

Statut consultatif spécial auprès du Conseil économique et social des Nations Unies (ECOSOC) depuis 2015
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The Future of Global Environmental Governance

Kyoto is dead, and Paris has killed it. This shorthand means that the approach to global environmental problems represented by the Kyoto Protocol to address climate change has been replaced by a more decentralized method represented by the Paris Agreement. Kyoto imagined that nation-states acting together through formal international legal agreements would provide the best way forward to solve large global environmental problems such as climate change. Paris jettisoned Kyoto as unworkable, and the new agreement heralds a conceptual shift in how we as a human society frame problems of global environmental governance. It is a positive shift, in my view, and the full implications of this change for law, business, nonprofit organizations, and everyday citizens and consumers are not yet fully grasped.

Climate change is the most important and largest environmental challenge in the twenty-first century. It is well-known by all but the most economically self-interested and scientifically ignorant that climate change is real. Average global temperatures have been rising, along with average sea levels. Glaciers and polar ice have been shrinking. Extreme weather events such as flooding, drought, and heat waves have become more likely and frequent. If nothing is done, catastrophic consequences for civilization are also likely: mass starvation, huge refugee flows, expansion of diseases, and environmentally motivated wars.

Climate change poses an extraordinarily difficult challenge because of its scope and complexity. As I've previously argued, the Kyoto style of organizing nation-states to address climate change by a treaty or other formal "top-down" arrangement foundered on at least six problems (Orts, "Climate Contracts," *Virginia Environmental Law Journal* 29:197 (2011)). First, the complexity of many countries and many people with conflicting interests and values makes agreements difficult. Second, the economic interests of nation-states are often in direct competition. Third, the ethics of comparative responsibility among nation-states (and among rich and poor) lead to controversies about how much those who gained from climate unfriendly practices should compensate those who have not benefited. Some countries are also more vulnerable to climate risks than others. Fourth, the short attention spans of most human beings do not easily engage rationally with long-term climate consequences. Fifth, the administrative means to monitor and enforce global standards for greenhouse gas emissions are weak. Sixth, the economic phenomenon of "leakage" – i.e., the displacement of climate unfriendly production to non-regulated jurisdictions – poses a challenge to comprehensive international regulation.

The Paris Agreement represents a bold new approach because of its "bottom up" rather than "top down" structure. Because each nation-state (including almost every country on the planet) has agreed to submit a plan with self-defined targets of performance, the burden is removed from experts at the "top" to construct a global regime of greenhouse gas control and technical programs for adaptation. This bottom-up approach worries experts because there can be no guarantees about overall collective progress toward effective reductions of climate-affecting emissions. But for the reasons given above, there is no alternative.

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President Trump's ill-advised withdrawal (or, more precisely, his decision to begin legally to withdraw) the United States from the Paris Agreement may, contrary to his intentions, end up demonstrating the wisdom and strength of this approach. Because of the decentralized and open structure of the Paris Agreement, a number of U.S. States (notably California) and cities (including New York, among many others) have declared that they will comply with the U.S. commitments to Paris made by President Obama. Many leading businesses are making the same commitment. In other words, states, cities, and businesses – as well universities and other nonprofit institutions —are making an end-run around the Trump Administration and a recalcitrant Republican Congress.

The silver lining of Trump's outrageous action is that it highlights the need for an “all hands on deck” approach to dealing with large-scale global environmental challenges such as climate change. Other global environmental challenges include biodiversity loss, deforestation, loss of arable land, destruction of the ocean's fisheries, fresh water shortages, and the spread of toxic chemicals. (See Speth, *The Bridge at the End of the World* 19-39 (2008)). Traditional international law has proven ineffective in dealing with these problems (Yang and Percival, “The Emergence of Global Environmental Law,” *Ecology Law Quarterly* 36: 615 (2009)). Paris represents a new way forward. The largest, most intractable problems require new modes of global environmental governance.

Social theorists such as Saskia Sassen offer a vision of the emergence of “global assemblages” that include nation-states and other governing bodies (such as cities), combined with associations of firms, nonprofit organizations, and universities (Sassen, *Territory, Rights, Authority: From Medieval to Global Assemblages* (2006)). How best to construct these assemblages for global environmental governance is a topic for further work both in theory and everyday practice.

Eric Orts, Guardsmark Professor, Professor of Legal Studies & Business Ethics and Management, Director: Initiative for Global Environmental Leadership. The Wharton School, University of Pennsylvania (United States)