

Introduction to climate change governance and law



From the Kyoto Protocol to the Paris Agreement: Climate Change 2.0

The year 2016 saw two surprising events in the world of climate change governance. First, the Paris Agreement was ratified by more than 55 state parties, which together account for more than 55% of the world's greenhouse gas emissions, on October 5, and it officially became effective on November 4. Second, Donald Trump, a climate change skeptic, was elected as President of the United States, one of the largest greenhouse gas-emitting countries. As glaciers have melted down at unprecedented speed, sea levels have risen, and the frequency of extreme weather has increased, climate change and its adverse impacts have changed the ways in which people live and influenced how governments at all levels govern and enforce laws. The global community has come to the

realization that climate change is no longer a purely scientific concern. Prompt action must be taken, and we must adapt to ever-changing circumstances.

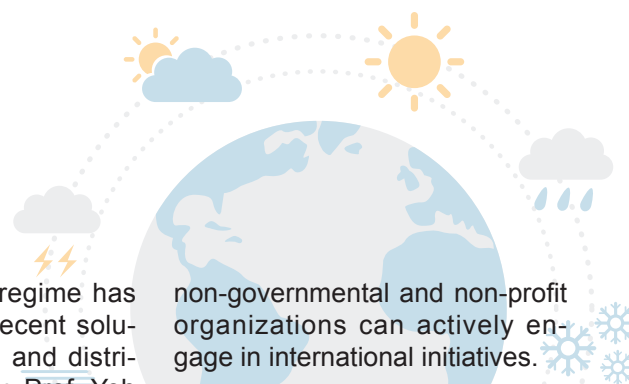
State-centric negotiation and its limitations

Prof. Yeh clearly notes in *Climate Change Governance and Law* (National Taiwan University Press, 2015) that “state-centric negotiation” is the main obstacle that prevents nation states from reaching consensus in combating climate change. The large-scale and cross-border impacts of climate change make sovereignty-based international negotiations seem infeasible. The confrontation between developed and developing countries also deadlocked when the Kyoto Protocol placed a heavier burden on developed nations under the principle of “common but differentiated responsibilities”. Powerful nation states dominate major negotiations at the Conference of Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC). Procedural malfunctioning has also worsened the negotiation process. Lack of transparency, participatory mechanisms and clear rules for decision-making processes are hurdles to effective participation for all climate change stakeholders. State-centric negotiations and procedural malfunctioning have led to disappointing results in international negotiations, as at COP 15, held in Copenhagen in 2009, where no consensus on a legally bind-

ing instrument for the post-Kyoto era was reached.

Breaking through: Multi-level governance and governability

In the context of climate change, the boundaries between nations have become blurred, and state sovereignty has been eroded. Accordingly, Prof. Yeh points to multi-level governance, a more holistic approach to adapting to climate change. Climate change cannot be circumscribed by a nation or an administrative district. Taking a bottom-up approach, supra-state organizations actively participate in climate governance. For example, the European Union (EU) integrated its member states into corresponding legal and policy frameworks and requested that every member state comply with the EU standard. Meanwhile, the EU still plays a critical role in international negotiations, as seen in its support for the establishment of the first Emissions Trading System Market in the world. Also following the bottom-up approach, sub-state entities have also actively participated in climate change governance. Cities on the front lines of combatting climate change began to be formally recognized at COP 21, held in 2015 in Paris. ICLEI - Local Governments for Sustainability, the most prominent association of cities and communities, shattered the conventional wisdom that only nation states could play an important role in international legal governance. At COP 22, held in 2016 in Mar-



rakech, cities, towns and regions were all represented. Now, in many places, emission reduction efforts are led by cities that have played a prominent role in helping nation states to achieve their National Determined Contributions (NDCs). Non-governmental organizations and elements of the private sector are all fully involved in this global issue and are willing to take on the tasks it requires. Climate change governance is a classic example of the challenge of global administrative law. Diverse regulatory sources and institutions are created, and multilevel cooperation and interaction are developed. Accountability is ensured through the establishment of compliance and supervisory mechanisms. The NDCs enacted in the Paris Agreement reflect the trend in global administrative governance in which every party state considers its own situation when setting its mitigation, adaptation, funding and technology goals. Every five years, there will be a global stocktake to assess collective progress towards achieving the ultimate purpose of the Agreement and to inform further actions by state parties.

Policy instruments, target issues and norms

Under the concept of multi-level governance, Prof. Yeh presents various policy instruments, including market mechanisms, economic incentives and innovative solutions to the attribution and distribution of climate change liability among states. The cur-

rent climate change regime has failed to develop a decent solution to the attribution and distribution of state liability. Prof. Yeh proposes the creation of a global climate change liability fund, in which the obligatory share of each state is, first, to be benchmarked by its contribution to historical cumulative emissions and, second, must also reflect present emission dynamics. In the next part, six targeted issues including energy, adaptation, finance, trade, human rights and hazard prevention are addressed and examined to determine whether the relevant policy instruments are capable of tackling them. From the legislative framework perspective, Prof. Yeh reviews climate change legislation worldwide and suggests a possible framework for Taiwan.

Taiwan's adaptation under climate change governance

As a major greenhouse gas emitter, Taiwan is also highly vulnerable to climate change. Prof. Yeh believes that multi-level governance provides an alternative through which Taiwan – often isolated from state-centric international negotiations – can participate in the international community. A global city like Taipei has a better chance of engaging in discussions on international climate change governance by participating in the ICLEI, joining the world carbon trade markets and communicating with the international community about adaptation technology. Meanwhile, its vibrant civil society and

non-governmental and non-profit organizations can actively engage in international initiatives.

In recent years, environmental legislation in Taiwan has made significant progress. The Greenhouse Gas Reduction and Management Act was passed in July 2015, and three land management acts were passed consecutively: the Wetland Conservation Act in 2013, the Coastal Zone Management Act in 2015, and the National Land (Spatial Planning) Act in 2016. This is a critical moment for Taiwan to establish a climate change adaptation plan and promptly reshape the current landscape of climate change law and policies. Taiwan's strategy must not emulate traditional ideas or conventional wisdom. Rather, it must identify new trends and use innovative legal thinking to meet the unprecedented challenge of climate change, now and in the coming centuries.

Reference

Jiunn-rong Yeh. (2015). *Climate Change Governance and Law*. Taipei: National Taiwan University Press.

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