

## **Deal or no Deal: Reflections on the Paris Agreement on Climate Change**

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### **Original Research Article**

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**Abstract:** In December of 2015, the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP21) took place in Paris. UNFCCC is an international environmental agreement on climate change, of which there are 195 States Parties. The U.N. Intergovernmental Panel on Climate Change (IPCC) has warned of the consequences of failing to limit global temperature rises to at least 2 degrees Celsius (above pre-industrial times), highlighting that the impacts would pose a threat to humanity and could lead to irreversible climate change. The meeting in Paris was hailed as a make-or-break opportunity to secure an international agreement on approaches to tackling climate change, a commitment to a longer-term goal of near zero net emissions in the second half of the 21st century, and supporting a transition to a clean economy and low carbon society. This paper discusses the issues and solutions of climate change, development and critical views, the UAE environmental regulation, company's environmental responsibility, and the future of the Paris Convention on Climate Change.

**Keywords:** International Environmental Law, Climate Change, Paris Convention, IPCC.

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### **INTRODUCTION**

The protection of the environment is yet to be considered by many as a serious dilemma [1] which it is, as our planet earth and its natural resources known as the "Ecosystem" which includes all humans, plant life, mountains, glaciers, atmosphere, galaxy, seas are all facing the threat of destruction. Threats not the least of which are namely, pollution, climate change, global warming, deforestation, industrial and household waste, acid rain, Ozone layer depletion, urban sprawl, and genetic engineering.

Islam has also called for the protection of the environment as failing to follow the Quranic injunctions, and we have, of course, upset the ecological balance. And it is up to us to set it right again.

This will require great effort, and courageous personal change to restore and preserve the balance in nature [2]; to take up our responsibility as viceroys of

God and hence as custodians, stewards, and trustees in whose trust God has placed the resources we enjoy [3].

One of the reasons that also add up to the importance of this subject is that it does not only affect a solitary state but has consequences that reach up to most nations of the world if not all.

Thus, the international environmental law came into existence as the world's response to a problem of a growing concern [4], with a number of multilateral and bilateral agreements prior to the 1950s set in order to protect commercially valuable species such as, *the 1902 Convention for The Protection of Birds Useful to Agriculture* [5], *the 1916 Convention for*

<sup>3</sup>Shabir Ally, *Environment and Islam, Climate Change: A Call for Personal Changes*, January, 15th, 2015.

<sup>4</sup>R. Stavins, J. Zou, et al., "International Cooperation: Agreements and Instruments." Chapter 13 in: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, 2014.

<sup>5</sup>Article 1 sets out the principle by which birds that are useful to agriculture, especially insectivores, and particularly those mentioned in List N° 1, are to enjoy

<sup>1</sup>Clark, Duncan, *Which Nations are Most Responsible for Climate Change?* London: Guardian (2011).

<sup>2</sup> Pogge, Thomas, *Poverty, Climate Change, and Overpopulation*, 38 GA. J. INT'L & COMP. L. 525 (2010).

*The Protection of Migratory Birds in the United States and Canada* [6]. Some also focused on wildlife animals like *the 1900 London Convention for the Preservation of Wild Animals, Birds and Fish in Africa* [7].

Multilateral and bilateral agreements came to form the majority of the fundamental rules of international environmental law [8], many of them had a great impact on the shaping of new agreements [9], as *the Kyoto Protocols* [10], effect on the recently signed *Paris Agreement on Climate change*, where they shared a number of similarities in addition to the adjustment of the parts that were backpedaling.

If I am to make the subject clear, I must oversimplify it to the point of discussing the definition of the international environmental law, how it came to be, its overall importance, its development, legal issues, and the environmental regulation of the United Arab Emirates.

It ought to go without saying that the draftsmen of *the Paris Agreement on Climate Change* made their legislative message as clear as possible. I

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absolute protection; it is forbidden to kill them at any time and in any manner, or to destroy their nests, eggs or hatching.

<sup>6</sup> Canada and the United States agree to ensure the long-term conservation of migratory birds by means of regulation, monitoring, enforcement, education, partnership, incentives, and other means.

<sup>7</sup> Is a multilateral treaty on wildlife preservation that was signed by the European colonial powers in London in 1900. Although it never entered into force, it has nevertheless been recognized as one of history's earliest agreements on nature conservation.

<sup>8</sup> For a general description of the impacts of climate change, see Intergovernmental Panel on Climate Change [Ippc], *Climate Change 2007: Impacts, Adaptation and Vulnerability* (2007). For Impacts on the United States, see U.S. Global Change Res. Program, *Global Climate Change Impacts in the United States* (Thomas R. Karl Et Al. Eds., 2009).

<sup>9</sup> See, e.g., *Human Rights and Climate Change* (Stephen Humphreys ed., 2010). Examining questions raised by climate change policies; John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT'L L. 163 (2009) (addressing duties of human rights law imposes with respect to climate change); Eric A. Posner, *Climate Change and International Human Rights Litigation: A Critical Appraisal*, 155 U. PA. L. REV. 1925 (2007) (questioning whether international human rights litigation would lead to a desirable outcome); Amy Sinden, *Climate Change and Human Rights*, 27 J. LAND RESOURCES & ENVTL. L. 255 (2007).

<sup>10</sup> *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Dec. 11, 1997, 37 I.L.M. 22 (1998).

will approach *the Paris Agreement on Climate Change* and analyze the main parts of the agreement such as its aims, results and the legal issues standing in the face of its implementation in the best way possible.

### International Environmental Law

We come now to the basic steps to show the essentiality to establish a clearly defined term of environment [11] in order for the law to succeed in protecting it, since adopting a concept which is limited in its scope will create a difficulty that makes the laws contribution narrowed and inadequate.

The literal meaning of environment is derived from a French word "*Environia*" [12], which means "what surrounds" which consists of variations of components such as land, water and air [13], thus, excluding the organism's dependent upon them like animals or insects.

Here, I should warn that any sensible concept of environment must include all natural elements of the environment, for instance the *Albanian Law of Environmental Protection* adopted the following definition of environment as:

*"All natural and anthropic elements and factors in there action and interaction"* [14].

And it clarified the meaning of natural elements as: water, air, soil, subsoil, solar radiation, vegetable and animal organisms, with all natural processes and phenomena generated by their interaction and which affect life.

On the substantive side, the environment is generally defined as the totality of circumstances surrounding an organism or group of organisms, especially the combination of external physical conditions that affect and influence the growth, development, and survival of organisms [15].

After the establishment of a definition of environment and the variations in the prospects that are

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<sup>11</sup> Einstein reportedly said that; "the environment is everything is not me."

<sup>12</sup> Wapner, S. & Demick, J., *Person-in-environment Psychology: A Holistic, System-oriented Perspective*. In W.B. Walsh, K.H. Craik, & R.H. Price (ed.), *Person-Environment Psychology: New Direction and Perspectives*(2<sup>nd</sup> ed., PP. 25-60). Hills- dala, NJ: Erlbaum (2000).

<sup>13</sup> Einstein, *Supra* note, 11.

<sup>14</sup> Article 2 of the 1992 Albanian Law of Environmental Protection.

<sup>15</sup> See also, article by Puja Mondal, *Meaning, Definition and Components of Environment*. Another meaning of environment is: the surroundings or conditions in which a person, animal, or plant lives or operates.

taken in defining it, now we have to look at how it's set as a branch of international law and how it applies on sovereign states and organizations.

At this stage, global and regional environmental issues [16] are increasing the needs of international law. Debates over environmental concerns implicate core principles of international law and have been the subject of numerous international agreements and declarations. Thus, international environmental law has been undoubtedly growing in importance and necessity throughout the last decades.

Altogether, international environmental law is defined as: the field of international law regulating the behavior of states and international organizations with respect to the environment [17].

The fact that international environmental law deals with many ecological problems (*i.e.*, climate change, pollution, acid rain) on a global level makes it a primary source for the protection of the nature.

The process leading to the formation of international environmental law came about after multiple elements and sources congregated to found basic rules and principles that helped in putting it as an actual branch of international law and these sources are namely:

#### **Soft law**

It is a law consists of statements, resolutions, recommendations, declarations, final acts of conferences, and similar documents that are strongly persuasive but not in a strong legal sense. The principal of "state sovereignty" for example which refers to the right of states to exploit their own resources pursuant to their own environmental and development policies.

#### **Conventions**

They are considered as the most important forms of international environmental law, conventions include treaties, statutes, protocols, and any other form of written concluded between states, *i.e.*, *The 1992 Rio Declaration on Environment and Development* [18].

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<sup>16</sup> Limon, Marc, Human Rights Obligations and Accountability in the Face of Climate Change, 38 GA. J. INT'L & COMP. L. 543 (2010).

<sup>17</sup>Article by Aaron Shwaback, Thomas Jefferson School of Law, San Diego & Arthur John Cockfield, Queen's University Faculty of Law, Kingston, Ontario, Canada, *The Role of International Law and Institutions*, Volume 1, *Encyclopedia of Life Support Systems (EOLSS)*, Chapter 1(2009).

<sup>18</sup> The Rio Declaration was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide countries in

#### **Custom**

is considered the body of law that reflects settled practices of states that are not set out in written agreements *i.e.*, the matter of trans-boundary harms (acid rain-radioactive fallout) whereas customary law imposes on states the obligation to prevent the cause of damage to the territory of another state.

#### **Subsidiary Sources**

Such sources are mentioned by article 38 of the ICJ Statute include general principals of law, judicial decisions, and scholarly writings [19].

#### **Development and Critical Views**

Environmental law is rapidly evolving and constantly changing legal field. Due to the nature of environmental issues [20], our understanding of natural resources, biodiversity and the impact we are having on all aspects of the environment is always improving, the legal frameworks which govern planning, use, and management of the environment must also adapt accordingly.

The job of fitting all the pieces together is unquestionably the hardest part of drafting, thus, in 1900, treaties that were in relation to environmental issues focused on matters of national sovereignty over natural resources, addressing boundary waters, navigation, and fishing rights in shared waterways but things took an upturn ever since *the 1909 Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States And Canada* [21].

Current treaties prove the existence of a pattern whereas there is constant increase in scope. Treaties dealt with the protection of specific species to the whole ecosystem as the main priority of them. Therefore, it is wholesome to mention that recent treaties address global issues like climate change, ozone layer while taking socio-economic conditions into consideration.

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future sustainable development. It was signed by over 170 states.

<sup>19</sup> See Anita Margrethe Halvorsen, *Equality among Unequals in International Environmental Law: Different Treatment for Developing Countries*, P.11 (1999).

<sup>20</sup> As Joseph Stalin is said to have remarked, "The death of one man is a tragedy. The death of millions is a statistic." Peter York, *Dictator Style: Lifestyles of The World's Most Colorful Despots*, P. 111 (2006).

<sup>21</sup> Article I states that "The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally."

Due to the complex nature of the global environment, it is required by those who formulate international environmental law to each deal in depth with a limited range of problems where they must resort to delicate negotiations and skillful diplomacy to find solutions that please the different motives whether politically or economically of the states involved.

For adequate testing, many would claim that following this method is the reason for the slow development of international environmental law, where a more direct and firm approach is needed on account of the current environmental problems.

Nevertheless, it is still considered the most valuable tool in policy implementation, for reaching a half-solution will set the pavement for a final solution in years to come [22].

One of the major obstacles concerning the development of the international environmental law is the economic implications of signing up environmental agreements, which is an increasing concern of developing states and particularly economic competitiveness and how it would somewhat set boundaries to it [23].

The conventional perspective suggests that environmental regulations damage the economic performance of regulated (usually pollution intensive) [24] industries because they increase production costs leading to lower productivity or profitability.

However, an alternative position argues that environmental regulations might lead private firms and the economy as a whole to become more competitive internationally by providing incentives for environmentally-friendly innovation that would not have happened in the absence of policy [25].

Then there is the very fundamental matter of little evidence to suggest that strengthening international environmental regulations will damage

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<sup>22</sup> Mostafa K. Tolba, Iwona Rummel-Bulska, Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992, Massachusetts Institute of Technology, P. 14 (1998).

<sup>23</sup> See Sarah Valentine & Reed Smith, International Environmental Law, Advocates for International Development (2012).

<sup>24</sup> Shue, Henry, Subsistence Emissions and Luxury Emissions, 15 LAW & POL'Y 39 (1993). See also Baer, Paul, Athanasiou, Tom & Sivan Kartha, The Right to Development in A Climate Constrained World (2007).

<sup>25</sup> Policy brief by Antoine Dechezleprêtre and Misato Sato, The Impacts of Environmental Regulations on Competitiveness, Grantham Research on Climate Change and the Environment, November 2014.

international competitiveness since the effect of current environmental regulations on where trade and investment take place has been shown to be negligible compared to other factors such as market conditions and the quality of the local workforce.

Another major concern is the failure of most environmental treaties to offer financial resources to states as compensation for the additional, and often significant, costs incurred as a consequence of implementing protective measures. This lack of compensation gives rise to the concern that many developing states will be unwilling to support similar measures in the future, choosing to sacrifice environmental protection for economic growth [26].

However, since the involvement of developing states is essential to ensure success of international environmental agreements for the protection of sensitive natural resources, some treaties do now provide compensatory finance to be made available to developing states so as to enable them to meet the costs of implementing the obligations imposed [27].

For example, *Principle 12 of the Stockholm Declaration 1972* [28] also makes it clear that the costs incurred by developing states by incorporating environmental safeguards need to be considered and for financial assistance to be provided where possible [29].

In addition, the next important step is to explore the existing challenges that stand in the face of a more progressive development of international environmental law such as:

- Excessive time lags between scientific understanding of environmental issues and corresponding development of appropriate laws at the national, international, and regional levels;
- Outdated or inadequate national legislation or international agreements to effectively address certain environmental issues;

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<sup>26</sup> Valentine, *supra* note, 23.

<sup>27</sup> Harry N. Scheiber, LOSI and Director Moon Sang Kwon, Securing the Ocean for the Next Generation, LOSI Conference Papers, 2012. See also, Equality Among an Equals, on the question why should industrialized countries help developing countries by using incentives?, Chapter 4, Sustainable Development.

<sup>28</sup> Principle 12 of the Stockholm Declaration states that "Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate- from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose."

<sup>29</sup>*Id.*

- Lack of environmental laws to adequately preserve and protect natural resources and ecosystems, especially in developing states.
- Insufficient capacity to implement environmental laws, especially in developing states.

### **UAE Environmental Regulation**

The UAE has undergone a great deal of an environmental renaissance in recent years. Environmental awareness has been high on the agenda and there have been constant reminders of individual states obligations to the natural world [30], and in particular sensitive environment of the southern Gulf. There is now, in addition to the governmental structure, a plethora of non-governmental environmental making great efforts to take the environmental state of the UAE to a better level.

Sophisticated environmental legislation has been promulgated, involving several separate laws. Some apply at a federal level, others only at the individual Emirate level. There is a clear move toward consistency across the federation, although each Emirate retains, constitutionally, a certain degree of overall autonomy. The task of putting into practice what is enshrined in such laws, backed up by monitoring and strict enforcement, is now being addressed. The UAE is endeavoring to restore the balance and ensure resources are used both sustainably and equitably, while at the same time maintaining a place for nature [31].

Current legislation relevant to the natural environment and its resources are formed in respect of the general rules of international environmental law. Much has come into force only in the last decade, and the most recent, at least, has yet to be put to the test.

There has been a number of federal laws, decrees and separate Emirates laws, set for the purpose of protecting the UAE's different environmental aspects:

### **Marine Life**

- Federal Law No. (24) of 1999 Concerning Protection and Development of the Environment as amended by Law No. (11) of 2006.
- Federal Law No. (23) of 1999 Concerning Exploitation, Conservation, and Development of Living Aquatic Resources in the United Arab Emirates and its Executive Order issued by Ministerial Decree No. (302) of 2001.
- Law No. (5) of 2016 the Regulation of Groundwater in the Emirate of Abu Dhabi.

### **Overland**

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<sup>30</sup> Posner, Eric, International Law: A Welfarist Approach, 73 U. Chi. L. Rev. 487 (2006).

<sup>31</sup> Aspinall, Simon, Environmental Development and Protection in the UAE, p. 278 (2001).

- Federal Law No. (16) of 2007 Concerning Animal Protection.
- Federal Law No. (11) of 2002 Concerning the Regulation and Control of International Trade in Endangered Species of Wild Fauna and Flora and its Executive Order issued by Council of Ministers Decree No. (22) of 2003.
- Law No. (22) of 2005 Regulating Wildlife Hunting in the Emirate of Abu Dhabi.
- Law No. (13) of 2005 Regulating Grazing in Abu Dhabi Emirate and its Executive Order No. (13) of 2005.

### **Protected Areas**

- Emiri Decree No. (18) of 2001 Declaring Marawah as a Protected Marine Area.
- Emiri Decree No. (33) of 2005 Declaring Al Yasat as a Protected Marine Area.

The UAE has proved its intent to seek all methods possible to challenge environmental problems that its facing and referring to conventions or treaties that it signed in respect of that matter as principles to do so, where the law states as a general principle to:

*"Undertake the implementation of international and regional conventions ratified or signed by the State in respect of environment protection, pollution prevention and preservation of natural resources" [32].*

### **Issues**

#### **Enforcement**

The rules of international environmental law are of little affect if they are not ensured by all means to be put into implementation, and enforcement of the international environmental law is a vital [33], yet a problematic aspect that caused the arisen of different issues concerning it such as state compliance and state sovereignty.

#### **State Compliance**

The formal sources of international law include general principles of international law, international customs, and all multilateral agreements, and since the latter plays a great role in shaping the rules of international environmental law, we will discuss state compliance and methods to insure a legal/political respect and implementation of the treaties [34].

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<sup>32</sup> Article 2 of the Federal Law No. (24) of 1999 for the Protection and Development of the Environment.

<sup>33</sup> See Remarks of Vernon Smith, in Global Crises, Global Solutions 630, 635 (Bjorn Lomborg ed. 2004). Remarks of Thomas Schelling, at 627.

<sup>34</sup> Balakrishna Pisupati, Charlotte Boumal, Elizabeth Maruma Mrema and Alphonse Kambu, Issues of Compliance: Considerations for the International Regime on Access and Benefits Sharing, United

"Multilateral agreements where several countries agree on a common set of goals, objectives and measures to deal with specific environmental issues" [35].

Some of the reasons that prevent the enforcement of the multilateral agreements are:

- The capacities and resources needed to effectively ensure the implementation of the provisions of a multilateral environmental agreement, are usually assessed after the discussions on the agreement are disclosed, which makes it difficult for parties to take compliance seriously at the time the agreement is negotiated and enters into force.
- Lack of strong economic arguments and political will to comply with multilateral environmental agreements.
- The tendency to have the negotiations dominated by the powerful state, and in many cases not all parties holding stakes in the outcome were adequately represented [36], that of which creates the gap between what is reached in the agreement and what is actually applied on the matter since the counterparties to the powerful states will be in the position of reluctantly signing the treaty without the intention to put it into force.

Some of the solutions that I suggest in order to solve the previous issues are:

First, resources and expenses needed for the success of the agreement must be discussed within its barriers as they are a vital part of the agreement and must not be separated or postponed, so "It is better to use compliance-inducements, such as offers of financial or manpower assistance [37].

Second, its perceived worldwide that the norms of the international environmental law limit the state's ability to produce effectively in a much profitable way which is incorrect, because this creates a solitary view of the world where a more broad one is needed and a more sensible approach is required, since a low-production for the long run is better than high-productivity that will not last for years to come if it reduces the chances of a good quality of life for generations to come.

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Nations Environment program (UNEP), Division of Environmental Law and Conventions (DELIC), P. 7 (2004).

<sup>35</sup>Id.

<sup>36</sup> Mostafa K. Tolba, Iwona Rummel-Bulska, Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992, Chapter 9: Building International Environmental Accords, P. 178 (1999).

<sup>37</sup> O'Connell, Mary, Enforcement and the Success of International Environmental Law, Indiana University School of Law, Fall 1995, Volume 3 issue 1.

Third, though the issue of powerful states [38], dictating the environmental negotiations has been up for urge in the past decade specially in the *Kyoto Protocol*, there has been a noticeable progress in the last few years, precisely the *Paris Agreement on Climate Change*.

### State Sovereignty

It is an international law norm that sovereign states are to refrain from interference in the domestic affairs of other states on the one hand, but, on the other hand, the territorial limitation of a state empowers it to do as it pleases.

In so far as international boundaries exist, the possibility that disputes may arise are obvious. Boundary disputes are engendered by the reduction of natural resources beyond a state's border.

The concept of state sovereignty is therefore designed to protect a state's independence from and legal impermeability [39], in relation to foreign powers on the one hand and the state's exclusive jurisdiction and supremacy over its territory and inhabitants on the other [40], which has been adopted by the U.N. General Assembly resolution 1803 XVII. It proclaimed: "*The right of peoples and nations to permanent sovereignty over their natural wealth and resources.*"

But not all would agree with this when it comes to the matter of environment where a much broader view must be put into consideration which is the global environment and the overall effect of singular states acts on an international scale, because focusing on a local state may limit our vision, and we would be deceived by the good local environmental standards leading us to forget the state of global environmental damage [41].

Thus, the concept of state sovereignty could be suspended when global environmental problems are at issue, such as depletion of the ozone layer, the extinction of the world's biodiversity, the pollution of international waters, and the threat of climate change.

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<sup>38</sup> Rich nations do make small foreign aid contributions, much but not all of which appears to be designed to further specific foreign policy goals. See Alberto Alesina and David Dollar, Who Gives Foreign Aid to Whom and Why, 5 J. Econ. Growth 33 (2000).

<sup>39</sup> J.L. Goldsmith, E.A. Posner, The Limits of International Law (Oxford University Press, 2006).

<sup>40</sup> See article by Nico P. Swartz, Mpho Ceasar Setshegetso & Kagiso Tshwene, University of Botswana, Department of Law, State Sovereignty and Environmental Law, European Journal of Business and Social Sciences, Vol. 3, No. 8, P. 35 (2014).

<sup>41</sup> Environment and Law: Routledge Introductions to Environment Series, Local Environment Versus One Global Environment, P. 52 (2006).

The world's climate and biodiversity were identified as a 'common concern' of mankind in *the 1992 Conventions on Climate Change and Biodiversity* [42].

This has been declared by the sole arbitrator Huber, who was then President of the Permanent Court of International Justice:

*"Territorial sovereignty involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and war, together with the rights which each State may claim for its nationals in foreign territory"* [43].

Hence, the obligation that is on the states is not only to manage their natural wealth and resources in such a way as to avoid significant harm to (the 'sovereign' territory of) other states, but also to manage their natural wealth and resources properly for the sake of their own people [44] including future generations.

In a further notice, these trends provide a framework for international co-operation required to protect the environment.

### **Companies Environmental Responsibility**

Over the years the transnational corporations substantially contribute to the worldwide stress on the environment. Many acts that deplete natural resources, contribute to the depletion of the ozone layer and to climate change, deplete fish stocks, Clear-cut forests, move waste across boundaries, and so on, are not performed by states, but rather by economic entities operating in more than one state.

Nevertheless, throughout the last decade companies contributed mostly in a negative manner to the international environment when it came to the production of industrial products that are not friendly to the environment, also, we have to pin down the inefficiency in disposal of waste. Long term exposure to polluted air and water causes chronic health problems, making the issue of industrial pollution into a severe one.

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<sup>42</sup> Research by Chinthaka Mendis, *Sovereignty vs. Trans-boundary Environmental Harm: The Evolving International Law Obligations and the Sethusamudram Ship Channel Project*, United Nations/Nippon Foundation Fellow, Chapter 8, P. 226 (2006).

<sup>43</sup> In *The Island of Palmas Case* (United States v. The Netherlands, award in 1928).

<sup>44</sup> D.G. Victor, K. Raustiala and E.B. Skolnikoff, *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice*, (MIT Press, 1998).

A view believes that the political domain of the international legal order is, compared to other systems, relatively undeveloped and that international law determines the scope of public authority of states and international governmental organizations, but these do not fully reflect and organize a global community [45].

As a result, the concept of *Corporate Social Responsibility (CSR)* [46], has emerged which is defined as the duty to cover the environmental implications of the company's operations, products and facilities; eliminate waste and emissions; maximize the efficiency and productivity of its resources; and minimize practices that might adversely affect the enjoyment of the state's resources by future generations [47].

The model of corporate social responsibility consists of six main areas: human rights [48] labor practices, the environment, fair operating practices, consumer issues, and community involvement and development [49].

Thus, many companies embraced this concept as a response to the public pressure that has been put upon them, and for that reason transitional corporations were subject to legal disputes regarding the violation of environmental regulations. Taking the Volkswagen emissions scandal as a base line which erupted on the 18 of September 2015, when *the United States Environmental Protection Agency (EPA)* issued a notice of violation of *the Clean Air Act (CAA)* [50], to German

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<sup>45</sup> D.G. *supra* note 44.

<sup>46</sup> One primary focus of corporate social responsibility is the environment. Businesses regardless of size have a large carbon footprint. Any steps they can take to reduce those footprints are considered both good for the company and society as a whole.

<sup>47</sup> See Piotr Mazurkiewicz, *Corporate Environmental Responsibility: Is a Common CSR Framework Possible?*, World Bank.

<sup>48</sup> See, e.g., *International Covenant on Civil and Political Rights* art. 4(1), opened for signature Dec. 16, 1966, 1966 U.S.T. 521, 999 U.N.T.S. 171 (allowing derogations "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed").

<sup>49</sup> Agnieszka, Misztal & Małgorzata Jasiulewicz-kaczmarek, *Environmental Issues of the Corporate Social Responsibility*, DE GRUYTER, Vol.18, No. 1. (2014).

<sup>50</sup> The Clean Air Act (CAA) is the comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.

automaker Volkswagen Group after it was found that Volkswagen had intentionally programmed turbocharged direct injection (TDI) diesel engines to activate certain emissions controls only during laboratory emissions testing. The programming caused the vehicles' NO<sub>x</sub> output to meet U.S. standards during regulatory testing but emit up to 40 times more NO<sub>x</sub> in real-world driving, this caused a €16.2 billion (\$18.28 billion) charge related to the emissions-cheating scandal, forcing it to slash its 2015 dividends and post a deep loss.

### **The Paris Agreement on Climate Change**

The agreement came as a response to the increasing global temperature (the year 2015 ranks as the warmest on record) [<sup>51</sup>], where thermometer readings all around the world have risen steadily since the beginning of the Industrial Revolution since the amount of energy radiated by the Earth depends significantly on the chemical composition of the atmosphere, particularly the amount of heat-trapping greenhouse gases [<sup>52</sup>].

The former U.S. President Obama said:

*"The Paris agreement establishes the enduring framework the world needs to solve the climate crisis; it creates the mechanism, the architecture, for us to continually tackle this problem in an effective way"* [<sup>53</sup>].

### **Aims of the Agreement**

The agreement has various objectives and aims that it intends to achieve throughout the upcoming years all in effort to minimize the negative impacts of the industrial revolution, all of which in the long run would help in keeping a safe environment for future habitants of the earth:

- To strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius [<sup>54</sup>].

Scientists generally consider that we have to limit global warming to 1.5 degrees Celsius above

<sup>51</sup> See NASA on climate change, <https://climate.nasa.gov/vital-signs/global-temperature/>

<sup>52</sup> See NASA Earth Observatory <https://earthobservatory.nasa.gov/>

<sup>53</sup> President Barak Obama, speaking from the White House, December 14, 2015.

<sup>54</sup> See article 2 of the Agreement.

<sup>55</sup> See the scientists views on the matter, <https://science.sciencemag.org/> also see report by Joel Guiot, Climate change: The 2015 Paris Agreement Thresholds and Mediterranean Basin Ecosystems, October 2016.

pre-industrial temperatures to keep small, low-lying islands and coastal areas free from the worst effects of climate change. For small island nations, 1.5 degrees may be the highest temperature rise under which they can continue to exist without being swallowed by rising seas. In fact, the Alliance of Small Island States (AOSIS) negotiating group has adopted the phrase "1.5 to stay alive" as its motto. AOSIS was joined by the Climate Vulnerable Forum, led by the Philippines in Paris, in calling for a 1.5 degree °C temperature goal in the Paris Agreement in the Manila-Paris Declaration.

At the other end, politicians have agreed that 2 degrees °C is the upper end of acceptable temperature rise if we are going to limit the adverse effects of climate change. That is why the Paris Agreement has an objective of holding global temperature increases "well below" 2 degrees °C above pre-industrial levels and "to pursue efforts" to limit this increase to 1.5 degrees. That is important for the reason that we are close to those limits already.

February 2016 was the warmest month on record according to two U.S. scientific agencies; the Earth's surface temperature was 1.21 degrees °C above the twentieth-century average.

To keep warming from exceeding 2 degrees °C, the Paris Agreement essentially sets out a long-term goal of peaking global GHG emissions as soon as possible, rapidly reducing them thereafter, and continuing to reduce them until we reach net zero emissions in the second half of this century. The agreement sets this goal based on science, which says that to have greater than a 66 percent chance of keeping warming below 2 °C degrees, we have to reach net zero emissions between 2080—2090, (or between 2095—2100 to have greater than a 50 percent chance).

The scientists also says that if we want to have greater than 50 percent chance of keeping warming below 1.5 degrees, we need to reach net zero between 2060—2080. In other words, the sooner we peak emissions and the faster we reduce them, the better chance we have [<sup>56</sup>].

*Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production.*

In order to achieve this goal, the agreement came up with a new mechanism in order to encourage the participation of all parties in the process and not just

<sup>56</sup> The climate reality project, what you need to know about the Paris agreement, on the answer for the question; What is the Deal with the 1.5 Degree Celsius Goal? Will the Paris Agreement Help Prevent the Earth from Warming over 2 Degrees °C?



limiting it on specific states, and the tool used to do so is concept of nationally determined contributions, where the contribution that each individual state should make in order to achieve the worldwide goal, which is to be well below 2 degrees Celsius.

*To strengthen the ability of states to deal with the impacts of climate change and to reach ambitious goals, appropriate financial flows, a new technology framework, and an enhanced capacity building framework will be put in place, thus, supporting action by developing states and the most vulnerable states, in line with their own national objectives [57].*

## Results

The agreement has included various ideas and forms of achieving its intended goal like the INDCs, ensuring finance and sustainable development mechanisms, all of which would help in taking the efforts forward in a mannerism that does not leave place for unfairness or prejudice.

Article 3 required that the NDCs must be "Ambitious" and to represent progression over time [58], INDCs pair national policy setting — in which states determine their contributions in the context of their national priorities, circumstances, and capabilities — with a global framework under the Paris Agreement that drives collective action toward a zero-carbon, climate-resilient future.

The INDCs create a constructive feedback loop between national and international decision-making on climate change.

INDCs are the primary means for governments to communicate internationally and the steps they will take to address climate change in their own states. INDCs reflect each state's ambition for reducing emissions, taking into account its domestic circumstances and capabilities. Some states also address how they will adapt to climate change impacts, and what support they need from, or will provide to, other states to adopt low-carbon pathways and to build climate resilience [59].

Thus, the agreement is designed to draw the participation and action of all states.

Since it applies to all parties to the UNFCCC—including the major emerging economies, such as India and China—rather than requiring emissions reductions only from developed states, as was the case in *the Kyoto Protocol of 1997* [60]. In addition, the national climate goals that states submit to be associated with the agreement will have political rather than legal force and will be nationally determined [61].

A downside that the negotiators of the Agreement however stated that the NDCs and the 2 °C reduction target were insufficient, instead, a 1.5 °C target is required and that the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the intended nationally determined contributions do not fall within least-cost 2 °C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and also notes that much greater emission reduction efforts will be required than those associated with the intended nationally determined contributions in order to hold the increase in the global average temperature to below 2 °C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5 °C above pre-industrial levels by reducing to a level to be identified.

## Ensuring Finance

In Copenhagen, states agreed to establish the multilateral Green Climate Fund (GCF) to help mobilize funding in developing states to reduce emissions and adapt to the impacts of climate change.

Nearly \$11 billion has been pledged to the GCF from 31 states, including a \$3 billion pledge from the United States. In addition, states agreed to help mobilize \$100 billion by 2020 through public and private financing to assist developing states in reducing emissions and adapting to climate change. These investments help spur additional global action on climate change and help states address its devastating impacts.

The Paris agreement further catalyzes action and implementation over time, as developed states have agreed to continue the existing collective mobilization commitment on finance (\$100 billion annually), through 2025. And prior to 2025, developed states would set a new collective quantified goal of mobilizing at least \$100 billion for climate finance. Other states are encouraged to also help mobilize finance. To provide predictability on climate finance, developed states will communicate every two years on projected levels of public climate finance for developing states, while

<sup>57</sup> See United Nations Framework Convention on Climate Change [https://unfccc.int/paris\\_agreement/](https://unfccc.int/paris_agreement/)

<sup>58</sup> Article 3 of the Paris Agreement states that "As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts... The efforts of all Parties will represent a progression over time."

<sup>59</sup> See World Resource Institute, <http://www.wri.org/indc-definition>

<sup>60</sup> The Kyoto Protocol is an international treaty which extends the 1992 United Nations Framework Convention on Climate Change; it was signed in Japan on 11 December 1997.

<sup>61</sup> Gwynne, Taraska, The Paris Climate Agreement, Center for American Progress, December 15, 2015.

developing states will report on climate finance on a voluntary basis. Regular updates send a signal for where low-carbon investments can be made, and the resources available to help the most vulnerable communities adapt to climate change [62].

### **The Sustainable Development Mechanism**

Sustainable Development (Goal 13) acknowledges that *the United Nations Framework Convention on Climate Change (UNFCCC)* is the primary intergovernmental forum for negotiating the global response to climate change [63].

There is a dual relationship between sustainable development and climate change. On the one hand, climate change influences key natural and human living conditions and thereby also the basis for social and economic development, while on the other hand, society's priorities on sustainable development influence both the GHG emissions that are causing climate change and the vulnerability.

This occurs because the impact of climate change, policy responses, and associated socio-economic development will affect the ability of states to achieve sustainable development goals.

Arguably, the pursuit of those goals will in turn affect the opportunities of success of the climate policies.

*"Climate change impacts on development prospects have also been described in an interagency project on poverty and climate change as 'Climate Change will compound existing poverty' [64].*

All of which that has been described in Paragraph 6.4:

*"A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis..."*

### **The Legal Aspect of the Agreement**

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<sup>62</sup> Issue Brief, The Paris Agreement on Climate Change, NRDC (Natural Resources Defense Council), December 2016.

<sup>63</sup> Meenakshi, Raman, Chee, Ling, *Third World Network*, chapter: The Climate Change Battle in Paris: Putting Equity into Action, Spotlight on Sustainable Development, <https://www.2030spotlight.org/en/book>

<sup>64</sup> See the (IPCC) Intergovernmental Panel on Climate Change, [https://www.ipcc.ch/publications\\_and\\_data/](https://www.ipcc.ch/publications_and_data/), The IPCC Fourth Assessment Report 2007, on the Dual Relationship between Climate Change and Sustainable Development.

The Paris Agreement is a treaty under international law, but only certain provisions are legally binding. The issue of which provisions to make binding (expressed as "shall," as opposed to "should") [65]. *I.e.*, paragraph 9 of Article 7 asserts:

*"Each Party shall [66], as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions."*

The level of NDCs set by each states or the 'contributions' determined themselves are not binding as a matter of international law, as they lack the specificity, normative character, or obligatory language necessary to create binding norms.

Though, the Paris agreement has some binding elements, and there are some binding elements of the Framework Convention [67], in the sense that failure by a party to achieve or implement its NDC would put the party in breach of its treaty obligations [68], yet, many of these are not directly relevant to mitigation as much as they are directed to the states determined contributions and how it will proceed to actually put them into work.

Furthermore, there will be no mechanism to force states to set a target in their NDC by a specific date and no enforcement if a set target in an NDC is not met. There will be only a "name and shame" system [69]. As the agreement provides no consequences if states do not meet their commitments, because having any may trigger the withdrawal of more governments, bringing about a total collapse of the agreement.

Also, all parties should be required to submit an updated NDC, with the expectation a

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<sup>65</sup> See Center of Climate and Energy Solutions, <http://www.c2es.org>

<sup>66</sup> Of course, when the verb 'shall' is used in a non-binding instrument like the Copenhagen Accord, it does not create a legal obligation.

<sup>67</sup> Geoffrey, Palmer, *The Paris Climate Change Agreement and the Law: International and Domestic*, Address to a Public Meeting Sponsored by Wise Response and Victoria University of Wellington, 27 January 2016.

<sup>68</sup> Daniel, Bodansky, Sandra Day O'Connor College of Law, Arizona State University Lavanya Rajamani, Centre for Policy Research, Key Legal Issues in the 2015 Climate Negotiations, Center For Climate and Energy Solutions (C2ES), June 2016.

<sup>69</sup> Transparency: The Backbone of the Paris Agreement, May 29 2016. Yale University website <http://envirocenter.yale.edu>

Party's updated NDC will represent a progression beyond its earlier contribution, The agreement creates a legally binding accountability framework, which is critical for the credibility of the agreement, in order to facilitate understanding of states' progress toward meeting their national climate goals, this is mentioned in Article 4, paragraph 9 as follows:

*"Each Party shall communicate a nationally determined contribution every five years in accordance with decision..."*

By preferring the active voice to the passive, the Agreement provides that it shall enter into force 30 days after 55 states, representing 55 percent of global emissions, have deposited their instruments of ratification, acceptance or accession with the Secretary-General. As of today, 73 states and the European Union have joined the Agreement, exceeding the 55 percent threshold for emissions [70].

Another issue has been arisen with the U.S. president Donald Trump desire to abandon the agreement as he believes that the increase in the global temperature is not related to human activities and that this agreement just limits the U.S. ability to produce in a much direct form. However, once a party has joined the agreement, they cannot begin the process of withdrawal for three years [71].

### **The Future**

The Paris Agreement is considered by many as a success for the world leaders in their attempt to secure a future that is safe for generations to come and that it created the great basis for more international agreements and decisions that will reform the way that environmental problems are dealt with.

Moreover, though its problematic to come up with solutions that will quickly get us to the destination that we need to be since the issues of enforcement, sovereignty, and many other issues, climate change negotiations had constant conflicts of interests between poor and rich states, between the left and the right.

Varied interests and mindsets brought the globally coordinated climate change adaptation efforts many frustrations and difficulties. As a result, there has been little progress, and the delicate balance between development and environmental protection, between merits of modern conveniences and moderated

consumption of resources was almost impossible to achieve [72].

Future climate forcing resulting from human activities depends primarily on cumulative CO2 emissions. This is because it has been the most important greenhouse gas so far and it has one of the longest lifespan of all greenhouse gases.

### **Reflections**

In closing I would like to say that conscientious effort has been done to the development of international environmental law, significantly throughout the last decade since the process had the constant seek to regulate environmental problems, and thereby transfer environmental issues from domestic to international jurisdiction.

This paper also illustrated that there is no uniform solution exists in developing effective international instruments of global environmental governance.

While legally binding multilateral environmental agreements should remain the primary option given their backup system of enforcement measures and non-compliance regimes, global, comprehensive, and legally binding instruments should be developed only when the negotiating states are truly capable of implementing the adopted measures in their domestic laws, as well as solely when parties are confident that they can exert compliance.

Legal problems facing multilateral agreements on climate change have been repetitive and always allowing a great gap between the signed documents and the put into implementation process, for that I see it is necessary to establish a more direct plan to have a legal binding document that does not allow the easy way out option for states that want to run away from their commitments.

Abraham Lincoln's answer is as good as any. When asked how long a man's legs should be, he answered, "Long enough to reach the ground." For that, as long as it takes the draftsmen to do their particular job to have a successful international environmental law and to have more prospers growth, there must be a level of selflessness by all the states and the willingness to sacrifice the chance for an incredible industrial growth, and financial strength in hope that we will be giving a chance for generations to come, just to have the basic needs, and quality of life that we enjoy today, as the establishment of strong grounds and firm principles for this law are a necessity if we are looking to save what can be saved from our planet earth.

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