

United Nations Framework Convention on Climate Change: History and Evolution of Negotiations and Agreements^(*)

Birleşmiş Milletler İklim Değişikliği Çerçeve Sözleşmesi: Müzakerelerin ve Anlaşmaların Gelişimi ve Tarihi

Arş. Gör. Emirhan ALTUNKAYA^(**)

Abstract

Since 1990s Climate Change has become an inseparable part of the international politics and through diverse negotiations under United Nations (UN) structure notable number of agreements has been reached which constitutes the global climate change law today. United Nations Framework Convention on Climate Change which is signed in 1992 is still stands as the fundamental text of this law and established a series of conferences where further negotiations took place to develop necessary measures through international agreements for climate action. This paper aims to investigate evolution of international climate change law through four major international agreements (UNFCCC, Kyoto Protocol, Copenhagen Accords, Paris Agreement) reached in these negotiations. In this way, it will reveal key controversy points in the negotiations and current situation of the global climate change regime.

Keywords

Environment, Climate Change, Developed and Developing Countries.

Özet

1990'lı yıllardan beri İklim Değişikliği uluslararası siyasetin ayrılmaz bir parçası haline gelmiş durumda ve özellikle Birleşmiş Milletler (BM) bünyesindeki kapsamlı müzakereler sonucunda, bugün uluslararası iklim değişikliği hukukunu oluşturan, dikkate değer sayıda uluslararası anlaşmaya varılmış durumda. Bu bakımdan, 1992 yılında imzalanan Birleşmiş Milletler İklim Değişikliği Çerçeve Sözleşmesi (BMİDÇS) bu hukukun en temel metinlerinden birini oluşturmakla kalmayıp, aynı zamanda iklim değişikliğiyle mücadele müzakerelerinin yürütüleceği ve

^(*) Hakem denetiminden geçmiştir.

^(**) Arş. Gör. Emirhan Altunkaya, Galatasaray Üniversitesi, Uluslararası İlişkiler Bölümü Araştırma Görevlisi & Orta Doğu Teknik Üniversitesi, Uluslararası İlişkiler Bölümü Doktora Öğrencisi, emirhanaltunkaya@gmail.com

yapılacak uluslararası anlaşmalar aracılığıyla önlemlerin alınacağı, bir uluslararası konferans serisi başlatmıştır. Bu çalışma, bu kapsamda yapılmış olan dört temel uluslararası anlaşmayı (BMİDÇS, Kyoto Protokolü, Kopenhag Uzlaşması, Paris Anlaşması) inceleyerek, uluslararası iklim değişikliği hukukunun değişimini incelemeyi hedeflemektedir. Böylelikle, müzakere sürecindeki tartışmalı noktaları ortaya çıkartacak ve küresel iklim değişikliği rejiminin günümüzdeki durumunu araştırmaktadır.

Anahtar Kelimeler

Çevre, İklim Değişikliği, Gelişmiş ve Gelişmekte Olan Ülkeler.

Introduction

Environment as an issue of international politics is not recent. Since 1950s environmental issues started to become part of international discussions with emergence of several environmental problems of international nature. In parallel with, the necessity for an international cooperation to tackle these environmental problems and need for legislations that can enable this cooperation has already been presented at the first international conference on the environment, the United Nations Conference on the environment of Stockholm in 1972. Among these environmental problems, Climate Change is one of the greatest challenges facing humanity and probably the most crucial in search for a global action because of its nature. Both causes and consequences of climate change are on such scale that necessities cooperation and legislation at global level. In other words, this cooperation could only be possible with development of an international climate change regime through global conventions and agreements. Accordingly, the United Nations Framework Convention on Climate Change (UNFCCC) which is signed in 1992 by 165 countries (today has 197 parties) within the Earth Summit in Rio de Janeiro stands as one of the founding texts of international climate change regime. Since 1992 various negotiations took place under UNFCCC framework to develop effective legislations for mitigating climate change. Throughout regular conferences established by UNFCCC, parties that have signed the convention negotiated to develop a global action against climate change. These efforts have been seriously hampered by a number of disparities between the parties, especially between groups often named as developed and developing countries. While these negotiations gave birth to various agreements, protocols and declarations which constitutes base of international climate change law today, experts argues that disparities between parties are still apparent and hindering further legislations. This paper aims to investigate these negotiation processes and their impact on taking form on international climate change law. In doing so, it will focus on the four main agreements that has shaped global climate change regime

so far; UNFCCC, Kyoto Protocol, Copenhagen Accords, Paris Agreement, and their respective negotiation processes. In this way, it intends to offer a brief overview of global climate change regime, to reveal most debated points within the legislations and the current situation. Which in its turn can provide an indication of in what direction global climate regime is unfolding.

I. UNFCCC: Framework of the Climate Change Regime

UNFCCC signed in 1992, at the UN Conference on Environment and Development, namely the Earth Summit, stands as the fundamental text that shapes the global climate change regime. It has entered into force on 1994, after ratification of sufficient number of countries, and holds a broad legitimacy due to its nearly universal membership. It is the initial starting point for the legislations and mechanisms developed under UN structure to tackle climate change. UNFCCC, recognizes climate change as the greatest threat of the upcoming century to human security and well-being, and should be mitigated to prevent its adverse effects.¹ Thus the UNFCCC aims to stabilize Green House Gas (GHG) concentrations in the atmosphere, which is the main cause of human induced climate change. Article 2 of the Convention, declares that the ultimate objective of the Convention and any legal instruments that it may adopt in upcoming years is to limit GHG concentration in the atmosphere at a level *“that prevents dangerous anthropogenic interference with the climate system. It will be necessary to wait for this level in sufficient time for ecosystems to adapt naturally to climate change, food production is not threatened and economic development can continue in a sustainable way.”*² In this regard, climate change is officially recognized by signatory parties as a global threat that should be mitigated by developing legal instruments that enables international cooperation through UNFCCC framework. UNFCCC establishes also regular conferences that known under the abbreviation of Conference of Parties (COP), where parties of the Convention evaluate the progress in the climate action and work on further international legal instruments and mechanisms to mitigate climate change.³ Therefore, parties of the Convention have met annually since the entry into force of the Convention, since 1995, in COP meetings to assess progress and negotiate necessary measures for further action. Moreover, Article 3 of the Convention established the principles that should guide the negotiations to achieve the objective of the Convention; principle

¹ United Nations Framework Convention on Climate Change, *United Nations*, FCCC/INFORMAL/84, 1992, p.1 (Entered into force; 21 March 1994)

² United Nations Framework Convention on Climate Change..., *op. cit.*, Article 2, p.4 (Entered into force; 21 March 1994)

³ *Ibid.*, Article 7, p.10

of common but differentiated responsibilities, principle of precautionary actions, promotion of sustainable development and aid to the specific needs of developing countries vulnerable to adverse effects.⁴ In the direction of these principles, and in accordance with respective reports of World Commission on Environment and Development (WCED) and Intergovernmental Panel on Climate Change (IPCC), the fight against climate change has emerged as a development issue over the last decades in the international arena.⁵ We can argue that the UNFCCC has taken into account the inequalities between developed and developing countries in the face of the phenomenon of climate change, with its principle of *common but differentiated responsibilities (CBDR)*. CBDR principle divides the signatory parties of the convention into two groups, developed and developing countries, and attributes them different roles for the climate action.⁶ In other words, as it was also emphasized by the previous scientific reports, UNFCCC recognized that developed/industrialized countries are the historical responsible of GHG concentration in the atmosphere and should take principal actions for mitigating its adverse impacts in other regions of the world, especially in developing countries. In this regard, convention specifies a set of countries which is listed in the annex of the convention as the developed/industrialized countries of the world that should act first to implement necessary measures to reduce their GHG emissions.⁷ Article 4 of the convention, in its first subsection declares commitments that bind all the parties of the convention; such as measuring and reporting periodically their GHG emissions, formulating and implementing national programs to contain GHG emissions, cooperating for adaptation to the impacts of climate change.⁸ While the second subsection of the Article 4, assigns additional commitments to the annex I countries for mitigating climate change; such as adopting *national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of GHG*.⁹ Therefore we can emphasize that governments agreed on primary responsibility of developed countries in the global climate action and differentiated their objectives. Lastly, Article 11 of the convention also envisage to establishment of necessary financial mechanisms for supporting mitigation and adaptation activities against climate change. This article assigns the responsibility of establishment of

⁴ United Nations Framework Convention on Climate Change..., *op. cit.*, Article 3, p.5

⁵ Chris Simoens, "Changements climatiques et développement durable; les jalons d'une prise de conscience mondiale", *Le journal de cooperation Belge*, Vol. 1., 2008, p.3

⁶ United Nations Framework Convention on Climate Change..., *op.cit.*, Article 4, p.6-7

⁷ *Ibid.*, Annex, p.23

⁸ United Nations Framework Convention on Climate Change..., *op.cit.*, Article 4, p.5-6

⁹ *Ibid.*, Article 4, p.6

necessary financial mechanisms and technology transfer mechanisms to regular COP meetings.¹⁰ Ultimately, we can argue that through UNFCCC, signatory parties agreed upon a general legal structure that sets fundamental targets and basis of climate action. In this regard, UNFCCC shows up as a framework convention that sets general direction which enables further meetings to decide how to implement necessary measures.

Experts argue that this was result of long-lasting discussions in the pre-negotiation process of the UNFCCC, which revealed for the first time the disparities between developed and developing countries regarding the climate action. The formal intergovernmental negotiation processes of the UNFCCC began in December 1990, when the United Nations General Assembly established the Intergovernmental Negotiating Committee (INC) of a Framework Convention on Climate Change, to negotiate a convention containing "appropriate commitments" in time for signature in June 1992 at United Nations Conference on Environment and Development (UNCED). For the next fifteen months, the states gathered different sessions in which they discussed intensively the shape of the climate regime.¹¹ In this pre-negotiation process of the UNFCCC, the climate change mitigation debate easily fell into the dichotomy between developed and developing countries. Discussions reflected controversial key points that can be conceptualized in terms of North-South or Developed-Developing countries struggle.¹² The outcome of China's Ministerial Conference on Developing Countries on Environment and Development, the Beijing Declaration which reveals the position of the developing countries, explicitly stated the process of negotiating the climate regime in North-South terms, stating that "*currently being negotiated FCCC process should clearly recognize that it is the developed countries that are primarily responsible for excessive GHG emissions, historically and currently... Developing countries must have comprehensive scientific, technical and financial cooperation to cope with the negative impacts of climate change*". So, during the pre-negotiation process the developing countries rightly pointed out the responsibility of the developed countries for the mitigation of climate change as they are the historical responsible for GHG emissions. This main objective of the Beijing Declaration, different roles for developed and developing countries in the global climate action, has been incorporated in the UNFCCC under the pressures from developing countries. On the other hand, with the pressures from United States and petrol producing countries,

¹⁰ *Ibid.*, Article 11, p. 14

¹¹ Daniel Bodansky, "The History of Global Climate Change Regime", Urs Luterbacher, Detlef Sprinz (ed.), *International Relations and Global Climate Change*, Cambridge, London, MIT Press, 2001, p.31

¹² Daniel Abreu Mejia, "The Evolution of the Climate Change Regime: Beyond North - South Divide", *ICIP Working Papers*, No. 6, 2010, p.16

the UNFCCC did not have any binding commitments on any government to reduce emissions at a specific level within a set timetable.¹³ Ultimately, the UNFCCC has provided commitments - legally non-binding - exclusively for developed countries to stabilize their GHG emissions. The rest of the countries were grouped into non-Annex countries, including developing countries such as China, India and Brazil, with only voluntary commitments. We can argue that with the UNFCCC, climate change has begun to take shape as an international development issue and the divergent position between the two groups becomes evident. Besides this, financial mechanisms were the most controversial issue in the pre-negotiation period. The developing countries, along with India's initiatives, have successfully included a commitment that developed countries provide "new and additional" financial resources to support their sustainable development and to prevent the adverse effects of climate change in these regions.¹⁴ We can argue that, in the presence of these disparities, the parties preferred to have a framework convention that outlines the main principles of the international climate regime and to set the rules and procedures later in the Conferences of the Parties (COP) which will meet regularly to the effective implementation of the Convention. According to Bodansky, these institutions and mechanisms for implementing the convention were also a matter of debate between the two parties in the negotiations. He underlines that developed countries have supported strong mechanisms, while developing countries prefer the approach of a framework convention with regular conferences for international discussions.¹⁵ We can argue that the UNFCCC reflected a carefully balanced compromise on these and other issues but still many of its provisions do not attempt to resolve the disparities. Within the COPs, subsequent discussions of these and other disparities have continued between the two groups. In this perspective, the Convention does not represent an end point, but rather the beginning of the divergent perspectives between the two parties on the formation of the international climate regime.

Hereby we can argue that UNFCCC as a *framework* convention confine itself by setting fundamental objectives and general principles of the climate action. In this regard, it has manifested political intent and engagement of the parties to tackle climate change within cooperation under UNFCCC structure. But it hands over the establishment and development of necessary mechanisms for the implementation of the convention, to the additional protocols and agreements which will be prepared through COP meetings.

¹³ Daniel Bodansky, "The History of Global Climate Change Regime...", *op.cit.*, p.33

¹⁴ *Ibid.*, p.33

¹⁵ Daniel Bodansky, "The History of Global Climate Change Regime...", *op.cit.*, p.34

II. Kyoto Protocol: Clarified Targets for Initial Action

The convention came into force in 1994 and a year later, at the first Conference of the Parties meeting in Berlin in 1995, governments had begun to think about the next steps beyond the UNFCCC. COP-1, responding to considerable pressure from the developing countries, decided to establish an ad hoc committee to negotiate a legal protocol by 1997, containing additional commitments for developed countries (Annex 1) to the convention.¹⁶ This committee started to work on a protocol, an international agreement linked to the existing convention which will have stricter demands for GHG emissions. In this regard, the Kyoto Protocol, which was signed in 1997 as the result of the work of this committee, was aimed to enable implementation of the convention. Kyoto Protocol's major feature is that it has internationally binding emission reduction targets for the world's developed economies which have accepted it. According to the Protocol, parties decided to that Annex 1 countries specified by UNFCCC should work *to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012*.¹⁷ It has also specified these targets for each country according to their respective engaged contribution in its annex.¹⁸ Moreover, Article 3 specifies the possible actions for achieving these binding targets and offers some flexibility mechanisms through cooperation with developing countries. While Article 3 of the protocol defines this legally binding targets for developed countries, Article 10 of the protocol accentuate CBDR principle and underlines that non-annex countries should also take into consideration and work for mitigation of climate change.¹⁹ Article 11 of the protocol clarified the implementation of financial mechanisms and emphasized the responsibility of developed countries to provide technology transfer and financial resources for mitigation and adaptation activities in developing countries.²⁰ In this respect, we can argue that Kyoto Protocol has defined some of clarified targets for the implementation of the convention. It presents an important first step for the mitigation activities and legal procedures to follow.

Experts underline that Kyoto Protocol also sparked many discussions between the parties during its preparation. Negotiations remained blocked mainly on two issues; the level of emission limitation targets for developed

¹⁶ Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.21

¹⁷ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, 2303 UNTS 147, Article 3, p. 3 (entered into force: February 16, 2005)

¹⁸ *Ibid.*, Annex B, p.20

¹⁹ *Ibid.*, Article 10, p.9

²⁰ Kyoto Protocol..., *op.cit.*, Article 11, p.11

countries and possible mechanisms to enable developed countries to meet their objectives flexibly.²¹ On the first issue, the European Union (EU) and developing countries has proposed relatively strong targets, while other industrialized countries like the United States, Japan and Australia have insisted on weaker targets. The researchers draw attention to this divergence between the two groups of states of developed countries, between JUSSCANZ and the EU. He emphasized that Japan, the United States, Switzerland, Canada, Australia and New Zealand insisted on weak goals and differed from the EU's point of view.²² This north-north confrontation on emission reduction targets was resolved by specifying different emission reduction targets for each part, ranging from an 8% reduction from 1990 levels for the EU, to an increase of 10% for Iceland.²³ On the flexibility debate too, the United States insisted on a different position than the EU and the developing countries. The United States has supported setting up mechanisms that would allow developed countries to achieve their targets through emission reduction projects abroad or through emissions trading between countries. Conversely, the EU and the developing countries argued that domestic action should be the main means to achieve emission reduction targets.²⁴ Ultimately, the Kyoto Protocol was adopted in COP-3 in 1997, imposing a legally binding reduction of global GHG emissions on developed countries by an average of 5%, with specific targets for each country.²⁵ So the main protocol mechanism is the imposition of quantified GHG emission reduction commitments, which are planned on a fixed schedule and are subject to international control, exclusively for Annex 1 countries.²⁶ In this regard, we can argue that the protocol is perhaps the most evident example of the application of the principle of common but differentiated responsibilities, as it has not introduced any binding commitment for developing countries. On the other hand, the Protocol has put in place three flexibilities mechanisms for developed countries to achieve their goals by achieving or acquiring reduction of emissions in other countries; Joint Implementation (JI), Emissions Trading System (ETS), Clean Development Mechanism (CDM).²⁷ CDM allows developed countries to acquire additional emission rights by carrying out GHG reduction projects in non-Annex countries. The OMC

²¹ Daniel Bodansky, "The History of Global Climate Change Regime...", *op.cit.*, p.36

²² Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.23

²³ Daniel Bodansky, "The History of Global Climate Change Regime...", *op.cit.*, p.36

²⁴ Daniel Bodansky, "The History of Global Climate Change Regime...", *op.cit.*, p.5

²⁵ Kyoto Protocol..., *op.cit.*, Article 3, p. 3 (entered into force: February 16, 2005)

²⁶ Lavanya Rajamani, "Differentiation in the Emerging Climate Regime", *Theoretical Inquiries in Law*, No. 14, Vol. 1, 2013, pp.150-171, p.152

²⁷ Kyoto Protocol..., *op.cit.*, Article 12, p. 12-13

operates in a manner very similar to the CDM, but is used for offset projects in developed countries with economies in transition, including Ukraine and Russia. ETS allows Annex I countries, which have emission rights - allowable but unused emission allowances, to sell this excess capacity to countries above their goals. So it created an international carbon market to allow Annex I countries to trade their emission quotas.²⁸ According to Bodansky, these flexibility mechanisms are the most criticized feature of the Protocol, as it does not oblige states to adopt particular measures but give them the freedom to decide how, where and when to reduce emissions.²⁹ The protocol has given the opportunity to developed countries to achieve their objectives by obtaining emission rights through these flexibility mechanisms, instead of reducing their domestic GHG emission level.

In sum, the Kyoto Protocol (KP) once again underlined the objective of the convention, which aims to prevent the adverse effects of climate change on human security, and emphasized the promotion of the concept of sustainable development. To this end, the KP has set out to define concrete international procedures and rules that provide for economic, financial and commercial mechanisms for mitigating climate change. But the confrontations between the developing countries and the developed countries, which were present even in the negotiation period of the Protocol, are sharpened in the following years and have seriously delayed the entry into force of the Protocol. The United States Senate, in the same year of the signing of the protocol, adopted the Byrd-Hagel Resolution which expresses that the Senate would not ratify the protocol, unless that the developing countries participate significantly in the efforts of mitigation of climate change under a legally binding protocol. This meant that much of KP's effectiveness relied on the unresolved confrontation between the parties and this resolution questioned the non-binding situation of the developing countries within the KP.³⁰ With the definitive withdrawal of the Bush administration from the KP in 2001, the effectiveness of the climate regime have changed considerably and even the entry into force of the Protocol is suspended by the respect of the ratification clause by parties that in 1990 represented at least 55% of the total volume of emissions.³¹ This refusal also marked the beginning of a

²⁸ Phillippe Cullet, "Equity and Flexibility Mechanisms in the Climate Change Regime: Conceptual and Practical Issues", *International Environmental Law Research Center*, IELRC Working Paper No.1, 1998, p.9

²⁹ Daniel Bodansky, "A Tale of Two Architectures: The Once and Future U.N. Climate Change Regime", *Arizona State Law Journal*, v. 43, no. 3, 2011, p. 700, pp. 697-712

³⁰ Joelle Paquet, "La gouvernance climatique mondiale", *Rapport évolutif de Laboratoire d'étude sur les politiques publiques et la mondialisation (LEPPM)*, Avril 2012, p.3

³¹ Kyoto Protocol..., *op.cit.*, article 25, p.19

gradual decline in ambition to keep the KP at the center of the regime on the climate. It is arguable that since the United States' rejection of the KP, the participation of developing countries in climate change mitigation efforts has been at the center of all discussions within the following COPs. The absence of commitments from major polluters within non-annex countries such as China and India has become one of the main debates of global climate action. On the other hand, the KP negotiations were marked by North-South cooperation dynamic between the EU and the G-77 / China which coincided in the position to promote mechanisms for implementing strong and ambitious emission reduction.³² This momentum for cooperation between European Union and developing countries continued in COP-6 in Bonn and COP-7 in Marrakesh, where the parties negotiated the rules for the operation of the Protocol, especially those of the flexibility mechanisms. In these negotiations, the umbrella group, the informal coalition of developed countries (Australia, Canada, New Zealand, Norway, Russia, Ukraine and United States) continued to seek additional flexibility in fulfilling their commitments. While the EU, supported by China and G77, sought to attract enough consensus for the ratification of the PK to enable its entry into force by overcoming ratification clause.³³ With the Bonn and Marrakesh agreements, the Umbrella group has successfully put in place desired procedures for the flexibility mechanisms and the path to the entry into force of the Kyoto Protocol is finally paved.³⁴ Nevertheless, two more years were needed to satisfy the 55% emissions clause; after a long negotiation process, the Russian Federation finally ratified in 2004 and the protocol formally entered into force in 2005.³⁵ Besides, Marrakesh Accords have established three climate funds under Kyoto Protocol for financing mitigation and adaptation activities in non-Annex countries.³⁶ These financial aids, which are funded through voluntary contributions from Annex 1 countries focused on reducing human vulnerabilities in face of climate change, especially in the least developed countries.

According to researchers, the Kyoto Protocol can be regarded as a significant success for the climate regime if we focus solely on its objectives and targets. But the states that submitted to these commitments within the Protocol, accounted for only about a quarter of global GHG emissions, as the Protocol does not provide binding commitments for developing countries

³² Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.25

³³ Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.26

³⁴ Hermann Ott, "Climate Policy After the Marrakesh Accord", *International Environmental Law*, Vol.12, Oxford University Press, 2002, p. 4-5

³⁵ Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.27

³⁶ Marrakesh Accords, UNFCCC, FCCC/CP/2001/13/Add.1, Article 10, p.35

and as the United States which accounts for about 25% of global emissions refused to participate.³⁷ Therefore, both affectivity and sufficiency of the Kyoto Protocol has been largely hampered and questioned. In addition, Protocol set targets for a five-year commitment period from 2008 to 2012. Thus, as soon as the Protocol's entry into force process has been completed, the question has become of what to do after 2012 and official discussions on the post-Kyoto climate regime began.

III. Copenhagen Accords: Unconformity on Future of the Regime

Negotiations on the future of the climate regime beyond the first Kyoto Protocol commitment period ending in 2012 and on the participation of developing countries in global GHG emission reduction efforts continued in the following COPs. In Montreal COP-11 (2005), an informal dialogue was launched on long-term cooperative action for all parts of the UNFCCC.³⁸ This means establishment of a new track of legislation to replace Kyoto Protocol or to process parallel to it which will include non-annex countries and non-ratifies of the Kyoto Protocol. On the one hand, deliberations on the future of the climate regime in the Kyoto track also became official in 2006 with the launch of the Working Group for post-2012 commitments of Annex 1 countries. Bali Action Plan (BAP), adopted in 2007 at COP-13, launched formal negotiations for a new comprehensive climate change agreement to succeed the Kyoto Protocol.³⁹ With the introduction of the BAP, which aims to reach a comprehensive agreement in two years at COP-15 in Copenhagen, a second negotiating track parallel to the existing one in Kyoto has been officially started. This new track aims to develop an agreement that would contain internationally binding commitments for all the parties including the developing countries, such as China and India. Therefore it aimed to erode the differentiation between annex 1 countries and developing countries on reduction commitments and also to integrate those that declined to follow Kyoto Protocol track. In this respect, it has helped to bring major GHG emitters such as the United States, China and India into the negotiations.⁴⁰ In the following two years, developed countries, especially the United States, tried to convince developing countries to accept legally binding reduction commitments for enhanced international action.

The Copenhagen conference had been gathered with plenty of hope to conclude a new legal instrument that will govern the international regime on

³⁷ Daniel Bodansky, "A Tale of Two...", *op.cit.*, p.706

³⁸ Daniel Abreu Mejia, "The Evolution...", *op.cit.*, p.28

³⁹ Lavanya Rajamani, "Differentiation in the Emerging Climate Regime...", *op.cit.*, p.156

⁴⁰ *Ibid.*, p.157

climate change. It was probably the most important summit in the history of climate negotiations, attracting 125 heads of state and government and 40,000 participants. But instead of a detailed and binding framework to promote global climate cooperation, the parties have left Copenhagen with a general policy that privileges the voluntary actions of states and devalues the role of international law and global climate governance.⁴¹ Disparities between the various groups continued until the Copenhagen conference and the dynamics of negotiation remained stuck during the most part of the conference. Annex 1 countries emphasized that emerging powers such as China, India, Brazil and South Africa (BASIC Group) no longer deserve to be left out of the reduction efforts to which they are entitled under Kyoto regime, as they have become major GHG emitters of the world. These Annex 1 countries were generally reluctant to accept a new round of emissions targets within Kyoto, if other major emitters (including the US and the BASIC Group) accept binding commitments as well.⁴² The US, which is not part of the PK, has insisted on a new comprehensive agreement to replace the PK which will encompass national commitments for US and developing countries as well, but opposes to legally binding commitments on international level.⁴³ The emerging coalition of the BASIC Group has insisted that the developed countries accept a second Kyoto period with binding targets and opposed to the adaptation of a new agreement related to their GHG emissions.⁴⁴ In the final, the Copenhagen Conference failed to reach a strong consensus on the post-2012 climate regime.

The Copenhagen Accord, result text of the conference, was drawn up behind the scenes in the last hours of the conference by the heads of state from a limited number of countries, especially through negotiations between China and United States.⁴⁵ The Accord rested as political declaration emphasizing “*strong political will to urgently combat climate change in accordance with the principle of common but differentiated responsibilities and respective capabilities*”⁴⁶. Article 2 of the Copenhagen Accord, recognized the limit of 2 degree Celsius increase in global temperature that is defined by IPCC Fourth Assesments Report as the main objective of the global climate action.⁴⁷ According to Article 3, Annex 1 countries agreed to increase their financial

⁴¹ David Hunter, “Implications of the Copenhagen Accord for Global Climate Governance”, *Sustainable Development Law & Policy*, Vol. 10, No. 2, Winter 2010, pp.4-15, p.5

⁴² Lavanya Rajamani, “Differentiation...”, *op.cit.*, p.157

⁴³ David Hunter, “Implications of the Copenhagen...”, *op.cit.*, p.6

⁴⁴ Daniel Abreu Mejia, “The Evolution...”, *op.cit.*, p.31

⁴⁵ Joelle Paquet, “La gouvernance climatique...”, *op.cit.*, p.4

⁴⁶ Copenhagen Accord, UNFCCC, 2009, FCCC/CP/2009/L.7, Article 1, p.5

⁴⁷ *Ibid.*, Article 2, p.5

aid and technology transfer to the developing countries for enhancing mitigation and adaptation activities against climate change.⁴⁸ Article 5 of the Copenhagen Accords brings maybe the most notable novelty to the climate change regime by underlying that the non-Annex countries agreed to apply non-binding mitigation measures. It requires non-Annex countries to implement national mitigation actions and to report their progress in 2010.⁴⁹ In this regard, the agreement does not prescribe individual emission reduction targets in the medium or long term, but requires non-Annex I countries to take nationally determined mitigation actions. We can argue that this was a positive sign for further negotiations on a legally binding agreement that will include grand emitters such as China and India. But it is evident that Copenhagen Conference did not achieve the expected progress in forming a new universal protocol with legally binding targets that can replace Kyoto Protocol.

We can argue that Copenhagen Accords fall short to shape international climate change law and remained more as a political declaration. According to Bodansky, the relatively weak outcome of Copenhagen is result of two fundamental factors in the negotiations. First, the Copenhagen Conference was the first meeting whose success depended on the development of the developing countries' emissions. Secondly, the two most important players - the United States and China - disagree on the basic architecture of a future legal regime.⁵⁰ For him, the Copenhagen Accord represents a compromise that has achieved as much as possible, by establishing a process for listing the targets of developing countries which have met the symmetry demand of the United States and by establishing only political commitments which have satisfied Chinese rejection of legally binding obligations.⁵¹ On the other hand, the Copenhagen outcome has faced strong criticism. It is often expressed as a failure in that it could not provide a solution to the post-2012 scenario of the climate regime despite all the high hopes.⁵² In this regard, we can argue that it is obvious that Copenhagen Accord didn't met the expectations in developing a new international agreement to guide climate action and thereby in shaping global climate change law.

⁴⁸ *Ibid.*, Article 3, p.6

⁴⁹ *Ibid.*, Article 5, p.6

⁵⁰ Daniel Bodansky, "The International Climate Change Regime: The Road From Copenhagen", *Harvard Project on International Climate Agreements*, October 2010, p.2

⁵¹ *Ibid.*, p.4

⁵² Massimiliano Montini, "Re-Shaping Climate Governance for Post-2012", *European Journal of Legal Studies*, Vol.4, No.1, p.12

IV. Paris Agreement: New Hope for Climate Regime?

The COP that followed the one in Copenhagen, COP-16 in Cancun in 2010, clarified some issues of the Copenhagen Accord and started working on its the implementation. All the parties of Copenhagen Accord, including developing countries, presented their national reduction targets and agreed upon the Cancun Agreements which recognize the need to significantly reduce global emissions in order to achieve the objective of limiting the rise in average temperature to 2 degrees.⁵³ The Cancun Agreements maintained the two parallel tracks within climate regime, the Kyoto Protocol track and the UNFCCC track, known as the Special Working Group on Long-Term Cooperative Action, one that tried to be developed by the Copenhagen Agreements.⁵⁴ About the Kyoto track, although Cancun has not reached agreement on a second commitment period, it acknowledged that to avoid the adverse impacts of climate change, Annex 1 countries must reach ambitious commitments such as 25% to 40% below 1990 levels by 2020. This was an attempt to maintain pressure to conclude the second KP commitment period in the next COP.⁵⁵ About the other negotiating track, Cancun Agreements examined the long-term cooperative vision of the 2°C target and decided to reconsider a target of 1.5°C by 2015.⁵⁶ In this regard, the COP17 in Durban (2011) had significant results on both tracks; decision to set up the second Kyoto commitment period, launch of a new negotiation platform (Durban Platform) to develop new climate architecture by 2015.⁵⁷ During the Durban Conference, the Kyoto Protocol Annex 1 countries agreed to update their commitments for the second period, except Japan, Russia and Canada, who have already made it clear before Durban that they would not enter a second commitment period because they consider the Kyoto structure, which requires commitments from developed countries only, as unbalanced by nature. So the Durban outcome for the Kyoto runway was a significant political commitment by the EU and other Annex 1 countries to legally formalize a second commitment period at next year's meeting.⁵⁸ It was at COP18 in Doha in 2012, that the decision to engage Annex 1 countries in a second KP period was formally taken. On the other hand, the Durban Conference resulted in the launch of a new negotiating track,

⁵³ Cancun Agreements, UNFCCC, FCCC / CP / 2010/7 / Add.1, 15 March 2011, Article 1, p.4

⁵⁴ Jeniffer Morgan, "Reflections on the Cancun Agreements", *World Resources Institute*, Washington, December 2010, p.2

⁵⁵ Jeniffer Morgan, "Reflections on the Cancun Agreements...", *op.cit.*, p.4

⁵⁶ Cancun Agreements, UNFCCC, FCCC/CP/2010/7/Add.1, Article 4, p.3

⁵⁷ Romain Morel, "Durban: One Small Promising Step for Climate for 2020", *Climate Brief*, No. 10, December 2011, p.2

⁵⁸ Durban Decisions, UNFCCC, FCCC/CP/2011/9/Add.1, 15 Mars 2012, Decision 19, p.61

the Durban Platform, to develop "*a new legal instrument with legal value under the UNFCCC applicable to all parties*" by 2015.⁵⁹ So, in Durban, the parties were finally in agreement on the legal value of the new instrument and on the participation of the developing countries in emission reduction commitments. Although doubts remained for the outcome of the Durban Platform's work, the return of the group BASIC and United States to the negotiations for a legal agreement was a big step forward for the future of the climate regime.⁶⁰ We can argue that it is this progress that paved the way for reaching an agreement in 2015 in Paris. Although the Durban Conference cannot be considered as a success for climate change law as there was no official agreement. But it has undoubtedly made notable progress in changing the global climate regime by the regained political will for a new agreement until 2015. We can argue that *Ad Hoc Working Group on the Durban Platform for Enhanced Action* was the reason for the big expectations from the Paris conference for a new legally binding and universal agreement on climate action.

COP 21 in Paris met with plenty of hope to reach a new international climate agreement "with a legal value" and "applicable to all", as planned in Durban. The Warsaw (2013) and Lima (2014) Conferences served as pre-negotiations periods for COP-21, in which all parties were invited to submit their planned nationally determined contributions (INDCs) on GHG reduction targets, before Paris.⁶¹ At COP-21, parties negotiated to find a balanced solution that is not too strong (and therefore unacceptable by key states) or too weak (and thus ineffective for the purpose). The main controversial issues as usual included; the legally binding nature of commitments within the agreement, development of the finance and technology transfer mechanisms for developing countries, and the long-term global goal of climate regime.⁶² At the end of two-week of negotiations, the Paris Climate Agreement was signed. It has advanced the long-term global goal by emphasizing the target as "*holding the increase in the global average temperature to well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels*".⁶³ As it is mentioned about, it was a controversy point in the negotiations as the majority of the parties demanded the declaration of 1.5°C degrees as

⁵⁹ *Ibid.*, Decision 1, p.2

⁶⁰ Romain Morel, "Durban: One Small Promising Step...", *op.cit.*, p.4

⁶¹ International Institute on Sustainable Development (IISD), *Earth Negotiations Bulletin*, Vol. 12, No. 663, December 2015, p.2

⁶² Daniel Bodansky, "The Paris Climate Change Agreement: A New Hope?", *American Journal of International Law*, Vol. 110, No. 2, May 2016, pp.288-319, p.289

⁶³ Paris Agreements, UNFCCC, FCCC/CP/2015/L.9/Rev.1, 12 December 2015, Article 2, p.2

the official long-term target while the developed countries preferred to keep 2°C degrees as the official target. In the end, facing the majority, the industrialized countries accepted to find a language that mentions the target of 1.5 ° C without declaring it as the official operational objective.⁶⁴ On the other hand, about the legal value of the agreement, United States was against legally binding GHG reduction targets and sought to convince other parties through bilateral consultations.⁶⁵ The other largest emitter of GHG in the world, China has supported a legally binding agreement but demanded weak measures of international transparency on its pursuit of national targets.⁶⁶ At the end, parties agreed upon an agreement with a legal value but which will be based on National Determined Contributions (NDCs), not like Kyoto Protocol which had internationally determined targets. In this regard, Paris Agreement *invites parties to communicate their first nationally determined contribution no later than when the Party submits its respective instrument of ratification, accession, or approval of the Paris Agreement.*⁶⁷ These NDCs will be decided by national governments, will contain five year targets on GHG emissions and will be renewed and communicated to the UNFCCC every five year. Agreement doesn't address annexed list of countries as previous agreements did, therefore requires all signatory parties to provide NDCs and work towards achievement of their national targets. So we can argue that Paris Agreement has achieved its goal of establishing a new international agreement with legal value applicable to all parties. Lastly, the Paris Agreement (PA) also contains a less detailed section on the support and promotion of adaptation activities in the developing countries under Article 7. The PA creates a global goal on adaptation that was absent previous agreements aimed at strengthening "adaptive capacity, building resilience and reducing vulnerability to climate change".⁶⁸ On the financing of these activities, several developed countries have opposed their financial commitment and have even suggested reversing previous commitments in terms of financing climate action. But in the face of strong resistance from the G77 and China, developed countries have agreed to provide financial resources to help developing countries adapt to the impacts of climate change, with a goal of "100 billion dollars a year" here to 2025.⁶⁹ Thus we

⁶⁴ Radoslav Dimitrov, "The Paris Agreement on Climate Change: Behind Closed Doors", *Global Environmental Politics*, Vol. 16, No.3, August 2017, pp.1-11, p.4

⁶⁵ *Ibid.*, p.3

⁶⁶ *Ibid.*, p.3

⁶⁷ Paris Agreements, UNFCCC, FCCC/CP/2015/L.9/Rev.1, 12 December 2015, Article 22, p.4

⁶⁸ Charlotte Streck, Paul Keenlyside, Moritz von Unger, "The Paris Agreement: A New Beginning", *Journal for European Environmental & Planning Law*, Vol. 13, 2016, pp. 3-29, p.19

⁶⁹ Paris Agreements, UNFCCC, FCCC/CP/2015/L.9/Rev.1, 12 December 2015, Article 54, p.8

can argue that Paris Agreement has also made some progress on the financial disparity between developing and developed countries. Nevertheless, we can assert that compared to previous agreements Paris Agreement seems more comprehensive and ambitious.

The Paris Agreement is often seen as different from its predecessors and as a historic agreement for the climate regime for certain reasons. First, it is a legally binding instrument, unlike the Copenhagen Accord which was more like a political declaration. Second, it applies not only to developed countries, such as the Kyoto Protocol did, but also to developing countries, which account for a growing proportion of global emissions. Thus, it is abandoning the Annex-based differentiation in the UNFCCC and Kyoto Protocol. In addition, it establishes a long-term sustainable architecture, which institutionalizes an iterative process in which parties will return every five years to review collective progress and submit emission reduction plans for the next five-year period. And finally, the Paris Agreement seems to have universal or almost universal acceptance, unlike the Copenhagen and Kyoto agreements.⁷⁰ In these respects, it is arguable that the outcome of COP-21 has exceeded expectations, resulting in an agreement that can be accepted as an important step in the evolution of the climate regime.⁷¹ The main criticism about the Paris Agreement is that it is based on the planned contributions determined at the national level. The Accord is built entirely around promises of voluntary contributions by countries, which is still far from reaching the stated goal of limiting the rise in temperature to 2°C. Without further political action, the world is already on the road to a 4°C degree increase in global temperature by 2100, and even if all the NDCs granted in Paris are fully implemented, it will put the world on the way to an elevation over 3°C degrees by 2100.⁷² Moreover, observers point out that particularly the commitments made in the Paris Agreement by major emitters, such as the United States, China and India, are far away from to fulfill the objective of the Agreement.⁷³ Another criticism about the Accord is that it focuses only on long-term action for objective mitigation of 2°C and failed to put concrete plans to promote adaptation activities and

⁷⁰ Daniel Bodansky, "The Paris Climate Change Agreement...", *op.cit.*, p.290

⁷¹ International Institute on Sustainable Development (IISD), *Earth Negotiations Bulletin*, Vol. 12, No. 663, December 2015, p.43

⁷² Raymond Clemençon, "The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?", *Journal of Environment & Development*, Vol. 25, No. 1, pp. 3-24, p.4

⁷³ Guri Bang, "The Challenge of translating the Paris agreement into effective domestic policy", in Harold Wilhite and Arve Hansen (ed.), *Will the Paris Agreement Save the World*, Oslo Academy of Global Governance, Working Paper, No. 1, 2016, Oslo, University of Oslo, Center for Development and Environment, pp.27-33, p.32

prevent short-term threats.⁷⁴ Although it envisages an overall objective of adaptation, it is often criticized for being weak in describing concrete action and cooperation plans for adaptation activities. Oxfam, underlining that even only 1°C of global warming can cause great destruction for vulnerable populations, suggests that the goals related to adaptation activities within the Paris Agreement are largely insufficient to resolve the humanitarian situation in front climate change.⁷⁵ After all, the Paris Agreement represents an almost universal agreement to fight climate change as an urgent and serious threat to humanity, which for the first time has been signed by all countries. Despite its deficiencies, we can argue that it justifies cautious optimism about the future of the international climate regime.

With entry into force of Paris Agreement on 4 November 2016, the international climate regime has created a new structural order under the UNFCCC. However, the implementation of the Agreement will define the success of its objectives, which remains to be seen. After 23 years of negotiations in the UNFCCC, much remains to be decided and governments are currently negotiating the operational aspects of the Agreement. In 2018, the parties will make the first assessment of collective efforts in relation to the PA and finalize the details of the implementation of the Agreement.

Conclusion

As a result of the growing scientific evidence and environmental wave since 1970s Climate Change has become an important issue for global politics. Because of the nature of its cause and consequences, Climate Change requires international, even global, cooperation to tackle. It has been 26 years from the first international convention to tackle climate change, United Nations Framework Convention on Climate Change, has been signed. This agreement was a framework convention which sets the general objective and principles of the global climate change regime. In this regard, it hands over establishment of concrete measures and binding commitments from parties to latter legislations under UNFCCC structure. Since 1992, through long-lasting negotiations parties tried to develop an effective international agreement to mitigate climate change and prevent it adverse effects. Ultimately, we can argue that today especially four agreements (UNFCCC, Kyoto Protocol, Copenhagen Accords and Paris Agreement) seem like the most important components of the global climate change regime. This paper aimed to examine these agreements and the most controversy points in their respective negotiation processes. By doing so, it

⁷⁴ OXFAM, "The Paris Climate Agreement: Oxfam's Initial Analysis", 2015, p.5

⁷⁵ *Ibid.*, p.5

has tried to reveal the evolution of the international climate change law and to point out its milestones. In this direction, evolution of the international climate change regime has been the scene of intense debates, mainly over disparities between developed and developing countries. Main reasons of this disparity were; the historical responsibility of developed countries for anthropogenic GHG level in the atmosphere and the crucial vulnerability of regions of the world where developing or less developed countries are situated, in the face of climate change. Major developing countries - led by China - emphasized the responsibility of developed countries to reduce their GHG emissions to mitigate climate change and to provide financial and technical assistance to developing countries to support their adaptation activities. On the other hand, while several developed countries - notably the European Union countries - accepted to assume this primary responsibility. Some developed countries - led by United States - have refused to undertake all efforts to combat climate change and persisted for similar GHG emission limits for developing countries, which have become major emitters over time. Thus, we can argue that the main dynamic of 25+ years of negotiations on the formation of the climate change law was this confrontation between developed and developing countries. Ultimately, climate change law has evolved through different agreements since 1992 and proposed changing legislations over time under pressure of negotiations. In the current situation, most recent Paris Agreement seems as a sustainable international agreement, as it reached quasi-universal legitimacy. While it is offering a certain vision for the future of the climate action, it should be underlined that its success depends on its implementation and execution over years.

Bibliography

Official Documents

- IISD (International Institute on Sustainable Development), *Earth Negotiations Bulletin*, Vol. 12, No. 663, December 2015
- OXFAM, *The Paris Climate Agreement: Oxfam's Initial Analysis*, 2015
- United Nations, Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997
- United Nations, UNFCCC, Cancun Agreements, 2010
- United Nations, UNFCCC, Copenhagen Accords, 2009
- United Nations, UNFCCC, Durban Agreements, 2011
- United Nations, UNFCCC, Marrakesh Accords, 2001
- United Nations, UNFCCC, Paris Agreements, 2015
- United Nations, United Nations Framework Convention on Climate Change, 1992

Articles

- Charlotte STRECK, Paul KEENLYSIDE, Moritz VON UNGER, "The Paris Agreement: A New Beginning", *Journal for European Environmental & Planning Law*, Vol. 13, 2016, pp. 3-29
- Chris SIMOENS, "Changements Climatiques et Développement Durable; les Jalons d'une Prise de Conscience Mondiale", *Le Journal de Cooperation Belge*, Vol. 1., 2008, pp.1-9
- Daniel Abreu MEJIA, "The Evolution of the Climate Change Regime: Beyond North - South Divide", *ICIP Working Papers*, No. 6, 2010, pp. 1-51
- Daniel BODANSKY, "The History of Global Climate Change Regime", *International Relations and Global Climate Change*, LUTERBACHER Urs,
- Daniel BODANSKY, "The International Climate Change Regime: The Road from Copenhagen", *Harvard Project on International Climate Agreements*, October 2010, p.1-7
- Daniel BODANSKY, "The Paris Climate Change Agreement: A New Hope?", *American Journal of International Law*, Vol. 110, No. 2, May 2016, pp. 288-319
- David HUNTER, "Implications of the Copenhagen Accord for Global Climate Governance", *Sustainable Development Law & Policy*, Vol. 10, No. 2, 2010, pp.4-15
- Detlef SPRINZ (ed.), Cambridge, London, MIT Press, 2001, pp. 23-41
- Guri BANG, "The Challenge of translating the Paris agreement into effective domestic policy", *Will the Paris Agreement Save the World*, Oslo Academy of Global Governance, Oslo, Center for Development and Environment, Working Paper, No. 1, 2016, Oslo, pp. 27-33
- Hermann OTT, "Climate Policy After the Marrakesh Accord", *International Environmental Law*, Vol.12, Oxford University Press, 2002, pp. 1-13

- Jeniffer MORGAN,, “Reflections on the Cancun Agreements”, *World Resources Institute*, Washington, December 2010, pp. 1-12
- Joelle PAQUET, “La Gouvernance Climatique Mondiale”, *Rapport évolutif de Laboratoire d’étude sur les politiques publiques et la mondialisation (LEPPM)*, Avril 2012, pp. 1-24
- Lavanya RAJAMANI, “Differentiation in the Emerging Climate Regime”, *Theoretical Inquiries in Law*, No. 14, Vol. 1, 2013, pp. 150-171
- Lavanya RAJAMANI, “The Devilish Details: Key Legal Issues in the 2015 Climate Negotiations”, *The Modern Law Review*, Vol.78, No. 5, 2015, pp. 826-853
- Lavanya RAJAMANI, “The Making and Unmaking of the Copenhagen Accord”, *International and Comparative Law Quarterly*, Vol.59, No.3, Julliet 2010, pp. 824-843
- Massimiliano MONTINI, “Re-Shaping Climate Governance for Post-2012”, *European Journal of Legal Studies*, Vol.4, No.1, 2011, pp. 8-27
- Phillippe CULLET, “Equity and Flexibility Mechanisms in the Climate Change Regime: Conceptual and Practical Issues”, *Internatinal Environmental Law Research Center Working Paper No.1*, 1998, pp. 1-22
- Radoslav DIMITROV, “The Paris Agreement on Climate Change: Behind Closed Doors”, *Global Environmental Politics*, Vol. 16, No.3, August 2017, pp. 1-11
- Raymond CLEMENCON, “The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?”, *Journal of Environment & Development*, Vol. 25, No. 1, pp. 3-24
- Romain MOREL, “Durban: One Small Promising Step for Climate for 2020”, *Climate Brief*, No. 10, Decembre 2011, pp. 1-8

