

Searching for middle ground: National Contributions in a Global Agreement

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After two weeks of intense negotiations at the 21st Conference of the Parties (COP 21) in December 2015 in Paris - the 196 Parties to the United Nations Framework Convention on Climate Change (UNFCCC) agreed on the COP Decisions and Paris Agreement. The UN Secretary General, Ban Ki-Moon, described the Paris Agreement as a ‘monumental triumph for people and our planet’¹. The Paris agreement is a return to the ‘pledge and review’ approach of the early days of global climate policy – middle ground between national pledges for climate action within a global architecture of review and collaboration.

For the last twenty years, international climate change policy has been focused on the search for a centrally negotiated multilateral climate treaty with all countries as signatories. Yet since its inception, adapting the top-down multilateral treaty model to the challenge of climate change has been a Sisyphean task.

The new approach has broken a deadlock and created a sense of optimism – but trust and legitimacy in the regime still needs to be built to ensure performance. The devil is the detail – right balance between top-down measures and bottom-up flexibility are needed for specific challenges related to ensuring equity, mobilizing finance, driving technological change and ensuring climate resilient development.

In this paper we enroll theoretical insights from the work of Elinor Ostrom on polycentric governance, to see how a durable, hybrid climate regime could emerge out of the Paris Agreement and facilitate equitable and ambitious climate outcomes.

The paper is divided into four sections: we first examine the road to Paris –the lessons from the last thirty years of climate policy for the future regime; next we review theory – what are the theoretical insights from the work of Elinor Ostrom on polycentric governance; we examine how the ‘hybrid’ architecture of the new regime might play out in dealing with specific issues: setting ambition, ensuring differentiation, legal form, mitigation and adaptation; and lastly we

¹ "COP21: UN Chief Hails New Climate Change Agreement As ‘Monumental Triumph’". *UN News Service Section*. 12 December 2015

analyze the way forward – building trust and legitimacy and encouraging the ‘ground swell’ of actors.

I. The Road to Paris

UNFCCC

The UNFCCC, adopted in 1992, establishes the normative architecture of the climate regime. It's an ambitious statement of intent. The UNFCCC seeks to “achieve...stabilization of greenhouse emissions of greenhouse concentrations at a level that will prevent dangerous anthropogenic interference with the climate system²”. Currently there are 197 Parties to the UNFCCC. The agreement outlines the goals, objectives, principles and general commitments of different Parties but leaves the issue of specific greenhouse reduction commitments, levels of financial contributions, mechanisms for technological change and specific policy measures to future agreements.

Enshrined in the UNFCCC Article 3 is the differentiation in responsibilities between developed and developing countries and an acknowledgement of differing capabilities through phrases such as Common But Differentiated Responsibilities (CBDR) and Respective Capabilities (RC). The Convention also divides Parties into Annex I, Annex 2 and Non Annex I countries, Annex I countries being developed nations with greater responsibility for historical emissions and with higher capability to act on climate change. The UNFCCC process created political consensus and raised awareness on the issue of global warming as well as succeeded in establishing the overarching architecture of climate governance.

The Kyoto Protocol and why it failed

After the adoption of UNFCCC in 1994, the first major treaty ‘under the UNFCCC’ was the Kyoto Protocol of 1997. The Kyoto Protocol called on Annex I countries under the UNFCCC to commit to cuts in emissions while leaving out Non Annex I countries from legally binding requirements for climate action. The Protocol faced difficulties in its implementation, failing to secure support from the United States, then the world's largest emitter and therefore being akin to staging Hamlet without the Prince. Countries such as Canada pulled out of the Agreement at a

² United Nations Framework Convention on Climate Change, 1992, <https://unfccc.int/resource/docs/convkp/conveng.pdf>

later date while others such as Russia and Japan had to rely on creative accounting to meet their commitments on mitigation³.

Behind these specific failures lies a larger conceptual problem, caused not by any incompetence on the part of Kyoto's drafters—to the contrary, as an agreement it elegantly relied on successful elements of earlier environmental and arms control agreements—so much as the mammoth coordination problem of climate change itself. Rayner has called Kyoto a 'simple solution' to a complex problem and argued that the attempt to impose emission reductions across national jurisdictions was based on false analogies with earlier regimes such as the Montreal Protocol and arms control agreements such as the Strategic Arms Reduction Treaty (START)⁴.

As a problem with specific causes but global and often unknown consequences, caused by and affecting people inequitably, with long-term catastrophic consequences but the short-term benefit of cheap energy, climate change poses the most complex problem yet to global political will. A simple instrument like Kyoto would not suffice.

After the failure of Kyoto and subsequently the Copenhagen conference in 2009, climate policymakers began to search for a bottom up approach to climate governance. The term Nationally Determined *Commitments* was introduced at COP 19 in Warsaw (2013). The idea underwent several transformations to make it more acceptable to all member states before the final version of Intended Nationally Determined Contributions (INDCs) was agreed upon in Lima the following year at COP 20.

Paris Agreement: Pledge and review

In the lead up to COP 21 in Paris, all countries submitted INDCs outlining their commitments and plans for climate action in the years to 2030. The firewall between developed and developing nations was breached as all countries signed up for climate action, in line with their interests, responsibilities, capacities and political calculations. Top down elements of climate governance are still in play however.

³ Marco Verweij, "Is the Kyoto Protocol Merely Irrelevant, or Positively Harmful, for the Efforts to Curb Climate Change?" *Clumsy Solutions for a Complex World*, Eds. Marco Verweij and Michael Thompson (New York: Palgrave MacMillan, 2006), 31-60.

⁴ Rayner, Steve. "How To Eat An Elephant: A Bottom-Up Approach To Climate Policy". *Climate Policy* 10.6 (2010)

* INDCs are now NDCs after the signing of the Paris Agreement.

The evolving climate regime combines bottom-up national pledges for climate action through NDCs* with top-down rules for review, transparency and collective consideration of overall adequacy. It represents a paradigm shift from earlier attempts to craft a global climate agreement. In the Paris Agreement, the global community is searching for middle ground - a fine balance between bottom-up national contributions and top-down rules of the game that might deliver both ambition and universal participation.

The NDCs can cover both mitigation action and adaptation action by Parties although some countries such as developed nations have only outlined plans for mitigation action. Countries cannot face any punishment for failing to meet their NDC targets. However, they are required to submit fresh NDCs every 5 years and each submission has to represent a progression of ambition on climate action⁵. Therefore, while the requirements to pursue domestic mitigation measures and submit NDCs are legally binding, the targets themselves are not.

The UNFCCC Secretariat was tasked with compiling together the NDCs of Parties and making an assessment of the overall adequacy of climate action. The numbers show that ambition will have to be significantly raised if there is to be any chance of limiting global average temperature rise to 2 degrees centigrade, much less 1.5 degrees⁶. This underscores the importance of the '5 year global stocktake' called for in the Agreement⁷ and the requirement to ratchet up ambition over time.

The Agreement establishes an 'enhanced transparency framework' as well as a mechanism to promote compliance with and implementation of the Paris Agreement⁸. The mechanisms however are to be purely facilitative in nature and non-punitive. The Paris Agreement therefore provides a loose umbrella for climate action with all member states signing up for voluntary 'contributions' towards a global goal on climate change.

II. Polycentric Governance

The argument that climate governance must take more pluralist, bottom up approaches that disavow ambitious top down mitigation commitments for a progressive 'direction of travel' and

⁵ UNFCCC, Paris Agreement, Article 3 & 4.3

⁶ "Global Response To Climate Change Keeps Door Open To 2 Degree C Temperature Limit: New UN Report Synthesizes National Climate Plans From 146 Countries". *UNFCCC*, October 2015.

⁷ Paris Agreement, Article 14.1

⁸ Paris Agreement, Article 13.1 and Article 15.2

action at multiple levels is not new⁹. Even before the failure of Copenhagen in 2009, scholars had begun to move on from the idea that a single, monolithic, top down approach to climate protection could deliver a global consensus. Achieving emission reductions that limit us to average temperature rise of 2 degrees Centigrade (or the more ambitious 1.5 degrees) and increasing the ability of vulnerable countries to adapt to climate impacts arguably requires innovative and proliferated governance which allows for action at multiple levels in a flexible overarching structure¹⁰.

Theory suggests that a ‘clumsy’ approach to climate policy may work. Institutional experts have analyzed the resilience possible in “polycentric governance” that creates adaptive systems better suited to ‘wicked’ problems such as climate change, rather than simpler, more elegant but more brittle agreements such as the Kyoto Protocol¹¹.

A polycentric order implies many scales and centers of decision making, formally independent of each other and undertaking independent action, but under a general system of rules and with relations between members¹². The new picture of climate governance today emerging post Paris contains characteristics of polycentricism that Elinor Ostrom foresaw as necessary for coping with climate change¹³. Ostrom argued that “global solutions” negotiated at a global level may be insufficient for addressing climate change if not supported by efforts at local, regional or national levels¹⁴. Benefits of climate action accrue not just at the global, macro level but also at local and regional levels, creating incentives for actions at multiple scales¹⁵. Further, a multitude of actors influence the causes behind climate change – actions by individuals, families and corporations combine together to deliver the consumption and production patterns that exacerbate global warming¹⁶. Lastly, global solutions run the risk of creating a perception of free riding amongst some participants who believe their action may be subsidising inaction by other members. Policy action at only a global level would find it difficult

⁹ See for instance- Steve Rayner, "How To Eat An Elephant: A Bottom-Up Approach To Climate Policy, Op. cit. and Falkner, R. Stephan, H. & Vogler, J. *International climate policy after Copenhagen: towards a 'building blocks' approach*, Global Policy Volume 1. Issue 3. October 2010

¹⁰ Ostrom, Elinor (2009), *A Polycentric Approach for Coping with Climate Change*, Office of the Senior Vice President and Chief Economist, The World Bank.

¹¹ Mathur, Vikrom, January 2016, *Finding middle ground in Paris*, ORF Commentaries, <http://www.orfonline.org/research/finding-middle-ground-in-paris/>

¹² Ostrom, Vincent, 1999. "Polycentricity – Part 1" In *Polycentricity and Local Public Economies*, ed. Michael McGinnis, 52-74. Ann Arbor: University of Michigan Press.

¹³ Elinor Ostrom, *A Polycentric Approach for Coping with Climate Change*, Op. Cit.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

to garner the trust and reciprocity among members needed to both be on track with commitments as well as increase ambition over time¹⁷.

The move away from state centric approaches to climate change that negotiate between themselves in an international forum far away from citizen realities has to also do with the decreasing identification of the state as the primary unit of governance in society. Within nations, processes of devolution and disaggregation are taking place as smaller political entities, geographies and individuals retake agency of action. The imperatives of these tiers of society are frequently unaligned with the top down mandates of an international forum such as the UNFCCC. Global climate governance may therefore benefit from supporting bottom up approaches to climate action.

Further, scholars studying transnational governance have highlighted the wide range of functions performed by transnational initiatives such as capacity building, information sharing and even occasionally rule making and implementation, long considered to be under the domain of the state¹⁸. Allowing for mutual reinforcement of state and non-state actions on climate action should therefore be a driving thrust of a new climate architecture¹⁹.

The theory therefore suggests that a shift in climate governance towards a more flexible, durable and polycentric approach should generally allow for the following elements:

- Action at multiple spatial levels – international, national and local;
- Action through many modes and solidarities – markets/private sector, state and local governments and civil society/households;
- Different domains of action – national public policy and transnational governance;
- Minilateral Clubs – coalitions of the willing/transnational alliances;
- Greater support and recognition for bottom-up action.

III. A Fine Balance

The new paradigm of the Paris Agreement raises some questions, such as the role of peer pressure and free riding in climate politics, while old challenges like equity and inclusivity remain and take on new forms. Is it possible for the Paris Agreement to build a lasting and

¹⁷ Ibid.

¹⁸ Abbott, K.W., 2011, *The transnational regime complex for Climate change*. Environ. Plann. C 30, 571 – 590.

¹⁹ Green, J.F., 2013, *Rethinking Private Authority: Agents and Entrepreneurs in Global Environmental Governance*, Princeton University Press

durable climate regime? How does the Paris Agreement allow for a polycentric approach, components of which were described in the previous section? How can a middle ground between bottom up feasibility and top down ambition ensure equitable and effective outcomes?

Ambition

In the lead up to COP 21, the goal to limit global average temperature rise to 2 degrees centigrade was widely seen as the overarching ambition of a potential new climate agreement. The more ambitious 1.5 degrees goal called for by Low Lying Island States had been given little chance of finding its way into the Paris Agreement. International climate diplomacy had rallied around the goal to limit average temperature rise to two degrees since economist William Nordhaus introduced the concept as the limits of avoiding extreme climate impacts in climate change conversations in 1975. However, the Paris Agreement managed to include the 1.5 degrees target as a result of the push by the High Ambition Coalition (including the US, EU and Low Lying Island States)²⁰. The 2 degree goal however continues to be the main focal point of climate efforts.

The Paris Agreement eschewed a top down mitigation or emission reductions target that was favoured by the Kyoto Protocol. Instead, more flexible, and less quantitative targets were introduced such as to increase ability to adapt, increasing flows for climate finance as well as requiring a progression in efforts by member states over time²¹. The global exercise thus served to create an “ambitious direction of travel” rather than ambition embedded in a single global goal. The shift to emphasis on direction of travel of bottom up contributions rather than hard targets is one of the key features reflecting the new contours of the climate regime. Messaging and semiotics trumped the hard math that characterized the simpler Kyoto Protocol. At the same time, the inclusion of the 1.5 degrees goal, although with qualifications, serves to indicate that top down ambition has only increased if not remained the same in the new agreement.

Hybrid Legal Form

The Paris Agreement has a hybrid legal form. Some elements such as the obligation of means to pursue domestic mitigation action are formally binding, while others such as the need for developed countries to take the lead in mitigation action are expressed less categorically²². The

²⁰ Paris Agreement, Article 2.1(a)

²¹ Paris Agreement, Article 2.1 (b), (c) and Article 3

²² Savaresi, Annalisa (2016), *The Paris Agreement: a new beginning?* Journal of Energy & Natural Resources Law, 34:1, 16-26

hybrid structure of the Paris Agreement and some of its non-legally binding provisions has led to concern that the Agreement is toothless²³.

However, diplomatic efforts for a global agreement always understood the need for a non-binding agreement, given that in the US for instance, domestic consensus on climate change does not exist and legally binding provisions would have to pass the US Congress, killing the Agreement before it even began. This was after all one of the key reasons behind the failure of the Kyoto Protocol.

The Paris Agreement's inherent flexible, hybrid nature gives leeway to member states on how to undertake action to tackle climate change as well as lets them set their own targets. It does however mandate a stock take and review every 5 years as well as require that every 5 years member states have to present progressive ambition on their plan for climate action. Therefore, procedural commitments to 'prepare, communicate and maintain' NDCs that 'represent progression' after each cycle are legally binding²⁴.

The shift to allow countries space to create their own national policies without legally binding pressure is one of the 'polycentric' features of the Paris Agreement, which allows for bottom up determined action at multiple levels instead of attempting to enforce top down targets that failed under the Kyoto Protocol. Such a strategy may actually yield increased participation of member states in their domestic actions and therefore increased ambition globally; scholars have found for instance that non-binding strategies are adopted at a much quicker rate than those that are legally binding²⁵.

Differentiation

Concerns over equity and equitable outcomes have been one of the defining features of climate governance. Historical responsibility of developed countries as well as the "right to pollute" claimed by some developing nations characterize the challenge of resolving equity in a new climate change regime. The Kyoto Protocol faced defections as developed countries accused developing nations such as China and India of free riding on their climate commitments, a challenge that is predicted by Ostrom's critique of the focus on global solutions²⁶.

Instead of the enforced commitments of Kyoto, Paris allowed for a regime built on self-differentiation, as countries outlined their nationally determined plans for climate action

²³ Bershidsky, Leonid (2015), "A Toothless Treaty Can't Hold Off Climate Change". *Bloomberg View*

²⁴ Paris Agreement, Article 4.2 and 4.3

²⁵ Dubash, N. K., Hagemann, M., Hohne, N. & Upadhyaya, P. (2013). *Developments in national climate change mitigation legislation and strategy*, *Clim. Policy* 13, 649-664.

²⁶ See Section 2, Page 5

through their NDCs. Self-differentiation however, is no guarantor of equitable outcomes. It is only to be expected that countries will reflect *interest* not *equity* considerations in their NDCs²⁷.

Paris has dismantled the differentiation firewall that was reflected in the Annex/Non Annex divisions enforced by Kyoto, replacing it with a more flexible approach, which arguably still hinges on equity. Going forward however, self-differentiation will not be enough for the reasons outlined above. It is crucial that new principles such as climate justice create room for developed countries to increase trust and legitimacy in the eyes of developing nations by continuing to take the lead in mitigation, technology transfer and financial support.

Ostrom's framework suggests that this may happen through more informal processes, by support for bottom up action, through transnational alliances such as the Solar Alliance and by minilateral/bilateral clubs, such as the High Ambition Coalition or US/China and US/Brazil agreements. The global stock take and peer review system will provide further opportunities to design a climate regime that delivers equitable outcomes in a flexible, hybrid approach.

Mitigation

The mitigation agenda of climate action was couched thus far in the long - term goals of emission reductions and efforts to limit average temperature rise to an extent that will avoid dangerous climate change, long agreed to be 2 degrees centigrade. The Kyoto architecture mandated reductions in carbon emissions by developed countries, an approach which had few adherents and faced defections as concerns of free riding and economic advantages for developing countries along with struggles to garner domestic consensus prevented the agreement reaching full effectiveness. The Paris Agreement while continuing to give importance to mitigation has allowed countries to set their own targets, as long as they review the same every 5 years and continue to be more ambitious over time. The Agreement also calls for a net balance in carbon emissions and mitigation by carbon sinks by the second half of the century²⁸.

Domestic realities, politics and national interests will ultimately determine the extent of a country's mitigation contributions. It is here above all that questions of equity vs. interest take centre stage. Delinking carbon emissions from economic growth is likely to be difficult, especially in the short term, as the price competitiveness of fossil fuels and their extensive presence in national economies make them difficult to be forsaken. However, a peer pressure system of pledge and review means that countries risk destroying the entire fabric of the Agreement if they fail to deliver on mitigation action. The top down pressure of increasing ambition over

²⁷ Aniruddh Mohan, 2016, *Reframing Differentiation: Equitable Outcomes for Transformational Change*, Working Draft

²⁸ Paris Agreement, Article 4.1

time also means that the exceptionalism of countries such as those in emerging markets will be vulnerable over time.

Bilateral agreements such as those between in US-China have already seen the first moves by big polluters to tie in futures together and seek to spur domestic action through international promises. Transnational alliances such as the Solar Alliance and the Breakthrough Energy Coalition in turn focus on the innovation and technology transitions needed to both keep the lights on as well as undertake rapid decarbonisation of the global economy. In the end, finance and technology will drive decisions around energy choices, a fact that the Paris Agreement both acknowledges and looks to leverage, turning away from the Manichean design of the Kyoto Protocol that staked the success of climate governance on getting major polluters to sign up for drastic reductions in carbon emissions. The new, flexible arrangement of the Paris Agreement has brought all the major polluters on board for the first time. Loose top down directives must not however become a shield for inaction, something that will have to be ensured through the transparency, monitoring and verification systems that are called for in the Agreement.

Adaptation

It is perhaps hardly surprising that with the shift to a bottom up approach to climate action, adaptation was given a central role in the Paris Agreement. Scholars who have long argued for bottom-up, flexible approaches to climate governance also decried the taboo that existed on adaptation action, long viewed as the costs of failed mitigation²⁹.

Adaptation's centrality in the Paris Agreement does however give rise to new questions. While the global goal on mitigation has been to limit temperature rise to 2 degrees centigrade as highlighted previously, a global goal on adaptation is far less clear. The problem with adaptation is that it is harder to imagine how *local* action to adapt to climate impacts can contribute to *global* good, unlike mitigation action. Nevertheless, adaptation does find its way in the NDCs of developing countries who are clear that taking action to better adapt to climate impacts is part of their contribution to global efforts on climate change.

The loose framework of the Paris Agreement can help support the adaptation agenda by enabling it to be tied to other related processes. For instance, the Sustainable Development Agenda (SDGs) is an effective surrogate for adaptation action. Development is after all, the best adaptation to climate change. Further, action at multiple levels by a multitude of actors all work better with adaptation than mitigation, given the rural, local and regional nature that adaptation action is characterized by. Future outcomes in this regard must take into account

²⁹ Steve Rayner, *How To Eat An Elephant: A Bottom-Up Approach To Climate Policy*, Op. cit.

concerns over loss and damage, the costs of adaptation, and addressing the fundamental inequity of climate impacts which disproportionately affect the global south.

IV. Building Legitimacy & Trust

A loosely structured, non-punitive, non-binding and polycentric regime will perform only if it retains legitimacy among the wide set of actors and institutional arrangements that constitute it. This legitimacy will derive from mutual trust; all Parties need to keep their pledges to build trust.

Peer pressure politics will be central to the new regime. Parties will be under pressure to stay the course to retain their reputation among the polity of nations. Media and civil society are likely to scrutinize the performance of nations. While there will be no formal action against countries that do not meet their pledges – the informal pressure in a highly interconnected world is likely to be too strong. Peer pressure politics is not new. For example, the OECD has had a long history of peer review mechanics leading to effective peer pressure that enforces norms. Peer pressure regimes are effective as trust is built over time through increasing cooperation³⁰. As trust builds, the possibility of mutual commitment to higher levels of ambition is likely to become possible.³¹ Increasingly, states need to be accountable to their own civil society about climate action – in democratic nations, domestic public opinion and pressure by citizens to protect the rights of vulnerable populations.³²

Large developing countries, like India, China and Brazil backed down from their previous positions around strict differentiation in mitigation action between developed and developing countries during the COP in Paris. But for the regime to gain legitimacy among stakeholders in developing countries it will still need to have equitable outcomes. The preamble of the Paris Agreement for the first time makes a reference to the notion of ‘climate justice’. The term alludes to both distributive and corrective justice relating to the relative burden on nations to support coping and resilience of vulnerable communities to climate impacts and also the transition to low carbon economies³³. Emerging nations like India need to pursue low carbon development trajectories and developed nations need to progressively de-carbonize their economies and support low carbon growth and adaptation in developing countries sincerely.

³⁰ Pagani, Fabricio, (2002), *Peer Review as a Tool for Co-operation and Change*, Directorate for Legal Affairs, OECD.

³¹ Pagani, *Peer Review as a Tool for Co-operation and Change*, Op. cit.

³² “Thousands Flood Lima’s Streets in Largest Latin American Climate March,” *Global Voices*, 15 December 2014, <https://globalvoicesonline.org/2014/12/15/photos-largest-climate-march-in-latin-american-history-floods-limas-streets/>.

³³ Savaresi, Annalisa (2016), *The Paris Agreement: a new beginning?* Op. Cit.

Legitimacy of the regime will also grow as more non-state and sub-national actors begin to engage with each other, through multilateral efforts and their own governments. The Paris Agreement recognizes the role of non-state and sub-national actors and also, for first time, creates a framework to catalyze and take this action forward, in the COP decisions associated with the Paris Agreement. Two high level champions will be appointed to support and drive forward action by cities, companies and other non-state actors³⁴. All future COPs will have a high level action day where cities and companies will report back from their efforts – this process is directly linked with the formal process of review under the UNFCCC. Not only do nations and states need to pledge action but other actors are also encouraged to do so.

Means of implementation - finance and technology - have always been contentious issues in climate policy debates. In accordance with the principle of CBDR enshrined in the UNFCCC, developed countries are under obligation to transfer climate friendly technology and support adaptation efforts. In the past developed countries have pledged to mobilize resources to the tune of 100 billion USD per annum to support climate action in developed countries, transfer technology and build capacities. The legally binding text in the Paris Agreement does not contain any numbers but does stipulate that developed countries will take the lead in mobilizing climate finance for developing country needs and that such mobilization would be a progression over previous efforts. The Transparency Framework Mechanism established as part of the Paris outcome has been tasked with monitoring the flow of finance from developed countries and under Article 13, developed countries are legally bound to provide information on financial support provided to developing countries. The trust in the regime will grow if developed nations uphold their commitments to support action in developing countries – both in spirit and in numbers.

For long-term legitimacy, the process of ratcheting up ambition over time needed to be clear. The establishment of an institutionalized process to assess the adequacy of action in light of science was perceived as an indispensable element of the agreement, to ensure its durability, flexibility and alignment with the evolution of scientific knowledge. As highlighted previously, Articles 3 and 4.3 respectively ensure that global stocktaking, beginning in 2023 and to be held every 5 years, will witness increasing level of ambition over time, something that was sorely missing in the Kyoto Protocol.

A polycentric regime will also gain strength from the extent to which it links itself to other regimes that have extensive buy in. Scholars have argued that climate change is a complex problem that relies far too much on a single framework of law (the UNFCCC)³⁵. Broader sets of challenges such as human rights and trade need to be recognized to overcome the paucity of

³⁴ Paris Agreement Decision 122

³⁵ Humphreys, Stephen, 2016, *Climate change: too complex for a special regime*, Journal of Energy & Natural Resources Law, Volume 34, Issue 1

climate law by linking with other bodies of international law³⁶. The Paris Agreement has for the first time in a multilateral environmental treaty, made a reference to the issue of human rights in its preamble text. Similarly, issues of flow of finance for clean energy can only be resolved if global banking norms such as Basel III are aligned with and contribute to the outcomes envisaged in the Paris Agreement. Last but not least, the global trade regime must not hinder climate action³⁷ and instead be responsive to the need for cost effective clean energy solutions that promote energy access and mitigation action³⁸.

V. A Climate of Change

The Paris Agreement is no panacea – cure for all the ills of the global climate – but its pragmatic and symbolic value can't be underestimated. After the near breakdown of attempts to govern the climate in Copenhagen in 2009, the global community had nearly lost all faith in the ability of nations to come together to address a common problem collectively – in the interest of the our shared planet and future generations. Many analysts pronounced the death of multilateralism. The Paris Agreement renews hope and signals the resurgence of a co-operative spirit among the polity of nations and moves away from the polarized, rancorous and stagnant rhetoric of the past twenty years. Developing countries such as India backed down from some of its more hard line positions and allowed for the differentiation firewall to be breached in the interest of securing a global agreement – in doing so it demonstrated leadership, which is in line with ambition to play a stronger role in global processes. At the same time, developed countries such as the US and EU came together to form High Ambition Coalitions to strongly push for an ambitious global consensus. The semiotic value of the adoption of an ambitious global goal is important for the future of the regime.

The Paris Agreement is also pragmatic in its loose nature – it establishes a direction of travel – allows each country to determine its own mode and speed of travel but provides for review – both of individual and collective effort. It also recognizes and creates incentives for the role of multiple actors – especially non-state actors. The Annex I and Non Annex I – technocratic approach to differentiation that has been hard to sustain – even if justified has been replaced with 'self differentiation' while maintaining a call to climate justice and human rights in the preamble of the agreement.

³⁶ Ibid.

³⁷ Namrata Brar, April 2016, *India Accuses US Of Double Standards On Solar Trade*, NDTV, <http://www.ndtv.com/india-news/india-accuses-us-of-double-standards-on-solar-trade-1398544>

³⁸ Klein, Naomi, (2014), *This Changes Everything: Capitalism vs. the climate*, Penguin Publishers

In the lead up to the Paris COP, Pope Francis addressed climate change in his encyclical named “Laudato Si (Be Praised), On the Care of our Common Home”. Pope Francis wrote that global warming could worsen “if we continue with the current models of production and consumption” and reminds us that climate change will “strike in a special way the weakest on the planet³⁹.” Any regime in the long run has to aim to protect the weakest on the planet from the impacts of climate change and to provide lifeline access to development to those without – while constraining the over consumption of the rich. Only then will it be just. And only a just regime will last.

³⁹ Pope Francis, 2015, Laudato Si: On care for our common home