

“Complex is beautiful”: What role for the 2015 Paris Agreement in making the Effective Links within the Climate Regime Complex?*

“Complex is beautiful”: qual é o papel do Acordo de Paris de 2015 para estabelecer conexões efetivas no complexo regime climático?

Sandrine Maljean-Dubois**

Matthieu Wemaëre***

ABSTRACT

The 1992 United Nations Framework Convention on Climate Change (UNFCCC)¹ provides for the foundation of the international regime to fight against climate change. But it is widely acknowledged that it is neither efficient nor sufficient to tackle this challenge. As from 2000, a proliferation of policy initiatives outside this international climate regime has progressively questioned the centrality of the international governance on climate change as laid down by the UNFCCC. Climate talks under the auspices of the UNFCCC for the adoption of a new accord in Paris in December 2015 at the 21st Conference of the Parties to the UNFCCC provided a unique opportunity to rethink the role and structure of the international climate regime within its own boundaries. In order to increase the level of ambition of climate action as soon as possible and in the future, it was of crucial importance to design the Paris Accord in a way that it could be complemented and enhanced through synergies with other initiatives, which may be developed in other fora of international cooperation. This article analyses the role the Paris Agreement could play in achieving the defragmentation of the international governance on climate change, which could contribute to enhancing new cooperation dynamics, and to building a (more) consistent global climate law.

Keywords: Climate change, Paris agreement, defragmentation

RESUMO

A Convenção das Nações Unidas sobre Mudanças Climáticas de 1992 (UNFCCC) prevê a base do regime internacional para combater as mudanças climáticas. No entanto, é amplamente reconhecido que não é nem eficiente nem suficiente para enfrentar esse desafio. A partir de 2000, uma

* Recebido em 02/11/2017
Aprovado em 18/12/2017

** Diretor de Pesquisa, CNRS / CERIC [França]. E-mail: maljean.dubois@gmail.com

*** Advogado, Ordem de Advogados de Bruxelas e de Paris; Pesquisador associado CERIC, UMR DICE 7318, Aix Marseille Université, Université de Toulon, Univ Pau & Pays Adour, CNRS, 3 av. Robert Schuman 13628 Aix-en-Provence Cedex 1, France, Email: matthieu@wemaere-avocats.eu

1 UNITED Nations Framework Convention on Climate Change. *United Nations Treaty Series*, New York, v. 1771, n. 7, p. 107, 9 May 1992.

proliferação de iniciativas políticas fora deste regime climático internacional questionou progressivamente a centralidade da governança internacional sobre mudanças climáticas conforme estabelecido pela UNFCCC. Os debates referentes ao clima sob os auspícios da UNFCCC para a adoção de um novo acordo em Paris em dezembro de 2015 na 21ª Conferência das Partes da UNFCCC proporcionaram uma oportunidade única para repensar o papel e a estrutura do regime climático internacional dentro de seus próprios limites. A fim de aumentar o nível de ambição da ação climática o mais rápido possível, era de importância crucial projetar o Acordo de Paris de forma a ser complementado e aprimorado por meio de sinergias com outras iniciativas, que podem ser desenvolvidas em outros fóruns de cooperação internacional. Este artigo analisa o papel que o Acordo de Paris poderia desempenhar na realização da desfragmentação da governança internacional sobre mudanças climáticas, o que poderia contribuir para aprimorar novas dinâmicas de cooperação e para construir uma lei climática global (mais) consistente.

1. INTRODUCTION

Climate change is a highly complex policy challenge. Its causes cut across all economic sectors. Solutions require many different kind of policies in energy, infrastructure, finance and innovation, to name just a few. At the international level, the United Nations Framework Convention on Climate Change (UNFCCC) is widely seen as the central pillar of a broader 'regime complex', encompassing a number of formal and informal international policy processes.

Negotiations on a new climate agreement should be concluded under the UNFCCC by the end of 2015 in Paris.² Many countries expected these negotiations to produce a durable, legal agreement, which can structure climate cooperation in the long-term. But, regarding their difficulties to found a consensus, the Durban Platform gave birth to an *a minima* agreement in which the collective effort is the result of the aggregation of "nationally determined" contributions. The Parties themselves establish their contribution's level of ambition, at a national level, keeping in mind the collective objective of

holding global warming well under 2°C. The COP will likely provide further guidance to the States as to how they determine their contribution³, but until now there has been no burden sharing of the implementation of this collective objective, as it had been the case pursuant to the Kyoto Protocol and in particular as between the fifteen countries of the European Union at the time, who had allocated between themselves a common objective of reducing their emissions by 8%⁴. The objective of holding temperatures laid down in the Agreement is however completely unrealistic based on our emissions' trajectories. This is established on an annual basis by the United Nations Environment programme in its report entitled *The Emissions Gap*, released before each COP. This report analyses the gap in terms of ambition until 2020⁵. Several studies have also analysed the aggregate effect of States' national contributions prior to the COP 21, including a study commissioned pursuant to the UNFCCC for 31 October 2014⁶. It concluded that, combined altogether, these contributions do not take us towards 2°, even less 1.5°, but rather, according to estimates, towards 3 or 3.5°C. This is undoubtedly progress compared to the 4 or 5 °C expected by so-called "business-as-usual" scenarios. Even though today 191 Parties representing 98% of global emissions have submitted their national contribution, we are still very far from the objective set out in the Paris Agreement and, beyond that, from the safe operating space of our planet⁷.

Thus, to improve the level of ambition now and in the future, it is fundamental that the Paris agreement could be supplemented or even fuelled by other ini-

3 CCNUCC, Secretariat, Parties' views regarding further guidance in relation to the mitigation section of decision 1/CP.21, FCCC/ APA/2016/INF.1, 7 October 2016, add. 1, 18 October 2016.

4 This burden sharing was carried out by applying a basket of criteria established by the Utrecht University, based on the population, growth and energetic efficiency as well as opportunity or more political considerations. Phylipsen, G. et al. a triptych sectoral approach to burden differentiation: GHG emissions in the European bubble. *Energy Policy*, n. 26, p. 929-943, 1998.

5 See UNEP. *The Emissions Gap Report 2015*: summary for policymakers. Available at: <<http://uneplive.unep.org/media/docs/theme/13/EGR2015ESEnglishEmbargoed.pdf>>.

6 Synthesis report on the aggregate effect of the intended nationally determined contributions, Note by the secretariat, FCCC/CP/2015/7, 30 October 2015, 66 p. The Paris Decision takes note thereof (§16).

7 UNEP. UNFCCC Secretariat, Aggregate effect of the intended nationally determined contributions: an update, Synthesis report by the secretariat. *FCCC/CP*, n. 2, May 2016; Steffen, W. et al. Planetary Boundaries: Guiding human development on a changing planet. *Science*, v. 347, n. 6223, p. 1, 13 Feb. 2015.

2 UNFCCC. *Decision 1/CP.17 2011*: Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action.

tiatives, actions and policies, coming from other fora of international cooperation. This raises the question: what can the new agreement do in order to better forge effective synergies within the different elements of the climate regime, and to manage potential frictions? In a fragmented legal landscape (2), the Paris Agreement gives some new leverage tools for achieving the defragmentation of the international climate governance (3).

2. FROM A FRAGMENTED GOVERNANCE LANDSCAPE TO REGIME COMPLEXES

The issue of fragmentation has gained more weight in recent times, as researchers and policy makers realise the complexity of climate change, and search for effective solutions. We can highlight three central reasons why the climate regime has long displayed this degree of fragmentation.

First, as mentioned above, climate change is a high complex, multi-sector, multi-scale problem. Addressing it effectively requires coordinated policy responses in many domains. Ongoing work by the OECD, for example, assesses the multiple policy response required at the national level from different sectoral policy processes: from energy policy, trade and competition policy, innovation policy, infrastructure planning, and financial regulation. The same principle holds at the international level. An effective response to climate change will inevitably require a complex, multifaceted response, combining the expertise and mandates of different policy processes.

Secondly, there has also been in the past a divergence of views between countries and researchers regarding appropriate processes. This has been particular manifest in the debate about multilateral versus mini-lateral approaches to international coordination. Today it is probably fair to say that this conflict is perhaps less fundamental, and that a majority of experts and policy makers see multilateral and mini-lateral as complementary. This can be seen in the so-called Workstream 2 process under the UNFCCC and the Lima-Paris Action Agenda, which aims to catalyse a range of International Cooperative Initiatives.⁸ It is therefore being increasingly recognized that the UNFCCC is a core aspect of the global climate regime, but insufficient by itself.

⁸ UNFCCC. *Decision 1/CP.20 2014*: Lima call for climate action.

Thirdly, international law is, by definition, a fragmented regime. Fragmentation arises logically from the principle of 'autonomy of treaties', according to which every treaty is independent of all other treaties. The fragmentation of the international legal order is even increasing, due to the twofold movement of expansion and diversification of international law.⁹ The situation is even worse in international environmental law, without a global environmental organization supervizing or even unifying the hundreds of autonomous institutional arrangements existing.¹⁰ In international law, "*normative conflict is endemic to international law*" as stated by an International Law Commission's report.¹¹

The UNFCCC forms, of itself, already a fairly complex legal regime. The Convention, the Kyoto Protocol, the Cancun Accords and now the Paris agreement all represent significant albeit distinct developments of the climate regime. Nonetheless, overall the UNFCCC regime represents a relatively cohesive whole. In the past, it can be argued that the sharing of the workload between the UNFCCC and institutions like the International Maritime Organization, the International Civil Aviation Organization, the World Trade Organization, or the Montreal Protocol or the Convention on Biological Diversity have not been fully synergistic.

But it should be noted that fragmentation is not necessarily prejudicial. What matters is the effectiveness of the policy response, and in the past it seems relatively clear that the lack of better coordination has hindered the policy response. Regarding its relationships with other regimes or policy spaces, the climate regime has proven to be naturally closed and loosely interacting. Indeed, Parties has been quite indifferent, or even hermetic to what occurred elsewhere, regarding the consequences of their action or inaction on other environmental regimes and initiatives, as well as the consequences on other regimes and initiatives on their action within the climate regime. Despite the openness of the

⁹ ICD. *Fragmentation of International Law : Difficulties arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission*, A/CN.4/L.702, UNO, 28 July 2006.

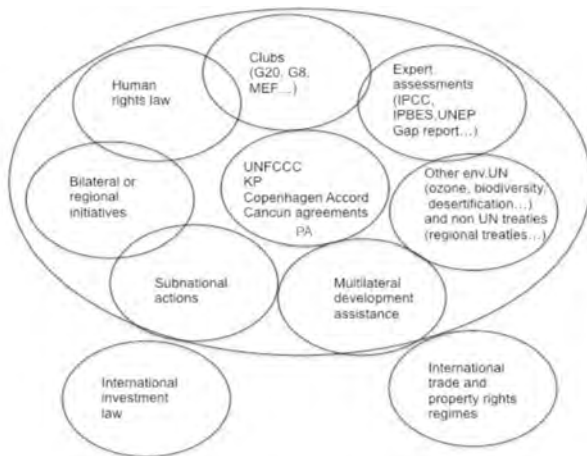
¹⁰ Churchill, Robin R.; Ulfstein, Geir. *Autonomous Institutional arrangements in multilateral environmental agreements : a little notice phenomenon. American Journal of International Law*, p. 623, Oct. 2000.

¹¹ ICD, *Fragmentation of International Law : Difficulties arising from the Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi*, A/CN.4/L.682, § 486, 13 Apr. 2006.

‘constitutional’ framework, the later has in general functioned in a kind of “*clinical isolation*”¹² from other parts of international law. For example, measures adopted to implement the UNFCCC and its Kyoto Protocol have shown that Parties have had so far little consideration of biodiversity conservation issues, with some very few exceptions in relation to forest and land use management, but always as ancillary consequences of climate mitigation or adaptation objectives.¹³

International climate change governance consists of a ‘regime complex’ rather than just a single regime¹⁴ of norms and institutions under the 1992 UN Climate Change Convention, the Kyoto Protocol and now the Paris Agreement. Raustiala and Victor identified a regime complex as “*an array of partially overlapping and non-hierarchical institutions governing a particular issue-area*”.¹⁵ The figure 1 below is adapted from the one that Keohane and Victor proposed of the international regime complex for climate change.

Figure 1 - Adapted from The regime complex for managing climate change



Source: Keohane, R. O.; Victor, D. G. The regime complex for climate change. *Perspectives on Politics*, v. 9, p. 7-23, 2011.

As well as the UNFCCC, the complex includes nu-

¹² WTO Appellate Body Report, *United States - Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, 29.04.1996, p. 19.

¹³ Maljean-Dubois Sandrine, Wemaëre Matthieu. Climate Change and Biodiversity. In : *Encyclopedia of Environmental Law - Biodiversity and Nature Protection Law*, Edward Elgar Publishing, ed. Jona Razzaque et Elisa Morgera, 2016. pp. 295-308.

¹⁴ On regimes, Krasner S. Structural causes and regime consequences: regimes as intervening variables, *International Organization*, vol. 36, n°2, pp. 1-21. 1982.

¹⁵ Raustiala K., Victor D. The regime complex for plant genetic resources, *International Organization*, vol. 58, pp. 277-309. 2004.

merous public and private institutions and initiatives which operate at the international, regional, bilateral, national and even subnational level, each with its own focus (for example, expertise with the IPCC, finance, technology, business...) and involving varying levels of commitment. The interactions between these different spheres vary both in their strength, and in whether they are intended or accidental. Orsini, Morin and Young later gave regime complexes the more precise, practical and operational meaning of “*a network of three or more international regimes that relate to a common subject matter; exhibit overlapping membership; and generate substantive, normative, or operative interactions recognized as potentially problematic whether or not they are essential in identifying regime complexes and analyzing their effects*”.¹⁶

After years of an abundant scholarship on the fragmentation of international law, this concept of regime complex has the advantage of highlighting that which links the different regimes together as much as that which divides them. Hence it offers an interesting analytical framework for understanding accurately a complex reality by focusing on the flow of both norms and actors which exist between the different legal and institutional realms. It therefore takes us further forward than the simple, well-established and relatively unhelpful observation that regime fragmentation exists, and towards a greater understanding of the relationships and interactions between these regimes.

From this perspective, we propose to view the Paris Accord as the bedrock of the regime complex for climate change. Otherwise the Accord and the whole regime complex are likely to be ineffective. To this end, the Accord should aim to fulfil two different but complementary objectives:

- on the one hand, a catalysing role to create a dynamic and contribute to raising the level of ambition in the other regimes that form part of the regime complex;
- on the other hand, to play the leading role in order to orchestrate climate governance, to strengthen coherence and ensure complementarity, ensure work is covered correctly and avoid duplication of effort etc.

¹⁶ A. Orsini, J.-F; Morin, O. Young. Regime complexes: a buzz, a boom, or a boost for global governance? *Global Governance: A Review of Multilateralism and International Organizations*, v. 19, n. 1, p. 29, 2013.

3. THE PARIS AGREEMENT AS THE BEDROCK OF THE 'REGIME COMPLEX' ON CLIMATE CHANGE

The COP Decision 1/CP.21, adopting the Paris Agreement at COP21, provides for several indicators towards a greater openness to external challenges than in the past. They acknowledge the need for a global approach to such challenges, which goes beyond the forum of meetings of Contracting Parties to the Paris Agreement, the climate COPs.

Depending on subjects, bridges have been built in two directions: either the Agreement takes into consideration other objectives or requirements, or it invites Parties or intergovernmental organisations to integrate better the climate change dimension. In its preamble, the Agreement refers to the need to ensure “*the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth*”, while recognizing the importance of “*the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention*”.

Regarding forests and sinks, it underlines “*the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches*” (art. 5). Such references could improve the coverage of biodiversity protection in the climate change framework which has been so far rather hermetic in that respect.

The preamble of the COP Decision 1/CP.21 also makes a reference to the Sustainable Development Goals, in particular to the SDG 13 on climate change as well as to Addis-Abeba Action Agenda adopted at the United Nations Third International Conference on Financing for Development and even to the Sendai Framework for Disaster Risk Reduction. Indeed, it is crucial to create greater consistency among these global objectives at the international level. The reference to such “meta-norms” could play a key role in strengthening the regime complex on international climate change and linking efforts under the UNFCCC with others in the international environmental and development law arena. It assists in linking the work under the Convention with relevant regimes, environmental and other, to the benefit of each of those regimes. Crucially, it will guide Parties’ in their implementation of the Paris Accord so that it is consistent with those other regimes, thus enhancing international legal coherence and reducing fragmentation. The synergistic role of the

Aichi Targets in the field of biodiversity protection has already been pointed out.¹⁷ Developing commonalities between regimes through common principles or strategic objectives could help to prevent conflict between multilateral environmental agreements.

A link is also established between climate change and human rights, not in the operative part of the Agreement as initially proposed by some Parties, but in the preamble of the Accord, which emphasizes that “*climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*”.¹⁸ However, this relates to the respect of “*respective obligations*” of States (existing or to be adopted in another context) : with such qualifier, some wanted to make sure that the Paris Accord would not create new obligations in this area.

On indigenous people, it must be noted that the Paris Accord also mentions the need to take into account traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant policies and actions (art. 7, § 5). Noteworthy that indigenous people have welcomed the recognition of the ambitious objective to pursue efforts to limit temperature increase to 1,5° C as compared to pre-industrial levels in Article 2 of the Paris Agreement. However, stating that climate change is a “*common concern of humankind*” is not new, in as far as it was already affirmed by the preamble UNFCCC since 1992.

On finance, there has also been an effort towards greater consistency: the COP Decision “*Invites all relevant United Nations agencies and international, regional and national financial institutions to provide information to Parties through the secretariat on how their development assistance and climate finance programmes incorporate climate-proofing and climate resilience measures*” (§ 44). In doing so, the Agreement assumes to become the core framework and a catalyst of

17 Futhazar, G. The diffusion of the Strategic Plan for Biodiversity and its Aichi targets within the biodiversity cluster: an illustration of current trends in the global governance of biodiversity and ecosystems. *YIEL*, v. 25, n. 1, p. 133–166, 2015.

18 We can find a similar formula in the preamble of the Paris Decision.

the strengthened international cooperation on climate change, in and out the UNFCCC.¹⁹

By contrast, there is no reference made in the Paris Agreement to international trade law or agreements. Initially proposed as an option in the Geneva text, it has been withdrawn and not tabled again in the final rounds of talks before COP21. Therefore, the *statu quo* should remain, with a relative deference from the international climate regime with regard to international trade law.²⁰ Having in mind how much international trade law, particularly intellectual property rights, can affect its implementation, the Paris Agreement could have integrated, at least, a clause reflecting upon the mutual supportiveness principle. This principle requires consideration of whether there are areas of conflict given that the Parties are required to interpret and apply the rules emanating from the two different legal regimes in a way that is mutually compatible. It is therefore a principle that enables the different regimes to be linked and coordinated whilst avoiding a hierarchy. According to the International Legal Commission, "*The assumption is that conflicts may and should be resolved between the treaty partners as they arise and with a view to mutual accommodation*".²¹

A reference to mutual supportiveness in the Paris Accord would have been helpful to the world of international business by providing a more balanced approach to the relationship between climate change and business than is currently the case. In terms of its environmental and commercial objectives, the Paris Agreement should not be subservient to international commercial law. More generally, it would have been beneficial to promote the principle of mutual supportiveness in the Paris Accord with a fairly general formulation that takes the mutual supportiveness principle out of its usual application specifically to international trade law.

The Paris Accord could have been inspired by the relatively balanced formulation contained in the Legal principles adopted in 2014 by the International Law Association. Article 10 entitled "Inter-Relationships" is

expressed thus:

"1. In order to effectively address climate change and its adverse effects, States shall formulate, elaborate and implement international law relating to climate change in a mutually supportive manner with other relevant international law.

2. States in cooperation with relevant international organizations shall ensure that consideration of climate mitigation and adaptation will be integrated into their law, policies and actions at all relevant levels, as laid out in Article 3.

*3. According to Article 8, States shall cooperate with each other to implement the inter-relationship principle in all areas of international law, whenever necessary [...]"*²².

Given that it represents a compromise, mutual supportiveness should have been a politically acceptable option and would have benefited the other areas of international environmental cooperation (in particular on ozone layer protection or biological diversity where there has already been some friction) and also more widely to the trade, investment, law of the sea and human rights domains. The clause proposed by the ILA is particularly interesting because it is balanced in aiming to take into account other areas of law in the drafting and implementation of climate law (§1), it also provides a principle of integration of climate demands into other policy areas at all relevant levels (§2) and provides, if necessary, for cooperation on the implementation of the principle of internormativity (§3). In this way, such a clause could enable secondary legislation (for example, previous COP decisions relating to the Paris Accord) to guide the implementation of the Accord in a direction which takes account of other normative areas in an evolutionary way. Such a clause could also inspire other normative areas to take better account of the relevant targets in the Paris Accord in a spirit of "win-win".

To take the example of biodiversity, procedures and modalities for "Intended Nationaly Determined Contributions"²³ implementation could be used to authorise the COP to recommend to Parties that they take into account the need to protect biodiversity, with reference to decisions under the Convention on Biological Diversity (CBD) that relate to certain objectives, means or indicators. Combined with the principle of "no ba-

19 See Abbott, Kenneth W. et al. *International Organizations as Orchestrators*. Cambridge: Cambridge University Press, 2015.

20 See Maljean-Dubois, Sandrine; Wemaëre, Matthieu. L'accord à conclure à Paris en décembre 2015: une opportunité pour 'dé'fragmenter la gouvernance internationale du climat ? *Revue juridique de l'environnement*, v. 4, p. 657, 2015.

21 ICD. Fragmentation of International Law : Difficulties arising from the Diversification and Expansion of International Law. *Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi*, A/CN.4/L.682, 13 Apr. 2006, §276.

22 *ILA. Legal Principles Relating to Climate Change Draft Article*. 2014. Available at: <<http://www.ila-hq.org/en/committees/index.cfm/cid/1029>>.

23 UNFCCC, Decision 1/CP.19 (2013), Further advancing the Durban Platform.

eksliding”, such an initiative could produce a domino effect on biodiversity conservation (whose positive effects on climate change mitigation and adaptation are already well-known). Clearly, the level of resistance that can be expected from some Parties to such an initiative should not be under-estimated. This resistance originates from a fear that discussions within the CBD could be “contaminated” through the “importation” of difficulties and structural issues from the UNFCCC. It also stems from a fear of losing sovereignty by “importing” concepts and rules that emanate from the UNFCCC, also remembering that some important Parties such as the US are not parties to the CBD. It may also be worth thinking about the need for better coordinated action with the Montreal Protocol for example on the elimination of HFCs. This shows particularly well the need of coordination between two international regimes, in that case the climate regime and the ozone regime. The increasing use of HFCs is a climate issue, complicated by the international policy aiming to protect the ozone layer. It is exactly at the interface of the two regimes. There is not a single word on that in the Paris Agreement. The issue has been given only marginal consideration on the road to Paris, as an opportunity to mitigate climate change. However, the Paris Agreement created the momentum which has favoured the adoption of an agreement during the Kigali Meeting of the Parties to the Montreal Protocol, in October 2016²⁴. The Kigali amendment will guarantee a better consistency of international action in favour of climate and ozone.

By promoting voluntary cooperative approaches in its Article 6, the Paris Agreement offers also multiple benefits, both by enhancing the implementation of the climate and other international regimes, and by inspiring and providing good examples to other Parties which could in turn result in an acceleration of the global effort under the Convention. Given the difficulty in making substantial progress involving all Parties, enhanced cooperative action could be a key way of enhancing not just the implementation of work under the Convention, but also under other regimes by promoting synergies with the Convention, and thus reducing fragmentation in the realm of international law.

24 Available at: <<http://www.unep.org/africa/news/kigali-amendment-montreal-protocol-another-global-commitment-stop-climate-change>>.

4. FINAL CONCLUSIONS

In recent years, other important environmental issues as forests, biodiversity, ozone, marine acidification, and so on, have in most cases been overshadowed by the issue of human-induced climate change, yet both are equally important, if not fundamental to the ongoing future of human populations and even planetary life. Indeed planetary boundaries are closely connected and this should be duly reflected in policies and legal tools²⁵. As shown by the lack of cross-reference in decisions taken in the context of the international climate change regime, the UNFCCC behaved sometimes like an autistic convention hermetic to external concerns. According to some authors, “*the connection with issues other than its own has been seen as an unwanted distraction to achieving its narrowly defined and interpreted object and purpose*”²⁶. COP21 has provided an unique opportunity to make a decisive step toward a better open approach of other issues and regimes. The Paris Agreement shows timid progress from this point of view and States have now to assume their responsibilities. Who can claim today in good faith that the international climate regime could solve on its own the issue of climate change? Indeed the natural fragmentation of international law allows States to instrumentalize one policy space against another in order to protect their domestic interests, thereby undermining overall effectiveness in the end.²⁷ Here, the “*schism of reality*” that Amy Dahan and Stefan Aykut pointed out, seems particularly relevant and is problematic. It is the result of a growing gap between a given reality of the world based on the globalization of markets and the overexploitation of fossil fuels, with States being prisoners of a fierce competition who hang on as ever their national sovereignty on the one hand and a negotiating forum supported by international governance arrangements which gives the impression it can be a central regulator being capable of allocating emission rights, but with less and less grip on this given reality.²⁸ Scholars

25 Biermann, F. Planetary boundaries and earth system governance: exploring the links. *Ecological Economics*, v. 81, p. 4, 2012.

26 Chambers, W. B. *Interlinkages and the Effectiveness of Multilateral Environmental Agreements*. Tokyo: United Nations University Press, 2008.

27 Doelle, M. *Re-thinking the Role of the UN Climate Regime*. 5 March 2015. Available at: <<https://blogs.dal.ca/melaw/2015/03/15/re-thinking-the-role-of-the-un-climate-regime/>>. Ostrom, E. Voir aussi E. Ostrom, *Polycentric Systems for Coping with Collective Action and Global Environmental Change*. *Global Environmental Change*, v. 20, p. 550, 2010.

28 Dalmedico, A. Dahan, Aykut, S. *Gouverner le climat, 20 ans de négo-*

have definitely to pay more attention for the coming years both to interplays between the international regimes²⁹ but also to the management of regime complexity at the national level.³⁰

Acknowledgements. This work has been funded by the Agence nationale pour la recherche française within the project CIRCULEX <ANR-12-GLOB-0001-03 CIRCULEX> and by the Iddri (Paris). The authors would like to warmly thank Thomas Spencer, from the Iddri, for his advice and encouragements and Pierre Mazzega, GET Géosciences Environnement Toulouse UMR5563, CNRS / IRD / Université de Toulouse, for his useful insights and comments.

REFERENCES

INTERNATIONAL LAW ASSOCIATION. *Legal Principles Relating to Climate Change Draft Articles*. 2014. Available at: <<http://www.ila-hq.org/en/committees/index.cfm/cid/1029>>.

Abbott, K. W. The Transnational Regime Complex for Climate Change. *Environment & Planning C: Government & Policy*, v. 30, n. 4, p. 571–590, 2012.

Abbott, K. W.; Genschel, Snidal S.; Zangl B. *International Organizations as Orchestrators*. Cambridge: Cambridge University Press, 2015.

Betsil, M. et al. Building Productive Links between the UNFCCC and the Broader Global Climate Governance Landscape. *Global Environmental Politics*, v. 15, p. 1-10, 11 May 2015.

Biermann, F. Planetary boundaries and earth system governance: exploring the links. *Ecological Economics*, v. 81, p. 4-9, 2012.

Chambers, W. B. *Interlinkages and the Effectiveness of Multilateral Environmental Agreements*. Tokyo: United Nations University Press, 2008.

ciations internationales. Paris: Presses de Science Po, 2015. p. 399-400.

²⁹ For example the CMS Convention or the Ramsar Convention, or even regional conventions. See for instance the stimulating proposals of Betsil, M. et al. Building Productive Links between the UNFCCC and the Broader Global Climate Governance Landscape. *Global Environmental Politics*, v. 15, p. 1-10, 11 May 2015

³⁰ Velázquez Gomar, J. O.; Stringer, L. C.; Paavola, J. Regime Complexes and National Policy Coherence: Experiences in the Biodiversity Cluster. *Global Governance*, v. 20, p. 119. 2014.

Dahan, Dalmedico A.; Aykut, S. *Gouverner le climat, 20 ans de négociations internationales*. Paris: Presses de Science Po, 2015.

Doelle, M. *Re-thinking the Role of the UN Climate Regime*. 15 March 2015. Available at: <<https://blogs.dal.ca/melaw/2015/03/15/re-thinking-the-role-of-the-un-climate-regime/>>.

Futhazar, G. The diffusion of the Strategic Plan for Biodiversity and its Aichi targets within the biodiversity cluster: An illustration of current trends in the global governance of biodiversity and ecosystems. *YIEL*, v. 25, n. 1, p. 133-166, 2015.

Keohane, R. O.; VICTOR D. G. The Regime Complex for Climate Change. *Perspectives on Politics*, v. 9, n. 1, p. 7-23, 2011.

Maljean-Dubois, S. (Ed.). *Circulations de normes et réseaux d'acteurs dans la gouvernance internationale de l'environnement*. Aix-en-Provence: Confluence des droits, DICE, Aix-en-Provence, 2017. Available at: <https://dice.univ-amu.fr/sites/dice.univ-amu.fr/files/public/ouvrage_circulex_2017.pdf>.

Maljean-Dubois, S.; Wemaëre, M. L'accord à conclure à Paris en décembre 2015: une opportunité pour 'dé'fragmenter la gouvernance internationale du climat? *Revue juridique de l'environnement*, n. 4, p. 649-671, 2015.

Maljean-Dubois, S.; Wemaëre, M. Biodiversity and climate change. In: Razzaque, J.; Morgera, E. (Ed.). *Encyclopedia of Environmental Law: Biodiversity and Nature Protection Law*. Cheltenham: Edward Elgar Publishing, 2016. p. 295-308.

Oberthur, S.; La Vina, A. G. M.; Morgan, J. Getting specific on the 2015 Climate Change Agreement: Suggestions for the Legal Text with an Explanatory Memorandum. *WRI ACT2015 Working Paper*, May 2015.

Arlinghaus, J. Impacts of Carbon Prices on Indicators of Competitiveness, A Review of Empirical Findings. *OECD Environment Working Papers*, n. 87, 36 p., 27 March 2015.

Orsini, A.; Morin, J.-F.; Young, O. Regime Complexes: A Buzz, a Boom, or a Boost for Global Governance? *Global Governance: A Review of Multilateralism and International Organizations*, v. 19, n. 1, p. 27-39, Jan./Mar. 2013.

Ostrom, E. Polycentric Systems for Coping with Collective Action and Global Environmental Change. *Global Environmental Change*, v. 20, p. 550-557, 2010.

Steffen, W. et al. Planetary Boundaries: Guiding human development on a changing planet. *Science*, v. 347, n. 6223, p. 1, 13 Feb. 2015.

Trouwborst, A. Transboundary Wildlife Conservation in A Changing Climate: Adaptation of the Bonn Convention on Migratory Species and Its Daughter Instruments to Climate Change. *Diversity*, v. 4, p. 258-300, 2012.

Van Asselt, H. *The Fragmentation of Global Climate Governance. Consequences and Management of Regime Interactions*. Cheltenham: Edward Elgar, 2014.

Velázquez Gomar, J. O.; Stringer, L. C.; Paavola, J. Regime Complexes and National Policy Coherence: Experiences in the Biodiversity Cluster. *Global Governance*, v. 20, p. 119-145, 2014.