

Defending the Planet: A Columbia Law Podcast **Episode 3: “Back in the Paris Pact”**

[00:00:04] **Sue Biniiaz:** The Paris Agreement was actually quite resilient. Everywhere you turn, you see the Paris goals repeated.

[00:00:12] **Laurence Tubiana:** We need long-term strategies. Countries has to imagine how deep the transformation has to be. You can't do that in 2049. You have to really begin action now.

[00:00:24] **Biniiaz:** It's politically easier to say we're going to get to net zero in 30 years. It's much more climate significant to say we're going to reduce our emissions during this critical decade.

[00:00:35] **Michael Gerrard:** This is *Defending the Planet* from Columbia Law School. I'm your host, Michael Gerrard. I'm a professor at Columbia Law School, where I teach courses on environmental and energy law and serve as faculty director of the Sabin Center for Climate Change Law. Each week, I'll be joined by guests who are experts in the field, including several of my colleagues at Columbia. In this series, we'll be talking about combating the climate crisis through one of the most important and effective sets of tools at our disposal: the law.

[00:01:16] **Gerrard:** Let's start with the good news: The U.S. has rejoined the Paris climate agreement, the 195-nation pact to combat global warming. The bad news is that this landmark treaty may not be enough so far to prevent a dangerous rise in global temperature. The carbon emissions targets are too low, despite some recent improvements, and major polluting nations may not have an incentive to adopt and implement standards that are tough enough to prevent climate disasters. Catastrophic climate change is a global problem. Many say that it's *the* global problem, together with pandemics. And no nation—not even the biggest emitters like China, the U.S., and India—can solve it alone. So what role can international cooperation play in the fight against climate change? What are the limits of that cooperation? And how can it be effective when the interests of individual nations are so often at odds? My guests today are Sue Biniiaz and Laurence Tubiana.

[00:02:20] **Gerrard:** Columbia Law School alumna Sue Biniiaz served as the lead climate lawyer for the U.S. Department of State for more than 25 years. She recently returned to the State Department to support John Kerry, the special presidential envoy on climate, on international climate negotiations. Sue has served as a member of the

Law School's adjunct faculty and is a senior fellow with the Sabin Center for Climate Change Law.

[00:02:46] **Gerrard:** Laurence Tubiana is CEO of the European Climate Foundation, chair of the board of governors of the French Development Agency, and a professor at Sciences Po in Paris. Previously, she was France's climate change ambassador and special representative for the 21st Conference of the Parties, and she was a key architect of the Paris Agreement. She has taught classes at Columbia, including the Political Economy of Energy and Climate Policy and the International Political Economy of Biodiversity. Welcome, Sue and Laurence. So let me start with this question to both of you: The U.S. has rejoined the Paris climate agreement. What are the practical implications of the U.S. rejoining the agreement, and how difficult do you think it's going to be for the U.S. to be seen again as a world leader in climate after four years of absence during the Trump administration? Sue, can I turn to you first?

[00:03:50] **Biniarz:** Sure. Thanks, Michael, and nice to be reunited with Laurence. So let me talk first about the practical implications of returning. I think there are a couple. First of all, I think rejoining as President Biden's pretty much first act in office sent an immediate signal to not only the United States but to the rest of the world concerning the seriousness with which this new administration is going to take the climate crisis. So that's one. The second is I think it has breathed new life into the Paris Agreement. You know, many other countries stepped up during the four years of the Trump administration in terms of climate leadership, but I think there is a special role that the U.S. plays and I already feel that U.S. engagement, having now returned to the Paris Agreement, is making a difference. And I think it will make a difference at the COP.

[00:04:43] **Gerrard:** I'm sorry, I just wanted to jump in. COP is the Conference of the Parties, which is the meeting that is held every year of the parties to the U.N. Framework Convention on Climate Change. And the next one is coming up in November in Glasgow, Scotland.

[00:04:56] **Biniarz:** I would also say there are some domestic implications. I mean, rejoining Paris meant that the United States had to come up with a new emissions target, which is, you know, it's a requirement of being a party to the Paris Agreement—that you have one in place. So it drove the development of a 2030 emissions target. We also asked about how will the U.S. be seen after four years of absence. So just a couple of points on that: I mean, we obviously expected—or I personally expected—some skepticism about the U.S. return. You know, I've lived through a lot of flip-flops in U.S. policy: We negotiated Kyoto Protocol and then we didn't join, negotiated the Paris Agreement, joined and then and unjoined. So, you know, and we've been very mindful of the fact that other countries have, you know, stepped up during our absence. I think there's generally been a lot of excitement about the U.S. return and not as much skepticism as I, as I would have imagined, I think for a couple of reasons. I mean, there's been a palpable gap in leadership, which is not to say there hasn't been leadership, but I think that, again, the U.S. plays a particular role. I also think that the U.S. is doing a lot of things that are kind of future-proofed. So in other words, taking steps toward making climate action irreversible so that this doesn't happen again in the future. Even if someone comes along later and rips up pieces of paper, we will still have put in place a lot of steps that will, that will continue.

[00:06:29] **Tubiana:** Of course, there was a sentiment of relief from the rest of the world, seeing the U.S. back. Remembering what happened after Kyoto, we probably assumed that four more years of an administration that would reject international multilateralism, that would, of course, be very, very difficult. And, and you'll remember during these five years, every country which wanted to be active in the climate scene reached out to many of U.S. actors—both states and cities, and whoever wanted really to be in on the movement We Are Still In for us, from the European point of view, for example, was a very, very important signal that finally U.S. was still in. And I think that when I mentioned that, everybody noticed, everybody supported during the yearly Conference of the Parties, the delegation of the U.S. delegation of We Are Still In was significant of it's not only a government, is a U.S. society that wants to be in Paris Agreement. So, really relief because U.S. coming back, U.S. comes in a very, very different context, with, of course, challenges about what leadership means, but a lot of confidence because of the very strong commitment of many, many U.S. actors inside.

[00:07:53] **Biniac:** Although everyone was focused on the U.S. withdrawal, Paris Agreement was actually quite resilient as an instrument, and I think for two reasons. One is the one that Laurence mentions, and I give her 99% of the credit for this. Laurence felt very strongly that the Paris Agreement needed to be a new kind of international agreement. It would still be intergovernmental, but it needed to have a space or create a space for the engagement of non-state actors and for them to be able to take on commitments, and we ended up strongly supporting that notion. And I think that really helped keep the Paris Agreement going, at least as far as the United States below the federal level was concerned. So that—and we didn't know that we were creating it for that reason. We thought we were creating it for a different reason, but it ended up having the unintended effect of allowing the We Are Still In coalition, the U.S. Climate Alliance of 25 states or so that continued to support the Paris Agreement to play a big role, you know, in terms of not being parties capital P, but engaging in the Paris space. But the other thing that I think was resilient—and again, this was not intentional—was the nationally determined nature of commitments under the Paris Agreement. I think if you go back to the Kyoto Protocol, where the commitments, the emission reductions, were negotiated and then a big party disappears, it's a lot harder for other countries to stay in because they took on their stronger commitments, kind of in reliance upon what other parties said that they were going to do. So, for example, Canada withdrew from the Kyoto Protocol. And, you know, part of the reason was that the U.S. had negotiated them into a stronger commitment and then, you know, left without joining the agreement. So they're like, well, wait a minute, the quid pro quo has sort of disappeared.

[00:09:54] **Gerrard:** You mentioned Kyoto. Not all listeners may be familiar. So in 1997, the Kyoto Protocol was negotiated to implement the objectives of the U.N. climate conference. President Clinton and Vice President Gore supported it, but the U.S. Senate opposed it because we did not require the rapidly developing countries like China and India to reduce their greenhouse gas emissions. Then when President George W. Bush took office after the 2000 election, he rejected the Kyoto Protocol, so the U.S. was completely out of it, and the U.S. was the only major nation that never joined Kyoto. It was only after Barack Obama took office in 2009 that the U.S. went

back into the international agreements, and then it withdrew under President Trump and is now back under President Biden.

[00:10:49] **Biniarz:** Yes, exactly. And for the Paris Agreement, the nationally determined nature of commitments, I think, made it easier for states to stay in the agreement because the commitments they took on were basically what they thought they could do in line with their national circumstances rather than what they thought what they were doing in reliance on what other countries were doing. So the impact of U.S. withdrawal, while, you know, significant, I think it didn't have as much of an impact as it would have had had there been a Kyoto-type model.

[00:11:21] **Gerrard:** Laurence, in view of this history of the U.S. being in and out of the international agreements, how do you think the rest of the world looks at U.S. actions now? Is there concern that they won't continue that if the party changes again in the next election, that we'll be back out?

[00:11:41] **Tubiana:** The truth is that everybody knows a lot of the political economy in the United States. I think the rest of the world is, one, looking for a sign of really strong and structural engagement. So that can be done, in my view, not only because of, you know, the international diplomacy but the connection with the international position and the change operated in on the ground. There is a combination of the central government—the federal government—and the action in different places that can give that, you know, a depth. The second element is a policy view of what U.S. would like to see as in the multilateral system. And that's very big question mark, because we have now challenges on the global scene of which China is, of course, a very big one, which should not be ignored, even more middle-income countries. So there is a view, what kind of multilateralism U.S. is in favor. And, you know, the U.S. has been moving different positioning about the system. There are famous phrases of Madeleine Albright saying unilateral when we must and multilateral when when we can. And that I think everybody's looking at what kind of style of multilateral system now the U.S. will promote, or it is more of a club of the big players.

[00:13:12] **Gerrard:** Sue, do you have thoughts on that?

[00:13:13] **Biniarz:** When you talk about multilateralism, that can mean, you know, a million different things. But at the maximum, it means a global agreement like the Paris Agreement and the U.N. Framework Convention on Climate Change [UNFCCC], which includes, you know, nearly every country in the world. It's obviously the foundational agreement and you have to work within it, but it's going to have its limits in part because of the procedural element that basically it operates by consensus. And so to the extent that any one or two countries don't agree, they can sort of block what happens. So you can't put all your eggs in the basket of an entirely global agreement. And for that reason, the U.S., I think historically and now, thinks you have to, you know, set up all kinds of multilateral and other groupings. And I would just say, you know, one other thing this administration has been very focused on is something I call climate plus X. You know, when we think now of climate or international climate, we don't just think about the Paris Agreement and the U.N. Framework Convention. We think about all kinds of places where there are climate considerations. So that could be climate plus the ocean, climate plus biodiversity, climate plus the Arctic, the International Civil

Aviation Organization, the International Maritime Organization. And that's, you know, I have the lead on negotiations, which—so I'm very personally very well aware of how broad this group is, because, you know, we're basically trying to make sure that international shipping and international aviation, which, you know, directly look at reducing emissions from ships or planes or fora that kind of indirectly get at climate considerations like ocean fora, which could either involve protection of ocean sinks or, you know, protection of ocean areas from climate impacts or more of an adaptation angle. We want to make sure that the climate considerations are brought to those fora as well.

[00:15:24] **Tubiana:** I would add that what anyway, I was hoping for, you know, we're preparing the negotiation, is the finally the objectives that are in the Paris Agreement are now considered by many, many actors that are part of the climate regime. And the climate regime, as Sue said very rightly, is not only the UNF triple C by far. And now we see the Paris goals or Paris consistent and all this notion of the net zero by 2050, which is a sort of the concrete translation of the complex language that is in the articles of Paris, the global goals, are now a reference for very different actors. That could be, I don't know, the European Central Bank as well as a business, still actors that want to be near zero by 2050 and be Paris consistent. So this is, I think, the proof of the concept of the resilience of an agreement where even if you are not a party, by nature, the reference, the objective, because it's a global topic of global cooperation, you mean it is a very distributed leadership. And you need that distributed leadership because there is no central governance of the climate regime at all. Glasgow could be a moment, in my view, where you need a meeting of this year that we see the same accountability, the same element of measuring and the credibility of all these actors that are, in a way, looking at Paris as a norm setter and wanting to improve, saying they want to implement that norm. And I think, Michael, it's a very interesting exercise to look at in the international system, a very distributed governance, because that's the nature of the problem. But what are the common instruments we can use to do that? And so, for me, it's a very powerful question we should be able to advance over time.

[00:17:25] **Biniarz:** People often ask, like, is the Paris Agreement successful? And you can measure that success in different metrics, I think. If you look purely at the you know, if you add up the nationally determined contributions [NDCs], do they add up to well below two degrees or one point five degree limit? No, not yet. But in terms of has it been successful in spreading its objectives globally? I think very much so. I mean, everywhere you turn, as Laurence says, you see the Paris goals repeated. You see either well below two or one point five as the temperature limit that other organizations have kind of enshrined into their own goals. You see the concept of net zero emissions. Now, the words "net zero" don't appear in the Paris Agreement, but the concept of net zero does. And you also see now the emergence of words like "Paris aligned," "Paris compatible," "Paris consistent" everywhere, so I really agree that the Paris norms have kind of spread, you know, without some kind of one-world government to do it.

[00:18:38] **Gerrard:** One key goal of the Paris climate agreement is that global temperatures would be capped within two degrees Centigrade, which is three point seven degrees Fahrenheit of pre-industrial conditions, and try to get it as close to one point five degrees as possible. Following Paris, the Intergovernmental Panel on Climate Change released a report, 2018 suggesting that really we ought to keep to one point

five degrees because at two degrees Celsius, the small island nations are under water and lots of other terrible things happen. As you said, the voluntary pledges that each country has put forward by nationally determined contributions in 2015 were a lot above two degrees. Built into the Paris Agreement was a plan for the countries to look back and come up with stronger plans. How much confidence do you have that in the next few years that we'll see greater ambition and we'll end up with these nationally determined contributions adding up to within the Paris temperature goals under two degrees and that the countries will actually implement those pledges?

[00:19:49] **Tubiana:** We have making progress, but is just very slow. And, you know, 2030 is very soon now. It's just less than 10 years now. So if we—and the objective was to halve emissions by 2030, the global emissions—to be consistent with so negligible, we have a lot to do to break that threshold. Many countries have done really strong signals. Some countries have even increased, compared to 2015, their projection of emission: Mexico, Brazil, some others. So the movement is not clear. And that's why we need a lot of coordination and effort from the countries that really want the result in Glasgow to pressure on these countries to say, "Look, you have to be serious. This is about, it's not about playing games with long-term numbers." I am a big fan, as Sue knows, because—and she helped a lot to do that—that we need a long-term goal. We need long-term strategies because countries have to imagine how deep the transformation has to be to be net zero by 2050. You can't do that in 2049. You have to really begin action now. And that's where I think a pressure point has to be done. The same on, you know, the private sector, the business community, investors will make a lot of changes and they'll be very, very strong changes technologically and the cost of technology since the last five years, electrification of vehicles, for example, or the cost of renewable energy—everything has changed for for better. But still, of course, we are too slow. That's why we need a strong coordination efforts to change the gears of the global economy. And that's why I'm pleading so much for a strong EU-U.S. harmonization of the domestic policies, if we can, because that will give a major shift on the signal of the economy, which is finally will determine the level of emissions.

[00:21:50] **Biniatz:** I think when when people say to me, "Oh, the Paris Agreement was a failure from the start because parties was on parties were on track to two point seven." Well, that was the reason it was set up as a long-term agreement with periodic updating of commitments, collective global stocktakes to see how we were doing, et cetera, et cetera. Now, there were a couple challenges—strong challenges—thereafter, right? First, we have the IPCC [Intergovernmental Panel on Climate Change] report saying actually, you know, it's not, it's not enough. Even one point five degrees is going to be not so great. Then you have the Trump effect. And then, you know, in Paris, we said because of the need to upgrade the nationally determined contributions, in 2020 all parties are basically requested to, you know, look again at their, at their so-called NDCs. And, you know COVID, of course, derailed 2020 to a large extent. And so 2021 is the new 2020. And because of this, you know, distinction between two degrees and one point five, this administration is very focused on trying, you know, trying to keep one point five within reach or in sight. It's helpful to have long-term goals like net zero by 2050 and long-term strategies to show how you're going to get there. But one thing Secretary Kerry is very focused on is the 2020s. So, in other words, it's it's politically easier to say we're going to get to net zero in 30 years, right? It's harder and much

more climate significant to say we're going to reduce our emissions during this critical decade.

[00:23:39] **Gerrard:** So China is by far the world's largest emitter. The U.S. is second. India is third and rising fast. The U.S. and Europe can't tell China and India what to do. What are the ways that countries like the U.S. and the European countries can persuade or induce or incentivize or otherwise get more strong action by China and India?

[00:24:06] **Biniarz:** I think they're quite different situations. India has actually taken on a commitment. It's the so-called 450-gigawatt commitment. So their commitment is probably, I would say, in line with keeping one point five alive. But for them, it's a matter of implementation and getting support to implement. And one thing the U.S. has been working on with India is to support and round up others to support implementation of 450. In the case of China, it's a matter of their own commitments don't add up to being on track to one point, one point five. President Xi did make significant announcements in 2020, one of which was to achieve carbon neutrality before 2060. He also announced, you know, various upgradings of existing Chinese commitments, but they're not aligned yet with keeping one point five within reach. And they're not even aligned with meeting China's own goal of carbon neutrality before 2060 because they very much reflect a plateau of emissions during this decade and then a very steep decline, which I think most experts say is not, is not very plausible. So how do you get them to change? Well, we are obviously working with them bilaterally. We went to China and issued a joint statement. It's not 2014, so it's not—the conditions are not the same as when we did the big joint announcement back in 2014. But, you know, we have a bilateral dialog going on on climate, but we're also working very closely with other countries to try to get as many others on the one point five track as possible to basically demonstrate that, you know, everyone is getting on board and China needs to do the same.

[00:26:00] **Gerrard:** I would like to ask you about the role of litigation in all of this. The Sabin Center tracks the climate-related litigation around the world. We've counted about 1,800 cases in about 40 countries. We now have the supreme courts of two countries—the Netherlands and Germany—directing their national governments to significantly reduce their greenhouse gas emissions even below what their Paris pledges were. And more recently, we have a decision from a court in the Netherlands ordering Royal Dutch Shell to reduce not only its own emissions but the emissions attributable to the use of its products. What role do you think that litigation plays in the international climate picture? Does it affect the negotiations? Does it affect the actions of countries beyond those that are receiving these orders?

[00:26:51] **Tubiana:** I'm very excited about that. I must say, I have had a moment of being proud because they say you are not consistent with Paris Agreement and that's why we force you, government, to change the policy. And you know, Sue and myself, we were absolutely convinced that the enforcement mechanism of Paris was the translation to national legislation, because it's based on that. It's an international commitment and a translation into national law. The fact—and that's why there was of course a lot of activity of having climate laws as much as possible, and there were many

countries [that] have produced climate law in these five years. But then to compare these climate laws vis a vis the Paris consistency, that's a major step forward.

[00:27:36] **Biniarz:** I think there's a difference between other countries and the United States. So it's been interesting to watch the kind of proliferation of litigation in other countries. In the U.S., I think it's a little more complicated maybe in terms of invoking the Paris Agreement. I don't mean other kinds of climate related litigation. But, you know, the Paris Agreement is not, it's not the quote unquote law of the land. It's not a treaty. And the targets are not legally binding. So I think efforts to bring that Paris and U.S., let's say, NDC target into U.S. court can be counterproductive because it could act, it can act as a disincentive to be a party to the Paris Agreement and to take on a, on a tough target. I mean, one of the main arguments for pulling out of the Paris Agreement was the worry about domestic litigation. Now that may have been completely incorrect, legally, but it's definitely thrown out there as an argument for unintended consequences. You think you're joining this agreement with a nonbinding target, but one of these days, somebody is going to go into court, and a court is going to decide that, oh, you can't actually change U.S. domestic regulation because of the Paris Agreement. And so you don't want it to end up frustrating the thing you're trying to do, which is be a party to Paris and have an ambitious target, because of the fear of litigation.

[00:29:03] **Gerrard:** Do you think that the World Trade Organization will cause difficulties for either U.S. or European actions to try to have stronger action on climate change?

[00:29:15] **Biniarz:** I worked on an e-book, I guess you could call it, on all kinds of relationships between trade and climate, including issues that, you know, how implementation of the Paris Agreement, as it gets more and more ambitious and stringent, potentially bumps up more and more against WTO rules or at least creates challenges. And, you know, the question is whether the WTO should be looking at what it can do to kind of better support action under the Paris Agreement. One of those fields is, of course, border carbon adjustments, where you can guess what you think the rules would be, but it's really a bit of an untested area. I think the EU has made very clear publicly that it intends for its border carbon adjustment to be WTO, I guess, consistent or compatible or language like that. There will probably be somewhat differing views about exactly what that, what that means.

[00:30:11] **Gerrard:** Sue, could you just explain to our listeners what a border carbon adjustment is?

[00:30:17] **Biniarz:** It basically says, you know, on a I think it would say with respect to a particular good or sector, let's say steel, if you're importing steel into the EU from another country, basically look at the carbon pricing in the exporting country. And to the extent it's different or lower, you adjust to make it the same. And that money then is collected. I think the EU plan is to have that money go back to the member states, but I think there are options with respect to what happens to the money. There are many open questions about how you design a CBAM or border carbon adjustment. So I don't think you can define it that specifically.

[00:31:07] **Gerrard:** It's basically designed to protect domestic industries from competition from industries and other countries that are not subject to the same kind of environmental regulations as trying to level the playing field. Let me just ask you each one concluding question. What advice do you have for students and new lawyers who want to have an effect on climate change? What can they do that would have the greatest impact?

[00:31:34] **Tubiana:** My might take these days, but I am very, very influenced about, you know, the Paris Agreement. Resilience and efficiency lies in transparency and accountability. Again, we don't have a global government forcing anybody to do anything. So it is based on shaping expectations that it is the future that will happen and that better to be, in better to bandwagon on that transformation, than to be the laggards. So the accountability mechanism, for me, just an observation, we will have, I hope we will reinforce the transparency mechanism between governments. And, you know, there is a convention on climate change with all the tools, but we can think about all the mechanisms as well and I know Sue has thought about very much. But I think the new legal expert has to provide for that certainty on the signals and the quality of these policies and how to create mechanisms in these very distributed governance so we can trust each other—and not only government, but, again, companies and investors to try to harmonize the norms setting in the way they are implemented. There is an enormous legal work to do. And again, for me, I think the framework is there. We can certainly finalize the details. But what we need clearly is to strengthen all the elements of transparency and credibility. And that, in a way, is a very important job for legal expert, in my view. But I don't know what Sue thinks.

[00:33:22] **Biniarz:** Well, no, as usual, I agree with you. I think there's so much going on now in terms of the actors who are involved in the climate issue that one can imagine future clients being kind of at any level, right? Not just international or representing a national government, but financial institutions, investors, companies, states, localities. There's almost no actor in the, in the world or in our country that isn't going to be dealing with climate change in some way and legal issues are going to crop up. So I think the field is much broader, actually, than it, than it has ever been. In terms of what is good preparation, I'm very big—as, Michael, as you probably know from my teaching—I'm very big on skills rather than knowledge. I am a big believer that knowledge evolves and you can learn new things. You can learn the new content. But one one thing that's very useful, particularly from a law school, is learning about advocacy. No matter, no matter whether you're working for a locality or a federal government, you're going to be involved in trying to persuade. So advocacy skills are really important and, you know, analytical skills, I would say, you know, going to a meeting, listening to a whole bunch of people with different views, and being able to quickly kind of say, oh, they're really just kind of three issues and two of them are easy to resolve and one of them is harder to resolve. That's the kind of thing I think are basically useful skills in the climate world and can be applied to, kind of, any one of these scenarios, professional scenarios.

[00:35:05] **Gerrard:** And we try to teach all those things, of course, at Columbia Law School. Sue and Laurence, thank you so much for joining us.

[00:35:11] **Tubiana:** Thank you for the invitation, Michael.

[00:35:13] **Biniiaz:** Yeah, thank you.

[00:35:16] **Gerrard:** My guests today were Sue Biniiaz and Laurence Tubiana. Join me next time for another episode of *Defending the Planet*, and make sure to follow us wherever you get your podcasts. Thanks so much for listening.

[00:35:29] **Gerrard:** *Defending the Planet* is brought to you by Columbia Law School and is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Nancy Goldfarb, and Cary Midland, producers. Editing and engineering by Jake Rosati. Writing by Martha Moore and Dan Shaw. Production coordination by Zoë Attridge. Special thanks to Michael Burger and the Sabin Center for Climate Change Law. If you like what you hear, please leave us a review on your podcast platform. The more reviews we have, the more people will get to listen. If you're interested in learning more about the law and climate change, visit us at law.columbia.edu or follow us on [Facebook](#), [Twitter](#), and [Instagram](#). You can also follow the Sabin Center on Twitter [@SabinCenter](#).