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Rob Stavins: Welcome to Environmental Insights, a podcast from the Harvard Environmental Economics Program. I'm your host, Rob Stavins, a professor at the Harvard Kennedy School and director of the Harvard Project on Climate Agreements and the Harvard Environmental Economics Program.

In December of 2019 when I was in Madrid with my team at the 25th Conference of the Parties of the United Nations Framework Convention on Climate Change, better known as the annual climate change negotiations, I had wanted very much to sit down for a podcast conversation with Sue Biniaz, a longtime US negotiator and participant in the annual climate change meetings, but unfortunately due to some unrelated security breaches that took place that day at COP-25, we were unable to get together. That's the bad news, but the good news is that we are making it happen today, although Sue and I are in different locations because of COVID-19 social distancing.

Sue is currently a lecturer at Yale Law School and before that, she served for over 30 years in the State Department's legal advisor's office, and from 1989 until 2017 she was the lead climate lawyer and a lead climate negotiator for the United States. Welcome Sue.

Sue Biniaz: Thanks for having me, Rob.

Rob Stavins: Great to have you with us. I'm interested of course to hear your impressions of where the climate negotiations now stand and where they're going, but before we talk of that, I think our listeners would be interested to have some understanding of how you came to be where you are and where you've been. So let's go back to that. Where did you grow up?

Sue Biniaz: I grew up on Long Island, so basically the suburbs of New York City.

Rob Stavins: And that meant primary school and high school?

Sue Biniaz: Yes, the whole bit. Yeah, I went to a big public high school in Wantagh, which is better known for being the gateway to Jones Beach than probably for any other reason.

Rob Stavins: Right. And then you went to college where?
Sue Biniaz: I went to Yale, undergrad.

Rob Stavins: What'd you study as an undergraduate?

Sue Biniaz: I started out pre-med because most kids from my high school who went on to college were more interested in math and science because that's what my high school was better at. When I got to Yale I realized that there was this whole world of humanities out there and so I kind of gravitated in that direction. I ended up majoring in Russian studies.

Rob Stavins: In Russian studies, interesting. Now, so then how did you wind up going to law school and where did you go to law school?

Sue Biniaz: I was one of those people who went to law school as a default I guess because once I gave up the idea of med school, I really couldn't think of something better to do. I got interested in, as I was studying Russian studies, so this was in the height of the Soviet Union, I got interested in Soviet law and wrote my college thesis on Soviet law, and then decided, "Oh that's something I could specialize in." So I ended up going to Columbia Law School thinking I would specialize in Soviet law, but thank God I didn't, because the Soviet Union fell apart a couple of years later. While in law school, I got more interested in just international law generally. That's a hint to why I ended up at the State Department.

Rob Stavins: Now, for those of us who don't know anything really about Soviet Union law, I would have reacted and thought that Soviet law is close to being an oxymoron, but apparently not if it's an area that was of scholarship at the time.

Sue Biniaz: Yeah, I know my brother used to say the same thing like, "Isn't that the null set, Soviet law?" But I thought it was really interesting, both historically and how did the Soviet law deal with issues like intellectual property, which should be kind of anathema to a communist system, but they needed to make certain accommodations to create incentives for innovation.

Rob Stavins: That's interesting. Now what was your first job out of law school?

Sue Biniaz: Like many law school graduates, I clerked for a judge on the Ninth Circuit in Los Angeles for a year. A lot of people do that before taking their first kind of real job.

Rob Stavins: That's certainly the case. I always hear that. But can you explain to us why it is? Why is it that people ... it seems the top students coming out of a law school wind up clerking for a year?

Sue Biniaz: It's a great experience because you're on the inside of how the judicial system works ... and this was an appellate court, so you're not watching a trial or anything, but you're seeing briefs from both sides of an issue and you read those briefs and write a background memo for the three judges that are going
to be on the panel explaining each side's arguments and then making your own recommendations for the questions they should ask at the hearing. And then you watch the hearing, and then the judges have their own conference where they decide which way they want to go and then you draft up a recommended opinion.

So it's pretty amazing at age 25 that you get to draft ... at least do the first draft of what becomes the law. So I think that's what's very appealing to a lot of people. You learn a lot; you're around a lot of smart judges. And then the rest of your career, even if you don't litigate ever or show up in a courtroom, which is basically my situation, it still gives you a kind of inside peak.

Rob Stavins: That makes a lot of sense. Now how is it that you went from the appellate court to the State Department?

Sue Biniaz: Well, during law school, you basically spend summers trying out different possibilities that you might want to pursue after law school and that's what I did. One summer I worked at the State Department and I absolutely loved it. I was like a kid in a candy store. I mean every issue that rolled in, no matter how little I really, really just loved. At the end of my clerkship I had to decide go back to New York law firm or go to State Department. I decided I should go to the State Department, get it out of my system, be there a couple of years and then end up in New York and I just never ended up in New York. So two years turned into 32 years.

Rob Stavins: That's a decision you've never regretted I would guess?

Sue Biniaz: No, not really. I mean I don't think there are that many lawyers who love their jobs as much as I loved mine. I really just bounded out of bed in the morning because I just loved, love my issues.

Rob Stavins: As you well know, the venue where we were together at last year’s climate talks in Madrid as well as what was the planned venue for this year’s climate talks in Glasgow have both been turned into field hospitals because of COVID-19 and of course the climate talks that were scheduled to take place in November 2020 in Glasgow, Scotland have been postponed due to the global pandemic. What's your reaction to the postponement? Or tell me this actually, what was your reaction the moment you heard about the postponement?

Sue Biniaz: Well, I mean the issue of whether to postpone had been in the works for a while so there wasn't a moment ... I wasn't shocked or anything. I knew that a decision was going to be taken in the near future. I didn’t see how you could decide to stick with the current dates, so I was not unpleasantly surprised. I guess we’re all kind of disappointed but it had to be the right decision to postpone the COP and the subsidiary body meetings. Also, I was one of those people, maybe this is politically incorrect to say, but I never thought it was a great idea to have the COP a week after the US election.
Rob Stavins: Yeah. Well I'm sure you remember as well as I do the time in, what was it 2016 when the proximity of the COP to the US election, and people in the hallways, at least when I arrived in the second week of the COP were just glassy-eyed, walking like zombies at the result of the change of administration in the US.

Sue Biniaz: Yeah, exactly. And the COP that was in The Hague many moons ago was right in the middle of the Bush v. Gore undecided election. In a Trump 2.0 scenario, I think it would cast a negative shadow on the whole COP. If Biden were to win people would be happy from a climate point of view but the new administration wouldn't be able to really do or say anything because they wouldn’t be in power, and if you had some kind of contested election it would be a big distraction like it was back in The Hague. In that there was that small silver lining that at least that won’t be an issue.

Rob Stavins: So that makes me wonder, have there ever been informal discussions about changing the annual dates of the COP instead of doing it in November, December to some other time of the year?

Sue Biniaz: Not that I know of. Although it's coming up now, I suppose because apparently the UK ... it's been decided to hold it next year, but it's not exactly clear when, and I think they're deciding between May, June timeframe versus November, December timeframe. So if they were to decide on May, June, there'd be a sort of knock-on follow-on decisions to make like do you hold the next COP in a couple months later or do you postpone that one to the next year.

Rob Stavins: So there’s the choice of having it a few months later or a year later or a year and a half later?

Sue Biniaz: Yeah, exactly.

Rob Stavins: Yeah, that'll be interesting.

Rob Stavins: So more broadly, do you anticipate that the pandemic and the closing of economies and transportation as a result of the pandemic is going to, at least some observers have said, completely derail the UN approach and even render the Paris Agreement obsolete and ineffective? What’s your view on all that?

Sue Biniaz: I like to categorize things, so I guess I would divide the implications into three pieces and there’s probably more, and you as an economist would probably add a couple that I haven’t even thought of.

One is logistical implications and the delay if the COP is one example of that. But the other example of logistical implications could be, do we have to hold COPs in different ways? I had already been thinking we need to kind of revamp the annual COP because there’s less and less negotiation taking place so that can no longer be like the single metric by which you judge COPs. I think even by the end
of next year is it going to be possible or desirable to have thousands of people interacting? I don't know.

I guess logistical is one. Another is just focus, right. There's an obvious lessened focus by governments, businesses, the public on climate change and in the midst of a pandemic it's hard to say, "Oh, updating your nationally determined contribution this year has to be the top priority." I think the Secretary-General of the UN is trying to keep it on the front burner. He said the other day, I guess on Earth Day, that climate change is actually the deeper emergency compared to COVID but I don't know if that message is going to break through.

And then the third is just the substantive implications of COVID and the economic recession and all of that on what parties are able to do. And I think for that, and I think you had Joe Aldy on recently talking about stimulus packages, but everybody seems to be pointing to those as having a major impact on emissions one way or another, right, like if your stimulus packages lock in carbon intensive activities, then we may come out of this crisis sort of in a worse position compared to before. On the other hand, if you kind of green your stimulus package, you may come out in a better place.

I guess those are the three ways that I look at it, but I don't think it means the Paris Agreement is devastated.

Rob Stavins: Thinking back to the 2008, 2009 recession, which remarkably we can now say was actually mild compared to what we're likely to experience with COVID-19, that the Obama administration actually did include some significant green elements to its recovery package and it appears that the European Union is going to do likewise, but that has not been the case at least so far in the United States unless I've missed something.

Sue Biniaz: Yeah, I think so far that's been true. I mean they're going to be several, I guess trenches of recovery and stimulus and all of that, so there's still hope that there'll be greener aspects of future packages. It's kind of tricky because you don't want to lock in bad outcomes, on the other hand, I think the green groups they have to walk a careful line because they also don't want to be accused of sort of taking advantage of the situation. I think it's tricky business.

Rob Stavins: You were talking about the Paris Agreement. Now my understanding is that from the last couple of COPs the one element that was still remaining to be concluded in the so-called rule book, the more details that get written was Article 6. Where do you think that stands in terms of completing the work on Article 6 or is that just now off the table?

Sue Biniaz: I don't think it's off the table. I think it will be among the many things that the UK tries to do at its COP, even though it's a year later. It was unfortunate that they didn't reach agreement on Article 6 in Madrid. I think the compromises were all pretty evident and they ran out of time. I think there wasn't enough
kind of political oomph put into it at the end. That’s an example of if the US had been there at a political level, they would have been able to sort of bang some heads together and get it done.

One way in which it might be easier to reach agreement on Article 6 is that I think more analysis is being carried out between now and next year. One of the remaining issues in terms of the new clean development mechanism was will you be able to use leftover Kyoto offsets from the old clean development mechanism under the Paris Agreement after 2020. To a certain extent it was ideological with some saying like, "Yes, absolutely." And other saying, "No, absolutely not." I think what people are now doing is actually analyzing how many of those units are there and at what point is there a problem with environmental integrity if you let them kind of flood the system? And so maybe with more facts people will be able to come to agreements sort of on a rational basis rather than just yes and no.

Rob Stavins: My reaction to what I observed at least with Article 6 in Madrid is that whereas one might think, one might hypothesize, well with only one of the, was it 29 articles of the Paris Agreement remaining, everyone can focus on that and so the likelihood of completing it is greater. But rather what I observed is what I've called the funnel effect, namely that people, lots of parties to the agreement, lots of countries were really not satisfied with one article or another of the agreement, whether it's transparency or ambition or whatever and all of those other issues sort of got funneled into Article 6. So a lot of what the text that people wanted in Article 6 were things that really belonged in other parts of the agreement and then that became a problem in and of itself.

Sue Biniaz: I think you're right and I agree it's kind of counterintuitive. You'd think if you have one article left, it'd be easy to reach agreement. But I think what happened was there was too much attention in a way focused on Article 6 so that even countries that had not had strong positions on it because it was the only game in town gravitated towards it and took positions making it more difficult. The UK is going to have to make sure that people are not viewing the next COP as an Article 6 COP.

I think it's one of the reasons I think the COP needs to be re-thought is because I think the metric that's been used by many people including the press has been what the negotiating issues that are on the table. If you only look at those, it just puts too much pressure on what should be kind of a minor aspect of a COP compared to everything else that's going on.

Rob Stavins: Now the United States is scheduled to withdraw from the Paris Agreement on November 4th of this year. If it turns out in the presidential election there is a change of administration, that is that there is not a Trump 2.0 as you said, how can the new administration rejoin the agreement?

Sue Biniaz: Yeah, it's pretty straightforward to rejoin the agreement. They could even do it on day one, which is I think what the democratic candidates all said they would
do. Under the Paris Agreement, it basically clearly provides for a state to join, become a party even after the agreement has entered into force and you become a party 30 days later. So that's the international law piece. And then the domestic law piece is it's not the kind of agreement that requires Senate approval or congressional approval so the new administration could just jump in right away. If they did join right away and become a party 30 days later, the gap would be pretty small, right, because it would've exited on November 4th then become a party again in February.

Rob Stavins: So on Inauguration Day then you're saying the US might be anticipated to rejoin the Paris Agreement if there is a change of party in the White House?

Sue Biniaz: Yeah, I don't know if it'd be on Inauguration Day or the next day or a couple of days later, but that part is pretty straightforward.

Rob Stavins: Now the other part, of course, is the US nationally determined contribution, the NDC. What are the possible objectives that the new administration would have? How would it go about and on what basis formulating its NDC or would it simply pick up what is there from the Obama administration?

Sue Biniaz: I have written about this issue because I think you need to separate the rejoining from the NDC, right. Rejoining easy, NDC not so easy. Because I think you've got like timing issues and substantive issues, right. I think the objectives of a new administration might be, or maybe should be ... I have five.

One would be like immediacy. So they'd be anxious to rejoin Paris as soon as possible, right, to show we're not the Trump administration. Ambition because they want to show that they care about this issue a lot. I think ambitious action is necessary. The third would be credibility, right, because you're kind of in a credibility hole at the moment. You've walked away from the Kyoto protocol, you walked away from the Paris Agreement. You want to show that you can deliver on what you're committing to.

Sue Biniaz: The fourth would be durability. I think from a, I don't know if others would share this view, but I guess I feel like from a foreign policy point of view, if you're going to rejoin the Paris Agreement, do it in a way that isn't going to just be reversed four or eight years later. Try to make sure you have enough domestic buy-in so it's harder for a future administration to just reverse it again. And then the fifth would be leverage. If you're going to come back into the agreement, try to use whatever leverage the United States has at that point to get other countries to do more.

Those are what I would think are the five objectives and some of them are potentially at odds with each other.

Rob Stavins: And if our listeners want to read more about what you've written, is that in your article, “After Madrid, W[h]ither the COP”.
Sue Biniaz: On this issue, I think it's called "Returning to Paris: The Next U.S. ‘NDC.’"

Rob Stavins: We're running out of time, but I'm interested to ask you, what's your reaction to what up until COVID-19 was a striking reality, now we've almost forgotten about it, which were these youth movements around the world of climate activism that have arisen or arose both in Europe and in the United States and obviously that also led to some disruption at the most recent COP. But more broadly than that disruption, what's your reaction to those youth movements of climate activism?

Sue Biniaz: Well, I guess mostly positive. I don't agree with every kind of policy that they're espousing. I don't agree with never fly or things like that. I don't think they're realistic or even the right policy. But in terms of just getting young people interested in this issue and creating more debate, the fact that the UN ... it would have been unthinkable I think 10 years ago that a UN Summit would be like very oriented around youth and having young people come and speak to a gathering of heads of state. I think it's more positive than not positive definitely. If it translates into votes, getting out and voting for kind of pro-climate candidates, even better.

Rob Stavins: Well we're going to end on that very positive note. Thank you very much Sue for taking time to join us today. Before we go, I want to note that Sue has written a brief and another very informative article that's relevant to today's discussion, and that's the one titled "After Madrid, W[h]ither the COP" from Columbia Law School, January 2020, and that's certainly available on the internet. And then while I'm at it, I really should note that another article that's considerably more pessimistic so you get a balanced view is provided by another legal scholar, Noah Sachs in his article, "The Paris Agreement in the 2020s: Breakdown or Breakup," which was published just last year in Ecology Law Quarterly, which is a law review coming out of the University of California Berkeley.

I want to thank again our guest today Sue Biniaz, who served from 1989 until 2017 as the lead climate lawyer and a lead negotiator in the annual UNFCCC climate negotiations.

Please join us again for the next episode of Environmental Insights, Conversations on Policy and Practice from the Harvard Environmental Economics Program. I'm your host, Rob Stavins. Thanks for listening.

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