

## News

## Experts react cautiously to historic climate deal

JEFF BUCKSTEIN

Cautious optimism, tinged with a wait-and see attitude, is the reaction of many experts to the recently adopted Conference of the Parties (COP) Paris Agreement.

They are hopeful the agreement might herald major changes designed to prevent irreversible climate disaster. But memories are still fresh following the experience of past failures, including the 1997 Kyoto Protocol, from which Canada pulled out.

"The magnitude of the change is such that I have some scepticism that these bold targets will be met," said Jean Piette, a senior partner with Norton Rose Fulbright LLP in Quebec City, whose practice is focused largely on environmental law.

"It involves so much change in the structure of our economy, in the way industry is going to take this change towards greener, less carbon intensive sources of energy."

There could also be potential legal ramifications, such as compensation for traditional energy companies if the Paris Agreement results in leaving fossil fuels in the ground, he added.

"It's not perfect," said Tyson Dyck, a Toronto-based partner in the environmental group with Torys LLP, who noted that the Paris Agreement sets several aspirational targets that are non-binding, in contrast to Kyoto, whose targets were supposed to be binding.

"So you might look at it and think that this really doesn't hold its weight," added Dyck.

"But it does fix a lot of the problems that we've seen in the past with the Kyoto Protocol that led to the ultimate failure of that protocol to really produce emissions reductions."

Kyoto created political problems, especially in the United States where Congress refused to ratify binding targets, said Dyck, who predicted the same thing would have happened had the Paris Agreement taken a similar approach.

One of the weaknesses inherent to international law is that there is no international police force to enforce such provisions. The Paris Agreement, for instance, comprised 196 independent and sovereign nations that are very hesitant to concede any of their sovereignty, said Piette.

Bill Murphy, the national leader for climate change and sustainable services at KPMG LLP in Toronto, said the Paris Agreement is very significant from a directional perspective because it signifies that globally we have gone past the debate of whether man-made sources are contributing to climate change, to address



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key issues such as an agreed upon tipping point that needs to be avoided.

The preamble to the Paris Agreement emphasizes the need for "holding the increase in the global average temperature to well below two degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels."

Many environmental experts worry that if the average world temperature rises by two degrees Celsius by the year 2100—with the average global temperature already up by about one degree Celsius since the Industrial Revolution began around 1750—the effects of climate change could be irreversible.

"We're happy to see in there, first a big overarching two-degree target. But also real clarity—that it's two degrees, but we really know we should hit 1.5. It's not two degrees and maybe if we ease up to three it's not big," said Jay Ritchlin, the David Suzuki Foundation's director general for Western Canada.

"It's really quite strong and we're glad to see that there."

"We're already well on the way to where we don't want to be. I think the one thing this COP had

done in such an incredible way is emphasized that the problem's real, we all agree. And the need to act is urgent," added Ritchlin, who is based in Vancouver.

The Paris Agreement is a pivotal moment in history, and it features a strong commitment to work on core issues with respect to climate change. However, there remains a lot of detailed, hard work that each of the participating countries will have to address in the years ahead, he warned.

The Paris Agreement requires each country to continually update and communicate its national climate change, with the first global stock taking in connection with such plans starting in 2023, and then continuing every five years thereafter.

"One of the binding parts about the Paris Agreement is that the countries that did submit their national commitments in the lead-up to the Paris Conference have to revisit those commitments every five years," said Dyck. "The agreement doesn't tell them what commitments they have to make, or how they have to change them every five years. But they have to be revisited in a transparent way."

"The thought was that by forcing that cycle to continue every five

sions by sources and removals by sinks of greenhouse gases.

"If we're going to use the approach of a common purpose that we're all united behind, and regular revisiting of how well we're doing, we just need to be very clear and transparent about what that means. Are we setting real targets? And are they being met? That's absolutely essential," said Ritchlin.

Another important aspirational target established in the preamble to the Paris Agreement is for the developed countries to financially assist developing nations most at risk because of climate change, such as the island nations in the South Pacific which are especially vulnerable to rising sea levels.

The participating countries "strongly urged" that a minimum of US \$100 billion per year be earmarked for mitigation and adaptation purposes by 2020, and that each developed country scale up their level of financial support.

However, that target is not legally binding. Nor is there any determination of how much each developed country would contribute to that fund.

"Is it going to happen? That's a big, big question," said Piette.

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## News

# Ritchlin: 'Absolutely essential' that targets set and met

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"I think we really need to see some increased stringency and timelines around that element especially," said Ritchlin.

"The developing world has many citizens who have every right to expect a better standard of living. If we don't want them to go through the same dirty energy pathway to get there, we need to use some of our wealth in the developed world to help...so I think that is not quite strong enough. That's one area that needs to be worked on."

The Paris Agreement also addressed the issue of loss and damage in connection with climate change and the environment. Article 8 states that "parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow



onset events, and the role of sustainable development in reducing the risk of loss and damage."

"This is another contentious point in the discussions," said Dyck. "A lot of small island states, and some of the developing countries, wanted stronger language in that Article 8. They actually wanted a recognition that developed countries would be liable for that loss and damage."

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David Suzuki Foundation

Developed countries strongly resisted that notion and said they would not take on liability for this loss and damage and that the causal connections would be hard to prove in any event.

For example, they didn't think it would be proper to start pointing fingers to developed countries to try and recover costs after a hurricane came through and caused damage to developing nations, he added.

"So all they ended up with at the end of the day was a commitment in the agreement that everybody recognizes that this is a serious issue, and they recognize the importance of averting that type of loss and damage," said Dyck.

"But there's no kind of liability mechanism that would allow developing countries to get compensation if they did have one of those weather events hit them."

Murphy said the Paris Agreement will impact business revenues, costs and capital as companies strive to reduce their greenhouse gas emissions and adapt to various carbon pricing mechanisms, such as a cap-and-trade program.

Flows of institutional capital, for instance, may be favourably inclined towards companies that have adjusted their strategy to adapt to a shift to a low carbon economy. And companies that have done so may find they are better able to access capital that they require to invest in new technologies, he elaborated.

The Paris Agreement will be open for signature at United Nations headquarters in New York from April 22, 2016 to April 21, 2017. It will enter into force 30 days after at least 55 member countries to the Paris Convention, which account for an estimated 55 per cent of the total global greenhouse gas emissions, have ratified it.