



Time for Action – Blocked and Postponed



A first assessment of COP25 in Madrid

*Wolfgang Obergassel
Christof Arens
Christiane Beuermann
Lukas Hermwille
Nicolas Kreibich
Hermann E. Ott
Meike Spitzner*

The 25th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP25) was held in Madrid / Spain from 2 to 15 December 2019 under the presidency of Chile. The Wuppertal Institute research team closely observed the negotiations during the two-week conference and can now present their initial analysis of the conference outcomes.

The Wuppertal Institute will publish its in-depth analysis of COP25 early 2020. The report will take a close look at the various issues addressed at the conference and at other related topics.

The Wuppertal Institute publishes an analytical report after each COP. Find all reports published since 2001 at: <https://wupperinst.org/en/topics/climate/cop/>

Publisher

Wuppertal Institut für Klima, Umwelt, Energie gGmbH

Döppersberg 19

42103 Wuppertal

www.wupperinst.org

Authors

Wuppertal Institute

Wolfgang Obergassel

Christof Arens

Christiane Beuermann

Lukas Hermwille

Nicolas Kreibich

Meike Spitzner

ClientEarth Deutschland

Hermann E. Ott

Contact

Wolfgang Obergassel

Energy, Transport and Climate Policy

wolfgang.obergassel@wupperinst.org, Tel. +49 202 2492-149, Fax +49 202 2492-250

Picture credits front page

In first row, from left to right: Photo by IISD/Kiara Worth (enb.iisd.org/climate/cop25/enb/10dec.html), Photo by IISD/Kiara Worth (enb.iisd.org/climate/cop25/enb/6dec.html), Welcome to staff and volunteers at COP 25 by UNclimatechange (<https://flic.kr/p/2hSZGk4>) /Flickr/CC BY-NC-SA 2.0 (<https://creativecommons.org/licenses/by-nc-sa/2.0/>), Photo by IISD/Kiara Worth (enb.iisd.org/climate/cop25/enb/11dec.html)

In second row, from left to right: Photo by IISD/Kiara Worth (enb.iisd.org/climate/cop25/enb/11dec.html), Photo by IISD/Kiara Worth (enb.iisd.org/climate/cop25/enb/7dec.html), Photo by IISD/Kiara Worth (<http://enb.iisd.org/climate/cop25/enb/attrib/>), UN Secretary General Antonio Guterres briefs the press at COP 25 conference by UNclimatechange (<https://flic.kr/p/2hUP957>) /Flickr/CC BY-NC-SA 2.0 (<https://creativecommons.org/licenses/by-nc-sa/2.0/>)

Version

Dezember 2019

The texts of this publication are licensed under Creative Commons | Attribution-NonCommercial-NoDerivatives 4.0 International license | The license is available at <http://creativecommons.org/licenses/by-nc-nd/4.0/>



Contents

1	Introduction	5
2	Raising Ambition	6
2.1	Ambition Pre- and Post-2020	6
2.2	Non-Party Actors	8
3	The Paris Rulebook	9
3.1	Cooperative Approaches under Article 6	9
3.2	Common Timeframes for Nationally Determined Contributions	11
3.3	Transparency Framework	12
4	Support for the Global South	13
4.1	Adaptation	13
4.2	Loss and Damage	14
5	Gender Action Plan	16
6	Conclusions and Outlook	17
6.1	The Last Stand of Fossil Interests?	17
6.2	From Negotiation to Action	18
6.3	Fast Track Needed	18

1 Introduction

Setting a new record for overtime, the 25th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) came to a close at 1:55PM on Sunday, 15 December, 44 hours later than its scheduled end. During its two weeks of duration, the conference once again highlighted the limitations of a consensus-based regime, which provides ample opportunity to blockers to hold up the entire process.

The COP presidency had run the conference on the theme “time for action”. The most important topics of the conference included raising climate ambition, finishing the implementing rules of the Paris Agreement, and supporting developing countries in dealing with loss and damage due to the impacts of climate change.

In practice, as at most previous COPs, much of the conference was dominated by deliberate foot dragging and re-stating of old positions. However, while in previous years the overtime had been due to ambitious countries wanting more than recalcitrant countries were willing to concede, this year overtime was needed to fend off attempts to undermine the integrity of the entire Paris Agreement, particularly in the areas of calling for increased ambition as well as ensuring the integrity of international carbon trading under Article 6 of the Paris Agreement. In the end, the COP was once more not able to send a strong signal on the need for enhancing ambition. And again, Parties could not agree on the remaining implementation rules for the Paris Agreement, in particular common timeframes for Parties’ nationally determined contributions (NDCs) and rules for cooperative action under Article 6 of the agreement.

COP25 thereby highlighted how much work still lies ahead both domestically and internationally if 2020 is to see a step-up in climate action that is consistent with the long-term goal of the Paris Agreement. If the process in 2020 fails to substantially strengthen national contributions, civil society and the most ambitious countries should initiate negotiations on a “fast track” – a parallel regime to the UNFCCC and Paris Agreement.

2 Raising Ambition

2.1 Ambition Pre- and Post-2020

The Paris outcome requires the Parties to the Paris Agreement whose initial NDC covers the time period up to 2025 to communicate a new NDC by 2020, while Parties whose NDCs cover the period up to 2030 are required “to communicate or update” these contributions by 2020.¹ Given the lack of climate ambition most countries have so far exhibited, the question in Madrid was whether the conference would send a strong signal on the need for all countries to strengthen their contributions. While the Paris Agreement mandates that NDCs should reflect a Party’s “highest possible ambition”, in previous sessions many Parties had disputed that the 2020 round of re-submitting NDCs entailed a requirement to increase ambition.

In the run-up to the conference, 68 Parties had signalled that they intended to strengthen their contributions. However, most of these Parties were small island states and less developed countries. Collectively, they account for only about 8% of global emissions. At the end of the conference, the number of Parties had risen to 80, covering 10% of global emissions.² Of the major emitters, none has so far clearly signalled their intention to increase their ambition. And while on 13 December the European Council agreed that the EU will aim to become climate-neutral by 2050, what this will mean for near-term ambition still needs to be worked out.

As at previous COPs, the negotiations in Madrid were burdened by the legacy of decades of insufficient climate policy. The contributions under the Paris Agreement apply only from 2020 onwards. Climate action up until 2020 has been governed by the decisions adopted under the UNFCCC and the Kyoto Protocol at the conferences in Cancún, Durban and Doha in 2010-2012. The Paris Agreement has taken a nuanced approach to differentiating what is expected from Parties according to their national circumstances. By contrast, the rules covering the period up to 2020 have been strongly based on the “bifurcation” established by the UNFCCC, requiring developed countries to take the lead on climate action while expecting only voluntary actions from developing countries. Developing countries have for years voiced dissatisfaction with the level of action of developed countries, both relating to the level of emission reductions as well as to the provision of financial, technological and capacity building support to developing countries. According to reports presented at the conference there is indeed a severe risk that the pledge by developed countries to mobilise USD 100 billion annually from 2020 will be missed.

In Madrid, the G-77 once again pointed out that pre-2020 action was the basis for post-2020 action. The Group of Like-Minded Developing Countries (LMDCs)³ took a particularly hard line, outlining that in their view the “pre-2020 period” was not about timescales, but about ambition. In their view, the pre-2020 period would only

¹ Decision 1/CP.21, Adoption of the Paris Agreement, para 23f.

² 2020 NDC Tracker, <https://www.climatewatchdata.org/2020-ndc-tracker>

³ The group of like-minded developing countries includes China, India, and other Asian countries such as Malaysia, countries in the Organization of Petroleum Exporting Countries such as Saudi Arabia, and some Latin American countries such as Venezuela.

be finished when commitments had been delivered. The lack of effort developed countries had so far shown must in their view not be redistributed across all Parties. The LMDCs therefore demanded that a 2-year work programme should be undertaken under the Subsidiary Body for Implementation to take detailed stock of the efforts made so far, and to discuss a way forward for how developed country Parties could make good on their commitments. However, most other developing countries did not support this hard line. While they regretted the lack of ambition exhibited by developed countries, in their view future ambition from all countries should not be conditional on the treatment of the pre-2020 period.

The final outcome of the conference ties ambition pre- and post-2020 together as had been demanded by the LMDCs. Both the COP and the CMA (Parties to the Paris Agreement) re-emphasize “with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation efforts in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels”.⁴ In addition, the COP decision also recalls the USD 100 billion commitment and emphasises that developing countries still face challenges in accessing support. COP26 will feature a round table on pre-2020 implementation and ambition including Parties and non-Party stakeholders.

On the question of NDC revision, the penultimate version of the text proposed by the Chilean presidency on 14 December merely reiterated the invitation to Parties to communicate their NDCs. This draft provoked strong reactions from many Parties who demanded to adopt a clear requirement to raise ambition. However, in the end it was not possible to include such clear language in the decision. Instead, the final decision recalls the request to re-submit existing NDCs or submit new or updated NDCs and surrounds it with general statements on the need to raise ambition. Furthermore, the decision recalls that the Secretariat is requested to prepare a synthesis report of the NDC submissions, and requests the Secretariat to make this report available to COP26.⁵

Finally, a decision by the Parties to the Kyoto Protocol “strongly urges Parties to the Kyoto Protocol that have yet to ratify the Doha Amendment” to do so as soon as possible.⁶ The Doha Amendment contains commitments for industrialised countries for the period 2013-2020 but has not yet entered into force due to an insufficient number of ratifications.

On adaptation, the CMA encourages Parties to submit their first adaptation communication as soon as possible and to engage in adaptation planning processes and implementation of actions. The decision requests the Adaptation Committee to work on approaches for reviewing overall progress in achieving the Paris Agreement’s global

⁴ Decision 1/CP.25, Chile Madrid Time for Action, Advance unedited version, para 3; Decision 1/CMA.2, Chile Madrid Time for Action, Advance unedited version, paras 8 and 5 respectively.

⁵ Decision 1/CMA.2, Chile Madrid Time for Action, Advance unedited version.

⁶ Decision 1/CMP.15, Chile Madrid Time for Action, Advance unedited version, para 4.

goal on adaptation and to include the outcome of this work in its 2021 annual report.⁷

In summary, the decision essentially only reiterates the provisions that had already been agreed in Paris. The conference was not able to send a clear signal that all Parties will need to strengthen their contributions if achievement of the objectives of the Paris Agreement is to be kept within reach.

2.2 Non-Party Actors

The annual COP has become an event that holds importance for a far wider range of actors than national governments. It has become an annual fair for climate action. This is partly due to the fact that since 2014, the UNFCCC Secretariat and the subsequent COP Presidencies have sought ways to “orchestrate” non-state and subnational actors and initiatives to contribute to climate action. Inter alia the Secretariat has established the Nonstate Actor Zone for Climate Action (NAZCA), an online database/registry in which in the meantime a whopping 17,000 actors have registered their climate change mitigation and/or adaptation commitments. An annual Yearbook of Global Climate Action provides a more detailed analysis of the activities.⁸

Furthermore, the Marrakech Partnership for Global Climate Action (GCA) was established to coordinate activities. Two “high-level champions” nominated by consecutive COP Presidencies are working with the Secretariat to advance activities. Among other things an impressive set of sectoral Climate Action Pathways has been developed for various thematic areas (energy, human settlements, industry, land use, oceans and coastal zones, transport, water) as well as resilience as a cross-cutting area. Each of these pathways consists of an executive summary as well as an “action table” containing good practices collated from participating non-state and subnational actors. These climate action pathways hold significant potential and could also inform national governments. Yet, the series of sectoral action events took place only at the margins of COP25 and did not attract much attention from international media nor from negotiators and national governments. As in previous years, they have been perceived largely as a side note of the intergovernmental negotiations.

While these activities have been largely perceived as a success, their continuation was somewhat uncertain. The GCA originated from a stream of negotiations targetting the enhancement of pre 2020 climate action and hence had only a mandate until 2020. At COP25, Parties decided to extend this mandate until 2025 including the mandate for consecutive COP Presidencies to nominate high-level champions.⁹

⁷ Decision 1/CMA.2, Chile Madrid Time for Action, Advance unedited version, paras 12-14.

⁸ https://unfccc.int/sites/default/files/resource/GCA_Yearbook2019.pdf

⁹ Decision 1/CP.25, Chile Madrid Time for Action, Advance unedited version, para 27-29.

3 The Paris Rulebook

3.1 Cooperative Approaches under Article 6

The rules on Article 6 were the last chapter of the Paris rulebook that could not be finalized in Katowice. Pressure to come to an agreement in Madrid was thus high, as were Parties' stakes involved in the negotiations: while a number of countries are advocating rules that would allow them to achieve individual short-term benefits, others strive to maintain the environmental integrity of the Paris Agreement by opposing a system that to the fear of many would allow carbon markets to become a large loophole in the architecture of the regime.

After the Katowice failure, Parties had continued to negotiate at SBSTA 50 in Bonn, albeit without much progress. In Madrid, Parties continued discussing different text versions under SBSTA, again finding no solutions for the crunch issues, see below. When ministerial-level negotiations in the second week brought no change to the deadlock, the COP Presidency tabled three different proposals of varying quality in the final days of the conference, yet none of them succeeded. In the end, the issue was once again postponed, the three pre-final presidency text versions will be the basis for a restart of the negotiations in 2020.¹⁰

Accounting (double counting)

One particularly contentious issue of the Article 6 negotiations relates to the rules on how to account for ITMOs and emission reductions transferred under Article 6.2 and Article 6.4, respectively. Robust accounting rules are a necessary precondition to ensure that emission reductions are not used more than once (double counting), preventing the environmental integrity of the Paris Agreement being undermined. While countries made progress in finding technical solutions for dealing with the diversity of Parties' NDC targets, one key political issue could not be solved: the question on whether countries will have to account for the transfer of emission reductions under the Article 6.4 mechanism by implementing so called "corresponding adjustments".

In Madrid, Brazil continued pushing for Article 6.4 emission reductions exports being exempt from corresponding adjustments, while most other Parties rejected this approach, highlighting that it would lead to double counting of emission reductions and thereby undermine the environmental integrity of the Paris Agreement. In the course of the two weeks of negotiations, Parties were unable to find a solution to the Brazilian position, which was still reflected in the draft text tabled by the Presidency during the last hours of the negotiations. Thanks to the strong stance of the other countries to defend the environmental integrity of the Paris Agreement, the text was not adopted.

Kyoto Transition

Another contentious question was how to deal with certificates from the Kyoto Protocol and whether countries should be allowed to use these under the Paris Agreement. China, India and Brazil, all three countries hosting thousands of Clean Development

¹⁰ Decision -/CMA.2, Matters relating to Article 6 of the Paris Agreement, Advance unedited version.

Mechanism (CDM) activities and holding a large amount of CDM units, pushed for these credits to be transitioned into the Article 6.4 mechanism. And the negotiations experienced another unprecedented move from one of the Parties holding large amounts of Assigned Amount Units (AAUs) from the Kyoto Protocol: Australia strongly advocated for the possibility to use these emission permits for the achievement of NDCs.

Parties tried to find common ground by limiting the environmental impact of the transition of Kyoto units: The draft text tabled by the Presidency during the last hours of the negotiations would have allowed the use of CERs if the underlying project was registered after a specific point in time. However, the specific date would still have to be determined by the CMA in the future. If adopted, there would be uncertainty regarding Australia's approach to use AAUs for NDC attainment: A paragraph that would have excluded the use of Kyoto Protocol units and which was contained in previous drafts was not included in the pre-final draft.

By not adopting the text proposal made by the CMA presidency, Parties impeded a full transition of CERs and AAUs that would have led to an oversupply of credits in a yet to emerge carbon market. Parties further avoided rules that would have allowed Parties to fulfil their already unambitious NDC targets with certificates from the past.

Other crunch issues

Further contentious issues comprised, inter alia, the question of "overall mitigation in global emissions (OMGE)", i.e. making sure that Article 6 activities go beyond mere offsetting in that they actively reduce emissions. According to the Paris Agreement, Art. 6.4 activities are to include such a component, while Art. 6.2 is silent on this. Thus, one of the contentious issues in this regard is whether or not Art. 6.2 should apply this concept as well in order to establish a level playing field. The other question is how to operationalize OMGE. The latest text proposal from the presidency suggests for Art. 6.4 to cancel at least 2% of traded mitigation outcomes for overall mitigation while in the case of Art. 6.2, Parties are just "strongly encouraged" to set aside a portion of their traded mitigation outcomes.

Parties also have diverging views about environmental and social safeguards in order to prevent that Art. 6 mitigation actions cause harm on the ground, for example when large hydro dams comprise possible resettlements. However, even language suggesting that Art. 6 actions are to respect human rights and rights of indigenous peoples was contentious in Madrid.

Parties also wrangle about possible levies that could be introduced for mitigation activities in order to generate income for adaptation measures, as was the case with the Clean Development Mechanism. Again, there is a case for equal treatment here, as the Paris Agreement only foresees this "share of proceeds" being applied to Art. 6.4. The African Group as well as G77 and China demand the share of proceeds covers both Art. 6.2 and 6.4 in order to create a reliable revenue stream for Adaptation Fund, while the US as well as the EU fear that such a taxation of bilateral activities under Art. 6.2 conflicts with their respective domestic legal systems.

All in all, postponing decisions on Article 6 prevented creating potential loopholes with regard to accounting and carry-over of Kyoto units and therefore this move was

certainly the preferential option. However, it remains unclear how Parties intend to solve the prevailing conflicts given that numerous attempts and years of negotiations have failed to produce consensus. On the positive side, a group of countries led by Costa Rica and Switzerland on the penultimate day of the COP launched the ‘San José declaration’ establishing high quality standards for integrity of the Art.6 transactions, which quickly gained the support of 31 countries¹¹. Switzerland stated in final plenary it would apply these rules to the Art. 6.2 pilot activities it will keep conducting. Whether or not this will create best practice examples eventually becoming the norm remains to be seen.

While some of the key political issues remain unresolved, it should be highlighted that Parties made considerable progress on several technical issues. Since the upcoming negotiations will continue on the basis of the three texts proposals of the Presidency, there is a risk that some of the progress made could be reversed. Article 6 is at a decisive crossroads with a solution that satisfies all is nowhere to be seen. The only thing clear at the moment is that another year of exchanging views and discussing pros and cons of well-known options is certainly not the way forward.

3.2 Common Timeframes for Nationally Determined Contributions

In the run-up to the Paris conference, Parties had not been able to agree on any mandatory requirements for the content of NDCs. As consequence, the NDCs currently vary strongly in many respects, including in the timelines they cover. While some Parties’ NDCs have 2025 as target date, most have 2030 and some have even longer timeframes.

COP21 had therefore mandated the CMA to “consider common time frames at its first session”. Consequently, the conference in Katowice had agreed that NDCs for the period post-2030 should adhere to common timeframes, but Parties had not been able to agree on any specific proposal.

The absence of consensus continued in Madrid. In particular, small island states, least developed countries (LDCs) and the Environmental Integrity Group (EIG) argued for having five-year cycles as longer timeframes would carry a high risk of locking in insufficient ambition. By contrast, the like-minded developing countries suggested that timeframes could be up to 2030, 2035, 2040, or as decided by the Party. Later in the first week the LMDCs proposed differentiated timeframes for mitigation, adaptation, and finance as well as differentiation for developing and developed country Parties. Developed country Parties by and large apparently did not assign high priority to the question, suggesting that the issue could also be resolved at a later COP.

In the end, Parties were not able to come to a conclusion, the item will therefore be included in the agenda of the next session.

¹¹ Ministerio del Ambiente y Energía (2019): Leading countries set benchmark for carbon markets with San Jose Principles. Press release, <https://cambioclimatico.go.cr/press-release-leading-countries-set-benchmark-for-carbon-markets-with-san-jose-principles/>

3.3 Transparency Framework

At COP24 in Katowice, Parties had agreed on the modalities, procedures and guidelines for the Transparency Framework. These rules do not only contain provisions on how Parties are to report on their GHG emissions and progress towards implementing their NDCs but they also establish international processes to review and assess the reports.

In Madrid, Parties were mandated to further specify these provisions by agreeing on outlines of reports and reporting tables. In doing so, they had to strike a balance between the objective of ensuring that reporting is complete and transparent while at the same time making sure that templates can also be used by developing countries with limited capacities.

Despite significant efforts during the first week of the negotiations, Parties were unable to reach consensus on how to continue working on this matter, in particular on whether to undertake inter-sessional work and give a mandate to the secretariat to make a proposal for common reporting tables. While some countries (US, EU, AI-LAC, LDCs, AOSIS, Australia, Canada and Japan) wanted to continue discussing this issue, others (China, LMDC, African Group) opposed this and the text was not forwarded to the COP. The agenda item will therefore be included in the agenda of the next SBSTA session in June.

4 Support for the Global South

4.1 Adaptation

Adaptation was the priority issue for many of the developing country Parties. In the opening statements of COP25, a number of Parties highlighted the importance of the adaptation fund (Australia for the umbrella group), stressed that adaptation and mitigation should be balanced (Egypt for the African Group), that Article 6 should provide resources for adaptation through share of proceeds (Bhutan for the LDCs) or an Art. 6 „adaptation credit“ (Papua New Guinea for the Coalition for Rainforest Nations). Brazil (for Argentina, Brazil, Uruguay - ABU), called on developed countries to scale up ambition on finance with regard to the GCF and the Adaptation Fund. Finally, Venezuela (for ALBA) emphasised its general priority of adaptation over mitigation. Compared to the emphasis placed, the discussion was controversial with few results.

In Madrid, the report of the Adaptation Committee was discussed in joint SBI/SBSTA informal consultations. At COP24 in Katowice, the adaptation Committee had been requested to consider gaps and needs and how to address them. Discussion were from the beginning controversial focusing on the prominence given to the private sector. Developing countries underscored that adaptation finance should be public funds from developed countries. There was also disagreement on how to reference the AC`s recommendations with some countries objecting reference in any form. Controversies remained unresolved with some developing countries calling for inviting submissions from Parties by March 2020 and for the Secretariat to compile these into a synthesis report whereas several other developed countries opposed to this. As a result, no agreement was found and the item was included in the provisional agenda for SBI 52.

Issues regarding the membership of the Adaptation Fund board were controversially discussed. With Parties unable to find agreement the item was also deferred and included in the provisional agenda for the next meeting. Regarding finance, the CMP decision welcomed additional financial pledges and contributions and highlighted the multi-annual pledge by Germany. But additional funds and voluntary support were again encouraged.

Discussions on National Adaptation Plans (NAP)¹² were taken up in plenary and informal consultations. Discussions focused on challenges in accessing financial resources for NAP formulation and implementation. In its decision, the COP takes note of the ACs work on gaps and needs and invites Parties to share information on activities to adress gaps and needs. Developed countries were urged to mobilise support for adaptation activities in developing countries. The decision also notes challenges to access funding from the GCF Readiness and Preparatory Support Programme for the formulation of NAPs. SBI is requested to work further on gaps and needs and the implementation of NAPs.

¹² FCCC Report of the Adaptation Committee/SB/2019/3

4.2 Loss and Damage

The issue of dealing with climate impacts that cannot be adapted to, known under the term of “loss and damage”, has been subject to contentious debates for several years now. With the Warsaw International Mechanism (WIM) for Loss and Damage, an institution dedicated to deal with climate induced impacts was established by the COP in 2013. At COP25 in Madrid, the review of the WIM was one of the key agenda items.

A key priority for developing countries in Madrid was to strengthen the WIM, so that the mechanism could fulfil its hitherto largely neglected mandate to support vulnerable countries through the provision of finance, technology and capacity building.

One priority for developing countries was to improve vulnerable countries’ access to new and additional finance for dealing with climate change induced loss and damage. This key ask of developing countries was not only discussed in the context of the review of the WIM but also subject of discussions on climate finance taking place in other negotiation fora. This position of developing countries, that was supported by a large number of non-governmental organisations¹³, encountered fierce opposition of some developed nations. In particular, the US and Australia opposed the idea of providing new and additional finance, referring to existing financial support.

This divergence of views is reflected in the final decision text¹⁴, which recognizes the need to provide finance for loss and damage by urging the “scaling-up of action and support, as appropriate, including finance, technology and capacity-building“ (para 32). The text, however, does not contain an explicit reference to developed countries. This was criticised by developing countries during the final plenary who underscored that they understood this paragraph as referring to developed countries. Another weak point from the developing country perspective is that the decision does not specify that finance for loss and damage must be new and additional. This can be seen as a risk that the funding needed to finance loss and damage will be taken from climate finance streams intended to fund mitigation and adaptation actions in developing countries, thereby effectively reducing these already insufficient financing streams.

In the negotiations on the review of the WIM, Parties further agreed on installing an expert group that is to engage with existing financial institutions under the UNFCCC to find ways on how to enhance the provision of climate finance for loss and damage and facilitate developing country’s access to it. The expert group was however not vested with a mandate to mobilise new finance for loss and damage.

To support the implementation of activities on loss and damage, Parties further agreed on establishing the Santiago Network. The network is to provide technical assistance to key actors involved in the implementation of approaches to address loss and damage in particularly vulnerable developing countries.

¹³ Action Aid (2019): More than 150 NGOs sign open letter calling for loss and damage fund with debt relief. <https://actionaid.org/news/2019/more-150-ngos-sign-open-letter-calling-loss-and-damage-fund-debt-relief>

¹⁴ Draft decision -/CMA.2: Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review. Advance unedited version.

Another issue that proved particularly contentious was the future governance of the WIM. While the mechanism was established by the COP in 2013, it was put under the authority and guidance of the CMA with the adoption of the Paris Agreement in 2015. In an attempt to ensure they would not be subject to any future liability and compensation claims, the US pushed for the WIM to be operational exclusively under the Paris Agreement. Under such a structure and with the US presumably no longer being a Party to the Paris Agreement by the end of 2020, any future obligations for the US under the WIM to support developing countries in their efforts to deal with climate induced loss and damage would become obsolete. Developing countries successfully objected the US proposal of the WIM being pushed under the CMA and they were also successful in opposing the expansion of a clause that would have limited liability and compensation. However, the question of whether the WIM will continue being operational under both the COP and the CMA could not be resolved and will be taken up at a future meeting.

5 Gender Action Plan

One of the strongest outcomes of COP25 was the adoption of the 5-year Enhanced Gender Action Plan (GAP) under the UNFCCC by Parties.¹⁵ These confirmed the GAP adopted in 2017 - despite a dramatic negotiation process on this item, in the end there was no backlash on this issue. On the contrary, Parties strengthened the GAP with two new activities: targeted capacity building for the advancement of gender-responsive climate solutions at all levels, and strengthening and accelerating implementation.

The enhanced GAP “sets out objectives and activities under five priority areas that aim to advance knowledge and understanding of gender-responsive climate action and its coherent mainstreaming in the implementation of the UNFCCC and the work of Parties, the secretariat, United Nations entities and all stakeholders at all levels, as well as women’s full, equal and meaningful participation in the UNFCCC process”.¹⁶ The enhanced GAP defines 2-7 activities for each of the objectives in the five priority areas, for which clear provisions are made with regard to a) responsibilities: leading responsibility in each case, and contributing responsibilities (e.g. Parties, UNFCCC Secretariat, chairs of constituted bodies, „relevant organisations“, national gender and climate change focal points, „relevant national financial and budgeting institutions“, „research community“ etc.), b) Timeline (e.g. until COP28 in 2022 or a fixed date within the next 5 years), c) Deliverables/outputs (guidelines, implementation of capacity building, etc.), d) Level(s) of implementation (e.g. at international, regional and/or national level). However, clearly defined indicators for measuring progress are lacking. The NGO Life e.V. criticises the GAP for recognising the intersectional identities of women, including indigenous women and women with disabilities, but “more work needs to be done to understand the multidimensional and non-binary social intersections that impact the ways in which people mitigate to and build resilience to climate impacts.”¹⁷

And the NGOs also criticise the overall outcome of the COP25 with regard to gender: "No real action on gender equality can be achieved without progress from Parties to fully implement the Paris Agreement, including to limiting warming to 1.5 degrees".¹⁸

¹⁵ Decision -/CP.25, Enhanced Lima work programme on gender and its gender action plan, Advance unedited version.

¹⁶ Ibid, Annex, Gender Action Plan, para 1.

¹⁷ Advances for Gender Equality at COP25, 12/13/2019, <https://wedo.org/advances-for-gender-equality-at-cop25/>.

¹⁸ Ibid.

6 Conclusions and Outlook

6.1 The Last Stand of Fossil Interests?

Some commentators have argued that the conflicts at COP25 show that the time of cosmetic climate policy has come to an end. In their view, countries that are strongly tied to fossil fuels are now feeling the bite of the Paris Agreement and trying to organise massive resistance, but the majority of countries wants to lift climate policy to a new level.¹⁹

However, the countries blocking progress at COP25 are merely the tip of the iceberg. While adhering to the Paris Agreement in their rhetoric, in practice none of the major emitters are yet ready to seriously embark on a trajectory that is consistent with the objectives of the agreement. Even the efforts of countries such as Germany and the UK that used to be widely seen as frontrunners have been rated as “highly insufficient” and “insufficient” by the Climate Action Tracker.²⁰ Even within the confines of the UNFCCC’s consensus system, blockers would have a much harder time if there was a counterweight of other major emitters actually committed to the cause.

The outcome of COP25 is thus a true reflection of the current state of climate policy. The conference was not able to complete the Paris rulebook and sent only a muted signal on the need for more action. It was not even able to agree on milestones for the process in 2020. In order to facilitate an initial global evaluation before the next conference in Glasgow in November 2020, all contributions should be on the table by the middle of next year at the latest.

Whether 2020 will become the year of ambition raising will to a large extent depend on the EU. Ursula von der Leyen, the new President of the European Commission, tried to regain the position of climate leader for the EU with her intervention at COP25. She declared that the EU wanted to be the first climate neutral continent by 2050 and that to achieve this objective action had to be taken now. The EU and China have scheduled a summit for September to help prepare the next COP in Glasgow. This summit will only be a success if the EU does not come empty-handed. The EU should take a decision before the summit with China to strengthen its emission reduction target for 2030. To make this possible, the European Commission should publish its proposal for the target revision within the first 100 days of the new Commission, as von der Leyen had initially announced. If the Commission publishes its proposal later, this will likely not leave enough time for the EU to come to an agreement before September.

Given its high historical emissions and high economic capability, the EU has the responsibility to take the lead and not wait for moves from others before taking its decision. The EU as a whole should therefore follow the example of Denmark, which recently adopted binding legislation to reduce its emissions by at least 70% below 1990 levels by 2030.

¹⁹ Klimagipfel zeigt Stärken und Schwächen des Pariser Abkommens: Staaten können tiefe Gräben bei Schlüsselthemen nicht überwinden, <https://germanwatch.org/de/17465>, also see Hermwille, Lukas, and Lisa Sanderink. 2019. 'Make Fossil Fuels Great Again? The Paris Agreement, Trump, and the US Fossil Fuel Industry'. *Global Environmental Politics* 19 (4): 45–62. https://doi.org/10.1162/glep_a_00526.

²⁰ <https://climateactiontracker.org/countries/germany/>, <https://climateactiontracker.org/countries/uk/>.

Holding the EU Council presidency in the second half of 2020, Germany will have a key role in the positioning of the EU. The German government therefore needs to reclaim a frontrunner position and end its current blockade of ambitious measures at national and European level, for the benefit of the climate – but also of the German economy, which has significant potential on the growing international climate protection markets. Given that Germany is set to miss its 2020 climate targets by a wide margin, forces now need to be joined to increase the targets for 2030 and securely achieve them. The climate protection programme that has so far been developed by the German government falls far short in this regard.

6.2 From Negotiation to Action

Another important theme regards to the increasingly important role of non-state and subnational actors. While those actors and their decisive action cannot and should not replace action at the national level, they can support NDC implementation and facilitate ambition by influencing policy formulation at the domestic level through, by increasing legitimacy and authority of NDC decision making through stakeholder participation, by acting as a watchdog and supporting transparency and accountability of national governments, by contributing to NDC implementation with their own activities both on mitigation and adaptation and by shaping national policy agendas in view of subsequent NDCs.²¹

With the process of regime building coming closer to its completion, it is high time to shift away the focus of "negotiation COPs" to events that highlight and put center stage the action developed by non-state and subnational actors and to seek ways to more formally interlink the Global Climate Action Agenda with the intergovernmental process. For example, the COP could formally take note of the climate action pathways developed by the Global Climate Action Agenda and/or even endorse them so that they receive some form of legitimation and authority. This, in turn, might help to raise their prominence and increase the likelihood that this stream of work is actually picked up by national governments in a constructive manner.

6.3 Fast Track Needed

While the results of COP25 are sobering, to say the least, it is worth mentioning that the multilateral process under the UNFCCC is and remains crucial to advance climate action across the globe. First and foremost, it is the only universal forum in which all Countries including the least powerful have a say.²² Moreover, the adoption of the Paris Agreement has achieved major paradigm shifts. It shifted the global climate discourse towards the 1.5 °C target, it provides a reference point for civil society including the Fridays for Future movement, and the adoption of the "finance

²¹ see for example Chan, Sander, Idil Boran, Harro van Asselt, Gabriela Iacobuta, Navam Niles, Katharine Rietig, Michelle Scobie, et al. 2019. 'Promises and Risks of Nonstate Action in Climate and Sustainability Governance'. *Wiley Interdisciplinary Reviews: Climate Change* 10 (e572): 1–8. <https://doi.org/10.1002/wcc.572>. and Hermwille, Lukas. 2018. 'Making Initiatives Resonate: How Can Non-State Initiatives Advance National Contributions under the UNFCCC?' *International Environmental Agreements: Politics, Law and Economics* 18 (3): 447–66. <https://doi.org/10.1007/s10784-018-9398-9>.

²² It is worth noting that in the final hours of negotiations apparently negotiators from smaller countries were no longer included and in fact left out of the room when the more powerful actors struck the final deals. See tweets from the lead negotiators of the Least Developed Countries Group (<https://twitter.com/ldcchairunfccc/status/1205952448105455617?s=12>) and Alliance of Small Island States (<https://twitter.com/aosischair/status/1205949355762565120>)

objective” (Art. 2.1c of the Paris Agreement) initiated a paradigm shift in the global financial system with more and more (development) banks figuring out ways to redirect financial flows into climate-compatible investments.

Still, the talks in Madrid illustrated once more that substantial progress within the limits of the multilateral consensus-based climate regime remains extremely difficult. Arguably, it will never allow for a sufficient pace of progress. Should the alliance between EU, China and other countries not evolve and pull the process out of the current limbo, civil society and ambitious countries must seriously consider establishing an international process parallel to the current regime of UNFCCC, Kyoto Protocol and Paris Agreement.²³ COP25 has demonstrated that the obstructive power of a handful of countries is able not only to hold the process but to turn the Paris Agreement into the opposite direction. The next conference might thus see the worst possible outcome – weak ambition with no substantial improvement of most Parties’ NDCs, very weak implementation of the Enhanced Transparency Framework and yawning loopholes. The ultimate objective of the UNFCCC and the legally binding target of the Paris Agreement to keep warming well below two degrees would be thwarted and impossible to reach. Worst nightmares would become true and multilateral approaches seriously damaged – much to the liking of the new nationalist proponents in various parts of the world.

There are, however, multilateral approaches that are not necessarily global or universal in character. Of course, in an ideal world such an alliance of forerunners would be able to form under the umbrella of the UNFCCC by negotiating and adopting a new protocol containing ambitious rules for those who sign up to it. But unfortunately, such a protocol would have to be negotiated by all Parties and thus would not have any chance of containing binding rules or even effective decision-making procedures. The situation reminds of heroin addicts who vow solemnly to become clean – but also stipulate that all measures must be agreed by everyone. This “detox by consensus” would not get very far, especially since the dealers are part of the group, who will lose economically if consumption is effectively reduced.

Any such attempt to establish a more effective regime must therefore start as a parallel process independent from the UNFCCC. It is politically not easy to forge a new agreement on a subject matter that is already regulated, but it is not legally prohibited since the current climate regime is not exclusive. It is also important to note that this fast track must be built on a solid legal foundation. There are also good reasons for more flexible “soft law” approaches, but if the agreement contains legally binding obligations (and it should) and especially if there are trade implications this must be done by hard law in order to comply with the international trade regime. A constructive way forward would be to consider transnational decarbonization clubs that address specific sectoral transformation challenges, for instance in the iron and steel industry.²⁴

²³ See e.g. Obergassel et al.: Phoenix from the Ashes – Analysis of the Paris Agreement to the UNFCCC, 28 ELM 2016, p.3 at p.12 et seq.

²⁴ see Obergassel, Wolfgang, Hanna Wang-Helmreich, and Lukas Hermwille. 2019. ‘A Sectoral Perspective on Climate Clubs’. Deliverable D4.3c. COP21 RIPPLES Project (Horizon2020). <https://www.cop21ripples.eu/resources/deliverable-4-3/> and

Preparations for such a diplomatic process should start immediately in order to be able to commence after COP26 in Glasgow 2020. The issue could already be part of the EU-China negotiations, with all Parties expressing the firm intention to aim at a separate agreement should next year's conference have unsatisfactory results. The mere threat of such a fast track process might already induce some much-needed urgency into the preparations for COP26.