The Paris Agreement on Climate Change: implications for
business and government

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Introduction

On 22 April 2016, 175 world leaders gathered in New York to sign the new climate change agreement (the “Paris Agreement”) adopted in Paris by 196 parties during the 2015 Climate Change Conference which took place between 30 November and 11 December 2015 (the “Paris Conference” or “COP21”).

The Paris Agreement will enter into force when ratified by at least 55 nations representing 55 percent of anthropogenic greenhouse gas emissions. Currently, fifteen States have deposited their instruments of ratification. China and the United States, together representing 38% of global emissions, have both pledged to ratify the deal by the end of the year.

It is not possible to overstate the importance of the consensus reached in concluding and signing the new climate change agreement. Consensus was vital both to ensure progress towards addressing climate change for future generations and to restore faith in the UN’s consensus-based system. The achievement of international consensus was all the more poignant given the spectre of terrorism which overshadowed the conference following the Paris attacks of 13 November 2015.

The newly agreed long-term temperature goal is to hold the increase in global average temperature to “well below 2°C” and to “pursue efforts” to limit the temperature increase to 1.5°C above pre-industrial levels. However, the effectiveness of the Paris Agreement in curbing emissions of greenhouse gases and limiting global warming to the somewhat vague “below 2°C” target is a matter of concern for many commentators, who feel the Paris Agreement falls short of what is required to prevent irreversible, anthropocentric changes to our planet. Indeed, the lack of legally binding targets, coupled with soft language in other operative parts of the text, raises concerns that the Paris Agreement may not be the success it has been heralded to be.

The troubled road to the Paris Conference

The Paris Conference was the 21st Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change (the “UNFCCC”) and it represented a critical juncture in climate change negotiations. The 1997 Kyoto Protocol applied the concept
of common but differentiated responsibilities, drawing a clear distinction between States with obligations to reduce emissions and those without such obligations. This was agreed at Kyoto to address the concern of developing States that their economic development would be constrained by the imposition of binding emissions targets. Emerging economies argued that their growth should not be restricted, especially considering that developed countries had been allowed free reign during their periods of industrial development. Thus, the 1997 Kyoto Protocol resulted in discord between States that accepted quantified emissions targets (i.e., developed States) and States that did not (i.e., developing States).

In its most recent 2014 Report, the Intergovernmental Panel on Climate Change (the “IPCC”) stated:

> Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever […]. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are extremely likely to have been the dominant cause of the observed warming since the mid-20th century.

In fact, the international community had recognised for some time that the Kyoto Protocol would not be effective in achieving the required reductions in greenhouse gas concentrations. Major hurdles in that respect included the disavowal of the Kyoto Protocol by the United States, Canada’s withdrawal from the agreement in 2012 and the exclusion of major emitters like China, India and Brazil from emission reduction obligations.

Twelve years after Kyoto, the 2009 Copenhagen Conference failed to produce an agreement to bridge the gap between developed and developing states. A breakthrough, however, came at the 2010 Durban Conference, during which it was agreed that breaking the deadlock in climate change negotiations required taking a new direction. To that end, the Durban Platform laid out a plan to prepare a new, legally binding instrument by 2015 which would impose concrete obligations on both developed and developing States.

As the IPCC stated in its 2014 Report:
Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems.

From the IPCC’s findings, it was clear that time would be of the essence in reducing greenhouse gases to a level which would not create irreversible damage. Thus, the stakes could not have been higher at the 2015 Paris Conference. It was critical that consensus be reached in Paris, so that States would be able to move away from the damaging impasse towards implementation.

Key successes of the Paris Agreement

The fact that consensus on a new, legally binding agreement was reached at all should be seen as a significant achievement. Largely, that achievement can be credited to the unique ‘bottom up’ approach to emission targets. Indeed, the issue of whether all participating States should be subject to binding emissions reduction targets had been the primary obstacle to previous attempts to negotiate a new climate agreement. Under Article 4 of the Paris Agreement, however, each State is required to submit a nationally determined contribution (“NDC”) to reduce greenhouse gas emissions in order to achieve the temperature target. This represents a departure from the traditional ‘top down’ approach contained in the Kyoto Protocol, which imposed quantified targets only on certain States. As a matter of fact, States parties to the UNFCCC were required to submit their intended NDCs in advance of the Paris Conference. By 12 December 2015, 186 out of the 196 States parties had provided their NDCs. This alone is a remarkable achievement. What is more, some of the participating States are regulating greenhouse gas emissions for the very first time and doing so in a setting that subjects this regulation to international legal obligations.

Article 4 of the Paris Agreement also sets a goal of reaching global peaking of greenhouse gas emissions as soon as possible and, then, achieving rapid reductions in order to reach emission neutrality. In short, this means striking a balance between anthropogenic emissions from carbon sources and the removal of greenhouse gases by sinks (both natural and artificial) through carbon sequestration. Under the Paris Agreement, a review process known as a “global stocktake” will measure progress against the set targets. The first “global stocktake” is scheduled for 2023. Thereafter, it will take place every 5 years. In this context, it is worth noting that, in many places, the Paris Agreement uses language that refers to progression. For instance, there is
language evidencing an intention to move NDCs beyond the current levels set by States and to achieve more ambitious targets.

Failures of the Paris Agreement

Arguably, however, even this approach will not necessarily guarantee that the temperature target of the Paris Convention is reached. It has been estimated that even fully achieving the current NDCs would result in an increase of 2.7°C, well above the minimum 2°C target.

Moreover, the likely effectiveness of the agreement concluded at the Paris Conference remains subject to conjecture. The Paris Agreement employs a hybrid technique of legal drafting. It anchors domestic measures that do not themselves have globally legal binding force to the legal obligations under the Paris Agreement. Since the actual content of the legal commitment is not defined within the legal obligation itself, some argue that the Paris Agreement lacks the bite that some States, particularly small island nations, were hoping to secure with legally binding emissions targets. In fact, there is very little in the Paris Agreement that is legally binding. Whilst there is a binding obligation to submit NDCs and to take part in the 5-year reviews of NDCs (with an expectation of progression), States are not bound to meet their targets. States are in fact free to determine those targets based on their national circumstances. It is hoped, but there is no legal obligation, that States will “race to the top”, spurred to action by international peer pressure. Many commentators are sceptical and anticipate that States will seek to “wriggle out” of their commitments. This apprehension is only enhanced by the fact that, as with many other multilateral environmental agreements, the compliance mechanism in the Paris Agreement does not include any sanctions. The Paris Agreement relies heavily on transparency through regular reporting of NDCs as the means to keep States accountable, rather than through any enforcement mechanism. Whilst this was likely a necessary concession in order to achieve consensus, it is a far cry from an ideal mechanism.

The Paris Agreement also fails to deliver anything new in relation to the financing of climate change mitigation and adaptation. Article 9 simply reiterates what is already set out in the UNFCCC, i.e., that developed States will continue to provide financial assistance to developing States. This is being done through the Green Climate Fund ("GCF") which was established in 2010 at COP-16 in Cancun to raise a pool of money, to be contributed by States on an annual basis. The GCF’s target, to be achieved by 2025, is for the total pledges to the GCF to amount to USD 100 billion each year. Those funds then would be made available to developing States for costs relating to adaptation
and mitigation projects. Currently, the GCF only has achieved annual contribution pledges of USD 10.2 billion. The Paris Conference granted a 5-year extension to the GCF.

Similarly, there was no agreement on any mechanism for legal responsibility or financial liability to deal with loss and damage caused by climate change. Instead, Article 8 of the Paris Agreement relies on the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, a mechanism established in 2013 with a much more cooperative and facilitative focus. Many commentators view this as a particularly adverse outcome for vulnerable countries that may be disproportionately affected by climate change, yet make the smallest contributions to historical greenhouse gas emissions.

Perhaps too negatively, a number of commentators have indicated that the Paris Agreement, despite its apparent attention to traditional ‘North/South’ issues, does not do enough to protect the most vulnerable countries and peoples and that it does not force countries to cut emissions fast enough to forestall catastrophic climate change. In the eyes of those commentators, the Paris Agreement does not include a general agreement on setting a pathway to a carbon-free future; rather, it sets the more modest goal of carbon neutrality.

How will the Paris Agreement affect business and government?

If the Paris Agreement comes into force, its impact on businesses will depend largely on whether States will seize the momentum created by the submission of their NDCs and put plans into action to meet their volunteered targets. If States take their commitments seriously, they may introduce measures like carbon taxes (which may result in higher prices for consumers) and subsidies for green infrastructure. Increasing investment in renewable energy and non-fossil-fuel-intensive products will provide opportunities for growth and employment. As noted by Dr Jim Yong Kim, President of the World Bank, “taking action now will not only solve the problem of protecting the planet, but it will be a tremendous boost for economies.” Following the Copenhagen conference, there was significant growth in the low-carbon economy. In 2015, the renewable energy economy attracted USD 286 billion of investments globally.

Any transition towards a “green economy”, however, will require financing for investment in low-carbon economic pathways (for example, enhancing the energy efficiency of existing infrastructure and the development of low-carbon energy supplies such as hydro, wind and solar power). Whilst it is possible that the goal of decarbonisation
expressed in the Paris Agreement will lead to a shift of financial flows from high-carbon to low-carbon investments, it is estimated that investments of USD 1 trillion a year between now and 2050 would be needed in order to deliver a real low-carbon transformation. A key driver to realising the potential benefits of the impulse set by the Paris Agreement will be for businesses to engage and look for market-driven ways to increase investment in low-carbon and renewable energy sources. The combined market of low-carbon technologies and electric and hybrid vehicles represented USD 600 billion for the year 2015 and may be expected to continue to expand. The Paris Agreement may also open up for investments in renewables in new markets, such as in Africa or India. The efforts of States to implement their NDCs will be vital to instilling confidence in investors and aid the mobilisation of capital.

Investors in traditional carbon markets may be at risk. Indeed, some major actors in that market have acknowledged a need to adapt. In response, bankers present at the Paris Agreement argued in favour of regulations to compel financial firms to declare their exposure to holdings that might lose value due to climate change. During the Paris Conference, the Governor of the Bank of England launched a task force, the purpose of which is to push financial firms to disclose to lenders, insurers, investors and other stakeholders their exposure to carbon stocks and climate change issues. A similar task force on climate-related financial disclosures has been launched by the Financial Stability Board, an international body established after the 2009 G20 summit in London. In France, the United Kingdom and United States, public companies or insurance companies are already required to disclose their exposure to climate change risks.

From a governmental perspective, failure to act now to reduce emissions may lead to greater problems in the future. Additionally, a failure to curb climate change may amplify existing social, political and resource tensions and ignite conflicts, not to mention reverse decades of advances in sustainable development. Thus, taking compliance with NDCs seriously could have a concrete, positive impact on global security and prosperity.

Final reflections

Certainly, COP21 adhered to the UN ideals of seeking to act with international consensus to tackle a global problem. The themes of the Paris Conference resonated on a global scale, with more than 150 heads of State attending on the opening day. That, in and of itself, is laudable. While achieving consensus confirms that the UN-inspired collective approach to addressing a global issue like climate change can
work, it comes at a price. That price is compromise, which can lead to a weakening of the terms of any final agreement.

All told, however, in a system necessitating international consensus the outcome of the 2015 Paris Conference represents a step in the right direction. The Paris Agreement breathes fresh hope into the global framework established by the UNFCCC in 1992, which had been flailing under the Kyoto Protocol regime.