

CURRENT HISTORY

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After Paris: Good Enough Climate Governance

JOSHUA BUSBY

Climate change has finally come of age politically. Before the recently concluded Paris negotiations, the issue was not ripe for progress. The major economic powers did not feel sufficient urgency that the problem required action. In the lead-up to the 2009 Copenhagen climate negotiations, public expectations were as high as they are now, but the timing was bad, coming on the heels of the global financial crisis.

Today, while the global economy is not in great shape, it is much better. And leaders of the countries that produce the largest amounts of carbon emissions are convinced that climate change must be dealt with, which means that we have finally turned the corner on mustering political will. Now the hard part begins.

The December 2015 talks in Paris set the stage for serious action on climate change. Having spent more than a decade trying to force through a top-down, treaty-based approach to reducing greenhouse gases, the international community has embarked on a new course based on pledges of intent by individual countries and periodic reviews of implementation. It is the best chance for success that we are going to get out of the United Nations process, and we have to make the most of it.

While the UN is an important venue for deliberations and commitments on climate action, there are numerous other forums where the problem is being addressed. Many of them provide opportunities for progress on important goals including protecting forests, curbing short-lived gases, and reducing fossil fuel subsidies.

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Significant progress has been achieved through bilateral processes—including between China and the United States, the world’s two largest emitters, together responsible for nearly 40 percent of global emissions. Action has also moved to the subnational level, as provinces and cities have set ambitious targets alongside private-sector actors such as corporations. Provinces, cities, and companies are not waiting for global agreements or national legislation to do their part.

With climate impacts already upon us, the agenda has expanded beyond emissions reductions (mitigation) to minimizing the worst effects (adaptation), with politically difficult demands for rich countries to compensate those affected (for what is being called “loss and damage”). As a consequence, the climate problem has increasingly extended its reach to a wide variety of domains, including energy, national security, trade, health, and other policy areas.

This fragmented landscape of organizations, levels, and actors all dealing with the climate challenge is what political scientists Robert Keohane and David Victor call the “regime complex.” As we think about the future of climate governance, we have to extend our perspective beyond the UN to the full panoply of existing and potential approaches.

Going forward, it may prove futile to subordinate these disparate processes under the banner of the UN, but that’s OK. There is a case for good enough climate governance. As the Council on Foreign Relations’ Stewart Patrick has suggested, we should accept this “ungainly patchwork of formal and informal institutions” as the new normal and make the most of it.

The question is whether the sum of these efforts will amount to sufficient progress to ward off dangerous climate change, conventionally

defined as not allowing global temperatures to increase by more than 2 degrees Celsius (3.6 degrees Fahrenheit) above pre-industrial levels. It is debatable whether or not this specific target is enough or even achievable. At Paris, the parties agreed to hold the increase in global temperatures to “well below” 2 degrees Celsius. And to placate vulnerable developing countries, the agreement includes an aspirational goal to restrain the increase to 1.5 degrees Celsius. With global temperatures already 1 degree Celsius above pre-industrial levels, that aim is likely unrealistic.

Either way, serious action on climate change will require nothing less than a transformation to a decarbonized global economy by the middle of this century. Beyond that goal, the human species will have to move collectively to “climate-proof” its infrastructure and cities with stronger building codes and other measures to minimize the consequences of climate change that are already inevitable given the accumulation of greenhouse gases in the atmosphere.

PARIS VIA COPENHAGEN

To understand where we are going, it is helpful to understand how we got here. The 1992 UN Framework Convention on Climate Change (UNFCCC) is the original treaty under which most climate negotiations fall. There are 196 parties to the UNFCCC, and they meet annually through the Conference of the Parties (COP). However, this treaty did not include legally binding emissions reductions, only a general commitment to avoid “dangerous” climate change.

The 1997 Kyoto Protocol was an extension of the UNFCCC and was based on the premise that legally binding targets and timetables for emissions reductions were the ultimate expression of global seriousness about climate change. Thus, Kyoto set a global cap on emissions and apportioned reductions to a subset of rich countries but none for fast-growing developing countries like China.

That arrangement was underpinned by the principle of “common but differentiated responsibilities,” which meant that rich countries should do more to address climate change. It seemed just at the time, since advanced industrialized countries were responsible for the lion’s share of global emissions, including both cumulative historical emissions and current ones. However, Kyoto did not include a graduation procedure to allow coun-

tries to take on new commitments as they became wealthier or as their emissions increased.

By the mid-2000s, the climate regime had become a ritualized round of meetings for the sake of meeting, with little prospect of real progress. The two largest emitters, the United States and China, essentially remained outside the process. The United States under the George W. Bush administration refused to ratify Kyoto, and fast-growing China had no obligations under the treaty to reduce or slow its emissions. Other major economies such as Canada and Japan did little to restrain theirs, leaving the European Union as the only significant political actor with ambitious climate policies. After Chinese emissions surpassed those of the United States around 2007, it became apparent that something had to change.

The 2009 Copenhagen negotiations, seen by many at the time as a failure, set the stage for the recent success in Paris. In the period leading up to Copenhagen, some advocates and countries still held out hope for a second commitment period under the Kyoto Protocol after the first one expired in 2012.

However, Copenhagen largely killed off the Kyoto approach in favor of a new bottom-up regime based on country pledges, which have come to be called Intended Nationally Determined Contributions (INDCs). By the time of the Paris conference, more than 150 INDCs representing 184 countries, including all the major emitters, had been submitted to the United Nations. These pledges of intent allow countries to participate based on diverse national circumstances and on what they can implement given political and economic realities at home.

AVOIDING THE SENATE TRAP

Coming out of Copenhagen and the subsequent climate meetings, many countries agreed to negotiate a new agreement to take the place of Kyoto. Because some countries remained committed to the treaty-based approach, this entailed reaching a compromise that the new agreement would have some legal character. During climate negotiations in Durban, South Africa, in 2011, the parties left the issue to be hammered out in Paris by agreeing to ambiguous language for a “protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties.”

Climate change action is a global public good that requires all the major emitting countries to

participate and cut their emissions. The negotiating venue of the UNFCCC, with its universal membership and consensus-based process, makes it very difficult to reach agreement. But the mitigation problem appears more tractable if we recognize that 12 emitters (treating the European Union as a single actor) are responsible for about three-quarters of global emissions of greenhouse gases.

If the legal character of the agreement was not negotiated properly, however, the United States, the second-largest emitter, might not have been able to participate. If the United States were not a party to the deal, then other major emitters, namely China, would likely also balk at taking on commitments.

For the Paris agreement to survive and include the United States, it could not be a new treaty. The US president has to submit treaties to the Senate for their advice and consent, which requires a two-thirds majority. That high treaty bar is absent in other advanced industrialized countries. It means that the United States is often an outlier when it comes to treaty ratification on a variety of issues, not limited to the environment. The Law of the Sea, a treaty endorsed by the US military, the business community, and environmentalists, sits unratified 30 years after it was negotiated.

The way the Paris negotiators resolved this problem was to make the new agreement legally binding in some respects and not others. In the lead-up to Paris, former US Undersecretary of Energy David Sandalow noted that the United States could agree to certain “procedural requirements” (on reporting and measurement, for example) that would be legally binding under the 1992 Framework Convention, to which it was already a party. This would not require the Senate’s advice and consent. However, new, legally binding commitments to emissions reductions would require Senate approval.

SUNLIGHT PROVISIONS

The Paris agreement successfully avoided such ratification pitfalls. However, the new regime based on country pledges of intent—a sort of collective crowd-sourcing of commitments—has a critical defect: the low level of ambition. A recent report from the UN Environment Programme sug-

gests that the pledges, if fully implemented, would amount only to about half of what is needed to avoid a 3.6-degree Fahrenheit increase in global temperatures.

Negotiators therefore included review cycles and a process whereby countries are to update their commitments every five years. Together, these features will allow the global community to “ratchet” up the ambition to keep pace with advances in science and knowledge about how to move toward a low-carbon economy. This model of allowing for periodic strengthening of the regime is how the problem of ozone depletion was successfully addressed under the Montreal Protocol.

One of the key points of contention at Paris was the frequency of the review periods and when they would begin. In the lead-up to Copenhagen, France and China endorsed a five-year review cycle, which set the agenda for the talks. During the negotiations, European countries successfully pressed for a preliminary review before the agree-

ment enters into force in 2018 and a formal review of progress in 2023. In addition, the agreement urges countries to update their INDCs before the agreement enters into force in 2020 and thereafter every five

years. India and others argued for a starting date of 2020 at the earliest and no revisions in country INDCs until 2030. For Europe, an earlier review would provide a mechanism for some collective “stock taking” to ensure that the global path is headed in the right direction.

For countries like India that preferred a 2030 target, earlier and more frequent reviews would not allow sufficient time for the regime to start working, and might require them to revisit their targets before they were inclined to do so. Many developing countries also wanted to ensure that review mechanisms extended beyond just emissions reductions and mitigation to adaptation and climate finance.

To be meaningful, the ratcheting process hinges on the sunlight that can be shed on what countries are doing to fulfill their commitments, which requires reporting and measurement standards. European countries wanted robust mechanisms that would allow international external review of mitigation activities for all countries. Developing countries, insisting that they are able to track their

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own progress on reducing emissions, wanted to retain differential standards based on levels of economic development.

Though committed to a transparency regime, US officials ultimately thought that the stringency of this part of the agreement should not be a deal-breaker. Thus, in the lead-up to Paris, Washington signaled its willingness to retain some differentiation in reporting requirements for countries based on their wealth. It assumed that nongovernmental organizations, academics, and think tanks would be in a position to review the adequacy of countries' actions going forward.

As a result, the accountability mechanisms in the final agreement, though legally binding, are less detailed and exacting in their reporting requirements. In this regard they are more in line with the preferences of countries like India and China. Perhaps the key innovation is a new "Capacity-building Initiative for Transparency," which will support developing countries' efforts to track emissions and policy implementation.

ANTE UP

In the lead-up to Paris, China adopted a more forward-thinking strategy with respect to climate change. This change in approach was prompted by severe air pollution in Chinese cities, a broader economic strategy to move away from heavy industry, and recognition of China's vulnerability to climate hazards such as rising sea levels that threaten coastal cities.

In bilateral meetings with the United States, China pledged that its greenhouse gas emissions would peak by 2030 and that it would step up its use of non-fossil fuels. China also pledged more than \$3 billion in climate finance for developing countries, a major step forward in assuming a leadership role. While China's own emissions are enormous at more than 25 percent of the global total, the trajectories of its coal use and emissions are now headed in the right direction.

With China having adopted a more conciliatory tone, India came into the Paris conference as the most important potential spoiler, occupying the negotiating space previously held by China. For a satisfactory agreement to be reached at Paris, it had to go a long way to assuage India's concerns.

India still has 300 million people without electricity, and its primary electricity source remains

coal. As part of its INDC, India pledged to increase its non-fossil-derived electricity to 40 percent of its overall total by 2030. While the non-fossil share is currently about 30 percent, India aims to vastly increase its electricity use. Given the heavy burden of extending energy access to those who are now off the grid, New Delhi is concerned that climate mitigation efforts will slow the nation's development trajectory. Unless significant financial assistance (and technology) is provided, India will not be able to achieve its ambitious non-fossil targets and will turn to coal to meet its citizens' needs.

At Copenhagen, rich countries pledged to raise \$100 billion per year in climate financing for developing countries from both public and private sources. This figure is somewhat arbitrary, and the true financial needs are likely to be much greater. Discussions about technology transfer have also long been part of climate negotiations, with little to show for it so far. Going into Paris, India was concerned that promises of financial and tech-

nological aid would once again fail to materialize on the massive scale that is needed.

The challenge for advanced industrialized countries was being able to make a credible offer

of significant financial assistance. In 2014, the United States pledged \$3 billion to the Green Climate Fund, the main multilateral instrument meant to deliver climate finance. As a down payment on its pledge, the Obama administration included a request for \$500 million in its fiscal year 2016 budget proposal. That appropriation remains stalled as of this writing, though there was some optimism that all or a portion of the payment would be appropriated in the new year.

However, that meant President Barack Obama went to Paris empty-handed when it came to finance. One way the administration sought to prevent this problem from unraveling the wider agreement was to enlist the support of private actors to provide financial backing. As the Paris negotiations were getting under way, Bill Gates announced the creation of the Breakthrough Energy Coalition, a group of 26 investors from 10 countries, including fellow billionaires Richard Branson, Mark Zuckerberg, and Jeff Bezos, among others. Gates pledged \$1 billion of his own money to fund clean-energy innovation, and the pool will

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likely swell to several times that amount. Alongside this effort, 20 countries including China and the United States pledged to double their investments in clean energy in a public-private partnership dubbed Mission Innovation.

Although these initiatives went some way toward placating developing countries' concerns about climate finance, the Paris negotiations were contentious on two key points. First, the United States sought to expand the donor base of countries providing financial assistance with a line in the draft text calling for contributions from all countries that were "in a position to do so." Developing countries challenged this line, given its ambiguity and the implications for redistributing the financial burden. The final agreement invites voluntary contributions by other parties.

A second finance-related concern for developing countries, particularly low-lying island nations, was so-called loss and damage as a result of climate change. Where adaptation is not possible and damage is incurred as a result of climate change, developing countries want to be compensated. This demand was forced onto the agenda

during the 2013 Warsaw negotiations. However, many negotiators realized that the prospect of potentially unlimited legal liability would make it impossible for the United States and other rich countries to agree to this concession. Thus, the Paris agreement sought to recognize the concern over loss and damage while explicitly ruling out financial compensation mechanisms. To make this compromise acceptable, the Obama administration pledged to double its annual support for adaptation by poor countries from \$400 to \$800 million by 2020. In addition, the Paris agreement reaffirms—though not in the legally binding section—the previous commitment made by developed countries to mobilize at least \$100 billion per year in climate finance for developing countries by 2020.

ALL HANDS ON DECK

The Paris conference also allowed cities, corporations, and NGOs to showcase other efforts to address climate change at various levels and in specific areas. Many of these processes are only loosely coordinated, if at all, through the UNFCCC process.

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The New York Declaration on Forests, which came out of the UN Climate Summit in 2014, is one notable effort. The initiative sought to limit emissions from deforestation, particularly in the Indonesian palm-oil sector. Companies are expected to collaborate with state and local governments and NGOs to stop deforestation by imposing standards on their supply chains. Other supplemental bilateral and multilateral processes also aim to restrict emissions from deforestation, including efforts by Norway to finance forest protection in Brazil and Indonesia.

We have also seen significant breakthroughs on so-called short-lived climate forcers such as methane and hydrofluorocarbons (HFCs). Developed as replacements for ozone-depleting chemicals, HFCs have proved to be potent contributors to global warming. Because short-lived forcers do not stay in the atmosphere for long, actions to reduce their use will help avoid warming in our lifetimes. In contrast, carbon dioxide stays in the atmosphere for about a century, so efforts to reduce CO₂ emissions will not generate results for many years. After considerable track-two dialogues led by NGOs, India finally agreed in April 2015 to allow HFCs to be addressed through the Montreal Protocol.

Significant climate action has taken place at the subnational level in some countries. California has a cap-and-trade scheme, as do several Northeastern US states as part of the Regional Greenhouse Gas Initiative. Some Canadian provinces also have stringent climate policies, including Alberta, British Columbia, Ontario, and Quebec. There has been some modest cooperation across borders between California and Canadian provinces through the Western Climate Initiative. The European Union has gone the farthest with action at the supranational, national, and subnational levels through its emissions trading scheme, targets for emissions reductions, and robust subsidy programs such as feed-in tariffs, which pay renewable energy producers a guaranteed price for generating electricity.

Additional progress to address emissions at the subnational level includes efforts such as the Under 2 MOU process spearheaded by California, which pairs subnational localities from different countries in an effort to raise the level of ambition. Beyond these efforts, there has been significant mobilization at the city

level through the C40 Cities Climate Leadership Group. Former California Governor Arnold Schwarzenegger founded the Regional Climate Action Group in 2010; at Paris it proposed a new \$1 billion investment fund to raise climate financing in order to kick-start technology development and encourage private-sector investment at the regional level.

Private industry is increasingly organizing in support of climate action, and not only through the billionaires' technology initiative led by Gates. We Mean Business, a coalition of 335 companies from around the world with collective revenues exceeding \$7.1 trillion, came together in 2013 to press for and commit to more ambitious action on climate change.

The challenge lies in working out how these efforts relate to and are recognized by the wider UNFCCC process. At the 2014 Lima climate negotiations, the hosts launched the NAZCA action agenda whereby companies, cities, subnational regions, and others could register their commitments.

The Paris organizers have sought to keep that action agenda going and to expand on it.

After Paris, we should expect to see a proliferation of efforts in different spheres as actors experi-

ment with multiple ways to reduce greenhouse gases. Whether the UNFCCC will seek to frustrate or control these endeavors remains to be seen. It is also unclear if these efforts constitute additional reductions beyond what states have committed to through their INDCs, or can be counted as fulfilling those pledges.

AMERICAN INGENUITY

As the second-largest emitter, the United States was critical to getting a global climate deal at Paris. Understanding the domestic political landscape provides a window on its negotiating position in Paris and the prospects for success. The Obama administration played its weak hand on climate quite well. It also enjoyed some luck. In the face of implacable opposition to new legislation to address climate change, the administration got creative—and called in some favors. After the financial crisis, the domestic auto industry owed its survival to Obama. That put the president in a position get the automakers to agree to improved fuel efficiency standards.

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The Obama administration also used existing legislative authority under the Clean Air Act to promulgate important rules on both new and old power plants through the Clean Power Plan. At the same time, the administration has moved decisively to address short-lived forcers such as HFCs and methane. A significant proportion of methane comes from leakage from oil drilling and fracking.

The emergence of shale gas and declining prices for renewables allowed the United States to reduce greenhouse gas emissions by 9 percent between 2005 and 2013. Both market developments have made coal increasingly uncompetitive and too risky for investors, leading to the closure of 130 coal-fired plants over the past five years, with 70 more set to close. That amounts to about one-third of all coal-fired plants in the country.

Together, these changes will help the United States move toward achieving the goal it announced in 2009, ahead of Copenhagen, to reduce emissions 17 percent below 2005 levels by 2020 and meet its commitment announced in the INDC to reduce emissions by 26-28 percent below 2005 levels by 2025. However, much ultimately depends on the 2016 elections. If a Republican president should be elected, there is a high likelihood that he or she would seek to slow down and underfund, if not repeal, Obama's Clean Power Plan. Even to meet its 2025 targets, the United States will likely have to do more than it has promised.

PRAGMATIC PROCESS

The Paris agreement is based on a pragmatic appreciation of how the world works. In the absence of a world government, powerful states

cannot be forced to take actions that they do not see as being in their interest. At best, climate negotiations and international agreements serve as focal points that allow countries to align their actions for common purposes. Since climate protection is a global public good, there is always the potential for free-riding behavior, cheating, and disputes over burden sharing. But international organizations can serve as negotiating platforms to ensure that costs are distributed to the satisfaction of the participating parties, if not fairly.

The Paris agreement does just that. It is not truly fair, since it lets countries like the United States get away with higher per capita emissions than others. Still, for many developing countries, the Paris agreement is better than no deal and an important step in the right direction.

The regime it sets up can also serve to publicize the actions of states and hopefully detect and deter cheating. All of this is basic international relations theory, but the climate community learned these lessons the hard way. The important point is that negotiators now appreciate them.

Paris should not be the last word. Subsequent meetings will have to consider whether countries are keeping their commitments and raise ambitions further. Adaptation measures, which continue to get short shrift, will loom larger as the impacts of climate change impose costs on populations, infrastructure, agriculture, and more.

In Kyoto, by seeking an agreement that worked well in theory, climate advocates achieved an agreement that worked *only* in theory. For the past two decades, the hardest part has simply been getting started, with all the major economies moving in the right direction. Even if Paris is not perfect, it should be good enough for now. ■