

INTRUMENTALIZATION OF THE NORMATIVE BOTTOM-UP PARADIGM OF THE PARIS AGREEMENT BY THE RULEBOOK

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ABSTRACT

The article addresses the instrumentalization of the bottom-up paradigm in the international climate change regime, the nationally-determined contributions (NDCs) of the Paris Agreement (PA). The PA does not present details of the procedure of NDCs, as these gaps were filled by the Paris Rulebook. In this sense, the present study was guided by the following inquiry: how does the Paris Rulebook address the bottom-up paradigm, that is, how does it implement art. 4:2 of the Paris Agreement? The general objective was set as to highlight the normative paradigm. In order to achieve the general objective, the following specific objectives were defined: to contextualize the United Nations framework on climate change, and to elucidate the instrumentalization of art. 4:2 of the Agreement by the Paris Rulebook. It is a theoretical research, whose problem was approached qualitatively and whose purpose was to describe the legal phenomenon through technical procedures of bibliographic review with systematic interpretation. As an instrument, NDCs are considered to depend on the three essential elements of the Agreement. As self-determination is the guiding principle for the contributions, it is concluded that the procedures for mitigating greenhouse gas emissions are political decision-making processes, rather than technical or out of the need to contain the global temperature, and that it is an instrument still under construction.

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INSTRUMENTALIZAÇÃO DO PARADIGMA NORMATIVO ASCENDENTE DO ACORDO DE PARIS PELO LIVRO DE REGRAS

RESUMO

A pesquisa aborda a instrumentalização do paradigma ascendente no regime internacional de mudanças climáticas, as contribuições nacionalmente determinadas (CNDs) do Acordo de Paris. Esse não apresenta detalhes do procedimento das CNDs, essas lacunas foram supridas pelo Livro de Regras de Paris. Nesse sentido, o presente estudo foi guiado pelo seguinte questionamento: como o Livro de Regras de Paris aborda o paradigma ascendente, ou seja, instrumentaliza o art. 4:2 do Acordo de Paris? Definiu-se como objetivo geral evidenciar o paradigma normativo. A fim de alcançar o objetivo geral, delimitou-se como objetivos específicos: contextualizar o regime das Nações Unidas sobre de mudanças climáticas, e elucidar a instrumentação do art. 4:2 do Acordo pelo Livro de Regras de Paris. Trata-se de uma pesquisa teórica, cujo problema foi abordado de maneira qualitativa e tem por finalidade descrever o fenômeno jurídico por procedimentos técnicos de revisão bibliográfica com interpretação sistemática. Considera-se que, sendo um instrumento, as CNDs dependem dos três elementos essenciais do Acordo. Sendo a autodeterminação norteadora das contribuições, conclui-se que os procedimentos de mitigações de gases de efeito estufa são processos de decisão política, não técnica ou por necessidade da contenção da temperatura global, e que é instrumento ainda em construção.

Palavras-chave: *contribuições nacionalmente determinadas; CQNUMC; Livro de Regras de Paris; mitigação de gases de efeito estufa; mudanças climáticas.*

INTRODUCTION

The States Parties to the Paris Agreement are committed to presenting their nationally-determined, progressive and successive contributions. These characteristics configure the so-called bottom-up approach, characterizing innovation in the United Nations' international climate change regime. Decision1/CP.21, the document accompanying the Agreement, determined that additional guidance should be developed on the characteristic, as well as accounting and necessary information of nationally-determined contributions, which are the self-determined emissions reduction goals, that is, domestic mitigation measures, expressed in art. 4 of the Agreement.

The guidelines were established in the decision, and their respective annexes to COP 24 held in Katowice, Poland. The document is intended to provide guidance for the implementation of the Paris Agreement, to enhance the clarity, transparency and understanding of the Parties' nationally-determined contributions (NDCs), as well as procedures for designing the "global stocktake" and "compliance mechanism".

From the nationally-determined contribution intentions submitted by 180 countries and presented at the Conference in Lima, COP20, in 2014, it was already clear that their aggregate impact for the first five or ten years after 2020 would not be enough to put the planet on the path of emissions reduction, which would result in warming above the limit established in the Agreement (THORGEIRSSON, 2017). Therefore, the debates about the "Rulebook" revolved around how to integrate the bottom-up approach with the need for greater strictness for the fulfillment of the contributions presented by the Parties.

Thus, from these considerations, the following research problem was formulated: How does the Paris Rulebook address the bottom-up paradigm, that is, how does it instrumentalize art. 4 of the Paris Agreement? To answer the question, the general objective of this research was set to highlight the bottom-up normative paradigm of the Paris Agreement and its delimitation by the Rulebook. In order to achieve the general objective, specific objectives were defined: to contextualize the international climate change regime; and elucidate the implementation of art. 4 of the Agreement in the Paris Agreement and in the Paris Rulebook.

The scientific and social relevance of this delimitation is the essentiality of understanding the implementation of nationally-determined

contributions, as on these depends the achievement of the objective of containing global temperature. It is a theoretical research, whose problem was approached qualitatively and aims to describe the legal phenomenon by technical procedures of bibliographic review with systematic interpretation.

The text was sectioned according to the specific objectives. First, we sought to present the evolution of the international climate change regime to contextualize the innovation of the bottom-up paradigm. Then, general concepts of the Paris Agreement are presented, paying attention aspects that are relevant for understanding the subsequent item. Finally, we present the instrumentalization, through the Paris Rulebook, of the greatest innovation of the current international agreement on climate change: the bottom-up normative paradigm.

1 EVOLUTION OF THE INTERNATIONAL CLIMATE CHANGE REGIME

The term “regime” has been defined in International Relations as “a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations”, according to Yamin and Depledge (2004, p. 17). The authors complement the definition by stating that the term also refers to institutions and procedural instruments established to oversee its implementation, development and execution.

The creation of an international climate change regime can be understood as the response offered by States to one of the most significant challenges of our time: climate change. For Bodansky (2016, p. 3) the Paris Agreement “represents the culmination of the third phase of the United Nations Climate Change Regime”, composed of four phases. The first started in 1990 with the creation of an Agenda around Climate Change. The second phase is characterized by the formation of the basic structure of the climate regime, between 1991 and 1994, with the entry into force of the United Nations Convention on Climate Change (UNFCCC).

In turn, the third phase was regulatory, aimed at negotiations, preparations and operationalization of the Kyoto Protocol, which required industrialized countries to reduce their emissions of carbon dioxide (CO₂) and five other greenhouse gases. A period extended from 1995, when the Berlin mandate started negotiations, after the entry into force of the Kyoto

Protocol in 2004, this phase also includes the adoption of the 2001 Marrakesh Agreements, which establish detailed rules on the functioning of the Protocol.

The fourth and current phase began in 2005 and refers to the concern of what to do after 2012, when the first commitment period of the Protocol ended. Milestones in this phase include the 2007 Bali Action Plan; the 2009 Copenhagen Agreement; the 2011 Durban Platform, which initiated a new round of negotiations to address the period beginning in 2020; the 2012 Doha Amendment, which extended the Kyoto Protocol to 2020; and the Paris Agreement, of 2015, which addresses the post-2020 period (BODANSKY; BRUNNÉE; RAJAMANI, 2017).

In a different sense, Juste Ruiz classifies the International Climate Change Regime by the most important multilateral documents. He maintains that currently the Regime is formed by a three-dimensional structure, an architecture developed in successive phases and marked by the following legal documents: the United Nations Framework Convention on Climate Change, 1992, the Kyoto Protocol, 1997, and the Paris Agreement, 2015. Since this model is unusual, because protocols usually complement the framework convention, in the climate change regime, the Paris Agreement does not fit as a second protocol to the 1992 Convention nor as a new framework convention (JUSTE RUIZ, 2018).

More broadly, for Mayer (2018), the United Nations Framework Convention on Climate Change regime is the most evident; however, there are a number of international climate agreements in force concurrently with the regime established in 1994. Therefore, depending on the concept of regime adopted, these rules would be included in the climate regime.

International law on climate change has as its source both international custom, in which a general practice is accepted as legal and as law, and general norms of international law, for example, the principle of not causing harm to another State (MAYER, 2018). Furthermore, also functioning as sources are international conventions that establish rules expressly recognized by States, norms that establish collective objectives, national commitments and procedural and institutional provisions, in particular the Framework Convention Regime and other agreements that pervade the theme of climate change, even if indirectly, like the Montreal Protocol on substances that deplete the ozone layer (1987), the International Convention for the Prevention of Pollution from Ships (1973), the Convention on Biological Diversity (1992) etc.

The United Nations Framework Convention on Climate Change (hereinafter referred to as UNFCCC) originated from the negotiations of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change convened by the United Nations General Assembly in 1990³. The Committee's negotiations originated the text of the Convention adopted on May 9, 1992⁴, entering into force in 1994. The Convention establishes a general framework – in this sense, for negotiators, it was already clear that subsequent instruments would be needed⁵ – and defines a “final” objective and some principles of cooperation, in addition to describing “vague national commitments” to promote mitigation, adaptation and to establish institutions that can facilitate additional negotiations (MAYER, 2018, p. 34).

The regime's institutions are central to the development and maintenance of multilateral debates. The Conference of the Parties (COP) is an assembly of representatives of all parties gathered in annual sessions to make decisions on implementation and, if necessary, on amendments or protocols to the Convention (art. 7). Reporting to COP are The Secretariat (art. 8) and two specialized bodies for multilateral negotiations between sessions: the Subsidiary Body for Scientific and Technological Advice, and the Subsidiary Body for Implementation (arts. 9 and 10) (MAYER, 2018). This structure was endorsed by the Kyoto Protocol and the Paris Agreement. Therefore, every year, concurrent with the Convention of the Parties to the Convention, there is also the meeting of the Kyoto Parties and, since 2015, the meeting of the Paris Parties.

Art. 2 of the UNFCCC defines the “ultimate objective” of the international climate change regime. It establishes that States (Parties) must act in order to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”, which shall occur within a time frame “sufficient to allow ecosystems to adapt naturally” to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner (UNFCCC, 1992).

An environmental quality standard, an environmental threshold, is

3 The theme, climate change, emerged on the international political scene in 1988, when at the UN General Assembly, the Government of Malta proposed that climate conservation be part of the common heritage of humanity, addressed the issue for the first time and adopted Resolution 43/53.

4 In June of the same year, the United Nations Conference on Environment and Development (Rio-92, Eco-92, or Earth Summit) took place, when it was adopted and opened for signature.

5 Inspired by the experience of the Montreal Protocol (1987) that complements the 1985 Vienna Convention on the protection of the ozone layer.

established, and the Parties are required to ensure that it is not exceeded. That is, activities that cause interference in the climate system are allowed to continue to a certain extent, which differs, for example, from Multilateral Environmental Agreements that establish limits that impose absolute prohibitions on specific activities, such as the ban on dumping of radioactive waste in the sea or the moratorium on whaling (YAMIN; DEPLEDGE, 2004).

The objective of the Convention has a preventive emphasis, since it establishes that the ecological limits of the Earth must be respected when expressing that the stabilization of greenhouse gases (GHG) in the atmosphere should be achieved “within a time frame sufficient to allow ecosystems to adapt naturally to climate change” (BRAZIL, 1998). This objective applies to the Kyoto Protocol and the Paris Agreement, and this characteristic is justified by the imperative of the Convention itself when stating that “any related instrument” must share the ultimate objective established in art. 2, which is stated in the preamble to subsequent documents.

The UNFCCC’s ultimate objective has a programmatic character of mitigating climate change. Therefore, with the achievement of stabilization in atmospheric concentrations of GHG at a safe level, it becomes obsolete, but there is no provision for its termination after the achievement, in any case the achievement of the final objective remains a distant perspective.

In addition, the Convention’s ultimate goal must be achieved in a timely manner, envisioning the threats of the effects of climate change to society. The Convention does not provide a definition of what level of risk is considered “dangerous”, which reflects the difficulty of reaching consensus among States, which have different expectations for international cooperation on climate change.

Moreover, adaptation efforts are mentioned several times in the Convention and can be considered as a complementary way to reduce the risk of anthropic interference in the climate system. However, as stated by Mayer (2018, p. 36), “what would constitute a dangerous anthropogenic interference with the climate system is far from clear”.

The first decision adopted by the COP at its first session was the establishment of the Berlin Mandate for negotiation of a legal instrument, leading to the adoption of the Kyoto Protocol at COP3 in December 1997. The agreement established that it would not introduce obligations to developing countries, one of the biggest and most significant differences between such and the Paris Agreement. The main obligation established by

the Protocol is the reduction of overall anthropogenic emissions. Oliveira (2017, p. 158) maintains that the Protocol has characteristics of hard law, since

There are clear standards and delineations in the text of the Protocol, so that this objective can easily, if it were the case, be demanded by an international court or international arbitration, without generating any doubt about the outcome of an eventual demand, since its outlines would be well traced by the obligation.

The quantified emission limitation and reduction commitments were intended for developed countries, listed in Annex I, and are outcome obligations. The percentages were defined based on the 1990 emissions, so the States, listed in Annex B, should not exceed them during the commitment period between 2008 and 2012 (MAYER, 2018).

Annex A lists six greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). It also contains sectors and categories of relevant sources of emission of these gases.

The Protocol also created three “flexibility mechanisms” to facilitate the fulfillment of quantified emission limitation and reduction commitments, allowing cooperation between developed and developing countries, or by a group of developed countries. They are: Joint Implementation, Clean Development Mechanism (CDM) and Emissions Trading (YAMIN; DEPLEDGE, 2004).

These mechanisms are intended to enable the Parties to reach their mitigation commitments by making, financing or buying emission reductions generated abroad, that is, they follow the market logic. They were not instruments concluded in the Protocol, being the cause of immense debate at COP meetings. In summary, they are instruments that allow a State Party to report in its inventory of emissions, as a result of their own effort, mitigations that occurred outside its territory. Peixer (2019, p. 104) highlights:

In practice, industrialized countries obtained emission quotas, which established the maximum limits for their annual GHG emissions. Countries could increase their quotas through collaboration with other countries, either in the form of emission reduction projects, from which carbon credits could be purchased, or through the purchase of parts of quotas from other countries (if the actual emissions from other countries were below their quotas). This collaboration between projects and the credit trade between industrialized countries was called Joint Implementation. Projects between industrialized and developing countries were organized under a Mechanism (CDM). Direct trade between countries of parts of the emission quotas was organized as the International Emissions Trade.

Opened for signature on March 16, 1998, the uncertainties of ratification by the United States⁶ have been confirmed. The non-participation of the largest GHG emitter has greatly weakened the possibility of fulfilling the final objective of the Convention and the mitigation quantification provided for in the Protocol. Even so, negotiations for the applicability of the Protocol continued until at COP7, in 2001, the Parties signed “The Marrakesh Agreements”, a set of twenty-three agreements that governed numerous modalities of application of the Protocol and its flexibility mechanisms. States were then invited to continue ratification processes. In 2005, all Parties to the Convention had ratified, except the United States.

Taken together, the individual commitments included in Annex B aimed at achieving a 5% reduction, below 1990 levels, of GHG emissions from developed States. After years of inaction and increasing national emissions, Canada withdrew from the Protocol two weeks before the end of the commitment period to avoid the finding of non-compliance.

Without Canada and the United States, only thirty-six Annex B States implemented their emission limitation and reduction commitments. The implementation of QELRCs () was facilitated by rapid emission reductions in economies in transition (i.e. countries formerly from the Eastern Bloc) during the 1990s and by the progressive offshoring of greenhouse gas-intensive industries to emerging economies. The 2009 global economic crisis also had the effect of reducing GhG emissions in developed States, although temporarily, making it easier for several States to comply with their commitment during the 2008-2012 period. (MAYER, 2018, p. 42).

In the aforementioned scenario, two avenues of debate have unfolded: first, the option of extending the term of the Kyoto Protocol, establishing a second commitment period, even without the participation of economies with a high level of emissions (United States and Canada); or, secondly, to open a second avenue of negotiations, directly under the Convention, with the participation of the United States, and to try to convince the emerging economies to make specific commitments in the mitigation of climate changes, considering their increasing emissions (MAYER, 2018).

Both options were adopted. The negotiations continued in parallel, and still in 2005 the first meeting took place to discuss the amendment to the Protocol. Negotiations for “long-term cooperative action” started with the Bali Action Plan (COP13). Both negotiations were due to end

6 United States of America legislation requires that Agreements be ratified by the Senate. Thus, the president of the time signed, but the Senate refused to ratify it on the grounds that it would be detrimental to the US economy to participate in an agreement to limit and/or reduce greenhouse gas emissions in which no commitments are required from developing countries within the same period of compliance, with this being an imposing characteristic for future treaties.

in Copenhagen, at COP15 in 2009. The negotiations that led to the Paris Agreement started in 2005, introducing the idea of a more global approach to the climate regime.

COP15, in 2009, did not meet expectations. According to Bodansky (2016), two years proved to be insufficient for the discussion. However, it has its importance, as it pointed out in an embryonic manner the way forward, reorienting the international climate change regime by establishing reduction contributions through a process of collective negotiations, using bottom-up architecture and reducing the difference in treatment between developed and developing countries.

The Cancún Agreement, the result of the COP16 negotiations, incorporated the main elements of Copenhagen, but with a limited approach until 2020, leaving doubts about the amendment of the Kyoto Protocol. There was a decision on the focus of the Durban Conference, COP17 in 2011, when an *ad hoc* Working Group was established, which met 15 times until Paris and sent a project for negotiation in the first week of the Conference.

The negotiation process that led to Paris, organized by The Durban Platform for Enhanced Action, had a strong commitment to balance. Developed countries adopted a second Kyoto Protocol period at COP18. Indeed, the emerging and developing countries agreed to negotiate a new instrument that would impose obligations on them, which would fulfill the requirement imposed by the US Senate for the United States to participate in a climate agreement. This new legal instrument would be applicable to all Parties (BODANSKY, 2016).

Upon arrival at COP21, States were already familiar with the new approach. After the Conference began, 180 States had already sent their intentions for nationally determined contributions, which were invited in 2014 by *the* Lima Action Plan. Thus, in December 2015, the Paris Agreement was approved by 195 States, and currently 189 countries are signatories to the 197-Party Framework Agreement (UNFCCC, 2020). As Bodansky (2016, p. 1) rightly describes:

The Paris Agreement seeks a Goldilocks solution that is neither too strong (and hence unacceptable to key states) nor too weak (and hence ineffective). To safeguard national decision-making, it adopts a bottom-up approach, in which the Agreement “reflects rather than drives national policy.”⁷ But to promote stronger action, states’ “nationally determined contributions” (or NDCs, for short) are complemented by international norms to ensure transparency and accountability and to prod states to progressively ratchet up their efforts.

Thus, the three-dimensional structure of the international climate change regime of the United Nations Framework Convention on Climate Change, comprising the Convention, the Kyoto Protocol and the Paris Agreement, is completed.

This three-dimensional structure may present operational problems in the future, as there are three different enforcement bodies, which, however, come together and act in unity of act. The Conference of the Parties (COP) to the Convention also operates as a Meeting of the Parties to the Kyoto Protocol and as a Meeting of the Parties to the Paris Agreement. All parties can participate in COP meetings dedicated to the other instruments of the regime and intervene in the deliberations as observers, that is, without voting ability.

Juste Ruiz (2018, p.33) argues that the simultaneous presence of non-Party States was already a problem during the coexistence of the two previous operational units (Conference of the Parties to the Convention and Conference of the Parties to the Kyoto Protocol). Therefore, the lack of definition of the existing relationship between the different elements tends to present more difficulties, either due to the inevitable overlapping of the actions of the three meetings of the Parties, or due to the need for consensus for decisions or, still, due to the specific diplomatic weight of each country exercised during the meetings held for the different instruments, even without formal voting ability. This last characteristic is aggravated by the withdrawal of the United States from the Paris Agreement.

2 PARIS AGREEMENT: GENERAL ASPECTS

Considered a highly innovative international instrument, the Paris Agreement (hereinafter referred to as the PA or Agreement) deviates from conventional models of the International Climate Change Regime. Bodansky (2016) classifies eight aspects that characterize the new paradigm of the Regime for catalyzing global and progressive actions to combat climate change.

First, it should be noted that this is not a political agreement, the Parties are bound by those rules. Second, the global application is innovative because, regardless of the status of development, the Party must present national contributions to mitigate greenhouse gas emissions, thus reaching the global level, since, at the entry into force of the Agreement, in 2016,

approximately 95% of global emissions were represented in nationally-determined contributions submitted by states.

The third aspect refers to the absence of differentiation, since the main obligations are the same for all Parties. The fourth establishes long-term architecture, but with a collective assessment balance every five years, which is the fifth aspect. The Agreement presents the expectation of the Parties that there will be increasingly stronger action over time for the progressive renewal of NDCs. Therefore, progressivity is the sixth aspect.

It also innovates in the oversight, using transparency in an enhanced way, since the emission inventories will be in a public database, subjecting the Parties to peers and the general public. Finally, the eighth aspect was “universal” acceptance, since, at the time of signing, only Nicaragua objected.

The nomenclature is part of the strategy devised during the Paris negotiations in order to avoid the legislative procedures that undermined the Kyoto Protocol.

Regarding its legal nature, although there is some opposition, it is unquestionable that the PA is an international treaty, as expressed in the final clause, compatible with the 1969 Vienna Convention on the Law of the Treaties (BRAZIL, 2009), as it refers to an agreement, signed in writing, between States and governed by international law, as well as following the regime of treaties with regard to negotiation, adoption, authentication of the text and entry into force, which also includes the application of the rules on the interpretation of the treaty arts. 31 and 32 of the Vienna Convention (JUSTE RUIZ, 2018; BODANSKY, 2016; MAYER, 2018; PEIXER, 2019; MINNEROP, 2020; RAJAMANI; BODANSKY, 2019).

Questions about the substantive legal nature of the Agreement have their starting point in the instrument by which it was adopted: Decision 1/CP.21. This Decision has 139 paragraphs and section III, entitled “Decisions to give effect to the agreement”, has an undeniable interpretative value as part of the treaty context and may even have a direct binding effect (JUSTE RUIZ, 2018, p.39), whereas the Paris Agreement, relatively small, has 29 articles attached. Following the prescription of the Vienna Convention on the Law of the Treaties, their interpretation includes the preamble and annexes (art. 31:2).

The PA maintains a relationship with the UNFCCC for three reasons: first, because in order to be part of the Agreement, it is necessary to be part of the Convention (art. 20 PA); second, because it expressly presents the

objective of “enhancing the implementation of the Convention, including its objective, aims to strengthening the global response to the threat of climate change”, (art. 2: 1 PA); and, thirdly, because it uses the operating institutions of the Convention, the Conference of the Parties, art. 16:1, the Secretariat, art. 17, and the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation, arts. 18 and 19.

However, the PA has some characteristics that give it a certain operational autonomy and it seems to be a call to become the main instrument in the future for the development of the global regime to combat climate change (JUSTE RUIZ, 2018). The instrument’s provisions have a variable and diluted regulatory content, in which mandatory elements are sometimes almost non-existent (SALINAS ALCEGA, 2018, *apud* JUSTE RUIZ, 2018, p. 40).

According to Juste Ruiz (2018), the PA has a peculiar and embryonic legal configuration, as it combines formally binding content with little prescriptive content, in which specific legal obligations are very confusing and often incomplete, with most of the provisions presented in a diluted manner and with low prescriptive content, so that specific legal obligations are sometimes almost non-existent or, at least, imperceptible, requiring further regulatory development through the action of the Conference of the Parties and its subsidiary bodies, so much so that the Agreement repeatedly refers to future action of COP and its subsidiary bodies, issues that the Paris Rulebook sought to operationalize, a document resulting from the 24th round of United Nations Regime climate negotiations, COP24 held in December 2018 in Katowice, Poland (RAJAMANI; BODANSKY, 2019)⁷.

The Agreement is divided into substantive provisions, which are fundamental aspects of the agreement, and procedural provisions, which aim to strengthen transparency and promote compliance. Substantial elements of the agreement are: principles, which are the same as those of the Convention (preamble to the Agreement); mitigation; adaptation; financial assistance, technology transfer and capacity building (arts. 9, 10 and 11 respectively); and public participation (art. 12), with procedural provisions being: Transparency (art. 13), Compliance (art. 15) and Loss and Damage (art. 8 read jointly with § 52 Decision 1/CP.21).

⁷ Rajamani and Bodansky point out the relevance of adopting the Rulebook, in view of the global political scenario: “The adoption of the so-called Paris Rulebook represents a significant diplomatic achievement in the current geopolitical context, demonstrating continuing political support for the Paris Agreement despite the headwinds created by President Trump’s announced intention to withdraw the United States from the Agreement in 2020, and the equivocation on the Agreement by the newly-elected Brazilian President, Jair Bolsonaro” (RAJAMANI; BODANSKY, 2019, p. 2).

The principles that inspire the PA are the same prescribed in art. 3 of the UNFCCC. It is noted that the preamble expressly states that the PA has the purpose of fulfilling the objective of the Convention and will be guided by its principles. They are: precautionary principle, sustainable development, promotion of an open international economic system and common but differentiated responsibilities.

Unanimously, the doctrine has stressed that the PA has profoundly reformulated the principle of common but differentiated responsibility by the provision of art. 2:2: “This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (JUSTE RUIZ, 2018, p. 41), an approach that does not escape criticism for considering that such changes consist of:

[...] dismantling the differential treatment of developing countries in terms of central obligations in other fields of international law – as was the case in trade agreements under the GATT with the emergence of the WTO – causing differential rules to disappear from large multilateral treaties at the same time when contextual norms are strengthened on the grounds that they promote more differentiation. The differentiation in the Climate Regime, enshrined in the Kyoto Protocol, disappears unnoticeably, bringing it closer to the logic of the Multilateral Trade System, enshrined with the entry into force of the World Trade Organization in 1995, neglecting the elementary difference between them, because “the atmosphere is a global public good, which cannot be said of international trade” (OLIVEIRA, 2017, p. 240).

However, with regard to financial assistance, technology transfer and capacity-building, they maintained the binary formulation of the principle, relying essentially on developing countries, except in the capacity-building measures that developed states should cooperate in for submitting regular reports from developing Parties (JUSTE RUIZ, 2018).

With regard to technology transfer, art. 10, paragraph 5 emphasizes that “accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development”, which appears to be a belief of the Parties that the effects of climate change can be mitigated or even resolved in the long term through technological means. Such speculation could be confirmed by the fact that the Parties did not ratify the Special Report of the Intergovernmental Panel on Climate Change (IPCC) on Global Warming of 1.5 °C during COP24.

Conversely, the non-ratification of this Report may show hope for the

other substantial provisions of the PA: mitigation, adaptation and public participation. Mitigation can be subdivided into carbon sequestration and emission reduction, respectively arts. 5 and 6. The sequestration of greenhouse gases is the reduction of existing gases in the atmosphere, that is, those that have already been emitted, and occurs through natural sinks (tropical forests, corals) or through technology of “capture and underground storage” (carbon deposits). The sequestration of gases or the reduction of greenhouse gases (GHG) existing in the atmosphere is expressly provided for in art. 5, being referred as well in the preamble.

While art. 6 addresses the reduction of emissions, the PA brings a cooperative approach of accountability of the Parties from the angle of their decision-making sovereignty, does not present rules of “flexibility mechanisms” as the Kyoto Protocol does, but rather a proposal for decentralized, voluntary and multilateral cooperation. Rubiales (2018, p. 137) points out that it seems to indicate a wide network of carbon markets, reaffirming the emissions market, but not just a market mechanism. The approach has been expanded so that States can access inexpensive mitigation procedures in any territory.

Another elementary disposal of the PA is adaptation, intrinsically linked to mitigation. Juste Ruiz (2018) argues that, as well as mitigation measures, in terms of adaptation, the Agreement is mild and maintains the dichotomy between States. There are those who believe that it is a problem of general interest, and, therefore, decisions must be multilateral. And there are others who believe it to be a local problem, so each country should address it properly with domestic policies. The issue was resolved in art. 7:2 of the PA, which defined that the adaptation approach will be global, although not operationalized by it.

It is the first time in the Regime that an instrument addresses mechanisms with the objective of adaptation. Carnero (2018, p. 150) points out that: “The international adaptation action has been, in the first place, a claim from the most vulnerable and least developed States, which demanded from the developed countries an intense and effective cooperation in this matter”. The term had already been employed by the Convention in the sense of providing assistance to vulnerable States, now, “adaptation means, first of all, to bear the costs of climate change in progress, taking into account the different situations of vulnerability and adaptability of each State” (CARNERO, 2018, p. 150).

In this way, control of adaptation is in the hands of the countries,

following the bottom-up logic, and in a cooperative manner, the Parties may present formulations or improvements to the national adaptation plans, through the exchange of information, strengthening of institutional arrangements, strengthening of scientific knowledge and provision of assistance.

Juste Ruiz (2018) calls attention to the intention behind this operational change that allows greater flexibility in actions, based on long-term action, in which contributions will be reformulated *sub specie aeternitatis*:

The change in the operational strategy formulated in the Paris Agreement seems to have as main objective of allowing the Parties greater temporal and material flexibility in their actions, with the veiled hope that, in the meantime, scientific and technological advances may find solutions that avoid the need to resort to more drastic measures to mitigate emissions (JUSTE RUIZ, 2018, p. 35).

However, without adopting effective mitigation measures, NDCs will be ineffective in seeking to contain the rise in global temperature, which would lead all of humanity to a collapse at the end of the 21st century. However, it is possible to question whether the world population knows about these risks.

Art. 12 establishes the duty of cooperation for educational promotion, capacity-building, awareness and public participation measures. This item reflects the wide participation of different actors in the Paris negotiations. The Paris Conference involved more than 19,000 government involved participants (including 150 heads of state), more than 6,000 representatives of NGOs and companies, including many CEOs, and approximately 2,800 members of the press (BODANSKY, 2016).

The provision that information on States' mitigation measures should be publicly accessible, in turn, settles the "Effectiveness" modality that the Agreement seeks, an efficacy based on transparency (such as emission inventories) for exerting pressure on peers, the population in general (organized or not), and on diplomacy and/or commercial.

In a procedural way, the Agreement seeks to "strengthen the diluted commitments made therein, through procedural mechanisms that aim to strengthen transparency, promote compliance and deal with loss and damage related to the effects of climate change" (JUSTE RUIZ, 2018, p. 48).

Art. 15 of the PA establishes a Compliance Committee with facilitating aims, composed of specialists, without punitive or adversarial nature, subordinated to COP, with the purpose of "facilitating implementation and promoting compliance". In the same sense, without judicial or punitive

character, art. 8 addresses issues of loss and damage, which induces error given the nomenclature of the civil liability doctrine. What is sought by the article is to recognize the damaging effects of climate change.

And, finally, there is the “Enhanced Transparency” framework, present in art. 13 of the PA, which establishes a “strengthened transparency structure”, an essential element for the new bottom-up approach, in which the Parties present their nationally-determined contributions, with no underlying obligation of result. The transparency framework seeks to configure a single system applicable to all Parties, while maintaining elements of differentiation applicable in particular to developing countries that need it (SARIEGO, 2018). The Agreement did not establish the procedure; it merely determined that it would be up to the Conference of the Parties to the Paris Agreement. Adaptation is modestly applied, with the recommendation that the Parties present/inform their adaptation work (CARNERO, 2018).

In addition, with regard to mitigation, the enhanced transparency constitutes an element that is binding on the Parties, for they must submit a report on the national inventory of emissions by anthropogenic sources and absorption by greenhouse gases sinks, as well as the information necessary to make an evaluation and monitoring of progress achieved (JUSTE RUIZ, 2018).

Given the importance of “Enhanced Transparency” for nationally-determined contributions, this is the theme of the longest section of the Rulebook aimed at “developing ‘common’ modalities, procedures and guidelines for the framework” that determines applicable criteria (RAJAMANI, BODANSKY, 2019, p. 11).

3 THE BOTTOM-UP NORMATIVE PARADIGM: PARIS AGREEMENT AND RULEBOOK

According to Rajamani and Bodansky (2019, p. 5) “The Paris Agreement is fundamentally driven by ‘national determination’”. In this sense, the model of nationally-determined contributions “institutionalizes a new normative paradigm”, with innovative characteristics that catalyze, over time, an increasingly stronger action to combat climate change (BODANSKY, 2016).

The Book contemplates three main categories in which the Paris Agreement has a legal effect based on the Doctrine of Interpretation of the

Treaty (MINNEROP, 2020). In the three categories, the Paris Convention of the Parties fulfills a distinct “interpretive normative function” in the post-Paris climate change regime. The first two categories include decisions external to the Paris Convention of the Parties, while the third concerns decisions internal to the Convention.

In the first category, the Book constituted a decision defining more narrowly an existing legal obligation or creating an obligation under the scope of an existing one, through the use of mandatory language, together with an annex that includes clear and specific elements, without allowing other options at the discretion of the Parties, for example. The Book brought accounting guidelines that the Parties must present based on the existing methods and the guidelines established in the Convention “as appropriate”, an obligation already prescribed in the PA, which obliges the Parties to account for NDCs, art. 4:13 (MINNEROP, 2020).

In the second category are decisions that still have a legal effect through the interpretation of the underlying provision of the Treaty, but the substance of the Agreement is limited by the Rulebook (MINNEROP, 2020, p.30), “so that no clear legal obligation can be identified”. As in art. 4:8 of the Agreement, which expresses that “all Parties shall provide the information necessary for clarity, transparency and understanding” (BRASIL, 2017). The Book combines mandatory language with openness for the parties’ discretion, using “as applicable”, which does not exclude the mandatory nature stipulated by the Agreement, but its legal effect is reduced. “While the use of non-binding language weakens the legal effect, the fact that the Paris Agreement anticipated further relevant decisions (in Art. 4(8)) – such as in the Paris Rulebook – strengthens the finding that a clear preference for implementation exists.” (MINNEROP, 2020, p. 30).

The third category includes internal decisions that bind the Paris Convention of the Parties or the compliance committee that will be created. The text of the Rulebook reinforced the role of this Convention “to facilitate international cooperation and to supervise the implementation of the Paris Agreement, to ensure that the efforts of the Parties are sufficient to achieve the agreed temperature target”. For example, the Rulebook outlined the mechanisms of the Paris Agreement (Global Inventory, Compliance Procedure), but did not impose obligations nor defined those existing in the text of the Agreement (MINNEROP, 2020).

Juste Ruiz (2018, p. 35-37) stresses that the instrument is “a masterpiece of legal flexibility”, as it combines a structure of imperativeness with

“specific provisions with a very diversified legal value that varies from formal mandatory to the mere suggestion of behavior”, with nationally-determined contributions being the highest expression of the hybrid soft law/hard law structure. The Paris Agreement combines, as a duty, requirements of clarity and transparency with the strict regulation of submission schedules, so that the “low regulatory intensity” of the provisions tend to be compensated for by the devices that establish procedural obligations and information, transparency and clarity mechanisms, verification systems and promotion of compliance.

The progressiveness of NDCs can also be understood as a limitation of discretion progressively (MINNEROP, 2020). Progressiveness is characterized because the instrument “incorporates elements of evolution, progression, ambition and reinforcement that distinguish it from other conventional instruments for use in the environmental sector” (JUSTE RUIZ, 2018, p. 37), a characteristic that applies to mechanisms as a whole, especially to mitigation efforts through nationally-determined contributions (art. 4:11). The Agreement establishes an evolutionary scenario based on the principle of non-regression and the requirement of a growing ambition to achieve the proposed objectives, with provisions that require a continuous effort of progression, whose collective effectiveness will be verified in a first world balance of application in the year 2023 (art. 14).

Viñuales (2018) points out that this progressivity only makes sense if the declared contributions are insufficient. Along the same lines, Juste Ruiz (2018, p. 38), states:

This projection into the future, together with the lack of realization of many of its provisions, makes the Paris Agreement an embryonic legal instrument that will only become fully operational as the rules and guidelines contained therein are developed.

Such operationalization of the rules and guidelines is the subject of the Rulebook, negotiated for three years, especially by the *Ad Hoc* Working Group. The document consists of several modalities, procedures and guidelines that formulate the obligations under the Paris Agreement and detail the procedures and mechanisms, including the process of review by technical experts, global stocktake and the implementation and compliance mechanism (RAJAMANI, BODANSKY, 2019).

The spirit of the Agreement is based on transparency, review processes and progressivity. They are crucial elements for its integrity and logic. Decision 1/CP.21, the document that accompanies the PA, determined that

additional guidelines should be developed on the characteristic, accounting and necessary information of nationally-determined contributions, which are the self-determined mitigation contributions regulated in art. 4.

Regarding the characterization of NDCs, the possibility of giving them greater discipline was discussed, and some States required quantifications, while others argued that it was a characteristic incompatible with self-determination. Thus, it remained unchanged in the Rulebook, a situation that expresses the wait for the first experience of the Global Assessment, for greater post-2024 specifications to occur (RAJAMANI, BODANSKY, 2019).

Otherwise, with respect to the information that must accompany nationally-determined contributions, the Paris Rulebook strengthens the ambition of the Agreement, as it specifies the information elements necessary for greater “clarity, transparency and understanding”, as well as declares that the parties will provide the information of the annex. But it does allow for certain discretion of the Party, as the elements must be used “as applicable” to their national contributions.

Annex I of the Book establishes what specific information the Parties need to provide, together with their NDCs, as applicable, quantifiable information on their mitigation reference points (which action, in which area), deadlines for implementation, gases covered, planning processes, assumptions and methodological approaches, in addition to specifying how they consider their contribution fair and ambitious and how it contributes to the objective of the regime (RAJAMANI, BODANSKY, 2019).

The parties do not need to present the first update of their NDCs in 2020, in line with the specifications in Annex I, but they are strongly encouraged to do so. With respect to differentiation, the Book states that the party can differentiate the requirements for clear, transparent and understandable information, because it self-differentiated its goal, not by the Party’s category (developed and developing). With regard to the fairness and ambition of contributions, the Book only requires the Parties to provide an explanation, does not prescribe guidelines, the explanation being self-determined (RAJAMANI, BODANSKY, 2019).

Regarding the accounting of contributions, duty established in art. 4:13, the Rulebook “modestly” specified information that it would compose of and boosted the use of IPCC methods and metrics, but it also allows the Party to use national methodologies, if their goal so requires, pursuing the self-determined idea of the NDCs. Regardless of the method chosen,

the choice and the metric must be explained, satisfying the Transparency mechanism (RAJAMANI, BODANSKY, 2019).

The “Enhanced Transparency” structure plays a central role in the Agreement, it is one of its elementary components, together with “Global Assessment” and “Implementation and Compliance Mechanism”, and is the longest part of the Rulebook. In summary, they establish relatively strong reporting requirements, but more modest review processes, with specified flexibility for developing countries based on their capacity needs. This structure is subdivided into the following components: (i) obligations to report on emission inventories, progress in the implementation and scope of contributions, and, for developed countries, the support provided to developing countries; (ii) review by technical experts; (iii) multilateral consideration that facilitates progress, which consists of peer review in a kind of multilateral negotiating table (RAJAMANI, BODANSKY, 2019).

The obligations to report on emission inventories, progress in the implementation and scope of contributions are met by the deposit of reports in the public bank, managed by the Secretariat, an obligation established in art. 13:7 of the PA, the term being two years and with differentiation for less developed and island countries covered in Decision 1/CP.21, paragraph 90 et seq.

Rajamani and Bodansky (2019) point out that the fundamental doubt was whether the Rulebook would require emissions inventories to adopt the 2006 IPCC guidelines (2006 IPCC Guidelines for National Greenhouse Gas Inventories). The most prescriptive element of the Rulebook is located here and detailed rules have been established on the analysis of key categories for inventories, consistency and recalculation of time series, uncertainty assessment, completeness assessment and quality assurance/control, and, finally, all parties are required to use the IPCC 2006 guidelines, but in the same logic of a certain openness to explained discretion and national autonomy (RAJAMANI, BODANSKY, 2019).

With regard to the progress of implementation and the scope of contributions, the Parties once again favored national autonomy. It is emphasized that States are not obliged to fulfill their goals defined in the NDCs, but if the rules on tracking progress were well structured, there would be the potential to generate some measure of responsibility.

However, as the tracking of progress accompanies the obligation of clear, transparent and understandable information, of art. 4:8 of the PA, the same open interpretation and autonomy attributed to it applies here. The

Book establishes a list of illustrative indicators that the Party “may include, as appropriate”, that is, the tracking of progress towards implementation and the scope of its national contributions is also self-determined, as the Party will choose its own qualitative and quantitative indicators (RAJAMANI, BODANSKY, 2019).

It is observed regarding the elements of the report, on the section of structure of enhanced transparency, that the Book of Rules established some limits, gave meaning to some open questions, but self-determination is a central element of the nationally-determined contributions; therefore, the mitigation procedures of greenhouse gases seems to us to be a political decision process, not a technical one or due to the need to contain the global temperature. From this reflection, it is questioned how this self-determination goes through the review by technical experts.

Rajamani and Bodansky (2019) state that, in this requirement, States have also chosen to preserve their autonomy in relation to nationally-determined contributions. The review by technical experts may take the form of a desk review, always with the consent of the Party subject to the review, and will be carried out in the country at regular intervals, for example in its first biennial transparency report and in the report containing information on the progress of domestic mitigation measures.

The procedure (i) will consider the information’s consistency with the Paris rules, the implementation and scope of the Party’s contributions and the financial support received, and (ii) will identify areas of improvement for the Party in relation to the fulfillment of commitments related to transparency, in addition to helping to identify its capacity-building, an element applicable to developing, less developed and island countries.

The preservation of sovereignty, and non-intervention in internal politics, can be seen in the prohibitions for technical reviewers. Teams are prohibited from making political judgments, from analyzing the adequacy or sufficiency of the national measures presented, the domestic policy adopted and the financial support received.

Having made the pertinent considerations on the Enhanced Transparency Structure element, we turn to the Global Assessment element. This element of the PA has the purpose of evaluating the collective progress to achieve the objective of the Agreement and its long-term contributions, a fundamental element for the progressivity proposed in the Agreement, as it allows the Parties, every five years, to view the progress in particular of the emissions mitigation, which is one of the substantial areas of the agreement.

The Agreement dealt with the nature, purpose, objective, periodicity and result of the global balance, but the mechanics was the subject of the Rulebook, which specified: “its three components (information collection, technical evaluation and consideration of results); how it will be accomplished; and the bodies responsible for doing so” (RAJAMANI, BODANSKY, 2019, p. 14-15).

The Book defined that the information for the preparation of the global evaluation can come from: the Parties to the Agreement, the IPCC, the UNFCCC Secretariat or its subsidiary bodies, the States not party to the Agreement, and organizations observing the Convention. It also defined the categories of relevant information, namely: the status of GHG emissions and mitigation efforts; the general effect of the national contributions of the Parties and the general progress in implementation; the state of adaptation efforts; financial flows and efforts related to loss and damage (RAJAMANI, BODANSKY, 2019). This institute plays a fundamental role, as it allows the parties to visualize, every five years, if their domestic mitigation measures are sufficient to meet the general objective of containing the global temperature.

In addition, the PA provides for broad guidance on the implementation and enforcement mechanism, and the Paris Conference of Parties is responsible for developing the modalities and procedures for the mechanism. The Parties were divided into those that wanted to limit the mechanism to the technical support for Parties with difficulties in implementation, and those that attributed to it a character of promoting accountability for the fulfillment of the contributions presented.

The Rulebook balances the two positions, providing an “extra layer of responsibility”, allowing the Compliance Committee to initiate proceedings and to issue reports on factual findings regarding non-compliance with procedural obligations, which are binding, that is, it will do so in case of non-compliance submitting national contributions every five years or mandatory report on implementation and scope, as well as participating in the multilateral debate on the progress of the agreement’s objectives. It can also issue “facilitating considerations” about “significant and persistent inconsistencies” between the reports and the rules of the transparency structure and identify inconsistencies that are general to the Parties.

However, even with this hardening, the mechanism maintained national autonomy as a fundamental matter. The Committee’s initiatives are limited to procedural issues; they cannot address the “content

of contributions, communications, information and reports”. When considering inconsistencies between the reports of a Party and the rules of art. 13, it requires the consent of the State in question (RAJAMANI, BODANSKY, 2019).

Otherwise, the procedure may be initiated by a Party in relation to its contributions, following the idea of self-determination, with respect to any provision of the Agreement, whether procedural (binding) or on content. In general, the Rulebook elucidated the facilitating nature of the mechanism, listing situations in which various measures and results of a process in the Committee would result, the responses being listed as “mild involving dialogue, assistance and recommendations” (RAJAMANI, BODANSKY, 2019).

In short, the definition of contributions is a decision of each Party, self-determining its mitigation of emissions, and, therefore, choosing how much it continues to contribute to the global warming potential. However, the legal and diplomatic value of the Paris Rulebook, which adds considerable requirements to the three essential elements of the Agreement, cannot be disregarded.

FINAL CONSIDERATIONS

At the meeting that would take place in 2020, postponed due to the COVID-19 pandemic, the Parties should present their nationally-determined contributions until 2025, stressing that the Parties that already have measures in place by 2030 can continue with them or update them. As much as the Agreement contained deadlines for the presentation and renewal of nationally-determined contributions, it is vague in relation to the elements of the reports, applicability and quantification.

These gaps in the 2015 text should be filled by another document that should create the guidelines, as expressed in Decision 1/CP.21, only remaining the decision and annexes adopted at the Conference of the Parties in Katowice in 2018, COP 24, of creating guidelines for the operation of nationally-determined contributions, documents called the Paris Rulebook.

The Paris Rulebook maintained self-determination as a guiding element, nationally-determined contributions. However, regarding the elements of the report, from the “enhanced transparency structure” section, it established some limits and gave meaning to some open questions. Even though States Parties may choose other metrics and models, they must

explain themselves, placing their inventory reports under the “transparency framework”, subjecting them to peers, civil society and compliance mechanisms.

For now, only time will tell if such refinements to the “enhanced transparency framework”, “global assessment”, “implementation and compliance mechanism” will be sufficient to limit the possible catastrophic scenarios presented by the IPCC Special Report on Global Heating of 1.5 °C. As much as, in the best scenario, the contributions presented by the Parties in 2016 will limit the temperature increase to 2.7 °C, as Bodansky (2016) has pointed out.

In summary, the nationally-determined contributions as an innovation of the Agreement, as this is a bottom-up legal instrument, depend on the three essential elements of the Paris Agreement: enhanced transparency structure, global balance and complementation and compliance mechanism. If self-determination guides NDCs, the procedures for mitigating greenhouse gases seem to us to be a political decision process, rather than technical or due to the need to contain global temperature, and reveals that the post-Paris path is still under construction.

REFERENCES

BODANSKY, D. The Paris Climate Change Agreement: a new hope? *American Journal of International Law*, v. 110, n. 2, 288-319, abr. 2016.

BODANSKY, D.; BRUNNÉE, J.; RAJAMANI, L. *International Climate Change Law*. Oxford: Oxford University Press, 2017.

BRAZIL. *Decreto n. 2.652, de 1º de julho de 1998*. Promulga a Convenção-Quadro das Nações Unidas sobre Mudança do Clima, assinada em Nova York, em 9 de maio de 1992. Brasília, DF: Presidência da República, 1998. Available from: http://www.planalto.gov.br/ccivil_03/decreto/d2652.htm. Access on: Mar 10, 2018.

BRAZIL. *Decreto n. 7.030, de 14 de dezembro de 2009*. Promulga a Convenção de Viena sobre o Direito dos Tratados, concluída em 23 de maio de 1969, com reserva aos Artigos 25 e 66. Brasília, DF: Presidência da República, 2009. Available from: http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D7030.htm. Access on: May 15, 2019.

BRAZIL. *Decreto n. 9.073, de 5 de junho de 2017*. Promulga o Acordo

de Paris sob a Convenção-Quadro das Nações Unidas sobre Mudança do Clima, celebrado em Paris, em 12 de dezembro de 2015, e firmado em Nova Iorque, em 22 de abril de 2016. Brasília, DF: Presidência da República, 2017. Available from: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/D9073.htm. Access on: May 10, 2018.

CARNERO, R. G. Mecanismos de adaptación. In: VILLAVICENCIO, P.; BORRÀS, S. (Orgs.). *El acuerdo de París sobre el cambio climático: un acuerdo histórico o una oportunidad perdida? Análisis jurídico y perspectivas futuras*. Madrid: Thomson Reuters, 2018.

JUSTE RUIZ, J. El tercer pilar del régimen internacional para responder al cambio climático: el Acuerdo de París de 2015. In: VILLAVICENCIO, P.; BORRÀS, S. (Orgs.). *El acuerdo de París sobre el cambio climático: un acuerdo histórico o una oportunidad perdida? Análisis jurídico y perspectivas futuras*. Madrid: Thomson Reuters, 2018. p. 29-52.

MAYER, B. *The International Law on Climate Change*. New York: Cambridge University Press, 2018.

MINNEROP, P. The legal effect of the ‘Paris Rulebook’ under the Doctrine of Treaty Interpretation. In: CAMERON, P.; MU, X.; ROEBEN, V. (Eds.). *Global energy in transition: towards rules-based multilateral governance of generation, markets and investment*. London: Hart, 2020.

OLIVEIRA, A. S. Regimes internacionais e a interação entre a OMC e os acordos ambientais multilaterais. In: V ENCONTRO NACIONAL DA ASSOCIAÇÃO NACIONAL DE PÓS-GRADUAÇÃO E PESQUISA EM AMBIENTE E SOCIEDADE, 5., 2010, Florianópolis. *Anais [...]*. São Paulo: Anppas, 2010.

OLIVEIRA, A. S. *Tratamento diferenciado dos países em desenvolvimento e mudanças climáticas: perspectivas a partir do Acordo de Paris*. Dissertação (Mestrado em Direito) – Programa de Pós-Graduação em Direito, Faculdade de Direito, Universidade Federal do Rio Grande do Sul, Porto Alegre, 2017. Available from: <https://lume.ufrgs.br/handle/10183/158919>. Access on: Dec. 10, 2019.

PEIXER, J. F. B. *A contribuição nacionalmente determinada do Brasil para cumprimento do Acordo de Paris: metas e perspectivas futuras*. Tese (Doutorado em Direito) – Centro de Ciências Jurídicas, Programa de Pós-Graduação em Direito, Universidade Federal de Santa Catarina, Florianópolis,

2019. Disponível: <https://repositorio.ufsc.br/handle/123456789/199009>. Access on: Dec. 15, 2019

RAJAMANI, L.; BODANSKY, D. The Paris rulebook: balancing international prescriptiveness with national discretion. *International and Comparative Law Quarterly*, v. 68, n. 4, p. 1023-1040, out. 2019.

RUBIALES, I. S. Mecanismos de mitigación. In: VILLAVICENCIO, P.; BORRÀS, S. (Orgs.). *El acuerdo de París sobre el cambio climático: un acuerdo histórico o una oportunidad perdida? Análisis jurídico y perspectivas futuras*. Madrid: Thomson Reuters, 2018. p. 125-147.

SARIEGO, P. M. Mecanismos de cumplimiento del Acuerdo de París. In: VILLAVICENCIO, P.; BORRÀS, S. (Orgs.). *El acuerdo de París sobre el cambio climático: un acuerdo histórico o una oportunidad perdida? Análisis jurídico y perspectivas futuras*. Madrid: Thomson Reuters, 2018. p. 245-258.

THORGEIRSSON, H. Objective (article 2.1). In: KLEIN, D. *et al.* (Eds.). *The Paris Agreement on Climate Change: analysis and commentary*. Oxford: Oxford University Press, 2017. p. 123-130.

UNFCCC – UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE. *Convention*, 1992. Available from: <https://unfccc.int/resource/docs/convkp/conveng.pdf> Access on: 1 set. 2020

UNFCCC – UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE. *Paris Agreement – status of ratification*. Bonn: UNFCCC, 2020. Available from: <https://unfccc.int/process/the-paris-agreement/status-of-ratification>. Access on: 1 set. 2020

UNFCCC – UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE. *‘Decision 1/CP.21: Adoption of the Paris Agreement’ (29 January 2016) FCCC/CP/2015/10/Add.1, 21, Annex (here in after ‘Paris Agreement’)*. Bonn: UNFCCC, 2016.

VIÑUALES, J. E. Epílogo: el acuerdo de París y la transición ecológica. In: VILLAVICENCIO, P.; BORRÀS, S. (Orgs.). *El acuerdo de París sobre el cambio climático: un acuerdo histórico o una oportunidad perdida? Análisis jurídico y perspectivas futuras*. Madrid: Thomson Reuters, 2018. p. 275-280.

YAMIN, F.; DEPLEDGE, J. *The International Climate Change Regime*:

a guide to rules, institutions and procedures. Cambridge: Cambridge University Press, 2004.

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