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Dangerous Incrementalism of the Paris Agreement

Jen Iris Allan*

Abstract

After a decade of negotiations, countries adopted a new, legally-binding agreement on climate change. The excitement for a new era in the climate regime is palpable among pundits and policymakers alike. But such enthusiasm largely overlooks that most of the Paris Agreement's provisions represent continuity with existent climate policy, not a break with the past. This paper argues that the Paris Agreement is a dangerous form of incrementalism, in two ways. First, it repackages existing rules that have already proven inadequate to reduce emissions and improve resilience. Second, states and non-state actors celebrate the Agreement as a solution, conferring legitimacy on its rules. I suggest that, beyond the strong desire to avoid failure, developing countries and NGOs accepted the Paris Agreement to secure the participation of the US and to uphold previous agreements. Given the reification of existing rules, the ratchet-up mechanism and non-state actors stand as the hopes to catalyze climate action.

Introduction

In December 2015, delegates, NGOs, journalists, and scholars, myself included, applauded the adoption of the Paris Agreement. After a decade of minor successes and major failures, countries negotiated a treaty acceptable to all. Better still, it seemed surprisingly ambitious. But the celebration was largely unjustified given the Agreement's content (Anderson 2015).

The Paris Agreement is a form of dangerous incrementalism, in two ways. First, it repackages existing rules that have so far proved to be an inadequate response to climate change. The Agreement creates four new institutions: the Paris Committee on Capacity-building, the implementation and compliance mechanism, a platform for local communities and indigenous peoples, and the "Article 6" market mechanism. While nationally-determined contributions (NDCs) are a new concept, they are a reincarnation of the bottom-up approach created by the Copenhagen Accord and affirmed in the Cancun agreement (Falkner 2016; Savaresi 2016).

Taken as a repackaged set of institutions, the Paris Agreement may be unable to reverse the trend of rising emissions. Emissions reductions stemming from the intended NDCs will slow the rate of emissions growth, although aggregate emissions will rise (UNFCCC 2015a) suggesting a global temperature increase between 2.6°C and 3.1°C by 2100 (Fawcett et al., 2015). Under the Cancun system, 141 countries, representing nearly 87% of emissions, submitted pledges. The Paris Agreement has intended NDCs from 190 countries representing 94.6% of emissions. In addition to using existing institutions, the Agreement adds only 7.6% of global emissions to the regime, although some countries, notably China, submitted more ambitious pledges. The Agreement fails to meet the needs of the world's most vulnerable for adaptation, loss and damage, and financial support (Sharma 2017) and appears unlikely to be effective, with few incentives to promote compliance or discourage free riding (Bang, Hovi, &

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Skodvin, 2016). It lacks provisions to regulate interactions with non-parties (Kemp 2017), a concern in the wake of the US withdrawal.

Second, the Paris Agreement is dangerously incremental because of its widespread legitimation, leading many to assert that the solution to climate change is now at hand. Even if NGOs and states privately thought the Paris Agreement was an inadequate response to climate change, they legitimized it. Developing countries praised it as a landmark of climate governance. Saint Lucia, for the Caribbean Community (CARICOM), a group highly vulnerable to climate change, described the Agreement as a “resounding triumph of multilateralism.” Tuvalu, a country renowned for saying the Copenhagen Accord, would “betray our people and sell our future” declared that the Paris Agreement, in saving Tuvalu, “will have saved the world.” Even Nicaragua, the one country that spoke against the deal, outlined the inadequacy of the “voluntary responsibility” of the pledging system as a “path to failure,” but did not block consensus.¹

Non-governmental organizations (NGOs) almost unanimously applauded the Agreement. They could have denounced it, potentially undermining its legitimacy. But, in a review of 50 NGO press releases, only three publicly held a negative view of the Agreement.² These were members of the climate justice movement, who decried the Agreement as the “Great Polluter’s Escape,” a “deliberate plan to make the rich richer and the poor poorer”, and “more empty promises and false solutions” (One World 2015). Others, from environmental NGOs to cities, and businesses to faith groups, welcomed the Agreement as an achievement and foundation for future climate action.

The enthusiasm imbued early scholarship. More sober assessments are emerging, showing the Paris Agreement as neither a revolution nor revelation. I seek to contribute to this rebalancing by offering ideas why this dangerous incrementalism occurred. Many understood in Paris that the treaty would not constitute solution to climate change, and yet they publicly supported it. After Copenhagen, there was palpable sense that the UNFCCC could not survive another such failure. Developing countries, like many others, wanted above all to avoid failure, and to end negotiations that detract from implementation. They therefore consented to an agreement that is not in their interests. Beyond the binary choice that any agreement is better than no agreement, I suggest that there were other reasons that constrained developing countries’ decision making to legitimize the Paris Agreement, primarily that it builds on a series of existing institutions that had their own legitimacy and that aligned with US demands.

The Best of the Alternatives

Developing countries and NGOs faced a difficult decision in Paris: is it better to agree to an incremental agreement today, or hold out for a better agreement later? If negotiations failed, global climate governance would still have the existing stock of institutions, but not rationalized into a cycle of submitting NDCs, and reviewing collective progress in the global stocktake, which informs future NDCs that are to be successively more ambitious (the “ratchet up mechanism”). It was unclear if a better deal would ever be on the table, especially given the negotiation process for the Paris Agreement.

Failure seemed plausible throughout the negotiations. Immediately before the Paris conference, the draft text looked far from ambitious or complete. Riddled with brackets, each set surrounding phrases

¹ Participant observation at the Comité de Paris closing session and COP closing plenary, December 12, 2015.

² The press releases represent a range of NGOs from all UNFCCC constituencies.

without consensus, the draft grew throughout 2015 as parties added text rather than reaching compromise. Even halfway into the Paris conference, the draft revealed continued contention, with over 800 brackets (IISD 2015). This proliferation of brackets masked how narrow the options had effectively become.

Developing countries, sometimes with some developed countries, put forward ideas to raise the ambition of the Agreement, but concessions in Paris were few. The reference to 1.5°C in the global goal amounts to a promise to “pursue efforts.” Even securing an article devoted to loss and damage, a key demand of developing countries to separate loss and damage from adaptation, was a limited win. Liability is excluded and the separation from adaptation is blurred. There are no titles for the Agreement’s articles to avoid explicitly recognizing loss and damage (Biniaz 2016), and it reaffirms the role of the Cancun Adaptation Framework. Other options, such as multilateral reviews of NDCs before their finalization, found little traction.

Instead, the developing and developed countries involved secured the ratchet up mechanism that could, over time, raise the ambition of the Paris Agreement. This was the one win that could hold promise and that lessened the sting of adopting an insufficient Agreement. Every five years, countries will hold the global stocktake. This period of reflection and likely pressure from NGOs, coupled with the requirement to submit successively more ambitious NDCs, is designed to inspire more ambition in the overall system.

Beyond the obvious benefits of ending negotiations for a treaty, the ratchet up mechanism is a significant consolation that the Agreement could improve over time. The mechanism can serve as a guard against complacency that could creep in when the public attention that often accompanies negotiations for a treaty subsides. Because of the aggregate nature of the stocktake, NGOs may have a key role, serving as whistleblowers (Faulkner 2016). These opportunities will come every few years, during the global stocktake and when NDCs are communicated, leaving perhaps fewer openings for many NGOs to influence the process than they enjoyed during the negotiations (Allan 2018). As delegates were aware, there are review mechanisms, including under the Convention, the Kyoto Protocol, and the Cancun agreement, and ambition remains low. Still, developing countries and NGOs accepted and celebrated the Agreement, not just to avoid failure and secure the ratchet up mechanism, but also because of two interlinked considerations that informed their choice: the need to bring the US on board, and, partly because of that need, the difficulties of over-turning existing institutions.

There were strong signals that the US would ratify the treaty, if it had certain features. The US could not ratify a treaty with new obligations beyond what they previously agreed to, putting the world, as Kemp (2016) explains, in a “ratification straitjacket.” For the US to agree to the Paris Agreement, it would have to use existing institutions. This constraint ruled out a legally-binding obligation for developed countries to adopt quantified, economy-wide targets. The ratification straitjacket also meant that the Agreement had to be annexed to a COP decision, and NDCs could not be annexed or in any other way inscribed in the Agreement, which could imply a new legal obligation. The most significant climate free rider agreed with the Paris Agreement, representing a win for vulnerable countries in itself.

The existing institutions also had legitimacy among parties, in both ideational and strategic terms. Parties may have viewed existing institutions as constitutive of climate policy, as “natural” ingredients for the Paris Agreement, which perhaps explains why there were so few attempts to renegotiate the bottom-up approach, or other existing institutions. Not even NGOs argued for a return to legally-binding mitigation targets. The Kyoto Protocol was languishing; still today there are not enough ratifications to

bring the Doha Amendment from 2012 into force. Parties sealed the bottom-up approach into the Paris Agreement in 2013, when they agreed to the intended NDCs. Debates lingered on what “intended” meant, either to signal parties’ intentions before the treaty takes effect, or, as India argued, that parties would intend to meet their NDCs. But it was clear the Paris Agreement would be bottom-up. Strategically, vulnerable countries likely viewed these institutions as the best option on the table. Like the financial and technology mechanisms established in 2010, perhaps these institutions could deliver, given the chance. Using these institutions would also avoid opening old issues.

Many of the institutions in the Paris Agreement were established as part of “package deals,” including greater transparency for developing countries (in 2007, 2009, and 2010), references to 1.5°C (in 2010), and the need for a market mechanism (in 2011). There would likely be social opprobrium if a country sought to untie a previous package that was carefully balanced to allow all to claim their interests were met. In the current “rulebook” negotiations for the Paris Agreement, parties routinely remind one another not to upset the Agreement’s careful balance. Opening previous agreements would lead to other countries re-inserting their pet issues to try to get a better deal, complicating the agenda and further dwindling trust.

Such social pressure also applied to other agreements, such as US-China bilateral commitment that stipulated that countries “in a position to do so” could contribute to climate finance. While the language was debated during the Paris conference, China’s lead negotiator, Xie Zhenhua noted in a press conference that the wording was settled, pointing to the bilateral statement. If the two largest emitters, one a provider and the other a recipient (and provider) of climate finance, agreed on the future of financial flows, consent by others seemed a *fait accompli*. Developing countries would get an extension of the promise of 100 billion per year by 2020 to 2025, but no new financial commitment. The bilateral deal extended to the world, just as the demands of the US to use existing institutions shaped the decisions available to other countries. Years of incremental progress partly locked countries into legitimating the Paris Agreement, a progression of the years of climate policy countries collectively built over decades.

Securing consent

Negotiation strategies by powerful countries and the conference Presidency helped remove any last opportunities to block the agreement. The US employed a range of techniques to increase pressure to adopt an Agreement made according to its requirements. The High Ambition Coalition led by the Marshall Islands and the US was a media and NGO darling that also served to ostracize countries such as India and Saudi Arabia that some believed could block a deal. As the US Climate Envoy Todd Stern explained to the media: “There are some countries here who are not in the coalition and, indeed, would seek a more minimal outcome” (Clark and Stothard 2015). Such coalition building has previously helped secure the consent of low-income countries for climate agreements (Ciplet, Roberts & Khan 2015). By aligning themselves with the US, including marching triumphantly together into the plenary hall, developing countries had already acceded to the Agreement. Participating in the momentum and helping to marginalize other developing countries, states vulnerable to climate change conceded their ability speak against or block the treaty.

The last resort for a country wanting to block the Paris Agreement is to blame the process, as the climate negotiations are perhaps notorious for. The tactic worked in Copenhagen, given the closed-door negotiations and leaked documents. The phrase “party-driven process” and calls for “inclusive” and

“transparent” negotiations became common mantras in the UNFCCC, used by developing countries to ensure their participation. The French Presidency undertook considerable efforts to align with these norms, which Cipler, Roberts and Khan (2015) show can help facilitate consent by those less powerful. Each evening of the second week, the COP President convened the Comité de Paris, an open session for all. Overnight, *indabas*, open, high-level negotiations, would meet on specific issues. The *indaba* co-chairs included delegates from countries known to block decisions, such as Venezuela. Presidency team members would brief delegations, outlining the Agreement’s contours without showing the whole text. Agreement drafts were distributed in plenary, a tactic specifically meant to allay concerns over preferential treatment by ensuring that parties received the text at the same time.

These negotiation strategies worked, although there was already considerable pressure to uphold the legitimacy of previous agreements and bring the US into a legally-binding climate treaty. Given the legitimacy the Paris Agreement holds as a product agreed to by states, President Trump’s decision to withdraw from the Paris Agreement was a deep betrayal. Countries agreed to a treaty that was built upon legitimate institutions, with US involvement, and negotiated in a transparent process. The decision to withdraw rebuked the foundations on which developing country support was based. In the bid to win US participation, countries adopted a treaty that could lose the planet. Then, they lost the US.

Locked into the “Best” Alternative?

Is the future as bleak as the past? The Paris Agreement is designed to endure, offering no opportunities to revisit its design. Parties are locked in the cycles of submission, reporting, global stocktake, and resubmission of NDCs. Even if those reviews, and the many other reports on the state of the global climate, show that the global response is inadequate, parties remain in the same circle.

Some, including Higham (2017), argue that the Agreement should be considered in its broader context, including the mobilization of non-state actors as a second foundation of the Agreement. Institutions such as the Non-state Actor Zone for Climate Action (NAZCA Portal) and Lima-Paris Action Agenda (LPAA) helped highlight, synthesize, and further non-state actors climate actions (Morgan & Northrop, 2017). These institutions align non-state actors’ efforts with the overall social structure and goals of the UNFCCC, which can confer legitimacy on their actions (Bernstein 2011). This legitimacy and the orchestration efforts of the Secretariat are clearly important to overall climate action. But they are not a substitute for meaningful, ambitious climate action by states. The Paris Agreement may have passed responsibility to non-state actors. The “all hands on deck” approach that Hale (2016) describes requires states as drivers, implementers, and funders of mitigation and adaptation efforts. What the Agreement largely lays out, however, is a reliance on the status quo.

But it has lofty goals, leading some, such as Cléménçon (2016) to characterize the Agreement as aspirational, rather than substantive. Developing countries, and the world, consented to an inadequate treaty, pinning their hopes on a long-term vision of how climate governance could learn and grow in the multilateral system.

Biography

Jen Iris Allan is a Lecturer in the School of Law and Politics at Cardiff University, UK. Her research focuses on non-state actors’ interactions with global environmental institutions and includes publications on climate change and chemicals and wastes governance.

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