

## Guest Editorial. Climate Policy after the Paris 2015 Climate Conference

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The landmark 2015 Paris Agreement, adopted to widespread acclaim at the 21<sup>st</sup> Conference of the Parties (COP 21) to the United Nations Framework Convention on Climate Change (UNFCCC), reflects profound political cleavages and tensions, which were already condensed, even camouflaged, in the wording of the mandate that launched the negotiations, as set out in the 2011 Durban Platform for Enhanced Action<sup>1</sup>. Of particular note are the opaque formulations defining both the mandate assigned to negotiators to work on ‘mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity building’ and the target outcome, potentially consisting of a ‘protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties’.<sup>2</sup> Writing in hindsight, the authors of this Editorial would have hoped to be able to comment on how these many tensions were settled and perhaps solved. But this is, alas, not possible, at least not yet. Rather than settled, the tensions arising in many - perhaps most - major issues, ranging from mitigation to adaptation to the different avenues to promote implementation (above all finance) were instead ingrained into the text of the Paris Agreement, leaving them to be resolved (perhaps) through the instrument’s future operation.

The wide diversity of possible interpretations of so many different parts of the Paris Agreement is clearly reflected in the contrasting views expressed in the articles of this guest-edited issue of *Climate Policy*. The range of interpretations was even wider in the conference held at the University of Cambridge, on 22 January 2016,<sup>3</sup> from which several of these articles are derived. Such diversity may in turn be diversely interpreted. But in the opinion of the authors of this Editorial, it is worrying, because it has the potential to obfuscate, at least for now, attempts at answering the main question raised by COP 21: how confident can we be that the Paris Agreement has set the world on a path that will eventually avoid dangerous climate change?

Not all the diverging views expressed and discussed at the Cambridge conference<sup>4</sup> – and indeed in the wider commentaries and debates that have emerged since Paris – can be addressed in one guest-edited issue. Before turning to those that are indeed encompassed here, it is worth highlighting one key tension that is hidden in both the

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<sup>1</sup> ‘Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action’, Decision 1/CP.17, 15 March 2012, doc. FCCC/CP/2011/9/Add.1, 2.

<sup>2</sup> *Ibid.*, para 2.

<sup>3</sup> The conference was jointly organized by four different centres within the University of Cambridge: the Centre for Environment, Energy and Natural Resource Governance (C-EENRG), the Energy Policy Research Group (EPRG), the Department of Politics and International Studies, and the Centre for Rising Powers, in association with *Climate Policy*.

<sup>4</sup> For an anonymised summary of the conference proceedings see R. Rafaty, ‘What Now? Climate Change and Energy after Paris’, Policy Briefing, available at <http://www.ceenrg.landecon.cam.ac.uk/> (visited on 24 July 2016). The website includes additional materials from the conference including many of the presentations.

wording of the Paris Agreement, and the difference between the two global temperature targets referenced (albeit in different ways) in the Paris Agreement, namely, 2 degrees C and 1.5 degrees C. Both targets had been mentioned in international climate negotiations since at least the 2009 Copenhagen Accord<sup>5</sup>. However, the lion's share of the research effort has focused on the 2 degree C target (eg see Jordan et al, 2013), so that the implications of climate stabilization at 1.5 degrees – or at least attempting to do so - is poorly understood. As we write this Editorial, many groups of scientists and modellers are actively working on filling this important gap in our knowledge. Holding the increase of global average temperature to 'well below' 2 degrees C as compared with pre-industrial times and 'pursu[ing] efforts' to limit the increase to 1.5 degrees C, as called for in the Paris Agreement, may potentially have dramatic socio-economic consequences. Behind the compromise wording used in Article 2(1)(a) may lie either major consequences for low-lying small island nations (in case of a higher increase) or (in case of drastic limitations) the scrapping of massive investments in infrastructure with the ensuing socio-economic, political and strategic impacts. In urging further research on the implications of a 1.5 degrees C target<sup>6</sup>, decision 1/CP.21 adopting the Paris Agreement has greatly influenced the scope of research efforts. These should include not just studies of impacts and mitigation costs, but assessment of the feasibility of the required political and societal response, on anything like the timescale needed.

Should there be any doubt, from a policy perspective, that the (aspirational) 1.5 degrees C goal will indeed help set the world onto a safer climatic path? Although ambitious, such an aspirational goal may or may not add momentum. If a target is perceived as unrealistic, particularly after its socio-economic implications have been estimated, will this help or undermine the normative pull of the Agreement? At the Cambridge conference, some speakers suggested that a 1.5 degrees C target might be incompatible with democracy to the extent that it would require such a large-scale and intrusive intervention that it could strain democratic decision-making processes. On the other hand, limiting ambition to a 2 degrees C target may entail severe consequences – actual 'loss and damage' – for a number of countries and populations. Such major tensions lie beneath the laconic expressions 'well below' and 'pursue efforts' in Article 2(1)(a), which are but two among many other illustrations of how tensions have been 'ingrained', rather than addressed, in the text of the Paris Agreement.

A wide divergence of views is also apparent in many topics analysed in this guest-edited special issue. The highly optimistic stance adopted by Richard Kinley, Deputy Executive Secretary of the UNFCCC, in the first article can be contrasted, in this respect, with the disquiet expressed in Anju Sharma's analysis of the agreement reached on adaptation, finance and loss damage, or with the optimism for the Agreement's future expressed – based on a different rationale – in the piece by Niklas

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<sup>5</sup> 'Copenhagen Accord', Decision 2/CP.15, 30 March 2010, Doc. FCCC/CP/2009/11/Add.1, paras 1, 2 and 12.

<sup>6</sup> 'Adoption of the Paris Agreement', Draft Decision -/CP.21, 12 December 2015, FCCC/CP/2015/L.9, para 21 (this paragraph is addressed to the IPCC, but the IPCC will necessarily rely on available research work done by the scientific community, and such work is for the time being scarce).

Höhne and colleagues on INDCs. Similarly, the article by Emma Lees views the new provision in the Paris Agreement on loss and damage in a clearly different light, when compared to Sharma's perspective on this question. Reasonable minds may certainly disagree and that is part of academic debate. What is more worrying is that such disagreements – and those expressed during the Cambridge conference – may reflect the potential for reasonable disagreements among countries and other stakeholders as to the path envisioned by the Paris Agreement. The international community faced a similar problem in the wake of the 1992 UN Conference on Environment and Development in Rio de Janeiro (Viñuales, 2013). Here, the broad concept of “sustainable development” allowed such a wide array of views and positions to be brought under an apparently single and simple umbrella that, as international efforts sought to move from norm development to actual implementation, this led to a new set of no less than 17 Sustainable Development Goals, with 169 targets and potentially many more indicators. Such an expansive definition of sustainable development has certainly helped to secure consensus, but more by “papering over” substantive differences, rather than truly resolving them. The risk, of course, is that governments are on board with the process, but the difficult decisions needed for real change are never taken. As with the Paris Agreement, only time can tell whether the SDGs will set humanity on course towards truly ‘sustainable’ development and, as with the Paris Agreement, the jury is likely to be out for a long time.

In the first article of this special issue, which draws on the opening keynote speech he gave to the Cambridge conference, Richard Kinley offers the unique insight of someone who has been at the centre of the climate negotiations since the early 1990s. Kinley considers COP-21 as ‘the most successful climate conference ever’, highlighting several major developments that took place both within and outside the plenary halls, as well as eight features of the outcome that, he claims, have ‘changed the game’ towards a more cooperative and effective approach to climate governance. Kinley's article can usefully be considered as a platform, a line drawn by someone who has been in the ‘game’ since the beginning.

Kinley's optimism on the provisions of the Paris Agreement relating to mitigation and innovations in climate governance is echoed in the arguments put forward by Niklas Höhne and his colleagues.<sup>7</sup> But the reasons given by Höhne et al differ in critical ways. While Kinley is broadly optimistic about the Paris Agreement as it stands, Höhne et al see optimism in the potential to strengthen both the treaty, and country INDCs, in the (hopefully near) future. Indeed, their analysis of the INDC system eventually retained in the Paris Agreement looks at the still significant gap between the Agreement's long-term global goals and the overall impact of the INDCs as a glass half full, rather than half empty. They see cause for hope in several factors, notably, the fact that many INDCs, including those of some large emitters, were conservative, leaving significant room for easy improvement, and the positive institutional dynamics that were set in motion at the national level by the very process of preparing the INDCs. Höhne et al are similarly optimistic about the mechanisms introduced by the Paris Agreement to increase ambition over time, and the important role that ‘non-party stakeholders’ are likely to play in future mitigation efforts. They

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<sup>7</sup> Takeshi Kuramochi, Carsten Warnecke, Frauke Röser, Hanna Fekete, Markus Hagemann, Thomas Day, Ritika Tewari, Marie-Jeanne Kurdziel, Sebastian Sterl, and Sofia Gonzales.

also point to some observed or projected technological transformations that could facilitate low-carbon trajectories, such as the development of renewable energy technologies and electric cars. Höhne et al claim that the success of mitigation action will depend firstly on the prompt and full implementation of (soon to be) NDCs, involving non-party stakeholders, and then on harnessing technological transformations to *overachieve* goals and hence generate momentum for the wider economy to switch to a new production matrix. There is some convergence of views, then, that the Paris Agreement has steered the world onto a path that can avoid dangerous climate change, *so long as its promise to trigger stronger future action is realised*.

A key area of the Paris Agreement where there is a marked divergence between the optimism of Kinley and the much more sober interpretations expressed by Anju Sharma, concerns adaptation, finance, and loss and damage. Sharma asks whether, aside from what was politically feasible, the results of COP-21 in these areas are satisfactory from the perspective of the most vulnerable constituencies. Through a detailed analysis of the provisions of the Paris Agreement, Sharma argues that these do not constitute an adequate response to the likely impacts of climate change, whether from a precautionary (anticipative) or post-cautionary (redress) perspective. Sharma pays particular attention to questions of finance and notes a number of shortcomings in both the Paris Agreement and the accompanying decision 1/CP.21, including the fact that there are no new financial commitments under the Paris Agreement, with the timeframe for the US\$ 100 billion pledge agreed in Copenhagen simply extended to 2025. At the same time, she points to the lack of reference to 'new and additional' funds in the Paris Agreement and continued controversies over the sources (public or private) of funds. The imbalance between the funds directed to mitigation as compared to those for adaptation is also a cause of concern, as is potential over-counting in climate finance reports of the funds that have genuinely been directed towards adaptation. Sharma further cautions that, despite the enthusiastic reactions of many observers regarding the enhanced status of adaptation in the Paris Agreement, the relevant provisions 'fall well short' and the provisions on climate finance 'do not inspire confidence'. Sharma argues that, from the perspective of the world's poorest communities, the Paris Agreement has not brought us much closer to avoiding dangerous climate change in a fair and equitable manner, if at all.

On the topic of loss and damage, Emma Lees expresses some cautious optimism regarding the inclusion of a specific provision in the Paris Agreement itself (Article 8). Concerns about the potential use of this provision to claim liability and compensation for loss and damage led to the addition of paragraph 51 in the accompanying COP decision, according to which Article 8 'does not involve or provide a basis for any liability or compensation'. Relying on general concepts of private law, Lees analyses these provisions in the wider context of the UNFCCC and the Paris Agreement and argues that 'responsibility' must be clearly distinguished from 'liability and compensation', the latter being one potential consequence (among others) of the former. According to Lees, the loss and damage provision could be fleshed out not only through insurance mechanisms, which seems to be the politically easier method, but also through a differentiated allocation of responsibility that does not necessarily trigger liability and compensation (and is hence consistent with

paragraph 51). In fleshing out legally this allocation, two key questions arise, namely how to fine-tune traditional concepts of causation and fault to make them adequate for the specificities of climate change and what consequences (other than liability and compensation) could be derived from such an allocation. Lees cautions against ignoring the current ambiguities surrounding the loss and damage provisions, which may result in depriving this potentially important dimension of the Paris Agreement of any concrete effect. Even if the Paris Agreement has increased our chances of eventually stabilising the climate at a “safe” level, some “loss and damage” due to climate change over the coming decades is inevitable.

Setting aside, for now, concerns over its substance, there is no doubt that merely reaching a consensus on the Paris Agreement was a major diplomatic achievement. The politics of Paris clearly played out very differently to those at COP 15 in Copenhagen six years before, which ended in widespread acrimony without a consensus outcome (eg see Depledge, 2010). How did this come about? In his article, Kinley praises the “strong leadership (not least within the G-77 and China) and flexibility” that was demonstrated “by all of the key players”. Isabel Hilton and Oliver Kerr’s paper focuses on a central player in the climate negotiations, namely China. They analyse in depth what they see as the more cooperative attitude of the world’s largest emitter, which they trace back to a change in China’s economic development model starting in the 12<sup>th</sup> Five Year Plan Period (2011-2015). They highlight China’s efforts to ‘move away from energy-intensive industry, exports and investment-led growth, and toward services and domestic consumption, with a focus on low carbon technologies’, which, according to them, helps to explain the redefinition of its agenda in international climate negotiations. This, in turn, accounts at least in part for the more constructive role that China played in the negotiations that led to the Paris Agreement, as compared with its more reticent stance throughout the Copenhagen process. Of particular significance, here, was China’s emerging partnership with the US, cemented through a series of coordinated policy announcements leading up to COP-21. These political initiatives in effect brought to an end the unproductive “you go first” relationship between the world’s two highest emitters that had frustrated the negotiations for decades. China’s rising emissions and growing confidence on the world stage, and a US President willing to use political and diplomatic capital in the climate change arena, enabled both countries to move together, thereby dropping a critical piece of the political puzzle into place. China’s prompt ratification of the Paris Agreement, again in a joint move with US President Obama at the September 2016 G20 Summit in Hangzhou, confirms China’s more proactive engagement with the climate negotiations and ensures this will be sustained into the future. While China’s apparently strong support for the Paris Agreement is not a sufficient condition to avert dangerous climate change, it is certainly a necessary one, and therefore a cause for cautious optimism.

The increasingly constructive collaboration between China and the US on climate change is perhaps the single biggest political factor accounting for the success of COP-21. While Hilton and Kerr document China’s critical role in this, much credit must also be given to President Obama, who expended considerable time, energy and resources in building up a strong working relationship with China. To recall, this was a huge turnaround from the frosty encounters in Copenhagen. President Obama has

now taken his pro-climate position to its logical conclusion, and formally “accepted”<sup>8</sup> the Paris Agreement as an Executive Agreement, as announced at the 2016 G20 Hangzhou Summit. This did not require advice and consent of the US Senate, which would have been impossible to obtain, given the constitutional hurdles involved, coupled with continuing US exceptionalism on the whole issue of climate change. Indeed, a critical question throughout the Paris negotiations was precisely how to craft the outcome so as to enable the US to become a party while bypassing the Senate: this requires linkage to existing US legislation (such as the US Clean Air Act), an existing treaty which had been ratified by the Senate (notably, the UNFCCC) and/or the President’s own powers under the US Constitution. While there is rejoicing now at US acceptance of the Paris Agreement, the drawback of Executive Agreements are that they are vulnerable to being revoked by future Presidents. President Obama was supportive of climate change action, but what will be the views of his successor, or indeed future US Presidents down the line? The Paris Agreement is a long-term instrument, whose effectiveness (as argued by Höhne et al) will depend on its future strengthening. It is entirely possible, however, that a future US President would revoke its membership of the treaty. These important questions are discussed in detail by Luke Kemp, in his paper on “US-proofing” the Paris Agreement. Kemp argues that the Paris Agreement is highly vulnerable to withdrawal by the US (or indeed any other major party, as Canada did from the Kyoto Protocol), not least because it does not include any provisions relating to non-parties. He suggests possible amendments to the Paris Agreement that could guard against drop-outs, while also exploring possible responses in the event of withdrawal by a major party. In doing so, his aim is to ensure continued effective participation by entities from the withdrawing party, such as sub-national governments and businesses.

And of course, China and the US were far from being the only participants whose constructive diplomacy in Paris helped to seal the deal. According to Kinley, there was “a strong, almost palpable, determination by all governments to reach agreement”. Attracting the most media attention was perhaps the High Ambition Coalition, eventually bringing together upwards of one hundred Parties, from the richest to the poorest, who raised the bar of acceptable action, and forced through “high ambition” provisions such as the 1.5 degrees C target and the specific provision on loss and damage.

Lower profile groups, such as the Independent Association of Latin America and the Caribbean, or AILAC<sup>9</sup>, also had important impacts on the outcome. This coalition of small and middle sized countries, formed in 2012, displayed a remarkable capacity for bridge-building and leading by example. Guy Edwards, Isabel Cavelier Adarve (former head of the AILAC support unit, writing in a personal capacity), Maria Camila Bustos, and J. Timmons Roberts, document the rise and influence of this “small group with the big impact”, arguing that AILAC was critical to consensus building in Paris. They explore how AILAC helped shape the Paris Agreement, and ask how it can build on its success to continue to nudge the climate regime along the path of a climatically safe future. Although the spotlight tends to fall on larger emitters in climate change politics, nearly a third of global emissions are accounted

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<sup>8</sup> An act that under both US constitutional law and international law triggers the same effects as ratification.

<sup>9</sup> Asociación Independiente de América Latina y el Caribe in the original Spanish.

for by small and middle-sized countries. Given that the short term prospects for decisive policy action in several of the largest countries and regions – US, India, Russia, even the EU – are lukewarm at best for diverse political reasons (even the promising Chinese resolve remains to be tested), the actions of small and middle-sized countries such as AILAC may become critical in maintaining the Paris Agreement’s momentum. There are no sanctions in the Paris Agreement to enforce implementation and no automatic mechanism to strengthen its targets (only processes to facilitate this). Peer pressure, leadership-by-example and insistent scrutiny by progressive governments (not just NGOs) are therefore the central (perhaps only) means by which the promise of the Paris Agreement can be fulfilled. Edwards and his colleagues have shown how a group of small and middle-sized countries can exert positive influence on the negotiations; the hope is that they will now exert the same kind of positive force on implementation and strengthening.

These constructive political developments are surely one of the main reasons to be optimistic about the Paris Agreement’s prospects: that its negotiation and adoption brought countries together in a spirit of constructive cooperation and support for the multilateral process that had eluded the climate change regime for many years. But a positive political atmosphere does not, by itself, cut emissions and avoid dangerous climate change. For that, implementation is needed. The speed with which countries ratify a treaty, and therefore with which it enters into force, can provide an early signal of commitment to put into place the necessary laws, policies and measures to implement its provisions. In this respect, at the time of writing, the Paris Agreement would seem well-placed. Formal declarations by China and the US have set the Agreement on track to come into effect probably in late 2016 or early 2017. Compared with the 7 years it took to bring the Kyoto Protocol into force, this would be remarkable indeed, beating even the rapid entry into force of the UNFCCC itself (22 months). One could be cynical, of course, and argue that it is easy for governments to ratify the Paris Agreement, when all they are doing is confirming their own pre-existing policies as set out in their INDCs, which are, in any case, voluntary.

Indeed, the voluntary and inclusive approach of the Paris Agreement, extending non-legally commitments to all countries, represents a significant departure from the now out-of-favour approach of the Kyoto Protocol, with its legally binding targets for a narrower group of countries. Assessment of the effectiveness of the Kyoto Protocol remains divided – high levels of compliance, indeed over compliance, were achieved. However, use of the flexibility mechanisms (such as the CDM) and accounting rules for land-use change and forestry played an important part in this (for an in-depth assessment, see Shishlov et al, 2016). There is also the view that the Kyoto Protocol was “designed for obsolescence” because of its firewall between Annex I Parties with emission commitments, and non-Annex I Parties without (Reiner and Jacoby, 2001). There can be no doubt, though, that the legally binding framework of the Kyoto Protocol helped promote compliance, and exerted pressure on governments to respond with a degree of regulatory attention that may not be reproduced for voluntary commitments. The new approach enshrined in the Paris Agreement will therefore need to prove its worth, and that proof will lie in actual implementation through concrete emission reductions.

One issue that will undoubtedly come to the fore as countries seek to strengthen their climate policies to implement the Paris Agreement is the relationship of those policies, and indeed the Agreement itself, with trade rules under the World Trade Organisation (WTO). The potential for clashes between climate-related goals and free trade rules is one that has concerned academic commentators for decades (eg Esty, 1994). In his paper on global trade and the promotion of cleantech industry post-Paris, John A Mathews argues that “these disputes have come to a head in the past few years ... imposing a serious risk of reversing whatever gains might be made in the forums established within the terms of the UNFCCC”. Mathews calls for a reconciliation between the WTO and the climate regime, which could be done through a COP resolution calling on the WTO to recognize climate change mitigation as a ‘public good’, whose pursuit might justify the application of GATT Article 20 exemptions in specified circumstances and for a designated period. This would have the advantage, for example, of giving greater flexibility to countries to develop their own clean industry capabilities, with less fear of triggering trade disputes. The extent to which the global trading regime can be harnessed in explicit favour of climate protection, rather than as a perceived threat or sometimes actual (unwitting) obstacle to it, will greatly impact on the effectiveness of the Paris Agreement in, as Höhne et al put it, “flipping” global markets towards the low-carbon technological future that is needed to achieve the 2 degree goal.

Overall, the articles in this guest-edited issue provide both a retrospective and a prospective view of the main outcomes of COP-21 and their policy implications. Most of all, they signal the wide range of interpretations of an instrument that, rather than reflecting consensus on the path forward, seems to encapsulate different - widely different - potential paths. To return, then, to the question posed at the beginning of this editorial, the extent to which the Paris Agreement has set us on a course to avoid dangerous climate change will depend on the path that is eventually taken. It is clear that the Paris Agreement, and the INDCs within it, is not sufficient as it stands to ensure a safe and stable climate. It does, however, prop open the window for doing so, and provide a politically acceptable structure and process through which *all* countries can play their part and tighten their commitments over time. If the Paris Agreement had not been concluded, and COP-21 had ended in the same kind of diplomatic debacle as Copenhagen, then this would surely have sounded the death knell for the international climate change regime. The euphoria felt after Kyoto in 1997, and the gloom following Copenhagen, have now been replaced with a cautious optimism after COP-21. The Paris Agreement has taken climate governance in a new direction, which holds both promise and pitfalls; as noted by Richard Kinley, the game is indeed changing. We hope that the articles in this collection will help illuminate this brave new world of the Paris Agreement, and the potential pathways to follow for winning that game.

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