Editorial

Fact and Fiction in the Dubai COP’s Decision on Fossil Fuels

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Abstract

The flagship decision of the 28th Conference of the Parties to the United Nations Framework Convention on Climate Change, issued on 13 December 2023, appears to call for the elimination of fossil fuels. This would be a first in the annals of the international legal regime on climate change. In reality, I argue, while the decision acknowledges that the world must move away from fossil fuels, it concedes that there is no known practical way of doing so. The combined effect of these positions is the same as the understanding which states had settled on prior to the Dubai conference, namely that each state would work at its own self-determined pace to reduce its reliance on fossil fuels.

Keywords

1 Introduction

In a comment for the *New Yorker* on the outcome of COP 28,¹ Elizabeth Kolbert wrote:

Three decades after agreeing to avoid ‘dangerous’ warming, the nations of the world today acknowledged that this would involve ‘transitioning away from fossil fuels.’ [...] Depending on how you look at things, the statement represents either a genuine breakthrough that will allow the globe to avert catastrophe or a point so obvious that what it really reveals is how far off track things have veered.²

Kolbert favoured the latter view, as her follow-up remarks make clear:

But how is it possible that twenty-eight negotiating sessions were needed to agree on what has been self-evident all along, which is that dealing with climate change will require phasing out or transitioning away from fossil fuels? [...] after twenty-eight COPS, and twenty-eight years of rising emissions, skepticism is clearly justified.³

Kolbert poses her ‘How is it possible?’ question rhetorically, leaving it unanswered. But what if we were to answer it ourselves?

Perhaps one answer would be that states for a long time did not believe that they needed to phase out fossil fuels, because a reduction in the use of such fuels, well short of a complete phase-out, would have been sufficient to contain the problem of climate change to a manageable level. Moreover, even if some states lately have come to see the phasing out of fossil fuels as necessary, almost no state knows how this is to be done. It is for this reason, we might say (in continuation of our reply to Kolbert) that states did not agree to the elimination of fossil fuels – until the last month of 2023.

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¹ The Dubai Climate Change Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP 28) was held over the period 30 November to 13 December 2023, in Dubai, United Arab Emirates. The last of these days was overtime. For the official account of the conference outcome, see UNFCCC Secretariat, ‘COP28 Agreement Signals “Beginning of the End” of the Fossil Fuel Era’, Press Release, 13 Dec. 2023, <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>.


³ Ibid.
If we accept this answer as plausible, it follows that states have now openly and collectively decried their quiet plans of the past to keep using fossil fuels indefinitely (albeit in reduced quantities). It does not follow, however, that states have any clearer idea now about how to phase out fossil fuels.

The true insight into COP 28, then, might be, not that the states have put an end at last to almost three decades of pretence (Kolbert), but that they have consciously changed their position by deciding to take a leap into the unknown. What is unknown is not whether fossil fuels must be phased out – this is henceforth treated as known – but whether the alternatives, such as they are, to fossil-fuel use can really be deployed in the time remaining to effect a fossil-fuel phase-out.

2 Fact

With this interpretation of the COP 28 decision I am being generous to the states. The actual language the states use in the decision is ‘Transitioning away from fossil fuels in energy systems’. This does not sound very different from (merely) reducing the use of fossil fuels, especially when one considers that the language does not extend to the use of fossil fuels in non-energy systems. Those other systems, or ‘sectors’ (to use the standard term), include the so-called industrial-processes sector (under which are included the processes for the production of iron and steel, cement, ammonia (which is needed for fertilizers), etc.), a sector that uses vast quantities of fossil fuels and from which vast quantities of greenhouse gases are emitted.

4 Conference of the Parties (COP) Serving as the Meeting of the Parties to the Paris Agreement, ‘Decision 1/CMA.5: Outcome of the First Global Stocktake’, 30 Nov. 2023, <https://unfccc.int /decisions> (hereinafter ‘Outcome Decision’).
5 Ibid., para. 28(d).
6 In the United Kingdom, for example, in 2020, the level of carbon dioxide (CO₂) emissions from industrial processes was 7% that of CO₂ emissions from the energy sector – a sizeable percentage. In absolute terms, the United Kingdom’s industrial-processes sector released 21.23 megatonnes of CO₂ in 2020, compared with 304.26 megatonnes from the energy sector. See United Kingdom, Department for Business, Energy, and Industrial Strategy, 8th National Communication, Aug. 2022, <https://unfccc.int/documents/624711>, at 485. Industrial processes are distinctive for their use of fossil fuels as feedstock. For example, fossil carbon is used as a reducing agent to remove oxygen from metal oxides, producing CO₂ as waste. See Intergovernmental Panel on Climate Change, Guidelines for National Greenhouse Gas Inventories, edited by H. S. Eggleston, et al. (Institute for Global Environmental Strategies, 2006), vol. 3, ch. 3, s. 4.3.
In fact, when all the various qualifiers enveloping the ‘Transitioning …’ phrase in the decision are considered, countries so inclined would be entitled to read it as a call for nothing more than reduced fossil-fuel use. The textual context of that key phrase is as follows:

[The COP] Further recognizes the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways and calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches: [...] (d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner.7

Such a multitude of qualifiers (I count eight in the quoted passage) is remarkable. Note that they include the 1.5°C warming limit. The ‘call’ to transition – the centrepiece statement of the centrepiece decision of the ‘uae Consensus’8 – is issued, therefore, in furtherance of COP policy to not lose sight of the 1.5°C limit (this being the lower limit inscribed as an objective of the collective of state parties in Article 2 of the Paris Agreement).9

However, not all parties to the Paris Agreement take the 1.5°C limit equally seriously – and with good reason.10 And none take it as seriously as the Article 2 limit of 2°C, which, by general consensus, must absolutely not be breached. Poor drafting or haste in the final hours of COP 28 may have introduced the lower limit into a place in the decision where it does not belong. The effect, nevertheless, is that ‘Transitioning away from fossil fuels in energy systems’ is now tied to the project of limiting global warming to 1.5°C. A follow-up act by

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7 Outcome Decision, above n. 4, para. 28.
8 Certain key decisions taken at COP 28, including the decision discussed here, have been designated as the ‘uae Consensus’; see UNFCCC Secretariat, ‘Outcomes of the Dubai Climate Change Conference’, no date, <https://unfccc.int/cop28/outcomes>.
10 Many scientists themselves do not believe that the 1.5°C limit is realistic. The budget for 1.5°C, if it has not been exhausted already, will almost certainly be exhausted by 2028: R. D. Lamboll, et al., ‘Assessing the Size and Uncertainty of Remaining Carbon Budgets’ (2023) 13 Nature Climate Change 1360–1367. See also Mark Poynting and Erwan Rivault, ‘2023 Confirmed as World’s Hottest Year On Record’, BBC News (online), 10 Jan. 2024, <www.bbc.com/news/science-environment-6786954> (‘Last year was about 1.48°C warmer than the long-term average before humans started burning large amounts of fossil fuels, the EU’s climate service says’).
the Paris Agreement parties is needed to extend the call to the ‘well below 2°C’ project as well.\textsuperscript{11} Let us nevertheless allow, as Kolbert does, that ‘transitioning away from’ is, in practice, a euphemism for ‘phase out’. This surely is how almost everyone will treat it from here on in.\textsuperscript{12} Having identified this element, and set it aside, we are left with the unknown – the leap into the dark.

3 Fiction

There is plenty of evidence in the COP 28 decision itself that the states are far from confident that they know how a phase-out of fossil fuels might be achieved, even if only ‘in energy systems’, even if only for observance of the (higher) 2°C limit.

To begin with, there is the dire condition of the states’ current Nationally Determined Contributions (NDCs):

[The COP] Notes with concern the findings in the latest version of the synthesis report on nationally determined contributions that implementation of current nationally determined contributions would reduce emissions on average by 2 per cent compared with the 2019 level by 2030 and that significantly greater emission reductions are required to align with global greenhouse gas emission trajectories in line with the temperature goal of the Paris Agreement.\textsuperscript{13}

Another paragraph of the decision explains how much greater the states’ planned emission reductions must be for ‘alignment’ with the Paris Agreement’s Article 2 limits:

\textsuperscript{11} According to the International Institute for Sustainable Development’s report on COP 28, the AOSIS (Alliance of Small Island States) group of states was not in the conference room when the Outcome Decision (above n. 4) was gavelled through. When AOSIS returned to the room to find the decision adopted, Samoa, speaking on behalf of the group, complained that ‘the focus on “energy systems” is disappointing, and stressed the text “endorses technologies that could take us backward”’. See IISD, ‘Summary of the 2023 Dubai Climate Change Conference: 30 November-13 December 2023’ (18 Dec. 2023) 12(842) Earth Negotiations Bulletin 1, <https://enb.iisd.org/united-arab-emirates-climate-change-conference-cop28-summary>, at 25.

\textsuperscript{12} See, as an example, the title of COP 28’s press release, cited at n. 1, above.

\textsuperscript{13} Outcome Decision, above n. 4, para. 21.
limiting global warming to 1.5°C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050.14

Planned reductions in states’ current NDCs for 2030, therefore, if fully implemented in accordance with their own terms, will be less than one-twentieth of what they should be (2% below instead of 43% below). Still worse is that states cannot be trusted with full implementation of their NDCs, for the decision recognizes that there is an ‘implementation gap’ which the current batch of NDCs has already opened up.15 This is partly due to the fact that most developing-country NDCs are conditioned for their performance on the receipt of astronomical amounts of international climate finance.16

Insufficient action to date would not be a problem if there were plenty of time left for states to mend their ways. But the decision leaves us in no doubt that there is very little time left: we had about a year, as of the time of the decision, to turn the corner and start reducing global greenhouse gas emissions absolutely, in accordance with the estimates of scientific modelling:

> based on global modelled pathways and assumptions, [...] global greenhouse gas emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5 °C with no or limited overshoot and in those that limit warming to 2 °C and assume immediate action.17

Obviously, turning the corner will not happen ‘before 2025’ with this current batch of NDCs, which are not even on track to deliver a 2% reduction from the 2019 level by 2030.

Insufficient current action and insufficient remaining time would still not be a terminal problem if we had great alternatives to substitute for fossil fuels. It is at this point in the COP 28 decision that the discourse switches from citing fact-based analyses to sounding metaphysical.

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14 Ibid., para. 27.
15 Ibid., para. 23.
17 Outcome Decision, above n. 4, para. 26, emphasis added.
The decision calls on states to do several things more or less immediately, including ‘Tripling renewable energy capacity globally … by 2030’.18 This means, if we try to visualize it, that for every wind turbine now standing there should be another two raised within six years; for every solar-array park, another two of the same size should materialize in the same general vicinity of the first within six years; for every hydropower dam (average construction time, not counting preparatory work, for a large dam is 8.6 years)19 there should be one more of the same size built somewhere upstream and another one somewhere downstream of the existing one by 2030; and so on, and so forth, through the list of currently installed renewable-energy technology.

In addition to the tripling of renewable-energy production, there must be, according to the decision, an ‘acceleration’ of ‘nuclear’20 (almost a contradiction in terms, considering the necessarily glacial pace of setting up nuclear-power plants, due to the safety and security issues involved), an acceleration of ‘removal technologies such as carbon capture and utilization and storage’21 (how does one accelerate the installation of something that does not yet exist commercially?),22 an acceleration of ‘low-carbon hydrogen production’23 (which by definition would require even greater increases in renewable energy), as well as accelerated reduction of ‘methane emissions by 2030’24 (except that methane emissions are currently increasing,25 so there is no reduction to accelerate), and ‘Accelerat[ed …] reduction of emissions from road transport’26 (which again entails further increases in renewable energy to charge the batteries of the subcategory of vehicles that can realistically be powered by them). And because the Paris Agreement’s Article 6 market

18 Ibid., para. 28(a).
20 Outcome Decision, above n. 4, para. 28(e).
21 Ibid.
22 See, for example, Editorial, ‘EU Climate Policy Is Dangerously Reliant On Untested Carbon Capture Technology’ (15 Feb. 2024) 626 Nature 456. At COP 28, following the adoption of the Outcome Decision (above n. 4), Palau’s representative, speaking for the group of Pacific Small-Island Developing States, ‘noted serious concerns with several loopholes such as carbon capture and storage that he said were unproven technologies’: IISD, above n. 11, at 26.
23 Outcome Decision, above n. 4, para. 28(e).
24 Ibid., para. 28(f).
26 Outcome Decision, above n. 4, para. 28(g).
mechanisms have not yet been operationalized, all these things will need to be achieved without the incentivizing cost-reductions that the international exchange of emission-reduction commitments effects.

Several other measures of a similarly challenging kind (one of which involves eliminating coal use, specifically) are collected, numbered, and urged upon the states in the COP 28’s decision’s flagship provision. Because each of these requires enormous amounts of surface space, money, or time (or all three), because none of these three prized resources is available in enormous amounts (as the decision is at pains to remind us), and because there are other equally pressing and just-as-expensive climate-related priorities to attend to on our tightly packed and long-suffering planet (including adaptation to climate change and providing reliable and affordable energy and energy-dependent services to people who presently do not enjoy these luxuries), the chapeau to this paragraph of the decision could just as well say: ‘We’d like Santa Claus to bring us in the closing years of this critical decade all of the following ...

Perhaps we have read passages like this in keynote decisions of earlier COPs and did not feel compelled to stop and weigh them. But here, the COP 28 decision forces us to stop and notice the fabulous glow of fantasy that now adheres to this text, which comes in the wake of the announcement that fossil fuels will be phased out.

4 Conclusion

Under pressure to announce the beginning of the end of the fossil-fuel era, the Dubai COP capitulated. The resulting decision text cleaves into fact and fiction. The supposedly paradigm-shifting decision, for which a petrostate conveniently now claims credit (‘We are on YOUR side!’), does not in fact solve any of the problems we have, intellectually, with climate change, nor does it point to any solutions in practice. The only thing it achieves is that, by making the renunciation of the fossil-fuel era factual, the implied end-date of the fossil-fuel era is made to seem more fictional than ever.

27 See iiisd, above n. 11, at 11.
28 See Outcome Decision, above n. 4, paras 22, 25, 67 (there is a financing gap of US$5.8–5.9 trillion in the pre-2030 period), 83, and 85.
29 An estimated US$215–387 billion annually is needed for adaptation to climate change in the pre-2030 period: ibid., para. 68. States providing adaptation finance will have to more than double their current contributions: ibid., para. 86. On top of these amounts, billions more are needed for the Loss and Damage Fund: ibid., para. 79.