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Current developments in Carbon & Climate Law - International

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Highly awaited because of its postponement by one year due to the Covid-19 pandemic and the growing media and political attention on climate change, the COP26 was held in Glasgow (Scotland) from October 31 to November 13, 2021. The meeting brings together both the 26th Conference of the Parties to the 1992 UNFCCC, the 16th Meeting of the Parties to the 1997 Kyoto Protocol, and the 3rd Meeting of the Parties to the Paris Agreement (2015). Logistical issues related to tense health conditions took up much of the UNFCCC administration's time in advance and limited access for many delegations and observers, especially for representatives from the South, due to even more exorbitant prices for accommodation and problems with vaccinations and visas.

Contrary to what some of the media announce during the COPs, this one was not "the COP of the last chance". Nevertheless, it had a double challenge: to specify the operational rules for the implementation of the Paris Agreement adopted in 2015 ("Rulebook") and to raise the ambition of national climate policies. In terms of ambition, the year 2021 was a deadline for States both to meet their obligation to revise or update their nationally determined contributions (NDC) to be implemented by 2030, and to respond to the Paris agreement's encouragement to submit long-term low greenhouse gas emission development strategies (LT-LEDS) by 2050.

Since the publication of the [IPCC AR6 WG1](#) (The Physical Science Basis) Report on 9th August 2021 establishing climate change widespread, rapid and intensifying, expert reports have been multiplying and show that the commitments made by States are insufficient to stay below a 2°C warming. In sept. 2021, the analysis of the secretariat of the Paris Agreement, the [NDC Synthesis Report](#), has shown that cumulative pledges lead to +2.7°C of average temperature increase by the end of the century (compared to +3°C with the accumulation of the pledges made at the Paris COP), still far from the objectives set in the Paris Agreement. A significant gap remains between the short-term pledges and the policies implemented to achieve them. To respond to this urgency of this critical decade, the COP 26 decisions have a more ambitious goal (1.5°C) while the Paris Agreement considered the 2°C objective as more consensual, and recognize the need to "reduce global CO₂ emissions by 45% by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other gas", especially methane before 2030. Decisions include strong injunctions for countries to submit in advance, by 2023 their plan to achieve carbon neutrality through their NDC and their LT-LEDS. For the first time, the main decision of the COP (1/CMA.3) refers to "the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies". Thus, it took 26 years for energy issues to be discussed within the UNFCCC.

Politically, if the COP is a negotiation session between States, it brings at the same time together a large number of actors (30,000 people) who seize this opportunity as a platform to make their commitments known. COP26 is particularly rich in such announcements by multiple and heterogeneous coalitions: coalition of fossil fuel exit pledges - some 40 countries have committed to abandoning coal for electricity generation by 2030 for the major economic powers and by 2040 for the poorest countries. Among them, some twenty large coal-

consuming countries have agreed to accelerate the end of their dependence on coal, including Canada, Ukraine, Chile and Vietnam, as well as Poland - although it is the worst performer in Europe in this area - which only planned to phase out coal by 2049 ; [Global Methane Pledge](#) (90 States (without China, Russia, India) reach an agreement to cut methane emissions by - 30% between 2020 and 2030, very important since each CH₄ molecule added to the atmosphere would be about 26 times more potent at warming than a CO₂ molecule, but only remains in the atmosphere for about a decade) ; [Glasgow Leaders Declaration on Forests and Land use](#) (140 States, a replica of 2014 announcements) ; France, Germany, UK, US and EU launch ground breaking [International Just Energy Transition Partnership with South Africa](#) ; [International Aviation Climate Ambition Coalition](#) (23 States), and many others. Do these multilateral initiatives by a handful of states really advance climate action or do they serve the momentum of negotiating rules at the universal level? These declarations are highly criticized because of the absence of the main actors concerned, the lack of accountability, the risk of wasting diplomatic energy that they generate, as well as their lack of articulation with the commitments of States under the Paris Agreement. Pragmatically, the COP 26 Presidency - who announced his "coal, cash, car and trees" objectives - has sought to diplomatically oversee both the dynamics of cross-cutting coalitions and the conduct of the UNFCCC multilateral negotiation process.

On a technical level, the Paris Rulebook has been completed, with the adoption of provisions that states had not been able to agree on at COP 24 in Katowice in 2018: Guidance on cooperative approaches referred to in Article 6.2 of the Paris Agreement, Rules, Modalities and procedure of Art. 6.4 (seeking to avoid the risk of double counting of units and limiting in time until 2025 the transition of units from the Kyoto Protocol's market mechanisms to those of Article 6), and Work-programme under the framework for non-market approaches (art. 6.8) ; the common timetables for submission of revised NDCs, and the transparency framework. Of note is the growing importance of recognizing and holding accountable the efforts of non-state and sub-state actors, with the establishment of a high-level panel of experts to propose clear standards to measure and analyze net-zero commitments from non-state actors.

The center of gravity of the negotiations clearly splits between mitigation and adaptation, with a diplomatic balance that is difficult to maintain around the issue of financing adaptation to climate change, which has grown significantly in recent years, especially in developing countries. During the COP, a lack of trust between North and South was felt on financial issues. The acceleration on financing pledges in the face of a backlog on the financing floors promised in 2015 (raising \$100 billion per year from 2020), creates a significant imbalance. Even though the "Glasgow Emergency Pact", which was requested by the most vulnerable countries, was finally given the name "Glasgow Climate Pact", the developing countries have obtained that the Glasgow decision calls for a doubling of funding for adaptation before 2025. In addition to increasing ambition, these thorny issues will be at the heart of the next COP, at the end of 2022, in Egypt in Sharm el-Sheikh, and probably the following ones.

The common thread after Glasgow is now the need for credibility of the promises made, so that "greenwashing does not become the new climate denial", as Laurence Tubiana, Executive Director of the European Climate Foundation, put it. This is what is at stake in the implementation of the transparency mechanism provided for in the Paris Agreement.