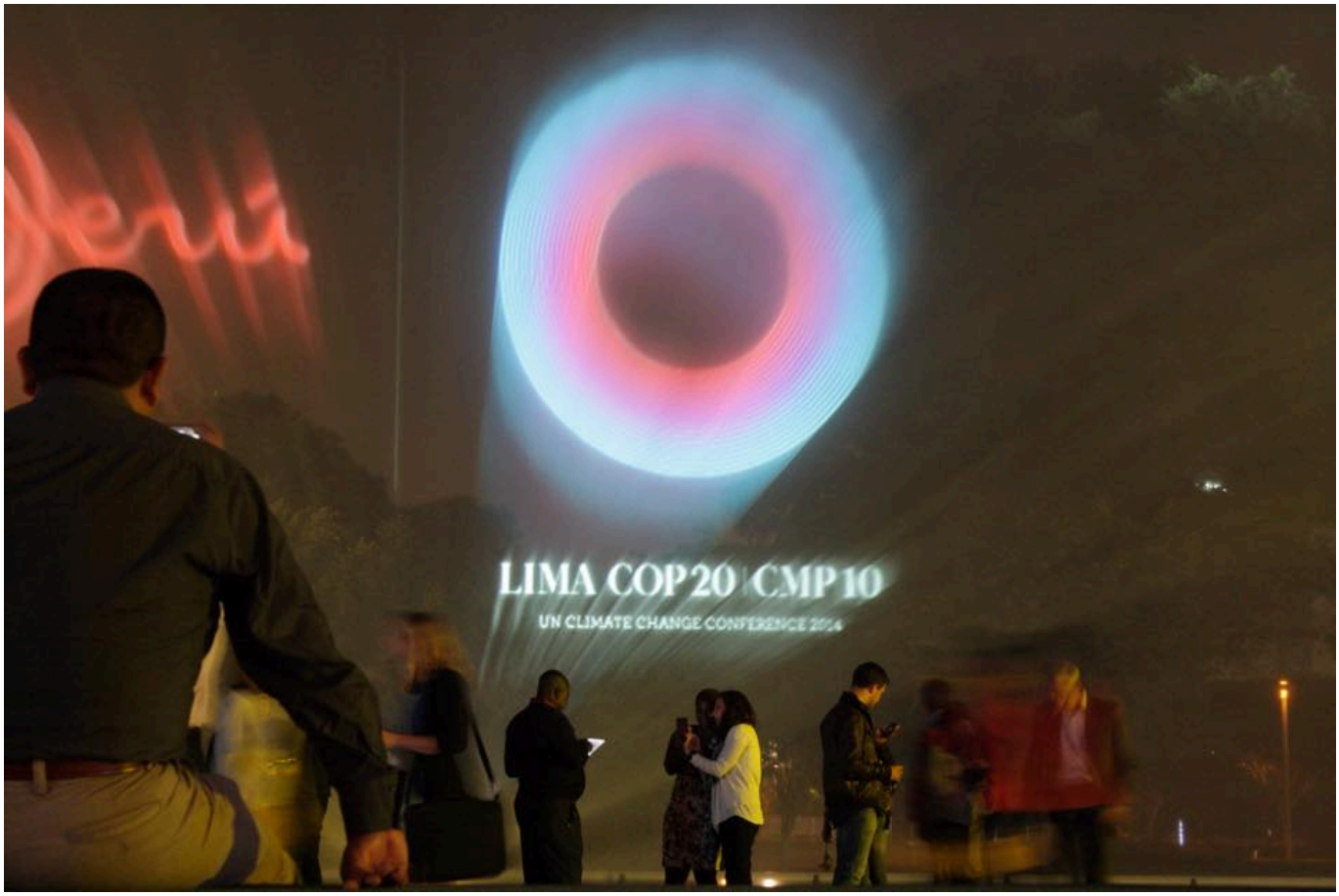
As you've probably heard by now, this year's UN climate change conference has produced an agreement, the "Lima Accord." The Accord invites each of the nearly 200 negotiating countries to develop an "intended nationally determined contribution" (INDC) to reduce its GHG emissions. INDCs represent some step forward from each country–in the words of the Accord, "a progression beyond the current undertaking of that Party." But what any particular INDC will look like remains largely up in the air–the Accord names some general elements that an INDC "may include," but does not contain any firmer requirements. The INDCs will be shared among the countries, and the aggregate expected results analyzed in advance of next year's conference in Paris. And thus will the imbedded commitments serve as a map to further negotiations.

As compared to other regulatory instruments in environmental law, the Accord looks awfully weak: it's got no caps, no quotas, no penalties — no real requirements. Instead, we have a system wherein the regulated parties (here, the countries) design their own means of compliance. It's soft law at its squishiest. The tragedy of the commons looms large.

And yet, the mainstream response to the Lima Accord has been relatively optimistic. With some strong exceptions, much of the coverage has cast the talks as a moderate success.

So what's everybody so excited about? Well, there's a few reasons to be encouraged by this outcome.



The Lima Accord: is there any substance to it?

First of all, the fact that we have an agreement at all is somewhat remarkable, or at least noteworthy. These conferences proceed by consensus, thereby setting up a deal-or-no-deal dynamic with a real threat of holdout. I attended the conference this year with UCLA's Environmental Law Clinic (see recent posts from my co-instructor Cara Horowitz and our student Sarah Kozal), and I saw first-hand the perils of this consensus process, which are not insignificant.

In the best example of the frustration involved, I saw three meetings and several hours of negotiation on the Kyoto Protocol's Clean Development Mechanism by the Subsidiary Body for Implementation end with the Co-Chair pleading — begging — for the parties to adopt his latest draft language "as a courtesy to the Co-Chairs." The draft had been watered down to a statement that the Body had "agreed to continue its consideration of this matter" at its next meeting, and simply codified the procedural result that would have occurred in the absence of agreement. The originally-proposed language would have asked the secretariat to incorporate party discussions and submissions into a revised draft; however, the parties

were unable to agree on how to frame these discussions and submissions so as to appropriately distinguish and weight points of agreement relative to new or not-yet-discussed areas, largely the result of one country's objections. The parties ultimately agreed to the empty language, as a consolation to the drafters — in the words of one negotiator, "we owe you that."

Similar dramas played out in large and small meetings across the negotiating venue. In this context, with the possibility of unilateral veto from any party, a deal of any measure is a cause for some mild celebration.

Second and more critically, the Accord's lack of hard prescriptions does not render it toothless. The New York Times characterized the agreement as "a climate accord based on global peer pressure." True enough, but worth noting: that's about as much as we can ask from any agreement between sovereigns. Recall the sad case of Canada, which dropped out of the comparatively meaty Kyoto Protocol as it drifted out of compliance, or that of the United States, which never ratified the Protocol after signing. Neither country is currently serving time in any climate prison, but both have been lambasted for their free ridership.

Coming out of Lima, the negotiating countries have essentially left with a homework assignment, to address as best they can the prompt "What I will do to address climate change." The assignment is ungraded, but everyone's answers will be posted on the board. Law students learn early on to appreciate the weight of peer pressure and other shame-based incentives. Students and graduates, recall the hours spent on your "ungraded memos" of first-year writing classes, or the sting of a boggled cold-call in a class with no participation grade.

Third, it's important to situate this year's Accord into the broader negotiations context, as one step along the path to the 2015 Paris conference. In this context, the INDCs coming out of the Lima negotiations can serve as a valuable set up to greater achievements next year. As such, we might view the forthcoming submissions as a trust-building exercise among the negotiators. If the parties come to the table with strong INDCs, and maybe some early progress toward implementation, they'll have built up a reserve of goodwill that will situate the next round of discussions. We've already seen hints of this effect from the US-China agreement, with commentators viewing the collaboration between the top emitters as a positive signal for other countries to follow.

As nearly every observer has noted prominently, the Lima Accord will not solve the climate crisis. It's too small, too weak, and too vague to do so. That was never its purpose. High school students in the de-fossilized clean energy future will not likely be

writing essays on the Lima conventions as the turning point in the fight against anthropogenic climate change. Lima was a step, and hopefully one in the right direction; it kicked the can down the road, but that's what it was aiming for. Ultimately, the legacy of Lima depends on what countries do next, in their INDCs, at Paris, and beyond. So if Lima is a bust, it's not a bust yet. There's still hope, and it's not unfounded.

Paris, 2015: Buy your plane tickets now.