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Part VII

The future of climate governance: theory and practice

44. Multilateralism in crisis?

Robyn Eckersley

Introduction

Those who argue that multilateralism is in crisis typically single out the international climate negotiations as Exhibit A. It is widely lamented that the negotiations have moved at a glacial pace since the Copenhagen meeting in 2009, that they are plagued by mistrust and entrenched divisions among hardened negotiating blocs, and that they seem destined not to achieve their basic purpose of preventing dangerous climate change.

Yet conflict, slow progress, stalemate and underachievement are standard fare in the history of multilateral negotiations. Failure to reach agreement in a particular round of negotiation does not necessarily produce a crisis in the relevant negotiations or the regime. Under what circumstances, then, would slow progress or stalemate in the climate negotiations, or withdrawal by parties from the regime, produce a crisis for climate multilateralism? And how would a crisis of climate multilateralism relate to the multiple social, economic and ecological crises that are expected to unfold if global average surface temperatures exceed 2°C, which has served as the political threshold for 'dangerous warming'?

As Ian Clark observers, 'we are most likely to ask questions about the legitimacy of a system only when things appear to be going wrong' (2003, p. 75). This chapter approaches the question of crisis as a grave problem of legitimacy, understood from a constructivist sociological perspective. Legitimacy and power are intimately related insofar as the erosion of legitimacy of a regime means the erosion in the power of the regime to enlist sufficient recognition, support and compliance to achieve its ends. A *crisis* of climate multilateralism is therefore understood as a critical turning point or juncture in the life of the climate regime whereby significant corrective action is required to prevent the disempowerment of any or all of the components of the regime (Reus-Smit 2007).[1] Such a crisis may be acute or chronic, depending on the duration of the turning point.

The focus of this chapter will be confined to the United Nations Framework Convention on Climate Change (UNFCCC) 1992, the Kyoto Protocol along with decisions and agreements made, or negotiations launched, by the parties (Dimitrov this volume). Although this particular assemblage includes two treaties, with overlapping but increasingly diverging membership, for ease of reference I refer to it as the 'climate regime' and 'climate multilateralism' interchangeably. A crisis of legitimacy may arise in relation to the entire assemblage, to one or other of the treaties, or to particular set of negotiations under either treaty.

A crisis of climate multilateralism and a real-world climate crisis must be treated as analytically distinct, since the former may not necessarily give rise to the latter. For example, the legitimacy of the climate regime could erode to the point where it loses authority but a longer-term climate crisis is averted due to states undertaking alternative initiatives outside the regime that are able to ward off a climate crisis. Conversely, it is possible to predict an unfolding climate crisis of major proportions even though most, if not all, parties remained committed to the climate regime on the basis of very weak commitments. Between these two opposite poles, there is a continuum of possible scenarios, including the situation where an uncorrected crisis of legitimacy in the regime would increase the risk of a real-world climate crisis.

However, this introductory account begs several important questions regarding what might give rise to a legitimacy crisis. First, what confers legitimacy and what factors might prompt the withdrawal of support for a treaty or negotiating mandate? Second, how much support is enough and whose support is critical to the maintenance of the authority of the climate regime? Third, if a crisis emerges, what kind of corrective action is required to recover legitimacy? This chapter addresses these three questions in turn.

Legitimacy and social recognition

From a constructivist sociological perspective, an institution, rule or decision is legitimate if the relevant community to which it applies believes it ought to be obeyed (Hurd 1999, p. 381). This differs from normative accounts of legitimacy, based on democratic or deliberative values (Stevenson this volume). On the sociological understanding, legitimacy is a form of socialized power grounded in social recognition by the relevant community of the rightfulness or authority of the institution, rule or decision and therefore does not depend on coercion or bribery to ensure compliance. In the case of multilateral regimes, the core of these communities are states, since they are the actors who negotiate, sign, ratify and implement multilateral agreements. The social recognition of regimes by non-state actors such as observers, experts, non-government organizations (NGOs) and transnational civil society is also important insofar as their judgments may directly or indirectly influence the judgments of states or their ability to achieve compliance in implementing the regime (Betsill, Beck this volume). Many of these non-state actors also participate in national delegations.

International regimes depend on state consent and have few other means of extracting support and compliance unless there are one or more very powerful states promoting and sponsoring the regime that are prepared to take it upon themselves to apply force or material inducements to produce agreement and secure compliance. Hegemonic power is partially socialized power since it includes a mixture of consent and coercion. However, a predominant reliance on material levers would signal a loss rather than recovery of legitimacy (and hegemony). Multilateral negotiations between three or more states are shaped and constrained by the deeper constitutional structure and norms of international society on the one hand, and the identities and interests of states involved in the rule-making process on the other. According to Ruggie's classic definition, multilateralism is a generic institutional form in the modern state system 'which coordinates relations among three or more states on the basis of 'generalized' principles of conduct' (1992, p. 571). For Ruggie, these principles go beyond 'particularistic interests and situational exigencies' and exhibit expectations of 'diffuse reciprocity,' or a 'rough equivalence of benefits in the aggregate over time' (1992, pp. 594, 571). These features also explain why multilateralism is a highly demanding institutional form and why 'its historical incidence … is likely to be less frequent than that of its alternatives' (Ruggie 1992, p. 572). States are often reluctant to withstand short-term relative losses in return for general absolute gains over the longer term. They are not obliged to enter into multilateral regimes (whether as formal treaties or informal agreements) and they are free to withdraw from any agreements made. Moreover, many multilateral regimes that do emerge often fall far short of their stated goals and do not deliver a rough equivalence of benefits over time. Yet this does not necessarily signal a legitimacy crisis.

Legitimacy problems only arise when there is a decline in social recognition and support for the regime, or a negotiating track, by the regime constituency. In the case of the core constituency of states, withdrawal of support from a regime or a negotiation track can occur for a wide range of different self-regarding or other-regarding reasons, but the key point is that the withdrawing parties consider that the situation has gone well beyond the usual conflict, aggravation and frustration that is often experienced in regime negotiations.

Reasons for withdrawal might include disillusionment with regime performance. Regime scholars sometimes draw a distinction between legitimacy and effectiveness but this separation only makes sense if effectiveness is understood as an independent standard applied by experts or scientists to determine progress compared to a counterfactual of no regime, or distance from a collective optimum (Andresen this volume). From a sociological perspective, it is the subjective judgments of performance that feed into judgments about legitimacy, which means that technical, scientific or environmental NGOs evaluations are only sociologically relevant insofar as they influence parties' judgments about regime performance.

The analytical distinction originally coined by Scharpf (1999) between 'input legitimacy' (procedural fairness) and 'output legitimacy' (effectiveness) incorporates social judgments about regime performance but it is not comprehensive enough to capture the range of factors that influence social judgments about legitimacy. For example, if input legitimacy is reduced to social judgments about procedural fairness, which are assumed to expand or contract in line with the degree of procedural fairness, then it cannot encompass social judgments about the efficacy (effectiveness and timeliness) of decision-making, which typically stands in tension with procedural fairness (as I discuss below). Likewise, if output legitimacy is reduced to subjective social judgments about effectiveness or problem-solving capacity (i.e., whether the regime 'output' has the ability to achieve the regime's ultimate goals, including cost-effectiveness and compliance), then it cannot include social judgments about the substantive fairness of regime principles, nor the fairness of the distributive outcomes (as distinct from output) that are likely to flow from implementing the regime. Nor do any of these categories acknowledge calculations by the parties about the political feasibility of implementing commitments at the domestic level.

Building on the work of Bodansky (1999), Eckersley (2007), Karlsson-Vinkhuyzen and Vihma (2009) and Karlsson-Vinkhuyzen and McGee (2013) these problems can be resolved by adopting a tripartite analytical distinction between input, output and outcome legitimacy, and incorporating social judgments about fairness, effectiveness and feasibility under each of these categories. *Input* legitimacy would encompass social judgments about the acceptability of the procedures and processes by which decisions and agreements are made, and include matters such as the epistemic quality of information provided to the negotiators, the inclusiveness of the negotiations, transparency and the efficacy of the negotiation and decision making process. *Output* legitimacy would encompass social judgments about the acceptability of the regime output, including the principles, substantive obligations and policy instruments. *Outcome* legitimacy would encompass social judgments about the acceptability of the actual or expected outcomes flowing from the implementation of agreements, decisions and policy instruments.

In practice, judgments about output and outcome legitimacy are closely intertwined. For example, the second Bush administration repudiated the Kyoto Protocol in 2001 because it was seen to lack output legitimacy (in terms of what the Bush administration judged to be fair) in not requiring developing countries to undertake commitments in the same commitment period. The Protocol was also considered to lack outcome legitimacy on the grounds that it would harm the US economy (an assessment of distributional consequences) and that it would be ineffective because it excluded major developing countries (an assessment of effectiveness). These considerations also dovetailed with the Bush administration's calculations about the likelihood implementing the Protocol, given US Senate's unanimous Byrd–Hagel resolution of 1997 that it would not ratify the Kyoto Protocol for all of the above reasons (an assessment of feasibility) (Bang this volume).

In short, decisions by states whether to support or repudiate a regime are practical, situated judgments based on 'all things considered,' including a negotiation of many of the tensions between input, output and outcome legitimacy identified above. This raises an evidentiary challenge for scholars of sociological legitimacy. While it is a relatively easy matter to determine whether any particular party rejects a treaty or set of negotiations simply by examining their statements and actions it is a much less straightforward matter to determine how much withdrawal of recognition by parties or the broader constituency of observers and stakeholders is enough to give rise to a legitimacy crisis.

What gives rise to a crisis of legitimacy?

Determining whether there is a legitimacy crisis requires determining whether social recognition and support have reached a sufficiently low level to require the parties to take corrective action to re-establish legitimacy or resign themselves to the disempowerment of the regime (or relevant negotiations, as the case may be) (Reus-Smit 2007, p. 172). The nature of this corrective action is discussed in more detail in the next section. Here we are concerned with the question of how much withdrawal of recognition is necessary, and by whom, to trigger a crisis. Determining where this threshold might lie is not an easy task, since it depends on the nature of the regime, and situational contexts and contingencies. Therefore, only two broad generalizations can be offered.

First, while state recognition is essential, it is not necessary that all or even most states must recognize and support a multilateral regime for it to be legitimate. How much support is required depends on the problem that is addressed. For example, a regime that provides 'club goods' to its members, with no or minimal consequences for other states, might enjoy legitimacy with only a small number of members, since effectiveness of output and outcomes does not depend on wide participation. In contrast, regimes that provide public goods typically require high levels of participation to provide the necessary mutual assurance and avoid free-rider problems, so that low participation would signal weak legitimacy based on social judgments about likely outcomes. However, much depends on the nature of the collective action problem. In some cases, including the climate regime, the level of participation is less important than whether certain states with the relevant attributes or capabilities are participating such as to produce the necessary ‘critical mass’ of states required to address the problem. The success of the climate regime will turn on, among other things, whether it can draw in a ‘critical mass’ of major emitters (McGee this volume). This layering of a collective action problem with the requirements of critical mass means that there is a variety of possible combinations and permutations that might ensure the regime continues to maintain its authority.

For example, a majority of the world’s states are responsible for less than 1 percent of emissions but only two states are responsible for around 40 percent of emissions (the US and China), only five states are responsible for more than 50 percent of emissions (the US, China, Russia, Brazil and India) while only 20 states are responsible for around 80 percent of emissions (an ‘E20’). It is not surprising, therefore, that many have argued that the world’s top 20 emitters make up the necessary critical mass (e.g., Naim 2009; Carin and Mehlenbacher 2010). The problem, however, is that most of the disagreement is concentrated among these players. Yet other—more productive—permutations are possible, such as a smaller number of major emitters and a larger number of medium, small and negligible emitters (including the most vulnerable states). From the standpoint of developing countries, the participation of states with significant financial and technological resources to assist developing countries in mitigation and adaptation (irrespective of their historical, per capita or aggregate emissions) must also form part of this ‘critical mass.’

Second, it is clear from the history of the Kyoto Protocol that the withdrawal of one major emitter (i.e., the US) is not necessarily fatal but this also depends on the stage of the negotiations. As we shall see, the parties have given increasing attention to the issue of critical mass since around 2009. We can therefore expect that the withdrawal of all or most of the major emitters would be increasingly likely to trigger a legitimacy crisis as the window of opportunity for an effective agreement increasingly closes.

The Kyoto Protocol: Anatomy of a Legitimacy Crisis

The Kyoto Protocol survived the defection of the US in 2001 (supported by Australia from 2001 to 2007), at a time when it was the world’s biggest aggregate emitter. Indeed, in the immediate aftermath of the US’s defection, it was arguably the US and not the Kyoto

Protocol that suffered the greatest erosion of legitimacy given the widespread international censure of the US by the parties and the broader regime constituency (Eckersley 2007).

However, the US's continuing objection to the Protocol has certainly contributed to the gradual erosion of support for this treaty. This problem was acknowledged with the launch of the Bali Action Plan in 2007 to negotiate a new agreement on long-term cooperative action to include all major emitters, including the US. By the time of the Durban meeting in 2011, the negotiations entered a period of acute crisis, since failure to reach agreement on a second commitment period would have led to the termination of the Kyoto Protocol beyond 2012. Corrective action was taken at the Durban in the form of a COP decision, and formalized at the Doha meeting in 2012. The parties agreed to an amendment to the Protocol whereby Annex I Parties would commit to reducing their emissions by at least 18 percent below 1990 levels over the period 2013–2020 (UNFCCC 2012). The Protocol was thus rescued from disempowerment after 2012.

However, the longer term future of the Kyoto Protocol remains uncertain. The treaty covers less than 15 percent of global emissions, and the number of parties committed to the second commitment period has shrunk. During the first commitment period, only one party (the US) maintained its defection, although Canada later abandoned the treaty once it had become clear that it would overshoot its target. Since 2012, more states have stepped away. Canada, Japan, Russia and New Zealand have joined the US in refusing to agree to a second commitment period, while the Ukraine, Kazakhstan and Belarus have threatened to withdraw following the decision at Doha to limit their sale of surplus emissions allowances (Allan and Kruppa 2012). While the 28 states of the EU remains committed, along with Iceland, Norway, Switzerland and Australia (although its position is uncertain following the election of the conservative Abbot government in 2013), the EU's commitments are unambitious and merely reflect its Copenhagen pledge made in 2009. According to Bert Metz, 'the KP second commitment period will add very little to what would have happened anyway, except for preserving the KP machinery in a "mothball state"' (2013, p. 154).

Yet it was not just the persistence of the US's critique of the 'rigid binary' between industrialized and developing countries in the Protocol that has encouraged this erosion of legitimacy. Rather, it has been the continued and rapid growth in emissions of the major developing economies that has turned the tide. Nonetheless, at the Durban conference in 2011 it was the EU's commitment to a second commitment period under the Kyoto Protocol that was crucial to winning the support of the major developing countries, most notably China and India, to the launch of the Ad Hoc Working Group on the Durban Platform for Enhanced

Action (ADP) to negotiate a new agreement. The crucial question going forward is whether these negotiations, or the larger regime, are at risk of crisis if no agreement—or only a weak one—is reached in Paris 2015. To assess this risk, it is helpful to take note of some salutary lessons from the history of managing negotiation impasses and recovering legitimacy.

Recovering legitimacy

The recovery of legitimacy is a communicative process that requires the renegotiation and recalibration of the goals, principles, rules and/or decision making procedures of the regime in ways that can maintain the continuing support of states (Reus-Smit 2007, p. 172). In our case, that means maintaining support above a critical threshold, as intersubjectively determined by the parties. This, of course, is especially challenging in circumstances when there is a very large number of participants, a large, complex and highly technical negotiating agenda and deep disagreement among hardened negotiation blocs, which is concentrated among the major emitters. Successive Conference of the Parties (COP) presidents have sought to produce a consensus on a 'fair and balanced package' across all of the complex agenda items in order to provide the widest scope for a facilitating issue linkage and a balanced set of tradeoffs for all parties. In practice, however, this often produces deadlock as progress on some items and tracks become stalled pending the resolution of conflicts on other items and negotiating tracks.

Under difficult circumstances such as these, the parties have found a variety of ways of managing complexity and disagreement. Here I focus on efforts to recalibrate decision-making procedures or lower expectations of regime output and outcomes.

Procedural Recalibration: Efficacy versus Fairness

Attempts to reform the procedures and processes of negotiation by parties and observers to strengthen input legitimacy can pull in different directions (Biermann this volume). On the one hand, there are those who criticize consensus decision-making as a recipe for grindingly slow negotiations and stalemate that creates the risk that parties may walk away from the negotiations. This has generated a call for majority voting. For example, in 2011, Mexico and Papua New Guinea submitted a proposal to amend the UNFCCC to allow majority voting (by three-quarters of the parties present) if all efforts to reach agreement by consensus fail, in order to avoid the problem of a small number of parties blocking progress in reaching agreement (UNFCCC 2011). However, the proposal has received little support, since few states (and especially great powers) are prepared to be bound by decisions to which they have not consented. Most states, and especially the most vulnerable states, have defended the virtues of inclusive multilateralism based on consensus as the best path to reaching a legitimate agreement. Inclusive, rule-based multilateralism is widely understood to empower weaker states and place constraints on powerful states.

On the other hand, there are those who highlight the privileges enjoyed by great powers in negotiations and the disadvantages suffered by the smaller and most vulnerable states. For example, great powers enjoy the advantages of larger delegations, greater resources and expertise and therefore a stronger communicative platform. They are also have greater capacity to resort to unilateralism or bilateralism and are therefore able to exert much more influence over the negotiations than weaker states through the threat of exit. To counterbalance these advantages, critics have argued for greater inclusivity, transparency and equity in representation and decision-making, such as capping the size of delegations to create a more level negotiation playing field (e.g., Schroeder et al. 2012). However, while these reforms would introduce greater procedural fairness, they are unlikely to resolve the deep disagreements among the major emitters.

There are, of course, various other ways in which parties might salvage negotiations during a crisis arising from deep disagreement. For example, they might decide to break the negotiations down into smaller, more manageable elements and move forward on those issues where agreement is more likely (e.g., Falkner et al. 2010), or they might go further by reducing the domain of governance covered by the regime and outsource some of the issues to other institutions. The most extreme response, short of total disempowerment of the regime, would be a suspension of negotiations and a shift to other negotiating forums (such as the G20) and action under other regimes in the broader climate regime complex (Zelli and van Asselt this volume). However, the favored response, to which we now turn, is recalibration of the goals, principles and commitments of the regime, and/or the negotiating mandate.

Recalibration of Goals, Principles and Commitments: Lowering Expectations

The favored method by the parties for managing disagreement has been to lower expectations, weaken previous agreements and commitments and opt for more rather than less flexibility and creative ambiguity in COP decisions. As Abbott and Snidal (2000) have shown, the ‘softening’ of international law occurs once weakening occurs along any or all of the elements of obligation, precision and delegation. That is, weakening occurs when a softer aspiration replaces binding legal norm, when vague principles replace clear and determinate rules, and when informal diplomacy and negotiation are relied upon in lieu of the delegation of authority to impartial entities such as courts or committees to rule on disputes and enforce compliance. Or the parties many decide to avoid legal entanglement altogether by opting for a political agreement (Bodansky 2013).

For example, the international expectation (or at least the hope) in the lead up to the Copenhagen conference in 2009 was for a new treaty containing legally binding but differentiated commitments from all the major emitters, in line with the UNFCCC's principles of developed country leadership and equity and common but differentiated responsibilities and capabilities (CBDR&C). However, the negotiations reached a state of crisis in the closing days of the meeting due to deep disagreement among the major emitters over the allocation of responsibility. Recalibration began with the now famous informal minilateral meeting between the US and the BASIC group, which produced the outlines of what eventually became known as the nonbinding Copenhagen Accord. This 'corrective action' managed to avert a complete disempowerment of the negotiations with a promise of nonbinding pledges to reduce emissions by industrialized and developing countries and significant new commitments on the important subject of climate finance. Yet many parties and observers complained that the negotiations were chaotic, confusing and lacking in procedural legitimacy, aided in no small measure by the mismanagement of the COP by the Danish presidency, which had generated two separate negotiating texts (Meilstrup 2010).

The practice of weakening previous commitments and increasing flexibility and creative ambiguity in decisions to keep the key parties around the table has continued since Copenhagen. For example, between 1995 and 2011, COP decisions have explicitly reaffirmed the principles of equity and CBDR&C. However, the ADP negotiating mandate was notable for the absence of any mention of these principles, to placate the US and likeminded parties (Pickering et al. 2012, p. 423). Yet the reference to 'under the Convention' ensured the continued support of developing countries, which have interpreted this to mean that the principles of equity and CBDR&C have been carried forward implicitly (and these principles were reintroduced in the final decision reached at the Lima summit in 2014, albeit subject to 'different national circumstances'). Moreover, the Durban mandate had called for 'a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties.' It is not entirely clear what might constitute 'an agreed outcome with legal force,' but India has argued that it could include an outcome that derives legal force from national rather than international law (UNFCCC 2013, para. 5.24, p. 5). Or it might take the form of a general treaty that determines that certain COP decisions made under the treaty are to have legally binding force.

By the end of the Warsaw climate summit in 2013, the promise of international commitments had been downgraded into ‘intended nationally determined contributions, without prejudice to the legal nature of the contributions’ (UNFCCC 2014, para. 2(b), p. 4). Moreover, the review mechanisms for these nationally determined contributions have not been settled, although it is clear from the Lima summit in 2014 that no formal review will take place prior to the Paris summit in 2015. Various proposals have been put forward for an ‘equity reference framework’ but there are few signs that the parties are likely to agree on common principles of equity, as distinct from perhaps a long shopping list of equity indicators from which they can pick and choose to justify their ‘contribution.’

While the form and design elements of the agreement remain unclear what is clear is that most of the major emitters (with the exception of the EU, whose emissions are declining relative to the US, China and India) are not prepared to commit to the Kyoto model of legally binding targets and timetables, or to collectively determined and apportioned targets derived from a scientific carbon budget. Nor are there any signs of agreement on general burden-sharing principles or promises of any significant increase in collective mitigation ambition, although the joint announcement by the US and China of their post-2020 targets prior to the G20 in 2014 was a promising sign. In short, the ongoing effort to recalibrate expectations to avert a crisis in the negotiations and maintain wide participation has been purchased at the cost of depth of commitment, and a gradual weakening of obligation, precision and delegation.

Conclusion

The foregoing analysis is sobering, since it points to a significant chasm between the insights generated by a sociological framework of legitimacy that focuses on the judgments of the parties and what we might expect from a critical and normative standard of legitimacy that integrates the requirements of procedural fairness, climate justice and robust climate protection. In short, at the time of writing, from a sociological perspective there is not sufficient evidence to support the claim that there is a crisis of climate multilateralism. However, from a critical and normative perspective it could be argued that there is at least a major legitimacy deficit in the regime and ADP negotiations in terms of input, output and outcomes that threatens to evolve into a full blown crisis if the 2015 agreement is too weak to prevent dangerous climate change. Elsewhere, I have explored ways of managing the unavoidable tensions between input and output/outcome legitimacy from a critical theory perspective. In particular, I have argued that the inclusive multilateralism of the UNFCCC is likely to produce a fairer and more effective treaty than proposals for an exclusive, minilateral agreement among the E20 but that an inclusive minilateral agreement reached among the most responsible, the most capable *and* the most vulnerable states might be an improvement on the status quo (Eckersley 2012).

However, this chapter has focused on the real rather than ideal world and it is clear from the foregoing analysis that the parties have found even Ruggie's kind of traditional multilateralism too demanding. The negotiations have drifted away from any generalizable principles of conduct (based on equity and CBDR&R) and towards the protection of particularistic interests and situational exigencies. Indeed, a cynical reading of the negotiations since Copenhagen might be that the drift towards a softer legal agreement based on weak and nebulous goals and commitments, and hyper-flexibility, is merely stalemate under the guise of multilateralism, since there is no longer and real convergence of expectations to uphold the existing regime or constitute a new regime. The desire of most major emitters not to be bound appears to outweigh any desire on their part to bind others in order to address the collective problem (Bodansky 2013, p. 2). Crises in negotiations have been averted at various points, but in ways that have maintained or increased rather than narrowed the distance between many of the key parties. For realists, this reflects key shifts in the balance of power and the emergence of new, multipolar world (Vogler this volume). On this pessimist view, the UNFCCC and Kyoto Protocol, both of which once held great promise, have degenerated into faux regimes and a climate crisis by the end of this century is now inevitable given the narrow window of time (around half a decade) remaining for effective action. Yet, contra realists, the problem is not multi-polarity per se but rather the fact that the rising powers have emerged outside the West and that struggles over relative gains are wrapped up in different conceptions of distributive justice (e.g., Hurrell and Sengupta 2012).

However, defenders of climate multilateralism would reply that this response is too pessimistic and certainly premature (Biermann this volume). The breadth of participation in the UNFCCC (196 countries plus the European Union), and in the ADP negotiations, is an achievement. Global emissions are lower than they would have otherwise been in the absence of the UNFCCC and Kyoto Protocol, and these treaties have produced a wide range of other benefits, from the development and refinement of accounting methodologies to a range of different forms of assistance to developing countries. These are hardly reasons for optimism.

Yet the pressure on the negotiators to do more, from the secretariat, observers, scientists and a majority of the parties (but especially the most vulnerable states), remains intense. If the UNFCCC and the Kyoto Protocol have become faux regimes, then why have no parties walked away from the ADP negotiations? One answer might be that they acknowledge, through their ongoing participation, that the climate regime, like large financial institutions, is now possibly ‘too big to fail.’

In any event, action is starting to take place in other parts of the broader climate regime complex, and at the national and subnational levels, as other chapters in this volume have demonstrated. Most of these initiatives would not have happened were it not for the climate regime, even though many have been borne out of frustration with the slow progress of the negotiations rather than admiration. If these initiatives begin to snowball, then the first scenario outlined in the introduction may become possible, but with a twist. That is, the negotiations for a new agreement may suffer another crisis point as 2015 approaches, and may become temporarily disempowered, but a longer-term climate crisis is averted because of the success of other initiatives. These, in turn, may buy further time for the negotiations to be revived or relaunched and also make it easier for agreement to be reached. Only time will tell.

Note

1, Reus-Smit’s article is the lead article in the special issue of *International Politics*, **44**(2) (2007) on ‘Resolving Crises of International Legitimacy.’ The author is a contributor to this special issue and was a participant in the two research workshops out of which the special issue arose.

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