

Forums

The Paris Agreement on Climate Change: Behind Closed Doors

*Radoslav S. Dimitrov**

Abstract

The Paris Agreement constitutes a political success in climate negotiations and traditional state diplomacy, and offers important implications for academic research. Based on participatory research, the article examines the political dynamics in Paris and highlights features of the process that help us understand the outcome. It describes battles on key contentious issues behind closed doors, provides a summary and evaluation of the new agreement, identifies political winners and losers, and offers theoretical explanations of the outcome. The analysis emphasizes process variables and underscores the role of persuasion, argumentation, and organizational strategy. Climate diplomacy succeeded because the international conversation during negotiations induced cognitive change. Persuasive arguments about the economic benefits of climate action altered preferences in favor of policy commitments at both national and international levels.

The Paris Agreement is fair and just, comprehensive and balanced, highly ambitious, enduring and effective, and with legally binding force.

China's Closing Statement at COP21, December 12, 2015

Imagine the odds. After two decades of acrimonious debates and dismal failures, UN negotiations produced a climate agreement that was adopted and lauded in superlative terms by the European Union *and* India, by China, the US *and* island states. Countries with seemingly irreconcilable differences praised the global arrangement as fair, balanced and ambitious. At the closing session of the Paris Conference on Climate Change, they described the outcome as “revolutionary” (Venezuela), “a tremendous collective achievement” (the EU), “a marvelous act” (China), “a resounding triumph of multilateralism” (St. Lucia)

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introducing a “new era of global climate governance” (Egypt), and “a tremendous victory for the planet... restoring the global community’s faith that we can accomplish things multilaterally” (USA) (UNFCCC 2015a).

The Paris Agreement of 2015 is the first global accord on climate change that contains policy obligations for all countries. It is a hybrid that enshrines both bottom-up and top-down approaches to global climate governance (Bodansky 2011). The new climate deal is a *laissez-faire* accord among nations that leaves the content of domestic policy to governments but creates international legal obligations to develop, implement, and regularly strengthen actions. National policies are subject to a robust international transparency system and global reviews, and successive policy plans must be progressively stronger. The policy agreement has considerable weaknesses and, obviously, it is still too early to assess its effectiveness. Nonetheless, the outcome is a political success in negotiations. Remarkably, all major protagonists endorsed the deal, and countries with diametrically opposed interests supported it. This underscores the significant achievement of reaching compromise on one of the most contentious issues in modern history.

How can we explain this result? This article seeks to initiate the academic conversation and examines the political dynamics in Paris from a participant’s perspective. In my view, understanding the diplomatic process is necessary for explaining the outcome. The analysis presented here highlights two process variables: persuasion and organizational tactics. The research for this report was based on direct participatory observation of negotiating sessions, closed ministerial-level meetings, and secret bilateral consultations during the conference.¹ There are compelling reasons why few scholars who serve on government delegations choose to publish their observations: disclosing politically sensitive information may compromise one’s position and future prospects for participation. This article seeks to raise the curtain and provide backstage insight into climate diplomacy, while maintaining confidentiality and keeping direct quotes anonymous. Here I will describe battles on key contentious issues, identify winners and losers, provide a brief summary and evaluation of the Paris Agreement, and highlight features of the process that help us understand the outcome.

Inside Political Debates

The Twenty-First Conference of the Parties (COP-21) was a culmination of a four-year diplomatic process and was characterized by a genuine collective effort to reach mutual compromise, skillfully orchestrated by the French presidency. The political dynamics were obscured by very restricted access. Civil society delegates were left out of negotiating sessions and could only watch TV screens with live coverage of some sessions. Most government delegates also lost access

1. Political disclaimer: The author served on a government delegation of a developed country during the Paris conference. This article does not contain any information that could compromise the interests of the author’s government or its coalition partners.

in the second week, when additional required passes were introduced and only four per delegation were provided for the key meetings. Major countries such as Germany had to borrow passes from small countries to keep its diplomats fully involved.

Negotiations in Paris addressed a kaleidoscope of diverse issues, with twenty-four spinoff groups working in the first week. Key contentious issues included the global long-term goal of the agreement and level of policy ambition; the legally binding character of national policy actions; climate finance; and the evolution of the policy regime over time (Rajamani 2015).

Legally Binding Obligations

Developed countries were united in Paris in seeking a global agreement that focuses on mitigation; skirts adaptation (important to least developed and island states); preempts legal obligations on finance, compensation, and technology transfer; and includes strong international transparency for national mitigation actions. There were, however, important differences in the North, particularly regarding the legally binding character of the agreement. The EU, supported by a coalition of Latin American countries (AILAC) and most island states (AOSIS) strongly pushed for mandatory and quantified national mitigation policies, and a legal obligation to communicate them internationally *upon ratification*, in order to make treaty participation contingent on binding domestic action. Europeans also insisted on regular and synchronized policy updates every five years, to ensure that successive mitigation commitments represent a progression beyond previous policy efforts.

Publicly, the US tried to appear constructive and avoided strongly worded opposition statements. In private bilateral consultations, however, they were so adamant against legally binding mitigation and finance that leading diplomats stated with complete certainty: “If we insist on legally binding, the deal will not be global because we will lose the US” (top EU official). In the end, it was the US that weakened mitigation commitments for developed countries in the new agreement. Literally in the last minutes before the final session that adopted the agreement on December 12, the US demanded a single word change: Developed countries “should” rather than “shall” undertake economy-wide quantified emission reductions. The start of the session was delayed for 90 minutes to address this potential crisis, and the EU and the G77 reluctantly accepted. This significant change implied less legally binding action but was never publicly discussed and was hastily slipped in as a ‘technical correction,’ together with punctuation changes!

China wanted a strong legally binding character for general obligations to act but weak international transparency of national policies. As one (anonymous) high-level official put it in internal meetings: “China is maximalist on legally binding and minimalist on transparency.” During late night sessions behind closed doors, they were strongly against a proposal for external expert review teams with

access to developing countries, opposed regular policy stocktaking, and wanted to delete references to a global policy review.

Long-term Goal

The coalition of island states (AOSIS) wanted zero net global emissions by 2060–2080, while the EU preferred science-based 80- to 95-percent emission reductions by 2050. A coalition of Like-Minded Developing Countries (LMDCs, including India, China, Saudi Arabia, and Malaysia) opposed quantification and wanted only weak qualitative goals. Similarly, the US wanted a more vague “decarbonization this century,” to signal a global transition away from fossil fuels without setting a clear deadline. One important political development in Paris was the surge of countries who wanted to limit the global temperature rise to 1.5 degrees Celsius above pre-industrial levels. For the first time, now the majority (106 states, to be precise) demanded preventing a temperature rise of 1.5°C. Northern countries preferred 2 degrees instead. The US was mildly opposed even to that, proposing that 2 degrees appear only in the preamble and not in the substantive sections of the treaty. China, India, the US, and Iran even opposed a proposal to commission a special IPCC report on the impacts of a 1.5-degree rise.

In the face of the majority, it was politically inexpedient to oppose publicly 1.5°C. Hence, industrialized countries engaged in a political exercise of linguistic gymnastics: how to craft ‘creative language’ that mentions 1.5 degrees without making it the official operational goal. Similarly, the issue of ‘loss and damage’ was important to many countries who hold the North historically responsible for negative climate impacts. Island states wanted an institutional process to address permanent loss and irreversible damage. All developed countries closed ranks, strongly united against provisions that could lead to liability and compensation, and blocked the creation of institutional arrangements. In closed consultations, rich countries carefully strategized to formulate text that gives nominal recognition to the issue, while precluding legal obligations.

Finance

One dramatic and hidden episode of the Paris Conference pertained to finance. Less than 24 hours before the end, a very tense debate among the ministers of rich countries raged behind closed doors. Several Northern countries opposed making financial commitments, and even suggested reversing previous pledges of climate finance. The entire outcome hung in the balance, since finance was a redline issue for the G77 and China. Some European diplomats fought and argued: “Any change in our position on finance will have seismic effects on the negotiations and will wreck the entire deal. What happens in Paris will be in the history books for a long time. Let’s not give any historian a reason to write that we ruined the global response to climate change” (personal notes). Such

latter arguments won, and all developed countries accepted a G77 demand for establishing a goal “from a floor of \$100 billion dollars per year” by 2025.

Differentiation

A cardinal debate overarching various issues pertained to the future of differentiation between developed and developing countries. The LMDCs sought a continued, sharp distinction between developing and developed countries that defined previous international treaties. India, for instance, demanded financial contributions that are obligatory for developed countries and voluntary for developing ones. Northern countries wanted to replace simplistic ‘binary differentiation’ with a more nuanced and flexible differentiation that reflects national capabilities for both mitigation and finance. The Umbrella Group,² the EU, and Switzerland wanted an expansion of the donor base and rejected “unacceptable bifurcated proposals [by the G77] for quantified commitments for public finance by developed countries only” (internal delegation document). The Umbrella Group (especially the US and Japan) were more hardline and vocal on the issue than the EU or Switzerland whose delegations often let the US fight that battle and privately said “If the US can live with it, we can live with it.”

Ultimately, countries demonstrated reciprocal willingness to compromise. In their closing statements, most delegations declared the Paris Agreement to be balanced because most players made sacrifices and gained something in return. China failed to obtain legally binding actions in the North and had to concede global stocktaking and stronger international transparency than they liked. Yet, they largely won the battle over differentiation in both finance and mitigation. The simple binary division between developing and developed countries is now gone but a subtle (and more ambiguous) differentiation remains between developed and “other” countries, “in light of national circumstances.” The US managed to weaken the legally binding character of national actions but lost on their mandatory and progressive evolution as well as on financial differentiation. The EU won on transparency, finance, and loss and damage - but failed to win quantitative global emission targets and restrictions on bunker fuels from international aviation and shipping. Island nations lost on adaptation and loss and damage but their delegates chanted a song outside the plenary hall, celebrating their success in obtaining a strong reference to a 1.5 degree limit as an aspirational goal of the treaty.

The Secret Ingredients

The Paris outcome was made possible by the heavy use of secrecy. The agreement is a composite *mélange* of building block pieces, many of which were

2. The Umbrella Group is a coalition including Australia, Canada, Japan, New Zealand, Norway, Russia, Ukraine and the United States.

negotiated in secret over the two weeks and preceding months. Secrecy is common in diplomacy, but the French finessed it to a new level – and with compelling efficacy. What was different this time was the combination between secrecy and legitimacy: the French Presidency made genuine efforts to accommodate everyone’s central interests through reciprocal trade-offs. They ran the conference in a tightly controlled manner, consulting everyone but keeping the results of consultations generally unknown to delegations who were not directly involved. Diplomats from small and major countries alike such as Brazil, the European Union, or key island states, confided that they did not know all the breakthroughs that were reached in private. Even chief negotiators from the US were seen reading the newest draft of the PA as soon as it was distributed in plenary (two copies per delegation). The crucial last two days of COP21 were dedicated entirely to private consultations, without any official negotiating sessions.

Some of the key issues debated over the past 20 years were resolved in Paris in secret meetings among a few countries. Six working groups on the key issues were established during the second week. One of them concluded its work without a single formal session because everything was settled privately. I participated in a small “invisible” meeting regarding a secret deal between the US and Saudi Arabia. The meeting took place in a small room of 5 by 5 meters, among only 10 individuals. My delegation was asked to accept or reject the bilateral deal, without rights to negotiate or modify. No record was kept, there was no paper copy of the legal text in question that was only displayed on a small screen, and we were explicitly told not to take photos. We endorsed the deal, and so did other ‘key players.’ Yet, when the French Presidency distributed the next draft of the agreement, it did not reflect the closed deal. In fact, the official draft contained text that was exactly the opposite from what was agreed privately!

The value of secrecy was in reducing the number of actors, widely recognized as an obstacle in negotiations (Victor 2011). COP21 President Laurent Fabius and his team sought to secure deals only among the key actors on each contentious issue. In a crucial part of the strategy, they kept many delegations in the dark about tradeoffs and compromises already made, until the last hours when they released the final text - and then presented everyone with a *fait accompli*. Pieces of privately negotiated text were thrown into the final text on the last day, when it would be too late to oppose without appearing to spoil the deal. We were explicitly and repeatedly told that the final text is a “take-it-or-leave it” deal that was not open to renegotiation. The overall purpose of these tactics was to avoid provoking early opposition and to leave no time for reopening major issues.

This raises important questions about transparency and legitimacy in global governance (Bernstein 2004). Secretive tactics potentially undermine the effectiveness of policy agreements if they leave governments discontent, and therefore less committed to implement. The reason why this approach worked in Paris was its productiveness: it delivered results and produced an

agreement based on mutual compromise. The organizational approach did not trigger the public accusations of unfairness and exclusion that helped wreck Copenhagen in 2009. In the closing session that adopted the PA, most delegations declared the process as fair, inclusive, and transparent. The political process was accepted as legitimate because it delivered results that satisfied key demands of most countries.

The Paris Agreement: Summary and Evaluation

The outcome of the conference is captured in a COP Decision on both pre-2020 and long-term policy, with the Paris Agreement (PA) as an annex to the Decision (FCCC/CP/2015/L.9/Rev.1; C2ES 2015). The package of the two texts constitutes the new global arrangement. It is comprehensive in thematic scope and contains provisions on mitigation policy, climate finance, transparency, reporting and review, and international cooperative mechanisms (read, carbon trading), as well as weaker sections on adaptation, capacity building, technology transfer, and forest policy. The Preamble of the PA also recognizes climate justice, the rights of indigenous peoples, gender equality, the empowerment of women and intergenerational equity.

Key provisions include a global objective of holding the temperature increase to “well below 2 C” and to “pursue efforts to limit the temperature increase to 1.5 C” (Article 2), and an aim of reaching global peaking of emissions “as soon as possible” (Art. 4.1). “All Parties are to undertake and communicate ambitious efforts” (Art. 2) and “Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve” (Art. 4.2), to be revised every five years, with strongly worded language throughout the text guaranteeing progression over time. Developed countries “should continue taking the lead” with economy-wide absolute emission reduction targets, while developing countries are under a weaker obligation and “should continue enhancing their mitigation efforts, and are encouraged to move over time toward economy-wide emission reduction or limitation targets in light of different national circumstances” (Art. 4.4).

“Developed country Parties shall provide financial resources to assist developing countries” while “other Parties are encouraged” to provide such support voluntarily (Art. 9). The accompanying Decision includes a provision that, after entry into force, Parties shall set a new collective financial goal “from a floor of USD 100 billion per year” (para. 54). The PA also establishes a market-based mechanism for sustainable development and carbon trading, proposed by Brazil and strongly supported by Japan and other developed countries, whose modalities are to be finalized later. Global stocktaking is to take place in 2023 and every five years thereafter, with comprehensive scope to reconsider mitigation, adaptation and finance policies. Compliance mechanisms are weak, with a “facilitative” committee whose work is “non-adversarial and non-punitive” (Art. 15).

Politically, the PA generally favors developed countries of the North, who won most of the key battles. The new climate deal meets all key demands of the US and is based on a model of global climate governance that Japan proposed in the early 1990s: a “pledge and review” system (Andresen 2015). The agreement is least fair to the African Group and other Least Developed Countries. It does not include references to their special circumstances, is weak on international dimensions for adaptation policy, and precludes any future claims for liability and compensation.

Strengths of the agreement pertain to principled obligations to act, regularity and progression of national policy development, international transparency and accountability. The PA is weaker on the long-term global goal, adaptation policy, compensation for loss and damage, and technology transfer. Crucially, the PA lacks specificity on the international division of labor for reducing emissions. The sharing of responsibility has been a central challenge in global negotiations (Gupta 2012). After decades of negotiations, countries addressed the division of labor for fighting climate change in a surprising way: they mostly avoided the issue. The exact connection between national mitigation policy “contributions” and the global policy goals is not well defined.

The complexity and experimental nature of the PA makes its evaluation difficult and has already raised controversy. In a current debate among international lawyers on the character of the PA, insider legal scholars who participate in the UNFCCC negotiations regard the PA as a legally binding treaty that creates obligations, with a complex mix of mandatory and voluntary provisions (Bodansky 2016; Rajamani 2016). Like any international treaty, the PA depends on ratification and entry into force.³ A double threshold for entry into force mirrors the Kyoto Protocol formula: The agreement would become operational when at least 55 countries accounting for at least 55 percent of global emissions ratified. Furthermore, important elements remain to be finalized in negotiations over the next years that may rectify some current weaknesses.

Explanations and Implications

The apparent political achievement of climate negotiations re-emphasizes the importance of traditional state diplomacy and intergovernmental multilateralism in climate governance. The Paris Agreement comes after a series of repeated failures to produce a global treaty over the past decades. This poor record of climate diplomacy had created a virtual consensus among academics, who have argued that UN talks cannot succeed (Hovi et al. 2013; Victor 2011; Hoffmann 2011). Many scholars turned away from interstate institutions and toward

3. On the first day the PA was open for signature, 175 governments signed it. As of June 21, 2016, 177 signatories and 18 states had ratified the PA, including Norway. See UNFCCC, “Paris Agreement – Status of Ratification,” available at http://unfccc.int/paris_agreement/items/9444.php, last accessed June 22, 2016.

productive and theoretically informative research on transnational governance, with a strong emphasis on subnational and nonstate initiatives, and on comparative politics (Bulkeley et al. 2014; GEP 2015). Reminders of the importance of the UNFCCC process (Depledge and Yamin 2011; Dimitrov 2015) and the value of integrating it in the study of climate governance (Betsill et al. 2015) have not reversed a general academic skepticism about UN diplomacy. It is still not too late to vindicate some of this pessimism. Obviously, it is too early to assess status of ratification, entry into force, and policy implementation. The weaknesses of the agreement and a lack of political commitment may undermine its environmental effectiveness.⁴ Nonetheless, the Paris outcome constitutes a political success in negotiating a meaningful accord. This diplomatic breakthrough raises the need to explain the switch from failure to success in regime formation.

What explains the outcome? Multicausality through an interplay of contextual and process variables likely holds the answer. Three key factors are worth emphasizing here. First, the 2014 bilateral agreement between China and the US helped jumpstart the UN process and evokes notions of ‘club approaches’ (Victor 2011; White House 2014). Second, as the evidence above suggests, the logistics of the diplomatic process and entrepreneurial leadership by host governments deserves special attention (Depledge 2005; Park 2015). The timing, pacing, sequencing and coordination of sessions, as well as the strategic rhetoric, were par excellence. Many diplomats praised the French for the organizational tactics and credited them for enabling success.⁵

Third, persuasive argumentation and social learning were key factors. In my view, UN diplomacy had already succeeded, even before Paris. Negotiations had facilitated policy change even before producing a formal agreement - because persuasive arguments had changed actors’ minds about the wisdom of climate policy (Dimitrov 2015). Ideas tabled during the negotiations since 2005 affected policy preferences and altered cost-benefit calculations. Korea’s concept of ‘green growth’ and European arguments about ‘win-win’ solutions changed perceptions of the economic benefits of climate policy (Dimitrov 2012). The ‘win-win’ concept was central to the EU negotiating strategy over the past years. Their arguments, backed by hard data and combined with ambitious unilateral policies in Europe, persuaded policymakers in other countries. A cardinal result of this social learning was the spate of domestic developments around the world (Dubash et al. 2013; see also Rising Powers Initiative 2015). By the opening of the Paris conference, 186 governments had declared national plans covering 94 percent of global emissions (UNFCCC 2015b). These policy pledges laid an important foundation for a global UN agreement.

4. The aggregate effect of current national pledges is expected to be a global mean temperature rise of 3.7–4.8 degrees this century (UNFCCC 2015b, 8).

5. Among many examples, New Zealand stated: “We stand in awe of the French presidency’s unrivalled diplomatic skills in bringing us to a successful conclusion” (closing Plenary statement, December 12, 2012).

The cognitive mechanisms through which persuasion and dialogue affected actor preferences and policy behavior operate across levels of analysis. Notably, they could help explain both the international success in Paris and domestic developments in multilevel climate governance. Can we understand the US-China bilateral agreement without persuasive EU arguments about the economic benefits of climate policy? The outcome is a case of ecological modernization, with all its positive and negative aspects (Matthews and Paterson 2005). Future research should continue to explore the interplay of structural and process variables, including the micro-dynamics of negotiation, logistical organization, and the role of argumentation in affecting policy preferences.

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