

IP, Climate Change and Energy: the Post Paris Agreement Framework



- The “**Earth Summit**” in Rio de Janeiro, 1992
- The **United Nation Framework Convention on Climate Change (UNFCCC)**: www.unfccc.int
- The Convention has been ratified by 197 countries («parties»)

The ultimate objective of the Convention was to stabilize greenhouse gas concentrations in the atmosphere «at a level that would prevent **dangerous anthropogenic interference** with the climate system ...»

«Such a level should be achieved **within a time-frame sufficient** to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner»



United Nations
Framework Convention on
Climate Change

- Art. 3.1 UNFCCC: «*The parties should protect the climate system for **the benefit of present and future generations** of humankind, on the basis of equity and in accordance with their **common but differentiated responsibilities** and respective capabilities. Accordingly, **the developed** countries should take the lead in combating climate change and the adverse effects thereof»*

Commitments (art. 4 UNFCCC):

All Parties, taking into account their **common but differentiated responsibilities** and their specific national and regional development priorities, objectives and circumstances, shall:

- Develop and periodically update **national inventories of anthropogenic emissions and removals by sinks**
- **Formulate, implement, publish and regularly update National Communications (NCs)** containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change;
- Communicate to the Conference of the Parties (COP) information related to implementation
- **Promote and cooperate** in the development, application and diffusion, including transfer, of technologies, practices and processes that CONTROL, REDUCE or PREVENT anthropogenic emissions of GHGs in all relevant sectors (energy, transport, industry, agriculture, forestry and waste management sectors)

Specific Commitments (art. 4, par. 2, UNFCCC):

The **developed Countries Parties** and other Parties included in Annex I commit themselves specifically:

- To adopt national policies and take corresponding measures on the mitigation of climate change by limiting its anthropogenic emissions of GHG and protecting and enhancing its GHG sinks and reservoirs.

The Kyoto Protocol to the UNFCCC, 1997

- Structured around two fundamental premises:
 1. The principle of common but differentiated responsibilities
 2. A prescriptive, quantitative, time-bound approach in addressing climate problems
- More than 100 developing countries, including China and India, were exempted from the Treaty
- Legally binding obligations only for developed countries to cut their GHG emissions — up to 5% below 1990 levels — in the period 2008-2012
- The US did not ratify the Treaty. Canada withdrew in 2012

The Kyoto Compliance System

- A standard top-down international Treaty
- 2 complementary approaches to compliance:
 - a) A **sanction-based approach** (the 'hard' compliance approach)

A LEGALLY BINDING, TOP-DOWN and RESULT-BASED APPROACH (sanction- coercion)



- a) A **facilitative approach**

The Kyoto Compliance System

- **Facilitative compliance:** through financial and technical assistance (seek to promote compliance *ex ante*), technology transfer, capacity building, persuasion, cooperation (ex. by providing 'early warning' of potential non compliance)

What non being compliance means?

-specific emission targets

-timetables for their achievements

Multilateral Environmental Agreement

- **Can we rely on States to implement** their international environmental commitments?
- Environmental agreements are build on Reciprocity
- **How to enforce a MEA?**
 - Domestic legal systems can enforce rules through sanctions. In international law is more difficult to enforce sanctions



How to effectively implement MEAs?

- Huge discrepancy between commitments and action



Climate compliance mechanisms: new trends

- **From hard to soft law**
- Promote future compliance rather than remedy past non-compliance
- **Focus on procedural commitments, self-reporting**
- Reliance on community pressure, international accountability

Climate compliance mechanisms: new trends

- A different track from enforcement: the attempt to **encourage and facilitate compliance**:
 - By helping countries to draft implementing legislation
 - By setting guidelines for the implementation of the MEA
 - By providing financial or technical assistance
 - By identifying the causes of non-compliance (Why do States fail to comply with their international obligations? Why do they make commitments and then fail to do what they had promised?)

The path towards the Paris Agreement

The negotiations towards a 2015 climate agreement focused on two key questions:

- **How to secure the participation of all major emitters?**
- **How to ensure that the commitments adopted by the countries will be respected?**

The Paris Agreement

- The Paris Agreement INVERTED THE KYOTO MODEL
- It relies on **a pledge and review architecture**
 - Countries VOLUNTARY COMMIT themselves to limit GHGs emissions
 - Countries have to REPORT PERIODICALLY and their efforts and results are periodically reviewed and assessed
- A **bottom-up** approach which leaves a **very wide margin of discretion to States** AS TO how to contribute to tackle climate change

EMISSION REDUCTION TARGETS ARE POLITICALLY BINDING, BUT NOT LEGALLY BINDING

REPORTING AND VERIFICATION MECHANISMS ARE LEGALLY BINDING!!

The Paris Agreement

- Both developed and developing countries have agreed to undertake and communicate their efforts to limit the global temperature increase to well below 2° C and to pursue efforts to limit the temperature increase to 1.5 ° C
- Two main instruments:
 - **Nationally Determined Contributions (NDCs)**
 - **Enhanced Transparency Framework (ETF)**

The Paris Agreement and the NDCs

- **Nationally Determined Contributions (NDCs)** are at the heart of the Paris Agreement
 - They are **NATIONALLY DETERMINED** rather than internationally negotiated
 - They **are not legally binding**
«Each Party should prepare, communicate and maintain successive NDCs that it intends to achieve»
 - They have to be prepared, communicated, maintained and updated **every five years** (PROCEDURAL COMMITMENTS)
 - Countries have agreed that the level of ambition to reduce emissions will increase over time (NO BACK-TRACKING IN CLIMATE PLANS!)
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The Enhanced Transparency Framework (ETF)

Art. 13 Paris Agreement: «*In order to built mutual trust and confidence and to promote effective implementation, **an enhanced transparency framework** for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is established»*

- The purpose of ETF is to provide a clear understanding of mitigation actions, to track progresses towards NDCs, to assess collective progresses every 5 years

Transparency is the backbone of the Paris Agreement!!

The Enhanced Transparency Framework (ETF)

- Both developed and developing countries shall:
Regularly submit national inventory reports and information on implementation and achievements of NDCs
- Developing countries should:
Regularly communicate progresses in implementing capacity building plans, policies, actions, measures
- Information on GHG inventories and on implementation and achievement of NDCs are subject to technical expert review

MRV

- The UNFCCC laid the foundations for the current system of Measurement, Reporting and Verification
- Over the decades, **a more structured approach to measurement and reporting has been elaborated**

Parties adopted a number of decisions detailing guidance on reporting (on the content and frequency of National Communications and on the content of BURs), as well as on the **financial and technical support to be provided to help developing countries to meet their reporting obligations**

- In 1999 a **CONSULTATIVE GROUP OF EXPERTS** was established to help developing countries in meeting their reporting obligations

Measurement

- **Measurement** entails direct physical measurement of GHG emissions (as well as **measurement of estimating emissions or emissions reductions**) and collecting information about support needed and received for climate change
- The methodologies for measurement are not defined by the UNFCCC, but developed by IPCC:

[IPCC guidelines of 1996](#)

[The Good Practice Guidance of 2000](#)

[IPCC guidelines of 2006](#)

Since IPCC guidelines are intended to be used by all countries with different capacities, they provide **different tiers of methods** **for each category of emission source**

3 types of MRV

- **MRV of GHG emissions** (estimating, reporting and verifying actual emissions over a defined period of time)
- **MRV of mitigation actions** (assessing GHG emissions reductions and effects of policies, projects and actions adopted)
- **MRV of support** (monitoring the provision and receipt of financial flows, transfer of technical knowledge and capacity building improvements; more in general, **evaluating the results of support provided**)



*For simplicity, this graphic uses the term 'emissions' to describe both 'emissions and removals'.

Reporting

- **Reporting** means focusing on the steps States have taken to implement their commitments (information on implementing legislation as well as on national measures taken to enforce this legislation) 

Reporting on mitigation actions (NCs guidelines)

«Based on national circumstances, non-Annex I Parties are encouraged to provide, **to the extent their capacities allow**, information on programmes and measures implemented or planned which contribute to mitigating climate change ... Including, as appropriate, relevant information by key sectors on methodologies, scenarios, results ...»

Reporting

- Guidelines for NCs for developing countries stress the need «to encourage the presentation of information in a **consistent, transparent and comparable, as well as flexible, manner, taking into account specific national circumstances**»
- BURs are intended as an update to NCs, providing more recent information. Guidelines for BURs allow **flexibility** so as to appropriately reflect the «*capacities, time constraints, data availabilities and the level of support provided*»

The main content of National Communications

National Communications should include (NC Guidelines):

- A national inventory of anthropogenic emissions and removal by sinks of GHGs
- A general description of steps taken or envisaged
- Any other information that developing countries consider relevant to the achievement of the objective of the Convention

Biennial Updated Reports provide an update of the NCs!

Verification

- **Verification of information** (contained both in NCs and BURs) may be conducted at national level before submission to the UNFCCC (voluntary)
- NCs are not subject to international verification. At national level verification is implemented through domestic MRV mechanisms to be established by developing countries (General guidelines adopted at COP 19, Warsaw 2013)
- **BURs are subject to verification through International Consultation and Analysis (ICA)**

To increase the transparency of information reported in BURs



What's the point of MRV?

- Evaluating whether the world is on track to limit temperature rise to 1.5/2 C°
- A regular reporting obligation can facilitate the **development of permanent institutional capacity** related to climate change activities
- Communication of information is a vehicle for **exchange of information and learning across countries**
- Reporting is essential to **build confidence among Parties** that “the others” are implementing their commitments
- **Increasing public awareness**

The Paris Agreement “beyond the Parties”

- The Paris Agreement relies on the collective ambition of individual States to reduce their emissions (NDCs)
- But **ambition has been lacking so far** (weak national targets, long timeframes)!!
- A full section of the Paris Agreement is devoted to “non-Parties stakeholders” which are invited to “scale up their efforts and support actions to reduce emissions”
- **A new way of enforcing and implementing international Treaties?**
- The USA withdrawal and the role of non-State actors

The role of non-State actors

- INVESTORS ACTIONS
- VOLUNTARY BUSINESS COMMITMENTS
- PRIVATE CLIMATE LITIGATION

The Transfer of green technologies to developing countries

Is IPR a major barrier to the international transfer of clean technologies?

Or the barrier is the developing State's lack of capacity to attract foreign clean technologies?

- Technology transfer usually occurs in the commercial sector
- So, we should try to regulate it according to the sustainable development principle

Capacity-building

According to art. 11 of the Paris Agreement, it is **the capacity** and ability **of developing countries to take effective climate change action** (i.e., the capacity to implement adaptation and mitigation actions, to facilitate technology development and access to climate finance, to improve climate education and public awareness, to ensure timely and accurate communication of information).



Developed countries should support CAPACITY BUILDING ACTIONS in developing countries

Capacity-building is essential to enable developing countries to participate fully and to implement the UNFCCC

Thank you for your attention!

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