The Paris Agreement: A New Hope?

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Closing the Carbon Cycle
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Paris: An Historic Deal ...
Since we can't agree to do anything, let's agree to do nothing.

... or a fraud?
Overview

- Historic background
- Overview of Paris Agreement
- Assessment
Development of the UN Climate Regime: A Play in Four Acts

Act I 1991-1994
- Framework Convention (UNFCCC)
- General system of governance

Act II 1995-2005
- Kyoto Protocol
- Negotiated, binding emissions targets

Act III 2005-2012
- Copenhagen Platform

Act IV 2012-2015
- Durban Platform
- Paris
- Bottom-up Pledges
Evolution of the UN Climate Change Regime

Three core issues

– How prescriptive? Top-down or bottom-up architecture?
  • To what extent should Paris Agreement dictate what countries must do?

– How legal?
  • To what extent should Paris Agreement be legally binding?

– How differentiated?
  • How should Paris address differences between developed and developing countries?
Constitutional: establishes basic system of governance
- Ultimate objective and principles
- General obligations to develop national programs – but no binding emissions targets
- Institutional arrangements

Differentiation: Annex I and non-Annex I

Negotiations began in 1991, finished in 1992

Act II
Kyoto Protocol

Key features:
- Internationally-negotiated and - agreed limits on GHG emissions
  - Market-based architecture favored by US
- Legally-binding
  - Detailed rules, rigorous accounting, compliance mechanism
- Strong differentiation: targets applicable only to developed countries

Developed countries
Top-down regulatory approach
Internationally-negotiated, absolute emissions targets
National policies and measures
Act III: Copenhagen / Cancun

- Disappointing in light of high expectations
  - Political not legal instrument
- But substantively significant
  - 2° temperature goal
  - Emission pledges from > 80 countries
  - Transparency regime
  - Financial pledges: mobilize $100 billion/year by 2020

Bottom Up Approach

International policy

National policies and measures
The top four emitters in 2013 covered 58% of global emissions. China (28%), United States (14%), EU28 (10%), India (7%).

Data: CDIAC/GCP

Growth rates 2012-2013

- China 4.2%
- USA 2.9%
- EU28 -1.8%
- India 5.1%
Contrasting Kyoto and Copenhagen

**Kyoto Protocol**

- Highly prescriptive:
  - Top-down architecture: Internationally-negotiated emission targets & rules
- Highly legal
  - Emissions targets legally binding
- Highly differentiated
  - Emission targets applied only to developed countries
  - Free ride for developing countries

**Copenhagen Accord**

- Non-prescriptive
  - Bottom-up architecture
  - Few international rules
- Political not legal agreement
- Some differentiation
Act IV

- Copenhagen address period up to 2020 -- but what next
- Durban Platform for Enhanced Action (2011)
  - Launched new process of negotiations, to be completed in 2015, to address post-2020 period
  - Agreement to be reached by 2015 and implemented from 2020
  - Two key features
    - “applicable to all” (in contrast to Kyoto)
    - Some kind of “legal force” (in contrast to Copenhagen)
Act IV: What approach to adopt?

Kyoto
- Top-down regulatory approach
- Legally-binding
- Firewall between developed and developing countries

Copenhagen/Cancun
- Bottom-up
- Softer law / political decisions
- Greater symmetry, parallelism
What is the role of the international climate regime?

- **Prescriptive model:**
  - Paris Agreement tells states what to do

- **Contractual model:**
  - Paris agreement memorializes/reflects what states agree to do

- **Facilitative/catalytic model**
  - Paris agreement catalyzes, encourages, reinforces action
Prescriptive model

- Impose obligations that make some countries better off and others worse off: winners and losers
Prescriptive model

- Why would countries that would be made worse off agree?
- And is prescriptive model likely to produce compliance?
Contractual model

- Paris Agreement based on reciprocity
  - States accept commitments in exchange for commitments by others.

- Pareto superior: everyone better off
  - Integrative/interest-based bargaining: goal is win-win outcomes – “Getting to Yes”

- Contract zone
  - For negotiations to succeed, there must be a contract zone, i.e., a set of agreements that leave all participants better off and are acceptable domestically.
But the negotiations aren’t easy
Why the contractual model isn’t working

- Climate change issue driven by domestic politics
- Most countries not willing to do more, in exchange for agreement others
Facilitative model

- States willing to take action on own
- Role of international regime
  - Raises/focuses attention > catalyzes action
  - Transparency focuses soft pressure
  - Assistance to enhance capacity
What is the goal?

- Environmental effectiveness is a function of three variables
  - Ambition
  - Participation
  - Compliance

- Variables interdependent:
  - Strengthening ambition does not help if it leads to less participation and/or compliance

EE: \( f(A,P,C) \)
Lessons learned

- Kyoto: strong legal and technical rigor, but shrinking participation
  - 2nd-round targets cover only 13% of global emissions
- Copenhagen/Cancún: broad participation but low ambition
  - 90+ pledges covering 80+% of emissions fall well short of 2°C pathway
Copenhagen/Cancun pledges vs. Kyoto commitments

Copenhagen emissions gap


The gaps between the coloured bands come about because this report mainly compiled pathways from low greenhouse gas stabilisation scenario.
Hybrid Approach

National Flexibility

International Rules

Bottom-Up
- Promote participation
- Allow experimentation
- Risk management > greater ambition

Hybrid

Top-Down
- Promote transparency and accountability
- Promote reciprocity
Paris Agreement: Threading the Needle

- Hybrid architecture
  - Bottom-up: Nationally-determined contributions (NDCs) to promote participation
  - International rules to promote ambition and accountability

- Hybrid legal form
  - Legal agreement, but not all provisions create obligations

- More nuanced, flexible approach to differentiation
Paris Agreement: Ambition

- Hybrid architecture
- Flexibility: nationally determined contributions
  - By Paris, over 180 – extraordinary, but well short of below-2°C goal
- Ambition: multilateral rules, long-term
  - Temperature goal: hold increase “well below” 2°C
    • also pursue efforts to limit increase to 1.5
  - Emissions goal: aim for global peaking asap and zero net emissions in second half of century
  - Global stocktake every 5 years
  - Submit NDC every 5 years, informed by global stocktake
  - Progression: expectation of greater ambition
Paris Agreement: Differentiation

- By Paris, no one arguing to use the 1992 Annexes; concept of “nationally determined” emissions targets accepted

- Outcome:
  - Most commitments apply to all Parties
  - Some soft distinctions between developed/developing countries in terms of emission targets
  - Existing finance commitments of developed countries are reaffirmed; enlargement of donor pool
  - Transparency system: common, with flexibility for those developing countries that need it because of capacity
Why Was Legal Character Such a Big Issue?

- Legal character of a particular provision in the Paris Agreement was the last issue to be resolved: “shall” vs. “should”

- Two main reasons why people cared so much
  - On the one hand, belief that if Paris legally-binding, then more credible / effective
  - On the other hand, concern that if Paris legally-binding, that would make it difficult or impossible for some countries to join
Effective of an international agreement a function of:
- Stringency of commitments
- Breadth of participation
- Level of compliance with commitments
How Might Legal-Bindingness Strengthen Effectiveness?

- Signal of stronger commitment and more domestic buy-in
- Domestic legal effects
- International enforcement

Greater likelihood of compliance?
How Might Legal-Bindingness Weaken Effectiveness?

- States worried that they might not be able to comply
- Domestic acceptance / ratification procedures

Less stringent commitments
Less participation?
Elements of Legal Character

- Legal character of Paris Agreement: Is it a treaty?
- Legal character of particular provisions: Are they legally-binding?
  - Legal obligations: “shall”
  - Recommendations/exhortations: “should”
- Other factors that influence how much norms influence behavior
  - Precision:
    - Is it clear what states are supposed to do, whether they comply
  - Oversight: compliance/accountability system:
    - Is their credible information to determine compliance?
The Paris Agreement is a “treaty” within the meaning of the Vienna Convention on the Law of Treaties

- VCLT defines “treaty” as an agreement in writing between states governed by international law
- Inclusion of final clauses in Paris Agreement provide clear evidence that the agreement is a treaty
  - Final clauses address issues such as how states express consent to be bound, entry into force, and depositary functions.
Legal Character of Specific Provisions

- The Paris agreement includes a mix of legally-binding and non-legally binding provisions
- Issue: Which provisions should be legally-binding?
  - Nationally-determined contributions
    - Procedural obligations to communicate, update, report?
    - Substantive obligations to implement or achieve?
  - Finance
    - New financial obligations?
Mitigation

- Legally-binding elements: Commitments by all parties to:
  - Prepare, communicate and maintain NDC
  - Pursue domestic mitigation measures
  - Provide information necessary for clarity, transparency and understanding
  - Communicate successive NDC every 5 years
  - Provide information necessary to track progress in implementing NDC

- Some provisions are non-binding:
  - Developed country parties *should* take the lead by communicating economy-wide absolute emission reduction targets
  - All parties *should* strive to formulate and communicate long-term low emission strategies

- NDCs not legally-binding: No obligation to implement/achieve
Adaptation and Finance

- Most provisions are non-binding
  - Parties should strengthen cooperation on adaptation actions
  - Parties should submit and periodically update adaptation communication
  - Developed country parties should continue to take the lead in mobilizing climate finance
  - Other parties are encouraged to provide financial resources voluntarily

- Relatively few legally-binding obligations
  - Parties shall engage in adaptation planning processes
  - Developed country parties shall provide financial resources “in continuation of their existing obligations” under the UNFCCC, and shall report biennially
Oversight

- Reporting requirements
- International expert review
- Multilateral consultative process: peer review
- Implementation and compliance mechanism
Assessing Paris
Glass Half Full or Half Empty
Problem-Solving Effectiveness
Glass Half Empty

Global greenhouse gas emissions

Current policy projections
Pledges and INDCs

Historical emissions, incl. forestry

2°C consistent median and range

1.5°C consistent median and range

Emission gaps
2°C
1.5°C

Source: climateactiontracker.org | 1 October 2015 © DW
Behavioral Effectiveness: Glass Half Full
Political Effectiveness

- Stringency of commitments
- Participation/Compliance

Utopian

Feasibility constraint, given political will

Inefficient: Poor Negotiating
**Glass Half Full**

- *Legally-binding* (albeit with non-binding elements)

- *Global*: near universal acceptance -- 188 countries have NDCs, ~95 of global emissions

- *Multilateral rules to promote ambition and accountability*

- *More flexible approach to differentiation*

- *Momentum*: other plurilateral, national, sub-national, and non-state initiatives
Maximizing Effectiveness over Time

- Stringency of commitments
- Participation/Compliance

Building political will over time