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FORUM

PARIS CLIMATE AGREEMENT
The Paris Agreement on Climate Change: Less is More

JORGE E. VIÑUALES*

I. Introduction

One of the difficulties of writing about climate change governance is that one must address a moving target. Despite the wide impression of inaction or, at best, of action in slow motion, the negotiations move at such a hectic pace, often focusing on what to the outside world appear to be mere details but, on closer scrutiny, hard fought and highly controversial details, that it is difficult to keep abreast. Such speed explains perhaps the profusion of writings over technicalities or the sometimes unconsidered attempts at launching new – and soon old – ideas, expressions, buzzwords, anecdotes. Conversely, it also explains the thriving literature on climate change policy broadly understood, encompassing legal aspects. The polyphony or even the cacophony in the literature is alas the price to pay for a powerful and creative body of analysis of climate policy.

Fortunately, the target does not move in an entirely random fashion. When one waits until the fog has somewhat dissipated and takes another look at what is still there, much remains,† and the contours of the topography appear better delineated.

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After a very preliminary examination of the Paris Agreement,\(^2\) shared shortly after the


\(^2\) 'Adoption of the Paris Agreement’, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/L.9 (‘Decision’), paras. 2–3. The Paris Agreement is appended as an Annex to the Decision. The agreement, technically a treaty under the international law of treaties (although it may not be qualified as such under some constitutional orders), was signed by 175 States on 22 April 2016. See ‘List of representatives to High-level signature ceremony’, available at: http://newsroom.unfccc.int/paris-agreement/175-states-sign-paris-agreement/ (accessed on 28 August 2016). The authentic version of the Paris Agreement (hereafter ‘Paris Agreement’) is available at: http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf (accessed on 28 August 2016). Pursuant to Article 21 (1), the Agreement required to enter into force ratification by ‘at least 55 parties to the Convention [i.e. the UNFCCC] accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions’. These thresholds were reached in early October 2016 and the Agreement entered into force on 4 November 2016. See http://unfccc.int/paris_agreement/items/9485.php (accessed on 8 November 2016). Of particular note is the ratification by the world’s two main emitters, China and the United States (US). On 1st June 2017, the US Republican President announced that the US would withdraw from the Paris Agreement. Legally, however, this can only be done if certain conditions are respected. Thus, at the time of writing, the US are still a Party to the Paris Agreement.
text of the Agreement became public, the writing of this article for the German Yearbook of International Law has given me the opportunity to offer more general observations about this important instrument and what it represents more broadly from the perspective of international and – to some extent – transnational and comparative law. With the benefit of hindsight, I believe that the significance of the Paris Agreement can be pinned down to a foundational compromise, whereby the expansion of the geographical and substantive scope of the instrument was made possible in exchange for significant de-internationalisation. Whether the price paid is high or low will very much depend on what is effectively done at the domestic and transnational levels. Some may say that internationalisation presents, in all events, no particular advantage. I may have subscribed to such a view, but after seeing the clear impact on mitigation not only of the Montreal Protocol but also of the unloved Kyoto Protocol, I am more inclined to give credit to top-down – international – climate regulation. But, realistically, there are cases where less is more and the Paris Agreement is, in my view, one such case.

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4 See Harriet Bulkeley et al., Transnational Climate Change Governance (2014).


7 Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, UNTS 2303, 148. According to a recent study, all 36 countries of Annex B that fully participated in the Kyoto Protocol (excluding the US and Canada) were in compliance with their targets in the first (2008–2012) commitment period. Of these, only nine emitted more than their initial target and had to rely on the flexible mechanisms (acquiring carbon credits) to meet their commitments. Such a finding holds even when so-called ‘hot air’ (i.e. the amount of emissions made available by the contraction of the economies in transition, hence not resulting from genuine mitigation action) and land policies, so-called ‘LULUCF’ (i.e. which may remove carbon and could be taken into account in the overall allowance) are taken into account. But it would not have been achieved if the US and Canada are taken into account. See Igor Shishlov/Romain Morel/Valentin Bellasen, Compliance of the Parties to the Kyoto Protocol in the first commitment period (2016) Climate Policy 16 (2016).