

The Paris Climate Conference (COP 21) Nov. 30 – Dec. 12 2015

Hopefully, through our class on the Paris Climate Conference and the videos and readings, you now have a good sense of the development of international efforts to respond to climate change, and some of the explanations for why climate change responses have been so challenging, from the individual, group/state, and global perspective.

In class, we picked the story up with the Paris Climate Conference. The conference was BIG:

- 196 parties to the treaty were represented
- 19,385 national delegates, 8,338 observers, and 8,825 media were in attendance
- 2,500 working group meetings were held
- The negotiating process was less contentious than in the past (there were less of the usual leaks and attacks characteristic of past UN climate summits).

There was great excitement when the COP21 President Laurent Fabius declared the adoption of the Paris Agreement. The circumstances were not procedurally correct: it would have been more diplomatic to hold a full plenary with many interventions, with each delegation requesting amendments. However, to prevent the collapse of the draft agreement, President Fabius literally hammered the adoption of the treaty before any delegate could request the floor. Nevertheless, this bit of diplomatic unilateralism received overwhelming support from the cheering (and exhausted) delegates.

For his part, the (now former) UN Secretary-General Ban Ki-moon opined that a movement once unthinkable is now unstoppable.

Speaking for the G77+China group (consisting of 134 countries), South Africa's Edna Molewa announced support for the text, noting that the acceptance of climate change targets was a major commitment by developing countries to combat climate change.

US Secretary of State John Kerry argued that the Agreement charted a new and sustainable path for the planet, sent a critical message to the global marketplace, and represented a victory for multilateralism.

Indian Minister Prakash Javadekar, perhaps illustrating that old tensions were still present, reflected that the treaty acknowledged the importance of sustainable lifestyles and of protecting countries vulnerable to climate change. He also reiterated the right of developing countries to economic growth and lamented the lack of recognition of developed countries' historical responsibilities for climate change in the Agreement.

French President François Hollande affirmed that whereas the French Revolution had affirmed human rights, the new Agreement signals a climate revolution and entrenches the rights of humanity as a whole.

The Paris Agreement (under the UNFCCC)

So what does the Paris Agreement commit signatory states to do? Under the commitments and goals (Article 2) of the agreement, parties to the agreement pledge 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.
- Increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production.
- Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate- resilient development.
- Submit nationally determined commitments, detailing how each country will reduce greenhouse gas emissions domestically and by assisting developed countries in mitigation and adaptation.
- Reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science.

- Renew their commitments at least every 5 years and make them progressively more ambitious.
- Provide financing to assist developed countries with mitigation and adaptation.
- Ensure that adaptation action is country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems.
- Promote cooperation in public education and public engagement on climate change and public access to information to help enhance action.
- Provide a transparency mechanism to facilitate implementation and compliance whereby these commitments must be accurately and consistently described and progress reported.
- Provide information related to climate change impacts and adaptation, and developed country Parties to provide information on financial, technology transfer and capacity-building support provided to developing country Parties, participating in facilitative, multilateral consideration of progress with respect to efforts.
- Including a compliance mechanism to review commitments and performance and hold states to account, through criticism rather than formal sanction.

The Paris Agreement was fundamentally different from the previous agreements at Rio and Kyoto for the following reasons.

All In

The UNFCCC and the Kyoto Protocol were characterized by a clear division between developed (Annex I) and developing (Annex II) countries. Only Annex I countries were obligated to reduce GHG emissions in the UNFCCC and the Kyoto Protocol.

In the Paris Agreement, in contrast, all countries, including developing countries, are supposed to curb emissions.

Pot Luck

The UNFCCC and the Kyoto Protocol divided up responsibility among developed countries for GHG emissions reductions targets. Each country was supposed to reduce emissions by a certain amount. These targets were to be implemented by Annex I countries and enforced through international law. So the approach was top down: governments go to a negotiation, agree to a commitment, sign and ratify a treaty, and implement it at home (or are supposed to).

At Paris, negotiations did not focus on dividing up targets. Instead, each country developed its own Intended Nationally Determined Contributions (INDCs) and brought them to Paris. The advantage of this “potluck” approach is that countries arrived at Paris with commitments that were already politically less contentious domestically.

Not Binding

The UNFCCC and the Kyoto protocol (and efforts to replace them) were legally binding international treaties. This means something. A treaty is a binding document that can be enforced by courts. They must be ratified by national parliaments, so that they become a part of domestic law.

However, the Paris agreement is not a legally binding treaty. In the United States, as a matter of domestic law, it is an executive agreement, binding only on President Barack Obama’s administration. In Canada, it is the same. An executive agreement made by one government is not binding on its successor if it is explicitly repudiated. This is what the new Trump Administration has done (although that will take three or four years).

Of course, while the UNFCCC and the Kyoto protocol were treaties, and some countries did reduce emissions, no one met their targets, and emissions continued to rise.

And so, rather than enforcing GHG emissions targets through a legally binding treaty in force in international law, the Paris Agreement aims to mobilize political pressure (both international and domestic) to

encourage compliance. The agreement creates a set of transparency measures and a process for regularly and publicly reviewing each country's progress every five years, beginning in 2020.

Positives

There are a lot of positives to be found in the Paris Agreement. The INDC concept is more in tune with underlying domestic political and economic realities than the UNFCCC and the Kyoto Protocol. The main barriers to strong action have always been domestic political factors, so letting the process of setting goals play out within each country (bottom up), rather than around a negotiating table (top down), makes sense.

The Paris agreement moves enforcement from the international to the domestic realm. Governments have demonstrated a reluctance (or outright failure) to pursue rigorous enforcement mechanisms to encourage compliance. So the Paris Agreement seeks to boost domestic support for serious climate efforts in each major country. Mandatory transparency and international review should empower domestic political forces that favour climate action.

The Paris agreement is also more flexible. Climate change is a rapidly evolving problem, requiring responses to keep pace. This is hard to achieve with formal, legal agreements because by the time an agreement is negotiated, climate conditions and technology have changed. The Paris agreement calls for review periods that are better suited to meeting an evolving climate change problem.

Criticisms:

Of course the Paris agreement is not perfect either. The emissions reductions promised under the INDCs submitted by governments do not meet the targets necessary to keep global temperature to 1.5 or 2 degrees above preindustrial levels. The current level of nationally determined greenhouse gas (GHG) reduction contributions will likely result in global temperature increases of between 2.7 to 3.5 degrees above pre-industrial levels. Not good.

Under the Paris agreement, there is no clear timetable for a peak year. Paris specifies that emissions should peak “as soon as possible” and emission balance should be achieved “in the second half of this century.” However, this is likely too late to avoid serious climate change impacts.

The Paris agreement lacks specifics on the commitment to increase financial support for poor countries beyond \$100 billion after 2020. The agreement also does not include any loss and damage principles or any reference to historical liability for rich countries for the damage caused by climate change.

Despite the agreement of developing countries to reduce GHG emissions, the divide between developed and developing countries remains. The phrase “common but differentiated responsibilities” appears frequently in the text of the agreement at the insistence of developing countries. These countries argue that they should be subject to weaker obligations than developed countries. In fact, there are many places in the agreement where the demands on developing and developed countries are qualitatively different. This is not necessarily a bad thing: no one should expect small island states to bear the same burden of GHG emission reductions and European countries. And of course rich industrial countries bear a greater share of the responsibility for climate change.

A major issue with the Paris agreement is compliance and enforcement mechanisms (or the lack thereof). The language of enforcement and compliance is notably lacking in teeth. It will be “facilitative,” functioning in a manner that is “transparent, non-adversarial, and non-punitive.” That does not even sound like an enforcement mechanism, at least not one that has any power. There is no International Court of the Environment (proposed by the International Bar Association) and there is no mechanism for international sanctions against states that fail to meet their commitments.

The hope is that international exposure and criticism will have a strong capacity to encourage state compliance because they affect the reputation of governments.

After Paris

So what is next? The UN climate summit in November of 2016 in Morocco was overshadowed by the US election campaign, which featured strong anti-climate change rhetoric.

The biggest test will come in 2020 when countries are supposed to contribute new emissions-cutting plans. Will they actually do that? The Kyoto Protocol was supposed to be a lasting structure for climate cooperation. Countries initially made commitments for the 2008-2012 period and were supposed to extend those to a second “commitment period” around 2009, allowing the Protocol to evolve. When most decided not to do that, Kyoto was effectively dead, and negotiations proceeded to focus on rewriting the entire climate regime. Paris is the result of that process.

Hope remains. But the earth will add two billion more people by 2050, who will all want and need energy. The only way to stay below the 2 degrees centigrade temperature increase is to phase out all fossil fuels by roughly the same date.

To do this, many things will be necessary, but two things stand out: a price on carbon (carbon taxation) and technology changes that are already driving a transition to low-emissions energy sources. Technology breakthroughs have already made wind and solar alternatives more viable. Carbon taxation will further level the playing field between fossil fuels and renewable energy sources. “In the last six years,” said Hal Harvey, C.E.O. of Energy Innovation, “solar prices have dropped by more than 80 percent, and now cost less than a new coal plant. Wind is down 60 percent, and LED lights more than 90 percent.” With other new technologies near at hand “it becomes clear that a clean future costs no more than a dirty one,” he said. “Texas now has the most wind installed of any U.S. state. Texas!”

This transition is a global phenomenon. Recent deals from Morocco to South Africa to Chile were struck for around 2.8 cents a kilowatt-hour of wind and 4.2 cents a kW-h for solar, making them highly competitive with fossil fuel. But a price on carbon is still important, because while renewables are cheaper compared to the building costs of new fossil

fuel plants, old fossil fuel plants (many still enjoying subsidies), can still run very cheaply.

So in the end, despite the limitations of the Paris agreement and the election of a climate change-denying President, there is still hope for major reductions in GHG emissions. The question is, will it be enough?