

International Governance of Climate Change. From the Framework Convention (1992) to COP-27 (2022)

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Abstract

For the past three decades, since the conclusion of the Framework Convention on Climate Change (1992), the climate issue entered and asserted itself more and more prominently on the world agenda, and a multilateral governance process was established to deal with it. Climate change is, by its nature and the challenges it entails, both an object of science, a political-legal problem and, last but not least, a civilizational stake. The interaction between, on the one hand, science, and on the other, politics and law, characterizes the process of international negotiations in the application of the general institutional-legal framework established in 1992, started by COP-1 (1995) and found once more at COP-27 (November 2022). In this context, the pending world governance, built under the auspices of the UN, has as its essential components the IPCC (1988), its periodic reports and the conferences of the parties to the Framework Convention, sometimes constituted in summits (with related documents), which are attended, as debate and dialogue partners, in addition to the representatives of the parties, by NGOs, think tanks, actors of the business world, local communities etc. The governance system thus characterizes the international climate regime, which is not reduced to an international legal regime, adding relevant aspects for other fields as well, which give it specificity and its own dynamics.

Keywords: *Framework Convention; conference of parties; climate change; climate governance; climatic regime; IPCC.*

Governance designates the action and manner of governing within a state, an enterprise, any organization or institution, either public or private. Considering the issue of climate change from this perspective and in such „administrativist” terms encourages the implementation of ways of understanding, preventing, mitigating, financing and adapting to climate imbalances, in order to guarantee a sustainable and efficient process of value creation in line with the positions of all concerned parties¹. It is clear that no State can alone envisage the commitment

¹ Michel Colombier, Marta Torre-Schaub, *Gouvernance climatique*, in M. Torre-Schaub, A. Jézéquel, B. LormetEAU, A. Michelet (dir.), « Dictionnaire juridique du changement climatique », Editions Mare&Martin, Paris, 2022, p. 281-283.

and financing of climate action; as a global phenomenon, climate changes require a global and concerted response. Playing a founding role, the 1992 United Nations Framework Convention on Climate Change established the principles of a global governance based on common but differentiated responsibility of the Parties, cooperative action, and solidarity to ensure that the development of human societies is not jeopardized. The document recognizes, in particular, the need to stop the historical growth of greenhouse gas (GHG) emissions and to take action to reduce vulnerabilities to climate imbalance. It establishes a global principle for reporting the emissions of each country. In 1997, the Kyoto Protocol, considering the most recent scientific knowledge and the need to reduce emissions globally, established a system of emission quotas per country whereby industrialized countries committed themselves to a collective reduction of about 8% by 2012. Developing countries could, in turn, engage in voluntary reduction actions, financed by loans that could be valued on the market of industrialized countries. However, while it was politically legitimate for the latter to be the first to embark on the decarbonization pathway, the Protocol prefigured a split between the two groups of countries. As these commitments only covered the period 2008-2012, the negotiation of a „post-Kyoto” regime quickly moved to the top of the COP (Conference of the Parties) agenda. In 20 years, the world has changed, emerging countries have become significant emitters and undeniable political, technological, and economic powers. At the same time, the 2014 IPCC report showed that limiting the increase in average temperatures to 2°C compared to pre-industrial levels required a rapid and radical reversal of the course of emissions to ensure climate neutrality. At COP-21 (2015) the Paris Agreement was concluded which defines a set of indivisible and universal collective actions (carbon neutrality, adaptation, financial solidarity) and a procedural commitment of countries to report nationally determined emission reduction contributions. In parallel with the negotiation of this agreement on the „solutions agenda”, an attempt was made to promote a variety of platforms for transformative action. In this context, climate justice has developed, both as a sanction for ineffective action and as a complementary pillar of multilateral agreement. It is from this perspective, too, that climate governance emerges with reference to the legislative, jurisprudential, and financial project generated during the many years of UN negotiations, which were considered too slow and not ambitious enough, but indispensable in the predominantly inter-state multilateral framework.

New dynamics, both normative and procedural and civic, are about to emerge. The UN High Commissioner for Human Rights has highlighted the indispensable elements of good governance: transparency, responsibility, accountability for own acts, participation, and responsiveness to people’s needs. Climate governance today is in full process of construction and its different

dynamics are sometimes carried out in an intuitive and less institutional way, following the examples of other social and global movements. But the main framework remains the UN framework represented by the Conference of the Parties to the Framework Convention/Paris Agreement.

1. Climate change governance aims, in a more general approximation, at establishing decision-making mechanisms that guarantee the quality and reliability of knowledge, while meeting democratic requirements². It involves citizens, enterprises, and governments, and is intended to apply equally to the public and private sectors, at local and national, regional, and global levels. At international level, and with a view to dealing with climate change as a global issue, it was established and operates the so-called United Nations climate governance, organized, and conducted within the legal-institutional frameworks promoted by the UN system. The term *governance* as such, used in the vocabulary of the United Nations, is sometimes criticized for assuming, reflecting, and emphasizing a certain managerial and apolitical view of issues. It would deny power relationships and the unequal or asymmetrical distribution of forces present on the world map, it would refuse to consider things at certain scales and to look at vertical forms of governance, and it would tend to render invisible the constraints on some actors and the lack of them on others. Or, in a context in which the principle of common but differentiated responsibilities of States in producing and fighting climate change is established and dominates global action on the matter, and climate justice is part of the same approach which cannot be indifferent to international policy. The term governance would also refer to the „nov-langue” (*newspeak*) of *New public management*, which accompanied the restructuring, undertaken after the neoliberal period of the 1980s and 1990s, of the ways of governing in Western democracies. At international level, the rhetoric of governance imposed itself especially in the context of a technicalization, an economization of the stakes. Such findings are also regarded as valid for the climate regime, and the notion of governance is used not so much as a naturalized one, but rather as a heuristic tool. Outlining and exposing the various stages, with their objectives, and the defining moments of such governance and general movements to assert the new trend in this field becomes a major challenge of the contemporaneity. To illustrate the nature and complex nature of the ecoclimatic question, it is sufficient to refer to a concrete example. The award of the Nobel Peace Prize to the *Intergovernmental Panel on Climate Change* (IPCC) in 2007 confirmed the success, but also the multidimensionality of the meanings, of a unique expertise with multiple resonances.

² Rafael Encinas de Muñagorri (dir.), *Expertise et gouvernance du changement climatique*, LGDJ, Paris, 2009, p. 12; Stefan C. Aykut, Amy Dahan, *Gouverner le climat? 20 ans de négociations internationales*, Presses de la Fondation Nationale des Sciences Politiques, Paris, 2014, p. 63-91.

The prize awarded was not essentially scientific, as the Group's mission was not to conduct actual scientific research, but to provide expertise by summarizing and expressing the conclusions of the approaches already undertaken and the published results. It is for this reason that the award, which has wide international prestige and resonance, which was also presented to the former Vice President of the United States, the lawyer Al Gore, was given to them „for their efforts to develop and disseminate a better understanding of the impact of human activity on climate change and for having informed the measures that are needed to remedy it“. Such an assessment emphasized the political quality of the expertise regularly produced by the IPCC and the work of the US political leader in raising awareness about the climate emergency. It also proved the importance gained by the global warming topic in the media, in public opinion and in international relations, by revealing the decisive contribution of human activities to the exacerbation of the greenhouse effect and the need to take responsibility for it, from the same perspective.

2. How UN global governance is established and operates

The components and the mechanism for achieving this new global governance, required above all by the nature and scale of the (ecological) issue that it seeks to manage, are defined in the international legal corpus initiated by the 1992 Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2015 Paris Agreement, as well as by the institutional framework created in this context, led by the Conferences of the Parties to the relevant documents. The original treaty is an integral part of, and should be seen as part of, a UN international environmental regulatory system, of which the Convention on Biological Diversity (1992) and the Convention to Combat Desertification (1994) are an intrinsic part, subsumed under the crucial moment in the development of international environmental law represented by the UN Rio Conference on Environment and Development (1992), through its decisions and, above all, its consequences.

In the application of the general framework thus established, the adoptions and developments required by the movement of the issue - technical-scientific, social and economic or interdependent - are ensured by the annual meetings, since 1995, of the Conference of the Parties (to the Framework Convention) (with the participation of representatives of 196 Parties), namely their reviews and decisions. In 1997 it was initiated and proposed for ratification and entered into force in 2004 after ratification by 175 States. After that, according to the relevant regulations promoted by the Conference of the Parties, two assemblies of the States Parties (including the EU) convened: one made up of the Parties to the 1992 Framework Convention (COP), the other of the Parties to the Kyoto Protocol

(MOP), with the specification that only Parties belonging to the former could be members of the latter. Of course, a Party that has ratified both international documents attended both the COP and the MOP. In this way a procedural problem arose and was added, particularly present in the discussions and preparations after 2012: the formal debate was followed by a *two-track approach*, that is, it was conducted in parallel in two different venues. This split reflects the reality of a two-speed process: the US, by not ratifying the Kyoto Protocol, did not formally participate in the negotiations conducted under the Protocol, the only ones that could lead to tangible progress and achievements regarding future commitments, while developing countries made the quantified emission reduction obligation for these countries the *sine qua non* of any discussion on future commitments on their part. By introducing the term „shared vision”, the Bali negotiations (2007) sought to overcome the impasse and take a significant step forward in the post-2012 reflection, without however resolving this issue. It was only after the Durban phase (2011) that the question of a simplification came to the fore again with the prospect of a single treaty, which was to be achieved at COP-21 in Paris in 2015 with the conclusion of the Climate Agreement as the framework document for global legal-institutional governance on climate change. The duality of governances: the Framework Convention and the documents implementing it in stages, in achieving the ultimate (final) objective set in 1992, at the starting point of the related and founding regulatory-institutional process, has also proved its pertinence and utility both with regard to the Paris Agreement and to the same positioning of Washington, given that the withdrawal of the US from the Agreement, under the Donald Trump administration, did not mean abandoning it in relation to the Framework Convention and thus favored its return in 2021 to the current system of UN climate governance.

3. Architecture of a complex and innovative climate governance

According to the institutional provisions of the original Framework Convention of the 1992 process, there are two major governance structures that can be simplified to two functions. *Upstream*, SBSTA examines scientific matters, takes on the political expression of controversies that arise within the COP on the latter, and acts as a link between the IPCC and governments. *Downstream*, the Subsidiary Board for Implementation (SBI) deals with the implementation of adopted decisions, in particular the financing mechanisms. In the context of the Kyoto Protocol, a Compliance Committee was established in 2005, made up of independent experts, in charge of verifying, on a comparative basis, the compliance by States Parties with their commitments. It was something in addition to verification as the body could and should invite countries to comply within specific deadlines, but the vocabulary adopted wanted to speak of „the situation” when a State violated

its commitment. As the parties voluntarily negotiated their responsibilities and as their sovereignty was inviolable, it was deemed that if a State was in default, it needed help. No sanctioning mechanism was foreseen, except for the possibility of excluding a country from carbon market mechanisms. The „architecture“ of UN governance under the Framework Convention is designed in such a way as to satisfy all the demands of the parties; its complexity also expresses an undeniable involvement of the parties in the process, since no court has the power to organize the negotiations hierarchically. Country groupings have the opportunity to formulate and submit relevant proposals which are then subject to negotiation by the Conference of the Parties. In these circumstances, the complexity of the architecture is inherent in the diversity of interests in the presence and the positions of the States Parties. Its simplification remains to this day a dilemma and a desideratum. One of the organizational objectives of the field, which has not been achieved so far, remains in fact to find a compromise on the architecture of climate governance. The executive power within it belongs to the secretariat, whose role is to collect all the proposals and reports coming from the States. It helps setting the agenda and assists the chairman of the plenary meeting - who, in COPs, is usually the environment minister of the country hosting the meeting - and the chairpersons of the various bodies. The climate change secretariat is „*la cheville ouvrière*“ (the linchpin) of this enormous machine, but it does not articulate the strategic vision and has little means to influence the negotiating process. The bodies meet several times a year to make progress on the practical implementation of the mandate entrusted to them.

4. A structure of a COP meeting

Typically, the first week of a COP involves negotiations in various special groups until very long texts (most often almost 170 pages) are produced where most of the technical points are left in draft form, as their wording is still subject to disagreement. A direct participant in such meetings described such an arrangement: „Negotiators arrive at an easy way to feed the process with proposals. Often, even excessively, when the specifications have a tendency to contradict too strongly the conditions of application. The negotiation work then aims at prioritizing the text and restructuring redundant proposals. But countries continually tend to reintroduce their original wordings... so the work quickly becomes sterile. Without a political mandate to make concessions, and more often without the conviction to do so, they lock themselves into blocking behaviors, without seeking synthesis and, in a certain way, checking their political consistency (weight) by the maneuvers they would impose“. The focus is on integrating new sectors and following up previously integrated topics. All economic, industrial and agricultural activities, forests, technologies, etc., belong *a priori* to the

process. From this perspective it can be said that the ecoclimate issue tends to reconfigure and encompass all environmental or sustainable development issues, so that it is negotiated and can be done on anything, „prepare here the new business plan” of the planet (C. Figueiras, former Secretary of the Framework Convention). On the contrary, there is too little negotiation and not enough determination on the level of ambition, on the emission reduction commitments at a precise horizon and as close as possible (2012, 2020, 2030) or the distance that separates, for years, on the one hand, the emissions released and their expected evolution, and on the other hand, the objectives announced such as, for example, capping the global average temperature increase at 2°C and if possible at 1.5°C compared to pre-industrial levels. The second week is traditionally more political, with the arrival and involvement of environment ministers. The negotiators’ focus at this stage is mainly on two sensitive matters: the legal form and the financing aspects, to the detriment of other dimensions, such as the shared vision, the ambition of the objectives or, more generally, the implementation of efficient climate policies. The organization of the process as such then becomes the key to the stakes of the negotiations. This means that rather than negotiating, for example, on the sources of funding for the „Green Climate Fund”, there will be a lengthy debate on its organization, secretariat, or governance. Or, in the same way, there will be less discussion about the precise content of the technologies, such as aspects related to renewable energy, their performance or price, which most negotiators ignore, but about the organization and structure of the technology committee! An example of such a concrete approach is the 2011 Durban meeting (COP-17/MOP-7) with regard to the „shared vision” approach and the notion of underlying, particularly conflicting, historical responsibilities. Four options for discussion were presented: a) agree on the numbers (reduction figures, quantified targets, peak emissions data, etc.) and then discuss the rest; b) discuss the context for adopting the numbers first (historical responsibility, differentiated responsibilities, ethical issues, etc.); c) establish a process; d) „let it all come together”. The option quickly settled on the third possibility, and it illustrates a strong feature of this governance. The same reasoning is always irresistibly imposed: the numbers (peak emission date, carbon budget figures, scientific data, etc.) are not discussed and therefore cannot be the subject of consensus. Choosing to establish a process is always to favor rather the form than the substance. A few simple sociological factors partly explain such a drift: negotiations are conducted, first and foremost, by lawyers, diplomats preoccupied with textual exercises of form, little familiar with actual technical matters or quantifications, and finally even with economics and technologies. Obviously, the specialists themselves, engineers and economists, may be in the influential position of experts and can thus contribute substantially to the framing of the regime, but in the dynamics of an ordinary COP, they play no decisive role.

5. Between procedural matters and political conflicts

Some of the drifts of the UN process can, however, be avoided through technical and procedural measures, as shown, for instance, by an example taken from the experience of COP-15 (2009) in Copenhagen and COP-16 (2010) in Cancun (Mexico), respectively. In the Danish capital, the arrival of the ministers at the beginning of the second week of the meeting increased the paralysis of the negotiations: without a precise political mandate, with a generally poor knowledge of the files and procedures, this second level of responsibilities, disconnecting the negotiations from their previous efforts, proved inoperative. It thus became clear that nothing could happen in the absence of heads of state, and in particular of US President Barack Obama. The following year, in Cancun, he was determined to avoid this trap so the ministers' meeting itself was not held. On the contrary, on arrival each minister was paired with a negotiator in the systematic North-South binomial; each *contact group* thus formed - 7 in all - was given the task of moving forward a blocking topic. This strategy proved more effective in creating the conditions for a less chaotic process and ultimately made it easier to reach an agreement. But the criticisms of the organization of a UN-type process and the adjustments that can be made to it have their limits, since its slowness is also due to the irreducible complexity of its multilevel development in which the actors involved control certain dynamics with difficulty. Aspects relating to the legal force, respectively the constraining nature of the provisions of the relevant texts, led by the 2015 Paris Agreement, are illustrative in this respect.

Finally, the focus on legal and procedural matters rather than on the actual political aspects is also the result of conscious strategies of actors whose aim is, more precisely, to block the process. They have been able to use the flaws in the UN approach to slow it down by emphasizing procedural complexity or diverting attention to secondary aspects.

5.1. External aspects and related impacts

A COP meeting is not just about (formal) negotiations. While about 1,500 people generally form the (intergovernmental) core of the debates, tens of thousands more participate in related activities (about 14,000 people attended COP-13, 10,000 at COP-14 and over 30,000 at COP-15). So, alongside the *on* there is and manifests an enormous *off*. Several circles of parallel events take place simultaneously on interrelated topics: workshops called *side events*, one or two-day meetings, satellite colloquia, exhibitions, etc. In a first circle, *side events* (several hundred at each COP) generally involve 3-4 interventions each, followed by a two-hour discussion. With several dozen to hundreds of participants, depending on the importance of the content and the notoriety of the speakers or organizers, they take place daily; they can be organized by a State, an academic institution, a research laboratory, a *think tank*, an international agency, social

organizations, trade unions, business groups, chambers of commerce, consulting firms, experts, as well as local or global NGOs concerned with the protection of the environment, the climate or the development of southern countries. The topics covered are very diverse: energy, forests, development, masses, adaptation, etc. Most often, two or three close partners team up to organize events, and these associations are never accidental. Parallel events maintain relationships of different types of ongoing negotiation. Some develop the point of view of a country or an organization. Research institutes or think tanks present papers on topics close to those debated during negotiations and serve as support for some countries; most of the time, it is about economic modelling based on certain hypotheses or objectives in order to decline scenarios, establish emission reduction trajectories and timetables and propose measures, in particular the energy mix to be pursued. *Side events* can also serve as a basis for launching guidelines in various sectors. They therefore fulfil multiple functions in relation to the negotiations: showcases for the countries' climate policies, platforms for new proposals, places to promote energy or industrial strategies (nuclear, wind, solar, energy efficiency).

6. Colloquia and forums organized on topics related to the official agenda of the negotiations

The second, the *off* one, consists of a series of colloquia and forums traditionally organized at the same time as the official debates and which allow the partners to assert their possible political perspectives, to make visible the network of influence they represent and to popularize their positions. They have been structured over the years and their impact has continued to grow. Among the component events that have asserted themselves through their permanence and influence, we may mention, by way of example, *Development and Climate Days*, which took place during the weekend in the middle of the conference period; launched in 2002 under the title *Adoption Day* this initiative has gained in prestige and importance; many institutions, particularly academic, especially Canadian and Swedish, have become involved in this context; these meetings are clearly intended to serve the coalition of developing (less developed) countries and the promotion, within the Convention, of a closer link between adaptation and development topics. *Business Day*, organized by the International Chamber of Commerce and the World Business Council for Sustainable Development, brings together high-level officials from the business world, the World Bank, major industrial groups, various UN structures and ministers of economy from different countries (usually Japan, South Africa, EU Member States, etc.); topics such as the carbon market, energy efficiency or clean technologies are addressed here. Finally, *Forest Day*, inaugurated at COP-13 in Bali in 2007, when the event was a great success, is in itself a „mini-convention”, involving plenary sessions,

side events (about 40) and bringing together about 900 partners representing the field (experts, academic researchers: foresters, ecologists, etc.), indigenous peoples and decision-makers from different parts of the world; the summary of the debates is sent to the Secretariat of the Framework Convention, which chairs the meeting.

On a more institutional level is the colloquium organized every year in these circumstances by the International Energy Agency, around models, scenarios and results of the approaches in this field, which each time has a great impact, both among the COP attendees and the world public opinion. Finally, a second *off*, the so-called „off of the off“, is also organized outside the conference as such with the participation of representatives of civil society, primarily of the environmentalist one; these are forums for debates, position papers and manifesto launches on topics of particular current interest, and which are in line with the present global agenda.

7. Meetings of the Conference of the Parties and their main outcomes

The Conference of the Parties, which met the year following the entry into force of the Framework Convention on Climate Change (1994), namely 1995, has had three periods of meetings: an initial one, establishing and starting the activity (with two editions, in 1995 and 1996), followed by the one related to the entry into force and implementation of the Kyoto Protocol (in which the COP to the Framework Convention was joined by the Conferences of the Parties to the Protocol, MOP) between 2005 and 2015 when, with the adoption of the Paris Agreement, the meetings of the Conference of the Parties to the new international document governing global climate action (Annex I) also took place. Each of these meetings had its own agenda, with topics related to the implementation of the ultimate objective of the Convention, the regular adjustment of its meanings, the development of cooperation and ensuring the progress of the legal and institutional climate approach. From such a perspective, global climate governance has evolved in its own way, marked by specific experience and outcomes. A simple review of the relevant milestones and their outcomes is significant for the course of the governance process and of the international climate regime. Thus, *the fourth* meeting of the Conference of the Parties in Buenos Aires (November 1998) left decision-making to the planned summit and confined itself to discussions in preparation of the organization of the implementation of the Kyoto Protocol, concluded in December 1997. Developing countries have expressed their expectations that industrialized countries should start reducing greenhouse gas emissions and called for the transfer of clean technologies. The U.S. supported the urgency and absolute priority of establishing and operating an emissions market and refused to commit to promoting emission reduction policies despite protests from European countries. COP-5, held in Bonn in November 1999, made

only one progress on national GHG inventories. The first part of the next meeting (COP-6), held in The Hague in November 2000, failed on three key aspects: the possibility of relying extensively on forests (as absorbers) to reduce commitments, the use of the GHG market, which occupied the central place for the U.S., contrary to the European position and the determination of sanctions in case of failure to comply with the commitments under the Protocol. Its second part, held in Bonn in July 2001, saved the Kyoto Protocol by defining the application and reaffirming its principle (reducing emissions) despite Washington's opposition. Also, in addition, four other main issues have been partially resolved: the role of forests as GHG absorbers (meeting the expectations of Japan and Canada in particular); ensure the financing of measures to help the southern countries by creating an adaptation fund; opening the way of the emissions market; the regime of sanctions for failure to comply with the provisions of the Protocol (the observation regime) has been attenuated, contrary to the wishes of the Europeans, yielding to pressures to refuse their constraining nature. At the seventh meeting (Marrakesh, November 2001), two funds were set up: one for the least developed countries and one specifically for climate changes. COP-8 (New Delhi, November 2002) was marked by progress on financial mechanisms, technology transfers to the South and the next steps of the Protocol. The works of the 9th edition (Milan, December 2003) were characterized by concerns about the absence of the USA from the negotiations on the Kyoto Protocol (whose ratification in March 2001 was rejected by the G.W. Bush Administration) and the delay of its ratification by the Russian Federation (which, however, under pressure from the European States and the EU, was to ratify it at the end of 2004). In fact, as a result of the extension of such COP-10 actions (Buenos Aires, December 2004), it was noted that the conditions for the entry into force of the Kyoto Protocol had been met. This required ratification by at least 55 countries simultaneously representing a total of at least 55% of global CO₂ emissions; the countries that had committed, however, represented 44.2%, so it was only with the cooperation of Moscow, which approved the treaty in November 2004, that this condition was also met, allowing the Kyoto Protocol to enter into force. The new formula, which includes not only the COP but also the MOP (Parties to the Protocol), was inaugurated in Montreal (28 November - 10 December 2005) and was followed by COP-12/MOP-2 in Nairobi (Kenya) on 6-17 November 2006. The review of the Protocol, or more precisely its follow-up after the period of application as originally foreseen (for 2008-2012), has been on the agenda of the meetings since 2008, by setting the objective of reaching an agreement on the mechanism to succeed the post-2012 Protocol. In order to cope with climate changes, the Adaptation Fund designed to help poor countries in this respect was consolidated. COP-13/MOP-3, organized from 3 to 14 December 2007 in Bali (Indonesia) represented a notable step forward in climate governance. First, there

was the agreement on two important points: the adaptation fund for poor countries suffering from the effects of global warming should include, on an equal basis, representatives of donor and recipient countries, to be managed by the Global Environment Fund. An objective of €215 million for 2015 was put forward, which, however, seemed derisory in relation to the scale of the intended purpose. At the same time, the principle of a premium for „avoided deforestation” or „avoided degradation” was accepted, given that the destruction of forests was a major source of CO₂ emissions. However, despite these advancements, the conference was to decide on them... later! The encrypted efforts were also indicated in the annex to the final text of the conference; strong oppositions were expressed in particular by the US, Australian and Canadian delegations. The annex referred to a 25/40% reduction of GHG emissions in industrialized countries by 2020 compared to the 1990 levels; such target corresponded to the commitment made in March 2007 by the European Union, which put forward at the meeting a reduction target of 60-80% of GHG emissions by 2050.

COP 14/MOP 4 (December 2008, Poznan in Poland) made progress in particular in the area of financing the fight against climate change. As such, it has been decided that the Adaptation Fund will finance the actions of the southern countries; it would be based on a 2% levy on the revenues generated by the clean development mechanism; disadvantaged countries would have direct access to the Fund (initially \$70 million in 2009, followed by hundreds of millions each year). These countries were demanding that the 2% offtake should be carried over to the carbon market. The latter proposal was sent for discussion, at the EU's initiative, to the Copenhagen conference scheduled for December 2009.

The meeting in the Danish capital (15 COP/5 MOP) ended in failure, managing to adopt, *in extremis*, on 19 December 2009 the „Copenhagen Accord”, a simple declaration of intent which the conference „took note of”, a political document without legal effect. Its aim was to „strengthen long-term concerted action| to fight climate change by „recognizing scientific estimates” that „global temperature rise should be below 2°C”. Nothing was said about the objective of halving global emissions by 2050. The need to cooperate in order to reach the „peak as far as possible” was highlighted; no precise date was given while the 2007 IPCC report suggested 2017 as the year to halt this increase. The parties in Annex I (developed countries) „commit to apply quantified economy-wide emission targets for 2020”. They were to be submitted to the Convention Secretariat by 31 January 2010. Also, „the results of the reductions will be measured, reported and verified”. The other parties, namely developing countries, including emerging economies, „will implement mitigation actions”. These will be presented every two years, opening international consultations „while respecting national sovereignty”. The mitigation actions that received international

support were subject to international scrutiny. On 31 January 2010, a total of 50 countries, representing 78% of global GHG emissions, had submitted their reduction plans. Developed countries were to provide financial resources, technologies to support application of adoption in developing countries. A \$30 billion aid package over 3 years (2010-2012) was a collective commitment by developed countries. This financing was a „priority” for the least developed countries, small island states and Africa. From 2013 to 2020, developed countries committed to jointly mobilize \$100 billion per year. This aid was imprecise in terms of resources and derisory in terms of its extent. A „Green Climate Fund” was being set up to support projects on mitigation and adoption in developing countries. The „crucial role” of forests was recognized and financial incentives were to be established immediately to reduce deforestation. The alternative counter-summit called for „climate justice”, insisting on a unification of social criticism with environmental matters. Among the obstacles expressed at the conference were: a very large gap between countries’ commitments and what assessments of IPCC reports indicated, the particular difficulties related to China and India’s refusal to be bound by emission reduction measures in particular sectors, and a stalling attitude on the part of the US towards more radical mitigation measures. The only quality of the meeting and of the Copenhagen Accord that was unanimously recognized was that it avoided deadlock in the negotiations and allowed them to continue.

COP-16/6 CMP (Cancun, Mexico, December 2010) was the moment when States Parties agreed on the 2°C limit as an acceptable threshold for global average temperature increase compared to pre-industrial averages. Industrialized countries’ national targets have been formally recognized in the multilateral process. They were to submit an annual report on their emissions inventory. A register was established to record the developing country mitigation measures and the technological aid from industrialized countries. The Kyoto Protocol’s Clean Development Mechanism (CDM) was being strengthened. Significant investments were expected for projects in the developing countries. In the area of climate finance, a Green Climate Fund was established with equal representation of developed and disadvantaged countries. Governments agreed to resume their efforts to reduce emissions from deforestation and forest degradation (REDD+) in developing countries through technological and financial support. The parties have established a Climate Technology Centre and a network to enhance technological cooperation in the field of adopting and reducing GHG emissions.

At COP-17/7 CMP (December 2011, Durban, South Africa) present countries extended the Kyoto Protocol for a second commitment period from 1 January 2013 to 2020. For the first time, China, the U.S. and India, all major GHG emitters, have agreed to abide by a new legally binding global agreement. It was to be concluded by 2015 and enter into force no later than 2020. A Green Climate Fund,

decided at COP-15 in Copenhagen and formally created at COP-16 in Cancun, was intended to support financing for developing countries in their adaptation to the effects of climate changes. Until then, its application has been delayed. In Durban, States Parties committed to fund it starting 2012, but no clear mechanism for its long-term replenishment has been agreed.

COP-18/8 CMP (Doha, Qatar, 2012) had to meet the requirements of the transition to the new agreement. In the meantime, the second commitment period for the implementation of the Kyoto Protocol, originally due to expire on 31 December 2012, began on 1 January 2013. But only the EU, Australia, Iceland, Norway and Switzerland have taken on new responsibilities, countries that accounted for only 14% of global emissions. On the contrary, Japan, the Russian Federation, Canada and New Zealand have withdrawn from the process. For the second part of the implementation, EU committed itself to reduce emissions in relation to its national target of reducing emissions by 20% in 2020 compared to 1990 levels, while leaving the door open to a 30% reduction if the necessary conditions were met. A work program on losses and damages related to climate change to help victims of climate disruption was being created to establish an institutional mechanism, similar to the one launched for States Parties to the Kyoto Protocol to revise their emission reduction targets upwards (between 25 and 40%) at the latest by 2014.

COP-19/CMO 9 (Warsaw, 2013) has been marked by the preoccupation with the preparation of a new international agreement to follow the Kyoto Protocol. The negotiations reached the new version of the compromise in Durban (South Africa) where, in 2011, members of the Conference of the Parties set a deadline of 4 years to reach a global document involving all major polluting countries, north and south, in the effort to reduce GHG emissions, not only western countries. The roadmap adopted in Warsaw stated that countries „that can” would deliver their emission reduction contributions before COP-21 at the beginning of 2015. The legal nature of these contributions was to be specified later. The meeting failed to adopt resolutions on the nature of the financial commitments of the developed countries, a *sine qua non* condition for gaining the confidence of developing countries and thus bringing them into the envisaged new legal regime which would also entail obligations for them. The Green Mitigation and Adaptation Fund was expected to be capitalized from 2014 at an amount of USD 100 million (out of a projected USD 100 billion by 2020). The REDD+ mechanism for reforestation was supposed to hold USD 280 million at the beginning but the source - public or private - of these funds was not defined. COP-20/CMO 10 (Lima, 2014) first found a compromise, for which the USA admitted that adaptation to climate change was not a matter of secondary importance. Less developed countries or small islands have already revealed the cost to them of dealing with the impacts of global warming. China and other emerging countries have united

with other developing countries in favor of a definition of national contributions that countries had to submit by March 2015. The principle of common but differentiated responsibilities in the field has been reaffirmed. While the capitalization of the Green Climate Fund at \$10.2 billion remained a step forward, no answer was given on how to raise the \$100 billion for the annual aid announced at the Copenhagen Conference in 2009. The issue of additional efforts to reduce emissions by 2020, that is before the entry into force of the future agreement, has not been resolved either. The final conclusions left open all options, both the most ambitious and the minimalist.

COP-21/COM 11 (Paris, 2015), which was established as a climate summit, resulted mainly in the approval of the Paris Climate Agreement, a legal document that established the new framework for international (UN) governance on climate change. The following meetings of the Conference of the Parties were to deal, according to a roadmap, with establishing institutional commitments for its implementation starting in 2020.

COP-22/COM 12 (Marrakesh, Morocco, 2016) was the first meeting of the COP dedicated to the initiation and implementation of the process to make the Paris Agreement technically operational in 2020. Its objectives were to prepare the implementation of the Agreement by drafting a rulebook, speeding up internal efforts in this area and drawing up the agenda until 2020. Decisions were adopted on financing climate action, the agricultural and food security stakes, the climate finance mechanism through bilateral commitments for the Green Fund, etc. Numerous initiatives and new platforms were launched, such as Platform 2050, the Partnership for Global Climate Action, Women 4 Climate, etc. The *Marrakesh Proclamation* for Climate Action and Sustainable Development adopted at the end called for stronger political commitments in this area, stronger solidarity in north-south relations, increased focus on poverty eradication, making instruments and methods more effective, etc.

COP-23/CMO 13 (Bonn, 2017), held under the chairmanship of the Fiji Islands, had a strong intermediary character in the process of preparing the framework for the implementation of the Paris Agreement. The negotiations focused on the elaboration of the handbook for the detailed technical implementation of the Treaty, setting out the relevant technical rules and procedures. All the main elements were discussed: mitigation, adaptation, enhanced transparency system for action and support, consultation, promotion and observation mechanism, application of the mechanism in the market. The methods to implement the „Talanoa Dialogue”, conceived as a type of multilateral dialogues held in order for the States to agree on how to present the fulfilment of their commitments, were finalized. Among the operational decisions were those relating to the platform for the local committees and indigenous peoples, the technical dialogue, the role of agriculture in climate change, etc.

COP-24/CMO 14 (Katowice, Poland, 2019) had as its main objective to finalize the regulation for the implementation of the Paris Agreement (Rulebook); according to it, countries would report their nationally determined contributions every five years, starting from 2020, and publish a transparency report every two years; a flexibility margin was foreseen for less favored countries. Several important points were carried forward to the next meeting of the Parties, such as the issue of the carbon market. The mechanisms for „raising the ambition level” of national climate plans remained unclear. Nothing has been decided on the issue of financing irreversible ‘loss and damage’ as a consequence of climate change. Developing countries called for increased cooperation, financing mechanisms for timely and early warning as well as adaptation efforts. A group of countries in the High Ambition Coalition committed to increase their contributions through national public policies.

COP-25/CMO 15, originally scheduled to take place in Chile (which retained its presidency), took place in Madrid and produced a mixed, below-expectations outcomes. Lacking leadership and despite the length of the meetings, the negotiators failed to reach an agreement on the carbon market dossier and the rules - already left in suspense at COP-24 - which had adopted the rules to implement the Paris Agreement - and which were to be completed at COP-26. In this situation the important thing was that the negotiation process continued. Due to the outbreak of the pandemic COP-26 could not take place in 2020 as scheduled.

COP-26/CMO 16 (Glasgow, UK, 2021) had the great role of resuming the works of the structure, after their suspension in 2020 due to the health crisis caused by the Covid-19 pandemic, its postponement to the following year and the finalization of the institutional arrangements related to the operationalization of the Paris Agreement.

First, there is the *Joint Declaration on Forests and Sustainable Land Use*, signed on 2 November by representatives of more than 100 countries (comprising about 80% of the world’s forests), which aims to halt and reverse deforestation by 2030, move towards restoring degraded forest land, fight fires and support indigenous communities. On the same date, the EU and the US announced an initiative to establish a „*global methane pact*”, with 100 countries (covering almost half of the total emissions and accounting for 2/3 of the world’s GDP) to reduce emissions by 30% by 2030 compared to 2020 (the second most abundant greenhouse gas, responsible for more than a quarter of global warming after the industrial revolution) and in the same context an *agreement to phase out coal* for electricity generation as well as a *coalition to eliminate oil and gas*. The EU’s presence was first manifested by positioning itself as a leader and role model, by being the only signatory to the Paris Agreement which adopted a climate law (which set 2050 neutrality as a legal target) and established a „roadmap” and implementation

instruments through the „Fit for 55” pact (July 2021) and the initiation, alongside the USA, of the global methane pact. The joint statement (denunciation!) by Germany and 4 other EU Member States on 11 November this year at COP-26, considering nuclear energy as incompatible with the „no significant harm” principle of the Green Taxonomy, contrary to the position expressed by 10 other European countries, led by France, on 15 October this year, shows dissension and difficulties in implementing Green Deal strategies.

Reconfirming the key role of the Washington-Beijing axis in establishing and operating the global climate governance system created by the Paris Agreement (2015), the *U.S.-China Joint Declaration on Enhancing Climate Action*, issued on 10 November 2021, was mainly aimed at avoiding the total failure of COP-26. It expresses resolutions *in extremis* of the two major world economies that the conference should reach compromise formulas that would allow the process to continue, making a start to this effect through the joint commitments announced. Adopted later after three successive versions, the Final Declaration (Glasgow Climate Pact) of 13 November 2021 is a compromise political document, reflecting the current state of acceptance and implementation of the Paris Agreement and indicating the benchmarks for future action. Through its aspirations and recommendations, the *Pact* reinforces the objective of limiting global warming to 1.5°C, refers for the first time to fossil energies, calls for accelerated reduction of their use, underlines the interdependence between climate and biodiversity issues. This illustrates that the developed countries’ vision of an energy-green transition, centered on GHG emission reduction and climate neutrality, is being imposed, that the group of major emerging economies is resisting and that solidarity in this general effort towards vulnerable countries is being ignored.

The Glasgow Climate Pact (COP-26) [2021] has the legal nature of a political declaration on the conclusions of two weeks of discussions between representatives of States, IPCC, enterprises and civil society. The use of the term *pact* suggests a willingness (especially on the part of the organizers of the meeting) to give the document a certain solemnity, which is related more to the seriousness of the issues it raises and less to the possible legal significance it implies. Indeed, the weak mandatory opening and the decisive soft law nature of the text are revealed above all by the expressions used, these being, as a rule: acknowledges, welcomes, invites, notes, emphasizes, urges, appeals, reaffirms, is aware of, reiterates, and completely lacking phrases such as: has been agreed, undertakes, must, is required, etc. Thus, a simple fact-finding report with the role of an inventory of the issues raised, the solutions suggested, and the consequences recorded. The main „agreements” reached in this context relate to stepping up national commitments to reduce GHG emissions, phasing out certain fossil fuels and increasing support to developing countries in their efforts to mitigate and adapt in relation to this. It is an expression of the importance of multilateralism and the

viability of the multilateral process inaugurated in 1992 and signifies the completion of the institutional arrangements necessary for the Paris Agreement of 2015 to become operational. Its ninety-six points are grouped into 8 sections: science and emergency, adaptation, financing of adaptation, mitigation, financing, technology transfer and capacity building for mitigation and adaptation, loss and damage, implementation, collaboration, each representing an important chapter of international collaboration on the subject. In the paper's view, we are now witnessing several interconnected global crises of climate change and biodiversity loss, which need to be addressed in an integrated way. International consensus has been reached that limiting the global average temperature increase to 1.5°C above pre-industrial levels must be a priority.

Of course, as the new system of global action to combat climate change is essentially based on voluntary commitments, the Pact also includes other developments of this kind, which will depend for their effective fulfilment on the compliance of the actors involved.

Of particular importance is the reference to the need to observe intergenerational equity/equality and human rights in general and, in this context, the special attention given to young people, encouraging their meaningful participation and representation in decision-making processes at multilateral, national and local levels, including under the Framework Convention and the Paris Agreement, and facilitating the organization of an annual climate forum, led by young people, for the dialogue between Parties and young people with a view to contributing to the implementation of the Glasgow work program on Action for Climate Empowerment. The various initiatives already affirmed in the meetings so far, those generated at COP-26 and others that could be promoted are encouraged so as to increase the mobilization of all actors in structuring the global response to the challenges of climate change. Just keeping the ecoclimate issues topical under different forms of cooperation and consensus building helps to strengthen the related international process.

COP-27/CMO 17 (Sharm El-Sheikh, Egypt, 2022), the longest (with more than two weeks of discussions), had a transitional character between Glasgow, which succeeded to finalize the institutional arrangements related to the operationalization of the Paris Agreement, and COP-28, scheduled to take place in 2023 in Dubai, aimed at making the first assessment of the mitigation and adaptation efforts of the States Parties. It adopted several resolutions and a *final declaration*, a text reflecting „delicate balances” and „the highest ambition achievable at this time”. At the initiative of the EU, also supported by the US, a special financial fund has been set up to compensate for the irreversible loss and damage caused by climate change in the most vulnerable developing countries. A special committee made up of representatives of northern and southern countries will work out the operational details before the next meeting of the

Conference of the Parties in 2023 in Dubai. Earlier, the French President announced his intention to hold a summit in Paris to „establish a new financial pact with the most vulnerable countries”. No progress has been made on moving away from fossil fuels while reiterating the commitment to accelerate the reduction of coal use (no mention of oil and gas!) and to eliminate „inefficient” fossil fuel subsidies. It reiterates the goal of limiting global warming to 1.5°C (as set out in the Paris Agreement) which requires an „immediate, deep and sustained” reduction of GHG emissions in „this critical area”. There is no reference to COP-15 to the Montreal Convention on Biodiversity (December 2022), which is called upon to establish a new global framework to put an end to the destruction of ecosystems by 2030, a prerequisite for combating climate change.

8. Conclusions

Climate governance, particularly at the global level, has evolved since it was established by the 1992 Framework Convention on Climate Change, which entered into force in 1994, and is now a complex system governed mainly by the Paris Agreement, with the annual meetings of the Conference of the Parties at its heart. It plays a key role in implementing the provisions of climate law. The institutional model of the COP is the result of progressive development in the context of the elaboration of multilateral conventional rules under the auspices of the UN. The powers conferred and the legal possibilities available to the institution of the Conference of the Parties (to the Framework Convention on Climate Change and the Paris Agreement respectively) should be taken into account. As an inter-state cooperation structure, its functions are to draft and adopt amendments, additional protocols, promote recommendations and any other measures designed to help achieve the objectives of the Convention. They are above all a framework to initiate, debate and formulate regulatory proposals to be decided by the summits, a high-level, intergovernmental political authority, a forum for expressing the official points of view of both developed countries and the most vulnerable countries, a solid context of transparency and accountability in the presentation of the commitments made, led by the CDN, finally for dialogue, alliance-building and the affirmation of projects. It is particularly from this latter perspective that its possible contributions to the development of the international legal regime in this area should be assessed.

In the field of global action against climate disruption, each of the three related agreements has created such a type of structure, even if different terminology has been used: Conference of the Parties to the Framework Convention (COP), Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP), Conference of the Parties serving as the Meeting of the Parties to

the Paris Agreement (CMA). Far from being a one-off meeting of all States Parties, COP is the „supreme body“, an organic assembly made up of subsidiary bodies (acting as a council), a bureau (dealing mainly with procedural and organizational matters) and an administrative body, generally housed in an existing international organization. In the context of a legal order that is still strongly voluntarist, the operation of the climate COP remains deeply marked by the rule of consensus, which gives it an important place and a significant role in the global cooperation of this kind and especially in the implementation of the Paris Agreement. The experience of COP meetings on climate and their contributions to the development, adoption and implementation of the related legal regulations remain relevant.