

THE CHALLENGES AND EXIGENCIES IN ENFORCING THE PARIS AGREEMENT: FROM THE PERSPECTIVE OF BANGLADESH

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ABSTRACT

Over the past decades, the rapid rise in global temperatures has indicated an irreversible and irresistible shift in climate conditions. In this regard, the international community has concluded various hard law instruments amongst which the Paris Agreement has emerged as the 'ideal' climate change treaty. Nevertheless, such initiatives have also been criticized as ineffective due to multiple reasons, for instance, the inactivity of developed nations in observing their obligations, developing nation's lack of scientific expertise and economic means and their reliance on cooperation from developed countries; the absence of an international forum to enforce climate justice and so on. Although climate change is a universal concern, its effects and adversities primarily tend to have a devastating impact on nations with vulnerable geographical locations. In this paper, the author has highlighted the significance and urgent necessity of international cooperation; the upswing in unfavorable conditions in climate-risk countries particularly Bangladesh; and the available avenues to compel 'inactive' yet 'major GHG emitting' nations to fulfil their environmental obligations.

Keywords: Climate change, global warming, Paris Agreement, international environmental law, Bangladesh

INTRODUCTION

Over the years, the phenomenon of climate change has become inevitable and irresistible (Harvey, 2021). Upon the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1970, five assessment reports were published that hinted at the origination of changes in the climatic conditions dating back to the 1950s and the major cause of the phenomenon has been attributed to “anthropogenic concentration of greenhouse gasses”. Colin (2012) iterated that following these reports various international agreements have been formulated to address climate change, but the major setback of these instruments has been the absence of equitable distribution of responsibilities between developed and

developing countries; i.e. the implementation of common but differentiated responsibilities, according to Epstein (2023). Consequently, the Paris Agreement was concluded in 2015. Harvey (2015) opined that the Agreement is hailed as a ‘one of its kind’ international environmental agreement that has been meticulously drafted taking into consideration all the elements that resulted in the failure of its predecessors. Nonetheless, simultaneously as the Agreement was finalised, the approach of the international community towards climate change shifted from “precautionary” to “preventive”, moreover, Susskind and Salem (2014) argued that the conditions have gone out of control throughout the years; despite the significant role taken by the global community in providing and developing various

frameworks to deal with climate change that resulted in the formulation of the Paris Agreement, the longstanding and deep-rooted issues in enforcing and implementing environmental agreements could still not be addressed entirely. For instance, the continuing reluctance among nations in fulfilling their obligations and surrendering their sovereignty, the lack of enforcement mechanisms of environmental treaties and the deficiency of an international platform that could insist on compliance - all these factors still tend to outweigh the ambitious targets of the Paris Agreement.

Notwithstanding, environmental issues worsen and become uncontrollable if appropriate measures are not introduced at the appropriate time. This has been the case with climate change and unfortunately, its consequences are miserably affecting countries with vulnerable geographical locations as they lack adequate resources and finances to tackle the damages (The Conversation, 2019).

Although such countries, for instance, Bangladesh, Indonesia, Malaysia, and India have been fulfilling their obligations under the Paris Agreement, the non-compliance by other signatories is exceeding the efforts taken by these countries. Bangladesh has been ranked as the 7th country that is greatly exposed to the impacts of climate change by German Watch's 2021 Global Climate Risk Index (CRI) majorly due to its vulnerable geographical location (The Business Standard, 2021), even though the country has a contribution of only 0.56% to global greenhouse gasses emissions (Seema, 2022). Furthermore, countries like Malaysia have been ranked 49th by the Climate Vulnerability Index ranking, as a higher vulnerability to climate change, despite the country being a contributor of only 0.79% to global emissions; concerning climate risk, Indonesia

is in the top-third ranking countries in terms of climate risk, laying open to excessive heat and flooding. In the year 2019, India was ranked as the seventh worst-hit country due to extreme weather events, as demonstrated by the Global Climate Risk Index, which published the ranking of countries in accordance to their vulnerability both in terms of mortalities and pecuniary losses (Vishwa, 2021). It is pertinent to understand that environmental issues are a threat to the whole world and their consequences, although are largely affecting the geographically vulnerable regions now, will eventually disseminate throughout every global region. Under the current conditions, it has become more urgent than ever to adhere to international law dealing with environmental calamities.

In this article, the author aims to highlight and bring forth the adversities encountered by the people of Bangladesh consequent to climate change, the earthly location of the country that threatens further losses to the country, the sincere efforts and measures adopted by the government of Bangladesh in both tackling climate change disasters and accomplishing its obligations under the Paris Agreement. Furthermore, the author also emphasizes the role of reluctant nations whose inactivity ought to strike out the efforts put in by developing nations and finally, the author proposes and identifies the myriad avenues available to Bangladesh and other countries, to enforce the Paris Agreement. A qualitative method has been applied by the author, in examining this area of environmental law, relying on primary sources such as the Paris Agreement and secondary sources, for instance, articles, books and research work, enforcement and implementation of the climate change agreement.

THE PARIS AGREEMENT

Currently, the Paris Accord is the only effective global legal instrument that deals with curbing and controlling the phenomenon of climate change. The Paris Agreement is designed to operate on a “5-year cycle”. One of its success points can be attributed to the Agreement’s emphasis on common but differentiated responsibilities. The Agreement has been drafted in a manner that equitably distributes obligations between developed and developing countries. The main objective of the Agreement is laid down in Article 2 (1)(a) which provides that *the goal should be to restrict the rise in temperature beyond 2 °C and to restrict the increase to 1.5 °C*. The Agreement allows its signatories to determine their level of ambition and to submit their plans for climate action known as nationally determined contributions (NDCs). Countries shall demonstrate, through their NDCs, their plans to curb greenhouse gas emissions, and their initiatives to increase adaptability to the consequences of global warming. Furthermore, taking into account the economic constraints and technical means of progressing countries in abiding by environmental obligations and in coping with the adverse impacts of an altering climate, which often is the root cause for their reluctance to comply with environmental obligations; the Agreement provides a framework for assistance to such countries. The Paris Agreement imposes the obligation to provide financial support to developed countries.

ENFORCEMENT MECHANISMS UNDER THE PARIS AGREEMENT

If a member state contends that another signatory state is defiant with the Paris Agreement, the former could rely on the dispute-resolving clauses in the Accord, as discussed by Raiser, Kornek, Flachsland

and Lamb (2020). For instance, Article 24 provides that the clauses laid down in Article 14 of the UNFCCC are applicable *mutatis mutandis (with the necessary changes made)* to the Paris Agreement, as stated by Amirfar and White (2021). In the same article, the options available under Article 14 have been mentioned, which include: i) *negotiation*, accompanied by *compulsory conciliation*; and ii) resort to the International Court of Justice (ICJ) or arbitration, given that the disputing parties have declared acceptance of either of the above-mentioned methods of dispute resolution under the UNFCCC, as discussed by Amirfar and White (2021).

Furthermore, Amirfar and White (2021) have outlined the procedures, which encompasses that, if a party seeks to rely on the *conciliation* procedure, it must first notify the other party regarding the existence of a dispute between them (Article 14(1)). Upon the passing of 12 months following such notification, if the parties fail to settle the dispute according to Article 14(1), it is open to both parties to submit their contentions for ‘conciliation’; which includes both *fact-checking* and *negotiation*. In this regard, the role of the mediator is taken up by a conciliation commission, which also offers remedies that could be mutually accepted between them, opined by Amirfar and White (2021). The commission usually issues a recommendatory award. However, such an award is not legally binding in nature, and it remains upon the states to decide whether to implement such an award. On the other hand, with regards to resorting to the ICJ or arbitration, it has been argued by Llamzon (2007) that very few member states have declared acceptance of the ICJ’s jurisdiction and arbitration. Moreover, Mathilde and Sandrine (2022) commented that the procedural rules for arbitration outlined in Article 14(2) have not yet been adopted by the Conference of the Parties (COP). Hence,

there is no procedure for setting up an arbitral tribunal.

Additionally, Voigt (2016) outlined the procedure to expedite compliance and implementation of the Agreement, as contained in Article 14, which provides that the procedure shall comprise a committee which must have the expertise and must be assistive. Nonetheless, till today such a committee could not be set up, furthermore, its capacity and tasks have not been determined; which ought to be decided by the COP in the coming meetings. Besides, it is stated in Article 15(2) that the committee will “*be non-contentious and non-disciplinary*”. Therefore, there remains opaqueness as to the assistance the committee would provide to States with their compliance and in addressing issues with non-compliance, according to Voigt (2016).

CLIMATE CHANGE RAMIFICATIONS IN BANGLADESH

The disadvantageous geographical positioning and demographic conditions of Bangladesh have resulted in devastating effects in the region, as put forward by Thomas et al (2013). In the last decade, the weather conditions in Bangladesh have deteriorated significantly and such adversities have also impinged the country’s economy and its development overall. For instance, Robiul, Mahbuba and Arif (2019) pointed out that the country has seen an exponential heightening in the sea level, more frequent and energetic cyclones, and displacement of localities, furthermore, Munir Zahidul & Hossain (2012) stated that diseases like cholera, malaria, diarrhea have become rampant in the areas.

Between the period 2000 to 2019, Bangladesh has encountered losses of approximately \$3.72 billion and the weather

conditions have drastically exacerbated over the period (The Daily Star, 2023). In a report published by the U.S. government, in 2018, it was demonstrated that more than 50% of the country’s population resides in “high climate exposure areas” which is around 90 million of its population; and more than 50 million are exposed to “very high” climate change effects (Rojas, 2021). Moreover, it has also been observed that, by the year 2050, out of seven people every one individual will be replaced due to climate change (Rojas, 2021). It has also been predicted that 11% of land in Bangladesh is likely to be depleted due to an upsurge in the sea level, which may lead to the displacement of up to 20 million people (Rojas, 2021).

Subsequently, the effects of climate change have resulted in abnormal weather conditions in Bangladesh. According to the Internal Displacement Monitoring Centre, during the last ten years, approximately 700,000 people were ousted by natural calamities. In the year of 2016, almost 5, 00,000 people were displaced due to Cyclone Roanu which brought about landslides and submerged villages that left thousands of people homeless, causing the evacuation of almost millions of people and around 26 deaths. Subsequently, in 2019, more than a million residents were driven to shelters by Cyclone Bulbul. The cyclone was recorded to last for the longest time in the history of cyclones that occurred in the country. In the year 2020, 10 people were killed by Cyclone Amphan, which drove thousands of people homeless and destroyed a significant portion of agricultural land. Following that year, in 2021, yet another cyclone named Yaas, caused devastation in Bangladesh, resulting in various damages and deaths. Recently, in 2022, Cyclone Sitrang affected almost 2.3 million people, one million people took shelter in 6,925 cyclone centres, 18 people

were killed and around 10,000 homes were destroyed.

BANGLADESH IMPLEMENTING ITS CLIMATE CHANGE OBLIGATIONS

Being a signatory to the Paris Agreement, Bangladesh has often been applauded for abiding by its obligations under the Agreement, regardless of the country being a low-income country. The country has set an example in demonstrating its international environmental obligations and also has been proactively taking measures to tackle the consequences of adverse climate conditions. In 2015, Bangladesh was the earliest country to draw up and submit their 'Nationally Determined Contributions (NDC)' to UNFCCC. The NDC focused on three sectors namely, Power, Industry and Transport. In 2018, with the view to enforce its NDC obligations, Bangladesh produced the NDC Implementation Roadmap and Action Plan. In 2020, Bangladesh updated its NDC which covered the previous areas along with the use of energy in different sectors (industry, commercial, residential etc.)

The country has gathered global acknowledgement for its outstanding progress in designing its initiatives to adapt to climate change. In its NDC, Bangladesh set a target to decrease its GHG emissions to 5%, by 2030; also stating that the reduction could surge up to 15% if the country receives adequate foreign funding. It is a matter of pride for Bangladesh that Sheikh Hasina the Prime Minister of the country has won the 'Champions of the Earth' organized by the United Nations Environment Programme (UNEP), recognising its all-embracing initiatives to deal with climate change (United Nations News, 2021). Moreover, the country has also pioneered in establishing the Climate Change Trust Fund. Furthermore, the country has moved a step forward by

amending its Constitution to insert a mandate (Article 18A) that requires the conservation of the nation's environment and raw materials for the current and upcoming generations, abiding by the principle of intergenerational equity under international environmental law.

The institutional setup of Bangladesh has been applauded to be one of its major achievements in tackling impacts of climate change. An extensive array of programs has been established by the Ministry of Disaster Management and Relief, for instance, 'National Plan for Disaster Management (2016-2020)' that outlines a comprehensive structure on calamity handling, guided by various policies and activities including the Sustainable Development Goals (SDGs), SAARC Framework for Action, Disaster Policy Act 2015 etc. Furthermore, numerous plans were adopted outlining the necessity to pursue both financial and social upgradation by considering calamity management (Bangladesh Climate Change Strategy and Action Plan, 2009). Furthermore, aiming to curb GHG gas production to almost 95 per cent by the year 2050. Khan, Huq and Shamsuddoha (2018) stated that, various trust funds have also been created namely, BCCTF and BCCRF, dedicating approximately US dollars 400 million for both mitigation and adaptation actions. Subsequently, another programme – the Bangladesh National Adaptation Programme Action (NAPA) has outlined various climate requirements for reconstruction and susceptibilities; and the actions proposed by the programme aimed to focus on poverty eradication and protection of livelihoods. The country has also significantly participated in international discussions on climate change and since 2020 undertaken to chair the forum of climate vulnerability – CVF. In any event, since Bangladesh is a low-income country, despite its ambitious attitude towards dealing

with climate change, financial aid remains one significant factor in enforcing its efforts, and in that aspect the country mainly relies on funding from the international community and developed nations.

BLOCKADES IN ENFORCING ENVIRONMENTAL LAW TREATIES

Historically, the long-standing factors that have impeded the enforcement of environmental agreements can be identified as - the non-existence of a particular international court that has jurisdiction over environmental disputes and the ‘non-enforceable characteristic of environmental agreements that serve as another barrier in ensuring compliance by member states (IISD, 2012). Falkner (2016) argued that even though the Paris Agreement falls within the realm of the Vienna Convention on the Law of Treaties, the Agreement as a whole is not legally binding. Nevertheless,

Arif and Md. Jahid (2016) opined that; it is also yet another unique characteristic of environmental agreements to be “soft-law” instruments to encourage the participation of all nations. Furthermore, the International Court of Justice (ICJ) has jurisdiction over certain environmental disputes; nonetheless, the Court’s jurisdiction ultimately remains subject to countries that provide their consent.

THE ISSUE OF ‘NON-COMPLIANCE’

The major practical hurdle in tackling global climate change has been the sheer disinclination of developed countries in either ratifying the Paris Agreement or in meeting their commitments, despite being the major emitters of greenhouse gasses (Maizland, 2023). In the report published by the Climate Action Tracker (CAT) it has been stated that although the majority of the countries have signed the Paris Agreement,

the collective obligation set by the Agreement to control the hike in global temperatures to 2 degrees is being observed by a few countries only. The major economies of the world including the G20 countries have not adopted any climate action scheme to execute their obligations set out by the Paris A (CNN, 2021). The CAT observed that almost 27 countries including the European Union combined make a contribution to 80% of the global emissions (Kotasova, 2021).

It has been identified by Bacchetta (2020) that ‘non-compliance’ can be distinguished in two categories, one that arises from *unwillingness* and the second from *unfavourable circumstances*, for instance, in the context of non-compliance in the case of climate change, nations such as the United States, United Kingdom, and other European countries possess the channels to reduce their emissions without much burden; nevertheless, they exhibit *reluctance* and inactivity on their part; on the other hand, certain countries lack the scientific and financial aid to realize their obligations, despite their full awareness of the phenomenon, nonetheless, the Paris Agreement has been designed in a manner that allows each signatory state to decide how to realize their mitigate duties.

The most recent Conference of Parties (COP 27) was held from 6th to 18th November 2022, in Egypt. The climate experts representing Bangladesh in the conference have urged developed nations to extend climate financing as the present amount is not sufficient to deal with the current drastic conditions (The Business Standard, 2022). It was further contended that developed countries, for instance, the United States despite being a major emitter of carbon, have been evading their obligation to provide financial assistance and till date they

have not contributed at all (The Business Standard, 2022).

Into the bargain, two prime countries that export oil have not yet ratified the Paris Agreement - Libya and Iran. According to the European Commission's emissions database, Iran is alleged to impart almost 2% of global emissions making the country the world's sixth highest greenhouse gas emitters and the nation's hesitance to ratify comes from its major dependence on oil. Nemch (2023) argued that even though Iran is a member state to the United Nations Framework Convention on Climate Change (UNFCCC), the mitigation efforts of Iran are ranked as "critically insufficient" by CAT, which demonstrates zero compliance with the Paris Agreement. On the other hand, the United States withdrew its membership to the Agreement, in 2020, under the presidency of Donald Trump (Fox News, 2017); however, it rejoined the treaty in 2021, with the election of President Joe Biden (Blinken, 2021).

According to an analysis by the watchdog Climate Action Tracker (CAT) it has been concluded that major economies in the world were non-compliant with their Paris Agreement obligations, although these countries collectively make up 80% of the world's emissions. The study also applauded developing nations such as Gambia as "1.5 compatible."

The European Union (EU) adopted the European Green Deal in 2020, pursuant to achieving its commitments under the Paris Agreement. As a part of the Deal, its emission reduction target has been increased from 40% to 55% by 2030. Schwarte (2021) opined that, although the EU submitted its NDC in 2020, it is said that the organization is not in conformity with one of the technical obligations which requires member states to

inform, of their particular levels of emission, to the UNFCCC secretariat. This obligation has been particularly imposed to ascertain that member states are transparent and accountable as well. Hence, such non-adherence could debilitate the effectiveness and authenticity of the Agreement.

THE WORLD COURT

Thouvenin (2023) states that the ICJ is often hailed as the primary place of resort in case of international disputes. The universal court has the competence to determine disputes relating to non-compliance with the Paris Agreement's obligations, one by exercising its adversarial jurisdiction (conditional upon a state's acceptance) or the other by issuing an advisory opinion.

With regards to the Court's adversarial jurisdiction, States agree to receive the compulsory jurisdiction of the ICJ by submitting a proclamation to the United Nations Secretary-General. Subsequently, the Court would have jurisdiction over disputes concerning treaty interpretation or international law obligations, among States that have submitted such declarations. To date, a total of 72 States have made such a proclamation.

On the other hand, Follesdal (2020) commented that, in respect to its consultative jurisdiction, the Court has the competence to provide opinions, on questions relating to various aspects of international disputes, upon requests from the UN General Assembly or Security Council, as stated in Article 96(1) of the United Nations Charter. Nonetheless, such advisory opinions of the ICJ are legally inoperative in settling disputes (Follesdal, 2020).

ABSENCE OF AN “ENVIRONMENT COURT”

International courts and tribunals (ICs) are unique in their own ways. Whilst they are independent in nature, concurrently, they attain their legitimacy from the states’ establishment and also the state’s consent allowing the court to exercise its jurisdiction (Follesdal, 2020). Hence, the ICs have to demonstrate a balanced stance in preserving states’ sovereignty on one hand and at the same instant, protecting the common interest in the environmental asset at risk, on the other hand (Follesdal, 2020). The primary role of international courts is to sanction claims by states and declare the ramifications arising from the violation or omission of treaty obligations (Follesdal, 2020).

Charlier (2003) argued that, historically, many times it has been proposed to set up a particular tribunal in environmental law focusing on environmental disputes. The first-ever proposal was made in the late 1980s, by Amedeo Postiglione, the International Court of the Environment Foundation’s (ICEF) founder (Charlier, 2003). However, such a proposal gave rise to two main contentions: the first was related to identifying the jurisdictional scope and the treaties that would define the jurisdiction of such courts; and the second concerned the probable tensions that could spring up with other international courts regarding disputes arising on environmental issues but relating to other areas such as human rights, trade, investment and so on (Charlier, 2003). Additionally, environmental disputes bear numerous challenges, for instance, a claim relating to environmental harm may involve prevention of the harm rather than obtaining a remedy; it is not feasible to measure environmental harm once it has taken place; environmental cases rely on scientific

evidence of causes and effects (Charlier, 2003).

CONCLUSION AND RECOMMENDATIONS

In his article, Ajit Niranjana (2023) opined that, recently, scientists have recorded the month of July 2023 to be the ‘hottest’ month in the history of the globe, subsequent to which, António Guterres Secretary-General of the UN, commented that, we have moved from the period of global warming to that of ‘global boiling’. Nonetheless, he has also opined that with immediate and drastic climate action - controlling of the increase in universal temperatures can be attained and steer clear of the worst of climate change. It has now become more transparent and evident than ever that climate change is real and its consequences have a ruinous impact on poorer nations that lack the resources both to tackle natural calamities and to provide redress to their aftermath.

As highlighted in this paper, Bangladesh is one of the prime victims of climate change calamities due to its area on earth coupled with the nation’s limited financial means in going about natural disasters. Although the measures adopted by the country and fulfilment of its commitments under the Paris Agreement are creditable and meritorious, it is undeniable that Bangladesh and other climate-risk countries require the cooperation and compliance of the developed or, in other words, ‘major contributing’ nations.

In 2022, the UN Special Rapporteur, Ian Fry was appointed to visit Bangladesh, in order to observe the country’s safeguarding of human rights in addressing climate change. Subsequent to his visit, in 2023, he concluded a report, setting out his findings along with various recommendations to the

Government of Bangladesh. He proposed that there has to be a unanimous agreement amongst the international community on a Loss and Damage Fund since developing countries like Bangladesh are unable to bear the huge costs involved in tackling climate change. Furthermore, he has advised the country's government to create a policy strategy that addresses the issue of tackling the population that are superseded due to climatic disasters. The report also emphasized on the need to focus on preserving the human rights of the indigenous people, perhaps by committing to the UN Declaration on the Rights of Indigenous Peoples. The report also highlights on framing strategies to enhance renewable energy and energy efficiency.

Although it is well settled that in the case of continued non-compliance with environmental agreements, states have the option to resort to international courts; in this regard, the ICJ, but the challenges and limitations of the world court in climate change disputes have already been iterated in the previous section. Another proposed approach could have been the creation of an international environmental court, but the challenges involved in designing such a court have already been scrutinized above.

In spite of the above, there are alternative courses of action that could also be sought outside the ones available under the United Nations Framework Conventions on Climate Change (UNFCCC). For instance, disputing parties have the option to turn to Secretary-General of the UN to provide its reliable agencies, in order to establish communication between the contending parties and settle the issues between them. This procedure has manifested to be an effective one in working out inter-state disputes as well as civil conflicts in countries like Cambodia, Mozambique, Nicaragua and

El Salvador. Moreover, entreating the UNEP is another avenue open to disputing parties; to seek assistance on contentions regarding their obligations under the Paris Agreement. Even though dispute resolution is not included in the mandate of the UNEP, it can be requested to take initiative as a neutral expert and a reliable third party in inter-positioning conflicts between parties; and even so contentions under the Paris Agreement.

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CONFLICT OF INTEREST

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