology might not work, is riddled with practical challenges, and carries the risk of future leakage, which would have major social and environmental consequences. Bioenergy with Carbon Capture and Storage is the poster child for the 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](#), 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 hectares](#) 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](#). 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.

[mid-century says the Decision text] low greenhouse gas emission development strategies” (Article 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.

Alibaba and Forty Rich Man

The danger of thinking that we have little choice but to accept those techno-fixes became ever more real when Bill Gates (Microsoft) and some of his Anglo-American billionaire friends, including Mark Zuckerberg (Facebook), Richard Branson (Virgin), Jeff Bezos (Amazon), as well as some of the richest (mostly) men from the ‘rest’ of the world, Mukesh Ambani (Reliance, India), Aliko Dangote (Dangote, Nigeria), Jack Ma (Alibaba, China), as well as Hasso Plattner (SAP, Germany) launched their Breakthrough Energy Coalition and were joined by 10 governments on the Mission Innovation. Increased public spending for research and innovation is certainly needed and much welcomed. But with no social and environmental criteria in place to determine the kind of innovation / technologies we want and need, we should be more than wary of placing the power over the thermostat of our planet and the lives of billions of people into the hands of a few corporate elites. Just as an example, Bill Gates has opined he is keen to bless Africa with GMOs, the world with more nuclear energy, and if possible everybody with solar radiation management technologies soon.

Another approach to technology is not only possible, one of the COP decisions *concretely* acknowledges: “the need to promote universal access to sustainable energy in developing countries, in particular in Africa, through the enhanced deployment of renewable energy.” Its inclusion was a nod to the newly established African Renewable Energy Initiative, which is not only African-led and owned, but also aimed towards decentralized renewable energy opportunities to address the persistent energy poverty of the poorest people, among them disproportionately many women. In this context, it is particularly galling that a reference to “environmentally and socially sound technologies” was stripped from Article 10 on technology in the final Paris agreement text. Many groups, including gender advocates, had fought for that reference, in order to draw attention to the fact that many appropriate / low-tech options, including traditional technologies, are available to address the climate crisis which respond directly to the needs and wishes of local communities,

“Early” Action

In light of the urgent need for climate action before 2020, Workstream II of the Ad-hoc working group on the Durban Platform, which completed its work at the Paris COP by submitting a draft agreement on Saturday 5 December, was launched in 2011 in Durban. But Workstream II received surprisingly little attention in Paris. Yet, 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.

Take climate finance for example: while the attention in Paris was, understandably, focused on talks about how to shift the trillions into low greenhouse gas emission investments and providing financial support to developing country INDC ambition post-2020, developed countries have yet to fulfil their Copenhagen promise to secure US\$ 100 billion per year by 2020. Six years after Copenhagen, the world still lacks a roadmap on how to achieve that goal. Instead, right before the Paris COP, the French presidency presented an [OECD/CPI report](#) that creatively accounted for financial transfers to developing countries such as from export credit agencies and market-rate loans, labelling them “climate finance.” This runs counter to the text and spirit of the 2010 Cancun Agreements. At least the Paris Decision on “Enhanced Action Prior to 2020” summarizing the outcome of Workstream II acknowledges the remaining gap in long-term finance. It asks developed countries to urgently and adequately address it, including by “significantly increasing adaptation finance from current levels” (para. 115).

That this is not the only gap that remains after Paris may not have come as a surprise to observers. The pre-2020 ambition gap, so gracefully acknowledged in Cancun but never in fact closed, will now be placed in the hands of two “champions” who must have magical powers.

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 was to come up with a way to put 186 Intended Nationally Determined Contributions into a bouquet of pledges and agree upon a transparency framework that tries to balance national sovereignty needs and international comparability and accountability. That these contributions, many conditional on international support, are inadequate is acknowledged. Clearly the approach of requesting nationally determined contributions (now called: NDCs), which has succeeded in mobilizing 186 countries to prepare climate strategies, did come at the expense of *ambition*. It is clear that 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 NDCs to be reviewed every five years (at least that!). Differentiation between (what used to be the neat division of) 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 (Article 14). At least the NDCs will be reviewed through a “facilitative dialogue” in 2018 — coinciding with the release of a requested IPCC special report on the impacts of 1.5°C warming and related greenhouse gas emission pathways.

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. *Legally binding* 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.

Lost and Damaged

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 made the undeniable links between livelihoods lost, forced migration, and loss & damage a very hot topic in Paris. Article 8 of the Paris Agreement anchors the issue and the Warsaw International Mechanism (WIM) firmly, separately from adaptation (Article 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 even though civil society groups have been strongly calling for such a process that could include looking 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 & 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 & Damage] does not involve or provide a basis for any liability or compensation.” Lawyers yet have 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 will be fought in the courtrooms in the years to come.

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”...

Finance: Who’s 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 and wanted a review of the provision of scaled-up finance from the US\$ 100 billion per year by 2020 as a floor linked to the review process for emissions reductions. Differentiation was the main sticking point of a finance agreement, with developing countries intent 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 voluntarily pledges to the Green Climate Fund (GCF), including South Korea, Chile and Mexico. Furthermore, the role of public finance 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 in its finance article 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 voluntary”. While a significant role of public funds is mentioned, providing that finance via highly concessional terms (in form of public

grants or subsidized loans) is only referred to 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 Green Climate Fund (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 COP22 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 US\$ 100 billion 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.

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 market approaches 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”. The use of the word “market” did not appear in the repeated iterations of the Paris text unless where related to “non-market approaches”. Nevertheless, the concept of market-based approaches is anchored in the form of multiple synonyms found throughout the entire text. Expressions such as ‘cooperative approaches’, ‘internationally transferred mitigation outcomes’, ‘enhanced’ this and that — appearing no less than 50 times throughout the Paris Agreement — all refer implicitly to market 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, making it clear from its contextual placement that the Paris Agreement creates a big opening for companies to come in.

COP 21 establishes a new market mechanism for “sustainable development.” Despite the clear failure of existing emission trading schemes to deliver 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,” the latter 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 seek to go beyond crediting single projects. Canada, Japan, New Zealand, South Korea, Switzerland and possibly Norway are all potential buyers.

Whether Europe becomes a buyer is unclear and will get entangled in a big fight for more EU ambition, now that it is clear the current target is inadequate if we are to limit warming to 1.5 degrees. The current 2030 target is after all a domestic one. Finally, for those owning a lot of hot air from Kyoto like Russia, the agreement does little beyond encouraging the retirement of such credits. The battle against the carry over of these Kyoto credits is still to come.

Results-based Payments and No Reference to Warsaw Framework on REDD+

In Paris over the two weeks of the negotiations, some Parties tried to push into the agreement a new mechanism on REDD+ by ignoring the existence of the Warsaw Framework on REDD+ that established the approach on reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries (REDD+). This approach was confirmed by the last Subsidiary Body for Scientific and Technological Advice (SBSTA) meeting on its forty-second session, held at Bonn in June 2015.

In the Paris Agreement in the section dealing with forests as sinks and reservoirs of greenhouse gases (Art. 5), the Warsaw Framework of REDD+ is not mentioned and neither is the possibility for new mechanisms on forests in the near future. The Warsaw Framework was not formally included in the Paris Agreement because it did not explicitly allow for offsetting in the original decision. The text recognizes the need for adequate and predictable financial resources and other “positive incentives” for results-based payment approaches, which is the basis for the payment of environmental services (PES) such as forest conservation efforts. The Paris decision in its section on finance (para. 55) asks specifically for stronger efforts in coordination such payment provision, including via the Green Climate Fund (GCF). At the behest of Norway, in the COP guidance to the GCF, the new fund is also asked to play a bigger role in results-based payment efforts. The crucial context of social and environmental safeguards, gender-responsiveness and benefit-sharing approaches that such PES approaches need to implemented is referred to very much as an afterthought only with a text reference to “a appropriate, non-carbon benefits” (Art. 5, para. 2).

No Operative Reference to Human Rights or Gender Equality: Saving the Climate for Whom?

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. The Climate Vulnerable Forum (CVF), a coalition of 20 countries led by the Philippines and pushing for the 1.5 degree climate goal had explicitly linked ambition in the Paris agreement to the protection of human rights.

Throughout the year, a cross-constituency coalition representing human rights groups, indigenous peoples, women and gender groups, trade unions, youth, faith-based, environmental and climate justice groups had worked in solidarity to anchor strong language on the protection of rights and the integrity of the planet in the operative part of the agreement as a mandate for its implementation, arguing that the Paris COP was the right time and place (the Universal Declaration of Human Rights was adopted in Paris in 1948).

While earlier drafts of the agreement text contained references to such rights in Article 2, subsequent iterations chipped away at that text with Norway, Saudi Arabia and the United States emerging as major opponents. In the end, only 14 countries out of 196 negotiating — namely Sweden, Belgium, Chile, Costa Rica, Dominican Republic, Finland, Guatemala, Ireland, Luxembourg, Mexico, The Netherlands, Philippines, Switzerland, Uruguay — were willing to make the issue a priority and stand up publicly in a last-minute letter to the French COP Presidency in which they asked to secure the rights reference prominently in the final agreement. To no avail.

The Paris Agreement now references human rights only in its preamble, demanding 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 person with disabilities an 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.

Gender and women's rights advocates were likewise very disheartened by the Paris Agreement, which failed to move the discourse on the gender dimension of climate change beyond the Cancun outcomes from 2010, despite significant advancements for example in the financial mechanism of the UNFCCC since then with both the GEF and the GCF acting on a gender mainstreaming mandate. Of more than eight references to the integration of gender considerations in the operative parts of the draft agreement in earlier versions (including in finance, technology and mitigation approaches), in the end only two explicit references to “gender-responsive” approaches made it into the Paris Agreement in the 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 Negotiation Process

Process-wise COP 21 was noteworthy for a number of reasons. First of all: everybody was happy with how the process was run by the French presidency. The newly created “Comité de Paris,” chaired by COP President Fabius, took the reigns from the co-facilitators of the ADP towards the end of week one, when a first draft of the final agreement and decision text was submitted. Ministers then continued the talks using various informal formats, including an inclusive “Indaba“, until the very last minute. The encouragements and good vibrations from the speeches of heads of state and government in the opening ceremony of COP 21 could be felt all the way through the closing plenary and were reinforced through by ministerial speeches in the second week. But no COP without last minute almost-disasters. COP 21 witnessed three of them:

- As noted above, US lawyers detected a (legally binding) “shall” instead of a (entirely voluntary) “should” in the Article 4.4 referring to developed countries taking the lead in economy-wide emission reduction targets. The reinsertion of the Convention wording “should” delayed the closing plenary by several hours. It was communicated to the closing plenary as a technical / translation error due to late night working hours. Luckily, nobody protested.
- Turkey, recent host of the G20, exercised its newfound geo-political muscle by continuing to insist on the creation of a separate category of countries, like economies in transition. The Presidency talked it into agreeing that this issue could be resolved over the coming months.
- The third stumbling block to adoption of the final Paris Agreement was Nicaragua. Rumor has it that Pope Francis himself got involved, calling Nicaragua’s president to reign in that country’s lead negotiator who wanted to block consensus. Unable to voice his concerns before the COP President gavelled the agreement, he did elaborate his stinging criticism of a deal falling short insisting that these concerns were noted by the COP president. To make it quite clear: irrespective of the messenger and the late hour of the message, Nicaragua spoke truth to what many people protesting on the streets in Paris were feeling in their hearts: The Paris Agreement puts us on a pathway to dangerous global warming of at least 3°C, it does not give confidence that adequate and predictable financial support with a key role for public finance for developing countries will be there and does at the same time request developing countries to sign off their rights to seek compensation for real losses and damages already occurred from climate change. The mentioning of human rights and other rights-based language in the preamble of the agreement — where it makes for emphatic rhetoric but does not convey any mandate for consideration in implementation of climate actions — does sound cynical under those circumstances. And many might even sympathize with Nicaragua saying that it has no intentions to give legitimacy to an entirely voluntary pledge regime by refusing to submit its own INDC.

And so the gavel fell much faster than anyone expected and tension gave way to collective ecstasy, wild clapping and cheering and many tears of joy — and beautiful pictures for President Holland’s last minute election campaign on the eve of the second round of French regional elections.

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.

The Role of the EU

However, despite the hard work and continuous efforts of the EU over the past few years to create a momentum for COP21 and forge new alliances, the bloc’s diplomacy or leadership was not apparent during the first week of the negotiations. The EU started to gain visibility and more negotiation heft in the second week of the negotiations when its brokerage role between developing and developed countries became more prominent. One of the strengths of EU climate diplomacy during COP21 was indeed its bridging role in bringing together a broad coalition of more than 100 countries that shaped major elements of the agreement and paved the way to pursuing a 1.5 degree target.

The coalition with the countries of the African, Caribbean and Pacific Group of States (ACP) during these negotiations was a novelty in the EU alliance-building strategy. The partnership emerged 13 years ago in the context of EU external trade policy and development cooperation but evolved for the first time in Paris to a new breakthrough climate alliance. The coalition was significantly strengthened with the backing of the US, Mexico, Norway, Columbia, Gambia and Brazil that joined forces with the EU, the island countries and the least developed countries for a broader climate alliance.

On other fronts, however, Europe has been less successful in these negotiations. One of the greatest losses of EU climate diplomacy has been the removal of shipping and aviation — the largest and rapidly growing sources of emissions — from the agreement. Recognizing the untapped potential in these sectors, the EU has been calling for a global approach to reducing greenhouse gas emissions from international aviation and shipping. Despite its persistence, a reference to these two sectors, most addicted to oil, did not make it into the final agreement. Neither did a reference to the Montreal Protocol and the HFC gases it is trying to contain. Another lost battle for the EU was the removal of the reference to human rights and gender equality and women’s empowerment from Art.2 of the Treaty, which defines the purpose of the agreement to the preamble, where it does not carry any legal weight or obligation. In the end, the EU, despite the months-long efforts of an inter-constituency civil society coalition that brought together environmental groups and women’s groups and organizations representing Indigenous Peoples, farmers, young people and trade unions, did not have the political will to fight for the solid anchoring of a 21st century climate agreement in a human-rights based framework and stand as a country bloc with a group of 14 countries that had fought until

the very end for strong rights-language in the Paris Agreement. Furthermore, EU finance ministers failed to agree on key aspects of the European Financial Transactions Tax, which was another missed opportunity to send a signal to the rest of the world about the possibility to use the financial transaction tax as an additional instrument for and key alternative source for climate financing.

As a part of their negotiating burden, the EU has dragged along aspiring neighbors from south east and east Europe most of which are amongst the rare number of countries that are not members of any of the big negotiation blocks (EU, G77, LDCs etc). EU candidate countries (Serbia and Montenegro) and those hoping to become one (Bosnia and Herzegovina) were silently aligning with the EU proposals. Aligning because they wish to become member states in the future; silently, because they still wish to think of themselves as developing countries being owed financial support for their climate actions. These countries are members of the Energy Community which implies that their energy policies and climate policies must align with the EU 3rd energy package as well as 2030 Climate and Energy Framework. INDCs from these countries were lacking ambitious, to say it charitably (for example Serbia aiming at 9.8% reductions with reported uncertainties about the calculations; Bosnia and Herzegovina even showing a 18% emissions increase) and will pose a challenge for EU climate leadership after Paris.

Outside of Le Bourget

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, conduct civil disobedience trainings, and demonstrating that another way of life is possible. By declaring a state of emergency for the planet they managed to reclaim some democratic space. This pressure was clearly felt and positively acknowledged by the French COP President Fabius and UN Executive Secretary Figueres in their speeches. From the Citizens' Climate Summit and the Climate Action Zone to the Village of Alternatives and the December 12th actions (Redlines Action, Climate Justice Peace, Rassemblement Massif), the message to political leaders and delegates was loud and clear: All fossil fuels have to stay in the ground. There is no excuse for inaction. A decentral renewable energy future with 100% renewable is possible. Those standing in the way of climate justice and the rights of future generations will be held accountable. The mere fact that the French government had to legalize the protests despite the declared state of emergency and related cancelations of earlier planned protests in the wake of the November terrorist attacks in Paris was a significant victory for democracy.

And although some activists might have felt a certain unease when Hollande, Ban Ki-moon and others embraced the protests, painting a picture of all of humanity happily celebrating the historical moment together, those involved in organizing the actions and mobilization efforts in and around COP 21 should be proud of what they collectively achieved by bridging some of the very old divides between those fighting “inside” for a good outcome and those demanding climate justice by protesting “outside”. One of the

concrete topics where the demands from those lobbying “inside” the protest and those mobilizing from the “outside” worked hand in hand was the focus on kicking the fossil fuel industry out of climate policy, undermining their business model and holding them accountable for the damage their products are causing.

Bill McKibben (founder of 350.org) and Naomi Klein (author of *This Changes Everything*) emerged as the two most visible leading figures of the climate justice movement in Paris. But it is important to notice that there were many, many more leading voices and a broad range and diversity of views expressed on the streets and in the various meetings and workshops. One of the achievements of the mobilizations in Paris was indeed that it helped to start building bridges between different parts of the movement, for example by linking those working against coal, fracking or industrial agriculture to those fighting free trade agreements or market mechanisms. This is the beginning of a conversation — one that will continue way beyond COP 21 and one that will hopefully and eventually be heard loudly and clearly by those who announced victory in Paris.

“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 Marrakech, 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.

ECOLOGY

COP 21 and the Paris Agreement: A Force Awakened

Judged against low expectations and the collective trauma of Copenhagen 2009, the acceptance of the global and legally binding Paris Agreement at the closing day of the UN Climate Change Convention's Conference of the Parties (COP) 21 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, the Paris Agreement can only be called a disappointment. Citizens around the world have yet to find out whether the Paris Agreement can be the springboard for lasting policy changes on the ground.

This policy analysis assesses the commitments governments were willing to make in the Paris Agreement critically against what would be required to anchor the global climate deal in climate justice and a human rights-based approach.