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What Have the Green New Deals to Do With the Paris Agreement? An Experimental Governance Approach to the Climate Change Regime

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TABLE OF CONTENTS: 1. *Introduction: a plethora of green new deals.* – 2. *Three modes of global governance: integrated international regimes, regime complexes and global experimentalist governance.* 2.1. *From Rio to Copenhagen: climate change multilateralism squeezed in unilateralism and transnationalism.* 2.2. *The modus operandi of the Copenhagen Accord: an example of regime complex?* 2.3. *The Paris Agreement: an example of experimental governance?* 3. *Three examples of experimental governance in climate change regime.* 3.1. *Unilateralism as a default sanction: the interplay between the EU and the ICAO.* 3.2. *Climate change litigations.* 3.3. *Enabling the global green new deals.* 4. *Conclusions*.

1. *Introduction: a plethora of green new deals*

After years of inertia, a number of countries have begun taking new steps to address the climate change challenge. The EU has launched its Green New Deal (GND) on December 2019, just before the burst of COVID-19 outbreak. Joe Biden, new president of the US, has made clear, in his speech after the election, that environment will be one of the most prominent issues on which he will lean during his presidency. Similarly, China, despite the lack of a comprehensive GND, has assured that it will fulfill by 2060 the climate neutrality obligation imposed by the Paris Agreement[1]. Even in Canada, a country having withdrawn from its second term obligations under the Kyoto Protocol in 2011, the GND has begun to be discussed following the democrats GND proposals in the US[2]. Recently, South Korea also followed this trend by giving GND a prominent place in its post-COVID-19 stimulus

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[1] China's Great Green Reset: Carbon neutrality by 2060. (2020). Retrieved 31 December 2020, from https://news.cgtn.com/news/2020-09-24/China-s-Great-Green-Reset-Carbon-neutrality-by-2060-U2EvAoswHS/index.html

[2] J. L. MACARTHUR, C. E. HOICKA, H. CASTLEDEN, R. DAS AND J. LIEU, *Canada's Green New Deal: Forging the socio-political foundations of climate resilient infrastructure?,* in *Energy Research & Social Science,* Vol. 65, 2020

plan[3]. On top of that, today there is a plethora of other GND proposals waiting to be considered by the political actors[4]. It is not an exaggeration to claim that we are on the threshold of a global GND regulatory competition.

While claims for GNDs are not new, this time is different: they sound more convincing. By means of illustration, the UN Environment Programme (UNEP), in the aftermath of the 2008 financial crisis, made a call for Global GND with a view to «reviving the global economy and boosting employment while simultaneously accelerating the fight against climate change, environmental degradation and poverty»[5]. At a time in which the experiences gained through economic crisis were still fresh, the Global GND stressed the importance of a state intervention in order to reinvigorate the world economy and diminish carbon dependency and ecosystem deprivation in 2008-2009[6]. Similarly, while we are tackling another crisis, this time generated by a global pandemic, calls for a GND have been made all across the world.

Some argue that this is just another episode of the global regulatory competition we have been witnessing for the last three decades in various different sectors such as animal welfare, environmental regulation, data protection, consumer health and market competition (anti-trust laws)[7]. Against such claim, this article argues that the tide of GNDs has much more to do with the governance framework laid down by the Paris Agreement (PA) than with geopolitics. In other words, the GNDs represent the last link in the chain of international law's struggle with climate change. As climate change is a "polycentric problem", which cannot be dealt without

[3] J. H. LEE AND J. WOO, *Green New Deal Policy of South Korea: Policy Innovation for a Sustainability Transition,* in *Sustainability*, Vol.12, No. 23; see for Latin America D.A. COHEN - T. RIOFRANCOS, *Latin America's Green New Deal,* in *NACLA Report on the Americas*, Vol.52, No. 4, for South Africa https://www.esi-africa.com/industry-sectors/finance-and-policy/south-africa-sanedi-endorses-green-new-deal-for-economic-recovery/

[4] See for the UK and Australia respectively https://www.greennewdealuk.org/; https://greens.org.au/greennewdeal.

[5] UNEP *Global Green New Deal: An Update for the G20 Pittsburgh Summit* 2009.; see also the book written by one of the report's authors E. B. BARBIER, *A global green new deal: Rethinking the economic recovery*. Cambridge University Press, 2010.

[6] E.B. BARBIER, cit., pp. XIX.

[7] See for a very detailed and comprehensive study A. BRADFORD, *The Brussels effect: How the European Union rules the world*. Oxford University Press, USA, 2020; see also M. CREMONA - J. SCOTT (eds.) *EU law beyond EU borders: the extraterritorial reach of EU Law*, Oxford University Press, 2019.

a holistic approach, and a "legally disruptive" one[8], it forces law to find alternative ways to cope with it. Hence international organizations and international law have undergone significant transformations in the last three decades.

This article will uncover the reasons underlying such transformations with a particular focus on the climate change regime[9]. In the first part of the study, the article will bring in the three modes of global governance elaborated by de Búrca, Keohane and Sabel (§ 2). These tools will be employed in the remainder of this part in order to analyze changes, trends and turning points in the climate change governance. In doing so, it will also establish a connection between these three modes of governance and notions such as unilateralism, transnationalism and multilateralism. It will uncover the dynamic relationship between these modes of governance in three different phases: a) from Stockholm to Rio (integrated regime / multilateralism) (§ 2.1)., b) from Rio to Copenhagen (from integrated regime to regime complex / competitive multilateralism) (§ 2.2), and c) from Copenhagen to Paris and forward (from regime complex to experimental governance / soft multilateralism) (§ 2.3). In its second part, the article will delve deeper into the structures of the PA and show how experimental governance operates under the regime transmuted by the PA (§ 3). To this end, it will first discuss how the process of reaching a decision on international aviation emission standard is in fact an interplay between the EU and the ICAO, and as such a process of experimental governance (§ 3.1); later, it will focus on two recent and widespread transnational phenomena, namely climate change litigations (§ 3.2) and global GNDs (§ 3.3). The article will argue that there is an implicit connection or elective affinity between the PA and these two very recent phenomena, i.e., that the mode of governance established with the PA has provided a fertile ground by virtue of which these two recent phenomena could find their way to globalize. Consequently, the rise of global GNDs is only one facet of this global green movement in which transnational actors serve as the NDC watchdog, the courts serve as a gate-opener and legislators enact GNDs.

[8] E. FISHER - E. SCOTFORD - E. BARRIT, *Legally Disruptive Nature of Climate Change*, in *The Modern Law Review*, Vol. 80, No. 2, 2017, p. 173

[9] In this study, the regime will be used in the broadest sense in a way encapsulating regime complex and integrated regime. See the next section (the three modes of global governance) for further explanations.

2. *Three Modes of Global Governance: Integrated international regimes, regime complexes and global experimentalist governance*

Observing the evolutional trajectory of international organizations and sectoral regimes from a historical perspective is quite useful to trace their transformations over time. This brings with it an acknowledgment that multilateral institutions spring from political coalitions depending upon compromise between different interest groups. Morse and Keohane, by adopting an internal point of view to multilateral institutions, put forward that states, non-state actors and international organizations, when they are dissatisfied with the existing institutional situation, are disposed to create alternative institutions in order to follow different policies than already pursued in the *status quo* institution[10]. Put differently, disenchanted or frustrated states, rather than resorting to unilateralism or isolationism, are inclined to use (*regime shifting*) or establish (*competitive regime creating*) another multilateral institution[11]. Thus, international organizations are not only open to qualitative transformations but also engaged in a competitive relationship between themselves. In other words, multilateralism is bound to be contested both from inside and outside. However, «what is contested is not the institutional form of multilateralism as such … but rather specific institutional forms of multilateralism»[12]. Thus, as suggested by de Búrca, it may be better to be couched in "competitive multilateralism" instead of contested multilateralism[13]. As the essence of contested multilateralism – in the form of both regime shifting and competitive regime creating - is competition between states or international organizations, it will be more appropriate to use the term "competitive multilateralism".

The idea of competitive multilateralism does not only enable us to see the path-dependent and historical evolutionary trajectory of international organizations.

[10] J.C. MORSE - R.O. KEOHANE, *Contested multilateralism,* in *The Review of international organizations*, Vol. 9, No. 4, 2014, p. 385.
[11] ID., *op. ult. cit.,* p. 386.
[12] ID., *op. ult. cit.,* p. 387.
[13] G. DE BÚRCA, *Contested or Competitive Multilateralism: A Reply to Julia C. Morse and Robert O. Keohane,* in *Global Constitutionalism,* Vol. 5, No. 3, 2016, p. 326.

It also opens up new possibilities for seeing traditional international organizations and regime complexes as a continuum within a dynamic relationship[14]. On the one side, there are international integrated regimes instituted by and large in the period following the Second World War, resting on an underlying consensus, involving top-down binding rules, and accompanied by a judicial body called to resolve treaty-related disputes. On the other side, we have regime complexes, marked by the existence of «partially overlapping and non-hierarchical institutions governing a particular issue-area»[15]. Even though the prototypical example of this integrated regime is the GATT, later succeeded by the WTO, the regimes active in fields such as air transport, food security, and climate change also fall into this category. Here, it is of utmost importance to accentuate that, in spite of the absence of a hierarchical structure, a regime complex is not devoid of any linkage. In other words, the components of a regime complex do not stand independently from each other but are necessarily linked. In a nutshell, they «stands near the midpoint of a continuum that runs from a single integrated organization to a wholly fragmented array of institutions with no significant linkages»[16].

In a political science perspective, it deserves to be mentioned that these integrated organizations came into existence in a period in which power was concentrated in the hands of Western countries under the hegemonic leadership of the US[17]. They were supposed to preserve the interests of a compact principal rather than competing principals. They therefore developed a monolithic and uniform appearance clouding the underlying and inherent power dynamics, contrary to today's highly transparent international organizations reflecting the underlying

[14] See for a study analyzing the role of Multilateral Environmental Agreements in the dynamic evolution of the international law. That the treaties take by and large a procedural form requiring further amendments provide a firm basis for dynamic interpretation because of the tacit amendment procedure, according to which amendments by default enter into force unless parties raise their objections in the depository K.N. SCOTT, *The dynamic evolution of international environmental law,* in *Victoria U. Wellington L. Rev.*, Vol. 49, No. 4, 2018.
[15] K. RAUSTIALA - D.G. VICTOR, *The regime complex for plant genetic resources,* in *International organization*, Vol. 58, No. 2, 2004, p. 279.
[16] K.W. ABBOTT, *Strengthening the transnational regime complex for climate change,* in *Transnational Environmental Law,* Vol.3, No.1, 2014, p. 65.
[17] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes of pluralist global governance,* in *NYU Journal of International Law and Politics,* Vol. 45, 2013, pp. 728-732.

power relations. After the fall of Berlin Wall, and the subsequent collapse of the Soviet Union, this seemingly uniform picture has dramatically changed. Even though Fukuyama hailed the end of the world and announced the victory of liberal democracy, things have not gone as expected[18]. To begin with, the EU, after successive important steps taken with the Single European Act of 1986 and Maastricht Treaty of 1992, came into the international scene as an important and highly integrated actor. The following rise of the global south has drastically altered the status quo around since the early 2000s. The first clear sign of this shift from compact to fragmented world order came with the lack of universal support lent to the international treaties in the second half of 1990s[19]. For instance, a comprehensive climate change regime, despite all the successive steps, could not be brought into existence. Instead, first the exemption of developing countries from the Kyoto Protocol, and second the US' abstention from ratifying it, destroyed the hopes of a comprehensive and integrated climate change regime from the outset. Accordingly, the rise of first the EU and then the Global South intensified the divergence of interests among states such that it paved the way for a new mode of global governance when coupled with the institutional inertia of the IGOs[20]. The Cambrian explosion of transnational organizations (TNO), offsetting the insufficiencies of the intergovernmental organizations (IGOs) with the turn of the century, is not a coincidence[21]. The fact that transnational organizations, controlled by non-state actors and performing administrative-like functions have proliferated in the last three decades whilst the figures of the IGOs fluctuated around 250 gives a sense of how remarkable this shift was indeed[22]. To sum up, it is apparent that international law

[18] F. FUKUYAMA, *The end of history?,* in *The national interest*, Vol.16, 1989, pp. 3-18.
[19] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes,* cit., p. 733.
[20] ID., *op. ult. cit.,* p. 735.
[21] K.W. ABBOTT, *The transnational regime complex for climate change,* in *Environment and Planning C: Government and Policy*, Vol. 30*,* No. 4, 2012, pp. 571-590; K. DINGWERTH - J.F. GREEN, *Transnationalism,* pp. 155, in K. BÄCKSTRAND – E. LÖVBRAND*, Research handbook on climate governance*, Edward Elgar Publishing, 2015, pp. 153-163.
[22] K.W. ABBOTT, J.F. GREEN and R.O. KEOHANE, *Organizational ecology and institutional change in global governance,* in *International Organization,* Vol. 70, No. 2, 2016, p. 249; S. BATTINI, *The proliferation of global regulatory regimes.* p. 47, in S. CASSESE*, Research Handbook on Global Administrative Law*. Edward Elgar Publishing, 2015, pp. 45-64.

experienced a significant shift from multilateralism to transnationalism, minilateralism and unilateralism with the turn of the century.

While regimes are «sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations»[23], a regime complex demands the existence of overlapping or intersecting regimes[24], which exhibiting coinciding membership and addressing similar issues despite their institutional independence. Thus, it seems fair to summarize that a regime complex places its focus on the interaction between regimes and on the quality of that interaction, i.e., whether the links establishing a loose connection between different components of the regime are in a more synergetic or conflictual nature. The more conflictual the linkages are the more it will resemble network structure, and by contrast the more they have synergetic characteristics the more it will move towards an integrated regime[25]. Therefore, even though the regime complex literature concentrates on overlapping regimes and on the rules flowing from this interaction, some conceives of regime complex as «fundamentally polycentric, consisting of multiple centers of authority, each involving different actors or actor combinations»[26]. Drawing on this latter conception of regime complex, this article will take regime complex as necessarily polycentric and treat transnational environmental organizations as the ideal type of a regime complex.

In addition to the climb of transnationalization, states, by circumventing formal and multilateral treaties like the UN-led climate change regime, made recourse to unilateralism and minilateralism, i.e., clublike structures to reach a decision having a global effect despite the absence of participation. From the foregoing, it may be inferred that this trend – transnational and unilateral movements in international law – demonstrates that the gap created by the deficiencies of IGOs

[23] S.D. KRASNER, *Structural causes and regime consequences: regimes as intervening variables,* in *International organization*, Vol. 36, No. 2, 1982, p. 186.
[24] See for the argument that regime complex requires at least three overlapping regimes A. ORSINI, J. F. MORIN and O. YOUNG, *Regime complexes: A buzz, a boom, or a boost for global governance?,* in *Global Governance: A Review of Multilateralism and International Organizations*, Vol. 19, No. 1, 2013, p. 30.
[25] ID., *op. ult. cit.,* p. 33.
[26] K.W. ABBOTT, *Strengthening the transnational regime complex,* cit., p. 65.

in addressing the new challenges of global governance has been filled by functionally equivalent institutions, be it in the form of unilateralism and minilateralism or transnationalism. Here it is worth emphasizing the distinction among them. Even though, transnationalism is sometimes regarded as any kind of action that conflicts with the traditional consent-based multilateralism[27], it should be distinguished from state's unilateralism and minilateralism. On this account, it seems useful to draw a distinction among different shades of unilateralism. Transnationalism stands for the activities and organizations that do stem from neither nation-states nor IGOs founded on treaties, but from the institutions in which private actors are involved[28]. By contrast, unilateralism amounts to any attempt made by nation states with the aim to reshape the existing multilateral situation. When it comes to minilateralism, as a special case of unilateralism, it pertains to the getting-together of like-minded states outside the borders of the formal multilateral organizations in small club-like associations such as the Major Economic Forum (MEF), G7, G8, G20, and the Asia Pacific Partnership (APP)[29].

Between these two poles of genuine integrated organizations and loosely coupled regime complexes, there are uncountable, different modes of governance, and (global) experimentalist governance[30] is a term, introduced to fill this gap. It helps us gain insight about global modes of governance with a claim that it is better to see governance as a «process of participatory and multilevel problem solving, in which particular problems (and the means of addressing them) are framed in an open-ended way and subjected to periodic revision by various forms of peer review in light of locally generated knowledge»[31]. In this case, the accent is on governance rather than government and there is a shift from the agent-centric approach of integrated

[27] G. SHAFFER - D. BODANSKY, *Transnationalism, unilateralism and international law*, in *Transnational Environmental Law*, Vol. 1, No. 1, pp. 31-41.
[28] See for a pertinent discussion P. ZUMBANSEN, *Piercing the legal veil: commercial arbitration and transnational law,* in *European Law Journal*, Vol. 8, No. 3, 2002, pp. 400-432.
[29] R. FALKNER, *A minilateral solution for global climate change? On bargaining efficiency, club benefits, and international legitimacy,* in *Perspectives on Politics*, Vol. 14, No. 1 *14*(1), pp. 87-101.
[30] Experimental governance is a term first used in the domestic legal orders see for an example G. DE BÚRCA - J. SCOTT, Law and New Governance in the EU and the US, Bloomsbury Publishing, 2006.
[31] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes,* cit., p. 477.

regimes to the non-state actors[32]. Given the absence of a political leader having the power to impose its own solution, the core idea experimentalism tries to convey is that it is almost impossible to find one right answer to the highly complex problems. So, it is better to perceive governance as an experimental process through which essentially wicked problems will gradually dissolve and active participation of the majority of the actors will be achieved[33]. Put differently, it is an approach prioritizing the process over ex-ante and conclusive solutions. By doing so, it sets in motion an incessantly continuous process in which the solutions that work are improved while the others are siphoned away[34].

One of the underlying assumptions of experimentalism is that «when central actors have limited foresight and share a thin consensus»[35] leaving essential questions open and prioritizing the process and participation over output is the only viable strategy to follow. When compromise seems unpromising in the short term, to establish a general framework with open-ended goals, waiting to be revised and instantiated in the light of the feedback received in the process, and leaving the implementation of these broadly defined goals to lower-level actors appear to be much more encouraging than setting-specific goals without granting any discretion to implementing actors. Further, the feedback provided by the local actors will be used as an input for setting out new goals and principles, so this will result in a continuous flow of information from bottom to the top[36]. In this model, the framework treaty will provide a 'hub' for exchanging ideas between center and periphery and serve as an information-pooling center[37]. In short, what experimental governance places emphasis is the idea that process matters not only because it is

[32] C. ARMENI, *Global experimentalist governance, international law and climate change technologies,* in *The International and Comparative Law Quarterly*, Vol. 64, No. 4, 2015, p. 879.
[33] ID., *op. ult. cit.,* p. 740. «…uncertainty is a persistent feature of some issue areas and that to respond effectively, institutions must enable participants to learn continuously to redefine the problems they face in the very process of solving them».
[34] R.O. KEOHANE - D.G. VICTOR, *After the failure of top-down mandates: The role of experimental governance in climate change policy* p. 206, in S. BARRETT – C. CARRARO – J. DE MELO, *Towards a workable and effective climate regime*, CEPR Press, 2015, pp. 201-212.
[35] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes,* cit., p. 484.
[36] ID., *op. ult. cit.,* p. 478.
[37] ID., *op. ult. cit.,* p. 483.

more legitimate, democratic or participatory per se, but because it has a significant potential for bringing about the best outcome. For, once initiated, it may render the realization of "unimagined alternatives" possible[38].

In what follows, the paper is going to analyze the evolutionary path of climate change governance not only from the perspective of the three different modes of governance introduced above (integrated international regimes, regime complexes and global experimentalist governance), but also with an eye on the dynamic relationship between multilateralism, unilateralism and transnationalism. It will argue that the UN-led climate change governance, commenced with the establishment of the UNFCCC, might be considered as an issue-specific integrated regime. Even so, it is plausible to argue that the entering into force of the Kyoto Protocol managed to create a partially integrated international regime, binding only for the developed countries. This multilateral but partially integrated attempt was not able to prevent the counter-institutional movements in the form of transnationalism and unilateralism. As a result, a regime complex has been flourished outside this formal UN-led treaty regime during the process spanning from Rio to Copenhagen. In the process running from Copenhagen to Paris, there have been some changes in the way in which states deal with the problem of climate change. This has set in motion an experimental mode of governance, which come to full fruition with the Paris Agreement in 2015. Such mode of governance has not only incentivized the rise of GNDs all around the world but also promoted climate change litigations. In brief, the fertile ground provided with the PA has begun to keep its early promises.

2.1. *From Rio to Copenhagen: climate change multilateralism squeezed in unilateralism and transnationalism*

Governing climate change is one the most complicated, tricky and multi-dimensional challenges of our age. For once, it is a global problem, cross-cutting disciplinary boundaries and calling for a multi-disciplinary and global action plan. For another, it is a highly complicated problem fraught with disagreements and

[38] ID., *op. ult. cit.,* p. 484.

contestations since it necessitates to transform our society from top to the bottom. It therefore goes without a saying that it is a problem of politics and governance. Despite uncountable efforts within the last three decades, the UN-led climate change regime has stopped notably short of its multilateral ambitions. The first significant step in that endeavor was taken in the 1972 Stockholm Declaration on the Human Environment, which marked a watershed moment in the evolution of international environmental law not because it replaced the term "nature conservation" with environment, but because it publicized the environmental law by setting it free from the shackles of private law[39]. The following next two decades bear witness to some small but important steps such as 1985 Vienna Convention and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. Having said that, none of them has been as determinative as the establishment of the UN Framework Convention of the Climate Change (UNFCCC), for it lay the foundations of a global climate change governance, stipulated some key principles, and set an ambitious, albeit highly abstract, target to be reached.

The UNFCCC has never been as fully-fledged integrated international regime as the international trade regime. Nevertheless, it exemplifies «the drive to establish new issue-specific international regimes, stimulating discussion of how such a climate regime would be linked to regimes for international trade, forestry, and transport»[40]. Thus, it seems safe to classify the UNFCCC as an issue-specific international regime, supposed to be complemented and fleshed out with the further annual conferences of the Parties (COP). So, the Convention, adopting «framework convention plus' model, took on essentially a procedural form» and «its substantial provisions were formulated in rather vague language»[41]. For instance, Article 2 of the UNFCCC laid down that the treaty aims at barring the GHG emission «at a level that would prevent dangerous anthropogenic (i.e., human) interference with the climate system». It was assumed that the framework convention will, putting flesh on its bones, be complemented with further conferences. The Kyoto Protocol was the first

[39] F. FRANCIONI - C. BAKKER, *The evolution of the global environmental system: Trends and prospects* (No. 8), in *Transworld Working Papers*, 2013, p. 3.
[40] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes,* cit., cit., p. 730.
[41] D. COEN - J. KREIENKAMP - T. PEGRAM, *Global Climate Governance. Elements in Public and Nonprofit Administration,* Cambridge University Press*,* 2020, p. 18.

attempt in this endeavor; however, it could only enter into force in 2005 more than 8 years later after its ratification. To instantiate Article 3(1) of the UNFCCC, involving common but differentiated responsibilities (CBDR), it drew a distinction between developed and developing countries. According to the KP, whereas the former was obliged to reduce their GHG emissions, the latter was put under no obligation due to narrow interpretation of the CBDR principle, which is one of the most perennial and hot topics of the climate change regime due to its focus on allocating responsibilities and sharing burdens[42]. The KP, being inspired by effective Montreal Protocol on Substances that Deplete the Ozone Layer, took a top-down and highly prescriptive approach[43] and embraced a «legalized regulatory model» [44]. It paid meticulous attention to compliance and even included a punitive sanction triggered in case of non-compliance.

Against this backdrop, the countries or transnational organizations, confronted with the failure of multilateralism, headed in different institutions for the sake of their own interests. These initiatives, taking place outside the formal boundaries of the UNFCCC, was even considered by some as a method of climate governance experimentation since it benefits from a heuristic methodology by finding any solution to common a problem in the face of institutional lethargy[45]. On the one side were 'fragmenters' resisting the UN-led formal climate change regime due to its strict mitigation targets and negative effects on economy, on the other were 'deepeners' pushing forward for more ambitious measures and policies by dint of their dissatisfaction with the ineffective UN regime[46]. Under these conditions, the fora such as G7/8, G20, MEF, APP, and countless transnational organizations served the interest of both groups. Whereas the US and the BASIC countries availed themselves of this transnational organizations for shying away from the shackles of

[42] B.A. DIKMEN, *Global Climate Governance between State and Non-State Actors: Dynamics of Contestation and Re-Legitimation,* in *Marmara Üniversitesi Siyasal Bilimler Dergisi*, Vol. 8, No. Special Issue, 2020, p. 64.
[43] D. COEN - J. KREIENKAMP - T. PEGRAM, *Global Climate*, cit., p. 18.
[44] D. HELD - C. ROGER, *Three models of global climate governance: From Kyoto to Paris and beyond,* in *Global Policy*, Vol. 9, No. 4, 2018, p. 529.
[45] M.J. HOFFMANN, *Climate governance at the crossroads: Experimenting with a global response after Kyoto*. Oxford University Press, 2011, p. 11.
[46] B.A. DIKMEN, *Global Climate*, cit., p. 64.

the KP, the EU mostly benefited from them for the progressive reasons. Further, the EU has taken advantage of its market power, making its market access conditional upon complying with its own environmental regulations. Thus, it somehow has implicitly imposed its own higher standards on the third countries without no regard to multilateralism. Against this backdrop, climate change gained significant momentum outside the formal boundaries of UN-led climate change regime in the first decade of the 21st century, not least resulted from the proliferation of transnational organizations, on the one hand, and from the EU's unilateralism on the other.

It is clear from the foregoing that the KP, the first-ever model geared towards addressing the climate change, was a state-centric treaty and almost blind to the transnational organizations. Thus, seen from the perspective of three modes of governance, it, had it been ratified by the majority of states it would have gave birth to one of the best examples of integrated international regimes However, its strict differentiation between developed and developing countries and exempting the latter from the treaty's obligations, coupling with the abstinence of key states such as the US, Australia and Japan seriously undermined this potential of the treaty. Now, it is apt to consider it with the benefit of hindsight as a partially integrated regime, which gives way to transnational and unilateral movements. In sum, even though from a substantial point of view, that is, when the characteristics of the KP taken into consideration, it lives up to the standards of the integrated regimes, it falls short of fulfilling the inclusiveness criteria inherent in these regimes.

2.2. *The modus operandi of Copenhagen Accord: an example of regime complex?*

Even a cursory glance at the Copenhagen Accord (CA) makes one take notice how different it is from the KP. It is a far cry from the KP in every aspect. It brought into existence a mode of governance «that would operate, at bottom, according to strictly voluntary governance logic»; therefore, it is fair to say that it «turned Kyoto

on its head»[47]. First of all, it was non-binding. Thus, it was somehow a mere declaratory document uttering the political intentions and aspirations of the signatories rather than being a stipulative one containing binding and legally dressed provisions. This is why, even though the Accord included some clauses related to the pledge and review for all countries, the states are not obliged to make pledges or honor their promises[48]. In that sense, it also breaks the continuity with as it gives up the strict interpreting of the CBDR. However, it, by paying no heed to the transnational organizations, followed the same logic with the KP. All in all, the CA was not an international agreement from a legal point of view, and it is therefore interpreted by some as a voluntary model of governance[49]. On this account, the CA falls also close to the regime complex within our three modes of governance since it is highly fragmented and not have substantial relevance from a legal point of view.

The CA demonstrates two different aspects of the global climate change governance. On the one hand, climate change regime has its own institutional history, going through different processes and experiences by means of which it is continuously shaped and reframed. On the other, under this process lies highly fragmented, contested and differentiated interests of nation states. Granted that international treaties and regimes are grounded in politics and hinge on political compromises that give birth to them; however, it does not come to mean that international regimes do not have any legal normativity independent of the political compromises upon which they are founded. In that regard, it is fair to say that the CA is the point that the normativity of international climate change regime was the lowest in its course of life. The fact that they could not find a common ground at a very important conference where the parties were expected to sign a new protocol, as a successor of the KP, in the 2009 Copenhagen COP casts light on how diverse the party's expectations are[50]. This is why, it is worth having a look at the political contestations underlying climate change regime.

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[47] D. HELD - C. ROGER, *Three models*, cit., p. 530.
[48] ID., *op. ult. cit.,* p. 531.
[49] ID., *op. ult. cit.,* pp. 527-537.
[50] H. VAN ASSELT – D. HUITEMA – A. JORDAN, *Global climate governance after Paris: setting the stage for experimentation?* p. 29, in B. TURNHEIM – P. KIVIMAA – F. BERKHOUT*, Innovating climate governance: Moving beyond experiments* Cambridge University Press, 2018, pp. 27-44.

It is obvious that the EU has been the most active and staunch defender of progressive climate change governance, in particular for the last two decades[51]. However, the picture was much more different in the first years of climate change governance. For instance, in the 1960s and 1970s, when environmental problems for the first time attracted global attention, the US was the most ardent supporter of the global environmental policies[52]. For instance, the 1972 Stockholm Conference and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer could not be materialized without the leadership of the US[53]. Yet, the EU took over the leadership of climate change beginning from the first half of the 1990s[54]. And Kelemen and Vogel argues that it is wrong to attribute this shift to the normative aspirations or to the commitment to multilateralism. Instead, by taking a regulatory political approach, they argue that it is because of the domestic political influence of the environmentalists[55] and of the regulatory competition between the US and the EU. In other words, not only did the environmentalist gained significant power in the EU while losing power in the US, but also did the EU have «little to lose from an international treaty restricting trade»[56]. After the US retreated from the KP in 2001, it almost became a duty for the EU to take on the leadership role. That is, it provided a stimulus for the EU to take the mantle of leadership.

The EU has been for the last two decades the main regional organization going beyond the UN-led climate change regime against the fragmenters such as the US and BASIC (Brazil, South Africa, India, and China) countries. Upon taking on the leadership, the EU demonstrated its leadership not only with words but also with deeds by leading by example[57]. In the period, spanning from Rio to Copenhagen, the

[51] A. BRADFORD, *The Brussels effect*, cit., p. 207-231.
[52] R.D. KELEMEN - D. VOGEL, *Trading places: The role of the United States and the European Union in international environmental politics,* in *Comparative Political Studies,* Vol. 43, No. 4, 2010, p. 428.
[53] ID., *op. ult. cit.,* p. 429.
[54] ID., *op. ult. cit.,* p. 440.
[55] See also a very similar argument focusing on the process following the US's withdrawal from the Kyoto Protocol and the EU's turn from carbon tax to the ETS and explain the global leadership with the domestic developments D. ELLERMAN, *The shifting locus of global climate policy leadership,* in C. BAKKER - F. FRANCIONI, *The EU, the US and Global Climate Governance*, Routledge, 2014, pp. 41-57.
[56] R.D. KELEMEN - D. VOGEL, *Trading places*, cit., p.447.
[57] C.F. PARKER - C. KARLSSON, *Climate leadership*, p. 195 in K. BÄCKSTRAND - E. LÖVBRAND*, Research handbook on climate governance*. Edward Elgar Publishing, 2015, pp. 191-201.

EU's fundamental climate change policy was to sustain the system of Kyoto Protocol, if not, to replace it with a new one in the same top-down logic. As to the US, it was the supporter of a symmetrical treaty as opposed to asymmetrical KP, differing developing countries from the developed ones. Therefore, for the US, «the new agreement should have a pledge-and-review structure that allows bottom-up, or 'nationally determined mitigation commitments,' rather than top-down, binding targets and timetables, such as the EU has pushed for in the past»[58]. As regards China, it has traditionally taken side with developing countries and presented itself as the representator of this bloc, and endorsed the ideas such as climate justice, historical responsibility of the West, and distributive financial policies[59]. It was therefore the supporter of an agreement that draws a distinction between developed and developing countries, thereby binding the former with top-down targets while the latter have the discretion to set up its own targets[60]. However, the rapid economic development of China and other BASIC countries have given rise to a discordance between these countries and the remainder of developing countries. For they also became the perpetrator of climate change rather than being a victim thereof.

Against this background, the parties convened at Copenhagen in 2009 with high expectations for a new comprehensive agreement. However, the parties could not arrive at an agreement, thereby the Copenhagen Accord (CA), having no legal force and involving no long-term goals, had bitterly shattered the hopes of environmental activist. Having said that, it also provided the basis for the subsequent period e.g., it obliged each member states without any discrimination to pledge their national contributions for 2020. This more relaxed approach to the CBDR was offset by setting a target for annual financial ($ 100 billion) transfer from developed to developing countries. Thus, the CA, despite the valid criticism levelled against it, laid the foundations of the landmark COP21 Paris Agreement (PA) which will transform drastically the *modus operandi* of the climate change governance[61].

[58] ID., *op. ult. cit.,* p. 198
[59] ID., *op. ult. cit.,* p. 196.
[60] ID., *op. ult. cit.,* p. 197.
[61] M. FERMEGLIA, *Comparative Law and Climate Change,* p. 238, in F. FIORENTINI - M. INFANTINO, *Mentoring Comparative Lawyers: Methods, Times, and Places,* Springer, 2020, pp. 237-259.

All in all, seen from the perspective of three modes of governance, it goes without saying that the CA is an example of regime complex. This may also be vindicated by looking at the academic writings in the wake of the CA. To illustrate, leading scholars in the field of comparative politics and international relations portrayed the climate change as a regime complex with paying particular attention given to the rise of transnational organizations. For them, climate change is composed of «loosely coupled system of institutions» without «no clear hierarchy or core»[62] as opposed to the full-fledged integrated regimes as exemplified by the WTO and trade regime. As may be implied, this was the moment when multilateralism is out of favor and unilateralism, transnationalism and minilateralism prove to be immensely popular. For by this time, the political tide was on the high flow whereas the (legal) normativity tide is on the ebb.

2.3. *The Paris Agreement: an example of experimental governance?*

The Copenhagen Accord (CA), laying down non-binding pledge and review procedure, was concluded between the US and BASIC countries despite the EU's ambitions for a more top-down agreement[63]. The EU, drawing on the lessons taken from this fiasco, gave up its «normative agenda and unrealistic expectations» and embarked on moving «towards a pragmatic strategy, attuned to the realities of changing power con-stellations» in Durban (COP 17)[64]. This strategy paid off with the support of developing countries and an agreement reached on extending the Kyoto Protocol up until 2020. What is more, the countries have come to a decision for a new legally binding treaty, finalized by 2015 (Durban Platform) and supported even by conventionally reluctant states such as the US and China[65]. The EU, during

[62] K. RAUSTIALA - D.G. VICTOR, *The regime complex,* cit., p. 9.
[63] C. F. PARKER - C. KARLSSON - M. HJERPE, *Assessing the European Union's global climate change leadership: from Copenhagen to the Paris Agreement,* in *Journal of European Integration*, Vol. 39, No. 2, 2017, p. 247.«the EU was not even in the room when the final details on the Copenhagen Accord were hammered out».
[64] K. BÄCKSTRAND - O. ELGSTRÖM, *The EU's role in climate change negotiations: from leader to 'leadiator',* in *Journal of European Public Policy*, Vol. 20, No. 10, 2013, p. 1369.
[65] ID., *op. ult. cit.,* p. 1382.

this process, act «as a 'leadiator', a leader-cum-mediator» since it «became a bridge builder between the major emitter»[66]. In the advance of Paris Agreement, the EU, once again exemplifying its directional leadership, recalibrated its 2030 GHG emission targets to 40% reduction, compared to 1990, with its 2030 Climate and Energy Framework on October 2014[67]. Against this backdrop, the bilateral agreement, concluded by China and the US, contributed to the EU's mediator leadership and flared up the hopes for a positive outcome from the Paris[68]. In Paris, the EU, adopting a similar approach to Durban, defended a «legally binding agreement with strong provisions for transparency and accountability, and a mechanism for raising the ambition over time»[69] and secured a «hybrid set up with bottom-up reduction pledges combined with a top-down review of performance»[70].

The PA explicitly stipulated that it will «be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties»[71]. Thus, it was a further movement from the top-down approach of the KP towards a designed «bottom-up architecture, consisting of national pledges and international scrutiny»[72]. In a nutshell, it was «a transition from a 'regulatory' model of binding, negotiated emissions targets to a 'catalytic and facilitative' model that seeks to create conditions under which actors progressively reduce their emissions through coordinated policy shift» [73]. In the first instance, the PA put an end to the strict interpretation of the principle of CBDR, so it dispensed

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[66] ID., *op. ult. cit.,* p. 1380-1381.
[67] European Council *2030 Climate and Energy Policy Framework*, 2014, retrieved from https://data.consilium.europa.eu/doc/document/ST-169-2014-INIT/en/pdf
[68] R. FALKNER, *The Paris Agreement and the new logic of international climate politics* in *International Affairs*, Vol. 92, No. 5, 2016, p. 1114; Savaresi also considers the PA as a watershed moment signifies the beginning of a new cooperative era A. SAVARESI, *The Paris Agreement: a new beginning?,* in *Journal of Energy & Natural Resources Law,* Vol. 34, No. 1, 2016, p.26.
[69] European Parliament *EU Position for COP21 climate change conference,* 2015 *https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572787/EPRS_BRI(2015)572787_EN.pdf*
[70] C. F. PARKER - C. KARLSSON - M. HJERPE, *Assessing the European,* cit., p. 249.
[71] Article 13 of the Paris Convention.
[72] D. BODANSKY, *Climate Change:Transnational Legal Order or Disorder?*, in T. C. HALLIDAY - G. SHAFFER (eds.), *Transnational Legal Orders*. Cambridge University Press, 2015, p. 293.
[73] T. HALE, *"All hands on deck": The Paris agreement and nonstate climate action,* in *Global Environmental Politics*, Vol. 16, No. 3, 2016, p. 12.

with the crude distinction between developed and developing countries. Instead, it took a more nuanced and cooperative approach to the principle of CBDR[74], and obliged each country to determine their own nationally determined contribution to the global emission cut. In other words, it rather than adopting a substantive rule valid for only developed countries, stipulated a self-differentiation principle[75] leaving its concretization to the member states. Even though the pledge and review approach has not been invented in Paris, it, contrary to Copenhagen, not only make it legally binding but also did not limit its temporal scope of application with a deadline. Thus, the parties are expected to pledge their NDCs until further notice and these pledges will be reviewed in the global stocktake every five year.

Second, it incorporated the transnational institutions into the UN-led climate change regime by considering them not «as an alternative to the UNFCCC process, or as merely a helpful addition, but as a core element of its logic of spurring rising action on climate over time»[76]. This breaks radically with the principal-agent model, characterizes the integrated international regimes and goes beyond it giving transnational organizations a prominent place[77]. Hence, the PA signifies a turn to transnationalism, whose origins could be traced back to the CA[78]. In other words, the agreement granted legal status to transnational organizations, empowered them, thereby rendered possible to call upon transnational organizations when the support of activists, journalists, scientist, civil societies, NGOs, and etc. are desperately needed. For instance, to observe and incentivize half-hearted states by means of 'naming and shaming' could only be realized with the support of NGOs and non-state actors in general[79].

Third, the PA is a compromise between deepeners and fragmenters, responded to both escaping from the shackles of Kyoto Protocol and UN-led climate

[74] D. COEN - J. KREIENKAMP - T. PEGRAM, *Global Climate,* cit., p. 21.
[75] D. HELD - C. ROGER, *Three models*, cit., p. 533.
[76] T. HALE, *"All hands*, cit., p. 13-14.
[77] D. BODANSKY*, Top 10 Developments in International Environmental Law: 1990-2020* in *Yearbook of International Environmental Law,* Oxford University Press*,* 2020, p. 19.
[78] T. HALE, *"All hands*, cit., p. 13 (paying attention to the increased scholarly interest in transnationalism studies).
[79] B.A. DIKMEN, *Global Climate*, cit., p. 74; see for the argument that states may also exert pressure to each other R. FALKNER, *The Paris Agreement*, cit., p. 1121-1123.

change regime on the one hand, and aiming to be as inclusive as much it can be on the other[80]. When seen from this perspective, it can be seen as a great achievement as it integrated both minilateral fragmenters and transnational deepeners into the UN framework[81]. Moreover, it, holding states under a procedural obligation to submit a more demanding pledge for each subsequent five-year-cycle, has yielded to the demands of recalcitrant states, on the one hand, and empowering transnational actors as the watchdog of the NDCs has been a response to the supporters of progressive climate change policies[82]. This new logic is described by Falkner as «domestically driven climate change action»[83]. The PA did not only find a delicate balance between different parties, but it also finds a middle way between Kyoto's integrated and legalistic approach and Copenhagen's highly fragmented, regime complex.

All in all, the PA embraces a novel and experimental approach and marks a significant shift in climate change governance[84]. If I were to describe this shift with one word, I would probably opt for describing it or associating it with proceduralization. That is, it «pins its hopes on a series of procedural obligation»[85]. For instance, it, by abstaining from giving a one right answer to the question the extent to which developed countries should contribute to the GHG emission reductions vis-à-vis developing ones, not only facilitates finding a middle way between parties but also nudges the states into taking on responsibility for addressing this problem[86]. Further, in the absence of binding substantive rules, transparency plays a key role in overseeing pledge-and-review process and compelling reluctant states by means of 'naming and shaming'. For this reason, transnational organizations are a *condicio sine qua non* for the success of the PA. That the figure of accredited organizations to the UNFCCC raised from 178 in 1995 to 2340 in 2020 is also telling, and this goes in the same direction with the general line of argumentation. Thus, it

[80] B.A. DIKMEN, *Global Climate*, cit., p. 74.
[81] ID., *ibidem.*
[82] ID., *op. ult. cit.,* p. 73-76; see for the watchdog role of non-state actors K. BÄCKSTRAND - J. W. KUYPER - B.O. LINNÉR - E. LÖVBRAND, *Non-state actors in global climate governance: from Copenhagen to Paris and beyond,* in *Environmental Politics,* Vol. 26, No. 4, 2017.
[83] R. FALKNER, *The Paris Agreement*, cit., p. 1118-1124
[84] H. VAN ASSELT – D. HUITEMA – A. JORDAN, *Global climate*, cit., p. 27.
[85] ID., *op. ult. cit.,* p. 31.
[86] R. FALKNER, *The Paris Agreement*, cit. p. 1115.

seems fair to say that the PA, albeit lacks explicit compliance mechanisms, have an implicit and collectively supported compliance system. To sum up, the PA as the epitome of post-sovereign global governance, did not only allocate responsibility by either giving more leeway to the actors (states) within the formal treaty mechanism or integrating some into the formal treaty framework but also struck a delicate balance between IGOs and its transnational competitors. In some sense, international law has been transnationalized while transnational law has been internationalized «through nonhierarchical 'orchestration' of climate change governance, in which international organizations or other appropriate authorities support and steer transnational schemes»[87].

Before moving on to the PA's analysis from the perspective of experimental governance, it is essential first to recall the assumption upon which the experimental governance is founded: in the case that the power is heterarchically distributed and that there is a lack of sufficient knowledge about how to govern, it is better to leave it to the process[88]. Discovering and learning how to govern by experiment, that is, a contextual, issue- and case-specific approach is the core of experimentalism. Even a cursory look at the climate change governance suffices to show that it has met experimentalists basic assumptions since the US' withdrawal from the regime till the PA. Granted that this is a very wide interpretation of these assumptions, and thus, it should be refined by considering the other conditions. In a nutshell, the five key features of experimental governance are: a) inclusive participation in non-hierarchical process, b) articulation of agreed common problem, c) devolution to local actors, d) continuous monitoring, and e) revision with peer review[89]. In a similar

[87] K.W. ABBOTT, *The transnational regime complex for climate change*, cit., p. 571; see for a very similar argument T. HICKMANN - O. WIDERBERG - M. LEDERER - P. PATTBERG, *The United Nations Framework Convention on Climate Change Secretariat as an orchestrator in global climate policymaking,* in *International Review of Administrative Sciences*, https://doi.org/10.1177/0020852319840425; see for a study questioning the effectiveness of this orchestration S. CHAN - W. AMLING, *Does orchestration in the Global Climate Action Agenda effectively prioritize and mobilize transnational climate adaptation action?,* in *International Environmental Agreements: Politics, Law and Economics*, Vol. 19, No. 4-5, p. 429-446.
[88] C.F. SABEL - J. ZEITLIN, *Learning from difference: The new architecture of experimentalist governance, in the EU*, in *European Law Journal*, Vol. 14, No. 3, p.280.
[89] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes*, cit., p. 483.

vein, Keohane and Victor make the experimental governance conditional upon a) the articulation of specific goals by the participants, b) the existence of a penalty default to discipline the reluctant states, and c) the existence of an institutional review mechanism in order to assess national pledges[90].

First and foremost, the PA is indisputably the most inclusive treaty up to now concluded, for it gives a prominent place to non-governmental and sub-national organizations. Further, the PA has precisely objectified the long term formal and aspirational goals, embraced a pledge and review coupled with a ratchet mechanism, and left enough discretion to the member states. Thus, this «can be cited as evidence for the presence of a thin (or even 'medium thick') consensus among nation states»[91], thereby shows the lack of agreement on the solutions. In short, it meets the first two conditions – inclusiveness and articulation of common problem – of the experimentalism. As to the condition of decentralized governance, the PA, as aforementioned, struck a delicate balance, by taking on a procedural form, between the KP and the CA. For instance, none of the climate change treaties includes provisions as to how to reach the concrete emission targets; that is, they left the implementation phase to the member states[92]. Yet, the PA did leave not only the implementation phase but also the law-making phase to the member states on the proviso that the targets will be scaled up in each cycle. Thus, the PA assumed in some sense that it will be supported by the transnational actors, particularly NGOs. And it seems safe to say that the activist NGOs did so far meet this expectation by leveraging climate change litigations in the post-Copenhagen period[93]. What is more, we observed a turn to fundamental rights in climate change litigation[94]. The plaintiffs

[90] R. O. KEOHANE - D. G. VICTOR, *After the failure of top-down mandates*, cit., p.207-210.
[91] H. VAN ASSELT – D. HUITEMA – A. JORDAN, *Global climate*, cit., p. 35.
[92] ID., *op. ult. cit.,* p. 36.
[93] J. SETZER - R. BYRNES, *Global trends in climate change litigation: 2020* snapshot in *Grantham Research Institute for Climate Change and Environment, London School of Economics*, 2020, p. 7.
[94] J. PEEL - H. M. OSOFSKY, *A rights turn in climate change litigation?,* in *Transnational Environmental Law*, Vol. 7, No. 1, 2018, pp. 37-67; see for a study analyzing the interaction between environment and human rights before the Inter-American Court of Human Rights T. ZHUNUSSOVA, *Human Rights and the Environment Before the Inter-American Court of Human Rights*, in E. CHITI - A. DI MARTINO - G. PALOMBELLA, *L'eta della Interlegalità,* Il Mulino, 2021 (Forthcoming), available at https://www.cir.santannapisa.it/sites/default/files/Zhunussova%2C%20Human%20Rights%20and%20Environment%20before%20IACtHR.pdf

have begun to invoke fundamental rights, drawing support from the international human rights treaties, to provide a firm basis for the idea that state's inaction to take sufficient measures does violate citizen's fundamental rights[95]. When seen holistically, it can be contended that transnational organizations have been discharging their duties fallen upon them with the PA, even though it is still contestable whether this was resulted from the PA or not. The other aspect of the devolution to local actors is the global rise of the GNDs[96]. With respect to continuous monitoring, reporting and reviewing, the PA provides some review and monitoring mechanism, though it remains to be seen how it will play out over time. Nonetheless, Asselt et.al. argue that the PA contains «the basic elements of monitoring, reporting and peer review, as required for global experimentalist governance, are in place»[97].

3. *Three examples of experimental governance in climate change regime*

3.1. *Unilateralism as a default sanction: the interplay between the EU and the ICAO*

[95] See for the two seminal cases Ashgar Leghari v. Federation of Pakistan (W.P. No. 25501/2015), Lahore High Court Green Bench, Orders of 4 Sept. and 14 Sept. 2015, available at: https://elaw.org/pk_Leghari (Leghari); Urgenda Foundation v. The State of the Netherlands Stichting Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI: NL:RBDHA:2015:7145, Rechtbank Den Haag [District Court of The Hague], C/09/456689/HA ZA 13-1396, available at: https://www.urgenda.nl/wp-content/uploads/VerdictDistrictCourt-UrgendavStaat-24.06.2015.pdf; and Stichting Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI:NL:GHDHA:2018:2591, Gerechtshof Den Haag [The Hague Court of Appeal], C/09/456689/HA ZA 13-1396, available at: https://www.urgenda.nl/wp-content/uploads/ECLI_NL_GHDHA_2018_2610.pdf; on 20 Dec. 2019, the Dutch Supreme Court upheld the previous decisions: Stichting Urgenda v. Government of the Netherlands (Ministry of Infrastructure and the Environment), ECLI:NL:HR:2019:2006, Hoge Raad [Supreme Court], C/09/ 456689/HA ZA 13-1396, available at: https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf

[96] The idea of global Green New Deals does not only include the movements having a special program named as "Green New Deal", but also legal documents addressing the duties deriving from the obligations PA imposed upon member states such as the French Law on Energy and Climate Action, issued on 8 November 2019. See for this act https://perma.cc/5XYM-8VDA

[97] H. VAN ASSELT – D. HUITEMA – A. JORDAN, *Global climate*, cit., p. 39.

For experimentalists, the process matters, but it ought to be braced by some disciplining mechanisms for compelling the unwilling actors to cooperation. A default sanction or a threat to unilateral action, triggered not in case of non-compliance but in case of non-participation[98], may be a typical example of these disciplining mechanisms. From the foregoing, it seems acceptable to raise the question of «what is so bad about unilateral action to protect the environment?», not least when its alternative is inaction rather than multilateralism[99]. For instance, the EU's unilateral action on airline emission cuts in a period when the US shied away from being bound to the Kyoto Protocol, may be assessed not only as «a legitimate case for taking unilateral initiatives»[100], but also as an example of default penalty in case of non-compliance. That said, some may argue that it is not right to resort to unilateral action in every instance since it may significantly vitiate the international legal order based on multilateralism. Thus, it is better that international law exerts discipline over unilateral action than leaving unilateral action without any response. Here, the process unfolded between the EU and international legal order about the aviation emissions is highly telling and deserves to be zoomed in not only because it reveals the «dynamic process of action and reaction, reassessment and response, in which international law plays an uneasy role as both a check and a potential consolidator»[101], but also because it represents a perfect example of experimental governance.

In 2008, with an amendment to the 2003 Aviation Directive, the EU extended its ETS's scope of application to all flights leaving and arriving to the EU territory beginning from 2012 in disregard of its extraterritorial effects[102]. The Directive exempted the countries having equivalent level of protection with that of the EU from

[98] G. DE BÚRCA - R.O. KEOHANE - C. SABEL, *New modes*, cit., p. 484.
[99] D. BODANSKY, *What's so bad about unilateral action to protect the environment?,* in *European Journal of International Law,* Vol. 11, No. 2, 2000, pp. 339-347.
[100] G. SHAFFER - D. BODANSKY, *Transnationalism, unilateralism*, cit., p. 37.
[101] ID., *op. ult. cit.,* p. 40.
[102] European Parliament and the Council (EC) Directive 2008/101 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, available at: https://op.europa.eu/en/publication-detail/-/publication/174ef6bb-5ada-469a-9a4e-c0e7f6d284a2/language-en

the EU's ETS system[103]. Further, it gave some time to the ICAO, at least by 2012, to reach a decision on global aviation emission cuts[104]. As expected, this unilateral move was lambasted by a manifold of airline firms, associations, and countries on the ground that this measure, due to its obvious extraterritorial jurisdiction, does violate the other states' sovereignty[105]. In turn, it was challenged before the UK courts on the grounds that the regulation conflicts with some international agreements, particularly Chicago Convention, and principles of customary international law[106]. To cut a long story short, the Court upheld the directive and stressed that the directive did not fall outside the scope of the wide discretion granted to the EU authorities under the Article 2(2) of the Kyoto Protocol[107]. However, the EU, upon harshly criticized and having received significant economic and political threats[108], postponed the measures and stated that it will not apply the directive by September 2016 in order to wait and see the outcome of the 2016 ICAO Assembly (aka Stop the Clock Decision) [109]. To put it bluntly, the clock was stopped on the condition that a multilateral treaty will be concluded by 2016 in line with the expectations of the EU. From this it may be inferred that the EU, in case of failure, would not abstain from using its unilateral measures.

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[103] I. HADJIYIANNI, *The Court of Justice of the European Union as a Transnational Actor through Judicial Review of the Territorial Scope of EU Environmental Law,* in *Cambridge Yearbook of European Legal Studies*, Vol. 21, 2019, p. 150
[104] ID., *ibidem*.
[105] V.K. GONÇALVES, *Climate Change and International Civil Aviation Negotiations,* in *Contexto Internacional*, Vol. 39, No. 2, 2017, p. 448.
[106] Case C-366/10, *Air Transport Association of America, American Airlines, Inc, Continental Airlines, Inc, United Airlines, Inc v. The Secretary of State for Energy and Climate Change* [2011] ECR I-13755 (ATAA case)
[107] ATAA, para. 185-188
[108] N.L. DOBSON, *Competing Climate Change Responses: Reflections on EU Unilateral Regulation of International Transport Emissions in Light of Multilateral Developments,* in *Netherlands International Law Review*, Vol. 67, No. 2, 2020, p. 189.
[109] Parliament and the Council Regulation (EU) 421/2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions Text with EEA relevance, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.129.01.0001.01.ENG

In the shadow of the EU's unilateralism, the negotiations over global market-based mechanism (MBM) for reducing the GHG continued until 2016. In the negotiations, the US and the BASIC countries along with the aviation firms played the role of "laggards" while the EU, as is usual, was the main supporter of a global regulation for emissions[110]. Almost 20 years later after it was first decided, the countries finally arrived at a decision on global GHG regulation in 2016 even though it does plainly fall short of the EU's ambitions[111]. For it adopts an MBM based upon the principle of compensation rather than reducing the GHGs directly[112]. Be that as it may, it seems apparent that the EU, once again, played the role of mediator between different parties in reaching a consensual decision even though they have diverged and generally conflicting interests. And by doing so, it took advantage of its market and regulatory power while using unilateralism as a stick in order to drive the other parties towards the consensus. This strategy, as argued by Hadjiyianni, may be considered as an attempt «to achieve a balance between unilateralism and multilateralism by justifying EU unilateral action in light of insufficient international action and validating the existence of (unitary action) as necessary, albeit second-based, solutions to global environmental problems»[113]. In a nutshell, even though unilateral action may be seen as potentially destructive to international legal order, it shows significant potential for serving as a stabilizer like the sword of Damocles[114].

3.2. *Climate change litigations*

Even in the first six month of 2020, the climate change cases brought before the courts all around the world has almost doubled compared to 1997, which only 884 cases came before the court[115]. Climate change litigation is not a new

[110] V.K. GONÇALVES, *Climate Change*, cit. p. 449.
[111] ID., *op. ult. cit.,* p. 450.
[112] ID., *op. ult. cit.,* p. 454.
[113] I. HADJIYIANNI, *The Court*, cit., p. 151.
[114] D. BODANSKY, *What's so bad*, cit., p. 339-340. «…unilateralism is not necessarily destabilizing. Sometimes, it can play a catalytic role, promoting the development of international environmental regimes. In such cases, another less pejorative term for unilateralism is ledership».
[115] UNEP (2020) Global Climate Litigation Report, p.4, available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y

phenomenon, yet it is by all means «prospering across the globe» so much so that it is on the cusp of «becoming a globally visible transnational phenomenon of growing importance»[116]. It is not easy to reach a conclusive decision the extent to which global climate change litigation is linked to the PA, yet it seems still a persuasive argument that there is an elective affinity between the upsurge in climate change litigations and the PA. This connection or affinity has become highly visible in a case decided in December 2019 by the Dutch Supreme Court. In Urgenda, the court, drawing support from Article 2 (right to life) and Article 8 (right to respect for private and family life) of the ECHR and from the PA's temperature goals, hold the Dutch government to account on the ground that it did violate the fundamental rights of its citizens by reducing its emission cut from 30% to 20% in 2011[117]. It is an inspiring decision in every aspect, and that the court establish a connection between fundamental rights and environment deserves every kind of praise. Further, this case has had a huge impact on the way in which climate change litigation can be employed in order to force countries to reach their NDCs. The inspiration triggered by the Urgenda's unprecedented success set the similar lawsuits in motion all around the world ranging from France to India, and to Ireland. One of the latest nodes in this complex web of litigations resolved on the 3rd of February 2021 with the French Administration Court's holding the view, similar to the rulings of the Dutch and Irish Courts, that the French government stopped short of «implementing public policies to allow it to achieve objectives it had set on the reduction of greenhouse gas emissions»[118]

From the foregoing, it may be implied that the provisions of the PA can be employed in the climate change litigation. Even though the provisions are by and large not justiciable in the domestic legal orders, the precise temperature goals set

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[116] L. WEGENER, *Can the Paris Agreement Help Climate Change Litigation and Vice Versa?,* in *Transnational Environmental Law*, Vol. 9, No. 1, 2020, p.18.

[117] See for an extensive analysis of the ruling J. SPIER, *'The "Strongest" Climate Ruling Yet': The Dutch Supreme Court's Urgenda Judgment,* in *Netherlands International Law Review*, Vol. 67, No. 2, pp. 319-391.

[118] https://www.vox.com/2021/2/4/22265316/france-climate-change-paris-court; available at http://paris.tribunal-administratif.fr/content/download/179360/1759761/version/1/file/19049671904968190497219049 76.pdf

out in the treaty would lend considerable interpretive support to the domestic courts[119]. In that respect, the principle of consistent interpretation with the international law can also play a critical role in establishing a connection between domestic and international legal orders[120]. The domestic courts in turn may check administrative and legislative discretions with the help of scientific evidence provided by the ICCP and the broadly defined yet specific targets to be achieved by 2050 and 2100[121]. Later, the PA, albeit devoid of any substantive NDC requirements to be achieved, includes several procedural obligations, e.g., to set up, communicate, provide transparency, and uphold NDCs[122]. The courts can benefit from these procedural obligations first and foremost to hold the states into account and to stave off inadmissibility argument by establishing a firmer connection between climate change and responsibility of states for taking further steps. Moreover, the courts may unlock the untapped potential of the transparency requirement by demanding from the government to provide reasons and justification in support of their decisions[123]. To conclude, climate change litigation, as summarized by Wegener: «does not replace the accountability and ratcheting mechanisms established at the international level. It rather adds a complementary, multifaceted second mechanism which allows for the direct involvement of non-governmental actors. … it connects the right of access to justice with public participation in decision making in climate matters at national and international levels and thus provides an additional role for private actors in the governance framework»[124].

Viewed from this angle, it can be argued that the PA could only reach its true potential only if the courts act as a gate-opener and the transnational organizations as a watchdog. At it seems that it has already began to lead up to its promises as today not only the states but also companies are holding to account due to their

[119] L. WEGENER, *Can the Paris Agreement*, cit., p.24.
[120] ID., *ibidem*; see also the South African case in which the court made use of this argument Earthlife Africa Johannesburg v. Minister of Energy, Case No. 65662/16, Judgment of High Court of South Africa, Gauteng Division, Pretoria (South Africa), 8 Mar. 2017
[121] L. WEGENER, *Can the Paris Agreement*, cit., p.26.
[122] ID., *op. ult. cit.,* p. 28-30.
[123] ID., *op. ult. cit.,* p. 35.
[124] ID., *op. ult. cit*, cit., p.36.

responsibility on climate change[125]. And it is no surprise that the PA plays a very crucial role here providing a normative background for the courts all across the world to take advantage of[126].

3.3. *Enabling the Global Green New Deals*

Even though there have been some notable developments in the wake of the PA such as the Global Pact for the Environment[127] and Paris Rulebook, which marks a transition from negotiation to implementation phase[128], none of them is as much important as the rise of global Green New Deal (GND). Loaded with the positive connotations of Roosevelt's New Deal, the aim of the global GND is to achieve climate neutrality by 2050 «in a way that also expands decent job opportunities and raises mass living standards for working people and the poor throughout the world»[129]. To this end, the two things are crucial: clean energy transformation and state's intervention to the market[130]. As it is implied even from these two crucial points, the GND crosscuts different sectors ranging from industry to agriculture, from consumption to transportation, thereby requires a large-scale restructuring of our relationship not only with environment but also with ourselves.

The IPCC's 2018 climate change report, showing the negative consequences of a 1.5 °C increase in global average temperature and the ways how to rein in the

[125] See the Hague District Court 26 May 2021 no C/09/571932 / HA ZA 19-379, available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339
[126] The PA is not only used as a normative source, it also served as a mechanism holding the transnational actors such as Schell to account «To buttress the conclusion that the Paris goals were legally relevant for RDS, the Court found it relevant that under the Paris Agreement, the signatories ensured support of non-state stakeholders» A. NOLLKAEMPER, *Shell's Responsibility for Climate Change: An International Law Perspective on a Groundbreaking Judgment.* in *VerfBlog,* (28 May 2021), available at https://verfassungsblog.de/shells-responsibility-for-climate-change/.
[127] See for the explanations about how unsatisfying the content of the treaty when compared to its title L. KOTZÉ, *A global environmental constitution for the Anthropocene?* In *Transnational Environmental Law*, Vol. 8, No. 1, pp. 23-27.
[128] L. RAJAMANI - D. BODANSKY, *The Paris Rulebook: Balancing International Prescriptiveness with National Discretion,* in *International & Comparative Law Quarterly*, Vol. 68, No. 4, 2019, p. 1025.
[129] N. CHOMSKY - R. POLLIN - C. J. POLYCHRONIOU, *Climate Crisis and the Global Green New Deal: The Political Economy of Saving the Planet,* Verso, 2020, p.54 (ebook version).
[130] ID., *op. ult. cit.,*

global warming within these range, had a positive impact on awakening the big powers from their sleep. First, the US's democrat party, under the leadership of Alexandra Ocasio-Cortez, proposed a resolution for a Green New Deal. Upon having criticized due to its ambitious, on account of the US, targets, the Green New Deal has morphed into the CLEAN (Climate Leadership and Environmental Action for Our Nation's) Future Act[131]. Though the presidency of Donald Trump hindered the US Green New Deal, it was to be assumed, even before the election results, that Joe Biden's presidency will turn the US back into the game as a much more motivated player. In a way satisfying this expectation, Joe Biden, in his first speech after the election results, clearly stated that America is «going to make sure that labor is at the table and environmentalists are at the table in any trade deals» that will be made[132]. As to China, despite the absence of a comprehensive Green New Deal regulation, the Chinese president announced that China aspires to be climate neutral country by 2060[133]. On top of this, the EU signed a new trade agreement with China on the last days of 2020 and as Valdis Dombrovskis, the EU commissioner for trade, stated, it contains some positive developments with respect to the China's approach to the climate change[134]. Considering that the EU has also rolled out its own GND on December 2019, which was already at the top of Ursula von der Leyen's political guideline, it may be argued that the PA has already evoked positive responses[135]. Additionally, it not only empowered and subjectivized nation states by devolving

[131] J. CONCA, *Democrats' Green New Deal Becomes The CLEAN Future Act*, 2020, retrieved 31 December 2020, from https://www.forbes.com/sites/jamesconca/2020/01/15/democrats-green-new-deal-becomes-the-clean-future-act/

[132] A. FANG, *Biden says US needs to align with democracies after RCEP signing*, 2021, retrieved 1 January 2021, from https://asia.nikkei.com/Economy/Trade/Biden-says-US-needs-to-align-with-democracies-after-RCEP-signing

[133] W. CHANGHUA, *China's Great Green Reset: Carbon neutrality by 2060*, 2020, retrieved 31 December 2020, from https://news.cgtn.com/news/2020-09-24/China-s-Great-Green-Reset-Carbon-neutrality-by-2060-U2EvAoswHS/index.html

[134] European Commission Press Release, Eu and China reach agreement in principle on investment, (30 December 2020), available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2541

[135] U. VON DER LEYEN, *Political Guidelines for the next European Commission 2019-2024. A Union that strives for more: My agenda for Europe*, 2019, p. 16, European Commission *'The European Green Deal',* Communication from the Commission, COM (2019) 640, (11 December 2019)

responsibility to them but also invigorated a regulatory competition among the big powers.

As aforementioned, there is a global climate change regime, orchestrated by the UN framework, and it contains different national legal orders' climate change policies among which the EU, the US and China bear significant importance. They are important actors because they have the power to shape the global climate change regime by merely regulating their own legal orders and leveraging their market power. Taking a cue from Bradford's Brussels Effect, there may be a Beijing Effect or a Washington Effect one day[136]. According to Bradford, the EU, by merely regulating its own market, has been regulating the global marketplace[137]. For her, what differs the EU from the US and China is its regulatory capacity, which seems absent in the latter due to its recent economic rise[138]. When it comes to the US, the quality of its regulations, even though it has also as much regulatory capacity as the EU, differs significantly from the EU. For instance, «the US authorities are often more mindful of the detrimental effects of inefficient intervention» whereas «the EU is more fearful of the harmful effects of nonintervention»[139]. To this, we may add numerous other differences such as the EU's integration through law strategy as being an uncompleted federation and the EU's becoming a regulatory state due to the scarcity of its budget. To put it differently, the EU, having neither purse nor sword, took advantage of the only thing it had: regulation[140]. Consequently, these created a culture for minimalist regulation in the US as opposed to the EU where a race to the

[136] A. BRADFORD, *The Brussels effect*, cit., p.64.
[137] ID., *op. ult. cit.,* p. 1, There are five components of the Brussels effect: *market size*, *regulatory capacity*, *stringent standards, inelastic targets*, and *non-divisibility.* See for explanations p. 25-63.
[138] A. BRADFORD, *The Brussels effect,* cit., p.31. «This is evident in the case of China, where the country's impact on global financial regulation has been limited, despite its vast capital reserves and extensive holdings of US treasuries. China's limited influence can be traced, in part, to its lack of effective and independent bureaucratic institutions overseeing national market rules in this area. Thus, acknowledging that sophisticated regulatory institutions are required to activate the power of sizable domestic markets means that few jurisdictions aside from the United States or the EU today have the capacity to be regulators with global reach».
[139] ID., *op. ult. cit.,* p. 102.
[140] ID., *op. ult. cit.,* p. 24. «In the world where the United States projects hard power through its military and engagement in trade wars, and China economic power through its loans and investments, the EU exerts power through the most potent tool for global influence it has—regulation».

top has prevailed. As such, the EU has become the global regulator in the policies ranging from data protection to market competition, from environment to consumer health and safety[141].

It is fair to say that when it comes to climate change, the EU's unilateral global regulation is likely to change due to the new mode of governance established with the Paris Agreement. The conflictual relationships both between developing and developed countries, on the one hand, and between the US and the EU, on the other, are likely to turn into a cooperative one. One of the main reasons for this expectation is the obligations, primarily the obligation to pledge NDC for every 5 years, set out by the Paris Agreement. They impel the states to take further measures and act as an active participant in climate change governance. Thus, it is not an exaggeration to assume that the countries will move towards the same direction, reducing net CO2 emission to zero, even though their pace varies. To this end, some countries such as the EU, the US, India, and South Korea have already adopted their own Green New Deal policies[142]. What is more, the EU, rather than leveraging its market power unilaterally, is more intended to use bilateral agreements on climate policy. On the 7th of October 2017, India and the EU signed a joint statement on clean energy and climate change, by means of which both countries «are committed to lead and work together with all stakeholders to combat climate change, implement the 2030 Agenda for Sustainable Development and encourage global low greenhouse gas emissions, climate resilient and sustainable development»[143]. As for the relationship with the US, the (EU) Commission, with the intention to turn the election of Joe Biden into an opportunity, drew up «A new EU-US agenda for global change» in which climate change is one of the most important headings alongside the COVID 19 measures. It is clear from the agenda that the EU makes a call for collective and collaborative action with the US by stressing out the importance of the stance that will be taken by the US for climate change policies. Last but not least, it is important to underline that

[141] ID., *op. ult. cit.,* pp. 99-231, for environment see ch.7.
[142] J.H. LEE - J. WOO, *Green New Deal Policy of South Korea: Policy Innovation for a Sustainability Transition,* in *Sustainability*, Vol. 12, No. 23, 2020.
[143] EU – India Joint Statement on Clean Energy and Climate Change, New Delhi, (6 October 2017), available at: https://www.consilium.europa.eu/media/23517/eu-india-joint-declaration-climate-and-energy.pdf

the agenda touches also upon the EU-China relations and clearly underscores the importance of taking similar approach against China, which «is a negotiating partner for cooperation, an economic competitor, and a systemic rival»[144].

If we return to the question raised in the beginning of this article, it may be assumed that the fertile ground provided with the PA paved the way for the turn to rights-based climate change litigation as well as for the global GND. Pursuant to the PA, each country is expected to prepare a comprehensive climate change strategy and a legal document, showing how it is going to reach the targets set out in the treaty. Therefore, the PA showed deference to the nation states by granting them wide discretion, on the one hand, and turned them into active subjects by putting them under an obligation to take further steps no matter how tiny are. Seen from this angle, it is not an exaggeration to assume that this trend of global GNDs is going to expand its scope and reach even the farthest corners of the world. As regards the interaction between these GNDs, it may be implied that the interaction among them will probably be more collaborative and coordinated than the pre-Paris period. The legalities, rather than competing whether to regulate or not, will cooperate in order to fight effectively against climate change[145]. The treaties the EU signed with China and India and the message it sent to the US for an enhanced transatlantic collaboration are the first signs of this change in the quality of interaction between different legal orders.

4. *Conclusions*

[144] European Commission *A new EU-US agenda for global change.* Joint Communication to the Parliament, the European Council, and the Council, JOIN (2020) 22, p. 8.

[145] See for a study analyzing the post-Paris period from the perspective of inter-legality G.ÇAPAR, *From Conflictual to Coordinated Interlegality: The Green New Deals within the Global Climate Change Regime Complex* in *Center for Inter-Legality Research*, Working Paper No: 03/2021, available at https://www.cir.santannapisa.it/sites/default/files/%C3%87apar%20-%20Coordinated%20Interlegality_0.pdf; see for the theory of interlegality G. PALOMBELLA, *Theory, Realities and Promises of Inter-legality: A Manifesto, in* J. KLABBERS AND G. PALOMBELLA, *The Challenge of Inter-Legality*, Cambridge University Press, 2019; see how inter-legality can be used as an analytical tool between different legalities E. CHITI, *Shaping Inter-Legality*, in J. KLABBERS – G. PALOMBELLA, *The Challenge*, cit., pp. 271-301.

This article has traced the historical trajectory of the climate change regime. It has relied on the three modes of global governance elaborated by de Búrca, Keohane, and Sabel (integrated international regimes, regime complexes and global experimentalist governance) in order to shed light on the evolution of the climate change governance in the last three decades. The analysis has brought to the fore the importance of historical and institutional analysis with an eye on the underlying political context and political actors.

By embracing an internal point of view to the climate change regime, it has recalled that the conclusion of the 1992 UNFCCC opened the way to a heterarchical and pluralist political situation, beyond the US hegemonic leadership, and it has represented the UNFCCC as an issue-specific integrated regime. The EU's gradual move towards leadership began around this time, followed by the proliferation of transnational organizations which was due to the lack of political leadership, on the one hand, and to the withering effect of globalization, on the other. This period, spanning from the US's withdrawal from the KP to Copenhagen, bears all the hallmarks of regime complex, which reached its apex at the CA by the end of the 2000s. As for the period from Rio to 2001, it can be considered as a transition period from an integrated regime to a complex regime, characterized by the absence of regime normativity and increasing tension among participants. The model of regime complex implies an attenuation of normativity: to put it bluntly, a regime complex, contrary to integrated regimes representing monism and unity, is positioned at the pluralist end of the spectrum. States, in this pluralist and conflictual environment, could not find a common ground for reaching a legally binding agreement; therefore, they have been only able to conclude a non-binding document, the Copenhagen Accord. This period in which politics gained priority over normativity lasted more or less up until the ratification of the PA. The PA has marked a turning point in the mode of governance from regime complex to experimental governance. Yet, its root can be traced back to the CA, that is to the moment experimental governance started to be used. In short, in the darkest moment of the night, experimental governance has brought a glimmer of fresh hope for the future.

In its second part, this article has turned its attention to the ways in which experimental governance operates in the governance of climate change. To this end,

it has first drawn attention to the procedural characteristics of the PA and has shown how they may prove useful in empowering both states and transnational organizations. Then, it has pointed to three different experimentalist examples having occurred before and after the PA. First, it has demonstrated how the aviation emission negotiations turned out to be successful in the shadow of the threat that the EU may unilaterally impose its own regulations on the other states. As a second example, the article has shown how the PA is used as a leverage to oversee whether the NDCs is honored. It has also been emphasized that this climate change revolution could only be possible by virtue of transnational organizations, for they began to act as a watchdog of the NDCs all around the world after the Urgenda case. Third, the emerging of different GNDs or similar legal documents across the globe has been ascribed to the procedural obligations imposed on states with the PA, as the latter brings pressure to bear on each country with respect to preparing a comprehensive climate change strategy and a legal document. Such procedural responsibilities nudge states into taking further action, no matter how limited it is.

ABSTRACT

Gürkan Çapar - *What have the green new deals to do with the Paris Agreement?: an experimental governance approach to the climate change regime*

The article highlights the particular role played by the PA in the global climate change governance institutional structure as an enabler of the global climate change litigations and global green new deals. In doing so, it benefits from the three-fold distinction provided by de Búrca, Keohane and Sabel as integrated regimes, regime complexes, and global experimental governance. The article aims at analyzing the institutional evolution of the global climate change regime with these three different modes of governance, pointing out the importance of particular turning points such as the Rio Declaration, Copenhagen Accord, and the Paris Agreement (PA). On top of this, the article embeds this institutional evolutionary trajectory of the global climate change regime in the tensions among multilateralism, unilateralism, and transnationalism. Lastly, it argues that the mode of governance established with the PA can be nominated as soft multilateralism, for it not only needs the cooperation of non-state actors and NGOs but also distance itself from both mere unilateralism and Kyoto-style top-down multilateralism. In short, it seems fair to argue that global climate change regime is in the process of cooperation, dialogue and iterative integration.

KEY WORDS: *Global Green New Deal(s); Global Experimental Governance; Paris Agreement; Climate Change Regime; Multilateralism.*