Editorial

Climate law remains in flux. At the international level, countries are working hard to finalize the operational details of the Paris Agreement, known informally as the 'Paris Rule-book', by the end of this year. In parallel, efforts are underway to take stock of national mitigation pledges and shed light on the remaining ambition gap, a facilitative process christened the 'Talanoa Dialogue'. A full negotiating docket does not equate to progress, however: negotiations have been challenging, with various items conditional on outcomes elsewhere, and an overall pace that remains alarmingly slow.

Setbacks in other areas of multilateral cooperation, such as international trade, are not contributing to the broader diplomatic context. Resurgent protectionism in a number of countries is dampening the political appetite for stronger climate action. Perhaps most worrisome are explicit or implicit threats to the elaborate yet vulnerable architecture of international climate cooperation, including the Nationally Determined Contributions (NDCs) submitted under the Paris Agreement.

The most glaring, if not the only, example of such threats is the announced withdrawal of the United States from the Paris Agreement. For all his inconsistencies on other fronts, President Trump has so far mostly followed through with his campaign promises on climate and energy policy. Executive rules adopted by the previous administration in the power and the transport sectors are being reviewed, with a view to reversing them or adopting less ambitious mitigation requirements.¹ Attrition in relevant government agencies, cut-backs in research funding, and an institutional effort to discredit climate science continue unabated.

In other part of the world, developments may be less dire, but they also do not instil great optimism. After protracted deliberation, the European Union is finally making advances with the legal framework for climate action beyond 2020. Its general trajectory points in the right direction; but internal divisions among Member States have impeded agreement on a level of climate ambition that would guarantee achievement of the European NDC and allow for significant progression going forward. Even European nations once thought of as climate leaders, such as Germany, are struggling to remain on course with their domestic energy transitions and the long-term decarbonization of their economies.

Sweeping transformation of complex and inter-connected systems, such as the energy, transport, industrial, and agricultural sectors, faces monumental challenges even under the best of circumstances. But unintended policy effects, uneven distribution of impacts, and growing pressure to change individual behaviour all risk eroding the political will for action. As the 'Talanoa Dialogue' focuses attention on the inadequacy of aggregate mitigation effort, it could be tempting to abandon hope for a breakthrough in conventional climate cooperation. A growing discussion among experts about the viability and – by ex-

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1 See Current Developments: North America, in this issue.

tension – the utility of the 1.5°C and 2°C targets contained in the Paris Agreement testifies to the intractable nature of the challenge.

Prospective or untested technologies, such as bioenergy with carbon capture and sequestration or global climate engineering, beckon with their promise of a cost-effective solution. That, too, is evident in the rising frequency and intensity of debates about the risks and opportunities posed by such emerging technologies. Important as these may be, however, it would be premature to dismiss the established channels of domestic and international climate action. Examples of progress are apparent in many countries around the world. Developing countries, in particular, are seeing a dynamic that would have been unthinkable a mere decade ago,² and presages the possibility of leapfrogging past some of the practices that have locked many more advanced economies into continued emissions.

Equally unwarranted would be to discount the global groundswell of support for climate cooperation after adoption of the Paris Agreement, evident in its rapid entry into force and, even more so, after the U.S. announced its defection. Vibrant initiatives at the ground level, in states and provinces, in municipalities, corporations and, more generally, across countless segments of civil society may ultimately be a better indicator of future climate progress than static headline numbers in NDCs and volatile political commitments. The same applies to innovation and the unrelenting cost decline for alternative energy and transport technologies, which find powerful expression in the detached language of markets.

Whether these can add up to enough momentum to bridge the remaining ambition gap will depend, in no small measure, on the legal context in which they operate. Investment in capital-intensive and long-lived assets requires a stable, enabling regulatory framework, including credible contractual arrangements. Innovation depends on rules that protect the intellectual property of innovators. As the article by Vedantha Kumar and Will Frank in this issue illustrates, the courts are increasingly called upon to serve as arbiters of the climate performance of governments. Laws are also key to ensuring the transparency and accountability of climate efforts beyond the traditional confines of the state, however. A societal transformation of the scale required by climate change can only be durable if it rests on rules and principles that are perceived as fair and legitimate by the broader public.

Just as law sustains the forces that have prompted the current climate crisis, then, it is also central to its solution. The six contributions to this issue, covering topics as varied as mitigation in international shipping and rainforest nations, bilateral diplomacy, measuring national climate performance, nuisance litigation, and carbon markets, are a reminder of the important legal and regulatory dimensions of climate change. They will inform ongoing academic and policy debates, and hopefully also enrich the readers of this journal.

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² See eg Current Developments: Latin America, in this issue.