

The Global Climate Regime on the Road to Paris, 2015: Shifting Norms, Changing Structures and Moving Targets

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Let me begin by thanking the School of Policy Studies for inviting me to give this year's J. Douglas Gibson Lecture. It is a tremendous honour and I am delighted to be here!

The invitation to give the lecture and to address "global governance and climate change" is also a very timely opportunity to take a step back and reflect on a topic that I have been working on for a long time.

Being a lawyer by training, I will offer a law-inflected perspective on global climate governance, focusing on the path to "Paris 2015."

Whether you are actively following the climate negotiations or not, in the coming months you will hear a lot about the lead-up to and then the actual "Paris 2015."

In climate governance circles, "Paris 2015" is short-hand for the meeting of parties to the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol that will take place in Paris from November 30 – December 11 (and likely a few days beyond that ... climate negotiations have a history of going over-time ...) of this year.

Why should we care about "Paris 2015"?

Well, if you are interested in global climate governance, Paris 2015 is worth watching because it will be a make-or-break moment for the UN climate regime.

But even if you are not interested in climate governance as such, Paris 2015 is worth some attention, at least if you believe those who say that this is a make-or-break year for our planet as well.

In both respects, the key question is “will the world agree on a long-term approach to mitigating climate change and adapting to it”?

If the past is any indication, we should perhaps not be overly optimistic. The UNFCCC has, after all, been around since 1992 (it was one of the global agreements adopted at the UN World Summit on Environment and Development).

And since then, there have been endless meetings in many places that gave their names to documents intended to demonstrate the world’s “commitment to moving forward” [one of my favourite climate diplomacy phrases] (Berlin [Mandate], Kyoto [Protocol], Marrakesh [Accords], Bali [Action Plan], Copenhagen [Accords], Cancun [Agreements], Durban [Platform on Long-Term Cooperative Action], Doha [Amendment] and, most recently, Lima [Call for Climate Action]).

Along the way the global temperatures have gone up, as have GHG emissions.

"No challenge poses a greater threat to future generations than climate change," said US President Barack Obama in his January 20 State of the Union Address.

So, what will the world do about it?

What should we expect from “Paris 2015”? What are the big issues?

In my lecture today I want to give you a map of the “road to Paris,” so to speak.

I will begin by sketching out why climate change (or, more accurately, global warming ... which is what gives rise to the climatic changes that we are worried about) is such an intractable policy challenge.

Next I will give you a sketch of where “Paris 2015” sits in the evolution of the UN climate regime, and what the big legal and policy road blocks have been.

Against this backdrop, I want to spend my remaining time on the deal that is now emerging.

Ultimately, while it may all be too little too late, I believe that there is reason for cautious optimism with respect to Paris 2015. There have been some real changes over the past few years that should help pave the rest of the way to Paris.

It is here that the three dynamics that the lecture title alludes to come into play. I will suggest that the likely Paris 2015 outcome will be the product of:

- a significant shift in the collective understanding of one of the central normative underpinnings of the climate regime – the notion of “common but differentiated responsibilities”
- a fundamental change in the structure of the UN climate regime – from a “top-down” to a “bottom-up” model
- and movement with respect to the emission targets that states agree to take on.

1. What makes climate change so intractable ... ?

Describing “the problem” is not actually that easy.

It is complex, daunting and multifaceted in a way that eludes easy categorization.

Beginning with the environmental dimension, climate change is a problem of unprecedented scale.

It is global in scope and inter-generational in its implications, and what we do (or don't do) today may have irreversible future consequences.

- So, it differs from say acid rain, the consequences of which can be reversed.

More importantly, solving the problem is about nothing less than changing the way we do everything that we do, everywhere in the world.

- So, it differs from say ozone depletion, which, although global and intergenerational, is caused by a distinct group of (replaceable) chemicals

Note that climate change is also unlike those two examples (acid rain and ozone depletion) in that it is much harder to communicate the threats it poses. How do you communicate the grave (almost too grave?) intertwined, and long-term threats posed by climate change?

It is not easy ... although it may be that the increase in temperatures and extreme weather events now do their bit to dramatize climate change, and make it real to people around the globe (a recent study called them “teachable moments,” highlighting the importance of personal experience in individual risk perceptions of future events: Howe, P.D. et al (2014). Mapping the shadow of experience of extreme weather events, *Climatic Change Letters*. DOI 10.1007/s10584-014-1253-6).

These actual experiences might help people around the world appreciate the “security dimension” of climate change. For some countries, like small island states, climate change poses an existential threat. For others, its physical effects might endanger human settlements, supplies of food, water or energy, or economic stability.

These effects can exacerbate humanitarian crises, promote state failures and border disputes, and produce more conventional threats to national and international security.

All of this has been known for some time, but when the Chief Scientific Adviser to the Blair Government, David King, wrote in the journal *Science* in 2004 that he considered climate change to be “the most severe problem that we are facing today - more serious even than the threat of terrorism,” the statement got only a scattering of headlines.

Will it make a difference that, in 2015, the US President makes the security point in his State of the Union Address (also taking a swipe at the “I am not a scientist” mode of climate denial)?

It is perhaps not irrelevant that a (Stanford / Resources for the Future) poll, reported by the *New York Times* last month, found that an overwhelming majority of the American public, including nearly half of Republicans, support government action to curb global warming.

Interestingly, the poll also found that two-thirds of Americans say they are more likely to vote for political candidates who campaign on fighting climate change, and less likely for candidates who question or deny the science of human-caused global warming.

So, perhaps President Obama is onto something ...

Well, even if the political will and momentum is gathering ... climate change raises difficult questions of equity, some would say of global environmental justice.

Historically, emissions of greenhouse gases have been far greater in the industrialized world.

The emissions of per capita emissions of industrialized countries still significantly exceed those of developing countries (in 2011 in metric tonnes of CO₂ ... US: 17.6; China: 6.2, India: 1.7), but China (23.43%) has surpassed the US (14.69%) as the single largest national emitter, and India (5.70%) may well catch up with China in the future.

Canada, incidentally, accounts for 1.57% of global emissions (total carbon - 0.5 CO₂), but per capita we are at 14.7 metric tonnes of CO₂ in 2011 (China x 3).

Ultimately, climate change, is a quintessential collective action problem. It can only be solved if all states, or at least the major greenhouse gas emitters, cooperate.

And that's the governance challenge: how does one get states and political leaders to prioritize and actually tackle the issue, nationally and internationally?

According to some, it's just not possible to do this. For example, Jørgen Randers, who back in 1972 co-authored *Limits to Growth*, argues that democracies are incapable of dealing with climate change:

“It is cost-effective to postpone global climate action [he wrote in a January 2015 article in the Swedish magazine *Extrakt*]. It is profitable to let the world go to hell.”

“I believe that the tyranny of the short term will prevail over the decades to come [he goes on to write]. As a result, a number of long-term problems will not be solved, even if they could have been, and even as they cause gradually increasing difficulties for all voters.”

Well, let's hope Professor Randers is wrong. I'll leave the question of how one gets decision-makers to act on climate to you – you are the policy experts.

Let me instead turn to the second part of my remarks, ...

2. The evolution of the UN climate regime on its meandering path to Paris 2015, including an assessment of the major road blocks.

As you can see [*Slide 10*], the way to Paris has been long, and *much* less linear than the slide might suggest. It may seem hard to believe, but global dithering about climate change goes back even further.

During the 1960s and 1970s, a series of highly publicised climatic and environmental events (sounds familiar?), first raised concerns about climate change. In 1979, WMO, UNEP, FAO, UNESCO and WHO convened the First World Climate Conference. In 1988, UNEP and the WMO, endorsed by the UNGA, established the IPCC, to provide the world with a clear scientific view on the current state of knowledge in climate change and its potential environmental and socio-economic impacts. [*Thousands of leading scientists from all over the world contribute to the work of the IPCC on a voluntary basis.*]

Negotiations for a global climate regime began in 1990, with the goal of having a treaty ready for signature at the Rio Earth Summit. Perhaps remarkably, the treaty was in fact adopted in 1992 at the Rio Conference on Environment and Development. This was a time of great optimism, a sense that, with the fall of the Berlin Wall in 1989, a new world order had emerged.

Commentators have later (rightly, I think) pinpointed 1992 as the height of green diplomacy, ambitions yielding to green fatigue shortly after. Be that as it may, the UNFCCC rode the wave of optimism.

Let me highlight some of the main points.

To secure global support for the ambitious undertaking of dealing with climate change in all its complexity, the climate regime was built incrementally.

As a framework convention, the UNFCCC itself contains no ambitious commitments for parties but rather is designed to facilitate long-term interaction, while setting basic parameters for the regime (goals, governing principles, institutions (COP), decision-making processes for future regime-development).

The UNFCCC still serves this function – it remains the hub of the UN climate regime.

Perhaps most remarkable is the fact that the treaty regime actually speaks to all the complexities of the climate change problem that I just sketched:

- The objective of the UN climate regime is to achieve a “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”
- It acknowledges climate change as a global environmental and sustainable development problem with intergenerational implications, requiring “the widest possible cooperation by all countries and their participation in an effective and appropriate international response.”

- It states plainly that the largest share of historical and [then] global emissions of greenhouse gases stem from industrialized countries, and that per capita emissions in developing countries remain relatively low
- It calls upon parties to protect the climate system “on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities,” and stipulates that “developed country Parties should take the lead in combating climate change.”
- It fleshes out this idea and provides that, initially, emission reductions be pursued only by the developed countries and countries with economies in transition that are listed in an Annex I to the convention
- So, the UNFCCC gave rise to a “bright-line” understanding of CBDRC– i.e. that it entails a distinction between industrialized and developing countries

At their first meeting in 1995 in Berlin, the UNFCCC parties adopted the negotiating mandate for the development of “a protocol or another binding legal instrument.” The Berlin Mandate also specified that the process “would “[n]ot introduce any new commitments for Parties not included in Annex I.”

The Kyoto Protocol was adopted in 1997. It provided binding greenhouse gas emission reduction commitments for Annex I states. Although this feature of the protocol has become controversial, it was consonant with the convention, especially the principle of common but differentiated responsibilities.

Be that as it may, as is now notorious, some of the major emitters of greenhouse gases did not have reduction obligations under the Kyoto Protocol, either because they were developing countries, like China and India, or because they refused to join the protocol, as did the then single largest country emitter, the United States

The original protocol required Annex I parties to achieve, during a 2008-2012 “commitment period,” specified reductions in comparison to their 1990 emission levels.

To give Annex I parties greater flexibility in meeting these emission reduction commitments, the Kyoto Protocol established several emissions trading mechanisms.

The parties also agreed to adopt “procedures and mechanisms to determine and address cases of non-compliance” with the protocol.

Four years later, in November 2001, the parties adopted the so-called Marrakech Accords, which put flesh on the protocol bones (how does emissions trading actually work, what compliance regime etc.).

Perhaps surprisingly, given the US refusal to join, the Kyoto Protocol did ultimately enter into force in February 2005, largely due to the determined lobbying by the EU, and bargaining with Russia (post-9/11 ... thumbing nose at US).

Clearly, the Kyoto Protocol was not the solution to the world’s climate change problem. The 2008-2012 commitments, even if fully implemented (total cut of 5.2% from 1990 levels), would have fallen far short of achieving the convention’s objective. To be fair, this was something that parties were aware of when the protocol was negotiated.

The Kyoto commitments were always seen as only a first step in the right direction. In the protocol, therefore, parties also agreed to begin consideration of new commitments and discussions about such additional commitments have been underway since 2005, on two tracks.

One track considered new commitments under the Kyoto Protocol for Annex I parties. This track, of course, precluded consideration of developing country commitments. So, another track was launched under the framework convention and, in 2007, sketched out in the “Bali Road Map.”

The significance of this development was that *all* states, developed and industrialized, agreed to be involved and consider some form of climate action, an

“agreed outcome” (nobody other than the Europeans and small island nations wanted to be more specific than that), to be adopted at COP-15 in Copenhagen.

The gulf between negotiating positions was wide and deep. In brief terms ...

- For many developing countries (DCs),
 - binding emission-reduction commitments were only for Annex I
 - hence, DCs wanted to see the Kyoto Protocol continued
 - for DCs, only general policy commitments and financial support
- By contrast, for industrialized countries (ICs), *all* major emitters had to have emission-related commitments, and the commitments had to be of the same legal nature and in the same instrument

Still, there was great optimism and a huge amount of expectation that the Copenhagen meetings would yield a breakthrough.

The meetings were a star-studded affair – an unprecedented number of heads of state and/or high-ranking government officials were in attendance (100+).

Alas, as some of you will recall, “Hopenhagen” quickly turned into “Nopenhagen” and then, for many pundits, into “Brokenhagen” (heralding the end of the UN climate regime).

Instead of a comprehensive global climate deal, the meeting produced only a slim political agreement, later dubbed the “Copenhagen Accord.”

How the Accord was arrived at is as significant as what it contains.

In the normal process of the UN climate regime, it is the plenary body, the COP, that adopts all decisions, and it must do so by consensus (i.e. no negative votes). This rule has been important to small states, but also useful those who do not wish to see the regime progress.

Things came to a head at Copenhagen, when a small group of states (Sudan, Venezuela, and Bolivia) made it clear that they would not allow a consensus decision.

So, the “Copenhagen Accord” ended up being negotiated at the eleventh hour by only five countries (Brazil, China, India, South Africa and the United States), albeit with support of the leaders of key industrialized and developing states from around the world.

When it came to adopting the Accord, Sudan, Venezuela, Bolivia, Cuba and Nicaragua refused. [*Challenged as illegitimate.*] By way of compromise, after 13 hours of negotiation, the COP merely adopted a decision taking “note” of the Accord, leaving without official status in the regime.

What was the content of the Accord? Three features are significant for my present purposes:

- First, in addition to “quantified emissions targets” for industrialized countries, it envisages for the first time an international commitment to “mitigation actions” by developing countries (in the *same instrument*, no less)
- Second, instead of negotiated, binding targets, the Accord invites states to “register” their “pledges” in two annexes (one for ICs, one for DCs).
- Third, the Accord recognizes for the first time that averting “dangerous” climate change required keeping temperature increases below 2 degrees Celsius (above pre-industrial levels)
 - Note that the Copenhagen pledges, if fully implemented, set the world on a 3-4 degrees C warming path (the “ambition gap”)

Although initially on fragile ground, the Accord brought significant shifts in the approach of the global climate regime – I’ll come back to these in a moment.

But let's continue on the road to Paris ... from Copenhagen, the climate road show moved to Cancun, where the COP did effectively approve the approach of the Copenhagen Accords (including the 2 Celsius benchmark), and tied them into the UN climate regime through the Cancun Agreements

So, at this point (2011), here's what there was:

- Kyoto Protocol (1st commitment period of Annex I to expire in 2012)
- Copenhagen/Cancun Agreements (non-binding IC and DC pledges to 2020)

And, as a reminder,

- Developing countries insisted that KP continue; no binding commitments for DCs
- Industrialized countries wanted a single, long-term agreement (i.e. post-2020) that includes all parties

The Durban Platform for Enhanced Action, adopted the following year, was the next step ... an elliptical formula that may amuse only international lawyers (who love comparing it to the Berlin Mandate):

- Parties agree to launch a process to negotiate, by 2015 (Paris!!), "a Protocol, another legal instrument or agreed outcome with legal force under the Convention applicable to all," and to be implemented from 2020
- Needless to say, this is a compromise formula, designed to keep everyone on board while keeping enough elbow room for, say China or India, to say that they were not agreeing to a treaty commitment
- In order to achieve that compromise, the Durban Platform also agreed to establish a new set of Annex I commitments under the Kyoto Protocol

And so, the following year, the Protocol Parties adopted the Doha Amendment to the Kyoto Protocol.

The Doha Amendment was meant to establish a second commitment period for the Kyoto Protocol, to run from January 2013 to December 2020 (so, a “bridge” to the post-2020 regime).

Such commitments were envisaged for the EU and its members, plus Australia, some other European countries and some CEITs [not, for example, Canada].

However, 144 ratifications are required for this amendment to enter into force and, so far, there are only 23, all of which come from developing countries (SIDS, China), plus Monaco, Norway and the UAE ...

So ... it is not at all clear that the KP-II will ever enter into force.

But that may also not be necessary, since the most important benefit of keeping the KP around is probably not the emission reduction commitments it would legally enshrine, but the *political* bridge it built to the all-important talks about a truly global post-2020 regime.

And that brings us, at long last, to December 2014 and the Lima Call for Climate Action that COP-19 produced.

It sets in motion the actual negotiations towards a Paris outcome and, in an Annex, contains “*elements for a draft negotiating text*” identified by the Chairs of the negotiating group.

Importantly, there was no dissent this time – agreement that *all* countries to be under common legal framework.

What does the “Call for Action” look like ... ?

- It sketches the coverage of the Paris outcome (mitigation, adaptation, finance, technology development and transfer, capacity building, and transparency of action and support)
- States are to come forward with so-called “INDCs” in advance of the Paris negotiations (by mid-year latest, ideally by March 31)

- INDCs are to “represent a progression beyond the current undertaking of that party”
- One might say that should not be hard, given the “ambition gap”
- The formulation was a compromise, given lack of agreement on the notion that there should be an *ex ante* assessment of the INDCs’ adequacy
- But all INDCs will be published at UNFCCC website and, by November 1, there is to be a report on their aggregate effect

Parties are now meeting on an accelerated schedule. At the Geneva Meetings in February, they did adopt an actual draft negotiating text.

- 38 pages of elements turned into 86 pages of options and square brackets
- because all parties needed to ensure that their concerns and preferred options are in the text [*once parties are in negotiating mode, only things that have been put into the text can be on the table*]

And now we come to the final, and perhaps most important, part of my remarks ... I want to leave you with some reflections on

3. Three key dynamics in the evolution of the UN Climate Regime

The climate regime has seen three major, and interrelated, changes that put it in a better position to anchor a genuinely global approach to climate change.

CBDRC ... (common but more differentiated responsibilities)

The first consists in a significant shift in the collective understanding of one of the central normative underpinnings of the climate regime – the notion of “common but differentiated responsibilities (and capabilities).”

Recall that, when the UNFCCC was adopted in 1992, the largest historical share of GHG emissions came from the North, and the per capita as well as total emissions of major industrialized countries far surpassed those of developing countries.

So, as a matter of global equity and pragmatism (how else would one bring DCs into the fold?), the convention recognized that ICs should lead in taking climate action.

The Berlin Mandate and the Kyoto Protocol are vivid illustrations of that approach. As I said already, Kyoto was never meant to be the be-all-and-end-all.

However, DCs insisted that it reflected the correct understanding of CBDRC. That is why DCs wanted to hang on to Kyoto – it came to be seen as a “fire wall” protecting DCs against commitments, *and* delivering legally binding commitments by ICs.

But the emergence of China and India as major national emitters made that approach increasingly untenable and, arguably, also inequitable. And, practically speaking, climate change cannot be solved without participation of all major emitters.

And so Northern countries began to argue

- for a long-term climate agreement that would include commitments for *all* states
- *and* for the proposition that differentiation meant not just as between North and South, but also within those groups

The climate regime provides a fascinating case study setting for anyone who is interested in how norms / frames matter, how seriously states take them, and how norm shifting actually happens

- the submissions and interventions of parties show this tug-of-war
- and, bit-by-bit, it came to be reflected in the instruments that I walked you through ...

- Copenhagen (= one document, but two annexes = broad differentiation between South / North, but also within those groups, via self-selected goals)
- Durban Platform ... did not reference CBDR at all (only “principles of the UNFCCC) and provided for negotiation of “Protocol, another legal instrument or agreed outcome with legal force under the Convention *applicable to all*” [= common instrument, but vague as to legal nature, to address refusal of China & India to take on binding commitments; CBDR only by implication]
- Lima Call for Action ... now that it is settled that there will be *one* instrument, CBDR is back in, but in the formulation that was test-driven in the US-China climate deal (arguably a major stepping stone towards a global deal): “CBDRC, in light of different national circumstances”
- I should say that the Geneva negotiating text has all CBDRC options (i.e. ranging from a “static,” “fire-wall” approach to an evolutionary one) back on the table
- But that is par for the negotiating course
- My reading is that the shift in interpretation is well on its way, and the Lima Call suggests what a Paris Outcome might look like in terms of CBDRC
 - One instrument with commitments to action by *all* emitters
 - The proposition that INDCs must “represent a progression beyond the current undertaking of that party” effectively ensures that there will continue to be South-North differentiation in emissions commitments, since (most) ICs start from a different level than DCs
 - And the very idea of “NDCs” effectively ensures that there will be differentiation of all kinds, beyond the big South/North divide

- Finally, the reference to “national circumstances” qualifies CBDRC such that its interpretation is now inherently dynamic (= a country’s claim to CBDR can change ...!)

You might think that all of this does not amount to much. But if you have followed the evolution of the climate change regime, you will know that this shift is hugely significant ...

- This shift tackles what has been a *major* road block
- in diplomatic and policy terms - the NDC approach solves a big problem ... *how to agree on the criteria for differentiation?*
 - Now each country decides for itself
 - But subject to scrutiny in terms of CBDRC principle and UNFCCC objective
- but also because CBDR is an anchor principle for the regime and serves an important legitimating function

Regime Structure ... (From Top-Down to Bottom-Up)

The second, equally momentous, shift is a fundamental change in the structure of the UN climate regime – from a “top-down” to a “bottom-up” model.

The Kyoto Protocol exemplifies the “top down” treaty model that has come to be common in international environmental law:

- states negotiate a legally binding agreement,
- including emission reduction commitments that each treaty party is legally bound to meet
- the international commitment entails domestic implementation to ensure compliance [*hence “top down”*]

- the treaty provides for international monitoring and accounting standards, to ensure comparability and transparency of individual parties' performance,
- an "Implementation Committee" assesses compliance and indicates "consequences" in the event of non-compliance

This model has many advantages, but for an issue as complex and high stakes as climate change, it has also turned out to have several drawbacks, including

- difficult to negotiate legally binding commitments,
- consensus system has slowed down already difficult negotiations
- then a sufficient number of ratifications is needed to bring treaty into effect
- individual parties will only be bound if they opt in through ratification
- any changes require further negotiations ... the cycle begins again ... need consensus, amendment will only enter into force if enough states ratify (see Doha Amendment ...) and then only those states that do are bound
- there are ways to streamline this system if parties are generally on the same page (say ozone treaties)
- but in the climate context, parties are not
- in any case, because parties must also agree to any compliance regime, let alone sanctions, the main thing that "enforces" compliance with the regime is transparency – being shown to be in non-compliance.

The UN climate regime is now moving away from this strict "top-down" approach to a model that incorporates a number of "bottom-up" elements.

This shift was first visible in the Copenhagen Accord, and my prediction is that the Paris Outcome will be a hybrid "top-down" / "bottom-up" affair:

- it will be anchored in a legally binding framework - UNFCCC will remain the overarching legal umbrella for the climate regime, furnishing its treaty bodies and processes
- the “outcome” itself could be hooked into this framework via
 - a new Protocol (replacing or supplementing the Kyoto Protocol), or
 - a decision of the COP
 - perhaps even a commitment to adopt binding laws at the domestic level
- whichever type of instrument is chosen, these “top-down” elements will be complemented (and made palatable – for those who resist it at the moment) by the “bottom-up” nature of individual states’ actual commitments
 - each state will determine its own “NDC”
 - so the traditional model (IL implemented through domestic measures) is inverted
- there will need to be common accounting rules, as before, but the compliance assessment is likely to be much less “centralized”
 - although some parties envisage a modified role for the existing Implementation Committee
 - others see room only for “transparency mechanisms” (posting of performance information on UNFCCC website; assessment of aggregate performance etc.)

This model too has some drawbacks, but it is not as weak as one might assume at first glance, and it has advantages that mirror the disadvantages of the top-down model:

- it may be what it takes to get states to agree to the legally binding part of the “outcome,’ knowing that their individual commitments are *not* binding under international law
- there is another important potential benefit: if the contribution is “nationally determined,” the US may be able to avoid the *domestic* ratification battle that would be bound to ground any binding international climate agreement in the US Senate (2/3 advice & consent); hence there may be something to be said for adoption of the Paris outcome by COP decision!
- protracted negotiations over binding commitments can be avoided, although a shadow negotiation is of course happening as parties reveal their *intended* NDCs ... individual parties may be subject to pressure to ratchet commitments up in advance of the agreement (and in light of CBDRC and regime objective)
- note also that the Kyoto targets too were ultimately “nationally determined” – they were quite arbitrary from a climate standpoint (so the only real difference is they were enshrined in binding form)
- down the road, commitments can be changed without the need for formal amendments, ratifications etc.
- the transparency mechanisms exert compliance pressure
- even if the international agreement does not provide for individual performance information, non-state initiatives are likely to do so – as they already are (see Germanwatch Performance index, WRI’s “Open Book” project etc.)

I come to the last of the three shifts I wanted to alert you to. This one is also closely connected to the other two, and it is in fact implicit in what I already said.

Moving Targets ...

So, third, the emissions “targets” of the climate regime have moved in all sorts of ways, all of which are important to bear in mind ...

First, while some states have staid more or less consistent in how they build their targets, others have moved the goal posts a fair bit as they announce new targets.

- Under the Kyoto Protocol, individual states’ targets differed, but all had to use 1990 as a base year.
- The EU and its members have continued to use 1990 as a reference year. So, under Kyoto, the EU was collectively committed to reduce GHG by 8 %. The EU’s prospective Doha target is a 20-30% reduction from 1990, and its INDC for post-2020 is: “40 per cent of 1990 levels by 2030.”
- By contrast, the US, for example, never ratified its Kyoto target of 5% below 1990. Its Copenhagen target used a different base year, 2005, and promised a 17% cut from that year by 2020. Its INDC (US – China deal) is a “26% to 28%” cut from 2005 by 2025.
- Note that, although 17% sounds like an ambitious target, it is actually much less than the old 5% Kyoto cut. That is because, by 2005, US emissions had increased. So, indexed to 1990, the US cut is really just bringing US emissions back to 1990 levels ... by 2020?
- Canada had a Kyoto commitment: 6% below 1990; but Canada withdrew from Kyoto just before its (non-)compliance would have been assessed in 2012. The trouble, of course, was that Canada’s emissions had been rising so rapidly that 6% from 1990 was closer to 30% of actual emissions.
- Its Copenhagen target tracks the US target, using 2005 as a reference year for a 17% reduction. In Canada’s case, the emissions increase in the intervening years was even greater. And, still, it looks like Canada is out of step with its new, much weaker target. And, as I already mentioned, there is no way of knowing what Canada’s INDC for the Paris will be.

Second, as will be clear from what I have said so far, the Paris 2015 “targets” will be differentiated in just about any way one could imagine ...

- Base years (EU and some other parties continue to use 1990; US and others have begun to use 2005; and 2010 is now emerging as a new reference year – in the end the base year per se does not matter ... so long as the emission cut is adjusted with a view to achieving the overall goal (more in a moment)
- Nature of the target (quantitative reduction, peaking, GHG intensity)
- Note that developing countries had no emissions targets at all, for the CBDR reasons embedded in the Kyoto approach.
 - The Copenhagen Accord, which envisaged “quantified economy-wide emissions targets” by industrialized countries, spoke cautiously of possible “mitigation actions” by developing countries.
 - A few negotiating rounds later, the Lima Call for Action now speaks generically of “(I)NDCs,” a term that is capacious enough to encompass quantified targets as well as other actions, including say GHG intensity goals, or China’s declaration that it will have its carbon emissions “peak around 2030” and ensure that 20% of its energy comes from zero emissions sources by then too.

Third, the shift from Kyoto-style targets to the emerging Paris-style targets also entails a shift from fixed to flexible targets.

- Many commentators have said the fixed targets imposed by Kyoto were an important part of its undoing, as states realized how difficult those harmless sounding targets were to meet in practice.
- Furthermore, rigid targets, so goes the argument, do not allow adjustment for changes in economic circumstances etc.
- INDCs enable each country to assess its own capacity and to make adjustments if necessary

- But ... backstopped by temperature goal ... so ...

Finally, it seems that the debate is also beginning to move beyond the much discussed 2 degrees Celsius temperature indicator.

- This marker has been a handy, albeit short-hand description of what is needed to meet the objective of the climate regime
- Working backwards from this marker, it is possible to calculate the maximum GHG concentrations in the atmosphere that would still allow a good chance of staying within the temperature goal
- The general consensus (IPCC 2014 Report) is that there is a 66% chance of staying within 2 degrees if total ghg concentrations stay between 430-480 ppm by 2100
- At the moment, concentrations are just under 400 ppm
- This information, in turn, makes it possible to calculate “climate safe” emissions pathways
 - Again, the general view is that global ghg emissions must drop between 40-70% compared to 2010 by 2050 (or 35-55% against 1990)
 - And “net zero” emissions between 2080-2100
- Indeed, the debate is now turning towards moving economies towards “net zero emissions”
 - A more meaningful goal than the temperature target because it is focused on what is actually required
 - It makes more tangible the fact that we are working with an “emissions budget” and that it is the end goal that matters
 - So, if a country choses to make steep cuts now, less will be required later (and vice versa)

- Hence, the budget approach gives a degree of flexibility
 - “Net zero” also means that emissions can be offset!
- The Geneva draft text contains a range of variations on the “net zero” theme – one recent analysis counted 15!
- Support for “net zero” is growing – a recent NGO analysis counted 120 countries in support (EU, Nordics, assorted others, plus AOSIS, 48 LDCs)
- But ... China, India and the US are not on board so far.
- Agreeing on 2 degrees was hard ... took almost 20 years of fights about the science ... but another norm / frame shift seems to be afoot now ... an important one!
- If “net zero” gains traction, it becomes much harder for governments to claim action when there is much too little, and to play shell games with the targets and numbers
- So ... moving the goalpost from 1990 to 2005 or 2010 does not mean you are getting yourself off the hook ... it only means that you missed the chance to make gradual cuts and are now required to take much bigger plunge

To sum up ...

The contours of a Paris 2015 outcome are now emerging, and they are being shaped by three developments in the evolution of the UN climate regime:

1. A shift in the collective understanding of the notion of “common but differentiated responsibilities,” such that the Paris Outcome is likely to
 - consist in one instrument with commitments to action by *all* emitters

- continue to provide for South-North differentiation in emissions commitments
 - also to provide for differentiation beyond the big South/North divide, through the vehicle of NDCs)
2. A change in the structure of the UN climate regime, such that the Paris Outcome will be a hybrid “top-down” / “bottom-up” affair:
- it will be anchored in a legally binding framework – the UNFCCC will remain the overarching legal umbrella for the climate regime, furnishing its treaty bodies and processes
 - “top-down” elements will be complemented by the “bottom-up” nature of individual states’ actual commitments
 - each state will determine its own “NDC”
 - there will need to be common accounting rules, but compliance assessment is likely to be much less “centralized”
3. There is considerable movement with respect to the emission targets that states agree to take on.
- the Paris targets are likely to differ in nature and with respect to such markers as base-years and timelines
 - some parties are now pushing for articulating the necessary global emissions pathway in terms of a net zero emissions goal