From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy

https://www.e-ir.info/2023/02/07/from-rio-to-paris-international-climate-change-treaties-between-consensus-and-efficacy/

SILVIA BACCHETTA, FEB 7 2023

This is an excerpt from _Global Climate Justice: Theory and Practice_. You can download the book free of charge from E-International Relations.

Combatting climate change requires a global coordinated effort. For this reason, international politics is the crucial setting to delineate a strategy that, on the one hand, involves as many countries as possible and, on the other hand, promotes effective measures to contain climate change. These two aspects represent two dimensions of international diplomacy: consensus (i.e., the willingness to be part of an international agreement) and efficacy (i.e., the need to devise norms that will be functional in tackling climate change). This chapter proposes to reconstruct how the consensus/efficacy trade-off has been balanced in the treaties that have progressively dictated international climate change policymaking.

Introduction

In 2021, the Intergovernmental Panel on Climate Change (IPCC) published its Sixth Assessment Report with updated data about climate change, stating that 'unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C or even 2° C will be beyond reach' (IPCC 2021). The report highlighted that our climate system is irreparably damaged, but it also stated that there is still time to slow down climate change by limiting warming through forward-looking climate policies. Combatting climate change requires a global coordinated effort that calls for a solution at the international level. In this sense, international diplomacy has tackled climate change by developing a global institutional framework (namely, a climate regime) to coordinate countries into developing apt pro-environmental policies (Lahn 2020; Gupta 2010; Randalls 2010; Mayer 2018). Each major climate regime (i.e., the Kyoto Protocol, the Copenhagen Accord and the Paris Agreement) applies a different approach in dealing with climate change, even though the treaties are composed by the same basic building blocks combined into three different yet organic regimes (Held and Roger 2018, 528).

To be successful, a climate regime ought to fulfil two core requirements: _consensus_ and _efficacy_. According to this first requirement, countries are expected to be part of an international climate change regime. For this reason, obtaining a country's consensus is crucial for a successful international agreement because it signals that a country is willing to do something about climate change. The second requirement, instead, deals with the kind of policies that are promoted by a climate regime. If the end-goal is to contain climate change, then it is necessary to promote measures that are conducive to effectively hit the target of climate change mitigation or adaptation set by climate science. However, balancing these two requirements is difficult and each climate regime tried to modulate the interplay between consensus and efficacy. Analysing how the consensus/ efficacy interplay shapes the design of international climate change policymaking provides an insightful angle for reconstructing the development of climate negotiations (Mayer 2018).

Efficacy, on the one hand, is important because it directs political action towards a specific target. Insofar a climate agreement, once implemented, provides a good chance of reaching a given climate target (e.g., limiting average temperatures to between 1.5°C and 2°C above pre-industrial levels) then it can be considered effective, regardless

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

of its specific policy plan – as s there can be different ways to allocate mitigation and adaptation burdens to reach a certain target (Gao, Gao and Zhang 2017). Consensus, instead, is related to a genuinely political dimension. It signals the willingness of a country to be part of an international agreement, assuming that compliance with the agreement's prescriptions will follow. Clearly, the more a climate regime accommodates countries' preferences, the more willing participants there will be. However, effectively combatting climate change requires to follow a strict schedule of (often demanding) environmental reforms, which can hinder widespread participation. This means that ultimately there is a trade-off between consensus and efficacy (Mayer 2018).

This chapter proposes a reconstruction of the history of international climate regimes by overviewing how the consensus/efficacy trade-off has been modulated during the last 20 years of international climate change policymaking. The first section will focus on the early years of climate change negotiations, which spans from the Rio Declaration to the development of the first major climate regime, the Kyoto Protocol. On the one hand, the Rio Declaration (1992) is a cornerstone document which provides guidelines for combatting climate change, including both consensus and efficacy among the guiding principles for international climate diplomacy. The Kyoto Protocol (1997) is the first major climate regime modulating the consensus/efficacy trade-off by prioritising efficacy over consensus. The second section will focus on the post-2000 phase of climate regimes, which includes the Copenhagen Accord and the current climate regime, the Paris Agreement. This second stage is characterised by a shift towards consensus after the Kyoto Protocol's failure. The Copenhagen Accord (2009) tried to push the consensus dimension while expecting countries to make voluntary pledges in line with the ambitious efficacy goals of the Kyoto Protocol.

The false start of the Copenhagen Accord prompted a reassessment of the institutional mechanisms at play. The result of this reassessment is the current climate regime, the Paris Agreement (2015), which balances efficacy with consensus within a novel normative framework. The final section proposes a commentary on the problem of non-compliance that affects climate change policymaking. Despite having perfectioned its institutional mechanisms, we are still far from effectively combat climate change because, in the end, countries do not implement the necessary environmental policies. To solve the non-compliance issue, there are two possible ways: a conservative view, which tries to correct the flaws of the current climate regime, and a reformist view, which instead argues that the climate regime ought to be radically changed in order to prompt compliance. In conclusion, a brief appendix discusses the outcomes of the COP26 held in Glasgow in 2021.

The Early Years: From Rio to Kyoto (1992–2001)

The first phase of international treaties on climate change begins with the Rio Declaration and ends with the failure of the Kyoto Protocol. The early years of climate negotiations are crucial for understanding the guiding principles and the inner workings of international cooperation to combat climate change. The Rio Declaration set out the cornerstone principles upon which international cooperation was to be built (United Nations 1992a). These principles, including consensus and efficacy, still provide a charter for climate action, and they form the basis of every climate change regime. The Kyoto Protocol was the first major international agreement to try to address climate change (IISD 1997). Despite being initially considered a diplomatic achievement, many countries defected from the Kyoto Protocol over the years, especially developed countries which were expected to bear most of the burdens of greenhouse gas (GHG) emissions reductions. The downfall of the Kyoto Protocol was due to the fact that the regime's prescriptions clashed with the interests of well-off countries. In addition, the Kyoto Protocol could not adequately balance consensus and efficacy, as it focused on efficacy, pushing concerns regarding the role of consensus to the background.

The Rio Declaration

To foster international awareness about climate change, the IPCC published its first scientific report about climate change in the early 1990s. The IPCC's reports stated that the concentration of GHGs in the earth's atmosphere was increasing rapidly, posing a danger for the stability of the planet's climate. The data provided by the IPCC's first report prompted the development of a stable institutional framework for establishing international climate policy (Böhringer 2003, 457).

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

In this initial phase, the main task was to pinpoint the key elements that would guide the international climate regime for years to come. The result of this effort was the Rio Declaration, which translated various values for environmental protection into a systematic document listing 27 cornerstone principles (United Nations 1992a; Viñuales 2015). These principles tackle many issues that soon became familiar for those interested in climate justice and environmental ethics. For example, the Rio Declaration mentions the right to sustainable development (Moellendorf 2014; 2011), the problem of intergenerational justice (Brandstedt 2015; McKinnon 2012) and a formulation of the precautionary principle (Gardiner 2006; Steel 2015; Hartzell-Nichols 2017).

For this chapter's purpose, the most relevant principles are the twelfth and the ninth, which discuss respectively consensus and efficacy. The twelfth principle declares that 'states should cooperate to promote a supportive and open international economic system' (United Nations 1992a) to address in a more conducive way problems of environmental disruption. Most importantly, it also declares that 'environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus' (United Nations 1992a). In this way, the Rio Declaration sets consensus as one of the main requirements to guide international policymaking regarding environmental issues. International climate agreements should, in other words, seek a consensus among those who participate, trying to accommodate the needs of each country to achieve cooperation. Additionally, the Rio Declaration implicitly discusses the efficacy dimension. The idea that a climate regime has to promote effective measures can be tracked down in the ninth principle which states that cooperation among countries should also include the improvement of scientific understanding, in order to deepen our 'scientific and technologic knowledge' (United Nations 1992a).

The importance of the Rio Declaration lies especially in its normative dimension, as it provides a value-laden paradigm for international climate regimes, even though it does not mention how to embed its principles in the inner workings of international diplomacy. To fill this void, it was drafted another cornerstone document, the United Nations Framework on Climate Change Convention (UNFCCC), which deals with the organisational structure that should be adopted by climate change regimes (United Nations 1992b). The UNFCCC also established some of the familiar (and controversial) requirements for climate policy implementation, such as the idea of legally binding mitigation commitments (Bodansky and Rajamani 2018) and the differentiated mitigation responsibilities between developed and developing countries (Gupta 2010, 640). Both the values and the procedures of international environmental diplomacy were then applied to the first UN climate regime, the Kyoto Protocol, which tried to incorporate the values listed in the Rio Declaration with an effective institutional, procedural, and legal framework to prompt climate action.

The Kyoto Protocol

The Kyoto Protocol was the first attempt to deal with the problem of curbing GHG emissions through a coordinated global effort. It is, for all intents and purposes, 'the climate regime's first systematic approach to addressing the problem of global warming' (Held and Roger 2018, 529). The Kyoto Protocol was the result of a widespread and far-reaching diplomatic effort, as this climate regime tried to involve many countries and tried to address most issues connected with climate change. On the downside, it also showed that the traditional tools of diplomacy were not adequate for 'crafting deals that actually make a difference' (Victor 2011, xxviii). More specifically, it applied to climate change the strategy of 'finding agreement where agreement is feasible and pushing other issues into the future' (Victor 2011, xxix) to get the treaty up and running, focusing on 'symbolic goals, such as limiting global warming to 2 degrees, while largely ignoring the more important practical need to set goals that governments can actually honor' (Victor 2011, xxviii). In this sense, the Kyoto Protocol can be considered both a success and a failure. It was undoubtedly a win for international diplomacy, as the behind- the-scenes negotiations led to the ratification of a viable and functioning climate regime. Yet, the implementation of the climate regime's prescriptions was very difficult to achieve, as effective measures to contain climate change would have mostly impacted the 'economic competitiveness' (Victor 2011, xxx) of participating countries – especially the well-off ones.

The Kyoto Protocol was initially drawn up following the blueprint of the UNFCCC, according to 'key parameters defining the kind of agreement states would pursue, including its legal form (it would be binding) and the parties it was intended to apply (namely, wealthier 'Annex I' states)' (Held and Roger 2018, 528). It divided participating countries into developed and developing countries – respectively called Annex I and non-Annex I countries (IISD

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

1997). The GHG emissions reduction requirements were assigned according to each country's level of development, therefore assigning the bulk of mitigation and adaptation burdens to the wealthier Annex I countries (Gupta 2010). More specifically, it established an overall GHG emissions reduction target (5% per cent below 1990 levels to be achieved by 2012) with additional individual targets that, once negotiated, countries were legally beholden to meet. The treaty allowed some flexibility for the specific policy strategies each country could implement to fulfil its commitments, though specifying that the parties were considered 'responsible under international law for meeting specific emission outcomes' (Held and Roger 2018, 529).

Despite being considered a game-changer treaty, it was clear that the lack of certain mechanisms could be a hindrance for the implementation of The Kyoto Protocol. For example, the Kyoto Protocol did not allow developing countries to make voluntary commitments. Additionally, the distinction between Annex I and non-Annex I countries led to some issues for the allocation of mitigation and adaptation burdens, as some of the top polluting countries (e.g., China, India and Brazil) had no mitigation commitments to meet because they were listed as non-Annex I countries. Moreover, the Kyoto Protocol lacked an effective compliance mechanism. So, if a country failed to meet its targets, it could simply withdraw from the agreement without suffering any penalty (Held and Roger 2018, 529). These internal contradictions of the Kyoto Protocol contributed to the climate regime's downfall in the subsequent years, when many Annex-I countries defected. The most significant defection happened in 2001 when the United States withdrew from the Kyoto Protocol because, according to the US government, the requirements of GHG emissions reduction were too costly and too demanding for the country's economy. (Böhringer 2003; Gupta 2010). After 2008, many countries, including Japan and Russia, refused to settle on new targets (Savaresi 2016, 2), bringing the negotiations to a gridlock that resulted into leaving behind the Kyoto Protocol in order to draw up a plan for an alternative climate regime.

If we analyse the Kyoto Protocol using the two dimensions of consensus and efficacy, we can see that it leaned more on the efficacy side, especially when compared to subsequent regimes. The Kyoto Protocol is efficacy-led as the mitigation targets are applied top-down to countries. Moreover, making the Kyoto Protocol a binding agreement might be seen as a way to enforce compliance with the regime's commitments as much as possible. The measures devised by the Kyoto Protocol were thought to be high-reaching and many Annex I countries considered the implementation of such measures to be too costly. Imposing these demanding mitigation burdens without considering how many resources each Annex I country was willing to actually allocate to climate change mitigation or adaptation led many countries to withdraw from the agreement. For what concerns consensus, there is little to say. The limited flexibility of the Kyoto Protocol did not give much room for manoeuvre to set more country-specific mitigation or adaptation goals. With its top-down architecture, the Kyoto climate regime is concerned with consensus insofar as it brings a country's diplomats to the negotiating table. Once the regime was ratified, every decision about goals, targets or the allocation of mitigation or adaptation burdens was imposed top-down on countries. With this little flexibility, if a country did not meet the top-down requirements, it had only one alternative option: shirking from the agreement.

The consensus/efficacy trade-off instantiated by the Kyoto Protocol suggests that an imbalance between the elaboration of efficient mitigation policies and states' willingness to be part of an agreement leads to an ineffective agreement. Imposing demanding obligations on countries without considering their available resources for climate change mitigation and adaptation or without giving them some freedom in setting their targets is a failing strategy. Indeed, many countries, rather than damaging their economy, preferred to renege on the climate regime, leaving only few countries to abide by the Kyoto Protocol. For an agreement that had the ambition to create a global, comprehensive and effective solution to combat climate change, the Kyoto Protocol was an institutional failure (Rosen 2015). Yet, the Kyoto Protocol represented a learning experience for international climate politics. It introduced in the global climate regime some institutional mechanisms that, with some improvements, were 'a valuable starting point for shaping climate policies in the future' (Böhringer 2003, 451).

The Post-2000 Breakthrough: From Copenhagen to Paris

The Kyoto Protocol's failure kick-started a new phase for the global climate regime. The Kyoto Protocol demonstrated that pursuing efficacy at the expense of consensus would produce a regime with few countries joining

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

it, so the efforts of international diplomacy shifted towards incorporating mechanisms that would increase the number of participating countries. The Kyoto Protocol's experience had taught that countries should be part of the decision process regarding the allocation of mitigation and adaptation burdens. Therefore, it became important devising a more flexible climate regime to accommodate the specific needs and demands of each participating country. The first attempt to apply this new model of international climate politics is the Copenhagen Accord, a short-lived climate regime ratified in 2009 (IISD 2009).

Initially, the Copenhagen Accord aimed at the creation of a bottom-up, consensus-based agreement. Despite the good intentions, it was clear since the beginning that reaching any kind of substantial agreement would be very difficult. In contrast the Kyoto Protocol's successful negotiations, international diplomacy could not find a common point of agreement in order to resolve each country's objection. Eventually, the Copenhagen Accord became just a *pro forma* agreement that did not bring forward the environmental agenda to contain climate change. The second attempt to create a novel climate regime came in 2015 with the Paris Agreement (IISD 2015), which is still the operating climate regime. After the Copenhagen Accord's demise, diplomats learned their lesson and they addressed most of the institutional, factual, and political problems that had hindered the previous climate regimes. The Paris Agreement's architecture and institutional mechanisms, indeed, are thought to elicit widespread countries' participation, and to effectively combat climate change, therefore keeping together both concerns about consensus and efficacy.

The Copenhagen Accord

The intention behind the Copenhagen Accord was to promote an agreement that purported 'a shared vision, adaptation measures, mitigation measures, technology development and transfer, and financial assistance and investment to be adopted in Copenhagen 2009' (Gupta 2010, 646). Indeed, the common understanding was that countries had to be more involved in negotiating climate targets, therefore, instead of imposing top-down mitigation burdens and legally binding commitments to each participating country, the new climate regime had to apply a more participatory structure, giving countries more flexibility to model climate change policies according to their own needs and resources (Savaresi 2016). Even though the classification between Annex I and non-Annex I countries still remained, it became less relevant in allocating mitigation and adaptation burdens (Rajamani 2010, 831–32). Under the Copenhagen climate regime, the Kyoto Protocol's binding commitments became *nationally determined contributions* (IISD 2009). The key feature of NDCs was that each country could decide how to contribute to combatting climate change, making participation more appealing – therefore focusing on consensus rather than on efficacy.

The Copenhagen Accord's negotiations began with the expectation of building a bottom-up agreement rooted in international cooperation and national participation, focusing on specific opportunities to cut emissions through domestic policies (Levi 2010). This expectation was largely misguided, as from the beginning of negotiations it was clear that there would be underwhelming results: negotiations were difficult, many countries vetoed the proposed measures (namely GHG emissions cuts), and there was general dissatisfaction with the results of the meetings. For example, the first draft of the Copenhagen Accord proposed an 80% reduction in GHG emissions, which was lowered to 50% during negotiations. The participating countries could only agree on maintaining the average global temperature below 2° C above pre-industrial levels, without adopting any more specific short- or medium-term targets (Gupta 2010; Randalls 2010). In the end, due to countries' reluctance to accept binding but efficient short- or medium-term targets, the Copenhagen Accord became just a *pro forma* agreement, despite the few persisting elements it introduced – such as the 2°C target and the idea of creating a climate regime 'open to all' (Held and Roger 2018, 530–31).

The Copenhagen Accord promoted 'a model of global climate governance that would operate, at bottom, according to strictly voluntary governance logic' (Held and Roger 2018, 530). By applying a bottom-up strategy, the Copenhagen Accord focused entirely on the dimension of consensus. Yet, this bottom-up strategy soon backfired as it was difficult to impose effective mitigation targets within this fully voluntary institutional framework. The result was an underwhelming treaty, with many participating countries but no bite in terms of combatting climate change, which is the bottom-line of any climate regime (Vidal, Stratton and Goldenberg 2009). Despite being a failure, in the big

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

picture of the history of international climate change treaties, the Copenhagen Accord paved the road towards the Paris Agreement. The Copenhagen Accord's proceedings signalled that the winning strategy to have a cooperative agreement was to enhance consensus through the creation of a flexible regime. However, a climate regime should also deliver on the efficacy dimension, namely it should promote mitigation and adaptation targets to reduce GHG emissions effectively. In this sense, the Copenhagen Accord could not deliver any significant goals for GHG emissions reduction.

The Paris Agreement

The Kyoto Protocol applied a top-down strategy to combat climate change, whereas the Copenhagen Accord tried to punt into place a bottom-up mechanism. Both architectures offered some advantages, but in the end the disadvantages were greater, leading both climate regimes to fail. Nevertheless, these previous regimes were useful because they paved the road to build a novel climate regime, namely the Paris Agreement, that focused both on consensus and efficacy. The key task of the Paris Agreement is to grant some flexibility to foster broad agreement and widespread participation without sacrificing the promotion of viable and effective mitigation and adaptation goals – that should possibly be set at each country's terms (Dimitrov 2016), while addressing also pressing matters of global distributive justice (Okereke and Coventry 2016; Okereke 2010; Moellendorf 2012).

With the development of the Paris Agreement, policymakers tried to pursue these objectives through a novel climate regime that integrates both a bottom-up and a top-down mechanism – albeit prioritising the former. As a matter of fact, the Paris Agreement consists in a binding agreement with mandatory provisions regarding mitigation and adaptation goals that each country can adapt to its own needs (Höhne et al. 2017; Rajamani 2016b). For this reason, the tool of *nationally determined contributions*, introduced in the Copenhagen Accord, was enriched with a Kyoto-like strategy that consists in setting mandatory long-term goals (IISD 2015). The key concept for the Paris climate regime is flexibility, so as to encourage international cooperation without vexing national governments with top-down impositions. This means that developed and developing countries can tailor their goals to their own needs, provided they stay on track with the overall mandatory goals set by the Paris Agreement (Streck, Keenlyside and von Unger 2016; Bodansky 2016). To guarantee this flexibility, the Paris Agreement contained a revised version of Copenhagen's nationally determined contributions*,* namely *intended nationally determined contributions* (Victor 2015). The parties can pledge their own mitigation or adaptation goals that had to be reached by a certain medium-term deadline. Such pledges 'are not up for negotiation' (Held and Roger 2018, 532) and they had to be 'taken as is' (Held and Roger 2018, 532). This means that the international regime has to accept each country's pledge with no interference. In this way, each country can adapt its policy strategy to its own needs: some countries can make ambitious pledges, while others can play it safer and pledge more modest targets.

The introduction of *intended nationally determined contributions* is a great concession in favour of the dimension of consensus. According to each party's ability, any country can be part of an international climate regime (with all the side perks, such as international recognition, participation in international talks, geopolitical weight, and potentially fruitful economic connections) without the hassle of meeting top-down commitments. Yet, the Paris Agreement was also able to promote the efficacy dimension. Indeed, even though each country is free to pledge whatever mitigation or adaption goal it deems appropriate, these pledges are integrated into a 'legally binding framework that builds around them a range of important procedural obligations' (Held and Roger 2018, 532; Rajamani 2016a), including periodical checks on each country's progress in implementing domestic policies to reach its pledged target. Moreover, the Paris Agreement aims to promote a more ambitious overall mitigation target than the previous treaties. Even though it still maintains the goal of keeping the temperatures rise below 2°C, it also encourages efforts to keep the rise below 1.5°C. Thanks to these mechanisms, within the Paris climate regime it is possible to combine a consensus-based architecture with the promotion of effective mitigation and adaptation goals to reduce GHG emissions, overcoming the main flaws of both the Kyoto Protocol and the Copenhagen Accord.

Nevertheless, there are also some weaknesses in the Paris climate regime as well. Perhaps its most important flaw is the lack of a punitive mechanism intervening when mandatory goals are not met (Streck, Keenlyside and von Unger 2016; Geden 2016; Spash 2016). Indeed, the only form of control mentioned in the Paris Agreement is a (still) undetermined mechanism involving a committee that will be 'non-adversarial and non-punitive, which means that it

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

has no teeth and can do nothing about non-compliance' (Spash 2016, 3). Furthermore, from 2017 to 2021, history repeated itself: during the Trump administration the United States decided to withdraw from the Paris Agreement, reminding everyone that what was achieved with much effort by a certain political administration could be easily undone by the next one. That turn of events highlighted the fact that any kind of plan regarding climate change policymaking will be ineffective if there is not an overarching and consistent long-term planning. Indeed, the US withdrawal reminded that climate policy requires more than making representatives from all over the world sit at the same table and agree on a set of measures, it needs a lasting political commitment to continue to be part of a climate regime, and to implement the necessary policies to combat climate change.

The Paris Agreement is the result of years of difficult negotiations in which diplomats were able to find a compromise between the urgency of effective policies and the need to involve as many countries as possible to produce a coordinated global effort to combat climate change. From the point of view of diplomacy, the Paris Agreement was an undeniable success that stemmed from the previous climate regimes by perfectioning the mechanisms that worked, pruning those that did not work and changing what could be modified to make it work (Allan et al. 2021). The Paris climate regime seems to have found the right way to balance the trade-off between consensus and efficacy, but some problems related to combatting climate change persist, even within an operating, well-balanced climate regime. Besides the more technical aspects, the main problem of each international climate regime – from the Kyoto Protocol to the Paris Agreement – is that it is still difficult to prompt countries to implement the expected mitigation or adaptation policies. Even with an accommodating climate regime such as the Paris Agreement, the transition from pledges to policy is not always sufficient to produce results. Indeed, very few countries are respecting and staying on track with their initial pledges (Victor 2016).This lack of practical results for GHG emissions reductions remains a climate regime's issue that needs to be solved.

Concluding Remarks: The Non-Compliance Issue and the Future of the Climate Regime

This chapter proposes a reconstruction of the history of the international climate treaties through the evolution of the consensus/efficacy trade-off, showing how each regime tried to balance the need to produce results in terms of climate change adaptation and mitigation (efficacy) and the need to involve as many countries as possible (consensus). This overview skims almost 30 years of climate regimes, pinpointing the different ways in which efficacy and consensus have been balanced: initially, the Kyoto Protocol prioritised efficacy over consensus, then the Copenhagen Accord tried unsuccessfully to combine consensus and efficacy on the misguided assumption that in a fully voluntary climate regime, countries would have set ambitious mitigation and adaptation goals for themselves. Eventually, the Paris Agreement was able to integrate specific mechanisms to accommodate both consensus and efficacy. Apart from the specificity of each climate regime, throughout the years international diplomacy has always found a way to overcome obstacles and enact an operative climate regime. Yet, these climate regimes did not produce any significant progress in terms of combatting climate change.

Probably, the major problem of dealing with climate change consists in translating pledges into actual environmental policies to be implement in each country. It is not difficult to bring countries with different interests and needs to the table and make them agree on a common institutional framework. Rather, the real challenge is to make countries follow up their international commitments with actual domestic policies. Instead, pledges mostly become empty promises as countries systematically fail to implement mitigation or adaptation policies: climate change policymaking is indeed affected by a systematic problem of non-compliance. The problem of non-compliance, which includes both the problem of implementation and free-riding, adds a further challenge to the already complex issue of climate change.

The problem is twofold: on the one hand, there is the need to prompt countries to implement climate change policies to reduce GHG emissions and curb climate change, while on the other hand, it is important to discourage free- riding, so as to make each country contribute to combatting climate change. There are two main proposals to solve the problem of non-compliance: on one side, there is a more conservative view that proposes the integration of some mechanisms to prompt compliance without any alteration to the current climate regime; on the other side there is a reformist view holding that the climate regime should be thoroughly reformed. More specifically, the conservative view holds that to solve the problem of compliance, it would be enough to think of possible compliance-enhancing

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

strategies that are consistent with the current climate regime's structure. According to the reformist view, instead, it is necessary to radically 'reconceptualize climate agreements' (Nordhaus 2021) because the persistent problem of compliance derives from the systematically 'flawed architecture' (Nordhaus 2021) of climate regimes.

According to the conservative view, the problem of compliance is related to each country's domestic circumstances that hold back the implementation climate change measures. Indeed, each country has limited resources to distribute over many issues, and climate change is only one of the many problems to tackle. Ultimately, it depends on how each country prioritises climate change over other issues. If a country has more urgent issues to solve, the implementation of mitigation and adaptation policies can be put on hold. Alternatively, climate change could simply not be a priority for a country's political agenda, so the implementation of climate change policies is delayed or downsized. Additionally, a government may decide to participate to international climate change negotiations purely for instrumental reasons unrelated to climate change, such as to improve a country's international credibility or to forge new alliances. If the problem is that governments do not implement mitigation and adaptation policies because they do not deem climate change as a primary concern, the solution could be to promote bottom-up actions that would push climate change up in a government's political agenda signalling climate change as a relevant issue. Such bottom- up methods might include cultivating green virtues (Peeters, Diependaele and Sterckx 2019, 442) or pushing climate action through strikes, demonstrations or actions of civil disobedience that might contribute to change a country's political agenda (Martin 1996; Delmas 2018; Welchman 2001).

According to the reformist view, the problem of non-compliance derives from the climate regime's inherently faulty architecture that relies on 'voluntary arrangements, which induce free-riding that undermines any agreement' (Nordhaus 2021). Therefore, it is necessary to radically change the climate regime 'from a voluntary agreement to one with strong incentives to participate' (Nordhaus 2021). The proposed solution is to think of the climate regime as a 'climate club' (Victor 2011; Nordhaus 2015; 2021). This proposal builds on creating a club system, namely, establishing a voluntary group in which there are mutual benefits derived from sharing the costs of a shared good or service, adapted to climate change. Instead of thinking about an overarching agreement, it would be better to create small groups of countries (i.e., climate clubs) to develop more manageable policies and to 'make it easier for club members to concentrate on the benefits of cooperation' (Victor 2011, xxx). Indeed, a climate club would provide rules for membership, prompting countries to agree to undertake emissions reduction policies to meet a goal (such as the 1.5°C temperature limit). At the same time, it would include penalties for nonparticipants, such as the imposition of penalty tariffs for non-club members. In this way, the climate club would be a cooperative system that is advantageous for its members and that would grant a stable membership with limited incentives to defect or free ride (Nordhaus 2021), therefore solving the problem of compliance at its roots.

At the moment, we are far from reaching a satisfactory goal in combatting climate change, notwithstanding the years of negotiations, the ever-changing climate regimes, and the work to highlight problems and propose solutions to correct them. The bottom line is that, since 1995, we are still worrying about the same issues – rising temperatures, excessive GHG emissions, extreme weather events, and ocean pollution – with no significant progress, as the most recent international conference has once again proved.

Appendix: The COP26 in Glasgow

The twenty-sixth Conference of the Parties (COP26) was held in Glasgow, Scotland in October 2021. The main purpose of COP26 was to confirm the Paris Agreement's commitments but the results of the conference were unsatisfactory: in the final document there were many lukewarm decisions that matter-of-factly delayed any effective policy strategy to combat climate change. For example, COP26 had to deliver important policy guidelines regarding the use of fossil fuels, especially coal: the expectation was to make countries pledge to phase out coal to reduce emissions; instead in the final document, many countries settled for a more modest pledge to phase down coal (United Nations 2022). Moreover, COP26 confirmed the goal to keep warming below 1.5°C above pre-industrial levels, even though this goal becomes more and more unattainable, especially considering that there are no impactful policies in place to achieve this target (Vidal 2021). In Glasgow, there was indeed a lack of political will to overcome the difficulties of combatting climate change, and it is a reiteration of the same lack of political will that we have diagnosed in the previous climate treaties. In the current situation, combatting climate change still seems an uphill

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

struggle as it was in 1995.

References

Allan, Jen Iris, Charles B. Roger, Thomas N. Hale, Steven Bernstein, Yves Tiberghien, and Richard Balme. 2021. "Making the Paris Agreement: Historical Processes and the Drivers of Institutional Design." *Political Studies*, online first. https://doi.org/10.1177/00323217211049294

Bodansky, Daniel. 2016. "The Legal Character of the Paris Agreement." *Review of European, Comparative & International Environmental Law* 25 (2): 142–50. https://doi.org/10.1111/reel.12154

Bodansky, Daniel, and Lavanya Rajamani. 2018. "The Issues That Never Die." *Carbon & Climate Law Review* 12 (3): 184–90. https://doi.org/10.21552/ cclr/2018/3/4

Böhringer, Christoph. 2003. "The Kyoto Protocol: A Review and Perspectives." *Oxford Review of Economic Policy* 19 (3): 451–66. https://doi.org/10.1093/ oxrep/19.3.451

Brandstedt, Eric. 2015. "The Circumstances of Intergenerational Justice."

Moral Philosophy and Politics 2 (1): 33–55. https://doi.org/10.1515/mopp-2014-0018

Delmas, Candice. 2018. *A Duty to Resist: When Disobedience Should Be Uncivil*. Oxford: Oxford University Press.

Dimitrov, Radoslav S. 2016. "The Paris Agreement on Climate Change: Behind Closed Doors." *Global Environmental Politics* 16 (3): 1–11. https://doi. org/10.1162/GLEP_a_00361

Gao, Yun, Xiang Gao, and Xiaohua Zhang. 2017. "The 2 °C Global Temperature Target and the Evolution of the Long-Term Goal of Addressing Climate Change—From the United Nations Framework Convention on Climate Change to the Paris Agreement." *Engineering* 3 (2): 272–78. https:// doi.org/10.1016/J.ENG.2017.01.022

Gardiner, Stephen M. 2006. "A Core Precautionary Principle." *Journal of Political Philosophy* 14 (1): 33–60. https://doi.org/10.1111/j.1467-9760.2006.00237.x

Geden, Oliver. 2016. "The Paris Agreement and the Inherent Inconsistency of Climate Policymaking." *Wiley Interdisciplinary Reviews: Climate Change* 7 (6): 790–97. https://doi.org/10.1002/wcc.427

Gupta, Joyeeta. 2010. "A History of International Climate Change Policy." *Wiley Interdisciplinary Reviews: Climate Change* 1 (5): 636–53. https://doi. org/10.1002/wcc.67

Hartzell-Nichols, Lauren. 2017. *A Climate of Risk. Precautionary Principles, Catastrophes, and Climate Change* . New York: Routledge.

Held, David, and Charles Roger. 2018. "Three Models of Global Climate Governance: From Kyoto to Paris and Beyond." *Global Policy* 9 (4): 527–37. https://doi.org/10.1111/1758-5899.12617

Höhne, Niklas, Takeshi Kuramochi, Carsten Warnecke, Frauke Röser, Hanna

Fekete, Markus Hagemann, Thomas Day, et al. 2017. "The Paris Agreement: Resolving the Inconsistency between Global Goals and National Contributions." *Climate Policy* 17 (1): 16–32. https://doi.org/10.1080/14693062.2016.1218320

IISD. 1997. "Summary of the Kyoto Climate Conference." *Earth Negotiations Bulletin* 12 (76): 1–16.

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

IISD. 2009. "Summary of the Copenhagen Climate Conference." *Earth Negotiations Bulletin* 12 (459): 1–30.

IISD. 2015. "Summary of the Paris Climate Conference." *Earth Negotiations Bulletin* 12 (663): 1–47.

IPCC. 2021. "Climate Change Widespread, Rapid, and Intensifying – IPCC." https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/

Lahn, Bård. 2020. "A History of the Global Carbon Budget." *Wiley Interdisciplinary Reviews: Climate Change*, 11(3): 1–9. https://doi. org/10.1002/wcc.636

Levi, Michael. 2010. "Beyond Copenhagen." *Foreign Affairs*, November. https://www.foreignaffairs.com/articles/commons/2010-02-22/beyond- copenhagen

Martin, Michael. 1996. "Ecosabotage and Civil Disobedience." *Environmental Ethics* 12 (4): 291–310.

Mayer, Benoit. 2018. *The International Law on Climate Change.* Cambridge: Cambridge University Press.

McKinnon, Catriona. 2012. *Climate Change and Future Justice: Precaution, Compensation, and Triage*. New York: Routledge.

Moellendorf, Darrel. 2011. "A Right to Sustainable Development." *The Monist* 94 (3): 433–52. https://www.jstor.org/stable/23039153

Moellendorf, Darrel. 2012. "Climate Change and Global Justice." *Wiley Interdisciplinary Reviews: Climate Change* 3 (2): 131–43. https://doi. org/10.1002/wcc.158

Moellendorf, Darrel. 2014. *The Moral Challenge of Dangerous Climate Change. Values, Poverty, and Policy*. New York, NY: Cambridge University Press.

Nordhaus, William. 2015. "Climate Clubs: Overcoming Free-Riding in International Climate Policy." *American Economic Review* 105 (4): 1339–70. https://doi.org/10.1257/aer.15000001

Nordhaus, William. 2021. "The Climate Club." *Foreign Affairs*, December. https://www.foreignaffairs.com/articles/united-states/2020-04-10/climate-club

Okereke, Chukwumerije. 2010. "Climate Justice and the International Regime." *Wiley Interdisciplinary Reviews: Climate Change* 1 (3): 462–74. https://doi.org/10.1002/wcc.52

Okereke, Chukwumerije, and Philip Coventry. 2016. "Climate Justice and the International Regime: Before, during, and after Paris." *Wiley Interdisciplinary Reviews: Climate Change* 7 (6): 834–51. https://doi.org/https://doi. org/10.1002/wcc.419

Peeters, Wouter, Lisa Diependaele, and Sigrid Sterckx. 2019. "Moral Disengagement and the Motivational Gap in Climate Change." *Ethical Theory and Moral Practice* 22 (2): 425–47. https://doi.org/10.1007/s10677-019-09995-5

Rajamani, Lavanya. 2010. "The Making and Unmaking of the Copenhagen Accord." *International and Comparative Law Quarterly* 59 (3): 824–43. https:// doi.org/10.1017/S0020589310000400

Rajamani, Lavanya. 2016a. "The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations." *Journal of Environmental Law* 28: 337–58.

Rajamani, Lavanya. 2016b. "Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics." *International and Comparative Law Quarterly* 65 (2): 493–514. https://doi.org/10.1017/

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

S0020589316000130

Randalls, Samuel. 2010. "History of the 2° Climate Target." *Wiley Interdisciplinary Reviews: Climate Change* 1 (4): 598–605. https://doi. org/10.1002/wcc.62

Rosen, Amanda M. 2015. "The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change." *Politics & Policy* 43 (1): 30–58. https://doi.org/10.1111/polp.12105

Savaresi, Annalisa. 2016. "The Paris Agreement: A New Beginning?" *Journal of Energy & Natural Resources Law* 34 (1): 16–26. https://doi.org/10.1080/02 646811.2016.1133983

Spash, Clive L. 2016. "This Changes Nothing: The Paris Agreement to Ignore Reality." *Globalizations* 13 (6): 928–33. https://doi.org/10.1080/14747731.2016.1161119

Steel, Daniel. 2015. *Philosophy and the Precautionary Principle. Science, Evidence, and Environmental Policy* . Cambridge: Cambridge University Press.

Streck, Charlotte, Paul Keenlyside, and Moritz von Unger. 2016. "The Paris Agreement: A New Beginning."*Journal for European Environmental & Planning Law* 13 (1): 3–29. https://doi.org/10.1163/18760104-01301002

United Nations. 1992a. "Rio Declaration on Environment and Development." https://www.un.org/en/development/desa/population/migration/ generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

United Nations. 1992b. "United Nations Framework Convention on Climate Change," http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

United Nations. 2022. "Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, held in Glasgow from 31 October to 13 November 2021" https://unfccc.int/sites/ default/files/resource/cma2021_10_add1_adv.pdf

Victor, David G. 2011. *Global Warming Gridlock. Creating More Effective Strategies for Protecting the Planet* . Cambridge: Cambridge University Press.

Victor, David G. 2016. "Making the Promise of Paris a Reality." In*The Paris Agreement and Beyond: International Climate Change Policy Post-2020*, edited by Robert N. Stavins and Robert C. Stowe. Cambridge, MA: Harvard Project on Climate Agreements.

Victor, David G. 2015. "Why Paris Worked: A Different Approach to Climate Diplomacy." *Yale Environment 360*. https://e360.yale.edu/features/why_paris_ worked_a_different_approach_to_climate_diplomacy

Vidal, John. 2021. "It Could Have Been Worse, but Our Leaders Failed Us at Cop26. That's the Truth of It."*The Guardian*, December 20, 2021. https:// www.theguardian.com/environment/2021/nov/13/heres-the-truth-our-leaders-at-cop26-have-failed-us-the-rest-is-spin

Vidal, John, Allegra Stratton, and Suzanne Goldenberg. 2009. "Low Targets, Goals Dropped: Copenhagen Ends in Failure." *The Guardian*, October 12, 2009. https://www.theguardian.com/environment/2009/dec/18/copenhagen-deal

Viñuales, Jorge E. 2015. *The Rio Declaration on Environment and Development: A Commentary.* Oxford: Oxford University Press.

Welchman, Jennifer. 2001. "Is Ecosabotage Civil Disobedience?" *Philosophy & Geography* 4 (1): 97–107.

From Rio to Paris: International Climate Change Treaties Between Consensus and Efficacy
Written by Silvia Bacchetta

About the author:

Silvia Bacchetta holds a PhD in Political Studies (2021) from NASP (Network for the Advancement of Social and Political studies) at the University of Milan (Italy) with a dissertation on the problem of individuals' compliance with climate change-related provisions. She graduated from the University of Eastern Piedmont (Italy) with a thesis on global justice. Her research interests intersect between political philosophy and climate justice.