

Climate talks as shortchanging international law

Fraud in public law is the deliberate attempt to avoid provisions of the statute. In the climate negotiations for instance, areas of interest to developing countries are not covered or sparsely covered, while other areas are over-regulated. Equitable sustainable development is not even discussed. At COP27, the policy debate was no longer legitimised by science. There seems to be a concerted effort to fraudulently change the basic structure of the Climate Treaty.

There are three problems with the current negotiating process. First, citizens in developed countries are not even aware that two-thirds of their national emissions of carbon dioxide come from their diet, transport, and residential and commercial sectors, which together constitute the major share of their GDP; the consumption sectors are not independent silos but reflect their urban lifestyles. Second, the process ignores that global well-being will also follow urbanisation of the developing country's population, requiring fossil fuels for infrastructure and energy to achieve comparable levels. Third, the need for vast quantities of cement and steel in developing countries for infrastructure – constituting essential emissions, as they urbanise – is not being considered.

As late urbanisers, developing countries account for more than half the annual emissions and most emissions growth. They cannot affordably access many of the new technologies to decarbonise quickly. The result is a shrinking of their policy space and human rights, endangering efforts to achieve comparable levels of well-being with those who developed earlier without any constraints. Such discussions are not taking place in the climate negotiations because of the way the agenda is set.

Politics, not science

The foundation of the Climate Treaty in international environmental law is questionable. In the run-up to the Stockholm Conference on the Environment (1972), the United States Secretary of States' Advisory Committee stated that



Mukul Sanwal

is a former United Nations diplomat with the Climate Change Secretariat

There seems to be a concerted effort to change the basic structure of the Climate Treaty where de-carbonisation of arbitrarily selected sectors has to be discouraged

“urbanization has changed the nation with seventy five percent of its people living in the urban area ...we must see ourselves not only as victims of environmental degradation but as environmental aggressors and change our patterns of consumption and production accordingly”. A scientific committee set up by the U.S. State Department had earlier concluded that “long range planning to cope with global environmental problems must take account of the total ecological burden... controlling that burden by systematic reduction in per-capita production of goods and services would be politically unacceptable. A concerted effort is needed to orient technology toward making human demands upon the environment less severe”. Power play framed natural resource use around risk management rather than technology transfer and the well-being of all within ecological limits.

Differentiated common responsibility

The objective of the Climate Treaty is to avoid a concentration of cumulative emissions of carbon dioxide, prevent dangerous anthropogenic interference with the climate system and enable sustainable economic development. The Paris Agreement (2015) agreed to a 1.5°C global temperature goal. The Intergovernmental Panel on Climate Change (IPCC) in 2018 recommended that net emissions needed to zero out around 2050. In Glasgow, in 2021, negotiators zeroed in on coal to reduce future emissions. This initiative was not based on science and it ignored the key finding of the IPCC on the centrality of the carbon budget, i.e., cumulative emissions associated with a specific amount of global warming that scientifically links the temperature goal to national action.

Carbon budgets are robust as they can be estimated accurately from climate models. And, they are the most useful for policy as they couple the climate to the economy consistent with the science of both. The IPCC, in 2018, estimated the budget for a 50% chance of avoiding more than 1.5°C of warming to be 2,890 billion tonnes of

carbon dioxide (now, it is less than 400bn tonnes), raising the question on how late developers will attain comparable levels of well being.

Climate justice

Climate injustice flows from the negotiations and not from the text of the Climate Treaty. First, the process adopted the structure of international law in a manner that rejected historical responsibility for a continuing problem, and steadily shifted the burden to China and India.

Second, the agenda was set around globalised material flows described as global warming (the symptom), and not wasteful use of energy.

Third, public finance is used as a means to secure a political objective, and not to solve the problem itself. The \$100 billion promised at Paris along with pre-2020 commitments constituting the incentive for developing countries to agree to a global temperature goal has not materialised. And, new funding for 'Loss and Damage' will be from a “mosaic of solutions”, constituting a breach of trust.

Fourth, the longer term trend has been ignored. With one-sixth of the global population, the developed country share in 2035 will still be 30%. Asia's emissions with half the world's population will rise to 40% remaining within its carbon budget. Pressures to further reduce emissions displace their human rights.

India's thrust on LiFE (or “Lifestyle for Environment”), with the individual shifting from wasteful consumption of natural resources goes back to the original science. Consumption-based framing challenges the ‘universalism’ that has dominated the negotiations and its common path of reductions based on single models. The carbon budget formalises a ‘diversity’ of solutions. For example, in developed countries, exchanging overconsumption of red meat for poultry can meet half the global emissions reduction required by the end of the century. A just transition for developing countries is about keeping within their carbon budget. And not de-carbonisation of arbitrarily selected sectors.