

## WHAT THE PARIS AGREEMENT ACCOMPLISHED (AND WHAT STILL NEEDS TO BE DONE)

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On December 12, 2015, after two weeks of negotiations, the 195 participating countries at the Paris conference of the parties to the U.N. Framework Convention on Climate Change, reached the [Paris Agreement](#). This article provides an overview of that agreement and some of its challenges.

### Goals

The headline from the Paris conference is the long-sought articulation of a global goal for climate action. In the Paris Agreement, the Parties agreed to hold “the increase in the global average temperature to well below 2 °C (or 3.6 ° Fahrenheit) above pre-industrial levels,” They also agreed “to pursue efforts to limit the temperature increase to 1.5 °C (or 2.7 ° Fahrenheit) above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

Parties also agreed that global greenhouse gas emissions should peak “as soon as possible.” They also agreed “to undertake rapid reductions thereafter.” Rapid reduction is to be accomplished “so as to achieve a balance between anthropogenic [human caused] emissions by sources and removals by sinks of greenhouse gases in the second half of this century.” This goal—zero net greenhouse gas emissions—implies that, absent advances in carbon sequestration or air capture technology, the use of fossil fuels would virtually cease.

### Mitigation Commitments by All Countries

This is the first time since the Framework Convention on Climate Change was opened for signature in 1992 that all 196 Parties (195 countries plus the European Union) have agreed to take actions to reduce their greenhouse gas emissions. The only prior agreement even remotely comparable—the Kyoto Protocol—limited only developed country emissions.

What action did they agree to take? In the run-up to the Paris conference, countries picked their own greenhouse gas (GHG) reduction targets in the form of “Intended Nationally Determined Contributions” (INDCs). Almost all countries submitted these pledges, reflecting the level of emissions reduction that each country intends to achieve. These INDCs, now called

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NDCs, are key building blocks to the international effort to address climate change. For example:

- China agreed to increase its share of renewable energy to 20 percent and achieve peaking of carbon dioxide emissions by around 2030, while making best efforts to peak early.
- The European Union agreed to a binding target to reduce domestic emissions by at least 40 percent below 1990 levels by 2030.
- The United States agreed to reduce emissions by 26-28 percent below 2005 levels by 2025.

### **Processes for Ratcheting Up Commitments**

It was clear long before Paris that the INDCs, taken together, fall way short of what is needed to keep the global temperature increase below 2 °C. In the summer of 2015, the Organization for Economic Cooperation and Development issued a report on the INDCs submitted up to that point, and concluded that “a significant acceleration in annual emission reduction rates” was needed to avoid exceeding that limit.

The Paris Agreement therefore contains mechanisms for ratcheting up ambition over time. Beginning in 2020, and every five years afterwards, each country is to “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.” Each “successive nationally determined contribution” is to “represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition.” The Agreement also provides for an interim review in 2018 assessing the Parties’ progress in meeting this objective (a “global stocktake”) and then every five years starting in 2023. The outcome of the global stocktake is to “inform Parties in updating and enhancing, in a nationally determined manner, their actions,” including enhanced “international cooperation for climate action.”

### **Adaptation and “Loss and Damage”**

Although most attention has been focused on the greenhouse gas mitigation-oriented provisions of the Paris Agreement, it also strengthened international support to help countries adapt and cope with the adverse effects of climate change. The Paris Agreement established a global goal of enhancing the capacity of countries to adapt to climate change—strengthening resilience and reducing vulnerability. Parties are required to plan and implement adaptation efforts and are encouraged to report their adaptation efforts and needs.

Moreover, the Agreement requires developed nations to provide financial support to adaptation efforts in developing nations, and commits to parity in allocation of resources between mitigation and adaptation support. Developed countries will mobilize at least \$100 billion per year starting in 2020 (and a larger as yet unspecified number starting in 2025) to

assist developing countries in their climate mitigation and adaptation measures.

Thus, if it was not clear previously, the Paris Agreement leaves no doubt that mitigation and adaptation are to be treated as co-equal components of climate action. The importance and interconnectedness of both is made explicit in the text, which recognizes that “the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.”

It is also important to note the emergence of “loss and damage” as separate category. Until Paris, “loss and damage” – constituting those components of climate impact that are irreplaceable—was considered a subset of adaptation. As the impacts of climate change become more obvious and intensify, it is becoming increasingly clear that simply enabling adaptation is not enough. Many countries are experiencing real losses for which adaptation is simply not possible. In the Paris Agreement, the Parties agreed to continue and strengthen the Warsaw International Mechanism (WIM) for Loss and Damage associated with the impacts of climate change. In the accompanying decision, however, the text provides that the WIM “does not involve or provide a basis for any liability or compensation.”

### **Success or Failure?**

There are two contrasting story lines about the Paris Agreement. One is critical: the INDCs do not far enough; the Agreement contains no substantive agreements to reduce greenhouse gas emissions by a specified amount; countries are not required to implement their INDCs/NDCs; the goal is aspirational, not mandatory.

The other is hopeful, and focuses on both the goal and the processes. These processes should encourage or prod governments to be more ambitious over time, without being prescriptive about what they should do. They will provide information to governments and others about what other governments are actually doing, as well information about the effectiveness and impacts of particular laws and policies. This information will be public, which means that governments are more likely to honestly and openly share what they are doing.

The United States provides an example of the challenges. When the U.S. submitted its INDC, it stated that its “target is consistent with a straight line emission reduction pathway from 2020 to deep, economy-wide emission reductions of 80% or more by 2050.” The U.S. INDC was based in part on the U.S. Environmental Protection Agency’s Clean Power Plan, adopted in August 2015, which would reduce greenhouse gases from electric generating facilities by 32% from 2005 levels by 2030. That plan, of course, has been stayed by the U.S. Supreme Court pending the outcome of litigation. Moreover, it appears that the November 2016 presidential election will have a major impact on the direction that the country takes in addressing climate change—and on the country’s continued commitment under the Paris Agreement.

The truth is that success or failure of the Paris Agreement cannot be determined now. It will depend on continuing and strengthening commitments and cooperation by and between all countries, and (of at least equal importance) by civil society. Because of the great scope of activities needed to effectively address climate change under the Paris Agreement, many clients will be affected. Lawyers can play a constructive and helpful role by advising their clients about the Paris Agreement, and about the challenges and opportunities it presents.