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**FROM INTERNATIONAL POLICY TO GOAL-SETTING GLOBAL  
GOVERNANCE: ARE THE UN SUSTAINABLE DEVELOPMENT GOALS AN  
EFFECTIVE LEGAL TOOL?**

**A Comparison with the Paris Agreement**

**MASTER OF TRANSNATIONAL LAW**

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## **ABBREVIATIONS:**

<b>UN</b>	United Nations
<b>SDGs</b>	Sustainable Development Goals
<b>UNFCCC</b>	United Nations Framework Climate Change Convention
<b>MDGs</b>	Millennium Development Goals
<b>NDCs</b>	Nationally Determined Contributions
<b>WCED</b>	World Commission on Environment and Development
<b>IAEG-SDGs</b>	Inter-Agency Expert Group of Sustainable Goal Indicators
<b>COP</b>	Conference of the Parties
<b>PIL</b>	Public International Law
<b>WRI</b>	World Resources Institute
<b>TERI</b>	The Energy and Resources Institute
<b>IOs</b>	International Organizations
<b>UNDP</b>	United Nations Development Programme
<b>UNGA</b>	United Nations General Assembly

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## INTRODUCTION

### **When 2015 put climate change at roundtable discussions**

2015 was the year that (re)shaped the public international law (PIL) community. The United Nations (UN) launched only months apart two different global instruments designed to be used in the fight against climate change: one using a similar, traditional approach, but with a sophisticated touch, and one using soft law, but with ambitious targets. The first one is the Paris Agreement, genuinely recognised as perhaps one of the most important '*hard law*' instruments in climate change; the second is the UN 2030 Agenda with its 17 Sustainable Development Goals (*SDGs*).

The Paris Agreement was somewhat expected to fill in the gaps and failures left by its predecessors: the UN Framework Climate Change Convention (*UNFCCC*) adopted in '92 and the Kyoto Protocol, adopted under the UNFCCC in '97.

On the other hand, the SDGs came as a '*renewal*' to the Millennium Development Goals (*MDGs*), ambitiously setting clear and tangible targets to be achieved by 2030, including targets to combat climate change.

In short, 2015 came in strongly with a new approach to public international law and, inherently, to global governance. It brought together all nations to conclude long-term common targets in tackling their future development sustainably, rather than just short-term. While States still adhere to international conventions, although the past decades have shown that when it comes to climate action, they were not as efficient, the UN brought an innovative approach, through goal-setting agenda: *no one must be left behind*. Hence, the 17 SDGs conclude a collaborative agenda, bringing together not only States, but a diversity of international, regional and local actors, including individuals and private businesses.

With less than 10 years to go forward, we have celebrated in 2020 a 5-year milestone for both the Paris Agreement and the 2030 Agenda, all during a world-changing pandemic, human rights movements and major political changes across the globe. I shall approach each of these topics in relation to my main focus point, sustainable development, in the upcoming chapters.

The rapidly changing history has shown us that these events can no longer be silenced, and should not be.

### **The approach of this paper**

In my first chapter I will discuss the legal nature of the SDGs and their importance to the legal and academia worlds. Subsequently, in my second chapter, I will briefly give an overview on global governance and its impact on the climate crisis, our learnings so far from the past experiences, and why the SDGs should be considered an innovative global governance tool. My third chapter will focus on the similarities and discrepancies between the Paris Agreement's Nationally Determined Contributions (*NDCs*) and the SDGs, with a clear focus on climate action, but also considering the recent US elections, and the COVID-19 pandemic.

Lastly, but hopefully challenging enough, I will argue in my fourth chapter that 'goal-setting' is a transformative, innovative approach adopted by the UN through the 2030 Agenda, compared to the old, dull, traditional public international law. I will outline the criticism and advantages of this approach, bringing some concrete and tangible examples of what has happened since their launch in 2015 in comparison to the Paris Agreement. I will conclude with my personal opinion on the topic, looking at the incoherence of policy-making at global level and the confusion created in the past years in the field of climate action.

This paper should be seen as a portal into the legal perspective on climate change, but also on sustainable development as a whole. The UN's motto since 2015 '*Leave no one behind*' means that each action made towards a concrete target can make a difference, even if it is a humble MA thesis. I hope to bring you on a journey where you critically start observing the legal backbone of public international law that we have known so far, and to ignite the spark in conducting some more research on the topic. As we are partaking in a global climate crisis, our planet needs all of us, from scholars, professors, science experts to children, households or grandparents. The more we educate ourselves on what means sustainable development and how beneficial it is for us and our future generations, the more we increase our chances to succeed.

With that being said, let me start with the key argument for this paper: *what are the SDGs and what is their legal nature.*

## CHAPTER 1

### What are the SDGs and why are they important?

On 25 September 2015, 193 Member States of the United Nations adopted the ‘2030 Agenda for Sustainable Development’ as a *comprehensive, far-reaching and people-centered set of universal and transformative Goals and targets*.<sup>1</sup> On this day, the outcome was a policy framework that was *accepted by all countries and applicable to all*<sup>2</sup> marking the beginning of the 15 years journey of the 17 aspirational Goals and their 169 quantitative and qualitative targets.

Briefly, the 17 SDGs are a set of 169 interconnected targets, with 232 established indicators. The motto that lies behind these goals is *Leave no one behind*<sup>3</sup>, which in practice means that if before the sub-populations, minorities or individuals’ opinions were disregarded when it came to generating change or global decision-making, now the situation has changed. Everything about these new targets and goals is about cross-action: cross-sectoral, cross-regions, cross-definitions.

The very innovative approach of the SDGs is that they strike down the traditional silence between regions and various cultures, definitions, issues, departments, sectors and people. This means that the goals are universally applicable, to all States, regardless of their traditional development status, unlike their former precursor, the MDGs, that applied strictly to developing countries.<sup>4</sup> In addition, the SDGs require substantial policy coherence and multi-

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<sup>1</sup> Resolution 70/1 adopted by the General Assembly on 25 September 2015: ‘*Transforming our world: the 2030 Agenda for Sustainable Development*’, para. 2 (*hereinafter Resolution 70/1*)

<sup>2</sup> *Id.*, para. 5

<sup>3</sup> United Nations, 2016, ‘*Global Sustainable Development Report*’, 2016, Department of Economic and Social Affairs, New York, July, (*hereinafter GSDR, 2016*), p. 3-7.

<sup>4</sup> JP Bervoets’s speech at ‘*Innovation Works*’, London, Ontario, Canada, as Vice President of the Community Foundations of Canada; He provides a high-level overview as to what the UN SDGs are and why they are important at the local, national and international level. 2018; *available [here](#)*.

stakeholder participation.<sup>5</sup> In this case, each opinion matters. In this case, no one will be *left behind*.

To answer the question of *why* the SDGs are important, one must keep in mind that they were built in the first place with the participation and consultation of the population. It sets a strong historical landmark in global governance, particularly in regard to public international law and its strategic mechanisms. The SDGs broke down all the barriers that public international law has built, by including the individuals and private businesses in the decision-making process.<sup>6</sup> It also represents an unprecedented movement in global governance as the SDGs were built beyond the public consultation by offering a participatory path to all world's populations.<sup>7</sup>

Additionally, the SDGs' core is achieving a sustainable future by 2030, by addressing current global challenges that we face, such as *poverty, inequality, climate change, environmental degradation, peace and justice*.<sup>8</sup> As such, their wide scope brings together common indicators of the themes abovementioned and they lay out a global mechanism that could be used by all States, public and private institutions, and individuals.

In short: the SDGs have created a *shared language* across nations. They represent a transformative global governance tool, as I will further argue in the next chapter, but as I must already mention, they give us the ability to work effectively across geographies, culture, political influences and legal frameworks.

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<sup>5</sup> United Nations, 2018. '*Working Together: Integration, institutions and the Sustainable Development Goals*', World Public Sector Report 2018, Division for Public Administration and Development Management, Department of Economic and Social Affairs, (DPADM), New York, April.

<sup>6</sup> Rakhyun E. Kim and Arlid Underdal, 2017. '*The Sustainable Development Goals and Multilateral Agreements*'; Utrecht University and University of Oslo. January 2017, p. 5-6.

<sup>7</sup> Fox O. Stoett P., 2016. '*Citizen participation in the UN Sustainable Development Goals Consultation Process: Toward Global Democratic Governance?*' *Global Governance*, 22(4), 555–573

<sup>8</sup> United Nations, 2016. '*The Sustainable Development Goals are Coming to Life, Stories of Country Implementation and UN Support*', United Nations Development Group, July 18, 2016.

For the first time in the history of global decision-making, the SDGs engage all participants<sup>9</sup> (*organisations, governments, communities, individuals* etc.) to share their data and knowledge on economic, social and environmental matters. For the first time, the SDGs represent a global collaborative mechanism of *leaving no one behind*.

### **The legal nature of the SDGs**

At a first look, one cannot consider the SDGs law. Since their adoption in 2015, the debate on whether the SDGs could be considered of legal nature or not was overlooked by the academia, as public international law was/is still the main interest.<sup>10</sup> However, as I will argue below, the SDGs could be considered more than an additional global mechanism to the already existing international conventions, and that they could be seen as a transformative tool to our everlasting, traditional law.

#### **a. The SDGs as a general legal principle of sustainable development**

The principle of sustainable development has been widely recognised as a principle of integration between the environmental, social and economic spheres<sup>11</sup> focusing in particular on its evolution and progressive refinement. As a quite recent concept, the principle was firstly published in 1987 in the *World Commission on Environment and Development* (WCED)'s report called '*Our Common Future*', which highlights that sustainable development is

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<sup>9</sup> GSDR, 2016, p. 4

<sup>10</sup> Cannon, Kelly, 2019. '*Putting the Sustainable Development Goals (SDGs) First in Academia*'. SAP Next-Gen, available [here](#). Note: the author highlights that '*In the changing landscape of the global economy, a new type of ranking system is emerging among universities and academics. Students and corporates encourage academic institutions to emphasize purpose, sustainability, and the Global Goals. The World University Rankings now feature a ranking system of universities around the world by SDG.*'

<sup>11</sup> Pavoni, Riccardo and Piselli, Dario, '*The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation*' (2016). *Veredas Do Direito*, Volume 13(26), p. 13. Available [here](#). (*hereinafter Pavoni, Piselli, 2016*)

*‘sustainable that meets the needs of the present without compromising the ability of future generation to meet their own needs’.*<sup>12</sup>

This definition is one of the most recognized descriptions of sustainable development, as it is used as a general principle, part of international environmental law. It was not used to limit the scope of sustainability, in general, but to add a preface to the climate action. In a few words, this definition was repeatedly used and reinforced by public and private stakeholders that it became an international principle, similar to good faith, human dignity or equity principles from public international law.<sup>13</sup>

However, as a general principle, sustainable development falls under the scope of international environmental law, rather than public international law. This principle is central to this analysis due to its ability to shape the international environmental law and some key areas of public international law, such as human rights, trade or investment law.<sup>14</sup> Soon enough, after its rapid development at international level, scholars started reflecting on its normative value, regarding it as general principle of law, or even a norm of customary international law.<sup>15</sup>

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<sup>12</sup> UNGA, 1987, *‘Report of the World Commission on Environment and Development: Our Common Future’*, UN Doc. A/42/427, 4 August, p. 43; Available [here](#). (*hereinafter WCED, 1987*)

<sup>13</sup> Cerin, P., 2006. *‘Bringing economic opportunity into line with environmental influence: A Discussion on the Coase theorem and the Porter and van der Linde hypothesis’*. *Ecological Economics*, 209-225; Dernbach, J. C., 1998. *‘Sustainable development as a framework for national governance’*. *Case Western Reserve Law Review*, 1-103; Dernbach, J. C., 2003. *‘Achieving sustainable development: The Centrality and multiple facets of integrated decision making’*. *Indiana Journal of Global Legal Studies*, 247-285; Stoddart, H., 2011. *‘A Pocket guide to sustainable development governance’*. Stakeholder Forum.’

<sup>14</sup> Barral V. 2012. *‘Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm’*, *European Journal of International Law*, Volume 23, Issue 2, May 2012, Pages 377–400

<sup>15</sup> ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development, 2 April 2002 (UN Doc. A/CONF. 199/8, 9 August); C. Voigt, 2009. *‘Sustainable Development as a Principle of International Law: Resolving Conflicts between*

The legal status of the principle of sustainable development can be further argued with reference to international instruments (1) and court's opinion (2).

Concerning the first argument, there are several instruments from international environmental law that have officially recognised sustainable development as legal principle. For example, the *Stockholm Declaration*<sup>16</sup> explicitly refers to the balance between the environmental protection and economic development<sup>17</sup>, urging the States to integrate them both as a general principle of ruling, according to their sovereign right to use their own resources.<sup>18</sup> In this sense, sustainable development already encompasses the environmental and economic dimensions.

Furthermore, the World Charter for Nature<sup>19</sup> emphasises the importance of the principle of sustainable development for environmental protection, in order to guide economic development. Moreover, the Rio Declaration<sup>20</sup> re-emphasises the same principles highlighted in the Stockholm Declaration, principle of sustainable development being among them.<sup>21</sup>

Subsequently, the International Court of Justice addressed the principle of sustainable development in *Gabčíkovo-Nagymaros*<sup>22</sup> by stating that sustainable development should be the basis for obliging the States in considering future conducts. The aim of the Court's opinion

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*Climate Measures and WTO Law*', Series: Legal Aspects of Sustainable Development, Volume: 2.

<sup>16</sup> UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994 (*hereinafter the Stockholm Declaration*)

<sup>17</sup> *Principle 13* of the Stockholm Declaration

<sup>18</sup> *Principle 21* of the Stockholm Declaration

<sup>19</sup> UN General Assembly, World Charter for Nature., 28 October 1982, A/RES/37/7;

<sup>20</sup> UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992) Rio Declaration on Environment and Development (*hereinafter the Rio Declaration*)

<sup>21</sup> *Principle 15* of the Rio Declaration

<sup>22</sup> *Gabčíkovo-Nagymaros Project*, Hungary v Slovakia, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ].

was to re-shape the manners of Hungary and Slovakia, which were previously harmful to the environment.<sup>23</sup>

Perhaps most importantly, within the same landmark decision, *Judge Weeramantry* gave a separate opinion where he specifically examined the legal status of sustainable development by concluding that it is a principle of law of normative status, as it has attained the status of customary international law.<sup>24</sup>

Therefore, the principle of sustainable development has earned its status of general principle within international environmental law long before the SDGs were adopted as a general global action plan. However, the core of the principle of sustainable development is the integration of environmental, social and economic spheres into one single mechanism, which led to the creation of the SDGs. The reason: to integrate all three dimensions into one, interconnected and indivisible agenda.

Lastly, the SDGs have been recognised as an international principle of sustainable development<sup>25</sup>, providing the proper integration of the key-aspects that our current global governance is trying to secure: economy, human rights and environment protection. Although this argument builds around States' practice and common behaviors towards sustainable development, the strongest argument is in favor of the SDGs seen as soft law, as I am arguing below.

#### **b. The SDGs as soft law**

After the adoption of the MDGs in 2000, the focus on the role of non-binding instruments ('*soft law*') has been significantly increasing due to the effective cooperation between States. This soft law, in particular *memorandums, codes of conduct, guidelines, action plans or policy frameworks*, has been translating the normative achievements in the field of sustainable

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<sup>23</sup> Viriyo, Aggarin, '*Principle of Sustainable Development in International Environmental Law*' (August 22, 2012). Available [here](#).

<sup>24</sup> Separate Opinion of Vice-President Weeramantry: '*The concept of Sustainable Development*'; Gabcikovo-Nagymaros Project (Sep. Op. Weeramantry). Available [here](#).

<sup>25</sup> Emas R., 2015. '*The Concept of Sustainable Development: Definition and Defining Principles*.' Brief for GSDR 2015.

development into practical implementation strategies at all levels, from sub-national to international.<sup>26</sup>

The recent landscape of public international law, especially due to the increasing involvement of the UN, has been reshaped in such way that the weight and functions of non-binding instruments have profoundly expanded, emphasising the potential of long-term action plans and policy frameworks, such as the 17 SDGs, in order to facilitate transnational partnerships and the integration of, as mentioned above, the economic, social and environmental spheres.

Therefore, not surprisingly, the non-binding instruments such as the 2030 Agenda and its SDGs have rapidly converted into national policies and legislations.<sup>27</sup> One might argue that this new, transformative way of incorporating the international actions into national provisions is even more practical and efficient than the traditional way of adhering to international conventions (*argument that I will come back to within the last chapter*).

Unlike the ‘*traditionally*’ known soft law, the SDGs marked an important step within the legal practice: they have established, besides clear targets and implementation mechanisms, monitoring authorities that ensure universal collaboration and outcomes. To illustrate, back in 2015, the *Inter-Agency Expert Group of Sustainable Goal Indicators (IAEG-SDGs)* was created in order to measure globally the progress and guide the decision-making progress.<sup>28</sup> The IAEG-SDGs created a framework comprised of indicators to measure and monitor the implementation of the SDGs in each State, in order to further ensure regional representation and technical expertise:<sup>29</sup>

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<sup>26</sup> Friedrich, Jurgén. ‘*International Environmental “soft law“: The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law.*’ Berlin, Heidelberg: Springer-Verlag, 2013 (hereinafter **Friedrich, 2013**) p. 1-2.

<sup>27</sup> Rakhyun E. Kim, ‘*The Nexus between International Law and the Sustainable Development Goals*’; *Review of European, Comparative & International Environmental Law* Volume 25, Issue 1, 25 April 2016, p. 15

<sup>28</sup> Resolution 70/1, para. 75

<sup>29</sup> Resolution adopted by the General Assembly on Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development: A/RES/71/313, available [here](#).

*‘[...]to continue to facilitate collaboration between national statistical systems and the relevant international and regional organizations to enhance data reporting channels and ensure the harmonization and consistency of data and statistics for the indicators used to follow up and review the Sustainable Development Goals and targets, within existing resources;’<sup>30</sup>*

The core argument in favour of using soft law in contrast to hard law would be that having specific, concise targets such as the 17 SDGs is a powerful strategic approach, due to the fact that time-bound targets act as a benchmark for the assessment of progress, which at the same time encourages performance evaluation, facilitates policy planning at all levels, and it conveys a sense of urgency which in turn mobilises larger efforts and promotes innovation.<sup>31</sup>

Finally, the SDGs come as a new way forward, as an integrated part of public international law. The global goals act like a gap-filler for prior international conventions, by promoting integrated thinking and harmonisation between the three dimensions of sustainable development and also as a secured perspective on law and policy making processes for the long run. In short, the SDGs are not dismissing the prior international conventions addressing similar topics and global challenges, but they complete them with their enforcement and monitoring mechanism to ensure implementation.

Finally, for this paper’s purposes, I further use the argument which address the SDGs as soft law, rather than a principle of sustainable development.

## **Why should scholars talk about the SDGs?**

### **a. Innovative transformation of the decision-making**

The transformative approach adopted by the UN with the 2030 Agenda and the SDGs brings a potential to innovate<sup>32</sup> and to support the future transformation of public international law.

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<sup>30</sup> *Id.*, para. 5

<sup>31</sup> Manning, Richard, 2009. *‘Using Indicators to Encourage Development. Lessons from the Millennium Development Goals’*. Copenhagen: Danish Institute for International Studies.

<sup>32</sup> Pavoni, Piselli, 2016, pp. 16-18

For the first time in the history of international development and collaboration, the procedure that led to the adoption of the SDGs was described as *an exemplary model of public participation*.<sup>33</sup> With the adoption of the SDGs, sustainable development meant the creation of *‘a political system that secures effective citizen participation in decision making’*.<sup>34</sup>

Our traditional public international law is transforming. As history has shown us before, in the field of public international law, all previous traditional international conventions and protocols tackling climate change have failed: the UNFCCC in 1992<sup>35</sup>, or the Kyoto Protocol in 1997<sup>36</sup>, because the burden was set on the developed countries, while the developing countries were given an *‘escaping route’*.

*‘The Future We Want’*<sup>37</sup>, however, called from the very beginning for the *‘inclusive and transparent process’* that clearly facilitates the national ownership of the SDGs and that they become the shared common priorities of the whole international community, regardless of developing or developed status of a state.<sup>38</sup>

This time, the international community joined forces at global level to ensure the protection of our planet, respecting more than just the economic and social spheres – but integrating the

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<sup>33</sup> Etty, T. et al. *‘By All Available Means: New Takes on Established Principles, Actions and Institutions to Address Today’s Environmental Challenges’*. Transnational Environmental Law, v. 4, p. 235 e ss., 2015

<sup>34</sup> WCED, 1987, p. 65; UN, 1992, principle 10

<sup>35</sup> The United Nations Framework Convention on Climate Change entered into force on 21 March 1994 and it can be consulted [here](#).

<sup>36</sup> The Kyoto Protocol, adopted in 1997, entered into force only in 2005 and it operationalizes the UNFCCC. It can be consulted [here](#).

<sup>37</sup> Outcome document/declaration on Sustainable Development and Green Economy adopted at the UN Conference on Sustainable Development in Rio, in 2012: *The Future We Want* (UNGA Resolution A/RES/66/288, 11 September 2012).

<sup>38</sup> United Nations, 2016. *‘Universality and the SDGs: A Business Perspective’*, The Sustainable Development Goals Fund, pp 9-12, available [here](#).

environmental sphere. This time, the SDGs happily harnessed a *global partnership* that enhanced the legitimacy of the entire Agenda.<sup>39</sup>

Retrospectively speaking, sustainable development, since the late 1980s, has emerged as a collective goal of the world community and public international law has been gradually aligning to it.<sup>40</sup>

In the end, the SDGs are not to be considered hard law, nor legal rules, as they are political goals. However, their substance, as argued above, is of soft law.<sup>41</sup> The SDGs are not a separate part of rule-making that belongs to international politics and cooperation, but they are an integrated part of public international law, as they were built to be consistent with the rights and obligations of States under such law.<sup>42</sup>

Many of the SDG targets have been previously integrated in international agreements, and they are considered to serve as a '*coordinating and synthesising framework for addressing the fragmentation of international law*'.<sup>43</sup>

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<sup>39</sup> Friedrich, 2013, pp. 373-374

<sup>40</sup> WCED; *The Rio Declaration*; Plan of Implementation of the World Summit on Sustainable Development (UN Doc. A/CONF.199/20, 4 September 2002); *The Future We Want* (UNGA Resolution A/RES/66/288, 11 September 2012),

<sup>41</sup> G. Nankani, J. Page and L. Judge, '*Human Rights and Poverty Restriction Strategies: Moving towards Convergence?*', in: P. Alston and M. Robinson (eds.), '*Human Rights and Development: Towards Mutual Reinforcement*' (Oxford University Press, 2005).

<sup>42</sup> *The Future We Want*, para. 58(a); *The 2030 Agenda*, para. 18.

<sup>43</sup> Griggs, D., M. Stafford Smith, J. Rockström, M. C. Öhman, O. Gaffney, G. Glaser, N. Kanie, I. Noble, W. Steffen, and P. Shyamsundar. 2014. '*An integrated framework for sustainable development goals*.' *Ecology and Society* 19(4): 49., p. 6.

### **b. Expectations to generate impact as academia community**

Generally speaking, public international law provides the normative context in which the SDGs and targets can operate and interact with each other.<sup>44</sup> It is time academia and lawyers integrate the SDGs in their work, as the transformation of public international law is already occurring.

As I have mentioned above, the motto laying behind the adoption and implementation of the SDGs is '*Leave no one behind*', including academia. All individuals, either through organisations, private or public, or at their own initiative, should incorporate the SDGs in their actions. Academia is no exception.

To illustrate, in a recent publication from Sydney University, The Deputy Vice-Chancellor for Research, Prof. Duncan Ivison, talks about the importance of academia as a community to generate impact that could be measurable for the achievement of the SDGs by 2030.<sup>45</sup>

He goes further to state that in the light of '*co-creation*', universities should be able to deepen their research and teaching when it comes to the SDGs, as now we are having a better global consensus on what our 2030 targets and how we can all achieve them. Universities are the back-bone of the society, by being able to provide advice and support to governments, decision-making bodies and to teach next generations about global collaboration.

Furthermore, transnational sustainable development cannot happen in silo approaches. Universities, as pillar for research and education, have a unique position of influencing the decision-making process and even the implementation of national actions.<sup>46</sup> The adoption of the 2030 Agenda should be seen as a 'catalyst for a renewed effort to promote integrated

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<sup>44</sup> R. Higgins, '*Problems and Process: International Law and How We Use It*' (Oxford University Press, 1994).

<sup>45</sup> Professor's Duncan Ivison opinion published in the newspaper of Sydney University, in June 2020, available [here](#).

<sup>46</sup> El-Jardali, F., Ataya, N. & Fadlallah, R. '*Changing roles of universities in the era of SDGs: rising up to the global challenge through institutionalising partnerships with governments and communities.*' Health Res Policy Sys 16, 38 (2018)

development'.<sup>47</sup>As such, universities are expected to participate as enablers for sustainable development integration, acceleration and implementation but also as creators of synergies at national, or, perhaps, even regional or transnational levels.

To conclude, we have seen so far *what* are the SDGs and *why* they are important, by highlighting their main message of global collaboration and leaving '*no one behind*' in achieving the goals set for 2030. We have also tackled the legal nature of the SDGs, discussing the argument of SDGs as a principle of sustainable development, but going further with the argument with the SDGs as *soft law*. Moreover, we have seen why academia should start playing an influencing role in the implementation of the SDGs through research and teaching and now we can properly introduce the next chapter: *global governance and the SDGs*.

## CHAPTER 2

### What is Global Governance?

As professor Neil Komesar rightfully stated, '*Global governance is about governance*'.<sup>48</sup> When one hears about global governance, formal systems as the UN, WTO, WHO appear in mind. It is a natural reflex, after decades of publicity and reinforcements. This is merely what is '*shown to the eye*', what is promoted by the media, what is insistently taught in law schools and business administrations.

However, global governance is not only about global mechanisms such as the ones mentioned above, but it encompasses a multitude of NGOs/NPOs, private and public stakeholders whose interests are at stake within the global decision-making process. As professor Komesar goes on in his in-depth analysis on global governance, only if we understand the existing global

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<sup>47</sup> United Nations. '*Breaking the Silos: Cross-Sectoral Partnerships for Advancing the Sustainable Development Goals*'. 2016. Available [here](#).

<sup>48</sup> KOMESAR, Neil; POIARES PESSOA MADURO, Luis Miguel; WAGNER, Wendy; SHAFFER, Gregory C.; BAKARDJIEVA-ENGELBREKT, Antonina, '*Understanding global governance: institutional choice and the dynamics of participation*', Florence: European University Institute, 2014, Global Governance Programme, [European, Transnational and Global Governance]p. 1 (*hereinafter* Komesar/Maduro).

governance framework, we can understand as well that there is a significant need for new and innovative approaches.<sup>49</sup>

The states are now part of a new '*world order*' that calls for formal and informal decision-making processes that are built specifically for networks of both public and private stakeholders, that are built for interdependence. However, interdependence creates a demand for governance<sup>50</sup> and this governance system has to be implemented according to this new world's needs and expectations, but most importantly, according to its current crisis: the climate crisis.

### **How Global Governance is transforming PIL**

Traditionally speaking, the states had the ultimate authority in decision-making, authority designed by their own constitution and political regimes. The traditional concept of sovereignty meant that third-parties or external, let's say, global bodies or organizations, could exercise this absolute power only if the state delegated or authorized it previously.<sup>51</sup>

Global governance changed this traditional concept of state power and sovereignty by changing the form of power *per se*. In this sense, global governance mainly means that the states transfer their power to a global authority, where international organizations such as the UN develop political and social tools that are completely different from the ones previously provided by the national Constitutions.<sup>52</sup> But, in fact, global governance is more than that. While public international law focuses more on the inter-state relationship, global governance refers to all international relationships *lato sensu*: it includes governance rules, interconnected multi-stakeholders dialogue, diversity of global actors, including individuals.

Moreover, global governance has highlighted in the past decade this idea of shifting the decision-making from national to international, restructuring the global order, focusing on

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<sup>49</sup> *Id.*, pp. 1-3.

<sup>50</sup> *Id.*, p. 3.

<sup>51</sup> Komesar/Maduro, p. 5.

<sup>52</sup> David Held, '*Democracy and the Global Order*', Cambridge and Oxford: Polity Press, 1995.

international organizations.<sup>53</sup> Accordingly, the UN started to play a leading role in how the world is structured and organized, offering an evolving structure for global dialogue between regions, countries and individuals.<sup>54</sup>

In this sense, the UN gradually launched international agreements or protocols that were addressing collective decision-making. Rapidly enough, these international tools started to be implemented and adopted at a large scale. The UN, therefore, acted as a leading actor in global governance, and issued its own definition of global governance as it follows:

‘global governance encompasses the totality of institutions, policies, norms, procedures and initiatives through which States and their citizens try to bring more predictability, stability and order to their responses to transnational challenges. Effective global governance can only be achieved with effective international cooperation [..]’<sup>55</sup>

Hence, the UN shifted from the traditional public international law that mostly included formal international conventions between the States toward a global governance approach, bringing upfront the idea of ‘*States and their citizens*’. As such, within this approach, global governance is meant to bring individuals closer to the decision-making process, and not only have State participation for citizens representation.

### **No more traditional Global Governance either**

Back in 2013, the UN General Assembly published a resolution called the ‘*UN in Global Economic Governance*’, preparing the road to the launch of the SDGs, mentioning that the states, at global level, must balance and include within their national policies the economic growth, social development and environment protection. The General Assembly fortified its point of view as well on that this balance and inclusion can be achieved through a strong

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<sup>53</sup> Van Bogdandy, A., ‘*Democratic Legitimacy of Public Authority Beyond the State – Lessons from the EU for International Organizations*’, April 27, 2011.

<sup>54</sup> Haynes, Jeffrey, ‘*Global Governance and the United Nations: the ‘Clash of Civilisations’ and the ‘Rise’ of RNGOs, Globalizations*’, 2017, Vol. 14, No. 6, 1060-1068.

<sup>55</sup> Committee for Development Policy, ‘*Global Governance and Global Rules for Development in the Post-15 Era*’, United Nations, June 2014.

*collective action that includes international cooperation and a strong institutional framework, having in mind that this must be central in a multilateral system, including a diversity of stakeholders*<sup>56</sup>. This was one of the first significant steps to transform the traditional Global Governance system: including a diversity of actors.

Subsequently, regarding cooperation, the UN, for example, traditionally provided a system with a decentralized structure, functioning mainly through specialized agencies, funds, programmes and subsidiary bodies of ECOSOC. This decentralized system, however, was found to be difficult when it came to internal coordination and cooperation.<sup>57</sup>

That is why in 2013 ECOSOC was reformed through the General Assembly's *Resolution 68/1*<sup>58</sup>, and it was assigned as having the main function *promoting coordination, cooperation and coherence among the various parts of the system, by promoting a balanced integration of the three dimensions of sustainable development, including environment protection*.<sup>59</sup> Global governance and sustainable development could not have been compatible and successful in the implementation if the system was functioning according to the same traditional framework.

At the same time, the Council was reformed *to pursue global dialogue for the implementation of the sustainable development agenda*, by enhancing the already existing arrangements like the ones with the World Bank, the International Monetary Fund, the World Trade Organization and the United Nations Conference on Trade and Development.<sup>60</sup>

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<sup>56</sup> Resolution of the General Assembly on '*The United Nations in Global Economic Governance*', August 2013, A/RES/67/289.

<sup>57</sup> Co-Chairs of the Technical Support Team (TST), UNDP (United Nations Development Programme) and DESA (Department of Economic and Social Affairs) brief on Global Governance, issued in 2014 by the Working Group on the Sustainable Development Goals (*hereinafter UN brief*), pp.148-149. The compendium can be accessed [here](#).

<sup>58</sup> Resolution of the General Assembly on the '*Review of the implementation of General Assembly Resolution 61/16 on the Strengthening of the Economic and Social Council*', September 2013, A/RES/68/1

<sup>59</sup> *Ibid.*

<sup>60</sup> UN Brief, p. 150

Therefore, this idea of reforming the ECOSOC comes as a consequence of filling in the gaps of traditional global governance, where one of the challenges, as seen above, was the inefficient collaboration between relevant IOs and other relevant stakeholders. The 'new' global governance however is all about multilateral engagement and diverse actors engaged in pursuing global dialogue.

### **PIL or Global Governance for climate action?**

When it came to addressing climate action, at global level was established the United Nations Framework Convention on Climate Change (UNFCCC) in Rio de Janeiro, back in 1992.<sup>61</sup> This convention represented the first international step towards combating climate change. It is indeed a significant milestone in public international law which binds the governments of the signatory countries to take action on climate change, but without giving them specific directions or objectives to be met.

As one of the first public international law tools for tackling climate change, the UNFCCC led the governments by the principle of '*common but differentiated responsibility*'.<sup>62</sup> This principle means, in a nutshell, that the developed countries, due to their greater abilities to move forward and act, should be held responsible in a differentiated way regarding the consequences of climate change than the developing countries.

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<sup>61</sup> The United Nations Framework Convention on Climate Change entered into force on 21 March 1994 and it can be consulted [here](#).

<sup>62</sup> '*Common, but differentiated responsibilities*' is a principle within the UNFCCC that acknowledges the different capabilities and differing responsibilities of individual countries addressing climate change. The Convention text reads as it follows: '*The global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions*'.

Unfortunately, as the evolution of climate actions under this particular convention shows, the principle of differentiated action *blocked* the climate change dialogue on actions and rather had the states focus more on the negotiations regarding the division of responsibilities and commitments.<sup>63</sup>

As the UNFCCC serves as a framework convention, in 1997 was adopted the Kyoto Protocol as the first implementation of measures under the UNFCCC. Launched to request the reduction of the global greenhouse gases emissions by 5% (*due in 2012*), compared to the 1990 levels of emissions,<sup>64</sup> the Protocol failed as well due to the same mistake: using the principle of differentiated responsibility, by which only the developed countries were required to achieve the emissions reduction, while the developing countries, such as China, as it was considered back then, were not required to comply with the emissions reduction.

In spite of the urgency brought by the climate crisis, the problematic negotiations delayed so much the entry into force of the Kyoto Protocol, that the initial targets of the greenhouse emissions reductions were no longer feasible, therefore, it was extended until 2020.

Traditional, therefore, does not necessarily mean good. Setting strong ambitions for climate action, using the same conventional framework of public international law as the backbone for generating impact, created in fact a historical failure where the major international actors such as the US, Russia, Japan, Canada or New Zealand refused to participate.<sup>65</sup>

What public international law has taught us from both the UNFCCC and the Kyoto Protocol is that if the most impactful states are not engaged and committed to act towards climate change, the international convention is no longer relevant.<sup>66</sup> The new approach, however, set out by global governance, underlines the importance of political implications in decision-making

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<sup>63</sup> O’Flaherty, Liam, ‘*The Global Governance of Climate Change*’, Global Governance Institute, University College London, August 2015 (*hereinafter O’Flaherty*).

<sup>64</sup> The Kyoto Protocol, adopted in 1997, entered into force only in 2005 and it operationalizes the UNFCCC. It can be consulted [here](#).

<sup>65</sup> Van der Gaast W. (2017) ‘*The Negotiation Process Leading to the Kyoto Protocol*’. In: International Climate Negotiation Factors. Springer, Cham.

<sup>66</sup> *Ibid.*

processes. The urgency of the climate crisis called for a new approach – a novel, innovative way to commit to serious targets, where all international actors are involved, without using the principle of differentiated action.

### **Innovative global governance and goal-setting agenda**

The approach to tackle climate change within the global governance environment started to change with the adoption of the Paris Agreement in 2015.<sup>67</sup> The Paris Agreement set a new tone within the global governance system, as there were provided commitments for each signatory party, called ‘*Nationally Determined Contributions*’ (NDCs).<sup>68</sup>

Instead of creating differentiations between developed and developing countries, these individually set commitments meant that each state has to rigorously and transparently set ambitions that underline climate actions. What used to be ‘*traditional*’ and internationally used for decades now, had to be transformed into clear, transparent goals to be achieved by each country. As such, the UN slowly transitions from hard law to binding targets and goals – more of a soft law approach, as mentioned in the first chapter.<sup>69</sup>

In this sense, the UN launched in 2015, alongside with the Paris Agreement, based on the consensus of 150 heads of state, the 17 Sustainable Development Goals (SDGs). These SDGs present a new approach for global governance, using goal-setting and clear targets as a strategy, complementing the traditional international agreements, but setting strong, monitoring and enforcement systems to ensure the implementation of global actions.

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<sup>67</sup> The Paris Agreement was adopted in 2015 and entered into force in 2016. It can be consulted [here](#).

<sup>68</sup> The Paris Agreement, Article 4, para. 2: *Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.*

<sup>69</sup> O’Flaherty, p. 5.

‘*Governing through goals*’<sup>70</sup> is the new approach – although not legally binding, confidently adopted at global level in 2015. I will get back to the comparison and features of the Paris Agreement and the SDGs in the upcoming chapter – now let us have a quick look at global governance and climate action:

### **What kind of global governance would fit best climate action?**

As mentioned by various scholars<sup>71</sup>, in the case of climate action, we could discuss judicial governance (1) or polycentric governance (2).

#### **a. Judicial governance**

##### *In theory*

The first type of global governance that appears to be a good fit in combating climate change is the judicial governance, or known best as public international law.

This particular type of governance aims to create legally binding agreements, which normally, any other type of governance fails to do only through multilateral diplomacy. This type of governance took place when the UNFCCC treaty was negotiated back in 1992, but subsequently failed due to the lack of engagement of the parties. Judicial governance was also used when the Kyoto Protocol was positively enforced, but later dismissed by the largest world’s polluters.

##### *In practice*

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<sup>70</sup> Kanie, Norichika, and Frank Biermann, editors. ‘*Governing through Goals: Sustainable Development Goals as Governance Innovation*’. The MIT Press, 2017.

<sup>71</sup> Nowrot, Karsten, ‘*Global Governance and International Law*’, Transnational Economic Law Research Center, Paper prepared for the 7<sup>th</sup> International Human Rights Conference, 2004; O’Flaherty, pp. 5-7; Gar Yein Ng, ‘*A Discipline of Judicial Governance?*’, Utrecht Law Review, Volume 7, Issue 1 (January 2011); Carlisle, Keith and Gruby, L. Rebecca ‘*Polycentric Systems of Governance: A Theoretical Model*’ [...], Policy Studies Journal, August 2017; Jordan, A., Huitema, D., Van Asselt, H., & Forster, J. (Eds.). (2018). ‘*Governing Climate Change: Polycentricity in Action?*’ Cambridge: Cambridge University Press.

From this perspective of judicial governance, through the ups and downs, the legal community noticed that the traditional international conventions are no longer the norm when it comes to addressing the climate crisis. This is one of the reasons why, for example, Roger Cox, a Dutch lawyer, wrote a landmark book on this topic, called '*Revolution justified*',<sup>72</sup> through which he encouraged the global legal community to get involved in the fight against climate change in the absence of an adequate political response.<sup>73</sup>

Cox is also a pioneer in taking legal action towards climate change and lack of activism from the national government, as he was the lawyer who initiated the proceedings of the very famous, landmark case related to climate change '*Urgenda v. the Netherlands*'.<sup>74</sup> Due to its actions and willingness to engage as a lawyer in the fight against climate change, in June 2015 he won the case against the Dutch government, having an unprecedented and groundbreaking verdict: the District court in The Hague ordered the Dutch government to reduce its CO2 emissions by at least 25% in 2020, compared to the 1990 levels.

### **When judicial governance is inactive**

In 2015, a large group of legal experts and lawyers acted actively against the climate crisis, by launching the so called '*Oslo principles*'<sup>75</sup>, as a judicial governance mechanism and as well as a reaction against the passivity of the governments to act against climate change. These principles were prepared by former judges from the Supreme Courts of *Australia, India, Brazil, the Netherlands, European Court of Human Rights and the Inter-American Commission on Human Rights* and by renowned law professors from *Columbia, Yale, Wuhan and Maastricht*.<sup>76</sup>

While the Oslo principles are not legally binding, they serve as a legal base of joint interpretation of international law, human rights law, national environmental law and tort law regarding climate change. This legal base is set to help judges from all over the world to decide

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<sup>72</sup> More about the '*Revolution Justified*' movement [here](#).

<sup>73</sup> Cox, R.H.J., 2014. '*The Liability of European States for Climate Change*.' *Utrecht Journal of International and European Law*, 30(78), pp.125–135

<sup>74</sup> '*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)

<sup>75</sup> The Oslo principles were adopted in 2015 and can be read [here](#).

<sup>76</sup> More about the principles and the group of legal experts can be read [here](#).

whether particular governments are in compliance with their legal obligations to address climate change.<sup>77</sup>

Judicial governance has repeatedly shown us that the same conventional approach in creating hard law and expecting States to willingly sign and ratify the conventions is no longer the norm. With the election of Donald Trump in the United States back in 2016 we were proven wrong, but I will get back to that in the next chapter. The current global challenges are overwhelming at all levels, from local to global sphere, and whereas there are many international conventions in place to tackle separately all of these issues, the 2030 Agenda unifies them within the same mechanism.

### **b. Polycentric governance**

#### *In theory*

On the other hand, polycentric governance appears beneficial as it tends to integrate a diverse institutional system: the public, private and hybrid spaces collaborate in both bottom-up and top-down processes.<sup>78</sup> In order to achieve the goal of carbon neutrality for example, as part of the fight against climate change, various actors on many different levels (*transnational, interstate, global*) engage in initiatives that have specific targets or objectives to be achieved. This multilateral approach is meant to break silos between the public and private spheres, where representation and participation were only accessible to the States officials.

#### *In practice*

For example, the UNFCCC, in its attempts to address climate change, has launched the International Cooperative Initiatives (*ICI*) which comprises governance arrangements between

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<sup>77</sup> Sutherland, Philip ‘*Obligations to Reduce Emissions: From the Oslo Principles to Enterprises*’, *Journal of European Tort Law*, November 2017.

<sup>78</sup> Ostrom, E. ‘*Polycentric systems for coping with collective action and global environmental change*’, in *Global Environmental Change*, Volume 20, Issue 4, October 2010, pp. 550-557.

businesses, cities, private and public stakeholders, in order to tackle climate change consequences and move towards renewable energies.<sup>79</sup>

Another example of polycentric governance prior to the launch of the UN SDGs is the Carbon Neutral Cities Alliance (CNCA), self-describing as a '*collaboration of international cities committed to achieving aggressive long-term carbon reduction goals*'.<sup>80</sup> There are 17 members (cities) from Europe, North America, Australia and Japan and together they are fighting to reduce the greenhouse emissions by 80% by 2050.

### **SDGs as polycentric governance**

However, the most recent, and perhaps the most successful example of polycentric governance is UN's new approach – the launch of the 17 SDGs. In this sense, the UN is seen as a '*transformational agent*'<sup>81</sup> that used a polycentric governance system in order to accelerate the implementation of the 2030 Agenda and the 17 SDGs.

The polycentric approach in the UN's global governance is used for improving the effectiveness of the SDGs implementation – *shifting from hard law to soft law*, but with clear targets and goals, acknowledging that each country's context is unique and that different indicators have to be in place.

Thus, the stage of global governance has been in the past years in a state of transformation: in terms of climate action, we have shifted from the traditional approach of governance, better known as judicial governance to a polycentric one, where the system allows for more inclusiveness and transparency, and customized goals where no country is '*left behind*'.

The principle of differentiated action no longer exists in this decentralized system of sustainable development goals, and each state has committed to a tailor-made target, that, together with all the other states' efforts, is supposed to have us celebrating by 2030 a more

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<sup>79</sup> Bakhtiari, Fatemeh, '*International Cooperative Initiatives and the UNFCCC*', Climate Policy Journal, June 2017.

<sup>80</sup> More about the functioning and organization of the CNCA can be found [here](#).

<sup>81</sup> Goegele, Hannes, '*Towards a polycentric approach to implement the 2030 Agenda*', SOAS University of London, June 2019.

climate-friendly society. The SDGs set the stage, the time frame and the targets, but they allow the national governments to implement a customized approach to tackle their biggest climate challenges and consequences, from carbon neutrality to water scarcity and hunger. And it all appeared to be working seamlessly, until, in 2020...

### **Climate action Global Governance during the COVID-19 pandemic**

Back in March 2020 the entire world was entering an unforeseen lockdown due to COVID-19. By the time I am writing this paper, we have generally experienced globally three lockdowns, social and economic restrictions on one side, and carbon emissions reduction on the other.

While the restrictions heightened, the demand for essentials burst: from large inventories of face masks and disinfectants to food rotting in the fields. The discrepancies between developed and developing countries heightened again, as rich States could afford short-run policies, backed-up with contingency plans, and poor states facing hunger and shortage of the minimum essentials for a decent living.<sup>82</sup>

There are many other elements involved when one discusses the outburst of COVID-19 and its consequences on the world, as a whole, but my mission is to tackle the ones related to the global governance approach towards climate change.

As such, starting with the beginning of the first lockdown in March 2020, the carbon emissions have declined by approximately 7%, which amounts to 34 billion tons, compared to the 2019 levels.<sup>83</sup> But enough with the statistics. These false applauds to the decline of emissions might create unrealistic expectations of the global population. We are still undergoing a rough climate crisis, as the past two decades have been the warmest years on record, with the average global temperature increased by 1.5° C.<sup>84</sup>

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<sup>82</sup> Snower J. Dennis, *'The Socio-Economics of Pandemics Policy'*. CESifo Working Papers, 8314/2020, May 2020, p. 3

<sup>83</sup> Earth, Stanford: *'COVID lockdown causes record drop in carbon emissions for 2020'*, available [here](#).

<sup>84</sup> Council of the European Union, *'Climate change: What the EU is doing'*, press release, 2021, available [here](#).

While some of the world's biggest polluters dropped their emissions drastically due to the restrictive measures during COVID-19, the global policymaking has been stagnating in terms of climate change: the most important international climate summit, COP26 (*Conference of the Parties*), supposedly taking place in November 2020, was postponed until 2021 by the UN.

*Why is this relevant?* In a few words, COP26 is perhaps one of the most important global events regarding climate action, previously established by the UNFCCC in order to ensure a collaborative participation of all Parties to the convention. Hence, in 2020 States were expected to bring their strong, updated nationally determined contributions for emissions reduction, part of their Paris Agreement obligations. In this way, the political pressure would have played the most important role in accelerating the implementation of the Paris Agreement and, on the other side, the SDGs.

While the UN failed in keeping its commitment towards the implementation of the milestones of the Paris Agreement, in spite of COVID-19, the International Energy Agency announced that its predicting an increase in methane emissions due to the pandemic, as the oil prices go down and the incentives to capture the gas as well. Methane, compared to carbon, is over eighty times more potent as a global warming agent.<sup>85</sup> Moreover, at global level, the COVID-19 pandemic was feared to delay even more the collective global action against climate change, and as the UNDP Administrator Achim Steiner mentioned:

“The world has seen many crises over the past 30 years, including the Global Financial Crisis of 2007-09. Each has hit human development hard but, overall, development gains accrued globally year-on-year. COVID-19, with its triple hit to health, education, and income, may change this trend.”<sup>86</sup>

In short, the global governance for climate change collapsed during the pandemic. At global level, international actors did not link the global health crisis that we are living in with the

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<sup>85</sup> Hill C. Alice, ‘*What the Coronavirus Pandemic Teaches Us About Fighting Climate Change*’, Council on Foreign Relation Opinion, April 10, 2020.

<sup>86</sup> UNDP report, 2021, available [here](#).

potential consequences of climate change.<sup>87</sup> The shortage on healthcare supplies, such as sanitization products, showed once more the great divide between developed and developing countries, but perhaps what's more important here is that the pandemic was predicted by scientists. *'Unrestricted deforestation, illegal wildlife trade, diseases that cross from animals to humans were foreseen to unleash an uncontrollable pandemic.'*<sup>88</sup>

## **What we know**

Due to the urgency of the pandemic, global governance resumed to short-run policy design, interchangeable and adaptable to each month or even weeks. We have seen the World Health Organisation in the spotlight, offering recommendations and guidelines, while the focus rightfully shifted from climate crisis to COVID-19.

We have seen a lack of transnational collaboration. We have observed the rise of nationalism in policy-making, each State confidently (*and rightfully?*) claiming it can decide best for its citizens. This is all a matter of politics. Global governance, in this case, has to go beyond the law-making and expand its approach across ideological toolboxes, covering the right and left wings and creating a consensus.

Finally, we have witnessed a wrongful assumption at global level that we could overcome future pandemics and climate change. The current statistics show us that even in 2021 we are behind the predicted schedule to act against the climate crisis and that the pandemic is continuing to take lives and shatter economies.<sup>89</sup>

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<sup>87</sup> Gilder Andrew, Rumble Olivia, *'Implications of the COVID-19 Pandemic for Global Climate Change Responses'*, South African Institute of International Affairs Policy Briefing 200, July 2020.

<sup>88</sup> UNDP, 2021, *'COVID-19 and the SDGs: How the 'roadmap for humanity' could be changed by a pandemic'*, available [here](#).

<sup>89</sup> Neeraj Mishra, *'Global Governance of COVID-19: Decline of Public Sphere and Transnational Democracy'*, in *'Integrated Risk of Pandemic: COVID-19 Impacts, Resilience and Recommendations'*, Springer, 2020, pp. 147-148.

## What next?

With a worrying rise of populism across the globe, with many developing countries running short on essentials for a decent living, with private big pharma stakeholders owning the vaccines market, global governance has to step in with international coordination, transnational law and political understanding.

*The plan?* To build a resilient recovery plan, involving all States.<sup>90</sup> Policy-making has to take into account the utterly necessary climate risk, and to prepare the States to stick to their commitments for climate action.

*The need?* To develop an even *newer* model of global governance that draws important lessons from the COVID-19 consequences, not only from the economic point of view, but also socially and environmentally speaking. This new model of global governance has to mobilize people to act and to keep their States accountable in case of failure to mitigate climate risks. In short, the bottom-top approach brought initially by the SDGs and the Paris Agreement (*more on that in the next chapter*) could be used for further transformations in global governance, including the citizens in the policy-making process.

While the discussion throughout this chapter focused on the differences of public international law and global governance in terms of climate action, we might have come to realize that neither of the actual systems might work in the future for the long-run. With the rapid spread of COVID-19, a huge discrepancy took place in the trust of the citizens in their national governments. Some may have succeeded to convey a trust-worthy message and measures during the pandemic, but some have certainly failed. And the pandemic still goes on.

The resilient recovery plan post-COVID has to take into account, therefore, not only States and the business sector, but also the individuals, whose fundamental rights have repeatedly been breached (*but that is a topic for another discussion*).

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<sup>90</sup> *Ibid.*

## CHAPTER 3

### What is now: the Paris Agreement

Adopted by 196 Parties at COP 21 in Paris, in December 2015, the Paris Agreement is a legally binding international treaty on climate change. It is part of the UNFCCC, that I have briefly mentioned in the previous chapter – a convention adopted back in 1992, but unsuccessful in its implementation.

The goal of the Paris Agreement is to limit the global temperature increase to 1.5° C, as it is mentioned in Article 2.a:

‘1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims *to strengthen the global response to the threat of climate change*, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts **to limit the temperature increase to 1.5°C** above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;’<sup>91</sup>

As such, the Paris Agreement is a novelty in the field of public international law, as it sets out ambitious global targets that must be achieved through multilateral cooperation and collaboration. One distinctive aspect about the agreement, however, is the way these targets are set out.

As set in *article 4, paragraph 1*, the Parties to the agreement are requested to ‘*prepare, communicate and maintain successive nationally determined contributions*’ (NDCs) that they intend to achieve in order to reach the global goal of limiting the temperature and the greenhouse gas emissions.

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<sup>91</sup> The Paris Agreement, adopted on 12 December 2015 at COP21 in Paris, available [here](#).

## **A bump in the road**

The adoption of the Paris Agreement in 2015 gave the international community a new hope in tackling climate change. States have ambitiously adhered to the principles set out in the Protocol, aligning with strongly defined NDCs to achieve zero greenhouse gas emissions by 2050.

Upon the US election in 2016 that he won, President Donald J. Trump criticized the Paris Agreement that was previously signed by President Barack Obama, stating that the global deal to cut down the emissions would mean *jobs clearance and monetary regulations on the US economy*. Therefore, on June 1, 2017, President Trump announced the withdrawal of the US from the Paris Agreement, being the only country to do so.<sup>92</sup> The official withdrawal from the agreement, according to the rules set out in the official document, could only happen 4 years later, on November 5, 2020.

The international community was no longer in shock. It was Kyoto Protocol all over again (*more about that below*). Thus, surprisingly, the world has moved on. During the four years of silence from Trump's administration, the EU, UK, Japan, China and South Korea committed to net-zero emissions by 2050. Most of the other States announced ambitious targets to tackle climate change, which confirmed that with, or without the US, which is one of the biggest polluters in the world, they will not stop. The US withdrawal from the Paris Agreement did not stop the fight against climate change, like it did back in 1997 when the Kyoto Protocol was adopted, but it surely changed the pace.

However, on the same day that the withdrawal from the Paris Agreement officially took place (*Nov. 2020*), Mr. Joseph Biden, the counter-candidate for the US Presidency for the 2020 elections tweeted the following:

‘Today, the Trump Administration officially left the Paris Climate Agreement. And in exactly 77 days, a Biden Administration will rejoin it.’

Words of wisdom, one might say, as President Biden won the 2020 US elections and only hours after he was sworn-in as the new US President, he signed the Paris Agreement. This marked a

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<sup>92</sup> Daley Jim, ‘*US Exits Paris Climate Accord after Trump Stalls Global Warming Action for Four Years*’, in Policy & Ethics, the Scientific American, Nov 4, 2020, available [here](#).

historical moment, as the entire international community was looking forward to the US rejoining the Paris Agreement and the common fight against climate change.

To do so, President Biden has already established the largest group of environmental experts within the White House, and his administration is currently racing to develop policy measures and catch-up four years of even more enhanced greenhouse gases.<sup>93</sup>

It was a true bump in the road. However, *shouldn't have been foreseen?*

## What was then: the UNFCCC and the Kyoto Protocol

### a. The UNFCCC

The public international law mechanism established to fight climate change before the Paris Agreement, as seen in Chapter 2, failed due to the principle of '*common, but differentiated responsibilities*'.

In contrast to *Article 4* of the Paris Agreement mentioned just above, *article 4* of the UNFCCC, for example, highlights that

‘all Parties, taking into account their *common but differentiated responsibilities* and their specific national and regional development priorities, objectives and circumstances’

meaning that each Party to the Convention has the freedom to tackle climate change however would fit best.

However, one thing must be set straight: the UNFCCC is a framework convention, not legally binding, but setting the '*stage*' for legally binding protocols and agreements to take place, such as the Kyoto Protocol and the Paris Agreement.

The UNFCCC established an annual forum, called Conference of the Parties (*COP*), now known as the most important high-level meeting for international discussions related to climate change.

In spite of being the first international treaty to tackle climate change, the UNFCCC *per se* failed due to its abstract commitments and targets, and lack of procedural guidelines to fight

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<sup>93</sup> The US journey to rejoin the Paris Agreement, as written in New York Times, available [here](#).

against global warming and greenhouse gas emissions.<sup>94</sup> To illustrate, the UNFCCC requested the Parties to develop, update and publish national inventories of ‘*anthropogenic emissions*’ and to ‘*formulate, implement regional programmes containing measures to mitigate climate change*’.<sup>95</sup> As seen, these measures are not subsequently defined nor quantified, being left at the discretion of each State.

Back to the ‘*common, but differentiated responsibilities*’ principle set out in the UNFCCC, the industrialized countries and economies in transition were requested to reduce their GHG emissions by the year 2000, acknowledging that all Parties have an obligation to address climate change, but at the same time, they are not equally responsible. All these countries were highlighted in *Annex I* of the UNFCCC:

‘2. The **developed country Parties** and **other Parties included in Annex I** commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that **developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention**<sup>96</sup>

The adoption of the UNFCCC that set a differentiated approach for developed and developing countries should have been a signal of alarm from the beginning, as the abstract wording and lack of tangible targets would become problematic. For this particular case of climate diplomacy, the UN Convention failed to capture the highest ambition possible against climate change,<sup>97</sup> but perhaps most importantly, it had failed to construct a fair political agreement, where all Parties work together in achieving a global target.

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<sup>94</sup> Gupta, J. (2014). ‘*Setting the Stage: Defining the Climate Problem (Until 1990)*.’ The History of Global Climate Governance. Cambridge University Press.

<sup>95</sup> UNFCCC, Article 4.1.a and b, available [here](#).

<sup>96</sup> *Id.*, Article 4.2.a

<sup>97</sup> Mabey, Nick, et al. ‘*The Evolution of Climate Diplomacy and the International Climate Regime*’. E3G, 2013, pp. 21–34, ‘*Understanding Climate Diplomacy: Building Diplomatic Capacity and Systems to Avoid Dangerous Climate Change*’.

## **b. The Kyoto Protocol**

Based on *Article 17* of the UNFCCC that allows the adoption of protocols to the Convention, in 1997 was launched the Kyoto Protocol requesting the reduction of the global greenhouse gases emissions by 5% (*due in 2012*), compared to the 1990 levels of emissions.<sup>98</sup>

This protocol allowed for a more tangible foreseeable target that must be achieved, however, not commonly, but according to the principle of '*common, but differentiated responsibilities*'. What is important to bear in mind regarding the Kyoto Protocol is that it represents a '*top-down*' legal instrument foreseeing a clear division of emissions among developed countries.<sup>99</sup>

However, the US, being one of the largest greenhouse gases emitters in the world, refused to participate in the Kyoto protocol, which led to the delay of the entry into force of the treaty to 2004. The UNFCCC Executive Secretary correctly highlighted that '*Kyoto was a very important political sign [...] Unfortunately, it didn't have its full force because the US didn't join in... That rejection colored everything that followed.*'<sup>100</sup>

Hence, the Kyoto Protocol underlined what was already shown at the adoption of the UNFCCC – the fight against climate change is above all, a political journey that we must learn to tackle multilaterally, without a differentiated action where the burden is carried by developed countries.<sup>101</sup>

The discussion, however, could go on about the agreements and COPs that followed the Kyoto Protocol, including the high-level discussions on what worked or did not work, but that would require another thesis perhaps. This is why the focus falls for now on the most important step in the fight against climate change, when the Paris Agreement was adopted. *Therefore:*

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<sup>98</sup> The Kyoto Protocol, adopted in 1997, entered into force only in 2005 and it operationalizes the UNFCCC. It can be consulted [here](#).

<sup>99</sup> Leal-Arcas, Rafael, '*Top-Down Versus Bottom-Up Approaches for Climate Change Negotiations: An Analysis*' (October 25, 2011). The IUP Journal of Governance and Public Policy, Vol. 6, No. 4, pp. 7-52, December 2011, Available [here](#).

<sup>100</sup> Luomi, Mari. '*Global Climate Change Governance: The Search for Effectiveness and Universality*'. International Institute for Sustainable Development (IISD), 2020 (hereinafter **Luomi**).

<sup>101</sup> O'Flaherty, pp. 2-4

### **A different ‘differentiated’ action**

The Paris Agreement revived the international community when it came to addressing climate change. Not only that it clearly stated that the international community cannot draw a line between developed and developing countries in the fight against climate change, but it brought an innovative approach with the implementation of the NDCs.

The NDCs vary in scope and ambition, and they reflect each country’s capabilities, development, and possible ways to cut down the emissions. Some examples show that China committed to cut off emissions by 2030, while India committed to reduction by 33 to 35% below 2005 level.<sup>102</sup>

Therefore, the principle of ‘*common, but differentiated responsibilities*’ is no longer setting apart the developed from developing countries, but instead it gives the flexibility to each Party to the agreement, according to its own limitations, to contribute to the fight against climate change. The difference this time is not only that developed countries no longer carry the ‘*burden*’ alone, but that the political pressure is immense on all States involved in the agreement.

This time, the political pressure does not come from the international community, but from the nationals of each State. This is why the Paris Agreement is a ‘*bottom-up*’ legal instrument instead of ‘*top-down*’ as the Kyoto Protocol, where all Parties could get engaged accordingly.<sup>103</sup>

Finally, although the Paris Agreement has flexible NDCs from each State, what differentiates it from all previous legal instruments tackling climate change is the robust system of monitoring, reporting and reassessing individual/collective States targets over time,<sup>104</sup> in order to achieve the global goal of temperature under 2° C.

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<sup>102</sup> Luoumi, pp. 7-10

<sup>103</sup> Luomi, p.2

<sup>104</sup> Laybourn-Langton, Laurie, and Lesley Rankin. ‘*The Current System of International Cooperation is Inadequate.*’ Institute for Public Policy Research (IPPR), 2019, pp. 7–10, ‘*Our Responsibility: A New Model of International Cooperation for the Era of Environmental Breakdown.*’

From *article 5* onward<sup>105</sup>, there are specific measures predicted to accelerate the implementation of the NDCs, including the creation of subsidiary bodies of the UN for technological development, research, education and awareness. For example, *article 14* prevails that a global stocktake should be conducted first in 2023 and every five years after, in order to check the progress of the Parties and their NDCs.

The NDCs are so far an efficient internal mechanism used by the Paris Agreement to address climate change globally, *but how does that relate to the SDGs due in 2030, also related to climate change?*

### **Synergies between the NDCs and the SDGs**

So far we have observed the different milestones that took place before the adoption of the Paris Agreement and the NDCs. In short, *the NDCs are mainly statements of the actions of each state party to the Paris Agreement, highlighting the strategic plan to tackle the greenhouse gas emissions, and other priorities that broadly contribute to sustainable development.*<sup>106</sup>

Both the NDCs and the SDGs are to be tackled by each state, individually, according to their own strategy and action plan to achieve the global goals. Although adopted in the same year and *'proposed'* by the same international organization, the NDCs and the SDGs have been defined and advanced separately, both nationally and internationally.<sup>107</sup>

Some scholars<sup>108</sup> addressed the lack of policy incoherence regarding the NDCs and the SDGs, especially as both tackle interlinked challenges of climate change, biodiversity, oceans, poverty, hunger and political instability – *I should address that shortly.*

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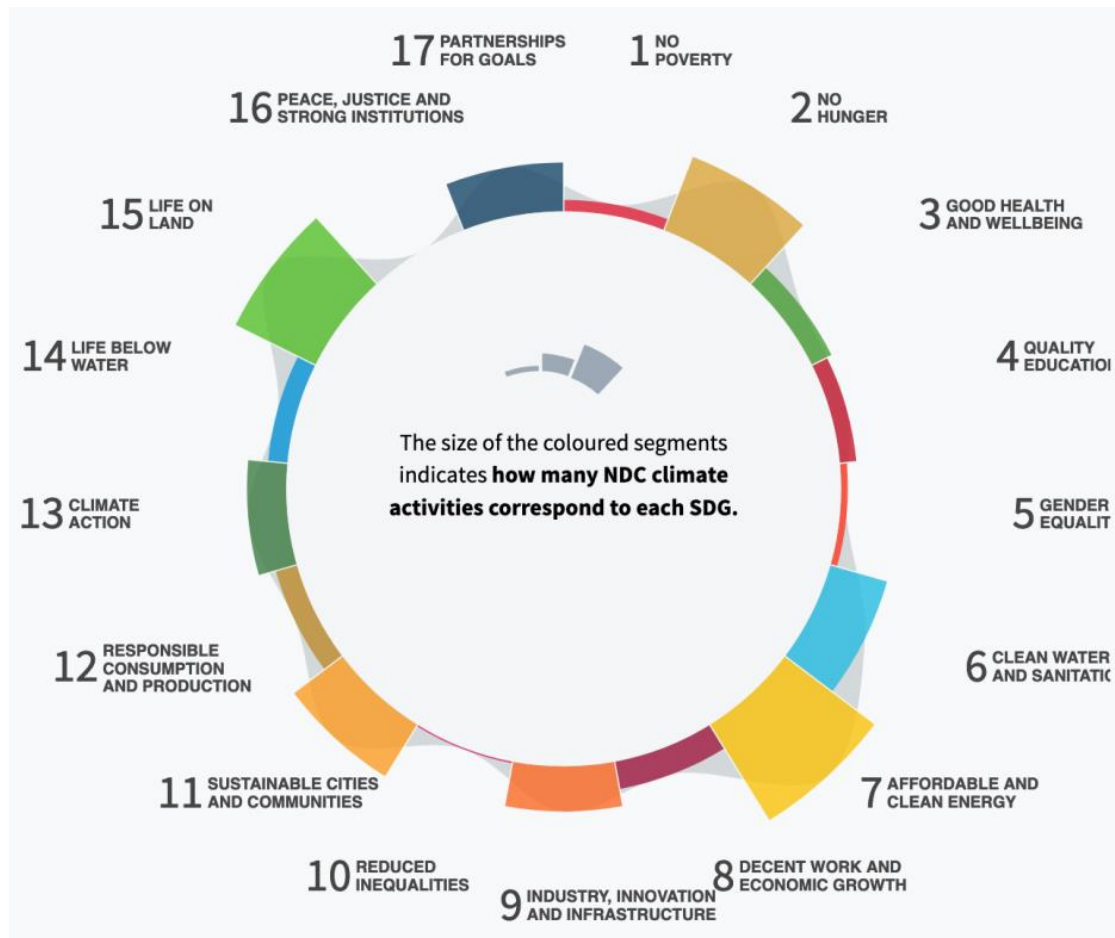
<sup>105</sup> The Paris Agreement, available [here](#).

<sup>106</sup> Dzebo, A., C. Brandi, H. Janetschek, G. Savvidou, K. Adams and S. Chan. (2017). *'Exploring connections between the Paris Agreement and the 2030 Agenda for Sustainable Development'*. SEI Policy Brief.

<sup>107</sup> Bouyé, M. 2018. *'INSIDER: Bridging Implementation of SDGs and NDCs: Examples and Early Lessons from Country Experiences'*, in Governance, World Resources Institute, available [here](#).

<sup>108</sup> Shawoo, Z., Dzebo, A. Hägele, R., Iacobuta, G., Chan, S., Muhoza, C., Osano, P., Francisco, M., Persson, Å., Linner, B-O. and Vijge, M.J. (2020). *'Increasing policy coherence between*

A study published by the World Resources Institute (WRI)<sup>109</sup> analyzed 11 countries and the European Union on their approach to address jointly the NDCs and the SDGs. This study was the first of its kind, and it discovered that climate actions embedded in the NDCs align with 154 out of the 169 targets of the SDGs. To illustrate, *see below* the example researched and published by the German Environment Institute and Stockholm Environment institute:<sup>110</sup>



Source: [ndc-sdg.info](http://ndc-sdg.info)

*NDCs and SDGs: a national perspective. SEI policy brief*. Stockholm Environment Institute. Stockholm.

<sup>109</sup> Buoyé, M., Harmeling, S., and Schulz, N-S. (2018). *‘Connecting the Dots: Elements for a Joined-Up Implementation of the 2030 Agenda and Paris Agreement.’* German Federal Ministry for Economic Cooperation and Development (BMZ) World and Resources Institute (WRI), available [here](#).

<sup>110</sup> Complete illustrations available [here](#).

There is unanimity in stating that the strongest links between the NDCs and the SDGs are found in the areas of water, food and energy.<sup>111</sup> As expected, most of the environmental and economic SDGs are reflected in the NDCs, embedded in their structure and action, whereas the social dimension SDGs are reflected to a lesser extent.<sup>112</sup>

Overall, the SDGs are generally reflected and embedded in most of the NDCs, as research shows<sup>113</sup>, although they are tackled separately. This fragmented approach towards sustainable development and climate change is one of the most discussed executions at international level, and scholars, experts, private and public stakeholders are urging the international community to reconcile their policies agenda in order to align the SDGs and NDCs.<sup>114</sup>

### **Policy coherence urgency in global governance**

As both the Paris Agreement and the 2030 Agenda are based on a '*bottom-up*' approach, States are given the flexibility to identify their biggest local challenges and draw an action plan to tackle them in light of the global achievement of sustainable development.

Their policies agendas, however, are set and implemented through two different channels: the NDCs of the Paris Agreement and the SDGs of the 2030 Agenda.

Although the NDCs are primarily working towards climate action, many States have used them to indicate their priorities and actions toward sustainable development.<sup>115</sup> However, the consistency of the NDCs and the SDGs is different, and their time-wise objective is different as well: the SDGs are '*due*' by 2030, while the NDCs, under the Paris Agreement, have different times to be reviewed until 2050.

In spite of their content discrepancies, many experts have noticed the interlinks between the SDGs and the NDCs, and thus, they have developed international tools that can further help in

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<sup>111</sup> ICSU (2017). '*A guide to SDG interactions - from science to implementation*'. International Council for Science (ICSU). Paris. Available [here](#).

<sup>112</sup> Dzebo, A., Janetschek, H., Brandi, C. and Iacobuta, G. (2019). '*Connections between the Paris Agreement and the 2030 Agenda: the case for policy coherence*.' SEI Working Paper. Stockholm Environment Institute, Stockholm, pp. 6-9

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Dzebo, p. 6

identifying these connections. Particularly identifying the connections between the NDCs and the SDGs means a first step towards policy coherence in the agenda implementation.<sup>116</sup>

### **International tools for policy coherence**

In order to achieve policy coherence for the NDCs and the SDGs, many institutes have developed international tools and exercises that help States and International Organizations to find the connections between their NDCs and SDGs. Some examples highlight the World Resources Institute, the German Development Institute, Climate Analytics, the Environmental Change Network or the Stockholm Environment Institute.<sup>117</sup>

Spotlight on The Energy and Resources Institute (TERI) that, for example, studied how the SDGs treat climate change and how NDC language is connected to the SDG targets<sup>118</sup> – this particular study is consistent with the United Nations analysis of South-South analysis, referring to the SDGs and the NDCs interlinks.

Additionally, the NewClimate Institute worked together with the Environmental Change Network to create the NDC Update Report in 2018<sup>119</sup>, focusing on the links between the NDCs and SDGs using the SDG Climate Action Nexus tool, developed previously by the German Agency for International Cooperation.<sup>120</sup> This report, for example, particularly states that it was designed to ‘*help policymakers assess whether the climate actions considered to achieve their NDC targets are likely to reinforce or undermine the SDGs*’.<sup>121</sup>

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<sup>116</sup> *Ibid.*

<sup>117</sup> Global Conference on Strengthening Synergies Between the Paris Agreement on Climate Change and the 2030 Agenda for Sustainable Development: ‘*Maximizing Co-Benefits by Linking Implementation of the Sustainable Development Goals and Climate Action;*’ Department of Economic and Social Affairs, the United Nations Climate Change Conference Summary, Copenhagen, Denmark, 2019, pp. 33-36 (*hereinafter UN Summary*)

<sup>118</sup> *Id.*, p. 35

<sup>119</sup> The NDC Update Report is available [here](#).

<sup>120</sup> Brandi et al. (2017). ‘*NDC-SDG Connections*’. German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), Stockholm Environment Institute

<sup>121</sup> The NDC Update report, p.1

However, the list of tools created to establish the nexus between the NDCs and the SDGs could go on. There is a particular international interest to move towards policy coherence and alignment between the 2030 Agenda and the Paris Agreement, especially now, when the pressure to accelerate the positive impact is even higher.

Concluding, States could definitely learn from each other's practices in climate action and sustainable development, understanding therefore possible conflicts and solutions, perhaps even areas of opportunities.

In order to understand how to link both the NDCs and the SDGs, States must create a joint monitoring system at national level, but at the same time, global governance should provide a framework for guidelines, implementation and cooperation.<sup>122</sup> The UNDP, back in 2017, published a report<sup>123</sup>, for example, on how to interconnect the NDCs and the SDGs at national level, but it takes more than that. States are in need of an integrated approach for the Paris Agreement and the 2030 Agenda, and the expectations are moving towards the origin of both: the UN.

## CHAPTER 4

### Goal-setting as global governance tool

As seen within the chapters above, the SDGs are focused on differentiated targets, achievable by 2030. In this sense, the UN has an important role of leadership to play in order to ensure the global governance setting for the goals achievement. These 17 goals are to be considered an innovative tool in global governance that sets the stage for the upcoming years of multilateral cooperation.

*Governance through goals*<sup>124</sup> appears to be the new tool in leading the international community. As argued above, the previous failures in using conventional, traditional

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<sup>122</sup> May, P. J., Sapotichne, J., & Workman, S. (2006). 'Policy coherence and policy domains.' *Policy Studies Journal*, 34(3), 381-403.

<sup>123</sup> UNDP (2017), '*Aligning Nationally Determined Contributions and Sustainable Development Goals*,' available [here](#)

<sup>124</sup> Kanie, Norichika, and Frank Biermann, editors. '*Governing through Goals: Sustainable Development Goals as Governance Innovation*.' The MIT Press, 2017

international conventions to address climate change have convinced the international community that it is time to adhere to a new, innovative system, such as goal-setting.

However, when we are discussing the goal-setting tool in global governance, one must bear in mind that it is not only about the SDGs, but also the NDCs, as both mechanisms are based on the 'bottom-up' approach where states are given the flexibility in determining their own action plan.<sup>125</sup>

In this sense, the UN not only that plays the foremost important role in governing both the SDGs and the NDCs, but it is expected to mobilize political support and resources<sup>126</sup> in order to achieve the goals through regional, national and international cooperation, including the civil society and the public and private stakeholders from both financial and business worlds.

In short, the goals underlined in both NDCs and SDGs are in fact *collective ambitions and aspirations* of the national governments and other political actors.<sup>127</sup>As seen in *Chapter One*, they have the legal value of a soft law, and some scholars and lawyers doubt their efficiency and utility as a successful global governance mechanism.

### **Criticism towards goal-setting mechanism**

Governing through goals is a contested strategy.<sup>128</sup> Some lawyers and scholars doubt the efficiency of a mechanism that holds States responsible only from the moral point of view. They argue that, in order to ensure effectiveness of the objectives, there must be a liability

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<sup>125</sup> Kanie, Norichika, et al. 'Introduction: Global Governance through Goal Setting.' *Governing through Goals: Sustainable Development Goals as Governance Innovation*, edited by Norichika Kanie and Frank Biermann, The MIT Press, Cambridge, Massachusetts; London, England, 2017, pp. 1–28 (*hereinafter Kanie et al*)

<sup>126</sup> *Id.*, p. 2

<sup>127</sup> *Id.*, p. 4

<sup>128</sup> Young, Oran N. 'Conceptualization: Goal Setting as a Strategy for Earth System Governance'. *Governing through Goals: Sustainable Development Goals as Governance Innovation*, edited by Norichika Kanie and Frank Biermann, The MIT Press, Cambridge, Massachusetts; London, England, 2017, pp. 31-52.

mechanism in place to control that.<sup>129</sup> In a few words, they argue that global governance should stick to the ‘*old, but gold*’ public international law mechanism: governing through international conventions.

Some other scholars<sup>130</sup> argue that goal-setting in global governance *lacks effectiveness* as there are no hierarchical governance arrangements at international level to ensure that the procedures are respected. In contrast, goal-setting relies completely on global diplomacy, international pressure and States cooperation.

Moreover, even some political experts dismiss the goal-setting mechanism as they consider it a failure in achieving meaningful, binding multilateral agreements<sup>131</sup>, such as the Paris Agreement.

Additionally, there was also some criticism towards the unintended effects that might be produced by the global goals, as they can distort the priorities within the international community, disrupting other ongoing initiatives, alliances and partnerships, perhaps this time regional, instead of global, or undermining policy-making mechanisms.<sup>132</sup>

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<sup>129</sup> Young, Oran N., Underdal Arild, Kanie Norichika and Kim E. Rakhuyun. ‘*Goal Setting in the Anthropocene: The Ultimate Challenge of Planetary Stewardship. Governing through Goals: Sustainable Development Goals as Governance Innovation*’, edited by Norichika Kanie and Frank Biermann, The MIT Press, Cambridge, Massachusetts; London, England, 2017, pp. 53-74. (*hereinafter Young et al.*)

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> Fukuda-Parr, Sakiko. 2014. ‘*Global Goals as a Policy Tool: Intended and Unintended Consequences.*’ *Journal of Human Development and Capabilities* 15 (2-3): 118-131.

However, the academia<sup>133</sup> is moving towards accepting the goal-setting governance mechanism with certain degrees of caution, by arguing that with particular institutional and resource mobilization efforts <sup>134</sup> it can be concretized. *Thus:*

### **Advantages of goal-setting in global governance**

Regardless of their type, goals in global governance highlight a different approach to our global issues because they recognize the freedom of each State in decision-making, but also their fundamental interdependence with other nations in order to generate positive impact on socio-ecological problems, for example.<sup>135</sup>

Moreover, compared to international conventions, goals such as the NDCs and the SDGs capture the interconnections between the global issues and they underline the detailed process and systemic approach to end them, or at least diminish.<sup>136</sup>

Additionally, both the NDCs and the SDGs reflect a political outcome – a rough negotiation with mainly all countries on the globe, consenting to collaborate for the upcoming decades on the same topics.

Perhaps the most important aspect to bear in mind is that the global goals, whether the NDCs or the SDGs, *reflect existing rules*, such as the one pre-existing in international treaties.<sup>137</sup> They are not merely aspirational goals, which happens normally when negotiating Parties want to draft an international convention, but they have a general layer, followed by individual mechanisms to ensure their implementations.

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<sup>133</sup> Biermann Frank, Stevens Casey, Bernstein Steven, Gupta Aarti, Kanie Norichika, Nilsson Mans and Scobie Michelle. *'Global Goal Setting for Improving National Governance and Policy'*. *Governing through Goals: Sustainable Development Goals as Governance Innovation*, edited by Norichika Kanie and Frank Biermann, The MIT Press, Cambridge, Massachusetts; London, England, 2017, pp. 75-98.

<sup>134</sup> *Ibid.*

<sup>135</sup> Young et al, p. 54

<sup>136</sup> Kanie et al., pp. 12-23

<sup>137</sup> *Ibid.*

In addition, the global goals do not reflect general, abstract rules, like the international conventions do, in order to offer a general accessible framework that could cover, through interpretation, various scenarios. The global goals come with specific topics to cover, for both short-term and long-term, such as poverty eradication.<sup>138</sup> Global goals, therefore, look at the broader societal transformation, including the economic and environmental aspect, whereas international conventions normally focus on one topic at a time.

Even more interesting, the global goals offer the possibility to raise the level of ambition several decades in a row.<sup>139</sup> As shown by the MDGs, the precursors of the SDGs, the ambition was ‘*shy*’ in the beginning, having the UN reluctant to set the bar too high from the start. However, the SDGs came to replace 8 goals with 17, having 169 detailed targets under each category. It is expected by 2030 to continue reducing the gap between developed and developing countries and setting even higher ambitions.<sup>140</sup>

Lastly, perhaps the most distinguishing advantage of the global goals in contrast to international conventions is their ability to mobilize a diversity of stakeholders, from individuals, to the public and private sphere, up to the international organizations and institutions.<sup>141</sup> This multitude of stakeholders involved increases the chances of effectiveness in practice, as the civil society, for example, is more and more interested in participating in the decision-making process.

To illustrate, in the past five years, numerous protests took place across the globe, voicing to urge the fight against climate change, to fight against xenophobia, racism and gender inequalities. As 2020 has shown us, with the *Black Lives Matter* movement and beyond, the civil society is restless. As such, the more it is involved in the decision-making process, especially for the long-term targets that address the social-environmental issues, the more successful global governance will be.

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<sup>138</sup> *Ibid.*

<sup>139</sup> Kanie et al, p. 24

<sup>140</sup> *Ibid.*

<sup>141</sup> Routledge Handbook of Global Sustainability Governance, edited by Agni Kalfagianni, Doris Fuchs, and Anders Hayden. Routledge International Handbooks, 2020.

## **‘Out with the old, in with the new’**

As *Young et. al* argue, there is growing evidence that we have entered a new epoch, called the *Anthropocene*, which means that globally speaking, us, humans, are essentially shaping planetary systems.<sup>142</sup> In a few words, we are generating negative and positive impact on all systems encompassed on the planet: from the social sphere, to the ecosystem, biodiversity, natural resources and so on.

The world is on a continuous changing journey, and we must ensure adaptive, flexible legal mechanisms that are capable of keeping up to the changing speed of the planet. As such, the classic international conventions that normally underline legal obligations and have in place liability mechanisms can no longer be the norm.<sup>143</sup> Our population has reached more than 7 billion people, and it is expected to reach almost 10 billion by 2050.<sup>144</sup> We must ensure a global governance mechanism capable of encompassing the needs of all nations, by giving them the flexibility to express themselves, their challenges, limitations and capabilities, which is already shown in the NDCs and the SDGs for example.

So far, these mechanisms had positive reinforcement from all Parties. Not only that they are publicly disseminating their contributions to achieve these goals,<sup>145</sup> but they are putting pressure on their own citizens, private businesses and organizations to collaborate.<sup>146</sup>

Beside the transition to a new epoch, we are witnessing another historical moment: global governance can work through diplomacy and institutional collaboration.<sup>147</sup> Goal-setting as a

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<sup>142</sup> Young et al, pp. 54-60

<sup>143</sup> *Ibid.*

<sup>144</sup> UN Department of Economic and Social Affairs publications on the world’s population, 17 June 2019, available [here](#).

<sup>145</sup> Sachs, J., Schmidt-Traub, G., Kroll, C., Lafortune, G., Fuller, G., Woelm, F. 2020. ‘*The Sustainable Development Goals and COVID-19.*’ Sustainable Development Report 2020. Cambridge: Cambridge University Press.

<sup>146</sup> Kanie et al., pp. 14-15.

<sup>147</sup> Young et al., p. 53

mechanism of global governance is working at high speed and it is expected to be successful by 2030, for the SDGs, and by 2050 for the NDCs.

The situation could change. Public international law has changed. States have evolved. Some states have disappeared. Some new States emerged. The world is going through an everlasting transformation. We might notice the first evolution of global governance through goal-setting close to 2030, when perhaps the UN will start the diplomatic negotiations for a new set of goals, as it happened before the adoption of the 2030 Agenda, when the MDGs were in force. But that is still to be seen.

To conclude, we can no longer hold onto our old mechanisms just because they are traditionally reinforced over the years. Global governance has taken a more important role than public international law, using politically integrative and systemic approaches, *'Leaving no one behind'*. As the title suggest, it might be a good moment for academia to slowly start recognizing the merits of goal-setting as an innovative approach of global governance, and focus on its benefits as an international tool, rather than hypothetical possibilities of what might not work.

## CONCLUSION

Here we are, at the end of the theoretical journey surrounding global governance and sustainable development. This topic is so broad and yet unexplored, but for the time being, some of the highlights below might help in understanding the current situation and what possible steps we could take from here:

1. The Sustainable Development Goals (SDGs) adopted in 2015 under the 2030 UN Agenda could be considered a soft law instrument for global governance.
2. While public international law sets out an important legal framework to tackle global challenges, we might need to move towards a more innovative approach that gives more flexibility to the States and includes a diversity of actors, including individuals.
3. The transformation of both public international law and global governance has been heavily triggered by the COVID-19 pandemic and we currently find each

other at crossroads: to continue our usual *'normal'* or to adapt to our new world's requirements and challenges?

4. The Nationally Determined Contributions (NDCs) which are the result of the adoption of the Paris Agreement (1), multilateral consensus (2), and individual national goal-setting (3) encompass many targets seen already in the SDGs. The international community of experts, scholars and policy-makers call for policy coherence in order to align the implementation of both NDCs and SDGs.
5. There are already international mechanisms in place created by organizations that observed the urgent need for global policy coherence between the NDCs and the SDGs, but we are still lacking a global centralized governance on this topic.
6. Both NDCs and SDGs should be seen as an innovative tool for global governance, as beside their monitoring and enforcement mechanisms, have earned global political consensus and involve a plentitude of actors.

The SDGs should not absolve their States from their ability to design and implement national regulations that tackle their own challenges. While the SDGs set out a global framework to do so, the State responsibility should not be minimized at national level. As the SDGs are not legally binding, they do come with an immense political pressure and international responsibility. Perhaps this time the consequences of climate change are so obvious to the eye that one can no longer turn the head away.

Throughout my personal work within the global corporative environment, I have observed how businesses join their forces to 'co-create' and bring positive impact through their actions, and how generally speaking, most citizens of the world have heard and understood that we are transitioning through a rough climate crisis.

We have seen together, since 2015, so many changes triggered by the climate crisis: from the US and Brazil elections that endangered our efforts against climate change, to the massive Australian fires, floods in Indonesia and Nepal, earthquakes in Turkey and Mexico and ice melting in the North Atlantic. And the list goes on.

What I have tried to illustrate throughout this paper were not only scholars' articles and legal instruments, but also reports of International Organizations, news and separate opinions of experts in environmental engineering. The law is transforming, as I previously argued, but I believe that us, students, are changing our understanding towards sources of learning as well. The SDGs have become an integrated part of our daily life, not only professional and academic, but personal.

At all levels, there were organizations built to support the implementation of the SDGs. Each State has young people involved in their own initiatives to support the goals they most believe in, and businesses also integrate the SDG framework within their Corporate Sustainability action plan.

The discussion could go on and I am sure it will. Not for this paper, as we have arrived at the end of it, but in practice, it is just the beginning. In September 2020, the UN Secretary-General announced 'A Decade of Action to deliver the SDGs', a framework that foresees all individuals getting involved in tackling global challenges to some extent. It is up to all of us to contribute in generating positive impact.

Scholars, businesspersons, students, children.. we are all running this marathon, and we are expected to win by 2030.

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