INTERNATIONAL

BUILDING FLEXIBILITY AND AMBITION INTO A 2015 CLIMATE AGREEMENT

CENTER FOR CLIMATE
AND ENERGY SOLUTIONS

by

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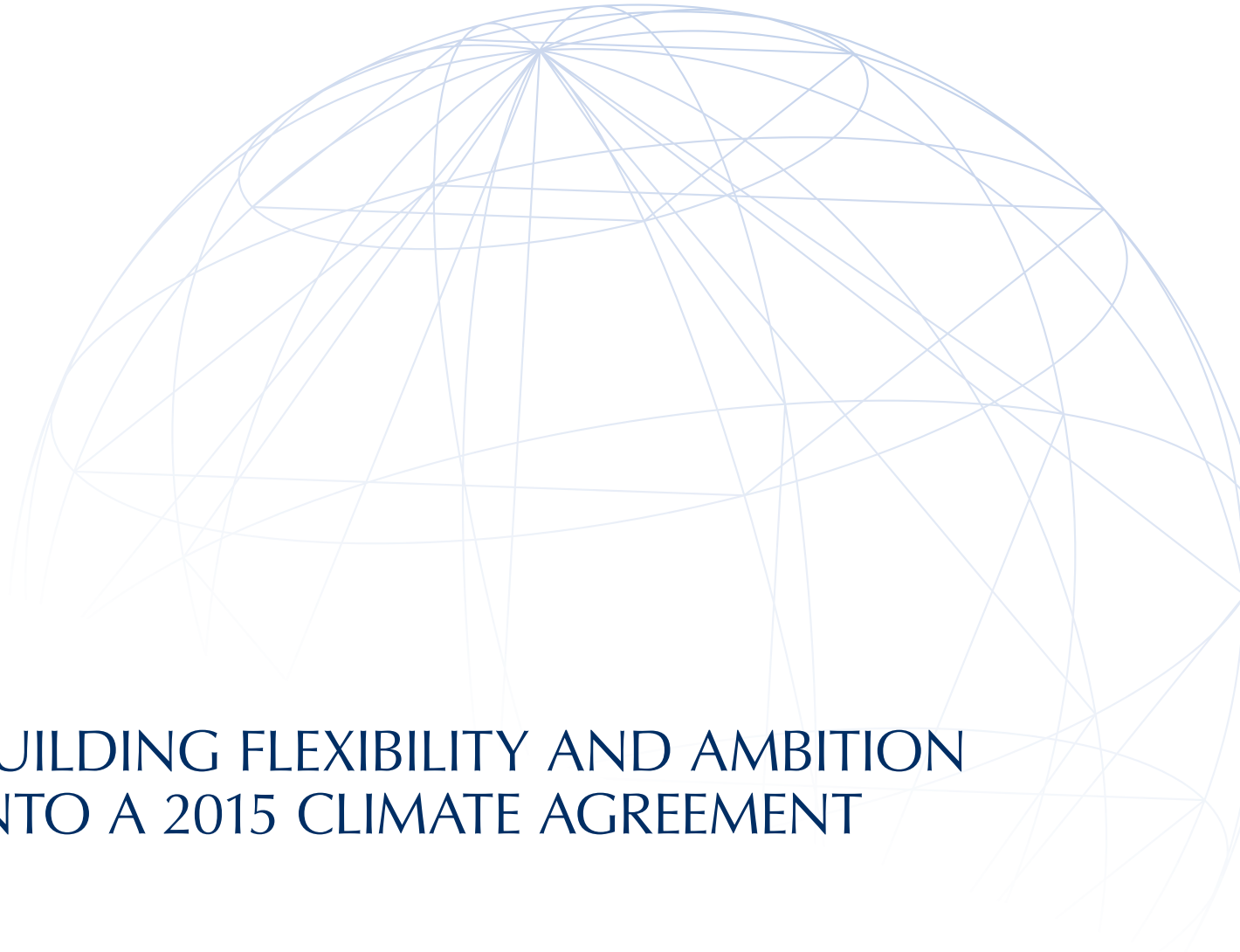

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CONTENTS

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I. INTRODUCTION

Governments are aiming to produce a new international agreement in 2015 defining the next stage of the global climate effort. Nearly a quarter century ago, with the adoption of the United Nations Framework Convention on Climate Change (UNFCCC), nations set the objective of preventing dangerous anthropogenic climate change. The global effort has since veered in different directions, and greenhouse gas emissions have continued to rise. In launching the current round of negotiations under the Durban Platform for Enhanced Action, UNFCCC parties set only broad parameters for a 2015 agreement: it will apply post-2020, have "legal force," be "applicable to all," and be "under the Convention."[1] Little beyond that has been yet agreed, and many difficult issues remain. But discussions to date suggest growing convergence around a more "hybrid" model of climate governance.[2]

This emerging hybrid approach seeks to balance national flexibility and international discipline to produce greater ambition. It aims to ensure broad participation through flexibility, by giving countries significant latitude in defining their national contributions or commitments. And, through international rules on transparency and accountability, it aims to prod countries to do more than they otherwise would.

Many international agreements have a hybrid character. The model under discussion in the climate arena reflects lessons learned from past experiences under the UNFCCC. To date, the UN climate change regime has vacillated between top-down and bottom-up approaches. On the one hand, the Kyoto Protocol provided for only a single type of mitigation commitment—legally-binding, economy-wide, absolute emissions targets, defined through a process of international negotiation—and included strong international accounting rules.[3] In contrast, the Copenhagen Accord and Cancún Agreements gave states almost complete flexibility in defining the nature and stringency of their commitments—including the sectors and gases covered, and the baseline relative to which commitments are defined—and left accounting to national discretion.[4]

Each approach has demonstrated strengths and weaknesses. Kyoto's more top-down approach provides greater legal and technical rigor, promotes transparency and comparability of effort, and holds the promise of greater ambition. But few states have been willing to accept it, primarily because international climate change policy is driven largely by domestic rather than international politics. The countries willing to undertake second commitment period targets under the Kyoto Protocol account for only about 14 percent of global emissions. In contrast, a more bottom-up approach encourages greater participation, since national commitments reflect national choices. But it may produce little more than business-as-usual, since states may pledge only what they already planned to do anyway. More than 90 countries made quantified pledges under the Copenhagen/Cancún approach, representing more than 80 percent of global emissions.[5] Though likely an improvement on business-as-usual, these pledges do not, in the aggregate, put the world on a pathway to meeting the 2° C temperature limit agreed to in Cancún.[6] Moreover, they are difficult to evaluate and compare, due to limited transparency and differences in approach.

The hybrid approach would meld top-down and bottom-up elements to encourage both broad participation and more ambitious commitments. A decision at the Nineteenth Conference of the Parties (COP 19) in Warsaw in late 2013—the midpoint in the Durban Platform negotiations—points toward a hybrid approach in the 2015 agreement. On the one hand, it includes a strong bottom-up element, inviting parties to communicate their "intended *nationally determined* contributions" (emphasis added) well ahead of the 2015 conference, to be held in Paris—and by the first quarter of 2015, for "those ready to do so."[7] But the Warsaw decision also plants the seeds of a top-down component, through its mandate that COP 20 specify the information that states should provide about their contributions to ensure "clarity, transparency, and understanding."[8]

This paper explores options for a hybrid approach in the 2015 agreement, focusing in particular on mitigation

efforts, rather than the broader array of issues under consideration in the Ad Hoc Working Group on the Durban Platform (ADP), such as finance, technology, and adaptation. It looks at the rationales for a hybrid approach, ways to design hybridity into an international agreement, and how top-down and bottom-up approaches have figured in the UNFCCC's evolution. Finally, the paper examines the types of top-down features that could complement nationally determined contributions to promote greater ambition, including a long-term goal as a benchmark for evaluating countries' efforts, reporting and review procedures to promote transparency and accountability, and provisions for updating or initiating the next round of commitments. In so doing, it also considers cross-cutting issues such as timing, the overall structure of the agreement, the differentiation of countries' obligations, and ways to make the 2015 agreement dynamic and, in turn, durable.

II. RATIONALES FOR HYBRIDITY

The effectiveness of an international agreement is a function not only of the stringency of its commitments but also the levels of participation and compliance by states.[9] If an agreement establishes strict commitments, which limit flexibility, then this tends to discourage participation, reducing the agreement's effectiveness. But if an agreement gives states flexibility to do whatever they please, it may provide little value-added.

Hybrid approaches attempt to mediate between these two competing dynamics. On the one hand, they give states flexibility in defining and/or modifying their commitments. But, on the other hand, they seek to bound national flexibility through internationally agreed rules, which promote greater ambition.

Providing states with flexibility to define and modify their commitments serves several important functions. First, flexibility allows states to tailor their commitments to take account of their particular circumstances and priorities. Some types of commitments may be politically or economically difficult for a state to accept, so a one-size-fits-all approach may preclude some states from participating or make them overly cautious. Similarly, commitments are generally more acceptable if they build on what a state is doing already. For both reasons, allowing states flexibility to define their commitments helps promote participation among diverse states and may make it easier for them to propose ambitious action. Second, flexibility allows states to experiment and innovate with different policy and legal approaches, rather than simply implement a single regulatory approach prescribed by an agreement. Third, flexible amendment procedures enable an agreement to respond to new information and circumstances. Finally, the flexibility to revise commitments allows a state to protect against the risk that an agreement that was in its interest at $time_1$ (when it joined) will no longer be in its interest at $time_2$ (when it must comply), as a result, for instance, of *force majeure* or other unanticipated developments.[10] This ability to manage risk frees states to propose more ambitious commitments initially, since they know they have an escape hatch if circumstances change or their initial calculations prove over-optimistic.[11]

But the benefits of flexibility come at a price. In addressing global problems such as climate change, much of a state's incentive to take strong action is based on a reciprocal commitment by other states to act.[12] But if states determine their commitments independently, rather than inter-dependently, then building reciprocity into an agreement becomes much more difficult. This may serve to limit ambition. In addition, allowing states to define their own commitments can result in highly disparate undertakings, which are difficult to understand and compare. Finally, if commitments can be easily adjusted or revised, this weakens their credibility and undermines the regime's predictability.[13] For these reasons, international agreements generally have a hybrid quality. They provide states with flexibility, but they bound that flexibility through international rules.

International rules can serve to promote ambition and implementation in a number of ways. Procedural rules help promote ambition through transparency and accountability. For instance, states may be more likely to submit ambitious contributions if they know that their contributions, as well as those of other states, will be subject to international scrutiny. But international scrutiny and peer pressure is possible only if other states and stakeholders have sufficient information to understand and evaluate what a state is undertaking. So procedural rules specifying the information that states must make available regarding the content, scope, and timing of their contributions can ultimately promote ambition.

Similarly, a procedural requirement that states report on their performance in implementing their contributions promotes accountability by allowing others to assess a state's record. The same is true of rules requiring states to take part in procedures to review their performance.

Finally, rules regarding the substance of states' contributions—for example, their type, scope, and timing—help make contributions more comparable and hence promote reciprocity. As New Zealand summarized in its ADP submission on elements of a 2015 agreement, "Ultimately rules serve to encourage ambition, to ensure consistency and therefore comparability of effort, and to enable accurate assessment of collective progress toward the global goal."[14]

III. THE HYBRID TOOLKIT

Hybridity can be accomplished in either or both of two ways:

First, a hybrid approach can involve a division of labor, with some issues resolved internationally and others left to national discretion. For example, the Ramsar Wetlands Convention[15] establishes several requirements for listed wetlands, including that parties precisely describe their boundaries and arrange to be informed of changes in their ecological character.[16] But, apart from requiring that parties list at least one wetland, the Ramsar Convention gives parties discretion about which wetlands to list and what measures to adopt to promote their conservation.[17]

A new climate agreement could adopt a similar type of hybrid approach. For example, it could give states flexibility to nationally determine the content of their contributions, but establish international rules on procedural issues such as transparency and review or on the accounting rules or time frame for nationally-determined contributions. Or it could specify what type of mitigation contribution a state must make (an economy-wide, absolute emissions target, a sectoral intensity target, and so forth) but give states discretion in specifying the ambition of their contributions.

Second, a hybrid approach can employ international rules that bound but do not eliminate national discretion. A number of different devices can be used to modulate between national flexibility and international standards:

Alternatives—First, to accommodate states with different circumstances, a multilateral rule can provide several alternatives, among which states may choose. For example, the Minamata Mercury Convention provides that parties shall not allow the manufacture, import, or export of certain products containing mercury (listed in an annex). But it allows a party to adopt different measures if the party can demonstrate that it has already achieved *de minimis* levels of manufacture, import and export for the vast majority of listed products.[18] Similarly, the Gothenburg Protocol to the Convention on Long-Range Transboundary Air Pollution requires parties to apply specified emission limits to each new stationary source within specified source categories. But the Protocol provides that parties may, as an alternative, apply different emission reduction strategies so long as the strategies achieve "equivalent overall emissions levels for all source categories together."[19] By providing states with alternatives, these agreements give states bounded flexibility, within the limited range of options presented.

Default rules/Opt-out procedures—Second, an agreement can allow parties to opt out of particular provisions. Provisions with opt-out clauses serve as default rules, which apply to a party unless it objects. New Zealand has proposed that the 2015 agreement establish default rules, which "set the broad parameters for nationally determined commitments (the default settings) while allowing Parties to opt out of one or more of these parameters within limits."[20]

Many multilateral environmental agreements establish annexes that can be amended through a qualified majority vote, but allow states to opt out of amendments—in essence making annex amendments function as default rules.[21] An international rule can also impose procedural and/or substantive limits on a state's ability to opt out. For example, the Minamata Mercury Convention allows parties to register exemptions from its phase-out dates, but requires that they do so upon becoming a party and imposes a time-limit on exemptions of five years after the relevant phase-out date.[22]

Opt-in procedures—Third, an agreement can define optional elements that apply only to those parties that affirmatively accept them. For example, the International Covenant on Civil and Political Rights creates an individual complaint procedure, but puts the procedure in an optional protocol, which applies only to those states that affirmatively accept it.[23] Opt-in procedures allow elements of a regime to be phased in (such as a compliance procedure or particular kind of commitment), as countries gain experience with an element and develop confidence in it, or as countries gain greater capabilities. Like guidelines and default rules, optional elements work primarily by influencing expectations—in the case of

optional elements, expectations about an agreement's evolutionary pathway, as the number of states accepting an optional element grows.

Contextual standards—Fourth, a multilateral rule can be formulated in contextual terms, qualifying its requirements by such phrases as "to the extent possible," or "as appropriate" or "depending upon national circumstances."[24] For example, the Gothenburg Protocol provides that a party shall apply best available technologies for preventing ammonia emissions "where it considers it appropriate."[25] Contextual standards such as this give states considerable discretion to determine what is "appropriate" or "possible."

Guidelines—Finally, a multilateral rule can be characterized as a guideline rather than as a legally-binding requirement. Guidelines serve to discipline national flexibility, by creating expectations about future behavior and by providing a basis for criticism when a state deviates. But, like default rules, states are not obligated to follow guidelines. The difference is that default rules apply unless a state formally objects, whereas states can choose to follow or not follow guidelines on an ad hoc basis. So guidelines, unlike default rules, do not put the onus on a state to enter a formal objection, which may be politically difficult to do.

IV. HYBRIDITY IN PRACTICE: THE UNFCCC

No international agreement is either fully bottom-up or top-down. They all involve some blend of international rules and national flexibility, and hence have a hybrid character. The various agreements that comprise the UN climate change regime are no exception. But international agreements differ in where they fall along the spectrum between national discretion and international rules. The UNFCCC and Copenhagen/Cancún agreements tend towards the bottom-up/national discretion end of the spectrum; the Kyoto Protocol towards the top-down/rules-based end.

UNFCCC

The Framework Convention gives states broad flexibility to determine their mitigation actions. Article 4.1 requires states to "formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change." But it provides few constraints on what states may do. It provides only very general, qualitative guidance, such as that states promote the "conservation and enhancement … of sinks and reservoirs" (Article 4.1(d)), and that they promote and cooperate in scientific research (Article 4.1(g)) and in education, training, and public awareness (Article 4.1(i)). And even some of these very general provisions contain qualifiers such as "as appropriate" (Article 4.1(d)) or "to the extent feasible" (Article 4.1(f)).

To the extent that the UNFCCC has "top-down" elements, they relate to reporting and review of Annex I GHG inventories.[26] Annex I countries must submit inventories annually, prepared using methodologies established by the IPCCC and reported according to guidelines adopted by the parties. The inventories are subject to annual review by expert teams, in accordance with detailed guidelines. Moreover, at least every five years, reviews are conducted in-country to more thoroughly examine documentation and activity data.

By contrast, non-Annex I inventories are subject to looser rules and are not subject to international review.[27] Similarly, although Article 12 requires parties to submit periodic national reports, specific standards for measuring and reporting policies and measures have not been adopted. As a result, the type and level of information provided on mitigation measures varies widely across parties. Moreover, while inventory reviews are based on clear guidelines and standards, there are no explicit guidelines for the review of national communications under the Convention.

KYOTO PROTOCOL

As compared to the UNFCCC, the Kyoto Protocol reflects a more top-down, rules-based approach. Although it gives parties considerable flexibility in choosing how to implement their commitments (including through emissions trading or use of the Clean Development Mechanism), it gives parties very little flexibility in defining the content of their commitments. Instead, it provides only a single commitment type: absolute, legally-binding, quantified emission limitation and reduction commitments (QELRC). It specifies the scope of these commitments: economy wide, for a basket of six greenhouse gases. It specifies the stringency of these commitments in an annex developed through international negotiations. And it specifies the accounting rules for determining compliance with each party's QELRC—for example, to calculate how many sinks credits can be included. Nor does it allow a party to opt out of any of these requirements, for example, by entering a reservation.[28] The only flexible elements of the Protocol concern the choice of a base year for economies in transition and the alternate base year (1995) allowed for three industrial gases.[29]

The Protocol also does not give parties any flexibility to change their commitments in light of changing circumstances (for example, higher than anticipated compliance costs). Adjustments to a state's emissions target require a multilaterally-agreed amendment. The only way a state can change its commitments without international approval is to withdraw from the Protocol altogether, pursuant to Article 27—the option that Canada chose when it was facing non-compliance.

The lesson of Kyoto is that few countries are willing to accept internationally-negotiated, legally-binding, quantitative limits on their emissions, even if they are given

considerable flexibility in the means of implementing these emissions limits. To attract the limited participation it did, the Kyoto Protocol had to provide carve outs for particular countries—for example, Article 3.7, which effectively loosened Australia's target, and Article 3.5, which allowed Economies in Transition (EITs) to pick a different base year than 1990, when their emissions were higher. Even so, few countries were willing to accept a second round of Kyoto commitments in the Doha Amendment.

COPENHAGEN ACCORD/CANCÚN AGREEMENTS

To a significant degree, the Copenhagen Accord (a political agreement) and Cancún Agreements (a set of COP decisions) reverted to the original UNFCCC approach, establishing a highly flexible architecture, under which each state can define its own mitigation contribution. Copenhagen and Cancún established a pledging process for both Annex I and non-Annex I parties, pursuant to which states listed their mitigations actions and commitments in information documents maintained by the UNFCCC secretariat. Of course, even the Copenhagen/Cancún process had rules-based elements. For example, Copenhagen and Cancún provided that Annex I countries will submit quantified economy-wide emissions targets. And they established new transparency requirements, including, for non-Annex I parties, biennial reports and a process of international consultation and analysis (ICA), as well as a process of international assessment and review (IAR) for Annex I parties. But the pledging process allowed developing countries to nationally determine the type of commitment/action they would undertake—for example, emissions intensity targets, conditional targets, sectoral targets, or policies and measures. And for those countries adopting absolute economy-wide targets, Copenhagen and Cancún allowed them to determine the base year, coverage, and stringency of their target. They did not specify what information states needed to provide about their pledges—for example, business-as-usual emissions projections, baselines, and accounting rules. Nor did they establish a common time frame. As a result, many of the pledges related to a single year, 2020, but some related to other time periods.

What can we learn from the Copenhagen and Cancún experience? First, many states are willing to make bottom-up pledges—the countries putting forward pledges account for over 80 percent of global GHG emissions.[30] Second, these pledges are insufficiently ambitious to put the world on a pathway to achieving the 2° C temperature limit.[31] Finally, the lack of rules on the content of mitigation pledges or the information to accompany them resulted in pledges of "breathtaking diversity" and "dubious rigor," as one commentator put it,[32] and makes it difficult to understand and compare pledges or to determine whether they are being met.[33] Although the Cancún Agreements established an *ad hoc* process to clarify the pledges,[34] a recent OECD study concluded that "the additional information provided remained limited and not all pledges were examined."[35]

V. IMPLICATIONS FOR THE 2015 AGREEMENT: POSSIBLE ELEMENTS OF A HYBRID APPROACH

In contrast to the Berlin Mandate, which clearly delineated some fundamental features of the future Kyoto Protocol, the Durban Platform decision provides only broad parameters for a 2015 agreement. It recognizes the need to strengthen the "multilateral, rules-based regime under the Convention" (suggesting the importance of including some rules-based elements in the Paris outcome), but otherwise focuses on more general attributes, including the agreement's legal form ("protocol, another legal instrument or an agreed outcome with legal force"), scope ("applicable to all"), and basis ("under the Convention").

The Warsaw decision on the Durban Platform,[36] although largely procedural in nature, begins to sketch out the contours of the 2015 agreement. On the one hand, the decision suggests that mitigation contributions will be "nationally determined," as they were under the Cancún Agreements—a strongly bottom-up element. On the other hand, the decision requests the ADP to identify the information that states should provide in order to facilitate "the clarity, transparency and understanding" of their intended contributions.[37] These informational requirements introduce a top-down element into the 2015 architecture.

An array of other top-down elements could be included in a hybrid agreement to help promote stronger ambition. These include a long-term goal serving as a benchmark for developing and assessing nationally determined contributions (NDCs); rules on transparency and accounting to ensure the clarity and comparability of NDCs; procedures to review parties' implementation of their NDCs; and provisions for updating or initiating the next round of contributions.

In elaborating a hybrid structure, four general issues arise:

Timing—First, at what stage should which aspects be elaborated? In the pre-Paris negotiations, in the 2015 agreement itself, or in rules developed after 2015, pursuant to the new agreement? The Warsaw decision requests COP 20 to determine the informational requirements for NDCs, but is silent on the timing of decisions on any rules for *ex ante* and *ex post* review, accounting, inscription, and differentiation.

Structure—Second, different elements of a hybrid architecture could be included in the 2015 agreement itself or in ancillary instruments, such as annexes or COP decisions, which have a different legal character or different amendment/revision procedures than the core agreement.

Differentiation—Third, the balance between national flexibility and international rules could be struck differently for different countries, depending on the degree to which hybrid elements apply to all parties or only some.

Dynamism—Finally, the agreement's design could enable it to evolve over time, for instance, by strengthening or adding top-down elements if efforts are falling short, or by adjusting differentiation as parties' capabilities grow or circumstances change. Such dynamism can be important in elevating ambition and ensuring a more durable agreement.

LONG-TERM GOAL

A long-term goal could serve as an important anchor for the top-down elements of a hybrid approach. The agreement could include rules of various kinds linking the goal with the development and review of NDCs, for example, by requiring states to take it into account in elaborating their contributions. Many multilateral environmental agreements articulate a long-term objective to guide their subsequent development,[38] but few have elaborated their objective in quantitative terms, which allows an assessment of the sufficiency of national actions and of the regime's overall progress in achieving its objective.

As an agreement "under the Convention," the 2015 agreement has as its ultimate objective the prevention of "dangerous anthropogenic interference with the climate system."[39] This objective, as well as its elaboration through the 2° C limit agreed to in Cancún, provide the

context for the development by states of their NDCs.

The 2015 agreement could further elaborate the Convention's ultimate objective, for example, through the articulation of a long-term goal (for example, a zero net GHG emissions goal[40]), a medium-term emissions reduction goal (for example, a 50 percent reduction by 2050), or a cumulative emission goal (for example, a limit of one trillion tons, as referenced in the IPCC's Fifth Assessment Report[41]).

FORMULATION, PRESENTATION, AND INSCRIPTION OF NATIONAL CONTRIBUTIONS

Requirement to Submit a National Contribution

A basic requirement, implicit in the Warsaw decision, is that parties submit a nationally-determined contribution. An example of such a requirement can be found in the Ramsar Convention on Wetlands of International Importance, which requires parties, when depositing their instrument of ratification, to designate at least one wetland to be included in a List of Wetlands of International Importance.[42]

Legal Character

The 2015 agreement could include only a procedural requirement that parties submit an NDC (for example, for inclusion in a non-binding schedule or annex), or the agreement could make the substance of NDCs legally-binding for some or all parties. In the latter case, parties would have an international legal obligation to achieve their NDC, in the same way that Annex I parties to the Kyoto Protocol are legally obligated to achieve their emission reduction targets.

Another option is to address the legal character of NDCs under domestic law—for example, by requiring parties to reflect their entire NDC in domestic legislation or regulation, or to support or buttress their NDC with legally-binding domestic measures. (The latter approach would allow parties to submit NDCs that are more ambitious than their domestic legal requirements.) Requirements concerning domestic legal implementation would help make NDCs more credible, by giving them the force of domestic law, and would hence serve a similar function as giving them the force of international law. If the agreement established an *ex ante* review procedure, the procedure could examine the adequacy of a state's domestic law in achieving its NDC. Similarly, an *ex post* review procedure could examine a state's performance in implementing its domestic legal requirements.

Many multilateral environmental agreements include provisions regarding domestic legal implementation. For example, the International Convention for the Prevention of Pollution from Ships requires parties to prohibit, under their domestic law, violations of the agreement by their vessels, and to impose penalties adequate in severity to discourage violations.[43] Generally, multilateral environmental agreements address domestic legal implementation only as it relates to binding international commitments, not non-binding obligations.[44] Nevertheless, there is nothing to prevent states from agreeing to provide for domestic legal implementation of their NDCs, even if the NDCs are not themselves binding under international law. A rough precedent can be found in the North American Agreement on Environmental Cooperation (also known as the NAFTA environmental side agreement), which does not set substantive international environmental standards, but instead requires each party to "ensure that its laws and regulations provide for high levels of environmental protection" and to "effectively enforce its environmental laws and regulations."[45]

Content

Although the Warsaw decision allows states to nationally determine their contributions, it does not preclude international guidance (or requirements) relating to particular aspects of NDCs, such as their type, scope, legal character, or differentiation. Even the Copenhagen Accord, which reflects a highly bottom-up approach, included substantive rules on important issues such as commitment type. For example, the Copenhagen Accord specifies the type of contribution expected of Annex I parties, namely, quantified, economy-wide emissions targets for 2020.[46] Similarly, the 2015 process could address particular aspects of NDCs either in the guidance adopted pre-Paris concerning the information that parties should put forward with their NDCs, in the 2015 agreement itself, in a COP decision adopted in connection with the agreement, or through a process to elaborate further guidance.

In their submissions to the ADP, some countries have suggested that NDCs should have a quantitative component[47]—for example, an emissions target or a quantitative target relating to forestry or land-use—for some or all countries. This bounding of NDCs could

be expressed as a requirement, a guideline, an expectation, a default rule, or an alternative. For example, Switzerland has proposed that all states be required to make one or more unconditional, quantified commitments.[48] Under this approach, states would still be able to determine what type of target to adopt (an economy-wide absolute target, an intensity target, a sectoral target, and so forth), as well as the ambition of their target. But they would not have unlimited discretion in formulating their NDCs. The United States has made a similar proposal, but would give states somewhat greater discretion. Under the US proposal, "contributions would be expected to be expressed in quantitative terms," but a state could express its NDC in qualitative terms, so long as the NDC is "quantifiable" by others in terms of its "anticipated effect on overall emissions."[49] Similarly, Norway has proposed parties representing a significant proportion of global emissions should develop economy-wide, quantified targets.[50] The submissions of China, the Least Developed Countries (LDC) group, and the Like-Minded Developing Countries (LMDC) group also propose quantitative targets, albeit only for Annex I countries.[51]

The 2015 agreement could also address the scope of NDCs. (While some parties have proposed that contributions encompass finance and adaptation as well, the focus here is mitigation only.) For example, New Zealand has suggested that the 2015 agreement might include default rules providing that quantified commitments address all GHGs and all sectors, but allowing states to create opt-outs for particular gases other than CO_2 and/or for particular sectors, subject to certain conditions.[52] Under this approach, NDCs would be required to cover CO_2, but coverage of other gases would be optional. Similarly, Switzerland has proposed that the 2015 agreement should "acknowledge" that economy-wide emission reduction targets "provide the highest level of clarity and predictability," and should "encourage Parties to move to such form of commitments as soon as possible." But the Swiss proposal would not require parties to adopt economy-wide targets.[53] The LDC group and China also propose economy-wide targets, but only for Annex I countries. For developing countries, the LDC group proposes to allow a range of contribution types, including relative targets, sectoral targets, and renewable energy targets.[54]

Additionally, the 2015 agreement could require or encourage states to include in their NDCs a description of their envisaged long-term emissions trajectory.[55] Such a requirement would promote long-term domestic planning, as well as allow an assessment multilaterally of the adequacy of national actions in achieving the Convention's ultimate objective.

Time Frame

Just as the Kyoto Protocol and the Copenhagen Accord specified the time frame for Annex I party targets (2008-2012 and 2020, respectively), the 2015 agreement might specify a common timeframe for NDCs. This could be specified either as a contribution period (for example, 2020–2025 or 2020–2030), like the commitment period in the Kyoto Protocol, or as a target date for the achievement of NDCs (for example, 2025 or 2030), like the 2020 date in the Copenhagen Accord or the "end of the decade" date in UNFCCC Article 4.2(a).[56] Without a common timeframe, NDCs will be difficult to assess in terms of their adequacy, in the aggregate, in achieving the 2° C temperature limit, or to compare. Inclusion of a rule specifying the timeframe for NDCs would address these problems.

Accounting Rules

The UNFCCC requires parties to submit national GHG inventories "using comparable methodologies to be agreed by the COP,"[57] and detailed accounting rules have been developed under the Kyoto Protocol, including for land-use change and forestry and for emissions trading. The 2015 outcome could similarly provide for common accounting rules for NDCs, either by specifying these rules in the body of the 2015 agreement or in an accompanying COP decision, or by creating a process to elaborate accounting rules in a future COP decision.

The European Union maintains that the 2015 agreement must contain "robust rules" on accounting, including in relation to the land use sector and to the use of market mechanisms to avoid double counting.[58] Similarly, Switzerland has proposed that the 2015 agreement "acknowledge the relevance of common accounting approaches" and give the COP authority to develop such approaches, "including in regard to inventory methodologies, global warming potentials and timeframes, sectors and gases covered, accounting of transferrable units, accounting in the land sector," as well as guidance for defining reference years, establishing projections, and using non-GHG metrics.[59] The United States has proposed that the agreement provide that land-use accounting include all significant sinks and sources and require that parties take the same approach in the base and target years, although it notes that any

common accounting rules should "allow for appropriate flexibility."[60] Meanwhile, Norway has proposed that the 2015 agreement include provisions addressing the use of markets by parties to achieve their NDC to "ensure no double counting, real emission reduction and sound governance."[61]

Participatory Requirements

The 2015 agreement could include guidelines and/or requirements for the formulation of NDCs, rather than leave this completely up to states. For example, the agreement could provide that parties give the public information about proposed NDCs and an opportunity to comment. Public participation requirements are found in the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters.[62] Similarly, the operational guidelines for the World Heritage Convention provide that, in the process for nominating sites to the World Heritage List, the "participation of local people is essential," and the Guidelines "encourage" parties "to prepare nominations with the participation of a wide variety of stakeholders, … including local communities, NGOs, and other interested parties."[63] The Ramsar Convention guidelines for the management of wetland sites also provide that local communities should be encouraged to take an active role in the site planning process.[64]

Informational Requirements

The provision of ex ante information by states about their NDCs can serve several functions, including to clarify NDCs, build understanding and trust among parties, allow an assessment of the adequacy of the overall global effort, allow an assessment of comparability of effort, and enhance domestic implementation.[65]

The Warsaw decision invites parties to communicate their NDCs in a manner that facilitates "clarity, transparency, and understanding" and requests the Lima conference to "identify the information that countries will provide when putting forward their contributions."[66] Hybrid agreements typically include such informational requirements. For example, the Ramsar Wetlands Convention requires parties to precisely describe and delimit on a map the boundaries of listed wetlands.[67] Similarly, the World Heritage Convention operational guidelines require parties, when nominating world heritage sites for inscription on the World Heritage List, to identify and describe the property, provide a justification for the inscription, describe the present state of conservation, and provide information on its legislative and regulatory measures.[68]

There appears widespread agreement on the need for informational requirements to ensure that NDCs are clear and understandable and can be assessed (although differences of view on the relevant assessment criteria—for example, adequacy and/or equity).[69] New Zealand's submission suggested that upfront information include the: type of contribution; expected emission reductions; time period; base year or baseline for any targets; sectors and gases covered; assumptions and methodologies for emissions projections; and accounting rules for determining achievement of the NDC. Similarly, the European Union has proposed a set of common informational requirements, as well as additional information requirements for particular types of NDCs such as absolute targets, relative targets, deviations from BAU, and policies and measures.[70] In contrast, the submissions by the LMDC group and China stress the need to differentiate any informational requirements between developed and developing countries.[71]

Ex Ante Review

The process through which national pledges were incorporated into the Cancún Agreements provided little opportunity for parties to examine one another's contributions before they were finalized. In calling on parties to communicate their intended contributions well ahead of Paris, and in its reference to "the clarity, transparency and understanding of the intended contributions," the Warsaw decision anticipates some form of *ex ante* consideration of parties' contributions under the Paris agreement, either on an informal, ad hoc basis, or in a more formal process governed by internationally-defined rules.

International rules could address a range of issues relating to the *ex ante* review process, including:

- **Objective—**Whether the review is intended simply to clarify parties' intended contributions, or whether it is intended to assess those contributions on the basis of, for example, their adequacy in achieving the 2° C temperature limit and/or their equity?
- **Nature—**Is the review a collective review of NDCs (and, if so, how many NDCs must be submitted in order to trigger the review process) or an individual review of each party's intended NDC?

- **Process**—Whether the review should involve in-session presentations by parties of their intended contributions, with opportunity for other parties to comment and question, or whether it should include additional elements, such as some type of expert review?
- **Indicators**—Whether the parties should collectively define a set of indicators to use in assessing the adequacy and/or equity of intended contributions? Alternatively, whether parties should decide individually what indicators to use in preparing or presenting their NDCs or assessing those of others?
- **Inputs**—Whether the review process should allow inputs from UNFCCC observer organizations or non-governmental groups?
- **Outputs**—Whether the review process should produce an output of some kind, such as a report or a COP decision, and whether this output can recommend or decide that contributions need to be revised on the basis of adequacy or equity?

REVISING NATIONAL CONTRIBUTIONS

The choice between national flexibility and international rules arises not only in the formulation of NDCs, but also in their later adjustment or revision. At one extreme, the 2015 agreement could give states flexibility to revise their NDCs unilaterally after they have been inscribed. At the other, it could require collective approval. In between, it could adopt a hybrid approach, which allows states to revise their contributions, but subject to international rules that bound their flexibility, for example, through rigorous transparency and accounting rules.

Allowing commitments to be revised in a flexible manner enables international agreements to respond to "evolving scientific understanding, natural disasters…, economic developments, social and demographic developments, evolving capabilities, political developments, technological developments, unknown unknowns."[72] Revisions of commitments can take a number of forms: they can be in the direction of more or less stringency, and can relate to a single country or the parties generally.

Treaty mechanisms that allow a party to revise its commitments upward allow parties to lock in stronger measures internationally. For example, the Ramsar Wetlands Convention allows parties to list additional wetlands unilaterally. Over time, this has led to a huge increase in the number of wetlands listed as internationally important under the Ramsar Convention.[73]

In contrast, mechanisms that allow parties to unilaterally revise their commitments downward serve as risk management tools, protecting parties against unexpected developments that render an agreement burdensome.[74] They are included in many agreements to encourage participation, as well as to allow states to accept more ambitious commitments initially, by giving them an escape hatch. Because these flexibility mechanisms weaken the credibility of states' commitments, however, they usually have a hybrid character, with international rules that constrain their use.

For example, the General Agreement on Tariffs and Trade (GATT) includes a "safeguards" clause, which allows parties to increase duties or impose quantitative restrictions—actions that would ordinarily violate the GATT. But the GATT strictly limits the circumstances under which a state may take these actions. A state may invoke the safeguards mechanism only as an emergency action, in response to a surge in imports that threatens serious injury, and then only on a temporary basis.[75]

Withdrawal clauses, such as Article 27 of the Kyoto Protocol, give states much broader freedom to exit from unwanted obligations.[76] Canada took this route in withdrawing from the Kyoto Protocol in 2011. But even withdrawal provisions include procedural limits, usually requiring a state to provide notice of its withdrawal and then to wait a specified period of time before the withdrawal takes effect.

International rules relating to the revision of contributions could include the following:

- **International reviews of adequacy**—The 2015 agreement could require that the parties (a) collectively review at specified dates (e.g., 2018, 2020) or at regular intervals their progress towards achieving the 2° C temperature limit, and (b) consider increasing the level of ambition if necessary. Workstream 2 of the ADP is currently engaged in a process of this kind, aimed at encouraging parties to increase the ambition of their pledges under the Cancún Agreements.
- **National reviews of adequacy**—The agreement could require each party to review the adequacy of its own NDC on a periodic basis, to determine if it could do more, in light of changed circumstances.
- **Triggers**—The agreement could define triggers for the revisiting of contributions—for example, based on quantitative factors such as GDP or qualitative factors such as natural disasters.[77]

- **One-way ratchet**—The agreement could require that parties progressively increase the level of ambition of their NDCs over time. New Zealand has made a proposal along these lines, essentially creating a one-way ratchet for the evolution of contributions.[78]
- **Safeguards clause**—The agreement could prohibit states from lowering the ambition of their contributions except under specified circumstances. The Ramsar Convention contains a provision of this kind, albeit of a general nature, providing that states may delist a wetland only because of "urgent national interests."[79]
- **Reprogramming requirements**—The Ramsar Convention provides that when a party "in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat."[80] The 2015 agreement might similarly provide that, if a state decreases the ambition of one aspect of its NDC, it should make up for that decrease by increasing the level of ambition of another part of its NDC.
- **Informational requirements**—The agreement could set forth informational requirements for proposed revisions by a party of its contribution.
- **Waiting periods**—The agreement could require parties to wait a specified period of time after proposing a revision before finalizing it, in order to allow time for international review and to give the state in question the opportunity to decide whether it really wants to proceed.

TRANSPARENCY/ACCOUNTABILITY IN IMPLEMENTING NATIONAL CONTRIBUTIONS

Parties have already established multiple layers of mechanisms to promote transparency and accountability in the climate regime. The UNFCCC requires the submission (and, in the case of developed countries, review) of emissions inventories and national communications. The Kyoto Protocol sets forth detailed procedural rules about the information Annex I parties must report relating to their emissions targets and establishes elaborate review and compliance mechanisms.[81] And the Cancún Agreements established new mechanisms for the measurement, reporting and verification (MRV) of mitigation efforts and support. These include biennial reports and two peer review processes—international consultations and assessment for developing countries, and international assessment and review for developed countries.

In addressing transparency and accountability in the 2015 agreement, parties must decide which of these existing mechanisms to incorporate or build upon, and whether new mechanisms are needed to fill any gaps. One important consideration is how to streamline requirements to minimize the burden on parties, expert reviewers, and the UNFCCC secretariat. Another is whether, and if so how, to differentiate these requirements—for example, by applying different guidelines to different types of contributions, or by using "tiered" methodologies of varying rigor for different groups of countries.

Information Requirements

The 2015 agreement could require parties to regularly report on their progress in implementing their NDCs. Such information might include, in addition to greenhouse gas inventories, a description of policies and measures adopted to implement NDCs, any supplementary information needed to assess achievement of a party's NDC (for example, for intensity targets, information about the party's GDP or energy use), the texts of relevant laws and regulations, and information concerning enforcement of domestic laws and regulations. As with other elements, the specific information to be reported could be elaborated as guidelines or requirements, and could be spelled out either in the 2015 agreement itself or in a subsequent COP decision.

International Review

Several submissions to the ADP propose that the 2015 agreement include a mechanism to review parties' implementation of their NDCs and their progress in achieving the Convention's objective. This could be accomplished by using existing mechanisms, such as IAR and ICA, through the modification of these existing mechanisms to address any deficiencies, or through the establishment of a new review mechanism or body. A number of international regimes, including the climate regime, use a combination of expert review followed by some form of peer review. In some cases, such as the International Monetary Fund, Montreal Protocol, and the UN Human

Rights Council, the peer review is conducted or begun by a designated body comprised of a sub-set of parties, which then reports to the full group.[82]

A strong international review process, such as that provided for in Article 8 of the Kyoto Protocol, could play an important role in assuring that parties implement their NDCs, whether or not the NDCs are themselves legally binding. As with the ex ante review process discussed above, international rules could address the objective, procedure, inputs, and outputs of any review process focusing on implementation. For example, Japan has proposed that national reports on implementation be subject to a technical assessment; that parties, NGOs, and private sector actors be permitted to submit questions and comments on the reports; and that review sessions by the subsidiary bodies make use of analysis by outside experts from international organizations, NGOs, and business.[83]

Compliance or Consultative Mechanism

Finally, the 2015 agreement could establish some form of mechanism to evaluate whether parties have complied with their obligations (and possibly impose consequences if they have not), or to play a facilitative role in helping parties better implement their NDCs, possibly through the provision of additional support. The Kyoto Protocol compliance mechanism, for example, includes both enforcement and facilitative branches.

One option is to establish the "multilateral consultative process" envisioned in the UNFCCC.[84] Under a draft text that was negotiated but never fully approved, a committee of experts designated by the COP would be able to consider questions pertaining to a party's implementation efforts at the request of the party itself, another party, a group of parties, or the COP.[85] The committee, acting in a facilitative, non-confrontational manner, would provide advice to parties to overcome difficulties in implementation, including about procuring technical or financial resources, and would provide its conclusions and any recommendations to the party concerned for its consideration.

Rules establishing a compliance or consultative mechanism would need to address its scope—in particular, whether it applies to some or all parties, and to some or all provisions of the 2015 agreement. If only some states support creation of a compliance mechanism, the rules establishing the mechanism could make it optional through either an opt-in or opt-out procedure.

SUBSEQUENT ROUNDS OF NATIONAL CONTRIBUTIONS

In contrast to the Kyoto Protocol, which provided for the negotiation of a second commitment period,[86] the Cancún Agreements did not establish a process for states to make additional rounds of contributions, after their initial contributions expired. Inclusion of rules in the 2015 agreement establishing an ongoing process for the elaboration of successive rounds of contributions would help make the agreement a more durable framework for addressing the climate change problem into the future.

Any rules governing the elaboration of subsequent rounds of NDCs could largely resemble whatever rules are adopted for the initial NDCs included in the 2015 agreement. However, states will not be under the same time constraints that they currently face in the ADP, where they must negotiate the rules for NDCs at the very same time that they are developing their NDCs. So they could choose to revise the initial set of rules, possibly in ways that shift the balance between national and international decision-making, allowing for an evolution in the hybrid character of the agreement.

The 2015 agreement could include procedural rules providing for regular reviews of the adequacy of the international mitigation efforts, as compared to the global temperature goal, and/or establishing a timetable for future rounds of NDCs. It could, for example, provide that parties submit their intended NDCs a specified period of time in advance of when they will come into effect. Requiring that states submit their intended NDCs relatively far in advance is important, in order to provide adequate time for whatever process of *ex ante* review is adopted. Timing issues have proved complex in developing the 2015 agreement, since virtually all of the details of the agreement remain to be determined, so countries must develop their intended NDCs in the context of considerable uncertainty. But timing issues should be simpler for future rounds of NDCs, since the basic parameters of the agreement will be in place, and countries will know the informational requirements, accounting rules, and review processes with which they must comply.

The agreement could also include substantive rules, for example, requiring that contributions for successive periods be progressively more ambitious. If the 2015 agreement differentiates between the contributions of different categories of countries, it could also provide for parties to graduate from one category to another if certain conditions are met, such as achievement of a specified level of per capita GDP or per capita emissions.

VI. CONCLUSIONS

After a quarter century of negotiations, agreements, and disappointments, many UNFCCC parties appear willing to try a new approach. Having over the years attempted both more top-down and more bottom-up approaches, and found both lacking, they are now exploring a middle way—a hybrid model that can achieve broad participation while delivering strong action.

For those who had long envisioned an extension and expansion of the more top-down approach embodied in the Kyoto Protocol, this latest turn in the evolution of the climate regime may appear a disappointing retrenchment. Alternatively, it may be seen as a practical accommodation to political and diplomatic realities. The hybrid model recognizes that while climate change is inherently a global challenge, the political will to address it must arise, and be exercised, primarily within the domestic realm. It is, accordingly, a concession to the limits of international law in influencing countries' behavior in an area so vital to their self-interests.

Thus far, the emerging hybrid approach remains largely a concept. With the decision in Warsaw calling for "intended nationally determined contributions," parties have for all intents and purposes established the core bottom-up element of the 2015 agreement: parties' individual commitments will be set unilaterally, at least in the first instance, not negotiated. This ensures governments a high degree of flexibility in defining their contributions, which should help ensure broad participation. What remains to be seen is whether parties can now agree on the kinds of top-down elements that will be needed to bound that flexibility and ensure strong ambition as well.

Parties face significant challenges in fleshing out the hybrid paradigm. They have little time to more fully define the nature of nationally determined contributions, let alone agree on detailed rules or guidance, before they are expected to begin communicating their intended contributions in early 2015. Indeed, it may only be possible to reach agreement on an overall architecture in Paris, with detailed rules on issues such as accounting and accountability deferred until later. It might at that stage be difficult, however, for countries to significantly strengthen their intended post-2020 contributions.

Apart from the tight timeline, reaching agreement in Paris will require some resolution of perennial, and highly political, issues—most notably, how countries' obligations will be differentiated, and how to mobilize stronger support for developing countries.

Finally, judging from the signals emerging thus far from key capitals, there is a good chance that the post-2020 contributions that governments bring to Paris will not suffice to bring global emissions in line with the 2-degree goal. This strongly suggests that for a hybrid approach to appear credible—and to in fact deliver on the promise of stronger action—the agreement must include mechanisms to progressively strengthen ambition over time.

The UNFCCC is, and will for some time remain, a work in progress. The turn toward a hybrid approach is a new stage in its evolution, but will not be achieved in one fell swoop in Paris. It will take time. It is especially critical, then, that the new agreement be one that is durable—one that can establish and hold countries' confidence over the long haul. To be successful, a hybrid climate agreement must not only capture all the political will that can be mustered at its inception, but, by strengthening confidence that all are contributing their fair share, it must help to steadily build the political will needed to deliver stronger action in the years beyond.

ENDNOTES

1 Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, UNFCCC Decision 1/CP.17, Dec. 11, 2011, UN Doc. FCCC/CP/2011/9/Add.1.

2 Informal Note on Progress by Co-Chairs, para. 8 (August 13, 2013).

3 Kyoto Protocol, arts. 3, 5, 7, 8.

4 Copenhagen Accord, UN DOC. FCCC/CP/2009/L.7, paras. 4, 5, Dec. 18. 2009; Cancun Agreements: Outcome of the Work of the AWG-LCA, UNFCCC Decision 1/CP.16 Dec. 10, 2010, UN Doc. FCCC/CP/2010/7/Add.1, paras. 36, 48.

5 Briner, Kato, and Hattori (2014), at 9.

6 UNEP (2013).

7 "Further Advancing the Durban Platform," UNFCCC Decision 1/CP.19, UN Doc. FCCC/CP/2013/10/Add. 1, para. 2(b).

8 Id. para. 2(c).

9 Bodansky (2012), at 2.

10 Bilder (1991).

11 Briner, Kato, and Hattori (2014), at 18, para. 68.

12 Bodansky (2003), at 38-39.

13 Briner, Kato, and Hattori (2014), at 6.

14 New Zealand (2014), at 7.

15 Ramsar Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, 2 Feb. 1971, UN Treaty Series 999: 245.

16 Id. arts. 2(1), 3(2).

17 Id. arts. 2(4), 3(1).

18 Minamata Convention on Mercury, Oct. 10, 2013, art. 4.

19 Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-Level Ozone, Nov. 30, 1999, art. 3(2).

20 New Zealand (2014), at 2, para. 8.

21 E.g., Convention on International Trade in Endangered Species, March 3, 1973, art. XV, UN Treaty Series 993:244-271; International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, art. 16(2)(g), UN Treaty Series 1340:61.

22 Minamata Mercury Convention, art. 6.

23 Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966.

24 Magraw (1990).

25 Gothenburg Protocol, art. 3(8)(b).

26 *See generally* Breidenich and Bodansky (2009), from which the following paragraphs are drawn.

27 For example, non-Annex I parties need not use IPCC inventory methodologies or submit inventories annually.

28 Article 26 of the Protocol explicitly prohibits reservations. On the use of reservations, see Swaine (2006).

29 Kyoto Protocol, arts. 3.5, 3.8.

30 Briner, Kato, and Hattori (2014), at 9.

31 IPCC AR5; UNEP (2013).

32 Rajamani (2014).

33 Briner, Kato, and Hattori (2014), at 8.

34 Cancun Agreements, paras. 38-39, 51.

35 Briner, Kato, and Hattori (2014), at 9.

36 "Further Advancing the Durban Platform," Decision 1/CP.19, UN Doc FCCC/CP/2013/10/Add.1.

37 Id. para. 2(c).

38 E.g., Long-Range Transboundary Air Pollution Convention, Nov. 13, 1979, art. 2 (objective is to "gradually reduce and prevent air pollution including long-range transboundary air pollution"); Minamata Mercury Convention, art. 1 (objective is "to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds").

39 UNFCCC article 2 defines the ultimate objective of the Convention and of "any related legal instruments" (presumably including the 2015 agreement, since it is to be adopted "under the Convention") as the stabilization of greenhouse gas concentrations at levels that would prevent "dangerous anthropogenic interference with the climate system, … within a time frame sufficient to allows ecosystems to adapt naturally, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner."

40 Haites et al. (2014).

41 IPCC AR5.

42 Ramsar Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, art. 2(4).

43 International Convention for the Prevention of Pollution from Ships, art. 4(1).

44 Bodansky (2009), at 212-14.

45 North American Agreement on Environmental Cooperation, Sept. 14, 1993, arts. 3, 5, *International Legal Materials* 32: 3312.

46 Copenhagen Accord, para. 4.

47 United States (2014), at 3; New Zealand (2014), at 1.

48 Switzerland (2014), at 1.

49 United States (2014), at 3.

50 Norway (2014), at 3.

51 LDC (2014), at 4; China (2014), at 4; LMDC (2014), at 4.

52 New Zealand (2014), at 8. Under the New Zealand approach, states would be required to have in place policies and measures to address gases and significant sectors not covered by their quantified target, and would be required include all gases and sectors in its inventory reporting.

53 Switzerland (2014), at 1.

54 LDC (2014), at 4-5.

55 Haites et al. (2014).

56 United States (2014), at 3 ("Initial contributions should relate to a common timeframe.").

57 UN Framework Convention on Climate Change, art. 4.1(a).

58 European Union (2014), at 5.

59 Switzerland (2014), at 2.

60 United States (2014), at 5.

61 Norway (2014), at 4.

62 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, International Legal Materials 38:517.

63 Operational Guidelines for the Implementation of the World Heritage Convention, WHC.05/2, Feb. 2, 2005, para. 123.

64 New Guidelines for Management Planning for Ramsar Sites and Other Wetlands, Res. VIII.14, para. 29, Nov. 18-26, 2002.

65 Levin et al. (2014), at 3.

66 UNFCCC Decision 1/CP.17, paras. 2(b)-(c).

67 Ramsar Convention, art. 2.1.

68 World Heritage Operational Guidelines, para. 132.

69 For an exhaustive list of possible information requirements, see Levin (2014).

70 European Union (2014), at 4.

71 LMDC (2014), at 10.

72 Briner, Kato and Hattori (2014) at 6-8.

73 As of May 21, 2014, the 168 parties to the Ramsar Convention had collectively listed 2,182 sites on the List of Wetlands of International Importance, encompassing an area of 208,546,927 hectares.

74 Bilder (1991).

75 General Agreement on Tariffs and Trade, art. XIX.

76 Helfer (2005).

77 Briner, Kato and Hattori (2014), at 15-16.

78 New Zealand (2014), at 3, para. 8(c).

79 Ramsar Convention, art. 2.5.

80 Id. art. 4.2.

81 Kyoto Protocol, arts. 5, 7, 8.

82 Pew Center on Global Climate Change (2010).

83 Japan (2014), 2-3.

84 UN Framework Convention on Climate Change, art. 13.

85 Multilateral Consultative Process, UNFCCC Decision 10/CP.4, UN Doc. FCCC/CP/1998/16/Add.1.

86 Kyoto Protocol, art. 3.9.

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With talks underway toward a new global climate agreement in 2015, this paper explores options for a "hybrid" approach that balances national flexibility and international discipline to promote greater overall ambition.

The Center for Climate and Energy Solutions (C2ES) is an independent, nonprofit, nonpartisan organization promoting strong policy and action to address the twin challenges of energy and climate change. Launched in 2011, C2ES is the successor to the Pew Center on Global Climate Change.

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