



Global climate justice and regime of international responsibility under international law

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Abstract

Climate change is the actual biggest challenge facing and threatening the entire planet. It is a global issue and a matter of concern for all humanity as it directly influences the general interest of humanity since the *environment is a universal public property belonging to the common heritage of humanity*. The excessive emission of greenhouse gas leads to a significant ecological disequilibrium.

This paper examines the actual regime of state responsibility and the different ways of remedies under International Law rules and their impacts on enhancing the concept of global climate justice, which will definitely have a positive effect on the stability of international climate regime. This responsibility directly addresses the states not the private actors although they are the most active in the industrial field.

Keywords: global climate justice, climate change, international responsibility, common but differentiated responsibilities, reparations, compensation

1. Introduction

The climate change damages constitute a “threat to international peace and security”^[1]. It could be considered as a “form of ecocide occurring on a global scale”^[2]. This international preoccupation requires an international action from all the countries within a proper multilateral framework in order to reach an international solution and a real engagement from the countries, especially the developed ones (representing almost 20% of the world’s population) viewed as the main responsible for the climate change.

The climate change threatens as well the basic rights of individuals, which has prompted the United Nations Human Rights Council (UNHRC) to confirm that the “*climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights*”^[3]. From this perspective, the adverse consequences of climate change challenge the stability of the states, specially the most vulnerable ones. The global justice climate supposes the adoption of equitable loss and benefits sharing by encouraging the recourse to the principle of “Common but Differentiated Responsibilities - Respective Capabilities (CBDR-RC).

2. Conceptualisation of climate change

The concept of “climate change” is defined, in article 1.2 of

the United Nations Framework Convention on Climate Change (UNFCCC), as “*a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*”. The UNFCCC established the climate regime in 1992, which primarily aimed to mitigate greenhouse gases in order to avoid the impacts of climate change. The international environmental law organises the different issues related to the climate change through international conventions, customary law and the general principles of international law.

In the beginning, the concept was perceived as an environmental matter caused by the increase of greenhouse gases in the atmosphere in addition to the global warming that raised the temperature of 2°. The Industrial Revolution and the development of industrial activities are considered the principal reason behind these changes as they enormously increase the use of fuels. This perception was rapidly transformed to a global preoccupation that affects the different economic, social, political and human rights domains. The speed of such impact has witnessed the worldwide environmental degradation and deterioration.

As for the international legal regulation of climate change, it is important to mention three main instruments that form the legal framework for the International Climate Change Law^[4]:

- **The United Nations Framework Convention on Climate Change (1992) (UNFCCC)**^[5] which was concluded in a form of framework treaty^[6] and does

¹ At the Twelfth session of the Conference of the Parties (COP 12), the former UN Secretary-General Kofi Anan confirmed that the global climate change is a “threat to peace and security”, November 2006, Nairobi, Kenya.

² Ecocide describes “the significant damage to or destruction of an ecosystem to such an extent that peaceful enjoyment of a part of that environment will be substantially diminished”. Patrick Huntjens, Ting Zhang, “Climate Justice: Equitable and Inclusive Governance of Climate Action: Policy and governance recommendations for advancing climate justice”, The Hague Institute for Global Justice, Working paper, No. 16, April 2016, p. 6.

³ United Nations Human Rights Council (UNHRC), Resolution on Human rights and climate change, 10th session, A/HRC/RES/10/4, March 2009.

⁴ Cinnamon P. Carlame, Oxford Handbook of International Climate Change Law, Oxford University Press, 2016.

⁵ The UNFCCC entered into force on 21 March 1994. With a near-universal membership, the convention has 197 ratified member states. <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>

⁶ A framework treaty is defined as “a conventional instrument that sets out the principles to be used as a basis for cooperation among States Parties in a specific area, while leaving it to them to define, by separate agreements,

not contain any binding obligations, only principles and general objectives. It aims mainly to convince or rather encourage states to adopt common actions in order to “achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”^[7].

- **The Kyoto Protocol 1997**^[8] contains binding obligations, especially for the developed states^[9]. Based on this agreement, the industrialised states accept legally binding commitments in order to limit and reduce greenhouse gas emissions. The nature of obligations could be considered as “obligation of result”^[10] as it states that “parties have to ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases...do not exceed their assigned amounts”^[11]
- **The Paris Agreement 2015**^[12] presents a global approach that establishes binding obligations to mitigate the emissions of greenhouse gases for developed and developing countries. With a universal participation of a large number of states, the Agreement emphasises the concept of “climate justice” in its preamble (para. 13). It lays the basis for a new legal framework to combat the climate changes applicable beyond 2020. This framework covers six main themes: “climate change mitigation; managing the harmful effects of climate changes; Resources and technology transfer; education; access to information and participation of public in climate change domain, capacity building and finally, monitoring and controlling the setting implemented”^[13]. The Paris Agreement is closely linked to the UNFCCC, only the members of the convention are allowed to adhere to the Agreement.

3. Climate change damages

The climate change damages could be defined as “residual damage, whether material, moral or environmental, that might lead to reparation under international public law”

the modalities and details of the cooperation, by providing, where appropriate, adequate institution (s) for thit purpose”.

Alexandre KISS, « Les traités-cadres. Une technique juridique caractéristique du droit international de l’environnement », Annuaire français de droit international, 1993, p. 793. The recourse of this instrument was largely used in the practice of International Environmental Law. As for example, Vienna Convention for the Protection of the Ozone Layer (1985).

⁷ The United Nations Framework Convention on climate change (UNFCCC), 1992, article 2.

⁸ The Kyoto Protocol adopted in Kyoto (Japan) on 11 December 1995, entered into force on 16 February 2005

⁹ For more information about the difference between UNFCC and Kyoto Protocol, see, Yves PETIT (dir.), Le Protocole de Kyoto. Mise en œuvre et implications, Strasbourg, Presses universitaires de Strasbourg, 2002, p. 247. Sandrine MALJEAN-DUBOIS, « La mise en route du Protocole de Kyoto à la Convention-cadre des Nations Unies sur les changements climatiques », Annuaire français de droit international, 2005, pp. 433- 463. Yves PETIT (dir.), Le Protocole de Kyoto. Mise en œuvre et implications, Strasbourg, Presses universitaires de Strasbourg, 2002, p. 247.

¹⁰ Benoit Mayer, “Obligations of conduct in the international law on climate change: A defence”, RECIEL, Vol. 27, 2018, p. 130.

¹¹ Kyoto Protocol, art.3.

¹² Paris agreement is an international treaty that entered into force on 4 November 2016 after the ratification of 55 member states of the convention.

¹³ Géraud de Lassus St-Geniès, « L’Accord de Paris sur le climat : quelques éléments de décryptage », Revue Québécoise de Droit International, Vol. 28, No. 2, 2015, p. 30.

https://www.persee.fr/doc/rqdi_0828-9999_2015_num_28_2_2183

^[14]. The impact and types of damages due to climate change depend on the existing international efforts of mitigation as well as the adaptation measures (national efforts adapted within the country).

The damages are mainly measured in the sectors and domains that are the most exposed to climate and directly depending on it, especially the agriculture. They are due to two main phenomena: natural disaster and human activities. The natural causes may include natural disasters, such as volcanos that increase the emissions of CO₂ (but its percentage is really small compared to emissions of industries). The increase of human activities leads to many problems that negatively affect different aspects of life, such as water scarcity, weather variations and heat waves, food insecurity, health problems, ..., population displacement. All these cause a “cascade effect” on ecosystems and a decline of biodiversity.

4. International state responsibility

According to the regime of international state responsibility^[15], a state is responsible in case it committed a wrongful or unlawful act that constitutes a breach of its international obligations. In addition, a state may breach the international obligation of “no harm rule”^[16] that oblige it to ensure that activities within its jurisdiction do not cause significant cross-boundary environmental damage^[17]. In this case, the responsibility of the state will be engaged in order to cease this act^[18] and to proceed to a reparation, which could take the form of compensation, restitution or satisfaction.

For the climate and the environment in general, the regime of state responsibility suffers from different complexity and raises several problems that need more consideration. For example, the application of the obligation of no harm requires the fulfillment of three conditions: “a cross boundary environmental damage; casual relation with specific activities within the jurisdiction and the failure of the state to take reasonable measures to prevent the harm”^[19]. To be a cross-boundary environmental damage, the harm must be the result of a human activity, be its physical consequence, have a physical effect crossing national boundaries and this harm must exceed a certain level of

¹⁴ Noémie Rachel Kugler, Pilar Moraga Sariago, “Climate change damages”, conceptualization of a legal notion with regard to reparation under international law”, Climate Risk Management, vol. 13, 2016, p. 110.

¹⁵ International Law Commission, General rules of international responsibilities of States, Responsibility for internationally wrongful acts, A/56/10 August 2001.

¹⁶ The principle of “no harm” is an important and widely recognised principle in customary international law. It is also considered as a foundation of international environmental law “whereby a state is duty-bound to prevent, reduce and control the risk of environmental harm to other states”. Ian Brownlie, Principles of Public International Law, 7th ed., 2008, p. 275. The UNFCCC confirms in its preamble that state “has the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction”.

¹⁷ Benoit Mayer, “The relevance of the no harm principle to climate change law and politics”, Asia-Pacific Journal of Environmental Law, Vol. 19, 2016, p. 79.

¹⁸ Article 30 (Cessation and non-repetition), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report. It also appeared on Yearbook of the International Law Commission, 2001, vol. II (Part Two).

¹⁹ Benoit Mayer, “State Responsibility and Climate Change Governance: A light through the storm”, Chinese Journal of International Law, vol. 13, No. 3, 2014, p. 539.

severity that requires a legal action ^[20]. A link of causality between the act of the state and the damage occurred should be established. It is also necessary to prove that the state is failing to act with due diligence. The damage should be serious and significant. However, there is no international criteria that determine the significance or severity of damage that entails the responsibility of a state. In addition, it is known that it is quite difficult to prove the responsible for the origin of the damage causes, whether it comes from public or private actors as the damages are often the result of accumulation of causes committed by several actors. Furthermore, the nature and the impact of the damages are not easy to be detected.

Seeing these difficulties, the international society opts for a gradual treatment of climate change problems. In spite of the fact that the states are not the only actor responsible for climate change, the role of other private actors, especially the firms and individuals, should be considered. However, states are responsible for all the activities arising from their dependent actors. This is “one of the State’s duty of control” ^[21]. In this case, the question is whether a state could be held responsible according to international rules for damages caused by climate change in its country or even for damages affecting the *neighbouring* countries?

Although the rules of international law are based on the principle of “sovereign equality of states” ^[22], the international environmental law seems different ^[23] regarding the attribution of state’s responsibility. The Convention of Rio de Janeiro 1992 establishes the concept of “Climate international responsibility” according to the principle of “Common but Differentiated Responsibilities-Respective Capabilities: CBDR-RC” ^[24]. This principle recognises that all states are responsible for climate change, but the level of responsibility and their capacities to deal with are different. The UNFCCC convention provides that the international responsibility differs according to the level of the state development. The difference is made between developed states (listed in annex I of the convention) and developing states (not included in annex I). The developed states have an additional responsibility, as they are largely responsible for the majority of problems facing the planet. Consequently, they have to address the severe impacts of climate change and assist the developing states by providing financial and technological assistance to mitigate the causes and consequences of the climate change. This principle dated from 1992 was not modified to take into consideration the changes in the economic level of many developing countries. For example, China and South Korea were

developing countries according to UNFCCC while at present they are considered as emerging advanced economies as per the recent reports of International Monetary Fund. The Paris Agreement inherited the principle of CBDRRC, but it focuses more on “*the capabilities of nations than responsibilities for emissions*” ^[25].

5. Remedies for climate change

The regime of climate international state responsibility aims to prevent the degradation of the climate status quo and to ensure a fair compensation for damages in case of severe national or transboundary effects. The remedies for climate change constitute an important step in order to maintain the justice. A state’s responsibility might be engaged in different cases and for different purposes.

To eliminate the negative consequences of a wrongful act, a state may proceed to:

- **Cease the wrongful conduct:** At the international level, states may fail to fulfill their obligations or violate an international rule. The cessation is usually the first action required in order to stop the violation of an international rule.
- **Offer assurances and guarantees of non-repetition:** It is a preventive action for the future act that aims to restore the confidence in the relationships between states or actors. It is not requested in all the situations, only when the cessation is not sufficient to reestablish the relationship between actors.

In addition, the responsible state “is *under the obligation to make full reparation for the injury caused by the internationally wrongful act*” ^[26]. The injury may be material or moral or even both. The reparation ^[27] may take different forms, either singly or in combination:

- restitution
- compensation
- satisfaction
- jurisdictional (courts) actions

The remedies regime in environmental damages and climate change is different. It may vary from asking states to cease the wrongful act or the harm it is responsible for, to placing pressure on states in order to take more serious actions at the national level. As for the reparation, it is extremely difficult to adopt the same road of the international regime for reparation, especially in case of restoration or restitution ^[28] because they are quasi impossible in almost all the cases. A financial compensation seems an appropriate full reparation of damages. The proportionality of damages should also be

²⁰ Marte Jervan, “The prohibition of transboundary environmental harm. An analysis of the contribution of the International Court of Justice to the development of the no harm rule”, PluriCourts research paper, 2014, no. 14-17, pp. 4-5.

²¹ Christina Voigt, “State Responsibility for Climate Change Damages”, Nordic Journal of International Law, Vol. 77, 2008, p. 9.

²² Christophe Colette, “L’action internationale contre les changements climatiques : Perspectives de l’après-Kyoto”, Études Internationales, Vol. 39, No. 2, juin 2008, p. 237.

²³ For more information about this concept, see, Lavanya RAJAMANI, “Differential Treatment in International Environmental Law”, Oxford University Press, 2006.

²⁴ According to Article 3.1 of the UNFCCC Convention: “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof”.

²⁵ Tian Wang and Xiang Gao, “Reflection and operationalisation of the common but differentiated responsibilities and respective capabilities principle in the transparency framework under the international climate change regime”, Advances in Climate Change Research, Vol. 9, issue 4, 2018, p. 254.

²⁶ Article 31 (Reparation), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report, A/56/10 August 2001. It also appeared on Yearbook of the International Law Commission, 2001, vol. II (Part Two).

²⁷ Article 34 (Forms of Reparation), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report, A/56/10 August 2001.

²⁸ It is the “re-establishment as far as possible of the situation that existed prior to the commission of the internationally wrongful act”. Commentaries to the draft articles on responsibility of states for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session, 2001, p. 237.

considered.

The UNFCCC does not mention the concept of damages or its compensation. It focuses more on the mitigation of greenhouse gases. In its preamble, the Convention stresses on the state's responsibility in order to "*ensure that activities within their jurisdiction or control do not cause harm or damage to the environment of other States or of areas beyond the limits of national jurisdiction*" [29]. This obligation is one of the important principles of international law that aims to respect the rights of other states. However, none of its provisions explains the responsibility of states. The convention puts the onus on the industrialised countries as the main responsible for the escalation of the situation.

As for Kyoto Protocol, it indicates a regime of sanction for non-compliance by giving states reasonable deadline to meet their contractual obligations to reduce the greenhouse gas emissions. In case of non-respect of the deadline, states will be considered in breach of their obligations.

The Stockholm declaration in 1972 encourages states to develop an international regime of liability and responsibility that may help in improving the regime of compensation for "*the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction*" [30]. However, the majority of interstate conflicts have been solved by using negotiations and multilateral or bilateral arrangements and agreements without any reference to the existing international rules.

The 19th Conference of the Parties (COP) creates the Warsaw International Mechanism for "Loss and Damage" in 2013 to "*address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change*" [31]. This should be done in a "*comprehensive, integrated and coherent manner*". The concept of loss and damages is defined as "*the actual and/or potential manifestation of impacts associated with climate change in developing countries that negatively affect human and natural systems*" [32]. The problem is that the *extreme and slow onset events, such as desertification, increasing temperatures, sea level rise, ocean acidification, land and forest degradation, loss of biodiversity* [33]....., cause more harm to the developing and vulnerable states.

This mechanism for "Loss and Damage" was integrated into the Paris Agreement in article 8 after hard negotiations that illustrate deep divergences between developed and developing states. Article 8 was carefully drafted in a form of compromise in order to exclude any type of concepts that make them responsible for climate damages that will definitely lead to financial obligations (compensation) and corrective measures. It states, in para. 3 that "*the Parties' obligations are of cooperative and facilitative character*". This article "*adds loss and damage as a third pillar to the*

climate regime alongside mitigation and adaptation" [34]

At the national level, several jurisprudences emerged from different courts which develop the tendency of climate litigation. A state may not take the necessary measures as per its authority in order to control and manage the excessive use of fuels in its industrial activities or to minimise its negative impacts as well as to mitigate the greenhouse gas. A state could also be held responsible in case of failing to act with due diligence. This obligation of due diligence supposes the existence of climate policies and regulations. The jurisdictional actions that may be taken in order to achieve the climate justice are different depending on the nature of the damages and the actor who committed the act.

There are several reasons for pursuing a legal climate process:

- **Actions may be brought in front of national jurisdiction against a state or public agencies (public responsibility) in order to force them to take more effective measures or legislations to mitigate the emissions of greenhouse gases. It could also aim to stop the construction of a project, related to either states or private actors, which could have negative impact on climate system or on fundamental human rights.**

In one important judgment in this regard, The Hague Court of Appeal upheld in 2018 the decision of the District Court of The Hague in the famous case "Urgenda Foundation V. the State of The Netherlands"³⁵ in 2015. It confirmed that the State of The Netherlands has breached its duty of care according to the Dutch Civil code and articles 2 and 8 of European Convention on Human Rights (ECHR) and then "*failing to pursue a more ambitious reduction of greenhouse gas emissions*". Therefore, it was decided that the State must reduce the emissions of greenhouse gas by at least 25% by 2020.

In another case, in April 2018, the Supreme Court of Colombia rendered a remarkable decision [36] in a case of climate litigation in which it attributes the legal personality to the Amazon Region as an entity subject of rights. This case was brought to the court by a group of Colombian citizens claiming that the governmental measures and policies increase the deforestation of the Amazon region and consequently the greenhouse gas, which negatively influence their rights to a healthy environment. The Court ordered the Colombian State to take its duty of protection of the Amazon region and acknowledge its essential role in climate balance for the present and future generations by reducing the deforestation of the region.

- **Actions taken by the state or by any other actor against a private actor at the national level in order to search for a compensation of the damage due to**

²⁹ UNFCCC, preamble, para. 8.

³⁰ Stockholm Declaration in 1972, Principle 22.

³¹ 19th Conference of the Parties (COP), 2013 (Decision 2/CP.19)

³² Report of the Subsidiary Body for Implementation on its thirty-seventh session, held in Doha from 26 November to 2 December 2012, Framework Convention on Climate Change, FCCC/SBI/2012/INF.14, p. 3.

³³ Decision 1/CP.16 on the Cancun Adaptation Framework, paragraph 25 defined the different types of slow onset events.

³⁴ Keely Boom, Julie-Anne Richards and Stephen Leonard, report on "Climate Justice: the international momentum towards climate litigation", Heinrich Boell Foundation, 2016, p. 14.

³⁵ Urgenda Foundation v. The Netherlands [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal)). For more information about this case: Torre-Schaub Marta, « L'affirmation d'une justice climatique au prétoire (quelques propos sur le jugement de la cour du district de La Haye du 24 juin 2015) », Revue Québécoise de droit international, vol. 29, issue 1, 2016, pp. 161-183.

³⁶ Corte Suprema de Justicia, STC4360/2018, 5/4/2018.

climate change or to mitigate the effects of such a phenomenon.

▪ Actions taken by a state against another state.

In a number of cases, the environmental protection is assimilated to human rights. In November 2015, an Inter-American Court of Human Rights issued a historical Advisory Opinion on the Environment and Human Rights^[37] in response to a request from the State of Colombia. The Court recognised “*the existence of an undeniable relationship between the protection of the environment and the realisation of other human rights, in that environmental degradation affects and the adverse effects of climate change affect the real enjoyment of other human rights*”^[38]. The Court states that in order to comply with the obligation of prevention “*states must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred*”^[39].

6. Global climate justice

As a universal public property belonging to the common heritage of humanity, the climate change is a global problem that requires a global solution. All the states must act for the protection of the environment and assume a full and common responsibility towards climate change but taking into consideration the different and degree of responsibilities and respective capabilities. This will lead to a global climate justice, which can be defined as “*addressing the disproportionate burden of climate change impacts on poor and marginalized communities*”^[40]. It is a strategy that aims to remove all unfair and unequal burdens derived from negative consequences of climate change.

The climate justice has two important sub-concepts: Equity and Fairness^[41] which were included in the “Common but Differentiated Responsibility” principles in the United Nations Framework Convention on Climate Change (UNFCCC)^[42]. The first international explicit recognition of the concept “climate justice”^[43] was in the preamble^[44] of the Paris Agreement.

³⁷ The Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, 15th of November 2017.

http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en

³⁸ Op. cit., para. 47, p. 21.

³⁹ Op. cit., para. 242. b, p. 92.

⁴⁰ Abate RS (ed), Climate Justice: Case Studies in Global and Regional Governance Challenges, Environmental Law Institute Washington DC, 2016.

⁴¹ Patrick Huntjens, Ting Zhang, “Climate Justice: Equitable and Inclusive Governance of Climate Action: Policy and governance recommendations for advancing climate justice”, The Hague Institute for Global Justice, Working paper, No. 16, April 2016, p. 4.

⁴² Chitresh Saraswat and Pankaj Kumar, “Climate justice in lieu of climate change: a sustainable approach to respond to the climate change injustice and an awakening of the environmental movement”, *Energ. Ecol. Environ.*, Vol. 1, No. 2, 2016, p. 68. DOI 10.1007/s40974-015-0001-8

⁴³ Keely Boom, Julie-Anne Richards and Stephen Leonard, report on “Climate Justice: the international momentum towards climate litigation”, Heinrich Boell Foundation, 2016, p. 6.

⁴⁴ The preamble of Paris Agreement provides “the importance for some of the concept of “climate justice”, when taking action to address climate change”.

The actual global situation marks an injustice caused by the adverse climate change effects. The main responsible for this phenomenon is the developed countries that can easily recover from the negative impacts of climate change owing to their economic and political potentials. Unlike the most vulnerable countries which suffer from these impacts and have to challenge this situation without any international support. The global climate justice seeks to “*promote more equitable allocation of the burdens of these impacts at the local, national and global levels through proactive regulatory initiatives and reactive judicial remedies that draw on international human rights and domestic environmental justice theories*”^[45]. This justice urgently needs to be maintained in order to “*build on a platform of equitable development, human rights and political voice*”^[46].

The climate change exacerbates inequalities around the globe. This affects all developed and developing countries on a different scale. There is a range of various aspects of inequalities depending on:

▪ The actual and historical contribution level of different actors to climate change

The industrialised and developed countries are effectively responsible more than others for the increase of greenhouse emissions. Therefore, they have a material and moral responsibility in this regard. The historical responsibility of the ecological (climate) debt^[47] helps to determine the part of each state in this debt. The situation has been slightly changed with the existence of new contributors in climate change other than state actors, especially the multinational companies and corporations.

▪ The impacts of distribution of damages of this change

Many documents were focused on measuring the impacts of climate change in order to quantify the damages caused; it has been shown that the poorest and the developing states are the most negatively affected by climate change as they sometimes have not the appropriate methods or sufficient resources to deal with climate change^[48].

▪ The repartition of charges and reparation of damages

The UNFCCC establishes the principle of “common but differentiated responsibilities and respective capabilities” which consists on distributing the charges of protecting the climate system between different states according to their differentiated part of responsibilities. This concept emphasises the idea of historical responsibility. The proper and fair application of this principle will lead to global climate justice. It integrates three correlative concepts: common responsibility; differentiated responsibility and respective capabilities.

7. Conclusion

⁴⁵ Abate RS (ed), op. cit., p. XXXIII.

⁴⁶ Barbara Adams and Gretchen Luchsinger, “Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs”, UNCTAD/NGLS/2009/2, November 2009, p. XII.

⁴⁷ Catherine Larrère, « Inégalités environnementales et justice climatique », *Annales des Mines - Responsabilité et Environnement*, Vol. 3, No. 79, Juillet 2015, p. 74.

⁴⁸ Intergovernmental Panel on Climate Change, Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, ed Field CB, *et al.* (Cambridge Univ Press, Cambridge, UK), 2012.

The regime of responsibility for climate change and the obligations arising from this field should be perceived as mandatory obligations. The actual regime faces serious challenges that limit its effectiveness which include but not limited to the multiplicity of actors, the accumulation of causes, the non-respect of international obligations, and the withdrawal from international conventions. The concept of international climate responsibility needs more development and adaptation to the evolution of the international society. This necessity is related to the emergence of new concepts, such as “duty of care”, “due diligence”, “sustainable society” and the right to a stable climate”. The increasing role of non-state actors needs to be regulated and organised. The global climate justice appears as an important and fundamental concept directly linked to the effectiveness of international regime of responsibility which positively influence the human rights and the sustainable development.

8. Recommendations

- Encourage states to ratify the international conventions that aim to mitigate the emissions of greenhouse gas and address the climate change.
- Establish a rigorous international mechanism for monitoring the implementation by states of their national contributions.
- Create rules under International Law that recognise and regulate the responsibility of the private sector and its important role in the mitigation of greenhouse gas emissions.
- Enhance the policies and strategies that help in the transition to zero carbon by 2050.
- Create an international strategy for improving and enhancing the global climate justice that ensures the respect of human rights as a fundamental right largely affected by the climate change.

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6. A framework treaty is defined as "a conventional instrument that sets out the principles to be used as a basis for cooperation among States Parties in a specific area, while leaving it to them to define, by separate agreements, the modalities and details of the cooperation, by providing, where appropriate, adequate institution (s) for this purpose”.
7. Alexandre KISS. « Les traités-cadres. Une technique juridique caractéristique du droit international de l’environnement », Annuaire français de droit international, 1993, p. 793.
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13. Benoit Mayer. “Obligations of conduct in the international law on climate change: A defence”, RECIEL, 2018; 27:130.
14. Kyoto Protocol, art.3.
15. Paris agreement is an international treaty that entered into force on 4 November after the ratification of 55 member states of the convention, 2016.
16. Géraud de Lassus St-Geniès, « L’Accord de Paris sur le climat : quelques éléments de décryptage », Revue Québécoise de Droit International. 2015; 28(2):30.
17. https://www.persee.fr/doc/rqdi_0828-9999_2015_num_28_2_2183
18. Noémie Rachel Kugler, Pilar Moraga Sariago, “Climate change damages”, conceptualization of a legal notion with regard to reparation under international law”, Climate Risk Management, 2016; 13:110.
19. International Law Commission, General rules of international responsibilities of States, Responsibility for internationally wrongful acts, A/56/10 August, 2001.
20. The principle of “no harm” is an important and widely recognised principle in customary international law. It is also considered as a foundation of international environmental law “whereby a state is duty-bound to prevent, reduce and control the risk of environmental harm to other states”. Ian Brownlie, Principles of Public International Law, 7th ed, 2008, p, 275.
21. The UNFCCC confirms in its preamble that state “has the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction”.

22. Benoit Mayer, "The relevance of the no harm principle to climate change law and politics", *Asia-Pacific Journal of Environmental Law*, 2016; 19:79.
23. Article 30 (Cessation and non-repetition), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report. It also appeared on Yearbook of the International Law Commission, 2001, vol. II (Part Two).
24. Benoit Mayer. "State Responsibility and Climate Change Governance: A light through the storm", *Chinese Journal of International Law*. 2014; 13(3):539.
25. Marte Jervan. "The prohibition of transboundary environmental harm. An analysis of the contribution of the International Court of Justice to the development of the no harm rule", *PluriCourts research paper*, 2014; (14-17):4-5.
26. Christina Voigt. "State Responsibility for Climate Change Damages", *Nordic Journal of International Law*, 2008; 77:9.
27. Christophe Colette, "L'action internationale contre les changements climatiques: Perspectives de l'après-Kyoto", *Études Internationales*. 2008; 39(2):237.
28. For more information about this concept, see, Lavanya Rajamani, "Differential Treatment in International Environmental Law", Oxford University Press, 2006.
29. According to Article 3.1 of the UNFCCC Convention: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof".
30. Tian Wang, Xiang Gao. "Reflection and operationalisation of the common but differentiated responsibilities and respective capabilities principle in the transparency framework under the international climate change regime", *Advances in Climate Change Research*. 2018; 9(4):254.
31. Article 31 (Reparation), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report, A/56/10 August, 2001. It also appeared on Yearbook of the International Law Commission, 2001, vol. II (Part Two).
32. Article 34 (Forms of Reparation), Responsibility of States for Internationally Wrongful Acts, International Law Commission Report, A/56/10 August, 2001.
33. It is the "re-establishment as far as possible of the situation that existed prior to the commission of the internationally wrongful act". Commentaries to the draft articles on responsibility of states for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session, 2001, p. 237.
34. UNFCCC, preamble, para. 8.
35. Stockholm Declaration in, 1972, Principle 22.
36. 19th Conference of the Parties (COP), 2013. (Decision 2/CP.19)
37. Report of the Subsidiary Body for Implementation on its thirty-seventh session, held in Doha from 26 November to 2 December, 2012, Framework Convention on Climate Change, FCCC/SBI/2012/INF.14, p. 3.
38. Decision 1/CP.16 on the Cancun Adaptation Framework, paragraph 25 defined the different types of slow onset events.
39. Keely Boom, Julie-Anne Richards and Stephen Leonard, report on "Climate Justice: the international momentum towards climate litigation", Heinrich Boell Foundation, 2016, p. 14.
40. *Urgenda Foundation v. The Netherlands* [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal)). For more information about this case: Torre-Schaub Marta, « L'affirmation d'une justice climatique au prétoire (quelques propos sur le jugement de la cour du district de La Haye du 24 juin 2015 », *Revue Québécoise de droit international*. 2016; 29(1):161-183.
41. Corte Suprema de Justicia, STC4360/2018, 5/4/2018.
42. The Inter-American Court of Human Rights, Environment and Human Rights, Advisory Opinion OC-23/17, 15th of November, 2017.
43. http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en
44. Op. cit., para. 47, p. 21.
45. Op. cit, para. 242. b, p. 92.
46. Abate RS (ed), *Climate Justice: Case Studies in Global and Regional Governance Challenges*, Environmental Law Institute Washington DC, 2016.
47. Patrick Huntjens, Ting Zhang, "Climate Justice: Equitable and Inclusive Governance of Climate Action: Policy and governance recommendations for advancing climate justice", The Hague Institute for Global Justice, Working paper, No. 16, April, 2016, p. 4.
48. Chitresh Saraswat, Pankaj Kumar. "Climate justice in lieu of climate change: a sustainable approach to respond to the climate change injustice and an awakening of the environmental movement", *Energ. Ecol. Environ*. 2016; 1(2):68. DOI 10.1007/s40974-015-0001-8
49. Keely Boom, Julie-Anne Richards, Stephen Leonard. Report on "Climate Justice: the international momentum towards climate litigation", Heinrich Boell Foundation, 2016, p. 6.
50. The preamble of Paris Agreement provides "the importance for some of the concept of "climate justice", when taking action to address climate change".
51. Abate RS (ed), op. cit., p. XXXIII.
52. Barbara Adams and Gretchen Luchsinger, "Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs", UNCTAD/NGLS/2009/2, November, 2009, p. XII.
53. Catherine Larrère, « Inégalités environnementales et justice climatique », *Annales des Mines - Responsabilité et Environnement*. 2015; 3(79):74.
54. Intergovernmental Panel on Climate Change, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, ed Field CB, *et al.* (Cambridge Univ Press, Cambridge, UK), 2012.