

Report Part Title: SESSION I: IMPLICATIONS FOR CANADA OF THE PARIS AGREEMENT

Report Title: IMPLEMENTING THE PARIS AGREEMENT:

Report Subtitle: THE RELEVANCE OF HUMAN RIGHTS TO CLIMATE ACTION

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The meeting was held under the Chatham House Rule,<sup>2</sup> such that participants were not obliged to speak and there should be no attribution of any participant's comments in any future report of the round table.

The meeting at the Royal York Hotel in Toronto commenced with smudging and prayer led by a representative of the Mississaugas of New Credit First Nation, on whose traditional lands the gathering took place. Opening speakers explained how there is no word for “sustainability” in the language of the Anishinaabe people, that responsibility and roles are as important as law and rights, that indigenous knowledge should be the foundation of the climate change strategy and that there had to be a true, long-term partnership with indigenous peoples to build capacity to address climate change. Participants were urged to take individual responsibility, look critically at processes embedded in assumptions of law, and consider and respect shared sovereignty between federal and provincial levels of government and indigenous peoples.

## SESSION I: IMPLICATIONS FOR CANADA OF THE PARIS AGREEMENT

The substantive discussion of the round table commenced with an overview of the Paris Agreement. It establishes the future global agenda for climate action in a manner founded on the principles of equity, solidarity and sustainability, and which incorporates and advances the Sustainable Development Goals (SDGs) adopted by the United Nations General Assembly in September 2015. The agreement contains both legally binding and non-legally binding components. It provides a pledge and review mechanism whereby a state submits its voluntary pledge (“greenhouse gas emissions limiting ambition”), which is then subject to a legally binding process to monitor and review the extent of fulfillment of that pledge. The combination of

binding and non-binding elements is expected to make it easier for a greater number of states to join the agreement.<sup>3</sup>

Some participants considered the Paris Agreement to be a masterpiece of diplomacy in the way it combines climate science and principles of equity, solidarity and sustainability in a gently persuasive legal framework binding states to work together to solve climate change. As one participant commented, after the failures of the Kyoto Protocol — where top-down targets did not produce results — the legally binding Paris Agreement and accompanying decision document provide “all you need, all you can expect.” It is a significant breakthrough in the lengthy and often frustrating climate negotiations because it sets a long-term goal; globalizes the obligations to take action; provides nuanced differentiation, instead of bright-line distinctions; provides for transparency and compliance; and includes loss and damage.

The weaknesses of the agreement were also noted. While the nationally determined contributions (NDCs) pledged thus far by states (including Canada) are clearly insufficient, it is not certain even these unambitious commitments will be met, and the year of peak emissions needs to be earlier than 2030, which is the year suggested by the Paris Agreement and decision document. It was suggested that Canadians must hold a forthright conversation about what is a fair contribution for Canada, how to achieve it and how to increase its ambition over time. One participant expressed concern about the agreement's lack of clear enforcement mechanisms.

It was noted that many of the intended nationally determined contributions (INDCs) submitted to the United Nations Framework Convention on Climate Change (UNFCCC) ahead of the Paris Agreement did not specifically mention

<sup>2</sup> When a meeting, or part thereof, is held under the Chatham House Rule, those present, including media, “are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” For a full explanation of the Chatham House Rule, see: [www.chathamhouse.org/about-us/chathamhouserule](http://www.chathamhouse.org/about-us/chathamhouserule).

<sup>3</sup> This was critical for the United States, for example. Dan Bodansky from the Sandra Day O'Connor College of Law, Arizona State University, has written a paper entitled “Legal Options for U.S. Acceptance of a New Climate Change Agreement” (May 2015, Center for Climate and Energy Solutions, online: <[www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf](http://www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf)>), which suggests that in certain circumstances the US president “would be on relatively firm legal ground” to accept a new climate agreement with legal force, even without submitting it to the Senate or Congress for approval. Bodansky suggests it would have to be a treaty that was procedurally oriented, rather than one that sets precise legally binding emissions limits or financial commitments. If the agreement contained the latter provisions, Senate or Congress would likely have to approve it. There is an element of uncertainty about the extent of this authority, such that the president's decision to proceed on executive authority might turn on his/her informed assessment of the political acceptability of that course of action. According to this paper, there are several ways for the United States to enter into international agreements. The most well known is Article II of the US Constitution, which requires that the president obtain the advice and consent of two-thirds of the Senate. US practice has developed such that most international treaties are made through other means, such as congressional-executive agreements, where approval is given by both houses of Congress, and presidential-executive agreements, where it is solely the president who approves. See also Marlo Lewis, “Is the Paris Climate Agreement a Treaty?” Global Warming.org (16 December 2015), online: <[www.globalwarming.org/2015/12/16/is-the-paris-climate-agreement-a-treaty/](http://www.globalwarming.org/2015/12/16/is-the-paris-climate-agreement-a-treaty/)>.

indigenous peoples or their concerns. Canada's INDC, for example, mentions the federal, provincial and territorial governments, but not the indigenous governments. This significant omission needs to be remedied because indigenous peoples live in closer harmony with their environment, and they are seeing and experiencing the effects of climate change more quickly and directly than other communities. Indigenous knowledge must be taken into account in understanding climate change and developing mitigation and adaptation strategies. Around the world there are countless examples of indigenous people suffering a double burden from climate change: first, its immediate impact on their traditional ways of life; and second, government actions to build mega-energy projects that displace them, ignore their concerns and destroy the natural environment. The 2007 UN Declaration on the Rights of Indigenous Peoples is relevant and provides a framework for indigenous peoples' participation in climate change action. The standard of free, prior and informed consent should require indigenous peoples' participation and collaboration from the earliest stages of strategic planning of climate action. It was suggested that consent is not to be understood as mere consultation nor as a veto, but as a requirement to have consensus with affected indigenous peoples. It was argued that participation requires that indigenous communities be represented in negotiations by persons they freely choose.

## SESSION II: CANADIAN ACTION AT THE INTERNATIONAL LEVEL

The relationship between climate change and human rights was one of the more hotly debated issues during negotiations for the 2015 Paris Agreement, and appears to have been a factor in the extended nature of the final deliberations. The Canadian delegation not only advocated for enshrining human rights language in the agreement, but also played an important role in convincing other state parties to accept the compromise provisions on the issue.

One participant observed that the human being is at the centre of climate change, both as cause and victim. Placing the human at the centre of the environment is not new. States have human rights obligations, which they need to comply with when dealing with climate change as well as when tackling other challenges, whether we explicitly state these obligations or not. Making the link explicit between human rights and climate change, thereby reminding states of their human rights obligations, might help ensure that respect for human rights happens in practice, especially vis-à-vis the most vulnerable members of our societies. This is key when states are taking measures to adapt to or mitigate climate change. They should take a human rights-based approach to addressing climate change in their implementation of the Paris Agreement at the international and domestic levels.

It was pointed out that there are no specific human rights provisions within the body of the agreement. The reference to human rights was initially proposed for the operative part of the agreement (Article 2), but in the end this was rejected by states. Nonetheless, the text as a whole seems imbued with human rights concepts, starting with the extraordinary preambular language:

*Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity....

*Noting* the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice," when taking action to address climate change....

The preamble must be taken into account in the interpretation of a treaty. Round table participants noted that John Knox recently observed, "the Paris Agreement signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and that actions to address climate change must comply with human rights obligations."<sup>4</sup> In his view, by virtue of Articles 55 and 56 of the UN Charter, the United Nations' founding document, states are duty-bound to cooperate with other states in protecting and promoting human rights.<sup>5</sup> This means that the threat to the human rights of climate-vulnerable states' inhabitants (such as those in low-lying island nations) is a collective responsibility. Knox considers climate change to be "a paradigmatic example of a global threat that is impossible to address effectively without coordinated international action."<sup>6</sup>

Human rights are a good addition to the climate change toolbox, especially since climate change can have adverse effects on the enjoyment of human rights and exacerbates existing vulnerabilities. It was noted, however, that human

4 United Nations General Assembly, Human Rights Council, *Report of the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/31/52, 1 February 2016.

5 *Ibid.*, at para 43.

6 *Ibid.*, at para 44.