



*Climate change is a real threat. The scientific evidence is irrefutable. The problem is that countless talks and rallies calling for action have only pushed things forward at a snail's pace. **Prof. Simone Borg** explains why.*

Back in the mid-1970s the scientific community was already sounding the alarm that emissions from human activities were unbalancing the composition of greenhouse gases in the atmosphere, leading to an unprecedented increase in global temperatures.

A decade later, on 21st September 1988, Malta raised the issue at the largest and arguably the most influential global political forum—the United Nations General Assembly.

Malta appealed, to all nations present, to initiate action at the political and legal level in response to these increasingly alarming scientific reports.

Following Malta's initiative at the UN, things began to move quickly. The Intergovernmental Panel on Climate Change (IPCC) was set up: a remarkable step in the right direction. For the first time, science was taking centre stage, becoming the guiding light that would spur governments into taking evidence-based national and global action. Malta's initiative, in



For those of us who have braved the negotiations through thick and thin, we consider the Paris Agreement as a legal instrument that has the potential to finally bridge the chasm between climate science and climate action required at the political and legal level.

fact, aimed to persuade other nations to respond urgently to concerns raised by the scientific community and determine a global legal agreement to address anthropogenic (human-induced) climate change.

Greater impetus came in 1990 when UN states were given a two-year timeframe within which to negotiate a climate treaty. For a short while, the usual lack of coordination between scientists and politicians appeared to be a thing of the past. States were eager to embark on partnerships to address human-induced climate change.

Sadly, things became complicated and negotiations turned acrimonious. The IPCC churned out scientific reports by the dozen, all demonstrating the high risks involved in maintaining a 'business as usual' attitude towards fossil fuel consumption. Politicians echoed this concern and climate change became a staple item on the agenda at all major global meetings. It was, and remains, by far one of

most discussed topics in these last three decades. However, the wheels of change stalled, and the set of robust legal commitments which would encourage states to 'walk the walk' continued to prove elusive.

To explain this stagnation, it is necessary to understand why negotiators take so long to agree on something that seems 'obvious' and requires urgent action.

A CLIMATE CHASM

The relationship between science and law has been compared to oil and water, in that they differ primarily in the methodology they use to achieve 'results'. Scientific conclusions are based on evidence acquired via a specific, predetermined methodology. Laws, serving to regulate human behaviour and ensure order, develop over time and are formulated in a way that accommodates priorities, whilst protecting the balance of interests among the different stakeholders involved. ➔



At international climate negotiations, priorities are set by governments. In democracies, government priorities are meant to be determined by the will and needs of the electorate. In other forms of government, priorities are set by whoever is in authority. Climate negotiators are envoys of their governments, meaning they have a set mandate from which they cannot depart, whatever their personal sentiments about climate action may be.

Climate negotiators representing different states may wholeheartedly agree that the planet needs climate action, but because their agenda is dictated by national interests and red lines they cannot cross, they will disagree on the type of measures that need to be adopted. For example, while states would give climate action due priority, they may still find difficulty in phasing out coal or imposing carbon taxes on fossil fuels.

Admittedly, such concerns are sometimes rooted in politicians' desire for re-election, but not always. Governments may acknowledge the effectiveness of certain climate action measures, but due to socioeconomic repercussions would refuse the legal binding required to carry them out on a national level. Some states may simply be unable to afford the heavy investment required for action. Governments may also need to postpone implementation

because of more pressing needs, such as the eradication of poverty. Other times, solutions depend upon changing consumption patterns, a social awareness that would take years, if not decades, to instil, or upon alternatives which are not yet widely accessible due to their exorbitant price points—think electric vehicles and, to a certain extent, solar and wind energy.

Other difficulties have played a significant part in the procrastination of international negotiations about climate change legislation. The interplay between science and law is arduous in all environmental agreements. In the cases of pollution or ozone depletion, identifying and tracing the origin and cause, the pollutant and pollutor, are relatively straightforward. This means specific action can be taken. However, many greenhouse gases are emitted naturally by a range of human activities, and all contribute to the negative effects. This means that while the concentration of greenhouse gases is scientifically proven to lead to warming of the atmosphere, it cannot be scientifically proven that, for example, an individual Category 5 Hurricane is the direct result of a specific amount of gases emitted by one or more states. The result is an absence of any causal link between an action and the resultant damage: essential proof in legal proceedings. This explains why sceptical politicians constantly harp



Prof. Simone Borg

on about the absence of absolute scientific proof and that climate change is a natural phenomenon.

The negotiation history highlights this complex landscape faced by negotiators. The first treaty, the United Nations Framework Convention on Climate Change (UNFCCC), was concluded in 1992. It had a fairly mild, albeit useful, legal mandate, serving as a good point of departure. However, as its name implies, it was but a framework and would need other legal instruments to be effective. Its parties were to inventory their greenhouse gas emissions and to submit a report on

how they aim to deal with climate change, by mitigating it at the national level. Industrialised nations were singled out in a list called Annex I, a move which later haunted them, with an additional legal obligation to stabilise their emissions at 1990 levels by the year 2000. Over time, this distinction between Annex I and non-Annex Parties was referred to as the 'firewall' because it contrasted those states that had to reduce emissions with all the others that had no such obligation. Some of the countries in Annex I, those with high income status and advanced industry, were also included in a separate Annex II, which legally required them to provide green technology to developing countries. The aim was to enable developing states to adopt cleaner energy generation processes.

HALF-BAKED DEALS

The UNFCCC treaty was considered too weak because it did not provide specific reduction targets. It merely aimed to reduce emissions by requiring only Annex I Parties to limit theirs. Efforts to introduce stricter obligations led to the Kyoto Protocol in 1997, as an additional legally binding instrument to the Treaty. The Protocol still imposed emission reduction targets only upon Annex I Parties, but included a number of 'sweeteners'. There were 'market friendly' measures such as granting Annex I Parties credits to

meet their emission reduction targets if they provided developing countries with cleaner technologies. Annex I Parties also had the potential to engage in a greenhouse gas emission trading scheme, where they could buy or sell surplus emissions to meet their targets. This meant they could make profits if they generated less emissions, by selling their surplus to others who had exceeded their targets. The latter would therefore incur expenses, which they could have avoided had they generated less greenhouse gases.

To the IPCC scientific reports however, the Protocol remained a half-baked response. The US, the world's greatest emitter at the time, refused to become a party to the Protocol, objecting to the so-called 'firewall', branding it as discriminatory and harmful to its competitiveness. On the other hand, developing countries saw Annex I Parties as being historically responsible for human-induced climate change and expected compensation for present and future damages they were suffering. Annex I Parties ratified the Protocol, but refused to negotiate any form of compensation. Instead, they established funding mechanisms to assist developing countries in adapting to climate change to reduce risks and losses.

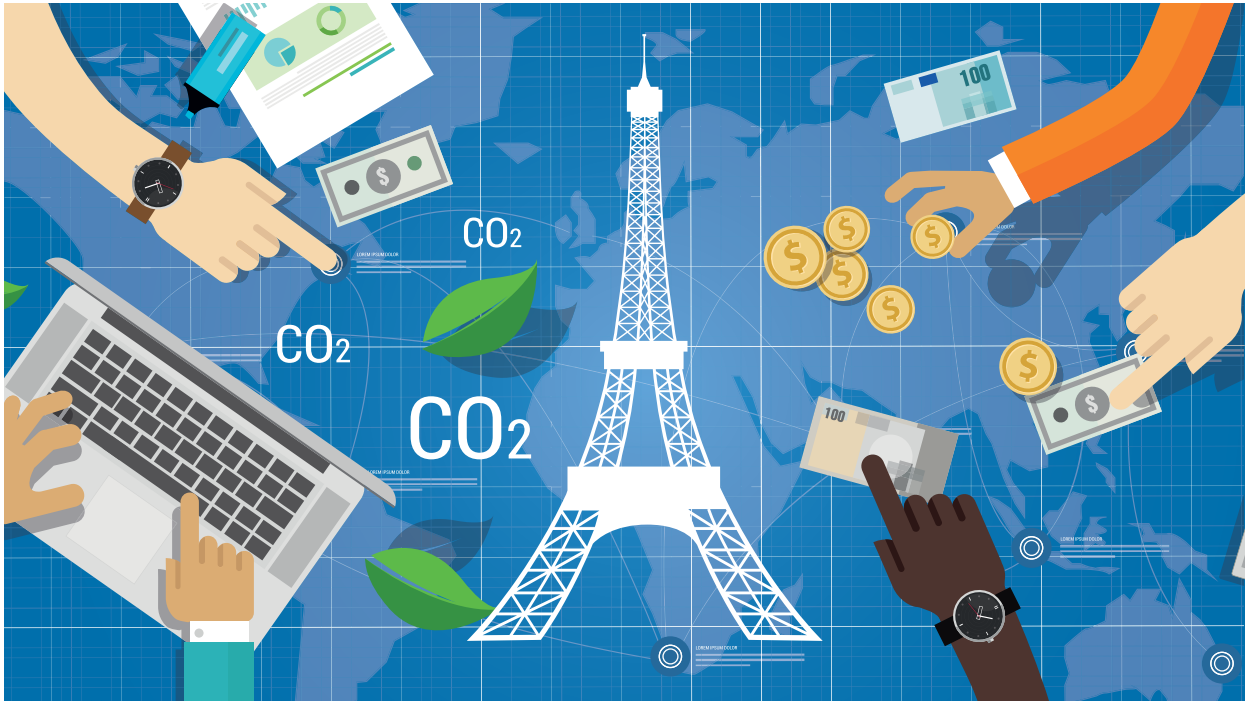
The UNFCCC and the Kyoto Protocol were a far cry from the IPCC's evidence-based recommendations. Even though greenhouse gas emissions were nowhere near

decreasing, the process stalled for the next twenty years, as a complex game of political tug of war ensued each time the Conference of the Parties (COP) met once a year.

High expectations were raised in 2009 when the COP met in Copenhagen. Although the expected new legal deal to set specific targets was disappointingly absent, two important milestones were reached. These would later pave the way to the Paris Agreement. It was agreed that the ultimate aim of an effective global agreement should be to halt the global temperature increase, keeping it below 2°C, and that 100 billion US dollars per year would be provided to developing states to enable them to take both mitigation and adaptation measures towards climate change. This kind of financial support was hypothesised to bridge the gap between developed and developing countries ➤

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and indirectly provide financial assistance in lieu of compensation which cannot be legally upheld.

Two years later in Durban, South Africa, the Parties finally agreed that a new legally binding agreement with no firewall would happen by December 2015. But, while negotiators were later relieved at what was achieved in Durban, the outside world appeared to have lost faith. Climate conferences became the butt of countless political jokes.

LIGHT AT THE END OF THE TUNNEL


In 2015 the Paris Agreement brought hope after nearly 50 years since researchers highlighted the

climate change problem. It was perceived as the long-awaited deal that would ultimately regulate state behaviour, making them take the right steps towards truly addressing climate change. Non-governmental organisations also adopted a more positive attitude. However, jubilation came mostly from politicians and the thousands of negotiators representing the various states, legal advisers, and technocrats. Scientists remained sceptical, describing the agreement with the (in)famous quip, 'too little too late'.

For those who braved the negotiations through thick and thin, the Paris Agreement is the legal instrument that has the potential to finally bridge the chasm between climate science and the climate action

required at the political and legal level.

Finalised through consensus, the Paris Agreement is a huge achievement that saw a shift away from the previous top down approach. This was accomplished thanks largely to the global leadership demonstrated by key personalities, such as Pope Francis with his encyclical letter *Laudato Si*, referring to the urgent need to address unsustainable consumption, and Ban Ki Moon, who, throughout his tenure as secretary general of the United Nations, championed the need for a meaningful multilateral agreement to combat climate change. Endorsements like these added trust into the equation and did away with the firewall, seeing states commit themselves to climate action irrespective of whether they are



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developing or developed countries. Each state set out specific plans and policies, the so-called 'nationally determined contributions' (NDCs), that will be verified and reviewed to carry out what the vast majority of scientific reports had been clamouring about for decades. This methodology allows for greater flexibility, enabling each state to focus on reducing emissions in the most favourable way according to its national circumstances. The NDCs can be revised periodically, but stakes can only be raised, not lowered. The Paris Agreement also establishes a mechanism that will introduce transparent accounting rules and verify the mitigation measures adopted by states. If correctly adhered to, by the end of

the century the plan should lead to a carbon-neutral planet, ensuring that temperatures will not rise beyond 2°C.

The 100 billion US dollars pledged in Copenhagen as aid for developing states is to be provided by a variety of funding mechanisms. Accessibility will be linked to performance based on the implementation of the NDCs. The Paris Agreement also achieved another unique milestone by giving both the private and civilian sectors a role as the drivers of change. The private sector will be key in achieving this paradigm shift to a carbon-neutral planet. Its vested interest in expanding research, job creation, and innovation will serve the world well.

Fifty years is way too long to justify procrastination on a course of action

that would benefit the globe, but the Paris Agreement shows that a multilateral response is the only way to curb a global ailment. Time is necessary to achieve momentum behind all the moving parts involved in concerted global action, the formulation of international norms, and the acceptance of their legally-binding nature. A pro-climate action government can be replaced by a skeptical one almost overnight. A single state can make or break international law. By involving communities, governments will no longer dominate such dialogues. When it comes to climate change, science and the law can once more work hand in hand to overcome this unprecedented, multi-generational threat. It will all depend on human goodwill. 