

Aligning Transnational Climate Action with International Climate Governance: The Road from Paris

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Transnational climate actions have come to constitute a distinguishable sphere of climate governance. Reflecting on the Paris outcome, this article discusses the role of non-State and subnational actors – especially on the road to the Paris climate change conference. It argues that the intergovernmental and transnational spheres of global climate governance could mutually reinforce each other by continuing mobilization efforts to engage non-State actors and by harnessing greater ambition, both from State and non-State actors. For such mutual reinforcement to take effect, however, the United Nations Framework Convention on Climate Change should engage non-State actors consistently and systematically. The article also argues that the Paris outcome and, above all, the building blocks that are part of the decision on enhancing pre-2020 action, constitute the most comprehensive framework of non-State engagement yet, offering a promising basis for mutual reinforcement of the intergovernmental and transnational spheres of global climate governance.

INTRODUCTION

Climate governance has become increasingly complex. For instance, regulatory instruments have become supplemented by market-based solutions and ‘flexible mechanisms’ following their inclusion in the 1997 Kyoto Protocol.¹ The proliferation of highly specialized international institutions addressing climate change has resulted in considerable institutional fragmentation.²

Moreover, there is a growing recognition that climate change as an encompassing issue is ultimately about sustainable development, requiring action across many sectors, including energy, trade, transport and agriculture.³ Underpinning these developments is the emergence of a multiplicity of non-State and subnational climate actions involving transnational actors.⁴ Taking the form of partnerships, networks and clubs aimed at mitigation as well as adaptation and climate-resilient development, these transnational actions arguably constitute a distinguishable sphere of global climate governance that transcends the formal intergovernmental negotiations under the United Nations Framework Convention on Climate Change (UNFCCC). While some scholars see fragmentation and polycentric approaches as preferable over more coherent (top-down) monocentric modes of governance,⁵ others have pointed to the merits of closer integration of non-State and subnational actors into the UNFCCC framework.⁶ On the one hand, transnational actions could provide the necessary supplementary contributions to governmental efforts, as governments are still unable to offer combined mitigation contributions to set the world on track towards the internationally agreed objective to hold ‘the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels’.⁷ Some even suggest that as few as 21 targeted non-State and subnational actions could help close the

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¹ See, e.g., H. Bulkeley and P. Newell, *Governing Climate Change* (Routledge, 2010); and P. Newell and M. Paterson, *Climate Capitalism: Global Warming and the Transformation of the Global Economy* (Cambridge University Press, 2010).

² See F. Zelli, ‘The Fragmentation of the Global Climate Governance Architecture’, 2:2 *WIREs Climate Change* (2011), 255; F. Zelli and H. van Asselt, ‘The Institutional Fragmentation of Global Environmental Governance: Causes, Consequences, and Responses’, 13:3 *Global Environmental Politics* (2013), 1; H. van Asselt, *The Fragmentation of Global Climate Governance: Consequences and Management of Regime Interactions* (Edward Elgar, 2014).

³ See M. Parry, ‘Climate Change is a Development Issue, and only Sustainable Development Can Confront the Challenge’, 1:1 *Climate and Development* (2009), 5; S. Bauer, ‘It’s About Development, Stupid! International Climate Policy in a Changing World’, 12:2 *Global Environmental Politics* (2012), 110.

⁴ See L.B. Andonova, M.M. Betsill and H. Bulkeley, ‘Transnational Climate Governance’, 9:2 *Global Environmental Politics* (2009), 52; H. Bulkeley et al., *Transnational Climate Change Governance* (Cambridge University Press, 2014).

⁵ See D.H. Cole, ‘Advantages of a Polycentric Approach to Climate Change Policy’, 5:2 *Nature Climate Change* (2015), 114; see also S. Rayner, ‘How to Eat an Elephant: A Bottom-up Approach to Climate Policy’, 10:6 *Climate Policy* (2010), 615.

⁶ See S. Chan and P. Pauw, *A Global Framework for Climate Action: Orchestrating Non-State and Subnational Initiatives for more Effective Global Climate Governance* (German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE), 2014).

⁷ Paris Agreement (Paris, 12 December 2015; not yet in force), Article 2.1(a).

global emissions gap.⁸ On the other hand, the emergence of transnational climate actions has also raised questions about the fragmentation of climate governance, possible conflicts between various regimes and accompanying increases in inefficiency and transaction costs. Non-State actions may also release State actors from their public responsibility to act⁹ and could further unwarranted privatization of governance.¹⁰ Business-as-usual solutions may crowd out more innovative and transformative alternatives;¹¹ non-State actors may prevent stricter government regulations by proposing their own standards;¹² and they may not address the most urgent issues but concentrate on picking ‘low hanging fruit’.¹³ Interactions between the transnational and State-centred spheres of governance may not be overwhelmingly positive, and there are good reasons to be suspicious of empty promises and ‘greenwashing’.¹⁴

To better ensure positive interactions between transnational and intergovernmental regimes, and to encourage non-State and subnational actors to make contributions to global efforts to mitigate and adapt to climate change, various scholars have proposed a wide range of measures to mobilize, support and increase the impact of their actions. Following theoretically informed arguments towards such ‘orchestration’,¹⁵ or the alignment of transnational actions with international climate targets, various suggestions have been made about how this could take shape in climate governance.

⁸ K. Blok *et al.*, ‘Bridging the Greenhouse-Gas Emissions Gap’, 2:7 *Nature Climate Change* (2012), 471.

⁹ F. Mirafteb, ‘Public-Private Partnerships: The Trojan Horse of Neoliberal Development?’, 24:1 *Journal of Planning Education and Research* (2004), 89.

¹⁰ P. van der Wel, ‘Privatisation by Stealth: The Global Use and Abuse of the Term “Public-Private Partnership”’ (Institute of Social Studies, 2004); P. Pattberg and M. Isailovic, ‘Private Environmental Governance’, in: P. Pattberg and F. Zelli (eds.), *Encyclopedia of Global Environmental Governance and Politics* (Edward Elgar, 2015), 281.

¹¹ See E.C. Poncelet, ‘A Kiss Here and a Kiss There: Conflict and Collaboration in Environmental Partnerships’, 27:1 *Environmental Management* (2001), 13.

¹² See P. Pattberg, *Private Institutions and Global Governance: The New Politics of Environmental Sustainability* (Edward Elgar, 2007).

¹³ T. Hale and D. Mauzerall, ‘Thinking Globally and Acting Locally: Can the Johannesburg Partnerships Coordinate Action on Sustainable Development?’, 13:3 *Journal of Environment Development* (2004), 220; F. Biermann *et al.*, ‘Multi-stakeholder Partnerships for Sustainable Development: Does the Promise Hold?’, in: P. Glasbergen, F. Biermann and A.P.J. Mol (eds.), *Partnerships, Governance and Sustainable Development: Reflections on Theory and Practice* (Edward Elgar, 2007), 239.

¹⁴ A. Hsu and A. Weinfurter, ‘Paris Climate Talks Need Business to Move beyond Greenwash and Empty Promises’, *The Guardian* (10 July 2015).

¹⁵ K. Abbott and D. Snidal, ‘Strengthening International Regulation through Transnational Governance: Overcoming the Orchestration Deficit’, 42:2 *Vanderbilt Journal of Transnational Law* (2009), 501; K. Abbott and D. Snidal, ‘International Regulation without International Government: Improving IO Performance through Orchestration’, 5:3 *Review of International Organizations* (2010), 315; see also K. Abbott, ‘The Transnational Regime Complex for Climate Change’, *Environment and Planning C: Government and Policy* (2012), 571.

For instance, Hale and Chambers¹⁶ suggest design considerations for a registry of non-State and subnational actions to share best practices, recognize actions, share knowledge, and to improve transparency and accountability. Chan and Pauw¹⁷ suggest that such a registry should be embedded in a more comprehensive framework ‘that mobilizes new and enhanced actions; facilitates information exchange and networking; ensures quality of data; and monitors and verifies the performance of individual non-state and subnational initiatives’.¹⁸ Whereas earlier discussions of orchestration assumed international organizations and States to be the ‘orchestrators’, they argue that orchestration could also be operated by expert networks, think tanks or private organizations, in collaboration with States and international organizations.¹⁹

The 21st Conference of the Parties (COP21) has been regarded in this context as a political opportunity to complement a pledge-and-review model between States with an orchestration framework for non-State actions to help implement nationally determined contributions and to inspire greater national ambition.²⁰ Until recently, suggestions for the orchestration of non-State and subnational actions used to be inevitably speculative in anticipation of the Paris climate conference and its uncertain outcome. This article reviews the actual outcome of COP21 and investigates whether it met the expectation of a more comprehensive framework that could facilitate real mitigation and adaptation contributions over the long term and that could reinforce both the intergovernmental and transnational spheres of global climate governance. It does not assume greater engagement and reliance on climate actions by non-State actors to be a panacea for global climate politics, but is concerned with the positive effects that may be expected from a (*more*) *comprehensive framework* as opposed to *ad hoc* measures to reach out and engage transnational actors.

This article argues that while the Paris outcome constitutes the most comprehensive set of building blocks to date, it still falls short of the requirements of a truly comprehensive framework. For a framework to be more comprehensive compared to the pre-Paris governance landscape it should combine key functions such as mobilization, recording, evaluating and (overall) review:²¹ it should strategically *link multiple functions over a longer period of time*, it should *record and mobilize* climate actions, it should *improve transparency*,

¹⁶ T. Hale and L. Chambers, ‘Design Considerations for a Registry of Sub- and Non-State Actions in the UN Framework Convention on Climate Change’ (Blavatnik School of Government, 2014).

¹⁷ See S. Chan and P. Pauw, n. 6 above.

¹⁸ *Ibid.*, at 30.

¹⁹ *Ibid.*, at 36.

²⁰ S. Chan *et al.*, ‘Reinvigorating International Climate Policy: A Comprehensive Framework for Effective Nonstate Action’, 6:4 *Global Policy* (2015), 466.

²¹ See S. Chan and P. Pauw, n. 6 above.

evaluate individual actions and review overall progress by assessing whether individual actions are consistent with global objectives.

The remainder of this article is structured as follows. It first outlines the transnational road to Paris, and then goes on to discuss the Paris outcome in the context of transnational climate governance. The article then reviews whether the Paris outcome has established an adequate framework for transnational climate actions, before outlining the road from Paris by considering the potential contribution of non-State actions for future mitigation and adaptation, the chances for successful orchestration and possible priorities for a longer-term action-oriented agenda.

THE TRANSNATIONAL ROAD TO PARIS

We understand transnational climate actions as activities by stakeholders other than States that are party to the UNFCCC, including initiatives by cities, regions, multinational corporations, small and medium-sized enterprises, civil society actors, investors, indigenous communities and other societal groups, individually or in collaboration, aiming at mitigating greenhouse gas emissions and/or at adapting to the impacts of climate change. The realm of transnational actions is therefore very broad and not limited to private actors alone (as it also includes local authorities and State-owned enterprises). UNFCCC Decision 1/CP.21 refers to 'non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples'.²²

The distinction between non-State and State actions is often blurred.²³ It is not so much made on the basis of the type of actors involved but on the basis of different processes: one is the intergovernmental process (in UNFCCC terms: 'between parties'), the other is beyond the intergovernmental process, and informally linked to the UNFCCC process. Overlaps are evident as a broad array of non-State actors seek to engage in the formal UNFCCC process, be it as lobbyists, observers or even as part of party delegations. Subnational governments, too, are defined as non-party and some governments, such as Taiwan, are not party to the UNFCCC either. While the notion of transnational climate action extends climate governance beyond the conventional understanding of the international climate regime as

one primarily involving States, the international and transnational realms of the climate regime are not strictly separated and increasingly characterized by overlaps and interlinkages.²⁴ The specific relation between States and societal stakeholders has been a long-standing subject of inquiry in political science.²⁵ At times, State–society relations have been viewed through a lens of 'corporatism'; at other times, these relations have been examined through a contractual lens – e.g., with governments (sub-)contracting functions to private actors. Moreover, the diverse array of non-State actors is not merely interacting with States, but in itself interwoven in pertinent global governance networks.²⁶ These and many other perspectives indicate that States and transnational actors are not separated; instead, they co-determine collective outcomes.

While the negotiations under the UNFCCC remain the central international process, efforts have been made to engage a large groundswell of stakeholders in the UNFCCC process,²⁷ with a view to: demonstrating broad societal support for climate action (including a strong international agreement); incentivizing practical contributions towards mitigation and adaptation; inspiring governments to adopt scalable and practical solutions; and considering more ambitious public policies. The negotiation process towards a new agreement and higher (mitigation) ambition before 2020 through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) featured technical expert meetings (TEMs), at which State and non-State stakeholders 'share policies, practices and technologies and address the necessary finance, technology and capacity building, with a special focus on actions with high mitigation potential'.²⁸ TEMs provide a rare interface between negotiators and non-party experts with opportunities to inspire greater engagement, exchange experiences and widely apply solutions. Transnational actions have gained further visibility within the UNFCCC process during the COPs. For instance, since COP20 in Lima in

²⁴ M. Betsill *et al.*, 'Building Productive Links between the UNFCCC and the Broader Global Climate Governance Landscape', 15:2 *Global Environmental Politics* (2015), 1.

²⁵ See B. Reinalda (ed.), *The Ashgate Research Companion to Non-State Actors* (Ashgate, 2011).

²⁶ See M. Koch, 'Non-State and State Actors in Global Governance', in: B. Reinalda, n. 25 above, 197.

²⁷ Since its establishment, the UNFCCC has engaged with non-State actors as 'observers'; see <http://unfccc.int/parties_and_observers/observer_organizations/items/9545.php>. The relevance of non-governmental observer organizations in the UNFCCC process is widely acknowledged; see, e.g., M. Betsill, 'Environmental NGOs and the Kyoto Protocol Negotiations: 1995 to 1997', in: M. Betsill and E. Corell (eds.), *NGO Diplomacy: The Influence of Non-governmental Organizations in International Environmental Organizations* (MIT Press, 2008), 43; N. Nasiritousi *et al.*, 'The Roles of Non-State Actors in Climate Change Governance: Understanding Agency through Governance Profiles', 16:1 *International Environmental Agreements: Politics, Law and Economics* (2016), 109.

²⁸ See <http://unfccc.int/focus/mitigation/technical_expert_meetings/items/8179.php>, 2015.

²² UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement (UN Doc. FCCC/CP/2015/10, Add.1, 29 January 2016), Section V.

²³ For example, the UNFCCC Secretariat has worked closely with non-State actors such as the Carbon Disclosure Project (CDP), Ecofys and the International Council for Local Environmental Initiatives (ICLEI) to populate its online platform, the 'Non-State Actor Zone for Climate Action' (NAZCA). See <<http://climateaction.unfccc.int/>>.

2014, a High Level Meeting on Climate Action was convened to highlight transnational climate action for both governments and a wider audience.²⁹

Governments and the United Nations (UN) have also embarked on efforts outside the confines of the UNFCCC process to incentivize and support transnational climate action. On the road to Paris successive COP presidencies, the UNFCCC Secretariat and the wider UN system, notably including the UN Secretary-General, (jointly) embarked on a series of efforts to mobilize and highlight climate actions. As early as 2011, the UNFCCC Secretariat launched the Momentum for Change campaign, to 'shine a light on the enormous groundswell of actions underway across the globe that are moving the world towards a highly resilient, low-carbon future',³⁰ recognizing transformative and innovative solutions that address both climate change, social, economic and environmental challenges.³¹ The campaign is particularly noteworthy in that it seeks to encourage transnational actions in developing countries, where – according to several studies – such actions have been underrepresented as of yet.³²

September 2014 saw the largest popular demonstration to act on climate change to date, with over 300,000 people participating worldwide, as the UN Secretary-General hosted the 2014 UN Climate Summit for leaders from government, finance, business and civil society, to galvanize and catalyse climate action, and to 'champion an ambitious vision ... that will enable a meaningful global agreement'.³³ Over 50 transnational climate actions were announced at the Summit.

Shortly following the UN Climate Summit, at COP20, the Peruvian government in collaboration with the UNFCCC Secretariat launched the 'Non-State Actor Zone for Climate Action' (NAZCA), an online platform to showcase commitments to climate action by companies, cities, regions and investors. In conjunction with NAZCA, the Peruvian COP presidency, the UN Secretary-General, the UNFCCC Secretariat, together with the incoming French COP presidency, also announced the 'Lima-Paris Action Agenda' (LPAA), to

further build momentum for ambitious national targets for the new agreement, and for incentivizing pre-2020 actions by State and non-State actors. The LPAA continued earlier mobilization efforts, enhancing the visibility of transnational climate actions, and improving and extending the NAZCA platform.³⁴

Although the impacts of mobilization efforts on the road to COP21 are difficult to measure, many players within the UNFCCC process and the wider UN system, notably the UNFCCC Secretariat and the UN Secretary-General but also COP presidencies like Peru and France, helped to create unprecedented exposure of transnational climate actions, creating a positive narrative of solutions and ambitions. The scale of the groundswell of transnational climate action is likely to have increased the pressure on governments and their negotiators to the extent of actually influencing negotiated outcomes.³⁵ To offer some examples, by mid-2016, NAZCA featured over 11,000 transnational climate actions. In September 2014, 228 cities joined the Compact of Mayors and pledged to cut greenhouse gas emissions and to prepare for future impacts of climate change; by December 2015, 428 cities had joined the initiative.³⁶ Similarly, in May 2015, 120 investors with assets over US\$12 trillion urged governments to adopt an effective, long-term mitigation goal in the new international climate agreement. And by December 2015, more than 400 investors representing US\$25 trillion had joined the call.³⁷ Especially the engagement of economic stakeholders, large businesses and investors, helped to build the argument that ambitious climate actions promote innovation and growth, rather than hurt the global economy.³⁸ Although efforts to link transnational climate action to the international climate regime can be assumed to have substantially influenced the Paris outcome, to what extent transnational climate actions have paved the way towards a new international climate agreement remains a topic for further investigation. The scale and substance of this groundswell, however, did not escape the attention of the negotiating governments at COP21.

²⁹ See <<http://unfccc6.meta-fusion.com/cop20/events/2014-12-11-15-38-lima-climate-action-high-level-meeting>>.

³⁰ See <http://unfccc.int/secretariat/momentum_for_change/items/6214.php>.

³¹ See also C. Figueres, 'Momentum for Change: How a Groundswell for Climate Action is Building', *Blog of UNFCCC Executive Secretary Christiana Figueres* (13 November 2013).

³² See, e.g., S. Chan *et al.*, *Strengthening Non-State Climate Action: A Progress Assessment of Commitments Launched at the 2014 UN Climate Summit* (Grantham Research Institute on Climate Change and Environment, London School of Economics and DIE, 2015); IVM and Fores, *Non-State Actors in a Paris Agreement: Are Cities and Companies Bridging the Emissions Gap?* (IVM and Fores, 2015).

³³ For more information on the UN Climate Summit, see <<http://www.un.org/climatechange/summit/>>. See also D. Messner, 'The UN Climate Summit 2014 in New York – The Evolution Continues' (DIE, 2014).

³⁴ See Galvanizing the Groundswell of Climate Actions, 'Lima-Paris Action Agenda (LPAA) Independent Assessment Report' (2015). For an analysis of the climate actions of more than 2,000 companies spread across 101 cooperative initiatives, see O. Widerberg and P. Pattberg, *Harnessing Company Climate Action beyond Paris* (Fores, 2015).

³⁵ See M. Jacobs, 'High Pressure for Low Emissions: How Civil Society Created the Paris Climate Agreement', *22:4 Juncture* (2016), 314. See also B. Hocking, 'Non-State Actors and the Transformation of Diplomacy', in: B. Reinalda, n. 25 above, 225.

³⁶ See <<http://www.climatechangenews.com/2015/04/10/live-in-seoul-sustainable-cities-world-congress-day-2/>> and <https://en.wikipedia.org/wiki/Compact_of_Mayors>.

³⁷ See <<http://investorsonclimatechange.org/>> and <<http://investorsonclimatechange.org/wp-content/uploads/2015/05/InvestorCEO-letter.pdf>>.

³⁸ See also Global Commission on the Economy and Climate, *Better Growth, Better Climate: The New Climate Economy Report* (2014).

THE PARIS OUTCOME

At the Paris climate conference, the top-down approach of assigning mitigation obligations as under the 1997 Kyoto Protocol was complemented by a bottom-up approach in which national governments determine their own contributions.³⁹ The stronger emphasis on bottom-up action in the post-Paris climate regime at the same time offers new opportunities for non-State and subnational actors. For instance, non-State and subnational actors can directly contribute to the implementation of national climate targets. National governments may see room to adjust their ambitions upward when they take into account non-State and subnational actions. Moreover, the UNFCCC Secretariat could help demonstrate scalable solutions for governments to include in their national strategies. Whereas non-State climate action in the context of the UNFCCC has in the past been looked at as an attempt to shift the burden away from developed countries,⁴⁰ the growing number of supportive references in negotiation positions suggests a positive turn in the perception of non-State actors in climate governance.⁴¹ Climate actions are now more often seen as a way to help achieve national targets.⁴² However, the Paris Agreement does not mention the role of non-party actors. While it refers to the importance of ‘public participation’, ‘cooperation at all levels’ and ‘the engagements of all levels of government and various actors’ in its preamble,⁴³ it specifies surprisingly little about the role of non-State actors. By contrast, Decision 1/CP.21 offers significant detail.⁴⁴

The decision implies several functions of non-State actors in global climate governance. In the preamble of Decision 1/CP.21, parties agree ‘to uphold and promote regional and international cooperation in order to mobilize stronger and more ambitious climate action by all Parties and non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples’.⁴⁵ Perhaps more importantly, a more specific role for non-State engagement is laid out in the context of ‘Enhanced action prior to 2020’.⁴⁶ On

the one hand, non-State actors are envisaged to demonstrate momentum on a large scale, as they are encouraged to keep registering initiatives on the NAZCA platform. On the other hand, non-State actors are seen as providers of scalable and replicable solutions in technical examination processes (TEPs).⁴⁷ Non-State actors are also seen as directly contributing to emission reductions, for example, through voluntary cancellation of certified emission reductions.⁴⁸

Together, elements of the decision on enhancing pre-2020 action arguably constitute the most comprehensive framework of non-State engagement yet. In the following, we present the main elements of the COP decision pertaining to non-State engagement.

STRENGTHENED INTERFACE BETWEEN NON-STATE ACTORS AND POLICY MAKERS

The TEP on mitigation, which started in 2014 under the ADP, will be extended and ‘strengthened’ in the period from 2016 until 2020.⁴⁹ As discussed above, at the TEMs held under the TEP, Convention bodies, governments, international organizations and non-party stakeholders can share their experiences and suggestions, providing a rare and crucial interface between the transnational and multilateral spheres of governance. The TEP aims ‘to facilitate and support Parties in scaling up the implementation of policies, practices and actions identified’ at these meetings.⁵⁰ The decision further emphasizes the need to improve access to this process particularly for non-party experts and developing country parties.⁵¹ The COP decision also aims to improve the transferability of lessons learned in climate actions to policy makers. The UNFCCC Secretariat is tasked with summarizing identified solutions emerging from TEMs, as well as insights from expert organizations, on an annual basis, in a technical paper on mitigation benefits and co-benefits of policies, practices and actions in a ‘user-friendly format’ for policy makers.⁵²

GREATER ACKNOWLEDGEMENT OF CLIMATE ACTIONS BEYOND MITIGATION

The COP gave broader recognition, and greater acknowledgement of climate change concerns beyond mitigation, including the environmental value of voluntary mitigation actions and their co-benefits for

³⁹ K. Mbeva and P. Pauw, *Self-differentiation of Countries’ Responsibilities: Addressing Climate Change Through Intended Nationally Determined Contributions* (DIE, 2016).

⁴⁰ See, e.g., ‘African Group Opening of ADP Session, Warsaw, Poland’ (12 November 2013), found at: <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_2-3_african_group_20131112.pdf>; and ‘Submission by India on the Work of the Ad-hoc Working Group on the Durban Platform for Enhanced Action Work Stream II’, found at: <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_india_workstream_2_2030309.pdf>.

⁴¹ *Ibid.*

⁴² See Galvanizing the Groundswell of Climate Actions, n. 34 above.

⁴³ Paris Agreement, n. 7 above, preamble.

⁴⁴ Decision 1/CP.21, n. 22 above.

⁴⁵ *Ibid.*, at preamble.

⁴⁶ *Ibid.*, at IV.

⁴⁷ *Ibid.*, at paragraph 112(a).

⁴⁸ *Ibid.*, at paragraph 107.

⁴⁹ *Ibid.*, at paragraph 109.

⁵⁰ *Ibid.*, at paragraph 109(c)(i).

⁵¹ *Ibid.*, at paragraph 109(b).

⁵² *Ibid.*, at paragraph 111(a–c).

adaptation, health and sustainable development.⁵³ Importantly, the COP decided to launch a TEP specifically for adaptation,⁵⁴ thereby addressing an imbalance in the pre-2020 discussions. The aim of the TEP on adaptation now mirrors that of the TEP on mitigation, namely, to identify opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions; to promote cooperative action on adaptation; and to facilitate the sharing of good practices, experiences and lessons learned.⁵⁵

ENHANCED VISIBILITY OF NON-STATE AND SUBNATIONAL ACTORS

The COP emphasizes the enhanced visibility of non-party stakeholders and their actions to a broader audience, in particular through registering more actions on the NAZCA platform,⁵⁶ and by convening a high-level event which engages dignitaries of parties, international organizations, international cooperative initiatives and non-party stakeholders at every session of the COP until 2020.⁵⁷ The annual high-level event is aimed to showcase policy options and actions for policy makers; and provides a podium to announce new or strengthened climate actions.⁵⁸

CONTINUED EFFORTS AND SCALING UP CLIMATE ACTIONS

The COP ensured continued efforts until 2020 to scale up and introduce new or strengthened voluntary efforts, including actions by non-State actors, through the appointment of two 'high-level champions' (by successive COP presidencies).⁵⁹ Until now, mobilization efforts have been very dependent on changing COP presidencies and their individual priorities. However, the installation of high-level champions with overlapping terms takes away some of the burden to mobilize non-State action from COP presidencies and could also direct specific attention to the action-oriented agenda. These may be small steps towards institutionalizing an action agenda in the longer term. The high-level champions are tasked to convene the annual high-level event together with the UNFCCC Executive Secretary and the current and incoming COP presidents, to engage interested parties and non-party stakeholders, and to further

voluntary initiatives, while guiding the UNFCCC Secretariat in the organization of TEMs.⁶⁰

CHALLENGES AND OPPORTUNITIES FOR A POST-PARIS FRAMEWORK FOR TRANSNATIONAL CLIMATE ACTIONS

To what extent has COP21 succeeded in creating an orchestration framework for non-State actions that contributes to reinforcing both the intergovernmental and transnational spheres of global climate governance, and which challenges remain? In the following, we outline promises and pitfalls of the COP21 outcome in terms of providing a framework for transnational climate actions before we provide a summarizing evaluation of the post-Paris framework against the criteria of a (more) comprehensive framework as introduced above.

ENHANCING VISIBILITY

The COP decision confirms and continues earlier efforts that strongly emphasize visibility. Visibility of non-State actions in itself, however, may have limited or even adverse effects. For instance, the COP encourages non-State actors to register their commitments on the NAZCA platform, which might result in an even larger number than the already more than 11,000 non-State and subnational commitments registered. A large number of non-State and subnational commitments suggest strong societal momentum for a transition towards a low-carbon economy, giving a positive signal to both policy makers and investors. However, the lack of guidelines and conditions for registering non-State actions might result in the acknowledgement of actions that are not particularly ambitious. Previous attempts to engage non-State actors in global sustainable development have been blemished by too many cases of 'greenwashing' and ineffective or disingenuous non-State actions, undermining the credibility of non-State engagement in multilateral politics and efforts by international organizations to 'showcase' non-State actions, for instance, at high-level events.⁶¹

⁵³ *Ibid.*, at paragraph 108.

⁵⁴ *Ibid.*, at paragraph 124.

⁵⁵ *Ibid.*, at paragraph 127(a-c).

⁵⁶ *Ibid.*, at paragraph 117.

⁵⁷ *Ibid.*, at paragraph 120.

⁵⁸ *Ibid.*, at paragraph 120(a-b).

⁵⁹ *Ibid.*, at paragraph 121.

⁶⁰ *Ibid.*, at paragraph 121(a-b).

⁶¹ While non-State actors have been very willing to showcase their commitments, for instance, at widely publicized conferences, most of them continued a business-as-usual approach. See A. Mert and S. Chan, 'The Politics of Partnerships for Sustainable Development', in: P. Pattberg *et al.* (eds.), *Public-Private Partnerships for Sustainable Development: Emergence, Influence and Legitimacy* (Edward Elgar, 2012), 21.

UNDERSTANDING EFFECTIVENESS

Although the COP foresees the high-level event as a venue to take stock of progress, there is no agreed understanding of what actually constitutes 'progress'.⁶² Without a process to identify progress, or particularly effective and innovative non-State and subnational actions, it is also difficult to designate 'good practices' to, for instance, showcase at high-level events, or in TEPs. Even if a process to identify progress would be agreed upon at a later stage, it is not very likely that the organizers of the high-level event would have the capacity to comparatively assess the performance of an extraordinarily large and growing set of non-State actions. The demonstration of non-State actions at high-level events and in TEPs is therefore subject to possible selection biases and political screening, rather than an assessment of progress or effectiveness. The lack of specification of effectiveness and 'progress' also poses analytical challenges regarding the metrics of non-State climate actions. Data on, for example, high- or under-performing initiatives would help partners in the LPAA to prioritize their activities, and to strategically focus on initiatives that have already performed well but could be scaled up for greater impact.

UNCLEAR INCENTIVES

The COP encourages parties to work closely with non-State actors in TEPs,⁶³ and the registration of commitments by non-party stakeholders on the NAZCA platform.⁶⁴ While governments may be keen to showcase what is happening in terms of non-State and subnational action within their jurisdictions, the incentives for non-State actors to register their actions on the NAZCA platform are rather unclear. Non-State actors might gain visibility for a larger audience through NAZCA, giving them positive exposure as being 'clean' and 'green'. However, non-State actors might not be interested in a closer association with the international climate regime.⁶⁵ The fact that more than 11,000 non-State and subnational commitments are featured on the NAZCA platform does not necessarily indicate that non-State actors see a value in registering their actions. In fact, most commitments were incorporated through existing data platforms, including International Council for Local Environmental Initiatives (ICLEI) and the Carbon Disclosure Project (CDP), rather than registered by individual stakeholders. Moreover, while more and enhanced interfaces for interaction with negotiators and policy makers may give more opportunities to voice

interests and concerns, engagement at the national or local level may be more effective in view of a 'bottom-up' climate regime in which contributions are developed at the national level. Finally, transnational stakeholders may be keen to 'showcase' promises, but less enthusiastic when they are held accountable and their actions are being tracked.

INTERFACE BETWEEN POLICY MAKERS AND NON-STATE ACTORS

The role of non-State actors may be particularly relevant to national contexts, especially in subsequent rounds of updates of nationally determined contributions. However, the COP decision only provides for a limited interface between national policy makers and non-State actors. The decision to expand and strengthen TEPs will improve and increase opportunities for interaction between non-State actors and national government representatives. However, TEMs until now have been held in conjunction with international negotiations, limiting the availability of government representatives. Although the COP decision refers to the possibility of regional events,⁶⁶ it remains to be seen whether the UNFCCC and successive champions and COP presidencies can suggest more tailored modes of local and domestic engagement for different regions, types of countries and issue areas.

SUSTAINING MOMENTUM AFTER PARIS

Despite the fact that the COP decision extends the LPAA to 2020, and improves continuity through high-level champions with overlapping terms, the action agenda might still lose momentum when existing partners in the action agenda (UN Secretary-General, COP presidencies and the UNFCCC Secretariat) fail to work together more closely. The two designated high-level champions, while tasked to jointly advance the action agenda, will have to divide their loyalties between different partners, while also working on behalf of their respective governments-cum-COP-presidencies. Besides, the continuity of the climate action agenda may be challenged pending leadership changes at the helm of the UN and the UNFCCC Secretariat.⁶⁷

⁶² Decision 1/CP.21, n. 22 above, at paragraph 120(c).

⁶³ *Ibid.*, at paragraph 117.

⁶⁴ *Ibid.*, at paragraph 134.

⁶⁵ See M. Betsill *et al.*, n. 24 above.

⁶⁶ Decision 1/CP.21, n. 22 above, at paragraph 109(a).

⁶⁷ On the relevance of executive leadership in international bureaucracies, see F. Biermann and B. Siebenhüner (eds.), *Managers of Global Change: The Influence of International Environmental Bureaucracies* (MIT Press, 2009); S. Bauer, S. Andresen and F. Biermann, 'International Bureaucracies', in: F. Biermann and P. Pattberg (eds.), *Global Environmental Governance Reconsidered* (MIT Press, 2012), 27.

This raises the question to what extent COP21 succeeded in setting up a comprehensive framework for transnational climate actions that strategically links multiple functions over a longer period of time; recording and mobilizing climate actions, but also improving transparency, evaluating individual actions and reviewing the overall progress?⁶⁸ In the following we provide an intermediary assessment.

INTERMEDIARY ASSESSMENT

On balance, our analysis of the Paris outcome suggests that COP21 improved the recognition and the visibility of transnational climate action, for instance, by convening high-level events and by encouraging non-State actors to continue registering initiatives on the NAZCA platform. Moreover, the Paris outcome has also led to improvements in terms of strategically linking 'best practices' and policy makers (through extending TEMs). Crucially, the Paris outcome promises greater consistency over time: the COP sanctioned continued efforts to engage non-State climate action until 2020 by appointing 'high-level champions', which contributes to institutionalization of an action-oriented agenda in the longer term.

Nonetheless, the Paris outcome still falls short of a truly *comprehensive* framework. COP21 does not provide for a review of overall progress against global goals (e.g., closing the global mitigation gap or the adaptation finance gap). It also lacks details on how to evaluate climate actions and how to ensure transparency of implementation. In June 2016, the French COP presidency and the incoming Moroccan presidency announced a road map for a Global Climate Action Agenda, with the intention to better link climate actions to national action plans, to improve transparency and to track implementation.⁶⁹ While promising, the road map lacks detail on these tasks, and it is far from certain that the road map will be implemented. Until then, the Paris outcome on non-State stakeholder engagement only partially meets the criteria of a comprehensive framework.

THE ROAD FROM PARIS

In this section, we review the potential of non-State actors to directly contribute to climate change mitigation and adaptation after Paris, and we outline priorities for a longer-term action-oriented agenda.

⁶⁸ See S. Chan and P. Pauw, n. 6 above.

⁶⁹ See <http://newsroom.unfccc.int/climate-action/global-climate-action-agenda/#Roadmap>.

CONTRIBUTION TO CLIMATE MITIGATION AND ADAPTATION

From an *ex ante* perspective, the potential of non-State actors to directly contribute to climate change mitigation and adaptation is great.⁷⁰ For example, in 2012, the potential of sector-based mitigation initiatives, including by non-State actors was estimated to amount to 17±3 gigatonnes of carbon dioxide (CO₂) equivalent by 2020, in principle enough to bridge the global emissions gap.⁷¹ At the same time, these expectations seem overly optimistic, given a global political economy, in which many non-State actors are not primarily interested in reducing emissions, especially when efforts are costly. Even though many non-State actors make promises, their principal aim may be public relations rather than achieving climate goals. Earlier instances of transnational engagement indicate that actual contributions of non-State actors are usually much more limited than *ex ante* assessments suggest.⁷²

Initiatives under the LPAA and the UN Climate Summit appear to be off to a promising start.⁷³ Commitments launched at the 2014 UN Climate Summit and initiatives mobilized under the LPAA engaged a broad variety of stakeholders from both developing and developed countries, addressing both mitigation and adaptation. Moreover, commitments seem to align with specific need and interests of developing countries as, for instance, agriculture and resilience commitments mostly focus on low-income countries, while mitigation-oriented actions aim at more developed countries with a larger emission reduction potential.⁷⁴

The most promising fact is that, within a year after their announcement, roughly two thirds of climate actions have taken steps to implement their commitments.⁷⁵ Notwithstanding this promising start, there is no room for complacency. Implementation in itself does not guarantee the desired behavioural and environmental impacts, and the progress of climate actions is not easily determined.

⁷⁰ This has been underlined, for example, by K. Blok *et al.*, n. 8 above; A. Hsu *et al.*, 'Towards a New Climate Diplomacy', 5:6 *Nature Climate Change* (2015), 501; M. Roelfsema *et al.*, *Climate Action Outside the UNFCCC: Assessment of the Impact of International Cooperative Initiatives on Greenhouse Gas Emission* (Netherlands Environmental Assessment Agency, 2015).

⁷¹ See K. Blok *et al.*, n. 8 above.

⁷² Lessons can be drawn from previous instances on non-State engagement, such as the 2002 World Summit on Sustainable Development, the 2012 United Nations Conference on Sustainable Development or the Nairobi Work Programme under the UNFCCC, established in 2006. See S. Chan and P. Pauw, n. 6 above; P. Pattberg *et al.*, n. 61 above.

⁷³ See S. Chan *et al.*, n. 32 above; Galvanizing the Groundswell of Climate Actions, n. 34 above.

⁷⁴ See S. Chan *et al.*, n. 32 above.

⁷⁵ *Ibid.*

A major challenge to estimating the contributions by non-State actions is a lack of clear targets and standards for monitoring, reporting and verification.⁷⁶ For example, the members of the city network C40 use different ambition levels, baseline years and target years.⁷⁷ If non-State and subnational climate actions are to help close the emission gap, a vital first step is to effectively monitor and track their contributions.⁷⁸ The recently launched Global Climate Action Agenda road map⁷⁹ acknowledges that a post-Paris framework for climate action should include tracking of non-State actions to safeguard transparency and credibility. However, without further detail on how to report and track climate action, it remains difficult to ensure concrete and attributable impact.

A successful post-Paris framework should address multiple functions to ensure delivery on commitments. Only then can it be expected to move beyond the mere demonstration of actions, and inspire new and tangible commitments. Scepticism remains warranted, especially when many efforts such as NAZCA solely improve the visibility of transnational climate actions. The credibility and effectiveness of a framework for transnational engagement are at risk of being undermined as follow-up on transnational actions remains lacklustre, and transnational contributions remain largely unknown.

PRIORITIES FOR A LONGER-TERM ACTION-ORIENTED AGENDA

In the following, we propose four priorities for a longer-term, comprehensive action agenda, drawing from the challenges and opportunities identified above.

A first key priority should be to *move from declarations to implementation*. Many climate actions are unspecific in terms of planned activities or committed resources, making it less likely for them to deliver desired outcomes. Some of the commitments launched at the 2014 UN Climate Summit and the LPAA with potentially the highest mitigation impact take the form of declarations, such as the New York Declaration on Forests.⁸⁰ Yet,

⁷⁶ See also IVM and Fores, n. 32 above. This underlines that measuring the potential contribution of non-State and subnational climate actions faces challenges similar to those plaguing the assessment and review of State party contributions. See also H. van Asselt, H. Sælen and P. Pauw, *Assessment and Review under a 2015 Climate Change Agreement* (Nordic Council of Ministers, 2015).

⁷⁷ See J.S. Bansard, P.H. Pattberg and O. Widerberg, 'Cities to the Rescue? Assessing the Performance of Transnational Municipal Networks in Global Climate Governance', *International Environmental Agreements: Politics, Law and Economics* (2016), 1–18.

⁷⁸ See A. Hsu *et al.*, 'Track Climate Pledges of Cities and Companies', 532:7599 *Nature* (2016), 303.

⁷⁹ See n. 69 above.

⁸⁰ See <http://www.un.org/climatechange/summit/wp-content/uploads/sites/2/2014/07/New-York-Declaration-on-Forest-%E2%80%93-93-Action-Statement-and-Action-Plan.pdf>.

these types of actions need to be operationalized; otherwise they risk remaining nothing more than paper tigers.

A second priority should be to *better track climate actions*. This, in turn, requires developing methodologies to adequately capture the contributions of different types of climate actions.

The need to track climate action calls for *closer engagement with researchers and analysts* as a third priority. The research community can play a role in (jointly) tracking climate actions, perhaps following the example of the Climate Action Tracker,⁸¹ which is a collaborative effort to keep track of governmental mitigation commitments.

A fourth priority is to *foster national and regional climate action agendas*. So far, TEPs and corresponding TEMs were held at international climate conferences. Similar processes would be particularly helpful in regional and national contexts. National and regional technical examinations will help to better link climate actions to nationally determined contributions. Parallel regional and national climate action agendas, moreover, will also help to align climate actions with broader development considerations such as the 2030 Agenda for Sustainable Development.⁸²

CONCLUSION

More than 11,000 non-State climate commitments made on the road to Paris demonstrate a broad-based support to act on climate change. The growing number of references to non-State actors in UN processes, platforms and databases, and international climate negotiations also manifest a growing recognition that climate governance has long ceded to be the exclusive domain of national governments.

The 2015 UN climate conference in Paris led to a greater acknowledgement of the multiplicity of non-State and subnational climate actions. While recognizing the underlying potential of such actions holds great promise, a greater reliance on climate actions by non-State actors and sub-national actors also entails risks.

⁸¹ The Climate Action Tracker results from a collaborative research project that analyses and tracks national climate commitments, see <http://climateactiontracker.org/>.

⁸² Transforming Our World: The 2030 Agenda for Sustainable Development (UNGA Resolution A/Res/70/1, 21 October 2015). For instance, Goal 13 explicitly addresses climate change in the context of sustainable development, and may encourage an institutional link in the form of an action agenda that benefits both climate change mitigation and adaptation as well as sustainable development. See S. Bauer *et al.*, 'Goal 13: Take Urgent Action to Combat Climate Change and its Impacts', in: M. Loewe and N. Ripplin (eds.), *Translating an Ambitious Vision into Global Transformation: The 2030 Agenda for Sustainable Development* (DIE, 2015).

To start with, we still know too little about the effectiveness of climate actions. Moreover, the proliferation of non-State and subnational initiatives could engender the further fragmentation of the climate governance landscape. This may be for the better if fragmentation leads to synergies and complementarities between the various initiatives, or for the worse if it leads to institutional conflicts, increased transaction costs and barriers to cooperation.

COP21 has been viewed as a chance to complement an intergovernmental pledge-and-review model with a framework to orchestrate non-State actions in global climate governance.⁸³ We conclude that COP21 has been successful in further developing the relationship between the UNFCCC and non-State and subnational climate actions. Above all, the Paris outcome advances the recognition and the visibility of transnational climate actions. It should also help to foster strategic linkages between ‘best practices’ in the realm of climate actions and governmental policy making at national and international levels. The Paris outcome further helps to improve consistency over time, most importantly by institutionally anchoring outreach through the high-level ‘champions’. However, the Paris outcome offers little detail on how to properly evaluate transnational climate actions and how to ensure transparency of their implementation. Against this background, we have argued that the building blocks of the Paris outcome constitute the most adequate approximation of a comprehensive framework for climate actions to date,

while still falling short of a truly comprehensive approach.

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⁸³ See S. Chan *et al.*, n. 32 above.