NEGOTIATING CLIMATE CHANGE IN CRISIS

EDITED BY STEFFEN BÖHM
AND SIAN SULLIVAN

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15. Towards a Fossil Fuel Treaty

Peter Newell

We need a new approach to tackling climate change. We need to start using the 'f' word much more: fossil fuels. The Paris Agreement does not even mention fossil fuels. The deliberate neglect by the climate regime of the largest source of greenhouse emissions is as shocking as it is unsurprising in a world in which fossil fuel lobbies still wield such power and have delayed effective climate action for so long that climate chaos is now upon us. This chapter urges that it is time to rein in the power these actors have over our collective fate, through international agreements and law which effectively and fairly leave large swathes of remaining fossil fuels in the ground. A *Fossil Fuel Non-Proliferation Treaty* (FF-NPT) based, like the Nuclear Non-Proliferation Treaty, on the three pillars of non-proliferation, disarmament and peaceful use, could fulfil that purpose.

The 'F' Word

We need a new approach to tackling climate change. We need to start using the 'f' word much more: fossil fuels. The Paris Agreement does not even mention fossil fuels. The deliberate neglect by the climate regime of the largest source of greenhouse emissions is as shocking as it is unsurprising in a world in which fossil fuel lobbies still wield such power and have delayed effective climate action for so long that climate chaos is now upon us. These companies have long wielded such power (Newell and Paterson 1998; Kolk and Pinkse 2007)—as also documented by Wright and Nyberg, this volume. But if further evidence of their influence were needed, it is observable in the distribution of

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bailout funds in response to the COVID crisis where G20+ countries have pledged over $207 billion so far to fossil fuel projects, according to the Energy policy tracker.[1]

It is time to reign in the power these actors have over our collective fate. Just six of the largest listed oil and gas companies alone hold reserves that together would use up more than a quarter of the remaining 2°C budget (McKibben 2012). And, historically speaking, only ninety companies have caused two-thirds of anthropogenic global warming emissions, including companies such as Chevron, Exxon, Shell and BP, with half of the estimated emissions produced in the past twenty-five years when the scale of the climate threat was clear (Heede 2014). Governments are complicit in this situation by planning to produce about 50% more fossil fuels by 2030 than would be consistent with a 2°C pathway, and 120% more than would be consistent with a 1.5°C pathway (SEI et al. 2019).

The long-neglected supply-side needs to occupy a central place in collective efforts to address climate change (Erikson et al. 2018; Gaulin and Le Billon 2020), starting with the Glasgow COP. The IPCC Special Report on 1.5 degrees published in October 2018 makes clear that realising the ambition of the 2015 Paris Agreement to keep global warming below 1.5°C requires deep and rapid decarbonisation.

A crucial, yet neglected, aspect of this is the need for international agreements and laws which effectively and fairly leave large swathes of remaining fossil fuels in the ground. A *Fossil Fuel Non-Proliferation Treaty* (FF-NPT) could fulfil that purpose (Newell and Simms 2019).

Though there have been calls for a Coal Elimination Treaty (Burke and Fishel 2020), it is clear we now need a more general fossil fuel treaty since the majority of remaining oil and gas reserves also need to remain in the ground. Such a treaty could have three pillars, modelled on the Nuclear Non-Proliferation Treaty.

The first pillar is *non-proliferation*. This would imply a moratorium on further expansion in rich OECD+ countries, underpinned by a model-driven assessment of which reserves of fossil fuels are un-burnable carbon and need to stay in the ground to be Paris compliant. This would underpin negotiations about the sequencing of commitments regarding different fossil fuels and the point at which other groups of countries take on commitments.

1 https://www.energypolicytracker.org/.

The second pillar is *disarmament*, which here refers to the accelerated phaseout, and managed decline of, existing investments and infrastructures in fossil fuels. It would be underpinned by the principle of a just transition to address both historical responsibility and the capacity to diversify away from fossil fuels, providing support for countries to do so (Kartha et al. 2018; Le Billon and Kristoffersen 2019; Muttitt and Kartha 2020).

The third pillar is *peaceful use*. This pillar refers to the financial and technological support to developing countries that will be needed for the adoption of renewable energy pathways. This support could be achieved, in part, by redirecting finance from fossil fuels, both public and private, and including the US$10 million a minute the IMF calculates that the world spends on fossil fuel subsidies (Coady et al. 2015), into a global transition fund to finance technology, retraining and compensation (see the chapters by Bracking and by Kaplan and Levy, this volume, on the complexities of climate finance).

There is precedent for international treaties which ban or regulate particularly harmful substances—think of the WHO Framework Convention on Tobacco Control (WHO FCTC), the Ottawa Treaty to ban landmines and the Chemical Weapons Convention. Internationally, there are also precedents for bans on fossil fuels such as the moratorium in place for mining projects in Antarctica (Article 7 of the Environmental Protocol of the Antarctic Treaty). The International Council on Mining and Metals has committed its members (including the World Coal Association) to neither explore nor mine in World Heritage Sites and to "respect legally designated protected areas" (ICMM 2003). Likewise, there are calls for banning oil drilling in the Arctic Sea and to halt exploitation in protected areas and on indigenous lands. Meanwhile, the 2017 Lofoten Declaration, signed by over 500 organisations, highlights the need to put an end to fossil fuel development and manage the decline of existing production.

There is much to be worked out in terms of overarching principles, modalities and procedures to ensure a fair, workable and effective fossil fuel treaty. But criteria for allocating and sequencing responsibility might include that (i) the costs of action should be borne disproportionately by those who have the greatest ability to pay defined by per capita income levels and who are best placed to redirect finance, production

and technology towards lower carbon alternatives; (ii) the greatest emitters of GHG emissions from the direct burning of their own fossil fuel reserves should act first; and (iii) cumulative emissions are assessed to take adequate account of historical responsibility and use of fossil fuels to date.

These three criteria would imply that OECD countries, plus the Russian Federation (OECD+), take the lead in the first instance with near-term targets and timetables for the phaseout of fossil fuels. Multilateral responses may be attractive to powerful countries wanting to ensure other states do not free-ride on commitments they are now making to leave fossil fuels in the ground. They would likely be supported in such an endeavour by the climate vulnerable groupings in the climate change negotiations such as the Least Developed Countries (LDCs) and the Small Island Developing States (SIDS) (Newell and Simms 2019). A universal treaty like the UNFCCC might not be required. Hence, even if major fossil fuel producers would not join a Fossil Fuel Non-Proliferation Treaty at first, there is still a strong rationale for initiating a treaty process led by a group of first movers who encourage others to join to avoid free-riding and problems of leakage. Supply-side policies adopted could also of course be included under countries' Nationally Determined Contributions under the Paris Agreement, providing a further incentive to participate in negotiations for a new treaty. Though negotiating the nuclear NPT took three years, this treaty would take longer and needs to be supplemented by other strategies aimed at keeping fossil fuels in the ground.

But there is momentum in this direction. Initial moves in this direction would include the formation of a first movers alliance, such as the Beyond Oil and Gas Alliance (BOGA), building on the precedent of the Powering Past Coal Alliance of countries. A number of countries in recent years have adopted bold supply-side policies in the form of moratoria, bans, production limits and so on, including most prominently Costa Rica, New Zealand, Denmark, Spain, France and Belize. France announced in December 2017 that it would phase out oil and gas exploration and production, a move then followed by Belize (which announced a moratorium on all offshore oil activity in late December 2017), Denmark (which implemented a ban on onshore oil and gas exploration in February 2018), New Zealand (which banned

new offshore oil exploration licences in April 2018), and Ireland (which enacted a ban on future oil exploration licences in September 2019) (Carter and MacKenzie 2020). Gaulin and Le Billon (2020), drawing on a fossil fuel cuts database, found that 1302 initiatives were implemented between 1988 and 2017 in 106 countries across seven major types of supply-side approaches. This demonstrates both a rapid growth in the number of supply-side initiatives taken during the past decade, but also their highly uneven adoption across the world, underscoring the need for a multilateral approach.

There is no underestimating the scale of the challenge of deliberately and legally calling time on the fossil fuel era that has provided such riches for some of the world's most powerful actors. Although it can appear daunting, it is worth recalling that many of the world's largest and most powerful private fossil fuel companies have their home base in OECD+ countries. This is key to avoid problems of carbon leakage and to improve compliance. An important move in this direction, and around which there is already some support, would be a public transparent registry of existing and planned sites of fossil fuel extraction that would form the basis of negotiations about *which* and *whose* reserves would be put beyond limits for reasons of avoiding further climate chaos.

An FF NPT is clearly not the only way forward. Any multilateral agreement to restrict the supply and production of fossil fuels will take many years to be negotiated. The urgency of the climate crisis and the need to improve the speed and depth of action in the way called for in the IPCC SR15[2] means that other routes to action must also be pursued in the meantime or alongside a multilateral endeavour. If an international agreement is to be achieved, it will likely only come about due to a confluence of political and economic factors favouring more ambitious action and a new approach to the issue. With regard to supply-side policies, this might include changes in the price and availability of alternatives to fossil fuels, particularly renewable energies such as wind and solar whose prices have fallen dramatically in recent years (notwithstanding the problems associated with industrial renewable energy production identified by Dunlap, this volume), and improvements in battery storage capacity. For many countries, further

2 i.e. the UN Intergovernmental Panel on Climate Change Special Report 15, see https://www.ipcc.ch/sr15/.

investments in a fossil-based infrastructure could lock in a higher cost fossil energy path and lead to stranded fossil fuel infrastructure assets and decreased competitiveness in a global energy market moving in the opposite direction and where 'peak demand' is also a growing consideration (Van de Graaf 2018).

Momentum is also likely to come from social movements and pressure groups both in terms of resistance to new sites of exploration at fossil fuel frontiers involving environmental defenders and other groups and advocacy around specific proposals for new mines and airport expansions, for example. Temper et al.'s (2020) analysis finds, for example, that over a quarter of fossil fuel projects encountering social resistance have been cancelled, suspended or delayed. Another source of pressure comes from the recent waves of litigation targeted at fossil fuel producers in recent years. The Urgenda case in the Netherlands stands out as the first case that successfully enforced the implementation of stricter national emission targets, followed up by the ruling in May this year in the Netherlands against Shell demanding that the oil company reduce its emissions within a more ambitious timeframe.

Proposing a new fossil fuel treaty is a bold thing to do. Let us not be naïve about the prospects that any such treaty will emerge in the very near future. Opposition will be immense. But really, if not this, then what? It is clear the vast majority of fossil fuels need to remain in the ground. Activism and resistance aimed at cutting off finance and resisting new infrastructures on the ground is vital. But we also need a multilateral approach to fairly agree who leaves which resources in the ground and helps poorer countries meet their energy needs in a lower-carbon way. This would complement, not replace, the Paris Agreement, but has the advantage of getting to the root of the problem. As cities, NGOs, citizens and even some businesses, as well as leading figures, such as former Irish President Mary Robinson, lend their support to this proposal,[3] it may be an idea whose time has come.

3 See https://www.fossilfueltreaty.org/.

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