

Notes for the third 2016 'Environmental Law Brodies Lecture'

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International Legal Character of the Paris Agreement

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Introduction

I will be speaking in my personal capacity, but from a perspective that has been informed by my professional involvement in the climate change negotiations, on and off, since 1991, representing a range of governments and NGOs, beginning as a legal advisor to the Alliance of Small Island States, working with various European governments, and now for the European Union.

My clients and employers have been governments that describe themselves as "progressive" forces in the negotiations – concerned about climate change, committed to taking action, and confident in the role that international law and institutions can play in driving progress.

I also bring to this issue the perspective of a lawyer and an occasional academic, with a particular interest in the subject of my remarks: the international legal character of the Paris Agreement.

From this perspective, I believe that the Paris Agreement is an historic agreement, a turning point in international climate law and policy, and hopefully, a turning point towards a safer and more stable climate.

This evening, I will first describe why the Paris Agreement is considered historic, and describe its essential features. I will then turn to the issue of legal character, describing for whom, how and why this issue became such a key aspect of the negotiations. I will indicate what I mean by the dimensions of legal character of an international agreement and test the Paris Agreement generally, against these dimensions. I will then focus specifically on the

¹ Principal Adviser, DG-CLIMA, European Commission. The views expressed are the speaker's and are delivered in his personal capacity. They do not necessarily represent the views of the European Commission or the European Union. These lecture notes are provided at the request of the event organizers as an informal record. A shorter version of this presentation was first made at the Arthur Watts Public International Law Seminar Series sponsored by Volterra Fietta on 'The Legal Impact of the Paris Agreement on Climate Change', held on 27 January 2016 at the British Institute for International and Comparative Law, and benefitted from the presentations and discussions at the seminar.

obligations at the heart of the Paris Agreement – those that require its Parties to reduce their greenhouse gas emissions – and describe how a deal was reached through two distinctions: firstly, between the legal form of the Agreement, and the legal character of its provisions; secondly between obligations of conduct and obligations of result.

2. Why is the Paris Agreement considered historic?

- It aspires to ambition by setting long term goals, by clarifying the temperature limits associated with a stable climate system (aiming to hold global averaged temperature rise to well below 2 degrees Celsius, pursuing a limit of 1.5 degrees Celsius); signalling the need for a global peaking of emissions as soon as possible; and the need to reach climate neutral emissions in the second half of the century;
- It will catalyse domestic climate policies and policymaking processes, through a requirement that all its Parties prepare, communicate and regularly update emissions reduction targets, every five years, through a dynamic ambition cycle;
- It puts in place a mandatory and robust transparency and accountability system to track Parties' performance against their targets;
- It provides for support to poor and vulnerable countries, both to cut their emissions, as well as to prepare for the impacts of climate change;
- It creates a new paradigm for climate governance, through a contemporary understanding of how to share common but differentiated responsibilities and respective capabilities in light different national circumstances, and equity – thus overcoming the outdated categories of developed and developing countries that have divided climate politics for decades;
- It resulted from an intense, and participatory negotiation process that produced a result that appears to have the buy in of all major players – adopted by acclamation, and widely praised afterwards. Two months after Paris there are few signs yet of negotiators' remorse;
- And, it is historic, because it is a multilaterally agreed, international legally binding treaty.

3. A few words about the architecture of the Agreement and the vocabulary of climate change before turning to its legal character:

The Paris Agreement is comprised of three substantive pillars:

- Mitigation

- Adaptation and
- Means of implementation

These pillars are held together by five related and transversal elements which connect differently across the three substantive pillars:

- **Nationally determined contributions** (189), all of which contain mitigation efforts but some that include adaptation and finance as well, each anchored and operationalized differently in the Agreement;
- **Equity and differentiation** (but without the UNFCCC Annexes, the contemporary understanding of differentiation is found in the context of each substantive pillar);
- **5 year ambition cycle** (all three pillars will be guided by long term goals, a comprehensive stocktake, and obligations to successively "progress" in the level of ambition);
- **Transparency and accountability** (the rules, procedures, and institutional arrangements for tracking progress will have common and distinct elements for each pillar);
- **Legal character:** (the prescriptive and precise nature of the provisions varies across the pillars).

4. Background to the discussions on the Legal Character of the Paris Agreement

The legal character of the Paris Agreement has been accurately described as an obsession of the Paris Agreement negotiators, from the launch of the process in Durban, in 2011, to the final moments before its adoption in Paris late in 2015.²

We can see this through the series huddles – relatively rare moments when normally staid UN negotiations can suddenly resemble a rugby scrum.

The huddles that kicked off the negotiations in 2011 and concluded them in 2015 were both sparked by the issue of legal character, as were a number in between.

The deal that brokered the Durban mandate in 2011 landed on a turn of phrase establishing "a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties".

This allowed sufficient ambiguity for the negotiations to move ahead with the support of the EU and other progressive Parties, which favoured a model based on the 1997 Kyoto Protocol; countries like India, which preferred an outcome based on COP decisions that would preserve the primacy of the UNFCCC; and those, like, the US which were looking for

² See Daniel Bodansky, "The Legal Character of the Paris Agreement", forthcoming in the Review of European and International Environmental Law (RECIEL); and Jacob Werksman, & Kirk Herbertson, The Aftermath of Copenhagen: Does International Law have a Role to Play in a Global Response to Climate Change?, 25 Md. J. Int'l L. 109 (2010).

an indeterminate something in between. I will come back to these perspectives on legal character in a moment.

In Warsaw, in 2013, Parties once again "huddled" over whether the emissions reduction targets Parties were to agree as part of the negotiations, would be characterised as "commitments" (a word which to many implied a binding form) or "contributions" (a word chosen because it was devoid of meaning). While characterised as an outcome that did not "prejudge" the legal character of a final deal, agreeing to use the term "nationally determined contributions" at this stage of the negotiations very likely weakened the prospects that the legal character of the targets would be binding, and strengthened the prospects that the form of the Agreement would be binding.

In the weeks before Paris, the debate and confusion around legal character continued to flare up. The press fanned some flames between US Secretary of State, John Kerry, and French Minister Laurent Fabius (who would brilliantly chair the Paris COP) lit by a mischaracterization in a Financial Times headline that read "Paris climate deal will not be a legally binding treaty".³

What Kerry had in fact said, as reported in the body of the article, was that there were "not going to be legally binding reduction targets like Kyoto" referring, of course to the 1997 Kyoto Protocol – and I will return to this distinction, between "Kyoto-like targets", and the Paris Agreement contributions, in a moment.

And in the final moments of the Paris negotiations, the French COP presidency presented the Parties with a final compromise, which – to the surprise of many – substituted the word "should" with the word "shall" in a key provision. This crossed a US "red line" on legal form. The negotiations suddenly froze, with a deal in the balance, huddles once again broke out. This time the resolution emerged from the podium rather than the Parties.

With the French Presidency taking responsibility for what it described as a clerical "error," the UN Secretariat reinstated the word "should" alongside other largely cosmetic adjustments to the text. By then the issue of legal character, and the particular concerns of the US, had been sufficiently "socialised" in the minds of most delegates, that the incident was allowed to pass, and the Paris Agreement was, with one more "should" and one fewer "shall", adopted by acclamation.

5. Why do we care so much about the legal character of the Paris Agreement?

Before unpacking this debate over legal character, and analysing how it was resolved, let me ask and answer what to this audience may be an obvious question: Why do we care about so much about legal character?

³ <http://www.ft.com/intl/cms/s/0/79daf872-8894-11e5-90de-f44762bf9896.html#axzz3zTw0Re5w>

In essence, advocates for "a legally binding agreement" believe that a binding agreement is more likely affect state behaviour, as well as the behaviour of other actors.

We believe this is because:

- Internationally and domestically, a binding agreement is the highest form of expression of political will – literally an expression of the intent to be bound, and an indication that others can act in reliance on that intent.
- Internationally, a binding agreement provides the foundation for institution building (from COPs to the financial mechanism); mobilizes the highest level of participation and media attention; catalyses other international institutions (e.g. World Bank environmental safeguards relate to environmental treaties to which host countries are bound)⁴. Paris would not have broken records (the number of heads of state and government, as well as mayors, and CEOs in attendance; the public and private sector financial resources mobilized; the international headlines captured) had the Paris COP not been a treaty-based body, negotiating a new treaty.
- Internationally, robust legal agreements often bring with them the institutions and procedures for transparency and accountability appropriate to any serious contract between Parties.
- Domestically, legal agreements engage parliaments, codify or strengthen domestic laws, survive changes in administration (if they bind all branches), provide a focus for domestic stakeholders and constituencies, and may be justiciable in national courts or otherwise actionable.

In the course of four years of negotiations, from Durban to Paris, this view in favour of a legally binding agreement was challenged – as naïve, positivist, and even dangerous – by both delegations and academics.

Some argued, for example, that, in the absence of enforcement mechanisms, a legally binding agreement was no more likely to change state behaviour than a non-binding instrument. Others argued that while bindingness might be a worthwhile characteristic, in this circumstance it would discourage participation, or even lower ambition.

⁴ Among the Operational Principles that are to inform a World Bank Environment Assessment include assessing " the adequacy of the applicable legal and institutional framework, including applicable international environmental agreements, and confirm that they provide that the cooperating government does not finance project activities that would contravene such international obligations."
<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20403235~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

The famously binding Kyoto Protocol was offered as an example of a binding treaty that had both scared Parties away, and had failed to react when its Parties didn't comply or withdrew.

Proponents of a legally binding agreement argued in response that the Kyoto Protocol failed not because of its legal form, but because of the unwillingness of the US and other major economies – at that time -- to act on climate change. In other words, with regard to the Kyoto Protocol, there was a misalignment from the outset between the depth of key Parties' political will and the design of the agreement.

The struggle over the legal character of the Paris Agreement can be seen from three perspectives:

- Firstly, that of major developing country economies and middle income countries that had never before taken binding commitments to reduce greenhouse gases. Among these countries India, which has grown to become one of the world's largest emitters of greenhouse gases, still has more than 300 million people living off the grid. These countries wanted to avoid signing up to binding commitments that could compromise their development priorities. They were used to signing up to climate agreements that had binding obligations for richer countries, but not for them, and continued to see this as a dimension of "equity" and a reflection of "historical responsibility".
- Secondly, the US Obama administration was keen to shape and to join in the Paris Agreement, but faced constitutional and political constraints. The US made it clear that it could not join if the form of the Agreement would require the advice and consent of a Republican dominated and a historically reluctant Senate. The nature of the US constitutional constraints would merit a separate lecture, by a more qualified speaker. But it is fair to say that during the negotiations, the boundaries of the President's Executive Authority to bind the state were not well-understood. Finding a way to understand and accommodate these concerns without gutting the agreement occupied a lot of my time. I will try to illustrate this as we dig deeper. Politically, the US could not sign up an agreement that held them, as a developed country Party to a higher standard of bindingness than developing countries, particularly China. The EU, and the rest of the industrialised countries, shared this political constraint.
- Thirdly the EU and other progressive countries were pushing for higher ambition, and saw a binding legal character as a key aspect of ambition. For the EU this was also about raising its competitors up to the same standards to which we have been held under the Kyoto Protocol. For small islands, this was an "existential issue" – they needed confidence that the agreement on which their survival depended would

be as strong as possible. We all shared a concern that a deal struck between the US and major emerging economies, each uncomfortable with bindingness for different reasons, would lead to a low common denominator agreement, including one with a weak legal character.

6. So, where did we land in Paris?

This push and pull on legal character led countries to explore the design of an internationally legally binding agreement, containing provisions with variable legal character. We would encourage participation in a binding treaty, by enabling each Party to determine nationally the form of target and level of ambition it was prepared to bind itself to.

We would thread the needle of US constitutional and political constraints with an agreement containing commitments (or rather "contributions") that amount to binding obligations of conduct, without being binding as to their result.

We would build into the Paris Agreement a high degree of "functional bindingness" by ensuring it had the highest standard transparency and accountability provisions. And we would encourage the evolution of the legal character of Parties' contributions over time.

This resulting compromise, which will keep academics and practitioners busy for many decades to come, I believe has produced an outcome that can be said to be more binding in its legal character than the UNFCCC, and less binding in its character than the Kyoto Protocol.

But it has also generated a deal that has the potential to be dramatically more inclusive than both previous treaties, in terms of its coverage of Parties and of global emissions, and in terms of the scope of the issues it covers, including adaptation, loss and damage and means of implementation (finance, technology transfer and capacity building).

And the Paris Agreement does this in a way that should drive deeper roots into the domestic policy making processes that will be so key to the success of the kinds of legal, social and economic transformations that will be necessary to achieve the Agreement's ambitious goals.

7. What is it that we mean by the legal character of an agreement like the Paris Agreement?

So with this introduction which was intended to indicate who cared, and why they cared about legal character, and before turning to a more detailed analysis of the Paris Agreement, let me pause, ask and answer a second set of key questions. What is it that we mean by the legal character of an agreement like the Paris Agreement?

The international legal character of an international agreement can be said to have four essential dimensions all of which I have already touched upon:

1. The legal form of the Agreement itself – is it a treaty under international law?
2. The mandatory or prescriptive nature of the provisions within the Agreement – must a Party abide by its terms to be in compliance?
3. The specificity and precision of these provisions – what must a Party do to abide by the Agreement's terms?
4. The rules, procedures and institutions in place to hold Parties accountable for their commitments, and to compel their compliance.

[I will not focus here on how these international dimensions of legal character may interact with domestic legal systems, such as the direct effect or justiciability of its provisions in national courts]

8. So, how does the Paris Agreement test against each of these dimensions of legal character, *generally*?

[I will turn *specifically* to the issue of the legal character of Parties' emissions reductions contributions in a moment].

A) First dimension, the legal form of the agreement:

- The Paris Agreement is a treaty within the meaning of the Vienna Convention on the Law of Treaties: it requires any country that wishes to be a Party to notify its consent to be bound (through ratification, acceptance, approval or accession); allows for no reservations; and provides that Parties will remain bound unless and until they withdraw;
- The Paris Agreement is a "related legal instrument" to the UNFCCC, adopted by its COP, and soon to be signed, then ratified and then enter into force;
- It is not a "protocol" by name but it is legally indistinguishable in its basic legal form from the Kyoto Protocol (i.e. it's a treaty), and it met the only relevant UNFCCC rule on the adoption of protocols: the text that led to its adoption was circulated to UNFCCC Parties six months before it was adopted, (pursuant to Article 17.2 UNFCCC);
- As a treaty, and in accordance with the Durban mandate, it is an outcome with legal force (based on its form, and as we shall see, its content);
- Under US law, it will be characterised by the Obama administration as an executive agreement, and we await the reaction of other domestic legal systems – it does not carry the title of a "treaty" or "Protocol" due to US constitutional and political sensitivities.

B) The second and third dimensions of legal character, the mandatory and specific nature of the commitments: or "who is bound to do what, and by when?" I will make some general remarks before focusing specifically on the provisions relating to emissions reductions:

The Paris Agreement contains:

- A variety of guiding provisions, including Article 2 which sets out the "the purpose" of the Paris Agreement (according to Article 3). Within that purpose there seem to be multiple "aims" (also referred to elsewhere as "goals"), for each substantive pillar. There is also a reference to the Convention's "objective" as well as a reframing of a couple of the Convention's "principles".
- It contains a range of more specific provisions described variably as contributions, efforts, actions, targets, strategies and plans.
- These provisions are framed in language that ranges from "shall", "should", "will", "strive".
- The provisions are directed at each Party, at all Parties, at categories of Parties (developed, developing, etc), at institutions, and at no one in particular.
- Some obligations are specific, some general, a few are indecipherable (these are rare), but a number are sufficiently precise and prescriptive to be both mandatory and, in some jurisdictions, I would guess, justiciable.
- The core of what each Party will do in substance is nationally determined, and nationally tailored in terms of its specific, and prescriptive nature. [I will come back to this in the context of mitigation, where I will suggest that "nationally determined contributions" (NDCs) are both the great strength and the potential vulnerability of the Paris Agreement].
- Indeed some contributions, as designed nationally, are conditioned on the actions of other Parties (in providing support) and/or on the performance of their own economies, by linking emissions reductions to growth in GDP.
- A variety in the legal character of different provisions is not unusual in an international agreement which often must balance multiple issues and priorities.
- But a variety of this degree may be unique to the Paris Agreement and to the issue of climate change for several reasons:
 - The nationally determined nature of Parties' NDCs.
 - The need to be comprehensive in coverage across very different kinds of issue areas (committing to specific, quantified actions on mitigation, is very different to doing so on adaptation and on means of implementation).
 - For example, one of the reasons the provisions on adaptation are very soft in their legal character is because setting baselines and measuring progress on a country's "resilience" to climate change is difficult, the actions necessary are not well-understood, and many vulnerable countries were reluctant to take

on specific commitments that could become burdens of implementation, or conditionalities for accessing funding.

- Furthermore, the main reason that individual commitments on finance are also relatively weak was the unwillingness, and the constitutional inability for many traditional donors to commit in advance and in a binding way to specific finance targets.

So what might appear to be a chaotic pattern of legal character across the Paris Agreement in fact reflects that most Parties saw the sense in being most prescriptive and precise with regard to the provisions on mitigation – this is, after all, what the atmosphere will see.

C) The fourth dimension: Procedures and institutions for transparency, accountability and compliance:

One of the biggest challenges, and perhaps the most important accomplishment of the Paris Agreement was to bridge the divide between developed and developing countries through an enhanced transparency framework system for the measuring, reporting and verification of Parties' performance, applicable to all Parties, but with flexibilities that take into account differences in national circumstances and capacities.

Each Party will be required to report every two years, in accordance with agreed methodologies and common metrics.

The transparency framework is also applicable to all the Agreement's provisions, but with tailored approaches to accounting and/or transparency rules for mitigation, finance, and even for adaptation.

The transparency framework, with regard to mitigation and the provision of support, is backed by a three-part accountability system:

- a. An expert review process with the purpose of "tracking progress towards achieving" NDCs, and a mandate to "identify areas of improvement;"
- b. A multilateral consideration or peer review process that will consider each Party's respective "implementation and achievement" of its NDC;
- c. And a mechanism to facilitate implementation and compliance with (all provisions) of the Agreement, under a Standing Committee of experts that will operate in a "facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties."

Together these rules, procedures will:

- Provide an evidence base of whether Parties are performing against their commitments;
- Create regular moments of institutionalised political accountability, at the international and domestic level for progress made;

- Build capacity at the country level to measure and to manage emissions.

While there are no "consequences" for non-compliance identified in the Paris Agreement, the system can evolve over time. Nonetheless, together these elements add up to one of the most robust and comprehensive transparency and accountability frameworks of any international environmental agreement.

9. Let's now turn to the mitigation contributions that are the heart of the beast. What is their legal character under the Paris Agreement?

However pleased we may be with the long term goals set in the Paris Agreement and the call for climate neutrality, it is the NDCs, how they are set and whether Parties will perform well against them, that the atmosphere will see. When given largely unfettered discretion to design their own contributions, 189 countries responded. The NDCs are therefore the Agreement's greatest strength – and also, potentially, its greatest vulnerability.

The unique legal character of the mitigation contributions under the Paris Agreement is determined by:

- How the mitigation contributions are set;
- How the contributions are anchored in the Paris Agreement;
- How and where the targets are "housed";
- How they are made operational.

• How are the mitigation contributions set?

The content of each mitigation contribution has been nationally determined. The precision and prescriptiveness of each Party's contribution will, in part, determine what that Party is bound to do.

The 189 INDCs received by the Secretariat, which will become NDCs when Parties join the Agreement, are remarkably diverse in their form and content: from the EU's 10 year carbon budget 2021-2030, to the US point target for 2025, to China's pledge to peak its CO₂ emissions "around 2030," to a diverse mix of policies and measures, conditioned and unconditional.

The Paris Agreement encourages all Parties to move over time towards more precise and prescriptive mitigation contributions that are wide economy-wide emission reduction or limitation targets. It sets an agenda for negotiating agreed common "features" that should be aimed at improving their clarity and comparability.

All Parties are required to account for the net emissions and removals corresponding to their contributions in a way that promotes environmental integrity, transparency, accuracy, completeness, comparability and consistency.

So, while nationally determined, the Paris Agreement puts in place processes designed to improve the prescriptiveness and precision of targets over time.

While these new rules will not apply until the next round of contributions, any Party at any time can update its contribution to enhance its level of ambition.

- **How the mitigation contributions anchored?**

This was the most contentious part of the discussions on legal character – how each Party's obligation with regard to its NDC is expressed – the textual "anchor." Here the three perspectives I mentioned, the reluctant major emerging economy, the constitutionally challenged US, and the aligned progressives came most sharply into focus.

While some emerging economies remained cautious about the legal character of contributions, their primary concern, to ensure they would not be bound in a way that compromised their development priorities, was largely addressed through the nationally determined nature of the contributions.

So the main battle ground – what is now Article 4.2 of the Agreement – saw a struggle between the US and the progressives, in the context of a rather fluid understanding of US constitutional and political constraints.

In order for the US to join the Agreement under the President's Executive authority, we came to understand the Agreement would need to meet a three part test:

1. It would have to fall within the general foreign policy powers of the President as set out in the US Constitution;
2. It could not commit the US to international obligations beyond the scope of those necessary to implement the UNFCCC, which the Senate had already ratified; and
3. Its implementation would need to be consistent with authorities the Executive had already been granted by Congress under existing legislation.

No one could claim to fully understand these boundaries as applied to these particular negotiations. But the Obama administration was clearly keen to provide themselves with a comfortable legal buffer, in a context where there were limited analogous precedents and even less jurisprudence.

We came to understand that the US President can, through an Executive Agreement enter into an international legally binding agreement, and that the Paris Agreement was emerging

as one that would be seen as in furtherance of the implementation of the UNFCCC, which the Senate had ratified. But the President could not bind the US internationally to achieving a specific target of the kind it had included within its INDC without the full confidence that it could achieve that target without additional Congressional action.

There was much at stake. Accommodating the US constitutional constraints would weaken the international legal character of all Parties' mitigation contributions. But reaching an agreement that would *a priori* exclude US participation was unthinkable.

It fell in part to the EU to push the US to be bound to its target as tightly as possible, while at the same time reassuring other progressive Parties that the compromise on offer was worth pursuing.

We came to an understanding that a compromise could lie in a classic distinction between an obligation of result (what Kerry referred to in the FT as "Kyoto style" targets), and an obligation of conduct. Targets binding as to outcome, as we understood it, were a step too far, as these would require Congressional action in a context where the Executive's regulatory authority proved insufficient to achieve that target.

On the other hand, if an obligation of conduct was expressed in sufficiently precise terms, and connected to the objectives of the NDC, this could produce a meaningful and verifiable obligation. In this context it was very helpful to be able to point to the level of effort the Obama administration had been making in the lead up to Paris to achieve its non-binding pledges under the accords agreed in Copenhagen and Cancun. We could accept and sell to others a commitment that would bind a future US Administration to do the same – to pursue, if not to achieve, its target.

We read the resulting language in Article 4.2 exactly as it is written: Each Party shall (is legally bound) to prepare, communicate and maintain successive nationally determined mitigation contributions that it intends to achieve. Parties shall (are legally bound) to pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

These provisions create binding and specific "obligations of conduct" requiring each Party to have a mitigation contribution, and to take identifiable steps towards achieving that contribution. Article 4.2 does not, on the other hand, convert NDCs into "Kyoto style targets", or obligations of result.

This is what we understood Article 4.2 to mean as we joined with the US and many others in the famous "High Ambition Coalition" that helped ensure the Paris Agreement was adopted by acclamation.

- **How are the mitigation contributions housed?**

Each mitigation contribution will be recorded in a public registry. The contributions in the registry will not be adopted or ratified by the Parties, and can be changed by the respective Party without amending the Agreement.

- **How are the mitigation contributions made operational?**

While Parties are not legally bound to achieve their NDCs, the mitigation contributions are nonetheless integral to the operation of the Agreement, and essential to achieving its objectives. They are what will be tracked on an individual basis. They will be aggregated collectively as part of the global stocktake. They must be communicated, updated or made new every five years. And, for eligible Parties, they will be supported by financially and otherwise. They are primary means by which Parties will achieve all the Agreement's goals. They will, under the Paris Agreement, remain nationally determined, and obligations of conduct. And they are the means by which the Paris COP succeeded, and they will determine whether the Paris Agreement succeeds.

IN CONCLUSION

Where does the Paris Agreement and the compromises it strikes, leave the role of international law in shaping state behaviour?

Is this a ground breaking and bold experiment, pragmatic and functional hybrid, a model for other areas of multilateral negotiations that need to capture ambition across very diverse Parties? Or is it an expedient fudge made necessary to accommodate the constitutional dysfunction of one country and its continued reluctance and that of many others to fully embrace the need for change?

Perhaps the Paris agreement is both. But with the Paris COP only weeks behind us, I am hopeful that we landed upon a unique compromise in which international obligations to prepare, communicate, pursue, account for, track and successively and progressively update targets will, in the bright light of regular international attention and in the heat of a warming planet, sink deep roots into domestic legal and political systems – perhaps more deeply than Kyoto-style targets.

These roots will need to reach emerging constituencies of demand in all major economies, concerned about climate change and inspired by the Agreement's goals and visions: avoiding dangerous temperature rise, peaking emissions and achieving climate neutrality. Like any political process, these roots need to be nurtured by the belief that it is possible to succeed. The Paris COP brought that belief to the international stage. The challenge now is to bring it home to all the Agreement's Parties.